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BEFORE THE
ILLINOIS COMMERCE COMMISSION

PRE-BENCH SESSION

Springfield, Illinois
Wednesday, September 9, 2009

Met, pursuant to notice, at 3:00 p.m. in
Hearing Room A, First Floor, Leland Building, 527
East Capitol Avenue, Springfield, Illinois

- PRESENT:
- MR. CHARLES E. BOX, Chairman
 - MS. LULA M. FORD, Commissioner
 - MS. ERIN M. O'CONNELL-DIAZ, Commissioner
 - MR. SHERMAN J. ELLIOTT, Commissioner

SULLIVAN REPORTING COMPANY, by
Carla J. Boehl, Reporter

1 CSR #084-002710

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PROCEEDINGS

CHAIRMAN BOX: Pursuant to the provisions of the Illinois Open Meetings Act, I now convene a regularly scheduled open meeting of the Illinois Commerce Commission. With me in Springfield are Commissioners Ford, O'Connell-Diaz and Elliott and I am Chairman Box; we have a quorum.

Before moving into the agenda, this is the time we allow the 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, there are no requests to speak.

Let us take the second item on today's agenda first. It is the Eastern Interconnection States' funding council's proposal to use U.S. Department of Energy regarding the ARRA funding for Transmission planning. Commissioner Elliott has been involved in these discussions and I turn the floor over to him.

COMMISSIONER ELLIOTT: Thank you, Mr. Chairman.

1 This item is on the agenda for our votes. As you
2 know, the Eastern Interconnection States, 42 states
3 and many of the provinces of Canada, have gotten
4 together to cooperate with a DOE and FERC item to get
5 together on electric resource planning priorities for
6 transmission planning. The states have met several
7 times over the last several months and have put
8 together a proposal for funding to DOE to support
9 interconnection planning processes over the next four
10 years.

11 The request is for 15 -- slightly over
12 15 million, and this will be used to offset studies,
13 travel, etc., for the representatives from the
14 various states. Each state has two representations
15 on the council. I represent the Commerce Commission,
16 and Jason Cisco, Jack Latham from the Governor's
17 office is also represented.

18 As I noted, the majority of the states
19 supported the proposal as final draft on the call
20 yesterday, and I abstained so that I could put it
21 before the Commission. I would recommend and make a
22 motion that the Commission accept and sign on to the

1 agreement to submit for funding.

2 COMMISSIONER FORD: So moved.

3 CHAIRMAN BOX: Is there a second?

4 COMMISSIONER O'CONNELL-DIAZ: Second.

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

6 All in favor say aye.

7 COMMISSIONERS: Aye.

8 CHAIRMAN BOX: Opposed?

9 The vote is 4-0 the Commission will
10 join the proposal.

11 The first item on the agenda was
12 Docket 09-0263. This is a petition for interlocutory
13 review by Commonwealth Edison Company of an
14 Administrative Law Judge ruling in the AMI pilot
15 proceeding. Administrative Law Judge Sainsot
16 recommends denying the petition. We will be voting
17 on this matter in tomorrow's bench session.

18 And, Judge Sainsot, are you available?
19 Could you brief us on this particular matter?

20 JUDGE SAINSOT: Sure, Mr. Chairman. Can you
21 hear me?

22 CHAIRMAN BOX: Yes.

1 JUDGE SAINCOT: Just to give you a brief
2 general background, in this docket ComEd asked for
3 Commission approval of a pilot program that tests
4 consumer reactions to advance metering or what is
5 called AMI. AMI is a type of meter that allows for
6 billing based on the actual cost of electricity as
7 opposed to its blended rate. Most consumers have a
8 blended rate.

9 The significance of actual cost as
10 opposed to a blended rate is that electricity in the
11 summer time is very expensive when it is hot and
12 there is air conditioners running, but it is much
13 less expensive at other times. These meters provide
14 an incentive not to use electricity during the
15 expensive time.

