

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

BEFORE THE
ILLINOIS COMMERCE COMMISSION

BENCH SESSION
(PUBLIC UTILITY)

Chicago, Illinois

Thursday, September 6, 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. ERIN M. O'CONNELL-DIAZ, Commissioner

MR. JOHN T. COLGAN, Commissioner

(Via audiovisual conference)

MS. ANN McCABE, Commissioner

MS. LULA M. FORD, Commissioner

(Via teleconference)

L.A. COURT REPORTERS by

Kari Wiedenhaupt, Reporter

CSR# 084-004725

1 PROCEEDINGS

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

10 Commissioner, are you there?

11 Commissioner Ford, are you there?

12 UNIDENTIFIED SPEAKER: I don't believe she has
13 called in yet.

14 CHAIRMAN SCOTT: Okay. We will wait for just a
15 couple minutes until the Commissioner can call in.

16 (Whereupon, a short break was
17 taken.)

18 CHAIRMAN SCOTT: All right. We will start back
19 up again, and pick Commissioner Ford up for the
20 meeting when she joins in.

21 Before moving into the agenda,
22 according to Section 1700.10 of Title II of the

1 Administrative Code, this is the time we allow
2 members of the public to address the Commission.
3 Members of the public wishing to address the
4 Commission must notify the Chief Clerk's Office at
5 least 24 hours prior to Commission meetings.
6 According to the Chief Clerk's Office, we have no
7 requests to speak at today's Bench Session.

8 (The Transportation
9 portion of the proceedings
10 was held at this time and
11 is contained in a separate
12 transcript.)

13 CHAIRMAN SCOTT: Commissioner Ford?

14 COMMISSIONER FORD: Yes.

15 CHAIRMAN SCOTT: We are getting a tremendous
16 amount of feedback.

17 (Whereupon, a discussion was had
18 off the record.)

19 CHAIRMAN SCOTT: I note that Commissioner Ford
20 has left the meeting upon conclusion of the
21 Transportation agenda.

22 We will now move on to the Public

1 Utility Agenda starting with the Electric portion.
2 Items E-1 and E-2 can be taken together. These items
3 concern initiating reconciliation proceedings for
4 ComEd and Ameren over revenues collected under their
5 energy efficiency riders between June 2011 and May
6 2012.

7 In each case Staff recommends entry of
8 an Order commencing the reconciliation proceeding.

9 Is there any discussion?

10 (No response.)

11 CHAIRMAN SCOTT: Is there a motion to enter the
12 orders?

13 COMMISSIONER MCCABE: So moved.

14 CHAIRMAN SCOTT: Is there a second?

15 COMMISSIONER O'CONNELL-DIAZ: Second.

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

17 In all favor, say aye.

18 (Chorus of ayes.)

19 CHAIRMAN SCOTT: Any opposed?

20 (No response.)

21 CHAIRMAN SCOTT: The vote is four to nothing,
22 and the Orders are entered. We will use this four to

1 nothing vote for the remainder of the Public Utility
2 Agenda unless otherwise noted.

3 Item E-3 is Docket No. 10-0537. This
4 item will be held for disposition to a future
5 Commission proceeding, but I believe Commissioner
6 McCabe has some questions for ALJ Hilliard on this
7 item.

8 Welcome, Judge. Commissioner McCabe?

9 COMMISSIONER MCCABE: I had some questions
10 about the incentive compensation portion of the Order
11 and how the Commission has handled incentive
12 compensation costs when charged through a rider
13 previously, if there is much experience there.

14 JUDGE HILLIARD: Historically, riders were
15 designed to address very specific types of costs. As
16 a result, routine costs such as incentive comp
17 usually -- historically weren't included in rider
18 recoveries. The last several years the General
19 Assembly has adopted a number of provisions that will
20 allow utilities to recover costs such as incentive
21 comp expense through riders. So there is some
22 experience that the Commission has in that regard.

1 The evidentiary record in each
2 proceeding determines which costs are recoverable.
3 In these -- incentive comp costs, the legislature
4 usually delineates that, in addition to establishing
5 a customer benefit, there has to be relationship
6 between the -- the type of costs sought to be
7 recovered and the -- and the compensation sought to
8 be taken into account.

9 COMMISSIONER MCCABE: And is that the main
10 issue here, is that the company's incentive
11 compensation program did not adequately have enough
12 criteria under the rider?

13 JUDGE HILLIARD: Yes, in general. The -- there
14 are a couple of questions. One is how much money is
15 sought to be recovered through the rider, and another
16 one is whether or not those expenses are properly
17 attributable to energy efficiency. The company's
18 evidence articulates, at least in my reading, that
19 the expenses -- the incentive comp that was paid
20 relates to more general criteria rather than energy
21 efficiency criteria, but one of the -- it's like
22 85 percent to 15 percent. 85 percent has nothing at

1 all to do with energy efficiency, and part of the 15
2 percent, a small part had something to do with energy
3 efficiency. But the -- the type of metrics that the
4 company provided information on are things like the
5 number of outages, the duration of outages, things
6 that didn't seem to be even indirectly related to
7 energy efficiency.

8 As to the amount of compensation
9 sought through the rider, the company only
10 articulated its position that they only sought 90,000
11 rather than 200 and -- whatever it was -- 30,000 in
12 their reply brief or in -- excuse me -- in their
13 brief on exceptions. Prior to that time, they hadn't
14 made that argument. So I really don't think that
15 there is -- it's the company's burden to show that
16 the incentive comp is compensable by ratepayers. And
17 the -- it seems to me that the company's position is,
18 other than the 90,000 that they agree went through
19 the rider, the rest of it is allocated generally
20 somewhere else, but they don't explain where that
21 somewhere else is, and it seems -- I think Staff
22 makes the argument and I accept the argument that the

1 statute allowing the recovery of energy efficiency
2 incentive comp requires that incentive comp go
3 through the rider, be recovered through the rider.
4 And if they have an argument that it's recoverable
5 somewhere else, they didn't make that with
6 specificity.

