

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission )  
On Its Own Motion )  
-vs- )Docket 18-1774  
AEP Energy, Inc. et. al. )

Collection of information relevant to )  
Alternative Retail Electric Suppliers' )  
Plans to distribute Federal Energy )  
Regulatory Commission-ordered )  
Settlement Proceeds to end-user )  
Customers in the Commonwealth )  
Edison Company Service Territory )

**ORDER REGARDING PROTECTION OF CONFIDENTIAL  
INFORMATION**

In the course of this proceeding, the parties and their attorneys may produce and receive certain confidential information by way of documents, testimony, answers to discovery requests, through informal discussions, or through another method of recording or transmitting information, including but not limited to any electronic, e-mail, or other computer-related communication.

To protect against the inappropriate use or disclosure of such information and materials and to facilitate disclosure in this case, it is hereby ordered, pursuant to Sections 4-404 and 5-108 of the Public Utilities Act (the "Act"), 220 ILCS 5/4-404, 5-108, and 83 Illinois Administrative ("Ill. Adm.") Code § 200.430, as follows:

**Process For Designation of Information**

1. Where any party believes in good faith that a specific document that it will produce contains information that is entitled to protection as confidential information under the law, that party ("Producing Party") shall identify such information by marking such information "Confidential" to signify that the Producing Party has in good faith made a legal and factual determination that the information is as described. The Producing Party shall visually distinguish such information from other information appearing in the same document. Where any Producing Party believes in good faith that specific information it will convey orally includes information that is entitled to protected treatment under the law, that Producing Party shall identify such information by stating that it is "Confidential" or to signify that the

Producing Party has made a legal and factual determination that such information will be, or has been, conveyed. The Producing Party shall also provide written confirmation within three business days of such communication to all recipients that “Confidential” information was conveyed. The written confirmation need only generally indicate that “Confidential” information was provided without repeating the substance of the communications. Each specific document so marked or specific information so identified will be referred to hereafter as “Confidential Information.” Information so designated shall be afforded all protections given to Confidential information set forth in Paragraphs 4 through 13 of this protective order (the “Order”), as applicable, unless and until a contrary ruling is made by the Administrative Law Judge (“ALJ”) or the Illinois Commerce Commission (the “Commission”).

2. “Confidential” as used herein is non-public information maintained by a party in confidence in the ordinary course of business and in which such party has a business interest in maintaining in confidence. It also includes such other categories of documents and information as are recognized as confidential under applicable law or by order of the ALJs or the Commission.

**Confidential Information**

3. Subject to rights to challenge confidential designations made by a Producing Party described herein, no information or document that is produced and designated as Confidential, nor any information contained therein or obtained therefrom, shall be delivered, exhibited, or disclosed to any person (other than Commission officers, employees and retained experts, who are not subject to this Order, but who are governed by 220 ILCS 5/4-404 and 5/5-108 and the Office of the Attorney General, which is governed by 15 ILCS 205/6.5(a)(d)), who has not read this Order, signed Form 1, attached hereto, and delivered Form 1 to the Producing Party.

4. Persons who comply with Paragraph 3 above shall use or disclose the Confidential Information only for the preparation and conduct of this proceeding, and then solely as provided in this Order, and shall take all reasonable precautions to keep the Confidential Information secure in accordance with the purposes and intent of this Order. This includes appropriate precautions to prevent the unauthorized transfer of information in any type of electronic format. All Confidential Information produced or exchanged in the course of this proceeding shall be used solely for the purpose of this proceeding or any appeal arising therefrom.

5. Parties may make Confidential Information available only to those who need access to the information to prepare for this proceeding and who have executed the attached Form 1 as provided in Paragraph 3 above. The number of copies (this includes the dissemination of information in an electronic format including, but not limited to, email transmission) of any Confidential Information made by a party shall not exceed the number of individuals associated with that party that have executed the attached Form 1, unless the Producing Party otherwise agrees in writing. The Producing Party, at its election, may provide a party with copies equal to the number of individuals for that party that have executed Form 1, in which event, additional copies (this includes the electronic scanning of documents or

dissemination of electronic documents via email or by other means of electronic sharing, such as placing electronic documents on a shared access network) shall not be made unless the Producing Party otherwise agrees in writing. Parties shall notify the Producing Party of the identity of each person to whom a copy will be disseminated.

6. If a party inadvertently produces information not marked “Confidential” and the Producing Party subsequently notifies the recipient that such information is Confidential, the receiving party will treat such information as identified by the Producing Party in accordance with the provisions of this Order and will use its best efforts to recall or retrieve any such information that has been distributed not in accordance with this Order. This paragraph does not waive the receiving party’s right under this Order to challenge subsequently such designation on its merits under Paragraph 13 of this Order.

