

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission
On Its Own Motion

vs.

Docket No. 00-0714

Illinois Power Company

Reconciliation of revenues collected under
gas adjustment charges with actual costs
prudently incurred.

PROTECTIVE ORDER

Pursuant to 83 ILL. ADMIN. CODE § 200.430, the Commission orders that the following procedures shall be followed in connection with the production in this proceeding of information and documents that a party asserts should not be made public:

A. The following definitions shall apply to information which a party claims should not be made public.

HIGHLY CONFIDENTIAL: Information concerning (1) material or documents that contain information relating directly to specific customers; (2) personnel records or records of individual employees; (3) marketing analyses or other market-specific information relating to products or services offered in competition with others, including information on the costs of such products or services; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants

(other than reports, work papers or other documentation relating to the testimony of auditors or consultants who are witnesses in this case); (5) strategies employed, to be employed, or under consideration in contract negotiations.

PROPRIETARY: Information concerning trade secrets, as well as confidential or private technical, financial and business information, that is not HIGHLY CONFIDENTIAL.

B. During the course of discovery a party may designate information as HIGHLY CONFIDENTIAL or PROPRIETARY (hereinafter, “designated information”) and shall make such designated information available to the party seeking discovery, if such information is not objectionable on any other ground, under the restrictions set out in paragraphs C and D. The requesting party may file a motion challenging the designation. The party designating the information confidential shall have five (5) days after the filing of the challenge to file a response. No other filings are authorized. The party receiving designated information shall maintain it as HIGHLY CONFIDENTIAL or PROPRIETARY, as the case may be, in accordance with this Protective Order, unless or until the Hearing Examiner or the Commission rules that the material or information is not HIGHLY CONFIDENTIAL or PROPRIETARY.

C. Materials or information designated as HIGHLY CONFIDENTIAL may, at the option of the furnishing party, be made available only on the furnishing party’s premises and may be reviewed only by attorneys or outside experts who have been retained for the purpose of this case, unless good cause can be shown for disclosure of the information off-premises and the designated information is delivered to the custody of the requesting party’s attorney. Outside expert witnesses shall not be employees, officers or directors of any of the parties in this proceeding. No more than three (3) copies of such material or information shall be made, which shall be shown only to persons allowed access to the information in accordance with this order.

Any notes taken shall be treated as the HIGHLY CONFIDENTIAL information from which notes were taken.

D. Disclosure of PROPRIETARY information shall be made only to attorneys, and to such employees of the requesting party who are assisting such attorney or the requesting party's experts for purposes of, or who intend to file testimony in, these proceedings, or to persons designated by a party as outside experts. Employees to whom such disclosure is to be made must be identified to the other party by name, title and job classification prior to disclosure. Information designated as PROPRIETARY shall be served on the attorney(s) for the requesting party. On-premises inspection shall not be required for PROPRIETARY information, except in the case of voluminous documents. Any employees of the party who wish to review such PROPRIETARY materials shall first read this Protective Order and certify in writing that (s)he has reviewed same and consented to its terms. The acknowledgement so executed shall contain the signatory's full name, permanent address, title or position, date signed, and an affirmation that the signer is acting on behalf of his/her employer. Such acknowledgement shall be delivered to counsel for the party furnishing the information or documents before disclosure is made.

E. Attorneys, in-house experts or outside experts who have been provided access to material or information designated HIGHLY CONFIDENTIAL or PROPRIETARY shall be subject to the nondisclosure requirements set forth in paragraphs C or D, whichever is applicable, and Q.

F. If material or information to be disclosed in response to a data request contains material or information concerning another party which the other party has indicated is confidential, the furnishing party shall notify the other party of the intent to disclose the information. If the other party had originally provided the material or information to the

furnishing party with the designation HIGHLY CONFIDENTIAL or PROPRIETARY, the furnishing party shall so designate the material or information when disclosing it in response to the data request. If the other party had not originally designated the material or information as HIGHLY CONFIDENTIAL or PROPRIETARY, the other party may upon receipt of notification from the furnishing party choose to designate the material or information as HIGHLY CONFIDENTIAL or PROPRIETARY under the provisions of this Protective Order.

G. Any party may use material or information designated as HIGHLY CONFIDENTIAL or PROPRIETARY in prefiled or oral testimony and exhibits at hearing provided that the same level of confidentiality assigned by the furnishing party is maintained, unless otherwise classified by the Commission. In filing testimony and exhibits all parties shall designate as HIGHLY CONFIDENTIAL or PROPRIETARY only those portions of their testimony and exhibits which contain information so designated by the furnishing party.

