
**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS COMMERCE COMMISSION)
)
 On Its Own Motion,)
) **No. 98-0147**
 Rulemaking proceeding to implement)
 Section 16-119A(a) of the Public Utilities)
 Act regarding Standards of Conduct)

**DIRECT TESTIMONY OF MARTIN J. BLAKE, PH.D.
ON BEHALF OF
COMMONWEALTH EDISON COMPANY**

Q: PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A: My name is Martin J. Blake. My business address is 6711 Fallen Leaf, Louisville, Kentucky 40241.

Q: BY WHOM AND IN WHAT CAPACITY ARE YOU EMPLOYED?

A: I am a Member and Principal of The Prime Group, LLC. The Prime Group provides consulting services in the areas of marketing, market research, rate and regulatory support, training, and strategic planning for energy industry clients. The Prime Group is focused on helping clients to prepare for the transition to a more competitive utility industry environment.

Professional Qualifications & Experience

Q: PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.

A: I received my Ph.D. in Agricultural Economics in 1976 from the University of Missouri, Columbia. My doctoral work centered on the areas of marketing and econometrics. I also hold a Master of Arts in Economics from the University of Missouri, Columbia, which I received in 1972. In addition, I received a Bachelor of Arts degree in Economics from Illinois Benedictine College in 1970.

Q: IN WHAT AREAS DOES YOUR PRACTICE CONCENTRATE?

A: As a member of The Prime Group, I have prepared and filed Order No. 888 and Order No. 889 compliance filings at the Federal Energy Regulatory Commission (“FERC”) for a number of electric utilities as well as Order No. 888 and Order No. 889 waiver requests for other utilities. I have prepared market power analyses in support of market-based rate filings at FERC for utilities and their marketing affiliates, as well as assisting other utilities with their market-based rate filings. I have also assisted several utilities in addressing both FERC and state affiliate transactions concerns and have provided training regarding standards of conduct. I have assisted utilities with developing strategic marketing plans and implementing these plans. I have provided utility clients with assistance regarding regulatory policy, strategy and liaison; state and federal regulatory filing development, testimony and support; cost of service development and support; the development of innovative rates to achieve strategic objectives; the unbundling of rates and the development of menus of rate alternatives for use with customers; performance-based rate and incentive rate development; and energy marketing and brokering capability development. I have made presentations to train account executives in sales and customer negotiation, as well as

presentations in ratemaking and utility finance seminars and workshops regarding basic utility marketing. I have provided marketing, market research and marketing support services for utility clients and have assisted them in assessing their marketing capabilities and processes.

Q: PLEASE BRIEFLY SUMMARIZE YOUR AREAS OF PROFESSIONAL EXPERIENCE PRIOR TO JOINING THE PRIME GROUP.

A: I have professional experience as an economist and professor of economics, as a utility regulator, and as a utility manager and executive.

Q: PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AS AN ECONOMIST.

A: From January 1977 to December 1986, I was employed first as an Assistant Professor, then as an Associate Professor, and finally as a Professor of Agricultural Economics at New Mexico State University in Las Cruces, New Mexico ("NMSU"). I was the head of the undergraduate program and taught economics, agricultural economics and econometrics. While at NMSU, I also worked as a consultant for various clients, providing price forecasting, load forecasting, and marketing services. Since 1992, I have taught mathematical economics and econometrics as an Adjunct Professor in the Economics Department at the University of Louisville. Prior to my joining the faculty at NMSU, I served in the U. S. Army as an instructor of economics, statistics, and accounting at the U. S. Army Institute of Administration at Fort Benjamin Harrison, Indianapolis, Indiana.

I also have a variety of experience with the application of economics to utility public policy issues. In addition to my experience as a utility regulator and executive, which I describe below, I have, for example, taught ratemaking since 1993 for electric utilities at the NARUC Annual Regulatory Studies Program at Michigan State University. From May 1983 to August 1983, while on a sabbatical leave from NMSU, I served as a Policy Analyst for the Assistant

Secretary for Land and Water at the U. S. Department of Interior.

Q: PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AS A UTILITY REGULATOR.

