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BEFORE THE
ILLINOIS COMMERCE COMMISSION
PUBLIC UTILITY REGULAR OPEN MEETING
Wednesday, April 1, 2020
Chicago, Illinois

Met pursuant to notice at 10:30 a.m. via
teleconference, Chicago, Illinois.

PRESENT:

- CARRIE ZALEWSKI, Chairman
- MICHAEL T. CARRIGAN, Commissioner
- SADZI M. OLIVA, Commissioner
- MARIA S. BOCANEGRA, Commissioner
- D. ETHAN KIMBREL, Commissioner

SULLIVAN REPORTING COMPANY
BY: JO ANN KROLICKI, CSR (Via teleconference)
License No. 084-002215

1 CHAIRMAN ZALEWSKI: Good morning. Are we
2 ready to proceed in Springfield?

3 COMMISSIONER CARRIGAN: Good morning,
4 Chairman. Mike Carrigan. We are ready to proceed.

5 CHAIRMAN ZALEWSKI: Thank you.

6 Under the Open Meetings Act and in
7 accordance with the Governor's Executive Orders, I
8 call the April 1, 2020, Regular Open Meeting to
9 order.

10 Before we proceed, I'd like to
11 indicate that due to the emergency measures
12 implemented in response to the COVID-19 pandemic and
13 the Governor's Executive Orders, we expect more
14 remote participation from the general public and the
15 Commissioners. The court reporter is also calling
16 in.

17 For clarity of the record, I would
18 ask every Commissioner to state their name every time
19 before speaking, and with that, we will proceed.

20 Commissioner Kimbrel is with me in
21 Chicago. Commissioner Carrigan is joining us from
22 our Springfield office. Commissioners Oliva and

1 Bocanegra are calling in, and I confirmed that
2 they're able to hear us.

3 We have a quorum.

4 We have no requests to speak.

5 We have no Transportation Agenda.

6 We're moving on to the Public
7 Utilities Agenda.

8 There are edits to the March 4, 2020,
9 Special Open Meeting Minutes.

10 There are edits to the March 18,
11 2020, Special Open Meeting Minutes.

12 There are also edits to the March 18,
13 2020, Emergency Special Open Meeting Minutes.

14 Are there any objections to approving
15 the Minutes as edited?

16 (No Response.)

17 CHAIRMAN ZALEWSKI: Hearing none, the
18 Minutes are approved.

19 Moving on to the Electric Items.

20 Item E-1 concerns ERM No. 20-019,
21 which is ComEd's filing to revise its Rider
22 Residential Real Time Pricing Program (Rider RRTP.)

1 In Docket No. 18-1772, the Commission approved Rider
2 RRTP modification to establish a one-year pilot
3 program that would invite a limited number of
4 customers to enroll on a risk-free basis during the
5 Pilot.

6 With this filing, ComEd now proposes
7 revisions to Rider RRTP to remedy ministerial errors
8 and to require ComEd to perform a balancing test
9 before any customer is invited to participate in the
10 Pilot to ensure the required balances for proper
11 statistical evaluation of the Pilot.

12 The Commission Staff recommends not
13 suspending the filing.

14 Are there any objections to not
15 suspending the filing?

16 (No response.)

17 CHAIRMAN ZALEWSKI: Hearing none, the
18 filing is not suspended.

19 Item E-2 concerns ERM 20-023, which
20 is MidAmerican's filing to modify its Rider
21 Curtailment Service or Rider CS. Rider CS provides
22 for an incentive payment for the Non-Residential Load

1 Management Program available to customers able to
2 curtail 250 kilowatts or more during specified
3 curtailment periods. Proposed modifications adjust
4 the incentive amount consistent with MidAmerican's
5 Energy Efficiency Plan that the Commission recently
6 approved in Docket 19-0734.

7 The Commission Staff recommends not
8 suspending the filing.

9 Are there any objections to not
10 suspending the filing?

11 (No response.)

12 CHAIRMAN ZALEWSKI: Hearing none, the
13 filing is not suspended.

14 Item E-3 concerns investigation into
15 a Non-RES Third-Party Warrant Process for Access to
16 Customer Advance Metering Infrastructure or AMI,
17 Interval Meter Data. The Order rejects the Joint
18 Process Proposal agreed to by some of the parties in
19 the docket.

20 The Order notes that the Commission
21 is not convinced that the proposed process will
22 increase data sharing due to the length of time and

1 multiple steps involved. The proposed process shifts
2 the burden of obtaining customer authorization to the
3 utility at ratepayer expense with recovery through
4 the utilities' rates.

