BEFORE THE
ILLINOIS COMMERCE COMMISSION

SPECIAL OPEN MEETING

Springfield, Illinois

Thursday, April 29, 2010

Met, pursuant to notice, on Thursday,

April 29, 2010 at 12:30 p.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
Laurel A. Patkes, Reporter
CSR #084-001340
PROCEEDINGS

ACTING CHAIRMAN FLORES: Good afternoon.

Pursuant to the provisions of the Illinois Open Meetings Act, I now convene a special 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 meeting of the Commission.

According to the Chief Clerk's Office, we have no requests to speak for today's session.

We have one item for today's agenda. That item is Docket Nos. 09-0306 through 09-0311. This is the Ameren Illinois Utilities proposed
general increase in electric and gas delivery service rates.

I understand that we have revisions to the proposed order. Commissioner Elliott, I believe you have two sets of revisions. Let's start with those.

COMMISSIONER O'CONNELL-DIAZ: Chairman?

ACTING CHAIRMAN FLORES: Yes, ma'am?

COMMISSIONER O'CONNELL-DIAZ: Before we start, I have some questions for the judges.

Judge Albers, good afternoon.

JUDGE ALBERS: Good afternoon.

COMMISSIONER O'CONNELL-DIAZ: As I was reviewing again after our last meeting the briefs as well as the record in this matter, I came across some other areas of inquiry I'd like to have resolved before we take any action.

With regard to the accumulated reserve for depreciation, that involves a rule that we operate under at the Commission, correct?

JUDGE ALBERS: I believe it's 287.44, historical test years.
COMMISSIONER O'CONNELL-DIAZ: And oddly enough, as I was doing my research, I came across the Order where the Commission entertained changes to that rule, Case 02-0509, which, coincidentally, you were the judge on, so I'm going to pick your brain. With regard to the revisions that were looked at in that proceeding, could you point to any discussion or comments or anything having to do with the provision where it talked about plant investment for the pro forma additions? Was that an issue in that case because I've looked at the record and --

JUDGE ALBERS: Well, I think the only issue pertaining to that particular subsection of 287 was whether or not a company should be required to propose updates or pro forma adjustments or if they should have it within their discretion to do so. I don't think there was any question as to whether or not it was any particular like net or gross or embedded plants.

COMMISSIONER O'CONNELL-DIAZ: And, in fact, there was no proposal for dressing up what's contained in the rule as it stands today with net
plant or net of plant of said plant investment.

JUDGE ALBERS: Correct.

COMMISSIONER O'CONNELL-DIAZ: And the parties to that case, this was back in what, '03, July of '03, the parties to that case, do you have a recollection whether -- as I looked at it, I saw staff's brief. I saw some company briefs. Attorney General, were they involved in that case?

JUDGE ALBERS: I think, yeah, it was most of the usual big players so to speak that we see here; AG, CUB, Ameren, ComEd. I think there were some other large utilities; Illinois-American.

COMMISSIONER O'CONNELL-DIAZ: Did they file comments with regard to the plant investment interpretation?

JUDGE ALBERS: Comments or like briefs on exceptions?

COMMISSIONER O'CONNELL-DIAZ: Briefs on exceptions, comments, anything that one would see in rulemaking to like further clarify this rule if they're in need of clarification.
JUDGE ALBERS: I think it was just on that issue of may versus shall file updates or pro forma adjustments.

COMMISSIONER O'CONNELL-DIAZ: So essentially, this was not an issue in the case as far as you saw it.

JUDGE ALBERS: I don't remember it being an issue or I don't remember seeing anything in the record that would have suggested it was an issue.

COMMISSIONER O'CONNELL-DIAZ: All right. Thank you.

And given your recommendation that you've given us, your reading of the rule is -- can you just clarify again what your reading of that provision of the rule means?

