

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission :
On its Own Motion :
 : **Docket No. 12-0457**
 :
Development and adoption of rules :
concerning rate case treatment of :
charitable contributions :

VERIFIED COMMENTS OF THE STAFF
OF THE ILLINOIS COMMERCE
COMMISSION

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July 22, 2014

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Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (“Commission” or “ICC”) (83 Ill. Adm. Code 200.800) and Section 10-101 of the Public Utilities Act (the “PUA” or “Act”), respectfully submits its Verified Comments and Proposed Rule in the above-captioned proceeding.

I. BACKGROUND

In an Initiating Order dated July 31, 2012, the Commission initiated a proceeding to allow all interested parties an opportunity to present ideas and language that will assist the Commission in formulating a policy on the issue of charitable contributions. (Illinois Commerce Commission On its Own Motion, ICC Order Docket No. 12-0457, 2 (July 31, 2012) (“Initiating Order”).) The following

parties have intervened: Integrys Business Support, LLC, Exelon Business Services Company, Northern Illinois Gas Company d/b/a Nicor Gas Company, Mt. Carmel Public Utility Co., the People of the State of Illinois, Ameren Illinois Company d/b/a Ameren Illinois, Commonwealth Edison Company, Citizens Utility Board, Aqua Illinois, Inc., Illinois-American Water Company, Integrys Energy Group, Inc., MidAmerican Energy Company, and Ameren Services Company. The parties conducted several workshops from October 2012 through December 2013, and Staff circulated several drafts of the Proposed Rule upon which parties informally commented. Staff now files this Proposed Rule, attached to this filing as Attachment A, which addresses some of the comments received by the parties during the informal workshop and comment process. Staff will summarize its rationale for select subsections of the Proposed Rule below.

II. COMMENTS

The purpose of this rulemaking proceeding is to provide a higher standard of information for future initial rate filings to ensure that when rate payers are asked to pay for charitable contributions made by the utility, the review of the prudence of those contributions can be sufficient. (Initiating Order, 1, citing Commonwealth Edison Company, ICC Order Docket No. 11-0721, 99 (May 29, 2012)). The Commission has indicated that a utility's initial filings should contain descriptions of the purpose of each contribution in order to have a complete record, and those descriptions should describe the purpose of the contribution, not merely a generic description of the organization being supported. Initiating Order, 1-2. Staff believes that the proposed rule attached to these Verified Comments accomplishes that purpose.

A. Section __.120 Supplemental Information To Be Provided Regarding Charitable Contributions

Subsection (a)(3). This subsection establishes that the utility must provide a description of why the donor utility believes the charitable contribution amount is reasonable for all charitable contributions to a single entity or organization that total \$1,000 or more in the reporting year for which a utility is seeking recovery from ratepayers in a rate case. A utility seeking recovery of its charitable contributions from its customers through rates bears the burden of showing that all individual donations, as well as the aggregate amount of donations, is reasonable. The Illinois Supreme Court has stated:

. . . the Act prohibits the Commission from ‘disallowing by rule, as an operating expense, any portion of a reasonable donation for public welfare or charitable purposes.’ (Ill. Rev. Stat. 1987, ch. 111 2/3, par. 9 -- 227.) However, section 9 -- 227 does not provide that every donation [a utility] makes to a qualified organization is presumed reasonable. [The utility] still has the burden of showing that a donation is reasonable in amount.

Business and Professional People for the Public Interest et al. v. Illinois Commerce Commission et al., 146 Ill. 2d 175, at 254 (Dec. 16 1991). Thus, the Illinois Supreme Court has made it clear that the utility bears the burden of showing that each individual donation is reasonable. Section __.120(a)(3) provides the utility an opportunity to make such a showing.

B. Section __.130 Information To Be Made Available Regarding Charitable Contributions

This section establishes that the utility seeking recovery must provide certain materials electronically to Commission Staff upon request. This section helps to provide a higher standard of information in future initial rate filings to ensure that when

rate payers are asked to pay for charitable contributions made by the utility, the review of the prudence of those contributions can be sufficient.

C. Section ____ . 140 Required Disclosures

Subsection (a). This subsection requires that for all individual donations to a single entity or organization that equal \$10,000 or more for which a utility may seek recovery as charitable contributions from ratepayers, the utility shall provide a written letter to that entity or organization from the utility that discloses the following Section 9-227 language:

A written statement indicating that the utility may seek recovery of the cost of the donation through rates, and

A written request by the utility that any public recognition given by the entity or organization to the utility for a charitable contribution from the utility should specify in a clearly visible format that the utility has requested that, to the extent allowed by Illinois law, the donation be funded by its customers.

