STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission,	**:**	
On its own Motion,	**:**	
	:	**06-0525**
Consideration of the federal standard	**:**	
On Interconnection in Section 1254 of the	**:**	
Energy Policy Act of 2005.	**:**	

<u>SECOND NOTICE ORDER</u>

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By the Commission:

I. Background

On July 26, 2006, the Commission commenced this proceeding to commence consideration of 16 U.S.C. Sec. 2621(d)(15). The EPAct required every state commission to commence consideration of 16 U.S.C Sec. 2621(d)(15), or set a hearing date for consideration of this statute by August 8, 2006, and complete its determination as to whether to implement 16 U.S.C. Sec. 2621(d)(15) by August 8, 2007. (16 U.S.C. Sec. 2621(a); 16 U.S.C. Sec. 2622(b)(5)(B)). The statute that Congress requires this Commission to consider provides, in pertinent part:

> (15) Interconnection. – Each electric utility shall make available, upon request, interconnection service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term 'interconnection service' means service to an electric consumer under which an on-site generating facility on the consumer's premises shall be connected to the local distribution facilities. Interconnection services shall be offered based upon the standards developed by the Institute of Electrical and Electronics Engineers: IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems, as they may be amended from time to time. *In addition, agreements and procedures shall be established whereby the services are offered shall promote current best practices of interconnection for distributed generation, including but not limited to practices stipulated in model codes adopted by associations of state regulatory agencies. All such agreements and procedures shall be just and reasonable, and not unduly discriminatory or preferential.*

(16 U.S.C. Sec. 2621(d)(15); emphasis added). The standard in question requires an electric utility to make interconnection services available upon request to any electric consumer that the utility serves, based upon Institute of Electrical and Electronics Engineers ("IEEE") Standard 1547. (16 U.S.C. Sec. 2621(d)(15)). IEEE Standard 1547 establishes the technical specifications for, and testing of, interconnection. It sets forth requirements regarding the performance, operation, testing, safety and maintenance necessary for interconnection. These criteria and requirements are applicable to all technologies with the aggregate capacity of 10 MVA or less at the point of common coupling. (*See,* IEEE Standard 1547 at p. 2, Section 1.3 Limitations.).

Participating in this docket were Commission Staff, the Ameren Illinois Companies, ("Ameren") the Commonwealth Edison Company, ("ComEd") the Environmental Law and Policy Center, (the "ELPC") the Illinois Attorney General, (the "AG") the City of Chicago, (the "City" or "Chicago") MidAmerican Energy Company, ("MidAmerican") and the Interstate Renewable Energy Council ("IREC").

On July 25, 2007, this Commission issued an Interim Order whereby it considered IEEE Standard 1547 and adopted it. In that Order, however, it noted, essentially, that 16 U.S.C. Sec. 2621(d)(15) requires this Commission to develop agreements and procedures regarding interconnection. In that vein, it concluded that there are many more issues involved in interconnection than just determining whether IEEE Standard 1547 should be utilized. (Interim Order at 3). This docket continued to proceed in order to develop standards regarding safety, legal standards, insurance standards, and many, many other issues.

A Public Forum convened on May 20, 2008. An Administrative Law Judge's Proposed Order (an "ALJPO") issued on May 23, 2008. The parties and Staff filed and served Briefs on Exception on May 30, 2008. MidAmerican did not file a Brief on Exception. Pursuant to an agreement amongst the parties, no Reply Briefs on Exception were filed in this docket.

II. The Net Metering Statute

Net meters are used by interconnecting entities or persons to determine the amount of utility-supplied electricity that those interconnecting entities or persons use. They also determine the amount of electricity that interconnectors supply to utilities. On August 24, 2007, almost a year after the instant docket commenced, the Illinois General Assembly enacted a single statute, which is now part of the Public Utilities Act, concerning net meters. Pertinent to this docket, it provided that:

> Within 120 days after the effective date of this amendatory Act . . . the Commission shall establish standards for net metering and, if the Commission has not already acted on its own initiative, standards for the interconnection of eligible renewable generating equipment to the utility

> system. The interconnection standards shall address any procedural barriers, delays, and administrative costs associated with the interconnection of customer-generation while ensuring the safety and reliability of the units and the electric utility system. The Commission shall consider the Institute of Electrical and Electronics Engineers (IEEE) Standard 1547 and the issues of (1) reasonable and fair fees and costs, (ii) clear timelines for major milestones in the interconnection process, (iii) nondiscriminatory terms of agreement and (iv) any best practices for interconnection of distributed generation.

(220 ILCS 5/16-107.5(h)). While the Net Metering Statute does not require this Commission to promulgate interconnection standards within 120 days from the date of enactment, net meters are used by persons and entities with on-site generation when those persons or entities wish to sell the excess electricity generated to utilities. A rule regarding net meters, therefore, does not have optimal value for the general public, or for utilities, unless there is also a rule in place regarding interconnection.

Staff conducted numerous workshops in order to fully consider the many issues involved in interconnection. Subsequently, on March 12, 2008, Staff served a copy of a Proposed Rule and an Emergency Rule upon the parties in this docket. On March 26, 2008, this Commission issued an order submitting an Emergency Rule and also submitting the Permanent Rule to the Joint Committee on Administrative Rules ("JCAR") commencing the First Notice Period. Notice of the Proposed (permanent) Rule was published in the Illinois Register on April 18, 2008, initiating the First Notice Period. Staff and the parties submitted Comments regarding the Rule on April 25, 2008.[1] The Parties and Staff filed Reply Comments on May 9, 2008.

III. The Emergency Rule

The Emergency Rule that is currently in effect is substantially the same as the Rule that is the subject of this Order. As shall be discussed more fully herein, the only substantive difference between the two is that the Emergency Rule has a "safe harbor" provision, which provides, essentially, that, as long as the utilities act in a manner that is just and reasonable, they are not in violation of the Rule.

IV. General Background Regarding the Rule

The Rule reflects the fact that there are four distinct generation levels. Level 1 contains a simple procedure for smaller generators. Level 1 is for laboratory-certified inverter-based generators with capacitance that is equal to or below 10 kVA. An inverter changes direct current ("DC") into an alternating current ("AC"). Typically, a Level 1

1 The ELPC and the AG jointly filed Comments and Reply Comments. For the sake of brevity, those joint filings are referred to herein as the ELPC's Comments and Reply Comments.

inverter-based generator is photovoltaic (solar) or a windmill. (*See,* 466.80).

Level 2 is for generators with capacitance that is above 10kVA but less than or equal to 2MVA.[2] These generators also must be laboratory-certified. Level 3 is for generators with capacities that are less than 10 MVA. Level 3 generators do not export power back onto the grid. A Level 3 customer must use reverse power relays or other mechanisms specified in the Rule to prevent power from flowing out into the distribution system. Finally, Level 4 is for all other interconnecting customers. Interconnectors that fail to pass the screens for lower levels become Level 4 interconnection applicants. (*Id.*).

Utilities are required to evaluate the 1-3 interconnection requests for adverse system impacts using various "screens." The "screens" are enumerated in the Rule. (*See, e.g.,* Section 466.90(a); 466.100(a); 466.100(a)(5)).

Level 4 interconnections, in general, can be much more complex than those in Levels 1-3. They can involve an Interconnection Feasibility Study, an Interconnection Impact Study, or an Interconnection Facilities Study. (466.120(d)(1); Appendices F, G and H). The Rule also contains guidelines that govern Interconnection Studies. (466.120(e)). It also defines what an Interconnection Impact Study is supposed to accomplish. (466.120(e)(2)). Additionally, the Rule sets forth, with specificity, how an Interconnection Facilities Study shall be conducted. (466.120(e)(3)).

The Rule provides that the technical standard to be used in evaluating any interconnection request subject to the Rule is IEEE Standard 1547. Also, for all interconnections, it requires persons or entities desiring to interconnect to submit a Commission-approved interconnection application to the applicable utility. (Sections 466.40; 466.50). After a Level 2-4 interconnection request is deemed to be complete, the EDC (the utility) assigns the application a queue position to interconnect based upon the date that the interconnection request is determined to be complete. The utility then informs the applicant of his or its queue position. (*See, e.g.*, 466.100(b)(3)). All applicants are required to submit proof to the interconnecting utility that a local building code inspection authority (*e.g.,* municipal) has inspected the property and has approved it. (*See, e..g.*, Appendix B).

A utility can schedule a witness test of the machinery in question, or, it can determine that a witness test is not necessary. (*See, e.g.,* 466.1100(e)(4)). Also, if a utility determines that it needs more information in order to evaluate the interconnecting facility's adverse system impact, it may request more information from the interconnector. (*See, e.g.,* 466.110(a(4)).

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2 Originally, the Rule provided for measurements in "MW" (megawatts). However, Staff recommended replacing "MW" with "MVA" (Megavolt Amperes") as "MVA" is more accurate. (*See*, Staff Reply Comments at 3). Volt-ampere is the amount of "apparent power" in an alternating current circuit. A watt, however, is the real power, which is generally equivalent to the volt-ampere amount for non-reactive circuits. Thus, for purposes of the Rule, there is little difference between a MW and an MVA. Staff's concern, however, was with accuracy, as IEEE 1547 is expressed in MVA, not MW. The Rule has been changed accordingly.

The Rule also requires the parties to use Commission-approved standardized Interconnection Agreements, as well as standardized contracts for interconnection feasibility studies, system impact studies, and facilities studies. (Appendices A through G). Except with regard to Level 4 facilities, interconnection review is on an expedited basis.

The standardized Interconnection Agreements clarify a variety of relationships. They determine when an interconnector may operate the generation facility and interconnect with a utility, when a utility may disconnect the generating facility, limitations on liability, and various other terms. They also require that a utility must have direct, unabated access to a required disconnection switch and metering equipment. (*See, e.g.,* Appendix A).

Further, the Rule provides for dispute resolution. This provision states that a party may seek resolution through complaint or mediation procedures at this Commission. However, it requires the parties to conduct an informal meeting for the purpose of settling their differences before availing themselves of Commission procedures. (466.130).

V. The Contested Issues Regarding the Rules

a. Whether there Should Be a Rule Governing Interconnection Procedures

MidAmerican's Position

The Emergency Rule has a "safe harbor" clause. It provides that:

Section 466.20 Interconnection requirement

a) Each electric distribution company shall offer interconnection to generation facilities, within the scope of this Part, on just and reasonable terms and conditions.

b) For the purposes of compliance with subsection (a), the procedures set forth in Sections 466.30, et seq., are just and reasonable. Any just and reasonable deviation from the procedures set forth in Sections 466.30, et seq., shall not be interpreted as a violation of this Part. For reporting purposes only, each electric distribution company shall disclose by filing on the Illinois Commerce Commission (Commission) website and subsequently posting on its website its rationale for utilizing an alternative procedure or practice than those set forth in Sections 466.30 et. seq.

(Emergency Rule, Sec. 466.20). This "safe harbor" provision was not intended to be a permanent part of the Rule. Rather, it was placed in the Rule to ensure that the utilities would not be placed in the position of being required to comply with the more detailed

aspects of the Rule until they had ample time to fully analyze it and implement its requirements.

Nevertheless, MidAmerican proposes that the "safe harbor" provision in the Emergency Rule should remain in the final version of the Rule. It argues that this provision affords the same level of protection for interconnection customers as that which a detailed rule would provide. (MidAmerican Comments at 2).

Ameren's Position

Ameren contends that the Rule should be limited to addressing only the interconnectors that are subject to the Net Metering Statute. It avers that the Rule improperly assigns benefits to all interconnections, even to those that are not subject to the Net Metering Statute. (Ameren Comments at 11). Essentially, Ameren maintains that the Rule is being promulgated pursuant to the Net Metering Statute, and therefore, it is valid only if it furthers the intentions of the Illinois General Assembly that were expressed in that statute. (*Id.* at 12). The Illinois General Assembly explicitly limited the Net Metering statute's application to retail customers that own or operate a:

> [s]olar, wind, or otherwise eligible renewable electrical generating facility with a rated capacity of not more than 2,000 kilowatts that is located on the customer's premises and is intended primarily to offset the customer's own requirements. . .

(*Id.; See, also* 220 ILCS 5/16-107.5(b)). Thus, Ameren argues that this docket, which was instituted pursuant to federal law, should constrict the mandates in the Rule solely to those matters addressed by the Illinois General Assembly in the Net Metering Statute. (Ameren Comments at 12). In support, Ameren cites an ALJ ruling that issued in this docket. It stated, in pertinent part, that:

> If the General Assembly intended to require the development of standards regarding interconnection to extend beyond the definition of "eligible customer" set forth in subsection (b) of the Net Metering Statute, it would have placed language in this statute stating that the interconnection standards to be developed would concern entities other than those defined in the statute's definition of "eligible customer." It did not.

(*See,* ALJ Ruling dated October 1, 2007; Ameren Comments at 12). Ameren avers that explicit in this ruling is an acknowledgement that the Net Metering Statute only requires this Commission to develop standards regarding the interconnectors that are subject to that statute.

Ameren further supports ComEd's argument that there should be no fixed standards for utilities. Also, according to Ameren, keeping the "safe harbor" provision in the Rule would allow utilities to remain flexible. Ameren, however, acknowledges that there are benefits to having procedures codified in a rule, such as eliminating misunderstanding or mistrust and decreasing the amount of litigation regarding interconnection. (Ameren Reply Comments at 2-3).

ComEd's Position

ComEd cites Section (h) of the Net Metering Statute and asserts that the Commission's obligations pursuant to that statute to develop interconnection standards have already been fulfilled. (220 ILCS 5/16-107.5(h)). ComEd further argues that, even if Section (h) of the Net Metering Statute were to be construed by this Commission to require it to develop interconnection standards, this statute does not require this Commission to include mandatory and detailed procedures. It concludes that the language in the Net Metering Statute requiring this Commission to develop interconnection standards would be satisfied if the Rule specified that utilities will be held to a "just and reasonable" standards in their handling of net metering interconnection applications, and, requiring utilities to post their procedures on their websites for easy public access. (ComEd Comments at 4).

ComEd additionally reasons that, if there were any requirement to adopt rules pursuant to the Net Metering Statute, this Commission would have been required to promulgate those rules within 120 days after that statute was enacted. ComEd further cites the Second Interim Order in this Docket, which issued on November 20, 2007. It avers that in that Order, this Commission effectively noted that, when it adopted IEEE Standard 1547 as the technical standard applicable to small generator interconnection, it had already acted on its own initiative, which, according to ComEd, obviates all of the federal requirements regarding interconnection rules. (*Id.* at 3-4).

ComEd also asserts that a detailed rule, like the one here, is a rarity in Commission regulation. For example, there are no detailed rules dictating how electric utilities must process requests for basic electric service, but, it is understood that the utilities must not act unjustly or unreasonably. Also, there are no Commission rules regarding how a utility should process requests to switch to competitive electric suppliers. (*Id.* at 5-6). ComEd states that this Commission should seriously consider not adopting the Rule. (ComEd Reply Comments at 2). The details of how utilities process requests for interconnection should be left to the utilities to manage in the same way that utilities are left to manage the details of processing requests for electric service. It points out that the electric grid is a complicated mechanism that was not designed to easily accommodate the connection of generation facilities in the manner, in which, it was designed to connect load customers. (ComEd Comments at 5-6).

The City's Position

The City maintains that the Net Metering Statute evinces a legislative mandate to promote renewable resources. It also avers that adopting Part 466 will create uniformity

and certainty. The absence of these two key factors, the City continues, has hindered the development of distributed generation projects. Also, according to the City, MidAmerican's proposal to keep the "safe harbor" provision in the Rule would have the same effect as maintaining the *status quo*. (City Reply Comments at 3).

Staff's Position

Staff posits that the rule ensures that the interconnection process will be uniform throughout this state. A uniform process allows the manufacturers of generation machines access to a wider market. A uniform process also streamlines the interconnection process, providing generation customers with a clear-cut and efficient method for installing their machines. (Staff Comments at 9).

Staff also disagrees with MidAmerican's contention that including "safe harbor" language in the Rule would provide the same level of protection for interconnection customers as that which is provided by a detailed rule. It asserts that Part 466 provides meaningful, enforceable customer rights, as well as certainty, regarding the technical, procedural and financial matters that are necessary for the growth of distributed generation. Staff avers that the public interest is served by a general and detailed rule. Staff additionally states that it can work with the utilities to assure that compliance with Part 466 can be efficiently and timely achieved. (Staff Reply Comments at 2-3).

The ELPC's Position

The ELPC argues that a uniform statewide rule provides the transparency and certainty that is needed to grow the distributed generation market in Illinois. According to the ELPC, utility-specific differences deter commercial-scale marketing. By adopting a statewide rule, it maintains, the Commission will enhance predictability and diminish the financial risks that currently hinder investment in distributed generation. (ELPC Reply Comments at 3). It concludes that the rule-based approach taken here strikes the appropriate balance between certainty and flexibility. (*Id.* at 4).

