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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
REGULAR OPEN MEETING)

Chicago, Illinois
August 4, 2009

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

BEFORE:

- CHARLES E. BOX, Chairman
- LULA M. FORD, Commissioner
- ERIN M. O'CONNELL-DIAZ, Commissioner
- SHERMAN J. ELLIOTT, Commissioner, via telephone

SULLIVAN REPORTING COMPANY, by
Teresann B. Giorgi, CSR

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I N D E X

CLOSED SESSION

Pages 20 to 27

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

5 With me in Chicago are
6 Commissioners Ford and O'Connell-Diaz.
7 I'm Chairman Box and we have a quorum.

8 Commissioner Elliott is joining us
9 from Springfield.

10 Is there a motion to include
11 Commissioner Elliott?

12 COMMISSIONER O'CONNELL-DIAZ: So moved.

13 COMMISSIONER FORD: Second.

14 CHAIRMAN BOX: It's been moved and seconded.

15 All in favor say "aye."

16 (Chorus of ayes.)

17 CHAIRMAN BOX: Any opposed?

18 (No response.)

19 CHAIRMAN BOX: The vote is 3-0.

20 Commissioner Elliott is now part of
21 this meeting.

22 Before moving into the agenda, this is

1 the time we allow the members of the public to
2 address the Commission. Members of the public
3 wishing to address the Commission must notify the
4 Chief Clerk's Office at least 24 hours prior to the
5 bench session.

6 According to the Chief Clerk's Office,
7 there are no requests to speak.

8 Before we start, we're holding
9 Item No. 2.

10 Item No. 1 is Docket 08-0548. This is
11 an amendatory order correcting a scrivener's error
12 in the order issued on July 29th, 2009. A paragraph
13 that should have been deleted was left in the order.

14 Administrative Law Judge Yoder
15 recommends entering the amendatory order deleting
16 the paragraph.

17 Is there a motion to enter the
18 amendatory order?

19 COMMISSIONER FORD: So moved.

20 CHAIRMAN BOX: Is there a second?

21 COMMISSIONER O'CONNELL-DIAZ: Second.

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

1 All in favor say "aye."

2 (Chorus of ayes.)

3 CHAIRMAN BOX: Any opposed?

4 (No response.)

5 CHAIRMAN BOX: The vote is 4-0. The amendatory
6 order is entered.

7 We will use this 4-0 roll call vote
8 for the remainder of the agenda, unless otherwise
9 noted.

10 As I indicated earlier, Item 2 is
11 being held.

12 Item 3 is Docket 09-0288. This is a
13 complaint by Robert Held against Northern Illinois
14 Gas Company. The parties have resolved all the
15 issues and have moved to dismiss.

16 Administrative Law Judge Moran
17 recommends dismissing the complaint with prejudice.

18 Is there any discussion?

19 (No response.)

20 CHAIRMAN BOX: Any objections?

21 (No response.)

22 CHAIRMAN BOX: Hearing none, the complaint is

1 requesting that it be allowed to replace the meter
2 instead of testing it.

3 Administrative Law Judge Jones
4 recommends entering the order granting the petition.

5 Is there any discussion?

6 (No response.)

7 CHAIRMAN BOX: Any objections?

8 (No response.)

9 CHAIRMAN BOX: Hearing none, the order is
10 entered.

11 Item 6 is Docket 0401. This is a
12 rehearing application by Malibu Condominium
13 Association of the interim order entered June 24th,
14 2009. Petitioner raises 5 points.

15 Administrative Law Judge Moran
16 recommends denying rehearing on the first 4, but
17 suggests entering an amended order in response to
18 the fifth point.

19 Malibu has also requested oral
20 argument.

21 Administrative Law Judge Moran notes
22 that the Commission must act on the rehearing

1 application no later than August 10th.

2 Judge Moran, do you want to join us --

3 JUDGE MORAN: Sure.

4 CHAIRMAN BOX: -- and explain the rehearing
5 petition application?

6 JUDGE MORAN: There were 5 points of alleged
7 error. All of these points were already discussed
8 in the order and Malibu doesn't raise any new
9 arguments. They simply, for example, in Point
10 No. 1, failed to comprehend what the Court was
11 saying in that Medusa Portland Cement Company
12 opinion. That opinion addressed all the matters
13 that Malibu raised and does not find in Malibu's
14 favor on any of those points.