16 For this project ComEd requests
17 approximately \$49 million for the technology and
18 meters and \$12.6 million for operating expenses from
19 the ratepayers.

20 ComEd has submitted a large grant
21 proposal to the United States Department of Energy
22 for \$350 million. That grant proposal is a part of

1 the record in this docket. The United States
2 Department of Energy's program provides matching
3 funds which is 50 percent of the funding for a
4 project. If the Department of Energy approves
5 ComEd's total request, consumers will fund the
6 remaining \$175 million.

7 A part of this grant application is
8 ComEd's request to fund the program that is the
9 subject of the docket here. The issue here is the
10 propriety of tariff language that ComEd had submitted
11 for approval that allows it to spend funds without
12 any Commission approval of the projects that it is
13 spending the money on. This tariff language allows
14 ComEd to recover funds from consumers regarding its
15 grant proposal projects that are not in this docket.

16 I should point out that, since the
17 time when the interlocutory report was filed, ComEd
18 filed a petition requesting Commission approval of
19 the grant funded projects that are not included in
20 this docket but are included in the grant
21 application. This is Docket Number 09-0407.

22 Attached to the petition in Docket

1 09-0407 is a tariff that allows ComEd a return on its
2 investments in these new projects. If the Commission
3 approves the petition in Docket 09-0407, ComEd would
4 have the relief it seeks which is right of recovery
5 of its expenditures on grant-funded projects that are
6 in addition to the project that is the subject of the
7 docket here.

8 COMMISSIONER O'CONNELL-DIAZ: Judge Sainsot,
9 what is the schedule, if you know, of 09-0407?

10 JUDGE SAINSOT: Well, it was just filed late
11 last Thursday. A status hearing will be scheduled --
12 I don't even think the notice is out -- for September
13 21. And beyond that, the only thing that's known at
14 this time is that ComEd has requested final
15 Commission approval by the end of the year. In this
16 docket ComEd has requested final Commission approval
17 by November 4, I think.

18 CHAIRMAN BOX: In which docket? In Docket
19 09-0263?

20 JUDGE SAINSOT: Right. So you are talking
21 about a two-month difference.

22 CHAIRMAN BOX: Judge, let me ask this. The

1 thing that was filed, 09-0407 that was filed last
2 Thursday...

3 JUDGE SAINSOT: Right.

4 CHAIRMAN BOX: .. that would include the 49
5 million and the 14.6 million that's also included in
6 09-0263?

7 JUDGE SAINSOT: No, it is for the remaining
8 project.

9 CHAIRMAN BOX: The remaining, okay. That's in
10 the grant.

11 JUDGE SAINSOT: Right. Actually, the project
12 that is the subject of 09-0263 is a rather small part
13 of the whole grant proposal.

14 CHAIRMAN BOX: As I recall, they came before us
15 when they filed 09-0263 and they gave us the names of
16 the cities and the suburbs and the part of the city
17 of Chicago that the smart meters would be going into,
18 right?

19 JUDGE SAINSOT: Right.

20 CHAIRMAN BOX: And that's where you get the 49
21 million plus the 12.6?

22 JUDGE SAINSOT: Right, right. I haven't had a

1 chance to look at the other docket in depth. But if
2 memory serves me, what ComEd asks for in 09-0407 are
3 more AMI meters, AMI compatible air conditioning
4 cycling switches, distributed automation and
5 supporting data communication infrastructure. There
6 is some SCADA kinds of things in there. It's a much
7 more elaborate project than the one that is in
8 09-0263.

9 CHAIRMAN BOX: Okay. Now, so what we have
10 before us for tomorrow is a petition for
11 interlocutory review. Whether that's successful or
12 not, the same results or the same issues will be
13 heard and litigated in 09-0407, is that correct?

