BEFORE THE

ILLINOIS COMMERCE COMMISSION

PRE-BENCH OPEN MEETING

Chicago, Illinois
October 6, 2009

Met, pursuant to notice at 1:30 p.m.

BEFORE:

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

Patricia Wesley, CSR, RPR
CHAIRMAN BOX: Good afternoon. Is everything all set in Springfield?

JUDGE WALLACE: Yes.

CHAIRMAN BOX: Pursuant to the provisions of the Illinois Open Meetings Act, I now convene the regularly scheduled pre-bench session of the Illinois Commerce Commission.

With me in Chicago are Commissioners Ford, and O'Connell-Diaz, and Elliott. I am Chairman Box. We have a quorum.

Before moving into the agenda, 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 the bench session.

According to the Chief Clerk's office, there have been no requests to speak.

We have one item on the agenda today, Docket 08-0363, Northern Illinois Gas Company's order on rehearing regarding its proposed general increase in natural gas rates. The issue on rehearing was whether the entire amount of
short-term debt should be imputed in the capital structure or should a lesser amount be included in the capital structure, if any.

Judge Sainsot and Judge Kimbrel are with us.

JUDGE SAINSOT: Just to start off with, we are required by law to tell you if there are any new comments on rehearing. There are no new comments.

CHAIRMAN BOX: Thank you. Do you want to give us a brief overview of the one issue in this particular case?

JUDGE SAINSOT: Yes. This Commission granted rehearing solely to determine whether the amount of short-term debt that was included in Nicor's capital structure in the final order in this docket was the proper amount to include or whether a lesser amount is in order. Implicit in this ruling is the recognition of the fact that it is appropriate to include some short-term debt in Nicor's capital structure.

On rehearing, Nicor and staff chose not to present any testimony, instead they stipulated to
the admission of certain data request responses into evidence.

Also, on rehearing Nicor argued that if the difference between this case and its previous rate cases is inclusion of cash working capital in its capital structure, then the amount of Nicor's short-term debt should be limited to the amount of its cash working capital.

The problem with that argument is that Nicor, the party with the burden of proof, did not present any evidence establishing that the amount of its cash working capital is the same as the amount of its short-term debt.

The significance of the fact that cash working capital was included in Nicor's capital structure is not the amount of its cash working capital, rather it is that once Nicor placed cash working capital in its cash capital structure, staff investigated the sources of Nicor's cash working capital.

That investigation led staff to conclude that Nicor's short-term debt was the source
of Nicor's cash working capital. It also led staff
to conclude that Nicor fund rate base items were
short-term debt. There was no evidence presented on
rehearing indicating that staff was wrong.

On rehearing Nicor also argued that the
amount -- that most of its seasonal gas purchases
are investor financed; however, staff established,
through its discussion of rehearing Exhibit 4, that
because Nicor uses a type of last-in, first-out
accounting method, Nicor pays for this gas with
customer-supplied funds, and there's no evidence
indicating that staff is incorrect.

I should also point out to you that
also included in the order is a determination as to
the joint motion to reopen. Originally the final
order in this docket concluded that a rulemaking
should commence with the purpose of establishing
standards for gas efficiency programs. Since that
time, the General Assembly enacted Section 8-104 of
the Public Utilities Act.

The joint movant stated that,
therefore, a rulemaking on this issue was not
necessary and the order before you agrees with them, and we should also remind you that if you change the amount of short-term debt, then the appendix to the original order would need to be changed, so you just need to let us know so we can change the appendix.

Also, if the amount of short-term debt is changed, Nicor will need a few days to re-file its tariffs and that should be reflected in the order.

Any questions?

CHAIRMAN BOX: Any questions from the bench?

(No response.)

I have a few. Judge Sainsot, could you go through and just give me the differences between this case and the three prior rate cases where short-term debt was not imputed in the capital structure.

JUDGE SAINSOT: Well, there are a couple of differences. One, the chief difference is inclusion of cash working capital, because once -- in the capital structure -- because once cash working capital was included in the capital structure, then
staff took a look at what was in cash working capital and that led staff to conclude that a portion of cash working capital was short-term debt. Also, in this case there was only three months where Nicor had no short-term debt. In previous cases there were many more months where Nicor was found to have no short-term debt whatsoever.

CHAIRMAN BOX: In any months at all?

