

1                                   BEFORE THE  
2                                   ILLINOIS COMMERCE COMMISSION

3                                   BENCH MEETING

4                                   (PUBLIC UTILITY)

5  
6                                   Chicago, Illinois  
7                                   Thursday, July 7, 2011

8  
9  
10                   Met, pursuant to notice, at 10:30 a.m. in  
11                   the N808, Eighth Floor, 160 North LaSalle Street,  
12                   Chicago, Illinois.

13  
14                   PRESENT:

15                   DOUGLAS P. SCOTT, Acting Chairman

16                   LULA M. FORD, Commissioner

17                   ERIN M. O'CONNELL-DIAZ, Commissioner

18                   SHERMAN J. ELLIOTT, Commissioner  
19                   via teleconference

20                   JOHN T. COLGAN, Acting Commissioner  
21                   via teleconference

22                   SULLIVAN REPORTING COMPANY, by  
                  Alisa A. Sawka, CSR, RPR  
                  License No. 084-004588

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PROCEEDINGS

CHAIRMAN SCOTT: Pursuant to the provisions of the Illinois Open Meetings Act, I now convene a regularly scheduled Bench Session of the Illinois Commerce Commission. With us in Springfield is Commissioner Elliott and Acting Commissioner Colgan. With me in Chicago are Commissioner Ford and O'Connell-Diaz. I'm Chairman Scott. We have a quorum.

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

(Whereupon, the Transportation Portion is contained in a separate transcript.)

CHAIRMAN SCOTT: Moving on to the Public

1 Utility Agenda. We'll start with the approval of  
2 minutes from prior Commission meetings.

3 Up first are the minutes from our June  
4 2nd Electric Policy Committee Meeting. I understand  
5 amendments have been forwarded.

6 Is there a motion to amend the  
7 minutes?

8 COMMISSIONER O'CONNELL-DIAZ: So moved.

9 CHAIRMAN SCOTT: Is there a second?

10 COMMISSIONER FORD: Second.

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

12 All in favor say, Aye.

13 (Chorus of ayes.)

14 CHAIRMAN SCOTT: Any opposed?

15 (No response.)

16 CHAIRMAN SCOTT: The vote is 5 to nothing and  
17 amendments to the June 2nd Minutes are adopted.

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

20 COMMISSIONER FORD: So moved.

21 CHAIRMAN SCOTT: Is there a second?

22 COMMISSIONER O'CONNELL-DIAZ: Second.

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

2 All in favor say, Aye.

3 (Chorus of ayes.)

4 CHAIRMAN SCOTT: Any opposed?

5 (No response.)

6 CHAIRMAN SCOTT: The vote is 5 to nothing and  
7 the June 2nd Electric Policy Meeting Minutes are  
8 approved.

9 Next up are minutes from our June 14th  
10 Regular Open Meeting. I understand amendments have  
11 been forwarded.

12 Is there a motion to amend the  
13 minutes?

14 COMMISSIONER O'CONNELL-DIAZ: So moved.

15 CHAIRMAN SCOTT: Is there a second?

16 ACTING COMMISSIONER COLGAN: Second.

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

18 All in favor say, Aye.

19 (Chorus of ayes.)

20 CHAIRMAN SCOTT: Any opposed?

21 (No response.)

22 CHAIRMAN SCOTT: The vote is 5 to nothing and

1 amendments to the June 14th Minutes are adopted.

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

4 COMMISSIONER FORD: So moved.

5 CHAIRMAN SCOTT: Is there a second?

6 COMMISSIONER O'CONNELL-DIAZ: Second.

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

8 All in favor say, Aye.

9 (Chorus of ayes.)

10 CHAIRMAN SCOTT: Any opposed?

11 (No response.)

12 CHAIRMAN SCOTT: The vote is 5 to nothing and  
13 the June 14th Regular Open Meeting Minutes as amended  
14 are approved.

15 We'll turn now to the Electric Portion  
16 of today's agenda. Item E-1 concerns a Reliability  
17 Report concerning the 2009 reliability performance of  
18 ComEd prepared by Staff pursuant to Section 16-125(d)  
19 of the Public Utilities Act and Part 411.40 of the  
20 Administrative Code. Staff recommends entry of an  
21 Order adopting this report.

22 Is there any discussion?

1 (No response.)

