

**Prohibited Expenses (Inducements) Proposed Policy Change from ICC Staff (9/5/18)  
Policy Manual Version 2.0**

<b>Policy Issue</b>	<p><i>Describe the policy / issue to be discussed. Why does this policy require inclusion in the Policy Manual Version 2.0? What unresolved policy issue(s) will be resolved by inclusion in the Policy Manual Version 2.0?</i></p> <p>ICC Staff proposes to change the name of Section 5.4 Inducements to Section 5.4 Prohibited Expenses and to modify the language of the section to make it clear that the section is not related to the tracking and reporting of “inducements” as a cost category, rather the purpose of the section is to specify certain prohibited expenses that shall not be recoverable from ratepayers. In addition, ICC Staff proposes expanding the list of prohibited expenses to include complimentary or discounted tickets to entertainment events, marketing of the utility name without direct connection to energy efficiency programs, incentive compensation unrelated to energy efficiency, and incentive compensation tied to financial metrics.</p> <p>This policy requires inclusion in Policy Manual Version 2.0 in order to provide greater clarity and certainty for utilities as to certain specific expenses that are not recoverable from ratepayers. In addition, this policy is intended to reduce litigation before the Commission because the utilities will know in advance certain categories of expenses that they should not fund with ratepayer money.</p>
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<p><b>Proposed Resolution</b></p>	<p><i>Describe the proposed resolution for this policy / issue, including any next steps that may be necessary.</i></p> <p><i>Note: After this policy issue is discussed at the Policy Manual Subcommittee, you may be assigned to draft proposed policy language for review by the Subcommittee.</i></p> <p>ICC Staff proposes the following changes to Section 5.4 Inducements:</p> <ol style="list-style-type: none"> <li>1. Renaming Section 5.4 Inducements to Prohibited Expenses and modifying the language to make it clear that the section is not related to the tracking and reporting of “inducements” as a cost category, rather the purpose of the section is to specify certain prohibited expenses that shall not be recoverable from ratepayers.</li> <li>2. Adding clarification language so it is clear that utility employees are also covered under the prohibition.</li> <li>3. Adding clarification language so it is clear that the list of prohibited expenses is not intended to be an exhaustive list.</li> <li>4. Expanded prohibitions to include complimentary or discounted tickets to entertainment events, marketing of the utility name without direct connection to energy efficiency programs, incentive compensation unrelated to energy efficiency, and incentive compensation tied to financial metrics.</li> </ol> <p>While the summary of the parties positions concerning Section 5.4 in the Docket No. 15-0487 Order may have clarified the first three items in the list above, it seems appropriate to go ahead and clarify the text in the section to align with the agreements outlined in the 15-0487 Order in order to help minimize confusion on this issue in the future. For example, see page 10 of 15-0487 Order “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.” ICC Final Order Docket No. 15-0487 at 10 (Dec. 16, 2015). In addition, see page 11 of 15-0487 Order: “In response to Staff’s assertion that the prohibition embodied in Section 5.4 may be construed to only apply to Program Administrator subcontractors, the Program Administrators and CES emphasize that the language is not ambiguous, clearly applies to Program Administrator employees, and that this is another needless change that would upend the consensus-building process. PA Final Comments at 13; CES Final Comments at 10-11. As set forth in the Policy Manual language, the prohibition in Section 5.4 applies to both the Program Administrators and their subcontractors. Id.” ICC Final Order Docket No. 15-0487 at 11 (Dec. 16, 2015).</p> <p>Rationale for the specific expense prohibitions:</p> <ul style="list-style-type: none"> <li>• Tickets to sports events or other entertainment events are discretionary and extravagances that are not necessary for delivering effective energy efficiency programs and they do not benefit ratepayers.</li> <li>• Expenses that are promotional or goodwill advertising in nature bringing the utility’s logo and name before the public without offering any information or connection to energy efficiency in general or the programs offered by the utility should not be recoverable under the utility’s energy efficiency riders.</li> </ul>
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Only marketing costs directly related to energy efficiency should be recoverable under the energy efficiency riders.

- Incentive compensation costs have to be related to activities and programs approved in the Company's energy efficiency Plan and those costs have to provide a benefit to ratepayers. The customer benefit required to be shown must be related to the incremental energy efficiency employees' efforts not the efforts of other utility employees. Only incentive compensation related to energy efficiency should be recoverable under the energy efficiency riders.
- Incentive compensation costs tied to financial metrics provide no tangible ratepayer benefit and should not be recoverable from ratepayers.