Additionally, the ELPC takes issue with Ameren's argument that the Net Metering Statute is the enabling statute for this docket. It points out that this Commission opened the instant docket on July 26, 2006, many months before the Net Metering Statute was enacted. (*Id.* at 4). It maintains that the true enabling statutes for this docket are the Public Utilities Regulatory Policies Act ("PURPA") and the Illinois Public Utilities Act. Neither one of these acts suggests any limitation in coverage. The ELPC also stated that PURPA requires utilities to make interconnection services, based on best practices, available to "any electric customer that the electric utility serves." (ELPC Reply Comments at 4-5, citing 16 U.S.C. Sec. 2621(d)(15)).

Analysis and Conclusions

No utility took exception to the conclusion in the ALJPO that is articulated below, which is, that there should be a rule governing the procedures involved in interconnection.

(*See,* ComEd Brief on Exceptions at 1-3; Ameren Brief on Exceptions at 1-2).

Whether the Net Metering Statute Limits the Scope of this Docket

Although both Ameren and ComEd argue that the Rule exceeds the boundaries of the Net Metering Statute, they do not state how it exceeds that which is defined in the Net Metering Statute. Part 466 applies to all interconnectors that have the technology with an aggregate capacity of 10 MVA or less. 10 MVA has been defined by ComEd as 10 Megavolt Amperes, and, about enough electricity to supply 225 average households. However, the Net Metering Statute is only applicable to those persons or entities that fall within its definition of an "eligible customer." An "eligible customer" is:

> A retail customer that owns or operates a solar, wind or other eligible renewable electrical generating facility with a rated capacity of not more than 2,000 kilowatts that is located on the customer's premises and is intended primarily to offset the customer's own electrical requirements.

(220 ILCS 5/16-107.5(b)). The interconnection standards to be developed pursuant to the Net Metering Statute are for the interconnection of "eligible renewable generating customers." (220 ILCS 5/16-107.5(h)). An "eligible renewable generating facility" is a:

> generator powered by solar electric energy, wind, dedicated crops grown for electricity generation, anaerobic digestion of livestock or food process waste, fuel cells or microturbines powered by renewable fuels, or hydroelectric energy.

(220 ILCS 5/16-107.5(b)).

It is true, as Ameren and ComEd point out, that even though the Net Metering Statute evinces a legislative intent to promote interconnection, the only interconnection standards that the Net Metering Statute requires this Commission to promulgate are those that concern renewable generation with facilities that have rated capacities of 2,000 kilowatts or less that are used primarily to offset a customer's own electrical requirements. (220 ILCS 5/16-107.5(b) and (h)). Therefore, for the most part, interconnections subject to the Net Metering Statute are Level 1 or Level 2 interconnectors. However, this does not end the enquiry. The Public Utilities Act requires this Commission to determine whether any service provided by a public utility is one that:

> [p]romote(s) the safety, health, comfort, and convenience of its patrons, employees and public and as shall be in all respects adequate, efficient, just and reasonable.

(220 ILCS 5/8-101). Thus, the Public Utilities Act provides this Commission with the jurisdiction necessary to impose any interconnection standards that exceed those comporting with the Net Metering Statute. (*See also,* 220 ILCS 5/8-401; 8-402; 8-505).

Additionally, we note that the federal EPAct (also called "PURPA") requires this Commission, once it has decided to adopt IEEE Standard 1547, to develop agreements and procedures for interconnection. (16 U.S.C. Sec. 2621(d)(15)). If Congress was of the opinion that this Commission does not have jurisdiction to promulgate rules regarding interconnection, it would have exempted this Commission from that requirement. It did not.

Moreover, if either Ameren or ComEd were truly of the opinion that this Commission does not have jurisdiction to promulgate rules regarding interconnection beyond that which the Net Metering Statute requires, surely, those utilities would have filed motions to dismiss this docket during the first year, in which, this docket proceeded, before the time when the Net Metering Statute was enacted, thereby curtailing any unnecessary waste of utility and Commission resources. Neither utility made such a motion.

Finally, whether the 120-day deadline in the Net Metering Statute applies to the development of interconnection rules was fully addressed in the ALJ Ruling that issued on October 1, 2007. In that Ruling, the ALJ found that the 120-day period in the Net Metering Statute does not apply to the development of interconnection standards. No party filed a motion for reconsideration or an interlocutory appeal. That ruling, therefore, is the law of the case, rendering ComEd's arguments on this issue to be unavailing. (*See, e.g., People v. Tenner,* 206 Ill. 2d 381, 395, 794 N.E.2d 238 (2002)). We additionally note that this issue was fully briefed by the parties. Also, at that time, ComEd contended that the 120-day period in the Net Metering Statute was inapplicable to the development of interconnection standards. (*See, e.g.,* ComEd Comments filed on September 17, 2007).

Whether this Commission Should Otherwise Decline to Promulgate the Rule

ComEd contends, essentially, that federal law does not require this Commission to promulgate any rules, and therefore, this Commission should decline to promulgate Part 466. It asserts that this Commission has decided, in this docket, that the electrical standard proffered in the federal EPAct, IEEE Standard 1547, should apply to the corresponding interconnections in Illinois. Therefore, it reasons, there is no need for any further Commission action.

This argument overlooks other portions of the EPAct, however, which require this Commission to establish agreements and procedures whereby the services offered by a utility promote the current best practices regarding the interconnection of distributed generation. (*See, e.g.,* 16 U.S.C. 2621(d)(15)). The most organized and clear-cut way to develop such procedures and agreements is by way of promulgating a regulation. We also note that the language in the federal statute clearly contemplates uniformity within a state, and it promotes national uniformity, as, it requires state commissions to determine the "best practices, including, but not limited to practices stipulated in model codes adopted by associations of state regulatory agencies." (*Id.*). ComEd's argument, therefore, is meritless.

ComEd also argues, essentially, that mandatory standards are not necessary

because other areas, such as requests for basic electric services, or how a utility processes requests to switch to a competitive electric supplier, are not regulated. In fact, however, the issues here are concern a wide variety of topics and they concern vital and complicated issues, such as safety issues, or, who or what pays when there is liability or when there is third-party liability. The issues here cannot be compared to what is involved in processing a request for basic electric services or processing a request to switch to a competitor. It is therefore appropriate that the Rule specifies, in detail, how an interconnection application will proceed.

Whether the "Safe Harbor" Provision Should Remain in the Rule

The utilities contend that the "safe harbor" provision should remain in the Rule, even though it was placed in the Rule on a temporary basis so that the utilities would have adequate time to analyze the Rule thoroughly and implement it. MidAmerican argues that this provision provides the same level of protection for interconnection customers as that which a detailed rule would provide. We disagree.

As Staff, the City, and the ELPC note, Part 466 will create uniformity and certainty, thereby removing major obstacles from the development of distributed generation projects. It also streamlines the process, providing clear-cut and efficient methods for installing generators. A uniform process additionally allows the producers of generation machines to have a more uniform access to a wider market. None of these benefits would evolve if the "safe harbor" provision remained in the rule. Including this provision on a permanent basis, as the City points out, would merely preserve the *status quo*. We decline to include the "safe harbor" provision in the final version of the Rule.

b. The Scope of the Rule-Sections 466.10 and 466.40

The ELPC's Position

Currently, Section 466.10 limits the scope of the Rule to interconnecting generation facilities with nameplate capacities of 10MVA or less. The ELPC asserts that in most cases, generators that are larger than what the Rule requires will be subject to the requirements of the Federal Energy Regulatory Commission (the "FERC") or the applicable Regional Transmission Organization (an "RTO"). (ELPC Comments at 5-7). However, if the state rules remain limited to 10 MVA, some generators will fall into the gap between the state and federal procedures. It further states that while the IEEE Standard 1547 is applicable to projects that are 10 MVA and below, this is no reason to deny larger projects access to the Level 4 study process, business terms and dispute resolution process. (ELPC Comments at 5-7). The ELPC contends that the IEEE Standard 1547 is a technical standard; it does not concern the broader business practice aspects of the Rule. It suggests that the appropriate sections of the Rule could be revised to make the IEEE Standard 1547 mandatory only for projects that are smaller than 10 MVA and advisory for projects that are larger than 10 MVA. It proposes amending the Rule as follows:

Section 466.10 the Scope of the Rule

> The Illinois Distributed Generation Interconnection Standard applies to generation facilities operated in parallel with an electric public utility distribution company in Illinois that are not subject to the Interconnection requirements of either the Federal Energy Regulatory Commission (the "FERC") or the applicable Regional Transmission Organization (an "RTO") (either Midwest Independent System Operator, Inc. ("MISO") or PJM Interconnection, LLC ("PJM")).
>
> Section 466.40 the Rule's Technical Standards
>
> The technical standard to be used in evaluating interconnection requests governed by the Illinois Distributed Generation Interconnection Standard is IEEE Standard 1547. For generation facilities with a nameplate capacity of more than 10 MVA, the EDC may depart from the IEEE standard in appropriate circumstances. The EDC shall provide the interconnection customer with a written explanation of any necessary departures from the IEEE 1547 Standard for generation facilities larger than 10 MVA.

(ELPC Comments at 6-8).

IREC's Position

IREC, also, avers that the FERC does not necessarily have jurisdiction over all facilities that are in excess of 10 MVA. In practice, almost all facilities larger than 10 MVA will interconnect with transmission lines listed on a utility's Open Access Transmission Tariff, making the interconnection subject to the FERC's jurisdiction. However, according to IREC, the FERC has declined to exercise its jurisdiction in certain instances, and, there is no reason to create a gap. It maintains that the rationale for providing a 10 MVA capacity cap is that IEEE Standard 1547 specifically states that it applies to systems with up to 10 MVA of capacity. (IREC Comments at 6). However, the FERC's Small Generator Interconnection Procedure also relies upon IEEE Standard 1547 and extends its coverage to 20 MVA. For generators with capacities between 10 and 20 MVA, IREC asserts that a utility can look to IEEE Standard 1547 for guidance. (IREC Comments at 6-7).

Staff's Position

Staff acknowledges that a "gap" exists between FERC-regulated interconnections and interconnections subject to Part 466. However, Staff asserts that it deliberately limited the scope of the Rule to distributed generation of 10 MVA or less. (Staff Comments at 13). Staff avers that it developed its position on this issue after considering the consequences of extending the Rule's applicability to distributed generation with capacities that are larger than 10MVA. Staff points out that IEEE Standard 1547 was not designed for larger interconnections. Thus, using this standard for larger interconnections could have negative impacts upon electric distribution systems in Illinois. Staff further maintains that because the electric distribution system was not designed to receive load from distributed

generation sources, accommodating the largest of distributed generation interconnections could require utilities to make modifications, which could render the timelines contained in the Level 3 and 4 interconnection screens impractical. Also, different procedures might be necessary to use for these larger generators. (Staff Reply Comments at 5-6).

Ameren's Position

Ameren argues that the scope of the Rule is properly limited to facilities with 10 MVA or less, based upon the scope of IEEE Standard 1547. It asserts that interconnecting larger generators is a complex, specialized project that requires more time than what is needed for smaller generator interconnections. Ameren concludes that imposing the screens and deadlines for Level 4 generators would be inappropriate. (Ameren Reply Comments at 8).

ComEd's Position

ComEd notes that IEEE Standard 1547 does not apply to generators that are larger than 10MVA. It argues, essentially, that the owners of larger generators have legal protection without the Rule because utilities always are legally required to behave justly and reasonably with respect to interconnection. (ComEd Reply Comments at 12).

Analysis and Conclusions

We agree with Ameren and Staff that extending the Rule to generators that are larger than 10 MVA is not appropriate. We are cognizant that this could create a "gap" between what is subject to the Rule and what regulated by the FERC. We are concerned that requiring use of procedures designed for smaller generators could be inappropriate for these larger generators, because the timeframes in the Rule, and, possibly, use of IEEE Standard 1547 as the technical standard, could be inappropriate for larger interconnections.

However, IREC's and the City's arguments establish that there is a need for standards for the interconnections of generators that are not subject to FERC jurisdiction, or that of the two applicable Regional Transmission Organizations, MISO and PJM. Therefore, a rulemaking shall commence developing standards for this particular group of interconnectors.

On Exceptions, the ELPC avers that the concerns expressed above are unfounded. Also, it asserts that initiating a new rulemaking does not "fix the problem now," as larger generators need access to the standardized business terms and dispute resolution provision in the Rule, not access to IEEE Standard 1547, which is a technical standard. (ELPC Brief on Exceptions at 6-7).

However, a concern expressed by Staff was that the timeframes in the Rule may not be practicable for these larger generators, as, accommodating the largest of distributed generation interconnections could require utilities to make modifications. The ELPC states no facts indicating that Staff's concerns are incorrect. Also, the screens in the Rule, which are various electrical standards, could be inappropriate for these larger interconnectors. We

believe that the better approach is to determine, in an organized fashion through a rulemaking, what timelines, electrical standards and other procedures are appropriate for these larger generators.

c. Section 466.50 Application Fees

The ELPC's Position

The ELPC points out that the application fees for interconnection are identified in the Appendices to the Rules, but, they are not specified in the Rule. Section 466.50 of the Rule, however, authorizes utilities to charge interconnection application fees. It also states that the applicable fee shall be specified in the interconnection request form. (Sec. 466.50). The ELPC avers that the Rule could create the mistaken impression that utilities have *carte blanche* discretion to impose higher application fees than those that are set forth in the standardized application documents. It suggests amending the Rule to provide a clear cross-reference to the standard forms in the Rule, or, the Rule should "spell out" the required fees. (ELPC Comments at 10-11).

IREC's Position

IREC is concerned that the Rule, in its present form, could allow utilities to determine the cost of interconnection. It suggests that Section 466.50(b) should state that: "Applicants shall remit the fee stated on the interconnection request form." (IREC Comments at 7-8).

ComEd's Position

ComEd contends that the notion that an appendix is not part of a Commission rule is misplaced, making the requests for changes to the Rule requested by the ELPC and IREC unnecessary. It further asserts that the Rule should be amended to allow utilities to change the application fee amounts, as, it may be appropriate for utilities to charge more for interconnection, due to rising costs, in the future. (ComEd Reply Brief on Exceptions at 13).

Analysis and Conclusions

We disagree with ComEd's assertion that utilities should be allowed to increase application fees. It may very well be that the application fees, at some point in time, should increase. However, we decline to presume, now, that such a change is would be inevitable or that such a change would be soon.

We agree with the ELPC and we note that its contention is reasonable. Section 466.50(b) shall be amended to read:

> EDCs may charge a fee by level that applicants must remit in order to process an interconnection request. The EDCs shall not charge more than

the fees specified in the interconnection request forms at Part 466, Appendix A and D.

d. Section 466.60 (h) and (i) External Disconnect Switches for Level 1 Interconnectors

These two sections of the Rule provide:

h) EDCs may require that distributed generation facilities have the capability to be isolated from the EDC. For distributed generation facilities interconnecting to a primary line, the isolation shall be by means of a lockable, visible-break isolation device accessible by the EDC. For distributed generation facilities interconnecting to a secondary line, the isolation shall be by means of a lockable isolation device whose status is indicated and is accessible by the EDC. The isolation device shall be installed, owned and maintained by the owner of the distributed generation facility and located electrically between the distributed generation facility and the point of interconnection. A draw-out type of circuit breaker accessible to the EDC with a provision for padlocking at the drawn-out position satisfies the requirement for an isolation device.

i) The interconnection customer shall allow the EDC to isolate the distributed generation facility. An interconnection customer may elect to provide the EDC access to an isolation device that is contained in a building or area that may be unoccupied and locked or not otherwise accessible to the EDC by installing a lockbox provided by the EDC that allows ready access to the isolation device. The lockbox shall be in a location determined by the EDC to be accessible by the EDC. The interconnection customer shall permit the EDC to affix a placard in a location of its choosing that provides instructions to EDC operating personnel for accessing the isolation device. If the EDC needs to isolate the distribution generation facility, the EDC shall not be held liable for any damages resulting from the actions necessary to isolate the generation facility.

(466.60 (h) and (i)). (Emphasis added).

The ELPC's Position

Level 1 systems are inverter-based. (466.80(a)(4)). The ELPC argues that the cost of a lockable, visible break isolation device can be substantial. Additionally, according to the ELPC, it is unnecessary to require such a device for inverter-based systems. An inverter-based system, the ELPC continues, has built-in protections that avoid the need for an additional disconnection switch. The safety of these systems is amply demonstrated by the collective experience of the tens of thousands of these installations worldwide. (ELPC

Comments at 4-5). The ELPC seeks to add the following language to the Rule:

> Inverter-based Tier 1 customer-owned renewable generation systems shall be exempt from this requirement, unless the manual disconnect switch is installed at the investor-owned utility's expense.