5 Because the Commission is not
6 convinced that the proposal will increase customer
7 usage of AMI data, the Commission cannot authorize
8 recovery of these expenses through the utilities'
9 rates. The Order concludes that it is not clear that
10 the suggested benefits will materialize, but it is
11 evident that the proposed process does not provide
12 benefits for all ratepayers and only very few
13 ratepayers may actually benefit.

14 (Brief interruption.)

15 CHAIRMAN ZALEWSKI: Commissioner Bocanegra,
16 I know that you had comments. If you don't mind
17 repeating yours?

18 COMMISSIONER BOCANEGRA: Yes, of course.
19 Thank you, Chair.

20 And the same comment as before,
21 Miss Court Reporter, if you do have trouble hearing
22 me, please feel free to interrupt.

1 I was saying that while I agree with
2 the ultimate conclusion in this Order not to adopt
3 the Joint Parties' Proposal, I disagree with my
4 colleagues on certain points.

5 First, I agree with Staff on a number
6 of critical issues, including that, one, the JPP is
7 not a true warrant process and, therefore, does not
8 conform with our initiating order. Two, the
9 proponents have failed to demonstrate why this
10 process is needed and how it addresses the agency
11 question, and, three, ratepayers should not shoulder
12 the financial burden associated with the JPP.

13 While I would not adopt the JPP and
14 agree with Staff's assessment, I do not believe
15 dismissing this matter entirely is necessary.
16 Rather, if the proponent of the third-party warrant
17 process believes in the necessity and value of the
18 process, I would encourage the parties to put forth
19 an actual warrant process that provides the necessary
20 safeguards for customers' information, addressed why
21 the warrant process is needed to assist customers,
22 and provides an alternative to a ratepayer

1 subsidization of the process.

2 The parties to this proceeding have
3 been working on this issue for many years, and I, for
4 one, am reluctant to completely disregard years of
5 work without any results. I do see a value in a true
6 third-party warrant process, and as CUB, EDF and
7 Elevate set forth, that customers should have the
8 ability to easily share their usage data to maximize
9 the benefit of grid modernization undertaken by the
10 utilities, which has been paid for in part by those
11 same ratepayers.

12 Additionally, the parties to this
13 docket address whether Green Button Connect
14 sufficiently addresses the data-sharing issues raised
15 in this docket. ICEA suggests that rather than adopt
16 the JPP, the Commission should revisit Green Button
17 Connect. The records show that only three third
18 parties have registered for Green Button Connect in
19 ComEd's territory and none in Ameren's.

20 I agree that there is a valid case
21 for exploring updates to Green Button Connect;
22 however, that is a separate matter from the issue

1 being addressed in this docket, and I believe
2 conflating the two issues further confuses the
3 questions posed in this docket.

4 Accordingly, I think it would be
5 prudent for many of the parties to this docket to
6 address and fix the issues with Green Button Connect
7 whether through a docketed proceeding or other means
8 available to the parties.

9 Thank you.

10 CHAIRMAN ZALEWSKI: Thank you.

11 Do any other Commissioners have
12 comments?

13 COMMISSIONER KIMBREL: I would just add --
14 this is Commissioner Kimbrel. I would just add that
15 I thought that the Administrative Law Judge did a
16 good job on this matter and found her Post-Exceptions
17 Proposed Order reasonable and not requiring any
18 further edits on our behalf.

19 She will be surprised to hear this,
20 but I do think that she's one of our better ALJs, and
21 she's listening, so I probably have to say she's the
22 best.

1 But anyway, that's all I have to add.

2 Thank you.

3 CHAIRMAN ZALEWSKI: Thank you.

4 I have a couple of comments.

5 Commissioner Bocanegra has correctly
6 identified the pressing needs for updated policies
7 for access to data exist.

8 The Commission understands this to be
9 a vital issue for the continued evolution of the
10 retail market, and in order for the Illinois retail
11 market to evolve and for Illinois to reach the
12 potential that is espoused in FEJA, it is
13 incumbent upon the Commission to soberly review
14 technologies and policies that support retail market
15 evolution while protecting retail market customer
16 privacy. The JPP does neither. Instead, I -- like
17 Commissioner Kimbrel, I commend the ALJ for her
18 tempered and balanced Order and agree with the Order
19 as written.