Below is Proposed Replacement Language for Policy Manual Version 2.0:

**5.4 Prohibited Expenses**

**Program Administrators shall explicitly incorporate expense prohibitions in all vendor contracts (including contracts for vendor subcontractors) that involve costs 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**
- **Complimentary or discounted tickets to sport events or other entertainment events**
- **Marketing of the utility name without direct connection to energy efficiency programs**
- **Incentive compensation unrelated to energy efficiency**
- **Incentive compensation tied to financial metrics**

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<p><b>Market Impact</b></p>	<p><i>Describe who this policy / issue impacts. Does this policy impact all Illinois utilities?</i></p> <p>This policy impacts all Illinois utilities who are governed by the Policy Manual as well as their subcontractors.</p>
<p><b>Commission Directive(s) – if applicable</b></p>	<p><i>Has the Illinois Commerce Commission previously addressed this policy or issue? If so, please provide language and specific citations, including the ICC docket number.</i></p> <p>Please see the end of this completed policy manual template for quotes from the ICC Orders. Below are citations related to each specific expense prohibition:</p> <ul style="list-style-type: none"> <li>• <i>Complimentary or discounted tickets to sport events or other entertainment events:</i> Nicor, ICC Final Order Docket No. 12-0601 at 13-14 (July 28, 2015); ComEd, ICC Final Order Docket No. 10-0467 at 111 (May 24, 2011); Nicor, ICC Final Order Docket No. 95-0219 at Section IV(b)(7) (June 20, 1996). In addition, tickets to sporting events are already prohibited as part of Policy Manual Version 1.1 adopted in ICC Docket No. 17-0270.</li> <li>• <i>Marketing of the utility name without direct connection to energy efficiency programs:</i> The Commission has entered an order in ICC Docket No. 16-0456 that approved Ameren and ICC Staff's agreement to remove certain utility name marketing costs from recovery, and the Company has accepted removal of utility name marketing costs in ICC Docket Nos. 17-1190 and 18-1100.</li> <li>• <i>Incentive compensation unrelated to energy efficiency:</i> ComEd, ICC Final Order Docket No. 10-0537 at 24-25 (Oct. 17, 2012).</li> <li>• <i>Incentive compensation tied to financial metrics:</i> Past Commission rulings have been clear and consistent in finding that incentive compensation costs tied to financial metrics provide no tangible ratepayer benefit and should not be recoverable from ratepayers. See Nicor, ICC Final Order Docket No. 04-0779 at 44 (Sept. 20, 2005); North Shore/Peoples, ICC Final Order Docket No. 09-0166/0167 at 58 (Jan. 21, 2010); Nicor, ICC Final Order Docket No. 08-0363 at 28 (March 25, 2009); Illinois American Water Co., ICC Final Order Docket No. 07-0507 at 25 (July 30, 2008).</li> </ul>
<p><b>Statutory Consistency</b></p>	<p><i>Have you reviewed your proposed policy against applicable Illinois statutes? Are there any possible conflicts? If so, please provide a citation and explanation.</i></p> <p>There are no possible conflicts. The references in the energy efficiency statute for cost recovery specifically indicate that those recoverable costs relate to energy efficiency measures, and incentive compensation costs that are unrelated to energy efficiency and marketing of the utility name without direct connection to energy efficiency programs both clearly do not meet this standard. See 220 ILCS 5/8-104(a); 220 ILCS 5/8-104(e-10); 220 ILCS 5/8-103B(a). Furthermore, for electric utilities, current statute prohibits cost recovery of incentive compensation expense that is based on net income or an affiliate's earnings per share. See 220 ILCS 5/16-108.5(c)(4)(A); 220 ILCS 5/8-103B(d)(2)(D)(i).</p>

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**220 ILCS 5/8-103B(a) states:**

It serves the public interest to allow electric utilities to recover costs for reasonably and prudently incurred expenditures for energy efficiency and demand-response measures.

**220 ILCS 5/8-104(e-10) states:**

(e-10) A utility providing approved energy efficiency measures in this State shall be permitted to recover costs of those measures through an automatic adjustment clause tariff filed with and approved by the Commission.

**220 ILCS 5/8-104(a) states:**

It serves the public interest to allow natural gas utilities to recover costs for reasonably and prudently incurred expenses for cost-effective energy efficiency measures.

