BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:  
REGULAR OPEN MEETING

Chicago, Illinois

August 4, 2009

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

BEFORE:
CHARLES E. BOX, Chairman
LULA M. FORD, Commissioner
ERIN M. O'CONNELL-DIAZ, Commissioner
SHERMAN J. ELLIOTT, Commissioner, via telephone

SULLIVAN REPORTING COMPANY, by
Teresann B. Giorgi, CSR
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CLOSED SESSION

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CHAIRMAN BOX: Pursuant to the provisions of the Illinois Open Meetings Act, I now convene a regularly scheduled open meeting of the Illinois Commerce Commission.

With me in Chicago are Commissioners Ford and O'Connell-Diaz.

I'm Chairman Box and we have a quorum. Commissioner Elliott is joining us from Springfield.

Is there a motion to include Commissioner Elliott?

COMMISSIONER O'CONNELL-DIAZ: So moved.

COMMISSIONER FORD: Second.

CHAIRMAN BOX: It's been moved and seconded.

All in favor say "aye."

(Chorus of ayes.)

CHAIRMAN BOX: Any opposed?

(No response.)

CHAIRMAN BOX: The vote is 3-0.

Commissioner Elliott is now part of this meeting.

Before moving into the agenda, this is
the time we allow the members of the public to address the Commission. Members of the public wishing to address the Commission must notify the Chief Clerk's Office at least 24 hours prior to the bench session.

According to the Chief Clerk's Office, there are no requests to speak.

Before we start, we're holding Item No. 2.

Item No. 1 is Docket 08-0548. This is an amendatory order correcting a scrivener's error in the order issued on July 29th, 2009. A paragraph that should have been deleted was left in the order.

Administrative Law Judge Yoder recommends entering the amendatory order deleting the paragraph.

Is there a motion to enter the amendatory order?

COMMISSIONER FORD: So moved.

CHAIRMAN BOX: Is there a second?

COMMISSIONER O'CONNELL-DIAZ: Second.

CHAIRMAN BOX: It's been moved and seconded.
All in favor say "aye."

(Chorus of ayes.)

CHAIRMAN BOX: Any opposed?

(No response.)

CHAIRMAN BOX: The vote if 4-0. The amendatory order is entered.

We will use this 4-0 roll call vote for the remainder of the agenda, unless otherwise noted.

As I indicated earlier, Item 2 is being held.

Item 3 is Docket 09-0288. This is a complaint by Robert Held against Northern Illinois Gas Company. The parties have resolved all the issues and have moved to dismiss.

Administrative Law Judge Moran recommends dismissing the complaint with prejudice.

Is there any discussion?

(No response.)

CHAIRMAN BOX: Any objections?

(No response.)

CHAIRMAN BOX: Hearing none, the complaint is
1 dismissed with prejudice.
2 Item No. 4 is Docket 09-0053. This matter concerns the investigation to determine
3 whether Global NAPS Illinois, Inc., still has the financial resources and managerial ability to
4 maintain its certificates. Global NAPS has since moved to withdraw its certificates, rendering this
5 proceeding moot.
6
7 Administrative Law Judge Moran recommends dismissing this proceeding.
8
9 Is there any discussion?
10
11 (No response.)
12 CHAIRMAN BOX: Any objections?
13
14 (No response.)
15 CHAIRMAN BOX: Hearing none, this proceeding is dismissed.
16
17 Item 5 is 08-0277. This matter concerns the meters used by Illinois American Water
18 Company for residential service in its Champaign District. The Company is seeking to extend the
19 10-year testing cycle required under Commission regulations to 15 years. The Company is also
requesting that it be allowed to replace the meter instead of testing it.

Administrative Law Judge Jones recommends entering the order granting the petition. Is there any discussion?

(No response.)

CHAIRMAN BOX: Any objections?

(No response.)

CHAIRMAN BOX: Hearing none, the order is entered.

Item 6 is Docket 0401. This is a rehearing application by Malibu Condominium Association of the interim order entered June 24th, 2009. Petitioner raises 5 points.

Administrative Law Judge Moran recommends denying rehearing on the first 4, but suggests entering an amended order in response to the fifth point.

Malibu has also requested oral argument.

Administrative Law Judge Moran notes that the Commission must act on the rehearing
application no later than August 10th.

Judge Moran, do you want to join us --

JUDGE MORAN: Sure.

CHAIRMAN BOX: -- and explain the rehearing petition application?

