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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD FEB 22 2006

STATE OF ILLINOIS
Pollution Control Board

Commonwealth Edison Company,)
)
Petitioner,)
)
v.)
)
Illinois Environmental Protection Agency,)
)
Respondent.)

PCB No. 04-215
(Trade Secret Appeal)

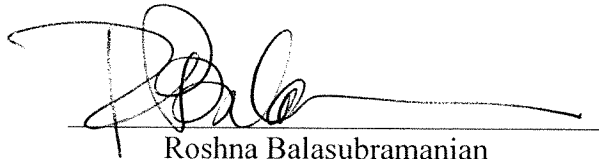
NOTICE OF FILING

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, Illinois 60601

Ann Alexander
Assistant Attorney General and
Environmental Counsel
188 West Randolph Street
Suite 2000
Chicago, Illinois 60601

Brad Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that we have today filed with the Office of the Clerk of the Pollution Control Board **Commonwealth Edison Company's Motion to Compel**, a copy of which is herewith served upon you.


Roshna Balasubramanian

Dated: February 22, 2006

Byron F. Taylor
Roshna Balasubramanian
Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603
(312) 853-7000

THIS FILING SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Commonwealth Edison Company,

Petitioner,

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Illinois Environmental Protection Agency,

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PCB No. 04-215
(Trade Secret Appeal)

COMMONWEALTH EDISON COMPANY'S MOTION TO COMPEL

Petitioner, Commonwealth Edison Company ("ComEd"), by and through counsel and pursuant to 35 Ill. Admin. Code §§ 101.614 and 101.616(b), hereby moves the Hearing Officer for an Order compelling Respondent, Illinois Environmental Protection Agency ("IEPA" or "the Agency"), to respond to certain of ComEd's Initial Interrogatories and Initial Requests for the Production of Documents. In support thereof, ComEd states as follows:

BACKGROUND

1. This case comes before the Illinois Pollution Control Board (the "Board") and the Hearing Officer on ComEd's petition for review of a negative IEPA determination (hereinafter "Agency's Denial") that certain data relating to six coal-fired generating stations was not entitled to trade secret protection under 35 Ill. Admin. Code Part 130. The trade secret materials consisted of compiled excerpts from an accounting record for each generating station, known as the Continuing Property Record ("CPR"), as well as excerpts of the Generating Availability Data System ("GADS") data for the stations (collectively, the "Confidential Articles"). Pursuant to 35 Ill. Admin. Code § 130.203, ComEd submitted to IEPA a statement of justification that set forth

the requisite elements for trade secret protection and the manner in which each element was satisfied.

2. On April 23, 2004, IEPA issued a cursory written statement denying ComEd's trade secret claims for both the CPR and the GADS data. The Agency's Denial offered no explanation, other than a recitation of the applicable legal standards:

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.

3. On appeal, ComEd contends that the Confidential Articles are entitled to trade secret protection under Illinois law, that there is insufficient evidence to support the Agency's Denial, and that Respondent failed to follow the procedures set forth in 35 Ill Admin. Code § 130.210(b)(1) in issuing its denial.

4. Following the Board's granting of ComEd's petition, the Hearing Officer entered an August 25, 2005 Order setting forth the applicable discovery schedule. Each party is permitted to serve interrogatories and document requests and conduct depositions. Consistent with the above-reference Order, ComEd served IEPA with written discovery. *See* Pet'r Initial Interrogs. (hereinafter "Exhibit A"); Pet'r Initial Req. Produc. Docs. (hereinafter "Exhibit B"). The Interrogatories and Document Requests sought, *inter alia*, information relating to IEPA's prior trade secret determinations of financial and operational data—including accounting records and GADS data—submitted by other businesses and electric utilities. ComEd further requested the Agency's prior analyses and/or determinations of what constitutes "emissions data." The relevant interrogatories sought the following information:

Interrogatory No. 12: Any determination IEPA has made relating to the trade secret status of a business's financial information.

Interrogatory No. 13: Any determination IEPA has made relating to the trade secret or confidential business information status of any other electric utility company's GADS data or other similar operational data.

Interrogatory No. 14: Any determination IEPA has made that information constituted "emissions data" as that term is now or was in the past defined under Section 5/7 of the Illinois Environmental Protection Act, 415 ILCS 5/7, or Section 114(c) of the Clean Air Act, 42 U.S.C. § 7414(c), or their predecessors and their implementing regulations.

Document Request No. 4: All statements of justification—prepared in defense of trade secret or confidential business information claims—submitted to IEPA between January 1, 1990 and the present.

Document Request No. 5: IEPA's responses—including preliminary and final agency determinations and correspondence related to the same—to such statements of justification.

The requested information bears heavily on the Board's review of the Agency's Denial, both as to whether the Agency's record contained all necessary and relevant information and as to the substantive reasoning utilized by the Agency to deny trade secret protection. *See Pulitzer Community Newspapers, Inc. v. Illinois Environmental Protection Agency*, PCB 90-142, slip op. at 6 (Dec. 20, 1990)(in trade secret appeals to the Board, "[t]he information in the [agency's] denial statement frames the issues on review").

5. IEPA provided no answers to the above-enumerated interrogatories, nor did it indicate that it would undertake reasonable efforts to locate responsive information. IEPA instead referred ComEd to "General Objections A, C, and D," which state, respectively, that ComEd's Initial Interrogatories and Document Requests seek irrelevant/inadmissible evidence (General Objection A), "are overbroad and burdensome" (General Objection C), and "are vague" (General Objection D). *See* Resp't Resp. to Interrogs. and Req. Produc. Docs. (collectively, hereinafter "Exhibit C"). No substantiation of any of the objections was provided, nor was there any explanation of how the general objections applied to the specific requests.

6. Counsel for ComEd has conferred with IEPA by letter, seeking to negotiate a mutually satisfactory resolution of these discovery issues. By letter dated January 25, 2006, ComEd responded to IEPA's objections by identifying the relevance of, and need for, the requested discovery. (Exhibit D). Additionally, ComEd requested greater specificity of IEPA's overbreadth and vagueness objections. IEPA indicated by letter dated February 2, 2006 that it is unwilling to provide responses to the contested discovery requests. (Exhibit E). The parties have been unable to reach an accord with respect to these matters. Because the requested information goes to issues that are central to this appeal, and to avoid further prejudicing ComEd as it prepares for depositions and other discovery without the benefit of IEPA's documents and written responses, ComEd respectfully seeks the Hearing Officer's intervention in this matter.

**THE DISCOVERY SOUGHT IS REASONABLY CALCULATED TO
LEAD TO RELEVANT INFORMATION**

7. IEPA has refused to respond to this discovery on the insupportable grounds that ComEd "seek[s] information that is irrelevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence." (Exhibits C, E). Respondent relies on an improper standard for refusing to respond to discovery. Under the Board's rules, "all relevant information and information **calculated to lead to relevant information** is discoverable." 35 Ill. Admin. Code § 101.616(a) (emphasis added); *Illinois v. Skokie Valley Asphalt et al.*, PCB 96-98, 2003 WL 22134512, *2 (Sept. 4, 2003). Whether the information sought is admissible at the hearing, or whether it will lead to admissible information, is simply not the Board's standard of discoverability. The Board's rules state explicitly that "it is not a ground for objection that the testimony of a deponent or person interrogated will be inadmissible at hearing, if the information sought is reasonably calculated to lead to relevant information." 35 Ill. Admin. Code § 101.616(e). The Agency's reliance on 35 Ill. Admin. Code § 105.214(a) is misplaced, because

that provision governs the admissibility of evidence at Board hearings, not the permissible scope of discovery. IEPA is obligated to undertake reasonable efforts to respond to ComEd's written discovery, *People v. Williford*, 649 N.E.2d 941, 944 (Ill. App. Ct. 1995), and as an agency, it has a duty during discovery to disclose evidence in its possession that might be helpful to an opponent. *Wilson v. Norfolk & W. Ry. Co.*, 440 N.E.2d 238, 244 (Ill. App. Ct. 1982); *Wegmann v. Dep't of Registration & Educ.*, 377 N.E.2d 1297, 1301 (Ill. App. Ct. 1978).

8. Additionally, IEPA has not demonstrated that the information sought by ComEd's interrogatories and document requests would be deemed inadmissible at the hearing. It is well-established that, even where appeals of final agency determinations are limited to a review of the record, discovery is permitted to determine whether the record is complete. "It is proper to inquire, and discovery should be allowed, to insure that the record filed by the Agency is complete and contains all of the material...that was before the Agency when the denial statement was issued." *Oscar Mayer & Co. v. Environmental Protection Agency*, PCB 78-14 (June 8, 1978). The Board has found that matters properly discoverable need not have been relied on or considered by the Agency at the time of its determination. *Grigoleit Co. v. IEPA*, PCB 89-184, 1990 WL 263955, at *7 (Nov. 29, 1990)("[D]iscovery in Illinois is designed to allow a broad and liberal transfer of information which may lead to the development of relevant evidence," therefore, "[d]iscoverable matters need not in themselves be relevant or have been relied upon or considered by the Agency."). See also *Midwest Generation EME, LLC v. Illinois Environmental Protection Act*, PCB 04-185, Board Order at 21 (Nov. 4, 2004)(at the hearing, petitioner may "challenge the reasons given to the Board" and present "testimony which would 'test the validity of the information (relied upon by the Agency).'").

9. The documents and information ComEd is seeking are relevant and reasonably calculated to lead to relevant information. If IEPA had previously determined that an electric utility's GADS data did not constitute "emissions data," for example, such information arguably should have been incorporated into the record before the Agency. Alternatively, IEPA's lack of experience with GADS data would be of equal relevance, since the Agency's refusal to protect ComEd's GADS data is at issue. IEPA also appears to be claiming that the CPR may have been "emissions data." Petitioner therefore is interested in the Agency's previous interpretations of the term "emissions data," to learn what, if any, similar determinations the Agency has made and whether the denial of ComEd's trade secret claims departs from the Agency's historic interpretations of that term. Review of such information bears directly on Petitioner's ability to develop its arguments regarding the "emissions data" issue.

10. IEPA has also put at issue whether ComEd's Statement of Justification was adequate. For instance, the Agency claimed that ComEd "failed to adequately demonstrate that the information has not been published, disseminated, or otherwise become a matter of general public knowledge...." Illinois trade secret regulations provide that a claimant is entitled to a rebuttable presumption that its trade secret articles have not been published, disseminated, or otherwise become a matter of general knowledge, if the claimant has taken reasonable measures to prevent the article from becoming publicly available, and if the statement of justification contains a certification from the owner that the article has never been published or otherwise become a matter of general public knowledge. See 35 Ill. Admin. Code §130.208(b). In its statement of justification, ComEd set forth the extensive measures the company has used to safeguard the CPR and provided the necessary certification from the company. The applicable trade secret regulations do not set forth the standards for overcoming this presumption, nor did

IEPA articulate any basis for its determination that the presumption in favor of trade secret status was rebutted. By reviewing the Agency's other determinations, Petitioner and the Board can evaluate whether IEPA has applied this regulation consistently. Furthermore, the standard against which ComEd's statement of justification as a whole was evaluated, or should have been evaluated, is of central importance to any review of the Agency's Denial. That standard cannot be ascertained clearly until the Agency's position with respect to other companies' similar proprietary data has been disclosed.

**THE DISCOVERY SOUGHT IS NEITHER OVERBROAD
NOR UNDULY BURDENSOME**

11. IEPA has objected to all of the above-enumerated discovery requests as overly broad and burdensome. It did not set forth, however, how these requests are overly broad, and consequently, how compliance with them would be unduly burdensome. Responding to counsel for ComEd's January 25, 2006 letter, counsel for IEPA flatly refused to look for the requested information. (Exhibit E). It further noted that, because the agency does not maintain "central recordkeeping for trade secret determinations" and that such decisions are filed according to the particular matter to which they belong, "the only way to gather any information at all concerning past trade secret determinations would be anecdotally." *Id.* That responding to a discovery request may take some effort is not a recognized basis for refusing to respond. *See People v. Williford*, 649 N.E.2d 941, 944 (Ill. App. Ct. 1995)(to comply with discovery obligation, respondent must do what is "reasonably practicable"). By its own account, IEPA has done nothing to date toward responding to the relevant interrogatories and document requests. ComEd's discovery requests, which primarily targeted trade secret analyses concerning operational and financial data, including GADS data, are neither impermissibly broad nor undefined as to render compliance with them impossible. Furthermore, ComEd indicated during

its good-faith attempts to confer that it would be willing to discuss an initial refinement of the scope of its discovery requests. IEPA should be required to respond to the extent possible, even where it is true that a response to the entire scope of an overly broad request would be unduly burdensome. *See Welton v. Ambrose*, 35 Ill. App. 3d 627, 633 (2004).

THE DISCOVERY SOUGHT IS NOT VAGUE

12. Finally, IEPA has objected to all of the above-enumerated discovery requests as being vague. It has not indicated, however, what is vague about them. Should a vagueness be identified, ComEd would be willing to clarify the discovery as necessary.

* * *

WHEREFORE, ComEd respectfully requests that the Hearing Officer grant its Motion to Compel.

Dated: February 22, 2006

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

By: 

Byron F. Taylor
Roshna Balasubramanian

SIDLEY AUSTIN LLP

One South Dearborn
Chicago, Illinois 60603
(312) 853-7000

Attorneys for Commonwealth
Edison Company

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Notice of Filing and Commonwealth Edison Company's Motion to Compel by U.S. mail on this 22nd day of February, 2006 upon the following persons:

Ann Alexander
Assistant Attorney General and
Environmental Counsel
188 West Randolph Street
Suite 2000
Chicago, Illinois 60601

Dorothy Gunn, Clerk
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, Illinois 60601

Brad Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, Illinois 60601



Roshna Balasubramanian

THIS FILING SUBMITTED ON RECYCLED PAPER

Exhibit A

contracts, tables, tabulations, graphs, charts, diagrams, plans, schedules, appointment books, calendars, diaries, time sheets, reports, studies, analyses, drafts, telegrams, teletype, or telecopy messages, files, telephone logs and messages, checks, microfilms, microfiche, pictures, photographs, printouts, electronic data compilations, tapes, diskettes, computer drives, removable media, notes, minutes or transcripts of proceedings. "Document" and "documents" shall each include originals and non-identical copies (whether different from original because of notes made in or attached to such copy or different for any other reason), all other data compilations from which information can be obtained or translated, if necessary, and any preliminary versions, drafts and revisions of the foregoing.

3. "All documents" means every document within the custody, possession or control of the Respondents, their attorneys, representatives, agents, affiliates, consultants, divisions, and all other persons or entities of any kind now or at anytime acting or purporting to act on their behalf.

4. "Communicate" and "communication" mean every type or form of communication, including but not limited to all oral or verbal communication face to face, by telephone, or otherwise, all written communication by letter, correspondence, notes, memos, messages, or otherwise, all electronic communication, such as e-mail, telefaxes, or otherwise, and all other methods and manners of transmitting information. The terms "communicate" and "communication" shall be given the broadest construction possible.

5. "ComEd Determination" means the April 23, 2004, letter from Chris Pressnall of IEPA to Byron Taylor of Sidley Austin Brown & Wood LLP, attached hereto as Exhibit 1.

6. The "Record" means the Administrative Record as filed in this action on July 13, 2004 by IEPA.

7. "Sierra Club's FOIA Requests" means all requests, whether written or oral, formal or informal, made by the Sierra Club to the IEPA or the United States Environmental Protection Agency ("USEPA") for information Commonwealth Edison or Midwest Generation submitted in response to the 2003 Section 114 Information Requests USEPA issued to ComEd and Midwest Generation.

8. "Statement of Justification" means any information submitted to IEPA to support a person's claim that information he submitted to IEPA is exempt from disclosure under Section 5/7 of the Illinois Environmental Protection Act 415 ILCS § 5/7 or under the Illinois Freedom of Information Act, 5 ILCS 140/1 et. seq., because the information constitutes confidential or proprietary business information or trade secrets.

