

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AMEREN ILLINOIS COMPANY)	
d/b/a Ameren Illinois,)	
Petitioner)	Docket No. 12-0001
)	
Rate MAP-P Modernization Action Plan -)	
Pricing Filing)	

**AMEREN ILLINOIS COMPANY’S
PETITION FOR INTERLOCUTORY REVIEW**

Ameren Illinois Company d/b/a Ameren Illinois (“AIC” or the “Company”) petitions the Illinois Commerce Commission (“Commission”) pursuant to Section 200.520 of the Commission’s Rules of Practice, 83 Ill. Adm. Code § 200.520, for Interlocutory Review of the Administrative Law Judges’ (“ALJs”) September 11, 2012 ruling (the “Ruling”) striking, without explanation, from AIC’s Brief on Exceptions the Company’s citation to and discussion of Resolution 1157 (“HR 1157” (attached as Exhibit A)) adopted by the Illinois House of Representatives on August 17, 2012. That Ruling is in error. As demonstrated below, HR 1157 is legal authority appropriately cited and relied on in support of arguments in briefing. While the Commission may accord the proper weight to legal authority cited to and relied on by a party in making its arguments, it is improper to affirmatively *strike* references to HR 1157 from a legal brief. As such, the Ruling should be reversed.

I. BACKGROUND

Some background is necessary to understand this Petition. On October 26, 2011, the Illinois General Assembly enacted Section 16-108.5 of the Public Utilities Act, the Illinois Energy Infrastructure Modernization Act (“EIMA”), which permits utilities who elect to participate in the infrastructure investment program to improve and modernize the State’s

electrical grid to recover their delivery service costs through a performance-based formula rate. 220 ILCS 5/16-108.5(b) & (c). Commonwealth Edison Co. (“ComEd”) was the first utility to seek Commission approval of a formula rate pursuant to the new ratemaking framework established by the EIMA. See Commonwealth Edison Co., Final Order, Docket 11-0721 (May 29, 2012), p. 2. On May 29, 2012, the Commission issued its Final Order approving, with modification, the tariffs proposed by ComEd in that proceeding. Id., p. 177.

On August 17, 2012, the Illinois House of Representatives adopted HR 1157, expressly directed to certain findings in the Docket 11-0721 Final Order and the Commission’s related interpretations of the EIMA. H.R. Res. 1157, Amend. No. 1, 97th Ill. Gen. Assem., Reg. Sess. (Aug. 17, 2012). Via HR 1157, the House made clear the intended meaning of certain provisions of the EIMA and explicitly conveyed that contrary findings in the Docket 11-0721 Final Order “fail[] to reflect the intent of the Illinois General Assembly” Id. at 5. Further, the House reminded:

The Illinois Supreme and Appellate Courts have consistently held that public policy in Illinois is expressed by the General Assembly, and it is not the province of an administrative agency to inquire into the wisdom and propriety of the legislature’s act or to substitute its own judgment for that of the legislature

Id. at 4. The House “urge[d]” the Commission to “strongly consider” reversing the findings at issue, and to “reach a decision that reflects the statutory directives and intent of the General Assembly” Id. at 5. The House directed that a copy of HR 1157 be delivered to the Commission’s Chairman and Commissioners. Id. (The Senate has introduced a similar resolution. See S.R. Res. 821, 97th Ill. Gen. Assem., Reg. Sess. (June 18, 2012) (attached as Exhibit B).)

On January 3, 2012, AIC became the second Illinois utility to seek approval of a formula rate pursuant to the EIMA, initiating the instant proceeding for that purpose. On August 22,

2012, the ALJs issued their Proposed Order (“ALJPO”) in this proceeding approving, with modification, AIC’s formula rate tariff. (ALJPO, pp. 195-97 (filed Aug. 22, 2012) (pertinent pages attached as Exhibit C).) The ALJPO, however, rejected AIC’s position that the EIMA requires, inter alia, (i) use of a year-end rate base for the purpose of determining reconciliation revenue requirements under the EIMA, and (ii) a year-end capital structure as AIC’s actual capital structure. (Id., pp. 173-74, 109.)

