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BEFORE THE
ILLINOIS COMMERCE COMMISSION

BENCH SESSION
(PUBLIC UTILITIES)

Springfield, Illinois
Thursday, February 20, 2014

Met, pursuant to notice, at 10:30 A.M. at
527 East Capitol Avenue, Springfield, Illinois.

PRESENT:

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

MIDWEST LITIGATION SERVICES, by
Angela C. Turner, Reporter
CSR #084-004122

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PROCEEDINGS

CHAIRMAN SCOTT: Pursuant to the provisions of the Open Meetings Act, I now convene a regularly scheduled Bench Session of the Illinois Commerce Commission. With me in Springfield is Commissioner Colgan. With us in Chicago are Commissioner McCabe, Commissioner del Valle, and Commissioner Maye. I am Chairman Scott. We have a quorum.

Before moving into the agenda, according to Section 1700.10 of Title 2 of the Administrative Code, this is the time we allow members of the public to address the Commission. Members of the public wishing to address the Commission must notify the Chief Clerk's office at least 24 hours prior to Commission meetings. According to the Chief Clerk's office, we have no requests to speak at today's Bench Session.

(The Transportation portion of the proceedings was held at this time and is contained in a separate transcript.)

CHAIRMAN SCOTT: Moving on to the Public Utility Agenda, we'll begin with the approval of minutes from our January 22nd Supplier Diversity

1 Policy Session. I understand amendments have been
2 forwarded.

3 Is there a motion to amend the minutes?

4 COMMISSIONER COLGAN: So moved.

5 CHAIRMAN SCOTT: Moved by Commissioner
6 Colgan.

7 Is there a second?

8 COMMISSIONER McCABE: Second.

9 CHAIRMAN SCOTT: Second by Commissioner
10 McCabe.

11 All in favor say aye.

12 (Chorus of ayes.)

13 CHAIRMAN SCOTT: Any opposed?

14 (No response.)

15 CHAIRMAN SCOTT: The vote is five to
16 nothing, and the amendments are adopted.

17 Is there now a motion to approve the minutes
18 as amended?

19 COMMISSIONER COLGAN: So moved.

20 COMMISSIONER McCABE: So moved.

21 CHAIRMAN SCOTT: Moved by Commissioner
22 Colgan. Second by Commissioner McCabe.

23 Any discussion?

24 (No response.)

1 CHAIRMAN SCOTT: All in favor say aye.

2 (Chorus of ayes.)

3 CHAIRMAN SCOTT: Any opposed?

4 (No response.)

5 CHAIRMAN SCOTT: The vote is five to
6 nothing, and the minutes from our January 22nd
7 Supplier Diversity Policy Session, as amended, are
8 approved.

9 Next, we'll address the minutes from our
10 January 23rd Bench Session.

11 Is there a motion to approval the minutes?

12 COMMISSIONER del VALLE: So moved.

13 CHAIRMAN SCOTT: Moved by Commissioner del
14 Valle.

15 Second?

16 COMMISSIONER COLGAN: Second.

17 CHAIRMAN SCOTT: By Commissioner Colgan.

18 All in favor say aye.

19 (Chorus of ayes.)

20 CHAIRMAN SCOTT: Any opposed?

21 (No response.)

22 CHAIRMAN SCOTT: The vote is five to
23 nothing, and the minutes from our January 23rd Bench
24 Session are approved.

1 Last, we'll address the minutes from our
2 January 28th Special Open Meeting. I understand
3 amendments have been forwarded.

4 Is there a motion to amend the minutes?

5 COMMISSIONER MAYE: So moved.

6 CHAIRMAN SCOTT: Moved by Commissioner Maye.

7 Is there a second?

8 COMMISSIONER del VALLE: Second.

9 CHAIRMAN SCOTT: Second by Commissioner del
10 Valle.

11 All in favor say aye.

12 (Chorus of ayes.)

13 CHAIRMAN SCOTT: Any opposed?

14 (No response.)

15 CHAIRMAN SCOTT: The vote is five to
16 nothing, and the amendments are adopted.

17 Is there now a motion to approve the minutes
18 as amended?

19 COMMISSIONER COLGAN: So moved.

20 CHAIRMAN SCOTT: Moved by Commissioner
21 Colgan.

22 Second by Commissioner --

23 COMMISSIONER del VALLE: Second.

24 CHAIRMAN SCOTT: -- del Valle.

1 All in favor say aye.

2 (Chorus of ayes.)

3 CHAIRMAN SCOTT: Any opposed?

4 (No response.)