2 CHAIRMAN SCOTT: Is there a motion to enter the  
3 Order adopting the ComEd Reliability Report?

4 COMMISSIONER O'CONNELL-DIAZ: So moved.

5 CHAIRMAN SCOTT: Is there a second?

6 COMMISSIONER FORD: Second.

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

8 All in favor say, Aye.

9 (Chorus of ayes.)

10 CHAIRMAN SCOTT: Any opposed?

11 (No response.)

12 CHAIRMAN SCOTT: The vote is 5 to nothing and  
13 the Order is entered.

14 We will use this 5 to nothing vote for  
15 the remainder of the Public Utility Agenda unless  
16 otherwise note.

17 Items E-2 and E-3 will be held at the  
18 request of Staff.

19 Item E-4 is Docket No. 09-0592. This  
20 item concerns a rulemaking surrounding Title 83 Parts  
21 4-12 and 4-53 of the Administrative Code concerning  
22 rules applying to alternative retail electric

1 suppliers marketing to residential and small  
2 commercial customers. ALJ Benn recommends entry of a  
3 First Notice Order authorizing submission of the  
4 proposed rules.

5 Commissioner Colgan, I believe you  
6 have some revisions to propose.

7 ACTING COMMISSIONER COLGAN: Yes, sir. I do.  
8 Thank you.

9 My proposed revision of Part 4-12  
10 rulemaking concerns early termination of sales  
11 contract. As currently proposed, Section 412.230  
12 requires no limit on the amount that the RES may  
13 charge a customer for early termination of a sales  
14 contract.

15 My concerns are two-fold. One, there  
16 is an inconsistency between the statutory  
17 requirements for an alternative gas supplier in the  
18 Commission's proposed rules for the retail electric  
19 suppliers regarding early termination fees if this  
20 rule were adopted as proposed. And, two, in my  
21 opinion, eliminating the early termination fee will  
22 incentivize the competitive marketplace from the

1 consumer's perspective.

2                   For the alternative gas suppliers,  
3 both the Public Utilities Act and the Consumer Fraud  
4 and Deceptive Practices Act explicitly limit early  
5 termination fees at \$50 total. The proposed rule  
6 merely requires that any sales contract containing an  
7 early termination fee must disclose the amount of the  
8 fee or the formula used to derive it.

9                   I believe that a \$50 limit on early  
10 termination will provide a positive reassurance from the  
11 consumer's perspective and without a limit on the  
12 early termination fee customers may be reluctant to  
13 enter into a sales contract with an RES for fear they  
14 may be subject to exorbitant fees in the future.

15                   So with that, Mr. Chairman, I request  
16 support from the Commissioners for this one revision.

17                   CHAIRMAN SCOTT: Thank you, Commissioner.

18                   Is there a discussion on these  
19 revisions?

20                   (No response.)

21                   CHAIRMAN SCOTT: Commissioner, are you making a  
22 motion to propose those revisions be adopted?



1           ACTING COMMISSIONER COLGAN: I so move.

2           CHAIRMAN SCOTT: Is there a second?

3           COMMISSIONER FORD: Second.

4           CHAIRMAN SCOTT: Okay. The motion and a  
5 second.

6                   All in favor say, Aye.

7                           (Chorus of ayes.)

8           CHAIRMAN SCOTT: Any opposed?

9                   (No response.)

10          CHAIRMAN SCOTT: The vote is 5 to nothing and  
11 Commissioner Colgan's proposed revisions are adopted.

12                   Is there any further discussion on the  
13 Order?

14                           (No response.)

15          CHAIRMAN SCOTT: Is there a motion to enter the  
16 Order as amended by Commissioner Colgan's revisions?

17          COMMISSIONER FORD: So moved.

18          CHAIRMAN SCOTT: Is there a second?

19          COMMISSIONER O'CONNELL-DIAZ: Chairman, if I  
20 might?

21          CHAIRMAN SCOTT: Yes.

22          COMMISSIONER FORD: I know that there's been

1 some other just grammatical and other revisions --

2 CHAIRMAN SCOTT: Yes.

3 COMMISSIONER O'CONNELL-DIAZ: -- that have been  
4 circulated amongst the offices, so I would support  
5 those revisions, too. Are you going to get to that?

6 CHAIRMAN SCOTT: No. No. That's good.

7 COMMISSIONER O'CONNELL-DIAZ: So with those  
8 revisions as well as Commissioner Colgan's revisions  
9 I think we have an order that the Commission is ready  
10 to vote on.