14 JUDGE SAINSOT: Right. The tariff language
15 that is at issue here is attached to the petition in
16 09-0407. So what you have in terms of possible, for
17 lack of a better word, harm to ComEd is the lag time
18 between approving the project here in 09-0263 and the
19 one in 09-0407, which is two months.

20 COMMISSIONER O'CONNELL-DIAZ: And the concern
21 there is that there is, for look of a better word,
22 competition for the federal moneys that are coming

1 from the stimulus package, and so the November 4 date
2 versus the end of the year date could, it is the
3 company's argument, that advantage our state
4 acquiring that money, is that --

5 JUDGE SAINSOT: Well, here is the thing. We
6 had a hearing, an evidentiary hearing, I don't know,
7 two, three weeks ago. And what the evidence showed
8 is that the U.S. Department of Energy requires
9 Commission approval of a project. I didn't see
10 anything in the evidence that indicated that the
11 tariff language was necessary for the U.S.
12 Department of Energy to go forward with that.
13 Commission approval is something that occurs after a
14 petition is filed and evidence is taken and the
15 Commission issues a final order. It is not tariff
16 language.

17 So did that address what you were
18 saying, Commissioner O'Connell-Diaz?

19 CHAIRMAN BOX: I think, correct me if I am
20 wrong, Judge, somewhere in the federal guidelines it
21 actually says that it is not mandated that we have
22 made a final decision by the time they make their

1 decision, but we have to make a decision before any
2 of the federal money is released.

3 JUDGE SAINSOT: That's correct. I am sure
4 Commission approval would be helpful.

5 CHAIRMAN BOX: But even if our government
6 acknowledged, that might not be the case, given the
7 timetables involved.

8 JUDGE SAINSOT: Right.

9 CHAIRMAN BOX: So let me ask you this. In
10 light of the fact that they filed 09-0407 and you
11 would have to have testimony and everything else,
12 could these two because they will accomplish the same
13 thing hopefully by the end of the year if that
14 evidence is taken and made part of 09-0263, will that
15 meet the timetable that they have asked for by
16 November 1?

17 JUDGE SAINSOT: Well, I don't think we can
18 have -- we could get -- that's a complicated project.
19 I don't think it is possible to get everything done.
20 I mean, you are talking about having a trial,
21 post-trial briefs, a proposed order and then briefs
22 on exceptions. I don't think that would happen in a

1 month and a half.

2 CHAIRMAN BOX: I am just wondering, say you are
3 dealing with 09-0407, can that be done by the end of
4 the year?

5 COMMISSIONER O'CONNELL-DIAZ: It doesn't have
6 to be done.

7 JUDGE SAINSOT: I think it is do-able. I think
8 Judge Kimbrel and I won't have much in the way of
9 Thanksgiving, but I think it is do-able.

10 COMMISSIONER ELLIOTT: Question, it seems to me
11 with the filing of 09-0407 that that sort of resolves
12 the issue, at least the evidentiary question the
13 joint movants are talking about. It seems to move it
14 to that docket.

15 JUDGE SAINSOT: Right, right. And it also
16 indicates that the real issue here is only the
17 two-month lag period.

18 CHAIRMAN BOX: So whatever the decision will be
19 from the judges, whether it is in 09-0263 or 09-0407,
20 you will hear the same evidence and the issues will
21 be resolved.

22 JUDGE SAINSOT: Right, we will hear evidence

1 that will relate -- well, I already heard evidence
2 that related to what was in the first petition,
3 09-0263, but then will hear evidence in the next
4 docket concerning the tariff language that's at
5 issue.

6 COMMISSIONER ELLIOTT: I think what we are
7 picking up is, out of the 175 million total request
8 to DOE, we have got 63 in the -0263 docket and the
9 remainder in the 09-0407 docket. So they will be
10 looking at different issues concerning like projects,
11 but in terms of the tariff language to recover the
12 ARRA money, the stimulus money, that would be
13 identical, am I correct?

