

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

BEFORE THE
ILLINOIS COMMERCE COMMISSION
REGULAR OPEN MEETING
(PUBLIC UTILITIES)
Chicago, Illinois
Tuesday, January 14, 2014

Met, pursuant to notice, at 10:30 a.m. at
160 North LaSalle Street, 8th Floor, Chicago, Illinois.

PRESENT:

- MR. DOUGLAS P. SCOTT, Chairman
- MR. JOHN T. COLGAN, Commissioner (by videoconference)
- MS. ANN McCABE, Commissioner
- MR. MIGUEL DEL VALLE, Commissioner
- MS. SHERINA E. MAYE, Commissioner

JENNIFER L, BERNIER, CSR, RPR, CLR
On behalf of Midwest Litigation

1 CHAIRMAN SCOTT: Pursuant to the provisions of the
2 Open Meetings Act, I now convene our regular meeting of
3 the Illinois Commerce Commission. With us in Chicago
4 are Commissioner McCabe, Commissioner del Valle,
5 Commissioner Maye. In Springfield is Commissioner
6 Colgan. I'm Chairman Scott. We have a quorum.

7 Before moving into the agenda, according to
8 Section 1700.10 of Title 2 of the Administrative Code,
9 this is the time we allow members of the public to
10 address the Commission. Members of the public wishing
11 to address the Commission must notify the Chief Clerk's
12 Office at least 24 hours prior to Commission meetings.
13 According to the Chief Clerk's Office, we have no
14 request to speak at today's meeting.

15 The first item of business on today's agenda
16 is the approval of minutes from our December 18th Bench
17 session. I understand amendments have been forwarded.
18 Is there a Motion to Amend the minutes?

19 COMMISSIONER McCABE: So moved.

20 CHAIRMAN SCOTT: Moved by Commissioner McCabe. Is
21 there a second?

22 COMMISSIONER MAYE: Second.

23 CHAIRMAN SCOTT: Seconded by Commissioner Maye.
24 All in favor, say aye.

1 (Ayes heard.)

2 CHAIRMAN SCOTT: Any opposed?

3 (No response.)

4 CHAIRMAN SCOTT: The vote is five to nothing and
5 the amendments are adopted. Is there now a Motion to
6 Approve the minutes as amended?

7 COMMISSIONER MAYE: So moved.

8 CHAIRMAN SCOTT: Moved by Commissioner Maye.
9 Second?

10 COMMISSIONER DEL VALLE: Second.

11 CHAIRMAN SCOTT: Seconded by Commissioner del
12 Valle. All in favor, say aye.

13 (Ayes heard.)

14 CHAIRMAN SCOTT: Any opposed?

15 (No response.)

16 CHAIRMAN SCOTT: The vote is five to nothing and
17 the December 18th Bench session minutes, as amended, are
18 approved.

19 Item 2 is the approval of minutes from our
20 December 18th Special Open Meeting. I understand the
21 amendments have been forwarded. Is there a Motion to
22 Amend the minutes?

23 COMMISSIONER DEL VALLE: So moved.

24 COMMISSIONER MAYE: Second.

1 CHAIRMAN SCOTT: Moved by Commissioner del Valle
2 and seconded by Commissioner Maye. All in favor, say
3 aye.

4 (Ayes heard.)

5 CHAIRMAN SCOTT: Any opposed?

6 (No response.)

7 CHAIRMAN SCOTT: The vote is five to nothing and
8 the amendments are adopted. Is there a Motion to
9 Approve the minutes as amended?

10 COMMISSIONER McCABE: So moved.

11 COMMISSIONER MAYE: Second.

12 CHAIRMAN SCOTT: Moved by Commissioner McCabe.
13 Seconded by Commissioner Maye. All in favor, say aye.

14 (Ayes heard.)

15 CHAIRMAN SCOTT: Any opposed?

16 (No response.)

17 CHAIRMAN SCOTT: The vote is five to nothing and
18 the December 18th Special Open Meeting minutes, as
19 amended, are approved.

