

RECEIVED
CLERK'S OFFICE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD JUN 02 2004

STATE OF ILLINOIS
Pollution Control Board

Commonwealth Edison Company
Petitioner,

v.

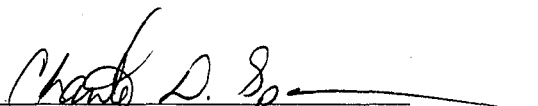
Illinois Environmental Protection Agency,
Respondent

PCB No. 04-215
(Trade Secret Appeal)

NOTICE OF FILING

To: Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 67294-9276

PLEASE TAKE NOTICE that we have today filed with the Office of the Clerk of the Pollution Control Board **Commonwealth Edison Company's Petition for Review of the Illinois Environmental Protection Agency's Denial of Trade Secret Protection**, a copy of which is herewith served upon you.


Chanté D. Spann

Date: June 2, 2004

Byron F. Taylor
Chanté D. Spann
Sidley Austin Brown & Wood LLP
Bank One Plaza
10 S. Dearborn
Chicago, Illinois 60603
(312) 853-7000

JUN 02 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

Commonwealth Edison Company
Petitioner,

v.

Illinois Environmental Protection Agency,
Respondent

PCB No. 04-215
(Trade Secret Appeal)

**COMMONWEALTH EDISON COMPANY'S PETITION FOR REVIEW OF THE
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S DENIAL OF TRADE
SECRET PROTECTION**

Pursuant to the Illinois Environmental Protection Act (415 ILCS §§ 5/40, 5/7(a)) and 35 Ill. Adm. Code § 130.214, Commonwealth Edison Company ("ComEd"), by and through its attorneys, Sidley Austin Brown & Wood LLP, hereby submits this Petition for Review of the Illinois Environmental Protection Agency's Denial of Trade Secret Protection and hereby states as follows:

1. On January 30, 2004, ComEd submitted final responses to a Clean Air Act § 114 Information Request issued by the United States Environmental Protection Agency ("USEPA"). At USEPA's suggestion, ComEd submitted a courtesy copy of the final responses and attachments to the Illinois Environmental Protection Agency ("IEPA"). Included in ComEd's final responses were excerpts from a Continuing Property Record ("CPR") and Generating Availability Data System ("GADs") data relating to six coal-fired generating stations formerly owned by ComEd (collectively referred to as "Confidential Articles").

2. The excerpts from the CPR are compiled listings of confidential detailed financial information related to expenditures at the six coal-fired generating stations. The CPR

compilations cover approximately 25 years of additions and transfers to these stations which cost more than \$100,000. Each entry includes the date that the equipment was put into service, the related work order number, a description of the work, and the cost. The CPR compilation was generated to answer specific requests within the USEPA's Clean Air Act § 114 Information Request. These compilations have not been released to the public.

3. The GADs data contains compiled information relating to the operation of the electric generating units at the six coal-fired generating stations. The GADs data covers a four year time period and includes planned outage hours, forced outage hours, maintenance outage hours and total unit derated hours for each generating unit at each station. The GADs data compilation was generated to answer specific requests within the USEPA's Clean Air Act § 114 Information Request. These compilations have not been released to the public.

4. The information contained in the Confidential Articles is considered confidential by ComEd and has competitive value. If ComEd's competitors were allowed access to this information, ComEd would be placed at a disadvantage. The danger is elevated because the information is compiled and covers a period of years. These compilations collect and summarize confidential data into a concise format. As explained in its trade secret statement of justification, ComEd limits the availability of the information within the Confidential Articles to select individuals at ComEd and its parent company, Exelon. Accordingly, ComEd conspicuously marked its final responses to the USEPA's Information Request as "Confidential Business Information" pursuant to the regulations set forth by the USEPA at 40 CFR § 2.203. Additionally, ComEd identified the documents as confidential business information within the text of its responses and in a cover letter accompanying its submissions.

5. The CPR compilation is also considered confidential business information and trade secrets by the current owner of the six coal-fired generating stations, Midwest Generation, EME ("Midwest Generation"). ComEd is obligated to Midwest Generation to maintain the CPR entries as confidential information.