7 COMMISSIONER MCCABE: So this is a -- for the
8 year 2010. So the company has probably already
9 submitted for 2011. So to fix this issue, they
10 probably wouldn't be able to do that until this year
11 or next?

12 JUDGE HILLIARD: That's likely, I think.

13 COMMISSIONER MCCABE: Okay. So then the issue
14 of the 90 versus 260,000, part of the issue there is
15 that the company did not raise the difference until
16 the brief on exceptions?

17 JUDGE HILLIARD: And then they didn't provide
18 any evidence as to where the rest of the money was
19 going; if they do that on Petition For Rehearing or
20 something else, but they didn't do it in the case in
21 chief, and it's sort of an afterthought of an
22 argument.

1 COMMISSIONER MCCABE: All right. That answers
2 my questions. Thank you.

3 CHAIRMAN SCOTT: Any further questions?

4 (No response.)

5 CHAIRMAN SCOTT: Thank you very much, Judge.

6 JUDGE HILLIARD: Sure.

7 CHAIRMAN SCOTT: And again, that item will be
8 held for disposition at a future Commission
9 proceeding.

10 Items E-4 through E-8 can be taken
11 together. These items concern customer complaints
12 against ComEd. In each case the parties have
13 apparently settled their differences and have brought
14 a Joint Motion to Dismiss, which the ALJ recommends
15 we grant.

16 Is there any discussion?

17 (No response.)

18 CHAIRMAN SCOTT: Are there any objections?

19 (No response.)

20 CHAIRMAN SCOTT: Hearing none, the Joint
21 Motions to Dismiss are granted.

22 Items E-9 through E-11 can be taken

1 together. These items also concern customer
2 complaints against ComEd. In each case the ALJ
3 recommends entry of an Order dismissing the matter
4 without prejudice for want of prosecution.

5 Is there any discussion?

6 (No response.)

7 CHAIRMAN SCOTT: Any objections?

8 (No response.)

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

11 Item E-12 is Docket No. 12-0154. This
12 is Ameren's petition seeking a certificate to allow
13 for the construction and operation of a new
14 transmission line and associated work in McLean
15 County. ALJ Von Qualen recommends entry of an Order
16 granting the certificate.

17 Is there any discussion?

18 (No response.)

19 CHAIRMAN SCOTT: Any objections?

20 (No response.)

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

1 Items E-13 through E-15 can be taken
2 together. These items are applications for licensure
3 as an agent, broker and consultant filed under
4 Section 16-115(c) of the Public Utilities Act. In
5 each case the ALJ recommends entry of an Order
6 granting the certificate.

7 Is there any discussion?

8 (No response.)

9 CHAIRMAN SCOTT: Any objections?

10 (No response.)

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

13 Items E-16 and E-17 can be taken
14 together. These are petitions for the confidential
15 and/or proprietary treatment of the petitioner's
16 report. In each case ALJ Baker recommends entry of
17 an Order granting the requested protective treatment.

18 Is there any discussion?

19 (No response.)

20 CHAIRMAN SCOTT: Any objections?

21 (No response.)

22 CHAIRMAN SCOTT: Hearing none, the Orders are

1 entered.

2 Item E-18 is Docket No. 12-0246. This
3 is a joint petition by Eastern Illini Electric
4 Cooperative and Ameren for a commercial customer
5 release to allow for a wind farm in Ford County to be
6 served by EIEC. ALJ Von Qualen recommends entry of
7 an Order granting the petition.

8 Is there any discussion?

9 (No response.)

10 CHAIRMAN SCOTT: Any objections?

11 (No response.)

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

14 Turning now to Natural Gas. Items G-1
15 and G-2 can be taken together. These items concern
16 North Shore and Peoples Gas, a recent filing for
17 proposed increase in gas distribution rates. For
18 each item Staff recommends entry of a Suspension
19 Order suspending the filing and setting the matter
20 for a hearing.

21 Is there any discussion?

22

1 (No response.)

2 CHAIRMAN SCOTT: Are there any objections?

3 (No response.)

4 CHAIRMAN SCOTT: Hearing none, the suspension
5 Orders are entered.

6 Item G-3 is Docket No. 11-0732. This
7 is Loni Slothower's complaint against Nicor. ALJ
8 Benn recommends entry of an Order dismissing this
9 matter without prejudice for want of prosecution.

10 Is there any discussion?

11 (No response.)

12 CHAIRMAN SCOTT: Any objections?

13 (No response.)

14 CHAIRMAN SCOTT: Hearing none, the Order is
15 entered.

16 Items G-4 and G-5 can be taken
17 together. These items are customer complaints
18 against Nicor. In each case the parties have
19 apparently settled their differences and have brought
20 a Joint Motion to Dismiss, which ALJ Kimbrel
21 recommends we grant.

22 Is there any discussion?

1 (No response.)

2 CHAIRMAN SCOTT: Any objections?

3 (No response.)

4 CHAIRMAN SCOTT: Hearing none, the Joint
5 Motions to Dismiss are granted.

6 Item G-6 is Docket No. 12-0284. This
7 is a petition brought by Integrys, Peoples Energy,
8 North Shore Gas and Peoples Gas seeking authority
9 under Section 7-101 of the Public Utilities Act
10 allowing Integrys to take assignment of an
11 intercompany borrowing agreement from Peoples Energy.
12 ALJ Baker recommends entry of an Order granting the
13 petition.