(*Id.* at 6). It acknowledges that several states' interconnection rules require external disconnection switches. However, the ELPC asserts, the recent trend is to eliminate such requirements for small inverter-based generators. (ELPC Reply Comments at 8-9).

The City's Position

The City contends that a lockable isolation device is appropriate only when a generator connects directly to the utility's system. Most distributed generation facilities, the City continues, will connect to a customer's secondary switchgear. This is especially true with regard to smaller generators, such as those that have photovoltaic (solar) equipment. In such instances, there should be no need for a separate isolation switch, provided that the customer's generator can be isolated by a complete disconnection of service. (City Comments at 2-3).

The City further contends that a separate disconnection device has been required because it is needed to ensure the safety of line crews or emergency response personnel, as this device is a means of isolating the source of backfeed. The City opines that effecting isolation at the main provides level of safety that is superior to isolation at the generation facility. It recommends that, with regard to the smaller Level 1 customers, when a customer elects to have its meter or service serve as the isolation device, (when a customer takes interruptible service) this requirement should be eliminated. The City reasons that in such an instance, Part 466 should not allow utilities to require additional isolation devices. (*Id.* at 4). The City seeks to amend sections 466.60(h) and (i) of the Rule as follows:

> h) EDCs may require that distributed generation facilities have the capability to be isolated from the EDC. For distributed generation facilities interconnecting to a primary line, the isolation shall be by means of a lockable, visible-break isolation device accessible by the EDC <u>or by means of the arrangement described in (i) below.</u> For distributed generation facilities interconnecting to a secondary line, the isolation shall be by means of a lockable isolation device whose status is indicated and is accessible by the EDC. The isolation device shall be installed, owned and maintained by the owner of the distributed generation facility and located electrically between the distributed generation facility and the point of interconnection. A draw-

out type of circuit breaker accessible to the EDC with a provision for padlocking at the draw-out position satisfies the requirement for an isolation device.

i.) The interconnection customer shall allow the EDC to isolate the distributed generation facility. An interconnection customer may elect to provide the EDC access to an isolation device that is contained in a building or area that may be unoccupied and locked or not otherwise accessible to the EDC by installing a lockbox provided by the EDC that allows ready access to the isolation device. The lockbox shall be in a location determined by the EDC to be accessible by the EDC. The interconnection customer shall permit the EDC to affix a placard in a location of its choosing that provides instructions to EDC operating personnel for accessing the isolation device. <u>If a Level 1 applicant does not elect to provide a separate isolation device, the EDC may disconnect its meter to isolate the generating facility.</u> If the EDC needs to isolate the distribution generation facility, the EDC shall not be held liable for any damages resulting from the actions necessary to isolate the generation facility.

(City Comments at 4-5).

IREC's Position

IREC points out that, by definition, Level 1 facilities are inverter-based. (*See, e.g.,* 466.80(a)(3)). It asserts that inverter-based systems provide near-certainty that power will not feed back to the grid when the grid is inoperative. It maintains that requiring isolation devices just adds an unnecessary cost, which can be from $200 to $1,000. IREC, also, argues that the Rule should be modified to eliminate this requirement for Level 1 facilities. IREC suggests that if this requirement is not removed from the Rule for Level 1 facilities, the Rule should require utilities to provide their line workers with maps of all distributed generation facilities and procedures for use of the isolation devices, as well as evidence that these procedures are followed. (IREC Comments at 2-3). In its Reply Comments, IREC asserts that isolation devices are rarely used by utility personnel. (IREC Reply Comments at 5-6).

Staff's Position

Staff posits that the isolation device at issue here prevents a generator from "powering up" distribution lines when a utility seeks to de-energize these lines. Staff argues that Sections 466(h) and (i), when read together, allow a utility to require interconnectors to install isolation devices and use those devices to disconnect their generators from the distribution system. (Staff Comments at 14-15). Staff acknowledges that removing a self-contained electric meter could achieve a visible break between the distributed generation

and the distribution system. However, doing so would result in an electrical outage to the entire property. Also, not every property with a Level 1 interconnection will be supplied with a self-contained meter. (Staff Reply Comments at 10).

Staff further maintains that a utility does not have control of, and is not necessarily knowledgeable about, any change to the conditions at the interconnection customer's distributed generation facility. As a matter of safety, utilities generally require visual disconnection from all sources of power before they allow their workers to work on de-energizing equipment. (Staff Reply Comments at 11-12).

Ameren's Position

Ameren seeks to add the following language to the Rule:

Section 466.160 Visible Disconnect Switch

> When required by EDC's operating practices, the Applicant shall furnish and install a ganged,[3] manually-operated isolating switch (or a comparable device mutually agreed upon by EDC and the Applicant) near the point of interconnection to isolate the generating facility from EDC's distribution system. The device does not have to be rated for load breaking nor provide over-current protection. (*sic.*).

According to Ameren, the cost of a simple switch would not be an overwhelming barrier. Additionally, such a switch is a standard industry requirement for providing a safe working environment and for the safety of the general public. It is also required in almost every state. This switch, Ameren avers, is critical to maintaining a safe working environment for utilities' line personnel. (Ameren Comments at 17-18).

Ameren further contends that a meter is not a satisfactory mechanism for disconnection. It points out that a meter is designed to measure electric usage and generation, not to disconnect or isolate generation facilities. Also, Ameren instructs its customers, emergency response personnel and employees not to tamper with meters. Further, the national electric code requires interconnected power production sources to have a disconnection means that is readily accessible, externally operable, and plainly indicative of its status. (Ameren Reply Comments at 12-13).

Ameren acknowledges that meters have been used, without incident, to disconnect load. However, Ameren asserts that using a meter in such a fashion is not an industry "best practice." Ameren maintains that a disconnection switch is necessary to protect the safety of customers, the general public, and emergency response personnel, as it facilitates easy and quick disconnection. Also, in a maintenance or emergency situation, it

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3 Ameren defines a "ganged" switch as one that simultaneously disconnects all poles or phases of a circuit to disconnect, or, one that isolates a system component in order to prevent system imbalance. (Ameren Reply Comments at 1).

provides a readily-visible indication that the generation device is not energizing facilities. To provide flexibility, in its Reply Comments, Ameren suggested replacing section 466.60(h) with the following language:

> When required by EDC's operational practices, distributed generation facilities must have the capability to be isolated from the EDC by means of a ganged switch that is lockable, manually-operated, and located near the point of interconnection for the purpose of allowing the EDC to isolate the generation facility from the EDC's distribution system and create a visibly-verifiable break in the circuit connection. To the extent (that it) is technically feasible and safe, and upon mutual agreement, the EDC may allow a comparable disconnection device for generation facilities connected to a secondary distribution line. The device does not have to be rated for load break or provide over-current protection.

(Ameren Reply Comments at 14). If no disconnection switch is required, Ameren continues, when seeking to disconnect a generator, a utility will be forced to disconnect an interconnection customer from all services, including load service. (*Id.* at 13).

MidAmerican's Position

MidAmerican opposes removing the isolation device requirement from the Rule. It states that its current policy is to require a utility-accessible, lockable, visible-break device, which is typically a disconnection switch, located between the point of interconnection and the distributed generation unit. MidAmerican requires this type of isolation device for all generators, irrespective of the size of the generator. (MidAmerican Reply Comments at 1).

ComEd's Position

ComEd argues that, for some customers, those with "greater than 200 amp" service, a meter does not isolate the customer's generator from the grid. Also, some customers' meters are in locations that are not readily-accessible. It concludes that therefore, the ability to "pull" a customer's meter is not a "sure-fire way" to quickly and easily isolate a customer's generator. ComEd thus supports the adding the language proposed by Ameren. (ComEd Reply Comments at 4-5).

Analysis and Conclusions

We decline to require utilities to provide maps of all distributed generation facilities and evidence that its line workers use the utilities' procedures for isolation devices. As the general population in Illinois interconnects, such maps would, necessarily, have to be updated constantly. It also is unnecessarily burdensome to require utilities to provide evidence that their personnel abide by their safety rules.

We note, however, that the ELPC and IREC state that, with inverter-based systems, there is no need for an external disconnection device. However, they do not state why this is so. Nor is it obvious.

Moreover, isolation devices are, necessarily, safety devices. Even if utility personnel did not need these devices or use them, there is the matter of first-responders, who are firemen, policemen, paramedics, and, on occasion, the National Guard. Necessarily, when a first-responder is on the scene, there is an emergency. Allowing a utility to require a visible switch or like device, provides an easy-to-find method of turning off the electricity generated by an interconnector. Good public policy would dictate that first-responders should have a visible and easy way to do so, as they may not have any training regarding electricity. This is especially true since these persons are on the scene only in emergency situations, leaving little time for them to analyze the equipment.

On Exceptions, the City, the ELPC and IREC assert that the language above is erroneous because the newer, UL-approved inverters do not backfeed onto the grid during a power outage.[4] Also, a first responder can disconnect a generator by using the circuit breaker panel. (*See,* IREC Brief on Exceptions at 6-7; ELPC Brief on Exceptions at 2-3; City Brief on Exceptions at 2-5).

This logic, however, assumes that a first responder would only be on the scene during a power outage. In reality, first responders are called to address many types of emergencies, including floods, fires, and many man-made emergencies. A power outage is only one type of emergency. It appears, from the information provided by these parties, that, during a fire, flood, or during many other types of emergencies, the inverter would not act to turn the power off.

We further acknowledge that, in many instances, a first responder would be able to turn the power off to the generator by using the circuit breaker panel, assuming that this person had access to the circuit breaker panel on the premises. Also, in many instances, a first responder may be able to contact the local power company and request that it turn the power off to the premises. However, depending upon the type of, and gravity of, the emergency in question, the person who responds to an emergency may have no training with regard to electricity and may not know to seek out the circuit breaker panel. Also, that person may not be able to find the circuit breaker panel quickly, or, may not have access to the circuit breaker panel on the premises due to the nature of the emergency (*e.g.,* a flood). We further note that it appears that the effects of possible climactic changes, which could, in the future, produce floods, tornadoes, and other like natural disasters, is something, of which, we should be cognizant and account for, whenever possible.

Moreover, irrespective of the safety of first responders, there is the matter of the safety of utility personnel. All three utilities have asserted that such a device is necessary to ensure that a person working on the line can turn the power from the generator off.

In so concluding, we acknowledge that allowing a utility to require an external disconnection device imposes an added expense. However, this expense is necessary to

[4] "UL" is Underwriter's Laboratories. (*See*, 466.30).

ensure the safety of utility personnel and those persons who are called to an interconnecting facility during an emergency situation.

We also decline to add any of the language proposed by Ameren. The Rule states that utilities can require an interconnecting customer to install a lockable, visible-break isolation device that is accessible by a utility. (Section 466.60(h)). Therefore, there is no need to change it. The language in these two proposals is also not clear and it is confusing.

e. Section 466.60(k) Utility Control and Monitoring for Levels 2-4

This Section of the Rule provides that:

> EDC monitoring and control of distributed generation facilities are permitted only when the nameplate rating is greater than 2 MVA. Monitoring and control requirements shall be consistent with the EDC's published requirements and shall be clearly identified in the interconnection agreement between the interconnection customer and the EDC. A transfer trip shall not be considered to be EDC monitoring and control when required and installed to protect the electric distribution system or an affected system against adverse system impacts.

(Section 466.60(k)).

The City's Position

The City maintains that utilities should not be allowed to be able to monitor and control a generation facility. It avers that an interconnecting customer will be forced to pay unnecessary costs, if that customer is required to pay for Supervisory Control and Data Acquisition ("SCADA") equipment and transfer trip facilities. (City Comments at 4-5).

It further asserts that when a generating facility is equipped with both local controls to prevent the export of energy, and with reverse power protection to disconnect generation, this requirement is unnecessary. According to the City, a utility only needs to monitor and control a generating customer's facility when the export of power from that facility exceeds the level, at which, the line to which it is connected can accommodate. The City desires to impose a cut-off for the utilities' ability to monitor and control interconnected facilities. It argues that this cut-off should be based upon the exported power as a percentage of the capacity of the line section. Also, the City opines that the last sentence in this part of the Rule, cited above, should be deleted because it could be interpreted to grant a utility the discretion to require transfer tripping that is unconstrained by any limitation in the Rule. (*Id.* at 5).

Staff's Position

Staff points out that this portion of the Rule is intended to limit the restrictions that a utility may place on distributed generation operations. In fact, utilities are not permitted to control the operation of distribution generation, if the interconnector's capacity is below 2 MVA. Staff maintains that it is reasonable for a utility to have some form of control over large generators in order to limit the operation of the distributed generation under defined conditions. For example, Staff continues, if a utility temporarily reconfigures its distribution system on a regular basis so that the distributed generation would cause high or low voltage when connected to that temporarily reconfigured distribution system, then, in such an instance, a utility should be allowed to monitor and control the generator's operations. Then, Staff continues, a utility must be certain that other customers would not be adversely affected by those operations. Staff avers that in the Level 2-4 Interconnection Agreement, at Attachment 5, a utility is required to provide a description of the known circumstances, under which, it would monitor and control an interconnector's generation equipment. (Staff Comments at 16).

Staff does not agree with the City's argument that limiting the export level to any set amount could be a universal alternative that always replaces a utility's need to monitor and control a generator's operations. It maintains that it is important for a utility to be able to maintain control over interconnections to its distribution system to protect the system's integrity, reliability and safety. (Staff Reply Comments at 12-13).

Staff further asserts that Section 466.60(k) should remain unaltered with regard to transfer trips. It avers that this portion of the Rule, (the last sentence in Section 466.60(k)), makes it clear that in certain circumstances, even though the capacity of the distributed generation facility might be below 2 MVA, a transfer trip could be necessary as a part of the interconnection facility equipment. In those cases, Staff continues, transfer tripping mechanisms would not be considered to be equipment that monitors or controls an interconnector's equipment. (Staff Reply Comments at 13-14).

Ameren's Position

Ameren avers that, given the size of the facilities at issue, monitoring and controlling systems are necessary to protect the reliability of electric delivery. Also, the language in the Rule related to transfer trips indicates simply that a transfer trip is not considered to be a "control." (Ameren Reply Comments at 19).

MidAmerican's Position

MidAmerican supports the language in the Rule. MidAmerican has procedures that provide real-time data to its control center, which, it states, is necessary to maintain adequate system capability for single contingency conditions, for real time switching and for the safety of the public, as well the safety of MidAmerican's personnel. It avers that control center operators need real-time generation data from larger generating units in order to determine the true amount of load served by the distribution circuit. Without real-

time information regarding a larger generating unit, an overload on the facilities could occur, if an outage were to occur on a distribution circuit. Such an overload could degrade power quality to customers and pose a safety risk to the general public. (MidAmerican Reply Comments at 3).

ComEd's Position

ComEd asserts that, if multiple machines on the same line section becomes more common, it may be necessary to extend monitoring to generators that are smaller than 2 MVA. A utility is required to design and maintain its distribution feeders in a manner that allows it to handle all of the load of the customers it serves from those lines, in case generators are taken off-line Without the monitoring, to which, the City objects, it is difficult for utility personnel to know how great a customer's load actually is. (ComEd Reply Comments at 5-6). ComEd points out that IEEE Standard 1547, at Section 4.1.6, states that a customer must provide a utility with a means of monitoring when a generator is larger than 250 kW, which is significantly smaller than the 2MVA size limit in the Rule. (*Id.* at 6).

ComEd also takes issue with the City's argument that the language in the Rule grants utilities unfettered discretion regarding transfer trips. Transfer trips, it continues, consist of a transmitter and substation equipment. This equipment monitors the status of the line circuit breaker. It also has a communication channel, which is, typically, a leased phone line. A transfer trip signal is generated when a utility line circuit breaker is tripped. That signal is received at the customer site and it, in turn, trips the customer's generator breaker or another designated breaker. ComEd asserts that transfer tripping mechanisms are protective devices; they are not used for day-to-day control of generators. Also, contrary to the City's argument, the language in subsection 466.60(k) merely clarifies that the use of a transfer trip for network protection is not subject to the 2MVA limitation that is applicable to monitoring and control devices. This language does not allow a utility to arbitrarily impose additional costs on an interconnector for no reason. (*Id.* at 6-7).

Analysis and Conclusions

As Staff and the utilities point out, monitoring and controlling equipment is necessary to ensure safety and reliability. Therefore, while we are mindful that such equipment could be expensive, we decline to alter the Rule in a manner that would exclude such equipment. Moreover, it appears that limiting the export level to any set amount does not afford a utility sufficient control to protect the system's integrity, reliability and safety.

