

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company)	
)	Docket No. 13-0657
Application for a Certificate of Public Convenience)	
and Necessity, pursuant to Section 8-406.1 of the)	
Illinois Public Utilities Act, and an Order pursuant)	
to Section 8-503 of Illinois Public Utilities Act, to)	
Construct, Operate and Maintain a new 345 kilovolt)	
transmission line in Ogle, DeKalb, Kane and)	
DuPage Counties, Illinois)	

**STAFF’S RESPONSE TO THE SKP GROUP AND URMIC REPLY TO
COMMONWEALTH EDISON COMPANY’S RESPONSES TO COMMISSIONERS’
QUESTIONS**

NOW COME the Staff witnesses (“Staff”) of the Illinois Commerce Commission (“Commission”) by and through its undersigned counsel, pursuant to 83 Ill. Adm. Code 200.190 and the October 10, 2014 *Notice of Administrative Law Judges’ Ruling*, and responds to the Reply to Commonwealth Edison Company’s Responses to Commissioners’ Questions (“Reply”) of Jerry Drexler, Kristine Drexler, William Lenschow, Thomas Pienkowski, Kristin Pienkowski, Robert and Diane Mason, John Tomasiewicz, and Ellen Roberts Vogel (together, “SKP” or “SKP Interveners”) and Utility Risk Management Corporation (“URMC”) (“together “SKP/URMC”) filed on September 18, 2014.

I. Procedural Background

On August 28, 2014, the Administrative Law Judges (“ALJs”) directed Commonwealth Edison Company (“ComEd”) to answer six questions issued by the Chairman and Commissioners. *Notice of Administrative Law Judges’ Ruling* (Aug. 28, 2014) (“August 28 Ruling”). ComEd was given 14 days in which to respond to the

questions, with replies due 7 days after ComEd filed its response. August 28 Ruling. On September 4, 2014, the ALJs reopened the record on their own motion pursuant to 83 Ill. Adm 200.870. *Notice of Administrative Law Judges' Ruling* (Sept. 4, 2014). On September 11, 2014, ComEd served its Responses ("ComEd's Responses") on the Chairman, Commissioners, ALJs and parties. *Commonwealth Edison Co.'s Report of Compliance* (Sept. 11, 2014). SKP/URMC filed its Reply to ComEd's Responses on September 18, 2014. On October 2, 2014, Staff filed a *Motion for Leave to Respond to the SKP Group and URMC Reply to Commonwealth Edison Company's Responses to Commissioners' Questions* which was granted by the ALJs on October 10, 2014. *Notice of Administrative Law Judges' Ruling* (Oct. 10, 2014).

II. Summary

In its Reply, SKP/URMC argues that ComEd's Responses "should not, and cannot, be entered into evidence or otherwise be substantively considered," because this would violate the Rules of Practice and due process rights. (SKP/URMC Reply, 1-2.) SKP/URMC's arguments should be rejected because: (1) the Commission has authority under the Public Utilities Act ("PUA"), the Illinois Administrative Procedure Act ("APA"), and the Rules of Practice of the Commission ("Commission Rules") to consider ComEd's Responses in its decision in this proceeding regardless of whether they are admitted into evidence; (2) the ALJs have the discretion to admit the Responses into evidence, (3) admission of the Responses into evidence is permissible and consistent with due process, and (4) even if admission of the Responses into evidence were improper, doing so would not violate due process.

III. Argument

A. The Commission has Authority under the Public Utilities Act, the Administrative Procedure Act, and the Rules of Practice of the Commission to Consider the Data Request Responses in its Decision in this Case Regardless of Whether the Responses are Admitted into Evidence.

SKP/URMC argues that “inclusion of ComEd’s Responses into the record would be violative of the Rules of Practice” and that they cannot be “entered into evidence or otherwise be substantively considered.” (SKP/URMC Reply, 2, 1.) To the contrary, Section 10-103 of the PUA (220 ILCS 5/10-103), Section 10-35 of the APA (5 ILCS 100/10-35) and Section 200.700 of the Commission Rules (83 Ill. Adm. 200.700) all explicitly recognize that this kind of information may be considered by the Hearing Examiner or Commissioners as part of the Record in this proceeding.

