

ILLINOIS POLLUTION CONTROL BOARD
December 11, 1975

COMMONWEALTH EDISON CO., INC.,)
 Petitioner,)
)
 v.) PCB 75-100
)
ENVIRONMENTAL PROTECTION AGENCY,)
 Respondent.)

ORDER OF THE BOARD (by Mr. Goodman):

On November 20, 1975, the hearing officer granted Intervenor's Motion to Produce, filed by Intervenor on November 14, 1975, and ordered the production of certain documents containing bid specifications. On November 21, 1975, Petitioner filed with the hearing officer an Opposition to the Motion to Produce, or in the Alternative, Motion for a Protective Order. On November 24, 1975, the hearing officer referred to the Board that portion of Petitioner's Motion relating to a Protective Order.

Petitioner seeks two orders in its prayer for relief. First, Petitioner requests that at all times other than during hearings on the matter, Intervenor disclose the produced documents and the information contained therein to no person other than employees or consultants of Intervenor and then only in preparation for hearings in this matter. Secondly, Petitioner requests that during hearings in this matter, Intervenor utilize the produced documents and the information contained therein only during in camera proceedings until such time as either party obtains a ruling from the Board on a timely-filed Application for Nondisclosure relating to in camera usage.

Rule 313(a) of the Procedural Rules (Rules) provides that the hearing officer may restrict discovery where necessary to prevent undue delay or harassment. However, Petitioner's Motion does not seek a restriction of discovery itself but, rather, protection from disclosure of the material obtained through discovery. The Rules contain no specific guidelines as to the granting of protective orders.

The Board hereby grants that portion of Petitioner's Motion for a Protective Order requesting that Intervenor disclose the produced documents and the information contained therein to no person other than employees or consultants of Intervenor and then only in preparation for hearing in this matter.

The Board denies Petitioner's request that during hearings in this matter Intervenor utilize the produced documents and the information contained therein only during in camera proceedings until such time as either party obtains a ruling on a timely-filed Application for Nondisclosure. The use of the produced documents at the hearing on this matter is at this point purely speculative and not subject to ruling by the Board. Petitioner should submit an Application for Non-disclosure, pursuant to Rule 107(c) if and when the produced documents are offered as evidence at the hearing in this matter.

The Motion for Stay of Production of Certain Documents submitted by I.U. Conversion Systems, Inc., is also denied. I.U. Conversion Systems, Inc., is not a party to this action and, therefore, has no standing to raise this motion.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 11th day of December, 1975 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board