We additionally disagree with the City's contention that the language in the portion of Section 466.60(k) regarding transfer trips allows unconstrained transfer tripping. The plain language in the Rule only states that transfer tripping is not to be considered to be a monitoring or controlling device. We note that according to ComEd, transfer tripping equipment is protective; it is not used for day-to-day control of a generator. The City offers no information establishing that ComEd's assertion is incorrect. We find the City's argument on this issue to be unpersuasive.

f. Section 466.60(l) Notice of the Commissioning Test

Currently, Section 466.60(l) provides, in pertinent part, that:

> The EDC may require a witness test after the distributed generation facility is constructed. The applicant shall provide the EDC with at least 15 business days notice of the planned commissioning test for the distributed generation facility. The applicant and EDC shall schedule the witness test at a mutually agreeable time. If the results of the witness test are not acceptable to the EDC, the applicant shall be granted 30 business days to address and resolve those results. . .

(Sec. 466.60(l)). ComEd avers that it is mindful that 15 business days is, in fact, three calendar weeks. However, it maintains that it does not have much personnel dedicated to the witness testing of interconnection arrangements. Also, various other emergencies, such as storm restoration activities and resolution of substation maintenance issues, could create demands upon the time of its personnel. Increasing the notice time to 30 business days, ComEd continues, permits it to work this activity into its current work processes and allow its personnel to meet the needs of the interconnecting applicants on the same basis, on which, it works to meet the needs of its other customers. (ComEd Comments at 11).

Staff's Position

Staff does not agree that ComEd's scheduling should govern Illinois rules. Staff notes that when a witness test is performed, a utility employee does not actually do any work; that employee simply witnesses the equipment being tested. (Staff Reply Comments at 23).

Analysis and Conclusions

We decline to alter this portion of the Rule. We note that Ameren and MidAmerican have not taken issue with the timeframe set forth in this portion of the Rule. We further note that 15 business days is three calendar weeks. Further, as Staff points out, little is actually required of utility personnel in a witness test. We also note that this docket commenced approximately two years ago. ComEd has, therefore, been on notice that it needs to "gear up" regarding interconnection for almost two years. ComEd states no fact that establishes that it could not have done so within this period of time.

g. Section 466.80(a) Determining the Review Level for Level 1 Facilities

The current version of the Rule provides that:

An EDC shall use Level 1 procedures to evaluate all interconnection requests to connect an inverter-based distributed generation facility when:

1) The applicant filed a Level 1 application; and

2) The distributed generation facility has a nameplate capacity of 10 kVA or less . . .

(Sections 466.80(a)(1) and (2)).

The City's Position

The City asserts that, while simple size limitations are desirable, the 10kVA size restriction for Level 1 review should be changed to 40kVA. According to the City, it is more appropriate to base the size limitation upon the size of a generation facility in relation to the rating of the customer's service drop. It avers that the Commission's rules should not elevate administrative simplicity above the need to avoid the unnecessary burdens on installations in circumstances that do not require them. (City Comments at 5-6).

MidAmerican's Position

MidAmerican opposes the City's proposed changed. It asserts that many of the technical issues encompassed in the interconnection of distributed generation, especially with larger generators, involve system protection coordination. It concludes that, when considering system protection constraints, the screening tool proposed by the City is not an effective means of determining the appropriate level of review. Also, using this type of screening tool could have a negative effect on very small generators, which are connected to a secondary wire with a high rating. This could force what should be a "fast track" interconnection review into a lengthy process. (MidAmerican Reply Comments at 2-3).

ComEd's Position

ComEd reminds this Commission that all of the applications at issue (Level 1 or Level 2) receive expedited treatment. It argues, in effect, that the City's proposal reduces the clarity that the Rule offers, thereby creating less certainty for the smallest generator applications. ComEd posits that it is appropriate that the (Level 1) maximum size is specific and reasonably small to cover only those machines that, without further analysis, will pose as little risk as possible. (ComEd Reply Comments at 7).

Staff's Position

Staff contends that raising the size limitation for Level 1 qualification could result in adverse impacts upon the distribution system, if a Level 1 application were not to receive a full investigation. (Staff Reply Comments at 14).

Analysis and Conclusions

We decline to alter the Rule in accordance with the City's arguments. The City did not explain the relevance of a customer's service drop. Additionally, MidAmerican avers that such a change could, unnecessarily, complicate matters for Level 1 interconnectors. Moreover, as Staff points out, Level 1 applications receive less scrutiny than that for Levels 2-4. A less than full investigation of the larger interconnectors that the City seeks to include in Level 1 could have an adverse impact on the safety and reliability of the grid. Further, we agree with ComEd's contention that it is appropriate to segregate those machines that pose the least amount of risk to the integrity of the grid in Level 1.

h. Sections 466.90(a)(1) and 466.100(a)(1) the Minimum Load Screens for Level 1 and Level 2

Sections 466.90(a)(1), which concerns Level 1 interconnectors, provides:

> For interconnection of a proposed distributed generation facility to a radial distribution circuit, the total distributed generation connected to the distribution circuit, including the proposed distributed generation facility, may not exceed 50% of the minimum load normally supplied by the distribution circuit. If minimum load values for the distribution circuit are not available, then the total generation on the distribution circuit, including the proposed distribution generation facility, may not exceed 15% of the maximum load normally supplied by the distribution circuit.

(Section 466.90(a)(1)). Similarly, Section 466.100(a)(1), which concerns Level 2 interconnectors, provides that:

> For interconnection of a proposed distributed generation facility to a radial distribution circuit, the total distributed generation connected to the distribution circuit, including the proposed distributed generation facility, may not exceed 50% of the minimum normal load that is supplied to the distribution circuit when the EDC's distribution circuit is configured in a normal manner. If minimum load values for the EDC's distribution circuit are not available, then the total generation on the EDC's distribution circuit, including the proposed distribution generation facility, may not exceed 15% of the maximum load supplied to the distribution circuit.

(Section 466.100(a)(1)).

The City's Position

The City avers that the secondary criterion (that the total generation may not exceed 15% of the maximum load supplied) is the superior screen. This is true, it states, because the term "minimum normal load" is not easy to determine. It asserts that 15% of the line section annual peak load should be the primary benchmark because it is a more reliable benchmark. Annual peak load can be used to establish the capacity of a line section, making it a more appropriate method for assessing what impact generation facilities will have on the distribution system. It is also much simpler to define and measure the annual peak load than it is to define the minimal normal load. (City Comments at 3-4).

The ELPC's Position

The ELPC acknowledges that the technical screening criteria for Levels 1 and 2 were gleaned from the FERC Small Generator Interconnection Procedures, as was done in many other states. However, according to the ELPC, the Rule here introduces a new requirement, which is, that the total distribution capacity connected to a distribution circuit may not exceed 50% of the minimum load that is normally supplied by the distribution circuit. (ELPC Comments at 14). Departing from the standard FERC screens and introducing a new level of complexity in Illinois, according to the ELPC, is not advisable and it represents a "step back" from best practices. (*Id.*).

IREC's Position

IREC asserts that use of a 50% minimum load screen for Level 1 and Level 2 is confusing, unnecessary and unique. It points out that most states, as well as the FERC, use 15% of the maximum load as a cap, which assures that the minimum load will never be exceeded. It concludes that therefore, there is no need for a separate, additional, minimum load provision. (IREC Comments at 4).

IREC further asserts that minimum load information is rarely collected. In practice, therefore, the 15% maximum load requirement will almost always be used. Also, because the maximum load on most circuits does not exceed the minimum load by more than a factor of three, in most cases, there will be little difference between the two approaches. It acknowledges, however, that certain circuits, such as those supplying seasonal loads for agriculture, may have a higher differential between maximum and minimum loads. However, IREC contends that these circuits are also the least likely to monitor their minimum loads. (*Id.*).

IREC additionally argues that an unintended consequence of the minimum load requirement is that the most common type of distributed generation, solar energy facilities, will be regulated based upon minimum loads. Minimum loads invariably occur at night, when those facilities will not be delivering power. Therefore, any minimum load restriction applicable to solar energy facilities should logically be based upon daylight minimum loads, though, according to IREC, daylight minimum loads will not be available. (*Id.*). IREC supports deleting the 50% minimum load requirement and adding the following sentence to

Sections 466.90(a)(1) and 466.100(a)(1):

> Alternatively, the interconnection customer will fail this screen if the EDC presents evidence based on the distribution circuit's load data that the total distributed generation interconnected to the distribution circuit, including the proposed distributed generation facility, could exceed the load on the distribution circuit at some time.

(*Id.* at 4-5).

ComEd's Position

ComEd asserts that use of the word "circuit" instead of the term "line section" in Sections 466.90(a)(1) and in 466.100(a)(1) could create confusion, as, essentially, these terms are interchangeable; however, "line section" is defined in the Rule, and "circuit" is not. (ComEd Comments at 5).

ComEd posits that the load screens are designed to prevent "islanding," a situation, in which, a portion of a utility's distribution line is energized solely by one or more customer's generators through the associated point of interconnection, while that portion of the utility's distribution line is electrically separated from the rest of its distribution system. "Islanding" creates a potential hazard to personnel working on a utility's distribution line. It also could result in damage to other customers' electrical equipment. What is relevant to determine whether there is a potential "islanding" issue, ComEd continues, is the capacity of a generator, as compared to the actual load on the line at the time of the triggering event that results in "islanding." (ComEd Reply Comments at 9-10). It states "categorically" that 50% of the minimum line load is a better measure when determining whether a customer can "island" a feeder. ComEd further notes that its load information is stored 24-hours a day, facilitating retrieval of both minimum and maximum load information. (*Id.* at 10).

With regard to the City's argument that the percent of maximum load is better because a minimum normal load is not easily determined, ComEd points out that the Rule accommodates this concern by providing for the maximum load value in the alternative. (*Id.* at 10). ComEd additionally maintains that the FERC's standards are not applicable because the connection process regarding distribution circuits is much more complex than connection to transmission lines. (*Id.*).

Ameren's Position

Ameren asserts that the 50% screen for Level 1 and Level 2 is necessary to protect power quality and reliability on the circuit. Ameren notes that should this screen be violated, interconnection is not precluded. Rather, there would be a system upgrade for that circuit and the interconnector would be placed within the Level 4 review process. (Ameren Reply Comments at 18-19).

Staff's Position

With regard to ComEd's argument that use of the word "circuit" instead of the term "line section" in Sections 466.90(a)(1) and in 466.100(a)(1) could create confusion, Staff contends that the term "circuit *is* defined in the Rule, it is defined in the term "radial distribution circuit." Staff therefore believes that the language in these two sections should not be changed, or, if they are changed, replacing the term "distribution circuit" with "radial distribution circuit" is appropriate. (Staff Reply Comments at 17).

Staff agrees that the Rule should be modified in the matter that the ELPC, IREC and the City suggest. Staff states that it appears that utilities do not consistently have a record of the minimum load and also, including the percentage of maximum load in the Rule adds unnecessary complexity to the Rule. Staff has included the appropriate modifying language in Attachment A to its Reply Comments. (Staff Reply Comments at 17-18).

Analysis and Conclusions

We decline to alter the Rule in the manner proffered by ComEd. As Staff points out, the term "circuit" is defined in the Rule.

However, we agree with Staff, the ELPC, the City and IREC that, because utilities may not actually determine their minimum load, this requirement adds unnecessary complexity to the Rule. And, as IREC points out, it appears that it will be rarely used. While ComEd argues that minimum load is the better measure to ensure that "islanding" does not occur, it states no facts indicating that use of maximum load as a screen is inadequate. Nor could it, since the Rule provides that the maximum load is an alternative to minimum load. The Rule shall be amended in accordance with Staff's proffered language, which is:

> For interconnection of a proposed distributed generation facility to a radial distribution circuit, the total distributed generation connected to the distribution circuit, including the proposed distributed generation facility, may not exceed 15% of the maximum load normally supplied by the distribution circuit. ~~If minimum load values for the distribution circuit are not available, the total generation on the distribution circuit, including the proposed distribution generation facility, may not exceed 15% of the maximum load normally supplied by the distribution circuit.~~

(466.90(a)(1)). Also:

> For interconnection of a proposed distributed generation facility to a radial distribution circuit, the total distributed generation connected to the distribution circuit, including the proposed distributed generation facility, may not exceed 15% of the maximum normal load normally supplied by the distribution circuit. ~~If minimum load values for the EDC's distribution circuit are not available, then the total generation on the EDC's distribution circuit,~~

> ~~including the proposed distribution generation facility, may not exceed 15% of the maximum load supplied by the distribution circuit.~~

(466.100(a)(1)).

i. Section 466.90(a)(2) Removing Redundant Language Requiring Inverter-based Equipment for Level 1 Interconnectors

Currently, Section 466.90(a)(2), which concerns Level 1 expedited review, provides:

> For interconnection of a proposed distributed generation facility to the load side of spot network protectors, the proposed distributed generation facility shall utilize an inverter-based equipment package. The interconnection equipment that the applicant proposes to use for the distributed generation facility shall be lab certified. When aggregated with other generation, the interconnection equipment shall not exceed 5% of the spot network's maximum load or 50 kVa, whichever is less.

(Sec. 466.90(a)(2)). ComEd contends that the first two sentences in this section of the Rule should be deleted because, by definition, Level 1 equipment is lab-certified and inverter-based. It reasons that therefore, this language could create confusion.

Staff's Position

Staff agrees that this sentence is redundant and therefore could create confusion. (Staff Reply Comments at 14).

Analysis and Conclusions

ComEd's proposal is reasonable and it shall be adopted.

j. Sections 466.80(c)(2) and 466.100(a)(5) Level 3 Area Network Rules

Section 466.80(c)(2) limits Level 3 non-exporting generators to a maximum nameplate capacity of 50 kVA on area networks. The aggregate of all generation on an area network is also limited to the lower of 5% of the maximum load, or, 50 kVA. (*See,* Section 466.80(c)(5)).

The ELPC's Position

The ELPC avers that the treatment of area networks is a special challenge for interconnecting customer-generators. This is true because the export of electricity must be limited and the network protection devices are "rigidly protected" in order to avoid the propagation of faults across a system that is generally not designated to accommodate the net export of generation. However, the ELPC continues, allowing interconnections to area networks for a limited number of generators is critical because area networks typically serve large urban areas where distributed generation can be the most valuable in relieving midday peaks and transmission or distribution congestion. (ELPC Comments at 11-12).

It maintains that the Rule includes two logically incompatible and redundant protections. Not only must an interconnector ensure that its generator never exports to the grid, but the aggregated generation on the network must also never exceed 50 kVA or, 5% of the maximum load. In effect, according to the ELPC, these provisions ban much useful distributed generation, like, the several hundred KW solar systems that are becoming common in big box stores, shopping malls and government facilities. (*Id.* at 12).

According to the ELPC, it would be reasonable to require either that the generators ensure that that their generation never meets the grid, or, that such generation is of a truly *de minimus* quality. It asserts, however, that it is not reasonable to have both of these requisites. The ELPC recommends that the Commission adopt the more customer-friendly language in Colorado's rules, or, adopt the standards for area networks included in New Jersey's rule.

The Colorado Rule is as follows:

> (2) For interconnection of a proposed Small Generating Facility to the load side of area network protectors, the proposed Small Generating Facility must utilize an inverter-based equipment package and, together with the aggregated other inverter-based package, shall not exceed the smaller of 10% of an area network's minimum load or 500 KW.
>
> (3) Notwithstanding sub-sections (1) or (2) above, each utility may incorporate into its interconnection standards, any change in interconnection guidelines related to networks pursuant to standards developed under IEEE 1547 for interconnections to networks. To the extent (that) the new IEEE standards conflict with these existing guidelines, the new standards shall apply.

(*See,* ELPC Comments at 12-13). The New Jersey standards are as follows:

> 2. For interconnection of a proposed generator that utilizes inverter-based protective functions to an AREA Network, the generator, in aggregate with other exporting generators interconnected on the load

side of the network protective devices, will not exceed the less of 10% of the minimum annual load on the network or 500 KW. For a photovoltaic Customer-Generator Facility without batteries, the 10% minimum shall be determined as a function of the minimum load occurring during an off-peak daylight period.

3. For interconnection of generators to Area Networks that do not utilize inverter-based protective functions or inverter-based generators that do not meet the requirements of (e)(2) above, the generator must utilize reverse power relays or other protection devices and/or methods that ensure (that) no export of power from the Customer's site including any inadvertent export (*e.g.,* under fault conditions) that could aversely affect protective device s on the network circuit.

(*Id.* at 13).

IREC's Position

IREC asserts that Section 466.80(c) restricts area network connections to potentially less than half of a percent of maximum load. This limitation effectively curtails the deployment of facilities in downtown areas. IREC suggest that the limit in Illinois can safely be raised to 200 KW. (IREC Comments at 8).

