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BEFORE THE  
ILLINOIS COMMERCE COMMISSION  
SPECIAL OPEN MEETING

Chicago, Illinois  
Thursday, June 26, 2014

Met, pursuant to notice, at 10:31 a.m. at  
160 North LaSalle Street, 8th Floor, Chicago, Illinois.

PRESENT:

- MR. DOUGLAS P. SCOTT, Chairman
- MR. JOHN T. COLGAN, Commissioner (via videoconference)
- MS. ANN McCABE, Commissioner (via videoconference)
- MR. MIGUEL DEL VALLE, Commissioner
- MS. SHERINA E. MAYE, Commissioner

1           CHAIRMAN SCOTT: Pursuant to the provisions of the  
2 Open Meetings Act, I now convene a Special Open Meeting  
3 of the Illinois Commerce Commission.

4           With us in Chicago are Commissioner del Valle  
5 and Commissioner Maye. With us in Springfield are  
6 Commissioner Colgan and Commissioner McCabe. I'm  
7 Chairman Scott. We have a quorum.

8           Before moving into the agenda, according to  
9 Section 1700.10 of Title 2 of the Administrative Code,  
10 this is the time we allow members of the public to  
11 address the Commission. Members of the public wishing  
12 to address the Commission must notify the Chief Clerk's  
13 office at least 24 hours prior to Commission meetings.  
14 According to the Chief Clerk's office, we have no  
15 requests to speak at today's meeting.

16           I want to start by welcoming Ny'eisha Gardner  
17 who's in the back in the red to the ICC. Ny'eisha will  
18 be working here with us this summer as a Chicago Public  
19 Schools intern.

20           Commissioner Maye, did you want to introduce  
21 Ny'eisha?

22           COMMISSIONER MAYE: Sure. Thank you.

23           Good morning, everyone. Ny'eisha is a part of  
24 the One Summer Chicago Internship Program, and she'll be  
25 working here through August 1st. The One Summer

1 Internship Program brings together government  
2 institutions, community-based organizations, and  
3 companies to offer over 22,000 employment and internship  
4 opportunities to youth and to young adults.

5 Ny'eisha is a rising senior at Mather High  
6 School, and she participated in the ICC's CPS job shadow  
7 day last March where her mentor was Administrative Law  
8 Judge Bonita Benn. Her first day was Monday, and she'll  
9 be with us for six weeks. And she'll be working on  
10 various projects with the different divisions of the  
11 Commission. We are excited to have her, and if we could  
12 just give her a nice, warm welcome, I'd appreciate it.

13 (Whereupon, a round of applause was  
14 heard.)

15 COMMISSIONER MAYE: Thank you, Chairman.

16 CHAIRMAN SCOTT: You're welcome.

17 Thank you. And welcome, Ny'eisha.

18 Item 1 on today's agenda is Docket  
19 No. 13-0497. This is our reconciliation of revenues  
20 collected under ComEd's Rider UF with uncollectible  
21 costs incurred. ALJ Kimbrel recommends entry of an  
22 Order approving the reconciliation.

23 Is there any discussion?

24 (No response.)

25 CHAIRMAN SCOTT: Is there a motion to enter the

1 Order.

2 COMMISSIONER MAYE: So moved.

3 CHAIRMAN SCOTT: Moved by Commissioner Maye.

4 Is there a second?

5 COMMISSIONER DEL VALLE: Second.

6 CHAIRMAN SCOTT: Second by Commissioner del Valle.

7 Any discussion?

8 (No response.)

9 CHAIRMAN SCOTT: All in favor say "aye."

10 (Whereupon, the ayes were heard.)

11 CHAIRMAN SCOTT: Any opposed?

12 (No response.)

13 CHAIRMAN SCOTT: The vote is five to nothing and  
14 the Order is entered. We will use this five-to-nothing  
15 vote for the remainder of today's Special Open Meeting  
16 unless otherwise noted.

17 Item 2 is Docket No. 13-0668. This is John  
18 Jozwiak's complaint against ComEd as to service in  
19 Stockton. It appears the parties have settled their  
20 differences and filed a Stipulation and Joint Motion to  
21 Dismiss which ALJ Riley recommends we grant.

22 Is there any discussion?

23 (No response.)

24 CHAIRMAN SCOTT: Any objections?

25 (No response.)