A: From January 1987 to November 1990, I served as a Commissioner and as the Chairman of the New Mexico Public Service Commission. As a Commissioner, my duties included making policy and adjudicatory decisions regarding rates, terms of service, financing, certificates of public convenience and necessity, and complaints for electric, gas, water, and sewer utilities. As Chairman, I supervised a staff of thirty-two professionals and sixteen support staff. During my tenure on the New Mexico Commission, I also served as Chairman of the Western Conference of Public Service Commissioners Electric Committee and as Chairman of the Committee on Regional Electric Power Cooperation, a group composed of state public service commissioners and representatives from the state energy offices of the thirteen western states.

As a Commissioner, I interpreted legislation, reviewed prior Commission cases to determine the precedents that they provided, drafted rules and regulations, wrote Orders, conducted hearings, ruled on motions, and served as an arbitrator in alternative dispute resolution proceedings. Although I do not have a law degree, I performed adjudicatory and regulatory functions for the four years that I served on the Commission.

Q: PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AS A UTILITY MANAGER.

A: From December, 1990 to June 1996, I was employed by Louisville Gas and Electric Company ("LG&E"). Initially, I served as LG&E's Director of Regulatory Planning. In this position, I was responsible for coordinating all of LG&E's state and federal regulatory efforts, and advised and presented testimony to regulators. In performing my duties in the federal regulatory area, I performed the market power analysis in LG&E's original market-based rate filing at the FERC, which was one of the first applications of the "hub and spoke" methodology that

the FERC now uses in assessing generation market dominance in market-based rate filings; supervised the preparation of the market-based rate filings; and served as LG&E's principal witness in this case. I also helped develop the electronic bulletin board that the FERC required as a condition for approving the market-based tariff.

Additionally, I helped to develop LG&E's comparable transmission tariff filing, which provided third parties with access to LG&E's transmission system at the same price, terms and conditions as LG&E. This was the first tariff providing comparable transmission service that was filed and approved by the FERC and was filed before Order No. 888 was issued by FERC. In this comparable transmission tariff filing, I served as LG&E's principal witness and negotiated the settlement in this case with FERC staff.

When LG&E Power Marketing filed for the ability to charge market-based rates, I helped to develop the codes of conduct that were submitted to the FERC as a part of the filing.

My areas of responsibility were expanded in April 1994 to include marketing and strategic planning. As the Director, Marketing, Planning and Regulatory Affairs, I was responsible for coordinating LG&E's retail gas and electric marketing, strategic planning, and state and federal regulatory efforts. I continued to be employed in that capacity at LG&E until June 1996, when I joined the Prime Group as one of its Principals.

Q: PLEASE DESCRIBE THE INDUSTRY GROUPS IN WHICH YOU HAVE PARTICIPATED.

A: I have served on several regional transmission coordination groups such as the Interregional Transmission Coordination Forum, and the General Agreement on Parallel

Paths, as well as the following committees of the Edison Electric Institute ("EEI") -- Economics and Public Policy Executive Advisory Committee, Strategic Planning Executive Advisory Committee, Transmission Task Force, and Power Supply Policy Technical Task Force. Recently, I have worked with a group of utilities developing the Midwest ISO.

Q: HAVE YOU TAUGHT ANY COURSES OR SEMINARS IN THE AREA OF UTILITY RESTRUCTURING?

A: Yes. In addition to teaching ratemaking for electric utilities at the NARUC Annual Regulatory Studies Program since 1993, I have also taught a course regarding the institutions and organizations of the new electric utility industry. Each year, I also teach and conduct numerous workshops and programs, and deliver invited presentations, to utility managers and regulators on a variety of subjects including industry restructuring.

Q. IN WHICH CASES HAVE YOU PREVIOUSLY TESTIFIED?

A. I testified before the Kentucky Public Service Commission in the rehearing in Case No. 90-158, an LG&E rate case; in Case No. 92-494, a biennial fuel adjustment clause review; in Case No. 93-150, an application for approval of a DSM cost recovery mechanism and a set of initial programs; in Case No. 94-332, an application for an environmental cost recovery mechanism; in case No. 92-494-B, regarding the confidentiality of coal bid data; and in case No. 95-455, a biannual review of the environmental cost recovery mechanism. I also participated in the conference to review LG&E's first integrated resource plan in Case No. 91-423 and testified in a number of fuel adjustment clause proceedings. I

