Section ___.10 Authority


Section ___.20 Scope

The requirements of this Part shall only apply to the amounts described in paragraph (a) and (b) of this Section that are designated by a Utility as rate case expense and sought to be recovered by the Utility through rates.

a) Amounts expended by a Utility to compensate Outside Counsel and Support Staff and Outside Technical Experts and Support Staff to prepare and litigate a rate case filing.

b) Amounts expended by a Utility to compensate Affiliate Counsel and Support Staff and Affiliate Technical Experts and Support Staff to prepare and litigate a rate case filing.

Section ___.100 Definitions

“Outside Counsel and Outside Technical Expert Compensation” – Costs subject to the Commission’s specific assessment as to justness and reasonableness shall include the following costs for which the Utility seeks recovery as part of rate case expense in a rate case filing:

1) Outside Counsel (attorney) fees, whether billed under an Hourly rate contract, a Flat fee contract, a Not-to-exceed contract, or some other arrangement for compensation not otherwise defined herein, non-attorney Support Staff fees, and reimbursement of miscellaneous incidental expenses.

2) Outside Technical Expert fees, whether billed under an Hourly rate contract, a Flat fee contract, a Not-to-exceed provision, or some other arrangement for compensation not otherwise defined herein, Support Staff fees, and reimbursement of miscellaneous incidental expenses.

“Utility Affiliate Counsel and Support Staff and Utility Affiliate Technical Experts and Support Staff Compensation” – Costs subject to the Commission’s specific assessment as to justness and
reasonableness shall include the following costs for which the Utility seeks recovery as part of rate case expense in a rate filing:

1) Expenses for Affiliate Counsel and related support staff for services rendered on a rate case, pursuant to an affiliate agreement, provided that the recovery of incentive compensation costs shall be consistent with the Utility’s recovery of non-rate case expense incentive compensation costs;

2) Affiliate Technical Experts and related support staff for services rendered on the rate case, pursuant to an affiliate agreement, provided that the recovery of incentive compensation costs shall be consistent with the Utility’s recovery of non-rate case expense incentive compensation costs.

“Hourly rate contract” means a contract under which, a Utility agrees to compensate Outside Counsel or an Outside Technical Expert based on hourly rates multiplied by hours billed.

“Flat fee contract” means a contract between a Utility and Outside Counsel or an Outside Technical Expert by which, the Utility pays an agreed upon amount, regardless of hours worked or billed.

“Not-to-exceed contract” means a contract between a Utility and Outside Counsel or an Outside Technical Expert by which, the Utility agrees to compensate the Outside Counsel or Outside Technical Expert at an hourly rate for work billed, but where there is a cap on the maximum amount that may be paid out under the contract.

“Outside Counsel” means an attorney not employed by the Utility or any of its affiliates who is retained to prepare and litigate a rate case filing subject to this Part on behalf of the Utility.

“Outside Technical Expert” means a consultant or other professional not employed by the Utility or any of its affiliates that is retained to testify as an expert witness on behalf of the Utility and/or otherwise assist the Utility with the preparation and/or litigation of a rate case filing.

“Miscellaneous Expenses” means expenses billed by an Outside Counsel, Outside Technical Expert, Utility Affiliate Counsel, or Utility Affiliate Technical Expert for costs including, but not limited to, travel, travel-related meals, lodging and photocopying, if evidence establishes that such costs were excluded from the agreement with the utility as compensation for the rate case at issue.

“Support Staff” means personnel performing functions under the direction and supervision of Outside Counsel, Outside Technical Experts, Utility Affiliate Counsel or Utility Affiliate Technical Experts in connection with a rate case filing subject to this Part, such as paralegals, legal assistants or other non-attorney/non-technical expert staff whose time is billed to the Utility in connection with a rate case filing.
“Time entry” means a contemporaneously-generated document that states the hours performed on a particular task, specifying the task performed and the applicable hourly rate in the case of Hourly rate billing or contracts with Not-to-exceed clauses, or the applicable estimated hourly rate, in the case of a Flat fee contract.

“Utility Affiliate Counsel” means an attorney employed by a Utility Affiliate who is retained to prepare and litigate a rate case filing subject to this Part on behalf of the Utility.

“Utility Affiliate Technical Experts” means a professional employed by a Utility Affiliate that is (i) retained to testify as an expert witness on behalf of the Utility and/or otherwise assist the Utility with the preparation and/or litigation of a rate case filing and (ii) who is not a Utility Affiliate Counsel as that term is defined.