JUDGE MORAN: There were 5 points of alleged error. All of these points were already discussed in the order and Malibu doesn't raise any new arguments. They simply, for example, in Point No. 1, failed to comprehend what the Court was saying in that Medusa Portland Cement Company opinion. That opinion addressed all the matters that Malibu raised and does not find in Malibu's favor on any of those points.

The second point of error talks again about Malibu's interpretation of certain statutory language. But that statutory language is not to be read literally or apart from the whole of the statute. I mean, it's the whole statute construction that governs.

Again, the Commission did that analysis in its order and Malibu has not shown that
analysis to be an error.
The third point, Malibu again tries to bring these kinds of equity arguments into its case. Those arguments were dealt with. The Commission relied on the proper statutory language and the interpretation of that language and there's nothing of merit here.
The fourth point, in those two statutes and the two statutes that pertain here, 252 and 252.1, one of them has a knowledge requirement. Malibu tries to impute that knowledge requirement somehow into the other statute which doesn't have a knowledge requirement.
But if you look at the rationale for that statute, it basically doesn't have a knowledge requirement because everybody knows what their bill is or everybody should know what their bill is. And so the time limitation on that one statute, 252, is based on the time that you received your bill.
The knowledge requirement that they try to impute to that statute goes to Section 252.1 and that's when you have knowledge of an event that
you wouldn't normally have knowledge of.

The Mehroo Patel case, which is analyzed in your interim order, discusses that. It shows in a different fact pattern or scenario where that would apply.

So Malibu does not give you anything new. It doesn't well attack any of your reasoning and therefore, Point 4 would fail.

Point 5 is an entirely different thing. Malibu complains that the decision on having the formal complaint versus the informal complaint used as the triggering point for the statute of limitations is not well explained or well founded.

And they do have a point in this.

The Commission is not supposed to just take sides, you know, saying, Okay, well, this party said this and this party said that, we're going to go with one party. You need an analysis of why those positions are good and viable positions.

In the post-exceptions to post-order there was an analysis done as to why the formal complaint is the one that matters. That analysis
1 looked at Section 10-108. It read through that language; what the General Assembly was getting at through that language; how they described the complaint process; who could bring a complaint, what's to be alleged; how it's served.

And in reading that statute, 10-108, together with 9-252 and 252.1, it becomes clear that the General Assembly intends the use of the final date of the formal complaint to set the limitations period.

I propose, then, for the sake of the litigants in this case, for the sake of any court review of this case, that the Commission adopt this language that was in the PEPO and put it back, either through an amendatory order or through a grant of rehearing which specifies that the rehearing is on this one single issue. I think it's important language, it's solid language and it belongs in your order.

CHAIRMAN BOX: But it can be done just by a simple motion today, amend the order to include the language we have here.
JUDGE MORAN: I think that what I would probably have to do is file a proposed amendatory order and then you enter that order.

CHAIRMAN BOX: This has to be done by the 10th or we just send it back for rehearing on that one, Point 5?

JUDGE MORAN: You know, I don't know.

COMMISSIONER O'CONNELL-DIAZ: I think the Commission at any time can amend their order. But this is actually coming out of the rehearing request, so...

JUDGE MORAN: Yeah.

COMMISSIONER O'CONNELL-DIAZ: I think it's a little bit different. But the Commission has the authority to -- as I understand it, we can amend our order.

JUDGE MORAN: Right. I mean, there's no question that you can amend, either as a stand-alone process or as a grant of rehearing. It might be cleaner, maybe, to do it on rehearing.

COMMISSIONER O'CONNELL-DIAZ: Judge Moran, the issues that are covered in the proposed amendatory
language was included in your proposed order --

JUDGE MORAN: Yes.

COMMISSIONER O'CONNELL-DIAZ: -- to us.

JUDGE MORAN: Yes.

COMMISSIONER O'CONNELL-DIAZ: These issues have already been fully litigated in the case in chief, correct?

JUDGE MORAN: No, nothing has been litigated in the actual case.

COMMISSIONER O'CONNELL-DIAZ: I mean, in the motions these issues were looked at.

JUDGE MORAN: All of these issues?

COMMISSIONER O'CONNELL-DIAZ: Yes.

JUDGE MORAN: Yes.