14 Is there any discussion?

15 (No response.)

16 CHAIRMAN SCOTT: Any objections?

17 (No response.)

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

20 Items G-7 and G-8 can be taken
21 together. These items are petitions by North Shore
22 and Peoples Gas seeking a waiver of provisions of

1 Part 285 concerning the accounting rules applicable
2 to their rate cases. ALJs Dolan and Teague recommend
3 entry of Orders granting the waiver.

4 Is there any discussion?

5 (No response.)

6 CHAIRMAN SCOTT: Any objections?

7 (No response.)

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

10 Moving on to Telecommunications, Item
11 T-1 concerns a filing by Frontier North for changes
12 to tariff pages related to franchise surcharges and
13 fees and related to the Illinois Simplified Municipal
14 Telecommunications tax rates. Staff recommends
15 allowing the company's request by not suspending the
16 filing.

17 Is there any discussion?

18 (No response.)

19 CHAIRMAN SCOTT: Any objections?

20 (No response.)

21 CHAIRMAN SCOTT: Hearing none, the filing will
22 not be suspended.

1 Item T-2 is Docket No. 12-0336. This
2 is RCLEC's application for Certificates of Service
3 Authority under Sections 13-403, 13-404 and 13-405 of
4 the Public Utilities Act. ALJ Benn recommends entry
5 of an Order granting the certificates.

6 Is there any discussion?

7 (No response.)

8 CHAIRMAN SCOTT: Any objections?

9 (No response.)

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

12 Items T-3 and T-4 can be taken
13 together. These are petitions by telecommunications
14 carriers seeking the cancellation of certificates
15 previously granted by the Commission. In each case,
16 ALJ Jorgenson recommends entry of an Order granting
17 the petition to cancel the certificates.

18 Is there any discussion?

19 (No response.)

20 CHAIRMAN SCOTT: Any objections?

21 (No response.)

22 CHAIRMAN SCOTT: Hearing none, the Orders are

1 entered.

2 Item T-5 is Docket No. 12-0406. This
3 is a joint petition by various telecommunications
4 carriers seeking approval of an amendment to an
5 Interconnection Agreement. ALJ Riley recommends
6 entry of an Order approving the amendment.

7 Is there any discussion?

8 (No response.)

9 CHAIRMAN SCOTT: Any objections?

10 (No response.)

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

13 Item T-6 is Docket 12-0472. This is a
14 joint petition by CenturyLink and NTS Services
15 seeking approval of their Arbitrated Interconnection
16 Agreement. ALJ Von Qualen recommends entry of an
17 Order approving the agreement.

18 Is there any discussion?

19 (No response.)

20 CHAIRMAN SCOTT: Are there any objections?

21 (No response.)

22 CHAIRMAN SCOTT: Hearing none, the Order is

1 entered.

2 Item T-7 is Docket No. 11-0668. This
3 is a petition by Dex One seeking a variance from
4 Section 735.180 of Title 83 of the Administrative
5 Code. We'll be holding this item for disposition at
6 a future Commission proceeding, but I do have some
7 questions for Judge Riley. Judge, thank you for
8 being here. Good morning.

9 Just really quickly, I just have a
10 couple of questions. The burden here that the
11 company has to show seems to be rather stiff. I
12 mean, they have to show -- prove that there is no
13 harm to anyone involved?

14 JUDGE RILEY: Right.

15 CHAIRMAN SCOTT: And that it's either
16 unreasonable or unduly burdensome, the regulation
17 here, and show that it's not statutory, which I think
18 clearly is not at issue here.

19 JUDGE RILEY: Right.

20 CHAIRMAN SCOTT: In terms of the matrix for
21 what is unduly burdensome, is there anything that we
22 have to go by other than the prior docketed variance

1 that was granted to the same petitioner in an earlier
2 case?

3 JUDGE RILEY: I don't really think there is,
4 no. It's kind of a catch as catch can situation.
5 What you are talking about, I think, is what's the
6 possibility of harm -- no. I am off on the wrong
7 track.

8 CHAIRMAN SCOTT: I will get back to that one in
9 a minute, but in terms of unduly burdensome or
10 unreasonable.

11 JUDGE RILEY: It's really on an ad hoc basis,
12 on a case by case basis. Other than the prior
13 docket, that's pretty much all I can think of.

14 CHAIRMAN SCOTT: And the fact that a company
15 has been providing a particular service, is that any
16 indication that something is or isn't, you know,
17 overly burdensome, if they have already been
18 providing the service for some time?

19 JUDGE RILEY: I don't know if it was -- the
20 evidence said so in this case, but in fact it's a
21 situation where maybe their costs have increased
22 significantly over a number of years, that kind --

1 that type of thing.

2 CHAIRMAN SCOTT: And in terms of the evidence
3 in this case, it seems that it was fairly anecdotal
4 on both sides.

5 JUDGE RILEY: Right.

6 CHAIRMAN SCOTT: You essentially had somebody
7 saying, I don't -- you know, I think this is overly
8 burdensome, or I don't think it's going to cause harm
9 to anyone, and others suggesting how you might be
10 able to prove harm, but essentially their testimony
11 was more anecdotal. Is that a fair characterization?

12 JUDGE RILEY: I think so. I believe so, yeah.

13 CHAIRMAN SCOTT: Okay. The notice that's
14 thought to be provided here, was there any evidence
15 of how that notice was supposed to be provided? It
16 seemed like there wasn't really -- other than the
17 company saying that they would provide adequate
18 notice that the service would change if the variance
19 was granted.

20 JUDGE RILEY: Well, they were just going to put
21 that inside the existing directories in a prominent
22 place, and that would be essentially their notice to

1 the customers that the circumstances were going to
2 change, the delivery circumstances were going to
3 change.

