

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Commonwealth Edison Company,
Petitioner

v.

Illinois Environmental Protection Agency,
Respondent

)
) **PCB 04-215**
) **Trade Secret Appeal**
)
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)

NOTICE OF FILING

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

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

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

Please take notice that today we have filed with the Office of the Clerk of the Pollution Control Board via electronic filing Respondent's Response and Memorandum in Opposition to Petitioner's Motion for an Interlocutory Appeal of Order denying Motions to Compel. A copy is herewith served upon the assigned Hearing Officer and the attorneys for the Petitioner, Commonwealth Edison.

Dated: Chicago, Illinois
June 22, 2007

LISA MADIGAN, Attorney General of the
State of Illinois

MATTHEW DUNN, Chief, Environmental Enforcement/
Asbestos Litigation Division

BY: *Paula B. Wheeler*
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**RESPONSE AND MEMORANDUM IN OPPOSITION TO PETITIONER'S
MOTION FOR INTERLOCUTORY APPEAL OF ORDER DENYING MOTIONS
TO COMPEL DISCOVERY**

Respondent Illinois Environmental Protection Agency ("IEPA" or the "Agency") submits this Response and Memorandum in Opposition to Petitioner Commonwealth Edison Company's ("ComEd") Motion for Interlocutory Appeal of Order Denying Motions to Compel Discovery. ComEd's Motion, filed May 31, 2007, is to appeal the Corrected Hearing Officer's Order denying ComEd's Motion and Amended Motion to Compel the IEPA's response to several of ComEd's Initial Interrogatories and Request for the Production of Documents.

The Hearing Officer's Corrected Order, entered April 26, 2007, denying ComEd's Motions to Compel should be affirmed and upheld. In its present Motion, ComEd mischaracterizes the IEPA's position by focusing on the Agency's argument that the disputed discovery is overbroad, vague, and burdensome. While admittedly this was one of the important arguments asserted by the IEPA, the key issue the Agency has cited from the beginning is the **lack of relevance** of the requested information in a trade secret hearing when said hearing is to be held exclusively on the administrative record. The Hearing Officer reiterated the IEPA's argument in denying ComEd's Motions to Compel,

stating that based upon the Board's procedural rules, the voluminous historical information sought is irrelevant and thus, inadmissible.

In support of this Motion, Respondent hereby incorporates as if fully stated herein the Response and Memorandum in Opposition to Petitioner's Motion for Interlocutory Appeal of Order denying Motions to Compel Discovery filed June 14, 2007 by the Illinois Environmental Protection Agency in the related trade secret appeal PCB Case No. 04-216.

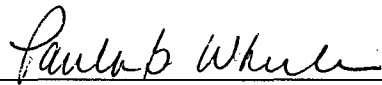
For the foregoing reasons, Respondent respectfully requests that Petitioner's Motion for Interlocutory Appeal of Order Denying Motions to Compel Discovery be denied.

Dated: Chicago, Illinois
June 22, 2007

Respectfully submitted,

LISA MADIGAN, Attorney General of the
State of Illinois

MATTHEW DUNN, Chief, Environmental
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Asbestos Litigation Division

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CERTIFICATE OF SERVICE

I hereby certify that I did on the 22nd day of June, 2007 send by United States
mail a copy of Respondent's Response to Petitioner's Motion for an Interlocutory
Appeal, to:

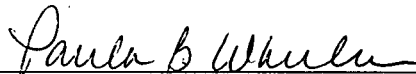
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Dated: Chicago, Illinois
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