

**ILLINOIS COMMERCE COMMISSION**

**MT. CARMEL PUBLIC UTILITY CO.** §  
§  
**Proposed general increase in electric** § **DOCKET NO. 07-0357**  
**And natural gas rates.** §

**CITY OF MT. CARMEL'S  
BRIEF ON EXCEPTIONS  
WITH SUBSTITUTE LANGUAGE**

The Proposed Order in this Docket violates in several key respects the Commission's own rules and ignores fundamental rules of evidence. As a result, the City of Mt. Carmel (City) requests that the Proposed Order be modified to comply with the law as set out in this Brief on Exceptions.

**EXCEPTION NO. 1**

**THE PROPOSED ORDER ERRONEOUSLY AND *SUA SPONTE* INCLUDES THE RESULTS OF DOCKET NO. 07-0530 TO JUSTIFY THE INCLUSION OF THE NEW TRANSMISSION LINE IN THE RATE BASE.**

During the pendency of this Docket, the ICC Staff in testimony correctly recommended the disallowance of a pro forma adjustment in the amount of \$663,788 for a transmission line for which Mt. Carmel Public Utility Company (Company or Utility) had no certificate of public convenience and necessity. In response to that criticism, the Utility filed for a certificate for the transmission line with this Commission in a separate docket.

The instant case was heard by the Administrative Law Judge (ALJ) on December 4, 2007, when the record was marked "Heard and Taken." Proposed Order at 2. No party filed any motion to reopen the record nor is there any order by the ALJ reopening the record.

Yet the Proposed Order at 6 includes an entire paragraph describing what occurred in Docket No. 07-0530 and the final order in that docket. The Proposed Order states that the final order in Docket No. 07-0530 was entered on January 30, 2008, two days before the issuance of the Proposed Order in this Docket. The results of Docket No. 07-0530 are not in the record that was “Heard and Taken” in this Docket. It is error for the Proposed Order to include *sua sponte* references to matters outside the official record. A final order in this case that includes this non-record material cannot be sustained on appeal.

The proper procedure is for the Company or another party to request that the record be reopened and that the ALJ take administrative notice, as provided by the Commission’s own rules at 83 Ill. Adm. Code Sec. 200.640. It is not the prerogative of the ALJ to include *sua sponte* in the proposed order material not in the record to justify the Order’s finding. A request to reopen the record at this time should be a subject for a Motion for Rehearing.

The Commission should strike the paragraph from the Proposed Order. Without the results of Docket No. 07-0530, there is no support for including the pro forma adjustment.

### **EXCEPTION NO. 2**

#### **THE PROPOSED ORDER ALLOWS A PRO FORMA ADJUSTMENT FOR VEHICLES BASED UPON INADMISSIBLE EVIDENCE.**

In this Docket, the Company requested a pro forma adjustment to add five new vehicles. In its pre-filed testimony, the Company stated that it “lacks the funds to make these expenditures until rates have been increased.” MCPU Ex. 1.0R at 15/3-4. The ICC Staff found this did not satisfy the requirement that the expenditures be made within 12 months of the Company’s filing. ICC Staff Ex. 8.0 at 2/33-39.

When the Company filed its surrebuttal testimony, it dramatically announced that it had found enough money to make the purchases and would be doing so. The Company 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.

The announced change of direction by the Utility did not impress ICC Staff Witness Ms. Everson. At hearing, she testified that the Company’s “surrebuttal testimony did not change my recommendation” to exclude the adjustment. Tr. at 49/12-16.

The Company used only one consultant for its entire case and did not present any witnesses who were directly employed by the Company. When the Utility put its sole witness on the stand, the consultant attempted to further bolster his testimony by presenting—for the first time—what he said were the minutes of the board of directors approving the purchase (MCPU Ex. 2.0SR) along with the purchase orders from three car dealerships (MCPU Ex. 1.1SR). The City objected to the admission of both exhibits<sup>1</sup>. The Company argued that the minutes, purchase orders and documents from the car dealerships were all “business records.” Tr. at 113/1-17. The City’s objection was overruled by the ALJ who found that the minutes and purchase orders were “a supplement” to the witness’s previous testimony. Tr. at 114/9-15. This conclusion is both illogical and contrary to any evidentiary rule.

The documents at issue are hearsay.

Hearsay evidence is testimony in court or written evidence of a statement made out of court, such statement being offered as an assertion to show the truth of the matters asserted therein, and thus resting for its value upon the credibility of the out-of-court asserter.

