

**Docket No:** 13-0657  
**Bench:** 10/22/14  
**Deadline:** 10/27/14

**MEMORANDUM**

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**TO:** The Commission

**FROM:** Terrance Hilliard and Heather Jorgenson,  
Administrative Law Judges

**DATE:** October 10, 2014

**SUBJECT:** Commonwealth Edison Company

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 the Illinois Public Utilities Act, to Construct, Operate and Maintain a new 345 kilovolt transmission line in Ogle

**RECOMMENDATION:** Enter the attached Order Denying the Application.

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**I. HISTORY**

On December 2, 2013, Commonwealth Edison Company (“ComEd”) filed with the Illinois Commerce Commission (“Commission”) a Verified Petition seeking a Certificate of Public Convenience and Necessity (“CPCN”) pursuant to Section 8-406.1 of the Public Utilities Act (“PUA” or “Act”), authorizing ComEd to install, operate, and maintain an overhead 345kV high-voltage electric transmission line and associated facilities, referred to as the Grand Prairie Gateway (“GPG”) Project (the “Project”). ComEd also sought an order authorizing or directing ComEd to construct the Project and related facilities pursuant to Section 8-503 of the Act.

The statute requires the Commission to enter its Order granting, granting in part, or denying the Petition within 150 days of filing. The statute also provides that the Commission may extend this 150-day period by 75 days for good cause. The Commission granted an extension to July 15, 2014.

After the submission of testimony and an evidentiary hearing, the record was marked “Heard and Taken” at the close of the proceedings on April 17, 2014.

On May 1, 2014, ComEd filed a Supplement to Verified Petition of Commonwealth Edison Company (“Supplement”), including Exhibit A consisting of an Affidavit of Donnell Murphy in which it acknowledged its collection of landowner data to support the petition began three days prematurely. Staff filed a Response to ComEd’s Supplement on May 9, 2014, arguing that ComEd erred in collecting landowner data

three days early in violation of 83 Ill. Admin. Code § 200.150(h), and accordingly should require that the statutory clock in this matter be reset.

The ALJs made ComEd's Supplement to its Verified Petition and subsequent responses filed by Staff and other parties part of the evidentiary record. The ALJ ruling also granted ComEd's request to reopen the record. On May 29, 2014, ComEd filed its Motion for Leave to File an Amendment to Its Petition.

On July 9, 2014, the Commission issued an Order on Motion to File Amended Petition, wherein the Commission granted ComEd's Motion to file its amended petition pleading new facts with regard to notice. The Order reset the statutory deadline for Commission action to October 27, 2014.

An evidentiary hearing on reopening was held on July 23, 2014. After hearing and briefing by the parties and interested intervenors, the ALJs served a Proposed Order on September 4, 2014. Briefs on Exceptions were filed September 18, 2014. Reply Briefs on Exceptions were filed September 25, 2014. Also on September 25, 2014, SKP Parties/URMC filed a Motion to Strike parts of ComEd's Brief on Exceptions. On October 1, 2014, SKP Parties/URMC filed a Motion to Strike portions of ComEd's Reply Brief on Exceptions. These Motions are still pending.

## **II. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

### **A. ComEd's Position**

ComEd presented testimony that the Project will serve the public convenience and necessity and provide considerable benefits to Illinois customers, even net of the Project's total costs. ComEd's testimony also states the line will promote the development of an effectively competitive electricity market, as provided under Section 8-406.1(f)(1), by relieving congestion, thereby restoring the feasibility of Stage 1A Auction Revenue Rights ("ARRs"), which are financial instruments designed to preserve the ability of native load customers to use the transmission system that they funded without bearing the cost of congestion. ComEd argues that the evidence demonstrates the seriousness of the transmission constraint at issue, how the constraint impairs ARRs, the need to physically expand the system to restore the feasibility of Stage 1A ARRs, and that the GPG Project achieves that goal. ComEd notes that there is no contrary evidence in the record.