Section 10-103 of the PUA provides that:

any finding, decision or order made by the Commission shall be based exclusively on the record for decision in the case, which shall include only the transcript of testimony and exhibits *together with all papers and requests filed in the proceeding, including, in contested cases, the documents and information described in Section 10-35 of the Illinois Administrative Procedure Act.*

220 ILCS 5/10-103 (emphasis added). Section 10-35(a)(7) of the APA, in turn, provides that the record in a contested case shall include “[a]ll staff memoranda or *data submitted to the administrative law judge or members of the agency in connection with their consideration of the case* that are inconsistent with Section 10-60.”¹ 5 ILCS 100/10-35 (emphasis added). Likewise, 83 Ill. Adm. 200.700(a)(7) provides, except in certain instances that are not applicable here, that “[t]he record in any proceeding

¹ Section 10-60 of the APA governs ex parte communications. 5 ILCS 100/10-60.

before the Commission shall include: All staff memoranda or *data submitted to the Hearing Examiner or Commissioners in connection with their consideration of the case.*”

83 Ill. Adm. 200.700(a)(7) (emphasis added).

Data submitted to the Hearing Examiner or Commissioners under Section 10-35(a)(7) of the APA is not limited, but rather encompasses a broad spectrum of information and sources. *Apple Canyon Lake Property Owners’ Ass’n v. ICC*, 985 N.E.2d 695, 705 (Ill.App.3d, 2013). In *Apple Canyon Lake Property Owner’s Ass’n*, the Commission argued, among other things, that data under this provision included only “staff memoranda” or “staff data.” *Apple Canyon Lake Property Owners’ Ass’n*, 985 N.E.2d 695 at 705. The appellate court disagreed, and found that, “by its plain terms, section 10-35(a)(7) includes any ‘data’ submitted to the ALJ and/or the Commission in connection with their consideration of the case, regardless of whether the data was authored or submitted by the Commission staff.” *Id.*

Data submitted under Section 10-35(a)(7) of the APA may be considered by the Commission in this proceeding regardless of whether it is evidence. *Id.* at 706. In *Apple Canyon Lake Property Owners’ Ass’n*, appellant property owner associations argued that the Commission erred when it failed to consider public comments posted by ratepayers on the Commission’s website and made at public forums regarding a water rate case, and struck all references to these comments from the Associations’ brief in that proceeding. *Id.* at 699. The Commission asserted that the comments were properly stricken because the APA provides that “[f]indings of fact shall be based exclusively on the evidence and on matters officially noticed.” 5 ILCS 100/10-35(c); *Id.* at 706. The Commission argued that the public comments were “un-sworn statements

that were not subject to cross-examination or the other rigors of the fact-finding process,” and therefore could not be considered “competent evidence” for use in resolving any disputed factual issues, and, as such, the Commission had the discretion to strike the comments “to preserve the integrity of the fact-finding process.” *Apple Canyon Lake Property Owners’ Ass’n*, 985 N.E.2d 695 at 706-707.

The appellate court disagreed. *Id.* The court did not dispute that the Commission must base its factual findings on the evidence and on matters officially noticed. *Id.* Nor did it dispute that nothing can be treated as evidence unless it is introduced as evidence and satisfies the threshold requirements of admissibility. *Id.* The court explained, however, that in making its ultimate determination, the Commission does not merely consider and resolve disputed factual issues, but must also consider equitable and policy considerations; e.g., whether rates are “just and reasonable.” *Id.* In making that determination, the Commission may, and in the case of public comments must, consider information that while not evidence, nevertheless is part of the record. *Id.* at 707-708.

In this proceeding, the Commission’s ultimate determination under Section 8-406.1 of the PUA revolves around a number of equitable and policy considerations: e.g., whether ComEd’s Grand Prairie Gateway Project (“Project”) (1) promotes the public convenience and necessity; (2) promotes the development of an effectively competitive electricity market that operates efficiently; (3) is equitable to all customers; and (4) is the least cost means of satisfying those objectives. 220 ILCS 5/8-406.1(f). In deciding these issues, the Commission may consider and rely upon the entire record in this proceeding, not solely the evidence. *Apple Canyon Lake Property Owners’ Ass’n*, 985

N.E.2d 695 at 707-708. ComEd's Responses are, by definition, data submitted to the Hearing Examiner or Commissioners that the Commission may consider as part of the Record. 5 ILCS 100/10-35; 83 Ill. Adm. 200.700. As such, the Commission may consider ComEd's Responses in deciding these issues regardless of whether they have been entered into evidence. Therefore, SKP/URMC's arguments are without merit and should be rejected.