1           CHAIRMAN SCOTT: Hearing none, the motion is  
2 granted, and the complaint is dismissed.

3           Item 3 is Docket No. 14-0108. This is Njundu  
4 Sillah's complaint against X O O M Energy -- XOOM  
5 Energy -- as to an illegal transfer of service. It  
6 appears the parties have settled their differences and  
7 filed a Stipulation and Joint Motion to Dismiss which  
8 ALJ Sainsot recommends we grant.

9           Is there any discussion?

10                           (No response.)

11           CHAIRMAN SCOTT: Any objections?

12                           (No response.)

13           CHAIRMAN SCOTT: Hearing none, the motion is  
14 granted, and the complaint is dismissed.

15           Item 4 is Docket No. 14-0042. This is our  
16 citation proceeding against Eagle Energy Services for  
17 failure to file a Compliance Recertification Report. It  
18 appears that the respondent has now made the necessary  
19 findings, and ALJ Kimbrel recommends the proceeding be  
20 dismissed.

21           Is there any discussion?

22                           (No response.)

23           CHAIRMAN SCOTT: Any objections?

24                           (No response.)

25           CHAIRMAN SCOTT: Hearing none, the proceeding is

1 dismissed.

2 Item 5 is Docket No. 14-0303. This is  
3 Accenture LLP's application for licensure under  
4 Section 16-115C of the Public Utilities authorizing it  
5 to operate as an ABC and petition to cancel the license  
6 of its subsidiary Utilities Analyses Inc. ALJ Kimbrel  
7 recommends entry of an Order granting the requested  
8 cancellation and requested license but also requiring  
9 Utilities Analysis Inc. to file any outstanding 2012 and  
10 2013 annual reports.

11 Is there any discussion?

12 (No response.)

13 CHAIRMAN SCOTT: Any objections?

14 (No response.)

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

17 Item 6 is Docket No. 14-0380. This is Ameren  
18 Transmission Company of Illinois' petition for an Order  
19 pursuant to Section 8-509 of the Public Utilities Act  
20 authorizing the use of eminent domain power. ALJ Albers  
21 recommends entry of an Order granting the requested  
22 relief. I believe Commissioner McCabe had some proposed  
23 edits to this Order.

24 Commissioner?

25 COMMISSIONER McCABE: Thank you.

1           First, I have a question for Judge Albers. We  
2 understand the eminent domain cases are coming before us  
3 in segments or subsegments, and there are nine segments  
4 to the Illinois Rivers Project.

5           Can you estimate how many more eminent domain  
6 cases will come before us?

7           ADMINISTRATIVE LAW JUDGE ALBERS: The short answer  
8 is no. The long answer is it just depends on how  
9 successful they are in getting with negotiations. And  
10 those they can't get, how they group them together. So  
11 I doubt even Ameren knows at this point.

12           COMMISSIONER McCABE: All right. Well, we'll stay  
13 tuned.

14           I propose edits to reverse the decision to not  
15 grant eminent domain for three parcels of land owned by  
16 the Stock Family. In their brief on exceptions, ATXI  
17 argued that, one, the work performed by the individuals  
18 in question was not required to be done by license  
19 persons under the Real Estate Appraiser Licensing Act;  
20 two, the appraisal process is part of the evaluation of  
21 the property which the Commission ruled stayed is in the  
22 Court's jurisdiction; and, three, the work label -- work  
23 label which is characterized as significant when it  
24 appears it was not.

25           Therefore, the Order approves eminent domain

1 for 28 parcels over 25 land owners along the Meredosia  
2 and Ipava segments.

3 With that, I move the edit.

4 CHAIRMAN SCOTT: Is there a second?

5 COMMISSIONER COLGAN: I'll second that.

6 CHAIRMAN SCOTT: It's been moved and seconded to  
7 adopt the edits.

8 Is there any discussion?

9 (No response.)

10 CHAIRMAN SCOTT: All in favor of the edits say  
11 "aye."

12 (Whereupon, the ayes were heard.)

13 CHAIRMAN SCOTT: Opposed?

14 (No response.)

15 CHAIRMAN SCOTT: The vote is five to nothing and  
16 the edits are accepted. Is there now a motion to enter  
17 the Order as amended.

18 COMMISSIONER McCABE: So moved.

19 CHAIRMAN SCOTT: Is there a second?

20 COMMISSIONER COLGAN: Second.

21 CHAIRMAN SCOTT: Moved by Commissioner McCabe and  
22 seconded by Commissioner Colgan.

23 Is there any discussion?

24 (No response.)

