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BEFORE THE  
ILLINOIS COMMERCE COMMISSION

BENCH SESSION

(PUBLIC UTILITY)

Chicago, Illinois  
Wednesday, October 3rd, 2012

Met, pursuant to notice, at 10:30 a.m. in the  
Main Hearing Room, 160 North LaSalle Street, Chicago,  
Illinois.

PRESENT:

MR. DOUGLAS P. SCOTT, Chairman

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

MR. JOHN T. COLGAN, Commissioner

MS. ANN McCABE, Commissioner

MS. LULA M. FORD, Commissioner

L.A. COURT REPORTERS by  
Kari Wiedenhaupt, Reporter

CSR# 084-004725

1 PROCEEDINGS

2 CHAIRMAN SCOTT: Pursuant to the provisions of  
3 the Open Meetings Act, I now convene the regularly  
4 scheduled Bench Session of the Illinois Commerce  
5 Commission. With me in Chicago are Commissioner  
6 O'Connell-Diaz, Commissioner Ford, Commissioner  
7 Colgan and Commissioner McCabe. I am Chairman Scott.  
8 We have a quorum.

9 Before moving into the agenda,  
10 according to Section 1700.10 of Title II of the  
11 Administrative Code, this is the time for all members  
12 of the public to address the Commission. Members of  
13 the public wishing to address the Commission must  
14 notify the Chief Clerk's Office at least 24 hours  
15 prior to the Commission meeting.

16 According to the Chief Clerk's Office,  
17 we have eight requests to speak at today's Bench  
18 Session. Seven of these requests concern ComEd's  
19 Formula Rate Case on Rehearing, while one request  
20 concerns a transportation matter. So I'll allow the  
21 individual on the transportation matter to speak  
22 first. Just a reminder that under Commission rules,

1 any person desiring to address the Commission shall  
2 be allowed up to three minutes for comments or  
3 questions, and we will not respond to the remarks  
4 that are made today; so just to warn you of that in  
5 advance.

6 So is Mr. David Leatherwood available?  
7 Please come forward, sir. You can pick either side  
8 and just pick a microphone. Very good. Go ahead  
9 when you are ready, sir.

10 MR. LEATHERWOOD: Sure. My name is David  
11 Leatherwood. I represent a small transportation  
12 company called Thunder Logistics, and my concern was  
13 I had spoke to -- we had a unit that was towed from  
14 the Villa -- Villa Park there out in North Avenue,  
15 and we do not feel that there was any signage to show  
16 that an unauthorized vehicle was going to be towed.  
17 It's a bobtail. It wasn't a semi-tractor and  
18 trailer, just a tractor, and I talked to Officer  
19 Castle (phonetic) at the Des Plaines location and  
20 asked him what their criteria was, and I looked up  
21 their code that I found on the Illinois site, and I  
22 think I have it correct here. It's 625 IL 5/18a-302,

1 and I don't know if you want me to read it verbatim  
2 or what I --

3 CHAIRMAN SCOTT: It's up to you.

4 MR. LEATHERWOOD: Okay. It's unlawful for an  
5 owner or other person in lawful possession or control  
6 of private property to remove or employ the  
7 commercial relocater to remove an unauthorized  
8 vehicle from such property unless written notice is  
9 provided to the effect that the vehicle will be  
10 removed, including the name, address and then phone  
11 number of the appropriate commercial vehicle  
12 relocater, if any. Such notice shall consist of a  
13 sign, posted in a conspicuous place in the affected  
14 area, of a size of at least 24 inches in height, 36  
15 inches in width and such shall be at least 4 feet  
16 from the ground, but less than 8 feet from the ground  
17 and shall be either illuminated with ink or  
18 reflective paint, or both. Such sign shall state the  
19 amount of -- and it just goes into the amount in the  
20 parking location.

21 There was no sign, and if I'm  
22 understanding, my interpretation is there should be a

1 sign showing that a vehicle can -- an authorized  
2 vehicle, what an authorized vehicle is. That's the  
3 main -- I guess, what I disagree with is that there  
4 is no sign, and if the ICC says that -- the way I  
5 understand it is the sign has to be conspicuous. It  
6 has to be a certain size, but they are saying that  
7 there is no sign.

8                   So any vehicle that that property  
9 owner deems unauthorized can be towed without the  
10 signage is what I am being told by your ICC police.  
11 There is no criteria of any type of signs. So if  
12 green cars are unauthorized, then green cars can be  
13 towed. There doesn't have to be any sign that says  
14 green cars are unauthorized. And that's -- what I  
15 understand, the ICC is to protect the consumer in  
16 that respect and would protect any type of business  
17 also from just being towed at random and without the  
18 owner putting any type of notification up there that  
19 the vehicle would not -- would be towed for parking  
20 in it. That's the gist of my --

21                   CHAIRMAN SCOTT: Thank you, Mr. Leatherwood. I  
22 appreciate you coming today. Thank you very much.

1 MR. LEATHERWOOD: Okay.

2 CHAIRMAN SCOTT: We have some of our elected  
3 officials here today. I will begin with Senator  
4 Donne Trotter. Senator, welcome back.

5 SENATOR TROTTER: Good morning, Mr. Chairman  
6 and Commissioners and everyone.

7 I am here this morning, and I want to  
8 talk about the smart grid initiative that is before  
9 you today. I'm really here to talk about essentially  
10 how it relates to Illinois' economy, the need to  
11 create jobs in our communities and to enhance our  
12 state's electric grid and prepare for the future. We  
13 are concerned about whether the promise of the Energy  
14 Infrastructure Modernization Act, also known as the  
15 smart grid law, which was passed last year by this  
16 legislature with a strong bipartisan majority is  
17 slipping away from us.

18 As a direct result of the historic  
19 law, ComEd intended to invest \$2.6 billion in the  
20 system including significant infrastructure upgrades  
21 and deployment of SMART meters throughout its service  
22 territory over the next two years. As part of that

1 investment ComEd planned to hire up to 2,000 workers  
2 at the peak of the program to modernize its electric  
3 grid. This would include the construction of a new  
4 state-of-the-art facility on Chicago's south side,  
5 which I reside in and represent. That would be used  
6 to train the next generation of utility workers.  
7 These workers would be performing the upgrades and  
8 enhancements to Illinois' electric grid, which would  
9 improve reliability, help customers better manage  
10 their electricity use through new SMART meters and  
11 meet the energy demands of the 21st century.

12                   It grows to almost \$1 billion in  
13 reduced revenues over the next ten years. Such a  
14 dramatic reduction means that ComEd cannot be  
15 expected to invest in its system if we go forward and  
16 not pass the issue that's before you today. ComEd's  
17 investments, reliability enhancements and the jobs  
18 that will be created by this law are only possible if  
19 the ICC adjusts its Order on ComEd's first formula  
20 rate filing. In its initial ruling in May, the ICC  
21 ignored and balanced the -- the balanced approach we  
22 took in crafting and passing the EIMA. It was an

1 approach that provided the utilities a fair degree of  
2 flexibility concerning cost recovery while  
3 establishing performance standards that it must meet  
4 or pay a financial penalty for failing to do so.

5           So the law and our intent in passing  
6 it is further clarified by our recent House  
7 Resolution, House Resolution 1157, which was passed  
8 in August by the Illinois House with an overwhelming  
9 bipartisan majority. The smart grid law was  
10 carefully written to encourage Illinois utilities to  
11 make the necessary upgrades to our State's electrical  
12 grid, which would also allow them a fair way to  
13 recover the costs needed to fund these investments.  
14 A modern, reliable, electric grid, one that can meet  
15 the demand of our increasingly connected world, is  
16 critical to our region for attracting new businesses  
17 and creating jobs.

18           However, the Commission's initial  
19 Order significantly and inappropriately reduced  
20 ComEd's revenue disrupting the balanced approach they  
21 took, greatly jeopardizing the work and the benefits  
22 it was designed to deliver. Such a dramatic



1 reduction in the retrieval of the benefits and  
2 revenues would mean that ComEd cannot be expected to  
3 invest in the system as planned if it is not likely  
4 to recover their costs.

5                   Therefore, I am calling upon the  
6 Illinois Commerce Commission to reverse its ruling of  
7 the May 29th Rate Order. This decision is critical  
8 to our state. Much is at stake here; specifically,  
9 the hundreds of jobs that were already being created  
10 by this program and the hundreds more that this  
11 program would create if deployed as planned. A new  
12 facility that would be going on Chicago's south side  
13 where ComEd would train thousands of utility workers  
14 to deploy, manage and maintain a digital smart grid  
15 was also on the table.

