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BEFORE THE
ILLINOIS COMMERCE COMMISSION

TRANSPORTATION BENCH SESSION

Chicago, Illinois
April 7, 2010

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

BEFORE:

MR. MANUEL FLORES, Acting Chairman

MS. LULA M. FORD, Commissioner

MS. ERIN M. O'CONNELL-DIAZ, Commissioner

MR. SHERMAN J. ELLIOTT, Commissioner

MR. JOHN T. COLGAN, Acting Commissioner

1 CHAIRMAN FLORES: Good morning. Pursuant to
2 the provisions of the Illinois Open Meeting Act, I
3 now convene a regularly scheduled Bench Session of
4 the Illinois Commerce Commission. With me in Chicago
5 are Commissioners O'Connell-Diaz, Elliott, Acting
6 Commissioner Colgan and I am Acting Chairman Flores.
7 Commission Ford is available by phone.

8 Good morning, Commissioner.

9 COMMISSIONER FORD: Good morning.

10 CHAIRMAN FLORES: By Rule we are required to
11 vote on allowing Commissioner Ford to participate by
12 telephone.

13 Is there a motion to approve
14 Commissioner Ford's participation by phone?

15 COMMISSIONER ELLIOTT: So moved.

16 CHAIRMAN FLORES: Is there a second?

17 COMMISSIONER COLGAN: Second.

18 CHAIRMAN FLORES: Its been moved and seconded.

19 All in favor say "aye."

20 (Chorus of ayes.)

21 Any opposed?

22 (No Response.)

1 The vote is 4-0 approving Commissioner
2 Ford's participation by phone.

3 Thank you so much, Commissioner Ford.

4 We have a quorum.

5 Before moving into the agenda,
6 according to Section 1700.10 of the Illinois
7 Administrative Code, this is the time we allow the
8 members of the public to address the Commission.
9 Members of the public wishing to address the
10 Commission must notify the Chief Clerk's Office at
11 least 24 hours prior to the bench session.

12 According to the Chief Clerk's Office,
13 there are three requests to speak. Speakers are
14 permitted three minutes to address the Commission.
15 Please be advised that the Commission values the
16 public's participation in the public comment period.
17 But according to ex parte laws and other procedural
18 rules, we will be unable to answer any questions or
19 respond. But should you are require any further
20 assistance, please -- we advise that you get in touch
21 -- that you contact the Consumer Services Division of
22 the Illinois Commerce Commission.

1 First we have Trustee Mary Niemiec.

2 MS. MARY NIEMIEC: Good morning. Thank you for
3 granting me the opportunity to address the Commission
4 today. I speak to you as a resident of Homer Glen
5 and a customer of Illinois American, and I would like
6 to address the Proposed Order in Docket 09-0319.

7 I've been told the Ruling is all but
8 finalized and that the rest of the process is a
9 formality, so that I'm wasting my time coming here
10 today. But I refuse to be that cynical and ask that
11 you closely look at the recommendations in the
12 Proposed Order. If approved, the cost to rate payers
13 in the Chicago metro area for water, it's the third
14 increase since 2003, which was 44.2 percent, another
15 5.28 in '08, and now a 28.8 percent under the
16 Proposed Order. Wastewater rates have increased
17 overall 17.64 percent with the base portion of the
18 water increasing 42 percent for 1000 gallons.

19 I know you are charged to look at the
20 cost that this company incurs to provide service and
21 to strive to determine a reasonable balance between
22 customer protection and the right of a private

1 enterprise to operate. Reasonable is the operative
2 word and an exception of reasonable is what must be
3 considered. Homer Glen residents pay 218 to
4 500 percent for water more than their surrounding
5 communities. These rates include unsubstantiated
6 standby fees and capitol improvements driven by a
7 strategy to increase net worth. The Proposed Order
8 too says that is inappropriate to compare rates with
9 surrounding communities.

10 The study Illinois American conducted
11 previously by Order of this Commission was a sham.
12 The three communities selected were not true
13 comparisons and a new objective study needs to be
14 ordered. Plainfield, that purchases its water from
15 the same source, American Lake Water, Plainfield
16 customers pay \$4.45 per 1000 gallons while Homer Glen
17 residents for the same amount of water pay \$12.63 -
18 the only difference is in the local distribution
19 which Illinois American owns.

