

**STATE OF MISSOURI-SENATE INTERIM COMMITTEE ON UTILITY REGULATION
AND INFRASTRUCTURE INVESTMENT**

AUGUST 24, 2016

TESTIMONY- ERIN M. O'CONNELL-DIAZ

Introduction

Good Morning my name is Erin O'Connell-Diaz, a veteran state public utility regulator. I have spent over 30 years as a public servant, 13 years as a Judge and then two terms as a Commissioner at Illinois' public utility commission. It is a pleasure to be back to testify before your committee regarding changes that Missouri is contemplating for its electric utilities recovery methodology. As you consider this important issue, it may be helpful to keep in mind certain factors that Illinois was experiencing before we adopted performance based making regulations contained in our historic Energy Infrastructure Modernization Act ("EIMA") reforms in 2011. As I shared with you this past spring, we in Illinois have found that in a short period of time, this legislation is delivering real and quantifiable benefits to our citizens. At the same time our rates have remained low and stable, electric reliability is award winning and we are building a secure energy future for our state. I would reiterate that prior to my state's adoption of Performance Based ratemaking several factors motivated the changes that occurred in Illinois. I would suggest Missouri is encountering those same obstacles that will impede its path to the future, without changes to its regulatory model.

In Illinois we recognized that traditional ratemaking was not doing a good job of promoting the utility service attributes that customers and state policy-makers care most about, such as rate stability, reliability, customer service, energy efficiency, enabling renewable and distributed generation development, and economic development, as well as productivity improvements. Clearly, the 120 -plus-year- old traditional regulatory process utilized in Illinois was in need of streamlining; rate cases had become frequent, numerous adjustment mechanisms, riders and deferral accounts had significantly complicated the process and it had become highly adversarial and costly for all parties to participate. The results of the proceedings were unpredictable, volatile and incomprehensible for most consumers. The time had come to develop a comprehensive solution as a more productive alternative.

Through many iterations at the legislature and with input from many stakeholders, the Illinois legislature passed our EIMA law which provided for a new process to develop performance based rates (PBR) through electric utility rate proceedings while still maintaining the Illinois Commerce Commission's oversight and authority. The Commission retained its authority to ensure rates are just and reasonable and based

only on prudently incurred costs, and parties retained the right to file for appeal of a Commission Order. In fact, the Commission exercises its historic authority in these cases that the utilities are required to file on an annual basis. This process, now in its fifth year, allows for better alignment of interests between customers and the utility; places the emphasis on performance, not just the cost building blocks that add up to a utility's revenue requirement; and provides an equitable division of the benefits of performance improvement and cost management. Without implementation of PBR, Illinois' electric system would have been at risk of under investment or cost recovery challenges leading to service degradation, credit downgrades and overall customer dissatisfaction. PBR is a proactive solution that can provide sustained benefits for all utility stakeholders and that takes a longer-term perspective on the balancing of interests and establishment of utility service that is in the public interest.

I appreciate the due diligence that you and your colleagues are going through as you consider this change. I admit I was skeptical when we first started looking at making these changes to our regulatory model. However, we are five years out since we implemented the changes and we now have an abundance of evidence that clearly shows this was the correct path. In particular:

- Illinois' residential and industrial electric rates remain the lowest in the Midwest Region as well as some of the lowest in the United States; our rates have risen less than Missouri's (for the distribution portion of a customer's bill an average of 2.5% increase in the last 4 years) while at the same time the dynamic transformation of our electric grid is taking place and currently delivering benefits to all sectors. Low prices, new build, better and greener services to industrial and residential customers, job creation and customer centered service are all occurring under the watchful eye of the public utility regulators. To be clear, this legislation has been truly transformative for our state as a whole;
- Regulatory oversight by the public utility regulatory commission has been enhanced with annual rate filings requiring review and approval of the yearly costs through fully litigated proceedings open to all stakeholders. As a Commissioner a big concern to me was that we not lose that important role. Extensive and timely annual Commission review under performance based ratemaking is a critical component of the process and one of the pillars of its success. In fact, in your proposed legislation, your Public Service Commission would enjoy more discretion than is afforded under the Illinois legislation.

Also the prudence standard of review by the Commission, that ensures just and reasonable rates, remains intact and unchanged under this legislation;

- Performance based ratemaking allows the Commission, its Staff and other parties to have a timely and discrete annual review of all costs resulting in less time and overall rate case expense, which benefits everyone;
- Transparent and measurable performance metrics are required of utilities with penalties for non-compliance as well as strong consumer protection provisions; again Commission oversight is at work;
- Illinois was just rated second in the nation for grid modernization and our state is benefiting from record reliability improvements resulting in millions of dollars saved by consumers. Since 2012 we have experienced the following societal savings in our two regions-Ameren Illinois-\$228 million/Commonwealth Edison-\$3.1 billion;
- 4,800 jobs have been created statewide not including indirect supply chain employment opportunities; Robust programs have been implemented that bring together our consumer advocates, educational sectors and many community organizations as critical partners in building Illinois' energy future;
- Modern grid technology has been deployed system-wide, such as smart meters, modern distribution/transmission components, energy efficient/green improvements and the grid has been better secured against storms/cyberattacks;
- Utilities have been enabled to make much needed long-term investments to modernize the electric grid at the same time ensuring customers realize the benefits of these improvements; and
- Credit ratings of the utilities have been kept sound during times of accelerated investments in the system which in turn keep construction costs and debt service costs lower thereby benefiting all.

