BEFORE THE
ILLINOIS COMMERCE COMMISSION

SPECIAL OPEN MEETING

Springfield, Illinois
Tuesday, April 13, 2010

Met, pursuant to notice, at 10:30 a.m. in Room A, Leland Building, 527 East Capitol Avenue, Springfield, Illinois.

PRESENT:

MR. MANUEL FLORES, Acting Chairman
MS. LULA M. FORD, Commissioner
MS. ERIN M. O'CONNELL-DIAZ, Commissioner
MR. SHERMAN J. ELLIOTT, Commissioner
MR. JOHN COLGAN, Acting Commissioner

SULLIVAN REPORTING COMPANY, by Carla J. Boehl, Reporter
CSR #084-002710
PROCEEDINGS

ACTING CHAIRMAN FLORES: Good morning.

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, Elliott and Acting Commissioner Colgan. I am Acting Chairman Flores. We have a quorum.

Before moving into the agenda, according to Section 1700.10 of the Illinois Administrative Code, 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, we have no requests to speak for this open meeting.

Turning now to the Public Utility Agenda, Item 1 concerns the approval of minutes from a March 16, 2010, regular open meeting. I understand that amendments have been forwarded. Is there a
COMMISSIONER ELLIOTT: So moved.

ACTING CHAIRMAN FLORES: Is there a second?

ACTING COMMISSIONER COLGAN: Second.

ACTING CHAIRMAN FLORES: It's been moved and seconded. All in favor say aye.

COMMISSIONERS: Aye.

ACTING CHAIRMAN FLORES: Any opposed?

The vote is 5-0 amending the minutes.

Is there a motion to approve the minutes as amended?

COMMISSIONER FORD: So move.

ACTING CHAIRMAN FLORES: Is there a second?

COMMISSIONER COLGAN: Second.

ACTING CHAIRMAN FLORES: It's been moved and seconded. All in favor say aye.

COMMISSIONERS: Aye.

ACTING CHAIRMAN FLORES: Any opposed?

The vote is 5-0 approving the minutes as amended.

Item 2 on today's agenda is Docket 08-0175. This case concerns complaints brought by
Citizens Utility Board, Citizens Action/Illinois and AARP against U.S. Energy Savings Corporation, an alternative gas supplier. This item will be held until the end of the session, so we will address it as a final item in today's hearing.

Item 3 is Docket Number 10-0008, Atmos Energy Corporation's application for an Order authorizing the issuance of up to two million shares of common stock through its retirement savings plan in an amount not to exceed $70 million. The Administrative Law Judge recommends the entry of an Order approving Atmos' application.

Is there any discussion? Is there a motion to enter the Order?

COMMISSIONER ELLIOTT: So move.

ACTING CHAIRMAN FLORES: Is there a second?

ACTING COMMISSIONER COLGAN: Second.

ACTING CHAIRMAN FLORES: It's been moved and seconded. All in favor say aye.

COMMISSIONERS: Aye.

ACTING CHAIRMAN FLORES: Any opposed?

The vote is 5-0 and the Order is
Item Number 4 is Docket Number 10-0119, DTE Energy Supply's application for a Certificate of Authority to operate as an alternative retail electric supplier under Section 16-115 of the Public Utilities Act. Administrative Law Judge Sainsot recommends entering the Order granting DTE's certificate.

Is there any discussion?

Is there a motion to enter the Order.

COMMISSIONER ELLIOTT: So move.

ACTING CHAIRMAN FLORES: Is there a second?

ACTING COMMISSIONER COLGAN: Second.

ACTING CHAIRMAN FLORES: It's been moved and seconded. All in favor say aye.

COMMISSIONERS: Aye.

ACTING CHAIRMAN FLORES: Any opposed?

The vote is 5-0 and the Order is entered.

Item Number 5 is Docket Number 09-0268, the Verizon/Frontier merger case. This item will be held for disposition at a future hearing.
Item 6 is Docket Number 09-0319, Illinois-American Water Company's proposed general increase in water and sewer rates. Revisions to the Order have been circulated among the Commissioners. Commissioner Elliott, I believe you had two sets of revisions. Let's start with those on which we believe there is universal agreement among the Commissioners.

COMMISSIONER ELLIOTT: Yes, thank you, Mr. Chairman. I made several changes. The first change is under the Cash Working Capital Section to change the revenue by 21 days, and also directed in that section IAWC in future cases to file a lead-lag study contemporaneous with the test year.

Also, one of the changes was to change the cost of short-term debt from one percent to .347, reflective of the most recent available cost of short-term debt in the record.