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<sup>1</sup> MCPU Ex. 2.0SR consists of two pages. There is no indication on its face that it is board minutes. There is no signature page or any certification from the Company concerning the document.

Michael H. Graham, Cleary & Graham's Handbook of Illinois Evidence §801.19 (8<sup>th</sup> ed. 2004).

As hearsay, the documents cannot be admitted unless they fall into an exception to the rule on hearsay. Ill. Sup. Ct. R. 236 sets out the requirements to allow a business record to be admitted into evidence. It states in pertinent part:

- (a) Any writing or record, whether in the form of any entry in a book or otherwise, made as a memorandum or record of an act, transaction, occurrence, or event, shall be admissible as evidence of the act, transaction, occurrence, or event, if made in the regular course of any business, and if it was the regular course of the business to make such a memorandum or record at the time of such an act, transaction, occurrence, or event or within a reasonable time thereafter.

Under this rule, a foundation must be laid for the documents to be admissible as a business record exception.

The party tendering the record must demonstrate that the record was made in the regular course of business and at or near the time of the transaction. See 145 Ill.2d R. 236(a). A sufficient foundation for admitting business records may be established through the testimony of the custodian of the records or another person familiar with the business and its mode of operation.

*National Wrecking Co. v. The Industrial Commission*, 352 Ill. App. 3d 561, 567 (1<sup>st</sup> Dist. 2004).

In *National Wrecking*, the administrative agency (the Industrial Commission) admitted claimant's hospital records and certain medical records. The appellate court reversed and remanded the case for a new hearing because no proper foundation was laid for the records. "If a document is admissible pursuant to an exception to the hearsay rule, the proponent must still lay an adequate foundation for its admission into evidence." *Id.* at 568.

In another case involving the Industrial Commission's admission of records, the appellate court reversed and remanded the case. *Greaney v. The Industrial Commission*, 358 Ill. App. 1002 (1<sup>st</sup> Dist. 2005). The Commission had again admitted purported business records into evidence but without the party laying the proper foundation. The court found that because no

proper foundation was laid, “the Commission abused its discretion in admitting and considering” the records. *Id.* at 1012.

In *Apa v. National Bank of Commerce*, 374 Ill. App. 3d 1082 (1<sup>st</sup> Dist. 2007), the appellate court reversed a trial court’s admission of bank statements under S. Ct. R. 236. The appellate court found that although the statements “could have been admitted” under the business records exception, admitting them in *Apa* was error because

*Apa* did not present any evidence on the circumstances of their creation. For two of the accounts, he testified only that he kept the records in the regular course of his business, and for the third, he did not offer even a level of foundation testimony. ‘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.’ [Citations omitted.] The admission of the bank statements was thus improper.

*Id.* at 1088.

In this Docket, the Utility provided no foundation for admission of the documents. The witness was a consultant and not an employee. There is no testimony that he had any knowledge of how the documents were kept, whether they were kept in the ordinary course of business, or whether they were accurate.

During cross examination, the witness’s knowledge of the board minutes (MCPU Ex. 2.0SR) was described as follows:

Q. Mr. Long, do you attend the board meetings of Mt. Carmel Public Utility?

A. No.

Q. Have you ever attended a board meeting for Mt. Carmel Public Utility?

A. Yes.

Q. When was the board meeting that you attended?

A. I don’t recall the exact date.

- Q. Was it within the last year?
- A. No, it was not.
- Q. Do you review the board minutes of Mt. Carmel Public Utility?
- A. Not regularly.
- Q. When do you obtain the board minutes to review?
- A. Only when they are provided to me for a specific reason.
- Q. So am I correct that you did not attend the November 2007 board meeting?
- A. I did not.
- Q. So you have no personal knowledge as to whether or not your Exhibit 2.0 SR is a true and accurate reflection of those board minutes?
- A. I am not sure I understand what the context of personal knowledge would be. But those minutes, that portion of those minutes, was provided to me by my counsel who is also an executive of the company and a board member.
- Q. You have no personal knowledge as to whether or not these minutes are correct, do you?
- A. Only to the extent that they were provided to me in that form.

Tr. at 107/21-109/9.

Thus, the Company has failed to meet the foundational requirements necessary to allow the admission of the board minutes as a business record under the Illinois Supreme Court rule. Absent qualifying under the exception, the minutes are hearsay and thus inadmissible. It was reversible error for the ALJ to admit the board minutes.

