BEFORE THE
ILLINOIS COMMERCE COMMISSION

REGULAR PUBLIC UTILITY OPEN MEETING

Chicago, Illinois
February 2, 2010

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

BEFORE:

MR. MANUEL FLORES, Chairman

MS. LULA M. FORD, Commissioner

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

MR. SHERMAN J. ELLIOTT, Commissioner
via telephone

MR. JOHN T. COLGAN, Commissioner

SULLIVAN REPORTING COMPANY, by
Tracy L. Overocker, CSR
<table>
<thead>
<tr>
<th>INDEX</th>
</tr>
</thead>
<tbody>
<tr>
<td>DOCKET NUMBER:</td>
</tr>
<tr>
<td>06-0706. . . . . . . . . . . . . . . . .</td>
</tr>
<tr>
<td>09-0399, 09-0433, 09-0419, 09-0420, 09-0428. . . . . . . .</td>
</tr>
<tr>
<td>09-0514. . . . . . . . . . . . . . . . .</td>
</tr>
<tr>
<td>08-0175. . . . . . . . . . . . . . . . .</td>
</tr>
<tr>
<td>09-0461. . . . . . . . . . . . . . . . .</td>
</tr>
<tr>
<td>09-0251. . . . . . . . . . . . . . . . .</td>
</tr>
<tr>
<td>08-0569. . . . . . . . . . . . . . . . .</td>
</tr>
</tbody>
</table>
CHAIRMAN FLORES: Good morning. Pursuant to the provisions of the Illinois Open Meetings Act, I now convene a regularly scheduled bench session of the Illinois Commerce Commission.

With me in Chicago are Commissioners Ford, O'Connell-Diaz, and Colgan. I am Commissioner -- I am Chairman Manuel Flores. We have a quorum here this morning. Commissioner Elliott is joining us via remote connection in our Springfield office.

Good morning, Commissioner.

COMMISSIONER ELLIOTT: Good morning.

CHAIRMAN FLORES: Is there a motion to allow Commissioner Elliott to join us via remote connection?

COMMISSIONER COLGAN: So moved.

CHAIRMAN FLORES: Is there a second, please?

COMMISSIONER O'CONNELL-DIAZ: Seconded.

CHAIRMAN FLORES: It's been moved and seconded.

All in favor say "aye."

(Chorus of ayes.)

CHAIRMAN FLORES: The vote is 4-0.
Commissioner Elliott will be allowed to join the meeting via remote connection.

Before moving into the agenda, according to Section 1700.10 of the Illinois Administrative Code, this is the time that 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 are two requests to speak. Speakers are permitted 3 minutes to address the Commission. Please be advised that the Commission values the public's participation in the public comment period; but according to ex-parte laws and other procedural rules, we are unable to respond.

First, we have Mr. Kirk Smith who is representing himself as well as the Fox River Alliance.

Mr. Kirk Smith, if you can please step up.

MR. KIRK SMITH: Good morning.
CHAIRMAN FLORES: Good morning.

MR. KIRK SMITH: I first thank you for allowing me to speak on behalf of a petition I filed in Docket 06-0706. Let me assure you, despite claims by others, myself and recent intervenors did participate in this process early speaking with Ameren staff and at public meetings, and I recently found this letter dated 2007 detailing my concerns. However, I do apologize for intervening late and at the time, I was a bit naïve about the process.

In short, upon reopening the case, we asked the ICC Staff counsel how we should proceed, and they advised us to possibly consider additional routes; but recently, the Administrative Law Judge, Albers, ruled against it. So there appears to be some confusion as to the exact content of the ruling that reopened the case. Today, I am here just to ask for clarification of your decision.

Despite the extra burden on my part, I'm happy to participate in longer proceedings if they could produce a better result. Ameren's primary route in this case is actually quite good in
comparison to the other proposed routes. When counsel advised us to consider other routes, I thought, Wow, all I have to do is find a route that exceeds a good route in the 12 criteria: A minimal environmental effect, minimal aviation safety concerns and will not produce a large number of intervenors.

I was actually surprised to find, in this letter dated March 30th, 2007, in the record of the case, a route that did just that. So I considered, for instance, proximity to homes. This route, as proposed by the City of Ottawa, can be constructed that goes by, actually, zero homes compared to 80 or more for the Ameren route and compared to 150 or more for the route that was cited in the decided in the earlier proceedings. From what I can tell, this route is the lowest cost, lowest impact and avoids all the issues that got us here. I believe if this route was further investigated at that time, we wouldn't even be here. And this newspaper article seems like the public is behind this route and this petition -- this recent
resolution from the City of Ottawa, they're behind the route.

So, what's the -- you know, at this point, I guess it's your decision. The bad thing is if we consider another route in this case, it delays the case and I understand the desire for expediency. However, the change of the -- the failure of the service is quite small and I think that right now, you have a choice of considering an additional -- allowing the proceedings to consider an additional route or limiting it to the two routes that Judge Albers had limited it to. And I would -- I would hope that you would consider that -- that we can probably come to a better resolution in the end if we're able to consider routes in a more open and free basis.

I look forward to your clarification on this, and I appreciate your time and I will respect your decision in this matter.

CHAIRMAN FLORES: Thank you very much, Mr. Smith.

Next we have Mr. Fred Morelli, Jr.
also representing the Fox River Alliance.

Mr. Morelli.

MR. FRED MORELLI: Thank you. I'm here representing the Fox River Alliance.

I think the issue before us is whether or not --

COMMISSIONER ELLIOTT: Can you move closer to the microphone, please.

CHAIRMAN FLORES: Can you move closer to the microphone, sir?

MR. FRED MORELLI: -- is whether or not Judge Albers will be permitted to consider other routes other than the Route 71 route and the route up the Fox River. It's our position and feeling that the route up the Fox River is simply indefensible, not only because of the ecological damage that will be caused, but also because of the danger to the sky divers and the existing airport.

Part of that route goes up Champaign Street. We feel that is likewise indefensible because of the proximity to the helicopter landing area near the Ottawa Hospital. That leaves only the
Route 71 route. And as far as whether that's a viable route, we think it is; but we're not urging that.

Kirk Smith has put together a document which I feel is just magnificent -- it covers everything -- and he's proposed a route that I think is far superior to the routes -- the route going up Highway 71 and we are asking that Judge Albers be permitted to consider the route that Kirk Smith has put together. He's touched on everything that needed to be touched on. There are 12 things and he's touched on and he's addressed them all.

There's no time to go into everything; but all of that is in his testimony, which we was filed when we were permitted to intervene. And all I ask is that you read that, that you consider that and that you allow the Administrative Law Judge, Judge Albers, to consider that route.

Thank you.

CHAIRMAN FLORES: Thank you.

That concludes our public comment period.
Turning to the first item on the agenda, Docket 06-0706, we have Petitions for Interlocutory Reviews submitted by three intervenors: Skydive Chicago, Incorporated, Ottawa Airport, Incorporated, and FRA. I would -- that's the Fox River Alliance.

The intervenors argue that the scope of the reopening be expanded to consider all available options for AmerenIP and Ameren Illinois Transmission Company's transmission line.

Administrative Law Judge Gilbert recommends denying the Petition for Interlocutory Review.

Administrative Law Judge Gilbert, would you please brief us on this matter, sir.

COMMISSIONER ELLIOTT: I'm sorry. It's Judge Albers.

CHAIRMAN FLORES: I'm sorry. Yes, I just -- I apologize to Judge Albers.

