BEFORE THE  
ILLINOIS COMMERCE COMMISSION  

PRE-BENCH SESSION  

Springfield, Illinois  
Wednesday, September 9, 2009  

Met, pursuant to notice, at 3:00 p.m. in  
Hearing Room A, First Floor, Leland Building, 527  
East Capitol Avenue, Springfield, Illinois  

PRESENT:  

MR. CHARLES E. BOX, Chairman  
MS. LULA M. FORD, Commissioner  
MS. ERIN M. O'CONNELL-DIAZ, Commissioner  
MR. SHERMAN J. ELLIOTT, Commissioner  

SULLIVAN REPORTING COMPANY, by  
Carla J. Boehl, Reporter
CSR #084-002710
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 Springfield are Commissioners Ford, O'Connell-Diaz and Elliott and I am Chairman Box; we have a quorum.

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.

Let us take the second item on today's agenda first. It is the Eastern Interconnection States' funding council's proposal to use U.S. Department of Energy regarding the ARRA funding for Transmission planning. Commissioner Elliott has been involved in these discussions and I turn the floor over to him.

COMMISSIONER ELLIOTT: Thank you, Mr. Chairman.
This item is on the agenda for our votes. As you know, the Eastern Interconnection States, 42 states and many of the provinces of Canada, have gotten together to cooperate with a DOE and FERC item to get together on electric resource planning priorities for transmission planning. The states have met several times over the last several months and have put together a proposal for funding to DOE to support interconnection planning processes over the next four years.

The request is for 15 -- slightly over 15 million, and this will be used to offset studies, travel, etc., for the representatives from the various states. Each state has two representations on the council. I represent the Commerce Commission, and Jason Cisco, Jack Latham from the Governor's office is also represented.

As I noted, the majority of the states supported the proposal as final draft on the call yesterday, and I abstained so that I could put it before the Commission. I would recommend and make a motion that the Commission accept and sign on to the
agreement to submit for funding.

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.

COMMISSIONERS: Aye.

CHAIRMAN BOX: Opposed?

The vote is 4-0 the Commission will join the proposal.

The first item on the agenda was Docket 09-0263. This is a petition for interlocutory review by Commonwealth Edison Company of an Administrative Law Judge ruling in the AMI pilot proceeding. Administrative Law Judge Sainsot recommends denying the petition. We will be voting on this matter in tomorrow's bench session.

And, Judge Sainsot, are you available?

Could you brief us on this particular matter?

JUDGE SAINSOT: Sure, Mr. Chairman. Can you hear me?

CHAIRMAN BOX: Yes.
JUDGE SAINSOT: Just to give you a brief general background, in this docket ComEd asked for Commission approval of a pilot program that tests consumer reactions to advance metering or what is called AMI. AMI is a type of meter that allows for billing based on the actual cost of electricity as opposed to its blended rate. Most consumers have a blended rate.

The significance of actual cost as opposed to a blended rate is that electricity in the summer time is very expensive when it is hot and there is air conditioners running, but it is much less expensive at other times. These meters provide an incentive not to use electricity during the expensive time.

For this project ComEd requests approximately $49 million for the technology and meters and $12.6 million for operating expenses from the ratepayers.

ComEd has submitted a large grant proposal to the United States Department of Energy for $350 million. That grant proposal is a part of
the record in this docket. The United States Department of Energy's program provides matching funds which is 50 percent of the funding for a project. If the Department of Energy approves ComEd's total request, consumers will fund the remaining $175 million.

A part of this grant application is ComEd's request to fund the program that is the subject of the docket here. The issue here is the propriety of tariff language that ComEd had submitted for approval that allows it to spend funds without any Commission approval of the projects that it is spending the money on. This tariff language allows ComEd to recover funds from consumers regarding its grant proposal projects that are not in this docket.

I should point out that, since the time when the interlocutory report was filed, ComEd filed a petition requesting Commission approval of the grant funded projects that are not included in this docket but are included in the grant application. This is Docket Number 09-0407.