20 The study focussed heavily on where
21 the revenue comes from, which is not the issue. The
22 cost of operation should be the issue. Illinois

1 American's own staff stated that the rate structure
2 is determined via the revenue requirement model, 5
3 percent in contempt, 7 percent general tax, 12
4 percent return on equity, 17 percent depreciation, 9
5 percent death cost and 50 percent maintenance and
6 operations. At minimum, rates would be 25 percent
7 higher than a municipality that purchases its water
8 from Chicago, not 200 to 500 percent. And if what
9 we're told by the Company that a privately run and
10 held company can operate more efficiently than inept
11 Government? Shouldn't it be even lower? We have no
12 other choice at this time. We don't have the option
13 to look for other providers. This is the clearest
14 case of a sanctioned monopoly and we the consumers
15 need your protection. I plead with you to be true to
16 your mission. Please don't make your consideration
17 simply formality. Please ask and Order a comparable
18 study of other communities, a true one. Thank you.

19 CHAIRMAN FLORES: Next we have Jean Smith.

20 MS. JEAN SMITH: My name is Jean Smith and I am
21 a resident of Prairie Grove, Illinois and I want to
22 thank you for letting me speak to you today on behalf

1 of the hundreds of residents and customers of
2 Illinois American Water.

3 I'm very concerned about the proposed
4 rate hike. I recently called around to nine
5 different municipalities in our area and tried to
6 determine what my average consumption would be if I
7 were to live in these other areas. And of the nine
8 areas I made an average and my monthly average would
9 be approximately \$71. I currently pay \$104 a month
10 on average. And with this proposed rate increase, my
11 rate would go up to \$138 a month. Now, there's only
12 one village or town in the area that was above my
13 current rate, so I made a phone call to them to kind
14 of find out why they would have a higher rate than I
15 would have. And speaking to the lady, she was
16 explaining to me that their small town had to incur a
17 lot of debt. And out of the \$1.3 million it cost
18 them to run their Water and Sewer Division, \$600,000
19 of it was to pay off there debt.

20 In this economic time, she said they
21 really needed to raise their rate a whole lot higher,
22 but they didn't feel like the people in their

1 community could pay for such rate increases. So they
2 went back and they renegotiated their debt and they
3 are continuing the debt so that they only have to
4 have a 3 percent increase this year because they know
5 their people, they know their community, they're
6 involved in it. I believe that whole problem with
7 the Illinois American Water is the fact that they
8 don't live in the communities in which they serve and
9 they don't see the pain that people are right now
10 having with the economy. So we are just asking you
11 to be the voice of the people and to be the conscious
12 of the people because right now we can't afford these
13 additional rate hikes and there's things that they
14 can could do to keep their cost down that I think
15 they should look at to try to do the same thing as
16 the small communities are to help their people.

17 CHAIRMAN FLORES: Thank you.

18 MS. JEAN SMITH: Thank you.

19 CHAIRMAN FLORES: Next we have Lawrence
20 Conrath.

21 MR. LAWRENCE CONRATH: I want to thank the
22 Commissioners for allowing me to speak as a resident

1 of Homer Glen and speak about the sexy subject of
2 sewerage. In addition to the water rates going up,
3 we have a very unique situation for 8,000 of our
4 residents, 6,000 of which live within the boundaries
5 of Homer Glen and another 2,000 that live in Orland
6 and Homer Township. We are all customers of Illinois
7 American Water. We are the only customers that have
8 other wastewater treatment through them in the
9 immediate 10-mile radius. All the other villages and
10 cities pretty much do their own wastewater treatment.
11 Within the district that we are under, Illinois
12 American has asked in the Proposed Order to increase
13 their rates with customers that average 8,000 gallons
14 among which we believe is the average. We'll see
15 since July of '08, July of '08 being significant
16 because in August of '08 the company decided to
17 change the way they bill wastewater from a flat rate
18 per home, to a flat rate plus volumetric. In July of
19 '08, homeowners were paying \$46 a month for the sewer
20 service. After the Proposed Order increase, the same
21 homeowners less than two years later will be paying
22 \$70 a month. That's a 52 percent increase in our

1 bills in less than two years and I don't understand
2 what's changed in less than two years that would
3 justify such an increase.

4 By comparison, we're paying \$8.75
5 after the Order is implemented per thousand gallons
6 for wastewater. Our neighbors directory to the east,
7 Orland, pay less than \$3; Mokena, to our south,
8 \$3.60; New Lenox, \$4.64, the larger municipalities
9 get the benefits of spreading their affixed costs
10 over larger customer base. Plainfield can treat a
11 thousand gallons of wastewater for \$1.77. Lockport
12 just finished their study and announced on March 31st
13 that they're going to have to fix their
14 infrastructure, which is the same excuse that
15 Illinois American has given for the increased cost.
16 They're a hundred-year-old village and they're going
17 to be able to do it for \$3.60 per thousand gallons of
18 wastewater. Again, the Proposed Order for the
19 Village of Homer Glen and other neighboring townships
20 are going to send the rates to \$8.75 per thousand
21 gallons, up 52 percent in less than two years.

