BEFORE THE
ILLINOIS COMMERCE COMMISSION

PUBLIC UTILITY REGULAR OPEN MEETING

Chicago, Illinois
August 25, 2009

Met pursuant to notice at 10:00 a.m.

BEFORE:

MR. CHARLES E. BOX, Chairman

MS. LULA M. FORD, Commissioner

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

MR. SHERMAN J. ELLIOTT, Commissioner
(telephonically)

SULLIVAN REPORTING COMPANY, by
Tracy L. Overocker, CSR
<table>
<thead>
<tr>
<th>DOCKET NUMBER</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>08-0364</td>
<td>4</td>
</tr>
<tr>
<td>BlueStar Energy Services, Inc.</td>
<td></td>
</tr>
<tr>
<td>vs. Lower Electric, LLC.</td>
<td>4</td>
</tr>
<tr>
<td>08-0532</td>
<td>9</td>
</tr>
<tr>
<td>Illinois Commerce Commission</td>
<td></td>
</tr>
<tr>
<td>vs. Commonwealth Edison Company</td>
<td>9</td>
</tr>
</tbody>
</table>
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 am Chairman Box and we have a quorum. Commissioner Elliott is joining us in Springfield.

Is there a motion to include Commissioner Elliott in today's meeting.

COMMISSIONER FORD: So moved.

CHAIRMAN BOX: Is there a second?

COMMISSIONER O'CONNELL-DIAZ: Seconded.

CHAIRMAN BOX: Moved and seconded.

All in favor say "aye."

(Chorus of ayes.)

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.

We have two items on today's docket.

Item 1 is 08-0364. This is a complaint by BlueStar
Energy Services, Inc., against Lower Electric, LLC,
and other parties who have settled. BlueStar alleges
that Lower Electric failed to meet the disclosure
requirements of the Agents, Brokers and Consultants
Statute.

The order sustains the complaint and
prospectively imposes a one-month suspension of any
ABC license respondent (sic) subsequently awarded to
the respondent. Administrative Law Judge Gilbert
recommends entering the order.

Judge Gilbert, would you like to brief
us on this today?

We will probably be holding this also
unless the Commissioners feel otherwise, to the next
meeting.

JUDGE GILBERT: Mr. Chairman, you said this in
such a succinct way, what the case is about, I'm not sure at this point what I can add for you. It is a complaint case. It is under the ABC Law. I think about six weeks ago you completed a rulemaking also under this law, and I think you've sent those rules on to the legislature on second notice. I don't know what's happened to them. I assume that they're still there.

And you also had this case before you on interlocutory review. The three original respondents had filed the motion to dismiss. I had issued a ruling denying that motion and that was brought to you under interlocutory review and you upheld the ruling. Two of the parties then settled. That left Lower Electric to continue the case as a respondent along with the complainant and BlueStar.

The essence of the complaint is that Lower solicited the customer without stating in writing what their expected remuneration would be, and I think the law is pretty clear that that is one of the requirements when soliciting a customer and there's a factual stipulation in which Lower agrees
that that's, in fact, what occurred.

   Nevertheless, they raised five -- or, as I've categorized them, five legal offenses which have to do with the timing of the application of the law; the availability of penalty prior to licensing; whether or not Lower is, in fact, an agent, broker or consultant at all under the law; and whether the violation, which I think is proven by the factual record, is, in fact, worthy of penalty.

   And with respect to each of those defenses, I've recommended that you look past those offenses and find that there is, in fact, a violation of the law here independently can't be imposed at this time.

   CHAIRMAN BOX: Any questions for the Judge?

   COMMISSIONER O'CONNELL-DIAZ: Judge Gilbert, you are -- your recommendation is a one-month suspension for the failure to comply with the law that the -- Lower has admitted to the violation; correct?

   They give us excuses or legal ideas as to how they -- how we shouldn't apply it to them; but
they do admit that they did not comply with the law, and your recommendation is that the Commission should suspend their certification for a month?

JUDGE GILBERT: Yes. Yeah, they don't, in fact, yet have a license -- no one could because our rule is not yet in place -- but at such time as they should apply for a license and if they are successful in that application, yes, there would be a one-month suspension.