Attached to the petition in Docket
09-0407 is a tariff that allows ComEd a return on its investments in these new projects. If the Commission approves the petition in Docket 09-0407, ComEd would have the relief it seeks which is right of recovery of its expenditures on grant-funded projects that are in addition to the project that is the subject of the docket here.

COMMISSIONER O'CONNELL-DIAZ: Judge Sainsot, what is the schedule, if you know, of 09-0407?

JUDGE SAINSOT: Well, it was just filed late last Thursday. A status hearing will be scheduled -- I don't even think the notice is out -- for September 21. And beyond that, the only thing that's known at this time is that ComEd has requested final Commission approval by the end of the year. In this docket ComEd has requested final Commission approval by November 4, I think.

CHAIRMAN BOX: In which docket? In Docket 09-0263?

JUDGE SAINSOT: Right. So you are talking about a two-month difference.

CHAIRMAN BOX: Judge, let me ask this. The
thing that was filed, 09-0407 that was filed last Thursday...

JUDGE SAINSOT: Right.

CHAIRMAN BOX: .. that would include the 49 million and the 14.6 million that's also included in 09-0263?

JUDGE SAINSOT: No, it is for the remaining project.

CHAIRMAN BOX: The remaining, okay. That's in the grant.

JUDGE SAINSOT: Right. Actually, the project that is the subject of 09-0263 is a rather small part of the whole grant proposal.

CHAIRMAN BOX: As I recall, they came before us when they filed 09-0263 and they gave us the names of the cities and the suburbs and the part of the city of Chicago that the smart meters would be going into, right?

JUDGE SAINSOT: Right.

CHAIRMAN BOX: And that's where you get the 49 million plus the 12.6?

JUDGE SAINSOT: Right, right. I haven't had a
chance to look at the other docket in depth. But if memory serves me, what ComEd asks for in 09-0407 are more AMI meters, AMI compatible air conditioning cycling switches, distributed automation and supporting data communication infrastructure. There is some SCADA kinds of things in there. It's a much more elaborate project than the one that is in 09-0263.

CHAIRMAN BOX: Okay. Now, so what we have before us for tomorrow is a petition for interlocutory review. Whether that's successful or not, the same results or the same issues will be heard and litigated in 09-0407, is that correct?

JUDGE SAINSOT: Right. The tariff language that is at issue here is attached to the petition in 09-0407. So what you have in terms of possible, for lack of a better word, harm to ComEd is the lag time between approving the project here in 09-0263 and the one in 09-0407, which is two months.

COMMISSIONER O'CONNELL-DIAZ: And the concern there is that there is, for look of a better word, competition for the federal moneys that are coming
from the stimulus package, and so the November 4 date
versus the end of the year date could, it is the
company's argument, that advantage our state
acquiring that money, is that --

JUDGE SAINSOT: Well, here is the thing. We
had a hearing, an evidentiary hearing, I don't know,
two, three weeks ago. And what the evidence showed
is that the U.S. Department of Energy requires
Commission approval of a project. I didn't see
anything in the evidence that indicated that the
tariff language was necessary for the U.S.
Department of Energy to go forward with that.
Commission approval is something that occurs after a
petition is filed and evidence is taken and the
Commission issues a final order. It is not tariff
language.

So did that address what you were
saying, Commissioner O'Connell-Diaz?

CHAIRMAN BOX: I think, correct me if I am
wrong, Judge, somewhere in the federal guidelines it
actually says that it is not mandated that we have
made a final decision by the time they make their
decision, but we have to make a decision before any
of the federal money is released.

JUDGE SAINSOT: That's correct. I am sure
Commission approval would be helpful.

CHAIRMAN BOX: But even if our government
acknowledged, that might not be the case, given the
timetables involved.

JUDGE SAINSOT: Right.

CHAIRMAN BOX: So let me ask you this. In
light of the fact that they filed 09-0407 and you
would have to have testimony and everything else,
could these two because they will accomplish the same
thing hopefully by the end of the year if that
evidence is taken and made part of 09-0263, will that
meet the timetable that they have asked for by
November 1?

