

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AMEREN ILLINOIS COMPANY)	
d/b/a Ameren Illinois,)	
Petitioner)	
)	
)	ICC Docket No. 16-0262
Rate MAP-P Modernization Action Plan –)	
Pricing Annual Update Filing)	

**REPLY BRIEF OF
THE PEOPLE OF THE STATE OF ILLINOIS**

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October 11, 2016

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The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois (“AG” or “the People”), hereby file their Reply Brief in the above-captioned Illinois Commerce Commission (“Commission” or “ICC”) proceeding, pursuant to Section 200.800 of the Commission’s Rules, 83 Ill. Admin. Code § 200.800, and the schedule set by the Administrative Law Judge.

I. INTRODUCTION

A. Overview

This Reply Brief responds to certain arguments made by Ameren Illinois Company (“Ameren,” “the Company,” or “AIC”) in its Initial Brief filed on September 26, 2016, related to the recoverability of certain 2015 advertising expenditures under Sections 16-108.5(d) and 9-225 of the Public Utilities Act. The People’s failure to respond to other arguments made by Ameren in its Initial Brief or arguments made in other parties’ Initial Briefs should not be interpreted as agreement or disagreement with those other arguments.

B. Legal Standard

As discussed in the People’s Initial Brief, this docket involves Ameren’s annual formula rate update, filed on April 15, 2016, under the Energy Infrastructure Modernization Act (“EIMA”), 220 ILCS 5/16-108.5, enacted as Public Act 97-0616 on October 27, 2011 and amended effective May 22, 2013 by Public Act 98-0015.

The EIMA subsection providing for annual formula rate updates provides that each “filing shall include relevant and necessary data and documentation for the applicable rate year that is consistent with the Commission’s rules applicable to a filing for a general increase in rates or any rules adopted by the Commission to implement this Section.” 220 ILCS 5/16-108.5(d)(3). Importantly, EIMA did *not* change the Commission’s authority to investigate and review a utility’s costs to assure that they are prudent and reasonable, authorizing the Commission to:

...enter upon a hearing concerning the *prudence and reasonableness of the costs incurred by the utility* to be recovered during the applicable rate year that are reflected in the inputs to the performance-based rate derived from the utility’s FERC Form 1...*The Commission shall apply the same evidentiary standards, including, but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility, in the hearing as it would apply in a hearing to review a filing for a general increase in rates under Article IX of this Act.*

220 ILCS 5/16-108.5(d)(3) (emphasis added). Accordingly, Ameren maintains the burden of proving that its requested rates are just and reasonable. 220 ILCS 5/9-201(c).

A finding of imprudence and unreasonableness must be based on substantial evidence, meaning "more than a mere scintilla; however, it does not have to rise to the level of a preponderance of the evidence. It is evidence that a reasoning mind would accept as sufficient to support a particular conclusion.” *Commonwealth Edison Co. v. Illinois Commerce Comm’n*, 405 Ill.App.3d 389, 398 (2010) (internal quotations and citations omitted). Costs that are unnecessary to the provision of service, or that the utility has not justified in amount are not

reasonable or prudent. *Id.* (employee costs related to the merger activities of the utility's parent not necessary to utility service, and the position that the employees worked on the merger for "free" was not credible).

II. OPERATING REVENUES AND EXPENSES

A. Contested Issues

- 1. Ameren Services Company Charges**
- 2. Attorney General Advertising Expense Adjustments**

i. Introduction

As discussed in the People's Initial Brief, after certain concessions by Ameren during the course of testimony, the remaining disputed advertisements identified by AG witness Michael L. Brosch as not recoverable comprise \$169,674 of jurisdictional expenditure during 2015. These advertisements are organized into the following categories:

- Avian Protection Program – Advertisement Nos. 5, 6 & 7
- Respect for Employees/Diversity – Advertisement Nos. 32-40, 42, 43, 54, 105, 300 & 301
- Reliability Improvements – Advertisement Nos. 18.2, 22, 23 & 29

Ameren argues in its Initial Brief that the various disputed advertisements "were distributed to inform and educate customers on the underlying programs and related benefits." AIC IB at 24. But, as the AG showed in its Initial Brief, the evidence does not support this contention. Moreover, it should be generally noted that Ameren made no effort to undertake a frank, close reading of each disputed advertisement, as the People did in their Initial Brief.¹ Instead, Ameren offered only conclusory statements, based on similar testimony from its witness

¹ See AG IB at 5-20.