JUDGE ALBERS: Thank you. That's all right. I'm here for you.

CHAIRMAN FLORES: If you could please speak loudly.
JUDGE ALBERS: Yes. This is quite an extensive record. So I will try to give you the nutshell version of it and you can ask for details if you'd like.

The Company filed a petition in November of '06 asking for approval to develop two transmission lines; one between LaSalle, Illinois and Wedron and the other between Ottawa and Wedron.

After a long process, the Commission, in March of 2009, adopted an order which approved both transmission lines. The one that eventually was adopted between Ottawa and Wedron, which is at issue here today, was the result of a stipulation between Ameren, the City of Ottawa and a group of property owners along Illinois Route 71. They call themselves the Route 71 Resistors.

The stipulation was arrived at following a problem with Ameren's testimony that came to light in the hearing in the prior December. To resolve that, the three parties simply agreed to change the preferred route of Ameren, which was the route along Route 71 -- State Route 71, to a route
along the Fox River.

At the time, there was no one in the case who opposed the Fox River route. So the Commission entered an order adopting the Fox River route, although on Page 65 of that order there was some misgivings presented or expressed regarding whether or not that truly was the best route given the circumstances; but because of the stipulation, the order did not delve into details or the pros and cons, if you will, of the Fox River route versus the State Route 71 route.

After the Commission entered that order, some property owners and business owners along the Fox River route became concerned. They indicated that -- I can't vouch for whether it's true or not -- but they indicated that they were told by Ameren prior to this case beginning that the Fox River route would not actually be selected. They apparently relied on that and when they did learn of the Fox River route being selected and became concerned, they raised some points about the existence of an airport, which was not in the record beforehand. They raised
concerns about the Ameren privatization given that
the wooded area would have to be removed to
accommodate the transmission line.

In September of 2009, the Commission
voted to reopen the record to examine just the route
between Ottawa and Wedron. During that discussion,
then Chairman Box had asked me about what -- Would
you consider reopening? And I recommended that we
limit the consideration between the original primary
route or preferred route of Ameren, which was the
Route 71 path, and the route that was actually
approved in the order, the Fox River path.

So the Commission did not expressly
indicate, Limit yourself to these two paths. So I
interpreted that to mean that in the absence of any
further discussion on that issue, that we are to look
at these two particular routes and not consider any
other ones given the time delay that would be -- time
and expense that would be incurred to consider an
endless number of additional routes.

When we received the testimony from
the parties that wanted this reopened, Mr. Smith had
provided additional routes for us to consider. And
at a status hearing we had in December, I
indicated -- I believe it was December -- I indicated
that we would limit ourselves to the two routes that
had previously been considered, and we would not be
taking the time to look at additional routes.

So, in a nutshell, that's where we are
today.

COMMISSIONER O'CONNELL-DIAZ: Judge Albers,
with regard to the assertion that the alternate route
that is proposed by -- that's contained in the
Petition to Intervene of Mr. Smith, he talks about,
first, if -- this route was first and formally
proposed in the record in April of 2007 by the City
of Ottawa.

Could you enlighten me on that or was
it proposed and rejected or looked at or...

JUDGE ALBERS: Going simply from my memory
here, which that was a couple years ago, various
parties, by intervening, had expressed, you know,
different alternatives here and there and different
modifications to routes that had been proposed by the
Company. And I recall there being some -- that being raised, but I can't recall with any particularity how detailed that proposal was. It was simply, you know, How about this kind of idea?

We did not notify any property owners along that path. To my knowledge, there have been no engineering studies done to determine, you know, the legitimacy of any path there. And I think there's some discussion or some concern expressed generally in the record about trying to get a line between Ottawa and Wedron and LaSalle -- LaSalle and Wedron separate so as to avoid any problem -- any double circuit where damage can take out essentially, you know, both lines. And I believe that route was raised in Mr. Smith's testimony. It basically ends up being primarily a double circuit.

COMMISSIONER FORD: Judge Albers, I thought we reopened it to reconsider the route between Ottawa and Wedron.

JUDGE ALBERS: Yes. This is specifically Ottawa and Wedron, the route between LaSalle and Wedron heading east toward Ottawa and then cuts north
to Wedron. It is a separate and distinct line. And
I understand Mr. Smith's proposal though. I think he
is proposing that the line leave Ottawa and join the
line coming from LaSalle creating a double circuit
between the two as it heads up to Wedron.

COMMISSIONER O'CONNELL-DIAZ: Thank you.
COMMISSIONER COLGAN: Judge Albers, this is
John Colgan.

What my understanding is is that the
Fox River route has been a possibility, but I think I
heard you say that there were assurances that were
given that it would not be the preferred route; is
that -- did I hear you correctly?

JUDGE ALBERS: Well, I can't speak to that
because I wasn't a part of that; but it's my
understanding, from comments made by those who sought
reopening, that at the very initial stages of this
process, before it even came to the Commission,
Ameren allegedly told people in the Fox River area
that they had nothing to worry about.

Now, I can't vouch for that in any
way, shape or form; but that is what those who sought
reopening it allege, that they were told previously that they would not see a line along the Fox River. However, once the case came before the Commission and the Fox River route was identified as a possibility, Ameren provided a list of all property owners along the Fox River route and those property owners received a notice from this Commission indicating that, we're looking at a single line along here, if you are interested, you know, please participate and nobody responded.

COMMISSIONER COLGAN: Well, this has been -- this has drug on for a while, and I haven't been on board for that long a period of time; but it just seems like there's been a lot of confusion that's been generated, and do you have any recommendations for -- regardless of how this turns out -- that we can avoid such confusion in the future?

JUDGE ALBERS: We have taken steps in this case to improve the notice to property owners to make it even more exclusive, that you better get on board early on or you are going to have concerns about this.
My understanding of the notice that is being currently used was updated to just come -- from before us, and I'm getting a nod from Chief Clerk Rolando that that is true, so we're trying to take steps to prevent similar confusion in the future.

**COMMISSIONER FORD:** Good.

**CHAIRMAN FLORES:** Any other questions by the Commissioners?

**COMMISSIONER COLGAN:** No.

**CHAIRMAN FLORES:** This is Manuel Flores. I have a couple questions, Judge.

The -- was there ever any -- in terms of the representation that Ameren is alleged to have made to the folks along the Fox River, was there any effort on the Commission's part to inquire about whether or not -- or on your part, rather, the Staff, to inquire to determine whether or not such communication was made.

**JUDGE ALBERS:** Not to my knowledge.

**CHAIRMAN FLORES:** Was there ever any presentation to you of any memorialized communications between Ameren and anyone along the
Fox River that would indicate that such communication took place?

JUDGE ALBERS: It is my understanding there was oral communications that occurred at open houses that Ameren posted to explain the project. I wouldn't have expected it to be any written record.

CHAIRMAN FLORES: And you made a -- we just heard remarks by Mr. Smith and I, again, want to thank him for taking the time to appear before the Commission to provide his comments.

You indicated, though, that you had -- when was it -- when was the first time that you actually came upon Mr. Smith's recommendations or suggestions.

JUDGE ALBERS: That would have been in the December 15th, 2009 testimony.

CHAIRMAN FLORES: That was the first time that you had been presented with any recommendations as to an alternative?