JUDGE SAINSOT: Well, I don't think we can
have -- we could get -- that's a complicated project.
I don't think it is possible to get everything done.
I mean, you are talking about having a trial,
post-trial briefs, a proposed order and then briefs
on exceptions. I don't think that would happen in a
CHAIRMAN BOX: I am just wondering, say you are dealing with 09-0407, can that be done by the end of the year?

COMMISSIONER O'CONNELL-DIAZ: It doesn't have to be done.

JUDGE SAINSOT: I think it is do-able. I think Judge Kimbrel and I won't have much in the way of Thanksgiving, but I think it is do-able.

COMMISSIONER ELLIOTT: Question, it seems to me with the filing of 09-0407 that that sort of resolves the issue, at least the evidentiary question the joint movants are talking about. It seems to move it to that docket.

JUDGE SAINSOT: Right, right. And it also indicates that the real issue here is only the two-month lag period.

CHAIRMAN BOX: So whatever the decision will be from the judges, whether it is in 09-0263 or 09-0407, you will hear the same evidence and the issues will be resolved.

JUDGE SAINSOT: Right, we will hear evidence
that will relate -- well, I already heard evidence that related to what was in the first petition, 09-0263, but then will hear evidence in the next docket concerning the tariff language that's at issue.

COMMISSIONER ELLIOTT: I think what we are picking up is, out of the 175 million total request to DOE, we have got 63 in the -0263 docket and the remainder in the 09-0407 docket. So they will be looking at different issues concerning like projects, but in terms of the tariff language to recover the ARRA money, the stimulus money, that would be identical, am I correct?

JUDGE SAINSOT: Well, I am not sure what you mean by identical. It would match what is proposed in the second docket, 09-0407. It doesn't match what is in the first docket, the docket that's here, because there is nothing in the petition to say what those projects are.

COMMISSIONER ELLIOTT: Right. That's in the -0407 case.

JUDGE SAINSOT: Right.
COMMISSIONER O'CONNELL-DIAZ: Well, isn't it actually in the supplemental petition that the company filed?

JUDGE SAINSOT: No, the supplemental petition simply said that in essence there is more to come. It didn't give much in the way of detail.

CHAIRMAN BOX: But, Judge, I am a little confused. Now, if they get the 175 million from the federal government, part of that, 61.6 or 62 million of that, was what they asked for in 09-0263, is that correct?

JUDGE SAINSOT: Right. I think that's the right figure.

CHAIRMAN BOX: So in essence because the second docket, whether we decide it by November first or by the end of the year, the ratepayer -- if you and the Commission decide that it is used and useful or it is prudent, the ratepayers would be technically paying half of that 62 million because half of it will be paid by the federal government out of the stimulus funds.

COMMISSIONER ELLIOTT: If the fund is granted.
CHAIRMAN BOX: If it is granted.

JUDGE SAINSOT: Right, in 09-0263, yes.

CHAIRMAN BOX: Right. So 09-0407 includes everything that's in 09-0263 and not vice versa.

JUDGE SAINSOT: No.

COMMISSIONER ELLIOTT: This is one-quarter and that's three-quarters.

JUDGE SAINSOT: Yeah, that's a good way of putting it, Commissioner Elliott.

COMMISSIONER O'CONNELL-DIAZ: The second filing is the larger amount.

COMMISSIONER ELLIOTT: The cleanest thing would really be to consolidate the two cases, but then you add two months lag onto --

JUDGE SAINSOT: Well, I don't know if it would be the cleanest thing.

CHAIRMAN BOX: Well, I would think -- and now this is just for discussion because we are going to vote on it tomorrow. I would think, though, with an application being filed, knowing we have a deadline of November 1 on one and knowing that we are going to try to get the other one done by the end of the year,
that would support their application. We are not making a commitment one way or the other in case we see decisions from the judge and what items are going to be purchased and the costs and everything else. That has to boost their application process. I don't know what more they can expect of us.

COMMISSIONER O'CONNELL-DIAZ: Chairman, you are talking about what the DOE needs to see from our Commission?

CHAIRMAN BOX: Yes.