prepared and filed testimony before the FERC in cases ER92-533, in which LG&E provided open transmission access and also received authority to charge market-based rates for its generation, and ER 94-1380, the first comparability tariff which was approved by the FERC. I prepared and filed rebuttal testimony in Cause No. PUD 960000116, Oklahoma Gas and Electric Company's last rate case before the Oklahoma Corporation Commission. In that case, I rebutted intervenor and staff proposals to disallow certain marketing, advertising, economic development and research and development expenses. I have prepared and filed direct and rebuttal testimony for Southern California Edison Company in Case Number 90-12-018 (phase 5). In this testimony, I reviewed the reasonableness of contracting by Southern California Edison with Integrated Energy Group (IEG) to provide marketing services to Southern California Edison and the reasonableness of the resulting marketing services performed by IEG. I prepared and filed direct and rebuttal testimony for Oklahoma Gas and Electric in Arkansas Public Service Commission Docket No. 96-360-U regarding recovery of stranded cost by Entergy Arkansas, Inc. In this testimony, I recommended recovery of 100% of stranded costs at such time as costs are actually stranded. I also testified before the New Mexico Public Utility Commission in Docket No. 2797, a general rate case for Plains Electric Generation and Transmission Cooperative, Inc.

With respect to the Illinois Commerce Commission ("ICC"), I testified in ICC Docket 98-0013 and 98-0035, which were concerned with ensuring non-discrimination with regard to affiliate transactions for electric utilities. In this case, I sponsored ComEd's

proposed affiliate transactions rules and suggested some basic principles that the Illinois Commerce Commission should follow in developing rules and regulations for ensuring non-discrimination and non-cross subsidization in transactions with affiliated and unaffiliated alternative retail electric suppliers (ARES). I also testified in ICC Docket 98-0036, which was a rulemaking to develop rules and regulations for assessing and assuring the reliability of the transmission and distribution systems as a part of electric utility restructuring in Illinois.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. I have been asked by Commonwealth Edison to discuss the Standards of Conduct and requirements for functional separation that were adopted by the FERC in Order Nos. 889 and 889-A, explain how the FERC has decided those Standards of Conduct should be implemented, and review how the FERC has dealt with Codes of Conduct filed in market-based rate proceedings. I will testify how the approach taken by the FERC could be applied by the ICC in these proceedings to establish Standards of Conduct and investigate potential functional separation between the delivery and generation services of electric utilities in Illinois so as to prevent undue discrimination and promote efficient competition at reasonable cost, as required by Section 16-119A of the Electric Service Customer Choice and Rate Relief Law of 1997 (“the Restructuring Act”). Additionally, I am introducing and supporting the Standards of Conduct and functional separation rules that ComEd is proposing in this proceeding. These rules are attached to my testimony as Exhibit A.

Q. WHAT CRITERIA WOULD YOU RECOMMEND THAT THE ILLINOIS COMMERCE COMMISSION APPLY IN DEVELOPING STANDARDS OF CONDUCT AND IN INVESTIGATING THE NEED FOR AND ADOPTING RULES REQUIRING FUNCTIONAL SEPARATION BETWEEN THE GENERATION SERVICES AND THE DELIVERY SERVICES OF ELECTRIC UTILITIES IN ILLINOIS?

A. I believe that the Commission should look to the words of Section 16-119A of the Restructuring Act as well as its own prior precedent in determining what rules to adopt in this proceeding. The Commission is not starting with a blank slate in this rulemaking in addressing Standards of Conduct or in investigating the need for and adopting rules requiring functional separation between the generation services and delivery services of electric utilities in Illinois. The Commission has guidance provided by the Restructuring Act, as well as precedent set in the Non-Discrimination Rulemaking decided recently by the Commission in which I was also a witness. I have taken this guidance into account in this testimony, as well as in the rules which I recommend that the Commission adopt.

Q. PLEASE DESCRIBE THE GUIDANCE THAT THE ACT PROVIDES IN DEVELOPING STANDARDS OF CONDUCT AND RULES REGARDING FUNCTIONAL SEPARATION FOR ELECTRIC UTILITIES IN ILLINOIS.