20 Continuing the evolution of the
21 retail market products and services is a paramount
22 concern for this Commission. Access to data, to

1 borrow a phrase from telecom, represents the last
2 mile in serving retail customers. The instant
3 docket does nothing to further this evolution. The
4 instant docket only serves to weaken consumer privacy
5 issues.

6 If there's no other comments, I am
7 going to do a roll call for clarity of the record.
8 When your name is called, if you are in favor of
9 approving the Order, please say, aye, and say, nay,
10 if you are opposed.

11 COMMISSIONER OLIVA: Sorry, Chairman
12 Zalewski, just one quick comment. This is
13 Commissioner Oliva.

14 I just wanted to state on the record
15 that I support Commissioner Bocanegra's points that
16 she made. I'm not going to reiterate them. But
17 overall, I just think that, perhaps, Green Button
18 should be revisited. And that's all for my comments.

19 CHAIRMAN ZALEWSKI: Okay. Thank you.

20 I'm going to go ahead and do the roll
21 call.

22 Commissioner Bocanegra?

1 COMMISSIONER BOCANEGRA: Aye.

2 CHAIRMAN ZALEWSKI: Just to clarify, the
3 Order is to approve. So if you're approving the
4 Order, you're saying, aye, and nay if you are
5 opposed.

6 Commission Bocanegra, you're an aye
7 or a nay?

8 COMMISSIONER BOCANEGRA: Yes. Just to
9 clarify, I am in agreement ultimately with the ALJ's
10 conclusion. So my vote is aye. I'm voting to
11 approve the ALJ's Proposed Order.

12 CHAIRMAN ZALEWSKI: Thank you.

13 Commissioner Carrigan?

14 COMMISSIONER CARRIGAN: Aye.

15 CHAIRMAN ZALEWSKI: Commissioner Oliva?

16 COMMISSIONER OLIVA: Aye.

17 CHAIRMAN ZALEWSKI: And I vote aye as well.
18 So we have five ayes, and the Order is approved.

19 COMMISSIONER KIMBREL: Commissioner Kimbrel
20 votes aye as well.

21 CHAIRMAN ZALEWSKI: I am so sorry.

22 COMMISSIONER KIMBREL: I'm getting used to

1 it.

2 CHAIRMAN ZALEWSKI: There's five. Thank
3 you. Thank you for correcting me.

4 Item E-4 concerns ComEd's Petition
5 for Creation of Rates Residential Time of Use Pricing
6 Pilot or Rate RTOUPP. The Commission entered an
7 Order in this proceeding on October 2, 2019, adopting
8 ComEd's proposed Rate RTOUPP with some modifications
9 proposed by the Attorney General's Office. On
10 November 14, 2019, the Commission granted ComEd's
11 Application For a Rehearing.

12 The main point of difference between
13 the parties is whether the capacity charges shall be
14 recovered in a separate line item on the customer
15 bill as proposed by ComEd or in a volumetric charge
16 based on the time of use as suggested by the AG.

17 The Order adopts the Commission's
18 initial conclusion in its October 2019 Order adopting
19 the AG's proposal, but clarifies the manner in which
20 that decision should be implemented. The method
21 proposed by the AG and supported by EDF and CUB
22 results in rates that collect more capacity costs

1 during the summer than non-summer periods.

2 Are there any comments from any of
3 the Commissioners?

4 COMMISSIONER BOCANEGRA: Chair,
5 Commissioner Bocanegra once again.

6 I will say I will be dissenting from
7 the ultimate conclusion reached in this case. I will
8 be filing my dissent following today's hearing.

9 CHAIRMAN ZALEWSKI: Anyone else?

10 COMMISSIONER KIMBREL: Yes. This is
11 Commissioner Kimbrel.

12 I would just like to note that this
13 Commission voted in support of the ALJ's
14 Post-Exceptions Proposed Order. Prior to the vote to
15 grant the Petition For Rehearing, there were a few
16 different views on the rates -- designed rates in
17 this four-year pilot, and I think that, honestly, we
18 could have gone in a number of directions.

19 But I did not see the need at that
20 time to grant the petition for a hearing, but I
21 ended up doing so along with the rest of this
22 Commission.

1 Staff's position has remained the
2 same as it was prior to the hearing as I believe all
3 the parties' positions remain the same. I just see
4 no reason at this point to change our decision on
5 this docket, and I do take some comfort in the fact
6 that this is a pilot program, and it can be tweaked,
7 and at the end of the four-year process, we will,
8 hopefully, have some suggestions on how this time of
9 use rate will be -- can best be utilized for
10 customers.

