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BEFORE THE  
ILLINOIS COMMERCE COMMISSION

PUBLIC UTILITY SPECIAL OPEN MEETING

Chicago, Illinois  
May 29, 2012

Met, pursuant to notice, at 10:20 a.m.

BEFORE:

MR. DOUGLAS P. SCOTT, Chairman

MS. LULA M. FORD, Commissioner

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

MS. ANN McCABE, Commissioner

MR. JOHN T. COLGAN, Commissioner

SULLIVAN REPORTING COMPANY, by  
Auhdikiam Carney, CSR  
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1           CHAIRMAN SCOTT: Pursuant to the provisions of  
2 the Open Meetings Act, I now convene a Special Open  
3 Meeting of the Illinois Commerce Commission. With me  
4 in Chicago are Commissions Ford, O'Connell-Diaz and  
5 McCabe. With us in Springfield by videoconference is  
6 Commissioner Colgan. I'm Chairman Scott.

7                         We have a quorum.

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

17                         Moving on to our agenda for today,  
18 Item 1 is the approval of minutes from our May 2nd  
19 Bench Session. I understand amendments have been  
20 forwarded.

21                         Is there a motion to amend the  
22 minutes?

1 COMMISSIONER O'CONNELL-DIAZ: So moved.

2 CHAIRMAN SCOTT: Is there a second?

3 COMMISSIONER FORD: Second.

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

5 All in favor say "aye."

6 (Chorus of ayes.)

7 Any opposed?

8 (No response.)

9 The vote is 5-0 and the amendments to  
10 the May 2nd minutes are adopted.

11 Is there a motion to adopt the minutes  
12 as amended?

13 COMMISSIONER O'CONNELL-DIAZ: So moved.

14 CHAIRMAN SCOTT: Is there a second?

15 COMMISSIONER McCABE: Second.

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

17 All in favor say "aye."

18 (Chorus of ayes.)

19 Any opposed?

20 (No response.)

21 The vote is 5-0 and the May 2nd  
22 minutes as amended are adopted. We will use this 5-0

1 vote for the remainder of today's Special Open  
2 Meeting unless otherwise noted.

3 Item 2 concerns initiating a tariff  
4 investigation to address some of the issues raised in  
5 Docket No. 11-0144, specifically regarding capacity  
6 charges for residential real-time pricing net  
7 metering customers with Commonwealth Edison.

8 Is there any discussion regarding the  
9 proposed Initiating Order?

10 (No response.)

11 Is there any objections to entering  
12 the Initiating Order?

13 (No response.)

14 Hearing none, the Initiating Order is  
15 entered.

16 Item 3 is Docket No. 11-0546. This is  
17 the proceeding for the Commission's evaluation of  
18 ComEd's Residential Real-Time Pricing Program. ALJ  
19 Albers recommends entry of an Order accepting the  
20 Joint Stipulation between the parties in this matter  
21 and directing the continuation of the Real-Time  
22 Pricing Program.

1 Is there any discussion?

2 (No response.)

3 Are there any objections to entering  
4 this Order?

5 (No response.)

6 Hearing none, the Order is entered.

7 Item 4 is Docket No. 11-0721. This is  
8 ComEd's formula rate docket pursuant to Section  
9 16-108.5 of the Public Utilities Act. ALJs Sainsot  
10 and Kimbrel recommend entry of an Order setting the  
11 initial rates under this new approach. I know we've  
12 got quite a few revisions up for consideration today;  
13 but before I do that, can I ask the judges for the  
14 public comments.

15 JUDGE SAINSOT: Since the last Commission  
16 meeting, we've had an additional 7 comments, which  
17 brings the total up to 2203.

18 CHAIRMAN SCOTT: Okay. I know there are  
19 revisions to this and we call first on Commissioner  
20 McCabe.

21 COMMISSIONER O'CONNELL-DIAZ: Mr. Chairman, I  
22 would like to ask a question of the ALJs.

1 CHAIRMAN SCOTT: Certainly.

2 COMMISSIONER O'CONNELL-DIAZ: Judge Sainsot,  
3 can you just run through the recommendations that you  
4 have tendered to us in your Order with regard to the  
5 pension aspect.

6 JUDGE SAINSOT: Well, very briefly Section  
7 16-108.5 allows ComEd to receive a return on what it  
8 calls the pension asset. ComEd's pension plan  
9 currently is underfunded even with the extra  
10 contributions it's made at approximately 68 percent.  
11 Staff's argument in this case was that because  
12 ComEd's pension plan was underfunded at less than a  
13 hundred percent, it wasn't a pension asset within the  
14 meaning of the statute. And the Order before you  
15 says that --

16 COMMISSIONER O'CONNELL-DIAZ: Does the statute  
17 define pension asset?

18 JUDGE SAINSOT: It does not.

19 COMMISSIONER O'CONNELL-DIAZ: And has the  
20 Commission entered Orders relative to pension assets  
21 previously that gave guidance to your recommendation?

22 JUDGE SAINSOT: Well, the Commission didn't

1 always call it a pension asset; but, in effect, the  
2 Commission allowed recovery of extra contributions to  
3 the pension contributions in general.

4 COMMISSIONER O'CONNELL-DIAZ: And these  
5 contributions would be the contributions over the  
6 legally required amount. So these are discretionary  
7 upticks that they put in the pension fund?

8 Judge Sainsot: That is correct. What the Order  
9 does is construe the term "pension asset" based on  
10 the plain meaning of the two words. An asset  
11 generally is an item of value and that item of value  
12 can have value even if it has a negative worth.

13 The example that was used was a house  
14 that's under mortgage-wise. It still has value. You  
15 still have to pay property taxes on it. You still  
16 have to insure it. You still have to maintain it.  
17 It's still a place to live. The bricks and mortar  
18 have value all of themselves, so that was the reason  
19 in the Order.

20 COMMISSIONER FORD: That was a good analogy.

21 COMMISSIONER O'CONNELL-DIAZ: Did you have  
22 occasion to interpret the other Orders that the

1 Commission looked at -- what -- I believe in the  
2 05-0567 case was referred to as a pension asset, but  
3 then we had two other cases after that that did not  
4 use exactly that terminology.