JUDGE ALBERS: As I understand it, the utility, based on the rule and what the Commission has done in the past, a utility can propose pro forma adjustments to a historical test year to their invested plant and there's no requirement regarding any type of additional across-the-board adjustment to reflect all the accumulated depreciation that would follow along.
with that period which we're looking at the pro forma adjustments.

I don't think I answered that very clearly.

Do you want me to try to clarify that any more or is that sufficient?

COMMISSIONER O'CONNELL-DIAZ: I think that's fine.

JUDGE ALBERS: Okay.

COMMISSIONER O'CONNELL-DIAZ: And I also think you went into a discussion about Section 211, you did not see how that was...

JUDGE ALBERS: Yeah, I remember that coming up last week. I look at that section of the act as being focused on what type of plant is actually used and useful and not necessarily like value assigned to it.

COMMISSIONER O'CONNELL-DIAZ: So it's not an accounting looking. It's an actual functionality of a plant, and that's how it would be...

JUDGE ALBERS: Right. I mean, it's a question of prudence I think in the language of the Act as
well, but I don't read that or, you know, I don't understand that as going towards the accounting aspect of it as you say.

COMMISSIONER O'CONNELL-DIAZ: And your recommendation to us relative to that argument was --

JUDGE ALBERS: I don't see how Section 9-211 is directly applicable to this issue here on the accumulated depreciation.

COMMISSIONER O'CONNELL-DIAZ: And would you say generally speaking as a judge that hears cases that a basic rule of statutory construction would be that you don't import words; that a phrase in a rule or a statute has the meaning that it has?

JUDGE ALBERS: Generally, yes.

COMMISSIONER O'CONNELL-DIAZ: So in this instance, as your recommendation reflects, you don't add to the rule that has been interpreted by this Commission in so many cases to add net plant or net of plant before we decide the plant investment.

JUDGE ALBERS: Well, I mean, looking at how as I understand it's been applied in the past, I think typically it's been net of plant that's been, you
know, net of plant is typically what's been considered or understood when applying that section.

COMMISSIONER O'CONNELL-DIAZ: And so your analysis would then move, once you looked at the rule, then your analysis would move to Commission cases where there was similar pattern, similar situation?

JUDGE ALBERS: Right. Once I look at the rule, I don't see net or embedded or gross plant, anything like that in the rule. In looking at how it's been handled in the past by the Commission, it's my understanding that net plant is what's been used by the Commission in past orders on this type of issue.

COMMISSIONER O'CONNELL-DIAZ: Okay. And based on your judgment call that you've recommended to us, you find no new circumstances that we would need to reverse those determinations on this record; is that fair?

JUDGE ALBERS: Right. I mean, I recognize it as -- you know, I agree with that, but I recognize that there is still the question of how does one, you know, what value does one plug in for net plant or
any of the accumulated depreciation. I mean, that's been disputed in various cases throughout, but I think net plant, it's my understanding that net plant has been the way that's been used or interpreted in the past.

COMMISSIONER O'CONNELL-DIAZ: And would you agree that a way to correct that would be to actually open up the rule again and look at it and take comments if one were so inclined?

JUDGE ALBERS: That is an option, yes.

COMMISSIONER O'CONNELL-DIAZ: I have nothing further.

ACTING CHAIRMAN FLORES: Any other questions or comments?

There are --

JUDGE ALBERS: Mr. Chairman, if there aren't any questions, if I may interject with the required reporting on public comments.

ACTING CHAIRMAN FLORES: Thank you.

JUDGE ALBERS: Since we last met, we now have a current tally of 248 comments regarding CILCO's electric case, 216 regarding CILCO's gas, 311
regarding CIPS electric; 151 regarding CIPS gas, 491
regarding IP electric, 493 regarding IP gas.

The Clerk's Office is in possession of
35 written objections, 47 of these posters, and we
now have 12 petitions for a total of 2,142
signatures, and I would say the vast majority of
these individuals are opposed to an increase.

ACTING CHAIRMAN FLORES: Thank you.

There are two sets of revisions and
most of these revisions were proffered by
Commissioner Elliott.