11 CHAIRMAN ZALEWSKI: Thank you.

12 Any other comments?

13 COMMISSIONER OLIVA: Yes. This is
14 Commissioner Oliva, and I will be joining in
15 Commissioner Bocanegra's dissent.

16 CHAIRMAN ZALEWSKI: Thank you. Is that
17 all?

18 (No response.)

19 CHAIRMAN ZALEWSKI: Okay. So like in the
20 last case, I'm going to do a roll call so that we
21 have a clear record. So when your name is called, if
22 you're in favor of approving the Order, please say,

1 aye, and if you are opposed, please say, nay.

2 Commissioner Bocanegra?

3 COMMISSIONER BOCANEGRA: I'm opposed. I am
4 voting nay.

5 CHAIRMAN ZALEWSKI: Commissioner Kimbrel?

6 COMMISSIONER KIMBREL: Aye.

7 CHAIRMAN ZALEWSKI: Commissioner Carrigan?

8 COMMISSIONER CARRIGAN: Aye.

9 CHAIRMAN ZALEWSKI: Commissioner Oliva?

10 COMMISSIONER OLIVA: I am opposed. I'm
11 voting nay.

12 CHAIRMAN ZALEWSKI: I am voting aye. So
13 the three ayes have it, and the Order is approved.

14 Item E-5 concerns ComEd's Petition
15 for an Evaluation of the Peak Time Savings Program
16 and Rider PTR or Peak Time Rebate. The program
17 provides rebates to residential retail customers that
18 curtail their electricity use during the peak usage
19 periods. The Order approves ComEd's request to
20 continue Rider PTR and its Peak Time Savings Program
21 under the current sunset day of December 31, 2022,
22 without modifications.

1 The Program Evaluation Report
2 produced by Nexant demonstrated the program to be
3 cost effective in 2018, and it's projected to be cost
4 effective over the 15-year horizon.

5 The Order further approves the
6 resolutions reached between Staff and ComEd regarding
7 the response to Nexant's recommendations on
8 increasing program enrollment.

9 Are there any objections to approving
10 the Order?

11 (No response.)

12 CHAIRMAN ZALEWSKI: Hearing none, the Order
13 is approved.

14 And just for the court reporter, when
15 I say Nexant, it's N-e-x-a-n-t.

16 Item E-6 concerns Docket 19-0875,
17 which is a Complaint against ComEd regarding easement
18 management. The parties filed a Stipulation and
19 Joint Motion to Dismiss noting that they resolved all
20 of the disputes and asking the Commission to dismiss
21 the Complaint with prejudice.

22 Are there any objections to granting

1 the Joint Motion and dismissing the Complaint with
2 prejudice?

3 (No response.)

4 CHAIRMAN ZALEWSKI: Hearing none, the
5 motion to dismiss is granted.

6 Item E-7 concerns ComEd's request to
7 reconcile revenues under its Rider ZEA or Zero
8 Emission Adjustment between June 1, 2018, and May 31,
9 2019. The Order approves the reconciliation as set
10 in the Appendix to the Order, finding that the costs
11 during the reconciliation period were prudently
12 incurred.

13 Are there any objections to approving
14 the Order?

15 (No response.)

16 CHAIRMAN ZALEWSKI: Hearing none, the Order
17 is approved.

18 Item E-8 concerns application for a
19 Certificate to Operate as an Alternative Retail
20 Electric Supplier. The Order grants the certificate,
21 finding that the Applicant meets the requirements.

22 Are there any objections to approving

1 the Order?

2 (No response.)

3 CHAIRMAN ZALEWSKI: Hearing none, the Order
4 is approved.

5 Item E-9 concerns a petition to
6 cancel a certificate to install distributed
7 generation facilities in Illinois. The petitioner
8 states that it ceased operations of its division that
9 installs distributed generation facilities under the
10 certificate. The Order cancels the certificate.

11 Are there any objections to approving
12 the Order?

13 (No response.)

14 CHAIRMAN ZALEWSKI: Hearing none, the Order
15 is approved.

16 Item E-10 through E-19 concern
17 requests for confidential treatment of petitioners'
18 reports. The Orders grant the protection, finding
19 that the information is highly proprietary and
20 confidential.

21 Are there any objections to
22 considering these items together and approving the

1 Orders?

2 (No response.)

3 CHAIRMAN ZALEWSKI: Hearing none, the
4 Orders are approved.

5 Item E-20 concerns application for
6 Certification to Install Energy Efficiency Measures
7 in Illinois. The Applicant indicated that it no
8 longer wishes to pursue the requested certifications.
9 The Order dismisses the application.