CHAIRMAN BOX: Any further questions?

(No response.)

CHAIRMAN BOX: Does anyone want to enter the motion which is to recommend entering the Judge's order?

COMMISSIONER FORD: So moved.

CHAIRMAN BOX: Is there a second?

COMMISSIONER O'CONNELL-DIAZ: Second.

CHAIRMAN BOX: Moved and seconded.

Further discussion?

COMMISSIONER O'CONNELL-DIAZ: Chairman, I'd just like to say that I agree with -- as I think the -- my colleagues have voted, I think this sends a
clear message with regards to the obligations of
companies that are going to be doing business in our
state; and this is about transparency and information
available so that customers can make choices fully
informed.

We have these rules that are in place. It doesn't appear that the company here has honored
the spirit of the law that is currently in place. I
know that they're going to probably go forward and
get a certification, but I think this sends a clear
message as to what the standard is going to be in our
state.

So I have no problem in affirming
Judge Gilbert's recommendation.

CHAIRMAN BOX: Any further discussion?
(No response.)

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

CHAIRMAN BOX: Opposed?
(No response.)

CHAIRMAN BOX: The vote is 4-0. The order is
entered.
Item 2 is Docket 08-0532. This matter concerns the Section 9-250 investigation into Commonwealth Edison Company's Embedded Cost of Service Study, which resulted from Commonwealth Edison's recent rate case.

The Coalition to Request Equitable Allocation of Costs Together, a/k/a REACT, has filed a petition for interlocutory review of an Administrative Judge ruling.

Also, the ALJs seek guidance on scope and scheduling of the proceeding. Administrative Law Judge Hilliard recommends denying the petition for interlocutory review and guidance from the Commission on the issue of scheduling.

Judge Hilliard, would you brief us today on this matter.

JUDGE HILLIARD: This is -- it's complicated and these things are interrelated. This is a follow-up proceeding on the last ComEd rate case. The Commission directed that we have an investigation regarding these rate-making issues. The Commission also indicated that it wanted to
approve the schedule of the case, that it wanted this done on an expedited basis but that it wanted a thorough investigation of these issues. And early on there was a protective order drafted by ComEd that was put in place that provided that specific confidential information could be circulated among the parties. There was a schedule in place. There is a discovery issue that arose regarding distribution equipment for three classes of customers that use a lot of electricity. The parties went back and forth. At one point, ComEd indicated that the information that was being sought would take a year for them to accumulate and that would cost a million dollars to perform the study. They went back and forth a little more and then ComEd indicated that part of the problem was that there were 72,000 points of service, 68,000 of which were streetlighting points of service. REACT, which is the moving party in all this, indicated that they weren't interested in those points, they just wanted the 10 megawatt or
bigger spots. ComEd responded that it wouldn't make any difference. It would still cost a million dollars and take a year, even if it was a study which essentially involved 95 percent less than what they thought was really involved.

Eventually, we issued a ruling. A couple other parties had points of view they expressed on sort of peripheral issues, one of which is IIEC which indicated they'd prefer if the parties that were identified in any of these discovery issues were not named.

So we issued a ruling which said that the information should specify the parties in these classes by number rather than name in keeping with that request; that the -- kind of the low apples on the tree, the things that were easy to provide, they should provide; and as to the distribution information, which is more expensive and more time-consuming to compile, that it should be limited to the REACT members, which are 11 entities named in their petition to intervene.

REACT filed their petition for
interlocutory review based upon that ruling, and they object to the -- our attempt to narrow the issue in a manner that we thought was sort of an attempt to reach a middle ground and that's the -- part of the issue before the Commission. Because this discovery issue kind of hadn't been resolved, it bumped up against our prescheduled hearing so we had to delay the hearings.

And depending on where the Commission wants to go with this, how in depth you want to go, we will need to reschedule. And we just want your direction to -- as to where you want this discovery issue to go, how broadly do you want us to investigate and then we'd like the ability to set a schedule which will, you know, present back to you consistent with whatever point of view you adopt.

That's about all I was going to say.

CHAIRMAN BOX: What is your recommendation?

