

ILLINOIS POLLUTION CONTROL BOARD
February 7, 1974

CITIZENS FOR A BETTER ENVIRONMENT,)
)
 Complainant,)
)
 vs.)
)
 ILLINOIS COMMERCE COMMISSION,) PCB 73-522
 MARVIN S. LIEBERMAN, As Chairman,)
 Illinois Commerce Commission, and)
 COMMONWEALTH EDISON COMPANY,)
)
 Respondents.)

ORDER OF THE BOARD (by Mr. Seaman):

On December 10, 1973, Citizens For A Better Environment filed its Complaint against Respondent, Commonwealth Edison Company, which currently has a rate increase case pending before Respondent, Illinois Commerce Commission (Docket Number 583040). Both Respondents have filed Motions To Dismiss the Complaint.

Complainant is an intervenor in the pending rate case and attempted therein to introduce testimony allegedly to the effect that Respondent, Commonwealth Edison, is in violation of various provisions of the Environmental Protection Act. The hearing officer refused to admit such evidence and Complainant has brought this action seeking relief therefrom. Complainant's prayer for relief is as follows:

A. That this BOARD FIND THAT THE Respondent, ILLINOIS COMMERCE COMMISSION is a "person" within the meaning of Section 3 of the Act.

B. That the Respondent, ILLINOIS COMMERCE COMMISSION has violated Sections 2(a)(iv), 8, 9, 11, 12, and 47(a) by allowing Respondent, COMMONWEALTH EDISON COMPANY to violate the Act and by not managing its activities in its Docket Number 58340 so as to minimize environmental damage by COMMONWEALTH EDISON COMPANY.

C. That the Board enter an order pursuant to Section 33(a) that the ILLINOIS COMMERCE COMMISSION accept testimony

on violations of the Act in its Docket Number 58340, and enter an order in that case after having given due and proper consideration to the Act.

D. That the Board enter an order pursuant to Section 33(b) that the ILLINOIS COMMERCE COMMISSION cease and desist from ignoring its obligations under the Act by deferring environmental issues to the Board.

E. That in the alternative to C. and D. above, the Board take direct testimony on the effects of COMMONWEALTH EDISON'S activities on the environment, and enter an order modifying the final order of the ILLINOIS COMMERCE COMMISSION in its docket number 58340 in accordance with the Board's findings.

Complainant has not sought review of the hearing officer's said ruling by the Respondent Commission in the manner provided by the Rules of Practice of the Commission. Pursuant to those Rules, the objection to the evidentiary ruling is still pending before the Commission and will be decided in due course by the Commission. Therefore, Complainant is attacking an action which has not yet been taken and which is within the exclusive jurisdiction of the Respondent Commission.

Complainant herein has failed to exhaust the administrative remedies provided by Section 67, 68 and 71 of the Public Utilities Act (Ill. Rev. Stat. 1971, Chap. 111-2/3, Sections 71, 72 and 75). Section 64 of the Public Utilities Act, Ill. Rev. Stat. 1971, Chap. 111-2/3, Section 68, provides that:

"Complaint may be made...by any person or corporation...by petition or complaint in writing, setting forth any act or things done or omitted to be done in violation of any provision of this Act."

Section 67 of the Act, Ill. Rev. Stat. 1971, Chap. 111-2/3, Section 71, provides for rehearing of the order before the Commission. Section 68, Ill. Rev. Stat. 1971, Chap. 111-2/3, Section 72, permits a circuit court to take jurisdiction of a matter properly before the Commission on judicial review.

The Complaint is dismissed as premature.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Order was adopted on this 7th day of February, 1974 by a vote of 5-0.

Christan L. Moffett