9. "ComEd's Statement of Justification" means the March 11, 2004 letter from Byron F. Taylor to Chris Pressnall, regarding ComEd's claims that certain information submitted to IEPA by ComEd constitutes trade secrets, attached hereto as Exhibit 2.

10. "Related to" and "relating to" mean, in addition to the customary and usual meanings, directly or indirectly mentioning or describing, comprising, containing, mentioning, discussing, criticizing, contradicting, evidencing, concerning, embodying.

containing, pertaining to, referring to, connected with, based upon, or reflecting upon a stated subject matter to any extent, whether logically or factually.

11. The conjunctions "and," "or" and "and/or" shall be interpreted either disjunctively or conjunctively so as to bring within the scope of each definition, instruction and document request any information you might otherwise construe as outside the scope of that definition, instruction or document request. Similarly, the singular shall include the plural and the plural shall include the singular. A masculine, feminine or neuter pronoun or description shall not exclude and shall include all other genders.

12. The term "person" means the plural as well as the singular, and shall include without limitation, individuals, associations, partnerships, corporations and other forms of legal entity.

13. "All" and "any" mean "any and all" and shall be inclusive.

14. "Identify" when used with respect to a document means to state the nature of the document (e.g. letter, memorandum, etc), the date such document was signed, prepared, sent and/or received, the identities of the sender and recipient(s) or addressee(s), and the present location and custodian of such document. In lieu of such document identification, you may produce a legible copy of the document you are asked to identify, indicating the Interrogatory to which the document is responsive or referring to the bates number or other identifying information in your answer to the Interrogatory.

15. "Identify" when used with respect to an individual means to state such individual's name, address, telephone number, occupation or profession, job title, and the name, address and telephone number of such individual's employer.

16. "Identify" when used with respect to an organization (e.g. a corporation, partnership, or association) means to state the name of such organization, type of such organization, and the address and telephone number of its principal place of business.

17. "Describe" and "Identify" when used with respect to a statement or communication mean to identify the persons making the statement or communication, the date it was made, the person or persons to whom the communication was made, the person or persons who witnessed the communication, the substance of the communication and the place it was made.

18. "Describe" and "identify" when used with respect to a fact or facts mean, in addition to the recitation of each specific fact, the identification of all documents which substantiate any fact or from which a fact is drawn, and the identification of any oral communication upon which your knowledge of a fact is founded, or which supports the fact, including between whom and when the oral communication occurred, and the substance of the communication,

19. "Describe" when used in connection with an act shall mean to identify the actor, the specific nature of the act, the date and place of the act and the individuals present.

20. The "CPR" shall mean the documents bates numbered COM000001 through COM000086 that ComEd submitted to the USEPA in response to USEPA's 2003 Section 114 Information Request.

21. "GADS Data" shall mean the documents bates numbered COM000087 through COM000093 that ComEd submitted to the USEPA in response to USEPA's 2003 Section 114 Information Request.

22. Any word contained in the Definitions and Instructions herein, or in the following Initial Request for Production, which is not defined above, shall have its plain and ordinary meaning as applied to the form of the word (noun, verb, etc.) and context in which it is used. For your reference, the plain and ordinary meaning of any word used herein may be found in Webster's Third New International Dictionary of the English Language, Copyright 1966.

INSTRUCTIONS

1. In construing these Interrogatories:
 - (a) the singular includes the plural and the plural includes the singular;
 - (b) the masculine includes the feminine and neuter genders;
 - (c) "and" and "or" shall mean and/or;
 - (d) the word "including" shall be construed without limitation;
 - (e) the use of the past tense shall include the present tense and the use of the present tense shall include the past tense so as to make the Interrogatories inclusive rather than exclusive.
2. Pursuant to 35 Ill. Adm. Code §101.616(e), these Interrogatories are continuing. Therefore, if at any time prior to the hearing on this matter, Respondent obtains additional responsive information, it shall immediately provide that information to the undersigned.
3. Each paragraph and subparagraph of these Initial Interrogatories shall be construed independently and no other paragraph or subparagraph shall be referred to or relied on for the purpose of limiting its scope.
4. For each Interrogatory, identify the person or persons who provided any information relied upon in the formulation of the response.

INTERROGATORIES

1. Identify each person who participated in the ComEd Determination, including those present for any discussions of the ComEd Determination.
2. Identify each person having knowledge of facts relevant to the subject matter of this appeal, other than those persons already identified in Interrogatory #1 above.
3. Identify each person you intend to call as a fact witness at the hearing on this matter and for each person identify and describe the facts to which each such witness is expected to testify.
4. Identify each person you intend to call as an opinion witness at the hearing on this matter and for each person identify: the subject matter which each such witness is expected to testify; the conclusions and opinions of each such witness and the bases therefore; the qualifications of each such witness; the identity of any reports or analyses that have been prepared by each such witness relating to this matter; and the curriculum vitae and resume for each such witness.
5. Identify and describe all communications between the Sierra Club and the IEPA or the Illinois Attorney General, relating to any matters relating to IPCB 04-215 or IPCB 04-216 or related to the Sierra Club's FOIA Requests.
6. Identify and describe all communications between IEPA or the Illinois Attorney General and any other person, relating to any matters relating to IPCB 04-215 or IPCB 0-216 or related to the Sierra Club's FOIA Requests.
7. Describe in detail the reasons you relied on to support the following statement in the ComEd Determination: "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.”

8. Identify the specific information in the Record, if any, that supports your claim, if any, that the CPR and/or GADS Data has been published, disseminated, or otherwise become a matter of general public knowledge.

9. Identify the specific information in the Record, if any, that supports your claim, if any, that the CPR and/or GADS Data lacks competitive value.

10. Identify the specific information in the Record, if any, that supports your claim, if any, that the CPR and/or GADS Data constitutes emissions data.

11. If you contend that the CPR and/or GADS Data constitutes emissions data, describe in detail the reasons supporting this contention.

12. Identify any determination you have made relating to the trade secret or confidential business information status of a business's financial information submitted to IEPA.

13. Identify any determination you have made relating to the trade secret or confidential business information status of any other electric utility company's GADS data or any similar data on the operations of any other type of manufacturing facility.

14. Identify any determination you have made that information constitutes “emission data” as that term as it is now or was in the past defined under Section 5/7 of the Illinois Environmental Protection Act, 415 ILCS 5/7, or Section 114(c) of the Clean Air Act, 42 U.S.C. § 7414(c), or their predecessors, and their implementing regulations.

15. Identify any documents or communications not otherwise identified in response to these Interrogatories that you will present or otherwise reply upon at the hearing in this matter.

CH2\ 1307141.1



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) 344-1444
ELGIN – 595 South State, Elgin, IL 60123 – (847) 608-3131 • PEORIA – 5415 N. University St., Peoria, IL 61614 – (309) 693-5461
BUREAU OF LAND – PEORIA – 7620 N. University St., Peoria, IL 61614 – (309) 693-5462 • CHAMPAIGN – 2125 South First Street, Champaign, IL 61820 – (217) 244-3800
SPRINGFIELD – 4500 S. Sixth Street Rd., Springfield, IL 62706 – (217) 786-6892 • COLLINSVILLE – 2009 Mall Street, Collinsville, IL 62234 – (618) 261-1100
MARION – 2309 W. Main St., Suite 110, Marion, IL 62959 – (618) 993-2200

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

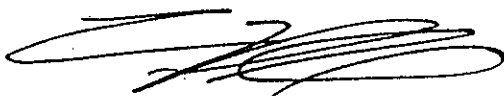
Attachment G is responsive to information request number 4 and contains information from the Generating Availability Data System (GADs). Generally, the GADs identifies boiler and turbine related forced, maintenance and planned outages. The Illinois EPA is denying trade secret protection to the information 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

SIDLEY AUSTIN BROWN & WOOD LLP

BEIJING
BRUSSELS
CHICAGO
DALLAS
GENEVA
HONG KONG
LONDON

BANK ONE PLAZA
10 S. DEARBORN STREET
CHICAGO, ILLINOIS 60603
TELEPHONE 312 853 7000
FACSIMILE 312 853 7036
www.sidley.com
FOUNDED 1866

LOS ANGELES
NEW YORK
SAN FRANCISCO
SHANGHAI
SINGAPORE
TOKYO
WASHINGTON, D.C.

WRITER'S DIRECT NUMBER
(312) 853-4717

WRITER'S E-MAIL ADDRESS
bftaylor@sidley.com

March 11, 2004

By Overnight Mail

Chris Pressnall
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

Re: ComEd/Exelon Statement of Justification

Dear Mr. Pressnall:

Commonwealth Edison ("ComEd") and its parent company, Exelon, (collectively, the "Companies") submit this letter and the enclosed attachments in response to the Illinois Environmental Protection Agency's ("IEPA") request that ComEd justify its claim that certain information contained in its responses to the United States Environmental Protection Agency's ("USEPA") Clean Air Act § 114 Information Request are exempt from disclosure to the public by the IEPA. The "Confidential Articles," namely, excerpts from the Continuing Property Record ("CPR") and certain GADs data, are trade secrets and confidential business information exempt from disclosure by the IEPA. 415 ILCS 5/7.1(a). The Confidential Articles were marked as such in a conspicuous manner. This Statement of Justification describes the internal Exelon/ComEd procedures and policies in place which are designed to assure that such information remains confidential and is not disseminated to the public. Additionally, please find attached a certification signed by Wayne Belko, which states that upon information and belief, Exelon has no knowledge that the Confidential Articles have ever been published, disseminated or otherwise become a matter of general public knowledge. Further, this statement of justification discusses the competitive value of the Confidential Articles and highlights why disclosure of these documents would cause competitive harm to the Companies.

Chris Pressnall

March 9, 2004

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I. The Confidential Articles are trade secrets and confidential business information that has not been published, disseminated, or otherwise become a matter of general public knowledge.

Exelon maintains a policy and several procedures concerning confidential information and its treatment by Exelon employees (ComEd is a wholly owned subsidiary of Exelon and Exelon policies apply to each of the Exelon companies, including ComEd). (See Attachments A-C). Exelon's corporate policy provides that its employees must protect confidential information from disclosure. (See Attachment A). Exelon values its information as one of its most important assets and requires that its employees safeguard trade secrets and confidential information to prevent unauthorized or inadvertent disclosure.

Exelon's corporate procedures are designed to ensure that the Companies' confidential information is protected. Confidential information is defined by Exelon as information that is "not generally available to the public and that may be of competitive or economic value to the owner." (See Attachment B). Exelon's corporate procedures provide that financial information, business methods, outage schedules, operations and operational requirements, and technical information are some types of information considered confidential by the Companies.

Confidential information is not generally available externally or internally. Employees may not disclose information to any employee, contractor or third party without classifying the information as either public, Company Confidential Information or Third Party Confidential Information. Information designated by the Companies as "confidential" is only disclosed to employees on a "need to know" basis. If an employee is not sure whether the information is confidential, it must be treated as confidential until a determination is made by the Legal Services Department.

The Companies require that employees possess proper identification and authorization for access to information, based on the confidentiality classification assigned to the information. Employees are only permitted the level of access to the information that is required to perform prescribed job responsibilities. Physical access to the areas containing confidential information or processing activities is limited according to the confidentiality classification of the information and is only allowed to the extent necessary to perform an approved task or job responsibility. Access to confidential information that is electronically stored is also limited to authorized users with appropriate user identification and passwords. Further, corporate procedures require that information that will be electronically transmitted over non-secure or public networks be appropriately encrypted.

The corporate procedures specifically prohibit employees from leaving confidential information unattended in conference rooms, on desktops, or in any places accessible to the public and visitors are not allowed access to areas where confidential information is located. Employees may not discuss competitive or confidential information in public areas.

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Requirements related to the non-disclosure of confidential information survive employees' terms of employment, as the Company's Code of Business Conduct prohibits them from disclosing this confidential information even after they are no longer employed by the Companies. Additionally, contractors, part-time and temporary workers, and those employed by others to work on Company premises must comply with the standards and guidelines relating to the treatment of confidential information.

The Confidential Articles

The Companies consider detailed financial data and information related to outages and operations to be confidential and competitive and has charged its employees to be "vigilant" in protecting such information. The excerpts from the CPR contain detailed financial information and are kept in a database that is accessible only by authorized individuals within the Companies with user identification and password. Currently, only approximately 35 employees are authorized to access this information. GADs statistical summary reports also are maintained in a confidential manner. To the extent that the data is in electronic format, the database is password protected. Only a select few employees are authorized to access GADs data. Although the Companies submit data to the North American Electric Reliability Council ("NERC"), per NERC policy, requesters are not permitted to obtain such data from NERC without the Companies' written consent. The Companies generally do not provide such consent to the release of this data.

II. The Confidential Articles have competitive value to ComEd.

The excerpts from the CPR and the GADs data are detailed information that has competitive value to the Companies. The Companies established above that they have maintained and continue to maintain the articles submitted to the IEPA as confidential information, limiting information even amongst the Companies' own employees on a need to know basis. A release of the Confidential Articles could provide the Companies' competitors with detailed information regarding overall business strategies, past and present. It also could lead to others achieving an economic advantage over the Companies. One of many examples would be a potential vendor who could then use this information to help inflate its bids.

III. Contractual Agreement between ComEd and Midwest Generation EME, LLC.

The CPR has a dual function in that it provides information on the timing of equipment installations, which directly relates to the operation of the Crawford, Fisk, Will County, Joliet, Powerton and Waukegan stations, in addition to its financial purposes. Accordingly, the entries for these stations have been provided to Midwest Generation EME, LLC ("Midwest Generation"), the current owner of the stations, who we understand will be submitting its own

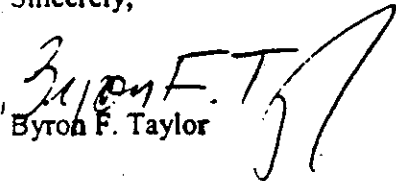
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Page 4

justification as to the competitive value of this information. The transfer of information was pursuant to the Asset Sale Agreement by and between ComEd and Edison Mission Energy as to Fossil Fuel Generating Assets. Under that Agreement, ComEd is obligated to maintain the CPR entries as trade secrets and confidential business information.

* * *

As detailed above, the excerpts from the CPR and GADs data submitted to the IEPA are competitive and confidential business information/trade secrets exempt from disclosure by the IEPA pursuant to 5 ILCS 140/7.1(a). Please continue to safeguard the Companies' trade secrets and confidential business information. Thank you very much for your attention to this matter.

Sincerely,


Byron F. Taylor

Attachments

cc: Sharon Neal

CERTIFICATION

I, Wayne A. Belko, state as follows:

- 1) I am a Senior Project Manager of Exelon (the "Company") and I am authorized to execute this certification on behalf of the Company.
- 2) Upon information and belief, I have no knowledge that the Confidential Articles claimed as trade secrets, described in the attached Statement of Justification dated March 11, 2004 have been published, disseminated or otherwise become a matter of general public knowledge.

Dated: March 11, 2004

Wayne A. Belko

Exelon

Corporate Policy **Information Protection**

LE-AC-3 Revision 0
Page 1 of 1
Effective Date: 11-01-00

Policy Statement

Notwithstanding a duty to provide certain information to regulatory authorities and the public, Exelon shall protect from disclosure information of a confidential nature. Exelon shall use only lawful and ethical methods to acquire information or practices of competitive value.

Policy Intent

Exelon shall:

- Protect the privacy of its customers, shareholders and employees to the extent allowed by law and regulation.
- Safeguard, avoid disclosure and prevent misuse of confidential information or practices.
- Protect confidential information entrusted to Exelon by others.

Implementation

This policy shall be implemented by establishing and following:

- Procedures for managing confidential information as a corporate resource.
- Procedures for identifying types of Exelon confidential information and practices.

- Procedures for safeguarding Exelon confidential information ensuring protection from disclosure. Such methods may include confidentiality agreements with employees.
- Training programs to ensure that employees can identify Exelon confidential information and are aware of their responsibility to protect it and the means of protecting it from disclosure.
- Procedures describing the allowable methods for acquiring and developing information of a competitive nature
- Periodic audits to ensure compliance.