Mr. Kennedy, for each advertisement category, apparently applicable to all advertisements in the grouping without regard to each advertisement's specific content. While the People offered thirteen pages of analysis discussing the specific disputed advertisements, Ameren offered only four² (AIC IB at 24-27). The Commission should undertake the same careful analysis of the advertisements; while the advertisements are grouped under three themes, each can be considered individually.

ii. Legal Standard

As noted above in part I.B of this AG Reply Brief, the Commission's assessment of the prudence and reasonableness of electric utilities' expenses incurred under EIMA is based on traditional Article IX standards that preceded EIMA.³ The legal standard for recovery of advertising expenses in this proceeding thus arises from Section 9-225(2) of the Act, which allows recovery of advertising expenditures found to be "in the best interest of the Consumer" or authorized under several specific enumerated categories in Section 9-225(3). Section 9-225(2) also prohibits recovery of "any direct or indirect expenditures for promotional, political, institutional or goodwill advertising."⁴ Goodwill advertising is defined in Section 9-225(1)(d) as "any advertising either on a local or national basis designed primarily to bring the utility's name before the general public in such a way as to improve the image of the utility or to promote controversial issues for the utility or the industry."⁵

² Ameren's Initial Brief also contains some preambulatory discussion of its general approach to advertisements in annual electric formula rate update cases and in this case, at pages 21-23.

³ 220 ILCS 5/16-108.5(d) ("The Commission shall apply the same evidentiary standards, including, but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility, in the hearing as it would apply in a hearing to review a filing for a general increase in rates under Article IX of this Act.").

⁴ 220 ILCS 5/9-225(2).

⁵ 220 ILCS 5/9-225(1)(d).

The Commission last year stated the legal burdens for proving a particular advertisement to be a recoverable expense:

The Commission also notes that the burden to demonstrate the reasonableness of a particular expense is on the utility proposing the expense, not the intervenors. *People ex rel. Hartigan [v. Illinois Commerce Comm'n]*, 117 Ill.2d [120, 135 (1987)]. However, the party proposing the adjustment to a “goodwill” advertisement must show that “the promotional aspect of the advertisement outweighs the message of the advertisement.” See *Commonwealth Edison Co.*, ICC Order Docket No. 11-0721 (May 29, 2012) at 102. In other words, while the burden to establish the reasonableness of an expense is initially on the utility, it shifts to the party proposing the adjustment, in this case the AG, to establish that the ads were “designed primarily” to improve the image of the utility.⁶

iii. Discussion of Advertisements

a. Avian Protection Program

(Advertisement nos. 5-7⁷, totaling \$11,753 of jurisdictional expense)

Ameren argues that these advertisements qualify as recoverable under the “service interruptions, safety measures or emergency conditions” prong of Section 9-225.⁸ AIC IB at 24. To recap, advertisements 5 and 6 serve to advise ratepayers that the Company has installed avian protective equipment within its distribution facilities.⁹ Advertisement No. 6 additionally advises ratepayers that Ameren is proud to support the conservation efforts of the Illinois Raptor Center, the Treehouse Wildlife Center, and the World Bird Sanctuary.¹⁰ Advertisement No. 7 features images of various birds with the caption “Protecting Birds of Prey,” with a small Ameren logo

⁶ Order, Docket No. 15-0305, December 9, 2015, at 46.

⁷ AG Ex. 1.4 at 1-3.