Also, private fire protection charges, I amended that to reflect that the private fire charges will not require more than 100 percent of the cost. It's similar to our public fire protection
charge cost basis.

And the next one would be capping the
fixed costs at 80 percent for the 5/8-inch meter
customers.

I believe those -- I will offer those
five and we will see where we are at with those five.
I would move those five changes, those five
amendments.

ACTING COMMISSIONER COLGAN: I second that.

COMMISSIONER O'CONNELL-DIAZ: And just so I
could clarify, Commissioner Elliott, with regard to
the fire protection charge, what your edits do is
insure that there is not a profit center for the
company with regard to those essential services that
obviously needs to be in the communities and ought to
be recovered by the company, but they are recovered
at what the actual cost is, with no profit.

COMMISSIONER ELLIOTT: Consistent with the
public fire protection cost.

COMMISSIONER O'CONNELL-DIAZ: Thank you.

ACTING CHAIRMAN FLORES: Is there any other
discussion on Commissioner Elliott's first set of
revisions?

Is there a motion to accept Commissioner Elliott's amendments, five amendments?

COMMISSIONER FORD: So move.

ACTING CHAIRMAN FLORES: Is there a second?

ACTING COMMISSIONER COLGAN: Second.

ACTING CHAIRMAN FLORES: It's been moved and seconded. All in favor say aye.

COMMISSIONERS: Aye.

ACTING CHAIRMAN FLORES: Any opposed?

The vote is 5-0. Commissioner Elliott's revisions are adopted.

COMMISSIONER ELLIOTT: Mr. Chairman, I do have two others I would like to offer.

ACTING CHAIRMAN FLORES: Okay.

COMMISSIONER ELLIOTT: The next is regarding the service company fees. In this particular issue I was concerned that the study provided by the company was not sufficient in my mind to support their requested increase. So in that regard I amended the order to reflect the five percent increase which was the proposal of the Attorney General in this case,
and also suggested that an independent audit of the service company fees be taken up. And I have put language into the Order affecting those two changes. In addition, with regard to the demand factors in the cost of service study, I adopted language to direct that a direct demand study at least be reviewed as to the cost, and an independent firm be taken up to provide bids to provide a direct demand study. And we can take a look at that and see what the cost and the benefit of those direct demand studies are. So I would offer those two amendments as well.

ACTING CHAIRMAN FLORES: Any further discussion?

At this time is there a motion to accept these two additional amendments, capping the service company fees at five percent and also the RFP for an independent audit on demand factors?

COMMISSIONER O'CONNELL-DIAZ: Mr. Chairman, are we going to have a discussion with regard to the revisions or do you want to have that now?
ACTING CHAIRMAN FLORES: I think we can have that now.

COMMISSIONER O'CONNELL-DIAZ: Well, with regard to Commissioner Elliott, I am just in a quandary with regard to your first revision. You know, as I look through the record, I don't see any witness challenging the methodology that has been presented by the company. There was a detailed estimate given by the company, the proposal by the AG to cap it to five percent of the amount that was granted in the previous docket.

It is why we have these cases that the opportunity is there for everyone to inquire as to what is presented by the company. I don't find that that happened. So what now is going to happen is we are going to layer on another segment of costs that are going to have to be recovered from ratepayers to do what should have been happening in this docket over the 11-month period, and that to me is troubling.

You know, at this point in time we are really looking at every single cost that we are
asking ratepayers to pay, and the parties in this proceeding had an obligation through the discovery process, as well as the hearing process, to come forward with an alternative methodology to challenge the methodology that was presented by the company in the Belleville lab study. I don't find any of that in this record.

But now what they are asking us to do is they are asking us to cap it, and now we are going to have another study that is going to be utilizing an independent audit company which will be paid large amounts of money, and that will be flowed through to ratepayers. So I find it hard to support something like that when there are many parties in this case that should have been doing the work all along during the progression of this case. I don't find a shred of contrary testimony or evidence to have us look differently, other than at the end saying, well, let's just do it this way because we didn't do our work. So I am just not in favor of layering another cost on ratepayers.

COMMISSIONER ELLIOTT: Well, yeah, I am not
interested in having the costs increased, either.

But I think in this particular issue and actually
throughout in many of the areas, particularly with
the cost of service, the lead-lag study and the study
that was performed for the service company fees, I
found many of these areas to be lacking.