16                   It also includes the implementation of  
17 a new training facility in Rockford, another  
18 distressed community, which could use this infusion  
19 of jobs to stimulate the economy. At stake is the  
20 ability of at least two major companies to establish  
21 new operations here in Chicago, and they would create  
22 good paying jobs. The Commission has the

1 responsibility to carry out the smart grid law as it  
2 was written, particularly at a time where our State  
3 and our communities badly needs these jobs. I thank  
4 you for your time, but before I step away, I just  
5 want to say that I am here wearing multiple hats; one  
6 as a resident on the southeast side, which has seen  
7 the diminishment of its job opportunities for the  
8 past couple of decades really essentially leading up  
9 to the diminishment of a very viable community.

10 This will be a strong infusion of jobs  
11 for that community. Also, we know that on the south  
12 side of Chicago, which is also one of the older  
13 communities, infrastructure is at the point to where  
14 without this new technology coming to the south side,  
15 we could see some more devastating outages that  
16 certainly can be prevented with going forward with  
17 this legislation and the responsibility that you have  
18 today. Having worked with the Governor through the  
19 years and having campaigned with him, I believe he's  
20 really sincere when he says that he wants to move  
21 Illinois forward. This is a large first step in  
22 moving Illinois forward, and I ask for your

1 consideration.

2 CHAIRMAN SCOTT: And next up will be Senator  
3 Dave Syverson. Senator?

4 SENATOR SYVERSON: Good morning, Mr. Chairman.  
5 It's nice to see you again, and Members of this  
6 Committee, thank you for allowing me a few minutes to  
7 come by and share with you.

8 First, let me begin by saying that I'm  
9 not here on behalf of ComEd. I am here on behalf of  
10 the 250,000 residents in the Rockford area that I  
11 represent. This also represents families that live  
12 in uncertain times. A week doesn't go by in our area  
13 that you can't help but open the paper and hear  
14 another story about an employer that may be leaving  
15 because of the uncertainty of our business climate.  
16 The EIMA legislation as we passed it out of the  
17 General Assembly provided at least some consistency  
18 when it came to the certainty of providing  
19 education -- or providing energy for our residents  
20 and for our business -- business companies. The  
21 smart grid legislation promises to give ComEd  
22 customers not just better service, but better

1 reliability and also the ability to manage their own  
2 energy. As was mentioned, we know this legislation  
3 will create up to 2,000 jobs, and a major component  
4 of that job is the creation of a state-of-the-art  
5 employee training center in the Rockford area.

6           Without the funding certainty in place  
7 provided by this legislation, the construction on  
8 this facility may be stopped or at least delayed.  
9 That's something neither Rockford, nor Illinois can  
10 really afford to have happen. As you know, in return  
11 for delivering the smart grid legislation, ComEd is  
12 asking for the certainty of recuperating their costs  
13 associated with building the smart grid and operating  
14 the business.

15           As a legislature, in passing this  
16 legislation, we believed that that was a fair  
17 compromise and a fair request. What's more, the  
18 intent of the smart grid legislation was that it  
19 passed and became law and that it was authorizing the  
20 recovery of their costs. We can use this as an  
21 opportunity to demonstrate to the business community,  
22 not just those that are here, but those that we are

1 trying to attract that we have a regulatory  
2 environment that is in place that is both fair and  
3 respects the letter and the spirit of legislation  
4 that has been passed.

5           That's why I am asking that the ICC  
6 reconsider its decision that was made in May and  
7 allow ComEd the certainty that they need to recover  
8 their costs. With that certainty, they will move  
9 forward quickly with creating the most reliable, up  
10 to date energy system in the country. Failure, I'm  
11 afraid, will drive this issue back to the legislature  
12 for more clarification, and in the meantime, will  
13 send a wrong message to the business community that  
14 we have this uncertainty.

15           That's why last week you may have seen  
16 that in the Northern Illinois groups including the  
17 Economic Development Council, Growth Dimensions, Area  
18 Chamber of Commerce, manufacturers all got together  
19 to announce their concerns over resolving this  
20 legislation, and that any delays that would happen  
21 would send a ripple effect of uncertainty throughout  
22 our business community.

1                   And that's why I am here today to  
2 bring that message and urge that resolution be found  
3 so the business community and the residents of  
4 Northern Illinois can have that comfort level or  
5 assurance of what is going to be in place. So thank  
6 you for your time in allowing me to share those  
7 thoughts.

8           CHAIRMAN SCOTT: Thank you, Senator. The next  
9 up is Mayor George Gaulrapp from Freeport. Mayor?

10           MAYOR GAULRAPP: Good morning. My name is  
11 George Gaulrapp, Mayor of the City of Freeport,  
12 Illinois. Thank you for your time and the ability to  
13 speak here this morning. I am speaking as the mayor  
14 of the city and Chairman Scott, I think you can  
15 relate to that, being a former mayor yourself. We  
16 are always cognizant of what we do for our  
17 constituents. I am going to take a little bit  
18 different path than Senator Trotter and Senator  
19 Syverson did.

20                   Right now in Freeport, Illinois we are  
21 undergoing a \$20 million infrastructure improvement,  
22 and part of that improvement paid for through the

1 capital improvement program that we have in Freeport  
2 are SMART meters for our water department.

3           These meters will allow our tenants to  
4 be monitored so we know if there is a leak. We will  
5 know it well in advance. And it's a cost savings  
6 proposition for the community, and it works out  
7 extremely well. So when I heard about the SMART  
8 meters through ComEd, I was extremely excited about  
9 this new technology, the ability of new technology to  
10 come to communities like Freeport, Illinois. We are  
11 located in the northwest part of Illinois. We have  
12 had several severe power outages over the last  
13 several years, but ComEd has worked with our  
14 community, and each of those numbers have gone down  
15 each year. They have been wonderful to work with.

16           I see them -- they help in communities  
17 like Freeport. When people are unable to pay their  
18 full bill, they work with the residents to make sure  
19 that they are able to keep lights on in their homes.  
20 As a father and a husband, I am affected by -- as a  
21 ratepayer also, and in my house we don't have an  
22 alarm clock. Every morning at 5:30 my daughter

1 Courtney turns on her blow dryer. When I hear that,  
2 next comes Alisha with her hair straightener and  
3 Rachel with her hair curler. So as they are doing  
4 this, I imagine the rates continue to spiral up in  
5 what I pay each month. We have as a community gone  
6 to a different source of aggregation for electricity.  
7 We saved our community members about 30 percent on  
8 their bills.

9 We have distribution from ComEd coming  
10 to the community. It's good distribution in a timely  
11 fashion. When we do have power outages or problems,  
12 they are very prompt to be there. If they are not  
13 able to re -- or to collect further investments, my  
14 fear is some of these response times will go down. I  
15 am excited about the SMART grid coming online so the  
16 response times will increase and the numbers of  
17 incidents will be reduced. So in my humble opinion,  
18 I hope that you will support the rate increase by  
19 ComEd in the future. Thank you.

20 CHAIRMAN SCOTT: Thank you, Mayor. Next up we  
21 have Mayor Jim Burke from Dixon. Mayor?

22 MAYOR BURKE: Good morning, Mr. Chairman and



1 Commissioners.

2 CHAIRMAN SCOTT: Good morning.

3 MAYOR BURKE: I am Jim Burke, City of Dixon,  
4 population 16,000.

5 A business, a city, a state, a nation  
6 must reinvest or it will become irrelevant in this  
7 world at best or a failure at its worst. The City of  
8 Dixon had a 50-year-old wastewater treatment plant  
9 that was dumping too much ammonia into the Rock  
10 River, as you would probably remember, Doug, and we  
11 replaced the plant with an \$18 million  
12 state-of-the-art facility to serve our residents and  
13 industry. The only way we could borrow the money and  
14 pay for this was by increasing the sewer use bills to  
15 the ratepayers. There is no free lunch.

16 Our city water supply had unacceptable  
17 levels of radium and arsenic. So we embarked on a  
18 \$14 million project to remediate the problem. The  
19 only way we could borrow the money to pay for the  
20 project was by increasing the water bills to the  
21 ratepayers. There is no free lunch.

22 We are now poised to serve virtually

1 about any sized industry with quality wastewater  
2 treatment and quality drinking water. The City of  
3 Dixon had a rock strewn riverfront in their downtown  
4 with a dilapidated, rundown parking lot separating  
5 the public from the river. We now have a beautiful  
6 riverfront plaza anchored with a life-size bronze  
7 statue of Ronald Reagan being enjoyed by thousands as  
8 it has become a destination point. It was an  
9 investment of public and private funds of \$6 million,  
10 but literally it transformed our downtown and  
11 community. However, there was no free lunch.

12 I can remember when an electrical  
13 outage in Dixon was a rarity. We now average several  
14 a year affecting a various number of customers for  
15 various durations of time, excluding any animal  
16 induced outages. Consequently as mayor, I've been  
17 involved in industrial development that is required  
18 to make sure our cities continue to grow so we have  
19 reliable power. Energy infrastructure modernization  
20 is vital to our city and state. However, there is no  
21 free lunch.

