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BEFORE THE
ILLINOIS COMMERCE COMMISSION
REGULAR OPEN MEETING
(PUBLIC UTILITY)
Chicago, Illinois
Tuesday, August 21, 2012

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

PRESENT:

- MR. DOUGLAS P. SCOTT, Chairman
- MS. LULA M. FORD, Commissioner
- MS. ERIN M. O'CONNELL-DIAZ, Commissioner
- MR. JOHN T. COLGAN, Commissioner
- MS. ANN McCABE, Commissioner

L.A. COURT REPORTERS by
Kari Wiedenhaupt, Reporter
CSR# 084-004725

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

8 Before moving into the agenda according
9 to Section 1700.10 of Title II of the
10 Administrative Code, this is the time we allow
11 members of the public to address the Commission.
12 Members of the public wishing to address the
13 Commission must notify the Chief Clerk's Office at
14 least 24 hours prior to the Commission meeting.
15 According to the Chief Clerk's office, we have no
16 requests to speak at today's meeting.

17 Moving on to the agenda for today. Item
18 1 concerns the approval of minutes from our
19 July 31st Regular Open Meeting. I understand that
20 amendments have been forwarded.

21 Is there a motion to amend the minutes?

22 COMMISSIONER MCCABE: So moved.

1 CHAIRMAN SCOTT: Is there a second?

2 COMMISSIONER COLGAN: Second.

3 COMMISSIONER O'CONNELL-DIAZ: 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 amendments are adopted. Is there a motion
11 to approve the July 31st minutes as amended?

12 COMMISSIONER COLGAN: So moved.

13 CHAIRMAN SCOTT: Is there a second?

14 COMMISSIONER MCCABE: Second.

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

16 All in favor, say aye.

17 (Chorus of ayes.)

18 CHAIRMAN SCOTT: Any opposed?

19 (No response.)

20 CHAIRMAN SCOTT: The vote is five to nothing,
21 and the July 31st Regular Open Meeting minutes as
22 amended are approved. We will use this five to

1 nothing vote for the rest of today's Regular Open
2 Meeting unless otherwise noted.

3 Item 2 is Docket No. 12-0176. This is
4 the Kurt J. Buehnerkemper Abe Lincoln Motel's
5 complaint against Liberty Power Holdings. The
6 parties have apparently settled their differences
7 and have brought a Joint Motion to Dismiss, which
8 ALJ Von Qualen recommends we grant.

9 Is there any discussion? Any
10 objections?

11 (No response.)

12 CHAIRMAN SCOTT: Hearing none, the Joint Motion
13 to Dismiss is granted.

14 Item 3 is Docket No. 12-0367. This is
15 Inertia Energy Advisors' Application for licensure
16 as an agent, broker and consultant under Section
17 16-115(c) of the Public Utilities Act. ALJ Albers
18 recommends entry of an order granting the
19 certificate.

20 Is is there any discussion? Any
21 objections?

22 (No response.)

1 CHAIRMAN SCOTT: Hearing none, the Order is
2 entered.

3 Items 4 and 5 can be taken together.
4 These are applications for licensure as an
5 alternative retail electric supplier brought by
6 Oasis Energy and IDT Energy. In each case ALJ
7 Yoder recommends entry of an Order granting the
8 requested certificate.

9 Is there any discussion? Any
10 objections?

11 (No response.)

12 CHAIRMAN SCOTT: Hearing none, the Orders are
13 entered.

14 Item 6 is Docket No. 12-0427. This is
15 Navigant Energy's application for licensure as an
16 agent, broker and consultant under Section
17 16-115(c) of the Public Utilities Act. After a
18 proposed order was served denying the application,
19 the applicant filed a Motion to Withdraw its
20 application, and ALJ Albers recommends entry of an
21 order granting that Motion to Withdraw.

22 Is there any discussion? Is Judge

1 Albers available to talk to us for a moment?

2 JUDGE ALBERS: Yes.

3 CHAIRMAN SCOTT: Thanks, Judge. If you could,
4 just so we have got it on our record -- and go
5 through what difficulties you ran into in trying to
6 serve a request for information on Navigant. And
7 also, if you could, talk about Navigant Energy and
8 this being a different company than Navigant
9 Consulting that we are -- that have seen in this
10 realm before.

