

**ILLINOIS COMMERCE COMMISSION**

**MT. CARMEL PUBLIC UTILITY CO.**

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**Proposed general increase in electric  
And natural gas rates.**

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**DOCKET NO. 07-0357**

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

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**DATED: 14 January 2008**

**Table of Contents**

I. Mt. Carmel Utility has failed to meet its burden of proof. .... 1

II. The evidence does not support any pro forma adjustments for speculative, future, new vehicles and speculative, future additional personnel. .... 1

    A. The Company has failed to explain its flip-flop on whether it has funds on hand to make purchases and hire new employees. .... 2

    B. The Company’s actions are consistent with its pattern to ignore ICC rules and regulations. .... 3

    C. The Utility’s tactics of using improper and inadmissible evidence in this Docket denied the Staff and interveners the opportunity to thoroughly review the newly created information. .... 4

    D. The Utility distorts the record in attempt to justify its own tardiness in purportedly ordering new vehicles on the eve of the hearing. .... 4

    E. As with the vehicles, the lack of hiring new employees was first raised in City’s direct testimony. .... 5

III. The Company ignores the other contested issues of amortizing rate case expenses and modifying commercial space heating rate increase. .... 6

IV. The ICC Staff recommendation concerning Utility’s ability to over-earn should be modified to include special contracts so that Company does not circumvent the intent of the provision. .... 7

    A. Commission should protect other customers from being charged excessive rates. .... 7

    B. To protect against over-earning, the Commission should include special contracts. .... 8

V. Conclusion. .... 9

Certificate of Service ..... 10

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

**I. Mt. Carmel Utility has failed to meet its burden of proof.**

Mt. Carmel Public Utility Company (Utility or Company) has not met its burden of proof in this Docket to support its requested increase in several critical areas.

Under the Public Utilities Act, 220 ILCS 5/9-201(c), the burden of proof to establish that its rates and charges are just and reasonable is upon the utility. A utility “has the burden of showing that its proposed rates are reasonable and must produce sufficient evidence to meet that burden.” *Citizens Utilities Co. of Ill. v. O’Connor*, 121 Ill. App. 3d 533, 542 (Second Dist. 1984). “[T]he burden of proof falls on the proponent of the rate whether the proposal is for a change in an existing rate or for the establishment of a new rate.” *Central Ill. Pub. Service Co. v. Illinois Commerce Commission*, 5 Ill. 2d 195, 211 (1955).

**II. The evidence does not support any pro forma adjustments for speculative, future, new vehicles and speculative, future additional personnel.**

The Company in this case did not present sufficient, credible and legally admissible evidence to support its adjustments to add yet-to-be purchased vehicles and yet-to-be hired personnel. In its brief, the Illinois Commerce Commission Staff (ICC Staff) concurs with the

City of Mt. Carmel (City) that these pro forma adjustments must be rejected by the Commission.  
ICC Brief at 10 and 16.

**A. The Company has failed to explain its flip-flop on whether it has funds on hand to make purchases and hire new employees.**

The Company in its initial brief offers no explanation as to:

- Why the Utility waited until after the ICC Staff and the City filed their rebuttal testimony to even convene a meeting of the Utility's board of directors to address the severe deficiencies that were identified by the parties in the Company's filing made some six months earlier.
- Why the Utility did not present any witness at hearing from the Company who had actual knowledge about the board meeting but rather relied on inadmissible hearsay testimony from its consultant.
- Why the Utility presented no Company witness who had actual knowledge of the purported purchase orders for the vehicles but rather relied on inadmissible hearsay evidence from a consultant who admitted he was not a party to any negotiations.
- Why the Company at hearing, contrary to customary Commission practice, waited to have its sole consultant-witness testify until after all other parties had completed their presentations.
- Why after six months of stating in discovery responses that it could not make any purchases or hire personnel because it lacked capital, the Utility suddenly found sufficient funds for the purchases at the eve of the hearing thus preventing the

ICC Staff and interveners from properly scrutinizing these claimed purchases and proposed hires.

**B. The Company's actions are consistent with its pattern to ignore ICC rules and regulations.**

In its brief, the Utility argues that the requirement that any must be in service and used and useful before being included in rates should not apply to the Company. Utility Brief at 7 and 11. The Utility cites no case or precedent for this opinion but merely cites to the testimony of its non-lawyer consultant who was its only witness in the case.

Arguing that it does not have to be bound by Commission rules or the Utility Act is a consistent theme by the Utility in this case.

For example, the Utility decided it could build a transmission line and substation without obtaining the required certification from the ICC. When confronted with this rule violation, the Utility immediately filed for a certificate of convenience and necessity with the Commission. The CCN Docket No. 07-0530 is pending. The Company dismissed its inattention to the law and Commission rules by stating "it has acted in good faith to remedy the problems." Utility Brief at 6.

