

1 general increase in electric and gas delivery service
2 rates.

3 I understand that we have revisions to
4 the proposed order. Commissioner Elliott, I believe
5 you have two sets of revisions. Let's start with
6 those.

7 COMMISSIONER O'CONNELL-DIAZ: Chairman?

8 ACTING CHAIRMAN FLORES: Yes, ma'am?

9 COMMISSIONER O'CONNELL-DIAZ: Before we start,
10 I have some questions for the judges.

11 Judge Albers, good afternoon.

12 JUDGE ALBERS: Good afternoon.

13 COMMISSIONER O'CONNELL-DIAZ: As I was
14 reviewing again after our last meeting the briefs as
15 well as the record in this matter, I came across some
16 other areas of inquiry I'd like to have resolved
17 before we take any action.

18 With regard to the accumulated reserve
19 for depreciation, that involves a rule that we
20 operate under at the Commission, correct?

21 JUDGE ALBERS: I believe it's 287.44,
22 historical test years.

1 COMMISSIONER O'CONNELL-DIAZ: And oddly enough,
2 as I was doing my research, I came across the Order
3 where the Commission entertained changes to that
4 rule, Case 02-0509, which, coincidentally, you were
5 the judge on, so I'm going to pick your brain.

6 With regard to the revisions that were
7 looked at in that proceeding, could you point to any
8 discussion or comments or anything having to do with
9 the provision where it talked about plant investment
10 for the pro forma additions? Was that an issue in
11 that case because I've looked at the record and --

12 JUDGE ALBERS: Well, I think the only issue
13 pertaining to that particular subsection of 287 was
14 whether or not a company should be required to
15 propose updates or pro forma adjustments or if they
16 should have it within their discretion to do so. I
17 don't think there was any question as to whether or
18 not it was any particular like net or gross or
19 embedded plants.

20 COMMISSIONER O'CONNELL-DIAZ: And, in fact,
21 there was no proposal for dressing up what's
22 contained in the rule as it stands today with net

1 plant or net of plant of said plant investment.

2 JUDGE ALBERS: Correct.

3 COMMISSIONER O'CONNELL-DIAZ: And the parties
4 to that case, this was back in what, '03, July of
5 '03, the parties to that case, do you have a
6 recollection whether -- as I looked at it, I saw
7 staff's brief. I saw some company briefs.

8 Attorney General, were they involved
9 in that case?

10 JUDGE ALBERS: I think, yeah, it was most of
11 the usual big players so to speak that we see here;
12 AG, CUB, Ameren, ComEd. I think there were some
13 other large utilities; Illinois-American.

14 COMMISSIONER O'CONNELL-DIAZ: Did they file
15 comments with regard to the plant investment
16 interpretation?

17 JUDGE ALBERS: Comments or like briefs on
18 exceptions?

19 COMMISSIONER O'CONNELL-DIAZ: Briefs on
20 exceptions, comments, anything that one would see in
21 rulemaking to like further clarify this rule if
22 they're in need of clarification.

1 JUDGE ALBERS: I think it was just on that
2 issue of may versus shall file updates or pro forma
3 adjustments.

4 COMMISSIONER O'CONNELL-DIAZ: So essentially,
5 this was not an issue in the case as far as you saw
6 it.

7 JUDGE ALBERS: I don't remember it being an
8 issue or I don't remember seeing anything in the
9 record that would have suggested it was an issue.

10 COMMISSIONER O'CONNELL-DIAZ: All right. Thank
11 you.

12 And given your recommendation that
13 you've given us, your reading of the rule is -- can
14 you just clarify again what your reading of that
15 provision of the rule means?

16 JUDGE ALBERS: As I understand it, the utility,
17 based on the rule and what the Commission has done in
18 the past, a utility can propose pro forma adjustments
19 to a historical test year to their invested plant and
20 there's no requirement regarding any type of
21 additional across-the-board adjustment to reflect all
22 the accumulated depreciation that would follow along

1 with that period which we're looking at the pro forma
2 adjustments.