⁸ 220 ILCS 5/9-225(3)(c).

⁹ AG Ex. 1.0 at 9:236-238.

¹⁰ *Id.* at 9:238-10:240.

shown in the corner of each image. Ameren argues that these “public education” efforts can serve the following purposes:

- Public education in this area increases awareness of the dangers of bird interference;
- Public education explains to consumers the impact of compliance on construction and maintenance of facilities;
- Public education warns¹¹ AIC and customers of governmental fines for actions impacting protected or endangered species;
- Public education provides details on proactive measures undertaken to minimize the environmental, safety and reliability risks associated with bird mortality, collisions, and nesting.

AIC IB at 24-25 (citing AIC Ex. 11.0 at 12:269-13:274).

As to the second of those points, it is important to note that *none* of Advertisements 5, 6, or 7 explain the impact of avian protection compliance upon construction and maintenance of distribution facilities. Advertisement 5 and 6 merely illustrate what structures or materials are used in the facilities, or – at best for Ameren’s argument – standards for spacing of wires, rather than construction process issues that members of the public will find of interest. Moreover, as to the third of these points, none of the three implicated advertisements educate customers on how to avoid harming endangered birds, which presumably could help to reduce the risk of governmental fines.

The first and fourth of Ameren’s justifications are also unavailing. Ameren’s Advertisement Nos. 5 and 6 show Ameren’s distribution line equipment intended to protect birds, but say very little regarding the dangers of bird interference – to the electrical system, the environment, nearby property, or nearby humans. Advertisement No. 6 suggests in one place that birds perching on an electric pole risk electrocution, but does not state how that would affect

¹¹ The language in AIC witness Kennedy’s testimony speaks of “protecti[ng]” AIC and customers “*from* governmental fines, “ while AIC’s Initial Brief now speaks of “*warn[ing]*” AIC and customers “*of* governmental fines,” a subtle but still significant (and unsupported by the record) change in meaning.

Ameren's infrastructure. Another part of Advertisement No. 6, under the heading "WILDLIFE EDUCATION TAKES FLIGHT," states that Ameren *will* educate young people about the dangers of power lines at future outreach events held with various conservation organizations, but does not directly state anything about those dangers or announce the schedules of the outreach events. Advertisement No. 7 merely shows various images of birds with the caption "Protecting Birds of Prey," without any explanation of how they could be endangered by electric distribution facilities or what "proactive measures" Ameren may be taking to protect them. The first and fourth justifications proffered by the Company clearly do not apply to this advertisement, however charismatic the birds may appear.

Moving beyond the four justifications outlined above, Ameren argues that this explication of physical avian protection measures is a legitimate business purpose because various public and non-profit entities have asked Ameren to "educate attendees" on these topics. AIC IB at 25. The Company does not, however, present any evidence of these requests from outside entities, and there was no such evidence in the record, so it is difficult to evaluate the accuracy of these assertions.

More fundamentally, it is not clear why these advertisements should be recoverable expenses under Section 9-225(3)(c) of the Act, which allows recovery of goodwill-related advertising expenses if they are for "advertising regarding service interruptions, safety measures or emergency conditions." Ameren has cited *no* evidence showing how the Avian Protection Program advertisements are linked to service interruptions, and none showing how electrocutions or other accidents involving birds, which are undeniably tragic, could cause safety problems. Advertisement No. 6, in the third bullet point under the "AVIAN PROTECTION PROGRAM" heading, refers to the safety *of birds*, but not of humans; in the fourth bullet point, the

advertisement asserts that bird nests could cause safety problems but provides no further explanation (and neither did Mr. Kennedy). Even if “safety” in Section 9-225(3)(c) were construed to include safety of birds, that provision could not possibly vindicate Advertisement No. 7, which says nothing of any specific safety measures.