Additionally, the ALJ admitted over objection of the City purported correspondence between the Utility and several car dealerships with the names Altec, Patriot and Drake-Skruggs. MCPU Ex. 1.1SR. The Utility argued that the correspondence was a “business record.” As with

the board minutes, the Company failed to lay a proper foundation for their authenticity and, therefore, it is reversible error to admit the documents. When asked about MCPU Ex. 1.1SR, the Utility's witness said:

Q. As part of your assignment in this docket did you negotiate with Altec Industries?

A. Never heard that name. Did you say Altec?

Q. That's what I said, yes.

A. How is it spelled?

Q. A-L-T-E-C.

A. Altec, did I negotiate with them directly, no.

Q. Do you know who they are?

A. I believe I do.

Q. As part of your assignment in this case from Mt. Carmel Public Utility did you negotiate any contracts with Patriot?

A. Who are they?

Q. Patriot, do you know who they are?

A. I believe it is a car dealer.

Q. Did you negotiate—were you authorized to negotiate on behalf of Mt. Carmel Public Utility with Patriot?

A. I did not deal with Patriot.

Q. Did you as part of your duties in this case deal with Drake-Scruggs?

A. No.

Q. You did not have any negotiations with Drake-Scruggs?

A. No.

Tr. at 109/10-110/13.

In spite of a record that demonstrated the witness knew nothing about the negotiations and barely could remember who the car dealerships were, the ALJ admitted these documents. The record is totally lacking in foundation for the admission of this hearsay evidence and it must be stricken to avoid reversible error.

### **EXCEPTION NO. 3**

#### **THE PROPOSED ORDER ALLOWS A PRO FORMA ADJUSTMENT FOR ADDITIONAL PERSONNEL NOT YET HIRED BY THE UTILITY BASED UPON INADMISSIBLE EVIDENCE.**

As with the pro forma adjustment for the vehicles, the Proposed Order relies upon inadmissible evidence for its conclusion. This is error and the Proposed Order should be modified to strike MCPU Ex. 2.1SR.

In this case, the Utility requested a pro forma adjustment to the test year to include \$241,993 for three additional employees. MCPU Ex. 1.0 at 10. As with the vehicles, the Company in its filed testimony emphasized that it would not hire the new employees “until rates have been increased.” MCPU Ex. 1.0R at 15. It was not until the Company’s surrebuttal testimony that the Utility changed its tune and submitted MCPU Ex. 2.1SR, a copy of what it alleges are board meeting minutes.

These are the same minutes discussed in Exception 2 above. The City will not repeat its arguments here but rather refers back to the legal discussion in Exception 2.

The ALJ committed reversible error by admitting the board minutes. This error should be corrected by striking the minutes and disallowing the pro forma adjustment.

#### **EXCEPTION NO. 4**

**THE PROPOSED ORDER ERRONEOUSLY DEVIATES FROM ESTABLISHED COMMISSION POLICY BY ALLOWING THE UTILITY TO RECOVER RATE CASE EXPENSES OVER THREE YEARS RATHER THAN USING A HISTORIC AVERAGE.**

The Proposed Order at 20 allows the Company to amortize rate case expenses over a short three-year period. This finding is contrary to the Utility's rate case filing history. The Utility filed rate cases in 1982, 1995, and 1997. City Ex. 1.0 Revised at 6/118-119. This indicates that, on average, the Company has eight years between rate cases, so an eight-year amortization period is appropriate.

This Commission has found that the amortization period for rate case expenses should be reasonable and related to the estimated life that the rates will be in effect. *Commonwealth Edison Co. Proposed General Increase in Rates for Delivery Services*, Docket No. 05-0597, Final Order at 53 (July 26, 2006). The use of historic data is consistent with past Commission practice. "[E]xaming 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. 05-0070 and 05-0072, Final Order at 48 (Nov. 8, 2005).

By allowing the shorter three-year period, the Proposed Order rejects the Commission's own practice and preference that rate case expenses are to be amortized based on the historic pattern of the utility's average interval between rate cases.