ComEd states that the Project will confer substantial benefits to customers in the ComEd zone. ComEd points to testimony that the Project will increase transmission capability, allowing customers greater and more efficient access to low cost, greener generation, and increasing available transmission capacity by nearly 1,000 MW. ComEd further adds that the Project will relieve congestion to the west of Chicago, which currently restricts access to lower cost and lower emission generation resources. ComEd contends that Staff agrees that the Project is likely to be cost beneficial by a wide margin and will benefit market efficiency.

ComEd, in its Briefs, also points out that the Commission has previously recognized that benefits such as those offered by the Project promote the development

of an effectively competitive electricity market. ComEd implores the Commission to give great weight to the results of the PJM planning process and its growth forecast.

ComEd points to evidence that it has satisfied the other requirements of Section 8-406.1(f)(1), particularly the requirement that the Project is least cost and equitable to customers. In addition, ComEd argues that the savings that result from the Project will accrue equitably to all Illinois customers and that the cost of the Project will be allocated fairly, in accordance with the FERC approved cost allocation methodology set forth in PJM's tariff.

ComEd states that by reducing congestion and increasing access to low-cost low-emission renewable resources, the Project, within the first 15 years, will reduce CO<sub>2</sub> emissions by an estimated 473 thousand tons. Further, ComEd states that the Project will not only enhance the diversity of the transmission routes connecting the eastern and western portions of the ComEd zone, but will also enhance ComEd's ability to perform line maintenance. ComEd adds that none of these benefits are questioned by any other witness.

## **B. Staff's Position**

Staff argues that it is uncertain whether the evidence supports a finding that Section 8-406(f)(1) of the Act is satisfied. Staff argues that ComEd had not shown the Project was necessary to provide adequate, reliable, and efficient service and is the least-cost means of satisfying the service needs.

Staff argues that ComEd has not supported its position that current or future infeasibilities of Stage 1A ARR are necessary to promote the development of an effectively competitive electricity market but project would yield effectively competitive results for other reasons.

Staff notes that the Company specifically relied on the fact that the Project was determined by PJM to be "necessary" to relieve transmission constraints that are causing "infeasibilities" in the allocation of Stage 1A ARRs. Staff questions ComEd's Stage 1A ARR justification for the Project.

As previously noted, PJM's identification of the need to build the GPG Project is related to infeasibilities in the allocation of Stage 1A ARRs. Stage 1A ARRs are those that are requested by load serving entities from a subset of the historical generation resources that were designated to be delivered to the load, up to the load serving entities' historical level of point-to-point transmission rights. They can be requested for up to 10 years. If the requested ARRs are granted and assumed to be converted into financial transmission rights ("FTRs"), then they would provide a long-term hedge to load serving entities that either own and operate the generating equipment at the "from" end of the ARR or have a long-term electric supply contract for delivery of power at the "from" end of the ARR. On the other hand, if the load serving entity has neither the generating equipment nor a long-term electric supply contract for delivery of power at the "from" end of the ARR, it does not provide a long-term hedge against congestion. The unconverted ARR does, however, still provide an expected source of revenue to the load serving entity.

ComEd converts no ARR into FTRs. ComEd owns and operates no generation resources. ComEd has no long-term supply arrangements with any generating companies, except for a small quantity of renewable energy contracts, all of which are priced for delivery at the ComEd Zone. There is no evidence in the record suggesting that any load serving entities within the ComEd Zone rely on any ARRs for long-term hedging against congestion cost increases. Thus, even if there is some validity to Federal policy makers' belief that load serving entities needed to have a way of hedging against congestion costs, this theory no longer appears applicable to ComEd. Therefore, Staff remains skeptical of ComEd's position that maintaining Stage 1A ARR feasibility is an indispensable component of the PJM electricity market, particularly as it relates to the ComEd Zone.

Staff argued there is a more direct and concrete method of determining whether the GPG Project will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives. In particular, Staff contends the resulting impacts of the Project are consistent with a market that is effectively competitive.