Exelon

Corporate Procedure

Protecting Exelon Information

LE-AC-301 Revision 0

Page 1 of 5

Effective Date: 12-04-01

1.0 PURPOSE

- 1.1 The purpose of this procedure is to ensure that Exelon Corporation and its affiliated companies (collectively and individually referred to as "Exelon" or the "Company") protect the Company's confidential information, as well as confidential information supplied to the Company by vendors, contractors, suppliers, customers, and other third parties. Confidential information is a valuable asset of the Company and to third parties supplying Exelon with their confidential information. The unauthorized or inadvertent disclosure of this information may create a liability for the Company involving a lawsuit or a fine, put the Company at a competitive disadvantage or deprive the Company of the opportunity to sell or license such information to others.

2.0 TERMS AND DEFINITIONS

- 2.1 "Company Confidential Information" means Confidential Information (as defined in Section 2.2 below) belonging to or pertaining to the Company.
- 2.2 "Confidential Information" means information, in any form (including, but not limited to, electronic, oral, or written form, or algorithms, devices, "know-how", machines, methods, procedures, software, or technology) that (i) is required by law or by agreement to be maintained as confidential; or (ii) is not generally available to the public and that may be of competitive or economic value to the owner. Examples may include, but are not limited to, customer information, personnel information, financial information, business plans, business methods, internal procedures, inventions, labor negotiations, legal documents, market research and data, outage schedules, operations and operational requirements, plant status, pricing data, planned mergers, divestitures or acquisitions, product or services proposals, research, technical information, trade secrets, valuation models, Material Information, Safeguards Information, State-Regulated Information, Third Party Confidential Information, and Transmission Information. (A more comprehensive, but not exhaustive listing of categories of Confidential Information is included in Attachment A).
- 2.3 "Material Information" means information about the Company that would be considered important by a reasonable investor in deciding whether to buy, sell or hold securities of the Company. A good shorthand test is whether the information could reasonably be expected to affect the price of the Company's securities if it were disclosed to the public; if so, it is Material Information. Information concerning earnings estimates or targets, dividends, proposals or agreements for significant mergers, acquisitions or divestitures, liquidity or litigation problems, important management changes, pending regulatory actions and other similar events should generally be assumed to be Material Information.
- 2.4 "Public Information" means information that is generally available to the public. Examples include, but are not limited to, advertising materials, annual reports, press releases, and information posted on Company internet sites.

- 2.5 **"Restricted Confidential Information"** means certain categories of Company Confidential Information, the use or disclosure of which may be subject to additional legal requirements and corporate and Business Unit policies and procedures. Examples include, but are not limited to, certain communications between the Company and its inside or outside counsel; certain customer-related information; medical and personnel records; Material Information; Safeguards Information; State-Regulated Information; Transmission Information; information marked "privileged", "attorney work product", "for your eyes only", "for internal use only", "reproduction or distribution prohibited"; or any information that is marked with similar restrictions.
- 2.6 **"Safeguards Information"** includes information relating to (1) security measures for the physical protection of special nuclear material; and (2) security measures for the physical protection and location of certain plant equipment vital to the safety of nuclear power stations as set forth in 10 C.F.R. Section 73.2.
- 2.7 **"State-Regulated Information"** includes certain information, other than Public Information, that is related to either (i) customers or (ii) transmission and distribution systems, as further defined in various state statutes, codes, and regulations.
- 2.8 **"Third Party Confidential Information"** means Confidential Information that is owned by a third party (i.e., any person or entity other than the Company) and is disclosed to the Company with the reasonable expectation or requirement that it will be kept confidential.
- 2.9 **"Transmission Information"** means certain information, other than Public Information, related to transmission, including information about available transmission capability, price, curtailments, ancillary services, and the like, as further defined in Corporate Procedure LE-AC-210: "Implementation of FERC Standards of Conduct."
- 3.0 **RESPONSIBILITIES**
- 3.1 **Exelon General Counsel**
- 3.1.1 Approve all corporate procedures implementing Corporate Policy LE-AC-3: "Information Protection."
- 3.2 **All Employees**
- 3.2.1 All Company employees are responsible for complying with this procedure and any procedures implemented by their respective Business Unit. Employees are expected to immediately report any suspected violations of this procedure that they observe to their Business Unit Management, the Legal Services Department or the Ethics Office. Upon termination of employment with the Company, employees are responsible for returning to the Company all documents containing Confidential Information. After employment ends, each employee has a continuing obligation to maintain the confidentiality of Confidential Information learned during the course of employment.

3.3 Business Unit Management

- 3.3.1** Ensures and monitors and is responsible for compliance with corporate procedures related to information protection; provides training related to these procedures; requires new employees to sign agreements containing confidentiality provisions; and oversees the development and implementation of business unit specific policies and procedures.

4.0 PROCEDURE

4.1 Classifying Information

- 4.1.1** Before disclosing information to any employee, contractor, or third party, an employee must first determine if the information is Public Information. Public Information may be released to anyone without restriction. If the information is not Public Information, the employee must determine whether it is Company Confidential Information or Third Party Confidential Information. If it is Confidential Information, the employee must also determine if it should be treated as Restricted Confidential Information.
- 4.1.2** If it is not readily apparent whether information is Public Information or Confidential Information, the employee must consult with his/her Business Unit Management for guidance. If management is not certain, it should refer the matter to the Legal Services Department. Until such determination is made, the information must be treated as Confidential Information. Employees must not assume that information is Public Information if it is not already marked "Confidential."

4.2 Protection of Confidential Information Generally

- 4.2.1** All Confidential Information must be safeguarded to prevent unauthorized or inadvertent disclosure. Documents containing Confidential Information must not be left unattended in conference rooms, on desktops, or in any places accessible to the public. Confidential Information must not be discussed in public areas where discussions may be overheard.
- 4.2.2** Documents containing Confidential Information should be marked "Confidential" on at least the first page. The fact that a document has not been marked "Confidential", however, shall not relieve a Company employee or any third party from the obligation to treat such information as Confidential Information.
- 4.2.3** Visitors to the Company must not be given access to areas where Confidential Information is visible to them. In areas where it would be impractical to prevent visitors from viewing Confidential Information, warning signs should be posted designating those areas as restricted. Public tours must not be given in such restricted areas.
- 4.2.4** Requirements for storing and transmitting Confidential Information electronically are contained in Corporate Procedures implementing Company Policy, IT-AC-1: "Use of Information Technology Assets."
- 4.2.5** Employees should consult their Business Unit Management or the Legal Services Department when handling Restricted Confidential Information to learn whether additional safeguards must be taken or whether additional restrictions on its use or disclosure apply.

4.3 Use and Disclosure of Company Confidential Information

- 4.3.1** Unless Company Confidential Information falls under the category of Restricted Confidential Information, it may be used for any legitimate Company purpose and may be disclosed to any Company employee with a need to know such information.
- 4.3.2** Company Confidential Information must not be disclosed to any bidder, vendor, contractor, consultant or other third party unless (i) he/she has a need to know the information; and (ii) she/he has first signed a confidentiality agreement in a form obtained from or approved by the Legal Services Department. If it is not clear whether a third party should receive Company Confidential Information, Business Unit Management must be consulted. All third parties that receive Company Confidential Information must be required to return or destroy such information upon completion of the project or upon request of Company.

4.4 Use and Disclosure of Third Party Confidential Information

- 4.4.1** Third Party Confidential Information must be treated with at least the same degree of care as Company Confidential Information. In addition, Third Party Confidential Information received pursuant to an agreement containing confidentiality provisions must be used and disclosed only in accordance with the requirements set forth in such agreement.
- 4.4.2** Third Party Confidential Information must not be used by the Company unless it has been lawfully obtained. Employees must not reveal to the Company any information that might reasonably be considered a trade secret or Confidential Information of a former employer. In addition, employees must not use Confidential Information of competitors or other third parties in a manner not authorized by the owner of the information. Employee must not attempt to induce, through social relationships or otherwise, present or former employees of competitors or other third parties to disclose their employer's Confidential Information. If there is any uncertainty as to whether Company is legally entitled to use Third Party Confidential Information, the Legal Services Department must be consulted immediately.
- 4.4.3** Employees must not review or accept unsolicited ideas, inventions, patent applications, or any data or potential trade secrets from other companies or persons without the approval of Business Unit Management, and review by the Legal Services Department, if necessary, unless the submitting party agrees in writing that the submission is made on a non-confidential basis.

4.5 Use and Disclosure of Customer Information

- 4.5.1** Additional legal requirements govern the use and disclosure of customer-related information. Such information must not be disclosed to any person other than Employees within the same business unit ~~except as otherwise authorized by Business Unit Management or the Legal Services Department.~~ Employees should consult with their Business Unit Management or the Legal Services Department when handling this information.

4.6 Use and Disclosure of Material Information

Use and disclosure of Material Information is also subject to Corporate Procedure LE-AC-202: "Buying and Selling Exelon Securities."

4.7 Use and Disclosure of State-Regulated Information

- 4.7.1 Additional state legal requirements govern the use and disclosure of State-Regulated Information. Such information must not be disclosed to any person other than Employees within the same business unit except as otherwise authorized by Business Unit Management or the Legal Services Department. Employees should consult with their Business Unit Management or the Legal Services Department when handling this information.

4.8 Use and Disclosure of Transmission Information

The use and disclosure of Transmission Information is subject to Corporate Procedure LE-AC-210: "Implementation of FERC Standards of Conduct."

4.9 Publications and Speeches

All materials proposed for publication, by way of written materials or speeches, must be screened by Business Unit Management, and if necessary, the Legal Services Department, to ensure that no Confidential Information is disclosed and that publication is in accordance with the Company's Conflict of Interest policy set forth in the Code of Business Conduct. With respect to technology, additional care should be given to ensure that no trade secrets or patentable ideas are inadvertently disclosed.

4.9 Enforcement

- 4.9.1 Failure to comply with this Procedure may result in disciplinary actions up to and including discharge and legal action.

5.0 DOCUMENTATION

- 5.1 NONE

6.0 REFERENCES

- 6.1 Exelon Code of Business Conduct.
6.2 Corporate Policy IT-AC-1: "Use of Information Technology Assets," and implementing procedures.
6.3 Corporate Procedure LE-AC-202: "Buying and Selling Exelon Securities."
6.4 Corporate Procedure LE-AC-210: "Implementation of FERC Standards of Conduct."
-

- 6.5 Business unit specific procedures.
6.6 Corporate Policy HR-AC-1-8: "Patents and Inventions."

7.0 ATTACHMENTS

- 7.1 Employee Handout: Protecting Confidential Information.

Corporate Procedure

Information Asset Protection

IT-AC-102 Revision 1

Page 1 of 7

Effective Date: 09-18-01

1.0 PURPOSE

To define Exelon's (the "Company") objectives for establishing specific standards and guidelines on the protection of the confidentiality, integrity and availability of Exelon's information assets.

2.0 TERMS AND DEFINITIONS

2.1 Availability – Ensures critical information is accessible when needed. The use of Company information systems shall not be denied to authorized users.

2.2 Availability Classification Categories:

2.2.1 High – refers to a requirement of continuous availability, high availability or zero tolerance of data loss.

2.2.2 Medium – refers to a requirement of scheduled availability, standard availability, or a partial tolerance of data loss.

2.2.3 Low – refers to a requirement of best effort availability, no availability, or a long-term to complete tolerance of data loss.

2.3 Confidential Information – Refers to information that the Company is required to keep private by law or agreement, as well as information of competitive or economic value to the Company.

2.4 Confidentiality – Refers to the protection of Confidential Information from disclosure. Information shall be disclosed only to those authorized to access it.

2.5 Confidentiality Classification Categories

2.5.1 Confidential – Control Level 2 – Refers to Confidential Information to be accorded the highest safeguard protection and a restricted distribution. This category is intended to be used sparingly.

2.5.2 Confidential – Control Level 1 – Refers to Confidential Information to be accorded safeguard protection and a controlled, but moderate distribution.

2.5.3 Internal Use Only – Refers to information that should not be distributed or disclosed to anyone outside of the Company without the approval of the Information Asset Owner.

2.5.4 Public – Refers to information that is unrestricted.

2.6 Encryption – A method of scrambling information to render it unreadable to anyone except the intended recipient, who must decrypt it to read it.

2.7 Information Assets

2.7.1 Intangible Information Assets – The logical information assets that are not easily assigned a monetary value. Intangible Information Assets include information (processed data), processes, the skills, training and experience of personnel, intellectual capital, and other business enablers (e.g., reputation, trust and other "social" assets).

2.7.2 Tangible Information Assets – The physical information assets with a measured cost or value. Tangible Information Assets include raw data, systems, networks and hardware.

2.8 Information Asset Custodian – Each information asset must have a clearly defined custodian. An information asset custodian (Custodian) is a person who, while not necessarily the Information asset owner, has the ultimate responsibility for its proper handling and safekeeping. Each information asset custodian must properly protect Exelon information assets in keeping with the designated Owner's control, data sensitivity and data criticality instructions.

2.9 Information Asset Owner – All information assets must have an owner. Information asset owners (Owner) are managers of organizational units that have primary responsibility for information assets associated with their functional authority. With the exception of operational computer and network information, Exelon Business Services Company Information Technology normally is not the Owner of any information assets.

2.10 Integrity – The protection of information and systems from malicious, unauthorized, or accidental changes.

2.11 User – The individuals, groups or organizations authorized by the Company to access Information Assets.

3.0 RESPONSIBILITIES

3.1 Exelon BSC Chief Information Officer (BSC CIO)

3.1.1 Approves Company Information Assurance procedures, standards and guidelines; manages the Information Technology Governance Management; and when information asset owners are not clearly implied by organizational design, the BSC CIO will make the designation.

3.2 Information Technology Governance Management (ITGM)

3.2.1 Serves as the Information Assurance corporate procedure sponsor; ensures the development and maintenance of the *Information Asset Protection Procedure* and associated standards and guidelines; provides corporate policies, standards, guidelines and procedures for Business Continuity Planning; leads periodic corporate recovery exercises; and assists Information Asset Owners and Custodians with the implementation of Business Continuity plans by guiding them through the steps necessary to develop, test and assess their recovery plans.

3.3 The Office of the Corporate Secretary

- 3.3.1 Coordinates and facilitates the corporate policy and procedures process; supports policy and procedure sponsors; maintains the corporate policy and procedures; prepares periodic reports on compliance with corporate policy and procedures; and chairs the Corporate Policy and Procedure Committee.

3.4 Exelon Business Unit Management

- 3.4.1 Ensures compliance with corporate policy and procedures; periodically submits data to the Office of the Corporate Secretary demonstrating compliance with corporate policy and procedures; oversees the development of business unit specific policies and technical procedures that are not intended to be binding on anyone other than the business unit.

3.5 Audit Division

- 3.5.1 Assists in monitoring compliance with corporate policies, procedures, standards and guidelines.

3.6 Information Asset Owner

- 3.6.1 Defines procedures that are consistent with the *Information Asset Protection Procedure* and associated standards and guidelines; ensures the confidentiality, integrity and availability of information assets; authorizes access to those who have an approved business need for the information; determines the business impact if an information asset is unavailable, data integrity is compromised or unauthorized access is gained; defines and funds a Business Continuity Plan for critical information assets to mitigate risks to an acceptable level; funds and participates with periodic corporate recovery exercises; and ensures the revocation of access for those who no longer have a business need for the information.

3.7 Information Asset Custodian

- 3.7.1 Provides a secure processing environment that protects the confidentiality, integrity and availability of information; administers access to information as authorized by the Owner; and implements procedural safeguards and cost-effective controls.

3.8 User

- 3.8.1 Uses the information only for its intended purposes and maintains the confidentiality, integrity and availability of information accessed consistent with the Owner's approved safeguards while under the User's control.