And from my perspective, having an
independent audit of these figures to provide some
assurance to the Commission that what we are looking
at are accurate numbers that are reasonable
estimations is the appropriate way to go. I am
reluctant to initiate an audit as well, but in this
case I feel it is justified.

COMMISSIONER FORD: I am always reluctant about
an audit because, after having been on this
Commission, I see us doing studies that I see also
the consultants coming in with different views and
then we have to do another, as Commissioner
O'Connell-Diaz said, another study for that study.
So I think it becomes too much repetition and it is
certainly burdensome and onerous for our staff, and I
just could not support an audit or a study for this.
COMMISSIONER O'CONNELL-DIAZ: And I really have to emphasize the fact that this is an 11-month proceeding and the company comes in, they file their case, and it is up to the parties to start chipping away at whatever the company comes in with and to put alternative methodologies to poke holes at what they have presented. There is nothing in this record by any witness with regard to this, and that to me is troubling.

So because certain entities, groups, have not done really their due diligence in the record before us, we are left with the record the way it is and now we are going to have, you know, another proceeding going on that is actually going to cost ratepayers money. I think that, you know, everybody has got a job in the rate case and I don't find that the parties have done their job in this case, and that's disturbing to me. So I can't support that.

ACTING CHAIRMAN FLORES: Any further discussion on these two additional amendments? Is there --

ACTING COMMISSIONER COLGAN: Chairman, I really hear what's being said by the two Commissioners who
just made comments about layering on costs to the consumers. I think the rate case itself lays on heavy costs to consumers, which is very troubling to me. And there has been lots of discussion in this case about whether there should be an indirect or direct demand study. And I came onto this case after it had been pretty much laid down, and I have also gone back through the record of some previous cases where there is this very same issue. This seems like it keeps turning around.

So, you know, I hear the concern about the costs, but I think we need to close the door on whether or not we need a direct or indirect demand study, cost of service study. So I am going to support this amendment for Commissioner Elliott's amendment on this case.

COMMISSIONER O'CONNELL-DIAZ: Well, just so we are clear, we are talking about two different studies here. We are talking about the direct and, with all due deference to Commissioner Colgan's comments, we are talking about the business services study, which that's what I am talking about should have occurred
in the case, didn't occur in the case. Nobody put
any contrary evidence for us to look at. But now we
are going to do an audit about it. That's number
one.

Number two, which I did not comment on
but now I am going to have to, the direct demand
study. You know, we had the workshop process that
ended up with the requirement that we would follow
the AWWA standard. This direct demand study, which I
guess what your language is going to do is going to
bounce it off into another proceeding and then we
will actually look at whether we will do it or not or
based on the cost, is that a fair understanding?

COMMISSIONER ELLIOTT: Yeah, get some estimates
from some outside companies.

COMMISSIONER O'CONNELL-DIAZ: The direct demand
study is not a study that is used by any regulatory
entity in the United States, in fact, probably in the
universe. So I don't know what we would be doing
with that. I am not adverse to doing -- you know, we
ordered the company to do cost studies. But whether
in fact the direct demand study is the appropriate
vehicle, just as Commissioner Colgan has just noted, I do think we need to close the door on what exactly is it that we want the company to do. And, you know, we have been around the block with this issue. But when we look at the costs that are associated with it, I think we have got $1.86 million for one service territory versus 143,000. That's a big difference.

So if the import of your recommendation on that and your change is to just kind of look at it, as opposed to that we are going to accept it right now, then I guess that that's a different remedy. But the use of a direct demand study, I don't know where that's going to get us. So those would be my concerns with regard to the secondary one.

So as I see it, these are two costs that consumers are going to have to bear, based on our ruling today.

ACTING CHAIRMAN FLORES: Is there a motion on Commissioner Elliott's two amendments?

COMMISSIONER ELLIOTT: Mr. Chairman, I will move the two amendments.
ACTING CHAIRMAN FLORES: Is there a second?

ACTING COMMISSIONER COLGAN: Second.

ACTING CHAIRMAN FLORES: At this time there has been a motion and it has been seconded. All in favor say aye.

COMMISSIONERS: Aye.

ACTING CHAIRMAN FLORES: All opposed?

COMMISSIONERS: Nay.

ACTING CHAIRMAN FLORES: Let the record reflect that Acting Chairman Flores, Acting Commissioner Colgan and Commissioner Elliott voted in favor of Commissioner Elliott's motion to also make these two additional amendments. Also let the record reflect that Commissioner Ford and Commissioner O'Connell-Diaz voted no on the motion.

At this time then, I would like to see if there is any other discussion on the Order.

