

1 BEFORE THE
2 ILLINOIS COMMERCE COMMISSION

3
4 SPECIAL OPEN MEETING

5
6 Springfield, Illinois
7 Tuesday, April 13, 2010

8
9 Met, pursuant to notice, at 10:30 a.m. in
10 Room A, Leland Building, 527 East Capitol Avenue,
11 Springfield, Illinois.

12
13 PRESENT:

14 MR. MANUEL FLORES, Acting Chairman

15 MS. LULA M. FORD, Commissioner

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

17 MR. SHERMAN J. ELLIOTT, Commissioner

18 MR. JOHN COLGAN, Acting Commissioner

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20
21 SULLIVAN REPORTING COMPANY, by
22 Carla J. Boehl, Reporter
22 CSR #084-002710

1 PROCEEDINGS

2 ACTING CHAIRMAN FLORES: Good morning.

3 Pursuant to the provisions of the Illinois Open
4 Meetings Act, I now convene a regularly scheduled
5 open meeting of the Illinois Commerce Commission.
6 With me in Springfield are Commissioners Ford,
7 O'Connell-Diaz, Elliott and Acting Commissioner
8 Colgan. I am Acting Chairman Flores. We have a
9 quorum.

10 Before moving into the agenda,
11 according to Section 1700.10 of the Illinois
12 Administrative Code, this is the time we allow
13 members of the public to address the Commission.
14 Members of the public wishing to address the
15 Commission must notify the Chief Clerk's office at
16 least 24 hours prior to the bench session. According
17 to the Chief Clerk's office, we have no requests to
18 speak for this open meeting.

19 Turning now to the Public Utility
20 Agenda, Item 1 concerns the approval of minutes from
21 a March 16, 2010, regular open meeting. I understand
22 that amendments have been forwarded. Is there a

1 motion to amend the minutes?

2 COMMISSIONER ELLIOTT: So moved.

3 ACTING CHAIRMAN FLORES: Is there a second?

4 ACTING COMMISSIONER COLGAN: Second.

5 ACTING CHAIRMAN FLORES: It's been moved and
6 seconded. All in favor say aye.

7 COMMISSIONERS: Aye.

8 ACTING CHAIRMAN FLORES: Any opposed?

9 The vote is 5-0 amending the minutes.

10 Is there a motion to approve the
11 minutes as amended?

12 COMMISSIONER FORD: So move.

13 ACTING CHAIRMAN FLORES: Is there a second?

14 COMMISSIONER COLGAN: Second.

15 ACTING CHAIRMAN FLORES: It's been moved and
16 seconded. All in favor say aye.

17 COMMISSIONERS: Aye.

18 ACTING CHAIRMAN FLORES: Any opposed?

19 The vote is 5-0 approving the minutes
20 as amended.

21 Item 2 on today's agenda is Docket
22 08-0175. This case concerns complaints brought by

1 Citizens Utility Board, Citizens Action/Illinois and
2 AARP against U.S. Energy Savings Corporation, an
3 alternative gas supplier. This item will be held
4 until the end of the session, so we will address it
5 as a final item in today's hearing.

6 Item 3 is Docket Number 10-0008, Atmos
7 Energy Corporation's application for an Order
8 authorizing the issuance of up to two million shares
9 of common stock through its retirement savings plan
10 in an amount not to exceed \$70 million. The
11 Administrative Law Judge recommends the entry of an
12 Order approving Atmos' application.

13 Is there any discussion? Is there a
14 motion to enter the Order?

15 COMMISSIONER ELLIOTT: So move.

16 ACTING CHAIRMAN FLORES: Is there a second?

17 ACTING COMMISSIONER COLGAN: Second.

18 ACTING CHAIRMAN FLORES: It's been moved and
19 seconded. All in favor say aye.

20 COMMISSIONERS: Aye.

21 ACTING CHAIRMAN FLORES: Any opposed?

22 The vote is 5-0 and the Order is

1 entered.

2 Item Number 4 is Docket Number
3 10-0119, DTE Energy Supply's application for a
4 Certificate of Authority to operate as an alternative
5 retail electric supplier under Section 16-115 of the
6 Public Utilities Act. Administrative Law Judge
7 Sainsot recommends entering the Order granting DTE's
8 certificate.

9 Is there any discussion?

10 Is there a motion to enter the Order.

11 COMMISSIONER ELLIOTT: So move.

12 ACTING CHAIRMAN FLORES: Is there a second?

13 ACTING COMMISSIONER COLGAN: Second.

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

16 COMMISSIONERS: Aye.

17 ACTING CHAIRMAN FLORES: Any opposed?

18 The vote is 5-0 and the Order is
19 entered.

20 Item Number 5 is Docket Number
21 09-0268, the Verizon/Frontier merger case. This item
22 will be held for disposition at a future hearing.

1 Item 6 is Docket Number 09-0319,
2 Illinois-American Water Company's proposed general
3 increase in water and sewer rates. Revisions to the
4 Order have been circulated among the Commissioners.
5 Commissioner Elliott, I believe you had two sets of
6 revisions. Let's start with those on which we
7 believe there is universal agreement among the
8 Commissioners.