B. The ALJs have the Discretion to Admit the Responses into Evidence under the Rules of Practice of the Commission

SKP/URMC argues that only Section 200.875 of the Commission Rules (83 Ill. Adm. Code 200.875) would govern the possible introduction of ComEd's Responses into evidence, and that entering the Responses into evidence would violate the Rules of Practice. (SKP/URMC Reply, 2-3.) SKP/URMC's argument is contradicted by the plain language of the very rule it cites in support of its position. Further, SKP/URMC ignores several Commission Rules in taking an overly narrow view of the ALJs' authority under the Rules.

As an initial matter, 83 Ill. Adm. Code 200.875 is not relevant to the scenario SKP/URMC describes. The rule provides for the admission of post-record data related to final rate levels or rate structures in a case, "[a]fter the record in a proceeding . . . has been marked 'heard and taken' but before issuance of a final order by the Commission." 83 Ill. Adm. Code 200.875(a). As SKP/URMC recognizes, however, the record in this proceeding was reopened by the ALJs and remains open. (SKP/URMC Reply, 1); *Notice of Administrative Law Judges' Ruling* (Sept. 4, 2014). Further, even if 83 Ill. Adm. Code 200.875 were applicable, the Rule clearly provides, as SKP/URMC again recognizes, that "[n]othing in this Section shall be construed to limit the discretion of the

Hearing Examiner or Commission, for good cause shown, to consider late-filed exhibits for admission into evidence.” 83 Ill. Adm. Code 200.875(c).

SKP/URMC’s argument also ignores several other Commission rules that clearly contemplate wide discretion on the part of the ALJs and the Commission with respect to the admission of evidence. SKP/URMC entirely ignores, for example, the authority of the ALJs and the Commission under 83 Ill. Adm. 200.870 to reopen the record and hold additional hearings. 83 Ill. Adm. 200.870. Likewise, Rule 200.500 provides that the hearing examiner has the power to “[a]t any stage of the hearing or after all parties have completed the presentation of their evidence to call upon any party or the Staff of the Commission to produce further evidence which is material and relevant to any issue.” 83 Ill. Adm. 200.500(e). Finally, Rule 200.610 expressly provides that evidence that is otherwise inadmissible under the rules of evidence is nonetheless admissible in contested Commission proceedings where that evidence is reasonably reliable. 83 Ill. Adm. 200.610(b). In this case, ComEd’s Responses were verified by expert witnesses as true correct and complete (See Affidavit of Paul F. McGlynn, Sept. 11, 2014; Affidavit of Steven T. Naumann, Sept. 11, 2014.) In addition, the parties had the opportunity to Reply to ComEd’s Responses and by that means question their reliability. (See August 28 Ruling.) Except for raising the due process issues discussed herein, no party questioned the reliability of ComEd’s Responses. That fact, taken in conjunction with the verification of such responses, provides support that ComEd’s Responses are reasonably reliable and comply with Rule 200.610.

As described above, under the Rules of Practice of the Commission, the ALJs and the Commission have broad authority and discretion with respect to the admission

of evidence. Therefore, SKP/URMC's argument that the ALJs cannot admit ComEd's Responses into evidence because it would be violative of the Rules of Practice of the Commission should be rejected.

C. Admission of the Responses into Evidence is Permissible and Consistent with Due Process

As a general rendition of legal principles, SKP/URMC's description of due process is not, in and of itself, objectionable. (SKP/URMC Reply, 3.) SKP/URMC, however entirely fails to analyze the principles of due process within the context of this administrative proceeding. Contrary to SKP/URMC's argument, admission of ComEd's Responses into evidence in this proceeding would be consistent with the principles of due process.