A. I am informed by counsel that Section 16-119A(a) of the Act charges the Commission to initiate a rulemaking proceeding to establish Standards of Conduct for electric utilities whose principal service territory is within Illinois. Section 16-119A(a) expressly identifies

purposes that the Commission is to achieve in developing Standards of Conduct. I am informed by counsel that Section 16-119A(b) provides the Commission with authority to investigate and to adopt rules regarding functional separation. That Section also expressly identifies purposes that the Commission is to achieve in investigating whether to adopt rules requiring functional separation. Finally, Section 16-119A(c) specifies criteria which, I am informed by counsel, the Commission must take into account under both Section 16-119A(a) and Section 16-119A(b) in developing rules regarding Standards of Conduct and functional separation.

Q. PLEASE DESCRIBE THE PURPOSES FOR DEVELOPING STANDARDS OF CONDUCT THAT ARE CONTAINED IN SECTION 119A(a).

A. The purposes of developing Standards of Conduct identified in Section 16-119A(a) are to: (1) create efficient competition between suppliers of generating services and sellers of such services at retail and wholesale, by allowing all customers of a public utility that distributes electric power and energy to purchase electric power and energy from the supplier of their choice in accordance with Section 16-104, (2) to prevent undue discrimination, and (3) to promote efficient competition.

Q. PLEASE DESCRIBE THE GUIDANCE PROVIDED TO THE COMMISSION IN SECTION 16-119A(b) REGARDING THE INVESTIGATION OF RULES REGARDING FUNCTIONAL SEPARATION?

A. Section 16-119A(b) states that the Commission may investigate:

the need for, and adopt rules requiring, functional separation between the generation services and the delivery services of those electric utilities whose

principal service area is in Illinois as necessary to meet the objective of creating efficient competition between suppliers of generating services and sellers of such services at retail and wholesale.

Section 16-119A(b) also provides that after January 1, 2003, the Commission may investigate the need for, and adopt rules requiring, functional separation between an electric utility's competitive and non-competitive services. Thus, I am informed by counsel that the Commission has the authority to investigate and issue rules regarding the functional separation between an electric utility's generation and delivery services immediately, but cannot address the functional separation between an electric utility's competitive and non-competitive services until 2003.

Q. WHAT CRITERIA DOES SECTION 16-119A(c) SPECIFY FOR THE COMMISSION TO TAKE INTO ACCOUNT IN DEVELOPING RULES REGARDING STANDARDS OF CONDUCT AND FUNCTIONAL SEPARATION?

A. Section 16-119A(c) of the Act specifies three criteria. Section 16-119A(c) first states that in establishing or considering the need for such rules, the Commission shall take into account 1) "the effects on the cost and reliability of service", and 2) "the obligations of the utility to provide bundled service under this Act." Section 16-119A(c) further specifies that the Commission shall adopt rules that 3) "are a cost effective means to ensure compliance with this Section."

Q. ARE THERE ANY DECISIONS TO WHICH THE COMMISSION MIGHT LOOK FOR GUIDANCE ON THE ISSUES BEING CONSIDERED IN THIS CASE?

A. In some states, state regulators have addressed Standards of Conduct and functional

separation for natural gas utilities, which might provide some guidance for addressing these same issues for electric utilities, but that has not happened here in Illinois. However, the Commission's September 14, 1998 Order in Docket No. 98-0035 addresses some of the same issues that presumably will be considered in this case, such as information sharing and employee transfers. Based on my experience both as a state regulator and as a utility manager, it is my opinion that the rules issued in this proceeding should be consistent with the rules issued in Docket No. 98-0035.

Q. HOW DOES THE RESTRUCTURING ACT DEFINE "DELIVERY SERVICES"?

A. The Act defines "delivery services" as:

those service provided by the electric utility that are necessary in order for the transmission and distribution systems to function so that retail customers located in the electric utility's service area can receive electric power and energy from suppliers other than the electric utility, and shall include, without limitation, standard metering and billing services. (emphasis supplied).

Thus, the General Assembly has identified transmission and distribution as two of the key elements of delivery services.

Q. DO TRANSMISSION SERVICES AND DISTRIBUTION SERVICES HAVE THE SAME CHARACTERISTICS?

A. No. Both transmission and distribution have different characteristics that make it important to address these two elements separately.