5 Did you have occasion to look at those  
6 Orders?

7 JUDGE SAINSOT: Yes. I looked at all three.  
8 And I think -- and the Order says that substantively  
9 no matter what you call it, it's an extra  
10 contribution to the pension.

11 COMMISSIONER O'CONNELL-DIAZ: And with regard  
12 to the Staff position that unless the pension was 100  
13 percent funded, there should be no recovery.

14 Is there any rule or law that you know  
15 of that would tell this Commission that that's what  
16 we should do with regard to this issue?

17 JUDGE SAINSOT: Well, Staff cited FAS 87. FAS  
18 is a standard put out by the Financial Accounting  
19 Service Board. I believe you have a footnote in the  
20 Order. And the Order notes this, that that's what  
21 FAS 87 says. However, there is really no evidence  
22 that that accounting standard applies here.



1 There's -- Staff did not present evidence that it did  
2 and, you know, different accounting standards apply  
3 to different situations.

4 COMMISSIONER O'CONNELL-DIAZ: And this  
5 particular accounting standard, the Company put  
6 testimony on -- I think it's Mr. Graff (phonetic)  
7 that suggested that this type of treatment suggested  
8 by Staff is not anything that would be seen in the  
9 accounting world. I'm not an accountant so I would  
10 have to look at specialists to guide my understanding  
11 of these issues. Is that a fair assessment of the  
12 testimony relative to this type of standard that  
13 Staff would have us adopt in this proceeding?

14 JUDGE SAINSOT: That's correct.

15 COMMISSIONER O'CONNELL-DIAZ: And in your  
16 conclusion, you did not agree with the Staff's  
17 position; but, instead, were in sync with the other  
18 Orders that we had on this issue?

19 JUDGE SAINSOT: That's correct.

20 COMMISSIONER O'CONNELL-DIAZ: Thank you.

21 CHAIRMAN SCOTT: Anything else on that,  
22 Commissioner?

1 COMMISSIONER O'CONNELL-DIAZ: No.

2 CHAIRMAN SCOTT: Thank you.

3 Commissioner McCabe, you have some  
4 revisions.

5 ACTING COMMISSIONER McCABE: The first one is  
6 on the business service company's annual incentive  
7 plan cost allocation. The Proposed Order drafts a  
8 separate document to investigate this issue. The  
9 edits we've made request that an investigation be  
10 done in the annual filing. We believe this will be  
11 easier than opening a different proceeding.

12 CHAIRMAN SCOTT: Is there discussion about  
13 this?

14 COMMISSIONER O'CONNELL-DIAZ: I guess this  
15 would really be a Staff question and I just thought  
16 of it, otherwise I would have had a conversation. I  
17 do believe that when we were coming out after the  
18 merger and an issue came up with regard to the  
19 business services center and the services that they  
20 actually provided and who was actually kind of behind  
21 the scenes doing the work and how does that -- did  
22 those allocations go forward? And I would just -- if

1 we're going to be doing something, I think Staff  
2 might want to look back and see if we've looked at  
3 that and if there's anything of importance that would  
4 help guide our studying of this issue in the  
5 proceeding that is suggested by these edits.

6 CHAIRMAN SCOTT: Okay. Further discussion?  
7 Have you made a motion to adopt the  
8 revision?

9 COMMISSIONER McCABE: So moved.

10 CHAIRMAN SCOTT: I will second that.

11 Any further discussion?

12 COMMISSIONER FORD: I'll abstain because I  
13 didn't have time to get a look at it.

14 CHAIRMAN SCOTT: Okay.

15 All in favor say "aye."

16 (Chorus of ayes.)

17 Any opposed?

18 (No response.)

19 We have one abstention so the vote on  
20 that will carry 4-0-1.

21 Commissioner McCabe.

22 COMMISSIONER McCABE: The pension asset

1 funding, I propose the Commission adopt the Staff  
2 position. The Staff's approach views the overall  
3 status of the pension and all its components as it  
4 relates to the utility on a stand alone basis. I  
5 will note that pension asset has never been included  
6 in rate base as an expense item. The proposed Order  
7 will allow a return on normal and special pension  
8 contributions. The Commission has not allowed a  
9 return on normal contributions for any utility. As  
10 noted we have allowed a return on special  
11 contributions in some prior ComEd cases.

12 CHAIRMAN SCOTT: Is that in the form of a  
13 motion?

14 COMMISSIONER McCABE: Yes.

15 CHAIRMAN SCOTT: I will second that.

16 Is there a discussion?

17 COMMISSIONER FORD: Yes. Mr. Chairman and  
18 Commissioner McCabe, after reviewing the record, I  
19 certainly would have to agree with the ALJ's  
20 conclusion regarding the pension asset funding issue  
21 in this matter. I do not believe the statute in  
22 question is ambiguous, nor do we need to establish a

1 definition for pension asset outside its plain  
2 ordinary meaning.

3                   Furthermore, I believe that it is  
4 incorrect to assume a pension asset can exist only  
5 when a plan is over funded. As the Proposed Order  
6 stated, an item of value can have a negative balance.  
7 While not specifically stated in previous ComEd rate  
8 cases, the Commission has consistently allowed  
9 recovery of pension contributions and I see nothing  
10 in the record evidence that requires us to depart  
11 from our past practices.

12                   This reminds me of when I first came  
13 to this Commission when we had an issue and I  
14 certainly was in the minority; but when it went to  
15 the Appellate Court, I was vindicate. So I see this  
16 as one of those issues.

17                   Thank you.

18                   CHAIRMAN SCOTT: Further discussion?

19                   Commissioner O'Connell-Diaz.

20                   COMMISSIONER O'CONNELL-DIAZ: I didn't know if  
21 Commissioner Colgan had anything.

22                   COMMISSIONER COLGAN: No.

1           COMMISSIONER O'CONNELL-DIAZ: I agree with what  
2 Commission Ford just stated. This issue, we have  
3 looked at it, and looked at it, and looked at it. It  
4 brings to mind -- what's the Shakespearean saying --  
5 a rose by any other name doesn't smell as sweet.