20 Item 3 is Docket No. 13-0506. This is our
21 investigation concerning the applicability of
22 Section 16-122, 16-108.6 of the Public Utilities Act,
23 with reference to release of customer information on
24 AMI. The Citizen Utility Board has filed a Request for

1 Oral Argument, ALJ Kingsley recommends we deny it. Is
2 there a Motion to deny the request?

3 COMMISSIONER McCABE: So moved.

4 CHAIRMAN SCOTT: Moved by Commissioner McCabe. Is
5 there a second?

6 COMMISSIONER MAYE: Second.

7 CHAIRMAN SCOTT: Seconded by Commissioner Maye.
8 Any discussion?

9 (No response.)

10 CHAIRMAN SCOTT: All in favor, say aye.

11 (Ayes heard.)

12 CHAIRMAN SCOTT: Any opposed?

13 (No response.)

14 CHAIRMAN SCOTT: The vote is five to nothing, and
15 the Request for Oral Argument is denied. We will use
16 this five-to-nothing vote for the remainder of today's
17 Regular Open Meeting agenda unless otherwise noted.

18 Item 4 is Docket No. 13-0495. This is ComEd's
19 Petition for Approval of its Energy Efficiency and
20 Demand-Response Plan pursuant to Section 8-103(f) of the
21 Public Utilities Act. REACT has filed a Request for
22 Oral Argument, which ALJ Haynes recommends we deny.

23 Is there any discussion?

24 (No response.)

1 CHAIRMAN SCOTT: Are there any objections to
2 denying their Request for Oral Argument?

3 (No response.)

4 CHAIRMAN SCOTT: Hearing none, the request is
5 denied.

6 ALJ Haynes also recommends entry of an Order
7 directing ComEd to file a revised plan. Commissioner
8 McCabe has some questions, I believe.

9 COMMISSIONER McCABE: Yes.

10 CHAIRMAN SCOTT: Commissioner McCabe.

11 COMMISSIONER McCABE: Yes.

12 CHAIRMAN SCOTT: Good morning, Judge.

13 JUDGE HAYNES: Good morning.

14 COMMISSIONER McCABE: The proposed Order, at page
15 63, directs ComEd to spend the remaining energy
16 efficiency budget after it meets the modified savings
17 goals. To the extent they do not expend the funds, do
18 those funds get rolled over to the next three-year plan?

19 JUDGE HAYNES: The short answer is, no. Each
20 three-year plan -- a new budget is established for each
21 three-year plan. The budget acts more like a max.

22 COMMISSIONER McCABE: Okay. And is there any risk
23 of imprudence if ComEd spends money after reaching its
24 modified goals and those remaining expenditures turn out

1 to be on cost ineffective measures?

2 JUDGE HAYNES: There is always a risk that the
3 company will be found -- their expenditures will be
4 found to be imprudent; but, as discussed in the Order,
5 cost ineffective measures may be okay if they're part of
6 a cost effective package of measures. But what any
7 party will propose to find as cost ineffective in a
8 reconciliation, you can't -- there is always a risk that
9 that will be proposed.

10 COMMISSIONER McCABE: And on the 5 percent risk
11 adjustment, was there any discussion in the record about
12 other jurisdictions or states having similar risk
13 adjustments?

14 JUDGE HAYNES: Not that I could find.

15 COMMISSIONER McCABE: Okay. Thank you.

16 JUDGE HAYNES: Sure.

17 CHAIRMAN SCOTT: Anyone else have any further
18 questions for the judge?

19 (No response.)

20 CHAIRMAN SCOTT: If there is nothing further, this
21 item will be held for disposition at a future Commission
22 meeting.

23 Item 5 is Docket No. 13-0498. This is
24 Ameren's Petition for Approval of its Energy Efficiency

1 and Demand-Response Plan pursuant to Section 8-103(e)
2 and (f) and 8-104(e) and (f) of the Public Utilities
3 Act. ALJ Yoder recommends entry of an Order
4 conditionally approving Ameren's Energy Efficiency and
5 Demand-Response Plan. Commissioner McCabe, I believe,
6 has some questions for the judge. Judge Yoder.

