

Report to the Commission under Section 200.520  
of the Rules of Practice

**Docket No:** 01-0423  
**Bench Date:** 10/23/01

**MEMORANDUM**

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**TO:** The Commission

**FROM:** Erin O'Connell-Diaz and  
Phillip A. Casey, Administrative Law Judges

**DATE:** October 17, 2001

**SUBJECT:** Commonwealth Edison Company

Petition for approval of delivery services tariffs and tariff revisions and of residential delivery services implementation plan and for approval of certain other amendments and additions to its rates, terms, and conditions.

**RECOMMENDATION:** Deny Petitions for Interlocutory Review.

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On October 5, 2001, the City of Chicago, People of the State of Illinois, the Citizens Utility Board, Blackhawk Energy Services, L.L.C., Enron Energy Services, Inc. AES New Energy, Inc., and the Environmental Law and Policy Center (collectively, the "Petitioners") filed a Petition for Interlocutory Review of the Administrative Law Judges (ALJ's) rulings made on September 13, 2001 concerning the designation of documents as "confidential" (Petition I). In a separate petition filed that same day, The Cook County State's Attorney's Office filed Petition for Interlocutory Review (Petition II) of the ALJ's September 13<sup>th</sup> ruling denying Cook County's Motion to Strike.

Section 200.520 (a) of the Commission's Rules of Practice mandates that "...unless good cause is shown..., the party or Staff seeking review of the ruling **shall** file a petition for interlocutory review within 21 days after the date of the action that is the subject of the petition..."(emphasis added) This section further requires that the petition **shall** be filed with the Chief Clerk as well as the ALJ's , Staff and all parties to the proceeding.

In accordance with Section 200.520 (a), any petition for interlocutory review of a September 13 ruling was due by October 4. Both Petitions were filed on October 5, 2001 and are, therefore, untimely. Moreover, both Petitions fail to cite good cause why the untimely Petitions should be considered. Further, with regard to Petition I, we note

that the ALJ's were never served with a copy of said motion as required by rules. **Based on the parties failure to comply with the aforementioned rules we submit that the Petitions should be denied.**

Assuming arguendo, that Petition I was timely filed, which it is not, we would aver that the Petition itself is legally insufficient, without merit, and should be rejected. Petition I fails to set forth specifically what ruling it is complaining about but instead calls for a blanket denial of all requests by ComEd for confidential designation rule of any document. Such a ruling is clearly contrary to the rules of the Commission as well as Illinois Law. As the Commissioners are aware and in compliance with the Commission's August 22, 2001, directive the ALJ's have conducted Motion Calls, twice a week, in which we have ruled on ComEd's requests for confidential treatment of hundreds of documents. We have reviewed each document individually, considered ComEd's arguments regarding the basis for the requested designation and entertained the arguments from any party that objected to the confidential designation. Based upon this careful examination, the ALJ's have made in excess of 125 individual rulings regarding each request.

We were struck by Petitioners' liberal allegations that our determinations were made on an "ad hoc basis" were arbitrary and a capricious abuse of our discretion. These stinging and unfounded allegations compelled us to refer to Black's Law Dictionary as well as Webster's Dictionary definition of ad hoc which provides as follows:

**Ad hoc:** (ad hok) *adj. & adv.* For this specific purpose, case or situation: an ad hoc committee. [ Lat., To this]

Based on this definition, the ALJ's did in fact convene the Motion Calls for the specific purpose of accomplishing the Commission's directive that required ComEd to demonstrate the basis upon which each document should be afforded the requested confidential designation. In accordance with Webster's definition, the Motion Calls were "ad hoc", and were for the "specific purpose, case or situation" relative to the ComEd's Confidentiality Requests.

We would also refer the Commission to our September 18, 2001, Memorandum to the Commission (attached hereto) which clearly sets forth the appropriate legal standards utilized in our review of the requests for confidential designation of documents in this matter.

With respect to Petition II, the County sought to strike testimony relative to rate of return/investor expectations. The ALJ's concluded that the testimony is not irrelevant but that they would give the testimony its appropriate weight. Further, the parties ability to present the testimony and cross examine the witnesses sponsoring the testimony will afford the Commission the opportunity to develop a full and complete record as required pursuant to 83 IL Adm Code Section 200.25(a).

For the above reasons, the Petitions for Interlocutory Review should be denied.

EOD/PC:jt