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BEFORE THE  
ILLINOIS COMMERCE COMMISSION

PUBLIC UTILITY REGULAR OPEN MEETING

Chicago, Illinois  
August 25, 2009

Met pursuant to notice at 10:00 a.m.

BEFORE:

MR. CHARLES E. BOX, Chairman

MS. LULA M. FORD, Commissioner

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

MR. SHERMAN J. ELLIOTT, Commissioner  
(telephonically)

SULLIVAN REPORTING COMPANY, by  
Tracy L. Overocker, CSR

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I N D E X

DOCKET NUMBER:

PAGE

08-0364  
BlueStar Energy Services, Inc.  
vs. Lower Electric, LLC. . . . . 4

08-0532  
Illinois Commerce Commission  
vs. Commonwealth Edison Company. . . . . 9

1           CHAIRMAN BOX: Pursuant to the provisions of  
2 the Illinois Open Meetings Act, I now convene a  
3 regularly scheduled open meeting of the Illinois  
4 Commerce Commission. With me in Chicago are  
5 Commissioners Ford and O'Connell-Diaz. I am  
6 Chairman Box and we have a quorum. Commissioner  
7 Elliott is joining us in Springfield.

8                       Is there a motion to include  
9 Commissioner Elliott in today's meeting.

10           COMMISSIONER FORD: So moved.

11           CHAIRMAN BOX: Is there a second?

12           COMMISSIONER O'CONNELL-DIAZ: Seconded.

13           CHAIRMAN BOX: Moved and seconded.

14                       All in favor say "aye."

15                       (Chorus of ayes.)

16                       Opposed?

17                       (No response.)

18           CHAIRMAN BOX: The vote is 3-0. Commissioner  
19 Elliott is now part of this meeting.

20                       Before moving into the agenda, this is  
21 the time we allow the members of the public to  
22 address the Commission. Members of the public

1 wishing to address the Commission must notify the  
2 Chief Clerk's Office at least 24 hours prior to the  
3 bench session. According to the Chief Clerk's  
4 Office, there are no requests to speak.

5                   We have two items on today's docket.  
6 Item 1 is 08-0364. This is a complaint by BlueStar  
7 Energy Services, Inc., against Lower Electric, LLC,  
8 and other parties who have settled. BlueStar alleges  
9 that Lower Electric failed to meet the disclosure  
10 requirements of the Agents, Brokers and Consultants  
11 Statute.

12                   The order sustains the complaint and  
13 prospectively imposes a one-month suspension of any  
14 ABC license respondent (sic) subsequently awarded to  
15 the respondent. Administrative Law Judge Gilbert  
16 recommends entering the order.

17                   Judge Gilbert, would you like to brief  
18 us on this today?

19                   We will probably be holding this also  
20 unless the Commissioners feel otherwise, to the next  
21 meeting.

22                   JUDGE GILBERT: Mr. Chairman, you said this in

1 such a succinct way, what the case is about, I'm not  
2 sure at this point what I can add for you. It is a  
3 complaint case. It is under the ABC Law. I think  
4 about six weeks ago you completed a rulemaking also  
5 under this law, and I think you've sent those rules  
6 on to the legislature on second notice. I don't know  
7 what's happened to them. I assume that they're still  
8 there.

9                   And you also had this case before you  
10 on interlocutory review. The three original  
11 respondents had filed the motion to dismiss. I had  
12 issued a ruling denying that motion and that was  
13 brought to you under interlocutory review and you  
14 upheld the ruling. Two of the parties then settled.  
15 That left Lower Electric to continue the case as a  
16 respondent along with the complainant and BlueStar.

17                   The essence of the complaint is that  
18 Lower solicited the customer without stating in  
19 writing what their expected remuneration would be,  
20 and I think the law is pretty clear that that is one  
21 of the requirements when soliciting a customer and  
22 there's a factual stipulation in which Lower agrees

1 that that's, in fact, what occurred.

2                   Nevertheless, they raised five -- or,  
3 as I've categorized them, five legal offenses which  
4 have to do with the timing of the application of the  
5 law; the availability of penalty prior to licensing;  
6 whether or not Lower is, in fact, an agent, broker or  
7 consultant at all under the law; and whether the  
8 violation, which I think is proven by the factual  
9 record, is, in fact, worthy of penalty.

