

STENOGRAPHIC TRANSCRIPT OF PROCEEDINGS

BEFORE THE

Illinois Commerce Commission

DOCKET NO. 01-0336

IN THE MATTER OF:

COMMONWEALTH EDISON COMPANY

CHIEF CLERK'S OFFICE

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ILLINOIS
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PLACE: Chicago, Illinois

DATE: May 1, 2001

PAGES: 1-42

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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
COMMONWEALTH EDISON COMPANY)
) No. 01-0336
Application for a Certificate)
of Public Convenience and)
Necessity, under Section 8-406)
of the Illinois Public)
Utilities Act to construct,)
operate and maintain a 34,000)
volt electric supply line in)
Cook County and Lake County,)
Illinois.)
Chicago, Illinois

May 1, 2001

Met pursuant to notice at 2:00 p.m.

BEFORE:
MS. ERIN O'CONNELL-DIAZ, Administrative Law
Judge.

1 APPEARANCES:

2 FOLEY & LARDNER, by
3 MR. PAUL HANZLIK and
4 MR. CHRIS ZIBART
5 Three First National Plaza, Suite 4100
6 Chicago, Illinois 60602
7 Appearing for Commonwealth
8 Edison Company;

9 MR. MARK L. GOLDSTEIN
10 3710 Commercial Avenue, Suite 1
11 Northbrook, Illinois 60062
12 Appearing for the Village of Palatine;

13 MR. STEVEN G. REVETHIS
14 160 North LaSalle Street, Suite C-800
15 Chicago, Illinois 60601
16 Appearing for the staff of the
17 Illinois Commerce Commission.

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SULLIVAN REPORTING COMPANY, by
Giraida B. Bordabeheres, CSR

1 JUDGE O'CONNELL-DIAZ: Pursuant to the direction
2 of the Illinois Commerce Commission, I now call
3 Docket No. 01-0336 and this is in the matter of
4 Commonwealth Edison Company, application of
5 Commonwealth Edison Company for a certificate of
6 public convenience and necessity under Section 8-406
7 of the Illinois Public Utilities Act to construct,
8 operate and maintain a 34,000 volt electric supply
9 line in Cook County and Lake County, Illinois.

10 May I have the appearances for the
11 record, please.

12 MR. HANZLIK: Foley & Lardner by Paul Hanzlik and
13 Chris Zibart, Suite 4100, Three First National
14 Plaza, Chicago, Illinois, appearing for the
15 petitioner, Commonwealth Edison Company.

16 MR. GOLDSTEIN: On behalf of the Village of
17 Palatine, Mark L. Goldstein, special counsel, 3710
18 Commercial Avenue, Northbrook, Illinois 60062; (847)
19 564-5573 is the telephone number.

20 With me, by the way, today is several
21 members from the Village of Palatine Reid Ottesen,
22 the Assistant Village Manager; Dale Ott, the

1 Superintendent of Public Works and Andrew Redetski,
2 the Director of Public Works.

3 MR. REVETHIS: Steven G. Revethis, staff counsel
4 appearing on behalf of the staff of the Illinois
5 Commerce Commission, Madam Examiner, 160 North
6 LaSalle Street, Chicago, Illinois 60601.

7 JUDGE O'CONNELL-DIAZ: Okay. Let the record
8 reflect that this matter was -- I don't know the
9 exact filing date, but it was filed a short time
10 ago. And the purpose of today's hearing is to,
11 first of all, find out exactly what issues are going
12 to be dealt with in this proceeding. I have read
13 the -- initially the petition filed by the company,
14 and subsequent to that the motion of the Village of
15 Palatine, too, that was filed to deny the motion for
16 temporary certificate and I do note that there was
17 filed late this morning a response by the company.
18 I have read all the motions.

19 I guess at this point it is -- is there
20 anything that the parties need to or can the
21 Commission assist in working out issues that may
22 have been presented in these motions?

1 MR. GOLDSTEIN: Judge O'Connell-Diaz, I think our
2 position at the moment is as follows: We've had
3 some discussions, obviously, with Commonwealth
4 Edison Company with respect to the proposed line
5 running through the Village. We filed as part of
6 our counterpetition to dismiss, minutes of the
7 closed session that the Village Counsel had on April
8 23rd.