Commissioner Elliott, would you like
to --

COMMISSIONER ELLIOTT: Yes. Thank you,
Mr. Chairman.

I made amendments to the areas with
regard to cash working capital, gas storage,
incentive compensation, NESC violations,
transportation fuel expense, O&M expenses, prior VGP,
the cost of service study rate capping and rate
moderation issues, and I would offer those amendments
for consideration.
ACTING CHAIRMAN FLORES: Is there any discussion of Commissioner Elliott's revisions?

COMMISSIONER O'CONNELL-DIAZ: Mr. Chairman, I'd like to run down the list and get a number for each of these proposed revisions and the impact on rates this would have.

COMMISSIONER ELLIOTT: I can tell you in total, but for each particular individual item, I don't have that broken down.

COMMISSIONER O'CONNELL-DIAZ: So what you're doing is you're offering a total package of revisions without breaking those numbers out so we can understand each of these and the rate impact?

COMMISSIONER ELLIOTT: I did not have that breakdown by individual amendment, no.

COMMISSIONER O'CONNELL-DIAZ: I'll just for the record state I have asked for those revisions since these came out, and I've never gotten -- not revisions. I've asked for those numbers, and I've never received those numbers, so it's a hard yardstick to understand what these numbers would mean to our final analysis so I'm somewhat hampered.
ACTING CHAIRMAN FLORES: Judge Wallace, with regards to the numbers, can you please inform us in terms of the materials that we have consistent --

COMMISSIONER ELLIOTT: Well, I think our accounting assistant provided a statement of the operating income with the adjustments. The estimates are reflected in total but it doesn't break down each of the adjustments by amendment.

COMMISSIONER FORD: Well, as I said earlier, I certainly had an issue with that because it's been very difficult for me to understand some of the issues that have come up with this. Certainly I'm not a lawyer but I do know how to analyze, synthesize, and evaluate information.

When I came to this Commission, there was an issue before us, and I was in the minority, but upon appeal, I was adjudicated because my decision was a correct decision.

And when I looked at this and I read the landmark decision from the Supreme Court decision on Bluefield Waterworks & Improvement Company versus the Public Service Commission of West Virginia, this
Order is certainly an abomination for this Company and for the consumers of the State of Illinois in my opinion because it has unintended circumstances that are certainly going to impact the economy and consumers for this great State of Illinois, and that's all I'm here for, to make sure that the Public Utility Act would say that we must, as public utility Commissioners, ensure that our ratepayers get reasonable, reliable and uninterrupted services at a reasonable cost, and also, that the utility get a reasonable rate of return on its investment.

And from what I'm reading, I do not see this. The numbers are not adding up, and I've said that over and over again. I don't know who I'm supposed to say it to but I hope it's on the record.

ACTING CHAIRMAN FLORES: Well, as I understand it here, we have at this point 11 different issues that were referenced: cash working capital revenue collection lag, cash working capital pass-through taxes, gas and storage, incentive compensation, NESC violations expense, transportation fuel expense, overall reasonableness of O&M expenses, Rider VGP,
and then on page 248, overall suitability of AIU's rate designs, and then the rate capping mechanism as well as the rate moderation.

As all the Commissioners know, these were issues that were brought forth by the parties. The parties litigated these matters. There is the full record.

In addition to that, there was the Administrative Law Judge who put forth a Proposed Order. The Commissioners ostensibly had an opportunity to review the Proposed Order and, under their lawful authority to exercise their discretion under the Public Utilities Act, have the opportunity to either go in line with the Proposed Order, recommendations, or make adjustments as the Commissioners see fit in line with their vested authority by the PUA.

My understanding is that there were also some numbers that were distributed for the purposes of answering questions regarding what the effect on overall rate base would be concerning the proposed adjustments under consideration.
At this time, Commissioner Elliott, would you like to add anything further?

COMMISSIONER O'CONNELL-DIAZ: Chairman Flores, I would just like to correct what may be misapprehended here.