Ameren's Position

Ameren argues that Level 3 generators are designed so that they do not push power back onto the grid. Essentially, they are installed for self-supply, as Level 3 customers do not intend to net meter or otherwise export power. However, the special limitations protect area networks and the customers that are on that system. Ameren points out that a utility must supply back-up electricity and balance power for Level 3 customers. If the screens are augmented, the possibility exists that an abundance of Level 3 interconnections on one circuit could lead to power quality and reliability issues for the (Level 3) interconnecting customer, or for other load customers on the applicable circuit. (Ameren Reply Comments at 17-18).

Ameren further avers that it is concerned about the impact on the distribution circuit that could occur when a Level 3 unit shuts down. When Level 3 units shut down, they create an instantaneous demand on the system for the full load that the generator was supplying, which affects reliability and power quality. Ameren points out that Level 3 generators are larger generators. As the size of the generator increases, the fault current contribution usually increases. Therefore, with larger generators, there is an increased likelihood that system protection changes will be required to ensure that faults on the system are detected and cleared, as well as to ensure that protective devices are properly coordinated. (*Id.* at 18).

ComEd's Position

ComEd reminds this Commission that Level 3 procedures are expedited. Connecting more than a minimal amount of generation to an area network, it reasons, would require extensive studies to determine whether additional protective measures are necessary, which precludes an expedited review. Also, according to ComEd, IEEE Standard 1547 does not contain any standards regarding connections to networks and therefore, it does not apply to networks. It makes no sense, according to ComEd, to argue that the "best practice" would provide expedited treatment for larger generators on networks because there is no technical standard on the subject. (ComEd Reply Comments at 8).

Staff's Position

Staff cautions that, when considering the appropriate capacity limits for non-exporting Level 3 distributed generation facilities, a person must also keep in mind that, if the distributed generation facility should "trip offline" or fail, a utility must be ready to supply the load that the distributed generation facility normally supplies after the distributed generation facility ceases to operate. (Staff Reply Comments at 16).

Analysis and Conclusions

We agree with Staff and the utilities' arguments. If a Level 3 generator, which is a larger generator, should fail, a utility would be required to supply power to that facility. The restrictions in this portion of the Rule ensure reliability and power quality in such an instance. Moreover, IEEE Standard 1547 has no standards regarding connections to networks. We therefore decline to alter this portion of the Rule.

k. Section 466.100(a)(3) Level 2 Maximum Fault Current

Currently, Section 466.100(a)(3) provides that:

> The proposed distributed generation facility, in aggregation with other generation on the distribution circuit, may not contribute more than 25% to the distribution circuit's maximum fault current at the point on the primary line nearest the point of interconnection.

(Sec. 466.100(a)(3)). ComEd contends that use of "25%" appears to be a typographical error, as the Maryland documents and the FERC standards that were discussed in the workshops specified 10% and no party disputed this language. (ComEd Comments at 3).

Staff's Position

Staff agrees with ComEd that 10% is the value in the Maryland Rule and FERC standards. Staff asserts that the Rule should be changed in accordance with ComEd's recommendations. (Staff Reply Comments at 14-15).

Analysis and Conclusions

ComEd's proposal is reasonable and it shall be adopted.

I. Section 466.110(a)(6) Elimination of the 15% Screen for Level 3 Interconnectors

The ELPC's Position

The rules regarding Level 3 non-exporting generators incorporate all of the Level 2 technical screens. (*See,* Subsection 466.100(a)). The ELPC asserts that the 15% of maximum load screen in Section 466.100(a)(1) should be removed entirely for Level 3 systems. If this provision is not excluded, the ELPC continues, it will restrict Level 3 generators to well-below the 10 MVA capacity in the Rule. It avers that this screen is unnecessary because Level 3 generators are designed so that they do not export power back to the grid. Therefore, there is no need to examine the percentage of the maximum load on a circuit represented by a Level 3 generator. (ELPC Comments at 8-9).

The ELPC maintains that this 15% screen unduly restricts Level 3 interconnections because the peak load of a typical distribution circuit is rarely above 10 MVA. Assuming a 10 MVA peak load on the distribution circuit, the 15% screen would effectively limit eligible Level 3 generators to below 1.5 MVA, which is much lower than the 10 MVA level intended in Section 466.80(c). (ELPC Comments at 9). The ELPC suggests the following language change to the Section 466.110(a)(6):

> For interconnection requests that meet the requirements in Section 466.80(d) for non-exporting distributed generation facilities interconnecting to a radial distribution circuit, the EDC shall evaluate the interconnection request under the Level 2 expedited review in Section 466.100(a), <u>except for the screen at Section 466.100(a)(1).</u>

(*Id.*).

IREC's Position

IREC avers that the point in creating Level 3 is to provide an easier application process for facilities that are incapable of delivering power to the grid because they use reverse power relays. It, also, takes issue with use of the Level 3 screen that the facility shall not exceed 15% of the distribution circuit maximum load, which, according to IREC, exists as a screen to assure that the facility will not generate more power than the entire load on the distribution circuit, despite the fact that Level 3 facilities cannot export electricity. Also, the 15% screen effectively limits Level 3 applicants to no more than the cap for Level 2, which is 2 MVA, effectively limiting any Level 3 applicant to Level 2's cap. IREC suggests that, rather than eliminate the screen entirely, Illinois could follow the lead of Maryland, which sets a higher percentage of maximum distribution circuit load for Level

3 facilities at 25% of the maximum load. Even a 50% limit, it argues, could be used for Level 3 system without incident. (IREC Comments at 5; IREC Reply Comments at 6).

IREC suggests that a compromise between Staff's position and its position would be to establish a separate rule for Level 3 regarding how quickly customers with large generating facilities can "ramp-up" their demand. (IREC Reply Comments at 7).

Staff's Position

Staff believes that the 15% maximum load screen for Level 3 non-exporting distributed generation facilities is appropriate. Staff cautions that a critical consideration for setting the appropriate capacity limitation in this situation is what happens when the generation facility ceases to operate. If the facility "trips offline," or fails, a utility's distribution system must be ready to supply the load that the distributed generation facility normally supplies. In such an instance, other utility customers must be protected from the effects of overloaded distribution circuits or failed distribution equipment caused by unexpected events at the distributed generation facility. (Staff Reply Comments at 15).

Analysis and Conclusions

ELPC proposes removing the maximum load screen for Level 3 non-exporting generating facilities. Staff points out that the maximum load screen is to protect the distribution system from the effects of overloading distribution circuits or other adverse effects upon the system, should a Level 3 non-exporting generator fail to operate. However, existing customers that may interconnect a Level 3 non-exporting generating facility are currently paying for distribution system capacity sufficient to meet their entire current load without such generating facility. It is, therefore, predictable, that in the instance in which Level 3 interconnectors need power, sufficient distribution capacity would be available. We therefore amend this portion of the Rule and remove the 15% maximum load screen for Level 3 non-exporting generators.

m. Section 466.120(c) Queue Position for Level 4

Subsection 120(c) requires and EDC to assign a queue position to a Level 4 applicant after its interconnection request is deemed to be complete. It also requires the interconnecting utility to notify that applicant as to its position in the queue.

Ameren's Position

Ameren argues that the following language should be added to Subsection 120(c):

> After an interconnection request is deemed complete, the EDC shall assign a queue position to it based upon the date the interconnection request is determined to be complete, <u>and the distribution circuit on which the interconnection is to take place.</u> The queue position of an interconnection request is used to determine <u>the order of study and</u> cost responsibility for the

> facilities necessary to accommodate the interconnection. Any required interconnection studies shall not begin until the EDC has completed its review of all other interconnection requests that have a higher queue position on the same distribution circuit. The EDC shall notify the applicant about its position in the queue.

(Ameren Comments at 7-8; Ameren Ex. 1 at 23). Ameren asserts that queues are used to measure and motivate progress along a series of important technical, business and contractual steps that are necessary to fairly and impartially interconnect to the grid. (Ameren Comments at 8).

Ameren further maintains that from a technical standpoint, it is important that each interconnecting customer is processed in the order, in which, it is received. This is true, it continues, because, as generators are added to the system, new incremental interconnection costs are created. Also, a change in one area can have an impact upon other parts of the system. Ameren opines that, in order to properly account for the costs involved in upgrades, and, in order to efficiently construct those upgrades, the effect each generator has upon the system should be studied. The incremental study process, Ameren concludes, is the hallmark of an efficient generator interconnection queue. *(Id.)*.

It contends that the orderly handling of engineering studies provides an interconnection customer with a fair analysis of the cost of upgrades. It avers that queuing interconnection customers based upon when those studies are completed, therefore, helps an interconnecting customer understand the sequential impact of multiple interconnection requests. It maintains that queuing these applicants in accordance with study completion also provide a methodology to separate the economically viable projects from those that are not economical. (*Id.* at 9).

Additionally, according to Ameren, its proposed language will prevent those developers that do not have firm project support from initiating studies and then request changes, as their developments take shape. Some developers of generation will send multiple requests, change study parameters, or stall study processes in an attempt to identify and seize economic opportunities. Such situations divert the attention of utility personnel from serious projects. (*Id.* at 9-10).

On Exceptions, Ameren clarifies that it only seeks to add language to the Rule that recognizes that a utility can process this queue sequentially on a circuit-by-circuit basis. (Ameren Brief on Exceptions at 5-6).

MidAmerican's Position

MidAmerican asserts that the Level 2 to 4 Interconnection Agreement appropriately addresses the issue of termination in Article 3, Sec. 3.3. However, it argues that language should be added to this section of the Agreement stating that the project shall be removed from the interconnection queue, if the Interconnection Agreement is terminated by either party. MidAmerican asserts that it is unfair and discriminatory to the lower-queued projects

when higher-queued projects stall or withdraw their Interconnection Agreement, but, nevertheless remain in the queue. (MidAmerican Comments at 3).

IREC's Position

IREC posits that the Rule, in its current form, does not include a harmful provision that was included in earlier drafts regarding system-wide sequential queuing of Level 4 applications. IREC avers that Ameren's argument is based upon that language. IREC also maintains that Ameren's language creates system-wide queuing, which, according to IREC, would significantly dampen the prospects for Level 4 interconnection. (IREC Reply Comments at 2).

The ELPC's Position

The ELPC recommends rejecting Ameren's proposed language, as, according to the ELPC, Ameren's sequential study process for Level 4 applicants makes no sense. Each application has generous time allotments for scoping meetings and studies. Each application also has provisions for allowing more time, if an EDC has further questions for an interconnecting applicant. A queuing process that trumps these timelines and allows utilities to ignore lower-queued applications until each and every higher-queued study is complete could create a backlog of years. It would also make it very difficult for Level 4 facilities to be financed. (ELPC Reply Comments at 9). The ELPC further asserts that a queue, by its very nature, creates an incentive for project developers to "get in line," even if their plans for a project are not fully-formulated. (*Id.* at 10).

Staff's Position

Staff avers that Ameren's proposed language creates a separate queue for each distribution circuit. Staff points out that Ameren's real concern is that an interconnection customer could "squat" on a distribution system location, continually refine its application and delay paying for system upgrades, until it receives funding. "Squatting" delays the projects of the persons behind the "squatters" in the queue. (Staff Reply Comments at 20). Staff avers, however, that the queue is used to determine the order, in which, a project is evaluated against the screens. Since a single queue determines the order of the projects the same at each location in the same manner as a separate queue for each location, Staff believes that Ameren's proposal does not resolve its concerns regarding "squatters." (Staff Reply Comments at 21).

Staff posits that the real solution to reduce "squatting" is to fairly and clearly limit an interconnection customer's ability to keep his or its queue position when a project falters. A project can falter when an interconnector does not receive approval to interconnect from a utility, or when it alters its plans, after turning in a completed application, or, when the interconnection agreement is terminated. Staff proposes language that would limit the applicants' ability to hold onto Level 4 queue positions in such situations in the following manner, if a Level 4 project is altered after its application is declared to be complete, the queue position must be surrendered.

Staff also agrees with MidAmerican's contention that, when an Interconnection Agreement is terminated, the terminated interconnector's queue position should also end. Finally, if an interconnection request is denied, the interconnector's queue position should also be surrendered. Staff's proposed changes are reflected in Exhibit A to its Reply Comments. (Staff Reply Comments at 21-22).

Analysis and Conclusions

MidAmerican's argument is reasonable and it should be adopted. There is no reason for a party to remain in the interconnection queue once its Interconnection Agreement is terminated. The applicable section of this contract shall be amended to reflect this change.

We also agree with Staff's approach to preventing "squatting" on an interconnection queue. Ameren's approach, however, is unduly burdensome to interconnectors, as it requires that any interconnection study shall not begin until a utility has completed its review of all other interconnection requests on the interconnection circuit that have higher-queued positions. It also unduly restricts a Level 4 applicant's queue position, as it requires that an applicant's queue position must be based upon the distribution circuit, on which, the interconnection is to take place. Therefore, we decline to add Ameren's proposed language. We also note that Ameren's language is confusing. We shall, however, add Staff's proposed language to Section 120(c), which is the addition of the following sentence at the end of this provision: "If the interconnection request is subsequently amended, it shall receive a new queue position based on the date that it was amended."

However, Ameren's approach, as is defined in its Brief on Exceptions, is reasonable. As Ameren points out, it is an engineering inevitability that all improvements to a distribution circuit should be planned sequentially or at the same time, when possible. Therefore, this section of the Rule shall be amended to provide:

> c) After an interconnection request is deemed complete, the EDC shall assign a queue position to it based upon the date the interconnection request is determined to be complete. **When assigning a queue position, an EDC may consider whether there are any other interconnection projects on the same distribution circuit.** If there are other interconnection projects on the same distribution circuit, the EDC may consider them together. If an EDC assigns a queue position based on the existence of interconnection projects on the same distribution circuit, the EDC shall notify the applicant of that fact when it assigns the queue position. The queue position of an interconnection request is used to determine the cost responsibility for the facilities necessary to accommodate the interconnection. The EDC shall notify the applicant as to its position in the queue. If the interconnection request is subsequently amended, it shall receive a

new queue position based on the date that it was amended.

n. Section 466.120(d) Level 4 Study Review

Ameren's Position

Subsection 466.120(d) sets forth the procedures that must be followed in a Level 4 study review. Ameren seeks to impose the following changes to this subsection:

> d) After the interconnection request has been assigned to the queue, the following procedures shall be followed in performing a Level 4 study review:
>
> 1) By mutual agreement of the parties, the scoping meeting, interconnection feasibility study, interconnection impact study, or interconnection facilities studies provided for in a Level 4 review and discussed in this Section may be waived or combined.
>
> 2) If agreed to by the parties, a scoping meeting on a mutually agreed upon date and time will be held, after the EDC has notified the applicant that the Level 4 interconnection request is deemed complete or the applicant has requested that its interconnection request proceed under Level 4 review after failing the requirements of a Level 2 or Level 3 review. The meeting's purpose is to review the interconnection request, existing studies relevant to the interconnection request, and the results of the Level 1, Level 2 or Level 3 screening criteria.
>
> 3) When the parties agree that an interconnection feasibility study shall be performed, the EDC shall provide to the applicant, no later than 10 business days after the receipt of a complete interconnection request or, if held, the scoping meeting, an interconnection feasibility study agreement (see Appendix E), including an outline of the scope of the study and an estimate of the cost to perform the study. <u>If the applicant does not sign and return the study agreement within 15 business days, the application shall be deemed withdrawn</u>.
>
> 4) When the parties agree that an interconnection feasibility study is not required, the EDC shall provide to the applicant, no later than 10 business days after the receipt of a complete interconnection request or, if held, the scoping meeting, an interconnection system impact study agreement (see Appendix F), including an outline of the scope of the study and an estimate of the cost to perform the study. <u>If the applicant does</u>

not sign and return the study agreement within 15 business days, the application shall be deemed withdrawn.

5) If the parties agree that neither an interconnection feasibility study nor a system impact study is required, the EDC shall provide to the applicant, no later than 10 business days after receipt of a complete interconnection request or, if held, the scoping meeting, an interconnection facilities study agreement (see Appendix G) including an outline of the scope of the study and an estimate of the cost to perform the study. If the applicant does not sign and return the study agreement within 15 business days, the application shall be deemed withdrawn.

(Ameren Comments at 10; Ex. 1 at 23-24). Ameren asserts that it is important to have milestones for both a utility and an interconnecting customer. It argues that, if timetables do not exist for both a utility and a customer, the interconnecting process could be greatly compromised, if a party delays (in submitting) responses or submittals, which could bring the interconnection process to a halt. Without the above-mentioned time requirements, it asserts, developers will be able to "park" on the most advantageous interconnection points within the system, thereby effectively owning the rights to interconnect such facilities, while "allowing themselves additional time to put deals together to the detriment of other later queued projects." (Ameren Comments at 10).

