

DIRECT TESTIMONY

of

Eric P. Schlaf

Energy Division

Illinois Commerce Commission

Request for Approval of Revisions to Delivery
Services Tariffs and Delivery Services Implementation Plan

Docket Nos. 01-0525/01-0625
(Consolidated)

Mt. Carmel Public Utility Company

November 30, 2001

TABLE OF CONTENTS

Introduction of Witness.....	1
Conclusions and Recommendations	2
Tariff Terms and Conditions	3
Electronic Signatures	4
Implementation Plan.....	8

1 **INTRODUCTION OF WITNESS**

2 **Q. Please state your name and business address.**

3 **A.** My name is Eric P. Schlaf. My business address is 527 East Capitol Avenue,
4 Springfield, Illinois, 62701.

5

6 **Q. By whom are you employed and in what capacity?**

7 **A.** I am employed by the Illinois Commerce Commission ("Commission") as an
8 Economist in the Energy Division. My primary responsibility is to provide
9 recommendations to the Commission about issues connected with the
10 implementation of the "Electric Service Customer Choice and Rate Relief Law of
11 1997" (220 ILCS 5/16).

12

13 **Q. Please state your educational background and professional experience.**

14 **A.** I obtained a B.A. in 1982 from the University of Illinois at Champaign-Urbana. I
15 received an M.A. in Economics in August 1984 and a Ph.D. in Economics in June
16 1991 from the University of Illinois at Chicago.

17

18 I joined the Commission in March 1990, serving in the Least-Cost Energy
19 Program. In March 1992, I moved within the Commission to the Office of Policy
20 and Planning. The Office of Policy and Planning was subsequently merged into
21 the Energy Division. I have also taught numerous courses in economics and
22 statistics at the University of Illinois at Chicago, Roosevelt University, and the
23 University of Illinois at Springfield (formerly Sangamon State University).

24 **Q. Have you testified about electric utility industry issues in other dockets**
25 **before this Commission?**

26 **A.** Yes, I have. In particular, I testified in Mt. Carmel Public Utility Company's ("Mt.
27 Carmel" or "Company") previous delivery services tariff case, Docket No. 99-
28 0116.

29

30 **Q. What is the purpose of your direct testimony in this proceeding?**

31 **A.** I present Staff of the Commission's ("Staff") review of: (1) the "Terms and
32 Conditions" portions of Mt. Carmel's delivery services tariff filing, and (2) Mt.
33 Carmel's Residential Delivery Services Implementation Plan ("Implementation
34 Plan"). I also offer a proposal that would allow suppliers to use electronic
35 signatures, in addition to written signatures, to satisfy "Letter of Agency"
36 requirements.

37

38 **CONCLUSIONS AND RECOMMENDATIONS**

39 **Q. What conclusions and recommendations do you provide in this testimony?**

40 **A.** I make the following conclusions and recommendations:

41 1. Suppliers signing customers to electric supply contracts should be
42 permitted to use electronic signatures to satisfy the "verifiable
43 authorization" requirements (generally known as "Letter of Agency" or
44 "written authorization" requirements) discussed in Section 16-115A(b) of
45 the Public Utilities Act ("Act"). If this proposal is adopted, customers could
46 be given the option of enrolling with their chosen suppliers via the Internet,

47 a practice that would be consistent with how customers purchase products
48 and services in many industries, including the natural gas industry.

49
50 2. The Commission should approve Mt. Carmel's proposed Implementation
51 Plan.

52

53 **TARIFF TERMS AND CONDITIONS**

54 **Q. Does Staff recommend changes to any of the terms and conditions of the**
55 **delivery services tariffs filed by Mt. Carmel?**

56 **A.** Yes. As discussed below, Staff proposes an addition to the Terms and
57 Conditions portions of Mt. Carmel's delivery services tariffs that would enable
58 suppliers to use electronic signatures, in addition to "written signatures," to satisfy
59 Letter of Agency requirements.