7. In the event that any party intends to use or uses any Confidential Information in testimony, exhibits, discovery responses, cross-examination, briefs or other documents to be filed in this proceeding, the following shall apply:

a) the testimony, exhibits, discovery responses, cross-examination, briefs, or other documents containing Confidential Information shall be sealed and served only on the Commission and the attorneys for the parties granted access to the Confidential Information pursuant to this Order. A “redacted” or “public” version and an “unredacted” or “confidential” version of any such testimony, exhibit, or briefs shall be served on each person entitled to service that is granted access to Confidential Information. Only the “redacted” or “public” version shall be served on any other persons entitled to service. This includes, but is not limited to, the service of documents in electronic format (such attorneys may distribute Confidential Information so received as provided herein);

b) the pages containing Confidential Information shall be clearly marked and the cover of the testimony or other documents shall indicate that Confidential Information is contained within the document inside. In the case of electronic data or documents, such designation shall be made by labeling the entire CD-ROM, disk, or other media containing electronic data;

c) the Commission shall keep all submissions containing Confidential Information under seal and shall segregate Confidential Information in its files and on its electronic network and databases. Confidential Information, as discussed below, shall not be posted publicly on the Commission’s electronic filing system maintained pursuant to 83 Ill. Adm. Code § 200.1000 *et seq.*, provided that, where appropriate, Confidential Information may be filed as a proprietary electronic document through the Commission’s electronic filing system consistent with said rules and 83 Ill. Adm. Code § 200.430 such that no person outside of the Commission is allowed to see or access the proprietary electronic documents as stated in 83 Ill. Adm. Code § 200.1050(b). All documents containing Confidential Information shall be withheld from inspection by any person not granted access to Confidential Information pursuant to this Order, including by electronic means;

d) all Confidential Information shall be redacted from the copies of such testimony, exhibits, discovery responses, briefs or other documents including electronic documents and emails that may be provided to individuals and their attorneys who are not granted access to Confidential Information pursuant to this Order;

e) except as provided in subsection (c), above, documents containing Confidential Information shall not be filed by electronic means as permitted by 83 Ill. Adm. Code § 200.1000, *et seq.* However, when a party seeks to file a document containing Confidential Information, it may file the “redacted” or “public” version of such document (as is required by 83 Ill. Adm. Code § 200.430(d)) with the Commission electronically. The filing of such a document will be deemed complete upon the filing of the public version of the document. The unredacted version of such document shall be filed as “proprietary” on the Commission’s electronic filing system; and

f) each Producing Party will maintain a list of all persons granted access to Confidential Information pursuant to this Order, and will make that list available to other parties upon request.

8. Any electronic transmission (e-mail) of Confidential Information or of file attachments containing Confidential Information shall indicate in the “subject” line and in the body of the message that Confidential Information is being transmitted. Electronic files containing Confidential Information shall include the word “Confidential” in the file name.

9. Cross-examination and re-direct examination involving Confidential Information shall be conducted during proceedings that will be closed to all those who are not allowed access to the Confidential Information under this Order. The transcript of such proceedings shall be kept under seal and shall not be posted publicly on the Commission’s e-Docket system.

10. If at any time another court, administrative agency, person, or entity subpoenas, requests or orders production of Confidential Information or documents containing the same, the party receiving the subpoena, request, or order shall notify the Producing Party in writing of that fact within two days after receipt of the subpoena or request (or sooner if necessary under the terms of the subpoena, request or order) and provide the Producing Party with an opportunity to seek appropriate remedies in order to adequately protect the release of any Confidential Information.

11. When the Commission’s Order in this proceeding is final and no longer subject to appeal, the sealed portion of the Commission’s record (paper and electronic) shall be retained under seal by the Commission.

12. All persons possessing Confidential Information or copies of documents containing Confidential Information (including, but not limited to, testimony, exhibits, transcripts, discovery, responses, briefs, e-mails, disks, electronic files) shall, within thirty (30) days after receiving a written, oral, or electronic request from the Producing Party and after the Commission order becomes final and no longer subject to appeal, return all those materials to the Producing Party or shall destroy the materials and certify in writing to the Producing Party that such materials have been destroyed. Persons receiving Confidential Information shall also destroy all notes, working papers, e-mails, disks, electronic files, and computer or other network

memories and other documents containing Confidential Information and shall certify in writing to the Producing Party that such notes, working papers, documents and electronic records have been so destroyed within thirty (30) days after receiving a written, oral, or electronic request from the Producing Party to do the same. This Order shall remain in effect for a period of five years from its date of entry, unless such period shall be extended at some future time pursuant to applicable Commission Rules.

