

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**Commonwealth Edison Company,
Petitioner**

y.

**Illinois Environmental Protection Agency,
Respondent**

PCB 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

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 a Response to Commonwealth Edison's Initial Requests for Admission. A copy is herewith served upon the assigned Hearing Officer and the attorneys for the Petitioner, Commonwealth Edison.

Dated: Chicago, Illinois
August 17, 2007

LISA MADIGAN, Attorney General of the
State of Illinois
MATTHEW DUNN, Chief, Environmental Enforcement/
Asbestos Litigation Division
ROSEMARIE CAZEAU, Assistant Attorney General
Chief, Environmental Bureau

BY: Paula Becker Wheeler
Paula Becker Wheeler, Assistant Attorney General
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Chicago, Illinois 60602
312-814-1511
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Commonwealth Edison Company,)	
Petitioner)	PCB 04-215
)	Trade Secret Appeal
v.)	
)	
Illinois Environmental Protection Agency,)	
Respondent)	
)	

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 Request for Admission ("Admission Requests"), answers and objects as follows:

I. GENERAL OBJECTIONS

A. Respondent objects to the Admission Requests 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 some information not in or directly pertinent to the administrative record, and/or developed after Respondent IEPA's decision.

B. Respondent objects to the Admission 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 Admission Requests on the ground that they are overbroad and burdensome.

D. Respondent objects to the Admission Requests on the ground that they are vague and/or ambiguous.

E. Respondent objects to the instructions and definitions to these Admission Requests insofar as they require Respondent to undertake or investigate or produce information in excess of what is required of it under the Illinois Code of Civil Procedure.

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

Admission Request No. 1:

In the past, the IEPA has utilized redaction as a means to release documents pursuant to an Illinois Freedom of Information Act ("FOIA") request without compromising a confidential business information claim by the person who originally submitted the information to the IEPA.

Response to Admission Request No. 1:

Respondent objects to Admission Request No. 1 on the grounds specified in General Objections A, B, C, D, and E. Without waiving such objection, Respondent admits that the Illinois Environmental Protection Agency ("IEPA"), Bureau of Air, has utilized redaction as a means to release documents pursuant to an Illinois Freedom of Information Act ("FOIA") in certain circumstances without compromising a confidential business information claim by the person who originally submitted the information to the IEPA.

Admission Request No. 2:

Prior to issuing its Denial, the IEPA did not prepare, or request ComEd to prepare, a version of ComEd's CPR or GADS excerpt in which CBI and/or trade secret information was redacted.

Response to Admission Request No. 2:

Respondent objects to Admission Request No. 2 on the grounds specified in General Objection A. Without waiving such objection, Respondent admits Admission Request No. 2.

Admission Request No. 3:

In response to a FOIA request, the IEPA has authority to release portions of a document that are not confidential and/or trade secret, while redacting or otherwise not disclosing portions of the same document that are confidential and/or trade secret.

Response to Admission Request No. 3:

Respondent objects to Admission Request No. 3 on the grounds that it asks for a legal conclusion and, further that the applicable statutes and regulations speak for themselves.

Without waiving such objections, Respondent admits Admission Request No. 3.

Admission Request No. 4:

IEPA has on more than one occasion contacted trade secret claimants to discuss the merits of their claim(s) prior to denying their claims.

Response to Admission Request No. 4:

Respondent objects to Admission Request No. 4 on the grounds specified in General Objections A and D. Without waiving such objections, Respondent admits that the IEPA, Bureau of Air, has on more than one occasion contacted trade secret claimants to discuss the merits of their claims prior to denying their claims.

Admission Request No. 5:

Subsequent to IEPA's receipt of ComEd's Statement of Justification, dated March 11, 2004, and prior to issuing the Denial, the IEPA did not contact ComEd or its counsel to discuss the merits of its trade secret claims.

Response to Admission Request No. 5:

Respondent objects to Admission Request No. 5 on the grounds specified in General Objection A. Without waiving such objections, Respondent admits Admission Request No. 5.

Admission Request No. 6:

The IEPA did not specifically determine that ComEd's CPR lacked competitive value.

Response to Admission Request No. 6:

Respondent objects to Admission Request No. 6 on the grounds specified in General Objection D. Without waiving such objections, Respondent neither admits nor denies Admission Request No. 6, but states in response that the IEPA, Bureau of Air, determined that, at a minimum, portions of Com-Ed's CPR lacked competitive value.

Admission Request No. 7:

The IEPA did not specifically determine that ComEd's GADS excerpt lacked competitive value.

Response to Admission Request No. 7:

Respondent objects to Admission Request No. 7 on the grounds specified in General Objection D. Without waiving such objections, Respondent neither admits nor denies Admission Request No. 7, but states in response that the IEPA, Bureau of Air, determined that Com-Ed failed to demonstrate that the GADS excerpt had competitive value.