25 CHAIRMAN SCOTT: All in favor say, "aye."

1 (Whereupon, the ayes were heard.)

2 CHAIRMAN SCOTT: Any opposed?

3 (No response.)

4 CHAIRMAN SCOTT: The vote was five to nothing, and  
5 the Order as amended is entered.

6 COMMISSIONER McCABE: Mr. Chairman?

7 CHAIRMAN SCOTT: Yes, Commissioner.

8 COMMISSIONER McCABE: Judge Albers would like to  
9 say something.

10 CHAIRMAN SCOTT: Judge, go right ahead.

11 ADMINISTRATIVE LAW JUDGE ALBERS: Are those the  
12 same amendments that were in the memo so I can just use  
13 those?

14 COMMISSIONER McCABE: Yes. We've already  
15 incorporated them. I can give them to you.

16 ADMINISTRATIVE LAW JUDGE ALBERS: All right.

17 COMMISSIONER McCABE: Along with the appendices.

18 ADMINISTRATIVE LAW JUDGE ALBERS: Great. Thank  
19 you.

20 CHAIRMAN SCOTT: Thank you, Judge.

21 Items 7 and 8 can be taken together. These  
22 items are applications for certification as an Installer  
23 of Distributed Generation Facilities under Section  
24 16-128A of the Public Utilities Act. In both cases,  
25 ALJ Baker recommends entry of an Order altering the

1 names to which the certificates were granted.

2 Is it is there any discussion?

3 (No response.)

4 CHAIRMAN SCOTT: Any objections?

5 (No response.)

6 CHAIRMAN SCOTT: Hearing none, the Amendatory  
7 Orders are entered.

8 Items 9 through 12 can be taken together.  
9 These items are applications for certification as an  
10 Installer of Distributed Generation Facilities under  
11 Section 16-128A of the Public Utilities Act. In each  
12 case, ALJ Baker recommends entry of an Order granting  
13 the requested relief.

14 Is there any discussion?

15 (No response.)

16 CHAIRMAN SCOTT: Any objections?

17 (No response.)

18 CHAIRMAN SCOTT: Hearing none, the Orders are  
19 entered.

20 Item 13 is Docket No. 14-0388. This is  
21 All-Tech Electrical Construction Company's application  
22 for certification to install, maintain, or repair  
23 electric vehicle charging station facilities under  
24 Section 16-128A of the Public Utilities Act. ALJ Benn  
25 recommends entry of an Order granting the requested

1 certificate.

2 Is there any discussion?

3 (No response.)

4 CHAIRMAN SCOTT: Any objections?

5 (No response.)

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

8 Item 14 is Docket No. 13-0669. This is the  
9 Jackson County Emergency Telephone System Board's  
10 petition to modify the 911 provider for the Emergency  
11 Telephone System Board in Jackson County, Illinois.  
12 ALJ Albers recommends entry of an Order approving the  
13 plan modification with certain agreed to conditions.

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 Item 15 is Docket No. 14-0248. This is TelNet  
21 Worldwide Illinois' petition for confidential and/or  
22 proprietary treatment of information contained in its  
23 annual report. This item has been withdrawn from  
24 today's agenda.

25 Items 16 through 18 can be taken together.

1 These items are Petition to Withdraw certificates of  
2 service authority to provide certain telecommunications  
3 services in Illinois. In each case, ALJ Benn recommends  
4 entry of an Order granting the requested relief.

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 Items 19 and 20 can be taken together. These  
12 items are joint petitions for approval of amendments to  
13 existing Interconnection Agreements pursuant to  
14 47 U.S.C. 252. In both cases, the ALJ recommends entry  
15 of an Order approving the amendment to the agreement.

16 Is there any discussion?

17 (No response.)

18 CHAIRMAN SCOTT: Any objections?

19 (No response.)

20 CHAIRMAN SCOTT: Hearing none, the Orders are  
21 entered.

22 Item 21 is Docket No. 14-0288. This is Legent  
23 Communication, LLC's petition for a certificate of  
24 interexchange authority to operate as a reseller of  
25 telecommunication services in the State of Illinois and

1 petition to cancel a previously granted Certificate of  
2 Service Authority to Legent Communications Corporation.  
3 ALJ Riley recommends entry of an Order cancelling Legent  
4 Corp's Certificate of Service Authority and granting the  
5 same to Legent, LLC.