6. On March 1, 2004, ComEd received a letter from the IEPA requesting that it justify its claims that the Confidential Articles are trade secrets pursuant to 35 Ill. Admin. Code Part 130. On March 11, 2004, ComEd submitted a statement of justification pursuant to 35 Ill. Admin Code Part 130, as requested by the IEPA. The statement of justification explained that the Confidential Articles are trade secrets because they have been protected by the company, have not been released to the public, and have competitive value to the company. 35 Ill. Admin. Code § 130.208. ComEd also attached a certification as required by 35 Ill. Admin. Code § 130.208.

7. On April 28, 2004 ComEd received a letter from the IEPA via U.S. mail denying trade secret protection for virtually all of ComEd's Confidential Articles. The IEPA indicated that ComEd failed to show that the Confidential Articles: a) had not been published, disseminated or otherwise become a matter of general public knowledge, and/or b) have competitive value, and c) do not constitute emission data. The IEPA letter provided no explanation or support for these cursory statements. In that letter, IEPA granted trade secret status to the work order numbers in the CPR compilation.

8. Release of ComEd's Confidential Articles to the public would be contrary to Illinois law because they constitute trade secrets exempt from disclosure by the Environmental Protection Act (415 ILCS §§ 7(a)(i), 7(a)(iv), 7.1(a)) and the Illinois Freedom of Information Act (5 ILCS §§ 140(7)(a)(g)). To the best of the company's knowledge, the Confidential Articles

have not been disseminated, published or otherwise become a matter of general public knowledge. Further, the Confidential Articles have competitive value because they contain compilations of detailed, confidential information that reveal information about ComEd's business strategies and practices and the operation of the electric generating units at the six stations. The disclosure of this information to ComEd's competitors could place ComEd at a disadvantage. ComEd does not have access to similar information generated by its competitors.

9. If the Illinois Pollution Control Board ("Board") determines that the IEPA properly denied ComEd's Confidential Articles trade secret status, the IEPA should continue to protect such data pursuant to the Illinois Freedom of Information Act (5 ILCS § 140/7(g)) and 2 Ill. Admin. Code Part 1828 as confidential commercial and financial information that is likely to cause ComEd competitive harm if released to the public. Further, the IEPA should continue to protect such data pursuant to the Illinois Environmental Protection Act as confidential data (415 ILCS § 7(a)(iv)).

10. Due to the confidential and commercial nature of the Confidential Articles, ComEd requests that they be filed under seal.

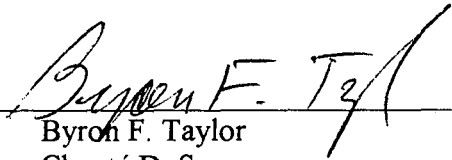
11. ComEd requests that the hearing on this matter be held *in-camera* to avoid disclosure of ComEd's trade secrets.

WHEREFORE, ComEd respectfully requests that this Petition for Review be Granted and that the Board enter an order reversing IEPA's determination that ComEd's Confidential Articles are not entitled to trade secret protection or, in the alternative, that the Board remand this matter to the IEPA and direct that the IEPA continue to treat this information as confidential until a final determination is made under 5 ILCS § 140/7(g) and 2 Ill. Admin. Code Part 1828.

Respectfully submitted,

Commonwealth Edison Company

By:


Byron F. Taylor

Chanté D. Spann

Sidley Austin Brown & Wood LLP

Bank One Plaza

10 S. Dearborn

Chicago, Illinois 60603

(312) 853-7424

Attorneys for Commonwealth
Edison Company



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397

JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-5544
217/782-9143(TDD)

Received 4/28/04
SAB&W

April 23, 2004

Byron F. Taylor
Sidley Austin Brown & Wood LLP
Bank One Plaza
10 South Dearborn Street
Chicago, Illinois 60603

**Re: Commonwealth Edison/Exelon
Trade Secret Justification – Commonwealth Edison information**

Dear Mr. Taylor:

The Illinois Environmental Protection Agency ("Illinois EPA") is in receipt of Commonwealth Edison's ("ComEd") trade secret Statement of Justification dated March 11, 2004 and received by the Illinois EPA on March 12, 2004. The Statement of Justification was provided at the request of the Illinois EPA and addresses information submitted by Commonwealth Edison ("ComEd") to the Illinois EPA in response to a United States Environmental Protection Agency ("USEPA") request for information under §114 of the Clean Air Act ("information request"). This letter serves as the Illinois EPA's response to ComEd's Statement of Justification.

