

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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CHIEF CLERK'S OFFICE

Illinois Commerce Commission )  
On Its Own Motion )  
vs. )  
Commonwealth Edison Company )  
Proceeding pursuant to Section 16-111(g) of the )  
Public Utilities Act concerning proposed transfer )  
of generating assets and wholesale marketing )  
business and entry into related agreements. )

Dockets No. 00-0244/00-0230  
(Cons.)

**REPLY BRIEF OF THE PEOPLE OF THE STATE OF ILLINOIS**

The People of the State of Illinois, by JAMES E. RYAN, Attorney General of Illinois (hereafter "People"), hereby file their Reply Brief in the above referenced matter.

**INTRODUCTION**

The People fully support the positions taken and the legal arguments made by the City of Chicago, the Cook County State's Attorney and the Citizens Utility Board. The following comments are directed at certain positions or statements taken or made by the Staff of the Illinois Commerce Commission and Commonwealth Edison.

**REPLY TO THE STAFF OF THE ILLINOIS COMMERCE COMMISSION**

In its Initial Brief, Staff stated that it "has found nothing that would lead it to conclude the proposed transaction will render ComEd unable to provide its tariffed services in a safe and reliable manner." Staff Initial Br. At 3. Staff supports this conclusion by listing "significant" terms of the proposed Power Purchase Agreement (hereafter "PPA") between ComEd and

GENCO, Staff Initial Br. At 4, and “main points” of ComEd’s direct testimony, Staff Initial Br. at 5. Staff’s opinion is premised on an assumption. That assumption is that the now non-existent GENCO will be capable of entering into legally binding agreements in the exact terms and conditions proffered by ComEd in its proposed transaction. That assumption fatally flaws Staff’s opinion. Because of the impossibility of actually knowing that GENCO will be capable of entering into legally binding agreements under the exact terms and conditions proffered by ComEd in its proposed transaction, it is purely speculative that ComEd will be able to provide tariffed services in a safe and reliable manner. As such, Staff’s assertion that it “has found nothing that would lead it to conclude the proposed transaction will render ComEd unable to provide its tariffed services in a safe and reliable manner”, Staff Initial Br. At 3, should be given no weight, and should not be used as a basis for approving the proposed transaction.

Additionally, Staff’s opinion that ComEd’s proposed transaction complies with the requirements of Section 16-128(c), addressing employee relations, is similarly flawed. There is not now a legally binding agreement between ComEd and the non-existent GENCO that guarantees Section 16-128(c) compliance. This is especially critical. Staff admitted that ComEd’s original Contribution Agreement did not comply with Section 16-128(c), and it had to ask ComEd for assurances regarding Section 16-128(c) compliance. Staff Initial Br. at 13. Because GENCO does not now exist, its capability to enter into a legally binding agreement in the precise terms and conditions contained in the Contribution Agreement is, at best, speculative. Most importantly, because any actually created GENCO will be beyond the general supervision and regulation of the Commission, and because ComEd’s initial failure to include adequate compliance (Staff’s own assertion) with Section 16-128(c) in its Contribution Agreement raises a real concern regarding GENCO’s eventual willingness to comply, it is impossible to state that

Section 16-128(c) requirements have been met. Again, Staff's assertion that "the Company [ComEd] has complied with the requirements of Section 16-128(c)", Staff Initial Br. at 13, should be given no weight, and should not be used as a basis for approving the proposed transaction.

### **REPLY TO COMED**

In ComEd's Initial Brief, it cited two previous dockets wherein the Commission approved an asset transfer that ComEd implied were similar to its proposed transaction. *See*, ComEd Initial Br. at 4, footnote 2 (ICC Doc. Nos. 99-0209, 99-0398). Those transactions are distinguishable.

ICC Doc. No. 99-0209 involved Illinois Power's asset transfer to an affiliate known as WESCO. The distinguishing factor is simple: WESCO was an existing corporation. There was no issue regarding the speculative nature of WESCO's capability to enter into and be legally bound by the proposed agreements in the precise terms and conditions presented. That, of course, is the situation in the instant matter.