60

61 **Q. Has Mt. Carmel proposed any changes to its existing terms and conditions**
62 **of delivery services?**

63 **A.** Yes. As described by Mt. Carmel witness Long, the Company has proposed only
64 a few changes to its existing "Terms and Conditions of Delivery Services" tariff
65 (Mt. Carmel Exhibit 1.0, p. 5.). These changes are minor in nature, and Staff has
66 no objection to the changes.

67

68 **Q. Please explain how Docket No. 00-0494 (the "Uniformity" proceeding for**
69 **delivery services tariffs) has affected this proceeding.**

70 **A.** The Uniformity proceeding concluded in March 2001. In that proceeding, Staff
71 and the other parties to the proceeding extensively reviewed, and were permitted
72 to seek changes to, the terms and conditions of the electric utilities' delivery
73 services tariffs. However, the Commission exempted Mt. Carmel from these
74 requirements, although Mt. Carmel has adopted some of the requirements on its
75 own initiative (Interim Order, Docket No. 00-0494, Appendix A, p. 10.). For
76 example, Mt. Carmel has upgraded its web site to enable customers and
77 suppliers to obtain customer-specific information, as well as other useful
78 information.

79

80 **ELECTRONIC SIGNATURES**

81 **Q. Please describe the Letter of Agency requirements applicable to customers**
82 **who wish to switch suppliers.**

83 **A.** Section 16-115A(b) of the Act states that, before a customer can be switched to
84 its electric service, an Alternative Electric Supplier must obtain the customer's
85 "verifiable authorization" in the form of a document, commonly known as a "Letter
86 of Agency" ("LOA") document. The LOA must conform to the requirements of the
87 Sec. 2 EE of the "Consumer Fraud and Deceptive Business Practices Act" (815
88 ILCS 505/2 EE). These requirements are generally referred to as "written
89 authorization" or LOA requirements. The requirements are listed, in greater or
90 lesser detail, in the electric utilities' delivery services tariffs and Implementation
91 Plans. In Mt. Carmel's case, basic LOA requirements appear in the definitions
92 section of the Company's "Terms and Conditions of Delivery Services" under

93 “Letter of Agency”. These requirements also appear in the Company’s proposed
94 Residential Delivery Services Implementation Plan.¹

95
96 The purpose of the LOA requirement, as generally understood, is to discourage
97 suppliers from switching customers without the customers’ written authorizations.
98 Simply put, the LOA requirement serves as an anti-slamming measure. This
99 requirement, along with other related requirements that discourage slamming,
100 has resulted in a virtual (if not total) lack of slamming since the electric market
101 opened in October 1999.²

102

103 **Q. What is the importance of the term “written authorization,” as stated in 815**
104 **ILCS 505/2 EE?**

105 **A.** The term “written authorization” has been taken literally to mean that a customer
106 who intends to switch to a supplier must actually sign his or her name to a piece
107 of paper that contains LOA information. (This is sometimes referred to as a “wet
108 signature” rule.) Customers have thus been prevented from signing up with
109 suppliers through alternative enrollments methods, such as Internet-based
110 enrollment or enrollment over the telephone, unless they also sign an LOA
111 document that they send to their chosen suppliers.

112

¹ Pages 11-12 of Mt. Carmel’s proposed “Residential Delivery Services Implementation Plan.”

² For example, a utility will only accept enrollment requests from suppliers who have obtained a certificate from the Commission, and also who have “registered” with that utility. This process thus limits the possible universe of potential slammers to registered suppliers only.

113 **Q. Has the written authorization requirement retarded the development of the**
114 **electric industry in Illinois?**

115 **A.** It may be hard to reach that conclusion, as some 15,000-20,000 customers,
116 mostly in the Commonwealth Edison Company service area, have switched to
117 delivery services despite the existence of the written authorization requirement.
118 What can be said, however, is that allowing customers to sign up for electric
119 service over the Internet, just as customers purchase airline tickets, books and
120 records, and even natural gas service, provides customers an additional
121 enrollment option that many customers might find valuable. What is more,
122 electric suppliers have been deprived of offering this enrollment option, which
123 almost certainly has raised their customer marketing costs. Minimizing marketing
124 costs will be especially important for suppliers that are considering entering the
125 residential electric market, where per-customer profit margins may be expected
126 to be very small. In fact, it would not be surprising if some marketers' entrance
127 into the residential market entirely depended entirely on the availability of Internet
128 enrollments.