13. If a party does not agree with the Producing Party's designation of documents and information as "Confidential," the party (the "Challenging Party") shall give the Producing Party reasonable written notice, by e-mail or by U.S. Mail, of the objection. The written notice of objection shall identify the specific documents or portions thereof that are the subject of the challenge. The Producing Party and the Challenging Party shall attempt to negotiate a satisfactory resolution of the issue. If the Producing Party continues to believe that the Confidential Information contains information that justifies such designation, it shall so inform the Challenging Party within five (5) business days of receipt of the Challenging Party's objection. If the Challenging Party continues to object to the Confidential designation, it may file a written notice of objection with the Commission. This filing shall identify the documents or portions thereof that are the subject of the challenge, but need not provide reasons in support of the challenge inasmuch as the burden is on the Producing Party to justify the confidential designation. At that point, if the Producing Party wants to maintain the confidentiality of the information, it shall file a motion, within five (5) business days of the filing of the written objection, requesting such relief. That motion shall provide in detail, for each document or type of document under challenge, the basis for seeking confidential treatment. An opportunity to file a response will be provided. A document marked "Confidential" shall be treated as such by all parties during the pendency of any challenge to such designation until the ALJs issue a ruling altering such designation.

**Applicability of Order to Staff and the Office of the Attorney General**

14. Commission Staff personnel (including but not limited to Commission officers, employees and retained experts) are governed by Sections 220 ILCS 5/4-404 and 5-108 regarding the disclosure of confidential information or documents and are not subject to this Order except that (i) Staff is hereby authorized by the Commission, pursuant to 220 ILCS 5/5108, to disclose "Confidential" Information otherwise subject to nondisclosure under 220 ILCS 5-108 to persons granted access to Confidential Information in accordance with the terms and provisions of this Order, and (ii) all pleadings or testimony by Staff containing Confidential Information shall be filed and distributed in accordance with the terms and provisions of this Order. Other than as set forth in the preceding sentence, Staff is not subject to the terms and provisions of this Order including, but not limited to, the terms and provisions set forth in Paragraphs 4, 5 and 12 above.

The Office of the Attorney General is governed by 15 ILCS 205/6.5(a)-(d) and, to the extent of any participation in this proceeding, will receive information in this proceeding on behalf of the People of the State of Illinois. The Office of the Attorney General shall treat Confidential Information in accordance with the terms of this Order and shall file and distribute pleadings or testimony in accordance with the terms of this Order.

**Other Objections or Information Not Covered By This Order**

15. This Order is not intended to describe all materials to which a party may make an objection to production, and nothing in this Order shall prevent a party from objecting to discovery requests pursuant to the Commission’s Rules of Practice, or to the extent applicable, the Illinois Code of Civil Procedure, the Rules of the Supreme Court of Illinois, or other law, including, but not limited to, the relevancy, materiality, or admissibility of any information requested. Likewise, nothing in this Order prevents any party from seeking review of any designation made by a Producing Party pursuant hereto. Further, this Order does not affect any party’s right to make objections as to the relevancy, materiality, or admissibility of any information requested, furnished, or received as a result of this Order. If the Producing Party reasonably believes that the sensitivity of the requested information is such that additional protections should be implemented or that no disclosure should be made to one or more of the parties and/or their independent third party experts, the Producing Party may object to disclosure on such grounds.

**Remedies**

16. Each party agrees that any violation of this Order by unauthorized disclosure of any Confidential Information may result in liability for damages and penalties as provided by law and that the Producing Party shall have the right immediately to pursue all legal and equitable remedies, including specific performance of the terms of this Order and compensatory damages for breach, provided that a showing that the information so disclosed is not entitled to Confidential treatment under the law is a defense against any and all claims under this Order.

17. Designations that are not made in good faith, including, but not limited to blanket designations made without consideration of the nature of the specific information being designated, shall constitute a violation of this Order and may result in relief authorized under the Act, the Commission’s Rules, and other applicable law, and may include liability for damages.

18. Nothing in this Order shall limit or supersede any protections applicable to information under other state or federal law.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2019

\_\_\_\_\_  
Administrative Law Judge

Illinois Commerce Commission ) Docket No. 18-1774  
On its Own Motion ) )

**CERTIFICATION FOR PRODUCTION OF CONFIDENTIAL INFORMATION**  
(FORM 1)

I, \_\_\_\_\_, certify that I am a(n) attorney/consultant/employee (circle one) for \_\_\_\_\_, a party to this proceeding, ICC Docket No. 18-1774, and that I request access to Confidential Information, as defined in the attached Order Regarding Protection of Confidential Information (the "Order"), that the Producing Party will produce. I have read the Order and agree to abide by all of its terms, unless such terms are altered by the Administrative Law Judge ("ALJ"), at which time the undersigned agrees to be bound by the terms of the Order, as altered and entered by the ALJs. By signing below, the undersigned is not waiving his/her right to object to or suggest modifications to the Order. I further certify that the Confidential Information (as defined in the Order) will be used solely for the purposes stated in, and as set forth in, the Order.

SIGNED: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Employer's Address: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Party Representing: \_\_\_\_\_

Subscribed and sworn to before me

this \_\_\_\_ day of \_\_\_\_\_, 2019

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Notary Public