9 COMMISSIONER ELLIOTT: Yes, thank you,
10 Mr. Chairman. I made several changes. The first
11 change is under the Cash Working Capital Section to
12 change the revenue by 21 days, and also directed in
13 that section IAWC in future cases to file a lead-lag
14 study contemporaneous with the test year.

15 Also, one of the changes was to change
16 the cost of short-term debt from one percent to .347,
17 reflective of the most recent available cost of
18 short-term debt in the record.

19 Also, private fire protection charges,
20 I amended that to reflect that the private fire
21 charges will not require more than 100 percent of the
22 cost. It's similar to our public fire protection

1 charge cost basis.

2 And the next one would be capping the
3 fixed costs at 80 percent for the 5/8-inch meter
4 customers.

5 I believe those -- I will offer those
6 five and we will see where we are at with those five.
7 I would move those five changes, those five
8 amendments.

9 ACTING COMMISSIONER COLGAN: I second that.

10 COMMISSIONER O'CONNELL-DIAZ: And just so I
11 could clarify, Commissioner Elliott, with regard to
12 the fire protection charge, what your edits do is
13 insure that there is not a profit center for the
14 company with regard to those essential services that
15 obviously needs to be in the communities and ought to
16 be recovered by the company, but they are recovered
17 at what the actual cost is, with no profit.

18 COMMISSIONER ELLIOTT: Consistent with the
19 public fire protection cost.

20 COMMISSIONER O'CONNELL-DIAZ: Thank you.

21 ACTING CHAIRMAN FLORES: Is there any other
22 discussion on Commissioner Elliott's first set of

1 revisions?

2 Is there a motion to accept
3 Commissioner Elliott's amendments, five amendments?

4 COMMISSIONER FORD: So move.

5 ACTING CHAIRMAN FLORES: Is there a second?

6 ACTING COMMISSIONER COLGAN: Second.

7 ACTING CHAIRMAN FLORES: It's been moved and
8 seconded. All in favor say aye.

9 COMMISSIONERS: Aye.

10 ACTING CHAIRMAN FLORES: Any opposed?

11 The vote is 5-0. Commissioner
12 Elliott's revisions are adopted.

13 COMMISSIONER ELLIOTT: Mr. Chairman, I do have
14 two others I would like to offer.

15 ACTING CHAIRMAN FLORES: Okay.

16 COMMISSIONER ELLIOTT: The next is regarding
17 the service company fees. In this particular issue I
18 was concerned that the study provided by the company
19 was not sufficient in my mind to support their
20 requested increase. So in that regard I amended the
21 order to reflect the five percent increase which was
22 the proposal of the Attorney General in this case,

1 and also suggested that an independent audit of the
2 service company fees be taken up. And I have put
3 language into the Order affecting those two changes.

4 In addition, with regard to the demand
5 factors in the cost of service study, I adopted
6 language to direct that a direct demand study at
7 least be reviewed as to the cost, and an independent
8 firm be taken up to provide bids to provide a direct
9 demand study. And we can take a look at that and see
10 what the cost and the benefit of those direct demand
11 studies are.

12 So I would offer those two amendments
13 as well.

14 ACTING CHAIRMAN FLORES: Any further
15 discussion?

16 At this time is there a motion to
17 accept these two additional amendments, capping the
18 service company fees at five percent and also the RFP
19 for an independent audit on demand factors?

20 COMMISSIONER O'CONNELL-DIAZ: Mr. Chairman, are
21 we going to have a discussion with regard to the
22 revisions or do you want to have that now?

1 ACTING CHAIRMAN FLORES: I think we can have
2 that now.

3 COMMISSIONER O'CONNELL-DIAZ: Well, with regard
4 to Commissioner Elliott, I am just in a quandary with
5 regard to your first revision. You know, as I look
6 through the record, I don't see any witness
7 challenging the methodology that has been presented
8 by the company. There was a detailed estimate given
9 by the company, the proposal by the AG to cap it to
10 five percent of the amount that was granted in the
11 previous docket.

12 It is why we have these cases that the
13 opportunity is there for everyone to inquire as to
14 what is presented by the company. I don't find that
15 that happened. So what now is going to happen is we
16 are going to layer on another segment of costs that
17 are going to have to be recovered from ratepayers to
18 do what should have been happening in this docket
19 over the 11-month period, and that to me is
20 troubling.

21 You know, at this point in time we are
22 really looking at every single cost that we are

1 asking ratepayers to pay, and the parties in this
2 proceeding had an obligation through the discovery
3 process, as well as the hearing process, to come
4 forward with an alternative methodology to challenge
5 the methodology that was presented by the company in
6 the Belleville lab study. I don't find any of that
7 in this record.

8 But now what they are asking us to do
9 is they are asking us to cap it, and now we are going
10 to have another study that is going to be utilizing
11 an independent audit company which will be paid large
12 amounts of money, and that will be flowed through to
13 ratepayers. So I find it hard to support something
14 like that when there are many parties in this case
15 that should have been doing the work all along during
16 the progression of this case. I don't find a shred
17 of contrary testimony or evidence to have us look
18 differently, other than at the end saying, well,
19 let's just do it this way because we didn't do our
20 work. So I am just not in favor of layering another
21 cost on ratepayers.