AIC took exception to those proposed findings, and argued that the interpretations of the EIMA adopted by the ALJPO on those issues were expressly rejected by the Illinois House of Representatives in HR 1157 as “contrary to the statute” and “fail[ing] to reflect the statutory directives and intent of the Illinois General Assembly” HR 1157, pp. 4, 5; see AIC BOE, pp. 28-29, 37-39 (filed Aug. 30, 2012) (attached as Exhibit D). Accordingly, to support its legal arguments that its interpretation of the EIMA in this regard better reflected the intent of the legislature, AIC cited to and relied on the legal authority the Company considered precisely on point—HR 1157.

One week after AIC filed its Brief on Exceptions, intervenors the Illinois Industrial Energy Consumers (“IIEC”) and the Commercial Group (“CG”) filed a motion to strike from AIC’s Brief its citation to and reliance on that legal authority. (IIEC/CG Mtn. & Memo (filed Sept. 7, 2012) (attached as Exhibit E).) Although AIC referenced HR 1157 as legal authority in support of the Company’s interpretation of the EIMA, IIEC/CG argued HR 1157 was not “evidence” of record upon which the Commission could rely. (IIEC/CG Mtn., p. 1; Memo, pp. 1-3.) They further argued HR 1157 was not the type of “evidence” of which the Commission may take administrative notice. (IIEC/CG Mtn., p. 1; Memo, p. 4.) From this, they concluded AIC’s citation to and reliance on that Resolution in its legal brief was somehow improper and

should be stricken from the record of proceeding. (Id.)

As directed, AIC responded to IIEC/CG's Motion by 4:00 p.m. the next business day. (See Notice of ALJ's Ruling (Sept. 7, 2012) (attached as Exhibit F); AIC's Resp. (filed Sept. 10, 2012) (attached as Exhibit G).) IIEC/CG filed a reply in support the day after. (See IIEC/CG Reply (filed Sept. 11, 2012) (attached as Exhibit H).) In their Reply, IIEC/CG did not argue HR 1157 was not legal authority, but rather that it was "not the best source of legislative intent." (Id., p. 3.) In other words, IIEC/CG merely argued the weight the Commission should accord the Resolution, not whether all references to it should be stricken from the record, prohibiting the Commission to consider it *at all*. On September 11, 2012, the ALJs granted, without explanation, IIEC/CG's motion. (Ruling (Sept. 11, 2012) (attached as Exhibit I).) For the reasons set forth in AIC's Response to IIEC/CG's Motion and below, that Ruling is erroneous and should be reversed.

II. ARGUMENT

In this Docket, as indicated above, the question of the proper construction of the EIMA is paramount to the resolution of a number of issues. "The cardinal rule of statutory construction, to which all other rules are subordinate, is to ascertain and give effect to the intent of the legislature." Collinsville Comm. Unit Sch. Dist. No. 10 v. Regional Bd. of Sch. Trustees of St. Clair Cty., 218 Ill. 2d 175, 186 (2006). The courts should use everything available to determine legislative intent: "[where] the mind labours to discover the design of the legislature, it seizes every thing [sic] from which aid can be derived." Andrus v. Shell Oil Co., 446 U.S. 657, 666, n.8 (1980) (quotations omitted). With respect to the intent of the legislature in enacting certain provisions of the EIMA, the House has *told* us what that intent is—in HR 1157.

The General Assembly defines a resolution as an official "action, in the form of a formal

legislative document, *taken by the Senate alone, the House of Representatives alone*, or both the Senate and House acting jointly . . . to express the opinion of *one* or both houses or to take some action short of enacting a law that is within the province of *one* or both houses.” Illinois General Assembly, Ill. Legislative Glossary, available at <http://www.ilga.gov/legislation/glossary.asp#R> (emphasis added). Both chambers do not need to act on a resolution. Thus, on August 17, 2012, HR 1157 became an official act, “expressing the opinion” of the House, and thus a source of legal authority, as other legislative history, a law journal or an academic treatise might be. AIC cited it accordingly in its brief.

