

1 BEFORE THE
2 ILLINOIS COMMERCE COMMISSION

3 REGULAR OPEN MEETING
4 (PUBLIC UTILITY)

5
6 Springfield, Illinois

7 Tuesday, September 11, 2012

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

12
13 PRESENT:

14 MR. DOUGLAS P. SCOTT, Chairman

15 MS. LULA M. FORD, Commissioner

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

17 MR. JOHN T. COLGAN, Commissioner

18 MS. ANN McCABE, Commissioner

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21 L.A. COURT REPORTERS
22 By: Carla J. Boehl, Reporter
 CSR #084-002710

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PROCEEDINGS

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

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

Moving on to the agenda for today, Item 1 concerns the approval of minutes from our August 15 Bench Session. I understand amendments have been forwarded. Is there a motion to amend the minutes?

COMMISSIONER O'CONNELL-DIAZ: So moved.

1 CHAIRMAN SCOTT: Is there a second?

2 COMMISSIONER McCABE: Second.

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

4 All in favor say aye.

5 COMMISSIONERS: Aye.

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

8 Is there a motion to approve the
9 August 15 minutes as amended?

10 COMMISSIONER COLGAN: So moved.

11 CHAIRMAN SCOTT: Is there a second?

12 COMMISSIONER McCABE: Second.

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

14 All in favor say aye.

15 COMMISSIONERS: Aye.

16 CHAIRMAN SCOTT: Any opposed?

17 (No response.)

18 The vote is five to nothing, and the
19 August 15 Bench Session minutes as amended are
20 approved.

21 We will use this five to nothing vote
22 for the rest of today's Regular Open Meeting, unless

1 otherwise noted.

2 Item 2 is Docket Number 11-0558. This
3 is Danny Dawson's complaint against Ameren. ALJ
4 Jones recommends entry of an Order denying the
5 complaint.

6 Is there any discussion?

7 (No response.)

8 Are there any objections?

9 (No response.)

10 Hearing none, the Motion to Dismiss is
11 granted.

12 Item 3 is Docket Number 12-0001. This
13 is Ameren's rate case under Section 16-108.5 of the
14 Public Utilities Act. We will be holding final
15 disposition of this item as we will be having oral
16 argument at 1:30 today on this matter. I believe
17 ALJs Albers and Yoder are available should there be
18 any questions on this item.

19 Are there any questions or an update
20 on public comments?

21 COMMISSIONER O'CONNELL-DIAZ: Mr. Chairman, I
22 have a question for the ALJs.

1 CHAIRMAN SCOTT: Sure.

2 Good morning, gentlemen.

3 JUDGE ALBERS: Good morning.

4 CHAIRMAN SCOTT: Commissioner?

5 COMMISSIONER O'CONNELL-DIAZ: Yes. Could you
6 just run through the determinations you made relative
7 to charitable contributions in this proceeding?

8 JUDGE ALBERS: Yes. If memory serves me,
9 basically, it dealt with whether or not certain
10 expenses fell under the category of allowable
11 charitable contributions which were for the public
12 welfare, scientific, educational or -- I forget the
13 other criteria. But there were certain expenses that
14 Staff and others did not feel fell under the
15 categories of any of those categories, and the
16 argument was whether or not -- I believe it was two
17 certain chambers of commerce primarily -- whether or
18 not they were public welfare expenses.

19 And looking at the ComEd Order entered
20 in 11-0721, there was some discussion as to what
21 constituted public welfare. And one of the
22 conclusions I recall from the ComEd Order was that

1 some of the Staff and Intervenor petitions lacked any
2 certainty, again if I recall correctly.

3 And in this case Staff has suggested
4 using a test, for lack of a better word, whether or
5 not it was a 501(c)(3) corporation. And given that
6 501(c)(3) corporations are restricted from lobbying,
7 Staff felt that was an appropriate test to use. And
8 the Company -- or, rather, the chambers of commerce
9 that were in question were not 501(c)(3). Instead,
10 they were 501(c)(6), I believe, organizations which
11 are allowed to do some lobbying.

12 And so to me that appeared that Staff
13 had taken seriously the Commission's direction to
14 provide more certainty or clarity as to what the
15 standard would be. So that was basically how I got
16 to that recommendation.

17 COMMISSIONER O'CONNELL-DIAZ: What does the law
18 say about that? Does it suggest that there should be
19 a screen with regards to whether or not it is a
20 501(c)(3) corporation?

21 JUDGE ALBERS: That statute references public
22 welfare, and it is just not terribly clear what

1 public welfare constitutes.

2 COMMISSIONER O'CONNELL-DIAZ: So it does not
3 have a restriction relative to only those entities
4 that are registered as 501(c)(3), is that correct?

5 JUDGE ALBERS: There is no express restriction
6 in that sense, no.

7 COMMISSIONER O'CONNELL-DIAZ: But this type of
8 designation would disallow other groups that are not
9 chambers of commerce but other entities that are in,
10 for lack of a better word, the endeavor, the
11 provision of services that are in the public welfare
12 which is incorporated under that statute, correct?