Because the GPG can be shown to result in a reduction in net costs and prices to consumers, it is reasonable to say that the Project promotes the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives.

Staff believes that if the Project can be expected to lead to lower consumer prices within Illinois, as the record shows to be the case here, then that is the type of outcome that would be consistent with a market that is effectively competitive. Consequently, this would also be consistent with a finding that the Project would promote the development of an effectively competitive electricity market.

### **C. Other Parties**

IIEC and WOW support the project. Both argue that it will provide cost savings and promote a competitive market.

SKP Parties/URMC argue that the Project is not needed and does not qualify for a CPCN. SKP Parties/URMC argue that, contrary to what ComEd witnesses contend, federal law does not require that PJM eliminate the infeasibility of Stage 1A ARRs. SKP Parties/URMC further argue that, despite ComEd's characterizations of what PJM may order or require ComEd to do as to building new electric transmission capacity, this Commission has a legal duty under the PUA to scrutinize the GPG Project and make the required statutory findings in order to grant ComEd a CPCN. SKP Parties/URMC argue that ComEd has failed to meet its statutory burden.

SKP Parties/URMC state that ComEd failed to demonstrate that the Project is either necessary or least cost. According to SKP Parties/URMC, ComEd has not shown that the reduction of risks for certain customers in the specific geographic area affected by the shortage of financial hedging tools meets the PUA legal requirement that the Project promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives.

SKP Parties/URMC also argue that ComEd cannot be granted a CPCN because it failed to comply with the statutory mandate to provide alternate routing. ComEd asserts that good cause for its failure exists because no alternative route corridor existed for the project it was proposing. In SKP Parties/URMC's view, as the evidence developed, ComEd's attempts to show good cause remained unconvincing.

#### **D. Conclusion**

The Order finds that while the project will increase efficiency and lower the cost of transmission to ComEd's customers, it is not clear from the record that the route is equitable to all customers or is the least cost method of achieving the statutory objectives. Pending the introduction of evidence regarding the cost of undergrounding in the Elgin portion of the project, the Order finds that the criteria for the issuance of a CPCN have not been met.

### **III. ROUTING**

#### **A. Sycamore and Burlington Townships**

There are numerous challenges to the routing proposed by ComEd through Sycamore and Burlington Townships in DeKalb and Kane Counties. Many of the intervenor's proposed adjustments to ComEd's primary or alternate routes shift the transmission line away from their properties. ComEd agreed to only one of the proposed adjustments, that of the Kenyon Brothers across their own property. The remaining portion of the Kenyon/Deutsch Adjustment would relocate the Project from commercial agricultural land and existing transportation rights-of-way onto sensitive Forest Preserve property over which ComEd has no rights and no opportunity to acquire those rights. Despite arguments to the contrary, ComEd has no rights to use the Forest Preserve land proposed by the Kenyon-Deutsch adjustment, and it cannot secure those rights.

Dauphinais Adjustment #1 was designed to address the concerns of intervenor William Lenschow and reduces the number of poles near his property. To avoid Mr. Lenschow's property, Adjustment #1 also moves the Project off the railway corridor where ComEd has existing rights.

Dauphinais Adjustment #2 likewise steers the Project away from SKP members' land. It would reduce proximity to one less residential structure while increasing impact to seven non-residential structures. It decreases the length of the Project by 0.17 miles, a sliver of the Project's 60-mile length and would require one less angle. In contrast, the other landowners affected by this proposed adjustment – the landowners for whose benefit the proceeding was reopened – oppose it and strongly prefer ComEd's Primary Route.

#### **B. City of Elgin**

As noted by SKP Parties/URMC and the City of Elgin, ComEd failed to propose the statutorily required alternative route for the 20% of the overall length of the project that goes through Elgin to the Wayne Substation. This section of the proposed route impacts far more than 20% of the property owners along the entire route of the project. ComEd is required by the statute to make a showing of good cause to be excused from this requirement. ComEd justifies its decision in not suggesting an alternative route by

arguing that, because the area is densely populated, ComEd could not provide a viable alternate route with the right-of-way width necessary to accommodate the Project and potential future circuits. ComEd mentions limited viable opportunities for an alternate route. These alternates would require displacing residences or excessive line length.