15 The second point of error talks again
16 about Malibu's interpretation of certain statutory
17 language. But that statutory language is not to be
18 read literally or apart from the whole of the
19 statute. I mean, it's the whole statute
20 construction that governs.

21 Again, the Commission did that
22 analysis in its order and Malibu has not shown that

1 analysis to be an error.

2 The third point, Malibu again tries to
3 bring these kinds of equity arguments into its case.
4 Those arguments were dealt with. The Commission
5 relied on the proper statutory language and the
6 interpretation of that language and there's nothing
7 of merit here.

8 The fourth point, in those two
9 statutes and the two statutes that pertain here,
10 252 and 252.1, one of them has a knowledge
11 requirement. Malibu tries to impute that knowledge
12 requirement somehow into the other statute which
13 doesn't have a knowledge requirement.

14 But if you look at the rationale for
15 that statute, it basically doesn't have a knowledge
16 requirement because everybody knows what their bill
17 is or everybody should know what their bill is. And
18 so the time limitation on that one statute, 252, is
19 based on the time that you received your bill.

20 The knowledge requirement that they
21 try to impute to that statute goes to Section 252.1
22 and that's when you have knowledge of an event that

1 you wouldn't normally have knowledge of.

2 The Mehroo Patel case, which is
3 analyzed in your interim order, discusses that. It
4 shows in a different fact pattern or scenario where
5 that would apply.

6 So Malibu does not give you anything
7 new. It doesn't well attack any of your reasoning
8 and therefore, Point 4 would fail.

9 Point 5 is an entirely different
10 thing. Malibu complains that the decision on having
11 the formal complaint versus the informal complaint
12 used as the triggering point for the statute of
13 limitations is not well explained or well founded.
14 And they do have a point in this.

15 The Commission is not supposed to just
16 take sides, you know, saying, Okay, well, this party
17 said this and this party said that, we're going to
18 go with one party. You need an analysis of why
19 those positions are good and viable positions.

20 In the post-exceptions to post-order
21 there was an analysis done as to why the formal
22 complaint is the one that matters. That analysis

1 looked at Section 10-108. It read through that
2 language; what the General Assembly was getting at
3 through that language; how they described the
4 complaint process; who could bring a complaint,
5 what's to be alleged; how it's served.

6 And in reading that statute, 10-108,
7 together with 9-252 and 252.1, it becomes clear that
8 the General Assembly intends the use of the final
9 date of the formal complaint to set the limitations
10 period.

11 I propose, then, for the sake of the
12 litigants in this case, for the sake of any court
13 review of this case, that the Commission adopt this
14 language that was in the PEPO and put it back,
15 either through an amendatory order or through a
16 grant of rehearing which specifies that the
17 rehearing is on this one single issue. I think it's
18 important language, it's solid language and it
19 belongs in your order.

20 CHAIRMAN BOX: But it can be done just by a
21 simple motion today, amend the order to include the
22 language we have here.

1 JUDGE MORAN: I think that what I would probably
2 have to do is file a proposed amendatory order and
3 then you enter that order.

4 CHAIRMAN BOX: This has to be done by the 10th
5 or we just send it back for rehearing on that one,
6 Point 5?

7 JUDGE MORAN: You know, I don't know.

8 COMMISSIONER O'CONNELL-DIAZ: I think the
9 Commission at any time can amend their order. But
10 this is actually coming out of the rehearing
11 request, so. . .

12 JUDGE MORAN: Yeah.

13 COMMISSIONER O'CONNELL-DIAZ: I think it's a
14 little bit different. But the Commission has the
15 authority to -- as I understand it, we can amend our
16 order.

17 JUDGE MORAN: Right. I mean, there's no
18 question that you can amend, either as a stand-alone
19 process or as a grant of rehearing. It might be
20 cleaner, maybe, to do it on rehearing.