9 JUDGE O'CONNELL-DIAZ: Is that Exhibit B to your
10 counter motion?

11 MR. GOLDSTEIN: That's correct. I think where
12 the Village is at the moment is exactly what's set
13 forth in the minutes and that is that if
14 Commonwealth Edison company would commit to costs
15 that would not exceed \$1.248 million plus -- 284 --
16 248. I'm sorry. \$1,284,000 plus or minus 10
17 percent, I guess our participation would not be any
18 deeper than it is right now.

19 There was a meeting yesterday with
20 ComEd people and the Village. It does appear to us
21 that it's very likely that the number will be
22 substantially higher than the \$1.284 million, far

1 greater than the 10 percent over or under that's
2 called for in the minutes.

3 The minutes that were attached clearly
4 indicate that it's the sense of Village Counsel that
5 if Commonwealth Edison would commit to that number,
6 then the Village manager would be authorized to
7 issue the necessary permits to put in the proposed
8 line.

9 So as an opening response to your
10 inquiry, I think that's where we're at. Obviously
11 we still feel that there is no urgency and we don't
12 believe that Rider 28 would ever be applicable to
13 us. But all those things may go by the courts if
14 ComEd were to commit in such a manner.

15 JUDGE O'CONNELL-DIAZ: Counsel.

16 MR. HANZLIK: Yes, thank you, your Honor. Just
17 briefly by way of background, on April 18th of this
18 year, Commonwealth Edison Company filed with the
19 Illinois Commerce Commission in Springfield,
20 Illinois, a motion for a temporary certificate which
21 I had attached to it three affidavits in support of
22 that motion, a petition for a certificate of public

1 convenience and necessity under Section 8-406 of the
2 Public Utilities Act and a draft of a proposed
3 interim order which would respond to the motion for
4 temporary certificate which has been filed under
5 Section 8-406(e) of the Public Utilities Act.

6 In preparing the petition, the motion
7 for a temporary certificate and the draft interim
8 order, we proceeded under a section of the Public
9 Utilities Act, Section 8-406(e), which sets out a
10 roadmap which has been well traveled by the
11 Commission in the past with respect to the grant of
12 temporary certificates of public convenience and
13 necessity.

14 That section of the Public Utilities
15 Act states that, The Commission may issue a
16 temporary certificate which shall remain in force
17 not to exceed one year in cases of emergency to
18 assure maintenance of adequate service or to serve
19 particular customers without notice or hearing
20 pending the determination of an application for a
21 certificate.

22 Now, that particular section has been

1 construed in several cases as I indicated. I picked
2 up four of the most recent cases from the Commission
3 where the Commission granted temporary certificates
4 and then proceeded with hearings with respect to a
5 permanent certificate. Those cases involved the
6 Citizens Utility Company of Illinois and can be
7 found in Docket 00-0194. Illinois Power Company in
8 Docket 98-0856, an interim order was issued there
9 granting Illinois Power a certificate in a case
10 where the petition had been filed on November 25,
11 '98, and the order was entered on December 16, 1998,
12 a temporary order and then the case proceeded with
13 full hearings on the permanent certificate.

14 There's an interim order in 97-0403
15 involving Illinois American Water Company, and I
16 think an earlier order in 97-0276 also involving
17 Illinois American Water Company.

18 JUDGE O'CONNELL-DIAZ: Mr. Hanzlik, in any of
19 those cases were there intervening parties that were
20 in opposition to the line being put through their
21 municipalities?

22 MR. HANZLIK: I know that there were intervening

1 parties. I do not know whether they were in
2 opposition. I can check that or provide you with
3 copies of each of these orders at the break or now
4 if you would like.

5 The -- regardless of whether there are
6 intervening parties or not, what the Commission has
7 determined in those cases and what is provided for
8 in the Public Utilities Act, Section 8-406(e) is
9 that that intervention and any objection to the line
10 is to be dealt with in the hearings involving the
11 petition for a certificate of public convenience and
12 necessity.

13 In other words, what we've asked for
14 here is nothing more than what has been asked for by
15 these other utilities and granted by the Commission.
16 And that is a temporary certificate in order to
17 provide service to a customer, in this case
18 Motorola, as well as other customers that are
19 located in the Deer Park business park in a timely
20 manner and then we contemplate full hearings with
21 respect to a permanent certificate.