I would like to make a few comments. This has been a very difficult case and in some aspects troubling. We have heard cries to reject this increase. However, we must act according to the law and evidence presented in this case. On that
basis I am reluctantly voting to accept the Order as amended. I am disappointed that in many instances Illinois-American Water Company did not clearly follow past direction from the Commission.

That being said, we have carefully scrutinized the Order, and I deeply appreciate the efforts that all the Commissioners and staff put into improving several aspects of it today, for example, limiting the size of the service company, the increase and ordering an audit of it, will help this Commission better monitor Illinois-American Water Company's actions in relationship to its parent company. This company cannot view the Illinois ratepayers as an open checkbook, and today we begin the process of bringing in those fees.

Likewise, the revisions regarding their future obligations of lead-lag studies and direct demand studies are designed to give the Commission the right tools for carefully watching any future rate request from this company. I do recall a very compelling statement from one of our own staff in oral argument where he said "Garbage in, garbage
out, "a very compelling statement and I think underscores the need for better analysis and implementing better tools when we know that there are better tools out there to give us a better perspective of how to evaluate these rate increases or petitions for rate increases.

So again I want to thank the Commissioners for their hard work that they put in, and I generally hope that Illinois-American Water Company has taken notice of the type of public comment and customer filings that this case has generated.

Is there a motion to enter the Order as amended?

COMMISSIONER ELLIOTT: So move.

ACTING CHAIRMAN FLORES: Is there a second?

COMMISSIONER FORD: Second.

ACTING CHAIRMAN FLORES: It's been moved and seconded. All in favor say aye.

COMMISSIONERS: Aye.

ACTING CHAIRMAN FLORES: Any opposed?

Let the record reflect a 5-0 vote in
favor of the Order as amended.

COMMISSIONER O'CONNELL-DIAZ: Mr. Chairman, if I might?

ACTING CHAIRMAN FLORES: Yes, ma'am.

COMMISSIONER O'CONNELL-DIAZ: Yeah, I would echo the reflections that the Chairman has noted for the record. I would also like to commend our staff and all the parties that participated in the proceeding. I know we sat through many comments. We also saw many articles in the newspaper, and some of those items were somewhat disturbing and showed a lack of understanding as to what exactly the Commission does when we have a case like this.

And I just want to make it clear that the Commission is not a rubber stamp for anybody. We are not a rubber stamp for our ALJs; we are not a rubber stamp for a company position; we are not a rubber stamp for a consumer advocate position. Our staff works around the clock when we get a proceeding like this. I know that we all worked over the last month and a half, actually more than a month and a half, on weekends and nights, going through the
records so we have a full understanding as to what
was put on our plate to decide. These are tough
decisions. They are tough economic times. But this
Commission's job as an economic regulator is to, and
under the law, is to look at what those costs are and
are they justified, and we have a legal obligation to
do that.

And so despite some references to the
rubber stamp, I want to assure everyone of the amount
of hard work that went on as seen by the various
edits that are offered by the Commissioners and the
absolute delving into this 11-month process that is a
very, very strenuous and very thorough process. And
at the end of the day, it is the Commission's job to
make their judgment call based on the record within
the statutory period of time, and so that's what our
job is.

And so I just want to thank my fellow
Commissioners for doing their job as we are supposed
to and not acting as a rubber stamp, by looking at
every item that's been put on our plate to decide.

Thank you.
ACTING CHAIRMAN FLORES: Commissioner Ford, did you want to say anything?

COMMISSIONER FORD: No, absolutely not.

ACTING CHAIRMAN FLORES: Commissioner Elliott? Commissioner Colgan?

I also just again want to thank Administrative Law Judge Jones and the entire Commission staff and all the other parties for their hard work as well on this case.

The next item is Number 7. This is a FERC matter that requires us to go into closed session. Is there a motion to go into closed session?

COMMISSIONER ELLIOTT: So move.

ACTING CHAIRMAN FLORES: Is there a second?

COMMISSIONER COLGAN: Second.

ACTING CHAIRMAN FLORES: All in favor say aye.

COMMISSIONERS: Aye.

ACTING CHAIRMAN FLORES: The vote is 5-0 to go into closed session. Let me know when the room is clear in Chicago.

(Whereupon at this point
pages 24 - 30 of the proceedings are contained in a separate closed transcript.)
CONTINUATION OF PROCEEDINGS

ACTING CHAIRMAN FLORES: Very well. I have been informed that we are ready in Chicago, so it looks like we are ready here in Springfield as well.