13 JUDGE ALBERS: Well, only if they also did not
14 meet any of the other criteria, scientific or
15 educational. I remember there was a fourth -- or, I
16 am sorry, a third. I just can't --

17 CHAIRMAN SCOTT: Religious.

18 JUDGE ALBERS: Religious, thank you. Only if
19 they didn't meet any of the other ones as well. If
20 you are like a 501(c) -- I am sorry, I'm not going to
21 blame it on the tax law exemption. But, in short, if
22 you are not a 501(c)(3) corporation but you do

1 provide scientific, religious, or educational
2 services, you could still qualify for an allowable
3 pass-through to ratepayers. So a school, for
4 example.

5 COMMISSIONER O'CONNELL-DIAZ: Does the Company
6 provide a list of some of those groups that would be
7 included -- would be excluded due to the screen that
8 you have now proposed in the Order, in -- I believe
9 it is one of your briefs which, I mean, there was
10 lodges, Shriners, different types of what I would
11 consider folks that are out there doing service that
12 is in the general public welfare.

13 JUDGE ALBERS: There may be organizations that
14 would not -- that contributions to would not be
15 allowable under such a standard, but I am suggesting
16 if they don't also meet the other criteria of the
17 statute.

18 COMMISSIONER O'CONNELL-DIAZ: And isn't there a
19 rulemaking going on now to elicit --

20 JUDGE ALBERS: Yes.

21 COMMISSIONER O'CONNELL-DIAZ: I am just
22 concerned that we are setting up a vote that won't

1 keep the good works of many of the organizations that
2 are out there. And, again, I think the numbers that
3 we are talking about here, the last time around it
4 was like 50 cents on an annual amount on someone's
5 bill. So I am just concerned that we are setting up
6 something that the statute doesn't contemplate and,
7 in fact, talks about that we should not be setting up
8 any rule or presumption. And so I think we are --
9 that the outcome that you have suggested kind of gets
10 into that alley which I think is probably in that
11 area. I understand the direction now.

12 CHAIRMAN SCOTT: Any other questions for the
13 Judges?

14 (No response.)

15 Any update on the public comments
16 received?

17 JUDGE ALBERS: I think we are still at two that
18 don't like the rate increase.

19 CHAIRMAN SCOTT: Very good. Thank you, John.

20 Item 4 is Docket Number 12-0396. This
21 is FTR Energy Service's application for a certificate
22 to operate as an alternative gas supplier under

1 Section 19-110 of the Public Utilities Act. The
2 deadline for consideration of this item has been
3 extended, so we won't be making a final decision on
4 this item today.

5 I understand Commissioner Colgan had a
6 couple of comments on this. Commissioner?

7 COMMISSIONER COLGAN: Yeah, I just wanted to
8 take a closer look at this as a result of violations
9 that an affiliate of FTR, Viridian, had in the state
10 of Maryland to determine the -- yeah, sorry -- to
11 determine if we should be granting a certificate to
12 FTR in Illinois, and so I will extend the deadline
13 pursuant to Section 19-110(f).

14 CHAIRMAN SCOTT: Okay. Thank you,
15 Commissioner.

16 Item 5 is Docket Number 09-0151. This
17 is Illinois-American Water Company's reconciliation
18 case for purchased water and purchased sewage
19 treatment surcharges from 2008 and a petition for
20 rehearing filed by the Attorney General for
21 consideration today. ALJ Jones recommends denying
22 that petition.

1 Is there any discussion?

2 (No response.)

3 Are there any objections to denying
4 the petition for rehearing?

5 (No response.)

6 Hearing none, the petition for
7 rehearing is denied.

8 Item 6 (12-0518) concerns the adoption
9 of changes to the Commission's Title II, Section
10 1700.20, rules concerning public comments received
11 through the Commission's website, something we
12 addressed in Docket Number 12-0378. After
13 communication between our Office of General Counsel
14 and JCAR staff, Commission Staff recommends entry of
15 an Order adopting a couple of amendments to our
16 recent public comment rule changes with an effective
17 date of October 1, 2012.

18 Is there any discussion?

19 (No response.)

20 Are there any objections?

21 (No response.)

22 Hearing none, the Order is entered.

1 Item 7 is a FERC matter concerning
2 pending litigation, so we will head into Closed
3 Session to address it. Is there a motion to go into
4 Closed Session?

5 COMMISSIONER COLGAN: So moved.

6 CHAIRMAN SCOTT: Is there a second?

7 COMMISSIONER McCABE: Second.

8 CHAIRMAN SCOTT: Moved and seconded. All in
9 favor say aye.

10 COMMISSIONERS: Aye.

11 CHAIRMAN SCOTT: Any opposed?

12 (No response.)

13 The vote is five to nothing; we will
14 now go into Closed Session. Please let me know when
15 the room is ready in Chicago.

16 (Whereupon at this point
17 pages 13 - 16 of the
18 proceedings are
19 contained in a separate
20 closed transcript.)

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CONTINUATION OF PROCEEDINGS

CHAIRMAN SCOTT: In Closed Session the Commission discussed making a filing in FERC Docket Number ER11-4081-002. Is there a motion to make the filing with FERC?