5 CHAIRMAN SCOTT: The vote is five to
6 nothing, and the minutes from our January 28th
7 Special Open Meeting, as amended, are approved.

8 Turning now to the electric portion of
9 today's agenda, Item E-1 is MidAmerican's filing to
10 comply with Docket Number 12-0212, which concerns
11 certification requirements applicable to vendors that
12 install electric vehicle charging stations. Staff
13 recommends that we approve the changes to
14 MidAmerican's tariff by not suspending the filing.

15 Is there any discussion?

16 (No response.)

17 CHAIRMAN SCOTT: Is there a motion to
18 approve the changes by not suspending the filing?

19 COMMISSIONER COLGAN: So moved.

20 CHAIRMAN SCOTT: Moved by Commissioner
21 Colgan.

22 Is there a second?

23 COMMISSIONER McCABE: Second.

24 CHAIRMAN SCOTT: Second by Commissioner

1 McCabe.

2 All in favor say aye.

3 (Chorus of ayes.)

4 CHAIRMAN SCOTT: Any opposed?

5 (No response.)

6 CHAIRMAN SCOTT: The vote is five to

7 nothing, and the filing is not suspended.

8 We will use this five to nothing vote for
9 the remainder of today's Public Utility Agenda unless
10 otherwise noted.

11 Item E-2 is our reconciliation of revenues
12 collected under Ameren's Hazardous Materials
13 Adjustment Clause Rider with actual and prudent costs
14 associated. Staff recommends entry of an Order
15 commencing the reconciliation proceeding.

16 Is there any discussion?

17 (No response.)

18 CHAIRMAN SCOTT: Are there any objections?

19 (No response.)

20 CHAIRMAN SCOTT: Hearing none, the Order is
21 entered.

22 Item E-3 is Docket Number 11-0593. This is
23 our investigation into ComEd's compliance with the
24 efficiency standard requirement of Section 8-103 of

1 the Public Utilities Act. This item will be held for
2 disposition at a future Commission proceeding.

3 Item E-4 is Docket Number 12-0598. This is
4 Ameren Transmission Company of Illinois' Petition for
5 a Certificate of Public Convenience and Necessity
6 pursuant to Section 8-406.1 of the Illinois Public
7 Utilities Act and an Order pursuant to Section 8-503
8 of the Public Utilities Act to construct, operate and
9 maintain a new high voltage electric service line and
10 related facilities in various counties across
11 Illinois. ALJs Albers and Yoder recommend entry of a
12 Second Order on Rehearing, which addresses the
13 segments of the project from (1) Meredosia to Pawnee;
14 (2) Pawnee to Pana or Mt. Zion; (3) Mt. Zion to
15 Kansas; as well as substation sites at Mt. Zion,
16 Kansas, Sidney, Rising, Ipava and Pana.

17 Judge, did you have an update on any
18 comments?

19 JUDGE ALBERS: I do.

20 CHAIRMAN SCOTT: Okay.

21 JUDGE ALBERS: As of this morning, there
22 were 427 comments. And we did, yesterday afternoon,
23 get two additional Petition to Intervene from
24 landowners in Christian County.

1 CHAIRMAN SCOTT: I had a couple of comments
2 on the case. During the initial portion of this
3 proceeding, I voted against the entry of an Order
4 that did not result in a complete Illinois Rivers
5 Project. As you will recall, the Commission approved
6 the project with a few spaces in the line initially.
7 My reading of the Act, which contemplates approval of
8 a project, rather than sections of a project or an
9 incomplete project, did not lend itself to my voting
10 in favor of the first Order.

11 In this instance, however, we now have a
12 complete protect being proposed by ATXI and
13 intervenors, and a complete project being approved by
14 the Commission through this Order. Thus, I will now
15 be voting in favor of entering the Order.

16 Are there other comments on this matter?

17 COMMISSIONER McCABE: Mr. Chairman.

18 CHAIRMAN SCOTT: Commissioner McCabe, yes.

19 COMMISSIONER McCABE: Routing new
20 transmission lines is not an easy process. ATXI's
21 Illinois River Project is a 375-mile long 345-kV
22 transmission line running from about the Mississippi
23 River near Quincy to the Indiana border near Terre
24 Haute. A dozen criteria informed the

1 decision-making, including cost impact on landowners,
2 the environment, historic resources, land use homes
3 in proximity to existing corridors.