JUDGE HILLIARD: Well, my recommendation on the interlocutory appeal is to affirm our ruling. On the scope of discovery, I think we continue to think that it's -- if we're going to get into this, it is --
it's practical to limit it to the REACT members. I guess the -- what we don't know is whether or not the Commission, you know, wants to develop this information either for the group as a whole or for the REACT members.

It seems reasonable to me that because we're in this, we're probably only going to do it once and we ought to do it thoroughly; and if getting this information will resolve these issues once and for all, it doesn't seem unreasonable to take the time to go and do them.

There is a certain amount of expense involved. One of the intervenors is the commercial group, and they've suggested that it would be appropriate if the Commission wants this information to be part of the record, to have the people who have moved for the information to pay for the study and that seems reasonable to me.

CHAIRMAN BOX: This is a study that would take, what, six months -- for only the REACT members six months and anywhere from 350 to $500,000?

JUDGE HILLIARD: It's not altogether clear
whether that is for the universe of the people in
this class or for the 11 members, but that's the
figure that we've been -- in the time period we've
been given.

COMMISSIONER O'CONNELL-DIAZ: Judge Hilliard,
just so I'm clear, and is the -- REACT's position
accepting of the whittled down version of the Data
Requests or are they still looking for the
68,000 points of service?

JUDGE HILLIARD: No, they don't want the --
they want -- but they want the universe, they want
information as to all 100 people and, in fact, ComEd
has indicated in some of their fillings that they're
not sure if they only did the REACT people, that it
would be very valuable information. So that's a
question.

Our thought was that you could
probably extrapolate from these 11 entities and see
whether or not their cost and their bills, you know,
were correlated in some way and that it wouldn't take
an extraordinary amount of time or cost a great deal
of money.
COMMISSIONER ELLIOTT: Mr. Chairman?

CHAIRMAN BOX: Yes, Commissioner Elliott.

COMMISSIONER ELLIOTT: This is sort of a thorny issue to try to get our hands around it and particularly with not having seen the actual Data Requests and the actual responses, it makes it more difficult to determine exactly what's being requested.

However, my review of the pleadings here, it appears to me that -- I think REACT's requests have gotten a little far afield of what we were contemplating here; and it appears to me that they're asking for sort of individual cost studies within a class, and I think that's going a little far afield. I'm not sure what that information is going to tell them relative to how they fit within the class.

I'm not particularly interested in seeing the schedule delayed on this. I'm a little concerned that -- particularly with regards to customer-specific, and by that I mean customer equipment that's dedicated to serve only single
customers that are not jointly utilized or more than one customer is utilizing it; and I'm thinking in terms of meters and service drops and distribution substations of equipment that may be particular to a particular customer account, that that is not tracked by ComEd, by the customer account or isn't referenced or somehow recoverable absent some convoluted study or six-month delay in data retrieval.

That is a disturbing concept; but going further beyond what is a customer specific account into the joint facilities, again, that seems to me going quite far afield and it's asking for individual cost studies that I'm not sure are going to be relevant when they're compared with customer class issues. It may be information that's valuable to REACT; but I'm not sure from the Commission's perspective, when we're looking at customer class, cost of service, that it's going to be particularly informative.

So I would -- I would, you know, register a desire not to go into this area and to pursue these cost studies and would prefer to
expedite the schedule.

COMMISSIONER FORD: I certainly concur with Commissioner Elliott because on July 17th, I think the Judges tried to do a middle of the road approach in whittling down REACT's request and certainly -- so that it would not be cumbersome and onerous on any of us -- burdensome, rather, on ComEd or what we wanted to have done for this, and I would certainly agree that we should deny the petition for interlocutory review.

CHAIRMAN BOX: Further discussion or comments or questions?

(No response.)

CHAIRMAN BOX: It appears to be a consensus. We'll have either -- a motion to affirm the Judges' ruling on interlocutory review.