### **EXCEPTION NO. 5**

**THE PROPOSED ORDER SHOULD BE AMENDED TO GIVE THE CITY NOTICE OF WHEN THE UTILITY OBTAINS A HIGH LOAD CUSTOMER RATHER THAN KEEPING THE INFORMATION PRIVATE BETWEEN THE UTILITY AND THE COMMISSION.**

The Proposed Order correctly finds that the addition of a new high usage customer can significantly affect the Utility's revenues. Proposed Order at 30. Because of this potential, the City and the ICC Staff recommended that the Company be required to file a new cost of service study and new rates to reflect the new customer.

The Proposed Order incorrectly rejects the Staff's proposal but instead leaves it up to the Utility to self-police whether it is in an over-earnings position. Such a fox-guard-the-henhouse approach is inappropriate and the Commission cannot delegate its responsibilities in such a manner.

The City agrees in concept with the Staff proposal to have the Utility file a cost of service study and new rates when a new customer is added to the Large Light and Power class. However, this recommendation is too limiting. The record evidence in this docket shows that the Utility does not put its large users on the Large Light and Power rate but rather enters into special contracts with such users. By doing so in the future, the Utility would be able to circumvent both the Proposed Order's language and the recommendation of the ICC Staff.

In addition, the Proposed Order provides that when the Utility does make a report, the report is to be secretly given to the ICC Staff and not to public entities such as the City. It is highly inappropriate for the Commission to allow a utility it regulates to operate in secret and to join in the Utility's effort to hide the fact that it has added a new, significant customer and hide the impact of the additional load on the utility's revenues, to the detriment of ratepayers.

The Commission should adopt the ICC Staff proposal to require the utility to report any new customer and file a new cost of service study. In addition, the Commission should require the Utility to serve any such reports upon the City. Finally, the Utility should be required to make such reports when any large customer is added whether under the Large Light and Power rate or by special contract.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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## SUGGESTED SUBSTITUTE LANGUAGE

### EXCEPTION NO. 1

Page 6 of the Proposed Order should be modified as follows:

In accordance with Staff's recommendation, MCPU filed a Petition seeking a Certificate of Public Convenience and Necessity for the transmission line in question, in Docket No. 07-0530. Following the schedule set for 07-0530, Mr. Rockrohr filed testimony wherein he recommended that Commission grant the requested certificate to MCPU for the transmission line at issue. ~~A hearing was held in Docket 07-0530 on January 15, 2008, at which time both MCPU and Staff entered their testimony into the record recommending the granting of the requested certificate. On January 30, 2008, the Commission considered 07-0530 and entered a Final Order granting a Certificate of Public Convenience and Necessity for this transmission line. As Mr. Rockrohr had indicated that he would reverse his recommendation to disallow the \$663,788 from rate base if MCPU received a Certificate of Public Convenience and Necessity for this transmission line from the Commission prior to the close of this proceeding, it appears to the Commission that this matter is no longer contested between the parties.~~

As of the date this record was marked "Heard and Taken," there is no record evidence to support the Company's requested pro form adjustment and therefore the request is denied.~~The Commission therefore finds that the construction of this new transmission line was both necessary to the operations of MCPU, and was used and useful prior to May 4, 2008, and the Commission will therefore allow this pro forma adjustment to Construction Work in Progress in rate base.~~

## **EXCEPTION NO. 2**

The Proposed Order beginning at Page 10 should be modified as follows:

### **d. Commission Analysis and Conclusion**

MCPU, Staff and the City address the issue of whether this pro-forma adjustment, pursuant to 287.40, is reasonably certain to occur within 12 months of the filing of the tariffs, and whether the amount is determinable. MCPU initially took the position that it could not commit to purchasing these vehicles unless they were allowed into rate base, and if there were not allowed into rate base, then they would not be purchased. It was not until the surrebuttal testimony and live supplementation of the surrebuttal testimony that MCPU addressed the Staff's and the City's concerns by introducing what were purported to be minutes of the board of directors and correspondence between MCPU and car dealerships. At the hearing, Exhibits MCPU 1.1SR and 2.0SR were admitted over objection. Upon review of the law, the Commission agrees with the City that MCPU did not lay a proper foundation for their qualification as a business record and, therefore, the records are impermissible hearsay. National Wrecking Co. v. The Industrial Commission, 352 Ill. App. 3d 561 (1<sup>st</sup> Dist. 2004), Greaney v. The Industrial Commission, 358 Ill. App. 2002 (1<sup>st</sup> Dist. 2005), Apa v. National Bank of Commerce, 374 Ill. App. 3d 1082 (1<sup>st</sup> Dist. 2007). The decision by the ALJ is hereby reversed and MCPU Ex. 1.1SR and 2.0SR are stricken from the record. When this position was objected to by Staff and the City, MCPU indicates it took steps to satisfy the parties concerns. These steps included action by the Board of Mt. Carmel directing the purchase of the vehicles in question, and Mt. Carmel eventually issued purchase orders for the vehicles. It does not appear to the Commission that As of the evidentiary hearing, December 4, 2007, that any of the vehicles had in fact been purchased. Staff and the City remain opposed to this pro-forma adjustment, both indicating their position that there is insufficient evidence to show the Commission that these purchases will occur with a "reasonable certainty."