Section ___200 Required Support for Compensation Costs

a) A Utility subject to Section _____ shall, upon request during discovery, make information available to parties of record in order to assist such parties in the development of a recommended amount of rate case expense and for the Commission in assessing the justness and reasonableness of amounts paid to compensate all persons covered by Section .20____(a) and (b). Information shall include, but not be limited to, the following:

1) Facts and documentation describing the terms of the engagement between the Utility and Outside Counsel and Support Staff and the Utility and Outside Technical Experts and Support Staff, to include the nature of the services to be provided, by whom the services would be provided, and the hourly rates to be charged in the case of a Flat fee contract or a Not-to-exceed contract, the presumed or estimated hourly rate charged for work of similar nature, or some other unit of time measurement period.

2) For services provided, including, but not limited to, under an Hourly rate contract, a Flat fee contract, or a contract with a Not-to-exceed provision, invoices, disclosing time entries for each Outside Counsel and Support Staff that clearly indicate

   i) a description of the service(s) provided;

   ii) by whom the service(s) were provided;

   iii) the time spent providing the service(s) on a daily basis;

   iv) the applicable hourly rate charged by the person(s) providing the service(s), or some other unit of time measurement period; and

   v) the applicable code(s) from the American Bar Association’s Uniform Task-Based Management System Litigation Code Set or similar standardized billing system, if and to the extent that the Outside Counsel and Support Staff use such a coding system in their billing invoices.
3) For services provided under an Hourly rate contract, including but not limited to a contract with a Not-to-exceed provision, invoices or other documents disclosing time entries for each Outside Technical Expert and Support Staff that clearly indicates

i) a description of the service(s) provided;

ii) by whom the service(s) were provided;

iii) the time spent providing the service(s) on a daily basis;

iv) the hourly rate charged, or some other unit of time measurement period.

4) For services provided under a Flat fee contract, all invoices provided by the Outside Counsel and Support Staff or Outside Technical Expert and Support Staff to the Utility which are related to the contract, as well as any existing invoices or documentation disclosing time entries and summaries of any proposals reviewed prior to the selection for service.

5) For a Flat fee contract, documents created or reviewed by the Utility in considering the reasonableness of the contracted fee, including any calculations that the Utility performed or reviewed related to the fee prior to execution of the contract. This includes the presumed or estimated hourly rate that would be charged in an Hourly rate contract and the presumed or estimated number of hours to be worked.

6) For services provided by Utility Affiliate Counsel and Support Staff and Utility Affiliate Technical Experts and Support Staff, documentation that clearly indicates:

i) a description of the service(s) provided;

ii) the name and title of the person(s) providing the service(s);

iii) the time spent providing the service(s) on a daily basis; and

iv) the rate(s) charged, excluding incentive compensation costs.

b) In addition to the information required in .200 (a), the Utility shall provide the following information at the time of filing its direct case:

1) All information required by 83 Ill. Adm. Code 285.3085 (Schedule C-10) and 285.3090 (Schedule C-10.1).

2) Invoices from the attorneys and expert witnesses that specify the work performed, by whom the work was performed and the charges for such services.

3) An explanation of the process, procedures and controls the Utility has in place to ensure that the work performed by all persons covered by Section .20____(a) and (b) does not duplicate work performed by a utility employee.
4) An explanation of the process, procedures and controls the Utility has in place to ensure that the bills from all persons covered by Section____.20 (a) and (b) are accurate, reasonable, and not redundant before payment is made to those vendors.

5) An explanation of the reasonableness of the fees to be paid to all persons covered by Section____.20 (a) and (b) with consideration of the factors enumerated in Section _____.300.