22 In closing, I request the ICC reverse

1 its rate program and allow ComEd to proceed in  
2 implementing innovative smart grid and other  
3 infrastructure improvements. Thank you for your  
4 time.

5 CHAIRMAN SCOTT: Thank you, Mayor Burke. Next  
6 up is Guy Niedorkorn from Aldridge Electric. Go  
7 ahead, sir.

8 MR. NIEDORKORN: Good morning. Thank you,  
9 Commissioners, for hearing me today. My name is Guy  
10 Niedorkorn. I am Vice President of Aldridge  
11 Electric, and as an Illinois-based contractor for  
12 more than 60 years, Aldridge Electric has had the  
13 pleasure of completing numerous projects with ComEd  
14 to strengthen our infrastructure and is eager to  
15 further grow our business here.

16 In recent years state funding and  
17 legislation have somewhat hampered our local  
18 opportunities, and so we were thrilled when the EIMA  
19 Program was brought up. Our part of the grid  
20 modernization has resulted in the employment of more  
21 than 100 tradesmen and engineers, and it's prompted a  
22 local investment of over \$2 million in equipment,

1 rental offices and warehouses in the City of Chicago.

2           These jobs and the investment is  
3 completely contingent on the EIMA program, and if the  
4 Illinois Commerce Commission does not side with ComEd  
5 rate formula, my company and the local economy will  
6 most certainly be critically impacted. So I ask that  
7 you really take a hard look at this ComEd rate  
8 formula and help businesses like ours to stay in  
9 Illinois. Thank you.

10           CHAIRMAN SCOTT: Thank you. Up next is Carol  
11 Sherman from TransLumen Technologies. Good morning.

12           MS. SHERMAN: Good morning. Good morning,  
13 Ladies and Gentlemen and of the Commission and  
14 Chairman Scott. My name is Carol Sherman, and I am  
15 the President of TransLumen Technologies. I am  
16 accompanied by my company founder, inventor and Chief  
17 Technology Officer, Douglas Siefken, who is in the  
18 audience today. We are a Chicago-based disabled  
19 veteran owned small business -- a service disabled  
20 veteran owned small business with three patents that  
21 drive our product and service offerings in visual  
22 technology, but most importantly for today, we are an

1 example of the small Illinois business that is  
2 benefiting from being a vendor to ComEd in its smart  
3 grid initiatives.

4 Our company was established in 2000,  
5 and we have had success in the defense, aerospace,  
6 advertising and Homeland Security sectors, which  
7 includes winning an award from the Illinois  
8 Department of Commerce and Economic Opportunity when  
9 Jack Lavin was serving as its director. We have  
10 collaborated with such companies as Boeing, Lockheed  
11 Martin and Motorola and government entities such as  
12 NASA, the Office of Naval Research and IIT through  
13 the Illinois Smart Grid Regional Innovation Center,  
14 but we feel that working as a partner with ComEd on  
15 smart grid dashboards is the long-term break we have  
16 needed to ride the consistent wave of revenue growth  
17 and obtain significant job creation in Chicago.

18 Illinois can be the hotbed of  
19 opportunities for companies like TransLumen, but to  
20 do that, we need the support of the state government,  
21 both -- in the country, both east coast and west  
22 coast are working very aggressively in smart grid

1 endeavors. Illinois should be the hub of innovation.  
2 We need to allow ComEd to recover its -- recover its  
3 costs with modernizing the electrical grid, which is  
4 a critical component in ensuring that Illinois'  
5 infrastructure is stable and capable of handling  
6 industrial and commercial growth and to forge a new  
7 innovation hub.

8 To conclude, we all need to do our  
9 jobs to make this initiative work. TransLumen needs  
10 to create critical next generation visualization  
11 tools for ComEd for its contribution to address the  
12 big data issues which, in turn, impacts the  
13 opportunity to better analyze electrical transmission  
14 in good weather and bad.

15 The Illinois Commerce Commission needs  
16 to ensure that the spirit of Illinois smart grid  
17 legislation is in sync with the decisions before this  
18 body. I want to thank you for your time, your  
19 interest, and your commitment to Illinois and its  
20 future. Thank you.

21 CHAIRMAN SCOTT: Thank you. And finally, last  
22 up is Arthur Miller from MZI Group. Mr. Miller?

1           MR. MILLER: Good morning, Commissioner. My  
2 name is Arthur Miller. I am President of MZI Group,  
3 a minority and veteran owned small business based in  
4 Chicago. We are an IBEW contractor. MZI Group has  
5 been fortunate to be part of the EIMA program which  
6 has allowed us to employ workers and grow our  
7 business. As a direct result of EIMA, MZI to date  
8 has been able to employ 17 employees of which 15 are  
9 IBEW electricians that had been out of work an  
10 average of 24 months.

11                     Due to EIMA program, MZI has invested  
12 \$500,000 in utility vehicles and equipment and has  
13 dedicated a facility on the south side of Chicago to  
14 support the EIMA program. The EIMA program is  
15 critical for my employees and my business to continue  
16 to grow and stay employed. Thank you.

17           CHAIRMAN SCOTT: Thank, Mr. Miller. And thank  
18 you to all of our public commenters. I appreciate  
19 you coming out today to share your thoughts with us.

20

21

22

1 (The Transportation portion of  
2 the proceedings was held at this  
3 time and is contained in a  
4 separate transcript.)

5 CHAIRMAN SCOTT: Turning now to the Public  
6 Utility agenda, we will begin with the approval of  
7 the minutes from our September 6th Bench Session. I  
8 understand amendments have been forwarded.

9 Is there a motion to amend the  
10 minutes?

11 COMMISSIONER COLGAN: So moved.

12 CHAIRMAN SCOTT: Is there a second?

13 COMMISSIONER FORD: Second.

14 CHAIRMAN SCOTT: It's been moved and seconded.  
15 All in favor, say aye.

16 (Chorus of ayes.)

17 CHAIRMAN SCOTT: Any opposed?

18 (No response.)

19 CHAIRMAN SCOTT: The vote is five to nothing,  
20 and the amendments are adopted.

21 Is there a motion to approve the  
22 minutes as amended?



1 COMMISSIONER O'CONNELL-DIAZ: 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 CHAIRMAN SCOTT: Any opposed?

8 (No response.)

9 CHAIRMAN SCOTT: The vote is five to nothing,  
10 and the September 6th Bench Session minutes as  
11 amended are adopted.

12 Up next is the approval of the minutes  
13 from our September 11th Regular Open Meeting. I  
14 understand amendments have been forwarded.

15 Is there a motion to amend the  
16 minutes?

17 COMMISSIONER COLGAN: So moved.

18 CHAIRMAN SCOTT: Is there a second?

19 COMMISSIONER O'CONNELL-DIAZ: Second.

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

21 All in favor, say aye.

22

1 (Chorus of ayes.)

2 CHAIRMAN SCOTT: Any opposed?

3 (No response.)

4 CHAIRMAN SCOTT: The vote is five to nothing,  
5 and the amendments are adopted.

6 Is there a motion to approve the  
7 minutes as amended?

8 COMMISSIONER COLGAN: So moved.

9 CHAIRMAN SCOTT: Is there a second?

10 COMMISSIONER MCCABE: 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 five to nothing,  
17 and the September 11th Regular Open Meeting minutes  
18 as amended are adopted.

19 We move now to the electric portion of  
20 today's agenda. Item E-1 is initiation of the  
21 reconciliation proceeding for ComEd and Ameren  
22 concerning the revenues collected under power

1 procurement riders. Staff recommends entry of an  
2 Order commencing the proceedings.

3 Is there any discussion?

4 (No response.)

5 CHAIRMAN SCOTT: Is there a motion to enter the  
6 Order?

7 COMMISSIONER COLGAN: So moved.

8 CHAIRMAN SCOTT: Is there a second?

9 COMMISSIONER MCCABE: Second.

10 CHAIRMAN SCOTT: It's been moved and seconded.  
11 All in favor, say aye.

12 (Chorus of ayes.)

13 CHAIRMAN SCOTT: Any opposed?

14 (No response.)

15 CHAIRMAN SCOTT: The vote is five to nothing,  
16 and the Order is entered. We will use this five to  
17 nothing vote for the remainder of the public utility  
18 agenda unless otherwise noted.

19 Item E-2 is Docket No. 10-0537. This  
20 is ComEd's reconciliation case for revenues collected  
21 under its energy efficiency rider. This item will  
22 also be held for disposition at a future Commission

1 proceeding.

2                   Item E-3 is Docket No. 11-0721. This  
3 is ComEd's initial formula rate case under Section  
4 16-108.5 of the Public Utilities Act. An Order was  
5 initially entered in this matter on May 29th. The  
6 Commission subsequently granted rehearing on three  
7 issues in this docket, and before us today is an  
8 Order on Rehearing reaching conclusions for the  
9 pension asset, average versus year end rate base, and  
10 the interest rate on reconciliation adjustment  
11 issues.