COMMISSIONER O'CONNELL-DIAZ: I think the language here is "application should include correspondence from Commission, approval process and timeline," and then I think the next part of it, "The money could be withheld until approval of pricing tariffs." So, you know, I also --

CHAIRMAN BOX: Keep these separate then. And the same judges will have them, I would think. Has this been assigned to the same judge?

JUDGE WALLACE: Yes.

JUDGE SAINSOT: Well, Judge Kimbrel has been added on to the second docket, 09-0407, but I am on
that other case.

COMMISSIONER O'CONNELL-DIAZ: And, again, this
is right of recovery we are talking about. So
approval of anything by the Commission in these
dockets will have an annual review reconciliation,
and so it is not a rubber stamp that all costs will
flow through to ratepayers for any of these items.
They will be given the scrutiny and hearing just as
any other rider recovery matter that we have at the
Commission.

So the notion that this is rubber
stamping and pushing something through is just
incorrect because we will be looking at on a regular
basis, a yearly basis, through proceedings and
discreet review of those records of all of these
costs.

JUDGE SAINSOT: That is correct. May I say
something about -- I heard the word "consolidation."
And I just --

COMMISSIONER ELLIOTT: Cringed?

JUDGE SAINSOT: Well, I don't think -- I think
it would create a lot more work for everybody
involved at this point. There has already been a trial, post-trial briefs are out in the 09-0263. They were just filed yesterday, for one thing.

For another thing, it is my impression, and I could be wrong about the second docket, but there is an issue about timing here. I think ComEd needs to get going as soon as possible on the project that is the subject of 09-0263. I am not so sure about the second docket, but then I am much more familiar with 09-0263 than I am with the petition that was filed last week.

My impression, and ComEd has stated this, is that they need to start going now and getting things in order now, in order to get these meters in people's homes by the heating season next year. They won't be able to do that or they will be impaired and I don't know to what extent. But it is my impression that it will impair the project if we delay the 09-0263 project. And the reason I say this is the consolidation issue.

COMMISSIONER ELLIOTT: Yeah, it seems to me that with the filing of 09-0407 that the evidence
requested or at least that the movements suggested was unavailable in this docket as being adduced in that docket. It seems to me that denying the relief here and having those issues adjudicated in the other docket as opposed to Staff's view in this case which was to potentially if we decided to grant and then do the evidentiary issues on those things in this case.

JUDGE SAINSOT: Well, this is really a legal issue, and I can appreciate where people might want to take evidence if you reverse me. But the reason that this tariff language was stricken was because it was beyond the scope of what the Commission ordered in ComEd's last rate case where this first arose.

And it is also beyond -- it is also relief requested that is beyond the scope of the facts presented in the petition or at trial. There is no evidence regarding these other ARRA-funded projects in 09-0263, and that's the real problem.

COMMISSIONER ELLIOTT: Right, and that evidence is going to be produced in 09-0407, is what you are suggesting.

COMMISSIONER O'CONNELL-DIAZ: And also an
averment that at the point in time that the Commission entered its order in 09-0263 there was no federal stimulus package out there.

JUDGE SAINSOT: You mean in the --

COMMISSIONER ELLIOTT: Initiating order.

CHAIRMAN BOX: In the rate case.

COMMISSIONER O'CONNELL-DIAZ: The initiating order. We had no notion that there was these moneys that could be utilized for projects such as this in our state.

COMMISSIONER FORD: Unless somebody else gets it.

COMMISSIONER ELLIOTT: ARRA really screwed up all the processes, didn't it?

CHAIRMAN BOX: Well, for a chance to get an improved system and more efficiency and with money from the federal government, I think it is worth it. I think we have enough to chew on until tomorrow morning when this matter comes up on the agenda. I think it is E5. Anyone need any more clarification from Judge Sainsot? Judge, thank you very much.
JUDGE SAINSOT: Thank you.

CHAIRMAN BOX: Judge Wallace, anything else to come before us before tomorrow morning?

JUDGE WALLACE: Nothing further today, sir.

CHAIRMAN BOX: We will have an admin meeting tomorrow after the bench session. There will be like a ten-minute recess for us to go to the video room after tomorrow's meeting.

Thank you very much. Meeting is adjourned.

MEETING ADJOURNED

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