4 Sometimes paralleling a new line with
5 existing lines makes sense from a cost and
6 reliability standpoint; sometimes it does not. I
7 cannot speak for the other Commissioners, but setting
8 a transmission line of this size on an expedited
9 basis does not yield optimum results. In both this
10 and the prior Order, the ALJs expressed frustration
11 with the lack of sufficient information on certain
12 criteria due to time constraints.

13 In addition, one party argued for a more
14 expensive route because Illinois ratepayers only pay
15 nine percent of the cost of this MISO multi-volume
16 project. Illinois ratepayers pay for MVP projects
17 throughout the MISO region. Therefore, I hope our
18 colleagues in other states are making decisions based
19 on what's the least-cost route for the sake of all
20 MISO ratepayers.

21 The ALJs did a good job on this Order given
22 the challenges, and I support the Order.

23 CHAIRMAN SCOTT: Further comments?

24 COMMISSIONER COLGAN: Judge, I do have one

1 question either for Judge Albers or Judge Wallace.
2 The Petitions to Intervene, I assume the way the
3 Order is written, if the Order were to be approved
4 today, those Petitions to Intervene would, by
5 operation, be not granted then, is that correct? Or
6 we have to deal with those separate?

7 JUDGE ALBERS: I think it's appropriate. I
8 read the Petition to Intervene. It would be fine for
9 the Commission to grant the Petition to Intervene.
10 And if you want, I can update the Petition A, which
11 lists all the intervenors.

12 CHAIRMAN SCOTT: So probably do -- Judge
13 Wallace.

14 JUDGE WALLACE: And even if you do grant
15 them today, they take the case as up-to-date.

16 CHAIRMAN SCOTT: As up-to-date.

17 JUDGE WALLACE: If they're end of the Order,
18 they get --

19 CHAIRMAN SCOTT: So it may be appropriate to
20 grant -- for a motion to grant the Petitions to
21 Intervene, and then deal with the case as a whole.

22 COMMISSIONER COLGAN: I will move to grant
23 the Orders to Intervene.

24 CHAIRMAN SCOTT: Commissioner Colgan moves

1 to grant the Motions to Intervene.

2 Is there a second?

3 COMMISSIONER del VALLE: Second.

4 CHAIRMAN SCOTT: Second by Commissioner del
5 Valle.

6 Is there any discussion on that issue?

7 (No response.)

8 CHAIRMAN SCOTT: All in favor say aye.

9 (Chorus of ayes.)

10 CHAIRMAN SCOTT: Any opposed?

11 (No response.)

12 CHAIRMAN SCOTT: The vote is five to
13 nothing, and the Petitions to Intervene have been
14 granted.

15 Now, on the larger issue of the case, as a
16 whole, is there a motion to enter the Second Order on
17 Rehearing?

18 COMMISSIONER McCABE: So moved.

19 CHAIRMAN SCOTT: Moved by Commissioner
20 McCabe.

21 Is there a second?

22 COMMISSIONER MAYE: Second.

23 CHAIRMAN SCOTT: Second by Commissioner
24 Maye.

1 Any discussion?

2 (No response.)

3 CHAIRMAN SCOTT: All in favor say aye.

4 (Chorus of ayes.)

5 CHAIRMAN SCOTT: The vote is five to
6 nothing, and the Second Order on Rehearing is
7 entered. And Judge Albers, to you and Judge Yoder, I
8 really want to thank you. That took a tremendous
9 amount of work in a too short period of time, as we
10 have all said, given what the statutes requires of
11 it. And we really appreciate the effort you put into
12 it. Thank you.

13 JUDGE ALBERS: Thank you.

14 CHAIRMAN SCOTT: Item E-5 is Docket Number
15 13-0178. This is EDF Industrial Power Services'
16 petition for the confidential and/or proprietary
17 treatment of their 2012 Call Center Report and 2012
18 Kilowatt-Hour Report for not less than two years.
19 ALJ Yoder recommends entry of an Order granting the
20 requested relief.

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 E-6 is Docket Number 13-0318. This is
4 ComEd's annual formula rate update and revenue
5 requirement reconciliation under Section 16-108.5 of
6 the Public Utilities Act. ALJs Dolan and Kimbrel
7 recommend entry of an Amendatory Order providing
8 additional detail as to the definition of a rate year
9 under EIMA.

10 In addition, the AG has filed a motion for
11 partial collection of revenues subject to refund,
12 which concerns the Commission's rejection of their
13 proposed ADIT adjustment in this and a related
14 proceeding. ALJs Dolan and Kimbrel recommend that we
15 deny the AG's motion.

16 Is there any discussion?

17 (No response.)