JUDGE SAINSOT: Well, no, it had some. In the last case I think it had five months with no short-term debt whatsoever and the other seven months it had short-term debt.

CHAIRMAN BOX: What about this particular case?

JUDGE SAINSOT: It has three months.

CHAIRMAN BOX: Didn't those cases say that's not an indication of the fact that shareholder money was being used and not ratepayer money so the point of distinguishing the fact that there was no short-term debt should not be included in short-term debt?

JUDGE SAINSOT: Well, obviously, shareholder money would have been used during those three months
or those five months if short-term debt wasn't used.

COMMISSIONER FORD: I guess I had an issue,
because, as the Chairman said, that for the three
times we have included -- it's been included, and I
look back and see there in Black's Law where it says
legal precedent, and not being a lawyer and I was
wondering if those three times that the Commission
did include that we would be remiss if we did not
include it this time?

JUDGE SAINSOT: Well, you are quite right that to
pay attention to the precedent. The trouble is here
is that the facts are different, and when the facts
are different, you don't have legal precedence, and
that is discussed in the order before you.

CHAIRMAN BOX: Succinctly tell us what that
difference is, the actual difference?

JUDGE SAINSOT: Well, I just mentioned the other
two, the first two that come to mind. I believe
there are others in the order as well.

COMMISSIONER O'CONNELL-DIAZ: Well, "others"
meaning other cases?

JUDGE SAINSOT: No, other facts.
COMMISSIONER O'CONNELL-DIAZ: So there's three
months differences of utmost importance to your
recommendation?

JUDGE SAINSOT: No. The most important fact here
is staff's analysis of what was in cash working
capital, which was in the original testimony in the
case in chief before rehearing. That is the most
significant fact. We didn't have that in any other
case. We didn't have staff going through the cash
on hand -- what Nicor's cash on hand is, which is
what cash working is. It's not just an accounting
function. It is what the -- what cash Nicor has on
a daily basis, where that money comes from.

COMMISSIONER O'CONNELL-DIAZ: And I think the
most recent Commonwealth Edison case is the cash
working capital.

JUDGE SAINSOT: Right, but staff's analysis of
cash working capital led it to conclude in that case
that there was no short-term debt in cash working
capital.

COMMISSIONER O'CONNELL-DIAZ: It wasn't an
exhaustive review in that proceeding by staff.
JUDGE SAINSOT: Pardon me?

COMMISSIONER O'CONNELL-DIAZ: There was not an exhaustive review of cash working capital by staff in that proceeding.

JUDGE SAINSOT: I don't know. All I know is looking at the order there was no mention. You have a better feel for that than I would.

CHAIRMAN BOX: Commissioner Elliott.

COMMISSIONER ELLIOTT: I just have got a comment. It seems the distinctive difference is an exhaustive study analysis performed in this proceeding with regard to that issue. It seems to be a perfunctory look at short-term debt and the amount on hand month to month in the prior cases. It seems to be quite different.

JUDGE SAINSOT: Well, and I would also point out that gas in and of itself is much more seasonal than electricity and staff has talked exclusively about the need for short-term debt due to the seasonal nature of gas purchases and use of gas.

CHAIRMAN BOX: In Peoples' last rate case, their short-term debt was zero, wasn't it?
JUDGE SAINSOT: That's correct, and North Shore too, which was part of that case.

CHAIRMAN BOX: And that was zero because did the staff do an exhaustive review in that particular case to see if, in fact, short-term debt existed or not or just --

JUDGE SAINSOT: Either that or Peoples had no short-term debt and Peoples handled its finances differently. That's the only thing I can think of.

COMMISSIONER O'CONNELL-DIAZ: Didn't the Commission reject the theory on four different occasions in four different matters that we had before us?

JUDGE SAINSOT: Well, it rejected it in the last two Nicor rate cases, that is true; however, factually I think we have a different situation, otherwise, we wouldn't be here.

COMMISSIONER O'CONNELL-DIAZ: Whose testimony can I look to to support the staff's exhibit -- the LIFO analysis that you refer to in your --

JUDGE SAINSOT: There is no testimony on that. That was part of the evidence that was stipulated
to. There's absolutely no testimony on that that I can recall. No, that's not true actually.

Mr. Arbushaw (phonetic) testified as to that procedure, but staff's particular analysis comes from what was stipulated into evidence on rehearing.

