BEFORE THE
ILLINOIS COMMERCE COMMISSION
TRANSPORTATION BENCH SESSION

Chicago, Illinois
March 7th, 2012

Met, pursuant to notice, at 10:30 a.m.

BEFORE:

MR. DOUGLAS P. SCOTT, Chairman
MS. LULA M. FORD, Commission
MS. ERIN M. O'CONNELL-DIAZ, Commissioner
MR. SHERMAN J. ELLIOTT, Commissioner
MR. JOHN T. COLGAN, Acting Commissioner
(via telephone)

SULLIVAN REPORTING COMPANY, by
Amy M. Spee, CSR, RPR
License No. 084-004559

With me in Chicago are Commissioners Ford, O'Connell-Diaz and Elliott. And with us in Springfield is Commissioner Colgan. I'm 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 Commission meetings. According to the Clerk's Office, we have one request to speak at today's Bench Session. Our public request to speak today comes from Representative Marlow Colvin.

Representative Colvin, are you there?

REPRESENTATIVE COLVIN: I am.

CHAIRMAN SCOTT: Very good. Just a reminder
that per the Commission's rules, you'll have
3 minutes for your comments. I know you've been
through this before, but you understand that we won't
actually be responding to you as you speak.

So when you're ready, go ahead.

REPRESENTATIVE COLVIN: That is understandable.

Good morning, Chairman Scott and
Mr. Colgan here in Springfield, to the rest of the
Commissioners.

Chairman Scott and the Commissioners,
thank you for this opportunity. My name is Marlow
Colvin, for the record. I'm the State Representative
of the 33rd Representative District on the Southeast
Side of the City of Chicago.

Thank you for this opportunity to
speak with you again.

I am here again today to discuss the
Chicago Clean Energy Project. As you know, this
project is not on your agenda for today's meeting
and, quite frankly, the reason I'm here is that I
find it so troubling.

There is a very real concern that this
proceeding has been unnecessarily and inappropriately
delayed in a manner that will prevent you from acting
within the statutory deadlines established by the
General Assembly.

As you recall, prior to you voting on
the initial order regarding the Chicago Clean Energy
Project in January, I had the opportunity to speak
with you about this $3 billion facility that is
planned to be constructed in my legislative district
on the Southeast Side of the City of Chicago.

In addition to providing much-needed
jobs and economic growth for this community and this
state, this project will provide a productive use for
Illinois coal, demonstrate the commercial viability
of U.S. gasification technology, and significantly
advance this country’s enhanced oil recovery efforts.

As we discussed then, there is a very
substantial legislative vetting of this project prior
to the statute being enacted. There also was a very
detailed framework that the General Assembly approved
in the statute. The General Assembly very
intentionally gave the ICC an important but limited
role. There was no disrespect intended by giving the ICC a limited role. There was a deliberate assignment of task with the Illinois Power Agency resolving contested terms of the sourcing contract, the Capital Development Board establishing the financial parameters for the capital and operations management cost and the ICC establishing the rate of return for the facility.

Each agency had a limited role in developing the foundation for the project that reflected the agency's particular expertise. The statute provides that once those inputs have been demonstrated, the ICC is to take the mechanical steps necessary to finalize the contract.

As the statute plainly states, the ICC is only to perform three very specific tasks at this point: fill in the blanks for the capital charge and O&M charge and the rate of return; number two, to remove two inappropriate early termination provisions; and, number three, correct typographical and scrivener errors.

The statute clearly states that these
are the only changes that the ICC is authorized to make to the contract the Illinois Power Agency approved. The order that you adopted in January went well beyond those tasks and modified the substantive terms of the contract that included poison pills that appeared designed to kill the project. The provisions that were included in your order absolutely were not contemplated by the General Assembly.

There really is no way for the General Assembly to draft a statute that is more clear regarding the ICC's limited role. However, when you voted on the order in January, the Chairman expressed his desire to get more legislative guidance. As a result, the House and Senate both have adopted resolutions clearly reiterating that the ICC was, indeed, to have a limited role expressing dissatisfaction with the January order and encouraging the ICC to grant rehearing so they can enter an order that makes only the limited modifications to the sourcing contract called for by the statute.
I was relieved to learn that this Body unanimously voted to grant request for rehearing followed by the Chicago Clean Energy and the economic development intervenors, but I was very troubled to hear about the positions of the Chief Administrative Law Judge who has been assigned to the case.

In his memorandum to this Commission, he recommended denial on rehearing to address legal issues that he recommended that the Commission further revise an IPA-approved contract. He did this after the House adopted its resolution, which request that the Commission grant rehearing to reverse itself on legal issues and clarify that the Commission was not to revise the IPA-approved contract except as explicitly reside -- required by the law.

Now we must wait for a process that again will result in a proposed order from the Chief ALJ. I am very concerned that the proposed order will contain poison pills and recommendations that are contrary to the law and legislative attempt.

You already have read the Chief ALJ's position in his memorandum. Of course the final
decision will be made by you, the Commissioners. I sincerely hope that each of you review the statute and follow its specific requirements, even if the Chief Administrative Law Judge recommends something else. It is an extraordinary step for the House and the Senate to adopt the resolution that we did a month ago.

With that understanding in mind as the sponsor of underlying legislation, I am dismayed at how your Chief ALJ has conducted this proceeding so far. I am concerned that your Chief ALJ is now trying to kill the project by delaying it to its death.