COMMISSIONER O'CONNELL-DIAZ: So this is not -- to amend the order to include what was included in the PEPO would not be outside the record or --

JUDGE MORAN: Oh, no, no, no. And it's a construction of law. It's not -- there's no facts that we're dealing with at this point. The only facts you're dealing with is, is it the informal complaint that governs for purposes of the statute
or is it the formal. It's all a matter of law. And I think you've got the right legal construction here. I think it's solid. And it, for the first time, gives you an absolute reasoning process for picking one date or the other.

COMMISSIONER O'CONNELL-DIAZ: So your suggestion is that it would make our order more complete and legally sustainable if it was --

JUDGE MORAN: More sustainable because the way it stands the Court could very well easily remand it and say, Hey, how did you pick this?

CHAIRMAN BOX: So which process -- which of the two do you recommend?

JUDGE MORAN: Gosh. Possibly the cleanest way is to grant rehearing on this one issue only, since it came up in the course of a rehearing petition.

CHAIRMAN BOX: Any comments from the Commission?

Commissioner?

COMMISSIONER O'CONNELL-DIAZ: This is really kind of like a summary judgment situation, isn't it, at the back end of a case? Because we're -- we already have this information in the record. The
parties have argued in the motions that we have seen --

JUDGE MORAN: Oh, yes. Yeah. You don't need rehearing in the sense of --

COMMISSIONER O'CONNELL-DIAZ: So I'm questioning why you --

JUDGE MORAN: The only thing you would need rehearing is, you know, let the parties look at this language because it was in the PEPO, it wasn't in the proposed order. So maybe they -- they wouldn't --

CHAIRMAN BOX: So it would be a very short process.

JUDGE MORAN: Yes. It's a very short process. What I'm saying is, this language wasn't in the PEPO because the parties never addressed this question in their initial briefs. So in the proposed order I sent a directive, Parties, I want you to discuss this question. They did that in their briefs on exceptions. So the first time this language appeared was in the PEPO. The Commission didn't adopt it, but the parties never saw it.
So it might be the best way, grant rehearing on the short thing. Let me have a proceeding, show them this language. Someone may want to add something more or dispute. And then you'll have an order on rehearing and then it will be all settled.

CHAIRMAN BOX: I think we have two motions before us.

Is there a motion to deny the request for oral argument? We can take care of that at this point.

COMMISSIONER O'CONNELL-DIAZ: So moved.

CHAIRMAN BOX: Is there a second?

COMMISSIONER FORD: Second.

CHAIRMAN BOX: It's been moved and seconded.

All in favor say "aye."

(Chorus of ayes.)

CHAIRMAN BOX: Opposed?

(No response.)

CHAIRMAN BOX: The vote is 4-0.

The request for oral argument, denied.

Is there a motion to deny the
rehearing on all the points, 1 through 4, raised in
the application?

COMMISSIONER O'CONNELL-DIAZ: So moved.

CHAIRMAN BOX: Is there a second?

COMMISSIONER FORD: Second.

CHAIRMAN BOX: Moved and seconded to deny
rehearing on Points 1 through 4 that's raised in the
application.

All in favor say "aye."

(Chorus of ayes.)

CHAIRMAN BOX: Any opposed?

(No response.)

CHAIRMAN BOX: The vote is 4-0.

Points on the rehearing is denied as
to Points 1 through 4.

Is there a motion to grant rehearing
on Point No. 5?

COMMISSIONER O'CONNELL-DIAZ: So moved.

CHAIRMAN BOX: Is there a second?

COMMISSIONER FORD: Second.

CHAIRMAN BOX: Moved and seconded to grant
rehearing on Point No. 5 only.
All in favor say "aye."

(Chorus of ayes.)

CHAIRMAN BOX: Opposed?

(No response.)

CHAIRMAN BOX: The vote is 4-0.

The application for rehearing on Point No. 5 is granted.

JUDGE MORAN: Thank you.

CHAIRMAN BOX: Thank you.

There are two FERC matters on today's agenda. Item 7 concerns MISO's comments on Docket ER09-1431-000. And Item 8 concerns MISO's proposed Schedule 34 for allocating reliability penalty costs, Docket ER09-1435-000. And these items require the Commission to go into closed session.

Is there a motion to go into closed session?

COMMISSIONER O'CONNELL-DIAZ: So moved.

CHAIRMAN BOX: Is there a second?

COMMISSIONER FORD: Second.

CHAIRMAN BOX: Moved and seconded.
All in favor say "aye."

(Chorus of ayes.)