11 CHAIRMAN SCOTT: Very good.

12 COMMISSIONER O'CONNELL-DIAZ: Just wanted to  
13 clarify that addition.

14 CHAIRMAN SCOTT: Thank you. I appreciate that.  
15 Further discussion?

16 (No response.)

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

18 All in favor say, Aye.

19 (Chorus of ayes.)

20 CHAIRMAN SCOTT: Any opposed?

21 (No response.)

22 CHAIRMAN SCOTT: The vote is 5 to nothing and

1 the First Notice Order as revised is entered.

2 Items E-5 and E-6 can be taken  
3 together. These items concerns customer complaints  
4 against Constellation and ComEd. In each case ALJ  
5 Kimbrel recommends that the Commission grant a motion  
6 to dismiss the proceedings without prejudice.

7 Is there any discussion?

8 (No response.)

9 CHAIRMAN SCOTT: Any objections?

10 (No response.)

11 CHAIRMAN SCOTT: Hearing none, these dockets  
12 are dismissed.

13 Items E-7 through E-10 can be taken  
14 together. These items all concern customer  
15 complaints filed against ComEd. In each case the  
16 parties have apparently settled their differences and  
17 brought Joint Motions to Dismiss which ALJ Benn  
18 recommends we grant.

19 Is there any discussion?

20 (No response.)

21 CHAIRMAN SCOTT: Any objections?

22 (No response.)

1           CHAIRMAN SCOTT: Hearing none, the Joint  
2 Motions to Dismiss are granted.

3                   Items E-11 and E-12 can be taken  
4 together. These items likewise concern customer  
5 complaints against ComEd. In each case the ALJ  
6 recommends that the Commission dismiss the matter  
7 without prejudice for want of prosecution.

8                   Is there any discussion?

9                                 (No response.)

10           CHAIRMAN SCOTT: Any objections?

11                                 (No response.)

12           CHAIRMAN SCOTT: Hearing none, these dockets  
13 are dismissed.

14                   Item E-13 is Docket No. 11-0279. This  
15 is Ameren's proposed increase in its electric rates.  
16 Before the Commission today is a Resuspension Order  
17 further suspending the proposed increase for another  
18 six months' time.

19                   Is there any discussion?

20                                 (No response.)

21           CHAIRMAN SCOTT: Any objections?

22                                 (No response.)

1           CHAIRMAN SCOTT:   Hearing none, the Resuspension  
2   Order is entered.

3                           Item E-14 is Docket No. 11-0382.   This  
4   is DPL Energy Resources' Petition to Cancel its ARES  
5   Certificate of Service Authority.   ALJ Wallace  
6   recommends that the Commission enter an Order  
7   approving cancellation of the Company's Certificate.

8                           Is there any discussion?

9   (No response.)

10           CHAIRMAN SCOTT:   Any objections?

11   (No response.)

12           CHAIRMAN SCOTT:   Hearing none, the Order is  
13   entered.

14                           Items E-15 through E-19 can be taken  
15   together.   These items are applications for Licensure  
16   as an Agent, Broker and Consultant under  
17   Section 16-115(c) of the Public Utilities Act.   In  
18   each case ALJ Yoder recommends that the Commission  
19   enter an Order granting the requested Certificate.

20                           Is there any discussion?

21   (No response.)

22           CHAIRMAN SCOTT:   Any objections?

1 (No response.)

2 CHAIRMAN SCOTT: Hearing none, the Orders are  
3 entered and the Certificates are granted.

4 Turning now to Natural Gas. Item G-1  
5 is Docket No. 10-0387. This is Barbara Griffin's  
6 complaint as to billing and/or charges against Nicor.  
7 ALJ Benn recommends that the Commission enter an  
8 Order dismissing this docket without prejudice for  
9 want of prosecution.

10 Is there any discussion?

11 (No response.)

12 CHAIRMAN SCOTT: Any objections?

13 (No response.)

14 CHAIRMAN SCOTT: Hearing none, the docket is  
15 dismissed.

16 Items G-2 through G-4 can be taken  
17 together. These items are the rate cases for Peoples  
18 Gas, North Shore Gas and Ameren Illinois' gas  
19 delivery operations. For each case before the  
20 Commission today is a Resuspension Order further  
21 suspending the proposed increase for another six  
22 months' time.

