

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

**Commonwealth Edison Company** :  
:   
**Request for Declaratory Ruling or** :   
**Alternative Petition pursuant to Section** : **02-0261**  
**7-101 of the Public Utilities Act for consent** :   
**to continue to operate under an** :   
**interconnection agreement that will be** :   
**assigned to an affiliated interest.** :

**ORDER**

By the Commission:

**Procedural History**

On April 15, 2002, Commonwealth Edison Company (“ComEd” or “Petitioner”) filed with the Illinois Commerce Commission (“Commission”) pursuant to Section 5-150 of the Illinois Administrative Procedures Act (5 ILCS 100/5-150) and Section 200.220 of the Commission’s Rules of Practice (83 Ill. Adm. Code 200.220) a verified Request for Declaratory Ruling that ComEd is not required to file or seek Commission approval, pursuant to Section 7-101 of the Public Utilities Act (“Act”) (220 ILCS 5/7-101), to continue to operate under an Interconnection Agreement (“IA”) accepted for filing by the Federal Energy Regulatory Commission (“FERC”) as a transmission tariff under the Federal Power Act (16 U.S.C. 791a *et seq.*), that will be assigned to an affiliated interest, and Alternative Petition, pursuant to Section 7-101 of the Public Utilities Act (“Act”) (220 ILCS 5/7-101), for consent to continue to operate under an IA that will be assigned to an affiliated interest. On May 16, 2002, ComEd indicated on the record, without waiving the jurisdictional arguments raised in its Verified Petition, that it was not seeking a Commission determination on its request for a Declaratory Ruling. The remainder of the Petition is the subject of this Order.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, this matter came on for hearing before a duly authorized Administrative Law Judge of the Commission at its offices in Chicago, Illinois on June 18, 2002. At the hearing, Counsel for ComEd and Staff entered appearance through counsel. The direct testimony of Robert Koszyk, ComEd’s Director of Interconnection Services, in support of the Petition, was admitted into the record (via affidavit) or (on verification). Garret E. Gorniak of the Financial Analysis Division and David Borden of the Energy Policy Division testified on behalf of the Staff of the Commission.

## ComEd's Position

ComEd is a corporation organized and existing under the laws of the State of Illinois with its principal office in Chicago, Illinois. ComEd is engaged in supplying electric energy and delivery services to the public in the northern portion of Illinois and is a public utility within the meaning of Section 3-105 of the Act (220 ILCS 5/3-105) and within the meaning of Section 201(e) of the Federal Power Act (16 U.S.C. 824(e)). ComEd is also an electric utility within the meaning of Section 16-102 of the Act (220 ILCS 5/16-102) and Section 796(22) of the Federal Power Act (16 U.S.C. 796(22)).

ComEd is a direct subsidiary of Exelon Energy Delivery, LLC ("EED"), a limited liability company organized and existing under the laws the State of Delaware, and an indirect subsidiary of Exelon Corporation ("Exelon"), a corporation organized and existing under the laws of the State of Pennsylvania. Accordingly, EED and Exelon are "affiliated interests" of ComEd as that term is defined in Section 7-101 of the Act (220 ILCS 5/7-101).

Southeast Chicago Energy Project, LLC ("Southeast") is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Delaware and is authorized to do business in Illinois. Exelon Generation Company, LLC ("Genco") is a Pennsylvania limited liability company engaged in the business of generating electric power and energy. Genco is a subsidiary of Exelon. Southeast is a direct subsidiary of Genco and an indirect subsidiary of Exelon. Accordingly, Southeast is an "affiliated interest" of ComEd as that term is defined in Section 7-101 of the Act (220 ILCS 5/7-101).

Under Section 201(b) of the Federal Power Act, the FERC has exclusive jurisdiction over the transmission of electric energy in interstate commerce and over the facilities for such transmission. 16 U.S.C. 824(b). The FERC accordingly has exclusive jurisdiction over rates, terms and conditions for the provision of transmission service under Section 205 of the Federal Power Act. 16 U.S.C. 824d.

ComEd, as a FERC-jurisdictional transmission provider, is required to interconnect generators to its transmission system. The FERC has determined that such interconnection is an element of the transmission service that transmission providers must offer to eligible customers. *Tennessee Power Company*, 90 FERC ¶ 61,238 (2000). Transmission providers enter into interconnection agreements with generation owners that set forth the rates, terms and conditions for this service. Such agreements are accepted for filing by the FERC in the exercise of its exclusive jurisdiction over rates for transmission service.

On February 8, 2001, ComEd, in its role as a FERC-jurisdictional transmission provider, executed an IA with Calumet Power, LLC ("Calumet"), a subsidiary of Peoples Energy Resources Corporation ("Peoples Energy"). The IA sets forth the rates, terms and conditions governing the interconnection of Calumet's 308 MW gas-fired generating

facility to the transmission system of ComEd. A full copy of the IA was attached to the Verified Petition.

