

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Mt. Carmel Public Utility Company	:	
	:	
	:	Docket No. 13-0079
Proposed general rate increase for gas	:	
service and an electric rate design	:	
revision.	:	

**STAFF OF THE ILLINOIS COMMERCE COMMISSION’S REPLY
IN SUPPORT OF ITS MOTION TO STRIKE A PORTION OF
THE SURREBUTTAL TESTIMONY OF DAN LONG**

The Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned attorneys and pursuant to Sections 200.190 of the Commission’s Rules of Practice, 83 Ill. Adm. Code 200.190, and the schedule set by the Administrative Law Judge, hereby replies to Mt. Carmel Public Utility Company’s (“Mt. Carmel” or the “Company”) Response (“Response”) to Staff’s Motion to Strike (“Motion”) a Portion of the Surrebuttal Testimony of Dan Long (Mt. Carmel Ex. 1.0 SR). In support of this Reply, Staff states as follows:

1. On June 28, 2013, Mt. Carmel filed the surrebuttal testimony of Dan E. Long, Mt. Carmel Ex. 1.0 SR, in response to the prefiled rebuttal testimony of Staff witness Alicia Allen.
2. On July 11, 2013, Staff moved to strike portions of the surrebuttal testimony of Dan E. Long due to the fact that it is improper surrebuttal testimony and not responsive to the rebuttal testimony of Ms. Allen.

3. On July 12, 2013, Mt. Carmel filed a Response to the Motion. In the Response, Mt. Carmel claims that the testimony is responsive and proper surrebuttal testimony.

4. Mt. Carmel claims that Ms. Allen referred to her direct testimony on rebuttal, and in so doing, it essentially “opened the door” to responding to her direct.

5. Ms. Allen’s direct testimony addressed the fact that Mt. Carmel did not perform a cost of service study (“COSS”) in the preparation for this rate proceeding. Staff Ex. 4.0 at 5. On rebuttal, Ms. Allen referred to her direct testimony which stands for this fact and expounded that “in absence of an updated COSS, there is no support for a different rate structure.” Staff Ex. 7.0 at 2, ln. 44-49.

6. Under Mt. Carmel’s view, Ms. Allen’s reference to a particular portion of the record therefore gives the Company leeway to provide rebuttal testimony on matters outside the scope of her rebuttal. This is improper and has no basis in the law.

7. Proper rebuttal evidence answers or responds to new affirmative matters raised by an adversary. Rodriguez v. City of Chicago, 21 Ill. App. 3d 623, 625-26 (1st Dist. 1974). Long-established Commission practice follows Illinois law in requiring that rebuttal testimony respond to another party’s testimony, and not raise entirely new issues or introduce new evidence that should properly be presented in a party’s case in chief. See, Final Order, Illinois Bell Tel. Co., Docket No. 02-0864, at 294-98 (June 9, 2004).

8. Mt. Carmel asserts that because Ms. Allen made mention of a COSS from the Company’s last rate case in ICC Docket No. 07-0357, she had “the ability [sic] and knowledge of the prior COSS and ... referenced and utilized it,” it was proper for Mr. Long to perform a new analysis for the gas rate design in surrebuttal. Response at

¶ 11. This is not proper justification for introducing new evidence at the surrebuttal stage.

9. Mt. Carmel had the ability to introduce evidence in support of its position based upon the COSS from Docket No. 07-0357. The Company declined to take such action on rebuttal of Ms. Allen's direct. It was not until the surrebuttal stage that Mt. Carmel presented the study as evidence in support of its current rate design. Accordingly, it should be stricken.

10. Mt. Carmel further alleges that Staff's Motion states that Ms. Allen "brought up no new positions or statements" on rebuttal and accordingly, Ms. Allen's rebuttal testimony should be stricken as duplicative and repetitive of her direct testimony. Id. at ¶ 9. This is patently false. At no time did Staff ever state that Ms. Allen did not provide new testimony on rebuttal, nor do we concede the matter now.

11. Regardless of whether Ms. Allen's rebuttal testimony suffers from the defects alleged in Mt. Carmel's Response, such defects are not grounds upon which Mt. Carmel's testimony can legally stand, and the Company provides no legal basis for such an argument.

WHEREFORE, for the foregoing reasons, Staff respectfully renews its Motion to Strike and requests that the Commission strike portions of the surrebuttal testimony of Dan E. Long, as outlined in Staff's original Motion.

Respectfully submitted,

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