I have requested and have continued to request --

ACTING CHAIRMAN FLORES: Well, with all due respect...

COMMISSIONER O'CONNELL-DIAZ: -- throughout the pendency of this case, I have asked for these numbers to be broken out. They have not been broken out so what I'm left with is -- and certainly I have read the briefs. I think anyone that knows me knows I read all the briefs. I read the testimony. I read everything in the case, and I don't think it's too much to ask to get numbers when someone is sponsoring a different way of going. We have a set of numbers from the Judges. These obviously have impacts. I'm not an accountant so I would like to know what impact it has.

To this moment, I really am in the
dark. I think there were numbers being circulated yesterday afternoon. I think we got two sets of wrong numbers.

COMMISSIONER FORD: Correct.

COMMISSIONER O'CONNELL-DIAZ: So I am really in the dark as to what all of this does, so if there is a lack of that information upon which I can rely to either say this is great or I agree with it or not, I feel like I've got half the book, and getting a lump number does not assist me in that analysis.

ACTING CHAIRMAN FLORES: Did you submit your request to --

COMMISSIONER O'CONNELL-DIAZ: I have requested --

ACTING CHAIRMAN FLORES: -- the staff who had been assigned to assist with these questions?

COMMISSIONER O'CONNELL-DIAZ: These are not my revisions. I asked for numbers from those that were sponsoring it, and as I count it, three gentlemen are sponsoring this, and I asked, that's what I kept seeing, that that's what it was, and I did not receive those numbers.
COMMISSIONER FORD: My office requested some numbers but I got them and that is why I am so confused this morning, because I went through those numbers last night and they don't reveal anything for me but negativity. Somebody is not in line with what the ALJ proposed, no, far, far from.

ACTING CHAIRMAN FLORES: I would ask we take a brief recess. I would like to take this issue and consider it, so I'm going to ask for a five-minute recess.

(Recess taken.)

ACTING CHAIRMAN FLORES: I'm now calling the session back to order.

As indicated prior to taking a brief recess, we have 11 items that are up for revisions. There has been comment on some of these revisions.

At this time, is there any other discussion on Commissioner Elliott's revisions?

Very well. At this time then I'd like to make a motion.

COMMISSIONER O'CONNELL-DIAZ: So does this mean that we will not get a breakdown by numbers as to
each of the proposed revisions from Commissioner Elliott? Is that where we're at?

ACTING CHAIRMAN FLORES: I believe that all discussion has been closed. At this time there's a motion to move forward on the --

COMMISSIONER O'CONNELL-DIAZ: No, no. I'm sorry. I asked for --

ACTING CHAIRMAN FLORES: I make a motion to move forward...

COMMISSIONER O'CONNELL-DIAZ: Excuse me, Chairman.

ACTING CHAIRMAN FLORES: I make a motion to move forward on the 11 revisions.

Is there a second?

COMMISSIONER ELLIOTT: Second.

ACTING CHAIRMAN FLORES: All in favor say aye.

ACTING COMMISSIONER COLGAN: Aye.

COMMISSION ELLIOTT: Aye.

ACTING CHAIRMAN FLORES: Any opposed?

COMMISSIONER FORD: Nay.

COMMISSIONER O'CONNELL-DIAZ: Nay.

ACTING CHAIRMAN FLORES: Roll call.
Commissioner Ford?

COMMISSIONER FORD: Nay.

ACTING CHAIRMAN FLORES: Commissioner --

COMMISSIONER O'CONNELL-DIAZ: Nay.

ACTING CHAIRMAN FLORES: -- O'Connell-Diaz?

So the record is clear, Commissioner O'Connell-Diaz votes nay.

Commissioner Elliott?

COMMISSIONER ELLIOTT: Aye.

ACTING CHAIRMAN FLORES: Commissioner Colgan?

ACTING COMMISSIONER COLGAN: Aye.

ACTING CHAIRMAN FLORES: I, Acting Chairman Flores, votes aye.