4 CHAIRMAN SCOTT: And the difference -- the
5 differentiation between Chicago and how Chicago is
6 treated and the -- for lack of a better term --
7 downstate areas, if you could, summarize for me what
8 that differentiation is. Is it just the availability
9 of other ways to get that information in Chicago that
10 don't exist outside or --

11 JUDGE RILEY: Well, what happened with the
12 Chicago as opposed to the rest of Illinois -- Chicago
13 is still going to -- Chicago and the suburbs will
14 still be able to get residential White Pages upon
15 request. That was what was determined in 07-0434,
16 and that will stay the same.

17 What happened downstate, there are
18 four key areas or four areas: Rockford, Peoria,
19 Springfield, and this Metro East area, which I
20 presume is -- I believe is East St. Louis on the
21 Illinois side. They would have no access
22 indefinitely to residential White Pages, and there

1 was no explanation as to why, you know, why they
2 wouldn't. That was the big difference between the
3 two areas.

4 CHAIRMAN SCOTT: Okay. Any questions?
5 Commissioner O'Connell-Diaz?

6 COMMISSIONER O'CONNELL-DIAZ: Just on that
7 point, given the fact that we have this disparate
8 treatment of the Chicago area and the downstate areas
9 that will be bereft of this ability to receive the
10 White Pages, and in some of those areas -- I mean,
11 this is the crush of the digital age upon us. I
12 mean, just as I think I can recall the other cases,
13 and you know, that everyone is online looking at
14 things, but I would suggest in some of those areas --
15 and I agree with your conclusion -- that folks may
16 not even have the ability to have access to internet
17 services for financial reasons or actual just
18 technical reasons, and to not be allowed to -- for
19 them to have these, you know, what have traditionally
20 been -- allowed them to walk their fingers through
21 what's available in their communities is just -- and,
22 you know, I understand that there is a cost

1 associated with these -- the generation of these
2 directories, but they are still needed.

3 JUDGE RILEY: I was going to say that Staff
4 repeatedly made that point, and they came up with a
5 20 percent figure, that as many as 20 percent of
6 people in Illinois would not have electronic access
7 to any of this information, and that's why the Order
8 reads as it does. It denies the petition to that
9 extent.

10 COMMISSIONER O'CONNELL-DIAZ: And there does
11 seem to be in the background -- and I think the
12 Chairman noted it. There is kind of vague evidence
13 that, you know, everybody is on the internet, and
14 this is how we should be going forward, when, in
15 fact, that really isn't the case. And as I read
16 through your Order, I thought about the amount of
17 times I actually pulled the Yellow Pages out in the
18 past week to look things up in my community, and, you
19 know, I don't live -- I live in a digitally
20 challenged area, but still, I mean, the access to
21 that information is, I think, important for medical
22 reasons for people, and for just every kind of thing

1 you could think of.

2 JUDGE RILEY: And the other problem is that
3 they have to resort to directory assistance, and
4 there's an additional charge.

5 COMMISSIONER O'CONNELL-DIAZ: Well, there's a
6 cost to that. Exactly. You never want to be calling
7 them.

8 JUDGE RILEY: Right.

9 CHAIRMAN SCOTT: Thank you. Further questions?
10 Further discussion?

11 (No response.)

12 CHAIRMAN SCOTT: Thanks, Judge. We appreciate
13 it. Thank you very much.

14 Item T-8 is Docket No. 12-0344. This
15 is a petition by Metropolitan Telecommunications of
16 Illinois seeking the confidential and/or proprietary
17 treatment of its Annual Report. ALJ Baker recommends
18 entry of an Order granting the requested protective
19 treatment.

20 Is there any discussion?

21 (No response.)

22 CHAIRMAN SCOTT: Any objections?

1 (No response.)

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

4 On to Water and Sewer, Item W-1 is
5 Docket No. 11-0677. This is Jeremy Laramore's
6 complaint against Illinois American Water Company.
7 We'll be holding the disposition of this item for a
8 future Commission proceeding, but I did have a couple
9 question for ALJ Jones in this matter. Is Judge
10 Jones available?

11 JUDGE JONES: Yes, sir.

12 CHAIRMAN SCOTT: Good morning, sir. How are
13 you?

14 JUDGE JONES: Fine, thank you.

15 CHAIRMAN SCOTT: So this is a very confusing
16 case, and just in terms of how things normally work
17 in these circumstances -- and I just want to make
18 sure I have got the facts correct.

19 So the -- looking at the map that was
20 submitted as evidence as part of the case that Mr.
21 Laramore submitted, the meter that we are talking
22 about here and the leak, neither one of those is on

1 Mr. Laramore's property; is that correct?

2 JUDGE JONES: That's correct, Mr. Chairman.

3 CHAIRMAN SCOTT: Okay. So the meter for Mr.
4 Laramore's property is actually on, essentially, his
5 neighbor's property across the street from him?

6 JUDGE JONES: Yes.

7 CHAIRMAN SCOTT: Okay. So --

8 JUDGE JONES: That and right-of-way.

9 CHAIRMAN SCOTT: Right. And I wanted to get
10 their assertion correct. Illinois-American's
11 assertion is essentially that once it gets to the
12 property line -- and I'm reading the testimony of Ms.
13 Beard (phonetic), I believe her name was. Once it
14 gets to the property line, then the company service
15 pipe becomes the customer service pipe at that point,
16 and therefore, at that point they don't have the
17 responsibility for repairs or maintenance; is that a
18 fair characterization of their assertion?