3 I don't think I answered that very
4 clearly.

5 Do you want me to try to clarify that
6 any more or is that sufficient?

7 COMMISSIONER O'CONNELL-DIAZ: I think that's
8 fine.

9 JUDGE ALBERS: Okay.

10 COMMISSIONER O'CONNELL-DIAZ: And I also think
11 you went into a discussion about Section 211, you did
12 not see how that was...

13 JUDGE ALBERS: Yeah, I remember that coming up
14 last week. I look at that section of the act as
15 being focused on what type of plant is actually used
16 and useful and not necessarily like value assigned to
17 it.

18 COMMISSIONER O'CONNELL-DIAZ: So it's not an
19 accounting looking. It's an actual functionality of
20 a plant, and that's how it would be...

21 JUDGE ALBERS: Right. I mean, it's a question
22 of prudence I think in the language of the Act as

1 well, but I don't read that or, you know, I don't
2 understand that as going towards the accounting
3 aspect of it as you say.

4 COMMISSIONER O'CONNELL-DIAZ: And your
5 recommendation to us relative to that argument was --

6 JUDGE ALBERS: I don't see how Section 9-211 is
7 directly applicable to this issue here on the
8 accumulated depreciation.

9 COMMISSIONER O'CONNELL-DIAZ: And would you say
10 generally speaking as a judge that hears cases that a
11 basic rule of statutory construction would be that
12 you don't import words; that a phrase in a rule or a
13 statute has the meaning that it has?

14 JUDGE ALBERS: Generally, yes.

15 COMMISSIONER O'CONNELL-DIAZ: So in this
16 instance, as your recommendation reflects, you don't
17 add to the rule that has been interpreted by this
18 Commission in so many cases to add net plant or net
19 of plant before we decide the plant investment.

20 JUDGE ALBERS: Well, I mean, looking at how as
21 I understand it's been applied in the past, I think
22 typically it's been net of plant that's been, you

1 know, net of plant is typically what's been
2 considered or understood when applying that section.

3 COMMISSIONER O'CONNELL-DIAZ: And so your
4 analysis would then move, once you looked at the
5 rule, then your analysis would move to Commission
6 cases where there was similar pattern, similar
7 situation?

8 JUDGE ALBERS: Right. Once I look at the rule,
9 I don't see net or embedded or gross plant, anything
10 like that in the rule. In looking at how it's been
11 handled in the past by the Commission, it's my
12 understanding that net plant is what's been used by
13 the Commission in past orders on this type of issue.

14 COMMISSIONER O'CONNELL-DIAZ: Okay. And based
15 on your judgment call that you've recommended to us,
16 you find no new circumstances that we would need to
17 reverse those determinations on this record; is that
18 fair?

19 JUDGE ALBERS: Right. I mean, I recognize it
20 as -- you know, I agree with that, but I recognize
21 that there is still the question of how does one, you
22 know, what value does one plug in for net plant or

1 any of the accumulated depreciation. I mean, that's
2 been disputed in various cases throughout, but I
3 think net plant, it's my understanding that net plant
4 has been the way that's been used or interpreted in
5 the past.

6 COMMISSIONER O'CONNELL-DIAZ: And would you
7 agree that a way to correct that would be to actually
8 open up the rule again and look at it and take
9 comments if one were so inclined?

10 JUDGE ALBERS: That is an option, yes.

11 COMMISSIONER O'CONNELL-DIAZ: I have nothing
12 further.

13 ACTING CHAIRMAN FLORES: Any other questions or
14 comments?

15 There are --

16 JUDGE ALBERS: Mr. Chairman, if there aren't
17 any questions, if I may interject with the required
18 reporting on public comments.

19 ACTING CHAIRMAN FLORES: Thank you.

20 JUDGE ALBERS: Since we last met, we now have a
21 current tally of 248 comments regarding CILCO's
22 electric case, 216 regarding CILCO's gas, 311

1 regarding CIPS electric; 151 regarding CIPS gas, 491
2 regarding IP electric, 493 regarding IP gas.

3 The Clerk's Office is in possession of
4 35 written objections, 47 of these posters, and we
5 now have 12 petitions for a total of 2,142
6 signatures, and I would say the vast majority of
7 these individuals are opposed to an increase.