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: Opposed?
(No response.)
CHAIRMAN BOX: The vote is 4-0 affirming the Judges' ruling.
Next is the scope. I think given the schedule we have here, you would have been starting the week of August 10th the evidentiary hearings.
We're a little far behind I take it.
JUDGE HILLIARD: Yes.
CHAIRMAN BOX: I think there was a reason we wanted this done immediately, because I think these numbers have to be applied, right, to the last rate case?
Is that correct.
JUDGE HAYNES: They would, yes.
CHAIRMAN BOX: That's what I thought, so that's why we wanted to expedite the proceedings.
What could the schedule look like, Judge?
I mean, if given the ruling we have today and the scope we want to expedite this, are there any other motions for discovery that you can
JUDGE HILLIARD: This is a -- I don't know. It hasn't come up.

CHAIRMAN BOX: Would it be your recommendation to submit to us, then, another schedule showing us --

JUDGE HAYNES: I think that rather than submitting another schedule, we ask that you direct us to enter a schedule on our own, consistent with your ruling, not to do the individual cost of service studies and we'll just try to get back on track as quickly as possible.

JUDGE HILLIARD: Because otherwise, any deviation from that, we've got to come back again and --

COMMISSIONER O'CONNELL-DIAZ: This will be a schedule, I would imagine, that would be -- the parties would have input, too and --

JUDGE HILLIARD: Yeah.

COMMISSIONER O'CONNELL-DIAZ: -- everyone will have a shot at coming up with a schedule that --

JUDGE HILLIARD: Right.

COMMISSIONER O'CONNELL-DIAZ: -- you ultimately
decide is the --

JUDGE HILLIARD: And if they're unhappy, they can come to you.

COMMISSIONER O'CONNELL-DIAZ: Exactly.

CHAIRMAN BOX: So we could have a motion to direct the Judges to compile the schedule --

COMMISSIONER FORD: Yes.

CHAIRMAN BOX: -- and let the case move forward.

Is there a motion to that effect?

COMMISSIONER ELLIOTT: So moved.

CHAIRMAN BOX: Second?

COMMISSIONER FORD: Seconded.

COMMISSIONER O'CONNELL-DIAZ: To let them do their job.

CHAIRMAN BOX: All in favor say "aye."

(Chorus of ayes.)

CHAIRMAN BOX: Opposed?

(No response.)

CHAIRMAN BOX: The vote is 4-0.

JUDGE HILLIARD: Can I --

CHAIRMAN BOX: Judge, yes.
JUDGE HILLIARD: I'd like to clarify your direction here. Our ruling, then, limiting the scope of the production to the REACT members is intact and the Commission wants that to happen?

CHAIRMAN BOX: Does that entail the cost of 350,000?

I don't think that was a ruling at all.

JUDGE HAYNES: No, I think that original -- I think that ComEd has produced all information in response to the original Data Request and that the additional step of six months, half a million dollars are you are not directing any further?

CHAIRMAN BOX: Right. And we're not directing any individual cost studies.

JUDGE HILLIARD: That's -- just in the interest of fairness, I think the parties would disagree as to whether or not that's an appropriate appellation for what they're asking. A cost study is much more extensive and it assigns, you know, common costs and things such as this and this is limited to distribution information for these particular
entities; but --

COMMISSIONER ELLIOTT: I think they are, in fact, allocating common cost in the distribution system and it's going beyond customer specific and it's an area that I don't believe individual studies is going to be of any benefit in our analysis of the customer class --

JUDGE HILLIARD: Fine.

COMMISSIONER ELLIOTT: -- allocations.

CHAIRMAN BOX: Okay. Judge Dolan, anything else to come before us today?

JUDGE DOLAN: No, Chairman.

CHAIRMAN BOX: My understanding is our next meeting is not until September 9th.

JUDGE DOLAN: It's a Pre-Bench. The 10th is the actual...

CHAIRMAN BOX: Right, but we have items on the agenda for the 9th?

JUDGE DOLAN: Yes, that's correct.

CHAIRMAN BOX: And we've moved that meeting to Springfield?

JUDGE DOLAN: Yes.
CHAIRMAN BOX: For the -- we have a Transportation Policy at 1:30 and the Pre-Bench is at 3:00; right?

JUDGE DOLAN: Yes.

CHAIRMAN BOX: Anything further?

JUDGE DOLAN: No, sir.

CHAIRMAN BOX: The meeting stands adjourned.

(Whereupon, the public utility regular open meeting was adjourned.)