19 JUDGE JONES: It is. The property line and the
20 associated equipment that is located at the property
21 line, right.

22 CHAIRMAN SCOTT: Right. So -- and they are

1 saying property line, in essence, in this case,
2 meaning somebody's property line, because it's not --
3 it's not the petitioner's property line at this
4 point, right? It's --

5 JUDGE JONES: That's correct.

6 CHAIRMAN SCOTT: It's his neighbor's property
7 line.

8 JUDGE JONES: It is.

9 CHAIRMAN SCOTT: So if we took that argument to
10 maybe a logical, maybe an illogical extreme, if a
11 subdivision was built, and the company put all the
12 meters and all the boxes right on the edge of one
13 person's property and then all the rest of the pipes
14 that went through the subdivision, no matter where
15 the streets were, no matter where the property was,
16 if they are just relying on the word property line
17 for their -- at the demarcation point at which they
18 back off of responsibility, couldn't you have a
19 situation that would kind of strain everybody's logic
20 that an entire subdivision wouldn't be their
21 responsibility at least as it got past whoever's
22 property that was sitting on?

1 JUDGE JONES: I believe that's where we get
2 into the relationship between these questions and
3 main extension rules. You've got mains running
4 through streets. If a developer wants to put in a
5 subdivision with a water service, of course, that
6 developer is going to have to pay a deposit to get
7 those mains extended along those streets, and once
8 that happens, then the residents tap into those mains
9 at or near the property line. So from an -- in terms
10 of how the rules work and in context and together,
11 that's how it goes.

12 CHAIRMAN SCOTT: Okay. But in this -- but in
13 this -- and that was probably a bad example, because
14 I gave you a new place, and this was an existing
15 place that's there. But so the -- and there had been
16 service at that location before, correct? He didn't
17 install new -- any new piping when he took the place
18 over in foreclosure, right?

19 JUDGE JONES: That's correct, Mr. Chairman.
20 There was service initially installed at the request
21 of Mr. Laramore's predecessor -- well, not immediate
22 predecessor, but back in 1922.

1 CHAIRMAN SCOTT: Way back predecessor.

2 JUDGE JONES: And at that point then is the
3 company installed equipment there where it still sits
4 today, and the then owner used the 300 feet of
5 service line then to move that water from the same
6 meter location where it is now to that same property.

7 CHAIRMAN SCOTT: And in reading through all of
8 the regulations that -- and you set them out very
9 well in the Order, and I appreciate that. But in
10 reading all of them, it seems like there is -- for
11 lack of a better word -- a compact here trying to
12 avoid a kind of an absurd result. From the company's
13 standpoint, trying to avoid the result of every time
14 anything breaks on somebody else's property, they
15 don't need to get, you know -- because it's the
16 customer's responsibility at that point, the company
17 doesn't need to get extra permission to go in and
18 repair something, and the same would be true from the
19 customer's standpoint, you know, their responsibility
20 up to their line.

21 But in this case, if we enter the
22 Order that's been proposed, Mr. Laramore has to

1 actually repair something that's not only not in an
2 easement, but isn't even -- that isn't on his
3 property. It's on another private party's property;
4 is that correct?

5 JUDGE JONES: Yes, that and right-of-way,
6 correct.

7 CHAIRMAN SCOTT: Right. So, I mean, you would
8 have to go through the right-of-way and then into the
9 other person's property to make this -- to make this
10 repair, which seems like it's not -- just offhand
11 isn't the way that we -- that this was tried to be
12 drawn up originally, or am I missing something there?

13 JUDGE JONES: I just think the way the rules
14 are designed, they are not intended to really have
15 these 300 feet distances between mains and people's
16 property, but -- and when these situations have come
17 up, the Illinois-American has been reluctant to cut
18 anybody off, because you are not supposed to take
19 service through other people's property. That's in
20 the Commission rules and company rules. But there is
21 sort of a grandfather situation in some of these
22 cases.

1 So rather than cut these people off,
2 the company continues to provide water to that meter,
3 but then if problems arise over these rogue lines,
4 then they expect the customer to pick up the tab for
5 the fix.

6 COMMISSIONER COLGAN: In terms of the tab, it
7 looks like Mr. Laramore maybe has three options. One
8 is replacing the service pipe at \$10,000, extending
9 the water main to his house for 21,000 or repairing
10 the leak?

11 JUDGE JONES: That's correct, Commissioner. He
12 has those three options.

13 COMMISSIONER COLGAN: And the leak is -- do we
14 know where the leak is?

15 JUDGE JONES: We do. It's -- it's on a map
16 that's -- that's in there, and the location of the
17 leak is identified.

18 COMMISSIONER COLGAN: So repairing the leak, we
19 don't have a cost estimate on --

20 JUDGE JONES: Commissioner, we do not, other
21 than the two sides, although not providing an
22 estimate, did stipulate it would be substantially

1 less than any of those other estimates.

2 CHAIRMAN SCOTT: Commissioner O'Connell-Diaz?

3 COMMISSIONER O'CONNELL-DIAZ: And Judge Jones,
4 just threaded through the rationale here is that the
5 burden in this instance, given all of the facts
6 particular to this case -- because this is, I think
7 as the Chairman said, a confusing case and probably a
8 case that could be singled out from a lot of other
9 cases that would be before us, and that's the basis
10 of your determination as I understand it, but that
11 the thought is that these costs, that for this water
12 service problem to this house, that's -- should be
13 borne by that customer as opposed to the customers
14 throughout that service territory?

15 JUDGE JONES: Yeah, Commissioner. I think
16 that's right. And Mr. Laramore's interpretation of
17 the rules would at least arguably require
18 Illinois-American to provide water somehow to really
19 everybody that requested it, no matter how far they
20 are from a main.