18 CHAIRMAN SCOTT: Is there a motion to enter
19 the Amendatory Order?

20 COMMISSIONER McCABE: So moved.

21 CHAIRMAN SCOTT: Moved by Commissioner
22 McCabe.

23 Is there a second?

24 COMMISSIONER del VALLE: Second.

1 CHAIRMAN SCOTT: Second by Commissioner del
2 Valle.

3 Any discussion on the Amendatory Order?

4 (No response.)

5 CHAIRMAN SCOTT: All in favor say aye.

6 (Chorus of ayes.)

7 CHAIRMAN SCOTT: Any opposed?

8 (No response.)

9 CHAIRMAN SCOTT: The vote is five to
10 nothing, and the Amendatory Order is entered.

11 Is there now also a motion to deny the AG's
12 motion?

13 COMMISSIONER MAYE: So moved.

14 CHAIRMAN SCOTT: Moved by Commissioner Maye.

15 Is there a second?

16 COMMISSIONER McCABE: Second.

17 CHAIRMAN SCOTT: Second by Commissioner
18 McCabe.

19 All in favor say aye.

20 (Chorus of ayes.)

21 CHAIRMAN SCOTT: Any opposed?

22 (No response.)

23 CHAIRMAN SCOTT: The vote is five to
24 nothing, and the motion is denied.

1 Item E-7 is Docket Number 13-0553. This is
2 our investigation of ComEd's tariffs approved in
3 Docket Number 13-0386. Similar to its motion we
4 discussed in the previous matter, the AG has filed a
5 motion for partial collection of revenues subject to
6 refund, which concerns the Commission's rejection of
7 their proposed ADIT adjustment in this and a related
8 proceeding. ALJs Dolan and Kimbrel recommend that we
9 deny the AG's motion.

10 Is there any discussion?

11 (No response.)

12 CHAIRMAN SCOTT: Is there a motion to deny
13 the AG's motion?

14 COMMISSIONER COLGAN: So moved.

15 CHAIRMAN SCOTT: Moved by Commissioner
16 Colgan.

17 Is there second?

18 COMMISSIONER del VALLE: Second.

19 CHAIRMAN SCOTT: By Commissioner del Valle.
20 Any discussion?

21 (No response.)

22 CHAIRMAN SCOTT: All in favor say aye.

23 (Chorus of ayes.)

24 CHAIRMAN SCOTT: Any opposed?

1 (No response.)

2 CHAIRMAN SCOTT: The vote is five to
3 nothing, and the motion is denied.

4 Items E-8 through E-10 can be taken
5 together. These are complaints against ComEd as to
6 billing and/or charges. The parties have apparently
7 settled their differences and have filed a
8 Stipulation and Joint Motion to Dismiss, which the
9 ALJ in each case recommends we grant.

10 Is there any discussion?

11 (No response.)

12 CHAIRMAN SCOTT: Any objections?

13 (No response.)

14 CHAIRMAN SCOTT: Hearing none, the Joint
15 Motions to Dismiss are granted.

16 Items E-11 through E-17 can be taken
17 together. These items are Applications seeking
18 authority to operate as an Agent, Broker, or
19 Consultant engaged in assisting end users procure
20 electricity and power in the state of Illinois
21 pursuant to Section 16-115C of the Public Utilities
22 Act. In each case, ALJ Kimbrel recommends entry of
23 an Order granting the requested relief.

24 Is there any discussion?

1 (No response.)

2 CHAIRMAN SCOTT: Are there any objections?

3 (No response.)

4 CHAIRMAN SCOTT: Hearing none, the Orders
5 are entered.

6 Items E-18 through E-22 can be taken
7 together. These items are Applications for
8 Certification as an Installer of Distributed
9 Generation Facilities pursuant to Section 16-128A of
10 the Public Utilities Act. In each case, ALJ Baker
11 recommends entry of an Order granting the requested
12 certificate.

13 Is there any discussion?

14 (No response.)

15 CHAIRMAN SCOTT: Any objections?

16 (No response.)

17 CHAIRMAN SCOTT: Hearing none, the Orders
18 are entered.

19 Turning now to Natural Gas. Item G-1 is
20 Docket Number 10-0635. This is our citation
21 proceeding to review, under Section 5 of the Illinois
22 Gas Pipeline Safety Act, United States Steel
23 Corporation's plan to have in place for the
24 inspection and maintenance of its pipeline facilities

1 in and near its Granite City Works. United States
2 Steel has filed a Request for Oral Argument, which
3 ALJ Wallace recommends we deny.