10                   And with respect to each of those  
11 defenses, I've recommended that you look past those  
12 offenses and find that there is, in fact, a violation  
13 of the law here independently can't be imposed at  
14 this time.

15                   CHAIRMAN BOX: Any questions for the Judge?

16                   COMMISSIONER O'CONNELL-DIAZ: Judge Gilbert,  
17 you are -- your recommendation is a one-month  
18 suspension for the failure to comply with the law  
19 that the -- Lower has admitted to the violation;  
20 correct?

21                   They give us excuses or legal ideas as  
22 to how they -- how we shouldn't apply it to them; but

1 they do admit that they did not comply with the law,  
2 and your recommendation is that the Commission should  
3 suspend their certification for a month?

4 JUDGE GILBERT: Yes. Yeah, they don't, in  
5 fact, yet have a license -- no one could because our  
6 rule is not yet in place -- but at such time as they  
7 should apply for a license and if they are successful  
8 in that application, yes, there would be a one-month  
9 suspension.

10 CHAIRMAN BOX: Any further questions?

11 (No response.)

12 CHAIRMAN BOX: Does anyone want to enter the  
13 motion which is to recommend entering the Judge's  
14 order?

15 COMMISSIONER FORD: So moved.

16 CHAIRMAN BOX: Is there a second?

17 COMMISSIONER O'CONNELL-DIAZ: Second.

18 CHAIRMAN BOX: Moved and seconded.

19 Further discussion?

20 COMMISSIONER O'CONNELL-DIAZ: Chairman, I'd  
21 just like to say that I agree with -- as I think  
22 the -- my colleagues have voted, I think this sends a

1 clear message with regards to the obligations of  
2 companies that are going to be doing business in our  
3 state; and this is about transparency and information  
4 available so that customers can make choices fully  
5 informed.

6 We have these rules that are in place.  
7 It doesn't appear that the company here has honored  
8 the spirit of the law that is currently in place. I  
9 know that they're going to probably go forward and  
10 get a certification, but I think this sends a clear  
11 message as to what the standard is going to be in our  
12 state.

13 So I have no problem in affirming  
14 Judge Gilbert's recommendation.

15 CHAIRMAN BOX: Any further discussion?

16 (No response.)

17 CHIARMAN BOX: All in favor say "aye."

18 (Chorus of ayes.)

19 CHAIRMAN BOX: Opposed?

20 (No response.)

21 CHAIRMAN BOX: The vote is 4-0. The order is  
22 entered.



1                   Item 2 is Docket 08-0532. This matter  
2 concerns the Section 9-250 investigation into  
3 Commonwealth Edison Company's Embedded Cost of  
4 Service Study, which resulted from Commonwealth  
5 Edison's recent rate case.

6                   The Coalition to Request Equitable  
7 Allocation of Costs Together, a/k/a REACT, has filed  
8 a petition for interlocutory review of an  
9 Administrative Judge ruling.

10                  Also, the ALJs seek guidance on scope  
11 and scheduling of the proceeding. Administrative Law  
12 Judge Hilliard recommends denying the petition for  
13 interlocutory review and guidance from the Commission  
14 on the issue of scheduling.

15                  Judge Hilliard, would you brief us  
16 today on this matter.

17                  JUDGE HILLIARD: This is -- it's complicated  
18 and these things are interrelated. This is a  
19 follow-up proceeding on the last ComEd rate case.

20                  The Commission directed that we have  
21 an investigation regarding these rate-making issues.  
22 The Commission also indicated that it wanted to

1 approve the schedule of the case, that it wanted this  
2 done on an expedited basis but that it wanted a  
3 thorough investigation of these issues.

4           And early on there was a protective  
5 order drafted by ComEd that was put in place that  
6 provided that specific confidential information could  
7 be circulated among the parties. There was a  
8 schedule in place. There is a discovery issue that  
9 arose regarding distribution equipment for three  
10 classes of customers that use a lot of electricity.  
11 The parties went back and forth.

