

**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	)	

**CITIZENS UTILITY BOARD RESPONSE TO STAFF MOTION FOR STAY**

In accordance with the Rules of Practice of the Illinois Commerce Commission (“ICC” or “Commission”), Section 200.190 (83 Ill. Admin. Code 200.190), and the schedule set by the Administrative Law Judge (“ALJ”) in his April 9, 2015 ruling, the Citizens Utility Board (“CUB”) hereby submits its Response to the Motion for Stay, which was included in the April 1, 2015 Reply Brief on Exceptions (“RBOE”) of the Staff of the ICC (“Staff”). For the reasons set forth below, CUB respectfully requests that Staff’s motion be denied.

1. In its Reply Brief on Exceptions, Staff moved for a stay of this proceeding pending the outcome of Senate Bill 2028, proposed legislation to amend Section 9-227 of the Public Utilities Act. Staff’s motion states that it was made in an effort to avoid prematurely moving into the First Notice period, which would begin the one-year statutory clock pursuant to 5 ILCS 100/5-40(e). Staff RBOE at 25.

2. Senate Bill 2028 (“SB 2028”) was introduced by Illinois state senator Dan Duffy. Senator Duffy previously sent a letter to Chairman Sheahan (filed on e-Docket on February 25, 2015 as an *ex parte* communication from an interested party) expressing concern about ratepayer recovery of utility charitable contributions. Memorialization of Ex Parte Communication from Interested Party, February 23, 2015 with Attachment.

3. SB 2028 was filed March 11, 2015 and referred to the General Assembly Assignments committee (pursuant to Senate Rule 3-6). The bill proposes to amend Section 9-227 of the Public Utilities Act, 220 ILCS 5/9-227 as follows (shown below in redline format):

Sec. 9-227. It shall not be proper for the Commission to consider as an operating expense, for the purpose of determining whether a rate or other charge or classification is sufficient, donations made by a public utility for the public welfare for charitable scientific, religious or education purposes, unless provided that such donations are reasonable in amount and are determined by the Commission to be in the best interest of ratepayers. In determining the reasonableness of such donations, the Commission may not establish, by rule, a presumption that any particular portion of an otherwise reasonable amount may not be considered as an operating expense. The Commission shall disallow ~~be prohibited from disallowing~~ by rule, as an operating expense, any portion of a ~~reasonable~~ donation for public welfare or charitable purposes ~~that is not in the best interest of ratepayers.~~ Any such donation must be publicly disclosed to the Commission within 10 business days after a public utility makes such a donation, including the name and address of each recipient and the amount of each donation. The Commission shall make this information available on its website.

4. Pursuant to Senate Rule 3-8(a) (Senate Resolution 0002 of the State of Illinois 99th General Assembly, excerpts attached here as Attachment 1), the Assignments Committee may refer any resolution to a committee. Pursuant to Senate Rule 2-10, the Senate President may establish deadlines for legislative actions. Such a schedule was set, and all substantive Senate bills were required to be moved out of their assigned committees by March 27, 2015 in order to move forward. See [www.ilga.gov/senate/schedules/2015\\_Session\\_Calendar](http://www.ilga.gov/senate/schedules/2015_Session_Calendar), attached here as Attachment 2. Not only was SB 2028 not out of an assigned committee by the March 27, 2015

deadline, but it was not even assigned to a committee by that deadline. *See* Bill Status of SB 2028, retrieved April 9, 2015, attached here as Attachment 3.<sup>1</sup>

5. Given the above circumstances, it is very unlikely that SB 2028 and the related amendments to Section 9-227 will pass. Thus, there is no need to hold this matter in abeyance “pending the outcome of the proposed amendments,” as proposed by Staff, because the outcome is almost certainly that the statute will not change.

6. Even if a circumstance arose where the language of the proposed amendment is somehow resurrected, in SB 2028 or another bill during this legislative session, there is no need to delay a Commission Final Order on the Proposed Rule or First Notice period. The First Notice Period lasts at least 45 days. 5 ILCS 100/5-40(b) and (e). The First Notice Period commences on the first day the notice appears in the Illinois Register. 5 ILCS 100/5-40(b). During that time, the applicable agency accepts comments from interested persons, and may hold public hearings on the proposed rulemaking. *Id.* After the First Notice Period, the agency shall provide notice of the rulemaking, including any modifications proposed by the agency, to the Joint Committee on Administrative Rules (“JCAR”), thus terminating the First Notice and commencing the Second Notice Period. 5 ILCS 100/5-40(c). The Second Notice period generally lasts for 45 days, but may be extended an additional 45 days. *Id.* During the Second Notice period, JCAR may make substantive changes to a proposed rule in response to objections or suggestions to JCAR. *Id.* At the expiration of the Second Notice period, JCAR may: (1) issue a Certificate of No Objection, in which case the rule may be immediately published as submitted to JCAR in the Illinois Register and adopted, or (2) file a recommendation for changes to the rule, to which the agency may respond within 90 days or adopt. *Id.* In any event, a rule must be adopted within one year

---

<sup>1</sup> The Senate President may schedule alternative deadlines for any legislative action pursuant to written notice filed with the Senate Secretary, pursuant to Senate Rule 2-10(e). However, such an extraordinary action seems unlikely, given that the resolution was not even assigned to a committee, much less passed out of that committee.

of the commencement of the First Notice period. 5 ILCS 100/5-40(e). In sum, even once First Notice period commences, there is still a year-long period during which the Commission or any party may propose changes to the proposed rule, should legislative amendment necessitate such changes.

7. If the legislative amendments contemplated by SB 2028 are passed, they are such that the one-year period contemplated by 5 ILCS 100/5-40 should be ample time for the Commission or the parties to express their opinions, and have those taken into account by JCAR, before the rule is adopted. Furthermore, the proposed amendment consists of two primary changes: it adds a requirement that charitable contributions are only allowable if they are determined to be in the best interest of ratepayers, and requires public disclosure of charitable contributions on the ICC and utility websites. Neither of those changes affects the content of the Proposed Rule.

8. This rulemaking was initiated on July 31, 2012 – nearly three years ago. It was initiated to “develop rules to provide a higher standard of information for future 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 at 2. The longer the period of time before uniform rules that satisfy the need for that higher standard of information are in place, the greater the potential harm to ratepayers, the longer the uncertainty for utilities as to what information the Commission requires in order to review charitable contributions, and the longer the Commission expends unnecessary resources during each individual utility rate case because of a lack of uniformity among the utilities.

9. The fact that the outcome of SB 2028 has already been decided by it failing to advance through the legislative process, the ability for the Commission or JCAR to modify the rule even once the First Notice Period has commenced, and the detriment all parties suffer from the lack of

the implementation of the Proposed Rule all suggest that it is unnecessary to delay this proceeding as proposed by Staff.

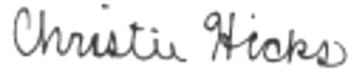
**CONCLUSION**

WHEREFORE, CUB respectfully requests that the Commission deny Staff's Motion for Stay.

Dated: April 9, 2015

Respectfully Submitted,

THE CITIZENS UTILITY BOARD



Christie Hicks, Senior Attorney

309 W. Washington, Suite 800

Chicago, IL 60606

Telephone: 312-263-4282

Fax: 312-263-4329

[crhicks@citizensutilityboard.org](mailto:crhicks@citizensutilityboard.org)