4 Is there a motion to deny the Request for
5 Oral Argument?

6 COMMISSIONER COLGAN: So moved.

7 CHAIRMAN SCOTT: Moved by Commissioner
8 Colgan.

9 Is there a second?

10 COMMISSIONER del VALLE: Second.

11 CHAIRMAN SCOTT: Second by Commissioner del
12 Valle.

13 Any discussion?

14 (No response.)

15 CHAIRMAN SCOTT: All in favor say aye.

16 (Chorus of ayes.)

17 CHAIRMAN SCOTT: Any opposed?

18 (No response.)

19 CHAIRMAN SCOTT: The vote is five to
20 nothing, and the request is denied.

21 ALJ Wallace also recommends entry of an
22 Interim Order finding that USS is subject to the
23 Pipeline Safety Act and that its facilities are
24 subject to the Commission's jurisdiction.

1 Is there any discussion?

2 (No response.)

3 CHAIRMAN SCOTT: Are there any objections to
4 entry of the Interim Order?

5 (No response.)

6 CHAIRMAN SCOTT: Hearing none, the Interim
7 Order is entered.

8 Item G-2 and G-3 can be taken together.
9 These items are our reconciliation of revenues
10 collected under North Shore Gas and Peoples Gas' coal
11 tar riders with prudent costs associated with coal
12 tar cleanup expenditures. In both cases, ALJ
13 Jorgenson recommends entry of an Order approving the
14 reconciliation.

15 Is there any discussion?

16 (No response.)

17 CHAIRMAN SCOTT: Are there any objections?

18 (No response.)

19 CHAIRMAN SCOTT: Hearing none, the Orders
20 are entered.

21 Item G-4 is Docket Number 13-0347. This is
22 DWA Capital Group's complaint against Peoples Gas as
23 to billing and/or charges. The parties have
24 apparently settled their differences and have filed a

1 Stipulation and Joint Motion to Dismiss, which ALJ
2 Jorgenson recommends we grant.

3 Is there any discussion?

4 (No response.)

5 CHAIRMAN SCOTT: Are there any objections?

6 (No response.)

7 CHAIRMAN SCOTT: Hearing none, the Joint
8 Motion to Dismiss is granted.

9 Items G-5 and G-6 can be taken together.
10 These items are petitions for the confidential and/or
11 proprietary treatment of portions of Direct Energy
12 Services and Interstate Gas Supply of Illinois'
13 reports of continued compliance as alternative gas
14 suppliers. In both cases, the ALJ recommends entry
15 of an Order granting the requested relief for a
16 period of two years.

17 Is there any discussion?

18 (No response.)

19 CHAIRMAN SCOTT: Are there any objections?

20 (No response.)

21 CHAIRMAN SCOTT: Hearing none, the Orders
22 are entered.

23 On to Telecommunications. Item T1 is Docket
24 Number 13-0448. This is Tempo Telecom's Motion to

1 Withdraw its petition for designation as an eligible
2 telecommunication carrier in the state of Illinois.
3 ALJ Riley recommends that we grant the request and
4 dismiss the proceeding without prejudice.

5 Is there any discussion?

6 (No response.)

7 CHAIRMAN SCOTT: Are there any objections?

8 (No response.)

9 CHAIRMAN SCOTT: Hearing none, the request
10 is granted and the proceeding dismissed.

11 Item T-2 is Docket Number 13-0675. This is
12 Aio Wireless's Application for a certificate of
13 wireless authority to operate as a facilities-based
14 carrier of telecommunication in the state of
15 Illinois. ALJ Riley recommends entry of an Order
16 granting the Certificate of Service Authority.

17 Is there any discussion?

18 (No response.)

19 CHAIRMAN SCOTT: Are there any objections?

20 (No response.)

21 CHAIRMAN SCOTT: Hearing none, the Order is
22 entered.

23 Item T-3 is Docket Number 14-0079. This is
24 Infotelecom's Petition to Cancel its Certificates of

1 Service Authority to provide interexchange and local
2 service in the state of Illinois. ALJ Riley
3 recommends entry of an Order granting the requested
4 relief.

5 Is there any discussion?

6 (No response.)

7 CHAIRMAN SCOTT: Are there any objections?

8 (No response.)

9 CHAIRMAN SCOTT: Hearing none, the Order is
10 entered.

11 Items T-4 through T-10 can be taken
12 together. These items are petitions for the
13 confidential and/or proprietary treatment of each
14 petitioner's annual report for a period of not less
15 than two years. In each case, the ALJ recommends
16 entry of an Order granting the requested relief.

17 Is there any discussion?

18 (No response.)