**220 ILCS 5/8-103B(d)(2)(D)(i) states:**

(D) Permit and set forth protocols, subject to a determination of prudence and reasonableness consistent with Commission practice and law, for the following:

(i) recovery of incentive compensation expense that is based on the achievement of operational metrics, including metrics related to budget controls, outage duration and frequency, safety, customer service, efficiency and productivity, and environmental compliance; however, this protocol shall not apply if such expense related to costs incurred under this Section is recovered under Article IX or Section 16-108.5 of this Act; incentive compensation expense that is based on net income or an affiliate's earnings per share shall not be recoverable under the energy efficiency formula rate;

**220 ILCS 5/16-108.5(c)(4)(A) states:**

(4) Permit and set forth protocols, subject to a determination of prudence and reasonableness consistent with Commission practice and law, for the following:

(A) recovery of incentive compensation expense that is based on the achievement of operational metrics, including metrics related to budget controls, outage duration and frequency, safety, customer service, efficiency and productivity, and environmental compliance. Incentive compensation expense that is based on net income or an affiliate's earnings per share shall not be recoverable under the performance-based formula rate;

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<p><b>Background Research (optional)</b></p>	<p><i>Provide any background research completed in preparing this template, including source references and links, as applicable. How do other jurisdictions address this policy issue? Has ACEEE, NASEO, MEEA or any other national or regional energy efficiency organization addressed this topic? If so, please provide reports and any other relevant sources.</i></p> <p>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.).</p>
<p><b>Additional Information</b></p>	<p><i>Provide additional information, as needed, to assist with understanding the issue and your request to include it in the Policy Manual Version 2.0.</i></p> <p>Please see summary below for each proposed prohibited expense, the rationale for the prohibition, language to support the prohibition from past ICC Orders, and relevant statutory language.</p>

**Complimentary or discounted tickets to sport events or other entertainment events**

<p><b>Prohibited Expense</b></p>	<p><b>Complimentary or discounted tickets to sport events or other entertainment events</b></p>
<p><b>Rationale</b></p>	<p>Tickets to sports events or other entertainment events are discretionary and extravagances that are not necessary for delivering effective energy efficiency programs and they do not benefit ratepayers.</p>
<p><b>Commission Directive(s) – if applicable</b></p>	<p><i>Has the Illinois Commerce Commission previously addressed this policy or issue? If so, please provide language and specific citations, including the ICC docket number.</i></p> <p>Yes. See Nicor, ICC Final Order Docket No. 12-0601 at 13-14 (July 28, 2015); ComEd, ICC Final Order Docket No. 10-0467 at 111 (May 24, 2011); Nicor, ICC Final Order Docket No. 95-0219 at Section IV(b)(7) (June 20, 1996). In addition, tickets to sporting events are already prohibited as part of Policy Manual Version 1.1 adopted in ICC Docket No. 17-0270.</p> <p>"Staff further points to two prior Commission decisions that rejected expenditures of entertainment and sport events in which the Commission determined these expenditures did not benefit ratepayers. As Staff notes, one of the decisions involved the Northern Illinois Gas Company where the Company used similar justifications for entertainment expenditures as Nicor Gas did in the instant proceeding. By the same token, the Commission finds these general team-building type rationalizations insufficient to justify luxury</p>

	<p>entertainment expenses." Nicor, ICC Final Order Docket No. 12-0601 at 13-14 (July 28, 2015).</p> <p>"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. These expenses should not be charged to ratepayers as they are not necessary for the provision of safe and reliable electric service. Accordingly, the adjustment proposed by Staff and the AG/CUB is approved." ComEd, ICC Final Order Docket No. 10-0467 at 111 (May 24, 2011).</p> <p>Nicor, ICC Final Order Docket No. 95-0219 at Section IV(b)(7) (June 20, 1996), (recovery of costs for tickets to sporting events used for company-described purpose of "fostering business relationships and maintaining employee morale" disallowed).</p>
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**Marketing of the utility name without direct connection to energy efficiency programs**