22 JUDGE O'CONNELL-DIAZ: When was the company aware

1 that this line needed to go in?

2 MR. HANZLIK: The company was in discussions with
3 Motorola in the summer of 2000. The company then
4 began an engineering analysis of the best way and
5 the least-cost way to serve Motorola. That process
6 was not completed until early this year and it was
7 determined that the least-cost method to serve
8 Motorola, which is a requirement under 8-406, was to
9 extend an existing 34 KV line. And that's what
10 we're talking here, extending an existing 34 KV line
11 which currently extends from the Palatine
12 substation; and that line would be extended for
13 approximately 3 miles on existing right of way where
14 we have a 12 KV line. All that would need to be
15 done -- there are be no additional property rights
16 that would be needed. All we would need to do is
17 change our poles, certain poles; not add any new
18 poles, just simply replace certain poles to
19 accommodate both the 12 KV line which is already
20 there overhead and add the 34 KV line.

21 JUDGE O'CONNELL-DIAZ: Which was the contract
22 entered into with Motorola?

1 MR. HANZLIK: The discussions -- I do not know if
2 an actual contract has been entered into.

3 JUDGE O'CONNELL-DIAZ: It states in your petition
4 that there was a contract. Page 2.

5 MR. HANZLIK: We will check that date. I do not
6 know the date off the top of my head, but I would
7 think that it would be sometime either in the summer
8 of 2000 or subsequent to that time period after the
9 engineering analysis was completed.

10 JUDGE O'CONNELL-DIAZ: When was the -- did ComEd
11 have discussions with the Village of Palatine
12 officials with regard to this line and if so, when
13 did that start occurring?

14 MR. HANZLIK: My understanding is those just
15 started in March of 2000. And once the framework of
16 the line, the engineering analysis, was sufficiently
17 complete to be able to demonstrate the method of
18 construction and the route of the line. And that's
19 not uncommon. These are normally routine
20 installations. We're talking about a 34 KV line --

21 JUDGE O'CONNELL-DIAZ: I understand, counsel,
22 what it is.

1 I've got a couple questions for
2 Mr. Hanzlik because I've gone through this.

3 This particular line that you are
4 requesting go through, it will be going through
5 portions of Palatine, correct?

6 MR. HANZLIK: On the existing right of way, yes.

7 JUDGE O'CONNELL-DIAZ: And it contemplates that
8 some of this line will be underground; is that
9 correct?

10 MR. HANZLIK: Pieces of it will be underground;
11 small pieces will be underground, that is correct,
12 where necessary.

13 JUDGE O'CONNELL-DIAZ: And on Page 3 of the
14 petition it states, on No. 9, Pursuant to local
15 ordinances, Palatine requires electric supply lines
16 over 2600 feet to be constructed underground unless
17 Palatine specifically approves overhead
18 construction.

19 And then in the response that was filed
20 this morning, I can't find it but it talks about if
21 Palatine wants underground facilities that they
22 should enact such an ordinance. So I'm a little

1 confused as to -- is there an ordinance?

2 MR. HANZLIK: I was going to -- let me just if I
3 could finish my response to Mr. Goldstein and then
4 he could reply, but I do want to address his
5 comments and respond to that as well.

6 There is a draft, as I understand it.
7 All I have is what was attached to Mr. Goldstein's
8 response. It's marked "draft" in the margin. It
9 does contain within it some inconsistencies; for
10 example, some different numbers and also there are
11 some blanks. So it is my understanding at this
12 point that we have a draft of minutes and a possible
13 ordinance or we have an ordinance that was adopted
14 which is not sufficient to permit this project to go
15 forward either underground or overhead.

16 JUDGE O'CONNELL-DIAZ: But those minutes are from
17 April 23rd and this was filed April 18th and it
18 states pursuant to its local ordinances. Where does
19 that --

20 MR. HANZLIK: I'm sorry. Let me just make sure I
21 understand the question and then --

22 MR. GOLDSTEIN: Judge O'Connell-Diaz, I think

1 that's exactly the problem. The problem really is a
2 matter of timing, and one of the reasons that we
3 attached a very rough draft minutes is simply the
4 fact that we have not had sufficient time to have
5 the minutes of that closed-door session formalized.
6 Everything is a super rush and there has been no
7 demonstrable emergency shown. And that's part of
8 the problem.