14 JUDGE SAINSOT: Well, I am not sure what you
15 mean by identical. It would match what is proposed
16 in the second docket, 09-0407. It doesn't match what
17 is in the first docket, the docket that's here,
18 because there is nothing in the petition to say what
19 those projects are.

20 COMMISSIONER ELLIOTT: Right. That's in the
21 -0407 case.

22 JUDGE SAINSOT: Right.

1 COMMISSIONER O'CONNELL-DIAZ: Well, isn't it
2 actually in the supplemental petition that the
3 company filed?

4 JUDGE SAINSOT: No, the supplemental petition
5 simply said that in essence there is more to come.
6 It didn't give much in the way of detail.

7 CHAIRMAN BOX: But, Judge, I am a little
8 confused. Now, if they get the 175 million from the
9 federal government, part of that, 61.6 or 62 million
10 of that, was what they asked for in 09-0263, is that
11 correct?

12 JUDGE SAINSOT: Right. I think that's the
13 right figure.

14 CHAIRMAN BOX: So in essence because the second
15 docket, whether we decide it by November first or by
16 the end of the year, the ratepayer -- if you and the
17 Commission decide that it is used and useful or it is
18 prudent, the ratepayers would be technically paying
19 half of that 62 million because half of it will be
20 paid by the federal government out of the stimulus
21 funds.

22 COMMISSIONER ELLIOTT: If the fund is granted.

1 CHAIRMAN BOX: If it is granted.

2 JUDGE SAINSOT: Right, in 09-0263, yes.

3 CHAIRMAN BOX: Right. So 09-0407 includes
4 everything that's in 09-0263 and not vice versa.

5 JUDGE SAINSOT: No.

6 COMMISSIONER ELLIOTT: This is one-quarter and
7 that's three-quarters.

8 JUDGE SAINSOT: Yeah, that's a good way of
9 putting it, Commissioner Elliott.

10 COMMISSIONER O'CONNELL-DIAZ: The second filing
11 is the larger amount.

12 COMMISSIONER ELLIOTT: The cleanest thing would
13 really be to consolidate the two cases, but then you
14 add two months lag onto --

15 JUDGE SAINSOT: Well, I don't know if it would
16 be the cleanest thing.

17 CHAIRMAN BOX: Well, I would think -- and now
18 this is just for discussion because we are going to
19 vote on it tomorrow. I would think, though, with an
20 application being filed, knowing we have a deadline
21 of November 1 on one and knowing that we are going to
22 try to get the other one done by the end of the year,

1 that would support their application. We are not
2 making a commitment one way or the other in case we
3 see decisions from the judge and what items are going
4 to be purchased and the costs and everything else.
5 That has to boost their application process. I don't
6 know what more they can expect of us.

7 COMMISSIONER O'CONNELL-DIAZ: Chairman, you are
8 talking about what the DOE needs to see from our
9 Commission?

10 CHAIRMAN BOX: Yes.

11 COMMISSIONER O'CONNELL-DIAZ: I think the
12 language here is "application should include
13 correspondence from Commission, approval process and
14 timeline," and then I think the next part of it, "The
15 money could be withheld until approval of pricing
16 tariffs." So, you know, I also --

17 CHAIRMAN BOX: Keep these separate then. And
18 the same judges will have them, I would think. Has
19 this been assigned to the same judge?

20 JUDGE WALLACE: Yes.

21 JUDGE SAINSBOT: Well, Judge Kimbrel has been
22 added on to the second docket, 09-0407, but I am on

1 that other case.

2 COMMISSIONER O'CONNELL-DIAZ: And, again, this
3 is right of recovery we are talking about. So
4 approval of anything by the Commission in these
5 dockets will have an annual review reconciliation,
6 and so it is not a rubber stamp that all costs will
7 flow through to ratepayers for any of these items.
8 They will be given the scrutiny and hearing just as
9 any other rider recovery matter that we have at the
10 Commission.