6                   Being a State of Illinois employee,  
7 pensions are very near and dear to my heart. The  
8 issue of a pension being funded or not funded. This  
9 is certainly appropriate public policy that we want  
10 to have these pensions funded. In the 05-0567  
11 case -- I might have the number wrong -- that  
12 situation provided a savings that allowed the company  
13 to infuse money into the pension plan. As I look at  
14 the pension plan funding, 68 percent in a year that  
15 we approved what nobody wants to call a pension  
16 asset, but I don't know what else to call it. It was  
17 a pension asset.

18                   In the 05-0597 case it was called a  
19 pension asset. 2009 the plan was funded at  
20 73 percent, 76 percent for 2010. Looking at the  
21 funding of another utility in our state does not  
22 guide me in understanding that it is very important

1 that these pension plans be funded and that there be  
2 appropriate recognition. The Companies can put their  
3 money -- they can keep going with the minimum  
4 funding. We want to see them fund to the best  
5 possible way for the people that are on the poles,  
6 the people that are in the offices to ensure that  
7 they do not have to sit and suffer like some of the  
8 many State employees that are worried about their  
9 pension plan and what's going on with that. The  
10 Commission has looked at this issue over and over  
11 again. And so it is quite astounding that we would,  
12 without remarkable reasons, change what we have  
13 decided. And the beneficial part of this certainly  
14 goes to the folks that work there that do the  
15 services that our companies and our ratepayers depend  
16 on.

17 So I'm sure we'll have rehearing on  
18 this because this is a hotly contested issue. I did  
19 find that due to the extent of the record, there were  
20 many questions that came to mind that I know supports  
21 Commissioner McCabe's edits; but, again, I think we  
22 really need to look at it in a joint way and go

1 forward with the backdrop of what this Commission has  
2 done. So I would not be supportive of these edits  
3 and I look forward to -- I know I don't have the  
4 votes, but I look forward to rehearing in this.

5 CHAIRMAN SCOTT: Further discussion?

6 Commissioner Colgan.

7 COMMISSIONER COLGAN: Well, I think this is  
8 probably the issue that got the most attention as we  
9 were coming down to a final conclusion here on this  
10 rate case proposal. There are arguments in both  
11 directions. It would have been a lot more helpful if  
12 it had been more clearly defined in the statute  
13 exactly what a pension asset was. I looked at this  
14 really close for the last several days over and over  
15 and I know everybody else has as well. I'm going to  
16 come down in support of Commissioner McCabe's  
17 proposal on this issue.

18 In my best judgment, I think -- I see  
19 this as an expense rather than an asset. And I  
20 appreciate all the hard work that I know Commissioner  
21 McCabe has done on this and I know everybody else has  
22 done a lot of hard work on this. I think it's one of



1 those cases where reasonable people have different  
2 opinions; but with that, I'm going to support  
3 Commissioner McCabe's amendment to the rate case.

4 CHAIRMAN SCOTT: Further discussion?

5 (No response.)

6 All in favor of the revision vote  
7 "aye."

8 COMMISSIONER McCABE: Aye.

9 COMMISSIONER COLGAN: Aye.

10 CHAIRMAN SCOTT: Aye.

11 Any opposed?

12 COMMISSIONER O'CONNELL-DIAZ: No.

13 COMMISSIONER FORD: No.

14 CHAIRMAN SCOTT: The vote is 3-2 and the  
15 revision is adopted.

16 Commissioner McCabe.

17 COMMISSIONER McCABE: On rate design, roughly  
18 pages 145 to 147 in the pending Proposed Order, these  
19 edits change the conclusion so that ComEd recovers  
20 50 percent of fixed costs through their fixed charge  
21 per Docket 10-0467 rather than  
22 50 percent -- rather than applying that to the total

1 cost. The conclusion in the Order for 10-0467 is  
2 that ComEd was to separate according to the  
3 50 percent fixed variable rate design.

4 CHAIRMAN SCOTT: Discussion?

5 COMMISSIONER O'CONNELL-DIAZ: I support these  
6 edits. What we're telling the Company to do is what  
7 we told them to do in the other case and they haven't  
8 done so. Certainly crack them in the line on that  
9 with this.

10 Thank you.

11 CHAIRMAN SCOTT: Further discussion?

12 (No response.)

13 Commissioner McCabe, are you moving  
14 for adoption of those revisions?

15 COMMISSIONER McCABE: So moved.

16 CHAIRMAN SCOTT: Is there a second?

17 COMMISSIONER O'CONNELL-DIAZ: Second.

18 CHAIRMAN SCOTT: All in favor say "aye."

19 (Chorus of ayes.)

20 Any opposed?

21 (No response.)

22 The vote is 5-0 and the revision is

1 adopted.

2 Commissioner McCabe.

3 COMMISSIONER McCABE: My last edit on the Order  
4 is on Page 178. The Proposed Order allows 10 days  
5 before the rates go into effect. The edit gives  
6 ComEd 5 days instead of 3 to make a compliance filing  
7 and allow all parties more time for review.

8 CHAIRMAN SCOTT: Is there any discussion on  
9 this proposed revision?

10 (No response.)

11 Are you making that in the form of a  
12 motion, Commissioner McCabe?

13 COMMISSIONER McCABE: Yes.

14 CHAIRMAN SCOTT: Is there a second?

15 COMMISSIONER FORD: Second.

16 CHAIRMAN SCOTT: Any further discussion?

17 (No response.)

18 All in favor of supporting the  
19 revision vote "aye."

20 (Chorus of ayes.)

21 Any opposed?

22 (No response.)