On April 6, 2001, pursuant to Part 35 of the FERC's Regulations, 18 C.F.R. Part 35 (2000), ComEd filed an executed copy of the IA with the FERC. The IA had an effective date of April 7, 2001. Pursuant to the authority delegated by FERC to its Director, Division of Tariffs and Rates-Central, under 18 C.F.R. § 375.307, ComEd's submittal was accepted for filing on May 10, 2001. The issuance of this order constituted final agency action and the IA became a FERC-filed tariff binding upon ComEd.

Genco and Peoples Energy have entered into a Development and Construction Agreement (the "Development Agreement") which contemplates that upon the making of certain contributions of money and property directly or indirectly to Southeast, Genco will have an equity interest of approximately 70% in Southeast and Peoples Calumet, LLC, a subsidiary of Peoples Energy and the parent of Calumet, will have an equity interest not exceeding 30% in Southeast. Pursuant to the Development Agreement, Peoples Energy agreed to cause Calumet to transfer the IA to Southeast.

Calumet has expressed a desire to assign, transfer, convey and deliver to Southeast all of Calumet's rights and obligations in and to the IA. The parties have memorialized their intent in an Assignment and Assumption Agreement, a draft of which was attached to the Verified Petition.

Under the Assignment and Assumption Agreement, Calumet, for and in consideration of a credit for the account of Peoples Calumet, LLC representing an interest in Southeast, and other good and valuable consideration, assigns, transfers, conveys and delivers to Southeast all of Calumet's right, title, benefit, privileges and interests in and to the IA.

Similarly, Southeast, under the Assignment and Assumption Agreement, agrees to assume and to pay, perform, fully discharge and fully satisfy all liabilities, duties and obligations of Calumet under the IA. Southeast's access to and right to use the ComEd system for transmission service are governed exclusively by ComEd's Open Access Transmission Tariff ("OATT") and the applicable laws and regulations of the FERC. Similarly, the rates ComEd will charge Calumet for the use of the ComEd transmission system are governed by ComEd's OATT and the applicable laws and regulations of the FERC.

The IA, as a transmission rate agreement filed with the FERC, is subject to Section 205 of the Federal Power Act (16 U.S.C. 824d), which requires that all rates for transmission service be "just and reasonable" and prohibits any rates that "grant any undue preference or advantage to any person." This federal statutory requirement, as well as the fact that the IA was entered into with an unaffiliated party and will be assigned to ComEd's affiliate unaltered, demonstrate that ComEd's Illinois jurisdictional

ratepayers will not be harmed by the assignment of the IA to an affiliated interest of ComEd or by ComEd's continuing obligations under the IA.

ComEd asserted that the affiliated relationship between ComEd and Southeast will have no effect on ComEd's performance under the IA. ComEd will do no more than continue to provide the FERC-jurisdictional interconnection services to which the IA obligates it.

ComEd argued that if approved, ComEd's continued operation under the IA, after it is assigned to an affiliated interest of ComEd, will increase the amount of generation resources needed to help meet growing customer demand for electric power and energy in Northern Illinois. ComEd contends that this is especially true because of the Calumet facility's strategic location in the City of Chicago. Accordingly, the public would be inconvenienced thereby.

### **Staff's Position**

At the hearing on June 18, 2002, Staff stated that it was not opposed to the granting of the Verified Petition by the Commission on policy grounds or for accounting reasons. Staff stated that after reviewing the petition, testimony, exhibits and data request responses in this case, as well as ComEd's Affiliated Interests Agreement, that the journal entries that result from this transaction appear reasonable.

### **Commission Analysis and Conclusion**

There are no contested issues of fact or law within the scope of the findings requested in this proceeding. Based on the evidence of record, the Commission concludes that the evidence establishes that ComEd's proposal is in the public interest and should be approved pursuant to Section 7-101(3).

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) ComEd is a corporation organized and existing under the laws of the State of Illinois. ComEd is engaged in the business of providing electric service to customers in the State of Illinois. ComEd is a public utility within the meaning of the Act.
- (2) the Commission has jurisdiction over ComEd, a public utility as defined by Section 3-105 of the Act;
- (3) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law; and

- (4) the proposed transaction is in the public interest and the public will be inconvenienced thereby and ComEd's Verified Petition should therefore be approved.

IT IS THEREFORE ORDERED THAT the consent and approval of the Illinois Commerce Commission is granted to Commonwealth Edison Company to continue to operate under an interconnection agreement that will be assigned to an affiliated interest, and to act in accordance with the terms and conditions of such interconnection agreement.

IT IS FURTHER ORDERED that approval is granted to Commonwealth Edison Company to do any and all other things not contrary to law that are necessary and appropriate for the performance of any and all acts authorized herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 10<sup>th</sup> day of July, 2002.

(SIGNED) RICHARD L. MATHIAS

Chairman