JUDGE ALBERS: Well, I mean this is under litigation. I can't -- well, I can't answer your question. When this case first was filed in 2006,
people came in -- Ameren filed its primary route with few alternatives. Other intervenors came in and filed their alternatives and they indicated in response to Commissioner O'Connell-Diaz's question -- they were a party that had joined saying, Hey, how about this without really any kind of thorough examination of the possibility. They were just throwing ideas out there.

In terms of the specifics that Mr. Smith had made, he intervened in this case this fall -- in the fall of 2009 and filed testimony. The first oral presentation on his position was not received until December 15th of this year -- I'm sorry -- of 2009. So his position was not known until then.

COMMISSIONER O'CONNELL-DIAZ: And, Judge Albers, what you're suggesting is that this alternative route that is spoken about -- and my question went to with regard to the Petition of Interlocutory Review -- it talks about April 27th and it was informally proposed. What you're talking about is the actual party to the case filing a
proposed alternative route that would analyze all of
the necessary requirements of that line to be
profitable engineering-wise and have supporting
documentation.

And what you have -- I think I understand you had said that that had never been presented in the case by anyone other than on this informal basis and until November of this year. Is that a fair assessment of -- we can't find any testimony or analysis done on this particular line in the record.

JUDGE ALBERS: Right. When I said parties had formally proposed alternatives, they were actually a party to the case that proposed informal appropriate alternatives. They were not accompanied by any, you know, serious studies or views. It was merely references that the Committee on -- the Commission or the Company should consider, you know, putting a line here, putting a line there without any type of engineering studies, without doing any kind environmental assessment.

The first time that we had received
any evidence regarding any serious proposal to put
the line where Mr. Smith has proposed was back in his
actual testimony. He -- to his credit, he took some
time to do this. I cannot vouch for the -- you know,
the validity of his review. It not been, you know,
subject to any other party's cross or, you know,
discovery requests unless they found serious
problems. I just can't -- one way or the other.
But the first time we got a serious
proposal of any level of review for this hearing,
this geographic area, was Mr. Smith's December 2009
testimony.

COMMISSIONER O'CONNELL-DIAZ: And it's been
pending since 2006; correct?
JUDGE ALBERS: November 6th, '06, that was
filed, November 1 of '06.

COMMISSIONER FORD: And you also said that none
of the property owners along Fox River intervened.
Is that part --
JUDGE ALBERS: That is correct. Notice was
sent when we first thought about using that Fox River
route -- probably a year and a half ago at least --
and nobody intervened. And that -- it is my recommendation today that we restrict consideration to the existing Fox River route or the originally preferred Route 71 in large part because of all the time that we've already spent on this case and, two, we're already giving these folks on the Fox River a second chance.

And it's not so much giving them a second chance; but I believe in order to make sure that whatever route we use between Ottawa and Wedron, it is the best possible route given the 12 factors that are usually considered. And I believe if we expand it to alternative routes beyond these two, we're going to be spending a lot more time on this case and they come back in --

COMMISSIONER O'CONNELL-DIAZ: Judge Albers --

JUDGE ALBERS: -- and, say --

COMMISSIONER O'CONNELL-DIAZ: -- is there a liability issue with this line not being up and running at this point in time?

JUDGE ALBERS: Ameren has expressed some concerns about not wanting to delay it any more than
they have to. You know, obviously the longer you wait, the higher the chances are going to get -- but I think Ameren would like to get this, you know, done. I can't tell you with any certainty what percentage chance there is of an accident or outage --

COMMISSIONER O'CONNELL-DIAZ: I know in some of the situations that the Commission has been presented with in regards to transmission lines, we have instances where there will be brownouts. And so that would certainly be a concern, but that does not seem to be a matter of record at this point in this particular proceeding.

JUDGE ALBERS: I don't think we're there yet.

CHAIRMAN FLORES: Judge, you indicated that Route 71 -- that it was between -- that the scope now of -- the analysis has been -- in terms of the two alternatives has been narrowed to the Fox River and Route 71. It's been -- and correct me if I'm incorrect here. In summarizing what you just indicated earlier, that it was determined there was some evidence that was presented before you that the
Fox River run -- excuse me -- the Fox River line presented some problems and that then the other -- the only other alternative -- viable alternative would be Route 71; is that correct?

JUDGE ALBERS: Yeah. I don't want to say it was the only other viable alternative; but given what's already in the record, it is the only other viable alternative, you know, if we expand the record based on the alternatives with -- but what we have before us now is either Route 71 or the Fox River and because of some concerns about the Fox River that were raised after the order was entered in March, I recommended that this matter be reopened to take a look at those concerns.

CHAIRMAN FLORES: All right. Well, then the -- I have no other questions.

COMMISSIONER FORD: Mr. Chairman, I would move that we accept the ALJ's recommendations.

CHAIRMAN FLORES: Is there a second?

COMMISSIONER O'CONNELL-DIAZ: Second.

CHAIRMAN FLORES: It's been moved and seconded. All in favor say "aye."
(Chorus of ayes.)

CHAIRMAN FLORES: Is there -- I'm sorry. I didn't hear Commissioner Elliott.

COMMISSIONER ELLIOTT: Aye.

CHAIRMAN FLORES: Okay. The vote is 5-0. The Petition for Interlocutory Review is denied.

COMMISSIONER O'CONNELL-DIAZ: Just to clarify. Judge Albers, have we clarified enough that now the analysis should be based on the Route 71 versus the Fox River Valley route so that that is -- for the rest of the proceeding, that that's what the Commission will be looking at?

Is that --

JUDGE ALBERS: That's my understanding.

COMMISSIONER O'CONNELL-DIAZ: Okay. Thank you.

CHAIRMAN FLORES: I do want to -- hold on, Judge, Manny Flores here. I do want to make another statement regarding this case at this point. The communication is critical. So I would advise that the Staff and the Commission undertake every effort to ensure that people are properly notified. I am troubled by an allegation
that was made -- in terms of representations that
were made.

Now, I asked whether or not there was
ever anything tendered, any type of memorialized
document, an e-mail or anything of the sort. You
indicated there hasn't been. So that's an
allegation. That being said, this is a very serious
matter and one where I believe community engagement
and community notice is critical.

I believe that one of the reasons why
we're here is ultimately because of some confusion as
to representations made or at least understandings or
potential misunderstandings. I want to avoid that.
I think everyone wants to avoid that to ensure that,
A, the public is properly notified and informed about
what's going on and how they can engage in
decision-making; and then, secondly, to ensure that
the projects move forward as expected by individuals
involved in the project.

So I would just like to put everyone
on notice, including Ameren, to ensure that proper
communications are made and that it would be best to
put things on paper and so -- to make sure that we all understand what to expect from one another and how we can all participate in this decision-making process.

COMMISSIONER O'CONNELL-DIAZ: Chairman, if I may, I totally agree with what you say and communication is very key. However, I would just note that when the Commission is presented with these matters and the formal notice goes out from our Clerk's Office, it is a legal notice that is given to landowners. And, certainly, it is incumbent upon all of us that would be affected by this line that when we see something like that to really understand the severity and to do what we are supposed to do as citizens that are going to be affected by a proceeding that's going on here.

So the due notice that was sent and required by law and that was sent by our Clerk's Office, folks need to understand that they do not put that in the bottom of the dresser drawer, that they need to act on it and come to our Commission to act so that we, the Commission, get that full record
developed in a timely fashion and are -- you know, be
able to consider all of these arguments.