1                   The "ayes" have it, 5-0, and the  
2 revision is adopted.

3                   Commission O'Connell-Diaz will give  
4 her revision.

5                   COMMISSIONER O'CONNELL-DIAZ: Yes. This is a  
6 joint revision with Commissioner McCabe's office and  
7 my office with regard to the appropriate interest  
8 rate. We heard argument on this the other day and we  
9 had two really kind of varying positions. And where  
10 the Commission has come down on is the thought that  
11 we know it's inappropriate for it to be a zero  
12 percent interest rate, which would be the customer  
13 deposit rate; but what we've done is use the backdrop  
14 of some other interest rate calculations in some  
15 other cases that we've had before us and come up with  
16 a hybrid calculation for the interest rate. It would  
17 use a methodology that uses the debt of long-term and  
18 short-term debt because this is somewhat of a hybrid  
19 situation given the length of time of the  
20 reconciliation period. The result would be an  
21 interest rate of 3.42 percent. We find that that is  
22 reasonable and appropriate to be utilized for the

1 reconciliation period recognizing that this is  
2 different than a Rider. It is different than  
3 probably any other case we've had before us. So this  
4 recognizes the time value of money during that period  
5 of time.

6 And so I would thank Commissioner  
7 McCabe and her office for working on this and we  
8 would tender it to you for discussion.

9 CHAIRMAN SCOTT: Is that in the form of a  
10 motion to adopt?

11 COMMISSIONER O'CONNELL-DIAZ: Yes.

12 CHAIRMAN SCOTT: Is there a second?

13 COMMISSIONER McCABE: Second.

14 CHAIRMAN SCOTT: Now, is there discussion on  
15 this particular revision?

16 Commissioner Colgan.

17 COMMISSIONER COLGAN: Yes. This, again, is a  
18 really interesting issue. I've been all around the  
19 block on this one trying to figure out the best  
20 possible outcome here. And if I have a concern about  
21 the proposal that is before us at the moment is that  
22 nobody argued that in the record. The Attorney

1 General did argue something about short-term debt,  
2 which was -- I forget exactly -- 072 -- .72, I think  
3 or something like that -- or .072. I don't remember  
4 exactly. But if you -- but then they back off of  
5 that position -- but if you look at the issue, the  
6 short-term debt I'm not sure really covers this area  
7 because it was for a longer period than one year.

8 So I think that we've come to a -- and  
9 I thank everybody for the work that's been done on  
10 this because it's been a tremendous amount of work  
11 and attention placed on these issues. And this is a  
12 very important issue because it has to do with the  
13 reconciliation amount that wasn't collected in the  
14 projected rate for these previous years. So I think  
15 that this is a reasonable compromise and I'm going to  
16 support the conclusion of the proposal.

17 CHAIRMAN SCOTT: Further discussion on the  
18 matter?

19 (No response.)

20 COMMISSIONER O'CONNELL-DIAZ: Thank you,  
21 Commissioner Colgan.

22 CHAIRMAN SCOTT: All in favor of the proposed

1 revision vote "aye."

2 COMMISSIONER O'CONNELL-DIAZ: Aye.

3 COMMISSIONER FORD: Aye.

4 COMMISSIONER McCABE: Aye.

5 COMMISSIONER COLGAN: Aye.

6 CHAIRMAN SCOTT: Any opposed?

7 No.

8 The vote is 4-1 and the revision is  
9 adopted.

10 Commissioner O'Connell-Diaz, you have  
11 further revisions?

12 COMMISSIONER O'CONNELL-DIAZ: Yes, with regard  
13 to the -- I know I don't have the votes, but average  
14 versus year end. I think the statute is exceedingly  
15 clear. I don't think it leaves anything to doubt and  
16 I would recommend that the Commission follow the law  
17 and use the final historical data that is encompassed  
18 in the language of the statute. I believe for us to  
19 do otherwise is a derogation of the new law that is  
20 put before us. I don't believe there's any ambiguity  
21 there. It states what it states and it is  
22 inappropriate for us to try to dress it up in any

1 other way.

2                   So I would look to using the year-end  
3 data or the final historical data as the language is  
4 in the statute as opposed to the averaging. The term  
5 "averaging" is not used anywhere in this statute.  
6 Additionally there is no directive to the Commission  
7 to do a computation to develop an average amount.  
8 And so I am just really kind of surprised that one  
9 could make a straight-faced argument that it means  
10 something other than what's in the statute. So I  
11 would offer those for consideration and make a  
12 motion.

13           CHAIRMAN SCOTT: Is there a second?

14           COMMISSIONER FORD: Second.

15           CHAIRMAN SCOTT: Is there any discussion on  
16 this particular revision?

17                   All in favor of that revision vote  
18 "aye."

19           COMMISSIONER FORD: Aye.

20           COMMISSIONER O'CONNELL-DIAZ: Aye.

21           CHAIRMAN SCOTT: Any opposed?

22           COMMISSIONER McCABE: No.



1 COMMISSIONER COLGAN: No.

2 CHAIRMAN SCOTT: No.

3 The vote is 2-3 and that particular  
4 revision is not adopted.

5 Any other revisions?

6 COMMISSIONER O'CONNELL-DIAZ: No.

7 CHAIRMAN SCOTT: I have three revisions that  
8 have been circulated to the offices. I have one to  
9 the advertising expense section of the Order. The  
10 purpose of the revision is to clarify Section 8-103  
11 of the Act regarding energy efficiency programs and  
12 saving goals and 9-225(3)(a) of the Act regarding  
13 recovering energy efficiency and conservation  
14 warranted advertising operation expense should be  
15 reconciled, hopefully to clarify which cost should be  
16 accounted for under which section of the Act.

17 My revisions maintain the conclusion  
18 of not disallowing ComEd's advertising expenses as an  
19 issue for energy efficiency and conservation as they  
20 meet the criteria of Section 9-225 sub 3, sub A of  
21 the Act and are not goodwill advertising and I would  
22 request all of your support.

1                   I would make that as a motion to  
2 approve that revision.

3                   Is there a second?

4           COMMISSIONER McCABE:   Second.

5           CHAIRMAN SCOTT:   Is there any discussion on  
6 that particular revision?

7                   (No response.)

8                   All in favor vote "aye."

9                   (Chorus of ayes.)

10                   Any opposed?

11                   (No response.)

12                   The "ayes" have it and the revision is  
13 adopted.

14                   I also have a revision to the interest  
15 rate section of the Order.  These are fairly  
16 straightforward revisions which simply clarify the  
17 statutory 2 and a half percent cap on rate increases  
18 which is following the statute.  It also applies to  
19 the reconciliation on such as the amount to be  
20 reconciled is included under that particular cap  
21 which is what I believe was intended in the  
22 legislation.

