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BEFORE THE
ILLINOIS COMMERCE COMMISSION

TRANSPORTATION BENCH SESSION

Chicago, Illinois
March 7th, 2012

Met, pursuant to notice, at 10:30 a.m.

BEFORE:

- MR. DOUGLAS P. SCOTT, Chairman
- MS. LULA M. FORD, Commission
- MS. ERIN M. O'CONNELL-DIAZ, Commissioner
- MR. SHERMAN J. ELLIOTT, Commissioner
- MR. JOHN T. COLGAN, Acting Commissioner
(via telephone)

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1 CHAIRMAN SCOTT: Pursuant to the provisions of
2 the Illinois Open Meetings Act, I now convene a
3 regularly scheduled Bench Session of the Illinois
4 Commerce Commission.

5 With me in Chicago are Commissioners
6 Ford, O'Connell-Diaz and Elliott. And with us in
7 Springfield is Commissioner Colgan. I'm Chairman
8 Scott. We have a quorum.

9 Before moving into the agenda,
10 according to Section 1700.10 of Title II of the
11 Administrative Code, this is the time we allow
12 members of the public to address the Commission.

13 Members of the public wishing to
14 address the Commission must notify the Chief Clerk's
15 Office at least 24 hours prior to Commission
16 meetings. According to the Clerk's Office, we have
17 one request to speak at today's Bench Session. Our
18 public request to speak today comes from
19 Representative Marlow Colvin.

20 Representative Colvin, are you there?

21 REPRESENTATIVE COLVIN: I am.

22 CHAIRMAN SCOTT: Very good. Just a reminder

1 that per the Commission's rules, you'll have
2 3 minutes for your comments. I know you've been
3 through this before, but you understand that we won't
4 actually be responding to you as you speak.

5 So when you're ready, go ahead.

6 REPRESENTATIVE COLVIN: That is understandable.

7 Good morning, Chairman Scott and
8 Mr. Colgan here in Springfield, to the rest of the
9 Commissioners.

10 Chairman Scott and the Commissioners,
11 thank you for this opportunity. My name is Marlow
12 Colvin, for the record. I'm the State Representative
13 of the 33rd Representative District on the Southeast
14 Side of the City of Chicago.

15 Thank you for this opportunity to
16 speak with you again.

17 I am here again today to discuss the
18 Chicago Clean Energy Project. As you know, this
19 project is not on your agenda for today's meeting
20 and, quite frankly, the reason I'm here is that I
21 find it so troubling.

22 There is a very real concern that this

1 proceeding has been unnecessarily and inappropriately
2 delayed in a manner that will prevent you from acting
3 within the statutory deadlines established by the
4 General Assembly.

5 As you recall, prior to you voting on
6 the initial order regarding the Chicago Clean Energy
7 Project in January, I had the opportunity to speak
8 with you about this \$3 billion facility that is
9 planned to be constructed in my legislative district
10 on the Southeast Side of the City of Chicago.

11 In addition to providing much-needed
12 jobs and economic growth for this community and this
13 state, this project will provide a productive use for
14 Illinois coal, demonstrate the commercial viability
15 of U.S. gasification technology, and significantly
16 advance this country's enhanced oil recovery efforts.

17 As we discussed then, there is a very
18 substantial legislative vetting of this project prior
19 to the statute being enacted. There also was a very
20 detailed framework that the General Assembly approved
21 in the statute. The General Assembly very
22 intentionally gave the ICC an important but limited

1 role. There was no disrespect intended by giving the
2 ICC a limited role. There was a deliberate
3 assignment of task with the Illinois Power Agency
4 resolving contested terms of the sourcing contract,
5 the Capital Development Board establishing the
6 financial parameters for the capital and operations
7 management cost and the ICC establishing the rate of
8 return for the facility.

9 Each agency had a limited role in
10 developing the foundation for the project that
11 reflected the agency's particular expertise. The
12 statute provides that once those inputs have been
13 demonstrated, the ICC is to take the mechanical steps
14 necessary to finalize the contract.