In the Closed Session the Commission discussed some comments on PJM's March 18 transmission cost allocation filing. Is there a motion to file the comments with FERC?

COMMISSIONER ELLIOTT: So move.

ACTING CHAIRMAN FLORES: Is there a second?

COMMISSIONER FORD: Second.

ACTING CHAIRMAN FLORES: It's been moved and seconded. All in favor say aye.

COMMISSIONERS: Aye.

ACTING CHAIRMAN FLORES: Any opposed?

The vote is 5-0. The comments will be filed with FERC.

Our last item is going back to the agenda and originally it was Number 2 and that is the Docket Number 08-0175. This case concerns complaints brought by Citizens Utility Board, Citizens Action/Illinois and AARP against U.S. Energy Savings
Corporation, an alternative gas supplier. Revisions to the Order have been circulated among the Commissioners. Let's start with Commissioner Elliott. Commission Elliott?

COMMISSIONER ELLIOTT: Thank you, Mr. Chairman. Yes, I have made some amendments. In my view I think the extension of our jurisdiction over consumer fraud and deceptive practices was quite a stretch, and so I removed our jurisdiction from that, and I adjusted the financial penalties accordingly.

And at the same time I maximized the penalties for the violations of the PUA, and I would offer that amendment for its revision.

ACTING CHAIRMAN FLORES: Is there any discussion, other discussion, on Commissioner Elliott's proposed revisions?

I do have a comment. While I appreciate the maximization of the penalties for violations of the Public Utilities Act and believe that particular action is just and deserved, I disagree with the conclusion that the Illinois Commerce Commission lacks jurisdiction to enforce the
Consumer Fraud Act and the Deceptive Trade Practices Act.

I agree with Administrative Law Judge Gilbert, Citizens Utility Board and other parties who sought the Commission's enforcement of these statutes using Section 19-110(e)(5) of the Public Utilities Act, the obligation that alternative gas suppliers comply with all applicable laws and rules. And in light of some of the Commission's interpretation of this language and how it may differ from my interpretation and the Administrative Law Judge's interpretation, I hope this illuminates the need for greater clarity on which this was intended to allow.

Is there a motion to accept Commissioner Elliott's revision?

COMMISSIONER FORD: So move.

ACTING CHAIRMAN FLORES: Is there a second?

COMMISSIONER O'CONNELL-DIAZ: Second.

ACTING CHAIRMAN FLORES: It's been moved and seconded. All in favor say aye.

COMMISSIONERS: Aye.

ACTING CHAIRMAN FLORES: All opposed say nay.
Nay.

Let the record reflect that the vote was 4-1. Commissioner Ford voted aye, Commissioner O'Connell-Diaz votes aye, Commissioner Elliott votes aye, Acting Commissioner Colgan votes aye and Acting Chairman Flores votes nay. Commissioner Elliott's revisions are adopted by a 4 to 1 vote.

Commissioner Elliot, I believe you have another revision?

COMMISSIONER ELLIOTT: Yes, thank you, Mr. Chairman. I added some language to the Order in consideration of the complaint process in itself, particularly with regard to the Citizens Utility Board, the company, these outside entities that are engaged in helping consumers with complaints against utilities in general, whether it be in this case U.S. Energy in particular.

It is my intent with the language to try to get greater cooperation in terms of bringing the complaint process ultimately to the Commission, which is the regulatory authority that I think is the appropriate place to adjudicate these issues. And if
it is done outside of our purview, we don't see these matters and it essentially blinds us, and that is a great concern to me.

And so I have added language that I believe is supported and has been favorably amended by other Commissioners and their assistants, and I would offer that language for consideration.

ACTING CHAIRMAN FLORES: Any other further discussion on this particular amendment?

COMMISSIONER O'CONNELL-DIAZ: Yes. I would like to thank Commissioner Elliott for starting the ball rolling. I think that through our bench discussions with regard to this, the oral arguments, it was very clear as to how troubling and disturbing we found this particular case and the actions of the parties. And my office was happy to help with those edits and believe that it is an important message.

We are the regulatory authority, and we have been hobbled by actions of parties that suggest that they are concerned about the consumers and in fact we are the ones that regulate the respondent in this case and we need to be able to
seek timely action and we have been somewhat legally
foreclosed on several occasions with regard to this
particular company, and we just don't want to have a
repeat performance of that.

So I support the language as amended.

ACTING CHAIRMAN FLORES: Any other discussion?