1                   These revisions do not otherwise  
2     change the conclusion to the section as it's recently  
3     been amended here. And I would request all of your  
4     support that we did remove the one sentence that  
5     Commissioner O'Connell-Diaz had asked for.

6           COMMISSIONER O'CONNELL-DIAZ: Mr. Chairman, I  
7     think we kind of talked back in the hallway with  
8     regard to putting this revision in a separate  
9     category so it reads more clearly because I think  
10    that if it's attached to the interest rate provision  
11    that we just voted on -- at least for me it was  
12    confusing. So I think we've come up with a separate  
13    title so it's set forth in its entirety and  
14    understandable. So with that I would second that.

15           CHAIRMAN SCOTT: Further discussion?

16                   (No response.)

17                   I actually didn't formally do it, so  
18    I'll make a motion to adopt this revision.

19                   Is there a second?

20           COMMISSIONER O'CONNELL-DIAZ: Second.

21           CHAIRMAN SCOTT: Any other discussion with the  
22    caveat as stated by Commissioner O'Connell-Diaz?

1 (No response.)

2 All in favor say "aye."

3 (Chorus of ayes.)

4 Any opposed?

5 (No response.)

6 The "ayes" have it and the revision is  
7 adopted.

8 And one final revision concerning the  
9 charitable contribution section in the Order. First  
10 my revisions add more detail regarding the basis for  
11 disallowing the Company's contribution to the  
12 University of Wisconsin not being from our state as  
13 an automatic disqualification; but because in the  
14 actual testimony it states that it's for a training  
15 program for Exelon to train people for Exelon, not  
16 for ComEd. So it does not directly benefit any ComEd  
17 ratepayers.

18 Second, my revisions also serve to  
19 clarify exactly what type of information and what  
20 level of detail the Commission is seeking from  
21 utilities that look to recover charitable  
22 contributions to rates under Section 9-227 of the

1 Act, a subject we've visited frequently.

2 And lastly my revisions call for  
3 rulemaking to provide even further clarity on how the  
4 parties on Section 9-227 should operate.

5 And I would make that a motion to  
6 adopt that revision and will request your support.

7 COMMISSIONER COLGAN: I will second that.

8 CHAIRMAN SCOTT: Is there further discussion on  
9 this revision?

10 COMMISSIONER COLGAN: Well, I just wanted to  
11 say that I think this is a really good idea because  
12 we've had this issue come up on numerous occasions  
13 over the last couple years. And I think we really  
14 need something that more clearly defines what the  
15 appropriate standards are for a charitable  
16 contribution. And in the interim period between now  
17 and getting a rulemaking, which could take a while, I  
18 think we need to continue to look at this issue and  
19 make decisions on a case-by-case basis.

20 But I support your amendment here,  
21 Chairman.

22 CHAIRMAN SCOTT: Commissioner Ford.

1           COMMISSIONER FORD:  Certainly, Chairman.

2                           I've always had issues with charitable  
3 contributions because working in several issues --  
4 working in organizations that need these charitable  
5 contributions, I don't want us to micromanage the  
6 Company who is allocating this money to those  
7 charities.  So that is my reason for having to vote  
8 no on that rulemaking because I'm also listening  
9 to -- not saying that I'm a tea party person, but I  
10 think sometimes we overregulate.  And some issues do  
11 not, in my opinion, need to be relulated.

12                           Everybody that sits on the chair of a  
13 board and asks for money should not have to be  
14 pre-scripted.  I think that the organization that is  
15 giving the money should look at each case, as we say,  
16 case by case.

17                           Thank you.

18           CHAIRMAN SCOTT:  Any further discussion?

19                           Commissioner O'Connell-Diaz.

20           COMMISSIONER O'CONNELL-DIAZ:  I'm compelled to  
21 vote "no."  I think everybody knows my feelings about  
22 the charitable contributions are guidances under the

1 statute. The statute is very clear where it  
2 suggests -- it doesn't suggest, it says that this  
3 Commission shall not enter a rule that would stand in  
4 the way of what the public welfare donations that are  
5 recoverable as are prescribed in the statute. So  
6 that is, to me, a very bright line as to where our  
7 authority is and where our guidelines should be.

8                   Additionally, having looked at the  
9 exhibit that was tendered, all you have to do is look  
10 down the list of the entities on there. I agree with  
11 Commissioner Ford, they're all 501(c)(3) corporations  
12 in our state and I don't know what other  
13 information -- I'm sure that we could come up with a  
14 list of information that we would have to have them  
15 fill out; but I don't think that that's what the  
16 statute prescribes for us to do.

17                   Additionally with regard to your  
18 revision on the University of Wisconsin, I would note  
19 that the State of Illinois has the most nuclear power  
20 plants, I think, in the world. And so if we are  
21 going to bring people to those plants and bring those  
22 type of professionals into our state to work, to

1 live, to pay taxes, and to keep human kind in those  
2 plants to keep the plants running that employ many  
3 throughout our state, I think it's important that we  
4 are out in our educational areas moving that ball  
5 forward so that we attract that type of  
6 professionalism into our state.

7 And so I think that I -- there is  
8 definitely benefit, not just to ComEd ratepayers; but  
9 to the State as a whole in bringing that type of  
10 knowledge base to our state. Once those students  
11 graduate from those programs, they can go few places  
12 to be in power plants and we'd like them to come to  
13 our state and pay taxes and be apart of the backdrop  
14 of our state.

15 So I cannot support that edit nor can  
16 I support that rulemaking. So I vote "no."

17 CHAIRMAN SCOTT: Further discussion?

18 Commissioner McCabe.

19 COMMISSIONER McCABE: I would also support the  
20 Company making charitable contributions. I would  
21 just note as did (unintelligible) in this proceeding  
22 that Illinois is unusual in allowing recovery of



1 donations from ratepayers.

2 CHAIRMAN SCOTT: Just a couple of quick points.  
3 Number one, I share your desire to have folks that  
4 are working in nuclear power plants here be well  
5 educated. The question here is whether that's a  
6 proper charitable expense that should come under  
7 ComEd ratepayers or through Exelon. And in here it's  
8 listed -- it's actually in the record that it's for  
9 the support of Exelon. That's the distinction that I  
10 would make in that particular case as opposed to the  
11 rationale that was given actually in the Order.