15 As the statute plainly states, the ICC
16 is only to perform three very specific tasks at this
17 point: fill in the blanks for the capital charge and
18 O&M charge and the rate of return; number two, to
19 remove two inappropriate early termination
20 provisions; and, number three, correct typographical
21 and scrivener errors.

22 The statute clearly states that these

1 are the only changes that the ICC is authorized to
2 make to the contract the Illinois Power Agency
3 approved. The order that you adopted in January went
4 well beyond those tasks and modified the substantive
5 terms of the contract that included poison pills that
6 appeared designed to kill the project. The
7 provisions that were included in your order
8 absolutely were not contemplated by the General
9 Assembly.

10 There really is no way for the General
11 Assembly to draft a statute that is more clear
12 regarding the ICC's limited role. However, when you
13 voted on the order in January, the Chairman expressed
14 his desire to get more legislative guidance. As a
15 result, the House and Senate both have adopted
16 resolutions clearly reiterating that the ICC was,
17 indeed, to have a limited role expressing
18 dissatisfaction with the January order and
19 encouraging the ICC to grant rehearing so they can
20 enter an order that makes only the limited
21 modifications to the sourcing contract called by for
22 the statute.

1 I was relieved to learn that this Body
2 unanimously voted to grant request for rehearing
3 followed by the Chicago Clean Energy and the economic
4 development intervenors, but I was very troubled to
5 hear about the positions of the Chief Administrative
6 Law Judge who has been assigned to the case.

7 In his memorandum to this Commission,
8 he recommended denial on rehearing to address legal
9 issues that he recommended that the Commission
10 further revise an IPA-approved contract. He did this
11 after the House adopted its resolution, which request
12 that the Commission grant rehearing to reverse itself
13 on legal issues and clarify that the Commission was
14 not to revise the IPA-approved contract except as
15 explicitly reside -- required by the law.

16 Now we must wait for a process that
17 again will result in a proposed order from the Chief
18 ALJ. I am very concerned that the proposed order
19 will contain poison pills and recommendations that
20 are contrary to the law and legislative attempt.

21 You already have read the Chief ALJ's
22 position in his memorandum. Of course the final

1 decision will be made by you, the Commissioners. I
2 sincerely hope that each of you review the statute
3 and follow its specific requirements, even if the
4 Chief Administrative Law Judge recommends something
5 else. It is an extraordinary step for the House and
6 the Senate to adopt the resolution that we did a
7 month ago.

8 With that understanding in mind as the
9 sponsor of underlying legislation, I am dismayed at
10 how your Chief ALJ has conducted this proceeding so
11 far. I am concerned that your Chief ALJ is now
12 trying to kill the project by delaying it to its
13 death.

14 The General Assembly put in law a
15 limited 30-day rehearing process for any order that
16 impacts the facility's recoverable costs. The idea
17 of waiting a half a year for a proposed order on
18 rehearing from the Chief ALJ that almost certainly is
19 not going to be in line with the legislative mandate
20 given the ICC is entirely unacceptable.

21 It is my strong hope that this Body
22 will direct the Chief ALJ to act on an expedited

1 basis, within 30 days contemplated by the law, to
2 develop a proposed order that recommends the
3 Commission approve the IPA-approved contract with
4 only the three changes outlined in the law.

5 With that, I simply want to add that
6 clearly the legislative intent, as I testified in
7 Spring- -- in Chicago in January and, again, here, I
8 just want to reiterate that this Bill was fully
9 vetted by folks duly elected across this state to
10 argue, discuss, debate, vet and to ultimately vote up
11 or down on this legislation and its intent and how it
12 would be implemented.

13 We went through great stakes and great
14 pains over the last three and a half years to
15 accomplish that. Why is that important? It speaks
16 directly to what our democracy holds. And that is,
17 speaking on behalf of all the people of Illinois,
18 those legislators in the Capitol, both in the House
19 and the Senate, who weighed in on its every member,
20 and then getting the approval by both chambers and by
21 super majority fashions and then having our Governor
22 sign this legislation into law clearly undergirds

1 what our democracy is really all about. And that is
2 the people deciding what's in the best interest of
3 the state of Illinois and it's interest in this case
4 in particular with respect to energy production in
5 Illinois.