7 JUDGE YODER: Yes.

8 CHAIRMAN SCOTT: There he is.

9 COMMISSIONER McCABE: Good morning.

10 JUDGE YODER: Good morning.

11 COMMISSIONER McCABE: On page 78 of the proposed
12 Order, it declines to adopt ELPC's proposal to spend a
13 significant portion of the emerging technologies budget
14 on a comprehensive Smart Devices Program. The
15 Commission appears to adopt CUB's proposal and
16 recommends that the company discuss this program at the
17 SAG and SGAC.

18 In adopting CUB's position, does the proposed
19 Order also adopt CUB's recommendation to spend any
20 remaining amounts of the technology fund on the Smart
21 Device Proposal?

22 JUDGE YODER: Commissioner, the intent was not, at
23 this time, to adopt CUB's spending proposal. As Ameren
24 has indicated, they have allocated a portion of the

1 Smart Devices Budget to some programs. The intent of
2 that conclusion was to adopt the last sentence in CUB's
3 position where CUB recommends that Ameren discuss its
4 plans for a program with the SAG and the SGAC. So,
5 perhaps, it needs clarifying, but at this time the
6 intent was not to adopt the spending provision of CUB's
7 recommendation.

8 COMMISSIONER McCABE: Okay. And if the Commission
9 were to agree with most of the intervenors that AIC's
10 savings goals should be revised upward, would the
11 company have to re-file its plan and would that be
12 through a compliance filing or another litigated docket?

13 JUDGE YODER: Commissioner, I believe the way the
14 conclusion of the final ordering paragraphs are drafted
15 in this, it calls for Ameren -- it calls for the
16 Commission to conditionally approve Ameren's plan and
17 for Ameren to make a filing within 30 days of a new
18 plan, taking into account the conditions proposed in the
19 Order. I believe that language would be satisfactory no
20 matter what changes the Commission makes to Ameren's
21 plan.

22 COMMISSIONER McCABE: Okay. Thank you.

23 JUDGE YODER: Thank you.

24 CHAIRMAN SCOTT: Any other questions?

1 (No response.)

2 CHAIRMAN SCOTT: Thank you, Judge. If there is
3 nothing further, this item will also be held for
4 disposition at a future Commission meeting.

5 Item 6 is Docket No. 13-0499. This is the
6 Illinois Department of Commerce and Economic
7 Opportunity's Petition for Approval of its Energy
8 Efficiency Portfolio Demand and Response Plan pursuant
9 to Section 8-103(e) and (f) and 8-104(e) and (f) of the
10 Public Utilities Act. ALJ Haynes recommends entry of an
11 Order directing DCEO to file a revised plan.

12 Are there any questions with regard to this
13 matter? Commissioner McCabe?

14 COMMISSIONER McCABE: I have one that I did not
15 submit previously, so I apologize. But since you're the
16 judge on two of these related issues, there is a lot of
17 discussion about referring issues to the SAG.

18 Any sense in the hearings whether the SAG can
19 handle everything you may be shifting over to them, or
20 are we asking too much?

21 JUDGE HAYNES: That is definitely a question. And
22 I think having to do with the discussion regarding the
23 policy manual, the parties talked about SAG just not
24 having time to deal with it and having limited

1 resources, so it is an issue.

2 COMMISSIONER McCABE: I know they're not a party.

3 JUDGE HAYNES: Okay.

4 CHAIRMAN SCOTT: Anybody else?

5 COMMISSIONER DEL VALLE: Well, I have a question.

6 Do they prioritize? How is it determined what they take
7 up and how much time and energy goes into each?

8 JUDGE HAYNES: You know, I don't know the answer to
9 that. It's not -- I know there aren't -- there is no
10 court reporter. I don't even know if there is
11 officially minutes, and it's definitely -- I don't know
12 how it's run. I know they have conference calls, but I
13 really don't know. It's not part of the record
14 necessarily how that happened, at least, not that I
15 recall.

16 COMMISSIONER DEL VALLE: So we establish
17 expectations, but there is no way of ensuring that what
18 we suggest be addressed will be addressable?

19 JUDGE HAYNES: Right. I think, obviously, if the
20 Commission tells them to address it, they'll do it.

21 COMMISSIONER DEL VALLE: So should we prioritize
22 for it?

23 JUDGE HAYNES: Sure. Yeah. I think a lot of the
24 issues that were thrown back to SAG were things that

1 aren't ready, that are not fully developed proposals
2 yet, and so it's not something that the Commission
3 necessarily wants to adopt because it's not clear what
4 they'll be adopting. And so let's go work it out with
5 everybody that knows about this and how to work it out
6 and then come to the Commission with a real proposal.