22 COMMISSIONER ELLIOTT: Well, yeah, I am not

1 interested in having the costs increased, either.
2 But I think in this particular issue and actually
3 throughout in many of the areas, particularly with
4 the cost of service, the lead-lag study and the study
5 that was performed for the service company fees, I
6 found many of these areas to be lacking.

7 And from my perspective, having an
8 independent audit of these figures to provide some
9 assurance to the Commission that what we are looking
10 at are accurate numbers that are reasonable
11 estimations is the appropriate way to go. I am
12 reluctant to initiate an audit as well, but in this
13 case I feel it is justified.

14 COMMISSIONER FORD: I am always reluctant about
15 an audit because, after having been on this
16 Commission, I see us doing studies that I see also
17 the consultants coming in with different views and
18 then we have to do another, as Commissioner
19 O'Connell-Diaz said, another study for that study.
20 So I think it becomes too much repetition and it is
21 certainly burdensome and onerous for our staff, and I
22 just could not support an audit or a study for this.

1 COMMISSIONER O'CONNELL-DIAZ: And I really have
2 to emphasize the fact that this is an 11-month
3 proceeding and the company comes in, they file their
4 case, and it is up to the parties to start chipping
5 away at whatever the company comes in with and to put
6 alternative methodologies to poke holes at what they
7 have presented. There is nothing in this record by
8 any witness with regard to this, and that to me is
9 troubling.

10 So because certain entities, groups,
11 have not done really their due diligence in the
12 record before us, we are left with the record the way
13 it is and now we are going to have, you know, another
14 proceeding going on that is actually going to cost
15 ratepayers money. I think that, you know, everybody
16 has got a job in the rate case and I don't find that
17 the parties have done their job in this case, and
18 that's disturbing to me. So I can't support that.

19 ACTING CHAIRMAN FLORES: Any further discussion
20 on these two additional amendments? Is there --

21 ACTING COMMISSIONER COLGAN: Chairman, I really
22 hear what's being said by the two Commissioners who

1 just made comments about layering on costs to the
2 consumers. I think the rate case itself lays on
3 heavy costs to consumers, which is very troubling to
4 me. And there has been lots of discussion in this
5 case about whether there should be an indirect or
6 direct demand study. And I came onto this case after
7 it had been pretty much laid down, and I have also
8 gone back through the record of some previous cases
9 where there is this very same issue. This seems like
10 it keeps turning around.

11 So, you know, I hear the concern about
12 the costs, but I think we need to close the door on
13 whether or not we need a direct or indirect demand
14 study, cost of service study. So I am going to
15 support this amendment for Commissioner Elliott's
16 amendment on this case.

17 COMMISSIONER O'CONNELL-DIAZ: Well, just so we
18 are clear, we are talking about two different studies
19 here. We are talking about the direct and, with all
20 due deference to Commissioner Colgan's comments, we
21 are talking about the business services study, which
22 that's what I am talking about should have occurred

1 in the case, didn't occur in the case. Nobody put
2 any contrary evidence for us to look at. But now we
3 are going to do an audit about it. That's number
4 one.

5 Number two, which I did not comment on
6 but now I am going to have to, the direct demand
7 study. You know, we had the workshop process that
8 ended up with the requirement that we would follow
9 the AWWA standard. This direct demand study, which I
10 guess what your language is going to do is going to
11 bounce it off into another proceeding and then we
12 will actually look at whether we will do it or not or
13 based on the cost, is that a fair understanding?

14 COMMISSIONER ELLIOTT: Yeah, get some estimates
15 from some outside companies.

16 COMMISSIONER O'CONNELL-DIAZ: The direct demand
17 study is not a study that is used by any regulatory
18 entity in the United States, in fact, probably in the
19 universe. So I don't know what we would be doing
20 with that. I am not adverse to doing -- you know, we
21 ordered the company to do cost studies. But whether
22 in fact the direct demand study is the appropriate

1 vehicle, just as Commissioner Colgan has just noted,
2 I do think we need to close the door on what exactly
3 is it that we want the company to do. And, you know,
4 we have been around the block with this issue. But
5 when we look at the costs that are associated with
6 it, I think we have got \$1.86 million for one service
7 territory versus 143,000. That's a big difference.

8 So if the import of your
9 recommendation on that and your change is to just
10 kind of look at it, as opposed to that we are going
11 to accept it right now, then I guess that that's a
12 different remedy. But the use of a direct demand
13 study, I don't know where that's going to get us. So
14 those would be my concerns with regard to the
15 secondary one.

16 So as I see it, these are two costs
17 that consumers are going to have to bear, based on
18 our ruling today.

19 ACTING CHAIRMAN FLORES: Is there a motion on
20 Commissioner Elliott's two amendements?

21 COMMISSIONER ELLIOTT: Mr. Chairman, I will
22 move the two amendments.

1 ACTING CHAIRMAN FLORES: Is there a second?

2 ACTING COMMISSIONER COLGAN: Second.

3 ACTING CHAIRMAN FLORES: At this time there has
4 been a motion and it has been seconded. All in favor
5 say aye.

6 COMMISSIONERS: Aye.

7 ACTING CHAIRMAN FLORES: All opposed?

8 COMMISSIONERS: Nay.

9 ACTING CHAIRMAN FLORES: Let the record reflect
10 that Acting Chairman Flores, Acting Commissioner
11 Colgan and Commissioner Elliott voted in favor of
12 Commissioner Elliott's motion to also make these two
13 additional amendments. Also let the record reflect
14 that Commissioner Ford and Commissioner
15 O'Connell-Diaz voted no on the motion.