10 Are there any objections to approving
11 the Order?

12 (No response.)

13 CHAIRMAN ZALEWSKI: Hearing none, the Order
14 is approved.

15 Item E-21 through E-38 concern
16 applications for Certifications to install Energy
17 Efficiency Measures in Illinois. The Orders grant
18 the certificates, finding that the Applicants meet
19 the requirements.

20 Are there any objections to
21 considering these items together and approving the
22 Orders?

1 (No response.)

2 CHAIRMAN ZALEWSKI: Hearing none, the
3 Orders are approved.

4 Moving on to our Gas Items.

5 Item G-1 concerns GRM 20-050, which
6 is North Shore's filing to revise Rider Invested
7 Capital Tax Adjustment or Rider ICTA. With this
8 filing, North Shore includes an annual internal
9 audit process in its tariffs for Rider ICTA per
10 Commission Order in consolidated Dockets 19-0784 and
11 19-0785.

12 The Commission recommends -- the
13 Commission Staff recommends not suspending the
14 filing.

15 Are there any objections to not
16 suspending the filing?

17 (No response.)

18 CHAIRMAN ZALEWSKI: Hearing none, the
19 filing is not suspended.

20 Item G-2 concerns GRM 20-051, which
21 is Peoples Gas' filing to revise Rider Invested
22 Capital Tax Adjustment or Rider ICTA. With this

1 filing, Peoples includes an annual internal audit
2 process in its tariffs for Rider ICTA per Commission
3 Order in the consolidated Dockets No. 19-0784 and
4 19-0785.

5 The Commission Staff recommends not
6 suspending the filing.

7 Are there any objections to not
8 suspending the filing?

9 (No response.)

10 CHAIRMAN ZALEWSKI: Hearing none, the
11 filing is not suspended.

12 Item G-3 concerns Docket 19-1017,
13 which is an Order authorizing a Second Notice for the
14 proposed amendments to 83 Illinois Administrative
15 Code 590. Part 590 provides the minimum safety
16 standards for transportation of gas and for gas
17 pipeline facilities. The proposed amendments change
18 the date for incorporation of federal rules from July
19 1, 2018, to September 1, 2019, to encompass the most
20 recent changes to the federal regulations.

21 Notice of the proposed amendments was
22 published on December 2, 2019. During the first

1 notice period, the Commission received no comments on
2 this rulemaking, and no hearings were requested or
3 held.

4 The Order directs that the proposed
5 amendments as reflected in the Appendix be submitted
6 to the Joint Committee on Administrative Rules to
7 initiate the Second Notice period.

8 Are there any objections to approving
9 the Order?

10 (No response.)

11 CHAIRMAN ZALEWSKI: Hearing none, the Order
12 is approved.

13 Items G-4 through G-15 concern
14 requests for confidential treatment of petitioners'
15 report. The Orders grant the protection, finding
16 that the information is highly proprietary and
17 confidential.

18 Are there any objections to
19 considering these items together and approving the
20 Orders?

21 (No response.)

22 CHAIRMAN ZALEWSKI: Hearing none, the

1 Orders are approved.

2 Moving on to our Telecommunication
3 Items.

4 Item T-1 concerns a request for
5 confidential treatment of petitioner's annual report.
6 The petitioner filed a motion to withdraw the
7 petition because the petitioner is not a Certified
8 Local Exchange Carrier and, therefore, is not
9 required to file an annual report.

10 Are there any objections to granting
11 the Motion to Withdraw the petition?

12 (No response.)

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

15 Items T-2 through T-5 concern
16 requests for confidential treatment of petitioners'
17 reports. The Orders grant the protection, finding
18 that the information is highly proprietary and
19 confidential.

20 Are there any objections to
21 considering these items together and approving the
22 Orders?

1 (No response.)

2 CHAIRMAN ZALEWSKI: Hearing none, the
3 Orders are approved.

4 Under Water and Sewer.

5 Item W-1 concerns WRM 20-002, which
6 is an Aqua Illinois' filing to revise its water
7 service tariff to implement a franchise fee agreement
8 with the City of Kankakee. The Commission Staff
9 recommends not suspending the filing.

10 Are there any objections to not
11 suspending the filing?

12 (No response.)

13 CHAIRMAN ZALEWSKI: Hearing none, the
14 filing is not suspended.

15 Items W-2 through W-4 concern
16 Illinois American's Applications for Certificates of
17 Public Convenience and Necessity to Provide Water
18 Service to Areas in Champaign and Peoria Counties,
19 Wastewater Collection Service to Granite City and for
20 the Approval of the Purchase of Certain Assets of the
21 Village of Sidney and Granite City.