9 But we're willing to act. We're
10 willing to come forth and have the Village manager
11 approve the line as requested. All we ask is that
12 certain conditions be met and the principal one of
13 them is that the line should not exceed \$1.284
14 million. And Mr. Hanzlik is correct, there are some
15 inconsistencies with the numbers, but I'm sure at a
16 plus or minus 10 percent he would rather go with the
17 1.284 million rather than the 248 as shown on the
18 bottom of those minutes.

19 MR. HANZLIK: I may just address that because we
20 are mixing two different issues here. This is not
21 about Rider 28. What this is is a very plain
22 vanilla request to install this line overhead in

1 accordance with Commission least-cost plans and
2 practices. That's what our temporary certificate
3 requests, that's what our petition requests. That's
4 what we're obligated to do under 8-406.

5 Now, the Village -- and it has the
6 privilege of talking with us about compelling us to
7 install it in an alternate way. If they want to
8 direct us by ordinance or otherwise to install a
9 nonstandard facility -- and here undergrounding for
10 this entire length would be nonstandard -- they can
11 compel use to do that. They haven't done that up to
12 this point.

13 JUDGE O'CONNELL-DIAZ: How much portion of the
14 line would be going through Palatine?

15 MR. OTTESEN: It's almost exclusively through
16 Palatine up --

17 JUDGE O'CONNELL-DIAZ: You know, sir, you're not
18 sworn, so let Mr. Goldstein.

19 MR. HANZLIK: My understanding is most of it
20 would be going -- 3 miles would be going through
21 Palatine.

22 MR. GOLDSTEIN: It's at least 2 miles.

1 JUDGE O'CONNELL-DIAZ: Where does this length --
2 where does this -- where do you get this belief
3 that's there's a local ordinance that requires
4 electric supply lines over 2600 feet to be
5 constructed underground?

6 MR. ZIBART: That's an ordinance that's been on
7 the books --

8 JUDGE O'CONNELL-DIAZ: That is an existing
9 Palatine ordinance.

10 MR. HANZLIK: We are not --

11 JUDGE O'CONNELL-DIAZ: So this line is over 2600
12 feet --

13 MR. ZIBART: Correct.

14 JUDGE O'CONNELL-DIAZ: -- because it would be
15 placed in the municipal confines of Palatine,
16 correct?

17 MR. HANZLIK: That is correct.

18 JUDGE O'CONNELL-DIAZ: So it would -- in
19 accordance with the ordinance, which I don't have a
20 copy of that, it would need to be underground.

21 MR. HANZLIK: No.

22 MR. ZIBART: Unless --

1 MR. HANZLIK: No.

2 JUDGE O'CONNELL-DIAZ: Or is it that Palatine
3 would have to approve the construction of the line?

4 MR. ZIBART: Both.

5 MR. HANZLIK: Both.

6 MR. GOLDSTEIN: It would have to be a permit
7 issued by the Village and that's what they're
8 speaking to.

9 MR. HANZLIK: If I may just -- everything that
10 Mr. Goldstein has said does not prevent us from
11 proceeding with this temporary certificate because
12 we will have then a year to consider a permanent
13 certificate and to continue our discussions.

14 In the event that between now and May
15 17th the Village does enact a proper ordinance to
16 compel us to put this line underground, then we
17 would be able to proceed under Rider 28. But we do
18 not have any assurance that that is going to happen
19 and what we cannot do is be put in a position of not
20 being able to serve this customer and that's what's
21 happening here.

22 We have been talking to Palatine since

1 early March and there have been a number of
2 meetings, some six or more meetings, with constant
3 request for more and more information. We reached a
4 point where we had no assurance we were going to
5 reach conclusion with them and ever obtain the
6 permits.