We have some --

COMMISSIONER O'CONNELL-DIAZ: Just to clarify the record, I'd like it clear that again I asked for confirmation as to whether we were going to get a breakdown of the numbers for Commissioner Elliott's revisions, and I presume by the push for the vote that the answer to that is no, that we will not be getting those numbers so that we can know what we're voting on, is that correct?
ACTING CHAIRMAN FLORES: Is that a question or a comment?

COMMISSIONER O'CONNELL-DIAZ: I'm asking for a response from the group that is proposing these revisions.

COMMISSIONER ELLIOTT: I'm sure that those numbers can be provided by the accounting assistant. I have no doubt in my mind.

ACTING CHAIRMAN FLORES: I believe there's a 12th item that is also being considered for revision. That is the accumulated reserve for depreciation.

Commissioner Elliott?

COMMISSIONER ELLIOTT: Thank you, Mr. Chairman. Yes, the changes and amendments to the order I put forth basically adopt IIEC's conclusion with regard to accumulated depreciation, reserve for depreciation.

It's my opinion that it's net plant that should be adopted, not gross, and that there is a violation of test year past in principle. This is consistent with the Dissenting Opinion I put forth in the ComEd case, and I believe this is the appropriate
treatment for this adjustment, and I would move my
language moves forward.

ACTING CHAIRMAN FLORES: Is there any further
discussion of Commissioner Elliott's revision on
accumulated reserve for depreciation?

Very well.

Is there a motion to accept
Commissioner Elliott's revision for accumulated
reserve depreciation.

ACTING COMMISSIONER COLGAN: So move.

ACTING CHAIRMAN FLORES: I second it.

All in favor say aye.

ACTING COMMISSIONER COLGAN: Aye.

COMMISSIONER ELLIOTT: Aye.

ACTING CHAIRMAN FLORES: Any opposed?

COMMISSIONER FORD: Nay.

COMMISSIONER O'CONNELL-DIAZ: Nay.

ACTING CHAIRMAN FLORES: I'll do a roll call
vote.

Commissioner Ford?

COMMISSIONER FORD: Nay.

ACTING CHAIRMAN FLORES: Commissioner
O'Connell-Diaz?

COMMISSIONER O'CONNELL-DIAZ: Nay.

ACTING CHAIRMAN FLORES: Commissioner Elliott?

COMMISSIONER ELLIOTT: Aye.

ACTING CHAIRMAN FLORES: Commissioner Colgan?

ACTING COMMISSIONER COLGAN: Aye.

ACTING CHAIRMAN FLORES: I, Acting Chairman Flores, votes aye.

Let the record reflect that the vote is 3 to 2 on Commissioner Elliott's revisions. They are accepted. All 12 revisions are accepted.

Is there any further discussion concerning the overall Order?

COMMISSIONER O'CONNELL-DIAZ: What is the fallout from all of this since we don't have the discrete numbers that we would need to really make an informed decision, but I'd like to know what the overall number is because it seems like we're just being forced to look at that. So if I could have that for the record.

JUDGE WALLACE: Mr. Chairman, could I inquire as to -- first of all, was that a motion to close
debate or a motion to vote on the 11 revisions?

ACTING CHAIRMAN FLORES: That was a motion to vote on the 11 revisions which has been taken and voted on.

JUDGE WALLACE: All right. Thank you, sir.

ACTING CHAIRMAN FLORES: And there is -- I'm sorry. Commissioner Elliott?

COMMISSIONER ELLIOTT: I would just offer those exhibits that have been circulated by the accounting assistant.

COMMISSIONER O'CONNELL-DIAZ: And what are the numbers, Commissioner?

COMMISSIONER FORD: The number I have is $4,700,000.

Is that correct? Does anybody know?

ACTING CHAIRMAN FLORES: We have been tendered here -- all of the assistants, Commissioners' assistants, have been provided numbers concerning the overall impact, and everyone has that material in front of them. It's an exhibit.

