
**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Commonwealth Edison Company	:	
	:	No. 00-0369
Petition for confidential treatment of the notice of transfer of generating assets and wholesale marketing business and entry into related agreements pursuant to Section 16-111(g) of the Public Utilities Act.	:	
	:	(Consolidated)
Illinois Commerce Commission On Its Own Motion	:	
	:	
-vs-	:	No. 00-0394
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.	:	

**REPLY BRIEF ON EXCEPTIONS OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

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August 3, 2000

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NOW COMES the Staff of the Illinois Commerce Commission (“Staff”), through its attorneys, and files this Reply Brief on Exceptions in the above captioned proceeding. Brief on Exceptions (“BOE”) were filed by the following: Illinois Industrial Energy Consumers (“IIEC”), the People of Cook County (Cook County), and the City of Chicago (“City”). This Reply Brief on Exceptions is Staff’s response to those exceptions where Staff found a response warranted. The absence of a response by Staff to any particular exception made by any of the parties should not in any way be construed as acquiescence or approval by Staff.

I. ARGUMENT

A. *Response to IIEC*

1. Reliability

The IIEC argues that “the Commission should require ComEd to present evidence on the development of an open and competitive generating market in the year 2004 and beyond in order to determine whether there is a likelihood that the subject transaction will result in the inability to provide safe and reliable service”. BOE, p. 7 and IIEC IB, pp. 10-11. As Staff pointed out in its reply brief, the IIEC has failed to show what impact, if any, the proposed transfer will have on the decisions of others to build or not built new power plants in or near the ComEd service territory. Staff RB, p. 2. Further, the HEPO points out that if ComEd is unable to acquire from the market all of the capacity required it will build the necessary capacity. HEPO, p. 14. The IIEC’s exceptions should be rejected.

2. Trust funds are assets of ComEd

The IIEC with the support of Cook County continues to argue that the nuclear decommissioning trust funds and the assets in those funds are not assets of ComEd within the meaning of Section 16-111(g). IIEC BOE, p. 9 IIEC IB, p. 4. The HEPO agreed with Staff's and the Company's interpretation of Section 8-508.1. Clearly the language of Section 8-508.1 sets forth that although the trust funds are to be separate from the assets of the electric utility, they are "separate from all other accounts and assets of the public utility". The IIEC in its BOE glosses over this language. The IIEC provides no plausible response to the fact that the decommissioning funds are assets being removed from ComEd's books (Appendix H, p. 5) and independent auditors have certified that ComEd's journal entries removing those assets from ComEd's books are consistent with accounting principles generally accepted in the United States". For these reasons and those previously stated the IIEC's arguments should be rejected.

B. Response to City

The City argued in its briefs and continues to take the position in its exceptions that a statutory refund obligation required by Section 8-508.1(c)(iii), will apply to the proposed transaction thus entitling Edison to a rate increase during the mandatory transition period. City BOE, pp. 1-8 City IB, p. 4. The HEPO correctly recognizes that the City's interpretation and application of Section 8-508.1 is flawed. HEPO, p. 17. The HEPO agrees with Staff that it would be unreasonable for the Commission to order a refund and then allow ComEd to recover it through rates. HEPO, p. 17. The City's BOE fails to

provide any reasonable argument in response to the well reasoned arguments set forth in the HEPO.

C. *Response to Cook County*

Cook County continues to argue that ComEd has not met its burden in showing that it will be able to meet its customers load in a reliable manner. Cook County argues that ComEd does not have signed contracts or rights for the capacity required if no customers switch. Cook County BOE, pp. 1-4 Cook County IB, p. 6. As Staff pointed out in its reply brief, Cook County's assumption that ComEd will not lose any customers is very conservative in a reliability analysis and contrary to ComEd's experience thus far in the new competitive environment where they have lost customers. Staff RB, p. 2. In addition, Staff witness Larson testified that the transfer will not substantially change ComEd's ability to provide safe and reliable service to its customers. Staff Ex. 3, pp. 3-4. The HEPO appropriately acknowledges these facts (HEPO, p. 2) and Cook County's argument should be rejected.

II. CONCLUSION

WHEREFORE, for the foregoing reasons, as well as those previously set forth in Staff's Briefs, the Staff of the Illinois Commerce Commission respectfully requests that the Commission adopt the Hearing Examiner's Proposed Order.

Respectfully submitted,

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