8 ACTING CHAIRMAN FLORES: Thank you.

9 There are two sets of revisions and
10 most of these revisions were proffered by
11 Commissioner Elliott.

12 Commissioner Elliott, would you like
13 to --

14 COMMISSIONER ELLIOTT: Yes. Thank you,
15 Mr. Chairman.

16 I made amendments to the areas with
17 regard to cash working capital, gas storage,
18 incentive compensation, NESC violations,
19 transportation fuel expense, O&M expenses, prior VGP,
20 the cost of service study rate capping and rate
21 moderation issues, and I would offer those amendments
22 for consideration.

1 ACTING CHAIRMAN FLORES: Is there any
2 discussion of Commissioner Elliott's revisions?

3 COMMISSIONER O'CONNELL-DIAZ: Mr. Chairman, I'd
4 like to run down the list and get a number for each
5 of these proposed revisions and the impact on rates
6 this would have.

7 COMMISSIONER ELLIOTT: I can tell you in total,
8 but for each particular individual item, I don't have
9 that broken down.

10 COMMISSIONER O'CONNELL-DIAZ: So what you're
11 doing is you're offering a total package of revisions
12 without breaking those numbers out so we can
13 understand each of these and the rate impact?

14 COMMISSIONER ELLIOTT: I did not have that
15 breakdown by individual amendment, no.

16 COMMISSIONER O'CONNELL-DIAZ: I'll just for the
17 record state I have asked for those revisions since
18 these came out, and I've never gotten -- not
19 revisions. I've asked for those numbers, and I've
20 never received those numbers, so it's a hard
21 yardstick to understand what these numbers would mean
22 to our final analysis so I'm somewhat hampered.

1 ACTING CHAIRMAN FLORES: Judge Wallace, with
2 regards to the numbers, can you please inform us in
3 terms of the materials that we have consistent --

4 COMMISSIONER ELLIOTT: Well, I think our
5 accounting assistant provided a statement of the
6 operating income with the adjustments. The estimates
7 are reflected in total but it doesn't break down each
8 of the adjustments by amendment.

9 COMMISSIONER FORD: Well, as I said earlier, I
10 certainly had an issue with that because it's been
11 very difficult for me to understand some of the
12 issues that have come up with this. Certainly I'm
13 not a lawyer but I do know how to analyze,
14 synthesize, and evaluate information.

15 When I came to this Commission, there
16 was an issue before us, and I was in the minority,
17 but upon appeal, I was adjudicated because my
18 decision was a correct decision.

19 And when I looked at this and I read
20 the landmark decision from the Supreme Court decision
21 on Bluefield Waterworks & Improvement Company versus
22 the Public Service Commission of West Virginia, this

1 Order is certainly an abomination for this Company
2 and for the consumers of the State of Illinois in my
3 opinion because it has unintended circumstances that
4 are certainly going to impact the economy and
5 consumers for this great State of Illinois, and
6 that's all I'm here for, to make sure that the Public
7 Utility Act would say that we must, as public utility
8 Commissioners, ensure that our ratepayers get
9 reasonable, reliable and uninterrupted services at a
10 reasonable cost, and also, that the utility get a
11 reasonable rate of return on its investment.

12 And from what I'm reading, I do not
13 see this. The numbers are not adding up, and I've
14 said that over and over again. I don't know who I'm
15 supposed to say it to but I hope it's on the record.

16 ACTING CHAIRMAN FLORES: Well, as I understand
17 it here, we have at this point 11 different issues
18 that were referenced: cash working capital revenue
19 collection lag, cash working capital pass-through
20 taxes, gas and storage, incentive compensation, NESC
21 violations expense, transportation fuel expense,
22 overall reasonableness of O&M expenses, Rider VGP,

1 and then on page 248, overall suitability of AIU's
2 rate designs, and then the rate capping mechanism as
3 well as the rate moderation.

4 As all the Commissioners know, these
5 were issues that were brought forth by the parties.
6 The parties litigated these matters. There is the
7 full record.