12           At one point, ComEd indicated that the  
13 information that was being sought would take a year  
14 for them to accumulate and that would cost a million  
15 dollars to perform the study. They went back and  
16 forth a little more and then ComEd indicated that  
17 part of the problem was that there were 72,000 points  
18 of service, 68,000 of which were streetlighting  
19 points of service.

20           REACT, which is the moving party in  
21 all this, indicated that they weren't interested in  
22 those points, they just wanted the 10 megawatt or

1 bigger spots. ComEd responded that it wouldn't make  
2 any difference. It would still cost a million  
3 dollars and take a year, even if it was a study which  
4 essentially involved 95 percent less than what they  
5 thought was really involved.

6 Eventually, we issued a ruling. A  
7 couple other parties had points of view they  
8 expressed on sort of peripheral issues, one of which  
9 is IIEC which indicated they'd prefer if the parties  
10 that were identified in any of these discovery issues  
11 were not named.

12 So we issued a ruling which said that  
13 the information should specify the parties in these  
14 classes by number rather than name in keeping with  
15 that request; that the -- kind of the low apples on  
16 the tree, the things that were easy to provide, they  
17 should provide; and as to the distribution  
18 information, which is more expensive and more  
19 time-consuming to compile, that it should be limited  
20 to the REACT members, which are 11 entities named in  
21 their petition to intervene.

22 REACT filed their petition for

1 interlocutory review based upon that ruling, and they  
2 object to the -- our attempt to narrow the issue in a  
3 manner that we thought was sort of an attempt to  
4 reach a middle ground and that's the -- part of the  
5 issue before the Commission. Because this discovery  
6 issue kind of hadn't been resolved, it bumped up  
7 against our prescheduled hearing so we had to delay  
8 the hearings.

9                   And depending on where the Commission  
10 wants to go with this, how in depth you want to go,  
11 we will need to reschedule. And we just want your  
12 direction to -- as to where you want this discovery  
13 issue to go, how broadly do you want us to  
14 investigate and then we'd like the ability to set a  
15 schedule which will, you know, present back to you  
16 consistent with whatever point of view you adopt.

17                   That's about all I was going to say.

18                   CHAIRMAN BOX: What is your recommendation?

19                   JUDGE HILLIARD: Well, my recommendation on the  
20 interlocutory appeal is to affirm our ruling. On the  
21 scope of discovery, I think we continue to think that  
22 it's -- if we're going to get into this, it is --

1 it's practical to limit it to the REACT members. I  
2 guess the -- what we don't know is whether or not the  
3 Commission, you know, wants to develop this  
4 information either for the group as a whole or for  
5 the REACT members.

6 It seems reasonable to me that because  
7 we're in this, we're probably only going to do it  
8 once and we ought to do it thoroughly; and if getting  
9 this information will resolve these issues once and  
10 for all, it doesn't seem unreasonable to take the  
11 time to go and do them.

12 There is a certain amount of expense  
13 involved. One of the intervenors is the commercial  
14 group, and they've suggested that it would be  
15 appropriate if the Commission wants this information  
16 to be part of the record, to have the people who have  
17 moved for the information to pay for the study and  
18 that seems reasonable to me.

19 CHAIRMAN BOX: This is a study that would take,  
20 what, six months -- for only the REACT members six  
21 months and anywhere from 350 to \$500,000?

22 JUDGE HILLIARD: It's not altogether clear

1     whether that is for the universe of the people in  
2     this class or for the 11 members, but that's the  
3     figure that we've been -- in the time period we've  
4     been given.

5             COMMISSIONER O'CONNELL-DIAZ:   Judge Hilliard,  
6     just so I'm clear, and is the -- REACT's position  
7     accepting of the whittled down version of the Data  
8     Requests or are they still looking for the  
9     68,000 points of service?

10            JUDGE HILLIARD:   No, they don't want the --  
11     they want -- but they want the universe, they want  
12     information as to all 100 people and, in fact, ComEd  
13     has indicated in some of their fillings that they're  
14     not sure if they only did the REACT people, that it  
15     would be very valuable information.   So that's a  
16     question.

17                            Our thought was that you could  
18     probably extrapolate from these 11 entities and see  
19     whether or not their cost and their bills, you know,  
20     were correlated in some way and that it wouldn't take  
21     an extraordinary amount of time or cost a great deal  
22     of money.