11 JUDGE ALBERS: Sure. Taking the second
12 question first, I am aware of no connection between
13 Navigant Energy and Navigant Consulting. I'm not
14 saying there isn't one, but I'm not aware of one,
15 and their application did not include any ties to
16 the Navigant Consulting Firm.

17 CHAIRMAN SCOTT: Okay.

18 JUDGE ALBERS: Taking your first question, as
19 indicated in the order when we wanted to serve our
20 notice, a couple of minor deficiencies in the
21 application. We tried to contact the attorney
22 listed in the application, by the name of Elena

1 Gallo, to get her e-mail address just so we could
2 serve the notice on her as the attorney of record
3 for the applicant, but when I tried to contact
4 the -- contact her using the phone number provided
5 by the applicant, a gentleman answered, indicated
6 he had no knowledge of Elena Gallo. I assumed I
7 misdialed, tried again and got the same gentleman
8 and the same result obviously.

9 So I used the Illinois Attorney
10 Registration and Disciplinary Commission web page
11 to find a phone number for the attorney, and when I
12 did, there was only one lawyer in Illinois by that
13 name, and she had a different address and different
14 phone number from that provided in the application.
15 When I contacted her, she indicated she had no
16 knowledge of the applicant.

17 She did volunteer that she does share
18 some office space with some energy firms. She did
19 not seem very sure of what they did. I asked her
20 if -- well, she indicated that whenever she gets
21 anything from the ICC, she forwards it on to them.
22 I asked her if it was Navigant Energy, LLC. She

1 has not heard of that firm. I asked her if she had
2 heard the name Mr. Mark Nakayama, who is the
3 individual who signed the pending application, and
4 she had not heard of him. I asked her if the firms
5 that she shares office space with might be two
6 other ABC's that have come before the commission.
7 Those would be JSN Consulting and Illinois Energy
8 Aggregation, LLC, and she had not heard of them
9 either. She did not know the names of the firms
10 she shared the office space with and did not
11 recognize any of the names I gave her.

12 So, you know, bottom line, she did not
13 know who this applicant is and did not know the
14 individual who signed the application, and given
15 the -- what I consider the serious deficiency of
16 listing somebody who is not your attorney in your
17 application, I recommend that the -- the
18 application be denied.

19 COMMISSIONER O'CONNELL-DIAZ: Judge Albers,
20 just to clarify, the JSN Consulting and Illinois
21 Aggregation, those are the energy firms that are --
22 that the real Miss Gallo suggested were in her

1 office suite; is that correct?

2 JUDGE ALBERS: No. When I gave her those
3 names, she didn't recognize those names either.

4 COMMISSION O'CONNELL-DIAZ: Okay. And so
5 those names have the same listing for the attorney?

6 JUDGE ALBERS: Well, Mr. Mark Nakayama is
7 associated with all three of these firms, and
8 that's why I referenced those to her.

9 COMMISSIONER O'CONNELL-DIAZ: Okay. Thank
10 you.

11 Just one other question or comment. I
12 probably need guidance from the OGC on this, but
13 considering this is -- we are dealing in the venue
14 of the unauthorized practice of law or someone
15 holding themselves out to be, I wonder if there is
16 any incumbency upon us as a Commission that has
17 discovered this to take this to the Illinois
18 Attorney Registration Disciplinary Commission to
19 alert them and have them do an appropriate inquiry
20 relative to this situation. I don't know.

21 CHAIRMAN SCOTT: I'm not sure the -- that we
22 ever found out who the lawyer actually is. I think

1 what the problem -- Judge, correct me if I'm wrong,
2 but the problem was, is the applicant put the name
3 of a lawyer that didn't even check out. The
4 address and phone number didn't check out, and the
5 lawyer who has the same name doesn't have any
6 knowledge of these folks at all.