16 At this time then, I would like to see
17 if there is any other discussion on the Order.

18 I would like to make a few comments.
19 This has been a very difficult case and in some
20 aspects troubling. We have heard cries to reject
21 this increase. However, we must act according to the
22 law and evidence presented in this case. On that

1 basis I am reluctantly voting to accept the Order as
2 amended. I am disappointed that in many instances
3 Illinois-American Water Company did not clearly
4 follow past direction from the Commission.

5 That being said, we have carefully
6 scrutinized the Order, and I deeply appreciate the
7 efforts that all the Commissioners and staff put into
8 improving several aspects of it today, for example,
9 limiting the size of the service company, the
10 increase and ordering an audit of it, will help this
11 Commission better monitor Illinois-American Water
12 Company's actions in relationship to its parent
13 company. This company cannot view the Illinois
14 ratepayers as an open checkbook, and today we begin
15 the process of bringing in those fees.

16 Likewise, the revisions regarding
17 their future obligations of lead-lag studies and
18 direct demand studies are designed to give the
19 Commission the right tools for carefully watching any
20 future rate request from this company. I do recall a
21 very compelling statement from one of our own staff
22 in oral argument where he said "Garbage in, garbage

1 out," a very compelling statement and I think
2 underscores the need for better analysis and
3 implementing better tools when we know that there are
4 better tools out there to give us a better
5 perspective of how to evaluate these rate increases
6 or petitions for rate increases.

7 So again I want to thank the
8 Commissioners for their hard work that they put in,
9 and I generally hope that Illinois-American Water
10 Company has taken notice of the type of public
11 comment and customer filings that this case has
12 generated.

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

15 COMMISSIONER ELLIOTT: So move.

16 ACTING CHAIRMAN FLORES: Is there a second?

17 COMMISSIONER FORD: Second.

18 ACTING CHAIRMAN FLORES: It's been moved and
19 seconded. All in favor say aye.

20 COMMISSIONERS: Aye.

21 ACTING CHAIRMAN FLORES: Any opposed?

22 Let the record reflect a 5-0 vote in

1 favor of the Order as amended.

2 COMMISSIONER O'CONNELL-DIAZ: Mr. Chairman, if
3 I might?

4 ACTING CHAIRMAN FLORES: Yes, ma'am.

5 COMMISSIONER O'CONNELL-DIAZ: Yeah, I would
6 echo the reflections that the Chairman has noted for
7 the record. I would also like to commend our staff
8 and all the parties that participated in the
9 proceeding. I know we sat through many comments. We
10 also saw many articles in the newspaper, and some of
11 those items were somewhat disturbing and showed a
12 lack of understanding as to what exactly the
13 Commission does when we have a case like this.

14 And I just want to make it clear that
15 the Commission is not a rubber stamp for anybody. We
16 are not a rubber stamp for our ALJs; we are not a
17 rubber stamp for a company position; we are not a
18 rubber stamp for a consumer advocate position. Our
19 staff works around the clock when we get a proceeding
20 like this. I know that we all worked over the last
21 month and a half, actually more than a month and a
22 half, on weekends and nights, going through the

1 records so we have a full understanding as to what
2 was put on our plate to decide. These are tough
3 decisions. They are tough economic times. But this
4 Commission's job as an economic regulator is to, and
5 under the law, is to look at what those costs are and
6 are they justified, and we have a legal obligation to
7 do that.

8 And so despite some references to the
9 rubber stamp, I want to assure everyone of the amount
10 of hard work that went on as seen by the various
11 edits that are offered by the Commissioners and the
12 absolute delving into this 11-month process that is a
13 very, very strenuous and very thorough process. And
14 at the end of the day, it is the Commission's job to
15 make their judgment call based on the record within
16 the statutory period of time, and so that's what our
17 job is.

18 And so I just want to thank my fellow
19 Commissioners for doing their job as we are supposed
20 to and not acting as a rubber stamp, by looking at
21 every item that's been put on our plate to decide.

22 Thank you.

1 ACTING CHAIRMAN FLORES: Commissioner Ford, did
2 you want to say anything?

3 COMMISSIONER FORD: No, absolutely not.

4 ACTING CHAIRMAN FLORES: Commissioner Elliott?
5 Commissioner Colgan?

6 I also just again want to thank
7 Administrative Law Judge Jones and the entire
8 Commission staff and all the other parties for their
9 hard work as well on this case.

10 The next item is Number 7. This is a
11 FERC matter that requires us to go into closed
12 session. Is there a motion to go into closed
13 session?

14 COMMISSIONER ELLIOTT: So move.

15 ACTING CHAIRMAN FLORES: Is there a second?

16 COMMISSIONER COLGAN: Second.

17 ACTING CHAIRMAN FLORES: All in favor say aye.

18 COMMISSIONERS: Aye.

19 ACTING CHAIRMAN FLORES: The vote is 5-0 to go
20 into closed session. Let me know when the room is
21 clear in Chicago.

22 (Whereupon at this point

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pages 24 - 30 of the
proceedings are
contained in a separate
closed transcript.)