And I know it can be daunting; but,
obviously, with regard to this line, there has been a
lot of collaboration among different interest groups
and that's what happens in these. I mean, your
neighbors all get involved and that's what's great
about our country, you can do that; but you do need
to -- when you get a notice from the Commission, you
need to say, Boy, I better pay attention to that.

So that would be my only caveat to
your comment.

CHAIRMAN FLORES: I think that's a good point;
but, again, I just want to make sure that --
sometimes things happen, as you know, Commissioner,
that people may not understand a lot of the legal
jargon that sometimes we receive in the mail.

I would also -- and I also make,
frankly, that comment to ensure that Ameren in its
efforts to communicate with the public, that they do
so with the highest level of professionalism. I know
they do good work out there; but, again, it's
incumbent upon all of us to communicate in a way where we all understand each other. And -- so that also goes to all the parties and not just the residents; but, again, I want to thank everyone who took time from their busy schedules to be here, and we obviously will be moving forward with this matter. So thank you.

Items 2, 3 and 6 and 7 will be taken together. These are applications for uncollectible expense adjustment tariffs submitted by various utilities pursuant to 16-111.8 of the Act. Administrative Law Judges Yoder and Albers recommended entering the orders granting the applications.

I want to open up any discussion to the Commissioners.

COMMISSIONER O'CONNELL-DIAZ: Chairman, if I might, I support the recommendation that's contained in the orders presented to us by the Judges. However, I did have an opportunity to go through the "Public Comments" section on our Web site and what became clear to me as I read through...
the public comments is that there is really kind of a misunderstanding as to how we, in fact, have petitions like this before us at the Commission.

These -- this particular provision was enacted by the General Assembly in its last year's session and it became law and when an item such as this becomes law, it becomes incumbent upon this Commission to implement that law. It is not a discretionary act we have. It is not our choice to ignore it. It is our duty and our obligation to really exercise the will of the General Assembly.

And that is why the Commission has these petitions and it is our job to look at them and review them and see if they comply with the law as enacted by the General Assembly and so, you know, this is not something that the Commission just is asking these companies to file or -- this is what the law requires them to do and it requires us to look at it.

So I just wanted to clear that piece up as to how the Commission actually gets a petition such as this. This is pursuant to law and it is this
Commission's job to implement the law as the legislature deems appropriate.

CHAIRMAN FLORES: Any other comments?

COMMISSIONER FORD: No.

Other than also pursuant to law, we must have testimony and we seem to have 111 --- 110 individuals comment and out of those 110 comments, only 7 was saying something like strongly opposed to what they thought was paying somebody else's bill. So I thought that was very -- those were excellent comments, those comments.

CHAIRMAN FLORES: Any other comments?

Again, as both Commissioners indicated, that we are also grateful for the comments that were sent to the Commission and that we are talking about here, an administrative aspect and we're -- in which this Commission is charged by law to implement and exercise via the will of the legislature.

And so on that end, I'd like to -- do we hear a motion to adopt the applications for --

COMMISSIONER FORD: So moved.
CHAIRMAN FLORES: Is there a second?

COMMISSIONER COLGAN: Second.

CHAIRMAN FLORES: All in favor say "aye."

(Chorus of ayes.)

CHAIRMAN FLORES: So none of the -- we don't have any opposition.

Very well. I'd like to move on to -- well, we're going to use the 5-0 roll call vote for the remainder of the agenda unless otherwise noted. We're moving on to Item 4, which is Docket 09-0514. This is Progressive Energy Group, LLC, has applied for an agents, brokers and consultants license under Section 16-115C of the Act.

Administrative Law Judge Yoder recommends entering the order granting the certificate.

Is there any discussion?

No response.

Any objections?

No response.

Hearing none, the order is entered granting the certificate.
Item No. 5 is Docket 08-0175. This is a request for oral argument in a complaint by the Citizens Utility Board and AARP against U.S. Energy Savings Corp.

Administrative Law Judge Gilbert recommends granting the request for oral argument.

Judge Gilbert, would you please brief us on this matter.

JUDGE GILBERT: Certainly, Chairman.

The parties to the case, CUB and AARP, the American Association of Retired Persons, and the respondent, which is U.S. Energy -- which is an AGS or an alternative gas supplier -- a certificate to provide transfer of gas services in the service territory, so Peoples Gas, North Shore Gas and Nicor. All of the formal allegations in the case arise from consumer complaints. These were consumer complaints received by the respondent itself, by this Commission, by the Better Business Bureau, by CUB, by the Attorney General, by the City of Chicago and this is during the period from the 1st of January 2007 to the end of March 2008.
The complaints generally coalesced around four subjects that -- well, I should say first -- I'm sorry -- U.S. Energy markets gas service almost exclusively by door-to-door selling and the only gas provider that does and they principally rely on door-to-door selling. So the complaints, as I said, kind of clustered around four subjects.

One is that savings were promised that were very unlikely under the U.S. Energy service contract and their service contract contains a fixed price for gas. So unlike what the incumbent utilities provide, which is a price that fluctuates based on the cost of that gas to the provider, U.S. Energy offers a contract which has a fixed price over a period of four or five years. And so the promise of savings, which the record demonstrates was a very unlikely promise, was probably the most common complaint from customers.

The second cluster of complaints concern misrepresentation of identity on the part of the salespersons at the door, that there was -- they claim to be from the utility rather than from an
alternative provider, they claim to be from this Commission, they claim to be from CUB -- well, I guess that point is made.

The third cluster of complaints had to do with the nature of the visit. In certain instances, salespersons did not present themselves as salespersons, but rather as people taking a survey, as persons from the utility offering to make a new arrangement -- a new service arrangement for the customer in which they would purportedly save money. So that third cluster has to do with misrepresenting the nature of the visit at the customer's door.

The fourth cluster will be generally considered unauthorized switching of service, either slamming a customer or forging a customer's name on a customer contract. All right.

So those generally are the four clusters of complaints which gave rise to the formal complaint by CUB and the AARP here and I am explaining how the complaint was formally shaped. Principally it's couched in terms of violations of the AGS or the alternative gas supplier law.
Section 19.110 of that law is basically the certification portion of the law that sets out the requirements to be certified. Two of those requirements are important here. One is that an applicant must show in the beginning that they have sufficient management, resources and abilities. Another thing that they must swear to do is to comply with all the laws applicable to the provision of service, it's a function they intend to perform in the marketplace.

And Section 19.115 of the law essentially says that all the things you promised to do when you were certified under Section 19.110 -- all those things you have to continue doing. All right.

So this complaint was basically couched in terms of failing to continue to do that which they originally promised to do and/or were required by law to continue to do. The main count in the case has to do with failure to maintain sufficient management and the principal symptom of the failure to maintain sufficient management was the
occurrence of an onslaught, really, of customer complaints.

It was alleged and I think the record demonstrates that the amount of customer complaints received relative to U.S. Energy during the time period of the case exceeded not only the amount of complaints received by any other gas provider, but by all other gas providers combined. Because of the requirement that an AGS must continue to comply with all applicable laws, the complaint also included counts under the Consumer Fraud Act and Deceptive Trade Practices Act, the CFA and the DTPA.

In addition, there were counts having to do with some other very specific provisions in Section 9.115 of the law, one being the requirement to always have verifiable authorization before you switch a customer from one provider to yourself and another being a requirement to always provide adequate prices for them.

All right. In the proposed order in terms of substantive conclusions, on the management question, which I'll call the big picture question
because that's dealing with complaints in the thousands, the finding is that there was management insufficiency and there was that insufficiency throughout the entire 15-month period and then essentially rose rather than fell during that period.