21 COMMISSIONER O'CONNELL-DIAZ: Judge Moran, the
22 issues that are covered in the proposed amendatory

1 language was included in your proposed order --

2 JUDGE MORAN: Yes.

3 COMMISSIONER O'CONNELL-DIAZ: -- to us.

4 JUDGE MORAN: Yes.

5 COMMISSIONER O'CONNELL-DIAZ: These issues have
6 already been fully litigated in the case in chief,
7 correct?

8 JUDGE MORAN: No, nothing has been litigated in
9 the actual case.

10 COMMISSIONER O'CONNELL-DIAZ: I mean, in the
11 motions these issues were looked at.

12 JUDGE MORAN: All of these issues?

13 COMMISSIONER O'CONNELL-DIAZ: Yes.

14 JUDGE MORAN: Yes.

15 COMMISSIONER O'CONNELL-DIAZ: So this is not --
16 to amend the order to include what was included in
17 the PEPO would not be outside the record or --

18 JUDGE MORAN: Oh, no, no, no. And it's a
19 construction of law. It's not -- there's no facts
20 that we're dealing with at this point. The only
21 facts you're dealing with is, is it the informal
22 complaint that governs for purposes of the statute

1 parties have argued in the motions that we have
2 seen --

3 JUDGE MORAN: Oh, yes. Yeah. You don't need
4 rehearing in the sense of --

5 COMMISSIONER O'CONNELL-DIAZ: So I'm questioning
6 why you --

7 JUDGE MORAN: The only thing you would need
8 rehearing is, you know, let the parties look at this
9 language because it was in the PEPO, it wasn't in
10 the proposed order. So maybe they -- they
11 wouldn't --

12 CHAIRMAN BOX: So it would be a very short
13 process.

14 JUDGE MORAN: Yes. It's a very short process.

15 What I'm saying is, this language
16 wasn't in the PEPO because the parties never
17 addressed this question in their initial briefs. So
18 in the proposed order I sent a directive, Parties, I
19 want you to discuss this question. They did that in
20 their briefs on exceptions. So the first time this
21 language appeared was in the PEPO. The Commission
22 didn't adopt it, but the parties never saw it.

1 rehearing on all the points, 1 through 4, raised in
2 the application?

3 COMMISSIONER O'CONNELL-DIAZ: So moved.

4 CHAIRMAN BOX: Is there a second?

5 COMMISSIONER FORD: Second.

6 CHAIRMAN BOX: Moved and seconded to deny
7 rehearing on Points 1 through 4 that's raised in the
8 application.

9 All in favor say "aye."

10 (Chorus of ayes.)

11 CHAIRMAN BOX: Any opposed?

12 (No response.)

13 CHAIRMAN BOX: The vote is 4-0.

14 Points on the rehearing is denied as
15 to Points 1 through 4.

16 Is there a motion to grant rehearing
17 on Point No. 5?

18 COMMISSIONER O'CONNELL-DIAZ: So moved.

19 CHAIRMAN BOX: Is there a second?

20 COMMISSIONER FORD: Second.

21 CHAIRMAN BOX: Moved and seconded to grant
22 rehearing on Point No. 5 only.

1 All in favor say "aye."
2 (Chorus of ayes.)

3 CHAIRMAN BOX: Opposed?

4 (No response.)

5 CHAIRMAN BOX: The vote is 4-0.

6 The application for rehearing on
7 Point No. 5 is granted.

8 JUDGE MORAN: Thank you.

9 CHAIRMAN BOX: Thank you.

10 There are two FERC matters on today's
11 agenda. Item 7 concerns MISO's comments on
12 Docket ER09-1431-000. And Item 8 concerns MISO's
13 proposed Schedule 34 for allocating reliability
14 penalty costs, Docket ER09-1435-000. And these
15 items require the Commission to go into closed
16 session.