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CONTINUATION OF PROCEEDINGS

ACTING CHAIRMAN FLORES: Very well. I have been informed that we are ready in Chicago, so it looks like we are ready here in Springfield as well.

In the Closed Session the Commission discussed some comments on PJM's March 18 transmission cost allocation filing. Is there a motion to file the comments with FERC?

COMMISSIONER ELLIOTT: So move.

ACTING CHAIRMAN FLORES: Is there a second?

COMMISSIONER FORD: Second.

ACTING CHAIRMAN FLORES: It's been moved and seconded. All in favor say aye.

COMMISSIONERS: Aye.

ACTING CHAIRMAN FLORES: Any opposed?

The vote is 5-0. The comments will be filed with FERC.

Our last item is going back to the agenda and originally it was Number 2 and that is the Docket Number 08-0175. This case concerns complaints brought by Citizens Utility Board, Citizens Action/Illinois and AARP against U.S. Energy Savings

1 Corporation, an alternative gas supplier. Revisions
2 to the Order have been circulated among the
3 Commissioners. Let's start with Commissioner
4 Elliott. Commission Elliott?

5 COMMISSIONER ELLIOTT: Thank you, Mr. Chairman.
6 Yes, I have made some amendments. In my view I think
7 the extension of our jurisdiction over consumer fraud
8 and deceptive practices was quite a stretch, and so I
9 removed our jurisdiction from that, and I adjusted
10 the financial penalties accordingly.

11 And at the same time I maximized the
12 the penalties for the violations of the PUA, and I
13 would offer that amendment for its revision.

14 ACTING CHAIRMAN FLORES: Is there any
15 discussion, other discussion, on Commissioner
16 Elliott's proposed revisions?

17 I do have a comment. While I
18 appreciate the maximization of the penalties for
19 violations of the Public Utilities Act and believe
20 that particular action is just and deserved, I
21 disagree with the conclusion that the Illinois
22 Commerce Commission lacks jurisdiction to enforce the

1 Consumer Fraud Act and the Deceptive Trade Practices
2 Act.

3 I agree with Administrative Law Judge
4 Gilbert, Citizens Utility Board and other parties who
5 sought the Commission's enforcement of these statutes
6 using Section 19-110(e)(5) of the Public Utilities
7 Act, the obligation that alternative gas suppliers
8 comply with all applicable laws and rules. And in
9 light of some of the Commission's interpretation of
10 this language and how it may differ from my
11 interpretation and the Administrative Law Judge's
12 interpretation, I hope this illuminates the need for
13 greater clarity on which this was intended to allow.

14 Is there a motion to accept
15 Commissioner Elliott's revision?

16 COMMISSIONER FORD: So move.

17 ACTING CHAIRMAN FLORES: Is there a second?

18 COMMISSIONER O'CONNELL-DIAZ: Second.

19 ACTING CHAIRMAN FLORES: It's been moved and
20 seconded. All in favor say aye.

21 COMMISSIONERS: Aye.

22 ACTING CHAIRMAN FLORES: All opposed say nay.

1 Nay.

2 Let the record reflect that the vote
3 was 4-1. Commissioner Ford voted aye, Commissioner
4 O'Connell-Diaz votes aye, Commissioner Elliott votes
5 aye, Acting Commissioner Colgan votes aye and Acting
6 Chairman Flores votes nay. Commissioner Elliott's
7 revisions are adopted by a 4 to 1 vote.

8 Commissioner Elliot, I believe you
9 have another revision?

10 COMMISSIONER ELLIOTT: Yes, thank you, Mr.
11 Chairman. I added some language to the Order in
12 consideration of the complaint process in itself,
13 particularly with regard to the Citizens Utility
14 Board, the company, these outside entities that are
15 engaged in helping consumers with complaints against
16 utilities in general, whether it be in this case U.S.
17 Energy in particular.

18 It is my intent with the language to
19 try to get greater cooperation in terms of bringing
20 the complaint process ultimately to the Commission,
21 which is the regulatory authority that I think is the
22 appropriate place to adjudicate these issues. And if

1 it is done outside of our purview, we don't see these
2 matters and it essentially blinds us, and that is a
3 great concern to me.

4 And so I have added language that I
5 believe is supported and has been favorably amended
6 by other Commissioners and their assistants, and I
7 would offer that language for consideration.

8 ACTING CHAIRMAN FLORES: Any other further
9 discussion on this particular amendment?

10 COMMISSIONER O'CONNELL-DIAZ: Yes. I would
11 like to thank Commissioner Elliott for starting the
12 ball rolling. I think that through our bench
13 discussions with regard to this, the oral arguments,
14 it was very clear as to how troubling and disturbing
15 we found this particular case and the actions of the
16 parties. And my office was happy to help with those
17 edits and believe that it is an important message.

18 We are the regulatory authority, and
19 we have been hobbled by actions of parties that
20 suggest that they are concerned about the consumers
21 and in fact we are the ones that regulate the
22 respondent in this case and we need to be able to

1 seek timely action and we have been somewhat legally
2 foreclosed on several occasions with regard to this
3 particular company, and we just don't want to have a
4 repeat performance of that.