12 The other part of it is -- and I've  
13 been really clear on this before -- that Act supports  
14 charitable contributions. I support charitable  
15 contributions. I like that. There's a minimum of  
16 information that's required that refers to the  
17 purpose as well as the organization that the  
18 charitable contribution is given to. All I want them  
19 to do is give me what the statute says, which is the  
20 purpose. Now that hasn't been able to be really  
21 clear, I guess. It says for educational purposes.  
22 It doesn't just say to an educational organization or

1 a scientific or religious organization. It says for  
2 those purposes. We never get information with such  
3 purposes.

4 Here in this particular case if you go  
5 back and examine all the charitable contributions,  
6 when pushed back we got more information about some  
7 of the organizations who were there. There was an  
8 additional filing that showed some things, but really  
9 what they were, were more information about what the  
10 organization was. So there are 501(c)(3)s that can  
11 use money for other than scientific, educational, or  
12 religious purposes. Is it to pay staff? Is it to do  
13 a particular project? Is it for them to be able to  
14 support something else outside? We don't know.

15 So just having a list of who the  
16 Company or the organizations are, to me, doesn't even  
17 come close to meeting what's in 227.

18 COMMISSIONER O'CONNELL-DIAZ: But don't you  
19 think that then it meets a statutory change? Because  
20 it's very clear that this Commission is not  
21 authorized to make any rules that would cause us to  
22 look at the provisions there that talk about that.

1 And when you're talking about purposes, is it --

2 CHAIRMAN SCOTT: That's what the statute says.

3 COMMISSIONER O'CONNELL-DIAZ: Right. But is  
4 it -- it can only be energy education?

5 CHAIRMAN SCOTT: It says scientific, religious,  
6 or educational purposes. That's what it says. And  
7 we get a list of what organizations are given to and  
8 we get no information about what the purposes are.  
9 As long as the statute has that small of a threshold,  
10 that small of a bar to walk over, it seems the least  
11 we can do on behalf of the ratepayers is to make sure  
12 that that actually happens here, especially given the  
13 fact that statutorily we're one of the only states  
14 that makes an allowance like this.

15 COMMISSIONER O'CONNELL-DIAZ: That's the  
16 legislature's choice.

17 CHAIRMAN SCOTT: And all I'm saying is the  
18 least we can do is make sure that they meet the  
19 minimum amount that's listed in the statute.

20 Further discussion?

21 (No response.)

22 All in favor of the revision vote

1 "aye."

2 COMMISSIONER COLGAN: Aye.

3 COMMISSIONER McCABE: Aye.

4 CHAIRMAN SCOTT: Aye.

5 Any opposed?

6 COMMISSIONER FORD: No.

7 COMMISSIONER O'CONNELL-DIAZ: No.

8 CHAIRMAN SCOTT: The vote is 3-2 and the  
9 revision is adopted.

10 Is there any further revisions on this  
11 Docket No. 11-0721?

12 (No response.)

13 Is there a motion to enter the Order  
14 as revised?

15 COMMISSIONER COLGAN: So moved.

16 COMMISSIONER McCABE: Second.

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

18 Any further discussion on the Order as  
19 revised?

20 (No response.)

21 All in favor say "aye."

22 (Chorus of ayes.)

1 Any opposed?

2 (No response.)

3 The vote is 5-0 and the Order as  
4 revised is entered.

5 I want to thank everyone for all of  
6 the work on this particular case because this really  
7 was an awful lot of work by an awful lot of people.  
8 I know how difficult this has been especially to  
9 Judge Sainsot and Judge Kimbrel. We really want to  
10 thank you very much. The deadlines were exceedingly  
11 tight as we know in this on due to the new statute.  
12 Not only did you have tight deadlines, but you had  
13 brand-new material to work with in the statutes and I  
14 know how difficult that is. And so thank you and to  
15 everyone else who put in long hours on this matter,  
16 thank you very much. I appreciate it.

17 Turning now to Item 5. This is Docket  
18 No. 12-0089. This is Ameren's petition for the  
19 approval of its multi-year performance metrics under  
20 Section 16-108.5(f) and 16-108.5(f-5) of the Public  
21 Utilities Act. ALJs Albers and Yoder recommend entry  
22 of an Order approving the metrics.

1                   Commissioner Colgan, I believe you  
2     have a revision.

3                   COMMISSIONER COLGAN: Thank you, Chairman.

4                   I'm proposing an amendment today to  
5     the Commission's conclusion in the section of the  
6     Order regarding some arguments that AG and AARP's  
7     proposal concerning premise visits. This amendment  
8     does not alter the conclusion. The edits that I'm  
9     offering are intended to strengthen the position that  
10    the Commission's rule regarding a premise visit prior  
11    to disconnection is an important consumer protection  
12    and can prevent dangerous health and safety  
13    conditions due to the loss of essential electricity  
14    service. In so doing, I also cite the Commission's  
15    Order in the ComEd AMI Pilot Program docket regarding  
16    remote disconnection service and this amendment is  
17    consistent with that.

18                  So with that, Mr. Chairman and  
19    Commissioners, I request your support.

20                  CHAIRMAN SCOTT: Is that in the form of a  
21    motion?

22                  COMMISSIONER COLGAN: Yes, sir.

1 CHAIRMAN SCOTT: Is there a second?

2 COMMISSIONER FORD: Second.

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

4 Any further discussion on Commissioner  
5 Colgan's revision?

6 (No response.)

7 All in favor say "aye."

8 (Chorus of ayes.)

9 Any opposed?

10 (No response.)

11 The vote is 5-0 and Commissioner  
12 Colgan's revision is adopted.

13 Is there any further discussion on  
14 this matter?

15 (No response.)