21 COMMISSIONER O'CONNELL-DIAZ: Thank you.

22 CHAIRMAN SCOTT: Further questions?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

(No response.)

CHAIRMAN SCOTT: Judge, thanks very much. I appreciate it. You may want to stay there. I think you are -- you may be up next again.

Item W-2 is Docket No. 11-0767. This is Illinois-American Water Company's rate case. Oral argument on this matter is scheduled for 11:00 on September 11th at the Commission offices in Springfield. So we won't be deciding on the matter today, but I believe Commissioner McCabe has some questions for Judge Jones.

Commissioner?

COMMISSIONER MCCABE: Yes. ALJ Jones, the first was on attorney's fees, and how much evidence was provided or considered regarding attorney's fees claimed by IAWC for their outside counsel.

JUDGE JONES: Thank you, Commissioner. Would you like me to comment briefly on that?

COMMISSIONER MCCABE: Definitely.

JUDGE JONES: Yeah, I think one aspect of that was how thoroughly those fees have been documented, and I think, perhaps, unlike some cases in the past,

1 there is a substantial amount of documentation here
2 that Staff requested the company provide and they did
3 provide. Among those things are some billing
4 records, and they show an itemization of the -- of
5 the costs by date, timekeeper, description of the
6 legal service provided, the number of hours to the
7 quarter hour and the amount.

8 And those are part of the
9 documentation then that was put into the record as an
10 exhibit. It's -- there is 34 parts to that
11 particular filing. It took 34 parts to get it on to
12 e-Docket because of the volume, but there is
13 documentation like that, at least this time around,
14 that is in there.

15 COMMISSIONER MCCABE: Okay. Thank you. And on
16 consultant expenses, with regards to consultant
17 expenses, the proposed Order takes a simple average
18 of the Staff's CPA rate and Mr. Warren's actual rate.
19 Are there other approaches for determining a
20 reasonable rate based on the record?

21 JUDGE JONES: I think so. I mean, the Staff
22 rate is certainly one -- one alternative there.

1 Staff used sort of the CPA rate as a proxy, and then,
2 of course, there is Mr. Warren's actual rate that no
3 one really disputes in terms of what it is. There is
4 also some reference, I think, at least by Staff to
5 making a comparison of Mr. Warren's rate to some of
6 the other legal or consultant rates that are in the
7 record, and I think that provides another alternative
8 to the Commission. And those -- I know the way this
9 is in the Order, it's kind of a little bit of a
10 difficult read, because there is no numbers in there,
11 but the numbers are in the record. Some of those are
12 confidential. So they weren't put in there, but
13 those would be some possibilities.

14 COMMISSIONER MCCABE: And in another area,
15 comparing utilities, various parties compared water
16 utilities as well as non-water utilities in coming up
17 with the common equity and rate of return. I just
18 wanted your thoughts on how -- the merits and
19 demerits of using those comparisons, especially with
20 non-water utilities.

21 JUDGE JONES: Thank you, Commissioner. I would
22 note that Steve Hickey is here, too. I think a lot

1 of times there is going to be the sample of the water
2 companies, and then frequently there will be an
3 attempt made to see if another sample can be
4 developed on a non-water company, and I think the
5 idea behind that is that you have a more robust
6 analysis if you can actually get two types of samples
7 in there.

8 That's particularly true, I think,
9 because there are not a lot of water companies that
10 go into these samples. So you end up really with a
11 little more information in the record and a little
12 more of a range for the Commission to work with if
13 that can be done.

14 And here what Staff did was sort of a
15 12-measure risk analysis of financial and operating
16 ratios to attempt to be -- to come up with a utility
17 analysis as a result of that quantitative effort, and
18 that became the utility sample with some exclusions.

19 MR. HICKEY: Commissioner, this is Steve
20 Hickey, if I could just add to it, because Judge
21 Jones and I discussed this as the case was going on,
22 and he is correct about how Staff came up with its

1 utility sample. I would just note that in developing
2 its water sample, Staff essentially used all the
3 water companies in the United States that were out
4 there that met their specific criteria, and I believe
5 there were only like seven, which is part of the
6 reason for the concern.

7 COMMISSIONER MCCABE: Has the Commission ever
8 used that type of analysis before?

9 MR. HICKEY: Yes. It's not really uncommon.

10 COMMISSIONER MCCABE: Mr. Hickey or Judge
11 Jones, what Docket could I look to for that; do you
12 know?

13 MR. HICKEY: The Aqua rate case, 11-0436, would
14 be one example, but I think it's not really uncommon
15 at all for the Commission in conclusions on return on
16 equity to -- excuse me -- to rely upon samples that
17 are not specific to the particular utility industry.
18 In electric cases, the Commission has relied on
19 samples of gas and electric. In water cases, the
20 Commission has relied on samples including water
21 samples, as well as utility samples, sometimes gas
22 samples. There are a lot of cases out there when the

1 Commission has done that.

2 COMMISSIONER MCCABE: Thank you.

3 CHAIRMAN SCOTT: Anything further? Further
4 questions?

5 (No response.)

6 CHAIRMAN SCOTT: Mr. Hickey, Judge, thanks very
7 much.

8 We have one miscellaneous item today.
9 Item M-1 is Docket No. 06-0703. This is the
10 rulemaking proceeding for Title 83, Part 280 of the
11 Administrative Code. We will be holding this item
12 for disposition at a future Commission proceeding as
13 well as the decision on the oral argument request
14 that's been made in this matter.

15 We have three other items of business
16 for consideration today. First up is a report from
17 our Office of Retail Market Development and Consumer
18 Services Division concerning Liberty Power's sales
19 activities in the State of Illinois. Torsten, Peter?