4.0 PROCEDURE

4.1 Access Control

- 4.1.1 Proper identification, authorization and authentication are required for access to information assets.
- 4.1.2 Authorization for access to information assets will be based on the confidentiality classification of the information and defined to provide only the level of access required to meet an approved business need or perform prescribed job responsibilities. Specific instructions for controlling access to information assets are provided in the *IA Access Control Corporate Standard*.

4.2 Remote Access

- 4.2.1 Authorization for remote access to information assets will be provided only to meet an approved business need or perform prescribed job responsibilities.
- 4.2.2 Remote access must be facilitated by using Exelon approved methods and programs. Specific instructions for accessing information assets remotely are provided in the *IA Remote Access Corporate Standard*.

4.3 Physical Access

- 4.3.1 Information assets must be protected with physical access control of areas containing information assets or processing activities.
- 4.3.2 The physical access controls must be at the appropriate level with the information classifications of the information and defined to provide only the level of physical access required to meet an approved need or perform prescribed job responsibilities. Specific instructions for physical access to information assets are provided in the *IA Physical Access Corporate Standard*.

4.4 Encryption

- 4.4.1 Encryption must be used to protect "Confidential" information assets that will be transmitted over non-secure or public networks (such as dial-up or the Internet).
- 4.4.2 Only Company-approved encryption algorithms, methods and products can be used to protect "Confidential" information. Specific instructions for encryption are provided in the *IA Encryption Corporate Standard*.

4.5 Integrity Protection

- 4.5.1 Information assets must be created and maintained with appropriate controls to ensure that the information is correct, auditable and reproducible. Specific instructions for protecting the integrity of information assets are provided in the *IA Integrity Protection Corporate Standard*.

4.6 Availability Protection

- 4.6.1 Appropriate controls based on the availability classification of the information must be established to ensure information assets are consistently available to conduct business. Specific instructions for protecting the availability of information assets are provided in the *IA Availability Protection Corporate Standard*.
- 4.6.2 Business Continuity Plans must be developed to identify the personnel, resources and corrective actions required for continued availability in the event of an unexpected interruption to normal business operations.
- 4.6.3 Business Continuity Plans must be reviewed and tested periodically for reliable and reproducible results.

4.7 Anti-Virus

- 4.7.1 Information assets must be protected from destructive software elements such as viruses and malicious code that impair normal operations.
- 4.7.2 Exelon-approved virus detection programs must be installed, enabled and updated on all systems susceptible to viruses and malicious code. Specific instructions for protecting information assets from viruses and malicious code are provided in the *IA Anti-Virus Corporate Standard*.

4.8 Information Handling

- 4.8.1 Handling of information assets will be based on their information classification and in accordance with approved methods for handling printed information, as well as electronically stored and transmitted information. Specific instructions for handling information assets are provided in the *IA Information Handling Corporate Standard*.

4.9 Auditing

- 4.9.1 Auditing must be activated to record relevant security events.
- 4.9.2 The audit logs must be securely maintained for a reasonable period of time. Specific instructions for auditing information assets are provided in the *IA Auditing Corporate Standard*.

4.10 Enforcement and Exception Handling

- 4.10.1 All employees, contractors, part-time and temporary workers, and those employed by others to perform work on Exelon premises or who have been granted access to Exelon information or systems, are covered by this procedure and must comply with associated standards and guidelines.
- 4.10.2 Failure to comply with the *Exelon Information Asset Protection Procedure*, standards and guidelines may result in suspension of use privileges or other disciplinary actions up to and including discharge and legal action.
- 4.10.3 Exceptions handling will include the following steps:
- a.) Exceptions to the *Information Asset Protection Procedure* must be submitted and approved by the Business Unit VP of IT.
 - b.) The ITGM will perform a risk assessment.
 - c.) The exception and risk assessment will be submitted to the Information Technology Council for corporate approval, if appropriate.
 - d.) Prior to management approval of any exception, all employees, contractors and consultants shall consistently observe the *Exelon Use of Information Technology Assets Policy*, associated procedures and standards. Corporate policies take precedence over corporate procedures.

4.11 Review and Revision

- 4.11.1 The *Information Asset Protection Procedure* will be reviewed and revised in accordance with the *Use of Information Technology Assets Policy*.

5.0 DOCUMENTATION

IA Information Asset Identification and Classification Corporate Procedure, IT-AC-101
Legal Information Protection Corporate Policy, LE-AC-3
Legal Document Management, Retention and Disposition Corporate Policy, LE-AC-4

6.0 REFERENCES

Use of Information Technology Assets Policy, IT-AC-1
~~*IA Access Control Corporate Standard*, IT-AC-102-1~~
IA Remote Access Corporate Standard, IT-AC-102-2
IA Physical Access Corporate Standard, IT-AC-102-3
IA Encryption Corporate Standard, IT-AC-102-4
IA Integrity Protection Corporate Standard, IT-AC-102-5
IA Availability Protection Corporate Standard, IT-AC-102-6
IA Anti-Virus Corporate Standard, IT-AC-102-7
IA Information Handling Corporate Standard, IT-AC-102-8
IA Auditing Corporate Standard, IT-AC-102-9

7.0 ATTACHMENTS

NONE

Approval

Signature	<u>9/18/2001</u> Date
Honorio Padron President and Chief Executive Officer Exelon Business Services Company	

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served Commonwealth Edison Company's Initial Interrogatories by U.S. mail on this 27th day of October, 2005 upon the following persons:

Ann Alexander
Assistant Attorney General and
Environmental Counsel
188 West Randolph Street
Suite 2000
Chicago, Il. 60601

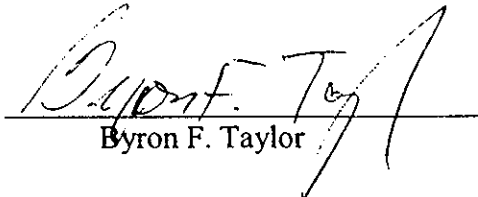

Byron F. Taylor

Exhibit B

or communication is recorded, reproduced or represented, including, but not limited to books, records, correspondence, reports, memoranda, electronic mail (i.e., "e-mail"), contracts, tables, tabulations, graphs, charts, diagrams, plans, schedules, appointment books, calendars, diaries, time sheets, reports, studies, analyses, drafts, telegrams, teletype, or telecopy messages, files, telephone logs and messages, checks, microfilms, microfiche, pictures, photographs, printouts, electronic data compilations, tapes, diskettes, computer drives, removable media, notes, minutes or transcripts of proceedings. "Document" and "documents" shall each include originals and non-identical copies (whether different from original because of notes made in or attached to such copy or different for any other reason), all other data compilations from which information can be obtained or translated, if necessary, and any preliminary versions, drafts and revisions of the foregoing.

3. "All documents" means every document within the custody, possession or control of the Respondents, their attorneys, representatives, agents, affiliates, consultants, divisions, and all other persons or entities of any kind now or at anytime acting or purporting to act on their behalf.

4. "Communicate" and "communication" mean every type or form of communication, including but not limited to all oral or verbal communication face to face, by telephone, or otherwise, all written communication by letter, correspondence, notes, memos, messages, or otherwise, all electronic communication, such as e-mail, telefaxes, or otherwise, and all other methods and manners of transmitting information. The terms "communicate" and "communication" shall be given the broadest construction possible.

5. "ComEd Determination" means the April 23, 2004, letter from Chris Pressnall of IEPA to Byron F. Taylor of Sidley Austin Brown & Wood LLP, attached hereto as Exhibit 1.

6. The "Record" means the Administrative Record as filed in this action on July 13, 2004 by IEPA.

7. "Sierra Club's FOIA Requests" means all requests, whether written or oral, formal or informal, made by the Sierra Club to the IEPA or the United States Environmental Protection Agency ("USEPA") for information ComEd submitted in response to the 2003 Section 114 Information Requests USEPA issued to ComEd.

8. "Statement of Justification" means any information submitted to IEPA to support a person's claim that information he submitted to IEPA is exempt from disclosure under Section 5/7 of the Illinois Environmental Protection Act 415 ILCS 5/7 or under the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., because the information constitutes confidential or proprietary business information or trade secrets.

9. "ComEd's Statement of Justification" means the March 11, 2004 letter from Byron F. Taylor to Chris Pressnall, regarding ComEd's claims that certain information submitted to IEPA by ComEd constitutes trade secrets, attached hereto as Exhibit 2.

10. "Related to" and "relating to" mean, in addition to the customary and usual meanings, directly or indirectly mentioning or describing, comprising, containing, mentioning, discussing, criticizing, contradicting, evidencing, concerning, embodying, containing, pertaining to, referring to, connected with, based upon, or reflecting upon a stated subject matter to any extent, whether logically or factually.

11. The conjunctions "and," "or" and "and/or" shall be interpreted either disjunctively or conjunctively so as to bring within the scope of each definition, instruction and document request any information you might otherwise construe as outside the scope of that definition, instruction or document request. Similarly, the singular shall include the plural and the plural shall include the singular. A masculine, feminine or neuter pronoun or description shall not exclude and shall include all other genders.

12. The term "person" means the plural as well as the singular, and shall include without limitation, individuals, associations, partnerships, corporations and other forms of legal entity.

13. "All" and "any" mean "any and all" and shall be inclusive.

14. Any word contained in the Definitions and Instructions herein, or in the following Initial Request for Production, which is not defined above, shall have its plain and ordinary meaning as applied to the form of the word (noun, verb, etc.) and context in which it is used. For your reference, the plain and ordinary meaning of any word used herein may be found in Webster's Third New International Dictionary of the English Language, Copyright 1966.

INSTRUCTIONS

1. In construing this Initial Request for Documents:

- (a) the singular includes the plural and the plural includes the singular;
- (b) the masculine includes the feminine and neuter genders;
- (c) "and" and "or" shall mean and/or;

(d) the word "including" shall be construed without limitation;

(e) the use of the past tense shall include the present tense and the use of the present tense shall include the past tense so as to make the document requests inclusive rather than exclusive.

2. Pursuant to 35 Ill. Adm. Code 101.616 (e), this Initial Request for Documents is continuing. Therefore, if at any time prior to the hearing on this matter, Respondent obtains additional responsive documents, they shall produce immediately to the undersigned such additional responsive documents.

3. All documents necessary for a correct understanding of any document responsive to the following requests shall be produced with the responsive document.

4. The documents produced shall be produced as they are kept in the usual course of business or organized and labeled to correspond to a specific request.

5. Each paragraph and subparagraph of this Initial Request for Documents shall be construed independently and no other paragraph or subparagraph shall be referred to or relied on for the purpose of limiting its scope

6. If any of these requests cannot be complied with in full, produce as many of the responsive documents as possible, identify the documents that cannot be produced, and specify the reason why those documents cannot be produced.

7. If any document described herein is withheld on the basis of any claim of privilege or otherwise, provide in writing the following information about each document: (1) its date, (2) the name, position and address of its author, (3) the name, position and address of each person who received, read or saw the document or copies thereof, (4) the subject matter and type of document (e.g. memorandum, letter etc.), (5) the nature of the privilege claimed (e.g. attorney/client privilege, work product doctrine, etc.) and

(6) the grounds for the claimed privilege in sufficient detail to allow a ruling on the appropriateness of the claimed privilege.

DOCUMENT REQUESTS

Produce:

1. All documents as to which ComEd has requested or will request "identification" in any Interrogatory served or to be served upon Respondent.
2. All documents identified by Respondent in any response to any Interrogatory that has been or will be served upon Respondent by Commonwealth Edison.
3. All documents relating to your interpretation of the term "emission data" as that term as it is now or was in the past defined in Section 5/7 of the Illinois Environmental Protection Act, 415 ILCS 5/7 or Section 114(c) of the Clean Air Act, 42 U.S.C. § 7414(c), or their predecessors, and implementing regulations of either act, including determinations that certain information constitutes or does not constitute emissions data.
4. All Statements of Justification that were submitted to IEPA from January 1, 1990 to the present.
5. All agency responses to Statements of Justification submitted to IEPA from January 1, 1990 to the present, including preliminary and final agency determinations and correspondence related to the same.
6. All documents relating to the ComEd Determination, including all documents reflecting communications relating to that determination.

7. All documents relating to each communication between the Sierra Club and IEPA, or the Illinois Attorney General, relating to any matters relating to IPCB 04-215 or IPCB 04-216 or the Sierra Club's FOIA Requests.

8. All documents relating to each communication between IEPA, or the Illinois Attorney General, and any other person, relating to any matters relating to IPCB 04-215 or IPCB 04-216 or the Sierra Club's FOIA Requests.

CH2\ 1307142.1

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
 ELGIN – 595 South State, Elgin, IL 60123 – (847) 608-3131 • PEORIA – 1415 N. University St., Peoria, IL 61614 – (309) 691-3462
 BUREAU OF LAND – PEORIA – 7620 N. University St., Peoria, IL 61614 – (309) 691-3462 • CHAMPAIGN – 2125 South First Street, Champaign, IL 61821
 SPRINGFIELD – 4500 S. Sixth Street Rd., Springfield, IL 62706 – (217) 786-6892 • COLLINGSVILLE – 2009 Mall Street, Collinsville, IL 62234
 MARION – 2309 W. Main St., Suite 116, Marion, IL 62959 – (618) 993-7200

PRINTED ON RECYCLED PAPER

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

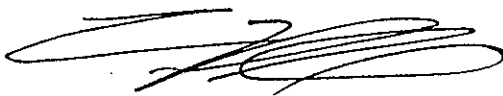
Attachment G is responsive to information request number 4 and contains information from the Generating Availability Data System (GADs). Generally, the GADs identifies boiler and turbine related forced, maintenance and planned outages. The Illinois EPA is denying trade secret protection to the information 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

SIDLEY AUSTIN BROWN & WOOD LLP

BEIJING
BRUSSELS
CHICAGO
DALLAS
GENEVA
HONG KONG
LONDON

BANK ONE PLAZA
10 S. DEARBORN STREET
CHICAGO, ILLINOIS 60603
TELEPHONE 312 853 7000
FACSIMILE 312 853 7036
www.sidley.com
FOUNDED 1866

LOS ANGELES
NEW YORK
SAN FRANCISCO
SHANGHAI
SINGAPORE
TOKYO
WASHINGTON, D.C.

WRITER'S DIRECT NUMBER
(312) 853-4717

WRITER'S E-MAIL ADDRESS
bftaylor@sidley.com

March 11, 2004

By Overnight Mail

Chris Pressnall
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

Re: ComEd/Exelon Statement of Justification

Dear Mr. Pressnall:

Commonwealth Edison ("ComEd") and its parent company, Exelon, (collectively, the "Companies") submit this letter and the enclosed attachments in response to the Illinois Environmental Protection Agency's ("IEPA") request that ComEd justify its claim that certain information contained in its responses to the United States Environmental Protection Agency's ("USEPA") Clean Air Act § 114 Information Request are exempt from disclosure to the public by the IEPA. The "Confidential Articles," namely, excerpts from the Continuing Property Record ("CPR") and certain GADs data, are trade secrets and confidential business information exempt from disclosure by the IEPA. 415 ILCS 5/7.1(a). The Confidential Articles were marked as such in a conspicuous manner. This Statement of Justification describes the internal Exelon/ComEd procedures and policies in place which are designed to assure that such information remains confidential and is not disseminated to the public. Additionally, please find attached a certification signed by Wayne Belko, which states that upon information and belief, Exelon has no knowledge that the Confidential Articles have ever been published, disseminated or otherwise become a matter of general public knowledge. Further, this statement of justification discusses the competitive value of the Confidential Articles and highlights why disclosure of these documents would cause competitive harm to the Companies.

Chris Pressnall

March 9, 2004

Page 2

I. The Confidential Articles are trade secrets and confidential business information that has not been published, disseminated, or otherwise become a matter of general public knowledge.

Exelon maintains a policy and several procedures concerning confidential information and its treatment by Exelon employees (ComEd is a wholly owned subsidiary of Exelon and Exelon policies apply to each of the Exelon companies, including ComEd). (See Attachments A-C). Exelon's corporate policy provides that its employees must protect confidential information from disclosure. (See Attachment A). Exelon values its information as one of its most important assets and requires that its employees safeguard trade secrets and confidential information to prevent unauthorized or inadvertent disclosure.