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 Item 22 is Docket No. 06-0703. This is our  
13 proceeding to revise 83 Illinois Administrative Code  
14 Part 280. ALJ Hilliard recommends entry of a Second  
15 Notice Order and revised proposed rule. This item will  
16 be held for disposition at a future Commission  
17 proceedings.

18 Item 23 is Docket No. 07-0446. It is Enbridge  
19 Pipeline's Motion to Reopen and amend its final Order  
20 whereby it was authorized pursuant to Section 15-401 of  
21 the Common Carrier by Pipeline Law, to construct,  
22 operate, and maintain a 36-inch pipeline. Enbridge  
23 requests that the Certificate be amended to authorize a  
24 pipeline of 24 inches rather than 36 inches. Enbridge  
25 does not seek any changes in pipeline route or right-of-

1 way width. ALJ Jones recommends that the proceeding be  
2 reopened, pursuant to Section 10-113(a) of the Act and  
3 83 Illinois Administrative Code Section 200.900 for the  
4 limited purpose of allowing parties to address the  
5 proposed amendment.

6 Is there any discussion?

7 (No response.)

8 CHAIRMAN SCOTT: Any objections?

9 (No response.)

10 CHAIRMAN SCOTT: Hearing none, the proceeding is  
11 reopened.

12 Item 24 is Docket No. 14-0604. This is  
13 Illinois-American Water Company's petition for Approval  
14 of Sale of Real Estate located in Will County. ALJ Benn  
15 recommends entry of an Order granting consent and  
16 approval of the subject property.

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.

23 Item 25 concerns the Commission's discussion  
24 of the recent D.C. Circuit Court's ruling on FERC  
25 Order 745 and its impact on Demand Response in Illinois.

1 I believe Randy Rismiller is here to brief us on the  
2 topic, and Randy is Springfield, I believe.

3 Randy.

4 MR. RISMILLER: Yes, sir. Thank you.

5 Good morning.

6 CHAIRMAN SCOTT: Good morning.

7 MR. RISMILLER: The order addresses -- The Court's  
8 decision addresses FERC's order 745 which was issued a  
9 while back. Order 745, basically, the purpose of that  
10 was to establish the compensation that so-called Cost  
11 Effective Demand Response would receive from Organized  
12 Ahead and Realtime Energy Markets, that is the markets  
13 run by the RTOs, in our case, PJM and MISO.

14 And, in that case, FERC decided the proper  
15 compensation for such Demand Response if it passes and  
16 established what is called cost-effectiveness test would  
17 be the full allocation of marginal price, that is the  
18 same -- the same compensation received by supply sided  
19 resources in the energy market.

20 That decision on its substantive merits was  
21 controversial in that a lot of renowned experts observed  
22 and made known that one -- energy wise, what a customer  
23 or a retail customer who provides Demand Response  
24 receives is the avoidance of paying the retail rate.

25 So it was, quite frankly, argued by a lot of

1 folks, and the ICC was one who made this argument, that  
2 full LMP compensation in wholesale market constitutes  
3 overpayment for Demand Response energy or energy not  
4 taken at the retail level.

5           And the suggestion was that the -- the payment  
6 ought to be more properly be the L & P minus some  
7 characterization of the foregone retail rate.

8           But in any event, FERC did not take that  
9 position. They went ahead and passed an order requiring  
10 full LMP. And it was opposed by at least one FERC  
11 commissioner and there were -- I think at least one  
12 defendant. I can't remember the exact number.

13           So that's what has been appealed, and it was  
14 appealed to the courts on two levels. Number one was  
15 what should the proper compensation be which was the  
16 main topic of debate in the underlying FERC case, and  
17 the other issue was just FERC's jurisdiction to  
18 establish a compensation for a product which stems from  
19 a decision via retail customer not to purchase retail  
20 energy. Is that something for which FERC can  
21 appropriately set a rate for.

22           And the majority of the Court, by two to one,  
23 decided no, that's not something that FERC can  
24 appropriately set a rate for. Doing so would be  
25 improper -- an improper injection into a retail market

1 decision which would be more rightfully the function of  
2 state regulators. So it was overturned on that basis.  
3 The Court stated directly that we hereby vacate  
4 Order 745.