Q. PLEASE EXPLAIN THE CHARACTERISTICS OF TRANSMISSION SERVICE .

A. Transmission lines were originally built to deliver power from a utility's generating stations to distribution substations from which it would ultimately be delivered to end-use

customers. Over time, utilities found it advantageous to interconnect with other utility systems to enhance reliability and reduce the generating reserves they would need to maintain in order to provide reliable service to customers. For the most part, the transmission system of the eastern interconnected grid was not built to move large blocks of power long distances. The existing transmission grid is like a system of city streets, not a superhighway. Most utilities do not have sufficient capacity at their interfaces with other utilities to meet the peak needs of their end-use customers by importing power alone. Transmission constraints at an interface may require that some transmission service customers have their transactions curtailed in order to maintain reliable operation of the transmission system. Because transmission capacity at interfaces with other utilities may not be sufficient to meet the needs of all market participants for transmission service, information regarding available transmission capacity, reservation rules and curtailment rules are significant issues that must be addressed.

Q. PLEASE EXPLAIN THE CHARACTERISTICS OF DISTRIBUTION SERVICE .

A. Distribution service involves receiving electric power at transmission voltage from the transmission system and delivering it at a reduced voltage to end-use customers.

Distribution service is one of the elements of bundled electric service that will remain a tariffed monopoly service provided by the utility in a competitive retail environment.

Distribution systems are currently planned and constructed to meet the non-coincident peak demands of all customers on the system. This helps to ensure that distribution systems are able to carry all of the electric power needed to meet the needs of all

customers. Unlike transmission systems, the availability of sufficient distribution capacity is not a constraint that can be used to prevent access to alternative suppliers. Thus, the availability of capacity, reservation rules and curtailment rules that are big issues for transmission service are not an issue for distribution service. The big issues regarding distribution service are outage information, connections to the distribution system, and access to customer usage information.

Q. HOW HAS THE FERC ADDRESSED TRANSMISSION ISSUES?

A. Because the availability of transmission service is an important issue in a competitive market, FERC Order Nos. 888 and 889 assure that transmission service is available to all parties on a non-discriminatory basis and that all parties have equal access to information regarding how much transmission capacity is available at each interface. All of the utilities in Illinois that are regulated by the FERC have adopted open access transmission tariffs to comply with Order No. 888, are participating in an Open Access Same-time Information System (OASIS) and have filed written procedures implementing the Standards of Conduct that the FERC established in Order No. 889 regarding functional separation of transmission and wholesale merchant personnel. Establishing an independent system operator (“ISO”) can also help to provide all parties with assurance of non-discriminatory transmission service. In *Wisconsin Public Power Inc., et al.*, 83 FERC ¶ 61,198 (1998), the FERC found that:

a properly structured ISO or other transmission entity can eliminate the potential for the strategic use of a transmission system owner’s priority to use internal system capacity for native load. The ISO or other transmission entity can also eliminate the incentive to engage in strategic curtailments of generation that a

transmission operator's generation service competitors own and can remove any incentive to game OASIS operations. This will promote generation entry and competition, since a properly structured ISO or other transmission entity have no stake in favoring certain market participants over others and potential entrants would likely see the transmission market as fair.

Section 16-126 of the Act provides that each Illinois electric utility owning or controlling transmission facilities or providing transmission services in Illinois and that is a member of the Mid-America Interconnected Network must join an ISO. On September 16, 1998, the FERC approved the Midwest ISO which includes most of the electric utilities in Illinois as well as a number of other states. The combination of the open access transmission service filings of utilities in Illinois, and the approval of the Midwest ISO means that issues regarding non-discriminatory transmission service have been adequately addressed by the FERC and do not need to be addressed further in this proceeding.

Q. WHAT HAS FERC SAID REGARDING ITS AUTHORITY OVER TRANSMISSION SERVICE FOR RETAIL CUSTOMERS?

A. The FERC has not exerted jurisdiction over transmission service that is included in the bundled sale of power to native load, but it has exerted jurisdiction over unbundled retail transmission that occurs as a result of a state open access program. In Order No. 889-A, the FERC stated that:

when a utility uses its own transmission system to transmit purchased power to retail load customers we have no jurisdiction over the transmission that is included in the bundled sale of power to native load. Order No. 889-A, III FERC Stats. & Regs. ¶ 31,049 at 30,552.

However, in Order No. 888-A, the FERC stated that:

if unbundled retail transmission in interstate commerce occurs voluntarily by a

public utility or as a result of a state retail access program, this Commission [the FERC] has exclusive jurisdiction over the rates, terms and conditions of such transmission. FERC Stats. & Regs., Regulations Preambles January 1991 - June 1996 ¶ 31,036 at 31,781.