While not stated directly, the essence of SKP/URMC's objection is that ComEd's Responses, without opportunity for additional discovery, testimony, hearings and cross-examination, are inadmissible hearsay, and admission of the Responses into evidence would violate due process. (SKP/URMC Reply, 3-5.) It is, of course, well-established that administrative proceedings must adhere to the principles and requirements of due process. *Abrahamson v. Ill. Dept. of Prof'l Reg.*, 153 Ill.2d 76, 92 (1992); *Dombrowski v. City of Chicago*, 363 Ill.App.3d 420, 426 (2005). Due process, however, is a flexible concept that depends on multiple factors and requires only such procedural protections as the nature of the interest affected and the particular situation demand. *Abrahamson*, 153 Ill.2d at 92; *Colquitt*, 298 Ill.App.3d at 863. In an administrative setting, due process does not always require application of the judicial model and administrative agencies are not bound by the strict rules of evidence that apply in a judicial proceeding. *MJ Ontario, Inc. v. Daley*, 371 Ill.App.3d 140, 149 (2007); *Chamberlain v. Civil Service*

Comm'n of the Village of Gurnee, 2014 WL 644392, ¶ 46 (Ill. App. 2 Dist. 2014). Cross-examination, and by implication a prohibition of hearsay, is not always required by due process. *Chamberlain*, 2014 WL 644392 at ¶ 46; *Trettenero v. Police Pension Fund*, 333 Ill.App.3d 792, 799 (2002). Moreover, an administrative agency is recognized to have experience and expertise on the issues it faces. *Provena Covenant Medical Cntr. v. Dept. of Revenue*, 236 Ill.2d 368, 386, (2010); *Chamberlain*, 2014 WL 644392 at ¶ 24. Therefore, an administrative agency's construction of law is afforded substantial weight and deference, and an agency's finding of fact will be upheld unless it runs contrary to the manifest weight of the evidence. *Provena Covenant Medical Cntr.*, 236 Ill.2d at 386-387; *Chamberlain*, 2014 WL 644392 at ¶ 24. Ultimately, due process is satisfied where there is notice and a meaningful opportunity to be heard. *Colquitt v. Rich Township High School Dist. No. 227*, 298 Ill.App.3d 856, 863 (1998).

As noted previously, the Commission Rules, specifically Rules 200.500, 200.610, and 200.870, clearly grant the ALJs and the Commission wide authority with respect to the admission of evidence. In particular, 83 Ill. Adm. Code 610(b) expressly provides that evidence that is otherwise inadmissible under the rules of evidence, e.g., hearsay, is nonetheless admissible in contested Commission proceedings where that evidence is judged to be reasonably reliable. Here, ComEd's Responses were prepared by expert witnesses and supported by sworn affidavits. (See Affidavit of Paul F. McGlynn, Sept. 11, 2014; Affidavit of Steven T. Naumann, Sept. 11, 2014.) Certainly the ALJs and the Commission have the experience and expertise to adjudge whether the information contained in ComEd's Responses are reasonably reliable, and the proper weight that should be given to their consideration, if any. Further, the Responses were served on

all of the parties, and all of the parties were given an opportunity to reply to the Responses. (See August 28 Ruling; see *also* ComEd's Report of Compliance, Sept. 11, 2014.) Therefore, not only is there a sufficient foundation to conclude that ComEd's Responses are reasonably reliable and thus may be admitted into evidence, but all of the parties were given notice of, and an opportunity to respond to, the Responses consistent with the requirements of due process.

D. Admission of the Responses into Evidence would not Violate Due Process even if Admitting the Responses into Evidence were Assumed to be Improper

Even assuming *arguendo* that it would be improper to admit ComEd's Responses into evidence, doing so would still not violate due process because neither SKP nor URMC has articulated a significant private interest or risk of the deprivation of a significant private interest in this proceeding that requires procedural due process protection and certainly not greater due process than they have already received in this proceeding.

The due process clause of the fourteenth amendment protects against the deprivation of life, liberty, or property without due process of law. U.S. Const., amend. XIV; *Chicago Teachers Union v. Bd. Of Educ. Of City of Chicago*, 963 N.E.2d 918, 922 (Ill. 2012). The procedural protections of due process safeguard the property interests that a person already has in specific benefits. *Chicago Teachers Union*, 963 N.E.2d at 922-923; *Bd. Of Regents of State Colleges v. Roth*, 408 U.S. 564, 576 (1972). The federal Constitution does not create property interests, but rather they are created and defined by state laws or other sources that secure certain benefits and that support claims of entitlement to those benefits. *Chicago Teachers Union*, 963 N.E.2d at 923.