22 The Orders grant the certificates and

1 approve the purchase of assets in the Village of
2 Sidney and approve Engagement Agreements for the
3 appraisal of the Granite City assets. The Orders
4 find that the company demonstrated a need for the
5 service to the proposed certificated areas. The
6 Orders also find that the company is capable of
7 sufficiently managing and supervising the provisions
8 of service.

9 Are there any objections to
10 considering these items together and approving the
11 Orders?

12 (No response.)

13 CHAIRMAN ZALEWSKI: Hearing none, the
14 Orders are approved.

15 Item W-5 concerns Aqua Illinois'
16 Petition For Annual Reconciliation of the Purchased
17 Water Surcharge for 2018. The Order approves the
18 reconciliation as set in the Appendix to the Order.

19 Are there any objections to approving
20 the Order?

21 (No response.)

22 CHAIRMAN ZALEWSKI: Hearing none, the Order

1 is approved.

2 Under Miscellaneous Items.

3 Item M-1 concerns Docket 19-0673,
4 which is Dakota Access and Energy Transfer's joint
5 petition to install additional pumping stations and
6 pumping facilities on existing certificated
7 pipelines.

8 On March 13, 2020, Sierra Club and
9 Save Our Illinois Land or SOIL filed a Petition For
10 Interlocutory Review of a ruling by the
11 Administration Law Judge or ALJ during the
12 evidentiary hearing, denying SOIL/SC the opportunity
13 to cross-examine Joint Petitioner's witness.

14 During the evidentiary hearing on
15 March 5, 2020, counsel for SOIL/SC attempted to
16 question Joint Petitioners' witness, Mr. Stamm,
17 about Sunoco, the pipeline operator and an affiliate
18 of Joint Petitioners and to show Mr. Stamm as part of
19 that questioning several documents describing
20 Sunoco's activities in Pennsylvania.

21 In objecting to the
22 cross-examination, Joint Petitioners raised a

1 relevancy objection. The Joint Petitioners argued
2 that the operations in Pennsylvania are not relevant
3 to the pipeline at issue in this proceeding. The ALJ
4 sustained Joint Petitioners' objection.

5 SOIL/SC argue that it was revealed
6 during discovery that the Sunoco entity in
7 Pennsylvania is the same entity that operates Joint
8 Petitioners' pipeline in Illinois. SOIL/SC believe
9 that common operator identity is highly relevant in
10 determining whether Joint Petitioners should be
11 granted approval for the proposed pipeline capacity
12 expansion project. Mr. Stamm's background indicates
13 that he likely has direct knowledge of Sunoco's
14 Pennsylvania operations and the violations and fines
15 in that state.

16 The SOIL/SC Petition states that the
17 inability to inquire about the operator of Joint
18 Petitioners' pipeline is prejudicial to SOIL/SC and
19 deprives the Commission of information relevant to a
20 determination of whether nearly doubling the
21 throughput of the pipeline is in the public
22 interests.

1 Do any Commissioners have any
2 comments they'd like to make?

3 COMMISSIONER BOCANEGRA: Chair, this is
4 Commissioner Bocanegra. If you don't mind, I do have
5 some comments to make on this matter.

6 CHAIRMAN ZALEWSKI: Sure, go ahead.

7 COMMISSIONER BOCANEGRA: Thank you.

8 I would like to say I will dissenting
9 from what I think is a majority here today, and I
10 would actually vote to grant SOIL and Sierra Club's
11 Petition For Interlocutory Review, but I would not
12 grant their request to submit into evidence the
13 documents attached with their Petition.

14 I believe that the appropriate remedy
15 would be for the parties to conduct another hearing
16 to allow SOIL and Sierra Club to cross-examine the
17 witnesses on the matters regarding Sunoco and
18 Pennsylvania.

19 However, by granting their request to
20 cross-examine, I am not opining on the relevancy of
21 their questions or the substance of their testimony.
22 I think that would be premature.

1 I do believe that SOIL and Sierra
2 Club still need to make an offer of proof to
3 demonstrate the relevancy of their questions and
4 establish that the witnesses they wish to
5 cross-examine have knowledge or should have
6 sufficient ability to speak on the issues in their
7 questions.