Q. DOES THE RESTRUCTURING ACT SAY ANYTHING ABOUT TAKING ACCOUNT OF FERC'S JURISDICTION IN THESE PROCEEDINGS?

A. Section 16-119A(d) of the Act states that:

Nothing in this Section shall be construed as imposing any requirements or obligations that are in conflict with federal law.

I am informed by counsel that this provision means the rules that the Commission develops in this proceeding must be consistent with the FERC's treatment of transmission with regard to unbundled retail transmission that occurs as a result of the Illinois state open access program. Because, as noted in the Act, transmission and distribution are both key elements of providing delivery service, it would be appropriate for the Commission to model its rules in this proceeding after the rules the FERC has adopted regarding transmission service. This would help to ensure a consistent approach for treating both transmission and distribution and would help to promote the development of a competitive retail market.

Q. PLEASE IDENTIFY WHERE THE FERC HAS DEALT WITH STANDARDS OF CONDUCT AND FUNCTIONAL SEPARATION ISSUES.

A. The FERC has dealt with Standards of Conduct and functional separation in: 1) Order Nos. 889 and 889-A, 2) a series of Orders regarding the written procedures filed by utilities for implementing the Standards of Conduct in Order Nos. 889 and 889-A, and 3)

Orders regarding market-based rates for utilities and power marketers.

Q. PLEASE SUMMARIZE THE PROVISIONS OF ORDER NOS. 889 AND 889-A.

A. Order Nos. 889 and 889-A require utility participation in an Open Access Same-time Information System (“OASIS”) and prescribe Standards of Conduct intended to implement the functional separation of transmission and wholesale merchant functions of public utilities. Section 37.4(c) of the FERC’s regulations requires that utilities subject to the rules must file written procedures implementing the Standards of Conduct in sufficient detail to enable customers and the FERC to determine that utilities are in compliance with the standards.

Q. PLEASE SUMMARIZE THE STANDARDS OF CONDUCT CONTAINED IN ORDER NOS. 889 AND 889-A.

A. The Standards of Conduct in Order Nos. 889 and 889-A define how a transmission provider must functionally separate its transmission and wholesale power merchant functions. In this case, FERC’s view is that transmission service is an essential service provided by a monopoly provider and that the wholesale merchant function provides a competitive service in the market. The Standards of Conduct contained in Order Nos. 889 and 889-A, which are incorporated in Part 37 of the FERC’s regulations, assure that access to the essential monopoly transmission service is not used to gain a competitive advantage for the competitive wholesale merchant function of the utility providing transmission service. Specifically, Order Nos. 889 and 889-A require that:

1. The employees of the Transmission Provider engaged in transmission system

operations must function independently of its employees, or the employees of any of its affiliates, who engage in Wholesale Merchant Functions. Order 889-A defines wholesale merchant function as “the sale for resale of electric energy in interstate commerce.”

2. In emergency circumstances affecting system reliability, Transmission Providers may take whatever steps are necessary to keep the system in operation. Transmission Providers must report to the Commission and on the OASIS each emergency that resulted in any deviation from the Standards of Conduct, within 24 hours of such deviation.
3. Any employee of the Transmission Provider, or any employee of an affiliate, engaged in wholesale merchant functions is prohibited from: (1) conducting transmission system operations or reliability functions; (2) having access to the system control center or similar facilities used for transmission operations or reliability functions that differs in any way from the access available to other open access Transmission Customers.
4. Notices of any employee transfer to or from transmission system operations or reliability functions must be posted on the OASIS.
5. Any employee of the Transmission Provider, or of any of its affiliates, engaged in

wholesale merchant functions shall have access to only that information posted on an OASIS and is prohibited from obtaining information about the Transmission Provider's transmission system (including information about available transmission capability, price, curtailments, ancillary services, and the like) through access to information not posted on the OASIS.

6. Any employee engaged in transmission system operations or reliability functions may not disclose to employees engaged in wholesale merchant functions any information concerning the transmission system of the Transmission Provider or the transmission system of another through non-public communications.
7. A Transmission Provider may not share any market information, acquired from non-affiliated Transmission Customers or developed in the course of responding to requests for transmission or ancillary service on the OASIS, with its own employees who are engaged in merchant functions, except to the limited extent information is required to be posted on the OASIS.
8. Employees of the Transmission Provider engaged in transmission system operations must strictly enforce all tariff provisions, if these provisions do not provide for the use of discretion.