6 I would hope that the Commission and
7 the Commissioners would take that to heart as they
8 deliberate these very important issues.

9 I want to thank you for your
10 indulgence for giving me this time to speak this
11 morning. And that would conclude my statement this
12 morning.

13 Thank you.

14 CHAIRMAN SCOTT: Thank you, Representative
15 Colvin.

16 That will conclude the public comment
17 portion of today's agenda.

18 On to today's matters, we will start
19 with Transportation agenda with the approval of
20 minutes from our February 16th Bench Session. I
21 understand amendments have been forwarded.

22 Is there a motion to amend the

1 minutes?

2 COMMISSIONER O'CONNELL-DIAZ: So moved.

3 CHAIRMAN SCOTT: Is there a second?

4 COMMISSIONER ELLIOTT: Second.

5 CHAIRMAN SCOTT: It's been moved and seconded.

6 All in favor say "aye."

7 (Chorus of ayes.)

8 Any opposed?

9 (No response.)

10 The vote is 5-0 and the amendments are
11 adopted.

12 Is there a motion to approve the
13 February 16th minutes as adopted?

14 COMMISSIONER O'CONNELL-DIAZ: So moved.

15 CHAIRMAN SCOTT: Is there a second?

16 COMMISSIONER FORD: Second.

17 CHAIRMAN SCOTT: So moved and seconded.

18 All in favor say "aye."

19 (Chorus of ayes.)

20 Any opposed?

21 (No response.)

22 The vote is 5-0 and the February 16th

1 Transportation Bench Session as amended are approved.

2 Moving on to the Railroad section.

3 Items are RR-1 through RR-3 can be
4 taken together. These items concern Stipulated
5 Agreements regarding public safety improvements at
6 highway-rail grade crossings across Illinois. In
7 each case Staff recommends entry of an Order
8 approving the agreement.

9 Is there any discussion?

10 (No response.)

11 Is there a motion to enter the orders?

12 COMMISSIONER O'CONNELL-DIAZ: So moved.

13 CHAIRMAN SCOTT: Is there a second?

14 COMMISSIONER ELLIOTT: Second.

15 CHAIRMAN SCOTT: Moved and seconded.

16 All in favor say "aye."

17 (Chorus of ayes.)

18 Any opposed?

19 (No response.)

20 The vote is 5-0 and the orders are
21 entered. We will use this 5-0 vote for the remainder
22 of the Transportation agenda unless otherwise noted.

1 Item RR-4 is Docket No. T09-0067.
2 This item concerns a citation proceeding against
3 Keokuk Junction Railway Company. ALJ
4 Kirkland-Montague recommends entry of a Supplemental
5 Order dismissing the Citation Order and subsequent
6 Order issued in 2009.

7 Is there any discussion?

8 (No response.)

9 Any objections?

10 (No response.)

11 Hearing none, the Supplemental Order
12 is entered and the Citation Order is dismissed.

13 Item RR-5 is Docket No. T11-0007.

14 This item concerns a Stipulated Agreement concerning
15 public safety improvements to a highway-rail grade
16 crossing in Effingham County. Staff recommends entry
17 of a second Supplemental Order granting additional
18 time for the project's completion.

19 Is there any discussion?

20 (No response.)

21 Any objections?

22 (No response.)

1 Hearing none, the Supplemental Order
2 is entered.

3 Item RR-6 is Docket No. T05-0058.
4 This item concerns a petition to establish 12 new
5 highway-rail grade crossings in Williamson County in
6 connection a coal mine. Petitioners seek voluntary
7 dismissal without prejudice for the part of the
8 petition related to the West Spur. And ALJ
9 Kirkland-Montague recommends entry of a fifth
10 Supplemental Order granting that partial dismissal.

11 Is there any discussion?

12 (No response.)

13 Any objections?

14 (No response.)

15 Hearing none, the Supplemental Order
16 is entered.

17 Mr. Matrisch, is there any further
18 Transportation business to come before the Commission
19 today?

20 MR. MATRISCH: Nothing further, Mr. Chairman.
21 Thank you.

22 CHAIRMAN SCOTT: Thank you, sir.