129

130 **Q. Could suppliers offer an Internet enrollment option while still requiring**
131 **customers to satisfy the Letter of Agency requirements?**

132 **A.** Yes. Two recently enacted statutes grant equal legal status to written signatures
133 and "electronic signatures" for certain types of commercial transactions. In July
134 1999, Illinois enacted the "Electronic Commerce Security Act" (5 ILCS 175). A
135 year later, the federal "Electronic Signatures in Global and National Commerce

136 Act” (15 U.S.C. Sections 7001 et seq.) was enacted. These two laws address
137 electronic signatures, which, according to the Electronic Commerce Security Act,
138 are signatures that are “...attached to or logically associated with an electronic
139 record.” By use of electronic signatures, these laws allow customers to switch
140 electric suppliers and also satisfy LOA requirements.

141

142 **Q. What would need to take place to permit suppliers to offer Internet**
143 **enrollments to customers?**

144 **A.** Ultimately, the Commission may have to approve modifications to Mt. Carmel’s
145 tariffs and perhaps also to its Implementation Plan to clarify that the written
146 authorization requirement could also be satisfied through the use of electronic
147 signatures.

148

149 **Q. Has the Commission endorsed the use of Internet enrollments?**

150 **A.** Yes. The Commission recently approved the use of Internet enrollments in its
151 Order in Docket Nos. 00-0620/0621 (Consolidated), the Nicor Gas Company
152 proposal to expand its Customer Select Program to approximately two million
153 additional natural gas customers. If the Commission believed that the use of
154 Internet enrollments would encourage slamming, or would otherwise be
155 potentially harmful to customers, I doubt that the Commission would have
156 approved the use of this enrollment method for residential customers. The
157 relevant part of the Commission’s Order in the Customer Select proceeding
158 reads as follows:

159 All parties agree that it is appropriate for customers to have the
160 ability to sign up via the Internet. As a result, the Commission
161 directs Nicor Gas to modify its tariffs to allow for this option. . . For
162 Internet enrollments, electronic rather than written documentation is
163 acceptable, provided that any supplier offering enrollment over the
164 Internet is required to ensure that its web site clearly displays the
165 LOA information in a clear and understandable manner that is
166 clearly visible to prospective customers. (Commission Order,
167 Docket Nos. 00-0620/0621 (Consolidated), p. 72.)
168

169 **Q. If electronic signatures are to be used, do you think that it would be**
170 **helpful for interested parties to discuss the practical application of Internet**
171 **enrollments in workshops?**

172 **A.** Yes. Before the electric market opened in October 1999 (and before utilities
173 prepared their initial delivery services tariff filings), Staff sponsored workshops on
174 numerous customer choice-related issues, including matters related to LOA
175 requirements. I think all parties would agree that the workshops were an
176 effective means to identify and resolve issues. Since the use of Internet
177 enrollments would be a fairly significant change in the way that suppliers have
178 operated in the deregulated Illinois electric market, I believe it would be helpful to
179 discuss issues concerned with Internet enrollments even though the tariff
180 proceedings are currently underway. Staff would be willing to discuss these
181 issues with interested parties in workshops.

182

183 **IMPLEMENTATION PLAN**

184 **Q. Have you had an opportunity to review Mt. Carmel's proposed Residential**
185 **Delivery Services Implementation Plan?**

186 **A.** Yes. I recommend that the Commission approve Mt. Carmel's Residential
187 Delivery Services Implementation Plan as proposed. I also recommend that Mt.
188 Carmel amend its Plan to conform to the Commission's final Order in this
189 proceeding.

190

191 **Q.** **Does this conclude your direct testimony?**

192 **A.** Yes.