In fact, U.S. Energy's own -- I think he's the vice president of regulatory affairs -- it's probably a slightly different title than that -- called the degree of complaints they received a crescendo by March -- by February-March, I should say, of 2008.

All right. So, yes, on the big picture count.

On the smaller counts -- and I call them smaller because of the way I had to address those -- the proposed order finds 8 to 10 violations -- 7 to 10 violations -- fewer than 10 violations of the CFA, Consumer Fraud Act, and the DTPA, the requirement to obtain verifiable authorization before switching and the requirement to adequately disclose your prices. The reason that there are a relative handful of those is because this Commission cannot directly enforce either the CFA or the DTPA. What you are enforcing is the provision in
the Public Utilities Act that says you must comply with applicable law.

So I took the position in drafting the Proposed Order that that required not just a complaint or allegation, but an actual finding of a violation and the record evidence in the case showed a violation of fewer than 10 instances in connection with the CFA and the DTPA.

All right. On all of this, I think the record is pretty complete. I felt pretty comfortable with what I did. I mean, either I'm right or I'm wrong; but I think there's enough there that as a documentary presentation, you can make the call on the oral argument -- I mean, without oral argument.

The question to me is the question of remedies, and I think this is what the consumer groups want to address on oral argument. I'd recommend that you impose some monetary penalties. Those are one kind of penalty the law permits you to impose and that seemed fairly straightforward to me. For each individual violation, you are empowered to
impose up to a $10,000 fine. It was fairly easy to count up the violations, decide what portion of the 10,000 was appropriate and make a recommendation to you.

Where it's gotten difficult for me, where I feel I'm a bit, I think, over my pay grade here is deciding on the other kinds of functional remedies to apply. Our time is short here. The case ends on February 25th. It has been extended six times as a provision by which a complaint case can be extended for a 60-day interval that is set forth in the law and on six occasions the parties extended it and then they stopped.

Frankly --

COMMISSIONER O'CONNELL-DIAZ: Were they trying to settle the case?

JUDGE GILBERT WITNESS: Yes. There was a long -- at least a 6-month hiatus in the case while the parties considered settlement, and I must say that I absolutely pushed that up and thought that would have been the best outcome for everyone; but settlement was not achieved. The Company is no
COMMISSIONER O'CONNELL-DIAZ: Didn't they kind of waive that by letting us sit here for six months while they did the settlement dance? I mean, we afforded them that time to work it out and now we're going to be put up against the wall to decide this by the 25th of February. I find that kind of troublesome.

Obviously, that was a joint motion by CUB and the Company to ask for all of these extensions and --

COMMISSIONER FORD: Was that agreed to by the Circuit Court to -- with the AG and Direct Energy? Aren't they under consent decree?

JUDGE GILBERT: Yes. Yeah, which has been part of what I've had to think about with respect to remedies. The AGS law itself was revised in April of this year. U.S. Energy was sued by the Attorney General for violations of the CFA and they entered into a consent decree. As part of that decree, they established a $1 million reparations fund and agreed to a certain number of constraints and requirements.
for the business practices.

COMMISSIONER O'CONNELL-DIAZ: Where did that $1 million go?

JUDGE GILBERT: I'm sorry?

COMMISSIONER O'CONNELL-DIAZ: Where did that $1 million reparation -- who received that?

JUDGE GILBERT: As I understand it, that was to be returned to customers. There was a procedure set up by which customers could seek returnment of that money.

COMMISSIONER FORD: But under -- did they give us, the Commission, the power to act on all of these requirements?

So I guess I'm a little confused on why we -- the consent decree gave us this award -- what did --

JUDGE GILBERT: The consent decree doesn't give the Commission any authority.

COMMISSIONER FORD: Okay. Authority.

JUDGE GILBERT: It's an agreement between --

COMMISSIONER FORD: I see now.

The law.
COMMISSIONER ELLIOTT: Was there an admission of guilt?

JUDGE GILBERT: No, there was not.

COMMISSIONER ELLIOTT: Thank you.

JUDGE GILBERT: In fact, there's an express statement in the consent decree that liability is denied.

COMMISSIONER ELLIOTT: So there's been no findings of violations of the CFA from that consent decree?

JUDGE GILBERT: Yes, that's correct.

COMMISSIONER ELLIOTT: Thank you.

COMMISSIONER O'CONNELL-DIAZ: Judge Gilbert, it wasn't clear to me, and I don't remember; but has the Commission had other complaints brought to it with regard to this particular provider?

JUDGE GILBERT: Yes they're individual complaints. This wasn't really part of our formal record. I did take a look --

COMMISSIONER O'CONNELL-DIAZ: Has CUB brought us any other complaints?

JUDGE GILBERT: Yes. In 2006 CUB brought a
complaint much like the present complaint.

COMMISSIONER O'CONNELL-DIAZ: And what transpired in that matter?

JUDGE GILBERT: The parties settled that.

COMMISSIONER O'CONNELL-DIAZ: Were there monetary funds exchanged in that, do you know?

JUDGE GILBERT: I don't know. That settlement is not part of the record. I know one of the things that resulted from that settlement -- and this is discussed in the record -- is that persons with service contracts with U.S. Energy were entitled to void those contracts. Beyond that, I guess I don't know how that resolved.

COMMISSIONER O'CONNELL-DIAZ: So, in that instance, the Commission would have gotten an agreed upon stipulation that we really never ruled on the bad practices of this company; is that --

JUDGE GILBERT: Yes, that would be correct.

COMMISSIONER O'CONNELL-DIAZ: Were all the other consumer complaints -- were those individual consumers that filed and those were all settled so we never really -- the Commission was never presented
with the totality of what we see in this proceeding?

JUDGE GILBERT: Yes, that's right. I would say that maybe 17 or 20 and that's approximate -- 17 or 20 were settled and 3 were resolved in favor of the Company.

COMMISSIONER O'CONNELL-DIAZ: Thank you.

JUDGE GILBERT: Those were all on individual complaints.

COMMISSIONER COLGAN: Judge, the way I understand your Proposed Order is that you feel there is sufficient evidence to demonstrate that they're in violation of the CFA and the DTPA and then, also, I hear you say that this Commission has no authority to enforce those laws; but there is enough evidence, you believe, to demonstrate that they're in violation of those laws to the extent that it brings them into noncompliance with their certification.

Is that what your argument is.

JUDGE GILBERT: Yeah. That's very close to -- yeah, to what the position is I am taking in the Proposed Order. To be clear, it's not that the CFA and DTPA violations cannot be penalized, it's just
the penalties available are the penalties set forth in the Public Utilities Act, not the penalties of the CFA or DTPA and --

COMMISSIONER O'CONNELL-DIAZ: That would be the court of general jurisdiction would be looking at those violations, not the Commission. We don't have jurisdiction over that.

COMMISSIONER ELLIOTT: That was my next question from here is that have we ever, as a body, ruled on CFA or DTPA.

JUDGE GILBERT: Yes, you have.

COMMISSIONER ELLIOTT: Could you -- is there a reference in the record?

JUDGE GILBERT: Yes. One of the cases is a case that I did -- it's a 2000 case -- it's Docket 00-0043 -- and the same reason was applied there. In order to determine whether a certificated entity is meeting its obligation to comply with all applicable law, you've got to interpret the applicable law; but you cannot apply the penalties contained in that law, you can only apply the penalties associated with failing to meet your
obligation to this Commission.