8 Evidentiary questions are certainly
9 open to interpretation, and judges will not always
10 agree. It is a delicate balance to weigh what
11 evidence is relevant to the issues in a proceeding
12 versus allowing protracted, time-consuming, and
13 potentially prejudicial testimony. The task is not
14 an easy one.

15 In this case, I believe the
16 objections against the cross-examination may have
17 been premature, and I personally would not have
18 allowed this to go any further -- excuse me -- I
19 would have allowed them to go further and offer
20 additional proof.

21 Therefore, for the foregoing reasons,
22 I will be dissenting from the majority, and I would

1 grant the Petition on the limited grounds that SOIL
2 and SC be allowed to cross-examine the witnesses
3 noted.

4 Thank you.

5 CHAIRMAN ZALEWSKI: Thank you.

6 This is the Chairman. I agree with
7 Commissioner Bocanegra, but have a little bit
8 different reasoning, and I would also -- I would
9 grant the Motion For Interlocutory Appeal.

10 I'm going to be filing a written
11 dissent that lays out my explanation later today on
12 the e-Docket system, but I just want to highlight a
13 couple of the points that I will be submitting in
14 written form.

15 Briefly, the evidence that SOIL and
16 Sierra Club are trying to admit in the record I
17 believe is clearly relevant to this proceeding. The
18 Illinois Rules of Evidence instruct that relevant
19 evidence means evidence having any tendency to make
20 the existence of any fact that is of consequence to
21 the determination of the action more probable or
22 less probable than it would be without the evidence,

1 and I think the evidence barred as a result of
2 denying SOIL/SC's appeal clearly meets this
3 definition.

4 In my written dissent, I also remind
5 the Commission that it has not yet determined whether
6 the Joint Petitioners should obtain a certification
7 under Section 15-401 or under Section 8-503. I would
8 argue that the evidence is relevant under either
9 review, but especially under Section 15-401, the
10 parties have introduced and the Commission has
11 considered evidence of pipeline safety issues in
12 other states to evaluate Applicant's fitness to
13 obtain a certificate, and to ensure a complete
14 record, the Commission must allow this evidence into
15 the record, especially if the Commission determines
16 that the petition should be reviewed under Section
17 15-401.

18 I also explained how SOIL/SC --
19 they're in compliance with the offer of proof
20 requirements under the context exception under the
21 Rules of Evidence.

22 Therefore, just to ensure a complete

1 record and so that the Commission can properly review
2 the Petition, the evidence pertaining to issues that
3 Sunoco pipeline has had in Pennsylvania should be
4 allowed into the record.

5 Do any other Commissioners have
6 anything they'd like to say?

7 COMMISSIONER KIMBREL: Madam Chair, this is
8 Commissioner Kimbrel.

9 Respectfully, I disagree with your
10 analysis, and I do note that, as Commission Bocanegra
11 stated, that there are times during a docket and
12 specifically an evidentiary hearing where an
13 Administrative Law Judge must decide whether he or
14 she is going to exclude evidence or allow it and give
15 it the weight that it deserves. This job that the
16 ALJ has is made more difficult when you have counsel
17 for a party who is engaged in motion practice and
18 seeks to cast a wide net on what should be allowed
19 into the record, including filing motions to suspend
20 the case schedule in an attempt to get even more into
21 the record.

22 This task is further complicated when

1 counsel files repeated Petitions for Interlocutory
2 Review questioning your decision. I understand that
3 counsel have a job to do, as does the ALJ, so I'm not
4 suggesting that counsel in this docket is doing
5 anything other than what the parties that he
6 represents wish him to do.

7 September of last year, Judge Dolan
8 decided to deny counsel for SOIL's motion to
9 investigate matters involving two pipelines in
10 Pennsylvania. The two pipelines which the judge
11 decided to deny counsel's motion to investigate,
12 those pipelines in Pennsylvania are 80 and 90 years
13 old respectively.

14 I apologize for the pause.

15 Counsel for SOIL filed a Petition For
16 Interlocutory Review of Judge Dolan's decision, and
17 this Commission supported the judge's decision at
18 that time.

19 Counsel for SOIL in his Third
20 Petition for Interlocutory Review of Judge Dolan now
21 questions again the judge's decision to deny
22 counsel's most recent decision on those same

1 pipelines in Pennsylvania from the record.

2 In the instant docket, we know that
3 Joint Petitioners received certificates from this
4 Commission to construct the pipeline and that oil has
5 been passing through that pipeline since 2017.

