

**ILLINOIS COMMERCE COMMISSION**

<b>MT. CARMEL PUBLIC UTILITY CO.</b>	§	
	§	
<b>Proposed general increase in electric and natural gas rates.</b>	§	<b>DOCKET NO. 07-0357</b>
	§	

**CITY OF MT. CARMEL'S  
HEARING BRIEF**

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**I. Introduction.**

The City of Mt. Carmel (City) intervened in this Docket because of concerns that the proposed rate increase by Mt. Carmel Public Utility Co. (Utility) was unjustifiably high and that the rate design would discourage much needed economic development in the area.

The City is impacted by the revenue increase and rate design in two significant ways.

**A. City's cost of electricity and gas will rise significantly.**

First, as a customer of the Utility, the City purchases power and energy in four rate classes. The Utility proposed increasing these classes by a high of 38.64 per cent to a low of 13.5 per cent. City Ex. 1.0 Revised at 4/74-77. Translated into total annual dollars, in 2006, the City paid the Utility \$192,152.55 for electricity and \$37,499.92 for gas. Under the Utility's proposal, the cost of electricity would be increased by \$53,917.20 and the cost of gas by \$6,403.40. City Ex. 1.0 Revised at 5/105 and 6/106.

**B. Rates can affect needed economic development for area.**

Second, the Mt. Carmel economy has suffered from the loss of two of its largest employers. As a result, the City is attempting to reach out to existing businesses and

encourage economic development in the area. City Ex. 1.0 Revised at 3. As the City witness Brandi Stennett testified, “It is our fear that the increased utility rates of 28 per cent and 36 per cent will nullify our goals of progress for the community.”

**C. Pro forma adjustments for future Utility vehicles and employees should be rejected.**

The City relied upon the Staff of the Illinois Commerce Commission (Staff) to fully explore the requested increase by the Utility. The City, except as explained below, in large part agrees with the proposed revenue adjustments recommended by Staff in its filed testimony and affirmed in the hearing record during cross-examination. In particular, the City agrees with two recommendations by Staff that are contested by the Utility:

- Staff recommended rejecting the Utility’s request for an adjustment to add three staff positions at a cost of \$241,993. The City agrees with this disallowance.
- Staff recommended rejecting the Utility’s request for five additional vehicles at a total cost of \$315,000. The City agrees with this disallowance.

**D. The City disagrees with Staff’s recommendation on rate case expense amortization and commercial rate design.**

The City does disagree with two other Staff recommendations:

- Staff agreed with the Utility that rate case expenses should be amortized over a three-year period. The City proposes that an eight-year period that reflects the historical average for the past three rate cases by the Utility be used instead.

- Staff recommended that the commercial electric space heating class receive an increase even though the cost of service study indicates the class should receive a rate decrease. The City believes the rate should be decreased, not increased.

This post hearing brief will focus only on these four items.

**II. The Utility's pro forma adjustment for the purchase of new vehicles should be rejected.**

**A. The Staff witness at hearing affirmed her recommendation to reject the vehicle adjustment.**

The City agrees with Staff witness Mary Everson to reject the Utility's pro-forma adjustments for the purchase of five new trucks.

At of the time that the Utility filed its surrebuttal testimony, the Utility finally and reluctantly had its board of directors pass a resolution that it would purchase the trucks. The Utility admitted that "[t]his action may be seen as being in conflict with previous statements regarding the lack of funds to make these purchases." MCPU Ex. 1.0SR at 5. Explaining its new and dramatic change of stance, the Utility stated that it only authorized the purchases when it realized "the impact of losing this cost recovery in the rate case revenue requirement." *Id.* The problem is that there is no assurance that the Utility will proceed with the purchase whether or not it receives the requested increase in revenues.

Staff witness Ms. Everson was unimpressed with the Utility's change of direction to apparently authorize the purchases as reflected in its surrebuttal testimony. When asked if the Utility's surrebuttal testimony on the vehicle purchases changed her

recommendation, she testified, “No, the surrebuttal testimony did not change my recommendation.” Tr. at 49/12-16.

The only witness offered by the Utility testified that he did not, in fact, attend the board meeting for which he was offering testimony. Tr. at 108/17-19. Moreover, he admitted that he had no personal knowledge of the contents of the board minutes he offered as evidence. Tr. at 108/20-109-9. He further admitted that he had no personal knowledge whether the excerpts from the board minutes themselves were even correct. Tr. at 109/6-9. He finally admitted he was only parroting what he had been told “by my counsel.” Tr. at 109/3. He further admitted that it was not part of his duties in this docket to negotiate the vehicle contracts nor did he have any contact with the persons involved in such negotiations. Tr. at 109/10-110/13.