5           So, if you recall, that 745 only addressed  
6 Demand Response compensation at the wholesale level for  
7 energy market purposes. But the Court's decision was  
8 based upon a jurisdictional determination. And so  
9 there's now this debate nationwide going on as to the --  
10 how broad the implication of the Court's decisions are.  
11 For example, does it also apply either directly  
12 immediately or likely to apply ultimately to capacity  
13 payments for Demand Response.

14           And in the PJM market in recent years, given  
15 that the wholesale energy price has been fairly low and  
16 there's not been a lot of Demand Response in the  
17 wholesale markets relatively in recent years, Demand --  
18 Demand Response has been making most of its money in the  
19 capacity market.

20           So while the Court's decision doesn't  
21 immediately or explicitly apply to the capacity market,  
22 its -- the rationale would seem -- would seem to  
23 potentially apply, and I think that's -- that's an issue  
24 of concern.

25           So there was a dissent in this case. And the



1 like PJM is weighing in, as well. So maybe if you could  
2 go through that just a little bit for us.

3 MR. RISMILLER: Yeah. The procedural remedies for  
4 parties in the case are the first option is to ask the  
5 Court to review en banc the panel decision en banc, as  
6 they say, which means the full -- the full appeals court  
7 contingent, I guess.

8 And, you're right, FERC has announced that  
9 they are going to submit such petition for en banc  
10 review. PJM has also made that announcement, that  
11 they're also going to pursue such a decision. I don't  
12 know the exact deadline for that. Sometime in early  
13 July, I believe, is the deadline to pursue en banc  
14 appeal.

15 In fact, if that -- if that is not taken, the  
16 Appeals Court decides not to grant en banc review, the  
17 next remedy would be a pursuit of the Supreme Court  
18 review of the decision.

19 Now, it seems like I've heard this from PJM  
20 and MISO that their view is that the Court order was  
21 directed at the FERC, it wasn't initially directed at  
22 the PJM and MISO. So FERC told -- or the Court told  
23 FERC that their Order 745 was defective and vacated.

24 So the RTOs are taking the position that  
25 they're not going to take immediate action in any way,

1 they're going to continue on, if they are, until FERC  
2 tells them differently. Because the directive of the  
3 Court will be to FERC not to PJM or MISO.

4 So I think as a practical matter, we're not  
5 likely to see any immediate action substantively by the  
6 RTOs until this en banc appeal process sorts itself out  
7 one way or the other.

8 CHAIRMAN SCOTT: And how about from other states?

9 MR. RISMILLER: I don't know -- I don't know -- I  
10 don't have a list of parties in the case to know if  
11 there are any State Commissions as parties in the case.  
12 But certain PJM states have submitted letters both to  
13 FERC and to PJM supporting and/or requesting that they  
14 make such an en banc petition to the Court, which they  
15 have now done.

16 We won't know until we actually see their  
17 petitions whether or not both of these parties, FERC and  
18 PJM, take on both of the major issues here, that is both  
19 the jurisdictional issue and the payments issue. It  
20 could be the case that they can take on one or the other  
21 or both. So I think that would be the interesting thing  
22 to know about these en banc petitions.

23 CHAIRMAN SCOTT: Okay. Discussion? Commissioner  
24 McCabe, I know you've dug into this issue pretty deeply.

25 Do you have any questions or thoughts here?

1           COMMISSIONER McCABE: I just want to amplify on  
2 what Randy said about this is the energy market and it  
3 could have ramifications for the capacity market. And,  
4 you know, Illinois and other states have energy  
5 efficiency and Demand Response statutory requirements,  
6 and we have a fair amount of industry who does  
7 participate in the capacity market.

8           So I think the RSA is a good management or  
9 emergency response tool, so it will be interesting to  
10 see how this all plays out.

11          MR. RISMILLER: Yeah. My thoughts on this matter  
12 at this point -- and they are still evolving -- is  
13 neither of these lines drawn, the line that the majority  
14 of the panel, the jury between State and Federal  
15 regulation, or the dissenting position and the line that  
16 he's suggesting, I think either of those could be made  
17 to work. That is if the Court's decision is upheld, I  
18 think the states could accommodate or react to the new  
19 lineup that would be established by that.

20           If the dissenting position ultimately holds or  
21 prevails, we're back sort of into the jurisdictional  
22 position that we're in now. We're familiar with this,  
23 we understand how it works, we can work with that.