I would also just like to add and
underscore the need on behalf of the public interest
for the various stakeholders to be mindful of the
importance that the Illinois Commerce Commission
places with regards to its regulatory authority under
the Public Utilities Act, and to remind the parties
that this Commission can only act on, again, the
evidence and the facts before it as it is presented
in individual cases.

In oral argument the attorney for the
Commission staff made what I thought was a very
compelling statement with regards to questions about
what would be the right remedy to impose on Just
Energy. And as I recall, the comment was that this
technically was the first time that this particular
actor was before the Commission with regards to the
violations that were alleged, creating a challenge, so to speak, with regards to evaluating the appropriate type of enforcement and remedies. It is in the public's interest to see that the Illinois Commerce Commission not be impeded from its authority to be able to enforce the laws under the PUA.

And that being, I support Commissioner Elliott's proposal and proposed amendment, and would also like to thank him as well for his work on this as well as his staff and everyone else.

ACTING COMMISSIONER COLGAN: Mr. Chairman?

ACTING CHAIRMAN FLORES: Yes, Commissioner?

ACTING COMMISSIONER COLGAN: I want to jump in on this comment just a little bit. I believe that the Attorney General and CUB play a very important and valid function in this process, and I think they do their very best out there to do it. I did participate with Commissioner Elliott on this and helped edit some of the language in this amendment.

I think that the point is that in the interest of Illinois consumers, I think we all, who have an interest in the consumers, we need to all
pull in a similar direction and hopefully we can come into better sync in doing that towards the future.

So I am going to support this amendment that Commissioner Elliott has offered. I want to thank him and his assistant for all the hard work that they have done on this, and that's what I have to say.

ACTING CHAIRMAN FLORES: Commissioner Elliott, do you have any further --

COMMISSIONER ELLIOTT: No. I just think that this has been an issue that we have all looked at. I think that it's been benefitted by everyone's participation and amendments, and I would make a motion to accept the amendment.

ACTING CHAIRMAN FLORES: Is there a second to Commissioner Elliott's motion?

COMMISSIONER FORD: Second.

ACTING CHAIRMAN FLORES: It's been moved and seconded. All in favor say aye.

COMMISSIONERS: Aye.

ACTING CHAIRMAN FLORES: Any opposed?

The vote is 5-0 and Commissioner
Elliott's revisions are adopted.

Next we will go to Commissioner O'Connell-Diaz also has a proposed revision.

Commissioner O'Connell-Diaz?

COMMISSIONER O'CONNELL-DIAZ: Yes. With regard to the Corrective Measures Section and due to the concerns that are noted in Section 2(a) of the Order which I think we just alluded to, I think the thought process is that we deem it essential that, as the legal entity charged with the regulatory oversight, that we are fully aware of any complaints that are out there with regard to this company.

And so the revision that we have proposed is that the respondent herein will be required to provide, within 24 hours of the lodging of a complaint, notice to our consumer services area so that we can start the informative process of finding out what's that about, is there more than one complaint out there, so that we are not confronted with a situation where there are processes going on outside of the Commission that resolve issues that properly should be before this Commission.
So we also, in the edits that were provided by Commissioner Elliott and our office, included language that we need to, just as Commissioner Colgan has just aptly noted, we as governmental and consumer groups need to work together, as opposed to working at opposite ends of the spectrum, when we see actions out there that harm the public, and we need to have that intergovernmental support. So this 24-hour notice provision will permit the Commission to be aware of those type of activities that may be out there that are harming our consumers.

ACTING CHAIRMAN FLORES: Any further discussion of Commissioner O'Connell-Diaz's proposed revisions? Is there a motion to accept the revisions?

COMMISSIONER ELLIOTT: So move.

ACTING CHAIRMAN FLORES: Is there a second?

ACTING COMMISSIONER COLGAN: Second.

ACTING CHAIRMAN FLORES: It's been moved and seconded. All in favor say aye.

COMMISSIONERS: Aye.
ACTING CHAIRMAN FLORES: Any opposed?

The vote is 5-0. Commissioner O'Connell-Diaz's revisions are adopted.

Lastly, I have, along with Acting Commissioner Colgan, proposed revisions to the Order. These revisions were actually, as I indicated, were proposed jointly between my office and Acting Commissioner Colgan's office, and I want to thank both Acting Commissioner Colgan and also Linda Buell for their hard work on this language.

The gist of our revision is to strengthen and tighten the corrective measures present in the Order. Specifically, we are trying to get at some of the core issues that caused such high levels of complaints and provide the Commission with more complete information to better equip the Commission for potentially more decisive action in the future.

Commission Colgan, I believe you would like to have a few comments as well?