12                   ALJ Sainsot, are you able to give us  
13 an update on the comments received on the case or  
14 Judge Kimbrel?

15                   JUDGE SAINSHOT: Yes, Mr. Chairman. Previously  
16 at the -- on May 29th there were 2,098 comments and  
17 letters. Since that time, 73 comments and letters  
18 have been filed as of about 9:30 this morning.

19                   CHAIRMAN SCOTT: Thank you. There are  
20 some revisions that are to be --

21                   COMMISSIONER O'CONNELL-DIAZ: Mr. Chairman?

22                   CHAIRMAN SCOTT: Yes.

1           COMMISSIONER O'CONNELL-DIAZ: Can we have a  
2 briefing from the ALJs before we get to the revisions  
3 so that we are clear on what they have recommended in  
4 the Proposed Orders?

5           CHAIRMAN SCOTT: Certainly.

6           COMMISSIONER O'CONNELL-DIAZ: Thank you.

7           JUDGE SAINOT: Well, there is three issues.  
8 There is -- I will discuss two, and then Judge  
9 Kimbrel can talk about the third one.

10                         There is the pension asset, which has  
11 to do with how you interpret the term, "pension  
12 asset." Staff has proffered a very technical term,  
13 and the Proposed Order used the plain meaning of the  
14 words, "pension" and "asset." The result of that  
15 interpretation regarding the pension asset determines  
16 whether there is a rate of return on ComEd's two  
17 pensions. If you take the plain meaning of the word  
18 "pension asset," then there is a rate of return. If  
19 you take the technical term that Staff uses, there is  
20 no rate of return, because the term that Staff uses  
21 requires the asset to have a positive balance and  
22 ComEd's pensions, according to the briefs, are only

1 80 percent funded. So that's the pension asset  
2 issue.

3 Then, there is the average rate base  
4 versus the year end rate base for reconciliation  
5 purposes. That issue concerns whether you look at an  
6 average, which is taken by taking the previous year's  
7 year end rate base and the current one and dividing  
8 them by two. So the term "average" is really a  
9 misnomer. I mean, there is an average, but normally  
10 one would consider an average to be taking the 12  
11 months and dividing them -- adding them up and  
12 dividing them by 12. If you take the year end rate  
13 base, the year end rate base is just a snapshot in  
14 time, and the average rate base is more of a complete  
15 picture.

16 And then, Judge Kimbrel, do you want  
17 to talk about the remainder?

18 JUDGE KIMBREL: Yeah. Regarding the  
19 reconciliation issue, the EMI specifies that any  
20 over-collection or under-collection will be credited  
21 or charged with interest, but it does not specify the  
22 interest to be used, how the interest rate should be

1 determined or whether a different interest rate  
2 should be applied to over and under-collections,  
3 which is why the Commission granted rehearing to  
4 determine what that would -- interest rate would be.

5 ComEd advocated a use of the weighted  
6 average cost of capital for both under and  
7 over-recovered reconciliation balances and maintains  
8 that WACC, or the weighted average cost of capital,  
9 is the only proposed interest rate that complies with  
10 the statute. I agreed with the Company, and that was  
11 based on the fact that I found that it wasn't clear  
12 that ComEd would rely exclusively on short-term debt  
13 or debt to fund the under-recovery, and that we  
14 wouldn't expect ComEd to totally change the way it  
15 manages its capital structure. And I also found that  
16 the record on rehearing did not support a finding  
17 that ComEd will or should finance reconciliation  
18 under-recoveries with only debt or short-term debt.

19 CHAIRMAN SCOTT: Thank you, Judges. Questions?  
20 Comments?

21 COMMISSIONER O'CONNELL-DIAZ: Judge Kimbrel,  
22 with regard to the interest rate and actually what's

1 provided for in the statute, it provides for the full  
2 recovery of any expenditures by the Company with  
3 regard to the infrastructure improvement that is  
4 calculated based on the amounts that are included in  
5 what is submitted; is that a fair reading of the  
6 statute as you --

7 JUDGE KIMBREL: That's the way I read it.

8 COMMISSIONER O'CONNELL-DIAZ: And in this  
9 instance, the recovery period of time, it spans  
10 multi-years; is that correct?

11 JUDGE KIMBREL: That's correct.

12 COMMISSIONER O'CONNELL-DIAZ: So the notion  
13 that short-term debt would be appropriate and would,  
14 in fact, allow the Company to even access it for the  
15 type of debt that they actually are going to be  
16 financing, it seems that that was not a winner in  
17 your thought process?

18 JUDGE KIMBREL: That's what I found,  
19 Commissioner.

20 COMMISSIONER O'CONNELL-DIAZ: And, in fact, the  
21 type of debt that is going to be financed with regard  
22 to the infrastructure improvements that are the



1 subject of the EIMA as provided for in the EIMA will  
2 be something other than short-term debt. There may  
3 be some short-term debt, but in order to cost --  
4 recover all of those costs, it would be almost nearly  
5 impossible for it to be short-term debt only?

6 JUDGE KIMBREL: I agree. I agree with that.

7 COMMISSIONER O'CONNELL-DIAZ: I just want to  
8 understand your rationale. Thank you.

9 CHAIRMAN SCOTT: Further questions or comments?

10 (No response.)

11 CHAIRMAN SCOTT: Thank you, Judges. I believe  
12 Commissioner McCabe has two revisions. Commissioner?

13 COMMISSIONER MCCABE: Yes. I offer a two-part  
14 amendment to ensure consistency between the Ameren  
15 and ComEd formula rate Orders. The first part, the  
16 Commission adopts the use of year end rate base for  
17 purposes of determining the rate year revenue  
18 requirement and average rate base for purposes of  
19 determining the reconciliation revenue requirement.  
20 Using year end balances and average balances in this  
21 manner will reduce regulatory lag and should lessen  
22 the gap between the values to be reconciled.

1                   Second, consistent with the  
2 Commission's decision in Docket 12-0001, the  
3 Commission adopts the recommendation of the Illinois  
4 Industrial Energy Consumers to apply ComEd's  
5 short-term cost of debt rate as the reconciliation  
6 interest rate.

7           CHAIRMAN SCOTT: Well, we will take them  
8 separately and start with the average versus the year  
9 end. Questions or comments on the revision?

10                   Commissioner O'Connell-Diaz?

11           COMMISSIONER O'CONNELL-DIAZ: I just have a  
12 question. Commissioner McCabe, with regard to the  
13 revisions to the year end, using two different  
14 numbers, where do I get guidance in the statute to  
15 arrive at the conclusion that you have that provides  
16 two different mechanisms for recovery of the -- full  
17 cost recovery that's contemplated by the statute?

18           COMMISSIONER MCCABE: I think the record in the  
19 Ameren case provided justification for using year end  
20 for the rate year revenue requirement and average for  
21 the reconciliation purposes.

22           COMMISSIONER O'CONNELL-DIAZ: I am asking about

1 this record.

2 COMMISSIONER MCCABE: We want consistency  
3 between the two Orders, and I think a lot of the  
4 parties in this case made very similar arguments in  
5 both dockets.

6 CHAIRMAN SCOTT: Further discussion?

7 COMMISSIONER O'CONNELL-DIAZ: With regard to  
8 that issue?

9 CHAIRMAN SCOTT: With regard to this issue. I  
10 want to take these one at a time.

11 So I'll call a question on that  
12 particular issue. All in favor of the revisions,  
13 vote aye.

14 COMMISSIONER COLGAN: Aye.

15 CHAIRMAN SCOTT: Aye.

16 COMMISSIONER MCCABE: Aye.

17 CHAIRMAN SCOTT: Opposed?

18 COMMISSIONER FORD: No.

19 COMMISSIONER O'CONNELL-DIAZ: No.

20 CHAIRMAN SCOTT: That revision is adopted on a  
21 three to two vote.

22 Commissioner McCabe's second revision

1 is on the interest rate. Questions or comments on  
2 that issue?

3 COMMISSIONER O'CONNELL-DIAZ: Is she proposing  
4 it?

5 CHAIRMAN SCOTT: Commissioner, are you --

6 COMMISSIONER MCCABE: Okay. I move consistent  
7 with our decision in Docket 12-0001, the Commission  
8 adopt the recommendation to apply ComEd's short-term  
9 cost of debt rate as the reconciliation interest  
10 rate.