The General Assembly put in law a limited 30-day rehearing process for any order that impacts the facility's recoverable costs. The idea of waiting a half a year for a proposed order on rehearing from the Chief ALJ that almost certainly is not going to be in line with the legislative mandate given the ICC is entirely unacceptable.

It is my strong hope that this Body will direct the Chief ALJ to act on an expedited
basis, within 30 days contemplated by the law, to
develop a proposed order that recommends the
Commission approve the IPA-approved contract with
only the three changes outlined in the law.

With that, I simply want to add that
clearly the legislative intent, as I testified in
Spring— in Chicago in January and, again, here, I
just want to reiterate that this Bill was fully
vetted by folks duly elected across this state to
argue, discuss, debate, vet and to ultimately vote up
or down on this legislation and its intent and how it
would be implemented.

We went through great stakes and great
pains over the last three and a half years to
accomplish that. Why is that important? It speaks
directly to what our democracy holds. And that is,
speaking on behalf of all the people of Illinois,
those legislators in the Capitol, both in the House
and the Senate, who weighed in on its every member,
and then getting the approval by both chambers and by
super majority fashions and then having our Governor
sign this legislation into law clearly undergirds
what our democracy is really all about. And that is
the people deciding what's in the best interest of
the state of Illinois and it's interest in this case
in particular with respect to energy production in
Illinois.

I would hope that the Commission and
the Commissioners would take that to heart as they
deliberate these very important issues.

I want to thank you for your
indulgence for giving me this time to speak this
morning. And that would conclude my statement this
morning.

Thank you.

CHAIRMAN SCOTT: Thank you, Representative
Colvin.

That will conclude the public comment
portion of today's agenda.

On to today's matters, we will start
with Transportation agenda with the approval of
minutes from our February 16th Bench Session. I
understand amendments have been forwarded.

Is there a motion to amend the
COMMISSIONER O'CONNELL-DIAZ: So moved.
CHAIRMAN SCOTT: Is there a second?
COMMISSIONER ELLIOTT: Second.
CHAIRMAN SCOTT: It's been moved and seconded.

All in favor say "aye."
(Chorus of ayes.)

Any opposed?
(No response.)
The vote is 5-0 and the amendments are adopted.

Is there a motion to approve the February 16th minutes as adopted?
COMMISSIONER O'CONNELL-DIAZ: So moved.
CHAIRMAN SCOTT: Is there a second?
COMMISSIONER FORD: Second.
CHAIRMAN SCOTT: So moved and seconded.

All in favor say "aye."
(Chorus of ayes.)

Any opposed?
(No response.)
The vote is 5-0 and the February 16th
Transportation Bench Session as amended are approved.

Moving on to the Railroad section.

Items are RR-1 through RR-3 can be taken together. These items concern Stipulated Agreements regarding public safety improvements at highway-rail grade crossings across Illinois. In each case Staff recommends entry of an Order approving the agreement.

Is there any discussion?

(No response.)

Is there a motion to enter the orders?

COMMISSIONER O'CONNELL-DIAZ: So moved.

CHAIRMAN SCOTT: Is there a second?

COMMISSIONER ELLIOTT: Second.

CHAIRMAN SCOTT: Moved and seconded.

All in favor say "aye."

(Chorus of ayes.)

Any opposed?

(No response.)

The vote is 5-0 and the orders are entered. We will use this 5-0 vote for the remainder of the Transportation agenda unless otherwise noted.
Item RR-4 is Docket No. T09-0067. This item concerns a citation proceeding against Keokuk Junction Railway Company. ALJ Kirkland-Montaque recommends entry of a Supplemental Order dismissing the Citation Order and subsequent Order issued in 2009.

Is there any discussion?
(No response.)

Any objections?
(No response.)

Hearing none, the Supplemental Order is entered and the Citation Order is dismissed.

Item RR-5 is Docket No. T11-0007. This item concerns a Stipulated Agreement concerning public safety improvements to a highway-rail grade crossing in Effingham County. Staff recommends entry of a second Supplemental Order granting additional time for the project's completion.

Is there any discussion?
(No response.)

Any objections?
(No response.)
Hearing none, the Supplemental Order is entered.

Item RR-6 is Docket No. T05-0058.

This item concerns a petition to establish 12 new highway-rail grade crossings in Williamson County in connection a coal mine. Petitioners seek voluntary dismissal without prejudice for the part of the petition related to the West Spur. And ALJ Kirkland-Montague recommends entry of a fifth Supplemental Order granting that partial dismissal.

Is there any discussion?

(No response.)

Any objections?

(No response.)

Hearing none, the Supplemental Order is entered.

Mr. Matrisch, is there any further Transportation business to come before the Commission today?

MR. MATRISCH: Nothing further, Mr. Chairman.

Thank you.

CHAIRMAN SCOTT: Thank you, sir.
Hearing none, that concludes today's Transportation agenda.
CERTIFICATE OF REPORTER

STATE OF ILLINOIS )
COUNTY OF COOK ) SS:

TITLE: Transportation Bench Session

I, Amy M. Spee, do hereby certify that I am a court reporter contracted by SULLIVAN REPORTING COMPANY of Chicago, Illinois; that I reported in shorthand the evidence taken at the proceedings had in the hearing of the above-entitled case on the 7th day of March 2012; that the foregoing 15 pages are a true and correct transcript of my shorthand notes so taken as aforesaid and contains all of the proceedings directed by the Commission or other person authorized by it to conduct the said hearing to be stenographically reported.

Dated at Chicago, Illinois, this 19th day of March 2012.

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Amy M. Spee, CSR, RPR