COMMISSIONER FORD: Well, except when short-term debt can be traced to a particular asset, then it's treated in the same manner as long-term debt. I guess I had questions along -- issues along those lines because it seems that in our other cases -- the three other cases you did not bring all that into the factual component of the case. That's why I'm having an issue with this.

If a child gets an F three times and -- I mean an A three times and comes back and gets an F, I want to have substantial reasons, and you are saying that Nicor did not present evidence that they did not track a short-term debt?

JUDGE SAINSOT: Yes, that's correct. That's not the only thing we are stating here, but that's correct. I'm not saying that Nicor has to track its debt.
What we are saying here is that it would be a lot easier if for Nicor or any other utility in the future if they found a way to track its debt. That's all.

COMMISSIONER O'CONNELL-DIAZ: But to disallow the totality of what Commissioner Ford was referring to as a kind of precedent that I'm just -- it's not clear to me that there's a procedural evidentiary record in this matter to lead us to that place and that there should be somewhat of an apportionment, and if that's the way the Commission is going to be looking at this issue you have noted, maybe we need to signal that, but there's just a whole host of cases where short-term debt has been treated in the manner that the Commission has treated it and so that becomes to me, the regulatory certainty. I just don't see anything in this record that wins me over to the other side.

That being said, you know, I'm thinking there should be a middle ground as opposed to this all or nothing, which that is the problem that I see, and I would prefer to see a middle ground, and
if this is the way the Commission's going to be looking at this as our determination, then we should signal to our companies that they need to start keeping their records in a different manner than they have if we are going to be looking at it like this.

It's very clear to me from Mr. Arboushaw's testimony in the case in chief, which, you know, led right into the reopening that with these monies there is a three-month period that due to the seasonal fluctuation of the business that they're in.

We can do all sorts of different kinds of analyses and hypotheticals, but that doesn't give me comfort on the facts level that this is appropriate nor legally sustainable, and so, you know, I understand it.

I think we are in a situation where obviously the books and records are not kept in the manner that I think staff would like them to be, so maybe we need to signal that, but this all or nothing I think is really --
COMMISSIONER ELLIOTT: On the other hand, I think we did just exactly that in reopening. I thought that our judge's opening statement with regard to what was requested to be provided, and the company provided no evidence with regard to anything other than the total.

COMMISSIONER O'CONNELL-DIAZ: I believe because these amounts are fungible, which is webbed through all the testimony, that there's a problem of producing a document that's got these numbers and where it went and how that was tracked. I think that --

JUDGE SAINSOT: Well, I didn't mean to interrupt you. I'm sorry. I'm sorry.

COMMISSIONER O'CONNELL-DIAZ: So I just think that that presents the problem. If we are going to be requiring our companies to do that, then I think we should give them a signal to do that and I think -- also, staff's position I think we could have gotten a better argument that there was some portion but they just weren't sure what it was, so I guess it's up to us to determine what's fair and
reasonable and also what we could -- how we could
get to a legally sustainable order. I just find
this should be really an about face as to how we
have dealt with it in most of the recent rate cases
which had had cash working capital, so, you know,
I --

COMMISSIONER ELLIOTT: I think in my review I
don't think there's any question, there's no doubt,
that the company has short-term debt in its capital
structure. The question is whether they utilize
that short-term debt to fund rate base assets, and I
think that's the difference in the analysis
performed in this case that is different from the
analysis performed in the other cases as to whether
or not there's been any relationship and that's the
analysis in the cash working capital that was not
performed in those prior cases and I think that
distinguishes this case from the others.

Now to the regard with if there's some
level under the totality again, it's Nicor's burden
to provide that evidence, and I think your
statements here is that that evidence was not
provided and that's sort of where I'm at. They have had not only the opportunity in the case in chief but rehearing.

CHAIRMAN BOX: You just started saying something earlier. What were you saying?

JUDGE SAINSOT: Well, I'm sorry. Again, I didn't mean to interrupt anyone. There's no evidence here that it couldn't have been some testimony or like evidence about pattern and practice that when we get this kind of a situation this is how we function. It would have been a simple matter to do.

There's no evidence here as to that. What we do have is Nicor saying, well, you know, the monies all over the place. Well, in reality they probably do -- for the margin calls, for example, they probably do go to certain place when they have margin calls and that would have been a very simple thing to do, and it wasn't done.