11 CHAIRMAN SCOTT: Is there a second?

12 COMMISSIONER COLGAN: Second.

13 CHAIRMAN SCOTT: Now we can have discussion.

14 COMMISSIONER O'CONNELL-DIAZ: I have a question  
15 there, too.

16 Okay. Contained in the language that  
17 you have proffered to us -- and I guess I probably  
18 just need an explanation. With regard to the effect  
19 that your methodology would result in an overall  
20 capital structure of the Company, it appears that  
21 that is left to potentially another Commission  
22 proceeding; is that --

1           COMMISSIONER MCCABE: I'm not sure I understand  
2 your question.

3           COMMISSIONER O'CONNELL-DIAZ: Well, I don't  
4 know if there is language in your -- in your  
5 language, With regard to the arguments by IIEC  
6 and ComEd on the effect that the short-term  
7 reconciliation interest rate may have on the  
8 Company's capital structure, the Commission declines  
9 to make a determination at this time. Instead, the  
10 Commission views this issue is best decided in a  
11 future Commission proceeding.

12           COMMISSIONER MCCABE: Okay. That's the end of  
13 that, that section. I think that's a separate issue  
14 from the larger issue of the treatment, and referring  
15 back to the conversation with ALJ Kimbrel, I believe  
16 the two-year lag is much different than a 30-year or  
17 more asset -- regulatory asset and the kind of  
18 treatment it deserves.

19           COMMISSIONER O'CONNELL-DIAZ: So that sets up a  
20 whole -- another proceeding to look at the effect  
21 this will have on the capital structure. This will  
22 have an effect on the capital structure since this

1 is -- they are not segregated out. We bought 15  
2 poles or new wiring. This is a composite number. So  
3 there will be an affect on the overall capital  
4 structure, and that, in fact, will affect its credit  
5 rating, I would assume.

6 So is there another proceeding that we  
7 will be looking at this, or I am -- what's this other  
8 Commission proceeding that would be --

9 COMMISSIONER MCCABE: This would be a separate  
10 consideration as we go forward in the next ten years  
11 of formula rate hearings and reconciliations.

12 COMMISSIONER O'CONNELL-DIAZ: Okay.

13 CHAIRMAN SCOTT: Yeah, I read that language to  
14 say that that was something that would be -- it was  
15 brought up by two different -- two of the parties,  
16 not all the of the parties, but two of the parties  
17 here, and that there wasn't enough on record to make  
18 a determination of that at that time, but that's  
19 something that as we are going through  
20 reconciliations in the future that that issue may  
21 come back again and will be ripe at that future time.

22 Any further discussion on this issue?

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(No response.)

CHAIRMAN SCOTT: It's been moved and seconded to adopt the revision on the interest rate. All in favor, say aye.

COMMISSIONER MCCABE: Aye.

CHAIRMAN SCOTT: Aye.

COMMISSIONER COLGAN: Aye.

CHAIRMAN SCOTT: Any opposed?

COMMISSIONER O'CONNELL-DIAZ: No.

COMMISSIONER FORD: No.

CHAIRMAN SCOTT: The vote is set three to two, and the revision is adopted. I am going to go back. We voted on it, but I neglected to -- I'm assuming, Commissioner McCabe, you are moving the year end versus average revisions that you discussed and were the subject of our discussion here?

COMMISSIONER MCCABE: Correct.

CHAIRMAN SCOTT: So it's been moved.

Is there a second?

COMMISSIONER COLGAN: Second.

CHAIRMAN SCOTT: It's been moved and seconded.

Any other discussion on that particular issue?

1 (No response.)

2 CHAIRMAN SCOTT: All in favor of that revision,  
3 vote aye.

4 COMMISSIONER MCCABE: Aye.

5 COMMISSIONER COLGAN: Aye.

6 CHAIRMAN SCOTT: Aye.

7 Opposed?

8 COMMISSIONER FORD: No.

9 COMMISSIONER O'CONNELL-DIAZ: No.

10 CHAIRMAN SCOTT: And that revision carries by a  
11 vote of three to two.

12 I have one revision to propose, and  
13 that is on the pension asset. And my revision does  
14 not change the conclusion that was reached in the  
15 Proposed Order as you heard from Judge Sainsot; that  
16 being that ComEd should receive investment return on  
17 the weighted average cost of capital on the amount  
18 listed under the FERC Form 1 filing for pension  
19 asset. The purpose of the edits is to further  
20 clarify the rationale for the decision, and to, in my  
21 opinion, and in working with a couple of the other  
22 offices, to strengthen that decision.



1                   The edits explain that while we don't  
2 believe there is an unambiguous -- excuse me -- that  
3 there is not an unambiguous meaning to the pension  
4 assets. There is a number of instances in EIMA where  
5 the meaning of the concept was not fully fleshed out.  
6 Indeed, ComEd and Staff both believe the language is  
7 incredibly clear that -- and believe it's incredibly  
8 clear in completely opposite conclusions about what  
9 it clearly means. The statute's heavy reliance on  
10 FERC Form 1 leads us to -- and these revisions to  
11 conclude that this is the controlling data, even if  
12 the pension expense is a line that's written by ComEd  
13 on the form, and that the form does not require ComEd  
14 to include such a number. This is, as we know, a new  
15 law, and past Commissions have occasionally allowed  
16 for discretionary contributions to receive investment  
17 return. It's my opinion and proposed in these  
18 revisions and in agreeing with Judge Sainsot's Order  
19 on this matter that the General Assembly meant  
20 something different here than we had done in the  
21 past.

22                   In the original decision in May our

1 Order read that the Staff position was to control;  
2 however, the edits to the Proposed Order and the  
3 Proposed Order on Rehearing itself would conclude  
4 that the General Assembly primarily intended that the  
5 entire amount independent of its liabilities be  
6 included, and so I would re -- move for inclusion of  
7 these revisions.

8 Is there a second?

9 COMMISSIONER MCCABE: Second.

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

11 Further discussion on this revision?

12 COMMISSIONER O'CONNELL-DIAZ: I would like to  
13 thank the Chairman's Office for these -- this change  
14 of heart, I guess would be the word. There is some  
15 language in here that I don't completely concur with;  
16 however, given the importance of this issue, and  
17 given the fact that I think that the ultimate  
18 conclusion is appropriate, and correct, and also most  
19 importantly in line with the directives that we have  
20 had from the General Assembly, I will be supportive  
21 of this language and the revision of the Order.

22 CHAIRMAN SCOTT: Further discussion?



1 (Chorus of ayes.)

2 CHAIRMAN SCOTT: Any opposed?

3 (No response.)

4 CHAIRMAN SCOTT: The vote is five to nothing,  
5 and the pension asset revision is adopted.

6 Further revisions to be proposed?

7 COMMISSIONER O'CONNELL-DIAZ: Chairman, I have  
8 two edits, and I don't know how they didn't get on  
9 your list, but obviously we've already voted on the  
10 year end. So I do not agree obviously based on my  
11 vote that -- I think the legislature was very clear  
12 in their directive to us. It doesn't tell us to do  
13 anything but to look at what's contained on FERC Form  
14 1. I think that the legislature has been abundantly  
15 clear with regard to what the correct conclusion  
16 should be of this body relative to that, but I  
17 obviously don't have the votes for the day.

18 And going back to the consistency that  
19 has been stressed by my colleagues with the Ameren  
20 Order, I also had requested that we take  
21 administrative notice of the granting of the motion  
22 to include in our record the House Resolution 1157.

1                   This we approved two weeks ago. It  
2 was based on a motion. We do not have a motion;  
3 however, our rules do provide for us as a body to  
4 take notice, administrative notice, of rulings in  
5 other cases of -- evidence in other cases, and that  
6 rule appropriately would permit us to include in the  
7 record in this docket that important House  
8 Resolution, which really in my mind does give  
9 evidence to what, in fact, the legislative intent  
10 was.

11                   I've said this before, with regard to  
12 the legislature and how we have had oral argument in  
13 all types of matters relative to this new  
14 legislation, we really didn't need to have another  
15 input from anything else but the legislation, but the  
16 House saw it appropriate to pass this Resolution, and  
17 we also gave it credence by allowing it in the record  
18 in our previous case that we ruled on two weeks ago.

19                   So with that consistency in mind, I  
20 had put this request to have us take administrative  
21 notice of that just as we have done in the other  
22 docket.

1 CHAIRMAN SCOTT: Thank you.

2 COMMISSIONER O'CONNELL-DIAZ: I'll be moving  
3 that.

4 CHAIRMAN SCOTT: Is there a second?

5 COMMISSIONER FORD: Second.

6 CHAIRMAN SCOTT: Further discussion?

7 (No response.)

8 CHAIRMAN SCOTT: The difficulty I had -- I  
9 think there are two distinctions. I appreciate your  
10 argument about the Commission being able to take  
11 notice, but the difference here versus in the Ameren  
12 case is that in the Ameren case, having an  
13 interlocutory appeal and a motion out there based on  
14 a motion to strike created one more issue in that  
15 particular case that by granting the motion and then  
16 dealing with that within the body of the document, I  
17 thought that that was a prudent course for us to take  
18 in terms of what may -- may follow in terms of the  
19 Order.