There is no record evidence that MCPU will purchase the vehicles in a timely manner. In fact, MCPU's attitude that "if you give us these in rate base, we'll buy them and if you don't, we won't" is unacceptable and unprofessional. It hardly supports MCPU's argument to include the pro forma adjustment.

The Commission therefore agrees with the Staff and the City and disallows the pro forma adjustment for the vehicles.

It is clear to the Commission that the position first adopted by MCPU, "if you give us these in rate base we'll buy them, and if you don't we won't", is insufficient to support the requested pro-forma adjustment. The question then becomes what is sufficient to show that these purchases are reasonably certain to occur. As noted, part of the

difficulty is that there is in essence a one year timeline to make the change, when a rate case has a timeline of approximately 11 months. Part 287.40 clearly contemplates a utility being rightfully allowed to make a pro-forma adjustment to rate base for something that will occur after an Order has been entered by the Commission.

The Commission must therefore judge what assurances have been made by the utility, and whether these assurances show that the purchases are a reasonable certainty. MCPU has presented evidence showing that its Board has directed that the vehicles in question be purchased prior to May 4, 2008. MCPU further presented at hearing copies of purchase orders which had been issued for each of the vehicles for which Mt. Carmel is seeking the pro forma adjustment. It appears to the Commission that Mt. Carmel has made a sufficient showing that the purchase of each of the five vehicles is reasonably certain to occur prior to May 4, 2008, and that the cost is determinable. As Mt. Carmel noted, it does not appear that any party has contested whether the costs are determinable or reasonable, but only whether the purchases were reasonably certain to occur. The Commission is at a loss as to what evidence could have been adduced that would have made the purchases more certain to occur, so as to satisfy Staff and the City, short of the actual purchase of the vehicles. Importantly, the question is whether there is reasonable certainty, not absolute certainty.

The Commission is aware of the risk of allowing this pro-forma adjustment, placing these vehicles into Mt. Carmel's rate base, and then, should these vehicles not be purchased, could put Mt. Carmel into an over-earning situation. The Commission trusts that Mt. Carmel understands the risk that taking that action would mean to future proceedings involving MCPU. The Commission would certainly take a dim view of any utility which made certain representations and assurances to the Commission of the actions it would take, and then fails to follow through on those representations. Mt. Carmel has represented to the Commission that these vehicles will be purchased prior to May 4, 2008, and has presented various testimony and documents to support that position. The Commission finds that there is a reasonable certainty that these vehicles will be purchased prior to May 4, 2008, and will therefore allow this pro-forma adjustment by Mt. Carmel. The Commission also deems it appropriate to direct Mt. Carmel to file a report on the first of each month to the Manager of the Commission's Accounting Department on the status of the purchases, until all five vehicles have been purchased. Should these filings not indicate that each of the vehicles have been purchased by May 4, 2008, then the Manager of the Accounting Department, in consultation with other Commission Staff, shall consider whether it is appropriate to recommend that the Commission begin a rate investigation on the Commission's own motion under 9-250 of the Act. The Commission notes further that neither Staff nor the City questioned whether the amounts for these vehicles was determinable or unreasonable, therefore the Commission will find that the purchase prices of the vehicles in question are determinable.