Rather than acknowledge HR 1157 as legal support for AIC’s argued interpretation of the EIMA, however, the Ruling *strikes* all reference to that authority from the Company’s brief, presumably as improper record “evidence” of which the Commission cannot take administrative notice. But, as AIC explained in its Response, this argument misses the point: AIC is *not* relying on HR 1157 as record “evidence.” (AIC Resp., pp. 2-4.) AIC is relying on it as legal authority containing an unequivocal expression of legislative intent.¹ And, given that statutes *must* be construed so as to—above all else—effectuate the legislature’s intent, such legislative expressions are routinely relied upon. As the Supreme Court has found, “we would be remiss if we ignored these authoritative expressions concerning the scope and purpose of [the statute at issue]” North Haven Bd. of Edu. V. Bell, 456 U.S. 512, 530-35 (1982) (quotations omitted) (considering post-enactment history, including a published summary of the final version of a bill, proposed agency regulations and responsive resolutions of disapproval, and individual resolutions introduced but not acted upon); see Andrus, 446 U.S. at 657 (considering post-

¹ As AIC explained in its Brief on Exceptions and its Response, a legislative resolution may inform questions of statutory interpretation and legislative intent, and so is appropriately cited in support of legal arguments. See ComEd Petition for Approval of Initial Clean Air Act Compliance Plan, Order, Docket 93-0027, 1993 Ill. PUC LEXIS 233, *15 (July 8, 1993); Eldred v. Ashcroft, 537 U.S. 186, 227-30 (2003) (Stevens, J., dissenting).

enactment Interior Department decisions and amendments passed by Congress); Cannon v. U. of Chicago, 441 U.S. 677, 688 n.6-7 (1979) (considering statements by members of Congress four years after enactment of and about the purpose and scope of the statute at issue made in connection with another statute); Sioux Tribe of Indians v. United States, 316 U.S. 317, 329-30 (1942) (considering a statement made almost five years after enactment by the same committee who reported the statute).² Thus, AIC’s citation to HR 1157 in briefing is appropriate, as it serves to inform the Commission of a formal expression of the legislature’s intent, an expression set forth by a chamber of the legislature itself.³

Neither IIEC/CG nor the ALJs who granted their Motion can honestly dispute HR 1157 is an expression by the legislature of its intent in enacting the EIMA. See HR 1157, p. 5. In fact, IIEC/CG *conceded* HR 1157 is a source of legislative intent, although they argued, not the “best source.” (IIEC Reply, p. 3.) But that argument simply goes to the weight. As a form of legal authority, HR 1157’s presence or absence from the evidentiary record is irrelevant to its propriety in a legal brief. But IIEC/CG’s position (and the Ruling’s) lead to the unreasonable result that HR 1157—and the House’s efforts in drafting it, publishing it, voting on and adopting it and directing that it be provided to the Commission—are utterly superfluous. Respectfully, they are not.

III. CONCLUSION

HR 1157 is a formal expression of the Illinois House of Representative’s intent with

² In their Reply, IIEC/CG attempted to distinguish the case law relied on by AIC to support the proposition that, in fact, post-enactment legislative developments are routinely considered (and accorded varying degrees of weight) in efforts to discern legislative intent. (AIC Resp., p. 4; IIEC/CG Reply, Ex. A.) But for all of IIEC/CG’s rhetoric, they do not (and cannot) argue the courts in those cases did not consider post-enactment legislative expressions.

³ Nevertheless, IIEC/CG (and the Ruling accepting their position) imply that the Commission can simply disregard an expression of legislative intent merely because it happened to be pronounced after the evidentiary record in a proceeding closed. AIC submits such position is illogical.

respect to the EIMA. AIC cited HR 1157 as legal authority in support of its arguments about that intent. For these reasons and the reasons stated above, the September 11, 2012 Ruling striking the references to HR 1157 was in error. It should be reversed.

Dated: September 11, 2012

Respectfully submitted,

Ameren Illinois Company
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/s/ Albert D. Sturtevant
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CERTIFICATE OF SERVICE

I, Albert D. Sturtevant, an attorney, certify that on September 11, 2012, I caused a copy of the foregoing *Ameren Illinois Company's Petition for Interlocutory Review* to be served by electronic mail to the individuals on the Commission's Service List for Docket 12-0001.

/s/ Albert D. Sturtevant

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