20 So I think there is a procedural  
21 difference here, which you noted, but I think that  
22 that makes a distinction in this case. The second

1 thing is if you had included the language that we  
2 actually had in the Ameren case I might have felt a  
3 little bit differently about it, but I think rather  
4 than just acknowledge the Resolution and give it the  
5 weight that the current jurisprudence would give it,  
6 the language kind of goes a lot farther than that and  
7 in a way that I'm not -- a way that I am not willing  
8 to support. So for that reason, I won't be  
9 supporting this inclusion.

10 COMMISSIONER O'CONNELL-DIAZ: Well, I would  
11 just remind you, Chairman, that our rules of practice  
12 at the Commission clearly provide for us to be able  
13 to admit some important documents such as this and to  
14 take notice of it, and I think the fact that it is  
15 the body that gave us this law, and I think it's  
16 important that we give deference to that. We did it  
17 in the other proceeding, and clearly our rules  
18 provide for taking such administrative notice not  
19 just in one place, but also it provides in two  
20 instances that this type of administrative notice can  
21 be taken, and I did note for the record that it was  
22 pursuant to a motion in the other case, but in the

1 other case we did not take administrative notice. We  
2 granted the motion.

3 So procedurally it's two different  
4 things, and our rules provide for it, and also, I --  
5 it does contain the same language with regard to  
6 getting agreement for it under the governing  
7 jurisprudence that we used in the Ameren case. So I  
8 would beg to differ with you on that.

9 CHAIRMAN SCOTT: Okay. Further discussion?

10 JUDGE SAINCOT: Mr. Chairman, I'm sorry to  
11 interrupt. I just wanted to clarify something.  
12 Staff attached that Resolution or one version of it  
13 to their brief, so -- and nobody objected. So  
14 technically it is in the record.

15 COMMISSIONER O'CONNELL-DIAZ: I didn't -- I  
16 missed that.

17 COMMISSIONER COLGAN: So technically the  
18 Resolution is attached to the final Order?

19 CHAIRMAN SCOTT: Thank you, Judge.

20 COMMISSIONER O'CONNELL-DIAZ: However, the  
21 Order does not reflect that. I mean, it's in the  
22 record, but it's not in the procedural history of the



1 Order, is it?

2 JUDGE SAINCOT: No. I think it's mentioned in  
3 the pension asset issue. I would have to look again,  
4 but I think --

5 COMMISSIONER O'CONNELL-DIAZ: I just think it's  
6 important for -- because if someone was reading our  
7 Order, the fact that it is in the record is an  
8 important factor in my mind, and it did not seem  
9 clear. My eyes are bloody stumps at the end of this  
10 from all the reading we have done. So I certainly  
11 may have missed that, but that was my intent with  
12 regard to this taking administrative notice, because  
13 I was unaware that that, in fact, had been appended  
14 to one of the briefs. Thank you.

15 CHAIRMAN SCOTT: Further discussion on the  
16 proposed revision?

17 (No response.)

18 CHAIRMAN SCOTT: All in favor, say aye.

19 COMMISSIONER FORD: Aye.

20 COMMISSIONER O'CONNELL-DIAZ: Aye.

21 CHAIRMAN SCOTT: Opposed?

22 COMMISSIONER COLGAN: No.

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CHAIRMAN SCOTT: No.

COMMISSIONER MCCABE: No.

CHAIRMAN SCOTT: The motion fails on a vote of two to three.

Any further revisions to be considered?

(No response.)

CHAIRMAN SCOTT: Then is there a motion to end the Order on Rehearing as amended?

COMMISSIONER COLGAN: So moved.

CHAIRMAN SCOTT: Is there a second?

COMMISSIONER MCCABE: Second.

CHAIRMAN SCOTT: It's been moved and seconded.

Any further discussion?

(No response.)

CHAIRMAN SCOTT: All in favor, say aye.

COMMISSIONER FORD: Aye.

CHAIRMAN SCOTT: Aye.

COMMISSIONER MCCABE: Aye.

COMMISSIONER COLGAN: Aye.

CHAIRMAN SCOTT: Opposed?

1 COMMISSIONER O'CONNELL-DIAZ: I'm opposed.

2 However, I concur with regard to the pension asset.

3 So I am concurring, and I am dissenting.

4 CHAIRMAN SCOTT: On a vote of 4 to 1, the Order  
5 on Rehearing as amended is entered. And on behalf of  
6 the Commission, if our eyes are bloody stumps -- is  
7 that what was said -- then I can't imagine what yours  
8 must be like after this case.

9 So thank you very much for all of your  
10 hard work, a tremendous amount of work in shortened  
11 time periods, and it doesn't go unnoticed by us. We  
12 just want you to know that we appreciate that very  
13 much. Thank you, Judges.

14 JUDGE WALLACE: Mr. Chairman?

15 CHAIRMAN SCOTT: Yes.

16 JUDGE WALLACE: Could I have some clarification  
17 on Commissioner O'Connell-Diaz? Did she dissent in  
18 part or --

19 COMMISSIONER O'CONNELL-DIAZ: I dissented in  
20 part -- yes. I dissented in part and concurred in  
21 part, and I will file a dissent.

22 JUDGE WALLACE: All right. Thank you very

1 much.

2 CHAIRMAN SCOTT: Thank you, Judge.

3 Commissioner?

4 COMMISSIONER O'CONNELL-DIAZ: Yes. Thank you  
5 Mr. Chairman. As it's clear this has been a long and  
6 arduous road for all of us, I know that when the  
7 legislation was being bantered about in the House of  
8 Representatives that the Commission was very active  
9 in those endeavors. We as a group took a position  
10 relative to the legislation. I think some of the  
11 things that we wanted we got. Some of the things we  
12 didn't, but at the end of the day the General  
13 Assembly is in charge of that action in our state.

14 I do understand my role as a  
15 regulator, and I have never been, nor do I have the  
16 desire to be a legislator, but it is my job, like it  
17 or not, to implement the laws that are passed by our  
18 General Assembly. In this instance, as I stated  
19 earlier, in any attempt for me to interpret the law  
20 that was given to us I just really do need to look at  
21 what the law says. I don't need to go through  
22 machinations to decide what's contained there, what

1 the intent is. To me this was very clear.

2 We have had Resolutions. We have had  
3 House hearings that have tried to clarify what the  
4 intent of the drafters of this legislation was for us  
5 as we stumbled along. But overall I found that the  
6 law was clear, and I really didn't need to go with  
7 that secondary source that many would go to in  
8 looking for legislative intent.

9 I do realize that my colleagues have a  
10 different opinion about these things, but it is very  
11 important to me that Illinois who was an early leader  
12 in the area of grid modernization, that we maintain  
13 that lead. I fear that we are falling behind. I  
14 know in many of our national meetings our sister  
15 states are eclipsing infrastructure build that we  
16 need to be doing in our state. They have taken  
17 lessons that we have gone through for them and  
18 adopted those for their states. I don't want  
19 Illinois to be in the back of the pack.

20 Obviously, such a huge financial  
21 commitment of this multi-year program requires  
22 sensitivity to rates for our ratepayers, but also

1 recognition that our utility systems are the backbone  
2 of our economy now and indeed the future of our  
3 state. The EIMA has been chosen as the path forward.  
4 It provides for cost recovery for this unprecedented  
5 build, yes, and let's be clear, there is a cost.  
6 There is no free lunch.

7           This legislation does not give the  
8 utility a blank check. It provides for a -- periods  
9 of reconciliation where every cost that is being  
10 asked to be paid for by ratepayers must be looked at  
11 by the Commission, by all the parties, and not one  
12 penny will be spent that has not gone through that  
13 appropriate process. The Commission is charged with  
14 that responsibility. We are used to doing that. We  
15 have been doing reconciliation proceedings since I  
16 have been here for so many years. I have no doubt  
17 that we are up for that job.

18           It is very troubling to me that the  
19 many benefits of this legislative opportunity that  
20 has been put before us may be held by the decision  
21 that we have entered into today, and I would imagine  
22 that it is up to our utilities to forge further

1 forward, but as I see it, I think that there will be  
2 a challenge for them to be able to provide the full  
3 realization of what the General Assembly gave us with  
4 regard to this grid modernization.

5           So I am sure there will be appeals,  
6 and there will be all different types of legal  
7 mechanisms. There might be more time down in  
8 Springfield. I don't know. But we do need to  
9 modernize our grid. We need to provide these jobs  
10 that are much needed in our communities, and this is  
11 the manner in which we can do it. And again, yes,  
12 there is a cost. Nothing is free in this world, and  
13 we as a community have to get together and solve the  
14 issue of getting our state moving forward. Thank  
15 you.