24           But if the majority position prevails, it's  
25 going to be very bloody difficult and just a big pain in

1 the transition period to the ultimate equilibrium.  
2 What's going to have to happen if the majority opinion  
3 prevails here is a lot of work at the State Commission  
4 level to rework programs and to reestablish a business  
5 structure for Demand Response to work.

6           So the transition period is going to be  
7 difficult and problematic, and there's going to be a lot  
8 of companies who have currently staked their business on  
9 the current State FERC structure who are going to have  
10 to be in big trouble and will be a big problem.

11           But it may be the case -- and I think  
12 Commissioner Clark made this decision pretty clear in  
13 his statement released recently -- that ultimately  
14 Demand Response more logically belongs on the demand  
15 side and not on supply side as FERC has established it.

16           And if you step back and think about this,  
17 what FERC was trying to accomplish in Order 745 was to  
18 compensate or account for what they perceive to be a  
19 market flaw. And the market flaw that FERC perceived  
20 was the nonresponsiveness of certain retail rates to the  
21 extent that rates are fixed at the retail level at  
22 certain times energy is being purchased inefficiently or  
23 being produced inefficiently.

24           So what FERC was trying to do in Order 745  
25 was -- this whole Demand Response concept -- was to

1 offset that inefficiency. And the reason that they were  
2 trying to do that is they have an obligation under the  
3 Federal Power Act when they see a market flaw that  
4 effects the wholesale rates in the way that makes  
5 wholesale rates unjust and unreasonable, they have an  
6 obligation to try to do something to fix that flaw.

7           So that was what they were trying to do. But  
8 if the flaw is fixed at the retail level by State  
9 Commissions and others who have authority over elements  
10 at the retail level, there's no compensation needed. So  
11 there is no extra step beyond that that's needed. And  
12 Commissioner Clark calls this price responsive demand  
13 that's contrasted with Demand Response.

14           But it is an interesting perspective, one that  
15 we've talked about and been kind of debating about for  
16 years now, but it's now I think come more to the fore  
17 given what the Court has decided here.

18           CHAIRMAN SCOTT: Let me ask one follow-up question  
19 to that, Randy. So Commissioner Clark is essentially  
20 saying you don't -- because the decision from the Court  
21 is fairly lacking in any kind of guidance to states as  
22 to if that order holds, how we're supposed to pursue  
23 this. But if I understand you right, Commissioner Clark  
24 is saying it's not really necessary because that will --  
25 the market itself will take care of that or --

1           MR. RISMILLER: Yeah. The -- You've kind of always  
2 been kind of logical -- illogical and a little bit  
3 awkward to treat reductions in demand as additions to  
4 supply. And that's what FERC has needed to do in order  
5 to compensate for this perceived market flaw that  
6 they've identified, the market flaw of the fixed retail  
7 rate, nonresponsiveness of retail demand.

8           And I think the vision is that if we didn't --  
9 if we could somehow -- if that perceived market flaw  
10 could somehow be more directly addressed, it wouldn't  
11 need to be indirectly addressed through the treatment of  
12 reductions in demand as additions to supply as FERC has  
13 done.

14          CHAIRMAN SCOTT: Okay. So let me just ask you  
15 about process, then.

16           So we're not a party to this, so in terms of  
17 getting involved in the litigation that's out there, we  
18 really don't have many options until they would hear it  
19 en banc, and then they would decide at that point  
20 whether they would take amicus briefs or anything like  
21 that. So we're kind of waiting for that en banc  
22 decision?

23          MR. RISMILLER: I -- I don't feel as comfortable on  
24 this procedural end, but that would strike me as  
25 correct. The ICC wasn't an active party in the FERC

1 case, but is not a party in the Appeals Court case.

2 CHAIRMAN SCOTT: Okay. Nora Naughton is here, as  
3 well.

4 Nora, did you want to weigh in?

5 MS. NAUGHTON: Yes. Hi, Randy. This is Nora  
6 Naughton.

7 I agree with Randy. I think that's where  
8 we're basically left. And it makes some sense. I was  
9 thinking -- and I have had some discussions with Randy  
10 about what Randy just said -- which is in this  
11 transition period as a retail choice state, should we be  
12 thinking about whether or not we are to encourage our  
13 own price responsive demand as, I guess, Commission  
14 Clark mentioned and how we should go about doing that,  
15 or should we just wait and see what happens.

16 But we are a retail choice state, so we may  
17 have a little bit more of an opportunity than some of  
18 the vertical integrated states to do that. So it may  
19 something Commission and Staff would be -- should be  
20 considering at least during this transition.