<b>Prohibited Expense</b>	<b>Marketing of the utility name without direct connection to energy efficiency programs</b>
<b>Rationale</b>	Expenses that are promotional or goodwill advertising in nature bringing the utility's logo and name before the public without offering any information or connection to energy efficiency in general or the programs offered by the utility should not be recoverable under the utility's energy efficiency riders. Only marketing costs directly related to energy efficiency should be recoverable under the energy efficiency riders.
<b>Commission Directive(s) – if applicable</b>	<p><i>Has the Illinois Commerce Commission previously addressed this policy or issue? If so, please provide language and specific citations, including the ICC docket number.</i></p> <p>The Commission has entered an order in ICC Docket No. 16-0456 that approved Ameren and ICC Staff's agreement to remove certain utility name marketing costs from recovery, and the Company has accepted removal of utility name marketing costs in ICC Docket Nos. 17-1190 and 18-1100.</p>
<b>Statutory Consistency</b>	<p><i>Have you reviewed your proposed policy against applicable Illinois statutes? Are there any possible conflicts? If so, please provide a citation and explanation.</i></p> <p>There are no possible conflicts. The references in the energy efficiency statute for cost recovery specifically indicate that those costs relate to energy efficiency measures and marketing of the utility name without direct connection to energy efficiency programs clearly does not meet this standard. See 220 ILCS 5/8-104(a); 220 ILCS 5/8-104(e-10); 220 ILCS 5/8-103B(a).</p>

	<p><b>220 ILCS 5/8-103B(a) states:</b> It serves the public interest to allow electric utilities to recover costs for reasonably and prudently incurred expenditures for energy efficiency and demand-response measures.</p> <p><b>220 ILCS 5/8-104(e-10) states:</b> (e-10) A utility providing approved energy efficiency measures in this State shall be permitted to recover costs of those measures through an automatic adjustment clause tariff filed with and approved by the Commission.</p> <p><b>220 ILCS 5/8-104(a) states:</b> It serves the public interest to allow natural gas utilities to recover costs for reasonably and prudently incurred expenses for cost-effective energy efficiency measures.</p>
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**Incentive compensation unrelated to energy efficiency**

<b>Prohibited Expense</b>	<b>Incentive compensation unrelated to energy efficiency</b>
<b>Rationale</b>	Incentive compensation costs have to be related to activities and programs approved in the Company's energy efficiency Plan and those costs have to provide a benefit to ratepayers. The customer benefit required to be shown must be related to the incremental energy efficiency employees' efforts not the efforts of other utility employees. Only incentive compensation related to energy efficiency should be recoverable under the energy efficiency riders.
<b>Commission Directive(s) – if applicable</b>	<p><i>Has the Illinois Commerce Commission previously addressed this policy or issue? If so, please provide language and specific citations, including the ICC docket number.</i></p> <p>Yes. See ComEd, ICC Final Order Docket No. 10-0537 at 24-25 (Oct. 17, 2012).</p> <p>"This Commission has long required a showing of benefit to ratepayers due to AIP to recover incentive compensation cost. In this Docket, the Company had failed to show how the incentive cost it sought to recover relate to energy efficiency or how the AIP had been tailored for ComEd's EE employees." ComEd, ICC Final Order Docket No. 10-0537 at 24 (Oct. 17, 2012).</p> <p>"Because AIP is not tailored to energy efficiency and demand response measures approved in ComEd's Energy Efficiency Plan that are ultimately implemented by ComEd for which ComEd seeks cost recovery through Rider EDA, ComEd is unable to meet the customer benefit standard set forth in past Commission orders." ComEd, ICC Final Order Docket No. 10-0537 at 25 (Oct. 17, 2012).</p>



<b>Statutory Consistency</b>	<p><i>Have you reviewed your proposed policy against applicable Illinois statutes? Are there any possible conflicts? If so, please provide a citation and explanation.</i></p> <p>There are no possible conflicts. The references in the energy efficiency statute for cost recovery specifically indicate that those costs relate to energy efficiency measures and incentive compensation costs that are unrelated to energy efficiency clearly do not meet this standard. See 220 ILCS 5/8-104(a); 220 ILCS 5/8-104(e-10); 220 ILCS 5/8-103B(a).</p> <p><b>220 ILCS 5/8-103B(a) states:</b> It serves the public interest to allow electric utilities to recover costs for reasonably and prudently incurred expenditures for energy efficiency and demand-response measures.</p> <p><b>220 ILCS 5/8-104(e-10) states:</b> (e-10) A utility providing approved energy efficiency measures in this State shall be permitted to recover costs of those measures through an automatic adjustment clause tariff filed with and approved by the Commission.</p> <p><b>220 ILCS 5/8-104(a) states:</b> It serves the public interest to allow natural gas utilities to recover costs for reasonably and prudently incurred expenses for cost-effective energy efficiency measures.</p>
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### Incentive compensation tied to financial metrics