9. Employees of the Transmission Provider engaged in transmission system operations must apply all tariff provisions in a non-discriminatory manner, if these provisions involve discretion. The Transmission Provider must keep a log, available for Commission audit, detailing the circumstances and manner in which it exercised its discretion under any terms of the tariff.
10. If the Transmission Provider offers a discount on purchases of transmission service or ancillary services, it must post on the OASIS an offer to provide the same discount to all eligible customers.

Q. PLEASE DESCRIBE THE ORDERS THAT FERC HAS ISSUED REGARDING STANDARDS OF CONDUCT.

A. The FERC has issued a series of Orders regarding the adequacy of the written procedures that utilities filed to comply with Section 37.4(c) of the FERC's regulations, which requires utilities subject to the rules to file written procedures implementing the Standards of Conduct in sufficient detail to enable customers and the FERC to determine that they are in compliance with the standards. *American Electric Power et al.*, 81 FERC ¶ 61,332 (1997); *Illinois Power et al.*, 81 FERC ¶ 61,338 (1997); *Allegheny Power Service Corporation et al.*, 81 FERC ¶ 61,339 (1997); *Atlantic City Electric Company et al.*, 82 FERC ¶ 61,028 (1998); *Baltimore Gas and Electric Company et al.*, 82 FERC ¶ 61,073 (1998); *Arizona Public Service Company et al.*, 82 FERC ¶ 61,132 (1998); and *Carolina Power & Light Company et al.* 82 FERC ¶ 61,193 (1998). These Orders provide

additional detail regarding the Standards of Conduct and the functional separation of transmission and wholesale merchant functions of public utilities.

Q. PLEASE EXPLAIN HOW THE FERC HAS DEALT WITH THE ISSUE OF LEVERAGING MONOPOLY FUNCTIONS INTO A COMPETITIVE ADVANTAGE IN THE MARKETPLACE FOR AFFILIATED POWER MARKETERS.

A. The FERC has addressed the issue of leveraging a monopoly function in wholesale transmission facilities into a competitive advantage in wholesale power marketing in two ways. The first way is to require that essential monopoly transmission services are available to all market participants on the same terms and conditions. The second is to require that information that the utility may possess as to essential monopoly transmission functions and related power purchases and sales that is shared with the utility's wholesale power marketers also be made available to other market participants on the same terms and conditions.

Q. HOW HAS THE FERC ASSURED THAT ESSENTIAL MONOPOLY SERVICES ARE AVAILABLE TO ALL MARKET PARTICIPANTS ON THE SAME TERMS AND CONDITIONS?

A. The FERC assured that essential monopoly services are available to all market participants on the same terms and conditions in Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 and in Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048. Order Nos. 888 and 888-A ensured that all market participants have access to transmission service, which is an

essential monopoly service, at the same price, terms and conditions.

Q. HOW HAS THE FERC ADDRESSED INFORMATION SHARING ISSUES?

A. The FERC has addressed the information sharing issue in two ways. The first way is to make any information as to essential monopoly transmission service available to all market participants and market participants can use this body of information as they see fit. The FERC took this approach in Order No. 889 and 889-A where it required transmission owners to establish an open access same-time information system (“OASIS”) to provide all market participants with access to essential transmission services information. The information on OASIS can be accessed and utilized by market participants as they see fit. The second way that the FERC has dealt with information sharing as to essential transmission facilities and power purchases and sales is in its orders approving market-based rates for utilities and their regulated affiliates. In these cases approving market-based rates, the FERC has required utilities to adopt a code of conduct which ensures that preferences are not accorded to a utility’s power marketing affiliate and that market information is not shared with the marketing affiliate unless it is also disclosed simultaneously to non-affiliates. This information sharing feature of the code of conduct ensures that preferences are not accorded to a utility’s wholesale power marketers (whether in the utility or in affiliates) and that marketing information is not shared with such marketers unless it is also disclosed simultaneously to non-affiliates.