21 CHAIRMAN SCOTT: Okay.

22 MS. NAUGHTON: Would you agree with that, Randy?

23 MR. RISMILLER: Yes. Procedurally, you know, the  
24 ICC didn't support payment for full LNP. So I think to  
25 be consistent, we -- if we were going to, you know,

1 advocate anything for those who have rights in the Court  
2 case, we would not be supportive of returning to FERC's  
3 Order 745 decision about the full L & P payment. That  
4 would be inconsistent.

5           But the jurisdictional matter I think could go  
6 either way. In the ICC's comments to FERC in the  
7 underlying case -- so we did address jurisdiction and we  
8 said a couple of things. The first thing that we said  
9 was that if FERC goes this way pay to full L & P to  
10 Demand Response, the effect of that will be to diminish  
11 the pressure or reasons for State Commissions to be more  
12 active in action, including Demand Response on the  
13 demand -- the demand side.

14           So we made that point, that FERC stepping into  
15 this role will have the effect of causing States to step  
16 back, and, quite frankly, that has been the case.

17           The other thing that we argued at the FERC  
18 level was even if FERC moves forward to insert its  
19 jurisdiction in this area, they couldn't have devised  
20 elements or roles for State Commissions to exercise some  
21 authority to assist the way -- the way that FERC was  
22 setting this thing up, and we suggested two.

23           One was we suggested that State Commissions be  
24 delegated the responsibility for determining what is the  
25 foregone retail rate that would be -- would be used in

1 the L & P minus G calculation. So we recommended that  
2 FERC provide a role for States in that regard. We also  
3 recommended that FERC provide States a role in how  
4 the -- how the revenues that are going to be paid to the  
5 demand responder -- full L & P -- how those are going to  
6 be recovered from other -- other customers.

7 Because, ultimately, payment -- the full L & P  
8 or, quite frankly, LMP minus G payment, will have to be  
9 paid and revenues will have to be recovered from  
10 somebody. So we urged that FERC carve out a role for  
11 State retail regulators in that area, as well. FERC  
12 didn't do either of those things.

13 So, anyway, I don't know how that helps you  
14 decide where to go, but we did address that matter in  
15 our comments in the underlying FERC case.

16 CHAIRMAN SCOTT: It sounds like, just to kind of  
17 sum here, that, from a legal standpoint, we'll wait on  
18 the en banc -- the decision whether or not it moves  
19 forward en banc. And then I think it is a good idea if  
20 Staff to begin to look at how to respond to this if the  
21 decision holds, and then whatever recommendations you  
22 want to bring back, either on the legal case or on the  
23 practical response portion when the picture gets a  
24 little more clear, I think that would be good.

25 Is thinking different than that? Anybody --

1 Commissioner McCabe? Commissioner Colgan? Anything  
2 different than that?

3 COMMISSIONER COLGAN: That sounds like a reasonable  
4 course to take.

5 CHAIRMAN SCOTT: Thank you, everyone. I appreciate  
6 very much.

7 We have one housekeeping matter left to  
8 discuss today which is our upcoming Gas and Electric  
9 Policy Session concerning coordination between Natural  
10 Gas and Electricity Industries.

11 Commissioner Colgan, you wanted to say a few  
12 words about this.

13 COMMISSIONER COLGAN: Thank you, Chairman.

14 I'd like to take this opportunity to remind  
15 everyone that on July 9, the Commission will hold a Gas  
16 and Electric Policy Session in Chicago, and it will  
17 start at 1:00 o'clock. This session will explore the  
18 very complicated issues surrounding coordination between  
19 natural gas and electricity industries and the impact of  
20 that coordination on reliability in Illinois.

21 We have assembled national experts on this  
22 topic who will share their thoughts and experiences with  
23 us. We have confirmed representatives from FERC, NRG  
24 Energy, both RTOs, PJM and myself, the three Illinois  
25 local distribution companies but have designated one



1           CHAIRMAN SCOTT:  So, Judge Dolan, any other matters  
2 to come before the Commission today?

3           JUDGE DOLAN:  Not today.

4           CHAIRMAN SCOTT:  Very good.  Thank you, sir.

5                   Hearing none, this meeting stands adjourned.

6                   Thank you, everyone.

7                               (Which were all the proceedings had  
8                               in the above-entitled cause.)

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