Exelon's corporate procedures are designed to ensure that the Companies' confidential information is protected. Confidential information is defined by Exelon as information that is "not generally available to the public and that may be of competitive or economic value to the owner." (See Attachment B). Exelon's corporate procedures provide that financial information, business methods, outage schedules, operations and operational requirements, and technical information are some types of information considered confidential by the Companies.

Confidential information is not generally available externally or internally. Employees may not disclose information to any employee, contractor or third party without classifying the information as either public, Company Confidential Information or Third Party Confidential Information. Information designated by the Companies as "confidential" is only disclosed to employees on a "need to know" basis. If an employee is not sure whether the information is confidential, it must be treated as confidential until a determination is made by the Legal Services Department.

The Companies require that employees possess proper identification and authorization for access to information, based on the confidentiality classification assigned to the information. Employees are only permitted the level of access to the information that is required to perform prescribed job responsibilities. Physical access to the areas containing confidential information or processing activities is limited according to the confidentiality classification of the information and is only allowed to the extent necessary to perform an approved task or job responsibility. Access to confidential information that is electronically stored is also limited to authorized users with appropriate user identification and passwords. Further, corporate procedures require that information that will be electronically transmitted over non-secure or public networks be appropriately encrypted.

The corporate procedures specifically prohibit employees from leaving confidential information unattended in conference rooms, on desktops, or in any places accessible to the public and visitors are not allowed access to areas where confidential information is located. Employees may not discuss competitive or confidential information in public areas.

Chris Pressnall
March 9, 2004
Page 3

Requirements related to the non-disclosure of confidential information survive employees' terms of employment, as the Company's Code of Business Conduct prohibits them from disclosing this confidential information even after they are no longer employed by the Companies. Additionally, contractors, part-time and temporary workers, and those employed by others to work on Company premises must comply with the standards and guidelines relating to the treatment of confidential information.

The Confidential Articles

The Companies consider detailed financial data and information related to outages and operations to be confidential and competitive and has charged its employees to be "vigilant" in protecting such information. The excerpts from the CPR contain detailed financial information and are kept in a database that is accessible only by authorized individuals within the Companies with user identification and password. Currently, only approximately 35 employees are authorized to access this information. GADs statistical summary reports also are maintained in a confidential manner. To the extent that the data is in electronic format, the database is password protected. Only a select few employees are authorized to access GADs data. Although the Companies submit data to the North American Electric Reliability Council ("NERC"), per NERC policy, requesters are not permitted to obtain such data from NERC without the Companies' written consent. The Companies generally do not provide such consent to the release of this data.

II. The Confidential Articles have competitive value to ComEd.

The excerpts from the CPR and the GADs data are detailed information that has competitive value to the Companies. The Companies established above that they have maintained and continue to maintain the articles submitted to the IEPA as confidential information, limiting information even amongst the Companies' own employees on a need to know basis. A release of the Confidential Articles could provide the Companies' competitors with detailed information regarding overall business strategies, past and present. It also could lead to others achieving an economic advantage over the Companies. One of many examples would be a potential vendor who could then use this information to help inflate its bids.

III. Contractual Agreement between ComEd and Midwest Generation EME, LLC.

The CPR has a dual function in that it provides information on the timing of equipment installations, which directly relates to the operation of the Crawford, Fisk, Will County, Joliet, Powerton and Waukegan stations, in addition to its financial purposes. Accordingly, the entries for these stations have been provided to Midwest Generation EME, LLC ("Midwest Generation"), the current owner of the stations, who we understand will be submitting its own

Chris Pressnall

March 9, 2004

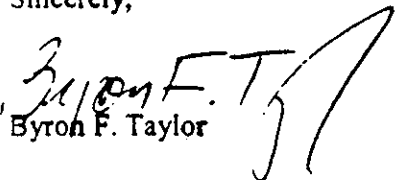
Page 4

justification as to the competitive value of this information. The transfer of information was pursuant to the Asset Sale Agreement by and between ComEd and Edison Mission Energy as to Fossil Fuel Generating Assets. Under that Agreement, ComEd is obligated to maintain the CPR entries as trade secrets and confidential business information.

* * *

As detailed above, the excerpts from the CPR and GADs data submitted to the IEPA are competitive and confidential business information/trade secrets exempt from disclosure by the IEPA pursuant to 5 ILCS 140/7.1(a). Please continue to safeguard the Companies' trade secrets and confidential business information. Thank you very much for your attention to this matter.

Sincerely,


Byron F. Taylor

Attachments

cc: Sharon Neal

CERTIFICATION

I, Wayne A. Belko, state as follows:

- 1) I am a Senior Project Manager of Exelon (the "Company") and I am authorized to execute this certification on behalf of the Company.
- 2) Upon information and belief, I have no knowledge that the Confidential Articles claimed as trade secrets, described in the attached Statement of Justification dated March 11, 2004 have been published, disseminated or otherwise become a matter of general public knowledge.

Dated: March 11, 2004

Wayne A. Belko



Corporate Policy

Information Protection

LE-AC-3 Revision 0
Page 1 of 1
Effective Date: 11-01-00

Policy Statement

Notwithstanding a duty to provide certain information to regulatory authorities and the public, Exelon shall protect from disclosure information of a confidential nature. Exelon shall use only lawful and ethical methods to acquire information or practices of competitive value.

Policy Intent

Exelon shall:

- Protect the privacy of its customers, shareholders and employees to the extent allowed by law and regulation.
- Safeguard, avoid disclosure and prevent misuse of confidential information or practices.
- Protect confidential information entrusted to Exelon by others.

Implementation

This policy shall be implemented by establishing and following:

- Procedures for managing confidential information as a corporate resource.
- Procedures for identifying types of Exelon confidential information and practices.

- Procedures for safeguarding Exelon confidential information ensuring protection from disclosure. Such methods may include confidentiality agreements with employees.
- Training programs to ensure that employees can identify Exelon confidential information and are aware of their responsibility to protect it and the means of protecting it from disclosure.
- Procedures describing the allowable methods for acquiring and developing information of a competitive nature
- Periodic audits to ensure compliance.

Exelon

Corporate Procedure

Protecting Exelon Information

LE-AC-301 Revision 0
Page 1 of 5
Effective Date: 12-04-01

1.0 PURPOSE

- 1.1 The purpose of this procedure is to ensure that Exelon Corporation and its affiliated companies (collectively and individually referred to as "Exelon" or the "Company") protect the Company's confidential information, as well as confidential information supplied to the Company by vendors, contractors, suppliers, customers, and other third parties. Confidential information is a valuable asset of the Company and to third parties supplying Exelon with their confidential information. The unauthorized or inadvertent disclosure of this information may create a liability for the Company involving a lawsuit or a fine, put the Company at a competitive disadvantage or deprive the Company of the opportunity to sell or license such information to others.

2.0 TERMS AND DEFINITIONS

- 2.1 "Company Confidential Information" means Confidential Information (as defined in Section 2.2 below) belonging to or pertaining to the Company.
- 2.2 "Confidential Information" means information, in any form (including, but not limited to, electronic, oral, or written form, or algorithms, devices, "know-how", machines, methods, procedures, software, or technology) that (i) is required by law or by agreement to be maintained as confidential; or (ii) is not generally available to the public and that may be of competitive or economic value to the owner. Examples may include, but are not limited to, customer information, personnel information, financial information, business plans, business methods, internal procedures, inventions, labor negotiations, legal documents, market research and data, outage schedules, operations and operational requirements, plant status, pricing data, planned mergers, divestitures or acquisitions, product or services proposals, research, technical information, trade secrets, valuation models, Material Information, Safeguards Information, State-Regulated Information, Third Party Confidential Information, and Transmission Information. (A more comprehensive, but not exhaustive listing of categories of Confidential Information is included in Attachment A).
- 2.3 "Material Information" means information about the Company that would be considered important by a reasonable investor in deciding whether to buy, sell or hold securities of the Company. A good shorthand test is whether the information could reasonably be expected to affect the price of the Company's securities if it were disclosed to the public; if so, it is Material Information. Information concerning earnings estimates or targets, dividends, proposals or agreements for significant mergers, acquisitions or divestitures, liquidity or litigation problems, important management changes, pending regulatory actions and other similar events should generally be assumed to be Material Information.
- 2.4 "Public Information" means information that is generally available to the public. Examples include, but are not limited to, advertising materials, annual reports, press releases, and information posted on Company internet sites.

- 2.5 **"Restricted Confidential Information"** means certain categories of Company Confidential Information, the use or disclosure of which may be subject to additional legal requirements and corporate and Business Unit policies and procedures. Examples include, but are not limited to, certain communications between the Company and its inside or outside counsel; certain customer-related information; medical and personnel records; Material Information; Safeguards Information; State-Regulated Information; Transmission Information; information marked "privileged", "attorney work product", "for your eyes only", "for internal use only", "reproduction or distribution prohibited"; or any information that is marked with similar restrictions.
- 2.6 **"Safeguards Information"** includes information relating to (1) security measures for the physical protection of special nuclear material; and (2) security measures for the physical protection and location of certain plant equipment vital to the safety of nuclear power stations as set forth in 10 C.F.R. Section 73.2.
- 2.7 **"State-Regulated Information"** includes certain information, other than Public Information, that is related to either (i) customers or (ii) transmission and distribution systems, as further defined in various state statutes, codes, and regulations.
- 2.8 **"Third Party Confidential Information"** means Confidential Information that is owned by a third party (i.e., any person or entity other than the Company) and is disclosed to the Company with the reasonable expectation or requirement that it will be kept confidential.
- 2.9 **"Transmission Information"** means certain information, other than Public Information, related to transmission, including information about available transmission capability, price, curtailments, ancillary services, and the like, as further defined in Corporate Procedure LE-AC-210: "Implementation of FERC Standards of Conduct."
- 3.0 **RESPONSIBILITIES**
- 3.1 **Exelon General Counsel**
- 3.1.1 Approve all corporate procedures implementing Corporate Policy LE-AC-3: "Information Protection."
- 3.2 **All Employees**
- 3.2.1 All Company employees are responsible for complying with this procedure and any procedures implemented by their respective Business Unit. Employees are expected to immediately report any suspected violations of this procedure that they observe to their Business Unit Management, the Legal Services Department or the Ethics Office. Upon termination of employment with the Company, employees are responsible for returning to the Company all documents containing Confidential Information. After employment ends, each employee has a continuing obligation to maintain the confidentiality of Confidential Information learned during the course of employment.

3.3 Business Unit Management

- 3.3.1** Ensures and monitors and is responsible for compliance with corporate procedures related to information protection; provides training related to these procedures; requires new employees to sign agreements containing confidentiality provisions; and oversees the development and implementation of business unit specific policies and procedures.

4.0 PROCEDURE

4.1 Classifying Information

- 4.1.1** Before disclosing information to any employee, contractor, or third party, an employee must first determine if the information is Public Information. Public Information may be released to anyone without restriction. If the information is not Public Information, the employee must determine whether it is Company Confidential Information or Third Party Confidential Information. If it is Confidential Information, the employee must also determine if it should be treated as Restricted Confidential Information.
- 4.1.2** If it is not readily apparent whether information is Public Information or Confidential Information, the employee must consult with his/her Business Unit Management for guidance. If management is not certain, it should refer the matter to the Legal Services Department. Until such determination is made, the information must be treated as Confidential Information. Employees must not assume that information is Public Information if it is not already marked "Confidential."

4.2 Protection of Confidential Information Generally

- 4.2.1** All Confidential Information must be safeguarded to prevent unauthorized or inadvertent disclosure. Documents containing Confidential Information must not be left unattended in conference rooms, on desktops, or in any places accessible to the public. Confidential Information must not be discussed in public areas where discussions may be overheard.
- 4.2.2** Documents containing Confidential Information should be marked "Confidential" on at least the first page. The fact that a document has not been marked "Confidential", however, shall not relieve a Company employee or any third party from the obligation to treat such information as Confidential Information.
- 4.2.3** Visitors to the Company must not be given access to areas where Confidential Information is visible to them. In areas where it would be impractical to prevent visitors from viewing Confidential Information, warning signs should be posted designating those areas as restricted. Public tours must not be given in such restricted areas.
- 4.2.4** Requirements for storing and transmitting Confidential Information electronically are contained in Corporate Procedures implementing Company Policy, IT-AC-1: "Use of Information Technology Assets."
- 4.2.5** Employees should consult their Business Unit Management or the Legal Services Department when handling Restricted Confidential Information to learn whether additional safeguards must be taken or whether additional restrictions on its use or disclosure apply.

4.3 Use and Disclosure of Company Confidential Information

- 4.3.1 Unless Company Confidential Information falls under the category of Restricted Confidential Information, it may be used for any legitimate Company purpose and may be disclosed to any Company employee with a need to know such information.
- 4.3.2 Company Confidential Information must not be disclosed to any bidder, vendor, contractor, consultant or other third party unless (i) he/she has a need to know the information; and (ii) she/he has first signed a confidentiality agreement in a form obtained from or approved by the Legal Services Department. If it is not clear whether a third party should receive Company Confidential Information, Business Unit Management must be consulted. All third parties that receive Company Confidential Information must be required to return or destroy such information upon completion of the project or upon request of Company.

4.4 Use and Disclosure of Third Party Confidential Information

- 4.4.1 Third Party Confidential Information must be treated with at least the same degree of care as Company Confidential Information. In addition, Third Party Confidential Information received pursuant to an agreement containing confidentiality provisions must be used and disclosed only in accordance with the requirements set forth in such agreement.
- 4.4.2 Third Party Confidential Information must not be used by the Company unless it has been lawfully obtained. Employees must not reveal to the Company any information that might reasonably be considered a trade secret or Confidential Information of a former employer. In addition, employees must not use Confidential Information of competitors or other third parties in a manner not authorized by the owner of the information. Employee must not attempt to induce, through social relationships or otherwise, present or former employees of competitors or other third parties to disclose their employer's Confidential Information. If there is any uncertainty as to whether Company is legally entitled to use Third Party Confidential Information, the Legal Services Department must be consulted immediately.
- 4.4.3 Employees must not review or accept unsolicited ideas, inventions, patent applications, or any data or potential trade secrets from other companies or persons without the approval of Business Unit Management, and review by the Legal Services Department, if necessary, unless the submitting party agrees in writing that the submission is made on a non-confidential basis.

4.5 Use and Disclosure of Customer Information

- 4.5.1 Additional legal requirements govern the use and disclosure of customer-related information. Such information must not be disclosed to any person other than Employees within the same business unit ~~except as otherwise authorized by Business Unit Management or the Legal Services Department.~~ Employees should consult with their Business Unit Management or the Legal Services Department when handling this information.

4.6 Use and Disclosure of Material Information

Use and disclosure of Material Information is also subject to Corporate Procedure LE-AC-202: "Buying and Selling Exelon Securities."

4.7 Use and Disclosure of State-Regulated Information

- 4.7.1 Additional state legal requirements govern the use and disclosure of State-Regulated Information. Such information must not be disclosed to any person other than Employees within the same business unit except as otherwise authorized by Business Unit Management or the Legal Services Department. Employees should consult with their Business Unit Management or the Legal Services Department when handling this information.

4.8 Use and Disclosure of Transmission Information

The use and disclosure of Transmission Information is subject to Corporate Procedure LE-AC-210: "Implementation of FERC Standards of Conduct."

4.9 Publications and Speeches

All materials proposed for publication, by way of written materials or speeches, must be screened by Business Unit Management, and if necessary, the Legal Services Department, to ensure that no Confidential Information is disclosed and that publication is in accordance with the Company's Conflict of Interest policy set forth in the Code of Business Conduct. With respect to technology, additional care should be given to ensure that no trade secrets or patentable ideas are inadvertently disclosed.

4.9 Enforcement

- 4.9.1 Failure to comply with this Procedure may result in disciplinary actions up to and including discharge and legal action.