19 CHAIRMAN SCOTT: Are there any objections?

20 (No response.)

21 CHAIRMAN SCOTT: Hearing none, the Orders
22 are entered.

23 Items T-11 through T-13 can be taken
24 together. These items are joint petitions for the

1 approval of or amendment to Interconnection
2 Agreements. In each case, ALJ Riley recommends entry
3 of an Order approving the agreement.

4 Is there any discussion?

5 (No response.)

6 CHAIRMAN SCOTT: Any objections?

7 (No response.)

8 CHAIRMAN SCOTT: Hearing none, the Orders
9 are entered.

10 We have two miscellaneous items on the
11 agenda today. Item M-1 is Docket Number 11-0711,
12 which is our rulemaking to develop and adopt rules
13 concerning rate case expense. This item has been
14 withdrawn from today's agenda.

15 Item M-2 is Docket Number 13-0252. This is
16 FutureGen Industrial Alliance's Application for
17 Certificate authorizing the construction and
18 operation of a carbon dioxide pipeline. ALJ
19 Jorgenson recommends entry of an Order granting the
20 certificate conditioned upon the Alliance receiving
21 all permits and approvals. I believe it's ALJ Von
22 Qualen recommends entry of an Order granting the
23 certificate conditioned upon the Alliance receiving
24 all permits and approvals necessary for the

1 construction and operation of the pipeline prior to
2 the start of any construction.

3 Commissioner Colgan has some proposed edits.
4 Commissioner.

5 COMMISSIONER COLGAN: Thank you, Chairman.

6 There's one contested issue in this case.
7 And today, I am proposing amendments to the contested
8 issue changing the Commission's Analysis and
9 Conclusions and the Findings and ordering paragraph
10 of the FutureGen CO2 pipeline certificate Order.

11 The contested issue in this proceeding is
12 whether the limited grant of eminent domain authority
13 granted with the certificate may be used prior to
14 FutureGen receiving all required permits and
15 approvals. The Proposed Order agreed with Staff and
16 stated that the Final Order in the grant of eminent
17 domain authority are conditioned upon FutureGen
18 obtaining all the required permits and approvals, and
19 that the grant of limited eminent domain authority
20 may not be exercised until FutureGen has obtained all
21 required permits and approvals.

22 I disagree with both the analysis and
23 conclusions set forth in the Order regarding this
24 issue. My proposed edits reverse the Proposed Order

1 and conclude that FutureGen's limited grant of
2 eminent domain authority should not be conditioned
3 upon receipt of all required permits and approvals.
4 My edits are based on, number one, the plain meaning
5 of Section 20G of the CO2 Act, which states that the
6 only condition is that the applicant must obtain all
7 required permits and approvals prior to the start of
8 construction, not prior to the use of eminent domain.
9 Number two, the legislative history of the Act. And
10 number three, the impractical and unworkable result
11 that would otherwise occur by jeopardizing
12 FutureGen's ability to acquire the easements required
13 for the pipeline route on a schedule that is
14 consistent with meeting federally-imposed project
15 deadlines, including the ARRA construction spending
16 deadline.

17 So in conclusion, and in summary, the
18 Proposed Order findings with respect to when the
19 Certificate of Authority becomes effective are
20 inconsistent with the plain meaning of the Illinois
21 Carbon Dioxide Transportation and Sequestration Act,
22 as well as the legislative history of the Act. The
23 language in the Proposed Order would also lead to
24 impractical and unworkable results, which is contrary

1 to the purpose of the Act. For the foregoing
2 reasons, the FutureGen Alliance had requested that
3 the Commission exercises discretion afforded to it in
4 Illinois law.

5 And so my edits I put forth to you, Mr.
6 Chairman and Commissioners, and I request your
7 support for these edits and move that they be
8 approved.

9 CHAIRMAN SCOTT: Motion to approve the
10 edits.

11 Is there a second?

12 COMMISSIONER del VALLE: Second.

13 CHAIRMAN SCOTT: Second by Commissioner del
14 Valle.

15 Discussion on the proposed edits?

16 COMMISSIONER McCABE: Mr. Chairman, could I
17 ask the ALJ a few questions?

18 CHAIRMAN SCOTT: Sure.

19 JUDGE VON QUALEN: Good morning.

20 COMMISSIONER McCABE: Good morning.

21 The Proposed Order mentions that FutureGen
22 currently has one of 12 required permits. Is that
23 still the case today, that you know of?

