

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY)
)
) Docket No. 12-0590
)
 Verified Petition for Expedited Approval of)
 Modifications to Rate GAP – Government)
 Aggregation Protocols)

**STAFF OF THE ILLINOIS COMMERCE COMMISSION'S
MOTION TO STRIKE THE
BRIEF ON EXCEPTIONS OF
THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION**

Pursuant to 83 Ill. Adm. Code 200.190, Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned attorneys, hereby files this Motion to Strike the Brief on Exceptions (“BOE”) of the Illinois Competitive Energy Association (“ICEA”) in the above-captioned matter.

On October 31, 2012, ComEd filed a Verified Petition for Expedited Approval of Modifications to Rate GAP – Government Aggregation Protocols, pursuant to Articles IX and XVI of the Public Utilities Act. The Retail Energy Supply Association (“RESA”), ICEA, and FirstEnergy Solutions Corp. intervened. Staff and RESA filed separate Motions to Dismiss on December 21, 2012. ICEA and ComEd filed separate Responses to the Motions to Dismiss on January 18, 2013. RESA and Staff filed separate Replies to the Motions to Dismiss on February 1, 2013, and the Administrative Law Judge (“ALJ”) issued a Proposed Order granting Staff’s and RESA’s Motions to Dismiss because “Administrative economy required that this docket be dismissed because the exact same issues are being considered in the rulemaking.” Proposed

Order at 3. The City of Chicago entered an appearance on April 16, 2013, and Staff, ComEd, and ICEA filed BOEs on April 18, 2013, pursuant to the schedule set by the ALJ. Cover Letter of Proposed Order (“Cover Letter”) (April 4, 2013). In that same Cover Letter, the ALJ reminded parties “that pursuant to 83 Ill. Adm. Code 200.830(b), substitute language is required to be included with exceptions when exception is taken as to a statement or finding of fact in the proposed order. *Briefs on exceptions not including such language shall be stricken.*” Cover Letter at 1 (emphasis added).

Despite this helpful reminder and stern warning, ICEA failed to submit any replacement statement or finding language in its BOE. See ICEA BOE. Additionally, ICEA cites to the exact rule requiring the inclusion of substitute language in its opening paragraph; clearly ICEA is well aware of the rule and its requirements. *Id.* at 1. Moreover, the rule itself is quite clear that “[w]hen exception is taken or reply thereto is made as to a statement or finding of fact, a suggested replacement statement or finding *must* be incorporated.” 83 Ill. Admin. Code 200.830(b)(emphasis added).

Nonetheless, while ICEA made extensive arguments that the Proposed Order should be revised in three different ways, ICEA never included any replacement statement or finding language. See ICEA BOE. ICEA’s disregard for the rules of practice at the Commission should not be ignored. The entire non-compliant ICEA BOE should be stricken as per the rules of practice and the ALJ’s specific instructions accompanying the Proposed Order. *Id.*; Cover Letter at 1; see ICEA BOE.

Because of the uncertainty regarding whether to Reply to a BOE that is the subject of this Motion to Strike, Staff recommends that the scheduled date for the Reply Brief on Exceptions be suspended until this Motion is ruled upon.

WHEREFORE, for the reasons stated above, Staff respectfully requests that the Commission strike ICEA's BOE in its entirety.

Respectfully submitted,

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