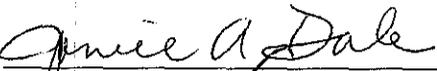
ICC Doc. No. 99-0398 involved Central Illinois Public Service Company's asset transfer. While the proposed transferee, coincidentally also known as Genco, was not an existing entity, the distinguishing factor in that case is that there was no pending merger of the parent corporation ( Ameren Corporation) that was subject to approval by a foreign regulatory commission. The pending approval of the ComEd/PECO merger by the Pennsylvania Public Utility Commission, and the speculation regarding GENCO's capability to enter into and be legally bound by the proposed Contribution Agreement in the precise terms and conditions presented after the merger is approved, is the concern in the instant matter that was not present in ICC Doc. No. 99-0398.

**CONCLUSION**

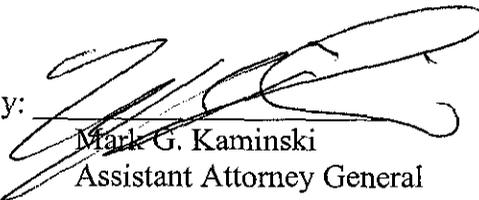
WHEREFORE, for the reasons set forth above, the People respectfully request the Commission enter an order in the manner requested in their Initial Brief.

Respectfully submitted,

THE PEOPLE OF THE STATE OF ILLINOIS  
James E. Ryan, Attorney General

By:   
Janice A. Dale, Chief  
Public Utilities Bureau

By:   
R. Lawrence Warren, Supervisor  
Consumer Utilities Unit

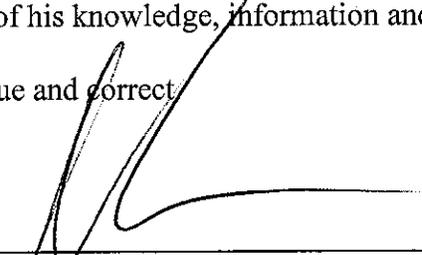
By:   
Mark G. Kaminski  
Assistant Attorney General

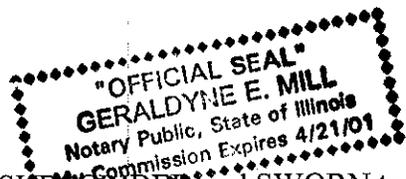
Dated: May 12, 2000

VERIFICATION

STATE OF ILLINOIS     )  
                                  )     SS  
COUNTY OF COOK     )

R. Lawrence Warren being first duly sworn upon oath, deposes and states that he is a Senior Assistant Attorney General, Office of the Attorney General State of Illinois; and that he has read the foregoing **Reply Brief of The People of The State of Illinois 00-0244/00-0230**, and knows the contents thereof; and that to the best of his knowledge, information and belief, based upon reasonable inquiry, the said contents are true and correct.

  
\_\_\_\_\_  
R. Lawrence Warren  
Senior Assistant Attorney General  
Public Utilities Bureau



PRESENTED and SWORN to  
before me this 5th day of May 2000

  
NOTARY PUBLIC

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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On Its Own Motion )

vs. )

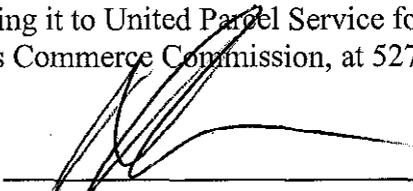
Commonwealth Edison Company )

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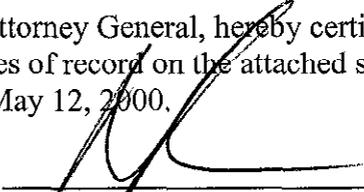
NOTICE OF FILING

PLEASE TAKE NOTICE that on this date, May 12, 2000, we have filed with the Chief Clerk of the Illinois Commerce Commission the enclosed Reply Brief of The People of The State of Illinois<sup>3</sup> in the above-captioned docket by delivering it to United Parcel Service for next day delivery for Donna Caton, Chief Clerk of the Illinois Commerce Commission, at 527 East Capitol Avenue, Springfield, Illinois 62794.

  
\_\_\_\_\_  
R. Lawrence Warren  
Senior Assistant Attorney General

CERTIFICATE OF SERVICE

I, R. Lawrence Warren, a Senior Assistant Attorney General, hereby certify that I served the above identified documents upon all active parties of record on the attached service list by United Service Mail, first class postage prepaid on May 12, 2000.

  
\_\_\_\_\_  
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Senior Assistant Attorney General

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