16 Is there a motion to enter the Order  
17 as revised?

18 COMMISSIONER COLGAN: Chairman, I have another  
19 comment I would like to make.

20 CHAIRMAN SCOTT: Okay. Go ahead, Commissioner  
21 Colgan.

22 COMMISSIONER COLGAN: I would like to mention

1 the concern that I have regarding the time  
2 constraints in this docket that did not allow the  
3 Commission adequate opportunity to review the  
4 additional metrics proposed by CUB. I agree with the  
5 Order's statement that CUB's proposals are a good  
6 starting point concerning important additional  
7 metrics.

8 I also agree that to the extent CUB's  
9 proposed metrics relate to any of Ameren's upcoming  
10 dockets, the parties should consider those metrics.  
11 I'm looking forward to reviewing the subsequent Staff  
12 report that reviews the metrics approved in this  
13 docket and any of Ameren's other related dockets. So  
14 I'm not proposing language, I'm just saying that as I  
15 read through I looked at those arguments that there  
16 are really importantly metrics that we should be  
17 considering that have to do with customer benefits as  
18 a result of this modernization. And I would like to  
19 resolve the vigilant and look for opportunities to  
20 continue to embellish the record so that those  
21 metrics are more clearly taken into consideration.

22 So there's no motion, I just wanted to



1 make that comment.

2 CHAIRMAN SCOTT: Thank you, Commissioner.

3 COMMISSIONER O'CONNELL-DIAZ: Having looked at  
4 the record in this matter and we have the statute and  
5 unfortunately the statute is prescriptive. And this  
6 is what happens when we get the new rules and the box  
7 top from Springfield and it really is concerning  
8 because these are -- just as Commissioner Colgan has  
9 noted, these are points that we normally in a normal  
10 situation that we would look at in a full-blown  
11 docketed proceeding. And we do have the background  
12 of the statutory mandates, however. And so I think  
13 we'll have to get creative as to how we approach this  
14 so that we kind of get a filled-in picture of the  
15 metrics as opposed to the prescriptive picture of the  
16 metrics that the statute kind of dictated to us.

17 Thank you.

18 CHAIRMAN SCOTT: Thank you.

19 Any further discussion?

20 (No response.)

21 Is there a motion to enter the Order  
22 as revised?

1 COMMISSIONER FORD: So moved.

2 CHAIRMAN SCOTT: Is there a second?

3 COMMISSIONER McCABE: Second.

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

5 All in favor say "aye."

6 (Chorus of ayes.)

7 Any opposed?

8 (No response.)

9 The vote is 5-0 and the Order as  
10 revises is entered.

11 Item 6 is Docket No. 12-0244. This is  
12 the proceeding for review of Ameren's AMI plan. ALJs  
13 Yoder and Von Qualen recommend entry of an Order  
14 denying the Company's proposed AMI plan. I have some  
15 revisions to offer which do not change the conclusion  
16 regarding the denial of the plan on the grounds of  
17 the cost beneficial standard.

18 Instead, my revisions seek to  
19 reinforce the Order's existing discussion on the  
20 general inadequacy of the level of detail contained  
21 in the Ameren proposed plan, and also provide further  
22 clarity regarding how the plan fails to satisfy the

1 cost beneficial standard, Section 16-108.6 of the  
2 Act, proposing the revisions in part because I think  
3 it's important to clarify that even in most places  
4 where the Company has met the standard of the Act,  
5 they've only minimally done so and the amount of  
6 detail is very scant.

7                   Again, these revisions do not change  
8 the conclusion of the Order or the conclusion reached  
9 in any individual section of the Order. And I would  
10 ask for your support and make a motion to approve  
11 that provision.

12                   COMMISSIONER McCABE: Second.

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

14                   Is there any discussion?

15                   Commissioner O'Connell-Diaz.

16                   COMMISSIONER O'CONNELL-DIAZ: I support your  
17 conclusions. This case is very troubling to all of  
18 us as we have -- certainly don't want to set up a  
19 situation where we are not implementing the law that  
20 the legislature gave us. We understand that -- I  
21 analogize this situation, this is the ticket to get  
22 into the airport. And while we cannot have

1 everything on that ticket, the Company needs the  
2 ticket in order to get into the airport to start the  
3 modernization and this is an essential part.

4 My concern as we vote on this is that  
5 we have not set up a scenario that the north and  
6 south are treated differently in our state, the north  
7 being ComEd territory and the south being Ameren  
8 territory. I don't believe that that's the intent of  
9 the legislation. I believe the legislation is  
10 all-encompassing and it is a total plan for our state  
11 to move forward in so many areas.

12 So I was troubled the other day when  
13 we got the combo platter part to this where we had  
14 the gas and the electric combined. The time lines  
15 were off. They weren't in conjunction with the  
16 statute. So there were many features to this that I  
17 think were troubling as we looked at it. With that  
18 said, I think the Company is aware that the plan had  
19 some problems that could not be overcome in the time  
20 lines that we were all given to do this work and I  
21 would look forward to quickly -- change plan that we  
22 see with regard to having our southern part of our

1 state be part of the, I believe, legislative intent  
2 of this new law. So it is with that, that I would  
3 concur with your recommendations.

4 COMMISSIONER FORD: Certainly those were along  
5 the same lines that I spoke about. I didn't want one  
6 part of the state to be computerized and modernized  
7 without the other part having an opportunity to do  
8 the same. So I would like for whatever we do to be  
9 expedited so that we can all be on the same page at  
10 the same time. I realize that some parts of our  
11 state -- coming from the South, I don't want us to be  
12 penalized.

13 CHAIRMAN SCOTT: Commissioner Colgan.

14 COMMISSIONER COLGAN: Again, being the only  
15 Commissioner from that part of the state --

16 CHAIRMAN O'CONNELL DIAZ: Yeah, but you have  
17 high-speed Internet and I don't.

18 COMMISSIONER COLGAN: I agree. This was really  
19 troubling because I don't think anybody anticipated  
20 that we would be in the situation that we're in here  
21 today. But the cost-benefit analysis is -- you know,  
22 that's really what I'm looking for. We all know that

1     there are big benefits that can be gained from the  
2     new technologies, the grid modernization and the AMI  
3     meters that come along with that. We all know that  
4     there are really big business that can be achieved  
5     there.