The purpose of this provision is to increase transparency. The recognition for philanthropic activities, such as a utility's donations to charitable organizations, should be bestowed upon the individual or individuals responsible for the funding of such a donation. If the utilities' customers are forced to fund these donations through the rates they pay, then it is the customers, and not the utilities, to which recognition should be given. Utilities would not be subject to this requirement for donations funded by shareholders.

Subsection (b). This subsection requires utilities to inform its customers through bill inserts and press releases, following newly ordered rates, the amount of charitable contributions that customers are funding. Charitable contributions represent a

discretionary expense that is unnecessary for the provision of utility delivery service. In the interest of fairness and transparency, customers should be made aware of the amounts they are paying for the utilities' discretionary donations.

D. Section ____150 Future test year Rate Filings

This section establishes parameters for information required in the event that a utility uses a future test year in a rate case. This section states that in such cases, the utility shall provide the information in Section __.120 for each of the three most recently completed consecutive calendar years immediately preceding the test year for which actual data are available, provided, however, that for those past calendar years, this requirement does not create additional information requirements that did not exist prior to the effective date of the rule for those particular years. This section is also intended to provide a higher standard of information in future initial rate filings to ensure that when rate payers are asked to pay for charitable contributions made by the utility, the review of the prudence of those contributions can be sufficient.

E. Section __.160 Disclosures Regarding Donations or Charitable Contributions made in compliance with the requirements of Article IX and Section 16-108.5(b-10).

This section is intended to ensure consistency with the Act and to prevent any duplication of rate recovery or any prohibited recovery through rates. Specifically, the section establishes that in connection with any donation by a participating utility, as defined in Section 16-108.5(b-10) of the Act, the participating utility shall, in its formula rate filings under Section 16-108.5 of the Act, provide to Staff a sworn statement that none of the donations made in compliance with the requirements of Section 16-108.5(b-10) are included in the request for rate recovery, and in connection with any charitable contribution by a public utility, the public utility in its rate case must provide

to Staff a certification that the charitable contribution does not have: (i) a lobbying, political, or any other election related purpose pursuant to Section 9-224 of the Act, 220 ILCS 5/9-224, or (ii) a promotional, political, institutional or goodwill advertising related purpose pursuant to Section 9-225 of the Act, 220 ILCS 5/9-225. This provision is necessary in order to ensure that any related rate recovery conforms to the Act and that the review of the prudence of the contributions can be sufficient.

III. CONCLUSION

Staff recommends that the Commission approve Staff's recommendations to its Proposed Rule made herein.

Respectfully submitted,

/s/

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July 22, 2014

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION

PART ____

DONATIONS OF UTILITIES

SUBPART A: GENERAL

Section	
____.10	Authority
____.20	Scope
____.30	Construction of this Part

SUBPART B: INFORMATION REQUIREMENTS

Section	
____.100	Applicability
____.110	Definitions
____.120	Information to be provided in a rate filing
____.130	Information to be made available
____.140	Required disclosures
____.150	Future test years
____.160	Disclosures Regarding Donations or Charitable Contributions made in compliance with the requirements of Article IX and Section 16-108.5(b-10)

SUBPART A: GENERAL

Section ____ .10 Authority

AUTHORITY: Authorized by Article IX of the Public Utilities Act [220 ILCS 5/9-101 et seq.], including but not limited to Sections 9-227 of the Public Utilities Act [220 ILCS 5/9-227], 9-101 of the Public Utilities Act [220 ILCS 5/9-101], and Article XVI of the Public Utilities Act [220 ILCS 5/16-101 et seq.].

SOURCE: Adopted at 34 Ill. Reg. _____, effective _____.

Section ____ .20 Scope

This Part establishes supplemental requirements of the Commission applicable to those public utilities that, pursuant to the Act, seek recovery of the costs of donations (as operating expenses)

through rates or other charges or classifications. This Part requires such public utilities to provide certain information in rate cases to supplement the requirements included in, without limitation, Title 83 Illinois Administrative Code Section 285.3070 Schedule C-7 Charitable Contributions, to ensure that (i) such donations qualify as operating expenses for which ratepayer recovery is appropriate under the Act and (ii) the information provided to the Commission for its review of the prudence and reasonableness of such donations is (a) sufficient in quality and detail; and (b) supported in the record of the rate case. This Part governs practices and procedures to implement these requirements.