6 Judge Dolan as an ALJ decided that
7 the pipelines in Pennsylvania have no bearing on this
8 record, especially in light of the fact that this
9 Commission granted the Joint Petitioner's original
10 certificate to construct the pipeline and is focusing
11 on handling that pipeline in the last three years and
12 not -- and that the two 90-year-old or
13 80-and-90-year-old pipelines in Pennsylvania should
14 be focused upon.

15 This is, again, consistent with his
16 decision earlier in the case where the Commission
17 supported his decision.

18 Thank you, Commissioner.

19 CHAIRMAN ZALEWSKI: Just to confirm, do any
20 of the other Commissioners have anything else they
21 would like to say? I want to make sure everyone has
22 a chance to speak if they'd like to.

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(No response.)

CHAIRMAN ZALEWSKI: All right. Great.

I'm also going to do a roll call for this docket, so when I call your name, if you are in favor of agreeing with the ALJ that the Petition for Interlocutory Review should be denied, please say, aye, and say, nay, if you are opposed and believe that the interlocutory review should be granted. A little bit of a double negative.

Commissioner Bocanegra?

COMMISSIONER BOCANEGRA: Thank you, Chair. I am voting nay. I believe that interlocutory review should be granted. Thank you.

CHAIRMAN ZALEWSKI: Thank you.

Commissioner Carrigan?

COMMISSIONER CARRIGAN: Aye.

CHAIRMAN ZALEWSKI: Thank you.

Commissioner Kimbrel?

COMMISSIONER KIMBREL: I believe that the Petition For Interlocutory Review should be denied.

CHAIRMAN ZALEWSKI: Commissioner Oliva?

COMMISSIONER OLIVA: Aye.

1 CHAIRMAN ZALEWSKI: I am voting nay on
2 this. So the three ayes have it, and the Petition
3 for Interlocutory Review is denied.

4 We have no Petitions For Rehearing.
5 Under Other Business.

6 Item 0-1 concerns April 2020
7 Solicitations of Bids to Sell Zonal Resource Credits
8 to Ameren Illinois Company.

9 Are there any objections to approving
10 the Procurement Administrator's Benchmark
11 Methodology?

12 (No response.)

13 CHAIRMAN ZALEWSKI: Hearing none, the
14 Methodology is approved.

15 Item 0-2 concerns April 2020
16 Solicitations of Bids to Sell Standard Energy
17 Products to Ameren, ComEd, and MidAmerican.

18 Any there any objections to approving
19 the Procurement Administrator's Benchmark
20 Methodology?

21 (No response.)

22 CHAIRMAN ZALEWSKI: Hearing none, the

1 Methodology is approved.

2 Item 0-3 concerns approval of
3 Batches, Contracts, and Confirmations under the
4 Adjustable Block Program.

5 Are there any objections to approving
6 the Program Administrator's Submissions?

7 (No response.)

8 CHAIRMAN ZALEWSKI: Hearing none, the
9 Submissions are approved.

10 This concludes our Public Utilities
11 Agenda.

12 Judge Teague Kingsley, do we have any
13 other matters to come before this Commission today?

14 JUDGE TEAGUE KINGSLEY: No, Madam Chairman.

15 CHAIRMAN ZALEWSKI: Thank you.

16 Do any other Commissioners have
17 anything they'd like to say?

18 COMMISSIONER OLIVA: Yes. This is
19 Commissioner Oliva.

20 I would just like to introduce to all
21 of those attending and listening that I have a new
22 Legal and Policy Advisor on my team. I am so excited

1 for all of you to meet him eventually. His name is
2 Alejandro Mateo. He is an attorney with a very
3 impressive background both in the private and
4 government sector.

5 He attended Stetson University
6 College of Law for his Juris Doctor and Florida State
7 University for his Bachelor of Science in Political
8 Science and Government. He was the Deputy Chief of
9 Staff at the Illinois Department of Children and
10 Family Services. He also interned at the Cook County
11 State's Attorney's Office and was a judicial intern
12 at the 13th Judicial Circuit and also worked at Axiom
13 as a project reviewer.

14 I'm so excited that he's on board,
15 and I look forward to all of you meeting him sometime
16 soon. Thank you.

17 CHAIRMAN ZALEWSKI: Thank you,
18 Commissioner, and welcome, Alejandro. You have an
19 impressive resume', and we look forward to working
20 with you.

21 Do other Commissioners have anything
22 else to say?

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(No response.)

CHAIRMAN ZALEWSKI: Hearing nothing and
without objection, this meeting stands adjourned.
Thank you.

(WHEREUPON, the above-entitled
matter was adjourned.)