7 COMMISSIONER DEL VALLE: I just wonder if it
8 becomes a way for us to kind of avoid making certain
9 things happen.

10 JUDGE HAYNES: I never avoid making decisions on
11 issues. Well, I don't know if it's avoiding or it's
12 just not possible to adopt the proposals yet.

13 COMMISSIONER DEL VALLE: Okay.

14 CHAIRMAN SCOTT: Anything else?

15 (No response.)

16 CHAIRMAN SCOTT: Okay. Thanks, Judge. We
17 appreciate it. This item will also be held for
18 disposition at a future Commission meeting.

19 Item 7 is Docket No. 13-0473. This is Karen
20 McCoy's complaint against ComEd as to billing and/or
21 charges in Chicago. ALJ Riley recommends entry of an
22 Order denying the complaint. Is there any discussion?

23 (No response.)

24 CHAIRMAN SCOTT: Any objections?

1 (No response.)

2 CHAIRMAN SCOTT: Hearing none, the Order is
3 entered.

4 Item 8 is Docket No. 13-0626. This is Linda
5 Maldonado's complaint against ComEd as to billing and/or
6 charges. It appears that the parties have settled their
7 differences and have filed a Stipulation and Joint
8 Motion to Dismiss, which ALJ Riley recommends we grant.

9 Is there any discussion?

10 (No response.)

11 CHAIRMAN SCOTT: Any objections?

12 (No response.)

13 CHAIRMAN SCOTT: Hearing none, the Joint Motion to
14 Dismiss is granted.

15 Item 9 is Docket No. 13-0553. This is our
16 investigation of ComEd's tariffs approved in Docket
17 No. 13-0386. CUB, the AG, and ComEd have all filed
18 Applications for Rehearing. ALJ Dolan and Kimbrel
19 recommend granting the AG and CUB's request in part and
20 deny the remainder of the requests made by the parties.

21 I'll take the issues in two different batches.
22 Start first with the ComEd Application for Rehearing. I
23 would move to deny that Application. Is there a second?

24 COMMISSIONER MAYE: Second.

1 CHAIRMAN SCOTT: Seconded by Commissioner Maye. Is
2 there any discussion?

3 (No response.)

4 CHAIRMAN SCOTT: All in favor of the denial, say
5 aye.

6 (Ayes heard.)

7 CHAIRMAN SCOTT: Opposed?

8 (No response.)

9 CHAIRMAN SCOTT: The vote is five to nothing and
10 ComEd's Application for Rehearing is denied.

11 Take the AG and CUB request together. I would
12 also move to deny those requests. Is there a second?

13 COMMISSIONER MAYE: Second.

14 CHAIRMAN SCOTT: Seconded by Commissioner Maye.
15 Discussion?

16 (No response.)

17 CHAIRMAN SCOTT: All in favor, say aye.

18 (Ayes heard.)

19 CHAIRMAN SCOTT: Opposed?

20 COMMISSIONER DEL VALLE: No.

21 CHAIRMAN SCOTT: The vote is four to one, and the
22 Motion to Deny carries.

23 Items 10 and 11 can be taken together. These
24 items are citation proceedings for various parties'

1 failure to file the required annual report or failure to
2 maintain certain certification requirements pursuant to
3 the Commission's Administrative Rules. In each case,
4 Staff recommends entry of an Order initiating citation
5 proceedings.

6 Is there any discussion?

7 (No response.)

8 CHAIRMAN SCOTT: Any objections?

9 (No response.)

10 CHAIRMAN SCOTT: Hearing none, the Orders are
11 entered.

12 Item 12 is a citation proceeding against CRM
13 Marketing Group. That item has been withdrawn from this
14 morning's agenda.

15 Items 13 through 27 can be taken together.
16 These items are citation proceedings for various
17 parties' failure to file a required annual report or a
18 failure to file -- failure to maintain certain
19 certification requirements pursuant to the Commission's
20 Administrative Rules. For each case, Staff recommends
21 entry of an Order initiating citation proceedings.