Seven attachments marked "confidential business information" were submitted by ComEd on January 30, 2004, in response to the information request and supplement its September 11, 2003, response. Attachments A through F are responsive to information request numbers 3 and 10 and contain information from ComEd's Continuing Property Record ("CPR") for each of the six coal-fired electric generating stations subject to the information request. ComEd's Statement of Justification asserts that the CPR is confidential business information as such is of competitive value to competitors or contractors/vendors and has been safeguarded by both ComEd and Midwest. The Illinois EPA is denying trade secret protection to all information contained in Attachments A through F (i.e., the CPR) responsive to information request numbers 3 and 10 except the work order numbers. ComEd and/or Midwest failed to adequately demonstrate that the information has not been published, disseminated, or otherwise become a matter of general public knowledge and/or failed to demonstrate that the information has competitive value.

ROCKFORD – 4302 North Main Street, Rockford, IL 61103 – (815) 987-7760 • DES PLAINES – 9511 W. Harrison St., Des Plaines, IL 60016 – (847) 294-4000
ELGIN – 595 South State, Elgin, IL 60123 – (847) 608-3131 • PEORIA – 5415 N. University St., Peoria, IL 61614 – (309) 693-5463
BUREAU OF LAND - PEORIA – 7620 N. University St., Peoria, IL 61614 – (309) 693-5462 • CHAMPAIGN – 2125 South First Street, Champaign, IL 61820 – (217) 278-5800
SPRINGFIELD – 4500 S. Sixth Street Rd., Springfield, IL 62706 – (217) 786-6892 • COLLINSVILLE – 2009 Mall Street, Collinsville, IL 62234 – (618) 346-5120
MARION – 2309 W. Main St., Suite 116, Marion, IL 62959 – (618) 993-7200

Further, ComEd and/or Midwest has failed to demonstrate that the information does not constitute emission data.

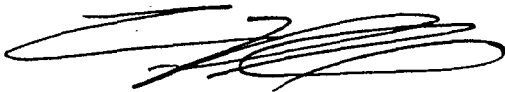
Attachment G is responsive to information request number 4 and contains information from the Generating Availability Data System (GADs). Generally, the GADs identifies boiler and turbine related forced, maintenance and planned outages. The Illinois EPA is denying trade secret protection to the information submitted by ComEd in response to information request number 4. ComEd and/or Midwest failed to adequately demonstrate that the information has not been published, disseminated, or otherwise become a matter of general public knowledge and/or failed to demonstrate that the information has competitive value. Further, ComEd and/or Midwest has failed to demonstrate that the information does not constitute emission data.

ComEd (or any requestor who is adversely affected by this determination) may petition the Illinois Pollution Control Board ("Board") pursuant to 35 Ill. Adm. Code 105, Subparts A and B to review the Illinois EPA's final determination within 35 days after service of the determination. Furthermore, ComEd (or any requestor who is adversely affected by a final determination of the Board) may obtain judicial review from the appellate court by filing a petition for review pursuant to Section 41 of the Illinois Environmental Protection Act [415 ILCS 5/41]. (35 Ill. Adm. Code 130.214)

Should ComEd or any requestor petition the Board or obtain judicial review from the appellate court, the Illinois EPA will continue to protect all information for which trade secret protection has been granted until it receives official notification of a final order by a reviewing body with proper jurisdiction that reverses this determination and that is not subject to further appeal. (35 Ill. Adm. Code 130.214)

The Illinois EPA will cease protecting all information not subject to trade secret protection as discussed herein unless the Agency is served with notice of the filing of a petition for review of its determination within 35 days after service of this notice of denial on ComEd and any requestor.

If you have any questions or concerns regarding this matter please do not hesitate to contact me.



Chris Pressnall
Assistant Counsel
Division of Legal Counsel

cc: Adam Quader, Sierra Club

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Notice of Filing and Petition for Review of the Illinois Environmental Protection Agency's Denial of Trade Secret Protection, by U.S. mail and facsimile on this 2nd day of June, 2004 upon the following persons:

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

A handwritten signature in cursive script, appearing to read "Chanté D. Spann", is written over a horizontal line.

Chanté D. Spann