7 Moreover, I want just simply to remind
8 all of us here that we do not concede the validity
9 of this ordinance. We are trying to work with
10 Palatine but there's a District Court opinion,
11 Appellate Court opinion in Commonwealth Edison
12 Company versus Warrenville where the Appellate Court
13 of Illinois for the Second District states that the
14 Public Utilities Act preempts enforcement of
15 ordinances that regulate or effectively regulate
16 Public Utilities where at least -- at least whereas
17 here the subject matter involves Commission-approved
18 construction projects.

19 And that's what we have been forced to
20 do is to come in here for a certificate to obtain
21 Commission approval because we're between a rock and
22 a hard place. We don't have a new ordinance telling

1 us to do it underground and directing us to do it.
2 We don't have approval under their ordinance
3 permitting us to install this line overhead. This
4 customer will not be served if we cannot get a
5 temporary certificate and get going with our
6 construction.

7 JUDGE O'CONNELL-DIAZ: Well, Mr. Hanzlik,
8 wouldn't you suggest that meetings in March when you
9 came in here in April to file this petition would
10 certainly not given the way governments and
11 municipalities work sometimes a lot slower than we
12 would like to, three or four weeks would not be a
13 prudent time to consider something of this
14 magnitude.

15 I mean, I think the -- obviously
16 the Village of Palatine has a -- legitimate is an
17 understatement with regard to the issues that are
18 raised in your petition. And this is not an
19 overhead line that it's going to be going through
20 Palatine. It is contemplating underground
21 construction which, I mean, certain portions are
22 going to be underground in Palatine, correct?

1 MR. HANZLIK: I think --

2 MR. ZIBART: Very small.

3 MR. HANZLIK: Very small piece.

4 JUDGE O'CONNELL-DIAZ: How much?

5 MR. GOLDSTEIN: At least 2600 feet.

6 MR. ZIBART: No -- you mean underground?

7 JUDGE O'CONNELL-DIAZ: Underground.

8 MR. ZIBART: Just maybe a couple hundred feet
9 would be underground.

10 JUDGE O'CONNELL-DIAZ: So I do -- this is an
11 expedited proceeding, I understand that, but, you
12 know...

13 MR. HANZLIK: The problem that we have is the
14 statute does not contemplate any particular amount
15 of time. The protection to the Village is that if
16 we construct this line and our certificate is
17 denied, then at our own cost we remove that overhead
18 line and we take it down. There's no cost to
19 Palatine.

20 Now, this is -- we're not talking about
21 anything other than an overhead pole and, in a
22 particular situation, an underground construction.

1 So it is at our financial risk as well as
2 construction risk. But regardless of whether --

3 JUDGE O'CONNELL-DIAZ: What about the underground
4 portion?

5 MR. HANZLIK: The underground portion --
6 actually, this line reinforces service to Palatine
7 as well in a way that 12 KV line that is up there
8 now serving Palatine. If we were not to construct
9 the 34 KV line over to Motorola and try to feed
10 Motorola off the existing 12 KV, it will put a
11 reliability constraint on Palatine. So this line
12 indirectly reinforces service to the Palatine area
13 by not drawing off the existing 12 KV.

14 JUDGE O'CONNELL-DIAZ: Was this going to be a
15 normal construction project done in the normal
16 course of reinforcing distribution systems --

17 MR. HANZLIK: No, because without --

18 JUDGE O'CONNELL-DIAZ: -- throughout the
19 northwest area?

20 MR. HANZLIK: -- Motorola, Palatine is fine; the
21 service in this area is fine. But this business
22 park is being up in Deer Park. It's not only

1 Motorola but there are other office facilities going
2 in and they cannot be served without a 34 KV line.

3 MR. GOLDSTEIN: But I think we ought to really
4 sort of focus in a little bit more on 8-406(e). And
5 as I understand part of Mr. Hanzlik's argument, he
6 seems to contend that it's absolutely mandatory that
7 the Commission issue a certificate -- temporary
8 certificate and I don't believe that's the case. I
9 see nothing in 8-406(e) that says that it's
10 mandatory. I think that what he has to show in
11 order to obtain that temporary certificate is that
12 an emergency exists and that he's going to serve
13 customers; more than one customer.

14 I mean it's pretty clear from the
15 motion for temporary certificate that the only
16 customer that will be served within the next year is
17 Motorola in Deer Park. And I guess we could argue
18 just as easily that perhaps since there is no proof
19 on the table as to what the reliabilities are of the
20 line, we could argue the same that the line from
21 Lake Zurich which is a 12 KV line which is already
22 serving, I assume, the Deer Park Mall which is right

1 next door, virtually, to the Motorola Deer Park
2 campus could be used to serve Motorola.