CHAIRMAN BOX: Opposed?

(No response.)

CHAIRMAN BOX: The vote is 4-0.

We're now going to go into closed session.

Let me know when the room is cleared in Springfield.

JUDGE WALLACE: They are fleeing as we speak.

We are clear.

(Whereupon, the following matters were held in closed session.)
Whereupon, the following matters were held in open session.

CHAIRMAN BOX: In closed session, the Commission discussed filing a letter in support of OMS in Docket ER09-1431-000.

Is there a motion to file the letter?

COMMISSIONER O'CONNELL-DIAZ: So moved.

CHAIRMAN BOX: Is there a second?

COMMISSIONER FORD: Second.

CHAIRMAN BOX: Moved and seconded.

All in favor say "aye."

(Chorus of ayes.)

CHAIRMAN BOX: Opposed?

(No response.)

CHAIRMAN BOX: The vote is 4-0.

The letter will be filed with FERC.

And they also request to file out of time.

And also in closed session, the Commission discussed filing comments in Docket ER09-1435-000.
Is there a motion to file the comments?

COMMISSIONER FORD: So moved.

CHAIRMAN BOX: Is there a second?

COMMISSIONER O'CONNELL-DIAZ: Second.

CHAIRMAN BOX: Moved and seconded.

All in favor say "aye."

(Chorus of ayes.)

CHAIRMAN BOX: Any opposed?

(No response.)

CHAIRMAN BOX: The vote is 4-0.

The comments will be filed with FERC.

Judge Wallace, anything else to come before us today?

JUDGE WALLACE: No, Mr. Chairman, that's all.

CHAIRMAN BOX: Okay.

JUDGE WALLACE: Did you adjourn the meeting, Mr. Chairman?

CHAIRMAN BOX: No, there's an issue here concerning the two dockets we just filed motions on.

Docket ER09-1431, the request was to file out of time and to file comments.
COMMISSIONER ELLIOTT: I can't hear you,
Mr. Chairman.
CHAIRMAN BOX: I'm sorry.
ER09-1431 was a motion to file comments, the Illinois Commerce Commission, with FERC and a request to file out of time. And that was passed 4-0.
And ER09-1435-000, also a motion made to file comments or to file a letter.
I'm reading directly off of 1431, it says comments filed -- and the second one is also comments -- comments and a letter on 1435?
MS. ERICSON: ER09-1435 is a motion to file comments out of time and comments.
CHAIRMAN BOX: What is 1431?
MS. ERICSON: It's comments.
CHAIRMAN BOX: So what's the letter on?
MS. ERICSON: I don't know what the issue is.
CHAIRMAN BOX: So both motions entail filing motions with FERC. And 1435 is a request to file out of time.
MS. ERICSON: I believe that's right.
1  ER09-1435 is a motion to file comments
2  out of time and comments.
3  CHAIRMAN BOX: Right.
4  MS. ERICSON: And ER09-1431 is a notice of
5  intervention and comments.
6  CHAIRMAN BOX: Intervention and comments?
7  MS. ERICSON: Yes.
8  COMMISSIONER ELLIOTT: Mr. Chairman, I'd make a
9  motion on 1431 to change our vote with OMS and
10  abstain to no. To authorize Randy to notify OMS to
11  do that.
12  MS. ERICSON: To clarify. I guess, originally
13  there was consideration of a letter, strictly a
14  letter form. And all we've done is move that into a
15  short pleading form, which is comments.
16  CHAIRMAN BOX: I think those two have been taken
17  care of.
18  Commissioner Elliott just made a
19  motion to give the authority to change his
20  abstention vote at MISO to a negative.
21  MS. ERICSON: Okay.
22  CHAIRMAN BOX: Do you need a vote on that to
have the authority to pass that vote?

MS. ERICSON: Yes, you should go ahead and vote on that.

CHAIRMAN BOX: That motion is made.

Is there a second?

COMMISSIONER FORD: Second.

CHAIRMAN BOX: Moved and seconded.

In ER09-1431-000 to authorize Commissioner Elliott to vote in a negative, to change his abstention vote at MISO.

All in favor say "aye."

(Chorus of ayes.)

CHAIRMAN BOX: Opposed?

(No response.)

CHAIRMAN BOX: The vote is 4-0.

He's so instructed.

Any further business?

(No response.)

Meeting is adjourned.

(Which were all the proceedings had in the above-entitled matter.)