20 MR. CLAUSEN: Yeah. Good morning. I will get
21 started and just briefly summarize what we have put
22 in front of you in the Staff report. As you probably

1 recall, earlier this year there were several new
2 changes that came out of a Notice of Inquiry that
3 started last year regarding consumer education. And
4 one of those things was the creation of a -- what we
5 call the complaint score card on the electric side.

6 And this complaint score card really
7 ranks alternate retail electric suppliers, and it
8 shows how each electric supplier's rate of complaints
9 for 1,000 customers for the last six months period
10 compares to the residential market as a whole. And
11 we have now, I think, eight separate score cards that
12 we have updated every month. And so they are all
13 showing on our website pluginillinois.org.

14 And one of the rules that we set up
15 when we created this ranking was that a supplier is
16 included in the ranking as soon as they have at least
17 three consecutive months of more than 200 residential
18 customers here in Illinois. And for the suppliers
19 that have only three, four, five months of that kind
20 of data, we actually have a little asterisk next to
21 them making the viewer aware that they have recently
22 been added to the ranking, because as I said earlier,

1 the ranking goes by a rolling average of a six-month
2 period.

3 Also worth noting is that these
4 informal complaints are generated at -- at our
5 Consumer Services Division, and the Consumer Services
6 Division takes out some of these contacts; for
7 example, we really take out the ones that are mere
8 inquiries. So if a customer calls and says, I have
9 never heard of this company, are they really licensed
10 by the Commission, then that particular contact is
11 not considered an informal complaint. At the same
12 time at the point of contact, the counselors do not
13 determine fault by the supplier. So the informal
14 complaints could very well be instances where the
15 supplier was at fault or where the supplier was not
16 at fault. So we are just at this point reporting all
17 informal complaints as they come in. And obviously,
18 every supplier is treated that way and ranked that
19 way.

20 And Liberty Power was included fairly
21 early on, and seven out of the eight times that they
22 have been included in our ranking they have been at

1 the bottom of the ranking, and doing all of those
2 eight complaint score cards, they have had -- their
3 complaint rate was higher than the market average.
4 So beginning with December of 2011, Liberty Power's
5 average ratio of informal complaints was higher than
6 any of the other suppliers for seven consecutive
7 complaint score cards. And even for the period in
8 which they achieved their best score, which was the
9 most recent complaint score card that looked at
10 January 1st through the end of June, 2012, Liberty
11 Power's six-month rolling average ratio of informal
12 complaints was about 11 times that of the market as a
13 whole.

14 And in addition to that, the informal
15 complaints against Liberty Power represent almost
16 80 -- sorry -- almost 28 percent of all informal
17 complaints between January and July of this year. So
18 that kind of speaks about the volume of informal
19 complaints. And at the same time, what's concerning
20 to us is the repetitive nature of the allegations
21 that we have seen here in these informal complaints,
22 and chief among those are allegations about

1 misrepresentation by the sales agent of third party
2 marketers that are -- and contracted by Liberty
3 Power, and numerous informal complaints allege that
4 sales agents claimed to be working for or with the
5 electric utility or a selected supplier in a
6 municipal aggregation program, and then some other
7 complaints allege that customers were switched
8 without authorization or that they have been unable
9 to reach Liberty Power to rescind or cancel an
10 enrollment.

11 And so the OMD and CSD, we have met
12 with Liberty Power over the last few months to
13 address both the large quantity as well as the nature
14 of the allegations within these complaints. So as a
15 result of some of these complaints, Liberty Power has
16 made several changes in its operation to improve its
17 quality control when it comes to marketing to
18 residential customers. However, Staff would like to
19 send a series of data requests to better understand
20 Liberty Power's structure to respond to allegations
21 of deceptive marketing.

22 So these data requests that we would

1 like to see, they will allow Staff to better judge
2 Liberty Power's ability to meet the managerial
3 qualifications as required by Section 16.115 of the
4 PUA and Code Part 451. And the first set of data
5 requests that we have prepared will address their
6 managerial resources and abilities; for example,
7 supervision, training, compliance, corrective actions
8 as a result of these incidents.

9 So at this point we are not asking you
10 to vote to open a formal proceeding. So there is
11 nothing -- there is no need for you to vote on
12 anything today. However, we wanted you to know about
13 Staff's actions in this area, and we will report back
14 to you after we had a chance to review their
15 responses to the data request, and that's when we
16 will, you know, come up with any further
17 recommendations.

18 CHAIRMAN SCOTT: Anything? Do you have
19 anything to add to that?

20 MR. MUNTANER: I don't. If you have any
21 questions, we will be glad to answer them, and as
22 Torsten said, we will certainly pass on some

1 information once we review the responses to the data
2 request and provide you with another report.

3 CHAIRMAN SCOTT: I appreciate you bringing this
4 to the Commission. I think this is important, and we
5 all know, because we hear all the time how important
6 it is -- and we hear it from other companies, too,
7 how important it is to maintain the integrity of the
8 program, and then if competition is going to work,
9 people have to have confidence in the folks that they
10 are dealing with and the companies.

11 So whether allegations that need
12 further exploration -- I appreciate both the fact you
13 have got the score card and that you are taking the
14 results of the score card and taking some action on
15 that. I think that's very good. I think it sends
16 the right message. So I appreciate that, and I am
17 looking forward to whatever the responses are, and I
18 think one of the issues here that you just mentioned
19 now and from reading the report of what kind of
20 resources the company actually has on the ground here
21 in Illinois to deal with some of the issues, and
22 that's obviously something that's been very important

1 to us on -- in a lot of occasions working with these
2 folks. So I appreciate that.