5 So I support the language as amended.

6 ACTING CHAIRMAN FLORES: Any other discussion?

7 I would also just like to add and
8 underscore the need on behalf of the public interest
9 for the various stakeholders to be mindful of the
10 importance that the Illinois Commerce Commission
11 places with regards to its regulatory authority under
12 the Public Utilities Act, and to remind the parties
13 that this Commission can only act on, again, the
14 evidence and the facts before it as it is presented
15 in individual cases.

16 In oral argument the attorney for the
17 Commission staff made what I thought was a very
18 compelling statement with regards to questions about
19 what would be the right remedy to impose on Just
20 Energy. And as I recall, the comment was that this
21 technically was the first time that this particular
22 actor was before the Commission with regards to the

1 violations that were alleged, creating a challenge,
2 so to speak, with regards to evaluating the
3 appropriate type of enforcement and remedies. It is
4 in the public's interest to see that the Illinois
5 Commerce Commission not be impeded from its authority
6 to be able to enforce the laws under the PUA.

7 And that being, I support Commissioner
8 Elliott's proposal and proposed amendment, and would
9 also like to thank him as well for his work on this
10 as well as his staff and everyone else.

11 ACTING COMMISSIONER COLGAN: Mr. Chairman?

12 ACTING CHAIRMAN FLORES: Yes, Commissioner?

13 ACTING COMMISSIONER COLGAN: I want to jump in
14 on this comment just a little bit. I believe that
15 the Attorney General and CUB play a very important
16 and valid function in this process, and I think they
17 do their very best out there to do it. I did
18 participate with Commissioner Elliott on this and
19 helped edit some of the language in this amendment.

20 I think that the point is that in the
21 interest of Illinois consumers, I think we all, who
22 have an interest in the consumers, we need to all

1 pull in a similar direction and hopefully we can come
2 into better sync in doing that towards the future.

3 So I am going to support this
4 amendment that Commissioner Elliott has offered. I
5 want to thank him and his assistant for all the hard
6 work that they have done on this, and that's what I
7 have to say.

8 ACTING CHAIRMAN FLORES: Commissioner Elliott,
9 do you have any further --

10 COMMISSIONER ELLIOTT: No. I just think that
11 this has been an issue that we have all looked at. I
12 think that it's been benefitted by everyone's
13 participation and amendments, and I would make a
14 motion to accept the amendment.

15 ACTING CHAIRMAN FLORES: Is there a second to
16 Commissioner Elliott's motion?

17 COMMISSIONER FORD: Second.

18 ACTING CHAIRMAN FLORES: It's been moved and
19 seconded. All in favor say aye.

20 COMMISSIONERS: Aye.

21 ACTING CHAIRMAN FLORES: Any opposed?

22 The vote is 5-0 and Commissioner

1 Elliott's revisions are adopted.

2 Next we will go to Commissioner
3 O'Connell-Diaz also has a proposed revision.

4 Commissioner O'Connell-Diaz?

5 COMMISSIONER O'CONNELL-DIAZ: Yes. With regard
6 to the Corrective Measures Section and due to the
7 concerns that are noted in Section 2(a) of the Order
8 which I think we just alluded to, I think the thought
9 process is that we deem it essential that, as the
10 legal entity charged with the regulatory oversight,
11 that we are fully aware of any complaints that are
12 out there with regard to this company.

13 And so the revision that we have
14 proposed is that the respondent herein will be
15 required to provide, within 24 hours of the lodging
16 of a complaint, notice to our consumer services area
17 so that we can start the informative process of
18 finding out what's that about, is there more than one
19 complaint out there, so that we are not confronted
20 with a situation where there are processes going on
21 outside of the Commission that resolve issues that
22 properly should be before this Commission.

1 So we also, in the edits that were
2 provided by Commissioner Elliott and our office,
3 included language that we need to, just as
4 Commissioner Colgan has just aptly noted, we as
5 governmental and consumer groups need to work
6 together, as opposed to working at opposite ends of
7 the spectrum, when we see actions out there that harm
8 the public, and we need to have that
9 intergovernmental support. So this 24-hour notice
10 provision will permit the Commission to be aware of
11 those type of activities that may be out there that
12 are harming our consumers.

13 ACTING CHAIRMAN FLORES: Any further discussion
14 of Commissioner O'Connell-Diaz's proposed revisions?

15 Is there a motion to accept the
16 revisions?

17 COMMISSIONER ELLIOTT: So move.

18 ACTING CHAIRMAN FLORES: Is there a second?

19 ACTING COMMISSIONER COLGAN: Second.

20 ACTING CHAIRMAN FLORES: It's been moved and
21 seconded. All in favor say aye.

22 COMMISSIONERS: Aye.

1 ACTING CHAIRMAN FLORES: Any opposed?

2 The vote is 5-0. Commissioner
3 O'Connell-Diaz's revisions are adopted.

4 Lastly, I have, along with Acting
5 Commissioner Colgan, proposed revisions to the Order.
6 These revisions were actually, as I indicated, were
7 proposed jointly between my office and Acting
8 Commissioner Colgan's office, and I want to thank
9 both Acting Commissioner Colgan and also Linda Buell
10 for their hard work on this language.

11 The gist of our revision is to
12 strengthen and tighten the corrective measures
13 present in the Order. Specifically, we are trying to
14 get at some of the core issues that caused such high
15 levels of complaints and provide the Commission with
16 more complete information to better equip the
17 Commission for potentially more decisive action in
18 the future.