COMMISSIONER COLGAN: So moved.

CHAIRMAN SCOTT: Is there a second?

COMMISSIONER FORD: Second.

CHAIRMAN SCOTT: It's been moved and seconded.

All in favor say aye.

COMMISSIONERS: Aye.

CHAIRMAN SCOTT: Any opposed?

(No response.)

The vote is five to nothing, and the filing will be made with FERC.

We have one additional item just to talk about briefly this morning. Our Executive Director, Mr. Feipel, is here to brief us on the issue that arose in the media recently concerning the meters that cause either elevated heat or fire in certain places where meters were changed out. I asked Mr. Feipel to give us an update briefly today

1 and then a longer process next week about what's been
2 done with the process and what's been done since that
3 came to light.

4 MR. FEIPEL: Thank you, Mr. Chairman,
5 Commissioners.

6 First, as soon as this was brought to
7 our attention two weeks ago as a result of those
8 press inquiries, we had started working with ComEd to
9 request additional information and an initial meeting
10 to brief us on the situation with those meters. At
11 that point we asked for all kinds of incident reports
12 that would relate to any kind of meter overheating at
13 all and then also to receive additional information
14 to brief us more fully on the scope of the issue.

15 Because the way we are looking at this
16 is there are actually two issues here. One is to
17 look at the meters that are already installed as part
18 of the ComEd pilot program a number of years ago.
19 There are roughly 135,000 meters that are installed
20 in the Chicago area. That's separate from the mass
21 deployment of Smart Meters as a result of the new law
22 that was passed about a year ago.

1 So remember that the mass deployment
2 is on hold currently. There is no scheduled
3 deployment until 2013, at least, for Smart Meters in
4 addition to those that are already installed in the
5 pilot. So we have got a little bit more time to look
6 at what those proper installation procedures should
7 be going forward. So the real focus at this point in
8 time, at least as we see it in terms of a public
9 safety issue, is those meters that are already
10 installed as part of the pilot.

11 That said, the other issue that we are
12 looking at is to not be too utility or technology
13 specific and make sure that this is not an issue
14 either with other utilities or other technologies
15 across the state.

16 So from here we are receiving
17 additional information. As we receive that, we will
18 review it, brief you accordingly, and then bring a
19 recommendation, when we are ready to, whether we need
20 more formal action or whether we can handle this in
21 the process we are using currently.

22 CHAIRMAN SCOTT: So when you say, just for

1 clarification, not technology or utility specific, so
2 obviously other utilities are changing out meters.
3 And because you have got incidents of this which
4 aren't related solely to Smart Meters but in changing
5 out other meters, you want to explore all of that,
6 right?

7 MR. FEIPEL: Exactly correct.

8 CHAIRMAN SCOTT: And with all the companies
9 that are doing it.

10 MR. FEIPEL: That is correct.

11 CHAIRMAN SCOTT: Commissioner?

12 COMMISSIONER O'CONNELL-DIAZ: I just want to
13 clarify that I think we are all aware that there were
14 some newspaper articles that somehow suggested that
15 the Commission was not on top of this situation, when
16 in fact, as Mr. Feipel has just noted to us, as per
17 usual and as business as usual for the Commission, we
18 have been on top of this issue as soon as we became
19 aware of it. Our engineers, Mr. Feipel, is that
20 correct, are looking and talking with the company,
21 collecting appropriate data, and doing the analysis
22 that is required by our experts. And only with that

1 information and that foundation can we assess the
2 situation properly. And we certainly have been doing
3 business as usual at the Commission and reporting on
4 that to us.

5 And so standing up for our experts
6 that are on Staff in the usual way we attack these
7 situations, that's what we have been doing.

8 MR. FEIPEL: That's exactly right.

9 COMMISSIONER O'CONNELL-DIAZ: We have not been
10 sitting on our hands.

11 COMMISSIONER FORD: Just one follow-up comment.
12 Mr. Feipel, isn't it true that it is only three homes
13 that have had a fire out of 130,000?

14 MR. FEIPEL: That's what ComEd reported to us
15 so far.

16 CHAIRMAN SCOTT: Further comments, questions?

17 (No response.)

18 We appreciate the update and look
19 forward to when you amass more data. I know you are
20 collecting that from the Company now. And as that
21 comes up, I am sure next week we will have some
22 further discussion. So I really appreciate that.

1 MR. FEIPEL: We will keep you posted.

2 CHAIRMAN SCOTT: Thank you very much.

3 Mr. Wallace, is there anything further
4 to come before the Commission?

5 JUDGE WALLACE: No, you have time for a break.

6 CHAIRMAN SCOTT: Thanks. Hearing none, this
7 meeting stands adjourned. We will reconvene in about
8 nine minutes for oral argument in the
9 Illinois-American Water Company rate case and then
10 once again at 1:30 for oral argument in Ameren's
11 formula rate case.

12 The meeting stands adjourned. Thanks,
13 everyone.

14 OPEN MEETING ADJOURNED

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