7 So it -- if I understand you correctly,
8 Judge, it almost seems like they just picked out a
9 lawyer's name and put it down on their application,
10 but that lawyer didn't necessarily have any
11 understanding of it. So it's not -- we have
12 more of a problem with the applicant than the
13 attorney, if I'm understanding that correctly,
14 Judge.

15 JUDGE ALBERS: Yeah, to be clear, I don't want
16 to malign Ms. Gallo. She -- when I looked her name
17 up in the ARDC website, she is listed as an -- as
18 an attorney authorized to practice law in Illinois.
19 She is the only person by that name authorized to
20 practice law in Illinois. So I believe it to be
21 the same individual, and I don't know why her name
22 and whatever address this is showed up on this

1 application form, but it's there. And that's what
2 I used to try to contact, you know, the -- that's
3 what I used to try to contact her with, and it
4 turned out the phone number and the address they
5 provided were both invalid.

6 COMMISSIONER O'CONNELL-DIAZ: Okay. Thank
7 you. I misunderstood that.

8 JUDGE ALBERS: I'm sorry.

9 COMMISSIONER O'CONNELL-DIAZ: No. That was my
10 misunderstanding and not your explanation.

11 CHAIRMAN SCOTT: Further discussion? Thank
12 you very much, Judge. I appreciate that.

13 Are there any objections to granting the
14 Motion to Withdraw?

15 (No response.)

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

18 Item 7 is Docket No. 12-0401. This is
19 TERM Power & Gas' application for licensure as an
20 alternative gas supplier. ALJ Von Qualen
21 recommends entering an Amendatory Order making
22 certificate changes to the list of names under

1 which the applicant does business.

2 Is there any discussion? Any
3 objections?

4 (No response.)

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

7 Item 8 is Docket Nos. 12-0093 and
8 12-0109, Consolidated. This is NG-911's
9 Application for a Certificate enabling it to
10 operate as a 911 provider in Illinois, and for a
11 certificate of local and interexchange authority
12 enabling it to operate as a reseller and/or
13 facilities based carrier of telecommunications
14 services in Illinois. ALJ Haynes recommends entry
15 of an order granting the requested certificates.

16 Is there any discussion? Any
17 objections?

18 (No response.)

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

21 Items 9 and 10 can be taken together.
22 These are petitions by the North Suburban Joint

1 Emergency Telephone System Board and the Village of
2 South Chicago Heights seeking modifications to the
3 respective 911 Emergency Telephone Systems. In
4 each case the ALJ recommends entry of an order
5 granting the petition.

6 Is there any discussion? Any
7 objections?

8 (No response.)

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

11 Item 11 is Docket No. 12-0408. This is
12 the Universal Telephone Assistance Corporation's
13 Petition for determination of the amount of
14 supplemental assistance provided under the
15 Universal Telephone Service Assistance Program.
16 ALJ Riley recommends entry of an order granting the
17 petition.

18 Is there any discussion? Any
19 objections?

20 (No response.)

21 CHAIRMAN SCOTT: Hearing none, the Order is
22 entered.

1 Item 12 is Docket No. 12-0463. This is
2 Coretec Communications' Petition to allow Coretec
3 to transfer its certificates from Coretec
4 Communications, Inc., to Coretec Communications,
5 LLC. ALJ Riley recommends entry of an Order
6 granting the request for relief via the
7 cancellation and re-issuance of the certificates.

8 Is there any discussion? Any
9 objections?

10 (No response.)

11 CHAIRMAN SCOTT: Hearing none, the Order is
12 entered.

13 Item 13 is Docket No. 12-0465. This is
14 a Petition by Cybertel Cellular Telephone Company
15 and Verizon Wireless seeking the transfer of
16 Cybertel's certificates to Verizon, its successor
17 in interest. ALJ Riley recommends the entry of an
18 Order granting the requested relief via the
19 cancellation and re-issuance of the certificates.

20 Is there any discussion? Any
21 objections?

22 (No response.)