19 Commission Colgan, I believe you would
20 like to have a few comments as well?

21 ACTING COMMISSIONER COLGAN: Yes. On the issue
22 of the audit, and before I go there, let me just say

1 that on the issue of the Consumer Fraud Act and
2 Deceptive Practices Act, I don't think it is -- I
3 think that is kind of a moot issue. I have seen in
4 the record, from my point of view, repeated and
5 substantive violations of the Alternative Gas Supply
6 Act which I thought were sufficient to bring some
7 serious measures, remedies, against the company.

8 In terms of the audit, you know, I
9 wanted to be sure in the audit that the audit is
10 specifically approved by this Commission. I wanted
11 to make sure that the staff had the authority to
12 interact on a regular and as-needed basis with the
13 audit to make sure that it is going correctly.

14 And, finally, I wanted to make sure
15 that the company would understand that the Commission
16 fully intends to make full use of its authority
17 pursuant to the Act to alter, modify or revoke or
18 suspend the Certificate of Service Authority if they
19 are not in compliance with the audit, once it is put
20 in place.

21 ACTING CHAIRMAN FLORES: Is there any other
22 further discussion?

1 Is there a motion to accept my
2 revisions?

3 COMMISSIONER ELLIOTT: So move.

4 ACTING CHAIRMAN FLORES: Is there a second?

5 ACTING COMMISSIONER COLGAN: Second.

6 ACTING CHAIRMAN FLORES: It's been moved and
7 seconded. All in favor say aye.

8 COMMISSIONERS: Aye.

9 ACTING CHAIRMAN FLORES: All opposed say nay.

10 Hearing no nays, the vote is 5-0 to
11 approve Acting Chairman Flores' and Acting
12 Commissioner Colgan's revisions. The vote is 5-0.

13 Is there any further discussion on the
14 Order?

15 I do have some remarks that I would
16 like to make. While I appreciate that we have all
17 taken steps towards strengthening the requirements
18 placed on this company through some of today's
19 amendments and while I appreciate the great work that
20 individual Commissioners and their assistants have
21 put in to get us to the point in this Order, I cannot
22 vote to enter this Order today. I believe the

1 misconduct exhibited by the company is deserving of a
2 more decisive and corrective action from the
3 Commission. I believe that it deserves to at least
4 -- specifically, I think the right measure would be
5 to suspend the ability to engage in door to door
6 sales as initially proposed, if not an outright
7 suspension of the certificate.

8 Ultimately, I both disagree with the
9 conclusions reached today regarding our enforcement
10 policies and believe that, even if you accept those
11 conclusions, more forceful and preventative action is
12 required, not only to protect consumers, but also to
13 protect competitors of the company in the
14 marketplace. Companies who play by the rules lose,
15 when companies who don't follow the rules escape
16 serious punishment.

17 As we have heard repeatedly from staff
18 in oral argument, they do not trust this company. I
19 do not trust this company, either. I would hope that
20 if this company came before the Commission seeking
21 its initial certification and if we had access to
22 this evidentiary record, we would force them to take

1 serious remedial action before being certified to
2 operate as an alternative gas supplier in Illinois
3 and not simply allow them to operate while working on
4 fixing the problems.

5 And I fear that absent a more forceful
6 application of the governing statutes, we may be
7 setting ourselves up for a future where we see this
8 company once again in a complaint case.

9 Because of these issues, I will be
10 voting against the motion to enter today's Order. Is
11 there a motion to enter the Order as amended?

12 ACTING COMMISSIONER COLGAN: Mr. Chairman?

13 ACTING CHAIRMAN FLORES: Yes.

14 ACTING COMMISSIONER COLGAN: I would like to
15 make a couple of comments.

16 ACTING CHAIRMAN FLORES: Yes.

17 ACTING COMMISSIONER COLGAN: I would like to
18 echo your sentiments on this. I, too, am going to
19 join you in voting no on this Final Order. I think
20 that, as I have mentioned, there are substantive and
21 repeated violations of the Alternative Gas Supply
22 Act. It is clear on the record to me that that is

1 there. My general principle on this is where there
2 is smoke, there is fire. And there is a lot of smoke
3 on this case.

4 And I am going to vote no on the Final
5 Order. I hope the company takes to heart some of the
6 provisions that will be in this Final Order. I
7 thank all of the Commissioners for their hard work in
8 trying to wrestle with this complicated issue and
9 trying to come to the best conclusion that we
10 possibly can. I think everybody has put their best
11 faith into this and has done the very best that we
12 can. But I am not going to be able to support the
13 Final Order, and I am going to reserve my right to
14 file a dissenting opinion.

15 ACTING CHAIRMAN FLORES: Any further
16 discussion?

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

18 ACTING CHAIRMAN FLORES: Yes, Commissioner?

19 COMMISSIONER O'CONNELL-DIAZ: I understand the
20 concerns that have been enunciated by Chairman Flores
21 and Commissioner Colgan. However, the record is what
22 we have before us. And, unfortunately, the record,

1 due to actions beyond this Commission's ability, the
2 record is what the record is. We could have a better
3 record, but we don't.