H. A party may designate prefiled or live testimony and exhibits, or portions thereof, submitted in this case as HIGHLY CONFIDENTIAL or PROPRIETARY (hereinafter, “designated testimony”). Designated testimony which is filed with the Chief Clerk’s office in hard copy shall be prepared in the manner described in Appendix “B” attached hereto. Designated testimony which is filed electronically using the Commission’s e-docket system shall be prepared and filed in the manner described in Appendix “C” attached hereto. Designated testimony shall not be served electronically on the parties and shall be served upon all attorneys of record only in hard copy form.

I. Attorneys upon whom designated testimony designated HIGHLY CONFIDENTIAL or PROPRIETARY has been served shall make such testimony available only

to those persons authorized to review such testimony under the restrictions in Paragraphs C or D, whichever is applicable.

J. Attorneys of record in this case shall require that the in-house or outside expert read this Protective Order and certify in a written nondisclosure agreement that the person has reviewed the Protective Order and consented to be bound by its terms. The nondisclosure agreement shall contain the signatory's full name, permanent address, employer and the name of the party with whom the signatory is associated. A copy of such agreement shall be provided to the producing party. Attached hereto as Appendix "A" and incorporated by reference herein is a form for use in complying with the terms of this paragraph.

K. In the event a witness discloses the contents of designated testimony in his or her own prefiled testimony or exhibits, such testimony or exhibits shall also be designated in the same manner as the designated testimony and handled in accordance with this Protective Order.

L. Unless good cause is shown, challenges to the confidential nature of designated testimony shall be filed with the Commission no later than ten (10) days after the designated testimony is filed or at the hearing, whichever occurs first. The party making the designation shall have five (5) days to respond to the challenge or may respond at the hearing, whichever occurs first. For purposes of this Paragraph L, "good cause" shall include, but not be limited to, discovery that the designated testimony is available publicly or is otherwise no longer maintained in a confidential manner by the party originally designating it as **HIGHLY CONFIDENTIAL** or **PROPRIETARY**.

M. The Commission or hearing examiner may rule on the challenge to the designations prior to the hearing, or at the hearings.

N. In the event no party challenges prefiled designated testimony, or in the event the Commission or its hearing examiner rules that designated testimony was properly designated, then such designated testimony shall be received into evidence, subject to any other objections being made and ruled upon, and (i) if filed in hard copy, kept under seal, and (ii) if filed electronically, maintained on e-docket in such a manner that it is accessible only to personnel of the Chief Clerk's office and to administrators of the e-docket system employed by the Commission.

O. In addition, all live testimony, including cross-examination and oral argument which reveals the content of prefiled designated testimony or which is otherwise held to be confidential, including any argument as to whether certain testimony is properly designated, shall be made only after the hearing room is cleared of all persons besides the Commission, its hearing examiners, court reporters, attorneys of record and witnesses to whom the designated information is available pursuant to the terms of this Protective Order. The transcript of such live testimony or oral argument shall be kept under seal and copies shall only be provided to the Commission, its hearing examiners, and attorneys of record. The transcript of such live testimony or oral argument shall not be posted on e-docket. Such attorneys shall not disclose the contents of such transcripts to anyone other than those who may have access to the designated information under the terms of this Protective Order. Persons who have access to the designated information under the terms of this Protective Order shall treat the contents of such transcript as any other designated information under the terms of this Protective Order.

P. References to designated testimony, whether prefiled or live and transcribed, in any pleadings before the Commission, shall be by citation only and not by quotation. Subject to

the jurisdiction of any reviewing court, references to designated testimony in pleadings or oral arguments made to such reviewing court shall also be by citation only.

Q. All persons who are afforded access to information under the terms of this Protective Order shall neither use nor disclose such information for purposes of business or competition or any other purpose other than the purpose of preparation for and conduct of this proceeding and then solely as contemplated herein, and shall keep the information secure and in accordance with the purposes and intent of this Protective Order.

R. Subject to the jurisdiction of any reviewing court, designated testimony constituting part of the record before the Commission shall be delivered to any reviewing court under seal upon service of the appropriate writ of review.

S. The Commission may modify this Protective Order on motion of a party or on its own motion upon reasonable notice to the parties and opportunity for hearing.

T. Within ninety (90) days after the completion of this proceeding, including judicial review thereof, all designated information, designated testimony, and transcripts, briefs and other pleadings containing or referring to designated information in the possession of any party other than Staff shall be returned to the party claiming a confidential interest in such information, and any notes pertaining to such designated information shall be destroyed; provided, however, that a party's attorney may retain file copies of testimony, exhibits, transcripts, briefs or other pleadings containing or referring to designated information. Designated information shall be maintained as PROPRIETARY or HIGHLY CONFIDENTIAL, as applicable, for two years following the completion of this proceeding.