22 Now what has that done for Illinois

1 American? I've done a study and I've looked at the
2 schedules that were submitted by the Company for the
3 Commissioners to look at in their Proposed Order to
4 determine whether or not what they're asking for is
5 reasonable. I've read the Proposed Order in this
6 matter and believe that the rate-making formulas need
7 to be revised to reflect current economic conditions.
8 On appendix D, Page 1, Illinois American details the
9 impact that the granted new rates will make in the
10 Chicago-Metro Wastewater Collection and Treatment
11 District. The revenues are going to increase in that
12 District by \$2 million with net post-tax income
13 rising from \$2.5 million to \$3.7 million. And
14 they'll increase on the percent of revenues from a 22
15 percent bottom line to a 29 percent bottom line. Why
16 the Company should enjoy a 6 percent increase in
17 their net profits because they say they need to cover
18 fixed costs is beyond me. Again, we were paying just
19 \$46 a month less than two years ago and now we're
20 faced with this 50-something percent increase in our
21 wastewater rates on top of the increase that we're
22 getting in our water.

1 One of the comments that one of your
2 Commissioners made was that they rejected the request
3 to conduct an independent audit into the high cost
4 for sewer because "it was not clear that any such
5 study or audit would produce a meaningful
6 cost-effective result". I've looked at exhibit --
7 Appendix D, Page 1, which outlines exactly what the
8 Company states is their cost of operations and their
9 revenues in our area. And it masks the fact that the
10 entire increase that they're requesting is going to
11 only be impacted by the 8,000 customers in Homer Glen
12 and Homer Township. They say they're only increasing
13 the rates 17.64 percent, but they use the entire
14 revenue for the district to come up with that number.
15 The real impact is closer the 50 percent on the
16 customers that are going to have their bills
17 increased. The same schedule, if they were to just
18 break out their wastewater treatment and collection
19 from that district number would reveal this much
20 larger increase that they're going to enjoy.

21 They've always made the argument that
22 when we compare our rights with surrounding

1 municipalities, it's not an apples, apples comparison
2 because we're comparing municipalities that can
3 charge these rate to their customers on a monthly
4 bill or in their real estate tax bill. If we were
5 given the cost of this district and how many
6 wastewater gallons that they actually treated in the
7 last year, it would give us a meaningful number in
8 terms of their true cost to provide wastewater
9 service for Homer Glen. And with that analysis, we
10 can then compare it to our sister communities and
11 give you specific numbers that you can rely on to
12 show whether or not this monopoly water company is
13 providing the lowest cost service in our area. I
14 suspect --

15 CHAIRMAN FLORES: If you can just rap it up,
16 please.

17 MR. LAWRENCE CONRATH: Okay. And in summary, I
18 just wanted to say that we're heavily dependant on
19 this Commission to represent our quality of life out
20 in the area in which we live. Up here we're hoping
21 that you will look at this carefully and cut some of
22 this tremendous increase in the cost from the

1 Proposed Order. Thank you very much for your time.

2 CHAIRMAN FLORES: Thank you very much,
3 Mr. Conrath, and thank you to all of the individuals
4 what took time from their schedules to appear before
5 the Commission today to provide their testimony.

6 That concludes the public comment
7 portion of today's hearing. We will now begin with
8 the Transportation Agenda.

9 As a different matter, we have minutes
10 to approve from the March 10, 2010 Bench Session. I
11 understand that amendments have been circulated.

12 Is there a motion to accept the
13 amendments to the minutes?

14 COMMISSIONER ELLIOTT: So moved.

15 CHAIRMAN FLORES: Is there a second?

16 COMMISSIONER COLGAN: Second.

17 CHAIRMAN FLORES: Its been moved and seconded.

18 All in favor say "aye."

19 (Chorus of ayes.)

20 Any opposed?

21 The vote is 5-0, the amendments are
22 approved.

1 Is there a motion to approve the
2 minutes as amended?

3 COMMISSIONER O'CONNELL-DIAZ: So moved.

4 CHAIRMAN FLORES: Is there a second?

5 COMMISSIONER ELLIOTT: Second.

6 CHAIRMAN FLORES: Its been moved and seconded.

7 All a favor say "aye."

8 (Chorus of ayes.)