24 JUDGE VON QUALEN: Really, the record

1 doesn't reflect if there's been any change since it
2 was marked heard and taken back in November. So I do
3 not know if there are any other permits, and it's not
4 reflected in the record.

5 COMMISSIONER McCABE: And if we adopted the
6 proposed amendment and FutureGen exercised eminent
7 domain and the project was abandoned in the future,
8 what happens to the land rights the Alliance gave to
9 the landowners?

10 JUDGE VON QUALEN: My understanding is they
11 would continue to have the easement. It would
12 continue to exist. It would show up on the title for
13 the property, henceforth. I do see that the Act
14 provides that the easement, the eminent domain is
15 only for use for a carbon dioxide pipeline. So under
16 the Act, it would not be able to be used for any
17 other purpose.

18 COMMISSIONER McCABE: Thank you.

19 CHAIRMAN SCOTT: Thank you, Judge.

20 Do you want to state your name for the court
21 reporter, please?

22 JUDGE VON QUALEN: Janis Von Qualen.

23 CHAIRMAN SCOTT: Thank you.

24 Further discussion?

1 COMMISSIONER MAYE: Mr. Chairman, I do have
2 a couple of points. I think, for me, this definitely
3 came down to a game time decision. I kind of have
4 stressed in the past, and I think this Commission as
5 a whole has stressed consistency. And I know that in
6 prior Commission proceedings, we talked about being
7 consistent. And we had said when it came to eminent
8 domain, it had to be acquired.

9 However, I do realize this is a very
10 distinct project. And Commissioner Colgan, as he did
11 point out, there are certain things that could occur
12 during this process of eminent domain that could
13 threaten the entire project. And I think that, as
14 it's been stated in the Order, that PHMSA would not
15 necessarily provide a permit for, I guess, a short
16 period of time prior to construction, which obviously
17 meant that there would be a very -- pretty much a
18 sliver of time for eminent domain and any Commission
19 proceedings that needed to go forward.

20 So with that, I do understand the fragility
21 of this, I guess, particular situation. And with
22 that said, I will support Commissioner Colgan's
23 edits.

24 CHAIRMAN SCOTT: I am going to support them

1 as well. And I think the reasons have already been
2 brought up. One, this is a law that's unique to this
3 particular situation. And so I think, as we look for
4 parallels or precedence in other places, we're not
5 going to find it, because it's unique to this
6 particular situation. And I think the legislative
7 history that Commissioner Colgan referenced is clear
8 that the desire of the General Assembly here is to
9 move this project forward.

10 And I think, certainly, the reading of the
11 law can be done the way that Commissioner Colgan
12 reads it. And that, tied to what I believe is the
13 legislative intent of the General Assembly here, and
14 the practicality of trying to acquire this land, as
15 people have already mentioned, in a very truncated
16 time period, leads me to believe that a different
17 reading of this would not allow the project to go
18 forward for a reason that I don't believe was
19 intended by the General Assembly.

20 So I am going to support Commissioner
21 Colgan's edits as well.

22 Further discussion?

23 COMMISSIONER McCABE: Mr. Chairman.

24 CHAIRMAN SCOTT: Yes, Commissioner.

1 COMMISSIONER McCABE: I'm going to support
2 the Proposed Order. I think the Proposed Order and
3 the Staff, our BOE laid out detailed policy and legal
4 reasons for not granting eminent domain until the
5 permits are obtained.

6 CHAIRMAN SCOTT: The amendments have been
7 moved and seconded.

8 All in favor of the amendments say aye.

9 (Chairman Scott, Commissioners
10 Colgan, Maye, and del Valle
11 responded.)

12 CHAIRMAN SCOTT: Opposed?

13 COMMISSIONER McCABE: No.

14 CHAIRMAN SCOTT: The vote is 4 to 1, and the
15 amendments are adopted.

16 Is there now a motion to approve the Order,
17 as amended?

18 COMMISSIONER COLGAN: So moved.

19 COMMISSIONER del VALLE: Second.

20 CHAIRMAN SCOTT: Moved by Commissioner
21 Colgan. Second by Commissioner del Valle.

22 Any discussion?

23 (No response.)

24 CHAIRMAN SCOTT: Question is on the Order,

1 as amended.

2 All in favor say aye.

3 (Chairman Scott, Commissioners
4 Colgan, Maye and del Valle
5 responded.)

6 CHAIRMAN SCOTT: Opposed?

7 COMMISSIONER McCABE: No.

8 CHAIRMAN SCOTT: The vote is 4 to 1, and the
9 Order, as amended, is adopted.

10 On to Petitions for Rehearing. Item PR-1 is
11 Docket Number 10-0684. This is our reconciliation of
12 revenues collected under Ameren's gas adjustment
13 charges with actual costs prudently incurred. Ameren
14 has filed an Application for Rehearing, which ALJ
15 Albers recommends we deny.