1           COMMISSIONER ELLIOTT:  Mr. Chairman?

2           CHAIRMAN BOX:  Yes, Commissioner Elliott.

3           COMMISSIONER ELLIOTT:  This is sort of a thorny  
4   issue to try to get our hands around it and  
5   particularly with not having seen the actual Data  
6   Requests and the actual responses, it makes it more  
7   difficult to determine exactly what's being  
8   requested.

9                           However, my review of the pleadings  
10   here, it appears to me that -- I think REACT's  
11   requests have gotten a little far afield of what we  
12   were contemplating here; and it appears to me that  
13   they're asking for sort of individual cost studies  
14   within a class, and I think that's going a little far  
15   afield.  I'm not sure what that information is going  
16   to tell them relative to how they fit within the  
17   class.

18                           I'm not particularly interested in  
19   seeing the schedule delayed on this.  I'm a little  
20   concerned that -- particularly with regards to  
21   customer-specific, and by that I mean customer  
22   equipment that's dedicated to serve only single

1 customers that are not jointly utilized or more than  
2 one customer is utilizing it; and I'm thinking in  
3 terms of meters and service drops and distribution  
4 substations of equipment that may be particular to a  
5 particular customer account, that that is not tracked  
6 by ComEd, by the customer account or isn't referenced  
7 or somehow recoverable absent some convoluted study  
8 or six-month delay in data retrieval.

9           That is a disturbing concept; but  
10 going further beyond what is a customer specific  
11 account into the joint facilities, again, that seems  
12 to me going quite far afield and it's asking for  
13 individual cost studies that I'm not sure are going  
14 to be relevant when they're compared with customer  
15 class issues. It may be information that's valuable  
16 to REACT; but I'm not sure from the Commission's  
17 perspective, when we're looking at customer class,  
18 cost of service, that it's going to be particularly  
19 informative.

20           So I would -- I would, you know,  
21 register a desire not to go into this area and to  
22 pursue these cost studies and would prefer to



1 expedite the schedule.

2           COMMISSIONER FORD: I certainly concur with  
3 Commissioner Elliott because on July 17th, I think  
4 the Judges tried to do a middle of the road approach  
5 in whittling down REACT's request and certainly -- so  
6 that it would not be cumbersome and onerous on any of  
7 us -- burdensome, rather, on ComEd or what we wanted  
8 to have done for this, and I would certainly agree  
9 that we should deny the petition for interlocutory  
10 review.

11           CHAIRMAN BOX: Further discussion or comments  
12 or questions?

13                           (No response.)

14           CHAIRMAN BOX: It appears to be a consensus.  
15 We'll have either -- a motion to affirm the Judges'  
16 ruling on interlocutory review.

17           COMMISSIONER FORD: So moved.

18           CHAIRMAN BOX: Is there a second?

19           COMMISSIONER O'CONNELL-DIAZ: Second.

20           CHAIRMAN BOX: Moved and seconded.

21                           All in favor say "aye."

22                           (Chorus of ayes.)

1           CHAIRMAN BOX:  Opposed?

2                           (No response.)

3           CHAIRMAN BOX:  The vote is 4-0 affirming the  
4 Judges' ruling.

5                           Next is the scope.  I think given the  
6 schedule we have here, you would have been starting  
7 the week of August 10th the evidentiary hearings.

8                           We're a little far behind I take it.

9           JUDGE HILLIARD:  Yes.

10          CHAIRMAN BOX:  I think there was a reason we  
11 wanted this done immediately, because I think these  
12 numbers have to be applied, right, to the last rate  
13 case?

14                           Is that correct.

15          JUDGE HAYNES:  They would, yes.

16          CHAIRMAN BOX:  That's what I thought, so that's  
17 why we wanted to expedite the proceedings.

18                           What could the schedule look like,  
19 Judge?

20                           I mean, if given the ruling we have  
21 today and the scope we want to expedite this, are  
22 there any other motions for discovery that you can

1 foresee?

2 JUDGE HILLIARD: This is a -- I don't know. It  
3 hasn't come up.

4 CHAIRMAN BOX: Would it be your recommendation  
5 to submit to us, then, another schedule showing us --

6 JUDGE HAYNES: I think that rather than  
7 submitting another schedule, we ask that you direct  
8 us to enter a schedule on our own, consistent with  
9 your ruling, not to do the individual cost of service  
10 studies and we'll just try to get back on track as  
11 quickly as possible.