In addition, the Utility also has been operating without an affiliate agreement between itself and its law firm, which is housed in the Utility office building. The Utility conducts transactions between Eric Bramlet an officer in the Utility and a partner in the law firm that rents space from the Utility. Staff Brief at 15. When confronted with the fact that such an arrangement requires an affiliate agreement, the Utility filed a new docket with the ICC to obtain

such permission. The Utility in its brief at 9-10 offers no explanation as to why it felt it did not have to follow the Commission's affiliate rules and regulations.

**C. The Utility's tactics of using improper and inadmissible evidence in this Docket denied the Staff and interveners the opportunity to thoroughly review the newly created information.**

As the City noted in its initial hearing brief, it was reversible error for the Commission to admit as "business records" both the board of directors' minutes and the purported purchase orders. This admission of improper evidence should be reversed and the evidence stricken as requested by the City in its hearing brief.

The ICC Staff in its initial brief, while not joining with the City to strike the improper evidence, did recognize that the Company's actions were inappropriate because "Staff had no opportunity to evaluate the information or respond to it on the record. Thus, the record contains documentation that has not been subjected to Staff's normal review and scrutiny. Accordingly, the additional information should be given little weight." Staff Brief at 11. The City requests that the Commission go further and strike the inappropriate evidence for the reasons set out in its initial hearing brief.

**D. The Utility distorts the record in attempt to justify its own tardiness in purportedly ordering new vehicles on the eve of the hearing.**

The Company incorrectly seeks to justify its tardiness for not arranging to order new the vehicles in accordance with the Commission's rules by attacking the credibility and integrity of Staff Witness Mary Everson. The Utility states in its Brief that "[i]n their direct testimony, no Staff witness took issue with the proposed vehicle additions." Utility Brief at 7.

Apparently the Company believes the ICC Staff somehow waives its statutory duty to further investigate all issues once the Staff files its direct testimony. Not only is this legally incorrect but also the Company's statement ignores the fact that the issue of the timing of the purchasing of the vehicles was first raised in the direct testimony of the City (City Ex. 1.0 Revised at 7/137-140). Ms. Everson recommended the disallowance of the pro forma adjustment after the Utility's witness responded to the City in his rebuttal. In fact, in City Ex. 2.01, the City attached the Utility's responses to data requests where the Company specifically states that the "Company has not yet acted to purchase the referenced vehicles. As a result, it has not secured a formal approval from its Board of Directors." (Data Response MHE 4.03). Thus, the Company is being disingenuous when it implies in its brief that it was surprised that the delayed purchase of the vehicles was an issue that could be reviewed by the ICC Staff and that it was a contested issue at hearing.

The Commission should not accept the Company's explanation, the improper evidence it offered over the City's objection nor find credence in the Company's attack of the ICC Staff. Instead, the Commission should adopt the ICC Staff's recommendation to reject this pro forma adjustment.

**E. As with the vehicles, the lack of hiring new employees was first raised in City's direct testimony.**

In a similar fashion, the Utility seeks to disguise its lack of evidence for the hiring of new personnel by attacking the ICC Staff. Apparently believing that repetition is good, the Company again questions the ICC Staff's credibility and integrity by stating, "[i]n its direct testimony, no Staff witness took exception to these 5 additional positions." Utility Brief at 11. Once again,

however, the Company fails to point out that it was the City that raised the issue in the first instance in its direct testimony, City Ex. 1.0 Revised at 7/148-150. As with the vehicles, the Company responded to the City in its rebuttal. As a result of the City identifying this issue, the ICC Staff appropriately investigated the issue. Based upon its own review, the ICC Staff agreed with the City and recommended that the pro forma adjustment for the three persons not hired be rejected.

Moreover, the Company in its Brief ignores—and wants this Commission to ignore—the Utility’s own inconsistent statements in its data response that the newly-created positions would not be filled until after the rates requested in this Docket are in effect. The data response states the hiring “will be as soon as possible after rates sought in this proceeding allow for such expenditures.” City Ex. 2.01. Further, the Company stated in its responses that there were no job descriptions for the positions and that as to the store room supervisor, the job description “will be developed at the time the Company is able to expend funds to fill that position.” City Ex. 2.01 at Data Response JMO 4.02. The Company’s inappropriate attack on the ICC Staff must be ignored, as well as the Company’s hearsay testimony. As the City previously noted in its initial Hearing Brief, the Utility’s board minutes should be stricken since it is inadmissible. The Commission should follow the City’s and ICC Staff’s recommendation to reject the Company’s proposed pro forma adjustment to payroll expenses.