16 Is there any discussion?

17 (No response.)

18 CHAIRMAN SCOTT: Is there a motion to deny
19 the Application for Rehearing?

20 COMMISSIONER COLGAN: So moved.

21 CHAIRMAN SCOTT: Moved by Commissioner
22 Colgan.

23 Second?

24 COMMISSIONER del VALLE: Second.

1 CHAIRMAN SCOTT: By Commissioner del Valle.
2 Is there any discussion?
3 (No response.)
4 CHAIRMAN SCOTT: All in favor say aye.
5 (Chorus of ayes.)
6 CHAIRMAN SCOTT: Any opposed?
7 (No response.)
8 CHAIRMAN SCOTT: The vote is five to
9 nothing, and the Application for Rehearing is denied.
10 Item PR-2 is Docket Number 13-0606. This is
11 Raymond LaVigne DDS's complaint against ComEd as to
12 billing and/or charges. The complainant has filed a
13 Petition for Rehearing, which ALJ Hilliard recommends
14 we grant.
15 Is there any discussion?
16 (No response.)
17 CHAIRMAN SCOTT: Is there a motion to grant
18 the Petition for Rehearing?
19 COMMISSIONER McCABE: So moved.
20 CHAIRMAN SCOTT: Moved by Commissioner
21 McCabe.
22 Is there a second?
23 COMMISSIONER MAYE: Second.
24 CHAIRMAN SCOTT: Second by Commissioner

1 Maye.

2 Is there any discussion?

3 (No response.)

4 CHAIRMAN SCOTT: All in favor aye.

5 (Chorus of ayes.)

6 CHAIRMAN SCOTT: Any opposed?

7 (No response.)

8 CHAIRMAN SCOTT: The vote is five to

9 nothing, and the Petition for Rehearing is granted.

10 We have two items of other business on

11 today's agenda, both of which concern pending

12 litigation. So we'll go into closed session to

13 address them.

14 Is there a motion to go into closed session?

15 COMMISSIONER del VALLE: So moved.

16 COMMISSIONER COLGAN: So moved.

17 CHAIRMAN SCOTT: Moved by Commissioner del

18 Valle. Second by Commissioner Colgan.

19 All in favor say aye.

20 (Chorus of ayes.)

21 CHAIRMAN SCOTT: Any opposed?

22 (No response.)

23 CHAIRMAN SCOTT: The vote is five to

24 nothing. The Commission will now go into closed

1 session.

2 Please let me know when the room is ready in
3 Chicago.

4 COMMISSIONER del VALLE: We're set.

5 (Whereupon, at this point,
6 pages 36 - 63 of the proceedings
7 are contained in a separate closed
8 transcript.)

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CONTINUATION OF PROCEEDINGS

CHAIRMAN SCOTT: In closed session, Randy Rismiller of Commission Staff briefed us on concerns of the ICC's comments to FERC regarding the System Support Resource Contract between MISO and Illinois Power Marketing Company and its associated cost allocation.

Is there a motion to file comments with FERC?

COMMISSIONER COLGAN: So moved.

CHAIRMAN SCOTT: Moved by Commissioner Colgan.

Second.

COMMISSIONER McCABE: Second.

CHAIRMAN SCOTT: By Commissioner McCabe.

All in favor say aye.

(Chorus of ayes.)

CHAIRMAN SCOTT: Any opposed?

(No response.)

CHAIRMAN SCOTT: The vote is five to nothing, and the filing will be made with FERC.

In closed session, we were also briefed by Nora Naughton and Randy Rismiller on the State's Amicus Brief in PPL EnergyPlus LLC versus Nazarian.

1 We just received a briefing on that particular
2 matter.

3 Judge Wallace, are there any other matters
4 to come before the Commission today?

5 JUDGE WALLACE: No, Mr. Chairman. That's it
6 for the day.

7 CHAIRMAN SCOTT: Thank you, sir.

8 Hearing nothing, the meeting stands
9 adjourned. Thanks everyone.

10 BENCH SESSION ADJOURNED.

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CERTIFICATE OF REPORTER

I, Angela C. Turner, a Certified Shorthand Reporter within and for the State of Illinois, do hereby certify that the Bench Session aforementioned was held on the time and in the place previously described.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

Angela C. Turner
IL CSR #084-004122