Indeed, other regulatory mechanisms may seem to be able to provide for the appropriate acceleration of investment to modernize Missouri's grid. However, I would caution that those options may appear adequate but in operation could serve to hamper your goal of actually achieving balanced and comprehensive grid modernization. In

Illinois, we had various trackers, riders, and other financing mechanisms provided for in our rules. What we discovered was that none of those regulatory plans permitted nor enabled the type of holistic and large scale long term planning necessary to achieve meaningful and comprehensive grid modernization and deliver 21st century benefits to our consumers. Most importantly, we recognized that our state's enabling legislation had to change in order for the Commission to be able to legally implement such all-encompassing energy infrastructure building programs.

I know that you, your colleagues and your Public Service Commission have the best interests for the future of Missouri at heart. I can tell you that of all the programs that I was involved with in my 30 years of public service, my participation in the implementation of performance based ratemaking is one of my proudest accomplishments. It has allowed a reality of growth and forward movement for my state in a manner I did not think possible. It is my firm belief that all the attributes I referenced above simply would not have happened if we had not changed the channel to performance based ratemaking regulation.

In closing, I appreciate the thought and consideration you each have given to the many sides to this issue. Given our experience with performance based rates you and your colleagues can be assured it is not an untried idea but a regulatory model that is transformative and works in both traditional and deregulated states. This legislation is currently allowing Illinois utility customers to be participants in the 21st century by leveraging a modernized utility foundation with new technologies, services and customer benefits that are the value streams of tomorrow. I believe that PBR mechanisms are important tools for regulators and utilities. Each state has unique needs, so the type of PBR mechanism or other regulatory changes that are instituted to address Missouri's need for electric grid modernization will benefit from your discussions and stakeholder input. This collaboration hopefully will result in the formulation of a plan that will hold utilities accountable, provide real and quantifiable benefits for the customers they serve and culminate in the creation a 21st century energy backbone for current and future generations of Missouri citizens.

Respectfully Submitted,
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Biography

Erin M. O'Connell-Diaz – Commissioner Emeritus (Illinois Commerce Commission)

Erin O'Connell-Diaz is President of FutureFWD, Inc., a consultancy focused on the issues and crafting solutions for creation of the utilities of the future. She is also a Senior Fellow for Governing Institute. In that role she serves among a diverse group of professionals that provide thought leadership, strategic direction and expertise regarding the crucial issues and challenges facing state and local governments. Prior to these endeavors she served two terms as a Commissioner of the Illinois Commerce Commission. She was Chair of the following ICC Committees: Consumer Outreach, Water, Electric Vehicle Initiative, Transportation/Rail-Safety and the groundbreaking Post 2006 Committee—a first in the field national stakeholder collaborative process focused on Illinois' restructuring transition to customer choice and development of a successful competitive electric supply market. She is notably one of the most experienced regulators in America regarding all aspects of the creation of, transition to and implementation of legislation for performance based ratemaking for energy infrastructure investments as well as electric/gas retail competition. Under her leadership Illinois has evolved into one of the nation's most successful competitive electric and gas marketplaces, which has maintained reliability and diverse supply while saving Illinois electric consumers approximately \$41.5 billion. During her terms of office she also directed initiatives that put Illinois in the forefront for its rail safety education, consumer educational outreach and grid modernization programs. On the national scene, she served as Chair of the National Association of Regulatory Utility Commissioners (NARUC) Committee on Electricity and a member of its Board of Directors as well as Vice-Chair of the Joint Subcommittee on Environmental Policy and Practice. She was also active on the Committees on Water, Utility Marketplace Access, International Relations and Critical Infrastructure and Nuclear Task Force. Additionally, she served as a member of the EPRI Advisory Council, NARUC's Rate School Faculty and the Advisory Board of the Critical Consumer Issues Forum. For consecutive years she was Co-Chair of the highly acclaimed NARUC-DOE Electricity Forum. On the international level she was a US delegate to two World Forums of Energy Regulation as well as successive ERRA conferences. She was lead state regulator to several USAID/DOE partnerships programs notably Brazil and Kosovo. Currently she is a member of the Harvard Electric Policy Group and the New Mexico State University Public Utilities Advisory Council.

She began her public service career as an Illinois Assistant Attorney General then as an Administrative Law Judge for the ICC culminating in her appointment as the Assistant Director-Administrative Law Division. She presided over extremely high profile cases of significance such as transmission siting, implementation of customer choice legislation for the gas, telecom and electric sectors, pipeline safety consumer complaints and all sector rate proceedings. In her community she is Vice-President and Trustee of the Bull Valley Association, Past Chair of the Chicago Bar Association's Public Utility Law Division and has served on the Board of Trustees-Regina Dominican High School, is a lifetime member of the Naval Reserve Association and a member of the Booncreek Watershed Alliance. She is a graduate of St. Mary's College of Notre Dame-*Cum Laude* and received her J.D. from Loyola University School of Law.