**III. The Company ignores the other contested issues of amortizing rate case expenses and modifying commercial space heating rate increase.**

In its Brief, the Company states that the only contested issues remaining in the case were the adjustment for payroll expenses, the addition of the vehicles and the amount of construction

work in progress to be included in rates for its new transmission line. Company Brief at 14. Apparently, the Company by this statement is conceding to the City the issue that the Utility's rate case expenses should be amortized over an eight-year period rather than three years. The Utility makes no mention of this issue in its Brief. Further, the Company erroneously states in its Brief that there are neither any cost of service nor rate design contested issues in the case. Utility Brief at 12. As noted in its initial brief, the City has recommended that the commercial space heating rate increase be reduced to bring the rate more in line with the cost of service, which would require the rate be decreased rather than increased as the Company recommended.

**IV. The ICC Staff recommendation concerning Utility's ability to over-earn should be modified to include special contracts so that Company does not circumvent the intent of the provision.**

**A. Commission should protect other customers from being charged excessive rates.**

The City generally agrees with the Staff Brief at 22 that requests that the Commission order the Utility to prepare and file a new cost-of-service study and adjust its rates if a customer takes service under the Light and Power class. As the ICC Staff correctly noted in its testimony, the loss of the only customer in this class changed what would have been a 12 to 18 per cent rate increase request into a 28 to 38 per cent rate increase. ICC Staff Ex. 6.0 at 9/195-197.

If a new customer—such as a mine load—takes service under this rate in the future, it raises the possibility of “putting the Company into an over-earning situation.” ICC Staff Ex. 6.0 at 11/226. This occurs because the Utility would recover significant unanticipated and unaccounted for revenues from such a high-use new customer. In other words, the other customers who had their rates set in this Docket based upon no revenues from the Light and Power class would be paying excessive rates. Because the Utility would receive the windfall

revenues, it would increase its profits on the backs of the other customers. It is for this reason that the Staff recommends in its brief that “new rates should be filed within 30 days of the date that the service begins for the customer.” Staff Brief at 22.

The Company concedes that the addition of a new large customer may require its rates be reduced for the other customer classes. Utility Brief at 13. However, rather than filing a new cost-of-service study and new rates, as recommended by the ICC Staff, the Company simply wants to “establish communications with the Staff.” *Id.* This is totally inadequate and a hollow gesture. Instead, the Company should be required to follow the ICC Staff’s recommendation and notify all parties to this Docket when the new customer is added to the Utility’s system.

**B. To protect against over-earning, the Commission should include special contracts.**

The City believes that the ICC Staff’s proposal for the Utility to file new rates and a new cost-of-service study with the ICC is there is a new Light and Power customer, while a step in the right direction, does not go far enough. In its testimony, the Company indicated that when seeking new customers, the published tariffs “do not represent all options available to potential customers.” MCPU Ex. 1.0R at 8/11-12. Instead, the Company states it has the “flexibility” to enter into special contracts with such customers. *Id.* at 8/18-20. In fact, the mine that left was not actually under the Light and Power Rate, but rather had a “special contract” with the Utility under which it paid less than the published rate to the Utility. Tr. at 101/13-20. In other words, if the Commission adopted the Staff recommendation for the Company to prepare and file a new cost of service when there is a new Power and Light rate customer, the Utility simply could avoid this requirement by placing the customer under a “special contract,” giving the Utility the

ability to over-earn. The recommendation by the ICC Staff should be modified to require the Company to file new rates for its customers whenever a customer who may otherwise qualify for the Power and Light rate, whether or not it is placed under that rate or a special contract, becomes a customer of the Utility. In this way, the Company cannot circumvent the requirement and it will prevent the Company from over-earning at the expense of its other customers.

## **V. Conclusion.**

The City requests that the proposed order in this docket:

- Reject the Company's pro forma adjustment for the inclusion of five additional vehicles.
- Reject the Company's pro forma adjustment for inclusion of additional potential employees.
- Establish an amortization period for rate case expenses based on the historical eight-year average as detailed in the City's Initial Hearing Brief rather than the shorter, unsupported three-year period the Company has requested.
- Modify the proposed increase to the commercial space heating class to more accurately reflect the cost of service conclusion that the rate class should see a decrease.
- Modify the ICC Staff recommendation concerning the filing of new rates when a new Large Light and Power customer takes service to include any special contracts so that the Company will not over-earn by simply giving the customer a contract rather than take service under a published rate.

Respectfully submitted,

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

I hereby certify that a copy of the City of Mt. Carmel's Reply Hearing Brief has been sent via electronic means to the service list on this 14<sup>th</sup> day of January 2008.

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