6) An explanation of the Utility’s rationale for the proposed amortization period of total rate case expense which approximates the time period between rate cases.

c) The Utility shall file the following information at the time of filing its direct or rebuttal case and, if applicable, its surrebuttal case, and as otherwise directed by the Administrative Law Judge:

A summary schedule of the compensation costs for which rate recovery is sought that includes for all persons covered by Section _____.20 (a) and (b) the following:

1) Identification of the Outside Counsel and Support Staff, Outside Technical Experts and Support Staff Utility Affiliate Counsel and Support Staff, and Utility Affiliate Technical Experts and Support Staff;

2) Total projected expense update, if the projection is the basis for the total requested rate case expense;

3) Actual expense incurred to date, with supporting invoices made available upon request;

4) Remaining costs projected to be incurred, if any; and

5) Total rate case expense that was approved by the Commission in the Utility’s previous rate case for the work performed by all persons covered by Section ______.20 (a) and (b); and

d) Inclusion of overhead expenses on the part of all persons covered by Section _____.20 (a) and (b) (e.g., photocopying, binding) shall be accompanied by evidence that the rates charged the Utility by the attorney or expert specifically exclude such overhead expenses from the rates charged to the Utility.

e) No later than five business days prior to the start of evidentiary hearings in the rate case, the Utility shall file an affidavit signed by a Utility representative with authority to make affirmations on behalf of the Utility that to the best of the Utility representative’s knowledge, information and belief as to the following:

1) The compensation paid or to be paid to all persons covered by Section ______.20 (a) and (b) that the Utility is seeking to recover as rate case expense in the instant rate case is
supported by billings or other documentation that:

i) Are true and accurate;

ii) Support costs that were reasonable to prepare and litigate the rate case;

iii) Were reviewed and approved by Utility management prior to payment; and

iv) Are not duplicative.

(2) The Utility paid or will pay the billed amounts requested to be recovered as rate case expense; and

(3) Additional compensation, if any, to be paid to all persons covered by Section _____.20 (a) and (b) not yet billed to the Utility, or not yet performed, will be made in accordance with the affirmations required in this subsection (d).

(4) The filing of the Utility representative affidavit is informational in nature and shall not be binding on the Commission in its assessment of the justness and reasonableness of the amount of rate case expense requested by the Utility.

f) All updates and supporting documentation of the rate case expense amounts requested by the Utility for recovery in rates shall be submitted for inclusion in the evidentiary record of the rate case.

Section _____.300 Determination of Reasonable Compensation Costs
a) Rate case expenses shall be addressed in the attorney review that occurs in post-trial briefs.

b) The factors to be considered by the Commission in determining the reasonableness of compensation costs for all persons covered by Section______.20 (a) and (b) may include, without limitation, the following:

1) The fulfillment of the required support for compensation costs as required in Section _____.200;

2) Identification of the type of service involved as either, professional or support staff;

3) Novelty, complexity or difficulty of the issues;

4) Nature, extent and reasonableness of work performed considered at the time the work was performed including, without limitation, the amount of support required for pleadings, discovery, briefing and hearings and the relevance of the work products to the justness and reasonableness of the proposed utility rates;
5) Requisite skill required to perform services efficiently and accurately;

6) Professional credentials including, without limitation, education, training, experience, achievements and reputation, in the applicable professional discipline;

7) The reasons why multiple Outside Counsel, Outside Technical Experts, Utility Affiliate Counsel or Utility Affiliate Technical Experts addressed the same issues;

8) Relevant evidence regarding the market rates concerning fees charged for comparable services including, as applicable, fees charged in other rate cases in Illinois or fees charged in other jurisdictions for rate cases;

9) Hourly rates applicable to Outside Counsel and Outside Technical Experts representing or retained by Utilities and Outside Counsel or Outside Technical Experts representing or retained by other entities that regularly appear in Commission proceedings; and

10) The reasonableness of the amount of time taken to perform a task.

Section ___400 Compensation Costs Support Disclosure
a) Information disclosed by the Utility in support of compensation costs for all persons covered by Section ____20(a) and (b) shall be afforded the same protections for privileged, confidential and proprietary information that exist under the Commission’s Rules of Practice, the Illinois Code of Civil Procedure, the Illinois Rules of Evidence and other applicable Illinois law.

b) When information or a document is withheld from disclosure or discovery on a claim that it is privileged pursuant to a common law or statutory privilege, any such claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced or disclosed and the exact privilege which is being claimed.

c) When there is a dispute regarding a claim of privilege, any party may file a motion seeking an in camera inspection of the documents in question by the Administrative Law Judge to resolve that dispute.

d) Nothing in this Section is intended to preclude or otherwise change any protections or rights existing pursuant to the Illinois Code of Civil Procedure, the Illinois Supreme Court Rules, the Illinois Rules of Evidence, the Commission’s Rules of Practice, or any other applicable law with respect to privileged information or documents.