16           CHAIRMAN SCOTT: Further discussion?

17           COMMISSIONER COLGAN: Well, I just want to say  
18 that I certainly respect your opinion and your  
19 position as a Commissioner has been -- is a very  
20 honorable one, and I've look to you in many ways for  
21 assistance as I've moved into this position, and I  
22 totally respect your opinion, and in this case we

1 have come to a couple of different conclusions.

2 I don't think that there is the  
3 clarity. I didn't find the clarity. I really looked  
4 for the clarity on a couple of the issues, and as we,  
5 you know, debated and struggled with all of this, I  
6 believe that the Commission has come to some very  
7 sound and good decisions here, and I thank all of my  
8 colleagues here and all of our -- assistance of the  
9 ALJs in this case for putting forward our very best  
10 effort. I think that's why there is five of us, and  
11 I think that we, you know, worked through all of  
12 these issues, and I hope that this is a decision that  
13 allows this program to move forward.

14 CHAIRMAN SCOTT: As do I. Obviously, when we  
15 talked about -- and Commissioner O'Connell-Diaz, you  
16 made reference to the legislative work, and I spent a  
17 lot of time in the legislature during the pendency of  
18 this particular bill and working with our legislators  
19 and we share, obviously, the desire that the smart  
20 grid move forward for all the reasons that you said.

21 However, in a bill that's this large  
22 and this complex, and a case of first impression on



1 all of these different issues, you know, trying to  
2 weigh every particular individual issue as it came  
3 forward created -- and I agree with Commissioner  
4 Colgan -- a couple of instances where there was some  
5 lack of clarity in there, and reasonable folks can  
6 disagree as to the interpretations there, and I think  
7 obviously we have done that, and we have played that  
8 out here.

9                   Certainly having had the desire to be  
10 a legislator once and having done that, I respect  
11 that process tremendously, and I respect the people  
12 who do it, and all of us are trying to figure out the  
13 best way to implement a law that was duly passed and  
14 by the General Assembly. You are right. That's our  
15 job, and even though we disagree on some of the  
16 particulars of that legislation, I don't think we  
17 disagree at all with anybody here and certainly the  
18 legislature that passed it with the idea of trying to  
19 move forward on -- on advanced metering can mean a  
20 lot of good things in terms of energy efficiency and  
21 usage going forward.

22                   This Commission before I got here was

1 certainly a leader in that. Commissioner Ford and  
2 Commissioner O'Connell-Diaz and Commissioner Colgan  
3 were working on those issues, which I appreciate and  
4 support, and the fact that we have a couple of  
5 disagreements on a couple of the issues doesn't in  
6 any way mitigate the fact that I want this  
7 legislation to move forward, but to move forward in a  
8 way that not only respects the legislation itself,  
9 but also the balancing that we always do between the  
10 Company and the ratepayers.

11 Anything further on this?

12 (No response.)

13 CHAIRMAN SCOTT: Thank you, everyone involved  
14 in this case. We appreciate all of your hard work  
15 involved in this.

16 Item E-4 is Docket No. 09-0592, which  
17 is our rulemaking proceeding for Parts 412 and 453 of  
18 Title 83 of the Administrative Code. Before us today  
19 is an Order authorizing the submission of the  
20 Post-Prohibition Revisions to Part 412 to JCAR, and  
21 ALJ Benn recommends entry of that Order.

22 Is there any discussion?

1 (No response.)

2 CHAIRMAN SCOTT: Are there any objections?

3 (No response.)

4 CHAIRMAN SCOTT: Hearing none, the Order is  
5 entered.

6 Item E-5 is Docket No. 12-0213. This  
7 is a proceeding to adopt rules establishing  
8 certification requirements ensuring that entities  
9 installing distributed generation facilities are in  
10 compliance with the requirements of Section 16-128A  
11 of the Public Utilities Act. ALJ Albers recommends  
12 entry of the First Notice Order for submission of the  
13 proposed rule.

14 Is there any discussion?

15 (No response.)

16 CHAIRMAN SCOTT: Any objections?

17 (No response.)

18 CHAIRMAN SCOTT: Hearing none, the Order is  
19 entered.

20 Item E-6 is Docket No. 12-0419. This  
21 is an eminent domain petition filed by the Illinois  
22 Department of Transportation seeking easement for a

1 road improvement project. ALJ Hilliard recommends  
2 entry of an Order approving the petition.

3 Is there any discussion?

4 (No response.)

5 CHAIRMAN SCOTT: Any objections?

6 (No response.)

7 CHAIRMAN SCOTT: Hearing none, the Order is  
8 entered.

9 Item E-7 is Docket No. 12-0488. This  
10 is ComEd's petition pursuant to Section 7-101 of the  
11 Public Utilities Act seeking authority to enter into  
12 a revolving credit agreement with the Seaway Trust.  
13 ALJ Hilliard recommends entry of an Order granting  
14 the petition.

15 Is there any discussion?

16 (No response.)

17 CHAIRMAN SCOTT: Any objections?

18 (No response.)

19 CHAIRMAN SCOTT: Hearing none, the Order is  
20 entered.

21 Item E-8 is Docket No. 07-0316. This  
22 is Spark Energy's petition seeking confidential

1 and/or proprietary treatment of its credit facility  
2 agreement. ALJ Wallace recommends dismissing the  
3 petition on the Commission's own motion.

4 Is there any discussion?

5 (No response.)

6 CHAIRMAN SCOTT: Are there any objections to  
7 the dismissal?

8 (No response.)

9 CHAIRMAN SCOTT: Hearing none, the matter is  
10 dismissed.

11 Items E-9 through E-11 can be taken  
12 together. These items are petitions for the  
13 confidential and/or proprietary treatment of the  
14 petitioners' reports. In each case ALJ Jones  
15 recommends entry of an Order granting the requested  
16 protective treatment.

17 Is there any discussion?

18 (No response.)

19 CHAIRMAN SCOTT: Are there any objections?

20 (No response.)

21 CHAIRMAN SCOTT: Hearing none, the Orders are  
22 entered.

1                   Item E-12 is Docket No. 12-0397. This  
2 is a petition by Santanna Energy Services seeking the  
3 elimination of certain reporting requirements imposed  
4 by the Commission in Docket No. 09-0597. ALJ  
5 Jorgenson recommends entry of an Order granting the  
6 company's petition.

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.

13           COMMISSIONER O'CONNELL-DIAZ: I'd just like to  
14 recognize -- I think this is Judge Jorgenson's first  
15 major Order to us. Is it?

16           CHAIRMAN SCOTT: They are all major.

17           COMMISSIONER O'CONNELL-DIAZ: Yes. But this  
18 one was a little bit -- this was a little heavy  
19 lifting, and I just wanted to recognize it is an  
20 excellent Order.

21           CHAIRMAN SCOTT: Very good.

22   Items E-13 through E-16 can be taken

1 together. These items concern application for  
2 licensure as an agent, broker and consultant under  
3 Section 16-115C of the Public Utilities Act. In each  
4 case, ALJ Albers recommends entry of an Order  
5 granting the certificate.

6 Is there any discussion?

7 (No response.)

8 CHAIRMAN SCOTT: Any objections?

9 (No response.)

10 CHAIRMAN SCOTT: Hearing none, the Orders are  
11 entered.

12 Items E-17 through E-19 can be taken  
13 together. These items concern application for  
14 licensure as an alternative retail electric supplier  
15 under Section 16-115 of the Public Utilities Act. In  
16 each case the ALJ recommends entry of an Order  
17 granting the certificate.

18 Is there any discussion?

19 (No response.)

20 CHAIRMAN SCOTT: Any objections?

21 (No response.)

22 CHAIRMAN SCOTT: Hearing none, the Orders are

1 entered.

2 Turning now to natural gas. Item G-1  
3 is Docket No. 07-0358. This is a proceeding  
4 concerning Peoples Gas' engagement in a public  
5 awareness campaign for its pipeline safety inspection  
6 program. These issues have since been resolved by  
7 the parties to this docket, and ALJ Dolan recommends  
8 dismissal of this matter on the Commission's own  
9 motion.

10 Is there any discussion?

11 (No response.)

12 CHAIRMAN SCOTT: Are there any objections?

13 (No response.)

14 CHAIRMAN SCOTT: Hearing none, the dismissal is  
15 granted.

16 Moving on to telecommunications. Item  
17 T-1 is Docket No. 11-0390. This is a citation  
18 proceeding against Movida Communications for the  
19 failure to maintain its corporate status. ALJ  
20 Kimbrel recommends entry of an Order revoking the  
21 Company's certificate of service authority.

22 Is there any discussion?



1 (No response.)

2 CHAIRMAN SCOTT: Any objections?

3 (No response.)