Therefore, a procedural due process analysis starts with a determination of whether a protectable interest is present. *Id.* at 923; *Wilson v. Bishop*, 82 Ill.2d 364, 368-369 (1980). Without such an interest, no process is due. *Chicago Teachers Union*, 963 N.E.2d at 923; *Wilson*, 82 Ill.2d at 368. In the context of an administrative proceeding, the due process procedural safeguards required vary with the circumstances of the case, and depend on: (1) the significance of the private interest that will be affected; (2) the risk of the erroneous deprivation of that interest through the procedures used; and (3) the significance of fiscal and administrative burdens that the additional or substitute procedural safeguards would entail. *Chamberlain*, 2014 WL 644392 at ¶ 46; *Colquitt*, 298 Ill.App.3d at 861. If a plaintiff does not have a property interest, then he or she is not entitled to due process, and has no basis to complain about the use of hearsay evidence. *Bd. Of Regents of State Colleges*, 408 U.S. at 577; *Chamberlain*, 2014 WL 644392 at ¶ 30.

In this proceeding, SKP Interveners have failed to articulate a significant private interest or risk of the deprivation of a significant private interest that would require due process protections greater than SKP Interveners have already received in this proceeding. The asserted interest of the SKP Interveners is that of property owners on the proposed primary and/or alternate Project routes. (See, e.g., *Petition for Leave to Intervene of Thomas Pienkowski and Kristine Pienkowski*, Jan. 7, 2014.) Illinois courts, however, have expressly found that the due process rights of property owners are not implicated in Certificate of Public Convenience and Necessity (“CPCN”) proceedings because “[n]o property or property rights of the landowners are taken, nor are such rights affected by anything which occurs in the hearing before the commission for a

certificate of convenience and necessity.” *Zurn v. City of Chicago*, 389 Ill. 114, 131, 132 (1945); *Chicago, B. & Q. R. Co. v. Cavanagh*, 278 Ill. 609, 616-617 (1917); *Illinois Power Co. v. Lynn*, 50 Ill.App.3d 77, 81 (4th Dist. 1977); see also *Egyptian Electric Coop. Assoc. v. Ill. Commerce Comm’n*, 33 Ill.2d 339, 342 (1965) (issue in such hearings is not one of private but of public convenience and necessity, and hearing before the Commission is not a partisan hearing but an administrative investigation as to the reasonableness of the utility’s plans and could not confer property rights). Rather, “the property owners’ rights are in jeopardy for the first time in court [condemnation proceedings] and are protected there by the motion to dismiss and traverse.” *Illinois Power Co.*, 50 Ill.App.3d at 81; *Zurn*, 389 Ill. at 131; *Chicago, B & Q R. Co.*, 278 Ill. at 616-617.

Thus, for example, in *Chicago B. & Q. R. Co.*, the Illinois Supreme Court found that the failure of the Public Utilities Commission to provide notice to property owners of a CPCN proceeding, serve a copy of the Commission’s order on property owners, or give property owners an opportunity to contest or appeal the order before the Commission did not violate due process because the property owners were not deprived of their property or any interest therein, nor was the railroad granted any interest in or right to possession of any property. *Chicago, B & Q R. Co.*, 278 Ill. at 616-617. Similarly, in *Zurn*, the Illinois Supreme Court found that the failure of the Redevelopment Commission to notify property owners of the Neighborhood Redevelopment Corporation’s application for a certificate authorizing it to acquire specific properties by eminent domain did not violate due process because no property was to be taken in the proceeding, and the rights of landowners was not affected. *Zurn*,

389 Ill. at 132-133. The Court observed further that the certificate was “merely another of the steps required by the statute authorizing a redevelopment corporation to exercise the power of eminent domain,” and that the condemnation hearing “gives to the property owner the right and the opportunity to be heard upon all questions on which he is entitled to a hearing and fulfills all the requirements of due process of law.” *Id.* at 133.

Under these principles, and in the context of the procedural safeguards required in an administrative proceeding, it is clear that, like the property owners in *Zurn* and *Chicago B. & Q. R. Co.*, the SKP Interveners have failed to articulate a significant private interest that will be affected in this proceeding, or demonstrate risk of the erroneous deprivation of a significant private interest, such that admission of the ComEd Responses would violate due process. The SKP Interveners’ property rights and interests will not be affected by the outcome of this proceeding, and ComEd will not gain any property rights or interests regardless of the outcome. Indeed, this docket is merely the first of several steps before the SKP Interveners’ property rights are at issue, and the SKP interveners will have ample opportunity to be heard consistent with all of the requirements of due process. See 220 ILCS 5/8-509; 735 ILCS 30/*et seq.* Therefore, even assuming *arguendo* that admission of the ComEd Responses into evidence is improper, such action would not violate the SKP Interveners’ due process rights.