17 Is there a motion to go into closed
18 session?

19 COMMISSIONER O'CONNELL-DIAZ: So moved.

20 CHAIRMAN BOX: Is there a second?

21 COMMISSIONER FORD: Second.

22 CHAIRMAN BOX: Moved and seconded.

1 All in favor say "aye."
2 (Chorus of ayes.)
3 CHAIRMAN BOX: Opposed?
4 (No response.)
5 CHAIRMAN BOX: The vote is 4-0.
6 We're now going to go into closed
7 session.
8 Let me know when the room is cleared
9 in Springfield.
10 JUDGE WALLACE: They are fleeing as we speak.
11 We are clear.
12 (Whereupon, the following
13 matters were held in
14 closed session.)
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1 (Whereupon, the following
2 matters were held in
3 open session.)

4 CHAIRMAN BOX: In closed session, the Commission
5 discussed filing a letter in support of OMS in
6 Docket ER09-1431-000.

7 Is there a motion to file the letter?

8 COMMISSIONER O'CONNELL-DIAZ: So moved.

9 CHAIRMAN BOX: Is there a second?

10 COMMISSIONER FORD: Second.

11 CHAIRMAN BOX: Moved and seconded.

12 All in favor say "aye."

13 (Chorus of ayes.)

14 CHAIRMAN BOX: Opposed?

15 (No response.)

16 CHAIRMAN BOX: The vote is 4-0.

17 The letter will be filed with FERC.

18 And they also request to file out of
19 time.

20 And also in closed session, the
21 Commission discussed filing comments in
22 Docket ER09-1435-000.

1 COMMISSIONER ELLIOTT: I can't hear you,
2 Mr. Chairman.

3 CHAIRMAN BOX: I'm sorry.

4 ER09-1431 was a motion to file
5 comments, the Illinois Commerce Commission, with
6 FERC and a request to file out of time. And that
7 was passed 4-0.

8 And ER09-1435-000, also a motion made
9 to file comments or to file a letter.

10 I'm reading directly off of 1431, it
11 says comments filed -- and the second one is also
12 comments -- comments and a letter on 1435?

13 MS. ERICSON: ER09-1435 is a motion to file
14 comments out of time and comments.

15 CHAIRMAN BOX: What is 1431?

16 MS. ERICSON: It's comments.

17 CHAIRMAN BOX: So what's the letter on?

18 MS. ERICSON: I don't know what the issue is.

19 CHAIRMAN BOX: So both motions entail filing
20 motions with FERC. And 1435 is a request to file
21 out of time.

22 MS. ERICSON: I believe that's right.

1 ER09-1435 is a motion to file comments
2 out of time and comments.

3 CHAIRMAN BOX: Right.

4 MS. ERICSON: And ER09-1431 is a notice of
5 intervention and comments.

6 CHAIRMAN BOX: Intervention and comments?

7 MS. ERICSON: Yes.

8 COMMISSIONER ELLIOTT: Mr. Chairman, I'd make a
9 motion on 1431 to change our vote with OMS and
10 abstain to no. To authorize Randy to notify OMS to
11 do that.

12 MS. ERICSON: To clarify. I guess, originally
13 there was consideration of a letter, strictly a
14 letter form. And all we've done is move that into a
15 short pleading form, which is comments.

16 CHAIRMAN BOX: I think those two have been taken
17 care of.

18 Commissioner Elliott just made a
19 motion to give the authority to change his
20 abstention vote at MISO to a negative.

21 MS. ERICSON: Okay.

22 CHAIRMAN BOX: Do you need a vote on that to

1 have the authority to pass that vote?

2 MS. ERICSON: Yes, you should go ahead and vote
3 on that.

4 CHAIRMAN BOX: That motion is made.

5 Is there a second?

6 COMMISSIONER FORD: Second.

7 CHAIRMAN BOX: Moved and seconded.

8 In ER09-1431-000 to authorize
9 Commissioner Elliott to vote in a negative, to
10 change his abstention vote at MISO.

11 All in favor say "aye."

12 (Chorus of ayes.)

13 CHAIRMAN BOX: Opposed?

14 (No response.)

15 CHAIRMAN BOX: The vote is 4-0.

16 He's so instructed.

17 Any further business?

18 (No response.)

19 Meeting is adjourned.

20 (Which were all the
21 proceedings had in the
22 above-entitled matter.)