ACTING COMMISSIONER COLGAN: Yes. On the issue of the audit, and before I go there, let me just say
that on the issue of the Consumer Fraud Act and Deceptive Practices Act, I don't think it is -- I think that is kind of a moot issue. I have seen in the record, from my point of view, repeated and substantive violations of the Alternative Gas Supply Act which I thought were sufficient to bring some serious measures, remedies, against the company.

In terms of the audit, you know, I wanted to be sure in the audit that the audit is specifically approved by this Commission. I wanted to make sure that the staff had the authority to interact on a regular and as-needed basis with the audit to make sure that it is going correctly.

And, finally, I wanted to make sure that the company would understand that the Commission fully intends to make full use of its authority pursuant to the Act to alter, modify or revoke or suspend the Certificate of Service Authority if they are not in compliance with the audit, once it is put in place.

ACTING CHAIRMAN FLORES: Is there any other further discussion?
Is there a motion to accept my revisions?

COMMISSIONER ELLIOTT: So move.

ACTING CHAIRMAN FLORES: Is there a second?

ACTING COMMISSIONER COLGAN: Second.

ACTING CHAIRMAN FLORES: It's been moved and seconded. All in favor say aye.

COMMISSIONERS: Aye.

ACTING CHAIRMAN FLORES: All opposed say nay.

Hearing no nays, the vote is 5-0 to approve Acting Chairman Flores' and Acting Commissioner Colgan's revisions. The vote is 5-0.

Is there any further discussion on the Order?

I do have some remarks that I would like to make. While I appreciate that we have all taken steps towards strengthening the requirements placed on this company through some of today's amendments and while I appreciate the great work that individual Commissioners and their assistants have put in to get us to the point in this Order, I cannot vote to enter this Order today. I believe the
misconduct exhibited by the company is deserving of a more decisive and corrective action from the Commission. I believe that it deserves to at least -- specifically, I think the right measure would be to suspend the ability to engage in door to door sales as initially proposed, if not an outright suspension of the certificate.

Ultimately, I both disagree with the conclusions reached today regarding our enforcement policies and believe that, even if you accept those conclusions, more forceful and preventative action is required, not only to protect consumers, but also to protect competitors of the company in the marketplace. Companies who play by the rules lose, when companies who don't follow the rules escape serious punishment.

As we have heard repeatedly from staff in oral argument, they do not trust this company. I do not trust this company, either. I would hope that if this company came before the Commission seeking its initial certification and if we had access to this evidentiary record, we would force them to take
serious remedial action before being certified to
operate as an alternative gas supplier in Illinois
and not simply allow them to operate while working on
fixing the problems.

And I fear that absent a more forceful
application of the governing statutes, we may be
setting ourselves up for a future where we see this
company once again in a complaint case.

Because of these issues, I will be
voting against the motion to enter today's Order. Is
there a motion to enter the Order as amended?

ACTING COMMISSIONER COLGAN: Mr. Chairman?

ACTING CHAIRMAN FLORES: Yes.

ACTING COMMISSIONER COLGAN: I would like to
make a couple of comments.

ACTING CHAIRMAN FLORES: Yes.

ACTING COMMISSIONER COLGAN: I would like to
echo your sentiments on this. I, too, am going to
join you in voting no on this Final Order. I think
that, as I have mentioned, there are substantive and
repeated violations of the Alternative Gas Supply
Act. It is clear on the record to me that that is
there. My general principle on this is where there is smoke, there is fire. And there is a lot of smoke on this case.

And I am going to vote no on the Final Order. I hope the company takes to heart some of the provisions that will be in this Final Order. I thank all of the Commissioners for their hard work in trying to wrestle with this complicated issue and trying to come to the best conclusion that we possibly can. I think everybody has put their best faith into this and has done the very best that we can. But I am not going to be able to support the Final Order, and I am going to reserve my right to file a dissenting opinion.

ACTING CHAIRMAN FLORES: Any further discussion?

COMMISSIONER O'CONNELL-DIAZ: Mr. Chairman?

ACTING CHAIRMAN FLORES: Yes, Commissioner?

COMMISSIONER O'CONNELL-DIAZ: I understand the concerns that have been enunciated by Chairman Flores and Commissioner Colgan. However, the record is what we have before us. And, unfortunately, the record,
due to actions beyond this Commission's ability, the
record is what the record is. We could have a better
record, but we don't.