11 So the notion that this is rubber
12 stamping and pushing something through is just
13 incorrect because we will be looking at on a regular
14 basis, a yearly basis, through proceedings and
15 discreet review of those records of all of these
16 costs.

17 JUDGE SAINSOT: That is correct. May I say
18 something about -- I heard the word "consolidation."
19 And I just --

20 COMMISSIONER ELLIOTT: Cringed?

21 JUDGE SAINSOT: Well, I don't think -- I think
22 it would create a lot more work for everybody

1 involved at this point. There has already been a
2 trial, post-trial briefs are out in the 09-0263.
3 They were just filed yesterday, for one thing.

4 For another thing, it is my
5 impression, and I could be wrong about the second
6 docket, but there is an issue about timing here. I
7 think ComEd needs to get going as soon as possible on
8 the project that is the subject of 09-0263. I am not
9 so sure about the second docket, but then I am much
10 more familiar with 09-0263 than I am with the
11 petition that was filed last week.

12 My impression, and ComEd has stated
13 this, is that they need to start going now and
14 getting things in order now, in order to get these
15 meters in people's homes by the heating season next
16 year. They won't be able to do that or they will be
17 impaired and I don't know to what extent. But it is
18 my impression that it will impair the project if we
19 delay the 09-0263 project. And the reason I say this
20 is the consolidation issue.

21 COMMISSIONER ELLIOTT: Yeah, it seems to me
22 that with the filing of 09-0407 that the evidence

1 requested or at least that the movements suggested
2 was unavailable in this docket as being adduced in
3 that docket. It seems to me that denying the relief
4 here and having those issues adjudicated in the other
5 docket as opposed to Staff's view in this case which
6 was to potentially if we decided to grant and then do
7 the evidentiary issues on those things in this case.

8 JUDGE SAINCOT: Well, this is really a legal
9 issue, and I can appreciate where people might want
10 to take evidence if you reverse me. But the reason
11 that this tariff language was stricken was because it
12 was beyond the scope of what the Commission ordered
13 in ComEd's last rate case where this first arose.

14 And it is also beyond -- it is also
15 relief requested that is beyond the scope of the
16 facts presented in the petition or at trial. There
17 is no evidence regarding these other ARRA-funded
18 projects in 09-0263, and that's the real problem.

19 COMMISSIONER ELLIOTT: Right, and that evidence
20 is going to be produced in 09-0407, is what you are
21 suggesting.

22 COMMISSIONER O'CONNELL-DIAZ: And also an

1 averment that at the point in time that the
2 Commission entered its order in 09-0263 there was no
3 federal stimulus package out there.

4 JUDGE SAINSOT: You mean in the --

5 COMMISSIONER ELLIOTT: Initiating order.

6 CHAIRMAN BOX: In the rate case.

7 COMMISSIONER O'CONNELL-DIAZ: The initiating
8 order. We had no notion that there was these moneys
9 that could be utilized for projects such as this in
10 our state.

11 COMMISSIONER FORD: Unless somebody else gets
12 it.

13 COMMISSIONER ELLIOTT: ARRA really screwed up
14 all the processes, didn't it?

15 CHAIRMAN BOX: Well, for a chance to get an
16 improved system and more efficiency and with money
17 from the federal government, I think it is worth it.

18 I think we have enough to chew on
19 until tomorrow morning when this matter comes up on
20 the agenda. I think it is E5. Anyone need any more
21 clarification from Judge Sainsot? Judge, thank you
22 very much.

1 JUDGE SAINSOT: Thank you.

2 CHAIRMAN BOX: Judge Wallace, anything else to
3 come before us before tomorrow morning?

4 JUDGE WALLACE: Nothing further today, sir.

5 CHAIRMAN BOX: We will have an admin meeting
6 tomorrow after the bench session. There will be like
7 a ten-minute recess for us to go to the video room
8 after tomorrow's meeting.

9 Thank you very much. Meeting is
10 adjourned.

11 MEETING ADJOURNED

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