8 In addition to that, there was the
9 Administrative Law Judge who put forth a Proposed
10 Order. The Commissioners ostensibly had an
11 opportunity to review the Proposed Order and, under
12 their lawful authority to exercise their discretion
13 under the Public Utilities Act, have the opportunity
14 to either go in line with the Proposed Order,
15 recommendations, or make adjustments as the
16 Commissioners see fit in line with their vested
17 authority by the PUA.

18 My understanding is that there were
19 also some numbers that were distributed for the
20 purposes of answering questions regarding what the
21 effect on overall rate base would be concerning the
22 proposed adjustments under consideration.

1 At this time, Commissioner Elliott,
2 would you like to add anything further?

3 COMMISSIONER O'CONNELL-DIAZ: Chairman Flores,
4 I would just like to correct what may be
5 misapprehended here.

6 I have requested and have continued to
7 request --

8 ACTING CHAIRMAN FLORES: Well, with all due
9 respect...

10 COMMISSIONER O'CONNELL-DIAZ: -- throughout the
11 pendency of this case, I have asked for these numbers
12 to be broken out. They have not been broken out so
13 what I'm left with is -- and certainly I have read
14 the briefs. I think anyone that knows me knows I
15 read all the briefs. I read the testimony. I read
16 everything in the case, and I don't think it's too
17 much to ask to get numbers when someone is sponsoring
18 a different way of going. We have a set of numbers
19 from the Judges. These obviously have impacts. I'm
20 not an accountant so I would like to know what impact
21 it has.

22 To this moment, I really am in the

1 dark. I think there were numbers being circulated
2 yesterday afternoon. I think we got two sets of
3 wrong numbers.

4 COMMISSIONER FORD: Correct.

5 COMMISSIONER O'CONNELL-DIAZ: So I am really in
6 the dark as to what all of this does, so if there is
7 a lack of that information upon which I can rely to
8 either say this is great or I agree with it or not, I
9 feel like I've got half the book, and getting a lump
10 number does not assist me in that analysis.

11 ACTING CHAIRMAN FLORES: Did you submit your
12 request to --

13 COMMISSIONER O'CONNELL-DIAZ: I have
14 requested --

15 ACTING CHAIRMAN FLORES: -- the staff who had
16 been assigned to assist with these questions?

17 COMMISSIONER O'CONNELL-DIAZ: These are not my
18 revisions. I asked for numbers from those that were
19 sponsoring it, and as I count it, three gentlemen are
20 sponsoring this, and I asked, that's what I kept
21 seeing, that that's what it was, and I did not
22 receive those numbers.

1 each of the proposed revisions from Commissioner
2 Elliott? Is that where we're at?

3 ACTING CHAIRMAN FLORES: I believe that all
4 discussion has been closed. At this time there's a
5 motion to move forward on the --

6 COMMISSIONER O'CONNELL-DIAZ: No, no. I'm
7 sorry. I asked for --

8 ACTING CHAIRMAN FLORES: I make a motion to
9 move forward...

10 COMMISSIONER O'CONNELL-DIAZ: Excuse me,
11 Chairman.

12 ACTING CHAIRMAN FLORES: I make a motion to
13 move forward on the 11 revisions.

14 Is there a second?

15 COMMISSIONER ELLIOTT: Second.

16 ACTING CHAIRMAN FLORES: All in favor say aye.

17 ACTING COMMISSIONER COLGAN: Aye.

18 COMMISSIONER ELLIOTT: Aye.

19 ACTING CHAIRMAN FLORES: Any opposed?

20 COMMISSIONER FORD: Nay.

21 COMMISSIONER O'CONNELL-DIAZ: Nay.

22 ACTING CHAIRMAN FLORES: Roll call.

1 Commissioner Ford?

2 COMMISSIONER FORD: Nay.

3 ACTING CHAIRMAN FLORES: Commissioner --

4 COMMISSIONER O'CONNELL-DIAZ: Nay.

5 ACTING CHAIRMAN FLORES: -- O'Connell-Diaz?

6 So the record is clear, Commissioner
7 O'Connell-Diaz votes nay.

8 Commissioner Elliott?

9 COMMISSIONER ELLIOTT: Aye.

10 ACTING CHAIRMAN FLORES: Commissioner Colgan?

11 ACTING COMMISSIONER COLGAN: Aye.

12 ACTING CHAIRMAN FLORES: I, Acting Chairman
13 Flores, votes aye.

14 We have some --

15 COMMISSIONER O'CONNELL-DIAZ: Just to clarify
16 the record, I'd like it clear that again I asked for
17 confirmation as to whether we were going to get a
18 breakdown of the numbers for Commissioner Elliott's
19 revisions, and I presume by the push for the vote
20 that the answer to that is no, that we will not be
21 getting those numbers so that we can know what we're
22 voting on, is that correct?