Analysis and Conclusions

We agree with Ameren. Requiring the return of the Study Agreement within 15 business days allows an interconnector sufficient time to review that agreement and return it to a utility. Also, as Ameren points out, an unnecessary delay in the process could effectively bring the interconnection process to a halt. We also note that no party or Staff has objected to Ameren's proffered language. The Rule shall be amended in accordance with that language.

o. Section 466.130 Timelines for Dispute Resolution

Section 466.130 concerns dispute resolution. Section 466.130(a) requires that when a party has a dispute with the other party, the party with the dispute must provide the other party with prompt written notice of the existence of the dispute, including sufficient detail to identify the scope of that dispute, in order to attempt to resolve that dispute in good faith. (466.130(a)). Section 466.130(b) provides that: "An informal meeting between the Parties shall be held within 10 days after receipt of the written notice. . . ." (466.130(b)).

MidAmerican's Position

MidAmerican maintains that in most places in the Rule, it is clearly stated whether a timeline is to be computed in calendar or business days. However, there is no such delineation in Section 466.130. It asserts that this portion of the Rule should state that the timeline therein should be "10 business days," to reflect the days of normal operation of the Commission and electric distribution providers. (MidAmerican Comments at 4).

Analysis and Conclusions

MidAmerican's point is well-taken. We also note that no party has objected to MidAmerican's proposal. This portion of the Rule shall be amended to reflect "10 business days."

p. Section 466.140 the Rule's Information-Sharing Requirements

The ELPC asserts that the information generated during utility interconnection reviews can be very useful to future applicants because those future applicants can learn how and where to design their projects so that they meet the interconnection requirements. It asserts that this is why Section 466.60(d) provides that utilities should share whatever previously-existing studies they have with interconnection applicants, thereby saving those applicants from the burdens involved in "re-inventing the wheel." The ELPC asserts that the last sentence in Section 466.140(c), however, contains some broad language that could be interpreted to conflict with the language in Section 466.60(d). It seeks to add the language set forth below to Section 466.140(c):

> Each EDC shall retain copies of studies it performs to determine the feasibility of, system impacts of, or facilities required by the interconnection of any distributed generation facility. The EDC shall provide the applicant with copies of any studies performed in analyzing the applicant's interconnection request upon applicant request. However, an EDC has no obligation to provide any further applicants any information regarding prior interconnection requests <u>to the extent that such information would violate security requirements or confidentiality agreements, or is contrary to law or State or federal regulations.</u>

(ELPC Comments at 15-16).

ComEd's Position

ComEd argues that this portion of the Rule was intentionally worded to state that a utility has no obligation to provide any prior studies to interconnection applicants. This is true, according to ComEd, because these studies look at specific pieces of equipment, in light of the conditions that exist at a particular point on the grid where the interconnection is proposed, at a precise point in time. Each proposed point must be suited separately because there is no certainty that any one point is just like any other point, with regard to

the relevant characteristics. Also, even the same point on the grid would have to be re-studied to determine whether there are different characteristics at a later point in time. ComEd concludes that older studies will provide an interconnector with no useful information. Thus, requiring utilities to store, retrieve and supply this information serves no purpose. (ComEd Reply Comments at 14).

Staff's Position

Staff agrees with the ELPC. Staff has included the ELPC's proposed language in its attachment to its Reply Comments. (Staff Reply Comments at 26).

Analysis and Conclusions

We strongly disagree with ComEd's contention that previous studies are useless to interconnectors. While utilities should not be bound by previous studies, because, as ComEd points out, there could be differences due to the passage of time and different interconnecting characteristics or equipment, these studies could provide interconnectors with useful tools as to what has been done in the past with regard to certain characteristics, especially when a characteristic is unique or somewhat unique. We also disagree with ComEd's suggestion that storing these documents is burdensome to a utility. In the world at present, such storage would merely involve the use of a scanner and a readily-available place to retrieve the information scanned. In all likelihood, a utility would have this information and a readily-available place for retrieval for its own use.

We agree with the ELPC that adding clarifying language to Section 466.140(c) will ensure that confusion will not arise. It will also help to ensure that interconnectors are not "re-inventing the wheel" with regard to what can be done to safely interconnect with a utility. The ELPC's proposed language shall be included into this section of the Rule.

q. Cost-Recovery Tracking

Ameren seeks to add the following language to the Rule:

Section 466.160 Cost Recovery Tracking

a) The EDC shall be permitted to track costs associated with implementing and administering the requirements associated with this regulation for amortization and recovery in a future rate proceedings together with just and reasonable carrying costs.

(Ameren Comments at 13).

Staff's Position

Staff opposes this proposal. Staff avers that including cost tracking in the Rule could be interpreted to implicitly sanction whatever costs that a utility tracks. Staff points

out that Ameren is obliged to abide by the relevant accounting rules. It is therefore required to record any costs it incurs regarding interconnection, irrespective of what the Rule contains. (Staff Reply Comments at 25).

Analysis and Conclusions

We decline to add Ameren's proposed language. Ameren's language does not define many terms therein. While accounting terms may be defined in other Commission regulations, this only highlights the fact that a person would not necessarily look in Commission rules regarding interconnection to find the rules regarding the accounting involved in the interconnection process. Also, adding this language to the Rule could be construed to mean that a cost that is so tracked is "just and reasonable" irrespective of what it actually is.

Moreover, this language appears to be unnecessary. As Staff points out, a utility is required by general accounting rules to track these costs irrespective of any language in the Rule. Therefore, Ameren's proposed language adds nothing of substance.

VI. The Standardized Agreements (Appendices A through G)

a. Whether the Standardized Agreements Should be Discretionary or Mandatory

Attached to the Rule are several documents which are meant to be standardized agreements. They are: the Level 1 Application and Interconnection Agreement, (one document) the Level 2-4 Application, the Level 2-4 Agreement, (two documents) a Certificate of Completion (certifying inspection by the pertinent local building inspector) an Interconnection Feasibility Study Agreement, an Interconnection System Impact Study Agreement and an Interconnection Facilities Study Agreement. (*See,* Part 466, Appendices A-G).

Staff's Position

Staff states that these documents are meant to be standard applications and contracts for utilities and interconnectors. Staff further asserts that the Level 1 Application and Contract, Appendix A, is meant to be a mandatory form, due to the potential lack of commercial sophistication that Level 1 applicants might have. This mandatory standard document, Staff believes, will protect both a utility and a Level 1 applicant. Also, Staff argues that the Level 2-4 Application should remain mandatory. However, the study agreements, Appendices E, F and G, are meant to be discretionary because these studies should be a cooperative effort between an EDC and an interconnector. While Staff believes that the Level 2-4 Interconnection Agreement should be mandatory, as a compromise, it would not object to making this Agreement, Appendix D, discretionary, as long as both parties agree to any different terms. This discretion would allow EDCs and customers to negotiate in good faith and encourage interconnection. (Staff Comments at 22).

Ameren's Position

Ameren acknowledges that without standardized contracts, overly-negotiated agreements can govern the interconnection process. Nevertheless, Ameren disagrees with Staff's assertion that the Interconnection Agreements should be codified in a regulation. Ameren asserts that codification of the agreements will render them difficult to change, as technology changes, or, as the needs of interconnecting customers evolve. Ameren proposes, as an alternative to standardized contracts, that the Commission can allow utilities to file standardized contracts for Commission approval. Allowing the utilities the flexibility to seek leave of the Commission to make modifications to existing contracts would address these concerns. Ameren asserts that the Rule could also provide that once approved, these contracts would be posted on a utility's website. To achieve this end, Ameren seeks to add the following to the Rule:

Section 466.150 Pro-Forma Agreements

a) Within 60 days of the effective date of this part, the EDC shall file with the Commission standardized pro-forma Interconnection (*sic.*) for eligible customers seeking to elect net-metering service as established by 220 ILCS 16-107.5 and in conformance with the review level identified within this part.

Ameren further suggests adding the following additional language:

1) The Commission shall review, approve, or identify any deficiencies within the filed agreements within 90 days from the date of filing.

2) If the agreements are deficient in any respect, the EDC shall have 45 days to resubmit compliant agreements, or seek reconsideration or appeal whichever is applicable.

b) All agreements shall be just and reasonable, and strike the appropriate balance between the rights of the interconnecting customer, the EDC and utility load customers.

c) The EDC shall be permitted to file pro forma agreements for customers other than those eligible for net-metering for approval by the Commission compliance (*sic*.) with the standard in subsection (b) above.

d) Once approved, the pro-forma interconnection agreement or agreements shall be posted on the EDC website.

e) Once approved, the pro-forma agreement shall be utilized by the EDC for all applicable interconnections until rescinded or modified by the EDC with Commission approval.

f) Prior to approval of pro-forma interconnection requirements required by this subsection, the EDC shall maintain just and reasonable standardized agreement forms compliant with this part where applicable. All interconnection agreements pertaining to customer generating facilities 10MVA or less, shall be compliant with the rules contained in this Part, and be otherwise just and reasonable.

(Ameren Comments at 14-15).

MidAmerican's Position

MidAmerican reminds this Commission that it serves multiple jurisdictions and approximately 10% of its electric customers are located in Illinois. MidAmerican would therefore like the opportunity to develop standard contracts and forms that could be useable across the three jurisdictions, in which, it operates. (MidAmerican Comments at 1-3).

MidAmerican further contends that utilities should be allowed to develop their own contracts, consistent with the procedures set forth in the Rule, and post those contracts on their websites. This process would allow enforcement by complaint and also would allow utilities to update their contracts in a simply manner. (MidAmerican Comments at 1-3).

MidAmerican concurs with Staff's suggestion that it is not absolutely necessary to require mandatory use of the Level 2-4 Interconnection Agreement. It asserts that the installations and circumstances regarding larger customers may not be easily slotted into master documents. MidAmerican, however, disagrees with Staff that the Level 1 Application and Agreement should be mandatorily-imposed. It asserts that Staff has ignored the utilities' obligations not to discriminate against their customers. (MidAmerican Reply Comments at 4).

The ELPC's Position

The ELPC posits that the practical concerns raised by the utilities pose no difficulty for them because waivers are available for the instances, in which, a utility and an interconnection customer need a customized arrangement. Also, given the generous timeframes included in the Rule, there is ample opportunity during the review schedules for utilities to request waivers. It concludes that therefore, this Commission should approve the standardized forms and contracts included in the Rule. (ELPC Reply Comments at 12-13).

IREC's Position

IREC asserts that the parties to this rulemaking have had differing opinion regarding a variety of issues. Failure to resolve the many issue in this rulemaking, it avers, only leaves these issues open for debate in the future. Also, without standardized contracts, each utility would be free make changes on a regular basis, creating dozens of agreements that dealers and installers of distributed generation equipment would have to track. (IREC Reply Comments at 3).

Analysis and Conclusions

We decline to add Ameren's proposed language. Ameren does not define "deficient," which is the legal standard this Commission would use to reject a contract. "Deficient" is also not a word that has significance in the body of law concerning contracts. The review process Ameren seeks to impose, therefore, has no legal standards for Commission Staff to apply when reviewing the contracts. Also, Ameren's proposed language regarding net metering is unnecessary and, is therefore, confusing.

We also disagree with the utilities' arguments that they should be allowed to file a *pro forma* contract, to be approved by Staff. As IREC points out, this leaves each utility free to make changes, frequently, thereby creating many agreements. Having one set of contracts creates clarity and simplicity for potential interconnectors and for the manufacturers and installers of interconnection products. We further note that the utilities are still free to apply for a waiver, if a situation arises in the future that truly makes a contract provision inapplicable, or, if a new contract provision should be added. As Ameren points out, a standardized contract also eliminates the burdens that an "overly negotiated" contract can impose on a utility.

Additionally, the *pro forma* approval approach is not consistent with the Congressional goals articulated in 16 U.S.C Sec. 2621, which promotes uniformity and encourages interconnection. As IREC points out, without standardization, the many issues that are resolved in this docket, in all likelihood, will only surface again in the future.

Further, we disagree with MidAmerican's contention that enforcement of Part 466 could reasonably be achieved by complaint. There is no certainty that a problematic provision or a problematic application of a provision would result in a complaint each and every time it occurs. Moreover, the complaint process can be time-consuming for the parties that are involved in a complaint.

We strongly disagree with the utilities' argument that their legal obligations not to discriminate against customers adequately protect interconnection customers. These laws afford protection when they are violated, which is after the fact. They also do not ensure that interconnectors do not, uniformly, receive inadequate or improper treatment. For this reason, we decline to make use of the Level 2-4 Interconnection Agreement, as is modified herein, discretionary. This approach helps ensure that utilities do not "brush aside" any interconnection customer.

On Exceptions, Ameren acknowledges that its proffered language contains no legal standard for this Commission to apply. It states, however, that *pro forma* contracts could be subject to Commission review as tariff filings. (Ameren Brief on Exceptions at 2-3). This procedure, also, contains no legal standard for Commission Staff to apply when reviewing these contracts. We decline to adopt Ameren's approach.

With regard to MidAmerican's argument that it should be allowed to create one contract for all of the jurisdictions, in which, it supplies power, we see no reason why MidAmerican cannot create a contract that delineates Illinois requisites, as well as those for other jurisdictions. MidAmerican's need for efficiency, however, should not rise above the need for meaningful, uniform, contractual provisions in interconnection contracts. Therefore, any multi-jurisdictional contract that MidAmerican develops must include all of the provisions in the Appendices to the Rule.

In summation, we find that the public interest is served by requiring use of the interconnection applications and interconnection contracts, as well as the Certificate of Completion, (Appendices A, B, C and D) on a mandatory basis. The study agreements, Appendices E through G, were never meant to be mandatory, as these studies are cooperative efforts between a utility and an interconnector.

a. Reactive Power Requirements for Level 2-4 Interconnectors

Ameren's Position

Ameren asserts that interconnecting customers should be obligated to follow the same reactive requirements as those that its customers that do not have generators are required to follow. Thus, a customer with a generation capacity that exceeds 1,0000 kW (not a Level 1 customer) should be required to maintain a power factor between .95 lag and .95 lead at all times. All other customers should be expected to maintain a power factor in the range of .90 lag to .90 lead at all times. (Ameren Comments at 18). (*See,* 466.80(a)(3)).

ComEd's Position

The Level 2-4 interconnection agreement provides that:

> The EDC shall not specify a power factor range that is more stringent than the power factor range load customers of comparable size must maintain in order to avoid reactive demand charges.

(Appendix D, par. 1.9.1). ComEd contends that this language should be changed to provide that:

> The EDC shall not specify a power factor range, applicable to situations in which the facility is drawing electricity from the grid that is more stringent than the power factor range load customers of comparable size must maintain in order to avoid reactive demand charges. However, the EDC may specify a more stringent power factor applicable to a situation in which the facility is exporting electricity to the electric grid.

(ComEd Comments at 10). ComEd maintains that the load customers that use its delivery system are required to maintain a power factor of at least 85% and the electric grid is constructed to accommodate up to a 15% deviation. The cost of this reactive power capacity is included in customers' delivery service charges. Also, if a customer has a load factor that is less than 85%, charges for additional reactive power are assessed. (*Id.* at 9-10).

ComEd posits that, when an interconnector is acting as a load customer and is drawing energy from the grid, it is appropriate to hold that customer to the power factor requirements that are applicable to other customers, (85%) because the distribution charges that an interconnector pays cover the cost of the necessary capacitance. However, when an interconnector exports power to the grid, it should be required to maintain a higher power factor because, in that situation, an interconnector is not paying for any reactive power supply. Otherwise, ComEd continues, other electric customers pay for the additional reactive power supply, which is not appropriate. (*Id.* at 10).

Staff's Position

After having reviewed Ameren's and ComEd's Comments, Staff states that the language in the Rule is probably not the best foundation, on which, to build standardized reactive power requirements for interconnectors. Staff believes that it would be more transparent and appropriate to modify the language in paragraph 1.9.1 in the Level 2-4 Interconnection Agreement, so that the allowable power factor range is specified for all interconnection customers. Staff has provided the appropriate language in attachment A to its Reply Comments. (Staff Reply Comments at 19). It is:

> Interconnection customers with a distributed generation facility larger than or equal to 1 MVA shall design their distributed generation facility to maintain a power factor at the point of interconnection between .95 lagging and .95 leading at all times. Interconnection customers with a distributed generation facility smaller than 1 MVA shall design its distributed generation facility to maintain a power factor at the point of interconnection between .90 lagging and .90 leading at all times.