4 We also have our jurisdictional call
5 from the General Assembly. We have the AGS statute
6 which is the rules of the road for this particular
7 entity, and to go into the territory, as I think
8 Commissioner Elliott stated earlier with regard to
9 our jurisdictional ability, we just don't have that
10 with regard to the Consumer Fraud Protection Act.
11 The Appellate Court has told us that.

12 So we must tailor the remedies that we
13 mete out to this company under the statute and the
14 record that we have before us. Legislators have
15 given us some strengthening of the AGS statute. We
16 have had one other incident or several other
17 instances of other companies coming in. But, you
18 know, we are stuck with the fine level that's
19 contained in that statute, and so to me it is a
20 bridge too far to do more than what we have with the
21 record before us.

22 I think the record itself leaves a

1 lot -- I think there were a lot of allegations there
2 that really were not credible. Whether they are true
3 or not, I don't know. But I think that proponents of
4 the complaint could possibly have done a better job
5 with what they had or what they didn't have.

6 But I just find ourselves that we are
7 under restrictions based on our actual legal
8 authority versus what we would like to do. So I
9 understand the concerns, but I just feel like we are
10 creatures of our enabling statute, and that's what
11 this Order is comporting to order from. So that's
12 all I have to say.

13 COMMISSIONER ELLIOTT: Mr. Chairman, I
14 obviously agree with Commissioner O'Connell-Diaz
15 regarding our authority, and I sympathize with the
16 position of the Chairman and Commissioner Colgan.
17 This has been a difficult case. I think I was struck
18 by the record, and I won't repeat the comments of
19 Commissioner O'Connell-Diaz, but that I think was the
20 restrictive issue for me with regard to this.

21 However, I do believe that the Order
22 as amended provides additional safeguarding, more

1 oversight, and I hope direction, sufficient
2 direction, from this Commission for the first time to
3 this company, that we are on the case and we are
4 concerned. And in my opinion I would rather not see
5 this company before us again.

6 COMMISSIONER FORD: I certainly just want to
7 interpose something to what Commission Colgan said
8 when he said that the Attorney General and CUB have
9 to work collaboratively together, and I think this is
10 what this Order will have us to do. After we make
11 sure that every 24 hours we will be able to establish
12 a record of our own. So I think this Order certainly
13 does what we all want it to do and I am on board with
14 this. This will certainly make us be more
15 collaborative on these complaint issues.

16 COMMISSIONER O'CONNELL-DIAZ: We hope.

17 COMMISSIONER FORD: Yeah, we hope.

18 COMMISSIONER O'CONNELL-DIAZ: Yeah, don't
19 forget there is a consent decree out there that we
20 don't really know what's in that consent decree, and
21 that to me is troubling. There has been moneys paid
22 and we kind of got in at the end of that whole track,

1 so we are kind of confined.

2 So I do believe that the Order
3 comports with the law and also gets us the
4 appropriate oversight. But, again, I do appreciate
5 the concerns as expressed by Chairman Flores and
6 Commissioner Colgan.

7 ACTING CHAIRMAN FLORES: Is there a motion to
8 enter the Order as amended?

9 COMMISSIONER ELLIOTT: So move.

10 ACTING CHAIRMAN FLORES: Is there a second?

11 COMMISSIONER FORD: Second.

12 ACTING CHAIRMAN FLORES: It's been moved and
13 seconded. All in favor say aye.

14 COMMISSIONERS: Aye.

15 ACTING CHAIRMAN FLORES: All opposed nay.

16 Nay.

17 The vote is 3-2. Let the record
18 reflect that Commissioner Ford voted aye,
19 Commissioner O'Connell-Diaz votes aye, Commissioner
20 Elliott votes aye, Acting Commissioner Colgan votes
21 nay, and I, Acting Chairman Flores, votes nay. The
22 Order as amended is entered by a 3 to 2 vote.

1 Again, I want to thank all of the
2 Administrative Law Judges who worked on the cases
3 that we disposed of today, and staff.

4 Also, it is with a heavy heart that I
5 want to make reference to the passing of someone from
6 the ICC family earlier this week. Dean Jackson who
7 is one of our -- once a chief, always a chief -- our
8 Chief Administrative Law Judge of the Transportation
9 Bureau, and I would like to express our condolences
10 to his wife and his children and also friends. I
11 don't know if any of the other Commissioners would
12 like to say a few words as well on that.

13 COMMISSIONER O'CONNELL-DIAZ: I just would
14 thank Judge Jackson for the many years that he gave
15 us great service and he chaired the Transportation
16 Committee. I know we could always look over the
17 table and he would have a fair read on whatever was
18 before us. And it is just really hard to lose
19 somebody, and I hope his family and friends are doing
20 well. And I know he is looking down at our bench
21 session today and probably would have a few good
22 suggestions for us. So my condolences to the family.

1 ACTING CHAIRMAN FLORES: I also want to just,
2 again, thank all of the assistants for their hard
3 work in their area, what they have been doing and
4 what they are going to continue to do. So thank you.

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

7 JUDGE WALLACE: No, Mr. Chairman.

8 ACTING CHAIRMAN FLORES: Very well, thank you.
9 Hearing none, this meeting stands adjourned. Thank
10 you, everybody.

11 MEETING ADJOURNED

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