6                     But if we can't demonstrate that it  
7     has a cost benefit to the customers, we're really  
8     left with no conclusion to come to other than the one  
9     that's in front us. And I agree that I wish we had a  
10    better proposal here so that we could have at least  
11    done something to modify it a little bit; but I don't  
12    see how we can get there. So I'm in support of this  
13    proposal and your recommendation to amend it,  
14    Chairman.

15                    CHAIRMAN SCOTT: Further discussion on the  
16    revisions?

17                             (No response.)

18                             All in favor of the revisions vote  
19    "aye."

20                             (Chorus of ayes.)

21                             Any opposed?

22                             (No response.)

1                   The vote is 5-0 and the revisions are  
2 adopted.

3                   Is there further discussion on this  
4 matter as revised?

5                   (No response.)

6                   And I'll just say I appreciate all of  
7 your comments. I certainly was in the same spot. A  
8 couple things -- before I got here you had done a lot  
9 of work on these kinds of issues on Smart Grid and on  
10 the modernization and all the benefits that that can  
11 reach. And I certainly prescribe to that work that  
12 you did and to that thought. And obviously when the  
13 statute came, you know, our reasons for not  
14 supporting the statute didn't have to do with Smart  
15 Grid, it had to do with the package that it came in.  
16 But the law gets passed and we have to implement it  
17 as we can. And then when we got the plan, as was  
18 said in the Order and was just further enforced by  
19 the revisions, the difficulty is that the  
20 cost-benefit analysis -- to get there you have to  
21 assume one of two things, neither of which is in the  
22 statute. And so there isn't any way, as Commissioner

1 Colgan said, to actually get there and approve this.

2                   And then second behind that is when  
3 you look at very minimal criteria in the earlier part  
4 that has to be met, and while we're agreeing that  
5 they were minimally met -- very minimally -- and even  
6 in some cases some simple vision statement is couched  
7 in terms of, you know, if we're allowed full cost  
8 recovery, which is not quite what the vision  
9 statement had in mind there. The vision statement  
10 gets met, but even then it's a condition. And so  
11 this is disappointing to me, too, because I, like all  
12 of you, have expressed -- you know, once the law  
13 passed, we looked forward to implementing it and  
14 making sure it gets implemented throughout this case.  
15 Unfortunately we're at this position, I agree with  
16 Commissioner Ford that hopefully whatever can be done  
17 subsequent to this gets done fairly quickly so that  
18 there is that opportunity throughout the state. So  
19 thank you for all your comments on this.

20                   Is there a motion to adopt the Order  
21 as revised?

22                   COMMISSIONER FORD: So moved.



1 CHAIRMAN SCOTT: Is there a second?

2 COMMISSIONER O'CONNELL-DIAZ: Second.

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

4 All in favor say "aye."

5 (Chorus of ayes.)

6 Any opposed?

7 (No response.)

8 The vote is 5-0 and the Order as  
9 revised denying Ameren's AMI plan is entered.

10 This is another situation where on  
11 behalf of all the Commissioners, we really need to  
12 thank the ALJs and the parties, again, a largely  
13 unprecedented matter. While we do have some  
14 experience with Smart Grid issues as I referred to,  
15 we're dealing with fillings made under a brand-new  
16 section of the PUA and with a very tight deadline,  
17 only 60 days. So a lot of work had to be done in a  
18 very short period of time. I want to make sure  
19 everybody knows just how much the Commission  
20 appreciates the hard work that went into getting this  
21 done on time.

22 So thank you to everyone.

1                   Item 7 is Docket No. 12-0269. This is  
2 Palmco Power Il's application for a certification as  
3 an alternative retail electric supplier. ALJ Riley  
4 recommends entry of an Order granting the requested  
5 certificate.

6                   Is there any discussion?

7                   (No response.)

8                   Are there any objections to entering  
9 the Order?

10                  (No response.)

11                  Hearing none, the Order is entered.

12                  Item 8 is Docket No. 12-0283. This is  
13 Glacial Energy's application for a certification as  
14 an alternative retail electric supplier. The Company  
15 has moved to withdraw its application and ALJ Wallace  
16 recommends granting the Company's motions to  
17 withdraw.

18                  Is there any discussion?

19                  (No response.)

20                  Is there any objections?

21                  (No response.)

22                  Hearing none, the application is

1 withdrawn.

2 Item 9 is Docket No. 12-0332. This is  
3 Ameren's petition seeking authority for the proposed  
4 issuance of up to \$450,000,000 of secured notes for  
5 refinancing outstanding indebtedness. ALJ Von Qualen  
6 recommends entry of an Order granting the requested  
7 authorization.

8 Is there any discussion?

9 (No response.)

10 Are there any objections?

11 (No response.)

12 Hearing none, the Order is entered.

13 Item 10 is Docket No. 12-0262. This  
14 is HIKO Energy's application for certification as an  
15 alternative gas supplier. ALJ Yoder recommends entry  
16 of an Order granting the requested certificate.

17 Is there any discussion?

18 (No response.)

19 Are there any objections?

20 (No response.)

21 Hearing none, the Order is entered.

22 Item 11 is Docket No. 12-0280. This

1 is Clearview Electric's application for certification  
2 as an alternative gas supplier. The Company has  
3 moved to withdraw its application and ALJ Yoder  
4 recommends granting the Company's motion to withdraw.

5 Is there any discussion?

6 (No response.)

7 Are there any objections?

8 (No response.)

9 Hearing none, the application is  
10 withdrawn.

11 Item 12 is Docket No. 12-0179. This  
12 is Illinois Bell and Home Telephone Company's Joint  
13 Petition for the approval of an Interconnection  
14 Agreement. ALJ Baker recommends entry of an Order  
15 approving the agreement.

16 Is there any discussion?

17 (No response.)

18 Are there any objections?

19 (No response.)

20 Hearing none, the Order is entered.

21 Judge Wallace, are there any other  
22 matters to come before the Commission today as part

1 of this agenda?

2 JUDGE WALLACE: That's all, Mr. Chairman.

3 CHAIRMAN SCOTT: Thank you, sir.

4 Hearing none, this meeting stands  
5 adjourned.

6 Thank you to everyone.

7 (And those were all the  
8 proceedings had.)

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