1 ACTING CHAIRMAN FLORES: Is that a question or
2 a comment?

3 COMMISSIONER O'CONNELL-DIAZ: I'm asking for a
4 response from the group that is proposing these
5 revisions.

6 COMMISSIONER ELLIOTT: I'm sure that those
7 numbers can be provided by the accounting assistant.
8 I have no doubt in my mind.

9 ACTING CHAIRMAN FLORES: I believe there's a
10 12th item that is also being considered for revision.
11 That is the accumulated reserve for depreciation.

12 Commissioner Elliott?

13 COMMISSIONER ELLIOTT: Thank you, Mr. Chairman.

14 Yes, the changes and amendments to the
15 order I put forth basically adopt IIEC's conclusion
16 with regard to accumulated depreciation, reserve for
17 depreciation.

18 It's my opinion that it's net plant
19 that should be adopted, not gross, and that there is
20 a violation of test year past in principle. This is
21 consistent with the Dissenting Opinion I put forth in
22 the ComEd case, and I believe this is the appropriate

1 treatment for this adjustment, and I would move my
2 language moves forward.

3 ACTING CHAIRMAN FLORES: Is there any further
4 discussion of Commissioner Elliott's revision on
5 accumulated reserve for depreciation?

6 Very well.

7 Is there a motion to accept
8 Commissioner Elliott's revision for accumulated
9 reserve depreciation.

10 ACTING COMMISSIONER COLGAN: So move.

11 ACTING CHAIRMAN FLORES: I second it.

12 All in favor say aye.

13 ACTING COMMISSIONER COLGAN: Aye.

14 COMMISSIONER ELLIOTT: Aye.

15 ACTING CHAIRMAN FLORES: Any opposed?

16 COMMISSIONER FORD: Nay.

17 COMMISSIONER O'CONNELL-DIAZ: Nay.

18 ACTING CHAIRMAN FLORES: I'll do a roll call
19 vote.

20 Commissioner Ford?

21 COMMISSIONER FORD: Nay.

22 ACTING CHAIRMAN FLORES: Commissioner

1 O'Connell-Diaz?

2 COMMISSIONER O'CONNELL-DIAZ: Nay.

3 ACTING CHAIRMAN FLORES: Commissioner Elliott?

4 COMMISSIONER ELLIOTT: Aye.

5 ACTING CHAIRMAN FLORES: Commissioner Colgan?

6 ACTING COMMISSIONER COLGAN: Aye.

7 ACTING CHAIRMAN FLORES: I, Acting Chairman

8 Flores, votes aye.

9 Let the record reflect that the vote
10 is 3 to 2 on Commissioner Elliott's revisions. They
11 are accepted. All 12 revisions are accepted.

12 Is there any further discussion
13 concerning the overall Order?

14 COMMISSIONER O'CONNELL-DIAZ: What is the
15 fallout from all of this since we don't have the
16 discrete numbers that we would need to really make an
17 informed decision, but I'd like to know what the
18 overall number is because it seems like we're just
19 being forced to look at that. So if I could have
20 that for the record.

21 JUDGE WALLACE: Mr. Chairman, could I inquire
22 as to -- first of all, was that a motion to close

1 debate or a motion to vote on the 11 revisions?