22 Is there any discussion?

23 (No response.)

24 CHAIRMAN SCOTT: Any objections?

1 (No response.)

2 CHAIRMAN SCOTT: Hearing none, the Orders are
3 entered.

4 Item 28 is Docket No. 12-0654. This is our
5 reconciliation of revenues collected under Illinois Gas
6 Company's gas adjustment charges with actual costs
7 prudently incurred. ALJ Yoder recommends entry of an
8 Order approving the reconciliation.

9 Is there any discussion?

10 (No response.)

11 CHAIRMAN SCOTT: Any objections?

12 (No response.)

13 CHAIRMAN SCOTT: Hearing none, the Order is
14 entered.

15 Item 29 is Docket No. 13-0665. This is Verde
16 Energy's Application for a Certificate of Service
17 Authority pursuant to Section 19-110 of the Public
18 Utilities Act to act as an alternative gas supplier.
19 ALJ Sainsot recommends entry of an Order granting the
20 requested certificate.

21 Is there any discussion?

22 (No response.)

23 CHAIRMAN SCOTT: Any objections?

24 (No response.)

1 CHAIRMAN SCOTT: Hearing none, the Order is
2 entered.

3 Item 30 is Docket No. 12-0451. This is Total
4 Call Mobile's Application for designation as an eligible
5 telecommunications carrier in the state of Illinois.
6 The petitioner has filed a Motion to Withdraw its
7 application, which ALJ Riley recommends we grant.

8 Is there any discussion?

9 (No response.)

10 CHAIRMAN SCOTT: Any objections to granting the
11 Motion?

12 (No response.)

13 CHAIRMAN SCOTT: Hearing none, the Motion is
14 granted.

15 Item 31 is Docket No. 13-0587. This is
16 Illinois Bell, AT&T, MCImetro Access Transmission
17 Services and Verizon Access Transmission Services' Joint
18 Petition for Approval of an amendment to an existing
19 interconnection agreement pursuant to 47 U.S.C.
20 Section 252. ALJ Baker recommends entry of an Order
21 approving the amendment.

22 Is there any discussion?

23 (No response.)

24 CHAIRMAN SCOTT: Any objections?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

(No response.)

CHAIRMAN SCOTT: Hearing none, the Order is entered.

Item 32 is Docket 11-0580. This is Donald Davis' complaint against ComEd as to service in Machesney Park, Illinois. ComEd has filed an Interlocutory Appeal on an ALJ ruling denying Staff's Motion for a Reconsideration of the ALJ's decision to deny a request to stay the proceeding. I have a couple of quick comments on this and then we'll be moving to grant the petition and stay the proceeding.

It's my position that it was not necessary for a stay of the Commission's Order in 11-0588. In order for a stay to attach here in Mr. Davis's complaint proceeding, Section 411.220(c) of the Administrative Rules appears to be a scheduling rule for the Commission and provides that formal complaints brought pursuant to the Commission's Rules of Practice brought by affected customers shall be stayed pending the disposition of a waiver proceeding and appeals thereof. The waiver proceeding is still on appeal at this time.

Although the ALJ's ruling references the Illinois Supreme Court rules and the Commission has the authority to control its own proceedings, it's not

1 subject to the rules of the Illinois Supreme Court as
2 the Commission is not part of a judicial branch of
3 government. Further, it may create hardship for the
4 complainant if we attempted to resolve his claim only to
5 have the waiver case overturned on appeal. It would be
6 administratively inefficient to hold any number of
7 complaint hearings wasting, potentially, the time of
8 ALJ's attorneys and, perhaps, most importantly, the
9 complainants themselves if, ultimately, ComEd is
10 successful in overturning the Commission's decision and
11 no liability attaches.

12 With that, I would move to grant the Petition
13 for Interlocutory review and to stay both this
14 proceeding and any other complaint proceedings pursuant
15 to Section 411.220 until such time as the appeals
16 process has concluded with respect to the ComEd
17 incident. Is there a second to that Motion?