3 Further comments, discussion?

4 Commissioner Colgan?

5 COMMISSIONER COLGAN: Mr. Chairman, I echo your
6 comments, and I want to thank the Staff for bringing
7 this to our attention in the kind of research and
8 in-depth analysis that you have done to put together
9 this report, and I will look with interest towards
10 your report that comes out of the result of your
11 further requests for information from the company.
12 But I thank you, and I think this is a really
13 important issue. And I will look forward to your
14 report.

15 CHAIRMAN SCOTT: Anything further?

16 (No response.)

17 CHAIRMAN SCOTT: Thank you, gentlemen. I
18 appreciate it.

19 Next up is a resolution for the 2012
20 Lifeline Awareness Week. Commissioner Colgan, I
21 believe you will be presenting this resolution.

22 COMMISSIONER COLGAN: Yeah. I have provided a

1 resolution to you. I just want to make a brief
2 comment. Many of us take for granted that we can
3 pick up our phone and call our friends, our family,
4 stay connected to the world, and phone service has
5 become such a routine luxury in our lives that we
6 just don't really realize how important of a -- or
7 how we sometimes take for granted how important it
8 is. But there are -- if you could imagine that there
9 are many people, people with disabilities who aren't
10 able to work, people who have lost their jobs because
11 of the economy, many people out there struggling with
12 trying to make ends meet, who just can't, you know,
13 even pay their rent, let alone be able to have this
14 service.

15 So unfortunately there are a lot of
16 people in the United States and in Illinois --
17 apparently five and a half percent of people in
18 Illinois -- households in Illinois, don't have basic
19 phone service. There is some good news and many of
20 these consumers may qualify for an assistance
21 program, the Lifeline Program, that makes telephone
22 service more affordable to the nation's low income

1 customers by providing a discount on the connection
2 fee and a monthly discount on monthly charges for
3 their total telephone service.

4 The FCC, the UTAC; our Illinois
5 Corporations, NARUC, NASUCA, the Governor's Office,
6 other State and federal agencies, cities, counties
7 and organizations have committed to increasing
8 awareness about the availability of the Lifeline
9 Program and are committed to encouraging eligible
10 citizens to sign up for this program. And as a
11 result of our requests, Governor Pat Quin has
12 declared the week of September 10th through the 14th
13 as Lifeline awareness week in Illinois, and I have
14 drafted a resolution stating that the Illinois
15 Commerce Commission supports the week of
16 September 10th through the 16th as Lifeline Awareness
17 Week in Illinois. And we encourage all eligible
18 customers to consider the Lifeline Program, and
19 ensure that all residents have access to basic
20 telephone service in order to stay in contact with
21 emergency services, community services, friends and
22 family.

1 So I am asking the Commission's
2 support for this resolution. Mr. Chairman and
3 Commissioners, I move that the Commission adopt the
4 resolution in support of the September 10th through
5 the 16th, 2012, as Illinois Lifeline Awareness Week.

6 CHAIRMAN SCOTT: Is there a second?

7 COMMISSIONER MCCABE: Second.

8 CHAIRMAN SCOTT: Further discussion?

9 COMMISSIONER O'CONNELL-DIAZ: I just would join
10 in my colleague's comments with regard to this
11 important resolution. You know, I think we take it
12 for granted, as we have mentioned today, about a lot
13 of the services that we have, and we all have the,
14 you know, fancy cell phones, but the ability to have
15 phone service in one's home for many of our folks
16 that are financially challenged, maybe even health
17 challenged, this is an important part of their lives
18 and keeps them connected for emergency services, and
19 also for just to be part of our society.

20 So it is a great thing that we do this
21 today, and I know that across the country through our
22 NARUC colleagues they are enacting similar

1 resolutions, and so we will have a wave of this
2 awareness across our country. And certainly Illinois
3 will be a leader with regard to keeping this on the
4 front burner so that we can ensure that those that
5 need it most are taken care of. So I thank
6 Commissioner Colgan for bringing this to our door
7 step today, and look forward to working to ensure
8 what's contained in this resolution is the reality
9 for people in our state.

10 CHAIRMAN SCOTT: I absolutely agree. I
11 appreciate you bringing this to us, Commissioner.

12 Further discussion?

13 (No response.)

14 CHAIRMAN SCOTT: All in favor, say aye.

15 (Chorus of ayes.)

16 CHAIRMAN SCOTT: Any opposed?

17 (No response.)

18 CHAIRMAN SCOTT: The vote is four to nothing,
19 and the resolution is adopted.

20 Our last item concerns a FERC matter.

21 So we will need to address that in Closed Session.

22 Is there a motion to go into Closed Session?

1 COMMISSIONER O'CONNELL-DIAZ: So moved.

2 CHAIRMAN SCOTT: Is there a second?

3 COMMISSIONER MCCABE: Second.

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

5 All in favor, say aye.

6 (Chorus of ayes.)

7 CHAIRMAN SCOTT: Any opposed?

8 (No response.)

9 CHAIRMAN SCOTT: The vote is four to nothing
10 and the Commission will now go into Closed Session.
11 Please let me know when the room is ready in
12 Springfield.

13 MR. HANSEN: We are ready.

14 (Whereupon at this point pages
15 51 - 56 of the proceedings are
16 contained in a closed separately
17 bound transcript.)

18

19

20

21

22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

CONTINUATION OF PROCEEDINGS

CHAIRMAN SCOTT: In Closed Session the Commission discussed filing comments in FERC Docket No. ER12-2440. Is there a motion to file the comments with FERC?

COMMISSIONER O'CONNELL-DIAZ: So moved.

CHAIRMAN SCOTT: Is there a second?

COMMISSIONER MCCABE: 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 four to nothing, and the comments will be filed with FERC.

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

JUDGE WALLACE: No, there is not.

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

(END OF PROCEEDINGS)