**B. Admitting the Utility’s board minutes and purchase orders is contrary to law and is reversible error.**

The board minutes and the purchase orders were erroneously admitted over the objection of the City. Concerning the two exhibits, the Utility’s counsel stated that Mr. Long

is testifying on behalf of the utility company; not an individual person. He is testifying on behalf of it. He has indicated that he was given copies of the board minutes through counsel who is also a director and officer. It is a business record, therefore admissible.

Tr. at 113/1-7.

This is not a correct statement of the law and the Administrative Law Judge erred in allowing the documents to be admitted over the City’s objection. In order for a business record to be admissible as an exception to the hearsay rule under Supreme Court Rule 236 “an adequate foundation must still be laid before it is admitted into evidence.”

*Greaney v. The Industrial Commission*, 358 Ill. App. 3d 1002, 1011 (1<sup>st</sup> Dist. 2005). In *Greaney*, the court reversed the Commission’s admission of uncertified reports that had been admitted as a business record because “the claimant failed to lay a foundation for the admission into evidence.” *Id.* A proper foundation requires authentication and identification. “As the claimant failed to present any further evidence demonstrating the authenticity of the records and reports of either doctor, we find that he failed to lay an adequate foundation for their admission into evidence. As a consequence, the Commission abused its discretion in admitting and considering the medical records and reports of Drs. Alvi and Lorenz.” *Id.* at 1013. Most recently, in *Apa v. National Bank of Commerce*, 374 Ill. App. 3d 1082 (1<sup>st</sup> Dist. 2007), the court reversed the trial court’s admission of bank records when the only evidence offered was that they were kept in the regular course of business and did not present any evidence of the circumstances of their creation. *Id.* at 1077-1088. “‘Without proper authentication and identification of the document, the proponent of the evidence has not provided a proper foundation and the document cannot be admitted into evidence.’ [citation omitted.] The admission of the bank statements was thus improper.” *Id.* Because the Utility failed to properly authenticate and identify the documents, it was error to allow them into evidence.

In light of the admission of improper evidence, the lack of a true commitment by the Utility to purchase the vehicles, and Staff’s testimony in the record, the pro forma adjustment for the purchase of the vehicles should be rejected.

**III. The Utility's request for a pro forma adjustment for hiring three additional people sometime in the future must be rejected.**

**A. The Utility presented no evidence that the proposed new employees are on the payroll.**

The Utility requested that it be allowed to make a pro forma adjustment for the future hiring of three additional employees at a cost of \$241,993. MCPU Ex. 1.0 at 10. The Utility also requested a pro forma adjustment for two other employees, but those employees have been hired and the adjustment for those actual employees is not contested. Staff witness Mike Ostrander recommended that the adjustment for the three potential future employees be disallowed from the pro forma payroll expenses because the hiring is not known and measurable and reasonably certain to occur within 12 months of the filing of the tariffs in this case as required by law. ICC Staff Ex. 7.0 at 11.

As with the vehicles, the Utility attempted to paper over the fact that it had not hired the three employees by having its outside consultant testify as to what he was told by his attorney that the board of directors did at a November 2007 meeting. However, just as with the vehicles, the Utility witness was not at the meeting and cannot personally testify as to the accuracy of the board minutes he sponsored. Tr. at 108/17-109/9. It was the Utility's decision not to make any officer or director of the Utility who may have had actual personal knowledge as a witness in this case but only to rely on its outside consultant who had no first hand knowledge. As noted above, it was reversible error for the ALJ to have admitted the board minutes. See *Greaney v. The Industrial Commission*, 358 Ill. App. 3d 1002, and *Apa v. National Bank of Commerce*, 374 Ill. App. 3d 1082, *supra*.

**B. At hearing, the Staff witness affirmed his recommendation to reject the pro forma adjustment for future employees.**

Mr. Ostrander, in a manner similar to Ms. Everson, was unimpressed with the Utility's last-minute effort to justify its pro forma adjustment. Mr. Ostrander was asked by the Utility if it were to provide "progress reports" for hiring dates whether that would change his recommendation. However, Mr. Ostrander was at a loss to explain whether those reports would become part of the record in the case. Tr. at 64/22-65/6. While he was on the stand, Mr. Ostrander agreed that the Utility's surrebuttal testimony did not change his opinion and that the pro forma adjustment to payroll expenses should not be made. Tr. at 65/11-14. Even after a recess when he was counseled by his attorney, in response to his own attorney's question that "[a]s of today's date, based on the evidence the company provided you in direct, rebuttal and surrebuttal testimony" what was his recommendation, he answered that the pro forma adjustment should be disallowed. Tr. at 68/3-8. Any reports or testimony, he agreed, would have to be filed before the briefs were filed in the case. Tr. at 73/19-22. Furthermore, the future employees would have to have accepted employment offers and be on the company payroll before the briefs were filed in this docket. Tr. at 74-1/7. Since none of what Mr. Ostrander outlined has occurred, his recommendation for the disallowance should be adopted by the Commission.