U. The provisions of this Protective Order do not apply to Staff. Staff is subject to the requirements of Sections 4-404 and 5-108 of the Public Utilities Act and to the nondisclosure

provisions of specific protective agreements reached by parties and Staff. Provided, that outside experts of Staff who have been contracted to be witnesses in this proceeding shall be subject to this Protective Order in the same manner as if they had been retained by any other party, and shall read this Protective Order and sign the nondisclosure agreement attached as Appendix "A" hereto.

V. Hard copies of designated testimony, whether filed or offered at the hearing, shall be prepared and filed in the manner described in Appendix "B". Designated testimony which is filed electronically using the Commission's e-docket system shall be prepared and filed in the manner described in Appendix "C".

SO ORDERED.

BY THE COMMISSION

DATED:

By: _____
Hearing Examiner

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

NONDISCLOSURE AGREEMENT

I, _____, have been presented a copy of the Protective Order issued in Docket No. 00-0714 on the _____ day of _____, 2001.

I hereby certify that I have read the above-mentioned Protective Order and agree to abide by its terms and conditions in connection with my receipt and review of any material or information that is designated HIGHLY CONFIDENTIAL or PROPRIETARY in accordance with the Protective Order.

Dated this _____ day of _____, 2001.

Signature and Title

Employer

Party

Address

Telephone

APPENDIX "B"

1. If prefiled testimony or exhibits containing parts which are classified as PROPRIETARY or HIGHLY CONFIDENTIAL is filed with the Chief Clerk's office in hard copy form, it shall be filed with the Chief Clerk's office as follows:
 - A. One copy (the Public Copy) of the prefiled testimony and exhibits with the PROPRIETARY or HIGHLY CONFIDENTIAL portions obliterated or removed shall be filed.
 - B. One copy (the Proprietary Copy) of the prefiled testimony and exhibits containing the information which has been designated as PROPRIETARY and HIGHLY CONFIDENTIAL shall be filed in a separate envelope conspicuously marked with the docket number, name of party, exhibit number(s), and the statement "Contains PROPRIETARY [or HIGHLY CONFIDENTIAL] information", as applicable. The PROPRIETARY pages shall be stamped "P" and the PROPRIETARY information indicated by two asterisks before and after the information, **PROPRIETARY**. The HIGHLY CONFIDENTIAL information pages shall be stamped "HC" with the HIGHLY CONFIDENTIAL information indicated by two asterisks and underlining before and after the HIGHLY CONFIDENTIAL information, **HIGHLY CONFIDENTIAL**.

Provided, that the specific format requirements set forth above shall not apply to the direct testimony of the Staff of the Illinois Commerce Commission which was filed on or about June 19, 2001 in this docket. Any other deviations from this format must be approved by the Hearing Examiner.

2. If the Hearing Examiner requires that copies of any testimony or other exhibits be provided at the hearing, then any such copies shall be provided in the form described in Paragraph 1 above, with each copy containing only PROPRIETARY portions placed into

a separate envelope to be marked as Exhibit __P, and with each copy containing any HIGHLY CONFIDENTIAL portions placed into a separate envelope to be marked as Exhibit __HC.

APPENDIX "C"

1. If prefiled testimony or exhibits containing parts that are classified as PROPRIETARY or HIGHLY CONFIDENTIAL is filed electronically using the Commission's e-docket system, it shall be filed as follows:
 - A. Two separate electronic versions of the testimony or exhibits, the "Public Copy" and the "Proprietary Copy", shall be created, in either Word or Wordperfect format. The first page of each version shall be prominently labeled "PUBLIC" or "PROPRIETARY", as applicable.
 - B. No designated information shall be included in the Public Copy of the testimony or exhibits. Blank spaces corresponding to the location of the designated information shall appear in those places at which the designated information would have appeared.
 - C. Each page of the Proprietary Copy which contains designated information shall be labeled "P" or "HC", as applicable. PROPRIETARY information shall be indicated by two asterisks before and after the information, "***PROPRIETARY**". HIGHLY CONFIDENTIAL information shall be indicated by two asterisks and underlining before and after the HIGHLY CONFIDENTIAL information, **HIGHLY CONFIDENTIAL**. Provided, that the requirements of this Paragraph C shall not apply to the direct testimony of the Staff of the Illinois Commerce Commission that was filed on or about June 19, 2001.
 - D. Both the Public Copy and the Proprietary Copy shall be converted to PDF format prior to filing, and saved using the "Standard Security" feature.

- E. The Public Copy shall be entered at the “File to Upload (Public Copy)” command of e-docket. The Proprietary Copy shall be entered at the “File to Upload (Proprietary Copy)” command of e-docket.
2. If the Hearing Examiner requires that copies of any testimony or exhibits be provided at the hearing, such copies shall be prepared and provided in accordance with Appendix “B” to this Protective Order.