<b>Prohibited Expense</b>	<b>Incentive compensation tied to financial metrics</b>
<b>Rationale</b>	Incentive compensation costs tied to financial metrics provide no tangible ratepayer benefit and should not be recoverable from ratepayers.
<b>Commission Directive(s) – if applicable</b>	<p><i>Has the Illinois Commerce Commission previously addressed this policy or issue? If so, please provide language and specific citations, including the ICC docket number.</i></p> <p>Yes. Past Commission rulings have been clear and consistent in finding that incentive compensation costs tied to financial metrics provide no tangible ratepayer benefit and should not be recoverable from ratepayers. See Nicor, ICC Final Order Docket No. 04-0779 at 44 (Sept. 20, 2005); North Shore/Peoples, ICC Final Order Docket No. 09-0166/0167 at 58 (Jan. 21, 2010); Nicor, ICC Final Order Docket No. 08-0363 at 28 (March 25, 2009); Illinois America Water Co., ICC Final Order Docket No. 07-0507 at 25 (July 30, 2008).</p> <p>"Costs related to incentive compensation are recoverable in rates only if the utility demonstrates tangible benefits to ratepayers. (See, e.g., 03-0403 at 15</p>

	<p>("[T]o recover incentive compensation, the plan must confer upon ratepayers specific dollar savings or other tangible benefits. Furthermore, the degree of benefit that accrues directly to ratepayers, rather than to other stakeholders, is a significant factor in determining whether incentive compensation should be recovered in rates."); 01-0696 at 10 (requiring evidence of "specific dollar savings or any other tangible benefit for the ratepayers"); 01-0432 (Mar. 28, 2002) at 42-43 ("the Commission has generally disallowed such expenses except where the utility has demonstrated that its incentive compensation plan has reduced expenses and created greater efficiencies in operations. ... [I]f a utility is seeking to recover such projected expenses from ratepayers, the utility should demonstrate that its plan can reasonably be expected to provide net benefits to ratepayers.") The utility bears the burden to establish that such tangible benefits accrue to ratepayers, in order to prove that the recovery of incentive compensation costs is just and reasonable. (See 220 ILCS 9-201(c).)" Nicor, ICC Final Order Docket No. 04-0779 at 44 (Sept. 20, 2005).</p> <p>"The Commission agrees with AG witness Efron that when incentive compensation seeks to achieve goals that primarily benefit shareholders, then it is reasonable to require that shareholders bear the cost of that incentive compensation." North Shore/Peoples, ICC Final Order Docket No. 09-0166/0167 at 58 (Jan. 21, 2010).</p> <p>"Recent Commission orders have set forth the requirements that incentive compensation plans demonstrate tangible benefits to ratepayers, and that incentive compensation not be based on shareholder goals." Nicor, ICC Final Order Docket No. 08-0363 at 28 (March 25, 2009).</p> <p>"The Commission has consistently disallowed recovery of payouts that are tied to overall company financial goals." Illinois American Water Co., ICC Final Order Docket No. 07-0507 at 25 (July 30, 2008).</p>
<p><b>Statutory Consistency</b></p>	<p><i>Have you reviewed your proposed policy against applicable Illinois statutes? Are there any possible conflicts? If so, please provide a citation and explanation.</i></p> <p>There are no possible conflicts. See 220 ILCS 5/16-108.5(c)(4)(A); 220 ILCS 5/8-103B(d)(2)(D)(i).</p> <p>220 ILCS 5/8-103B(d)(2)(D)(i) states:</p> <p>(D) Permit and set forth protocols, subject to a</p> <p>determination of prudence and reasonableness consistent with Commission practice and law, for the following:</p> <p>(i) recovery of incentive compensation</p> <p>expense that is based on the achievement of operational metrics, including metrics related to budget controls, outage duration and</p>

frequency, safety, customer service, efficiency and productivity, and environmental compliance; however, this protocol shall not apply if such expense related to costs incurred under this Section is recovered under Article IX or Section 16-108.5 of this Act; incentive compensation expense that is based on net income or an affiliate's earnings per share shall not be recoverable under the energy efficiency formula rate;

**220 ILCS 5/16-108.5(c)(4)(A) states:**

(4) Permit and set forth protocols, subject to a

determination of prudence and reasonableness consistent with Commission practice and law, for the following:

(A) recovery of incentive compensation expense

that is based on the achievement of operational metrics, including metrics related to budget controls, outage duration and frequency, safety, customer service, efficiency and productivity, and environmental compliance. Incentive compensation expense that is based on net income or an affiliate's earnings per share shall not be recoverable under the performance-based formula rate;