Section __.30 Construction of This Part

This Part shall not be construed to eliminate or diminish any Commission order or rule applicable to donations by public utilities under the Act but rather shall be construed to supplement any such order or rule, including, without limitation, Title 83 Illinois Administrative Code Section 285.3070 Schedule C-7 Charitable Contributions.

SUBPART B:

Section __.100 Applicability

This rule shall apply to all public utilities seeking recovery of the cost of donations through rates or other charges or classifications pursuant to the Act.

Section __.110 Definitions

Unless otherwise defined, the following terms as used in this Part shall have the following meanings:

“Act” means the Public Utilities Act [220 ILCS 5/1-101 et seq.].

“Charitable contribution” means any and all donations proposed to be an operating expense pursuant to the Act or any applicable orders or rules of the Commission including, without limitation, Section 9-227 of the Act and Title 83 Illinois Administrative Code Section 285.3070 Schedule C-7 Charitable Contributions.

“Commission” means the Illinois Commerce Commission.

“Donation” means a contribution made by a public utility to an organization or entity that purports to be engaged in the practice of promoting the public welfare or supporting charitable

scientific, religious, or educational purposes including, without limitation, charitable contributions.

“Management” means members of the board of directors and officers of the parent company or companies, and of the public utility and any employee of the parent company or companies and of the public utility, who participate in the selection or approval of public utility donations.

“Parent company” means any corporation holding the power to vote either (1) a majority of the voting capital stock of a public utility or (2) a majority of the voting capital stock of another company that holds the power to vote a majority of the voting capital stock of such public utility.

“Public utility” or “utility” has the same meaning ascribed to the term “public utility” in Section 3-105 of the Act [220 ILCS 5/3-105].

For purposes of this part, “rate case” means any rate proceeding filed under Articles IX or XVI of the Act or in connection with any other applicable recovery mechanism, including Riders.

Section __.120 Supplemental Information To Be Provided Regarding Charitable Contributions

a) To assist the Commission in evaluating the prudence and reasonableness of any charitable contribution, for all charitable contributions to a single entity or organization that total \$1,000 or more in the reporting year for which a utility is seeking recovery from ratepayers in a rate case, the utility must provide, simultaneously along with the information required to be provided in Schedule C-7: Charitable Contributions in 83 Illinois Administrative Code Part 285.3070, the following supplemental information provided that, if charitable contributions subject to this section include amounts that the utility contributed under a matching program under which it matches certain employee contributions, then the utility may report such matching contributions as a single aggregate amount separately for each such recipient of matching funds:

- 1) Account number/description used to record each charitable contribution;
- 2) Date and amount of each charitable contribution;
- 3) Description of why the donor utility believes the charitable contribution amount is reasonable;
- 4) Name of the entity or organization receiving the charitable contribution(s);
- 5) Publicly stated mission or a link through which the stated mission may be publically accessed and the physical address of the entity or organization receiving each charitable contribution;

- 6) Indication of whether the entity or organization receiving each charitable contribution is a tax exempt organization under Internal Revenue Code Section 501(c)(3). Notwithstanding this informational requirement, the fact that an entity or organization is or is not a charitable organization under Internal Revenue Code Section 501(c)(3) does not create an inference that each charitable contribution to such entity or organization is per se reasonable or unreasonable;
 - 7) Description of the purpose of each charitable contribution, including (i) whether the utility contributes to the donee organization for general purposes or for a more specific purpose, and (ii) whether the donee entity or organization provides services within the public utility's service territory or within the State of Illinois;
 - 8) Value of any goods or services received by the public utility in return or exchange for each charitable contribution, or portion thereof;
 - 9) Description of any goods or services listed in item (8);
 - 10) Amount of each charitable contribution, if any, allocated to other utility operations (e.g., gas and electric/water and sewer) or jurisdictions (e.g., Illinois and Iowa), along with the identification of that other utility operation or jurisdiction; and
 - 11) Basis of any allocation to other utility operations and jurisdictions, if applicable.
- b) The workpapers supporting Section __.120(a) shall include the following:
- 1) Procedures used by a utility providing multiple utility services (e.g., gas and electric or water and sewer) or serving multiple jurisdictions (e.g., Illinois and Iowa) to allocate any charitable contribution to each utility service provided or jurisdiction served;
 - 2) Description or copy of a utility's governance and procedures for selecting charitable contribution recipients and granting charitable contributions;
 - 3) List of members of management that serve on boards of directors or boards of trustees of the entity or organization that received a charitable contribution; and
 - 4) Sworn statements required by Section __.160, if applicable.