1                   Is there any discussion?

2                                   (No response.)

3           CHAIRMAN SCOTT: Any objections?

4                                   (No response.)

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

7                   Item G-5 is Docket No. 11-0321. This  
8 is ELHISCO's complaint against Ameren concerning  
9 alleged damage from the installation of an  
10 underground gas pipeline. ALJ Wallace recommends  
11 that the Commission grant Ameren's Motion to Dismiss  
12 the complaint on jurisdictional grounds.

13                   Is there any discussion?

14                                   (No response.)

15           CHAIRMAN SCOTT: Any objections?

16                                   (No response.)

17           CHAIRMAN SCOTT: Hearing none, the complaint is  
18 dismissed.

19                   Moving now to Telecommunications.

20 Items T-1 through T-4 can be taken together. These  
21 items each concern petitions by telecommunications  
22 carriers for Certificates of Service Authority under

1 Section 13-401 through 13-405 of the Public Utilities  
2 Act. In each case the ALJ recommends entry of an  
3 Order granting the requested authority.

4 Is there any discussion?

5 (No response.)

6 CHAIRMAN SCOTT: Any objections?

7 (No response.)

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

10 Item T-5 is Docket No. 10-0188. This  
11 is Cbeyond Communications complaint Illinois Bell  
12 Telephone Company. ALJ Haynes recommends that the  
13 Commission enter an Order denying Cbeyond's complaint  
14 and directing Cbeyond to pay the Commission's costs.

15 Is there any discussion?

16 COMMISSIONER O'CONNELL-DIAZ: Chairman, I would  
17 just like to thank Judge Haynes for really laying out  
18 very succinctly in the Order as well as the memo what  
19 I find to be a very questionable move by the  
20 complainant in this instance. And this has gone  
21 through the rigorous hearing process at the  
22 Commission. We have very strict rules with regard to



1     how these particular type of complaints go forward.  
2     And it is beyond my comprehension that a company  
3     would seek to voluntarily seek to dismiss a complaint  
4     when the Commission has already entered an order and,  
5     you know, essentially suggesting that they've wasted  
6     all of our time.

7                     And that's not what the law provides.  
8     That certainly is not what the Judge has found.  And  
9     I would just use this for purposes of edification of  
10    anyone else that's thinking of filing a motion such  
11    as this.

12                    So I would like to thank Judge Haynes  
13    for respecting our process and doing such a good job  
14    on that.

15                    CHAIRMAN SCOTT:  Absolutely.  Well said.

16                    Further discussion?

17                             (No response.)

18                    CHAIRMAN SCOTT:  Are there any objections?

19                             (No response.)

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

22                    Item T-6 is Docket No. 11-0412.  This

1 item is a joint petition by Illinois Bell Telephone  
2 Company, SprintCom and Wireless Company seeking  
3 approval of a third amendment to their  
4 Interconnection Agreement dated May 2nd, 2011. ALJ  
5 Baker recommends that the Commission enter an Order  
6 approving the amendment to the agreement.

7 Is there any discussion?

8 (No response.)

9 CHAIRMAN SCOTT: Any objections?

10 (No response.)

11 CHAIRMAN SCOTT: Hearing none, the Order is  
12 entered and the amendment to the Interconnection  
13 Agreement is approved.

14 Items T-7 and T-8 can be taken  
15 together. These items concern petitions for  
16 confidential and/or proprietary treatment of  
17 petitioner's 2007 Annual Reports. In each case ALJ  
18 Benn recommends that the Commission enter an Order  
19 granting the requested relief for a period of five  
20 years from the initial filing dates for the  
21 petitions.

22 Is there any discussion?

1 (No response.)

2 CHAIRMAN SCOTT: Any objections?

3 (No response.)

4 CHAIRMAN SCOTT: Hearing none, the Orders are  
5 entered and the protective relief is granted.

6 Item T-9 is Docket No. 10-0694. This  
7 item concerns a citation proceeding against Digital  
8 Network Access Communications initiated by the  
9 Commission in December of 2010. ALJ Benn recommends  
10 that the Commission dismiss this matter without  
11 prejudice pursuant to a motion by Staff.

12 Is there any discussion?

13 (No response.)

14 CHAIRMAN SCOTT: Any objections?

15 (No response.)