For all of these reasons, the Commission should deny recovery of the expenses associated with Advertisement Nos. 5, 6, and 7.

b. Respect for Employees / Diversity

(Advertisement¹² nos. 32-40, 42-43, 54, 105, and 300-301, totaling \$53,004 of jurisdictional expense)

All of these advertisements appear designed to inform the public that Ameren “respect[s]” its employees and values “diversity” among its workforce. Mr. Brosch observed in testimony, though, that “Ameren’s ‘respect’ and ‘diversity’ ads are not needed for any business purpose other than enhancing the public image of the Company.”¹³ He stated generally that Ameren should already be treating employees with respect and avoiding discrimination in employment practices, so advertising that fact does not make news and does not benefit customers.¹⁴

Ameren makes Section 9-229(3)(d) of the Act the lynchpin of its plea for recoverability, arguing that these advertisements concern its “employment opportunities.” AIC IB at 25. Perhaps recognizing that none of the implicated advertisements actually list any employment

¹² AG Ex. 1.6, Parts A-E.

¹³ AG Ex. 1.0 at 11:282-283.

¹⁴ AG Ex. 1.0 at 12:284-288.

opportunities, as the AG observed in its Initial Brief,¹⁵ Ameren argues that the advertisements work to “actively promot[e] and ensur[e] equal opportunity for all employees, prospective employees and the public at large.” AIC IB at 25 (citing AIC Ex. 11.0 at 6). Ameren also offers the puzzling non-sequiter, reflecting a point in Mr. Kennedy’s testimony,¹⁶ that the Commission itself has an office dedicated to promoting diversity within the Commission. AIC IB at 25. Ameren, though, did not point to any advertising the Commission has disseminated about its own diversity efforts.

To defend the recoverability of these advertisements, Ameren further describes the disputed “Respect for Employees” advertisements as useful for recruitment and retention of diverse talent. AIC IB at 26. As the People observed¹⁷ in their Initial Brief, though, none of the disputed advertisements in this category tell prospective employees of exactly what sort of skills are valued by the Company or what sort of job openings are available, making them a curious recruitment tool. In short, these “Respect”- and “Diversity”-themed advertisements are purely for goodwill and should be rejected by the Commission as allowable expenses. While respect for employees and a commitment to a diverse workforce that mirrors the community are laudable goals (or achievements, to the extent Ameren has achieved them), they do not need to be advertised.

c. Reliability Improvements

(Advertisement¹⁸ nos. 18.2, 22, 23, and 29, totaling jurisdictional expense of \$104,917)

¹⁵ AG IB at 13-14.

¹⁶ AIC Ex. 11.0 at 16:360-17:362.

¹⁷ AG IB at 16.

¹⁸ AG Ex. 1.7 at 1-6.

Mr. Brosch identified these four advertisements as part of a common theme generically extolling Ameren's reliability improvements. Advertisement No. 18.2 contains various permutations of an internet ad with an image of an Ameren worker and the caption "Improving reliability and saving customers money" or, alternatively, "So the power is there when you need it." Advertisement No. 22 is another set of internet advertisements with image of AIC workers and variations on the phrase "Committed to Improving Reliability." Other advertisements include phrases such as "Working for Bloomington-Normal," with "Investing in" sometimes substituting for "Working for," and other city names used in place of Bloomington-Normal. Advertisement No. 23 is a set of two online video advertisements, with images of Ameren trucks and narration about Ameren's strong reliability and its reliability-themed webpage. Advertisement No. 29 is a print advertisement extolling Ameren's "infrastructure upgrades that will improve reliability and performance" in the Metro East area and its reliability-themed webpage. Notably, the material in Advertisement No. 29 appears to be based on both Ameren's electric *and* gas operations, with imagery of gas pipe and text about the "natural gas delivery system."

Mr. Brosch observed in his testimony that "[i]t should go without saying that an electric utility is dedicated to providing good service and is working on improving reliability with its investments. There is no legitimate business purpose served by placing paid advertising to make such generalized claims, other than enhancing the public perception and reputation of Ameren"¹⁹; moreover, he stated, the advertisements "provide no in-depth explanations of specific infrastructure projects or resulting customer benefits." In last year's Docket No. 15-0305, the Commission disallowed cost recovery for 2014 Ameren radio advertisements that were

¹⁹ AG Ex. 1.0 at 12:300-304.