CHAIRMAN BOX: So does it concern you at all that if we are talking about LIFO, and FIFO, and accounting procedures, to see a company go from zero percent short-term debt in their capital structure
1 to 19 percent if my numbers are right? Does that
2 cause you some pause?
3 JUDGE SAINSOT: Yes. And I was kind of shocked
4 that Nicor chose not to present testimony and just
5 stipulated to the admission of data request
6 responses.
7 CHAIRMAN BOX: The staff thought that the
8 position didn't have to be all or nothing and the
9 company puts forth a compromise position and that
10 was not acceptable to you in your order either.
11 Was there any particular reason why
12 given the fact that going from zero to 19 to the
13 fact that the last three cases we ruled a certain
14 way and we haven't signaled anything? Staff never
15 agreed with that, but I think that's something we
16 have to take up later, too, that when -- I think we
17 talked about this at the oral argument, that when I
18 asked for precedence, I was given a list of cases
19 that the staff had taken a certain position and the
20 last time I checked that's not precedent.
21 I wanted to know how the Commission
22 ruled and it just seems like maybe I shouldn't say
1 staff is lying in wait for something like this where
2 Peoples is zero, Com Edison is zero, and I've never
3 seen a company's short-term debt at 19 percent.
4 COMMISSIONER FORD: And I'm looking at the
5 conclusion in 9-507 (phonetic) that says to me
6 included -- short-term debt should be included in
7 the company's capital structure adopted in this
8 procedure. Short-term debt is used as a source of
9 financing assets in rate base.
10 So when we come to those kinds of
11 conclusions and our failure to include it
12 understates (sic) the amount of the cost of debt,
13 that supports the company's rate base. This is from
14 our own dockets. Not being a lawyer, I'm just being
15 able to analyze and synthesize some information.
16 COMMISSIONER O'CONNELL-DIAZ: I guess the other
17 part I'm trying to keep in my mind is short-term
18 debt is more expensive than long-term debt.
19 Short-term debt actually helps the company's bottom
20 line and, in fact, helps the rates be lower, so for
21 us to discourage usage of short-term debt and
22 encourage or disallow that I think is not an
appropriate thing because at some point in time that will have an effect on the bottom line, so I think Commissioner Ford's statement that she just read from one of our other dockets is totally on board and on point.

Again, to go back to the testimony that was given by the company in Exhibits 24.1, 24.2, Exhibit 3, I don't know if they have anything more than what they gave in the first round because these are fungible.

We know they had zero balances three months of the year. In the other cases that the Commission has approved it was four months and seven months, so I think we get into semantics in regard to that.

In other company cases, other than Nicor, have a lot of this short-term debt and most recently Com Ed, and although I think Peoples, as Commissioner Elliott pointed out, wasn't heavily litigated, I don't know if there was an agreement, but short-term debt is utilized during the seasonal fluctuation and I think that hitting the bottom line
keeps prices and keeps the company in a good financial picture which is important for customers. So for us to do an about face without having the absolute concrete evidence in a record to me that's troubling, so I think we know it's not a hundred percent. It's not -- to me, I think it should be some middle place that we might find ourselves would be a reasonable conclusion for this situation.

CHAIRMAN BOX: Does the record include latitude for something other than zero or all?

JUDGE SAINSOT: I really wish it did. The only thing that we thought represented a middle ground was reducing it to the amount of Nicor's cash working capital.

The problem with that is that Nicor's cash working capital is not the same as it's short-term debt and there's no indication that they equate each other in that way. They're two separate entities, but that would be it.

CHAIRMAN BOX: Any other questions of the judge?

No comments or questions?
(No response.)

This is on our agenda for tomorrow. I think the deadline is the 7th at our 10:30 meeting.

Thank you. Appreciate it.

Judge Wallace, anything else to come before us?

JUDGE WALLACE: Nothing.

CHAIRMAN BOX: Thank you. The meeting is adjourned.

(Whereupon, the above matter was adjourned.)
No. 08-0363

State of Illinois
ILLINOIS COMMERCE COMMISSION

(To be filed with the Chief Clerk)

MINUTES

Chicago, Illinois

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

APPEARANCES AND ADDRESSES:

(None.)

DISPOSITION:  Adjourned.

EXHIBITS FILED:  (None.)

REPORTED BY:  SULLIVAN REPORTING COMPANY, by
Patricia Wesley

REMARKS:  Orig to Commission
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