Likewise, in this proceeding, URMC has failed to articulate a significant private interest, or risk of the deprivation of a significant private interest that would require due process protections greater than URMC has already received in this proceeding. URMC’s asserted interest is that of a Merchant Transmission Developer who has submitted a Merchant Transmission Request to PJM to upgrade the Byron to Cherry

Valley substation transmission lines within the ComEd Transmission Service Territory and whose proposal may be impacted by construction of ComEd's proposed Project. (See *Petition for Leave to Intervene of URM*C, March 19, 2014; *ComEd's Verified Response to the Petition to Intervene of URM*C, ¶ 2, March 21, 2014.) PJM has queued and is studying URM C's request, but the project remains in the planning stage. (*ComEd's Verified Response to the Petition to Intervene of URM*C, ¶¶ 3-4, March 21, 2014.) No construction agreement has been entered into between URM C and ComEd or PJM. *Id.* at ¶ 4. Further, URM C's proposal remains subject to and cannot conflict with previously approved and higher queue projects, including ComEd's Project. *Id.* at ¶ 3.

It is well-established that the due process clause protects "interests that a person *has already acquired* in specific benefits" and not "merely an expectation or abstract need for such benefits." *Segers v. Industrial Com'n*, 191 Ill.2d 421, 435 (2000) (citations omitted) (emphasis in original); *Bd. Of Regents of State Colleges*, 408 U.S. at 576; *Polyvend, Inc. v. Puckorius*, 77 Ill.2d 287, 294 (1979). In *Polyvend*, for example, the Illinois Supreme Court found that the plaintiff manufacturer did not have a claim of entitlement or protectable property interest in a 1979 license plate contract with the State of Illinois despite being the only bidder for the contract, and having been the successful bidder in 1976, 1977 and 1978. *Polyvend, Inc.*, 77 Ill.2d at 296. The Court found that each State contract was separate and independent from the other, and that prior performance did not give the plaintiff a preferred status or reasonable basis for concluding it would receive future contracts. *Id.* Further, the State had express authority to reject all bids, thus indicating there was no intention to confer a claim of

entitlement on bidders for government contracts. *Id.* at 295. As such, the plaintiff did not have a reasonable basis for an expectation that it would receive the contract, let alone an already acquired benefit protected by due process. *Id.* at 295-296.

Here URM C has articulated even less of a basis for an existing interest than the plaintiff in *Polyvend*. As already noted, URM C has not entered into any contracts for construction. (*ComEd's Verified Response to the Petition to Intervene of URM C*, ¶ 4, March 21, 2014.) URM C's proposal has not been approved by PJM, and is currently still in the planning stages. *Id.* at ¶¶ 3-4. In short, URM C's proposal is exactly that, a proposal, that has yet to receive approval or to progress beyond the planning stage. As such, it is arguable whether it is even reasonable to conclude that URM C has a reasonable expectation that its proposal will ultimately be constructed, let alone that it has an already acquired property interest. Moreover, given that URM C's proposal remains subject to and cannot conflict with ComEd's Project (*Id.* at ¶ 3), it is unclear what, if any, impact the approval of ComEd's Project would have on URM C's proposal, or how this would increase the risk of URM C being deprived of a private interest in its proposal.

Among the foundational requirements of due process protection in an administrative proceeding is that a party have a significant private interest at stake and face the risk of an erroneous deprivation of that interest through the procedures used. In this proceeding, however, as described above, neither SKP nor URM C have articulated either a significant private interest that is at stake, or a risk of the deprivation of a significant private interest that would require due process protections greater than they have already received in this proceeding. Therefore, even assuming for purposes

of argument that it would be improper for the ComEd Responses to be admitted into evidence, doing so would not violate due process.

WHEREFORE, Staff respectfully requests that the ALJ grant relief consistent with the arguments set forth herein.

Respectfully submitted,

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