Admission Request No. 8:

The IEPA did not specifically determine that ComEd's CPR constituted emissions data.

Response to Admission Request No. 8:

Respondent objects to Admission Request No. 8 on the grounds specified in General Objection D. Without waiving such objections, Respondent denies Admission Request No. 8.

Admission Request No. 9:

The IEPA did not specifically determine that ComEd's GADS excerpt constituted emissions data.

Response to Admission Request No. 9:

Respondent objects to Admission Request No. 9 on the grounds specified in General Objection D. Without waiving such objections, Respondent admits Admission Request No. 9, but states further that the IEPA determined that ComEd failed to demonstrate that the GADS excerpt did not constitute emissions data.

Admission Request No. 10:

The Administrative Record compiled by IEPA in this matter contains no document supporting any determination by IEPA that the CPR lacked competitive value.

Response to Admission Request No. 10:

Respondent denies Admission Request No. 10.

Admission Request No. 11:

The Administrative Record compiled by IEPA in this matter contains no document supporting any determination by IEPA that the GADS excerpt lacked competitive value.

Response to Admission Request No. 11:

Respondent admits Admission Request No. 11, but states further that the applicable statutes and regulations support the determination.

Admission Request No. 12:

The IEPA did not consult or retain any expert when evaluating whether the CPR and GADS excerpt lacked competitive value.

Response to Admission Request No. 12:

Respondent objects to Admission Request No. 12 on the grounds specified in General Objection A. Without waiving such objections, Respondent admits Admission Request No. 12.

Admission Request No. 13:

No person who assisted the IEPA in considering whether the CPR and GADS data lacked competitive value has experience owning, operating, managing, or running a coal-fired generating station.

Response to Admission Request No. 13:

Respondent objects to Admission Request No. 13 on the grounds specified in General Objection A. Without waiving such objections, Respondent admits Admission Request No. 13.

Admission Request No. 14:

The IEPA used a different definition of "emissions data" in the Denial than had previously been applied in other IEPA evaluations of trade secret claims. (*See, e.g., C. Romaine Dep. 126:6-12*).

Response to Admission Request No. 14:

Respondent objects to Admission Request No. 14 on the grounds specified in General Objection D, and on the grounds that it calls for a legal conclusion. Without waiving such objections, Respondent denies that the IEPA used a different definition of emissions data in the Denial than had previously been applied in other IEPA evaluations of trade secret claims.

Admission Request No. 15:

The IEPA's interpretation of emissions data, as it has evolved, is not reflected in its entirety in any Illinois statute, regulation, guidance document, or other IEPA-issued publication or authority.

Response to Admission Request No. 15:

Respondent objects to Admission Request No. 15 on the grounds specified in General Objection D, and on the grounds that it calls for a legal conclusion. Without waiving such objections, Respondent denies Admission Request No. 15.

Admission Request No. 16:

The IEPA's definition of "emissions data" has evolved over time. (*See, e.g., C. Romaine Dep. 126:6-12*).

Response to Admission Request No. 16:

Respondent denies Admission Request No. 16.

Admission Request No. 17:

The most recent modification of IEPA's definition of "emissions data" occurred in conjunction with IEPA's issuance of the Denial. (*See, e.g., C. Romaine Dep. 106*).

Response to Admission Request No. 17:

Respondent denies Admission Request No. 17.

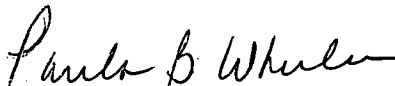
Dated: Chicago, Illinois
August 17, 2007

Respectfully submitted,

LISA MADIGAN, Attorney General of the
State of Illinois

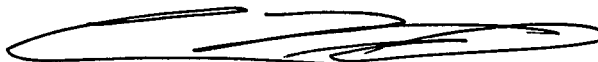
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STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

CHRISTOPHER PRESSNALL, being first duly sworn upon oath, deposes and states that he is an Assistant Counsel with the Division of Legal Counsel, Illinois Environmental Protection Agency, the Respondent in this cause; that he has read Petitioner Requests for Admission and the foregoing responses given thereunder by him; and that to the best of his knowledge, information and belief, said responses are true, correct and complete in accordance with the request.



CHRISTOPHER PRESSNALL

SUBSCRIBED AND SWORN to before me
this 16 day of August, 2007.

NOTARY PUBLIC



RECEIVED
ATTORNEY GENERAL

AUG 17 2007

ENVIRONMENTAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**Commonwealth Edison Company,
Petitioner**

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**Illinois Environmental Protection Agency,
Respondent**

PCB 04-215
Trade Secret Appeal

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of August, 2007 I caused to be served copies of the attached Notice of Filing and Respondent's Response to Petitioner Commonwealth Edison's Initial Requests for Admission, by hand delivery, to:

Byron F. Taylor
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Hearing Officer
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BY:

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