Analysis and Conclusions

Staff's, ComEd's and Ameren's arguments are reasonable. The Appendix has been modified in accordance with Staff's proffered language, which is:

> Interconnection customers with a distributed generation facility larger than or equal to 1 MVA shall design its distributed generation facility to maintain a power factor at the point of interconnection between .95 lagging and .95 leading at all times. Interconnection customers with a distributed generation facility smaller than 1 MVA shall design its distributed generation facility to maintain a power factor at the point of interconnection between .90 lagging and .90 leading at all times.

b. Indemnification for Third-Party Injuries

The standardized Interconnection Agreements included as part of the Rule contain mutual indemnity provisions for third-party injuries or losses.[5]

Ameren's Position

According to Ameren, requiring mutual indemnity "will likely invite lawsuits." (Ameren Comments at 15). Ameren asserts that it is more reasonable and consistent with other states to require unilateral indemnification-meaning that the interconnecting customer must indemnify utilities, but, utilities should not be required to indemnify interconnecting customers for third-party injuries, even when those utilities are responsible for those injuries. (Ameren Comments at 16-17). In the states where indemnification is required, Ameren continues, it is required by statute. (*Id.* at 16). In support, Ameren prepared a chart of state utility regulation laws on the subject of indemnification. (Ameren Ex. 2). Citing *In re Ill. Bell Switching Station,* 161 Ill. 2d 233 (1994), Ameren additionally contends that Illinois law favors limiting public utilities' potential liability, in order to keep rates low. Ameren cites no other law or Commission docket in support of this argument. (Ameren Reply Comments at 9-10).

Also, according to Ameren, requiring utilities to indemnify interconnectors for utlitilies' "gross negligence" and willful actions will subject utilities to frivolous lawsuits. This is true, it continues, because refusing to indemnify an interconnector for a utility's actions would mean that a utility would only be liable for damages under expressed circumstance. Thus, utilities would be protected from being held to what Ameren calls "strict liability" standards. (*Id.* at 10). It avers that in light of the "practical reality" of litigation, people do not determine who has indulged in gross negligence or willful misconduct before they sue. Additionally, a utility would "unquestionably" be viewed as a "deep pocket" defendant to be kept in a lawsuit regardless of actual fault. Ameren concludes that a bilateral indemnification clause would "only lead" to more complicated, lengthy and costly lawsuits, which is inconsistent with unspecified regulatory goals stated in the Public Utilities Act. (Ameren Reply Comments at 10-11).

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5 Indemnification is compensation to another person for an incurred loss. (*See, e.g.,* Meriam-Webster.com). Here, the indemnification at issue only concerns compensation to anther person or entity (an interconnector or an EDC) for payments made to a third-party.

In the alternative, if the Commission desired to "alter the balance of risk" for interconnection customers, the compromise position would be not to mention indemnity at all in the Interconnection Agreements. Ameren seemingly acknowledges that the statistics it provided in support of its argument that most states do not require bilateral indemnification are not completely accurate, as it further argues that Staff's statistics regarding other jurisdictions with laws requiring biliateral indemnification are not "best practices." (*Id.* at 11).

ComEd's Position

ComEd argues that it is perfectly appropriate for the Rule to require that utilities must be indemnified when they pay for third-party injuries, and when, the third-party injuries arise out of the interconnectors' negligence or willful misconduct. However, according to ComEd, it would simply be bad public policy to require utilities to indemnify interconnectors for the negligence or willful misconduct of utilities. (ComEd Comments at 8). It avers that this "increase in exposure" is really a subsidy to interconnectors, which is inappropriate, because the interconnectors are the persons or entities that are introducing increased risk into the operation of the electric grid. (*Id.* at 8).

ComEd acknowledges that the Rule was drafted after Staff examined what a number of other jurisdictions have enacted or promulgated with regard to indemnification for third-party injuries. However, it asserts that Staff should ignore the practices in these other jurisdictions because, according to ComEd, a rule that allows indemnification by a utility is not a "best practice." (ComEd Reply Comments at 2). (*Id.* at 3-4).

Staff's Position

Citing public utility commission matters in many jurisdictions, Staff asserts that its research reveals that most states that have addressed, or are in the process of addressing, this type of indemnification have required bilateral third-party indemnification. After considering the best practices of other states, Staff concluded that bilateral indemnification for third-party injuries is appropriate. (Staff Comments at 23-24).

The ELPC's Position

The ELPC finds Ameren's and ComEd's arguments that indemnification to third-parties would subsidize interconnectors to be "puzzling." It asserts that indemnification does not shift liability. Instead, an indemnity clause ensures that liability remains where it belongs-on the party that is responsible for the indemnifiable loss. In effect, the ELPC continues, ComEd and Ameren suggest that interconnection customers should assume the liability of electric utilities in third-party damage suits, even when the claims are "based upon the EDC's (a) negligence or willful misconduct or (b) breach of this Agreement." (Ameren Reply Comments at 11, citing Appendix C, Art. 6.3.3).

Analysis and Conclusions

Ameren and ComEd object to the fact that the Interconnection Agreements (Appendices A and D) provide for bilateral indemnification for injuries to persons who are not parties to these agreements. They do not object to being indemnified; they object to being required to indemnify. Although they do not cite the pertinent language, it is as follows:

> **Indemnification**. The interconnection customer shall indemnify and defend the EDC and the EDC's directors, officers, employees, and agents from all damages and expenses resulting from *any third party claim arising out of or based upon the interconnection customer's (a) negligence or willful misconduct or* (b) breach of this Agreement, except to the extent caused by the EDC's gross negligence or willful misconduct. *The EDC shall indemnify and defend the interconnection customer and the interconnection customer's directors, officers, employees, and agents from all damages and expenses resulting from a third party claim arising out of or based upon the EDC's (a) negligence or willful misconduct or* (b) breach of this Agreement, except to the extent caused by the interconnection customer's gross negligence or willful misconduct.

(*See, e.g.,* Appendix A at par. 7; emphasis added). Pursuant to this provision, an EDC (a utility) is only liable to an interconnecting customer when an EDC's actions harm another person or entity who is not a party to the Interconnection Agreement. The language in the Interconnection Agreement requires an EDC to pay for any damages it caused to that third-person or entity. Also, use of the term "and defend" connotes payment for the interconnector's attorney's fees and court costs, if any, in defending against this third-party action as a result of a utility's negligence or willful misconduct.

It appears that Ameren and ComEd are concerned with tort liability, as opposed to liability to third-parties for breach of contract. Ameren claims that utilities are "deep pockets" and ComEd asserts that indemnity "increases a utility's exposure." Moreover, the case cited by Ameren in support of its argument, *In re Bell Switching Station*, is a tort case. We analyze the utilities' arguments, therefore, as they pertain to tort law. We further conclude that Ameren and ComEd have waived their right to assert any argument regarding requiring indemnification for third-party losses resulting from breach of contract.

Although neither Ameren nor ComEd made this argument, we note at the outset that there is a logical inconsistency in requiring utilities to indemnify interconnectors for third-party injuries caused by the utilities' negligence or willful misconduct, except when those injuries are caused by an interconnecting customer's gross negligence or willful misconduct. Similarly, an interconnector is required to indemnify a utility for all damages and expenses resulting from any third-party claim arising out of, or based upon, the interconnector's negligence or willful misconduct, except when those injuries are caused by a utility's gross negligence or willful misconduct.

These exceptions appear to address the situation, in which, the utility and the interconnector are joint tortfeasors, meaning that both parties' actions caused the injury to a third-person or entity. However, there is no logical reason to hold the utility to a threshold of negligence or willful misconduct, but exclude liability when the interconnector meets a higher threshold, gross negligence or willful misconduct. Similarly, the exception regarding indemnification to utilities holds the interconnector to a standard of negligence or willful misconduct, but, it holds the utility, in the exception, to the same higher standard. There is no logical reason to create an exception with a higher threshold than that which is required for indemnity. At a minimum, this language is confusing

Moreover, we are concerned that these exceptions could be construed to mean that a utility is liable to indemnify for injuries to third-parties, except when the interconnector is also negligent. These exceptions could be construed to apply what was known decades ago as "implied indemnity" or "active-passive indemnity," which was the law before enactment of the Contribution Act, which allocates culpability for tortious actions based on the degree of fault. (*See, e.g.,* 740 ILCS 100/2; *Allison v. Shell Oil,* 113 Ill. 2d 26, 30-35, 495 N.E.2d 496 (1986), discussing implied indemnity and ruling that active-passive indemnity is no longer the law in Illinois). This construction would ignore the well-established body of statutory law and common-law regarding torts that recognizes apportionment of liability in accordance with relative culpability. (*See, e.g.,* 740 ILCS 100/2; 740 ILCS 100/3). Therefore, the phrases "except to the extent caused by the interconnection customer's gross negligence or willful misconduct" and "except to the extent caused by the EDC's gross negligence or willful misconduct" shall be eliminated from both Interconnection Agreements, Appendices A and D.

However, Ameren's argument that requiring the indemnification here only incites frivolous lawsuits makes no sense. The word "frivolous" only includes those lawsuits that have no basis in law or fact. Therefore, a frivolous lawsuit is one that is filed, irrespective of anything contained in an Interconnection Agreement, or, the law, or, it is one that is filed irrespective of the facts. Therefore, nothing in an Interconnection Agreement could deter the filing of frivolous lawsuits.

Ameren also asserts, essentially, that as long as there is a "deep pocket," people do not determine who has indulged in negligence of willful misconduct before they sue that "deep pocket." We note that tort lawsuits are subject to the Illinois Code of Civil Procedure, which provides many methods for dismissal of frivolous lawsuits at their inception. (*See, e.g.,* 735 ILCS 5/2-615, 2-619). Therefore, most frivolous lawsuits should end, fairly quickly.

Of far greater significance, however, is the fact that the contracts here are only between a utility and an interconnector. The provision here only concerns injuries to persons who are not privy to those contracts, to wit, third-parties. In most circumstances, a third-party, who is not a party to an interconnection agreement, but who is looking for a "deep pocket" to sue, would be totally unaware of the indemnification provision in any

interconnection contract, and would, therefore, be totally unaware that there is any "deep pocket." Ameren's argument is not grounded in fact.

On Exceptions, Ameren takes issue with the language above. It states that the reality is that if, someone is injured due to a generator interconnected with a customer's premises and its system, any competent plaintiff's attorney will sue the homeowner, the generation equipment manufacturer and the utility. (Ameren Brief on Exceptions at 3-4). As is explained below, however, nothing in an indemnification provision will alter that fact.

Ameren also asserts that the mutual indemnification provision creates an additional avenue of liability for use against a utility, and an excuse to keep an innocent utility in a lengthy and costly legal proceedings. (*Id.*). Ameren's argument ignores the law.

However, a contractual indemnification provision does not confer liability on a person or entity. The law determines who or what is liable for a person's injury. (*See, e.g.,* 740 ILCS 100/2; 740 ILCS 180/1). A contractual indemnification clause merely delineates who pays for what in enumerated circumstances. (*See, e.g., RCD Mortgage Co. v. National Union Fire Ins.,* 349 Ill. App. 3d 706, 712-15, 812 N.E.2d 728(1st Dist. 2004)). Therefore, the indemnification provision does not create any avenue of liability.

We also note that Ameren uses the term "strict liability," which is a legal term of art in tort law. "Strict liability" has no application here. (*See, e.g., Central Ill. Light Co. v. Home Insurance Co.,* 213 Ill.2d 141, 171, 821 N.E.2d 206 (2004)). Use of this term does not aid Ameren.

Moreover, Ameren and ComEd essentially ask this Commission to ignore the public policy concerns involved when a company or a company employee or official engages in imprudent or reckless conduct, thereby endangering an innocent third-party. Generally, public policy requires a wrongdoer to pay for his or its wrongdoing. (*See, e.g.,* 740 ILCS 100/2). This is especially true here, when, as the utilities and Staff have alleged with regard to many arguments, interconnection can involve serious safety issues.

An analysis of *In re Bell Switching Station Litigation,* 161 Il. 2d 233, 239-245, 641 N.E.2d 440 (1994), the only Illinois law cited by any utility on this issue, only bolsters the conclusion that utilities should be required to indemnify interconnectors for the utilities' negligence and willful misconduct. In that case, the complainants asserted tort theories, negligence or willful actions, and, they sought to recover purely economic damages from loss of telephone service after a telephone switching station caught fire due to that negligence or willful misconduct. (*Ill. Bell,* at 236).

The term "economic damages" was defined in *In re Bell Switching Station Litigation* as that which was enumerated in the well-established *Moorman* doctrine, which is "the damages resulting from inadequate value, costs of repair and replacement of the defective product, or consequent loss of profits without any claim of personal injury or damage to other property." (*Id.* at 241). In finding that the plaintiffs were not able to recover for these purely economic losses, the Illinois Supreme Court found that Section 5-201 of the Public

Utilities Act, 220 ILCS 5/5-201, provides that utilities are liable for actual damages, and even punitive damages, for their tortious actions, but, this statute does not provide for economic loss damages in tort actions. (*Id.* at 239). It further found that this conclusion was congruent with general tort law principles, which provide that, at common law, purely economic damages, (the loss of telephone service) as opposed to actual and punitive damages, are not recoverable in a tort action. In so ruling, it again cited *Moorman,* which prohibits the recovery of economic loss damages in tort actions. (*Id.* at 240-41). In that vein, the Illinois Supreme Court found that the tariffs filed by Illinois Bell, which precluded any recovery for economic damages for loss of use of its services, did not violate Illinois law. (*Id.* at 241-46).

Clearly, *In re Bell Switching Station Litigation* does not hold that there is any general policy in Illinois that requires this Commission to hold utilities to be immune from the tortious wrongdoing of their employees or management. Quite the opposite, it acknowledges that utilities are legally liable for their tortious wrongdoings. It holds, in accordance with generally-recognized principles of tort law, (the *Moorman* doctrine) that what a utility can be liable for in a tort action is what any other entity can be held liable for, actual damages (damages incurred due to injury to person or property) and, if the exigent circumstances warrant, punitive damages. *In re Bell Switching Station Litigation* merely holds that there is no recovery in Illinois in tort for purely economic losses, which has been the law in Illinois for several decades. The clause at issue, however, concerns recovery for "all damages and expenses," which can only entail those damages and expenses that are awardable to a third-party pursuant to Illinois law. It, therefore, only aids Staff's argument that indemnification for third-party losses should be required.

Indeed, Section 5-201 of the Public Utilities Act specifically provides that a public utility "shall be held liable" to the persons or corporations affected by "loss, damages or injury" caused by a utility's failure to abide by the Public Utilities Act, any pertinent regulation or Commission order. (220 ILCS 5/5-201). That injured person or corporation is entitled to actual damages, attorney's fees, and, in the case of willful misconduct, punitive damages. (*Id., see also Dempsey v. Holiday Utilities Corp.,* 107 Ill. App. 3d 467, 475-77, 437 N.E.2d694 (5th Dist. 1982); *Renken v. Northern Illinois Water Co.,* 191 Ill. App. 3d 744, 749-51, 547 N.E.2d 1376 (4th Dist. 1989)).

We further note that indemnification to third-parties for a utility's negligence or willful conduct concerns tort law. While Ameren's chart (Ameren Ex. 2, attached to its Comments) purports to list the states that "allow indemnification," there are many types of indemnification (*e.g.,* indemnification to a person for the harm incurred; indemnification for harm incurred by third-parties; indemnification when a person dies). Ameren's chart does not state what type of indemnification is in its chart. Also, indemnification often concerns who pays for what actions that violate various laws. Therefore, merely because indemnification does not appear in a regulatory statute or regulation in another state does not mean that there is not another statutory or common-law requirement (*e.g.,* in the statutes concerning tort law) that would require a utility to indemnify its customer for third-party injuries, when that utility was negligent or willful. We also note that *In re Bell Switching Station,* the only law cited by any utility on the subject, suggests that utilities *do*

have the duty to compensate persons for their tortious actions, as long as the compensation sought is what a person would normally be entitled to in a tort action.

Moreover, while Ameren surveyed current utility law in other states, this docket commenced pursuant to federal requirements that were imposed by Congress on all 50 states. As a result, this Commission is in the process of resolving the many issues regarding interconnection, including whether utilities should be required to indemnify interconnectors for the third-party injuries that the utilities caused. It is highly improbable that all of the other 49 states are in a position that is further along in the process of developing these standards than we are in this docket, in Illinois. We note that this docket has not come to an end. Therefore, Ameren's table as to what other states have enacted or promulgated is not persuasive.