COMMISSIONER O'CONNELL-DIAZ: That was my point in my jurisdictional question. We can't impose penalties that a court of general jurisdiction under the Consumer Fraud Practices Act could impose; but we can impose our own penalties based on the alternative gas supplier legislation under with which operate --

JUDGE GILBERT: Yes.

COMMISSIONER O'CONNELL-DIAZ: -- that's a different bailiwick?

JUDGE GILBERT: Yes.

COMMISSIONER ELLIOTT: Judge Gilbert, referring back to that case -- I'll rely on your memory -- but was -- in that case, had the party been found in violation of the CFA in another jurisdiction?

JUDGE GILBERT: Let me make sure that I understand the question.

COMMISSIONER ELLIOTT: Had the Attorney General found them noncompliant with the CFA and you ruled on a basis of that finding or you made a ruling that there was a violation without a finding of some other jurisdiction?
JUDGE GILBERT: No, we made our own ruling here.

COMMISSIONER ELLIOTT: Okay. Thank you.

JUDGE GILBERT: In fact, the Company was Ameritech and, yeah, there had been no action by the Attorney General.

In any event, I'll just pick up the trail where I left off unless there are --

CHAIRMAN FLORES: I think I have a question.

JUDGE GILBERT: Sure. Sorry.

CHAIRMAN FLORES: We started out with a question that, frankly, was never answered and that is a question that Commissioner O'Connell-Diaz posed in terms of the parties -- whether or not the parties have waived and by virtue of them taking up so much time in the settlement discussions and then now the Commission finds itself in a position where it has to make an important decision in a truncated time period.

So what is your answer to that particular question.

JUDGE GILBERT: I don't know. I'm not sure how
the consent of waiver would necessarily apply here.

CHAIRMAN FLORES: Or does it toll it?

Is there some type of tolling provision that can -- I know that -- I think it's an important question, and I understand that maybe you do not have an answer here; but I think it's an important point because here the Commission is going to be deciding on an important case.

There have been a number of references made to this case being one of first impression and the parties entered into a protracted settlement, which it appears we encouraged that to some extent when the parties acted in good faith; but taking up so much time and then leaving us in abeyance and then all of a sudden assuming and then expecting that this be decided in a very short time frame, you know, I think it's a valid question, and I would hope that someone -- obviously, you know, I'd like to have that answered.

Another question I have for you is the references made to this being the case of first impression, let me just start off by first asking, do
you believe that this case is one of first
impression?

   JUDGE GILBERT: I guess I believe it's a case
of first and a half impression.
   CHAIRMAN FLORES: That is where I was getting
to. So to help us refine the issues further, what
would -- what, in your opinion, makes this a case
of -- how did you describe that?
   COMMISSIONER FORD: First and a half?
   JUDGE GILBERT: First and a half.
   CHAIRMAN FLORES: You know, what are the issues
here that really are -- what would you consider to be
the novel issues in the case of -- the issue of first
impression for this -- before the bench?
   JUDGE GILBERT: Well, first, let me tell you
what was addressed.
   There's a previous case in 2002
   involving Santana Gas, and that case procedurally was
a little different because they were already doing
business. Along came the AGS law that required them
to be certified. So they came back and asked for
certification. And in the time they had been doing
business, they had also generated an inordinate number of complaints.

And so those complaints were brought to the Commission as an example of why Santana lacked management sufficiency required by the Act. And what the Commission concluded was that gas complaints are a very serious matter. The complaints, according to the record, appeared to be tapering off. Santana had committed to some reparative measures and even then, although you did grant certification, you imposed a number of conditions including the requirement to present a recovery plan -- a legal compliance plan that would recover from the prior noncompliance and some other qualifications as well.

Now, that was eight years ago and that was right after the AGS law had been introduced. There's been a lot more activity in the market since then and there are a lot more alternative providers and now you have a company that is in a somewhat more seasoned market. I think there's still confusion in the marketplace about what it means to take service among alternative gas suppliers.
That said, I think the context now is different and I think an entity that failed in 2007 or 2008 or that needs remedy in early 2010 can be treated differently than the Company that was already doing business at the time of the AGS law, suddenly a law comes into effect and they now have to backtrack and figure out how to comply with that.

So that's why I'm saying it's kind of a one-and-a-half -- it's kind of one-and-a-half first impression. I think it's a different ball game now than it was back then. Also the law has been changed and the law going forward has been changed. Going forward from our case -- because remember our case ends in March of '08 and the AGS law changed in April of '09.

In part -- and this is my supposition -- I don't know this -- but, in part, I believe the AGS law was changed because of U.S. Energy -- because there was never a reference to door-to-door selling in the old AGS law. The law is much more dense and expanded now with a lot of very minute requirements and prohibitions that weren't in
the previous law, and I think many of these have to
do with problems with door-to-door sales.

COMMISSIONER FORD: They got a lot of publicity
because, actually, it was going to minority
communities and the television stations and there was
a lot of deception and I think that is a part of why
we wanted that law changed.

JUDGE GILBERT: Yes. Again, I don't know --

COMMISSIONER FORD: I looked on the television
and saw it. No, I know for a fact that they did prey
on minority communities.

JUDGE GILBERT: Yeah, and the position that the
consumer groups have taken in the case is just that,
one of the reasons for the complaints was the focus
on elderly consumers, on minority consumers, on
consumers who did not speak English as a first
language.

COMMISSIONER COLGAN: Does the record indicate
that there are other alternative gas suppliers that
do door-to-door sales?

JUDGE GILBERT: The way that the record
reflects this is that no one else primarily relies on
door-to-door sales. That's the phrase that keeps coming up in the record. My sense is that no one really -- no one else really does it. So I do note in 2002 apparently Santana Gas did some of that. That's one of the things mentioned in the Order from 2006.

COMMISSIONER FORD: I think it was a narrow line under the Commission's Order.

CHAIRMAN FLORES: Any other questions?

COMMISSIONER ELLIOTT: Judge, are you going to be filing your Post-Exception Order?

JUDGE GILBERT: Yeah. In fact, if it weren't for the remedies question, I would have had it done already. I mean, everything else is done. I'm up late at night trying to figure out what remedies make sense and in part because of the short time of the case, I mean, being frank about it.

If you folks feel like this is the time for strict enforcement and I write a lenient order, do we have time to recover from that and, conversely, if you folks are feeling like you want to give these -- this particular provider some space --
and I've written something that's fairly strict -- do we have time to write a new order to recover from that?

Which is why I'm hoping -- even through this process -- to have some sense of what the Commission's point of view is because penalties other than -- well, in fact, even the monetary penalties are ultimately a policy question and the kinds of remedial measures that you might require really are policy questions. And I talk -- do you want to stop door-to-door selling? Do you want to revoke their certificate or modify it or suspend it? Do you want to do nothing because there's a settlement agreement with the Attorney General which would subject them to contempt of the Circuit Court if they violate it and because of the new AGS law? Do you want to open a new docket? Do you want to close this docket with an Order now.

CHAIRMAN FLORES: But, Judge, that's why I believe that we need to have that question answered with regard to timing, because I do believe that it really puts this Commission in an awkward position at
this point then to provide for some substantive recommendations that this case merits.