The Commission would note that while it is of course concerned with the added expense to customers by allowing this adjustment, the Commission must also concern

~~itself with a utility's ability to provide reliable service to its various customers. No party has questioned whether these vehicles are needed by Mt. Carmel to provide safe and efficient utility service to its customers.~~

~~The Commission also notes an issue raised by the City as to the order in which the parties presented their testimony at the evidentiary hearing, indicating that the order of witnesses was contrary to customary Commission practice. It appears from a reading of the transcript that the order of witnesses was decided on by the parties, and there appear to have been no requests to recall witnesses after Mr. Long's testimony. While the Commission discourages the filing of evidence on the day of an evidentiary hearing whenever possible, this may not always be possible. The Commission also notes that both the minutes of the Board of Directors and the issuance of purchase orders for the vehicles were discussed in Mr. Long's surrebuttal testimony, filed prior to the evidentiary hearing. The Commission is satisfied that the documents to which the City objected during hearing were properly admitted into evidence in this proceeding for the Commission to consider.~~

~~The Commission will therefore allow Mt. Carmel to make the requested pro forma adjustment to rate base for the vehicles in question, subject to the conditions discussed above, and will not adopt the proposed adjustment suggested by Staff and the City.~~

### **EXCEPTION NO. 3**

The Proposed Order beginning at Page 18 should be modified as follows:

#### **d. Commission Analysis and Conclusion**

~~The Commission notes that the arguments regarding this adjustment are essentially the same as those regarding the pro forma vehicle adjustment discussed above, and in fact, portions of the parties' Briefs discuss the two issues together. As noted earlier, this Commission has reversed the ALJ's decision to admit MCPU Exhibit 2.0SR, so the Commission's determination does not include that inadmissible evidence. The Commission notes that MCPU's initial attitude that it would not hire the employees until it received the rates it requested does not convince the Commission that MCPU will hire the employees in a timely manner as required by the Commission's rules. In fact, MCPU had several months after the deficiency was pointed out by the Staff and the City to incur these expenses, but MCPU decided not to do so. The Commission will allow a pro forma adjustment only for the two positions that were filled. As to the three vacant positions at the time the record was "Heard and Taken," the Commission will not allow any pro forma adjustment. Based upon the evidence in the record, it appears to the Commission that Mt. Carmel has presented sufficient evidence to demonstrate that these personnel hires are reasonably certain to occur prior to May 4, 2008, in conformity with Part 287.40. The Commission again must balance the costs to customers with a utility's ability to provide safe, efficient and reliable service to those same customers. No party has questioned that the hiring of these personnel will aid Mt. Carmel in providing such service. The Commission notes that in support of this opinion, Mt. Carmel has in fact already filled two of the positions, adding some credence to the belief that Mt. Carmel will follow through with the filling of these new positions. The Commission finds, as expressed earlier in the pro forma vehicle section of this Order, that Mt. Carmel has shown pursuant to Part 287.40 that these pro forma adjustments are reasonably certain to occur prior to May 4, 2008, and that the amounts of these adjustments are determinable. The Commission will therefore allow Mt. Carmel to make this pro forma adjustment to its 2006 historical test year, and will not adopt the proposed adjustment put forth by Staff and the City.~~

#### **EXCEPTION NO. 4**

The Proposed Order beginning at Page 20 should be modified as follows:

#### **c. City of Mt. Carmel Position**

The City submits that rather than the three year amortization period proposed by MCPU for rate case expense, a more appropriate period would be eight years. The City submits 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 City submits the Mt. Carmel filed for rate cases in 1982, 1995 and 1997. The City opines that using the time between rate cases shows that Mt. Carmel files a rate case about every eight years. The City notes that while Mt. Carmel argues it was prohibited from filing a rate case from 1997 and 2007 due to the rate freeze, Staff testified that this was not correct.

~~In support of its request, the City opines—pointed out that in Commonwealth Edison Co. Proposed General Increase in Rates for Delivery Services, Docket No. 05-0597, this Commission found that the amortization period for rate case expenses should be reasonable and related to the time the rates will be in effect. The City also cited Aqua Illinois, Inc. Proposed General Increase in Water and Sewer Rates, Docket Nos. 05-0070 and 05-0072 for the proposition that analyzing historic patterns by the utility for rate increases is an objective method that the Commission should use when determining the amortization period for rate case expenses. that generally, the Commission favors using historic data as an objective basis for determining the rate case expense recovery period, and that the rate recovery period should be reasonable and related to the estimated life that the rates will remain in effect. The City further notes that Staff appears to have used historic data for determining the amortization period in the past in other dockets, including the Aqua Illinois rate case, Docket Nos. 05-0070 and 05-0072.~~

The City submits that in this docket, the historical data show that the rates have an average life of eight years, and as Mt. Carmel has presented no evidence that it will be seeking another rate increase within three years, the three-year period sought is unreasonable given the historic data. The City submits that an eight year amortization period is warranted in this proceeding due to the historical data presented.