“incredibly broad, brief, and general”²⁰; for the same reason, the Commission should here disallow the expenses associated with the 2015 Reliability Improvement advertisements. The advertisements appear generally intended to extol Ameren’s strong or improving reliability, without conveying any more specific details, and thus meet the statutory definition of goodwill-related advertising. 220 ILCS 5/9-225(2).

Ameren, though, argues in its Initial Brief that these advertisements have a purpose of “educat[ing] AIC customers on system improvements that are improving overall reliability [...] and saving customers money.” AIC IB at 26 (citing AIC Ex. 11.0 at 22). Ameren further argues that the disputed advertisements “inform customers about the increased spending to install infrastructure improvements to improve reliability in their specific communities.” AIC IB at 26-27 (citing AIC Ex. 11.0 at 24:535-537). Ameren states that its “hope” with these advertisements is to inspire customers to use online resources and customer convenience programs, and to become better informed about distribution grid upgrades. AIC IB at 27 (citing AIC Ex. 11.0 at 24). However, as the People’s detailed discussion above of the advertisements in the record suggests, there is no useful information in the advertisements to educate consumers about reliability improvements, other than the very fact (or assertion) of reliability improvements.

Seeking to rescue these questionable advertisements, Ameren argues that these advertisements “seek a direct response from consumers.” AIC IB at 26 (citing AIC Ex. 11.0 at 24:534-535). A review of the underlying testimony does not shed a lot of light on this puzzling claim; it may refer to the website link contained in two of the advertisements in this category. While the advertisements might constitute an implicit invitation to visit the website, nothing in the advertisements “seek[s] a response,” however. If a response is sought, the question is

²⁰ Order, Docket No. 15-0305, December 9, 2015, at 48.

unstated, making the advertisements wildly ineffective at reaching the purported goal.

Finally, Ameren points to last year's formula rate order²¹ in Docket No. 15-0305, where the Commission found "a need for further education with respect to how EIMA [] infrastructure improvement projects impact customers" and thus allowed recovery of costs for certain advertisements that "explain to energy consumers what improvements are being undertaken." AIC IB at 27. Ameren calls the disputed advertisements here "targeted advertising" that seek to "bridge that gap in knowledge." *Id.* But the advertisements are not "targeted" and do not convey much "knowledge." As the discussion above in this Reply Brief shows, the advertisements here contain only buzzwords like "improving reliability," without any specific explanation beyond that or identification of any particular investment projects. They are broad and general, factors that contributed to the Commission's disallowing similar advertisements in last year's Docket No. 15-0305.²²

Because the advertisements in this category so closely parallel the disallowed expenses in last year's formula rate update proceeding, the associated costs here should also be rejected by the Commission.

iv. Summary

For all the reasons stated above and in the People's Initial Brief, the Commission should disallow recovery of the 2015 jurisdictional expenses associated with Advertisement Nos. 5, 6, 7, 32-40, 42, 43, 54, 105, 300, 301, 18.2, 22, 23, and 29, which together sum to \$169,674. All of these expenses are primarily goodwill-related and thus impermissible under Section 9-225(2) of the Act.

²¹ *Id.*

²² *Id.*

- B. Uncontested or Resolved Issues**
 - C. Recommended Operating Revenues and Expenses**
 - 1. Filing Year**
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- V. RECONCILIATION**
- VI. RECOMMENDED REVENUE REQUIREMENT**

VII. CONCLUSION

For all of the reasons stated in this Reply Brief and in the People's Initial Brief, the People of the State of Illinois respectfully request that the Commission enter an Order consistent with the recommendations in their two Briefs to deny recovery of certain 2015 advertising expenses.

Respectfully submitted,

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