1 CHAIRMAN SCOTT: Hearing none, the Order is
2 entered.

3 Item 14 is Docket No. 11-0436. This is
4 Aqua Illinois' 2011 water and sewer rate case on
5 Rehearing. ALJ Jones recommends entry of an order
6 on rehearing setting the large industrial customer
7 class rate increase at 12.5 percent down from 20
8 percent in the order initially entered by the
9 Commission. I, Commissioner McCabe, Commissioner
10 O'Connell-Diaz have developed some revisions to
11 offer in this matter.

12 These are revisions I know you have all
13 seen and given feedback on, which we all sincerely
14 appreciate. Primarily, what these revisions do is
15 to rewrite the conclusion to set the increase for
16 the large industrial class back at 20 percent
17 consistent with the order we initially entered in
18 this matter, rather than the 12.5 percent increase
19 in the ALJ's proposed order. We believe that the
20 20 percent number has a more sound basis of support
21 in the evidentiary record, is more consistent with
22 the cost-causation principles, and also serves to

1 reduce the subsidy that would be required from
2 other rate classes. And we appreciate your support
3 for these revisions, and I will ask if any of the
4 other Commissioners have anything to say about the
5 revisions. Commissioner McCabe?

6 COMMISSIONER MCCABE: I think water quality
7 and quantity are significant issues that are only
8 going to be more important and urgent in the years
9 ahead, and we are all concerned with the
10 significant increases that Aqua customers members
11 have experienced, and the issue in this Order was
12 limited to the case of one large Aqua customer,
13 Viscofan, which had threatened to leave the system
14 and currently pays less than its share of the cost
15 of service.

16 So today's Order on Rehearing prevents
17 Aqua customers from a further rate increase that
18 would be needed to pay for a steeper discount to
19 Viscofan. Our approach uses a percentage increase
20 in Viscofan's rates that bring it closer to its
21 true cost of service. Our approach uses a
22 percentage that was proposed by the parties to this

1 case, argued, analyzed and supported by the
2 evidence in the record.

3 CHAIRMAN SCOTT: Further discussion?
4 Commissioner O'Connell-Diaz?

5 COMMISSIONER O'CONNELL-DIAZ: Yeah. I just
6 would like to echo the concern that Commissioner
7 McCabe just noted with regard to cost-causation
8 principles. This obviously was a situation where
9 there is a subsidy. There was a subsidy, and
10 certainly we -- our goal is to have the cost-causer
11 pay for their charges to the system. I would like
12 to thank our Judge Jones for giving us an order
13 that I think is trying to split the baby and
14 possibly keep this company in the -- in the system.
15 That is the overhanging thread, if you will, that
16 was presented to us, but those chips will fall
17 where they will.

18 And I believe that the evidence in the
19 record supports the conclusion of the 20 percent
20 and is reflective of cost-causation principles. So
21 I would like to thank my colleagues for working
22 through this issue together.

1 CHAIRMAN SCOTT: Further discussion?

2 I'll move for the adoption of the
3 revisions.

4 Is there a second?

5 COMMISSIONER FORD: Second.

6 COMMISSIONER COLGAN: Second.

7 CHAIRMAN SCOTT: It's been moved and seconded.
8 All those in favor, say aye.

9 (Chorus of ayes.)

10 CHAIRMAN SCOTT: Any opposed?

11 (No response.)

12 CHAIRMAN SCOTT: The vote is five to nothing,
13 and the revisions are adopted. Is there any
14 further discussion on the matter as revised?

15 Is there a motion to adopt the Order as
16 amended?

17 COMMISSIONER MCCABE: So moved.

18 CHAIRMAN SCOTT: Is there a second?

19 COMMISSIONER FORD: Second.

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

22 (Chorus of ayes.)

1 CHAIRMAN SCOTT: Any opposed?

2 (No response.)

3 CHAIRMAN SCOTT:

4 The vote is five to nothing. And the
5 Order as amended is entered. And I would also echo
6 what Commissioner O'Connell-Diaz was saying of
7 Judge Jones. It's a difficult issue, difficult
8 case, and I appreciate him also last week answering
9 the questions that we had and walking us through
10 that again, and I know that helped me in my
11 clarification of the issues, and I appreciate that
12 very much.