Do you have it in front of you, Commissioner?
COMMISSIONER FORD: Yes, I do.

ACTING CHAIRMAN FLORES: Very well.

Then could we have someone -- Judge Wallace, do you have the accountant in here so that the accountant can speak, give them the material that has been provided to the individual Commissioners' assistants?

COMMISSIONER O'CONNELL-DIAZ: Well, they would not have our Order, so how is that --

COMMISSIONER FORD: They shouldn't have it.

JUDGE WALLACE: Your accounting assistant -- let me check.

COMMISSIONER O'CONNELL-DIAZ: All your edits, do you not know the impact of the wishes that you want to have input into this?

COMMISSIONER ELLIOTT: The edits are reflected in the schedules that were submitted.

COMMISSIONER O'CONNELL-DIAZ: And what are those numbers? I'm just asking for that clarification, please.

COMMISSIONER ELLIOTT: They were delivered to you.
COMMISSIONER O'CONNELL-DIAZ: Why can't you say them?

COMMISSIONER ELLIOTT: I just handed the numbers to my left.

COMMISSIONER FORD: Pass them over then.

(Whereupon Acting Chairman Flores handed a document to Commissioner Ford.)

COMMISSIONER O'CONNELL-DIAZ: I've got one page here. So what is the rate impact? You said you had an overall number. What is it?

COMMISSIONER ELLIOTT: For operating company or in total?

COMMISSIONER O'CONNELL-DIAZ: Total.

COMMISSIONER ELLIOTT: I have to calculate it.

JUDGE WALLACE: Hopefully someone from the accounting department can come down.

ACTING CHAIRMAN FLORES: Thank you.

COMMISSIONER ELLIOTT: Okay. Rough estimate, my line calculation of these numbers is somewhere between five and six million increase, without a calculator.
COMMISSIONER O'CONNELL-DIAZ: Thank you.

ACTING CHAIRMAN FLORES: Any further discussion?

Very well.

Before we move forward on the voting on the overall order, I want to thank all the parties. I want to thank Judge Albers for his review and job on the case.

I think it's extremely important that we note that when we receive a rate case, when the Illinois Commerce Commission receives a rate case, the duty of the Commission is to set rates. It's not to raise rates or lower rates, but it's to make decisions based on the evidentiary record in the case that set customer rates.

As in any of our cases, the process in the evidentiary record is what's most important, and the result we reach is an extension of that. I'm confident that what we've done here today is make the right decision, and I'm very comfortable that we've employed the appropriate methodology in coming away with a result.
At this time, I'd like to make a motion to enter the order as amended.

Is there a second?

COMMISSIONER ELLIOTT: Second.

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

ACTING COMMISSIONER COLGAN: Aye.

COMMISSIONER ELLIOTT: Aye.

ACTING CHAIRMAN FLORES: Any opposed?

COMMISSIONER FORD: Nay.

COMMISSIONER O'CONNELL-DIAZ: Nay.

ACTING CHAIRMAN FLORES: Okay. I'll take a roll call vote.

Commissioner Ford?

COMMISSIONER FORD: Nay.

ACTING CHAIRMAN FLORES: Commissioner O'Connell-Diaz?

COMMISSIONER O'CONNELL-DIAZ: Nay.

ACTING CHAIRMAN FLORES: Commissioner Elliott?

COMMISSIONER ELLIOTT: Aye.

ACTING CHAIRMAN FLORES: Commissioner Colgan?

ACTING COMMISSIONER COLGAN: Aye.
ACTING CHAIRMAN FLORES: I, Acting Chairman Flores, votes aye.

The vote is 3 to 2, and the order, as amended, is entered.

Judge Wallace, are there any other matters to come before the Commission today?

JUDGE WALLACE: No, sir. We have a special open meeting tomorrow to consider a procurement event and a FERC matter.

ACTING CHAIRMAN FLORES: Very well. Thank you.

Hearing none, this meeting stands adjourned.

MEETING ADJOURNED