**IV. The Utility has not justified its request for a short three-year period to amortize its rate case expenses.**

**A. Historic data shows longer recovery period is appropriate for rate case expenses.**

As to the recovery period for rate case expenses, the Utility proposed without any justification a three-year period. Staff did not disagree with this proposal. The City

believes that the three-year period should not be used but rather that the length of the recovery period should be based on the average of the time between the Utility's last three rate cases. The Utility filed for a rate case in 1982, 1995 and 1997. City Ex. 1.0 Revised at 6/118-119. Using the time between rate cases (25 years divided by 3), the average for a rate case by the Utility is every eight years.

The Utility argued that the ten-year period from 1997 and 2007 should be disregarded because it was legally prohibited from filing a rate case. MCPU Ex. 1.0 R at 18. Staff witness Ms. Everson testified, "[I]n Mr. Long's rebuttal testimony he states on page 18, lines 21-22 that during the 10 year rate freeze, MCPU's rates could not be increased. That is not correct with respect to MCPU." ICC Staff Ex. 8.0 at 7/137-138.

**B. The Commission favors using historic data as an objective basis for determining the rate case expense recovery period.**

The amortization period for rate case expenses should be reasonable and related to the estimated life that the rates will remain in effect. *Commonwealth Edison Co. Proposed General Increase in Rates for Delivery Services*, Docket No. 05-0597, Final Order at 53 (July 26, 2006). Using historic data for determining the amortization period is a method that Staff has used in the past with Commission. "[E]xamining a company's historical pattern of submitting rate increases is objective. Good reasons may exist and situations may arise that warrant deviating from a historical pattern, but absent such, Staff's analysis of historical patterns is the generally preferred approach." *Aqua Illinois, Inc. Proposed General Increase In Water and Sewer Rates*, Docket Nos. 05-0071 and 05-0072, Final Order at 48 (Nov. 8, 2005).

In this docket, the historical data show that the rates have an average life of eight years. The Utility has presented no evidence that it will be seeking another rate increase within three years, so the three-year period is unreasonable given the historic data. The Utility's argument that it was prohibited from obtaining a rate increase for 10 years is wrong and must be disregarded. The Commission should not abandon its previous findings that using historical data is an objective way to determine the amortization period for rate case expenses.

**V. The commercial space heating class should receive no increase.**

The City requests that the Staff's recommendation to give the commercial space heating class a rate increase when the cost of service would have the class receive a decrease should be rejected. Instead, the City believes that the class should receive no rate increase.

Economic development and the retention of business in Mt. Carmel is an overarching goal of the City due to the economic downturn in the community. Ms. Brandi Stennett, the City's witness and the economic development coordinator for the City, requested that the Utility "structure its rates in favor of small business." City Ex. 1.0 Revised at 8/157. The cost of service study provides the justification for doing so.

Staff witness Cheri Harden testified that the Utility's cost of service study "shows that the Commercial Electric Space Heating Service class should receive a decrease in revenue of 12% in order to produce the rate of return on rate base of 9.49%." Staff Ex. 6.0 at 12/247-248. Instead, the Utility proposed a rate increase for the class. *Id.* at 12/249-253. In her rebuttal testimony, Ms. Harden proposed increasing the class by 13.04 per cent. ICC Ex. CLH 10.01E and Tr. at 38/19-22. She agreed that it would not

be incorrect for the recommended increase to be lower than her recommendation. Tr. at 40/20-41/11.

By allocating no increase to the class, the class still would recover more than is justified by the cost of service study, which would justify a rate decrease. Allocating no rate increase to the commercial space hearing class also would additionally benefit the City's attempt to bring economic development to the area.

## **VI. Conclusion.**

The City requests that the Commission enter a Final Order consistent with the changes recommended in this brief by rejecting the Utility's request for pro forma adjustments for unpurchased vehicles and possible future employees, by amortizing rate case expenses over an eight-year period, and by not increasing the commercial electric rate.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the City of Mt. Carmel's Hearing Brief has been sent via electronic means to the service list on this 3<sup>rd</sup> day of January 2008.

\_\_\_\_\_/s/\_\_\_\_\_  
Richard C. Balough