18 COMMISSIONER MAYE: Second.

19 CHAIRMAN SCOTT: Seconded by Commissioner Maye.
20 Discussion? Commissioner del Valle?

21 COMMISSIONER DEL VALLE: Mr. Chairman, when we
22 issued our final Order in Docket 11-0588, I expressed my
23 concern that fewer legitimate claims would be heard
24 because of the duration of this process and passage of

1 time. The automatic stay in Administrative Rule 411.220
2 needs to be reviewed.

3 Utilities have every right to appeal
4 Commission decisions that they do not agree with; but in
5 doing so, they should not enjoy an automatic stay.
6 Guaranteeing customers will be forced to wait even
7 longer before they are given an opportunity to be heard.
8 Over the often lengthy appeals process, customers face
9 the risk of their claims going stale, a risk the utility
10 does not share.

11 Mr. Davis filed his complaint in August of
12 2011. Two-and-a-half years have now passed and he is
13 still waiting, and now he will be told that he must wait
14 to proceed with his claim until the Illinois Appellate
15 Court makes a decision on ComEd's appeal of our Order in
16 11-0588.

17 Of course, the process -- that process and
18 possible subsequent appeals could take anywhere from six
19 months to several years. I do not believe this outcome
20 achieves a fair balance of utility and customer
21 interest, so I will be voting no.

22 CHAIRMAN SCOTT: Thank you, sir. Further
23 discussion?

24 COMMISSIONER MAYE: I actually have a question. Do

1 we happen to know -- any of us know where we are with
2 the amount of complaints filed for this complaint? Has
3 there been a number? Do we know?

4 CHAIRMAN SCOTT: I don't know if it's --

5 COMMISSIONER MAYE: I wasn't sure.

6 JUDGE DOLAN: I talked to Pete Muntaner, because
7 they're handling them, and he said that some have been
8 coming in, but I don't know what the number is.

9 COMMISSIONER MAYE: Okay. My apologies for not
10 asking that in advance.

11 CHAIRMAN SCOTT: Could you let the court reporter
12 know who you are?

13 JUDGE DOLAN: I'm Judge Dolan.

14 CHAIRMAN SCOTT: Further discussion?

15 COMMISSIONER COLGAN: Mr. Chairman, I'm going to
16 vote for the interlocutory review, but I share some of
17 the concerns that Commissioner del Valle expressed
18 there. And I do think it would be a really good idea to
19 revisit this issue and to give some further
20 consideration to it. But I think the statute dictates
21 that the stay is an automatic stay.

22 CHAIRMAN SCOTT: Further discussion?

23 (No response.)

24 CHAIRMAN SCOTT: The Motion is in favor of the

1 Motion for Interlocutory Appeal and to stay this and
2 other proceedings brought pursuant to Section 411.220
3 with respect to the ComEd issue. All in favor, say aye.

4 (Ayes heard.)

5 CHAIRMAN SCOTT: Opposed?

6 COMMISSIONER DEL VALLE: No.

7 CHAIRMAN SCOTT: The vote is four to one. The
8 Petition is granted in this and any other associated
9 complaint proceedings are stayed until the appeal
10 process is complete.

11 Judge Wallace, any other matters to come
12 before the Commission today?

13 JUDGE WALLACE: No. That's all today,
14 Mr. Chairman.

15 CHAIRMAN SCOTT: Thank you. Hearing none, this
16 meeting stands adjourned. Thank you, everyone.

17 (Meeting adjourned.)

18

19

20

21

22

23

24

1 STATE OF ILLINOIS)
2 COUNTY OF COOK) SS.

3

4 Jennifer L. Bernier, being first duly sworn,
5 on oath says that she is a Certified Shorthand Reporter,
6 Registered Professional Reporter, Certified LiveNote
7 Reporter, doing business in the City of Chicago, County
8 of Cook and the State of Illinois;

9 That she reported in shorthand the proceedings
10 had at the foregoing Meeting;

11 And that the foregoing is a true and correct
12 transcript of her shorthand notes so taken as aforesaid
13 and contains all the proceedings had at the said
14 Meeting.

15

16

17

JENNIFER L. BERNIER, CSR, RPR, CLR

18

19 CSR No. 084-004190

20

21 SUBSCRIBED AND SWORN TO
22 before me this 23rd day of
23 January, A.D., 2014.

24