13 Item 15 is Docket No. 11-0767. This is
14 Illinois-American Water Company's proposed increase
15 in water and sewer rates. The company has made a
16 request for oral argument which is granted by
17 operation of law under Section 9-201(c) of the
18 Public Utilities Act. We are still in the process
19 of scheduling the oral argument, but sometime after
20 our Regular Open Meeting on September 11th in
21 Springfield it looks like a date that will work.
22 The Commission will send out an oral argument

1 notice once there has been a final decision made on
2 scheduling that argument.

3 Item 16 is Docket No. 12-0390. This is
4 the Illinois-American Water Company's Application
5 for a certificate under Section 8-406(e) of the
6 Public Utilities Act allowing it to serve another
7 recycling facility outside its service territory.
8 ALJ Jones recommends entering the interim order
9 granting the temporary certificate.

10 Is there any discussion? Are there any
11 objections?

12 (No response.)

13 CHAIRMAN SCOTT: Hearing none, the interim
14 order is entered.

15 Item 17 is Docket No. 11-0567. This is
16 CenturyLink's Petition for Arbitration concerning
17 the dispute between CenturyLink and NTS Services
18 Corp. NTS has filed a Petition for Rehearing on
19 this matter, and ALJ Yoder recommends denial of
20 that petition. Is there any discussion?

21 COMMISSIONER O'CONNELL-DIAZ: Well, Mr.
22 Chairman, I would just like to thank Judge Yoder

1 for a clear and concise memo, and additionally,
2 that I think it's -- what's the word I want --
3 nervy, cheeky for the company to have filed this
4 Petition for Rehearing when they did not afford
5 themselves the opportunity to reply to the initial
6 proposed arbitration decision which our rules
7 clearly provide for. They did not file a brief on
8 exceptions or reply to exceptions, and that is
9 certainly -- those are certainly items that the
10 Commission looks at in their review of the matter
11 before we even would get to a decision as well as
12 the ALJ. So they obviously missed two steps, but
13 now want to have a change in our final conclusion.
14 And I guess they need to read the Rules of
15 Procedure a little closer. So that's it. Thank
16 you.

17 CHAIRMAN SCOTT: Further discussion?

18 Are there any objections to denying the
19 Petition for Rehearing.

20 (No response.)

21 CHAIRMAN SCOTT: Hearing none, the Petition
22 for Rehearing is denied.

1 CHAIRMAN SCOTT: Item 18 is a FERC item for
2 which we will go into closed session to address.

3 Is there a motion to go into closed
4 session?

5 COMMISSIONER FORD: So moved.

6 CHAIRMAN SCOTT: Second?

7 COMMISSIONER MCCABE: Second.

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

9 All in favor, say aye.

10 (Chorus of ayes.)

11 CHAIRMAN SCOTT: Any opposed?

12 (No response.)

13 CHAIRMAN SCOTT: The vote is five to nothing,
14 and the Commission will now go into closed session.

15 Please let me know when the room is
16 ready in Springfield.

17 MR. HANSEN: We are ready.

18 (Whereupon at this point pages 23 -
19 25 of the proceedings are contained
20 in a closed, separately bound
21 transcript.)

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CONTINUATION OF PROCEEDINGS

CHAIRMAN SCOTT: Okay. In closed session the Commission discussed making a filing on FERC Document No. ER12-2414. Is there a motion to make the filing with FERC.

COMMISSIONER O'CONNELL-DIAZ: So moved.

CHAIRMAN SCOTT: Is there a second?

COMMISSIONER FORD: Second.

CHAIRMAN SCOTT: It's been moved and seconded.

All in favor, say aye.

(Chorus of ayes.)

CHAIRMAN SCOTT: Any opposed?

(No response.)

CHAIRMAN SCOTT: The vote is five to nothing. The filing will be made with FERC.

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

JUDGE WALLACE: Not today, sir.

CHAIRMAN SCOTT: Thank you. It's been a very productive meeting. The meeting is adjourned.

(END OF PROCEEDINGS.)