16 CHAIRMAN SCOTT: Hearing none, the matter is  
17 dismissed.

18 Items T-10 through T-12 can be taken  
19 together. These items concern Applications for  
20 Designation ss Eligible Telecommunications Carriers  
21 under the Federal Telecommunications Act of 1996. In  
22 each case the applicant has filed a motion to, its

1 application, which ALJ Riley recommends we grant.

2 Is there any discussion?

3 (No response.)

4 CHAIRMAN SCOTT: Any objections?

5 (No response.)

6 CHAIRMAN SCOTT: Hearing none, the Motions to  
7 Withdraw are granted.

8 We have two items which feature  
9 Petitions for Rehearing today. Item PR-1 is Docket  
10 No. 10-0467. This is ComEd's rate case and our Order  
11 in this matter was entered by the Commission on May  
12 24th. Various parties have filed Petitions for  
13 Rehearing in this case, and the ALJs on the matter  
14 recommend that all parties' Request for Rehearing be  
15 denied.

16 Is there any discussion?

17 (No response.)

18 CHAIRMAN SCOTT: Are there any objections to  
19 denying all Petitions for Rehearing per the ALJs'  
20 recommendations?

21 JUDGE DOLAN: Chairman, just before you go any  
22 further --

1           CHAIRMAN SCOTT:  Yes.

2           JUDGE DOLAN:  -- we did -- just so the  
3           Commission's aware, we did get a response from the  
4           Citizens Utilities Board that -- ComEd's Application  
5           for Rehearing.  And we got a motion from ComEd then  
6           to strike their rehearing saying that there's no  
7           authority.  But I just want to make you aware that  
8           these are out there.

9           CHAIRMAN SCOTT:  Okay.

10          JUDGE DOLAN:  And, obviously, if you deny  
11          rehearing, then they're moot anyway.  Okay.

12          CHAIRMAN SCOTT:  Thank you very much.  
13          Appreciate you bringing that to our attention.

14                        Are there any objections to denying  
15          all Petitions for Rehearing per the ALJs'  
16          recommendations?

17                                        (No response.)

18          CHAIRMAN SCOTT:  Hearing none, the Petitions  
19          for Rehearing are denied.

20                        Item PR-2 is Docket No. 11-0125.  This  
21          items concerns a citation proceeding brought by the  
22          Commission against NET TALK.COM.  The Commission

1 entered an Order in this matter revoking the  
2 Company's Certificate for failing to file its Annual  
3 Report on May 24th, and the Company now petitions for  
4 rehearing as it has filed its Annual Report. ALJ  
5 Baker recommends that the Commission grant rehearing  
6 for the purpose of granting the Company's prior  
7 Motion to Dismiss.

8 Is there any discussion?

9 (No response.)

10 CHAIRMAN SCOTT: Any objections to granting  
11 rehearing?

12 (No response.)

13 CHAIRMAN SCOTT: Hearing none, the Company's  
14 petition for rehearing is granted.

15 We have one item of other business on  
16 today's agenda. It concerns pending litigation and  
17 we'll need to go into closed session to discuss it.

18 I would move to go into closed  
19 session.

20 Is there a second?

21 COMMISSIONER FORD: Second.

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

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All in favor say, Aye.

(Chorus of ayes.)

CHAIRMAN SCOTT: Any opposed?

(No response.)

CHAIRMAN SCOTT: The vote is 5 to nothing to go  
into closed session.

(Whereupon at this point Pages  
23-34 of the proceeding are  
contained in a separate closed  
transcript.)

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CONTINUATION OF PROCEEDINGS

CHAIRMAN SCOTT: During closed session the Commission discussed our outside counsel settlement authority with respect to litigation involving Resource Technology Corporation and its affiliate Cliplease.

Is there a motion to give counsel the requested authority?

COMMISSIONER FORD: So moved.

CHAIRMAN SCOTT: Is there a second?

COMMISSIONER O'CONNELL-DIAZ: Second.

CHAIRMAN SCOTT: It's been moved and seconded.

All in favor say, Aye.

(Chorus of ayes.)

CHAIRMAN SCOTT: Any opposed?

(No response.)

CHAIRMAN SCOTT: The vote is 5 to nothing and counsel is granted the requested settlement authority.

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

JUDGE WALLACE: No, that's all, sir.



1 CHAIRMAN SCOTT: Thank you, sir.

2 Hearing none, this meeting stands

3 adjourned.

4 MEETING ADJOURNED

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