Q. DO THE FERC'S INFORMATION SHARING RULES APPLY TO INFORMATION SHARING BY THE UTILITY WITH UTILITY OR AFFILIATE PERSONNEL THAT

ARE NOT ENGAGED IN POWER MARKETING?

A. No. In Order No. 889, the FERC required that any employee of the transmission provider, or of any of its affiliates, engaged in wholesale merchant functions shall have access to only that information posted on an OASIS and is prohibited from obtaining information about the transmission provider's transmission system (including information about available transmission capability, price, curtailments, ancillary services, and the like) through access to information not posted on the OASIS. This requirement regarding access to information about the transmission provider's transmission system, an essential facility, was only applied to personnel of the utility and the affiliates engaged in wholesale merchant functions, not to all personnel regardless to their functions.

Q. PLEASE EXPLAIN HOW THE COMMISSION COULD UTILIZE FERC'S APPROACH FOR DEALING WITH THE ISSUE OF LEVERAGING MONOPOLY FUNCTIONS INTO A COMPETITIVE ADVANTAGE IN THE MARKETPLACE.

A. Just as the FERC was addressing the issue of utilities gaining a competitive advantage in wholesale power marketing by leveraging a monopoly function in transmission, in this proceeding the Commission is addressing a similar issue of utilities gaining a competitive advantage in retail power marketing by leveraging a monopoly function in distribution. Following FERC's approach, the Commission can require that essential monopoly distribution services are available in the form of delivery services to all participants on the same terms and conditions. The availability of essential monopoly transmission services for all participants on the same terms and conditions is already accomplished through

Order Nos. 888. The Commission can also require functional separation between retail merchant function personnel and utility distribution personnel engaged in delivery services operations. The functional separation between wholesale merchant function personnel and personnel of the utility engaged in transmission systems operations is already accomplished through Order Nos. 889. Additionally, the Commission can require that retail merchant personnel engaged in the marketing of unbundled electric capacity and energy do not have access to information about distribution systems operations or delivery services customers that is not also available to other market participants on the same terms and conditions. The requirement to share with other market participants on the same terms and conditions information regarding essential monopoly transmission functions that is shared with the utility's power marketers is covered by the FERC regulations and case law, and as discussed above, does not need to be addressed by the Commission.

Q. IS THERE A NEED FOR THE EQUIVALENT OF AN OASIS SYSTEM FOR ESSENTIAL DISTRIBUTION SYSTEM INFORMATION?

A. No. As discussed above, because the distribution system is planned and constructed to meet the peak needs of all customers, information regarding availability of distribution capacity is not necessary. Thus, there is no need for an OASIS for distribution information. The OASIS is necessary for wholesale transactions precisely because, by contrast, there is not sufficient transmission capacity for all potential users. A wholly public information mechanism -- the OASIS-- is necessary to ensure that utility or affiliate power marketers do not possess "inside information" about transmission systems that will

give them an edge in contracting for that scarce capacity.

Q. WHAT INFORMATION IS NEEDED ABOUT THE DISTRIBUTION SYSTEM?

A. Outage information, information about new or revised service interconnection, and information about the physical requirements necessary for interconnection are needed by all competitors and should be available on a non-discriminatory basis. In addition, as provided in the Restructuring Act, customer specific information should be available on the same terms and conditions to any party that obtains permission from the customer. Any customer continuing to take bundled electric serve has of course given permission to the utility to access its customer usage information.

Q. DO COMED'S PROPOSED RULES FOR ALTERNATIVE RETAIL ELECTRIC SUPPLIES MIRROR THOSE APPROVED BY FERC FOR WHOLESALE POWER MARKETERS?

A. Yes, they do. ComEd proposes to apply the FERC rules to what is for all intents and purposes the same issue, namely, access to essential monopoly facilities (in this case, retail distribution facilities instead of wholesale transmission facilities) and information concerning those facilities. The FERC-style rules ComEd proposes to follow are directly modeled not only on the general FERC rules, but on the specific ComEd rules for wholesale power marketing that were approved by FERC, including modifications required by FERC. Further, the FERC-style rules that ComEd proposes reflect the Commission's determinations on similar issues in the Non-Discrimination Rulemaking. The FERC-style rules that ComEd proposes and that I support in this proceeding are

attached to my testimony as Exhibit A. I recommend that the Commission adopt these rules as the Standards of Conduct that it is required to develop in this proceeding.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.