5.0 DOCUMENTATION

- 5.1 NONE

6.0 REFERENCES

- 6.1 Exelon Code of Business Conduct.
6.2 Corporate Policy IT-AC-1: "Use of Information Technology Assets," and implementing procedures.
6.3 Corporate Procedure LE-AC-202: "Buying and Selling Exelon Securities."
6.4 Corporate Procedure LE-AC-210: "Implementation of FERC Standards of Conduct."
-

- 6.5 Business unit specific procedures.
6.6 Corporate Policy HR-AC-1-8: "Patents and Inventions."

7.0 ATTACHMENTS

- 7.1 Employee Handout: Protecting Confidential Information.

Exelon

Corporate Procedure

Information Asset Protection

IT-AC-102 Revision 1
Page 1 of 7
Effective Date: 09-18-01

1.0 PURPOSE

To define Exelon's (the "Company") objectives for establishing specific standards and guidelines on the protection of the confidentiality, integrity and availability of Exelon's information assets.

2.0 TERMS AND DEFINITIONS

2.1 Availability – Ensures critical information is accessible when needed. The use of Company information systems shall not be denied to authorized users.

2.2 Availability Classification Categories:

2.2.1 High – refers to a requirement of continuous availability, high availability or zero tolerance of data loss.

2.2.2 Medium – refers to a requirement of scheduled availability, standard availability, or a partial tolerance of data loss.

2.2.3 Low - refers to a requirement of best effort availability, no availability, or a long-term to complete tolerance of data loss.

2.3 Confidential Information – Refers to information that the Company is required to keep private by law or agreement, as well as information of competitive or economic value to the Company.

2.4 Confidentiality – Refers to the protection of Confidential Information from disclosure. Information shall be disclosed only to those authorized to access it.

2.5 Confidentiality Classification Categories

2.5.1 Confidential – Control Level 2 – Refers to Confidential Information to be accorded the highest safeguard protection and a restricted distribution. This category is intended to be used sparingly.

2.5.2 Confidential – Control Level 1 – Refers to Confidential Information to be accorded safeguard protection and a controlled, but moderate distribution.

2.5.3 Internal Use Only – Refers to information that should not be distributed or disclosed to anyone outside of the Company without the approval of the Information Asset Owner.

2.5.4 Public – Refers to information that is unrestricted.

2.6 Encryption – A method of scrambling information to render it unreadable to anyone except the intended recipient, who must decrypt it to read it.

Internal Use Only

2.7 Information Assets

2.7.1 Intangible Information Assets – The logical information assets that are not easily assigned a monetary value. Intangible Information Assets include information (processed data), processes, the skills, training and experience of personnel, intellectual capital, and other business enablers (e.g., reputation, trust and other "social" assets).

2.7.2 Tangible Information Assets – The physical information assets with a measured cost or value. Tangible Information Assets include raw data, systems, networks and hardware.

2.8 Information Asset Custodian – Each information asset must have a clearly defined custodian. An information asset custodian (Custodian) is a person who, while not necessarily the information asset owner, has the ultimate responsibility for its proper handling and safekeeping. Each information asset custodian must properly protect Exelon information assets in keeping with the designated Owner's control, data sensitivity and data criticality instructions.

2.9 Information Asset Owner – All information assets must have an owner. Information asset owners (Owner) are managers of organizational units that have primary responsibility for information assets associated with their functional authority. With the exception of operational computer and network information, Exelon Business Services Company Information Technology normally is not the Owner of any information assets.

2.10 Integrity – The protection of information and systems from malicious, unauthorized, or accidental changes.

2.11 User – The individuals, groups or organizations authorized by the Company to access information Assets.

3.0 RESPONSIBILITIES

3.1 Exelon BSC Chief Information Officer (BSC CIO)

3.1.1 Approves Company Information Assurance procedures, standards and guidelines; manages the Information Technology Governance Management; and when information asset owners are not clearly implied by organizational design, the BSC CIO will make the designation.

3.2 Information Technology Governance Management (ITGM)

3.2.1 Serves as the Information Assurance corporate procedure sponsor, ensures the development and maintenance of the *Information Asset Protection Procedure* and associated standards and guidelines; provides corporate policies, standards, guidelines and procedures for Business Continuity Planning; leads periodic corporate recovery exercises; and assists Information Asset Owners and Custodians with the implementation of Business Continuity plans by guiding them through the steps necessary to develop, test and assess their recovery plans.

3.3 The Office of the Corporate Secretary

- 3.3.1 Coordinates and facilitates the corporate policy and procedures process; supports policy and procedure sponsors; maintains the corporate policy and procedures; prepares periodic reports on compliance with corporate policy and procedures; and chairs the Corporate Policy and Procedure Committee.

3.4 Exelon Business Unit Management

- 3.4.1 Ensures compliance with corporate policy and procedures; periodically submits data to the Office of the Corporate Secretary demonstrating compliance with corporate policy and procedures; oversees the development of business unit specific policies and technical procedures that are not intended to be binding on anyone other than the business unit.

3.5 Audit Division

- 3.5.1 Assists in monitoring compliance with corporate policies, procedures, standards and guidelines.

3.6 Information Asset Owner

- 3.6.1 Defines procedures that are consistent with the *Information Asset Protection Procedure* and associated standards and guidelines; ensures the confidentiality, integrity and availability of information assets; authorizes access to those who have an approved business need for the information; determines the business impact if an information asset is unavailable, data integrity is compromised or unauthorized access is gained; defines and funds a Business Continuity Plan for critical information assets to mitigate risks to an acceptable level; funds and participates with periodic corporate recovery exercises; and ensures the revocation of access for those who no longer have a business need for the information.

3.7 Information Asset Custodian

- 3.7.1 Provides a secure processing environment that protects the confidentiality, integrity and availability of information; administers access to information as authorized by the Owner; and implements procedural safeguards and cost-effective controls.

3.8 User

- 3.8.1 Uses the information only for its intended purposes and maintains the confidentiality, integrity and availability of information accessed consistent with the Owner's approved safeguards while under the User's control.

4.0 PROCEDURE

4.1 Access Control

- 4.1.1 Proper identification, authorization and authentication are required for access to information assets.
- 4.1.2 Authorization for access to information assets will be based on the confidentiality classification of the information and defined to provide only the level of access required to meet an approved business need or perform prescribed job responsibilities. Specific instructions for controlling access to information assets are provided in the *IA Access Control Corporate Standard*.

4.2 Remote Access

- 4.2.1 Authorization for remote access to information assets will be provided only to meet an approved business need or perform prescribed job responsibilities.
- 4.2.2 Remote access must be facilitated by using Exelon approved methods and programs. Specific instructions for accessing information assets remotely are provided in the *IA Remote Access Corporate Standard*.

4.3 Physical Access

- 4.3.1 Information assets must be protected with physical access control of areas containing information assets or processing activities.
- 4.3.2 The physical access controls must be at the appropriate level with the information classifications of the information and defined to provide only the level of physical access required to meet an approved need or perform prescribed job responsibilities. Specific instructions for physical access to information assets are provided in the *IA Physical Access Corporate Standard*.

4.4 Encryption

- 4.4.1 Encryption must be used to protect "Confidential" information assets that will be transmitted over non-secure or public networks (such as dial-up or the Internet).
- 4.4.2 Only Company-approved encryption algorithms, methods and products can be used to protect "Confidential" information. Specific instructions for encryption are provided in the *IA Encryption Corporate Standard*.

4.5 Integrity Protection

- 4.5.1 Information assets must be created and maintained with appropriate controls to ensure that the information is correct, auditable and reproducible. Specific instructions for protecting the integrity of information assets are provided in the *IA Integrity Protection Corporate Standard*.

4.6 Availability Protection

- 4.6.1 Appropriate controls based on the availability classification of the information must be established to ensure information assets are consistently available to conduct business. Specific instructions for protecting the availability of information assets are provided in the *IA Availability Protection Corporate Standard*.
- 4.6.2 Business Continuity Plans must be developed to identify the personnel, resources and corrective actions required for continued availability in the event of an unexpected interruption to normal business operations.
- 4.6.3 Business Continuity Plans must be reviewed and tested periodically for reliable and reproducible results.

4.7 Anti-Virus

- 4.7.1 Information assets must be protected from destructive software elements such as viruses and malicious code that impair normal operations.
- 4.7.2 Exelon-approved virus detection programs must be installed, enabled and updated on all systems susceptible to viruses and malicious code. Specific instructions for protecting information assets from viruses and malicious code are provided in the *IA Anti-Virus Corporate Standard*.

4.8 Information Handling

- 4.8.1 Handling of information assets will be based on their information classification and in accordance with approved methods for handling printed information, as well as electronically stored and transmitted information. Specific instructions for handling information assets are provided in the *IA Information Handling Corporate Standard*.

4.9 Auditing

- 4.9.1 Auditing must be activated to record relevant security events.
- 4.9.2 The audit logs must be securely maintained for a reasonable period of time. Specific instructions for auditing information assets are provided in the *IA Auditing Corporate Standard*.

4.10 Enforcement and Exception Handling

- 4.10.1 All employees, contractors, part-time and temporary workers, and those employed by others to perform work on Exelon premises or who have been granted access to Exelon information or systems, are covered by this procedure and must comply with associated standards and guidelines.
- 4.10.2 Failure to comply with the Exelon *Information Asset Protection Procedure*, standards and guidelines may result in suspension of use privileges or other disciplinary actions up to and including discharge and legal action.
- 4.10.3 Exceptions handling will include the following steps:
- a.) Exceptions to the *Information Asset Protection Procedure* must be submitted and approved by the Business Unit VP of IT.
 - b.) The ITGM will perform a risk assessment.
 - c.) The exception and risk assessment will be submitted to the Information Technology Council for corporate approval, if appropriate.
 - d.) Prior to management approval of any exception, all employees, contractors and consultants shall consistently observe the Exelon *Use of Information Technology Assets Policy*, associated procedures and standards. Corporate policies take precedence over corporate procedures.

4.11 Review and Revision

- 4.11.1 The *Information Asset Protection Procedure* will be reviewed and revised in accordance with the *Use of Information Technology Assets Policy*.

5.0 DOCUMENTATION

IA Information Asset Identification and Classification Corporate Procedure, IT-AC-101
Legal Information Protection Corporate Policy, LE-AC-3
Legal Document Management, Retention and Disposition Corporate Policy, LE-AC-4

6.0 REFERENCES

Use of Information Technology Assets Policy, IT-AC-1
~~*IA Access Control Corporate Standard*, IT-AC-102-1~~
IA Remote Access Corporate Standard, IT-AC-102-2
IA Physical Access Corporate Standard, IT-AC-102-3
IA Encryption Corporate Standard, IT-AC-102-4
IA Integrity Protection Corporate Standard, IT-AC-102-5
IA Availability Protection Corporate Standard, IT-AC-102-6
IA Anti-Virus Corporate Standard, IT-AC-102-7
IA Information Handling Corporate Standard, IT-AC-102-8
IA Auditing Corporate Standard, IT-AC-102-9

7.0 ATTACHMENTS

NONE

Approval

<u>Signature</u>	<u>9/18/2001</u>
	<u>Date</u>
Honorio Padron President and Chief Executive Officer Exelon Business Services Company	

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served Commonwealth Edison Company's Initial Request for Production of Documents by U.S. mail on this 27th day of October, 2005 upon the following persons:

Ann Alexander
Assistant Attorney General and
Environmental Counsel
188 West Randolph Street
Suite 2000
Chicago, Il. 60601

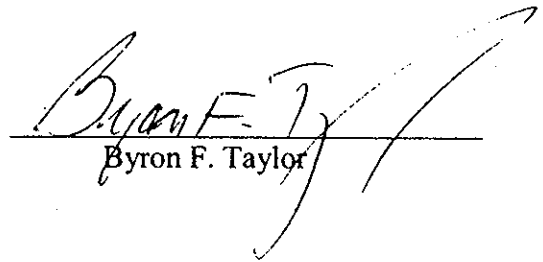

Byron F. Taylor

Exhibit C



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 22, 2005

Via overnight mail

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

Re: PCB 4-215

Dear Byron:

Enclosed please find a copy of Respondent's Response to Commonwealth Edison Company's Initial Interrogatories and Initial Request for Production of Documents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ann Alexander", is written over the typed name.

Ann Alexander

Enc.

cc: Roshna Balasubramanian ✓

PCB 04-215
Trade Secret Appeal

NOW COMES Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by LISA MADIGAN, Attorney General of the State of Illinois, and in response to Petitioner COMMONWEALTH EDISON COMPANY'S Initial Interrogatories, answers and objects as follows:

I. GENERAL OBJECTIONS

A. Respondent objects to the Initial Interrogatories on the ground that they seek information that is irrelevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. In particular, although the Pollution Control Board ("Board") specified in its June 17, 2004 order that hearings in this matter "will be based exclusively on the record before IEPA at the time it issued its trade secret determination" pursuant to 35 Ill. Admin. Code 105.214(a), and that "information developed after IEPA's decision typically is not admitted at hearing or considered by the Board"; and although the Board denied a motion in related case PCB 04-185 for reconsideration of this evidentiary restriction and a de novo hearing, Petitioner is seeking information not in or directly pertinent to the administrative record, and/or developed after Respondent IEPA's decision.

B. Respondent objects to the Interrogatories on the ground that they call for information that is protected by, inter alia, the attorney-client privilege, the work product privilege, the joint prosecution privilege, and the deliberative process privilege.

C. Respondent objects to the Initial Interrogatories on the ground that they are overbroad and burdensome.

D. Respondent objects to the Initial Interrogatories on the ground that they are vague.

Responses to the Initial Interrogatories shall not be construed as a waiver of these objections.

Interrogatory No. 1: Identify each person who participated in the Com Ed Determination, including those present for any discussions of the Com Ed determination.

Response to Interrogatory No. 1:

Respondent objects to this interrogatory on the grounds specified in General Objections C and D. Without waiving these objections, Respondent states that the persons who participated in the Com Ed determination are as follows:

1. Christopher Romaine, Utilities Unit Manager, Illinois Environmental Protection Agency, 1021 North Grand Avenue East, Springfield, Illinois 62794-9276, 217-785-1882.
2. Julie Armitage, Chief of Compliance and Enforcement, Bureau of Air, 1021 North Grand Avenue East, Springfield, Illinois 62794-9276, 217-782-9846.
3. Christopher Presnall, Assistant Counsel, Bureau of Air, 1021 North Grand Avenue East, Springfield, Illinois 62794-9276, 217-524-3003.

Interrogatory No. 2: Identify each person having knowledge of facts relevant to the subject matter of this appeal, other than those persons already identified in Interrogatory #1 above.

Response to Interrogatory No. 2:

Respondent objects to this interrogatory on the grounds specified in General Objections A, C, and D. Without waiving such objections, Respondent states that to its knowledge, there are no other persons at IEPA with significant personal knowledge of the facts relevant to the subject matter of this appeal.

Interrogatory No. 3: Identify each person you intend to call as a fact witness at the hearing on this matter and for each person identify and describe the facts to which each such witness is expected to testify.

Response to Interrogatory No. 3:

Respondent objects to this interrogatory on the grounds specified in General Objection C to the extent it calls for an overbroad and burdensome level of detail concerning the anticipated testimony of witnesses. Without waiving this objection, Respondent states that it has not yet made a final determination as to which persons it will call as witnesses and the facts to which each will testify, and reserves the right to supplement this response when such determination is made in the future. At this time, Respondent anticipates that it will call the following persons as witnesses:

1. Christopher Romaine (previously identified). It is currently anticipated that Mr. Romaine will testify concerning the basis for the Com Ed determination, in particular the basis for IEPA's conclusion that the documents at issue in this case constitute emission data.

2. Julie Armitage (previously identified). It is currently anticipated that Ms. Armitage will testify concerning the basis for the Com Ed determination, in particular the basis for IEPA's conclusion that Com Ed and/or Midwest Generation 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.