9 Any opposed?

10 The vote is 5-0 approving the minutes.

11 Starting with the Railroad Agenda,

12 Items RR-1 through RR-7 will be taken together.

13 These are Stipulated Agreements for
14 expenditures directed toward improving public safety
15 at designated highway-rail grade crossings across
16 Illinois.

17 Staff recommends entering the Orders
18 approving the Stipulated Agreements.

19 Is there a motion to enter the Order?

20 COMMISSIONER COLGAN: So moved.

21 CHAIRMAN FLORES: Is there a second?

22 COMMISSIONER ELLIOTT: Second.

1 CHAIRMAN FLORES: Its been moved and seconded.

2 All in favor say "aye."

3 (Chorus of ayes.)

4 Any opposed?

5 (No response.)

6 The vote is 5-0. The Orders are
7 entered. We will now use this 5-0 vote for the
8 remainder of the Transportation Agenda unless
9 otherwise noted.

10 Items RR-8 and RR-9 will be taken
11 together. These items are Petitions for additional
12 track and grade crossings in Plainfield. ALJ
13 Kirkland-Montequé recommends entering the Order
14 granting the Petition.

15 Is there any discussion?

16 (No response.)

17 Any objections?

18 (No response.)

19 Hearing none, the Orders are entered.

20 Item RR-10 concerns a Petition to
21 remove the existing grade separation structure
22 carrying Voorhees Street over the exempt Norfolk

1 Southern track and to construct a new roadway on
2 embankment over the existing railroad right-of-way
3 situated in Danville and apportioning cost thereof.
4 ALJ Kirkland-Montague recommends entering a
5 Supplemental Order approving the request of the
6 extension of time.

7 Is there any discussion?

8 (No response.)

9 Any objections?

10 (No response.)

11 Hearing none the Supplemental Order is
12 entered.

13 RR-14 concerns a Petition for an Order
14 authorizing the establishment of a new grade crossing
15 at 183rd Street in Tinley Park directing the
16 installation of automatic flashing light signals and
17 gates and dividing the cost of installation among the
18 parties. ALJ Kirkland-Montague recommends entering
19 the second Supplemental Order requesting additional
20 project completion time.

21 Is there any discussion?

22 (No response.)

1 Any objection?

2 (No response.)

3 Hearing none, the Second Supplemental
4 Order is entered.

5 Items RR-12 is a Stipulated Agreement
6 for expenditures directed toward improving public
7 safety at a highway-rail grade crossing in Thayer.
8 Staff recommends entering an Order approving an
9 increase in cost.

10 Is there any discussion?

11 (No response.)

12 Any objection?

13 (No response.)

14 Hearing none, the Order is entered.

15 Item RR-13 is a Stipulated Agreement
16 for expenditures directed toward improving public
17 safety at the Oak Street highway-rail grade crossing
18 in Coal City. Staff recommends entering an Order
19 allowing for supplemental costs and an extension of
20 time.

21 Is there any discussion?

22 (No response.)

1 Any objection?

2 (No response.)

3 Nearing none, the Order is entered.

4 We now turn to the Motor Carrier

5 Agenda.

6 Items MC-1 through MC-10 will be taken
7 together. These items all concern Stipulated
8 Settlement Agreements concerning alleged violations
9 of the Illinois Commercial Transportation Law. In
10 each matter Staff Transportation Counsel recommends
11 entering an Order approving the Stipulated Settlement
12 Agreement.

13 Is there any discussion?

14 COMMISSIONER O'CONNELL-DIAZ: Chairman, I don't
15 see Judge Nagel in the room; but I question with
16 regard to MC-1. So if we can hold that for a
17 while -- he is here.

18 I think I just called you Judge Nagel.
19 That could a demotion or a promotion. I don't know
20 which one. Transportation Counsel -- yes --
21 Mr. Nagel, with regard to this particular -- Smith
22 Movers -- I notice in your memo that there have been

1 two other occasions where this Company has been
2 founded in violation of operating without authority.

3 MR. NAGEL: Yes.

4 COMMISSIONER O'CONNELL DIAZ: And so what we
5 are doing here is -- obviously they've been caught
6 again and we're penalizing them for 50 days violation
7 with a penalty of \$5,000. Are we going to be seeing
8 them next spring again or -- and if it's 50 days
9 violation, you know, if they move a couple people,
10 I'm sure they would be making more than \$5,000.