In past Section 8-406 proceedings the Commission has utilized twelve criteria articulated in ICC Dockets 12-0598 and 06-0706 in reaching its conclusions. The Commission's decision should reflect a balancing of these criteria based upon the evidentiary record. Among the factors that the Commission must consider in making a determination of this nature are: 1) the number of affected landowners and other stakeholders; 2) the proximity of the project to homes and other structures; 3) community acceptance of the project; and 4) its visual impact.

This project, as sited, negatively impacts well over a thousand proposed or existing homes in a developed urban area. It is proximate to existing and proposed residential developments. The preponderance of public comment and an Elgin City council resolution indicate the community strongly objects to the project. Elgin reasonably argues that the negatives associated with this portion of the Project are, in effect, substantial costs being born by the residents of a densely populated area that should be taken into account by the Commission in reaching its decision.

Elgin requested that ComEd investigate, as an alternative, putting the transmission line underground for that portion of the project through the urban area. Elgin suggested using the same right of way proposed for the transmission line towers. ComEd concluded that this was too expensive but presented no specific evidence on the cost of undergrounding this portion of the project. In the absence of hard numbers, it is impossible to evaluate whether undergrounding this portion of project is a viable alternative when measured against the costs to the community of the project as proposed. A partial underground route with less adverse residential impact may or may not have eliminated the favorable cost benefit ratio for the project.

### **C. Conclusions**

The Order finds that ComEd's Primary Route through Sycamore and Burlington Townships in DeKalb and Kane Counties incorporating the Kenyon Brothers adjustment is, on balance, superior to any of the alternate proposals.

The Order finds that ComEd's conclusory assertion of a negative cost analysis in response to the Elgin undergrounding proposal does not relieve it of its responsibility to submit specific information to the Commission for its independent consideration, nor does it relieve ComEd of its burden of presenting adequate evidence demonstrating its proposed route is superior to other alternatives.

The Order further finds that ComEd has not provided good cause in its filings for failing to identify an alternate route or to otherwise provide evidence regarding the cost of undergrounding the portion of the Project running through the City of Elgin. The Order finds this requirement for the issuance of a CPCN has not been met.

### **IV. HEALTH CONCERNS**

Many intervenors express concerns for the health impacts of EMF exposure, and potential of stray voltage. SKP Parties/URMC state that ComEd's own witnesses have

justified the concerns of the landowner intervenors concerning health effects. The Order finds no credible evidence in the record that the Project poses a health risk to residents or livestock.

#### **V. PROPERTY VALUES**

ComEd argues that the only evidence in this proceeding of the actual effect of the Project on property values demonstrates that the Project will not adversely affect the value of nearby parcels.

Many of the intervenors have testified at length that they believe that the Project will negatively affect their property values. The City of Elgin notes that the project will also negatively affect future land use and development patterns in adjacent areas and would have a deleterious effect on the visual appearance and aesthetics of Elgin. The Order defers a finding on this issue pending the introduction of evidence regarding the cost of undergrounding through Elgin.

#### **VI. DESIGN**

The order finds that for that portion of the project for which the route using transmission towers is approved, the proposed use of multi-circuit ready poles is appropriate under the circumstances and consistent with Commission precedent.

#### **VII. RECOMMENDATION**

We recommend the Commission enter the attached Order denying the CPCN. Additionally, there are two pending motions to strike portions of ComEd's Brief on Exceptions and Reply Brief on Exceptions. Because these motions to strike relate in part to information filed in response to Commissioners' post record questions, we believe it prudent for the Commissioners to issue a ruling regarding the motions to strike in accordance with the Commissioners' intended use of information from the post record data requests.

TH/HJ:fs