12 JUDGE HILLIARD: Because otherwise, any  
13 deviation from that, we've got to come back again  
14 and --

15 COMMISSIONER O'CONNELL-DIAZ: This will be a  
16 schedule, I would imagine, that would be -- the  
17 parties would have input, too and --

18 JUDGE HILLIARD: Yeah.

19 COMMISSIONER O'CONNELL-DIAZ: -- everyone will  
20 have a shot at coming up with a schedule that --

21 JUDGE HILLIARD: Right.

22 COMMISSIONER O'CONNELL-DIAZ: -- you ultimately

1 decide is the --

2 JUDGE HILLIARD: And if they're unhappy, they  
3 can come to you.

4 COMMISSIONER O'CONNELL-DIAZ: Exactly.

5 CHAIRMAN BOX: So we could have a motion to  
6 direct the Judges to compile the schedule --

7 COMMISSIONER FORD: Yes.

8 CHAIRMAN BOX: -- and let the case move  
9 forward.

10 Is there a motion to that effect?

11 COMMISSIONER ELLIOTT: So moved.

12 CHAIRMAN BOX: Second?

13 COMMISSIONER FORD: Seconded.

14 COMMISSIONER O'CONNELL-DIAZ: To let them do  
15 their job.

16 CHAIRMAN BOX: All in favor say "aye."

17 (Chorus of ayes.)

18 CHAIRMAN BOX: Opposed?

19 (No response.)

20 CHAIRMAN BOX: The vote is 4-0.

21 JUDGE HILLIARD: Can I --

22 CHAIRMAN BOX: Judge, yes.

1           JUDGE HILLIARD: I'd like to clarify your  
2 direction here. Our ruling, then, limiting the scope  
3 of the production to the REACT members is intact and  
4 the Commission wants that to happen?

5           CHAIRMAN BOX: Does that entail the cost of  
6 350,000?

7                       I don't think that was a ruling at  
8 all.

9           JUDGE HAYNES: No, I think that original -- I  
10 think that ComEd has produced all information in  
11 response to the original Data Request and that the  
12 additional step of six months, half a million dollars  
13 are you are not directing any further?

14          CHAIRMAN BOX: Right. And we're not directing  
15 any individual cost studies.

16          JUDGE HILLIARD: That's -- just in the interest  
17 of fairness, I think the parties would disagree as to  
18 whether or not that's an appropriate appellation for  
19 what they're asking. A cost study is much more  
20 extensive and it assigns, you know, common costs and  
21 things such as this and this is limited to  
22 distribution information for these particular

1 entities; but --

2 COMMISSIONER ELLIOTT: I think they are, in  
3 fact, allocating common cost in the distribution  
4 system and it's going beyond customer specific and  
5 it's an area that I don't believe individual studies  
6 is going to be of any benefit in our analysis of the  
7 customer class --

8 JUDGE HILLIARD: Fine.

9 COMMISSIONER ELLIOTT: -- allocations.

10 CHAIRMAN BOX: Okay. Judge Dolan, anything  
11 else to come before us today?

12 JUDGE DOLAN: No, Chairman.

13 CHAIRMAN BOX: My understanding is our next  
14 meeting is not until September 9th.

15 JUDGE DOLAN: It's a Pre-Bench. The 10th is  
16 the actual...

17 CHAIRMAN BOX: Right, but we have items on the  
18 agenda for the 9th?

19 JUDGE DOLAN: Yes, that's correct.

20 CHAIRMAN BOX: And we've moved that meeting to  
21 Springfield?

22 JUDGE DOLAN: Yes.

1           CHAIRMAN BOX: For the -- we have a  
2   Transportation Policy at 1:30 and the Pre-Bench is at  
3   3:00; right?

4           JUDGE DOLAN: Yes.

5           CHAIRMAN BOX: Anything further?

6           JUDGE DOLAN: No, sir.

7           CHAIRMAN BOX: The meeting stands adjourned.

8                       (Whereupon, the public utility  
9                       regular open meeting was adjourned.)

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