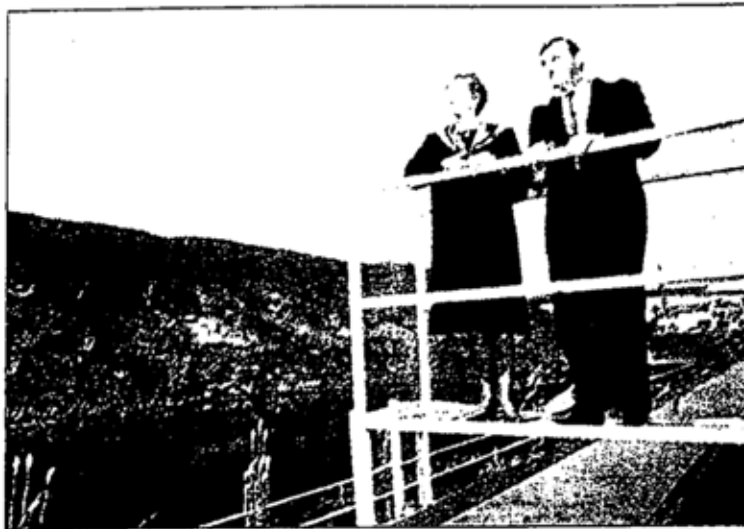


Chicago Tribune



Tribune photo by Val Mazzenga

Friendly terms: Commonwealth Edison counsel Pamela Strobel and Patrick Giordano, representing Chicago, helped negotiate a \$102.5 million coal case refund that clears the air for Edison's future. Story on Page 3.

Business

Chicago Tribune Monday, October 11, 1993

Settlement helps to clear air for Edison's future

By John N. Maclean
TRIBUNE STAFF WRITER

Only a few months ago, a seven-year battle by Mayor Daley to get Commonwealth Edison to give refunds to its customers for having overpaid for power-plant coal ran into an apparent dead end.

Mark Goldstein, a hearing examiner for the Illinois Commerce Commission, issued a proposed order saying Edison didn't owe its customers a dime in the coal case. Edison was "prudent and reasonable" in buying coal and managing its coal contracts, Goldstein declared.

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Today, Goldstein hails the agreement by Edison, the city and other groups to put the coal case behind them with a \$102.5 million refund beginning in November and running for a year. That settlement is part of the \$1.34 billion refund Edison negotiated to close the coal case as well as five other cases that have been hanging over the company, some for as long as a decade.

"I am totally in favor of it," said Goldstein, who also was ICC hearing officer on several of the other cases. "The settlement was agreed among all those parties; the Commerce Commission staff has signed off on it; it was reached only after lengthy negotiations."

The coal case stands apart from the rest. Only the coal case has an exact price tag—the other five are consolidated into a \$1.24 billion refund. The reasons Edison agreed to spend \$102.5 million instead of standing pat on Goldstein's proposed order tell a lot about coal, the company and the overall settlement.

"Although we had a favorable proposed order, we still had a long road we had to travel to get a final settlement," said Pamela B. Strobel, who has been general counsel of Edison since June.

"If we won a favorable ruling, it would have been appealed. If we had won in the appeals court, it would have been remanded to the Illinois Commerce Commission.

"One hundred million dollars is a lot of money. But with that, we removed delay and uncertainty. The amount reflects what we thought the merits of the case deserved—and the amount we can afford."

For the city, the settlement of the coal case involves a double vindication of its long-standing litigation with Edison. The case is the last, as well as the largest, brought against any U.S. utility for making commitments to buy low-sulfur coal from the West in the 1970s and '80s, and then failing to adequately renegotiate those contracts when the price of coal fell as the Western fields were developed.

U.S. coal-burning utilities had rushed to make long-term contracts for low-sulfur coal when "acid rain" became a hot environmental issue and federal regulations on sulfur emissions began to toughen. Sulfur emissions from coal-fired boilers were identified as a principal cause of acid rain. The low-sulfur coal from the West makes it possible for utilities to continue using existing coal-fired boilers while meeting new environmental regulations.

Edison was the last utility company in the country to win significantly lower contracts. After legal prodding by the city, Edison announced a major renegotiation last November that will save consumers \$2 billion over the next 20 years.

But the city continued to press its case that Edison owed consumers more—about \$300 million in rebates for Edison's failure to act earlier.

Patrick Giordano has been lead attorney on the city's case for the entire seven years, since Daley first brought the action when he was state's attorney. Giordano has since gone into private practice with Foley & Lardner, continuing to lead in the case.

While Giordano was preparing to fight Goldstein's order this summer, he got an unexpected telephone call from Sam Skinner, president of Edison. Skinner wanted to talk, but Giordano had heard such murmurings before.

None of the parties has been willing to disclose exact details of the negotiations. But all describe the negotiations as a tough, mutually respectful fight over six weeks, following the initial call to Giordano from Skinner.

The old Edison arrogance was gone, Giordano said. The Edison representatives, Skinner and Strobel, not only wanted to make a deal but clearly had a mandate to do so.

Strobel credits James J. O'Connor, Edison chairman and chief executive officer, as having played a constant role, giving direction and advice on a continuing basis. Edison's board of directors was kept informed by telephone, and met in September to review the outline of the deal.

Part of the difficulty was coordinating the coal case with the other rate cases, to which the city is also a party. Giordano and city lawyers Marie Spicuzza and Ronald Jolly coordinated with the consumer groups spearheading the rate cases.

But Giordano first had to convince himself Edison had indeed renegotiated its coal contracts so consumers would save \$2 billion. Edison agreed to provide confidential business data under a pledge of secrecy.

It was passed along to Forrest E. Hill, the city's expert witness in the case.

Hill, in an interview, said Edison had basically followed the city's advice in renegotiating the contracts.

The lesson about the company is that Edison was willing to pay a lot of money to get an opportunity to look clearly at its future.

O'Connor said in an interview the day the settlement was announced that Edison wants to focus, for a change, on its core business, providing electrical service to individual and corporate accounts. It doesn't want the interference of pending rate hassles or coal hassles, or even for a while competition with smaller independent power companies. O'Connor indicated.