And, you know, what I would hope is that parties did not use the settlement procedure to game the system as a way to put this Commission in an awkward position, then to have them scramble at the 11th hour to provide for substantive policy recommendations because I will tell you, I have a number of concerns, one of which Commissioner Ford just indicated with regards to the record that I read about also the way that certain communities appeared to have been targeted and then that opens up a whole bunch of other, you know, policy questions and considerations.

With regards to, you know, how do we treat the remedy section, you know, I have a number of ideas and recommended suggestions; but I'm sure each one of the Commissioners here also has her or his own recommendations and ideas and, frankly, we're going to need some time to vet these ideas and to be thoughtful in order to make sure that we reach the right decision.
So I -- you know, I know it puts you in a tough bind because you have to put together the Order and you have to also provide a response to -- you have to provide another -- you have the Post-Order Exception -- a Post-Exception Order --

COMMISSIONER O'CONNELL-DIAZ: Judge Gilbert, where was the conversation that took place that the Company was not going to be in agreement with doing another 60-day extension?

Is that on the record anywhere?

JUDGE GILBERT: Yeah, I believe it's -- there probably would not be a conversation in the way that you are suggesting.

COMMISSIONER ELLIOTT: Is there a way that you can go back to the parties and suggest that the Commission would certainly entertain or request an extension?

JUDGE GILBERT: Well, I could certainly do that if that's what you want me to do.

COMMISSIONER O'CONNELL-DIAZ: Well, I mean, I think that makes the Commission look a little subservient. Number one, there obviously was an
agreement between the parties at many points during the progress of this case to extend time. At that point in time there was an agreement by the petitioner as well as the defendant company. It put our Commission in a bind that we did not really have the case before us at that point in time.

So I find it extremely difficult to understand that we would be put up against a wall. So what would logically happen? They would go to the Circuit Court and get a Writ of Mandamus because the Commission did not enter the order? Have a nice time. The Commission is still doing its work. This is a serious matter that has consumer interest written all over it. It is our job to move this case forward.

The only reason this case was not going forward was because we afforded -- by agreement of the parties. It should have been made part of the record. That should have been on the record. It should have been, Okay, if we're doing this here, there's going to be time to pay for this at the end and the Commission is not going to be put in a
situation that we don't have the time with the matter when they have sat on their laurels trying to do a settlement.

So, you know, I really don't think it's appropriate that we have to go back and ask permission of this company to -- after I read this record, I'm not thinking real great about. So I don't like us being put in that position. So I guess our General Counsel Office will have to advise us as to this issue that has been raised.

MS. STEPHENS-SCHROEDER: Commissioner, we do have a special legal assistant that would be happy to answer all of your legal questions -- and we are looking into some of the matters -- and take a thorough look and advise you.

CHAIRMAN FLORES: Counsel -- I'm sorry. I was going to refer to you as corporation counsel. Where are we at though with regards to timing? Because it seems we may have to enter some type of an order calling for some type of an extension. So I want to make sure that --

JUDGE WALLACE: Mr. Chairman?
CHAIRMAN FLORES: Yes, sir.

JUDGE WALLACE: This is Judge Wallace in Springfield. I think we could handle this without -- and having extra time to work on this.

CHAIRMAN FLORES: That may -- okay. Well, then let me just make a recommendation, though, that, you know, when we talk about extra time here, we're not talking about two or two days and I suspect that we're not talking about either an -- an extra week, we're looking for -- I would recommend at least a month.

COMMISSIONER O'CONNELL-DIAZ: I think we would recommend a time until such time that the Commission feels comfortable in adjudicating this matter.

CHAIRMAN FLORES: Well, that's my point and I think we should have a discussion about that and I think that's why we need some sense about how much time we're talking about. That's what I'm asking in terms of, again, whether the Commission should just decide how much time it needs.

JUDGE WALLACE: Mr. Chairman, the Commission doesn't really need to vote on any time matter.
Commissioner O'Connell-Diaz succinctly stated the law. If this complaint case is covered by the one-year deadline -- going past the deadline is not fatal. It merely means that the parties can go into Circuit Court to get a Writ of Mandamus ordering the Commission to issue an order.

So if the Commission takes additional time, then there is really no -- there is no default in this situation.

CHAIRMAN FLORES: Okay. Very well.

JUDGE GILBERT: If I might, there have been such agreements to extend the case and the reason I want to emphasize that is because that is part of a law that constrains us. We have said -- we as a body now have said that we have accepted six extensions of the case because the parties have acted within the terms of the law to extend it each time and that at some point, at least one party said, I'm unwilling to follow that aspect of the law anymore.

I'm not sure that we can safely say that if we simply proceed beyond the deadline that we retain the power to issue an order. I just want to
put it out there and make sure you are cautioned about that.

COMMISSIONER FORD: Who asked for these six extensions?

Was it the parties or was it us, the Commission?

JUDGE GILBERT: Well, the parties did, but --

COMMISSIONER FORD: Okay.

JUDGE GILBERT: -- they're following the law that's out --

COMMISSIONER O'CONNELL-DIAZ: The Commission was never --

COMMISSIONER FORD: -- apprised.

COMMISSIONER O'CONNELL-DIAZ: -- advised of that.

JUDGE GILBERT: I'm sorry?

COMMISSIONER O'CONNELL-DIAZ: Was the Commission, other than your granting them that request, sitting in -- was there any discussion about that on the record about this is going to add time at the end of the case if it's not settled?

JUDGE GILBERT: Well, actually, yes, in a sense
that each extension adds 60 days to the case. I
don't want to give you the wrong impression about how
the parties proceeded here and, ultimately, I don't
really care to defend them one way or the other. So
if you are angry at them, you're angry at them.

COMMISSIONER FORD: Oh, we're angry.

COMMISSIONER O'CONNELL-DIAZ: No. I don't like
being backed up against the wall by someone. We've
given the parties time to go through a settlement and
we are -- our time is short --

JUDGE GILBERT: No. I understand.

JUDGE WALLACE: Mr. Chairman, I can cut this
short, I think. I'm not -- and if you want to
discuss this with Mrs. Schroeder in further detail.

This case wasn't brought pursuant to Section 10-108.
So it's quite arguable that the one-year deadline
doesn't apply anyway and we did not need to have
these extensions.

COMMISSIONER O'CONNELL-DIAZ: Thank you.

That's a good point, I didn't think of that.

CHAIRMAN FLORES: Now, the -- I still have a
question -- even more so for the other
Commissioners -- in terms of -- and also Judge Wallace, we are still, though -- you know, this is up for today on a Request for Oral Argument. There is a formal request.

So do we want to proceed in granting or decide on that motion here today not knowing how much time we're going to give ourselves with regards to -- then we will hold the hearing?

Commissioner Diaz.

COMMISSIONER O'CONNELL-DIAZ: I think we're no longer under the mistaken impression that we have that year deadline. So I think if it is the Commission's desire to entertain oral argument, that question should be raised and we should figure amongst ourselves when -- that date to convene that oral argument and probably give directions to the scope of what we'd like addressed in those oral arguments. That would just be a proposal I might suggest.

CHAIRMAN FLORES: Any other comments or feedback from the other Commissioners?

(No response.)
Very well. Why don't we -- at this time then I'd like to -- is there a motion to grant the oral argument?

COMMISSIONER COLGAN: So moved.

CHAIRMAN FLORES: Is there a second?

I didn't hear a second.

Is there a second.

COMMISSIONER ELLIOTT: Second.

CHAIRMAN FLORES: Thank you.

All in favor say "aye."

(Chorus of ayes.)