Interrogatory No. 4: Identify each person you intend to call as an opinion witness at the hearing on this matter and for each person identify: the subject matter which each such witness is expected to testify; the conclusions and opinions of each such witness and the bases therefore; the qualifications of each such witness; the identity of any reports or analyses that have been prepared by each such witness relating to this matter; and the curriculum vitae and resume for each such witness.

Response to Interrogatory No. 4:

Respondent objects to this interrogatory on the grounds specified in General Objection C to the extent it calls for an overbroad and burdensome level of detail concerning the anticipated testimony of witnesses. Without waiving this objection, Respondent states that it has not yet made a determination as to whether it will call an opinion witness, and reserves the right to supplement this response when such determination is made in the future.

Interrogatory No. 5: Identify and describe all communications between the Sierra Club and the IEPA or the Illinois Attorney General, relating to any matters relating to IPCB 04-215 or IPCB 04-216 or related to the Sierra Club's FOIA requests.

Response to Interrogatory No. 5:

Respondent objects to this interrogatory on the grounds specified in General Objections A, B, C, and D. Without waiving such objections, Respondent identifies the following communications between Sierra Club and IEPA concerning the Sierra Club's FOIA requests:

1. Letter dated October 27, 2003 to Marilyn Clardy, IEPA FOIA Officer, from Adam Qhader, Sierra Club, setting forth FOIA request.

2. Letter dated November 13, 2003 to Adam Qhader, Sierra Club from Joseph E. Svoboda, IEPA Chief Legal Counsel, regarding FOIA request.
3. E-mail dated February 12, 2004 to Marilyn Clardy, IEPA FOIA Officer, from Bruce Nilles, Sierra Club Senior Midwest Representative, setting forth FOIA request.

Respondent further states that to its knowledge, there were no other communications between IEPA or the Illinois Attorney General and Sierra Club prior to the Com Ed determination.

Interrogatory No. 6: Identify and describe all communications between IEPA or the Illinois Attorney General and any other person, relating to any matters relating to IPCB 04-215 or IPCB 04-216 or related to the Sierra Club's FOIA requests.

Response to Interrogatory No. 6:

Respondent objects to this interrogatory on the grounds specified in General Objections A, B, C, and D. Without waiving such objections, Respondent states that to its knowledge, there were no communications between IEPA or the Illinois Attorney General and any other person other than those identified in response to Interrogatory No. 5 prior to the Com Ed determination.

Interrogatory No. 7: Describe in detail the reasons you relied on to support the following statement in the ComEd Determination: "Midwest and/or ComEd 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."

Response to Interrogatory No. 7:

Respondent objects to this interrogatory on the grounds specified in General Objection C to the extent it calls for an overbroad and burdensome level of detail concerning the anticipated testimony of witnesses. Without waiving this objection,

Respondent states that it relied on, inter alia, the following reasons in support of the identified statement:

1. Petitioner's statement of justification is vague and lacking in detail, and provided insufficient information to support Petitioner's contentions that the information has not been published, disseminated, or otherwise become a matter of general public knowledge, and that the information has competitive value.

2. There was insufficient evidence that Petitioner "has taken reasonable measures to prevent the article from becoming available to persons other than those selected by the owner to have access to the article for limited purposes" per 35 Ill. Admin. Code 130.208(b), and that the information has been in fact protected from disclosure, because Petitioner failed to demonstrate, in its Statement of Justification or otherwise, that the information, in its compiled form or otherwise, was specifically designated and/or treated as confidential or proprietary in accordance with its general internal policies and procedures.

3. There was insufficient evidence that Petitioner "has taken reasonable measures to prevent the article from becoming available to persons other than those selected by the owner to have access to the article for limited purposes" per 35 Ill. Admin. Code 130.208(b), and that the information has been in fact protected from disclosure, because the information, in its compiled form or otherwise, is of a type that was or may have been known by or submitted to government agencies (e.g., the Department of Energy or the Illinois Commerce Commission) or third parties (e.g., contractors), but Petitioner failed to demonstrate, in its Statement of Justification or otherwise, that this information was protected from disclosure by such government

agencies or third parties, or that Petitioner ever requested such protection from disclosure (e.g., by contract or pursuant to the Illinois Commerce Commission rules at 80 Ill. Admin. Code 200.430). Thus, while Petitioner stated in its Statement of Justification that it had never provided the CPR to any third party, it failed to demonstrate that the information contained in the CPR had not been provided to a third party.

4. Petitioner provided insufficient information concerning the purported competitive value of the information, and in particular failed to provide convincing reason to believe that information that is more than five years old, with some of it more than three decades old, is of competitive value to Petitioner.

5. Some of the projects listed in the CPR were the subject of Respondent's permitting, and information concerning such projects set forth in permit applications submitted to Respondent is public, as Petitioner did not seek to protect such information as a trade secret.

6. Petitioner provided no basis for a conclusion that the information has competitive value in view of the fact that the information is historical in nature and Petitioner no longer owns the electric generating facilities to which the information pertains.

7. Respondent is mindful of the public's right to know information concerning Clean Air Act compliance of sources of air pollution, including the electric generating industry, and was unwilling to withhold such information from Freedom of Information Act requestors based on inadequate evidence that such withholding is legally necessary and appropriate.

Interrogatory No. 8: Identify the specific information in the Record, if any, that supports your claim, if any, that the CPR has been published, disseminated, or otherwise become a matter of public knowledge.

Response to Interrogatory No. 8:

Please see response to Interrogatory No. 7.

Interrogatory No. 9: Identify the specific information in the Record, if any, that supports your claim, if any, that the CPR and/or GADS Data lacks competitive value.

Response to Interrogatory No. 9:

Please see response to Interrogatory No. 8.

Interrogatory No. 10: Identify the specific information in the record, if any, that supports your claim, if any, that the CPR and/or GADS Data constitutes emission data.

Response to Interrogatory No. 10:

Please see response to Interrogatory No. 11. The status of the CPR and the GADS Data as emission data is supported by, inter alia and in addition to legal definitions and interpretations of what constitutes emission data and the contents of the CPR and the GADS Data themselves, record documents Bates stamped 869 – 1527 and 1543 – 1554.

Interrogatory No. 11: If you contend that the CPR and/or GADS Data constitutes emissions data, describe in detail the reasons supporting this contention.

Response to Interrogatory No. 11:

Clean Air Act § 114 and federal regulations pursuant thereto, and counterpart Illinois regulations, provide that “emission data” includes any documents containing information necessary to determine how much a particular source was “authorized to emit” – i.e., that would determine whether the facility’s emissions comply with the Clean Air Act. 40 C.F.R. 2.301(a)(2)(i)(B), promulgated pursuant to § 114 of the Clean Air Act, includes in the definition of emission data “Information necessary to determine the

identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source)." The Illinois definition at 35 Ill. Admin. Code. 130.110 is substantially the same.

The United States Environmental Protection Agency ("USEPA") information requests, the responses to which are the subject of this proceeding, were all directed specifically toward determining whether facilities it regulates were in compliance with the Clean Air Act New Source Review programs. The CPR contains a list of capital projects at Midwest Generation (previously ComEd) facilities, including activities at those facilities that may constitute modifications that triggered New Source Review. The GADS Data contains information concerning facility outages and restricted operation, which is relevant to the operational condition of the facilities and to assessing whether activities that were undertaken at the facilities should be considered modifications. Accordingly, since the information is necessary to determine whether modifications have occurred at Petitioner's facilities and the amount they were "authorized to emit" relative to New Source Review requirements, this information constitutes emission data.

This response is intended solely as a summary. Respondent reserves the right to clarify or elaborate upon it at any time during the course of this proceeding.

Interrogatory No. 12: Identify any determination you have made relating to the trade secret status of a business's financial information submitted to IEPA.

Response to Interrogatory No. 12:

Respondent objects to this interrogatory on the grounds specified in General Objections A, C, and D.

Interrogatory No. 13: Identify any determination you have made relating to the trade secret or confidential business information status of any other electric utility company's GADS data or any similar data on the operations or any other type of manufacturing facility.

Response to Interrogatory No. 13:

Respondent objects to this interrogatory on the grounds specified in General Objections A, C, and D.

Interrogatory No. 14: Identify any determination you have made that information constitutes "emission data" as that term as it is [sic] now or was in the past defined under Section 5/7 of the Illinois Environmental Protection Act, 415 ILCS 5/7, or Section 114(c) of the Clean Air Act, 42 U.S.C. § 7414(c), or their predecessors, and their implementing regulations.

Response to Interrogatory No. 14:

Respondent objects to this interrogatory on the grounds specified in General Objections A, C, and D.

Interrogatory No. 15: Identify any documents or communications not otherwise identified in response to these Interrogatories that you will present or otherwise reply [sic] upon at the hearing in this matter.

Response to Interrogatory No. 15:

At this time, Respondent has not yet made a determination to present or rely on at the hearing any documents or communications not otherwise identified in response to Petitioner's interrogatories.

Dated: Chicago, Illinois
November 28, 2005

Respectfully submitted,

LISA MADIGAN, Attorney General of the
State of Illinois

MATTHEW DUNN, Chief, Environmental
Enforcement/
Asbestos Litigation Division

BY: Ann Alexander

Ann Alexander, Assistant Attorney
General and Environmental Counsel
Paula Becker Wheeler, Assistant
Attorney General
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
312-814-3772
312-814-2347 (fax)

Ann Alexander, Assistant Attorney General and
Environmental Counsel
Paula Becker Wheeler, Assistant Attorney General
188 West Randolph Street, Suite 2000
Chicago, Illinois 60601
312-814-3772
312-814-2347 (fax)

**Commonwealth Edison Company,
Petitioner**

v.

**Illinois Environmental Protection Agency,
Respondent**

PCB 04-215
Trade Secret Appeal

I. GENERAL OBJECTIONS

1

B. Respondent objects to the Document Requests on the ground that they call for information that is protected by, inter alia, the attorney-client privilege, the work product privilege, the joint prosecution privilege, and the deliberative process privilege.

C. Respondent objects to the Document Requests on the ground that they are overbroad and burdensome.

D. Respondent objects to the Document Requests on the ground that they are vague.

Responses to the Document Requests shall not be construed as a waiver of these objections.

Document Request No. 1: All documents as to which ComEd has requested or will request "identification" in any Interrogatory served or to be served upon Respondent.

Response to Document Request No. 1:

Respondent objects to this interrogatory on the grounds specified in General Objections A, B, C and D, and the grounds specified in response to the interrogatories. Without waiving such objection, Respondent provides herewith the documents identified in response to Interrogatory No. 5. Respondent further states that Petitioner is already in possession of the record documents identified in response to the interrogatories.

Document Request No. 2: All documents identified by Respondent in any response to any Interrogatory that has been or will be served upon Respondent by Commonwealth Edison.

Response to Document Request No. 2:

Please see response to Document Request No. 1.

Document Request No. 3: All documents relating to your interpretation of the term "emission data" as that term as it is [sic] now or was in the past defined under Section 5/7 of the Illinois Environmental Protection Act, 415 ILCS 5/7, or Section 114(c) of the Clean Air Act, 42 U.S.C. § 7414(c), or their predecessors, and implementing regulations

of either act, including determinations that certain information constitutes or does not constitute emissions data.

Response to Document Request No. 3:

Respondent objects to this request on the grounds specified in General Objections A, B, C, and D. Without waiving such objections, Respondent states that documents in the administrative record supporting Respondent's determination that the information that is the subject of this proceeding constitutes emission data are identified in response to Petitioner's Initial Interrogatories.

Document Request No. 4: All Statements of Justification that were submitted to IEPA from January 1, 1990 to the present.

Response to Document Request No. 4:

Respondent objects to this request on the grounds specified in General Objections A, C, and D.

Document Request No. 5: All agency responses to Statements of Justification submitted to IEPA from January 1, 1990 to the present, including preliminary and final agency determinations and correspondence related to the same.

Response to Document Request No. 5:

Respondent objects to this request on the grounds specified in General Objections A, C, and D.

Document Request No. 6: All documents relating to the ComEd Determination, including all documents reflecting communications relating to that determination.

Response to Document Request No. 6:

Respondent objects to this interrogatory on the grounds specified in General Objections A, B, C, and D, except to the extent that the requested documents are contained in the administrative record. Without waiving such objection, Respondent states that to its knowledge, it is not in possession of any documents reflecting

communications relating to the Com Ed determination prior to the date of that determination other than those contained in the record and those identified in response to Interrogatory No. 5.

Document Request No. 7: All documents relating to each communication between the Sierra Club and IEPA, or the Illinois Attorney General, relating to any matters relating to IPCB 04-215 or IPCB 04-216 or the Sierra Club's FOIA requests.

Response to Document Request No. 7:

Respondent objects to this interrogatory on the grounds specified in General Objections A, B, C, and D. Without waiving such objection, Respondent provides herewith the documents identified in response to Interrogatory No. 5. Respondent further states that to its knowledge, there were no other communications between IEPA or the Illinois Attorney General and Sierra Club prior to the Com Ed determination.

Document Request No. 8: All documents relating to each communication between IEPA, or the Illinois Attorney General, and any other person, relating to any matters relating to IPCB 04-215 or IPCB 04-216 or the Sierra Club's FOIA requests.

Response to Document Request No. 8:


Respondent objects to this interrogatory on the grounds specified in General Objections A, B, C, and D. Without waiving such objections, Respondent states that to its knowledge, there were no communications between IEPA or the Illinois Attorney General and any other person, other than those identified in response to Interrogatory No. 5, relating to IPCB 04-215, IPCB 04-216 or the Sierra Club's FOIA requests prior to the date of the Com Ed determination.

Dated: Chicago, Illinois
November 28, 2005

Respectfully submitted,

LISA MADIGAN, Attorney General of the
State of Illinois

MATTHEW DUNN, Chief, Environmental
Enforcement/
Asbestos Litigation Division

BY: 

Ann Alexander, Assistant Attorney
General and Environmental Counsel
Paula Becker Wheeler, Assistant
Attorney General
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
312-814-3772
312-814-2347 (fax)

Ann Alexander, Assistant Attorney General and
Environmental Counsel
Paula Becker Wheeler, Assistant Attorney General
188 West Randolph Street, Suite 2000
Chicago, Illinois 60601
312-814-3772
312-814-2347 (fax)



**SIERRA
CLUB**
FOUNDED 1892

MIDWEST OFFICE - Chicago

October 27, 2003

Ms. Marilyn Clardy, FOIA Officer
Illinois Environmental Protection Agency
Bureau of Air
1340 North Ninth Street
P.O. Box 19506
Springfield, IL 62794

RECEIVED

NOV 03 2003

SENT BY FAX AND CERTIFIED MAIL

IEPA-DAPC-SPFLD.

Re: FOIA Request For Records Relating To All Coal-Fire Generating Facilities That
Have Been Reported To Illinois Environmental Protection Agency Pursuant To
Section 114 (a) Of The Clean Air Act.

~~CONFIDENTIAL~~

Dear Ms. Clardy:

I have received your response to Sierra Club's FOIA request concerning Midwest Generation coal-fire generating facilities, dated August 27, 2003. Thank you for your attention to that matter. Unfortunately Midwest Generation has provided very little relevant information that is responsive to IEPA oversight.

Sierra Club now requests all records relating to any coal-fire generating facilities that have reported to the IEPA, pursuant to Section 114 (a) of the Clean Air Act, 42 U.S.C. Section 7414 (a), excluding the Illinois Power/Dynergy Baldwin power plant.

Such records may have been originally requested by the EPA in order to determine compliance with the Illinois State Implementation Plan and applicable provisions of the New Source Performance Standards at 40 C.F.R. Part 60.

This request is intended to be inclusive of any coal-fire facilities owned by any power company in Illinois, and not limited to only Midwest Generation, L.L.C.

Pursuant to the Illinois Freedom of Information Act, please provide all records relating to the above request that the IEPA is in receipt of.

Please see the attached "Appendix A" enumerating the specific information requested.

