

Prohibited Expenses

May 31, 2023 Policy Manual Version 2.1 Subcommittee Meeting

Presented by Elizabeth Horne, ICC Staff

Energy Efficiency cost recovery is controlled by the Public Utilities Act, Commission rules and the Program Administrators' tariffs on file with the ICC. Subject to the Act, the applicable rules and tariffs, Program Administrators shall explicitly incorporate expenses prohibitions in all vendor contracts (including contracts for vendor subcontractors) that involve costs to be recovered through the Energy Efficiency cost recovery tariff mechanisms. Such expense prohibitions are applicable to utilities and their subcontractors. Prohibited expenses shall not be recoverable from Illinois ratepayers through the Energy Efficiency cost recovery tariff mechanisms. Prohibited expenses shall include but shall not be limited to:

- Direct payment for alcoholic beverages; and
- Marketing of the utility name which fails to relate to or reference either in writing, orally or visually, Energy Efficiency Programs, products or services.

Section 5.4 Prohibited Expenses Policy Manual 2.1

Purpose of Proposed Language Regarding Prohibited Expenses



To increase clarity and certainty for utilities regarding specific expenses not recoverable from ratepayers.



Reduce litigation before the Commission as utilities will be able to identify in advance which expenses should not be financed with ratepayer funds.

Overview of Proposed Changes

ICC Staff proposes the following changes to Section 5.4 Prohibited Expenses:

- 1) Add clarification language to make it clear that the list of prohibited expenses is not intended to be comprehensive or an all-encompassing approach.
- 2) Reinstating the prohibition of complimentary or discounted sports tickets into the policy manual.
- 3) Expanded prohibitions to include tickets to entertainment events, along with complimentary or discounted tickets.

Clarification Change (1)

Adding clarification language so it is clear that the list of prohibited expenses is not intended to be an exhaustive list.

- ▶ **Rationale:** According to the Program Administrators and CES (Consumer and Environmental Stakeholders), it has been concluded that while the Policy Manual provides guidelines for expenditures, it may not encompass every disallowed expense. A note of prudence must be made that even with adherence to the Policy Manual, there is still a possibility of future disallowances.
- ▶ **ICC Final Order Docket No. 15-0487 at 10 (Dec. 16, 2015)**
 - ▶ **Commission Directives:** Final Order states “The Program Administrators and CES explain that there were no other exclusions provided for because the majority of participants agreed that the Policy Manual was not intended to provide an exhaustive list of the excluded expenses nor preclude the possibility of other disallowances in future proceedings.”
 - ▶ PA Response Comments at 20
 - ▶ CES Final Comments at 8-9
- ▶ Language from ICC Final Order Docket No. 15-0487 supports the proposed change:
 - ▶ Adding further clarification to prevent any uncertainties, and to ensure it is clear that the list of prohibited expenses is not intended to be an exhaustive list.

Proposed Language Changes to Policy Manual

5.4 Prohibited Expenses

Energy Efficiency cost recovery is controlled by the Public Utilities Act, Commission rules and the Program Administrators' tariffs on file with the ICC. Subject to the Act, the applicable rules and tariffs, Program Administrators shall explicitly incorporate expense prohibitions in all vendor contracts (including contracts for vendor subcontractors) that involve costs to be recovered through the Energy Efficiency cost recovery tariff mechanisms. Such expense prohibitions are applicable to utilities and their subcontractors. Prohibited expenses shall not be recoverable from Illinois ratepayers through the Energy Efficiency cost recovery tariff mechanisms.

The following list of prohibited expenses is meant to serve as a reference, not an all-inclusive record of prohibited expenses.

Prohibited expenses shall include, but shall not be limited to:

Clarification Change (2)

Reinstating the prohibition of complimentary or discounted sports tickets into the policy manual.

Rationale: Note that including tickets to sporting events does not contribute to the successful implementation of energy efficiency programs. Ultimately, it is important to ensure that all resources are allocated in a way that maximizes the energy efficiency program's performance. This practice does not offer any advantages to ratepayers and may even be perceived as an unnecessary expenditure.

- ▶ **ComEd ICC Final Order Docket No. 10-0467 at 111 (May 24, 2011)**
 - ▶ **Commission Directives:** Final Order states “The Commission agrees with the proposal by Staff and the AG/CUB to remove all of the costs associated with professional sporting activities from ComEd’s proposed revenue requirement.”
 - ▶ **See also, Ameren ICC Final Order Docket No. 18-0913 at 3 (May 8, 2018)**

Language from ICC Final Order Docket No. 10-0467 & Docket 18-0913 supports the proposed change:

- ▶ Reinstating the prohibition in the policy manual regarding the provision of complimentary or discounted sports tickets.

“ Funds were not available for a Fourth of July fireworks display held by a Navy station which was justified as a community relations measure. While good community relations may be desirable for all government agencies, fireworks are not necessary to the operation and maintenance of the Navy.

”

B-205292, June 2, 1982.

GAO-17-797SP

Principles of Federal Appropriations Law

Fourth Edition, 2017 Revision

Clarification Change (3)

Expanded prohibitions to include complimentary or discounted tickets to **entertainment events**.

- ▶ **Rationale:** It is important to emphasize that tickets to entertainment events is not at all essential for the implementation of successful energy efficiency programs. Additionally, this practice does not yield any advantages for ratepayers and can be regarded as an indulgence that is not required.
- ▶ **Nicor, ICC Final Order Docket No. 12-0601 at 13-14 (July 28, 2015)**
 - ▶ **Commission Directives:** Final Order states “[T]he Commission finds these general team-building type rationalizations insufficient to justify luxury entertainment expenses.”
- ▶ Language from ICC Final Order Docket No. 12-0601 supports the proposed change:
 - ▶ Prohibiting complimentary or discounted tickets to entertainment events.

Other Jurisdictions

Focus on Energy Policy Manual 2013, POLICY: Costs and Invoices, Section VIII. Specific Non-Allowable Costs on pages 47-48 which includes among other things, Alcoholic Beverages and Entertainment (Costs of amusement, diversion, social activities, ceremonials, and costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities are non-allowable.).

Section VIII. Specific Non-Allowable Costs: Information on specific non-allowable costs is listed below. The following are general guidelines for expenses that will not be reimbursed by the Public Service Commission. Non-allowable expenses included but are not limited to the following:

8. **Alcoholic Beverages:** Costs of alcoholic beverages are non-allowable and must be credited from other indirect costs in computing the overall individual cost rates.
9. **Entertainment:** Costs of amusement, diversion, social activities, ceremonials, and costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are non-allowable.
10. **Marketing and Public Relations Costs:** The cost of advertising, marketing and public relations designed solely to promote the contracted organization are non-allowable under any circumstances.

Proposed Language Changes
(Proposed Effective Date for Policy Manual: January 1,
2024)

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- Direct payment for alcoholic beverages; and
- **Tickets to Sports Events**
- Marketing of the utility name which fails to relate to or reference either in writing, orally or visually, Energy Efficiency Programs, products or services.
- **Event Tickets for Entertainment**

Section 5.4
Prohibited Expenses
Policy Manual 2.1
Proposed Language



Questions?