Any opposed?

(No response.)

The vote is 5-0. The motion for oral argument is granted.

Moving on to Item 8, Docket --

JUDGE GILBERT: Chairman, I've been operating under the impression that I need to have an order to you as quickly as possible and I was going to try to do that at the latest by tomorrow.

So --

CHAIRMAN FLORES: That was --
JUDGE GILBERT: -- do you still want me to proceed with that or are we now on a different schedule?

CHAIRMAN FLORES: No.

COMMISSIONER O'CONNELL-DIAZ: No. We want -- get the Order to us. The Commission will decide what it wants to order in its Order, but I believe this Proposed Order went out on January 11th. So -- I got the briefs -- I would say we should get the Order.

CHAIRMAN FLORES: Mary, what do you think?

MS. STEPHENS-SCHROEDER: I have to defer to you. That is your decision.

CHAIRMAN FLORES: I just want to make sure that we are on the time line, though, that we can meet and I appreciate everyone's --

MS. STEPHENS-SCHROEDER: Right. And --

CHAIRMAN FLORES: -- I just want to make sure --

MS. STEPHENS-SCHROEDER: I think you can still --

JUDGE WALLACE: Mr. Chairman, when did you want to set oral argument?
CHAIRMAN FLORES: That was the point. I was trying to make. I wanted to make sure that we are all on the same time line and we haven't had the opportunity to designate a time. So that's why I was suggesting that perhaps we figure -- this is my recommendation: My recommendation is going to be that we vote on the motion to provide for oral argument. I think you will give the Commission the opportunity to have some meetings of the mind in terms of timing. We will get back to the Administrative Law Judge here, get back to all the parties -- including, you, Mary.

Very well. So we're going to move on to Item No. 8, Docket 09-0461, Atmos Energy Corporation, which has applied for the implementation of a universal shelf registration. Administrative Law Judge Wallace recommends entering the order.

Is there any discussion on this matter?

(No response.)

Any objections?

(No response.)
Hearing none, the order is entered.

Item No. 9 is Docket 09-0251, the City of Champaign and the Attorney General. The Office of the Attorney General had filed a Joint Request for Oral Argument in the Illinois American Water Company rate case. Rider QIP is the desired topic for oral argument. According to Section 9-201 of the Act, the Commission is required to grant oral argument in rate case proceedings.

Is there any discussion?

(No response.)

This serves as official notice that oral argument will take place on February 23rd, 2010, at 2:00 p.m. in Springfield. The issue to be argued is Rider QIP in the Illinois American Water rate case.

Item 10 is Docket 08- --

JUDGE WALLACE: Mr. Chairman?

CHAIRMAN FLORES: Yes.

JUDGE WALLACE: Judge Yoder had an item that he wanted to bring to your attention.

JUDGE YODER: I just wanted to inform the
Commission that reply briefs on exception in Docket 09-0251 were due today. Our anticipated procedure then would be to review those and incorporate anything that is necessary into the Proposed Order.

If the Commission wishes, I will prepare my recommendation for a Final Order. I can put it on the next week's agenda for your Honor for discussion purposes only or if the Commission desires, send it out however the Commission desires to send it out. I could have my recommendation on the final proposed -- Final Order for the Commission to review prior to oral argument.

CHAIRMAN FLORES: Any discussion by the Commissioners?

COMMISSIONER COLGAN: I think that would be good to have --

COMMISSIONER FORD: I think so, too.

COMMISSIONER COLGAN: -- a Proposed Order before we have the oral argument.

JUDGE YODER: The Proposed Order is out, the reply briefs on exception --
COMMISSIONER FORD:  Okay.

COMMISSIONER COLGAN:  Okay.

COMMISSIONER O'CONNELL-DIAZ:  Thank you, Judge Yoder.

CHAIRMAN FLORES:  Did you understand that?

(No response.)

Moving on.

JUDGE YODER:  Actually, my understanding is I will prepare my recommendation for a Final Order and that will set it on the next agenda, that way the Commission will have it for review sometime prior to the oral argument?

CHAIRMAN FLORES:  Yes. With those such factors.

JUDGE YODER:  All right. Thank you.

CHAIRMAN FLORES:  Thank you.

Item 10 is Docket 08-0569. Illinois Bell Telephone Company filed a second application for a --

COMMISSIONER ELLIOTT:  Excuse me.

Mr. Chairman?

CHAIRMAN FLORES:  Yes.
COMMISSIONER ELLIOTT: Does that require --

Item 9, does that require a vote from the Commission or is it just put under as stayed?

CHAIRMAN FLORES: It's put under.

COMMISSIONER ELLIOTT: Okay. Thank you.

CHAIRMAN FLORES: Is there any discussion --

we're going back to Item 10, Docket 08-0569.

Illinois Bell Telephone Company filed, again, a second application for rehearing regarding the legality of the DSL Internet requirements contained in the June 24th order. Administrative Law Judge Hilliard recommends denying the second application.

Is there any discussion in this matter?

COMMISSIONER ELLIOTT: Yes, Mr. Chairman. To be consistent with my prior vote in this case, I would recommend the application be granted.

COMMISSIONER FORD: To be consistent with me also, I will recommend that it be granted.

CHAIRMAN FLORES: Anything further?

(No response.)

Okay. Well, is there a motion to deny
the second application?

COMMISSIONER COLGAN: So moved.

CHAIRMAN FLORES: Is there a second?

(No response.)

I will second it.

All in favor say "aye."

COMMISSIONER COLGAN: Aye.

COMMISSIONER O'CONNELL-DIAZ: Aye.

CHAIRMAN FLORES: Aye.

Any opposed?

COMMISSIONER FORD: Nay.

CHAIRMAN FLORES: We're going to do a roll call --

COMMISSIONER FORD: Absolutely.

CHAIRMAN FLORES: -- to make sure we get this right on the record.

Commissioner O'Connell-Diaz?

COMMISSIONER O'CONNELL-DIAZ: Aye.

CHAIRMAN FLORES: Commissioner Ford?

COMMISSIONER FORD: Nay.

CHAIRMAN FLORES: Commissioner Elliott?

COMMISSIONER ELLIOTT: No.
CHAIRMAN FLORES: Commissioner Colgan?

COMMISSIONER COLGAN: Aye.

CHAIRMAN FLORES: And Chairman Flores votes aye.

COMMISSIONER O'CONNELL-DIAZ: And that was in concurrence with the recommendation of the Administrative Law Judge; correct?

CHAIRMAN FLORES: That's correct.

The vote is 3-2. The second application for rehearing is denied.

Item 11 is the 2009 Annual Report on electricity, gas, water and sewer utilities. Staff recommends adopting the report and submitting it to the Illinois General Assembly.

Is there a motion to adopt the 2009 Annual Report and to submit a report to the Illinois General Assembly?

COMMISSIONER FORD: So moved.

CHAIRMAN FLORES: Is there a second?

COMMISSIONER O'CONNELL-DIAZ: Second.

CHAIRMAN FLORES: It's been moved and seconded.

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

Any opposed?

(No response.)

None. The vote is 5-0. The 2009 Annual Report is granted and will be submitted to the Illinois General Assembly.

Judge Wallace, is there any other matter to come before the Commission?

JUDGE WALLACE: No, Mr. Chairman.

CHAIRMAN FLORES: All right. I wanted to thank everyone in Springfield and thank everyone here. Hearing that there was no other matters, the meeting stands adjourned. Thank you so much.

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