Section __.130 Information To Be Made Available Regarding Charitable Contributions

In any rate case proceeding involving a charitable contribution, the utility seeking recovery shall make the following materials available electronically to the Commission Staff upon request:

- 1) Written confirmation (which may be in the form of a receipt or a letter or other written communication) from the entity or organization receiving the charitable contribution showing the name of the entity or organization that received the charitable contribution, the name of the utility that made the charitable contribution, the date the charitable contribution was made, and the amount of the charitable contribution;
- 2) Copies of the letters that accompany the payment of any charitable contribution to entities receiving the charitable contribution required by Section __.140;
- 3) For all donations to a single organization or entity that are less than \$1,000 for the reporting year for which a utility is seeking recovery from ratepayers in a rate case, a spreadsheet that identifies the date, donee charity, purpose, and amount of each contribution, provided that, if charitable contributions subject to this subsection include amounts that the utility contributed under a matching program under which it matches certain employee contributions, then the utility may report such matching contributions as a single aggregate amount separately for each such recipient of matching funds, and the confirmation and letter prescribed in subsections (1) and (2) may not be available; and
- 4) For all individual donations that are \$10,000 or more for the reporting year for which a utility is seeking recovery from ratepayers in a rate case, written confirmation from the recipient entity or organization stating the intended purpose of the funds received.

Section __.140 Required Disclosures

a. For all individual donations to a single entity or organization that equal \$10,000 or more for which a utility may seek recovery as charitable contributions from ratepayers, the utility shall provide a written letter to that entity or organization from the utility that discloses the following:

- 1) The language of Section 9-227 of the Act (5/9-227);
- 2) A written statement indicating that the utility may seek recovery of the cost of the donation in rates paid by utility customers;

- 3) A written request by the utility that any public recognition given by the entity or organization to the utility for a charitable contribution from the utility should specify in a clearly visible format the following: “[Utility Name] has requested that, to the extent allowed by Illinois law, the donation be funded by the customers of [insert name of the donor utility].”

b. Following a Commission-ordered change in base rates, the utility shall include the notifications specified below that disclose the aggregate amount of charitable contributions that are included in the new base rates which ratepayers will pay in the following forums:

- 1) Bill Inserts appearing in all classes of customer bills with the first billing cycle at the new rates shall include the following statement:

Your bill with the new rates includes a portion of \$XXXX to fund charitable contributions made in [Insert Company name]’s name in accordance with Illinois law under Section 9-227 of the Illinois Public Utilities Act. 220 ILCS 5/9-227.

- 2) Any utility press release(s) in which the utility announces newly ordered rates shall include the following statement:

These new Commission-ordered rates include \$XXX to fund charitable contributions made in [Insert Company name]’s name in accordance with Illinois law under Section 9-227 of the Illinois Public Utilities Act. 220 ILCS 5/9-227.

Section __.150 Future test year Rate Filings

In the event that a utility shall use a future test year in a rate case, the utility shall provide the information in Section __.120 for each of the three most recently completed consecutive calendar years immediately preceding the test year for which actual data are available, provided, however, that for those past calendar years, this Section shall not be interpreted to create additional information requirements that did not exist prior to the effective date of this rule.

Section __.160 Disclosures Regarding Donations or Charitable Contributions made in compliance with the requirements of Article IX and Section 16-108.5(b-10)

In connection with any donation by a participating utility, as defined in Section 16-108.5(b-10) of the Act, the participating utility shall, in its formula rate filings under Section 16-108.5 of the Act, provide to Staff a sworn statement that none of the donations made in compliance with the requirements of Section 16-108.5(b-10) are included in the request for rate recovery; and

in connection with any charitable contribution by a public utility, the public utility in its rate case shall provide to Staff a certification that the charitable contribution does not have: (i) a lobbying, political, or any other election related purpose pursuant to Section 9-224 of the Act [220 ILCS 5/9-224]; or (ii) a promotional, political, institutional or goodwill advertising related purpose pursuant to Section 9-225 of the Act [220 ILCS 5/9-225].

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

VERIFICATION

I, Scott Tolsdorf, Accountant, in the Financial Analysis Division of the Illinois Commerce Commission, being first duly sworn upon oath, state that I am familiar with the facts and matters set forth in the Verified Comments attached hereto, and that the same are true and correct to the best of my knowledge, information and belief.



Scott Tolsdorf

Subscribed and sworn to before me
This 21st day of July, 2014.



NOTARY PUBLIC