4 CHAIRMAN SCOTT: Hearing none, the Order is  
5 entered.

6 Item T-2 is Docket No. 12-0448. This  
7 is a Joint Petition for the approval of the  
8 negotiated resale agreement between CenturyLink and  
9 Granite Communications -- Telecommunications. ALJ  
10 Riley recommends entry of an Order granting the  
11 agreement.

12 Is there any discussion?

13 (No response.)

14 CHAIRMAN SCOTT: Any objections?

15 (No response.)

16 CHAIRMAN SCOTT: Hearing none, the Order is  
17 entered.

18 Item T-3 is Docket No. 11-0668. This  
19 is Dex One's petition for a variance from the  
20 requirements of Section 735.180 of the Administrative  
21 Code. This item will be held for disposition at a  
22 future Commission proceeding.

1                   On to water and sewer. Item W-1 is  
2 Docket No. 11-0677. This is Jeremy Laramore's  
3 complaint against Illinois-American Water Company.  
4 ALJ Jones recommends entry of an Order denying the  
5 complaint.

6                   I have a revision to propose on this  
7 matter circulated last week. The revision actually  
8 changes the decision and finds in favor of Mr.  
9 Laramore. The IAWC in this case is relying on the  
10 tariff in saying that their responsibility stops at  
11 the, quote, unquote, "property."

12                   In this case the property in question  
13 is not Mr. Laramore's. It's his neighbor's, and  
14 there is absolutely no evidence of the ability for  
15 Mr. Laramore to do work on his neighbor's property or  
16 any connection between those two pieces of property  
17 at all. Taking it to an illogical conclusion, IAWC's  
18 position would allow for allowing it several parcels  
19 away, because in their testimony they just said that  
20 that meant when they hit property, that meant their  
21 responsibility was done if that's where they left the  
22 meter.

1                   There is not any evidence that would  
2 explain the decision as to why the meter was put  
3 where it was, and in doing this we are also -- in the  
4 revisions also asking for information as to how many  
5 cases are like this. It appears to be atypical, but  
6 it would be a good idea to know, I think, in terms of  
7 how would we react in future matters, how prevalent  
8 this situation is.

9                   So with that, I would move these  
10 revisions.

11                  COMMISSIONER COLGAN: I second that.

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

13                                 Any discussion on this item?

14                  COMMISSIONER O'CONNELL-DIAZ: Yeah. Thank you,  
15 Mr. Chairman, for your edits. But the one concern I  
16 would have -- and I think we talked about this the  
17 last time this was up by the Commission. It might  
18 have been Commissioner Colgan, but the concern is  
19 that -- I think this is one of those older systems,  
20 and it's not clear to me when Illinois-American came  
21 on board with this, and, you know, did the  
22 developer -- because the developer did this. And I

1 think I saw like the year 1930 something in the  
2 record.

3                   So I would be very concerned that if  
4 that is the case, that we have some similar  
5 situations like this, and it isn't atypical, that  
6 there would be a very, very large expense to the  
7 company and to its ratepayers to, you know, remediate  
8 these type of situations. Also, I think it would  
9 also serve to make it less attractive for some of our  
10 larger companies to take over some of these small,  
11 struggling utilities that are throughout our service  
12 territory in Illinois.

13                   So I think it would be cautionary I  
14 think when you do -- appropriately do what you are  
15 suggesting, but that we have to, you know, kind of  
16 figure out what kind of cost impact are we looking  
17 at, and does it have a downside with regard to these  
18 larger utilities taking over some of the smaller  
19 struggling homeowners' associations or those type of  
20 situations that are throughout our state. So with  
21 that caution --

22                   CHAIRMAN SCOTT: I agree with those concerns,

1 and that was the purpose for asking for the  
2 variation, so we could find out what the impact would  
3 be, and you're especially accurate in terms of some  
4 of the very small ones where the rate impact of this  
5 could be very dramatic for the other individuals in  
6 those small systems. So I appreciate those comments.

7 COMMISSIONER COLGAN: And that argument in  
8 itself is pretty good evidence to come to the  
9 conclusion that your amendment has come to, but it's  
10 not just that, but it's this land property owner  
11 would have to go on somebody else's property and dig  
12 it up and make the repair, which, you know --

13 COMMISSIONER O'CONNELL-DIAZ: Might have the  
14 sheriff out there.

15 COMMISSIONER COLGAN: Do you want somebody in  
16 your yard? I mean, they are like, what are you doing  
17 in my yard with your shovel? You know, so it kind of  
18 creates a -- those two things together create a  
19 support for --

20 CHAIRMAN SCOTT: Or the other option that was  
21 laid out was to bring it down the other piece of  
22 road, which what we also don't know for that is when

1 that piece of road was built to the property that Mr.  
2 Laramore has now, which would be even more expensive  
3 than going through the neighbor's property.

4 Further discussion?

5 (No response.)

6 CHAIRMAN SCOTT: It's been moved and seconded  
7 to approve the revisions as moved.

8 All in favor, say aye.

9 (Chorus of ayes.)

10 CHAIRMAN SCOTT: Opposed?

11 (No response.)

12 CHAIRMAN SCOTT: The vote is five to nothing,  
13 and the revisions are adopted.

14 Is there a motion to enter the Order  
15 as amended?

16 COMMISSIONER COLGAN: So moved.

17 CHAIRMAN SCOTT: Is there a second?

18 COMMISSIONER O'CONNELL-DIAZ: Second.

19 CHAIRMAN SCOTT: It's been moved and seconded.  
20 Any discussion?

21 (No response.)

22 CHAIRMAN SCOTT: All in favor, say aye.

1 (Chorus of ayes.)

2 CHAIRMAN SCOTT: Any opposed?

3 (No response.)

4 CHAIRMAN SCOTT: The vote is five to nothing,  
5 and the Order as amended is entered.

6 Item W-2 is Docket No. 12-0219. This  
7 is a petition by Aqua Illinois seeking a certificate  
8 for operating a wastewater collection system in  
9 Bourbonnais and the related regulatory approvals.  
10 ALJ Hilliard recommends entry of an Order granting  
11 the requested relief.

12 Is there any discussion?

13 (No response.)

14 CHAIRMAN SCOTT: Any objections?

15 (No response.)

16 CHAIRMAN SCOTT: Hearing none, the Order is  
17 entered.

18 Moving on to miscellaneous items.

19 Item M-1 is Docket No. 06-0703, and this is the  
20 rulemaking proceeding for Title 83 Part 280 of the  
21 Administrative Code. This item will be held for  
22 disposition at a future Commission proceeding.

1                   There was one Petition for Rehearing  
2 to consider today. Item PR-1 is Docket No. 11-0633,  
3 and this is George Fehringer's complaint against  
4 Nicor. This matter was previously dismissed for want  
5 of prosecution, and the complainant has since filed a  
6 Petition for Rehearing indicating he would like to  
7 pursue his complaint. ALJ Dolan recommends granting  
8 the complainant's Petition for Rehearing.

9                   Is there any discussion?

10                   COMMISSIONER O'CONNELL-DIAZ: Well, I just  
11 would like to -- and I'm sure that Judge Dolan will  
12 be doing this, but every time that we have someone  
13 that doesn't show up for our hearings, we have our --  
14 you know, the court reporter that comes, and there  
15 are expenses involved here. So it's important when  
16 someone does file something here that they follow  
17 through. So obviously we are giving this gentleman a  
18 second bite at the apple, but, you know, it just sets  
19 procedures in motion that are costly. That is what  
20 we do, but I think they need to -- the complainant  
21 needs to understand that and respect that.

22                   CHAIRMAN SCOTT: Judge?



1 JUDGE DOLAN: Yes, I agree.

2 CHAIRMAN SCOTT: Any further discussion?

3 (No response.)

4 CHAIRMAN SCOTT: Are there any objections?

5 (No response.)

6 CHAIRMAN SCOTT: Hearing none, the Petition for  
7 Rehearing is granted.

8 Last up is one item of other business  
9 for today, and this concerns the approval of the  
10 Commission's official meeting calendar for 2013. I  
11 believe the latest copy of this reflects the input of  
12 all of the Commissioners. So I believe we are set to  
13 move forward with that.

14 Is there any discussion on the 2013  
15 calendar?

16 COMMISSIONER FORD: None from me.

17 CHAIRMAN SCOTT: I'd move for the approval of  
18 the 2013 calendar. Is there a second?

19 COMMISSIONER FORD: Second.

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

21 All in favor, say aye.

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(Chorus of ayes.)

CHAIRMAN SCOTT: Any opposed?

(No response.)

CHAIRMAN SCOTT: The vote is five to nothing,  
and the calendar is approved.

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

JUDGE WALLACE: No. We are just really set to  
go for 2013 now.

CHAIRMAN SCOTT: Thank you, sir. Hearing none,  
this meeting stands adjourned.

(END OF PROCEEDINGS.)