2 ACTING CHAIRMAN FLORES: That was a motion to
3 vote on the 11 revisions which has been taken and
4 voted on.

5 JUDGE WALLACE: All right. Thank you, sir.

6 ACTING CHAIRMAN FLORES: And there is -- I'm
7 sorry. Commissioner Elliott?

8 COMMISSIONER ELLIOTT: I would just offer those
9 exhibits that have been circulated by the accounting
10 assistant.

11 COMMISSIONER O'CONNELL-DIAZ: And what are the
12 numbers, Commissioner?

13 COMMISSIONER FORD: The number I have is
14 \$4,700,000.

15 Is that correct? Does anybody know?

16 ACTING CHAIRMAN FLORES: We have been tendered
17 here -- all of the assistants, Commissioners'
18 assistants, have been provided numbers concerning the
19 overall impact, and everyone has that material in
20 front of them. It's an exhibit.

21 Do you have it in front of you,
22 Commissioner?

1 COMMISSIONER FORD: Yes, I do.

2 ACTING CHAIRMAN FLORES: Very well.

3 Then could we have someone -- Judge
4 Wallace, do you have the accountant in here so that
5 the accountant can speak, give them the material that
6 has been provided to the individual Commissioners'
7 assistants?

8 COMMISSIONER O'CONNELL-DIAZ: Well, they would
9 not have our Order, so how is that --

10 COMMISSIONER FORD: They shouldn't have it.

11 JUDGE WALLACE: Your accounting assistant --
12 let me check.

13 COMMISSIONER O'CONNELL-DIAZ: All your edits,
14 do you not know the impact of the wishes that you
15 want to have input into this?

16 COMMISSIONER ELLIOTT: The edits are reflected
17 in the schedules that were submitted.

18 COMMISSIONER O'CONNELL-DIAZ: And what are
19 those numbers? I'm just asking for that
20 clarification, please.

21 COMMISSIONER ELLIOTT: They were delivered to
22 you.

1 COMMISSIONER O'CONNELL-DIAZ: Thank you.

2 ACTING CHAIRMAN FLORES: Any further
3 discussion?

4 Very well.

5 Before we move forward on the voting
6 on the overall order, I want to thank all the
7 parties. I want to thank Judge Albers for his review
8 and job on the case.

9 I think it's extremely important that
10 we note that when we receive a rate case, when the
11 Illinois Commerce Commission receives a rate case,
12 the duty of the Commission is to set rates. It's not
13 to raise rates or lower rates, but it's to make
14 decisions based on the evidentiary record in the case
15 that set customer rates.

16 As in any of our cases, the process in
17 the evidentiary record is what's most important, and
18 the result we reach is an extension of that. I'm
19 confident that what we've done here today is make the
20 right decision, and I'm very comfortable that we've
21 employed the appropriate methodology in coming away
22 with a result.

1 At this time, I'd like to make a
2 motion to enter the order as amended.

3 Is there a second?

4 COMMISSIONER ELLIOTT: Second.

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

7 ACTING COMMISSIONER COLGAN: Aye.

8 COMMISSIONER ELLIOTT: Aye.

9 ACTING CHAIRMAN FLORES: Any opposed?

10 COMMISSIONER FORD: Nay.

11 COMMISSIONER O'CONNELL-DIAZ: Nay.

12 ACTING CHAIRMAN FLORES: Okay. I'll take a
13 roll call vote.

14 Commissioner Ford?

15 COMMISSIONER FORD: Nay.

16 ACTING CHAIRMAN FLORES: Commissioner
17 O'Connell-Diaz?

18 COMMISSIONER O'CONNELL-DIAZ: Nay.

19 ACTING CHAIRMAN FLORES: Commissioner Elliott?

20 COMMISSIONER ELLIOTT: Aye.

21 ACTING CHAIRMAN FLORES: Commissioner Colgan?

22 ACTING COMMISSIONER COLGAN: Aye.

1 ACTING CHAIRMAN FLORES: I, Acting Chairman
2 Flores, votes aye.

3 The vote is 3 to 2, and the order, as
4 amended, is entered.

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

7 JUDGE WALLACE: No, sir. We have a special
8 open meeting tomorrow to consider a procurement event
9 and a FERC matter.

10 ACTING CHAIRMAN FLORES: Very well. Thank you.

11 Hearing none, this meeting stands
12 adjourned.

13 MEETING ADJOURNED

14

15

16

17

18

19

20

21

22