3 I mean, we could surmise forever. They
4 have to provide the proof in some tangible fashion
5 and that's what we're attempting to have before the
6 temporary certificate is issued.

7 MR. HANZLIK: It is -- briefly respond --

8 MR. GOLDSTEIN: As I said, again, if ComEd is
9 willing to commit to the \$1.284 million number, then
10 our opposition goes away.

11 MR. HANZLIK: That is not the way Rider 28 works.
12 Rider 28 states that we have to pass on the cost no
13 matter what it is. I can't sit here and commit to a
14 number that I do not know will be the ultimate cost
15 to underground this line, whatever. If --

16 JUDGE O'CONNELL-DIAZ: Don't you think that the
17 Village --

18 MR. GOLDSTEIN: That's the same number that
19 they've used in their petitions.

20 JUDGE O'CONNELL-DIAZ: It's in this petition?

21 MR. HANZLIK: No.

22 MR. GOLDSTEIN: Yes. Mr. Blue's affidavit.

1 We're sure.

2 MR. HANZLIK: Right. This is the total cost of
3 the project, overhead construction; not -- nothing
4 to do with undergrounding. The least-cost route
5 here is the route that we have presented to the
6 Commission in our petition and our motion for a
7 temporary certificate.

8 JUDGE O'CONNELL-DIAZ: What exhibit is
9 Mr. Blue's --

10 MR. HANZLIK: It's the affidavit --

11 MR. GOLDSTEIN: It's attached to the motion, the
12 motion for temporary certificate.

13 MR. HANZLIK: It's the last affidavit. It's Page
14 2, Paragraph A.

15 JUDGE O'CONNELL-DIAZ: Attached to the petition?

16 MR. HANZLIK: The motion for a temporary
17 certificate.

18 MR. GOLDSTEIN: Let me make just one quick
19 comment, if I may. If you really look at the
20 minutes of the special session that is Exhibit B to
21 our counter motion, you will see that 1.284 million
22 is a number that was provided us by ComEd. The

1 Village Counsel relied upon that as the cost of the
2 burial of the line and that's what we would commit
3 if that's -- if that's the real number, there's
4 nothing else to talk about.

5 MR. HANZLIK: We're arguing about burying a line.
6 That is not what is before the Hearing Examiner or
7 the Commission. It is to construct this line
8 overhead. The number that Mr. Goldstein keeps
9 referring to was an estimated the cost of
10 undergrounding. It was our best estimate at the
11 time. What Mr. Goldstein has been asking for now is
12 a commitment. Rider 28 does not work that way.
13 We have to charge the rates and terms of the riders
14 that the Commission has enacted. Rider 28 says we
15 have to pass on the costs, not our commitment to a
16 cost. We have to pass on whatever costs.

17 I submit that it is improper to argue
18 about Rider 28 because we don't have even an
19 ordinance in place that permits us to underground
20 this line. What we have before us is a motion for a
21 temporary certificate. I will tell you I have
22 looked throughout the reported decisions at the

1 Commission and in the Courts. I find no decision
2 wherever an application under 8-406(e) was denied by
3 the Commission. I brought the four most recent
4 cases in where it's been granted by the Commission.
5 I will be happy to give those to the Examiner and
6 the parties here. That is the status of the law in
7 Illinois. Why does it make sense? Because they are
8 protected. Palatine is protected. We can continue
9 to talk with them; we can continue work with them;
10 we will do that, we pledge that because we value
11 good relations with them, but we simply have run out
12 of the time and the party that is being
13 disadvantaged here is Motorola. And we can't have a
14 customer -- we're mandated to provide service to
15 customers in Illinois.

16 JUDGE O'CONNELL-DIAZ: I understand that,
17 Mr. Hanzlik, but I'm a little bit troubled in that
18 the company didn't file this sooner than it did and
19 then there would have been some meaningful dialogue
20 or all of these issues may have been worked out.
21 This was filed a short time ago and --

22 MR. HANZLIK: I appreciate that.