We also have our jurisdictional call
from the General Assembly. We have the AGS statute
which is the rules of the road for this particular
entity, and to go into the territory, as I think
Commissioner Elliott stated earlier with regard to
our jurisdictional ability, we just don't have that
with regard to the Consumer Fraud Protection Act.
The Appellate Court has told us that.

So we must tailor the remedies that we
mete out to this company under the statute and the
record that we have before us. Legislators have
given us some strengthening of the AGS statute. We
have had one other incident or several other
instances of other companies coming in. But, you
know, we are stuck with the fine level that's
contained in that statute, and so to me it is a
bridge too far to do more than what we have with the
record before us.

I think the record itself leaves a
lot -- I think there were a lot of allegations there that really were not credible. Whether they are true or not, I don't know. But I think that proponents of the complaint could possibly have done a better job with what they had or what they didn't have.

But I just find ourselves that we are under restrictions based on our actual legal authority versus what we would like to do. So I understand the concerns, but I just feel like we are creatures of our enabling statute, and that's what this Order is comporting to order from. So that's all I have to say.

COMMISSIONER ELLIOTT: Mr. Chairman, I obviously agree with Commissioner O'Connell-Diaz regarding our authority, and I sympathize with the position of the Chairman and Commissioner Colgan. This has been a difficult case. I think I was struck by the record, and I won't repeat the comments of Commissioner O'Connell-Diaz, but that I think was the restrictive issue for me with regard to this.

However, I do believe that the Order as amended provides additional safeguarding, more
oversight, and I hope direction, sufficient
direction, from this Commission for the first time to
this company, that we are on the case and we are
cconcerned. And in my opinion I would rather not see
this company before us again.

COMMISSIONER FORD: I certainly just want to
interpose something to what Commission Colgan said
when he said that the Attorney General and CUB have
to work collaboratively together, and I think this is
what this Order will have us to do. After we make
sure that every 24 hours we will be able to establish
a record of our own. So I think this Order certainly
does what we all want it to do and I am on board with
this. This will certainly make us be more
collaborative on these complaint issues.

COMMISSIONER O'CONNELL-DIAZ: We hope.

COMMISSIONER FORD: Yeah, we hope.

COMMISSIONER O'CONNELL-DIAZ: Yeah, don't
forget there is a consent decree out there that we
don't really know what's in that consent decree, and
that to me is troubling. There has been moneys paid
and we kind of got in at the end of that whole track,
so we are kind of confined.

So I do believe that the Order comports with the law and also gets us the appropriate oversight. But, again, I do appreciate the concerns as expressed by Chairman Flores and Commissioner Colgan.

ACTING CHAIRMAN FLORES: Is there a motion to enter the Order as amended?

COMMISSIONER ELLIOTT: So move.

ACTING CHAIRMAN FLORES: Is there a second?

COMMISSIONER FORD: Second.

ACTING CHAIRMAN FLORES: It's been moved and seconded. All in favor say aye.

COMMISSIONERS: Aye.

ACTING CHAIRMAN FLORES: All opposed nay.

Nay.

The vote is 3-2. Let the record reflect that Commissioner Ford voted aye, Commissioner O'Connell-Diaz votes aye, Commissioner Elliott votes aye, Acting Commissioner Colgan votes nay, and I, Acting Chairman Flores, votes nay. The Order as amended is entered by a 3 to 2 vote.
Again, I want to thank all of the Administrative Law Judges who worked on the cases that we disposed of today, and staff.

Also, it is with a heavy heart that I want to make reference to the passing of someone from the ICC family earlier this week. Dean Jackson who is one of our -- once a chief, always a chief -- our Chief Administrative Law Judge of the Transportation Bureau, and I would like to express our condolences to his wife and his children and also friends. I don't know if any of the other Commissioners would like to say a few words as well on that.

COMMISSIONER O'CONNELL-DIAZ: I just would thank Judge Jackson for the many years that he gave us great service and he chaired the Transportation Committee. I know we could always look over the table and he would have a fair read on whatever was before us. And it is just really hard to lose somebody, and I hope his family and friends are doing well. And I know he is looking down at our bench session today and probably would have a few good suggestions for us. So my condolences to the family.
ACTING CHAIRMAN FLORES: I also want to just, again, thank all of the assistants for their hard work in their area, what they have been doing and what they are going to continue to do. So thank you. Judge Wallace, are there any other matters to come before the Commission today?

JUDGE WALLACE: No, Mr. Chairman.

ACTING CHAIRMAN FLORES: Very well, thank you. Hearing none, this meeting stands adjourned. Thank you, everybody.

MEETING ADJOURNED