11 How do we make sure that we don't have
12 them coming before us again?

13 MR. NAGEL: Certainly. The Commercial
14 Transportation Law provides for violations or civil
15 penalties between \$100 and \$1,000 per violation.
16 Sections -- well, our -- the Commission's Rules
17 provide for informal settlement discussions and where
18 those settlements will result in conserving the
19 resources of the Commission and expediting the
20 resolution of these types of issues. We're committed
21 to provide and reduce the penalties. Typically our
22 office takes into consideration several factors which

1 include the past compliance history, the type of
2 violations, the number of the violations, whether
3 these are willful or really more properly
4 characterized as negligent violations, the license
5 holders cooperation with Staff in resolving the
6 dispute, their compliance with -- or the willingness
7 to comply with these regulations in the future as
8 well as the revenues that were -- resulted from the
9 legal operations.

10 COMMISSIONER O'CONNELL-DIAZ: Do we know what
11 those revenues were?

12 MR. NAGEL: I'd have to look at the file. I
13 don't know -- I don't recall off the top of my head.
14 I'd have to do some math by looking at the actual
15 bills of lading. What this proposed settlement does
16 is proposing a \$100 per day of violation which is an
17 escalation from -- initially there was a \$50 per day
18 violation --

19 COMMISSIONER O'CONNELL-DIAZ: But this is their
20 third violation. So I'm kind of missing how they're
21 acting --

22 COMMISSIONER FORD: The first violation was in

1 1997?

2 COMMISSIONER O'CONNELL-DIAZ: This is their
3 third violation.

4 COMMISSIONER ELLIOTT: Yeah, first in '97.
5 It's becoming the cost of doing business.

6 COMMISSIONER O'CONNELL-DIAZ: Well, I'm
7 thinking, too, you know, this \$5,000 although I
8 understand that we're confined to the penalty
9 provisions; but in one day the cost of moving, that
10 could be one move. And if they were operating for
11 50 days.

12 MR. NAGEL: I do believe that the reason for
13 the authority -- the reason the authority went
14 revoked was the failure to have on file workers'
15 compensation coverage. I do believe that that was a
16 failure of the insurance company and not the lapse of
17 coverage for this case. I also recall -- I believe
18 these were moves that were conducted with regard to a
19 Chicago Housing Authority -- on agreement with the
20 Chicago Housing Authority.

21 COMMISSIONER O'CONNELL-DIAZ: Well, I just had
22 questions. I really kind of blindsided you because I

1 didn't let you know so you could have looked more
2 closely at the file. I'm sure that your understanding
3 of the underpinnings of your recommendation are fine.
4 It just struck me that this was a third time up for
5 this company, and given the fact that it's moving
6 season now, that we really need to be making sure
7 that these companies that are authorized by us have
8 the appropriate documentation to have the insurance
9 and that they are actually authorized by us because
10 moving is a very expensive proposition for people
11 and so it did catch my eye.

12 I'm satisfied with your evaluation. I
13 just was curious and I'll take a look at the files so
14 I'm more educated about what occurred, so thank you.

15 MR. NAGEL: Thank you.

16 CHAIRMAN FLORES: Should we hold this matter?

17 COMMISSIONER O'CONNELL-DIAZ: No, I'm fine.

18 CHAIRMAN FLORES: Very well.

19 Then again, MC-1 through MC-10.

20 Any further discussion on any of the
21 other matters?

22 (No response.)

1 Any objections?

2 (No response.)

3 Hearing none, the Orders are entered.

4 Item MC-11 concerns an Application for
5 Certificate of Public Convenience and Necessity for
6 Century 1 Movers. ALJ Kirkland-Montaque recommends
7 an entry of the Order denying permanent household
8 because of authority of the applicant.

9 Is there any discussion?

10 (No response.)

11 Any objections?

12 (No response.)

13 Hearing none, the Order denying
14 permanent household because of authority is entered.

15 Item MC-12 is an Application for an
16 Operator Employment Permit by Jeffrey Norlander. The
17 Applicant has failed to appear at multiple hearings.
18 ALJ Kirkland-Montaque recommends entering an Order
19 dismissing this Application without prejudice for
20 lack of prosecution.

21 Is there any discussion?

22 (No response.)

1 Any objections?

2 (No response.)

3 Hearing none, the Order is entered.

4 Item MC-13 is the Application for an
5 Operator's Employment Permit by Miguel Gomez. ALJ
6 Kirkland-Montague recommends entering the Order
7 approving the application.

8 Is there any discussion?

9 (No response.)

10 Any objections?

11 (No response.)

12 Hearing none, the Order is entered.

13 Mr. Matrisch, is there any further
14 Transportation business to come before the Commission
15 today?

16 MR. MATRISCH: Nothing further. Thank you.

17 CHAIRMAN FLORES: Thank you very much. Thank
18 you for the good work.

19 Hearing none, that concludes the
20 Transportation agenda.

21

22