Appendix A

1. Provide a list of all coal-fired generating units for which you are owner or operator which are currently operational or have been retired in the past 10 years. For each such unit, identify the generating station location, the boiler and turbine unit identification number, the date or year commercial operation began, the original design and current boiler heat input capacity (mmmbtu/hr), the original design and current gross and net generating capacity (MWg/MWn), the original design and current steam flow output capacity (lbs steam/hr), the current operating status, for any unit retired or inactive the applicable date or year, current fuel(s) being fired, type of particulate emissions control and year installed, type of sulfur dioxide emissions control and year installed, type of nitrogen oxides emissions control and year installed.
2. For all currently active coal-fired generating units provide monthly and annual total gross and net generation (MW-hr), monthly and annual average heat rate (BTU/KW-hr) and monthly and annual average coal heat content (BTU/lb) and percent sulfur for all years from 1975 through 2002.
3. For all currently active coal-fired generating units provide a list of all capital projects; of an amount greater than \$100,000.00, approved or completed between January 1, 1975 and the date of this request. For each such capital project identify the work performed, the date completed or projected to be completed, the project work order number and the dollar amount approved and/or expended.
4. Provide a copy of the Generating Availability Data System(GADs) data for the period 1/1/75 through 12/31/02 identifying all boiler and turbine related forced, maintenance and planned outages and curtailments for all currently active coal-fired generating units.
5. Provide copies of the summary results page of all stack tests for particulate matter, sulfur dioxide, nitrogen oxides, mercury, lead and hydrogen chloride for the period 1/1/75 through 6/30/02 for all currently active coal-fired generating units.
6. Provide copies of all PSD/NSR permits received and permit applications submitted for the period 1/1/75 to present.
7. Provide copies of all reports, correspondences, memoranda



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)

November 13, 2003

Adam Qhader
Sierra Club
200 North Michigan
Suite 505
Chicago, Illinois 60601-5908

Re: Freedom of Information Act Request

Dear Mr. Qhader:

This letter responds to your October 27, 2003, request for information pursuant to the Illinois Freedom of Information Act ("FOIA") received by the Illinois Environmental Protection Agency ("Illinois EPA") on November 3, 2003, relative to coal-fire generating facilities in Illinois. Specifically, you request that the Illinois EPA provide all records relating to any coal-fire generating facilities that have reported to the Illinois EPA, pursuant to Section 114(a) of the Clean Air Act, 42 U.S.C. Section 7414(a), excluding the Illinois Power Dynegy Baldwin power plant.

On November 10, 2003, the Illinois EPA received Midwest Generation EME, LLC's ("Midwest Generation") response to the USEPA Request for Information pursuant to Section 114 of the Clean Air Act dated February 13, 2003. Midwest Generation has claimed a considerable amount of the information in the response confidential. The Illinois EPA is providing all documents not marked "confidential". The Illinois EPA will evaluate all information marked "confidential" in accordance with "Procedures for Claiming and Determining that Public Information Records are Exempt From Disclosure", 2 Ill. Adm. Code 1828, Subpart D to determine whether the claim is valid. Should the Illinois EPA determine that the information was not properly claimed confidential and/or does not qualify as confidential information pursuant to 2 Ill. Adm. Code 1828.202(a)(1)(F), the Agency will supplement this FOIA response.

Given the Illinois EPA's decision not to provide to you some of the information requested, you have the right to appeal this matter by sending, to the Director of the Illinois EPA, a written notice of appeal pursuant to 2 Ill. Adm. Code 1826.406(b)(3). The notice should be mailed to the Illinois EPA at 1021 North Grand Avenue, East, Springfield, Illinois 62794.

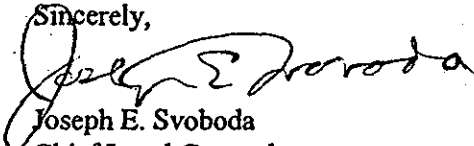
ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
BUREAU OF LAND - PEORIA - 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

Revised by: [illegible]

Enclosed are the non-exempt documents.

Should you have questions or comments with regard to this matter, please contact Illinois EPA Assistant Counsel, Chris Pressnall.

Sincerely,



Joseph E. Svoboda
Chief Legal Counsel

w/enclosures

From: b-nilles@mindspring.com
To: "Marilyn Clardy" <marilyn.clardy@epa.state.il.us>
Date: 2/12/2004 3:43:38 PM
Subject: FOIA: Midwest Generation

Hi Marilyn,

Pursuant to the state's Freedom of Information Act, please provide me with a copy of all records that the agency has received from either Midwest Generation and/or Commonwealth Edison in response to the USEPA Section 114 request these companies received in February 2003.

Sincerely,

Bruce Nilles
Senior Midwest Representative
Sierra Club
200 N. Michigan Ave., Ste 505
Chicago, IL 60601
p. 312.251.1511
c. 312.217.9725
f. 312.251.1780
e. bruce.nilles@sierraclub.org
w. www.illinois.sierraclub.org

CC: "Julie Armitage" <jarmitage@epa.state.il.us>, "Dave Kolaz" <dkolaz@epa.state.il.us>,
"Keith Harley" <Kharley@kentlaw.edu>

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FEB 13 2004

IEPA-DAPC-SPFLD.

Exhibit D



SIDLEY AUSTIN LLP
ONE SOUTH DEARBORN
CHICAGO, IL 60603
(312) 853 7000
(312) 853 7036 FAX

bftaylor@sidley.com
(312) 853-4717

BEIJING	GENEVA	SAN FRANCISCO
BRUSSELS	HONG KONG	SHANGHAI
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DALLAS	LOS ANGELES	TOKYO
	NEW YORK	WASHINGTON, DC

FOUNDED 1866

January 25, 2006

Via Messenger

Ann Alexander
Environmental Counsel and Assistant Attorney General
Office of the Attorney General
188 West Randolph Street
Chicago, IL 60601

Re: Commonwealth Edison Co. ("ComEd") v. Illinois Environmental
Protection Agency ("IEPA"), PCB 04-215

Dear Ms. Alexander:

We are in receipt of the IEPA's Responses to ComEd's Initial Interrogatories and Initial Request for the Production of Documents. IEPA objected to several Interrogatories and Document Requests by stating, without further explanation, that they are overbroad and burdensome, vague, and irrelevant, and it provided no responses to these discovery requests. As discussed below, we believe that additional responses and production of documents are required of IEPA pursuant to the Illinois rules of discovery and the Illinois Pollution Control Board's (hereinafter "the Board's") procedural rules. Please consider this letter as our effort to resolve these discovery matters informally without the assistance of the Board or the Hearing Officer assigned to this case.

Initial Interrogatories and Initial Request for the Production of Documents.

In its Initial Interrogatories, ComEd requested information about IEPA's prior trade secret determinations, as well as information about any prior agency interpretations of what constitutes emissions data. In its document requests, ComEd sought copies of statements of justification relating to trade secrets or confidential/proprietary business information that had been submitted to IEPA within the last ten years and the agency's responses to same.

More specifically, the relevant interrogatories and document requests sought the following:

- Interrogatory No. 12 requested IEPA to identify any determinations it has made relating to the trade secret status of a business's financial information.

- Interrogatory No. 13 requested identification of agency determinations of the trade secret or confidential business information status of any other electric utility company's Generating Availability Data System ("GADS") data or other similar operational data.
- Interrogatory No. 14 requested IEPA to identify determinations it has made that information has constituted "emissions data" as that term is defined by Section 5/7 of the Environmental Protection Act, 415 ILCS 5/7, or the Section 114(c) of the federal Clean Air Act, 42 U.S.C. § 7414(c).
- Document Request No. 4 sought production of all statements of justification—prepared in defense of trade secret or confidential business information claims—submitted to IEPA between January 1, 1990 and the present.
- Document Request No. 5 sought copies of IEPA's responses—including preliminary and final agency determinations and correspondence related to the same—to such statements of justification.

Responses Generally.

IEPA answered the discovery requests enumerated above by referencing "General Objections A, C, and D," which state, respectively, that the Initial Interrogatories and Document Requests seek irrelevant/inadmissible evidence (General Objection A), "are overbroad and burdensome" (General Objection C), and "are vague" (General Objection D). No substantiation of any of the objections was provided, nor was there any explanation of how the general objections applied to the specific requests. Board rules prohibit such responses and require that "[g]rounds for an objection to an interrogatory must be stated *with specificity*...." 35 Ill. Admin. Code § 101.620(c)(emphasis added). Moreover, written objections do not excuse complete refusal to respond to a discovery request. Where written objections are made to part of a request, the remainder of the request "shall be complied with." SUP. CT. R. 214.¹

Irrelevance & Inadmissibility of Evidence Objection.

In General Objection A, IEPA objected to all initial interrogatories and all document requests by citing to 35 Ill. Admin. Code § 105.214(a), the provision that governs admissibility of evidence at Board hearings in which an agency's final determination is appealed. Because § 105.214(a) deals with the admission of evidence at Board hearings, not with the scope of permissible discovery, this Board rule does not provide a basis for IEPA's objection and

¹ The Board looks for guidance to the Illinois Code of Civil Procedure and Illinois Supreme Court Rules concerning discovery. *Illinois v. C&S Recycling, Inc. et al.*, PCB 97-9, 2000 WL890179, *1 (June 22, 2000).

refusal to respond. IEPA has not demonstrated that the information sought by ComEd's interrogatories and document requests would be deemed inadmissible at the hearing, nor has IEPA adequately established that admissibility determinations are relevant to the scope of discovery requests. The Illinois Administrative Code and the Board clearly state that "all relevant information and *information calculated to lead to relevant information is discoverable.*" 35 Ill. Admin. Code § 101.616(a)(emphasis added); Illinois v. Skokie Valley Asphalt et al., PCB 96-98, 2003 WL 22134512, *2 (Sept. 4, 2003). The information sought by ComEd's Initial Interrogatory Nos. 12, 13, and 14 and ComEd's document request Nos. 4 and 5, is relevant to this case. ComEd is challenging a negative agency determination of the trade secret status of sensitive financial and operational data and has asked to review the agency's trade secret analyses of other financial and operational data, including GADS data, prior to the date on which the decision now being appealed was made. Please comply with these discovery requests by providing responses and documents. Otherwise, please provide with specificity the basis on which you believe this objection wholly excuses compliance with ComEd's discovery requests, or withdraw this objection.

Overly Broad and Burdensome Objection.

IEPA has objected to all of the above-enumerated discovery requests as overly broad and burdensome. It has not set forth, however, how these requests are overly board, and consequently, how compliance with them would be unduly burdensome. For instance, does the volume of responsive documents comprise an amount of pages not reasonably produced in the course of discovery? IEPA's generalized objection, without more, does not provide sufficient basis for its failure to respond or produce any responsive documents. As already noted, objections must be stated with specificity. IEPA is further obligated to respond to the request to the extent possible or by initially limiting the scope of its response, even where it is true that a response to the entire scope of an overly broad request would be unduly burdensome. See *Welton v. Ambrose*, 351 Ill. App. 3d 627, 633 (2004) ("despite these requests' somewhat broad wording, surely [the party resisting production] could have provided the records related to the surgery at issue in this case.").

In an effort to obtain responses to our interrogatories and document requests, we are willing to discuss an initial refinement of the scope of certain requests that you claim are overbroad and unduly burdensome. Prior to such discussion, however, please provide specific objections to the above-discussed requests that identify how the requests are overbroad and unduly burdensome, such as by estimating the volume of responsive documents or identifying the method by which responsive documents will be located, or withdraw this objection.

* * *

Please call me if you wish to discuss resolution of the discovery matters identified above. Given our current discovery schedule, we would appreciate your prompt reply.

Sincerely,

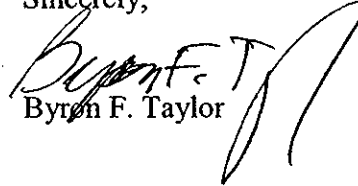

Byron F. Taylor

Exhibit E



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 2, 2006

Via facsimile (312-853-7036)
and United States mail

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

*Re: Commonwealth Edison Co. ("ComEd") v. Illinois Environmental Protection
Agency ("IEPA"), PCB 04-215 – discovery issues*

Dear Mr. Taylor:

I am in receipt of your letter dated January 25 concerning our response to ComEd's discovery. It remains our position that the information sought is plainly outside the scope of allowable discovery in this matter. Through this letter, however, I hope to clarify the basis for that position.

As you are aware, the Board ruled in PCB 04-185 (in a decision I assume you would concede applies substantively to this matter as well) that the hearing was to be held exclusively on the administrative record, rather than de novo as Petitioner Midwest Generation had requested. The discovery requests you cite in your letter, to which we declined to respond on relevance grounds, all seek information concerning Agency decisions in unrelated matters that is not in the administrative record, and could not therefore be considered by the hearing examiner.

The fact that discovery is allowed if it is "calculated to lead to relevant information," 35 Ill. Admin. Code 101.616(a), does not somehow automatically expand the scope of discovery to allow gathering of information entirely unconnected to the record, such as 15 years' worth of IEPA decisions in other matters. The only type of inquiry that could be "calculated to lead to relevant information" in this matter – i.e., lead to information in the record – would be questions directed at whether the administrative record as submitted by IEPA was in fact complete. Accordingly, IEPA was willing to

Byron F. Taylor
February 2, 2006
Page 2

respond to requests to identify communications concerning Sierra Club's FOIA request that took place prior to the Agency's final decision, as such communications could arguably be included in the record. However, ComEd presents no reason, nor could it, why information concerning past trade secret determinations in other matters should have been included in the record of this case. Such information is therefore not discoverable.

IEPA's position is fully supported by prior Board rulings. In Oscar Meyer & Co. v. Environmental Protection Agency, PCB 78-14 (June 8, 1978), where the petitioner had sought discovery concerning its *own* prior permit applications in connection with a permit hearing required to be held exclusively on the administrative record, the Board denied the discovery, holding, "How or why the Agency arrived at a different conclusion on the same facts is simply not relevant to the Board determination." The Board held that in a record-only proceeding, discovery is allowable only "to insure that the record filed by the Agency is complete and contains all of the material concerning the permit application that was before the Agency when the denial statement was issued." Similarly, in Owens-Illinois, Inc. v. Environmental Protection Agency, PCB 77-288 (February 2, 1978), also in connection with a hearing held exclusively on the administrative record, the Board held that the petitioner's interrogatories concerning Agency decisions not contained in the record were beyond the scope of permissible discovery because "Agency policy in the granting of other permits is not properly at issue and the discovery sought is not relevant."

In Joliet Sand and Gravel Co. v. Environmental Protection Agency, PCB 86-159, again addressing the question of the scope of discovery in proceedings held exclusively on the administrative record, the Board noted that, while "the Board could properly determine whether the Agency reviewed all facts 'available to' or 'in possession of' the Agency when making its permitting decision, the Board does not construe this holding as authorizing unlimited discovery in permit appeals." It concluded, in disallowing the petitioner's discovery requests, "Were the Agency a natural person, Joliet's discovery requests would amount to an attempt to hold the person upside down, to shake that person, and to see what fell out of the person's pockets, without differentiating between lint and items of value." The same description might well be applied to ComEd's requests at issue here.

Although, for these reasons, Respondent IEPA is clearly not required to respond to the requests for information concerning decisions in unrelated matters, it is worth noting as well that the Agency could not provide that information even if it had to. ComEd requests information concerning trade secret decisions dating back to 1990. Yet IEPA maintains no central recordkeeping for trade secret determinations. Those decisions are made in particular matters as they come up, and relevant information kept in the files of those matters, but no one at the agency keeps track of those decisions in any general or global way. The only way to gather any information at all concerning past trade secret determinations would be anecdotally – i.e., asking current staff if they recall making any such decisions, or whether they recall others making them. This haphazard approach would succeed only in obtaining a fractional, non-random sampling of the more recent decisions, which by its very nature would be useless for drawing larger evidentiary

Byron F. Taylor
February 2, 2006
Page 3

conclusions. Thus, ComEd's requests are clearly overbroad and burdensome in addition to being irrelevant.

For these reasons, we must continue to decline to respond either in whole or in part to the discovery requests at issue. However, if you would like to discuss this matter further, please feel free to contact me again.

Very truly yours,



Ann Alexander