#### **d. Commission Analysis and Conclusion**

The Commission is of the opinion that the City's analysis of the treatment of rate case expense amortization is a correct reflection of this Commission's established

~~policy. The Commission sees no reason to deviate from this objective method to determine the correct amortization period. The Commission finds that an eight-year amortization period for rate case expenses is appropriate and adopts the City's recommendation. a three-year amortization period is appropriate in this proceeding, as agreed to by Mt. Carmel and Staff. It appears the intervention of the rate freeze period is a sufficient anomaly to argue against a mathematical determination of the time between rate cases. While Staff notes that Mt. Carmel was not necessarily prohibited from filing for a rate increase during the freeze, Staff seems to indicate that this may not have been an unreasonable belief on the part of Mt. Carmel. As a three year amortization period has previously been found appropriate for Mt. Carmel rate case expense in prior proceedings, the Commission deems it appropriate to continue with that period for this docket.~~

## **EXCEPTION NO. 5**

The Proposed Order beginning at Page 30 should be modified as follows:

### **d. Commission Analysis and Conclusion**

The Commission notes that all parties agree that the loss of a large electric and/or gas customer for Mt. Carmel can have an adverse effect on the other rate classes. As the parties agree on the potential magnitude of gaining or losing a large customer, it appears appropriate to the Commission to order a new cost of service study to be performed by Mt. Carmel should a new customer begin taking service from Mt. Carmel who is eligible to take service under either the Light and Power Class or the Industrial Gas Service Class. The Commission also agrees with the City that large customers who take power and energy under "special contracts" rather than the posted tariffs can affect MCPU's revenues and potentially place it in an over-earning situation. ~~The Commission does not deem it finds it appropriate however to automatically~~ require Mt. Carmel to file new tariff sheets and rates based on the results of the new cost of service study. ~~The Commission finds that it is more appropriate to direct Mt. Carmel to provide a new cost of service study to the Manager of the Commission's Rate Department within 60 days of a new large customer taking service from Mt. Carmel, and for Mt. Carmel and Staff to determine what appropriate further action is needed, if any. The Commission deems this a more appropriate response as no one of course knows when, or if, a new large customer may begin taking service, or what conditions may be for Mt. Carmel when this happens. In the Commission's view, depending upon the circumstance, it is possible that rather than producing an over-earning situation, the addition of a large customer could instead allow Mt. Carmel to defer an otherwise necessary increase in electric or gas rates. Thus, while the Commission believes the requirement to file a COSS is appropriate, and the filing of new tariffs is appropriate and mandates such a filing. will not be mandatory. The Commission further does not find it necessary to direct~~ Mt. Carmel to inform all parties to this docket when such a customer begins taking service, ~~and finds that the actions ordered above are sufficient.~~

The Proposed Order beginning at Page 32 should be modified as follows:

- (15) Should Mt. Carmel begin providing electric or gas service to a new customer eligible to take service under either Mt. Carmel's Electric Light and Power Tariff, ~~or~~ its Industrial Gas Service Tariff, or through any special contract, Mt. Carmel is directed to perform a cost of service study that reflects the addition of a new large customer, and to provide the results of this new cost of service study to the Manager of the

Commission's Rate Department and the City within 30 ~~60~~ days of the date that service begins for the customer. In addition, within 60 days of the date that such service begins for the customer, MCPU shall file with the Commission new electric rates for all customer classes, based on the new cost of service study and serve a copy of those rates on the City.

The Proposed Order beginning at Page 32 should be modified as follows:

IT IS FURTHER ORDERED that should Carmel Public Utility Company begin providing electric or gas service to a new customer eligible to take service under either Mt. Carmel's Electric Light and Power Tariff, ~~or~~ its Industrial Gas Service Tariff, or through any special contract, Mt. Carmel is directed to perform a cost of service study that reflects the addition of a new large customer, and to provide the results of this new cost of service study to the Manager of the Commission's Rate Department and the City of Mt. Carmel within 30 ~~60~~ days of the date that service begins for the customer. Within 60 days of the date that such service begins for the customer, MCPU shall file with the Commission new electric rates for all customer classes, based on the new cost of service study and serve a copy of those rates on the City of Mt. Carmel.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the City of Mt. Carmel's Brief on Exceptions has been sent via electronic means to the service list on this 15<sup>th</sup> day of February 2008.

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