In summation, we conclude that the indemnification provisions in the interconnection agreements reasonably require utilities to indemnify interconnectors, as those provisions only require utilities to pay for the consequences of their wrongdoing to persons who are not parties to those contracts. In so ruling, we note that indemnification is required only when there is a loss incurred by an innocent third-party to an interconnection contract, who is not privy to it, and also when that loss results from a utility's negligence or willful actions. However, we conclude that the language in these contracts that excludes indemnity for a utility's actions when the liability is caused by an interconnecting customer, as well as that which excludes indemnity for interconnecting customers when the liability is caused by a utility, should be excluded from the Interconnection Agreements, as it could be construed to be in abrogation of Illinois law.

c. Level 1 Insurance

MidAmerican's Position

MidAmerican points out that the Level 1 Interconnection Agreement advises an interconnecting customer to obtain insurance, but it does not require that customer to do so.[6] At the same time, paragraph 7 of that Agreement requires an interconnecting customer to indemnify and defend an EDC and its agents from all damages and expenses resulting from any third-party claim arising out of, or based upon, the interconnecting customer's negligence or willful misconduct. (*See,* Appendix C at par. 7, p. 31). MidAmerican maintains that the only way to ensure that a Level 1 customer will be able to fulfill that obligation is to require that customer to provide a utility with insurance coverage, that is, a requirement to name a utility as an additional insured. (MidAmerican Comments at 3-4).

6 The Level 2-4 Interconnection Agreement requires interconnectors to insure utilities. (Appendix D at Article 7).

Staff's Position

Staff is not opposed to requiring interconnection customers to name the pertinent utility as an additional insured under their current homeowner's insurance policies. (Staff Reply Comments at 26-7).

The ELPC's Position

The ELPC avers that unjustified insurance requirements have been identified as a substantial barrier to interconnection. It asserts that utility-imposed insurance requirements beyond those that are found in typical homeowner's liability policy creates unnecessary costs that discourage customers from investing in grid-connected systems. (ELPC Reply Comments at 11).

Ameren's Position

Ameren maintains that Level 1 interconnectors should be required to "have insurance." (Ameren Comments at 16-17).

Analysis and Conclusions

MidAmerican's point is well-taken. The Level 1 Interconnection Agreement requires an interconnecting customer to "indemnify and defend the EDC and its directors and agents from all damages and expenses resulting from any third-party claim." (Appendix C at par. 7). In layman's terms, this means that an interconnecting customer is responsible for any type of third-party damages, court costs, and attorney's fees. We further note that, generally speaking, Level 1 customers would be customers with solar panels or other types of smaller generating facilities. There is no assurance that such a customer would be able to pay for damages, court costs and attorney's fees for any third-party claims, which could render this portion of the indemnity provision meaningless.

Language shall be added to the Level 1 interconnection application/agreement requiring Level 1 interconnectors to add the pertinent EDC (utility) as an additional insured on their homeowners' insurance policies when possible, or, in the case of persons or entities without homeowner's insurance, (*e.g.,* businesses) a comparable general liability insurance policy. By requiring an interconnector to add the utility as an additional insured, when possible, on a general liability policy, we also address the concerns expressed by the ELPC regarding unjustified insurance requirements.

On Exceptions, the City argues that requiring Level 1 interconnectors to insure utilities creates an uncertain interplay between the additional insured requirement and the indemnity provisions, citing *Chrysler Corp. v. Merrell & Garaguso,* 796 A. 2d 648 (Del. Supr. 2002). (City Brief on Exceptions at 7).

Chrysler, however, construed a Delaware statute that prohibited contractual indemnification for a party's own negligence in a construction contract. (*Chrysler,* 796 A.

2d at 650). A Level 1 agreement between an interconnector and a utility is not a construction contract. Morever, while Illinois has a law that is similar to the Delaware law in question, (*See,* 740 ILCS 35/1) Illinois law also specifically excludes insurance contracts from this provision, as well, as agreements to procure insurance. (*See, e.g.,* 740 ILCS 35/3; *Bosio v. the Branigar Org.,* 154 Ill. App. 3d 611, 615-16, 506 N.E.2d 006 (2nd Dist. 1987)). Therefore, it appears that the interplay between the indemnity provision, which does not provide indemnity for a party's own negligence, and any requirement for Level 1 interconnectors to obtain insurance coverage for utilities, is well-established in Illinois. This argument does not aid the City.

Also on Exceptions, the ELPC asserts that this Commission should not require Level 1 interconnectors to insure utilities for several reasons. It argues that Level 1 generators are safe, therefore, essentially, there is no need for such coverage. Also, the manufacturers of Level 1 equipment have product liability insurance to protect against potential property damage or personal injury claims. Additionally, Level 1 equipment would be covered by existing homeowner's and like policies, without any additional insured requirement. And, the utilities are able to obtain their own insurance. (ELPC Brief on Exceptions at 3-4).

Both the ELPC and IREC further contend that it is difficult for a homeowner to add a utility as an additional insured on their homeowner's insurance policies. (ELPC Brief on Exception at 4; IREC Brief on Exceptions at 1-3). IREC adds that it appears to be very unlikely that there would actually be a situation where such coverage is needed, as it would only be needed if a.) a third-party suffers damages due to the negligence of an interconnection customer; and b.) the utility was not negligent; and c.) that third-party sues the utility and d.) the interconnection customer has insufficient assets to back up its indemnification of the utility. (IREC Brief on Exceptions at 2).

We disagree with the contention that the utilities should obtain their own insurance coverage, as the cost of that insurance would be borne by the ratepayers. Also, the fact that Level 1 generators are safe does not alter the need for insurance coverage. Many items that are generally considered to be safe, such as homes, cars, etc., are routinely insured because they still can cause injuries to other persons. And, by definition, product liability coverage concerns when a defective product causes injury. It normally would not apply to the instances, in which, a defective product does not cause the injury to person or property.

We further disagree with IREC's assertion that the situations in which there would be a need for insurance coverage would be few, so as not to justify requiring Level 1 interconnectors to obtain insurance coverage for utilities. Level 1 carriers would tend to be homeowners, or small businesses, who, in many cases, would not be able to afford the cost of litigation. This would render the clause requiring Level 1 interconnectors to indemnify utilities to be meaningless. Moreover, if a Level 1 interconnector were unable to indemnify a utility, the ratepayers would bear the cost of this litigation.

However, the ELPC and IREC have voiced a very legitimate concern, and that is,

that, in many instances, a person will not be able to add a utility as an additional insured on a homeowner's insurance policy or like general liability policy. The following language will ensure that there is some liability insurance coverage when an interconnector is at fault and someone or something is injured. It also states that, when possible, the utility shall be named as an additional insured.

Insurance Disclosure

> The attached terms and conditions contain provisions related to liability, and indemnification and should be carefully considered by the interconnection customer. The Interconnection customer shall carry general liability insurance coverage, such as, but not limited to, homeowner's insurance. Whenever possible, the interconnection customer shall name the EDC as an additional insured on its homeowner's insurance policy, or similar policy covering general liability. . . . .
>
> 8) **Insurance.** The interconnection customer shall provide the EDC with proof that it has a current homeowner's insurance policy, or, other general liability policy, and, when possible, the interconnection customer shall name the EDC as an additional insured on its homeowner's insurance policy, or similar policy covering general liability.

d. Deposits

Article 5.2 in the Level 2-4 Interconnection Agreement requires an interconnecting customer to provide a utility with a deposit that is equal to 100% of the estimated non-binding cost of interconnection. (Appendix C at Article 5.2). It provides:

> 5.2 Interconnection Customer Deposit
>
> At least 20 business days prior to the commencement of the design, procurement, installation, or construction of the EDC's interconnection facilities and distribution upgrades, the interconnection customer shall provide the EDC with a deposit equal to 100% of the estimated, non-binding cost to procure, install, or construct any such facilities.

(Appendix C, par. 5.2).

Also, the Level 2-4 Agreement provides that:

> Interconnection customer shall provide a study deposit equal to 100 percent of the estimated non-binding study costs when the interconnection customer is the first in the queue.

Appendix C, par. 7).

The ELPC's Position

The ELPC points out that, for larger projects, the total cost of interconnection could be hundreds of thousands of dollars and the process could last for many months. It argues that it is simply not reasonable to "hold all of the money, up front and without interest," for an extended period of time. The ELPC maintains that this provision should be revised to allow the utilities to hold such deposits in escrow accounts, pay interest, and allow interconnection customers to select a guarantee, bond or letter of credit, in lieu of cash. (ELPC Comments at 16).

IREC's Position

IREC avers that an interconnection customer is placed in the queue for distribution when its application is complete, which occurs long before the estimated study costs are determined. However, the three study agreements in Appendices E, F and G provide that an interconnection customer shall provide a study deposit equal to 100% of the estimated non-binding study costs when that customer is first in the queue. (*See, e.g.,* Appendix E, at par. 7). Also, IREC asserts that a 100% deposit is excessive. (IREC Comments at 6-7).

On Exceptions, IREC clarifies that what it meant in this argument is that in almost all circumstances, queues will be empty and therefore, an applicant will be first in the queue upon being placed in the queue. It argues essentially, that the study agreements should contain language that is similar to the language cited above, which requires payment shortly before work commences, as opposed to when an interconnector is merely eligible to have the study performed (when it is first in the queue). Also, IREC's issue is with the timing of the deposits for studies, not the deposits due before interconnection. (IREC Brief on Exceptions at 3-5).

Staff's Position

Staff asserts that the Rule requires the interconnectors to pay the utility in full before any study is performed because this procedure prevents load customers from funding interconnection. Also, it is the better practice for an EDC not to become an interconnection customer's creditor. (Staff Comments at 21).

Staff states that the deposit here is not to secure future service. Rather, it is payment for services that will be rendered soon. Staff maintains that studies proceed under timelines that require them to be conducted reasonably quickly. For example, the interconnection studies are required to be completed in 30 business days. Staff argues that due to the short time periods involved, an escrow account that compiles interest is not appropriate. (Staff Reply Comments at 24-25).

Ameren's Position

Ameren avers that a deposit of less than 100% of the estimated study costs creates a potential financial liability for load customers. Like any other business venture, a

generation project can stall or lose financing. Ameren avers that load customers, who already face high energy costs, should not be required to "cover" any portion of the bill for a failed distributed generation project. (Ameren Reply Comments at 20). Ameren also disagrees with the notion of paying interest on deposits. It asserts that the deposits will be used to fund the construction of interconnection facilities. Thus, if a customer fails financially during the construction period, a utility will keep the portion of the deposit that represents the costs it incurred. Here, Ameren continues, a deposit is not to secure future payment for service. Rather, it is an "upfront" payment of a utility's costs that will be incurred in the immediate future. (Ameren Reply Comments at 20-21).

ComEd's Position

ComEd asserts that the deposit amount should not be reduced. It points out that the term "deposit" here is a bit of a misnomer. It is really an "advance" of monies due, as opposed to a security payment, which, historically, has been designed to protect against non-payment when a person has a bad credit history. (ComEd Reply Comments at 15).

Analysis and Conclusions

We disagree with the ELPC that a guarantee, bond, or letter of credit should be equal to the financial responsibility that a deposit would satisfy. This is true because these instruments do not actually pay any immediate expenses incurred by a utility with regard to an interconnection request. Guarantees, letters of credit and bonds just promise future payment. They are not the same as cash.

Also, we do not find a 100% deposit to be unreasonable. As the utilities have pointed out, a lesser deposit could create a situation, in which, the ratepayers pay for any work done by a utility that is not paid for by an interconnector. IREC provides no indication that the situation here is different from any other type of construction project. Construction projects are subject to setbacks, funding issues and other issues that can render them in situations whereby a supplier is not paid, or, is not promptly paid. The expenses incurred by a utility in such a situation, unlike the cases in which a private company is not paid or is not promptly paid, create a void that ratepayers must fill. We therefore decline to alter the Rule in the manner proffered by IREC.

However, IREC's point that the study agreements require advanced payment when an interconnector is first in the queue, irrespective of when that study will be performed, is well-taken. The language in these agreements shall be modified to provide that:

> 7. Interconnection customer shall provide a study deposit equal to 100 percent of the estimated non-binding study costs *at least 20 business days prior to the date upon which the study commences*.

We further note that there appears to be some confusion as to what "up front" payment is at issue. The ELPC and IREC assert that 100% of the estimated costs of *interconnection* (as opposed to fees for studies) should not be paid "up front." While

studies may not take much time, interconnection could take several months. Interconnection also may not commence immediately. There is no reason why the 100% deposit could not be earning interest, to accrue to the benefit of the interconnector, while that money sits. This could be achieved in a manner that imparts no harm on ratepayers by allowing interconnectors to escrow funds with a disinterested third-party. The language below allows an interconnector to earn interest on the monies deposited in a third-party escrow when completion of construction or installation is estimated to exceed three months from the date of notification pursuant to Article 4.1.1 of the Interconnection Agreement.

Article 4.1.1 will be amended to provide that:

> The interconnection customer shall pay for the cost of the interconnection facilities itemized in Attachment 3. The EDC shall identify the additional interconnection facilities necessary to interconnect the distributed generation facility with the EDC's electric distribution system, the cost of those facilities and the time required to build and install those facilities, *as well as an estimated date of completion of the building or installation of these facilities.*

Section 5.2 of this Interconnection Agreement shall be modified to provide that:

> At least 20 business days prior to the commencement of the design, procurement, installation, or construction of the EDC's interconnection facilities and distribution upgrades, the interconnection customer shall provide the EDC with a deposit equal to 100% of the estimated, non-binding cost to procure, install, or construct any such facilities. *However, when the estimated date of completion of the building or installation of facilities exceeds three months from the date of notification pursuant to Article 4.1.1 of this Agreement, this deposit may be held in escrow by a mutually agreed-upon third-party, with any interest to inure to the benefit of the interconnection customer.*

(Appendix C, par. 5.2).

Finally, Attachment 3 to this Agreement will be amended to provide that:

> This attachment is to be completed by the EDC and shall include the following . . .

3. An estimate for the time required to build and install the EDC's interconnection facilities based on results from prior studies *and an estimate of the date upon which said facilities will be completed.*

e. Timelines

The ELPC's Position

The ELPC asserts that reasonable timelines for key steps in the application and utility review processes are important elements of standardized interconnection rules. It maintains, however, that there are "no good reasons why interconnections in Illinois should take longer than interconnections in other areas of the country." It argues that most of the technical requirements are now standardized on a nationwide basis. The ELPC contends that the Rule has extended certain deadlines beyond those that were set forth in the applicable FERC rules. (ELPC Comments at 14-15).

Ameren's Position

Ameren asserts that the FERC's timeframes are irrelevant. Interconnections that are regulated by the FERC are coordinated by the Midwest Independent Transmission System Operator, Inc. ("MISO"). MISO has specialized full-time personnel that can accommodate interconnections. However, Ameren's non-FERC interconnections are administered by system engineers and other professionals that are primarily responsible for ensuring safe and reliable delivery service to load customers. Implementing tight timelines for processing interconnection application would prioritize interconnection customer requests above the needs of load customers, which would result in increased customer costs. (Ameren Reply comments at 21).

ComEd's Position

ComEd asserts that molding the Rule here so that it is similar to the FERC's procedures would not be appropriate. It would be arbitrary to adopt only a portion of the content of that model without considering its other elements, which may have also factored time issues into consideration. (ComEd Reply Comments at 13).

Staff's Position

Staff contends that the timelines in the Rule are sufficiently short to permit distributed generation. Staff notes that the FERC and other states should not determine what is appropriate in Illinois. (Staff Reply Comments at 23).

Analysis and Conclusions

The ELPC does not specify what interconnection standards are different from what particular items that are specified in the Rule. It also does not specify why these "no good reasons" are harmful to the general public or other entities. It has not provided this Commission with a basis of comparison between the two sets of rules. It also has not stated why these "no good reasons" are harmful. And, as ComEd points out, we also lack the full context of the FERC timelines. We conclude, therefore, that the ELPC has waived its right to assert this argument.

VII. Finding and Order Paragraphs:

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

(1) the Commission has subject-matter jurisdiction and jurisdiction over the parties;

(2) the recitals of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;

(3) the proposed Rule, 83 Ill. Adm. Code 466, as reflected in the attached Appendix, should be submitted to the Joint Committee on Administrative Rules pursuant to Section 5-40(c) of the Illinois Administrative Procedure Act, to begin the second notice period.

(4) a rulemaking shall commence for the purpose of developing standards for any interconnection that is not subject to Part 466, but is also not subject to the rules promulgated by the Federal Energy Regulatory Commission or subject to the rules of any Regional Transmission Organization that operates in Illinois; "not subject to," includes those interconnections that are not defined in the laws or rules governing an agency or organization, or any interconnection, over which, any one of the agencies or organizations defined herein, has declined to assert jurisdiction; the rulemaking shall be completed within 270 days of the date of this Order.

IT IS THERFORE ORDERED that the proposed Rule, 83 Ill. Adm. Code 466, as reflected in the attached Appendix, is submitted to the Joint Committee on Administrative Rules, pursuant to Section 5-40(c) of the Illinois Administrative Procedure Act.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is not final; it is not subject to the Administrative Review Law.

IT IS FURTHER ORDERED that a rulemaking shall commence for the purpose of developing standards for any interconnection that is not subject to Part 466, but is also not subject to the rules promulgated by the Federal Energy Regulatory Commission or subject to the rules of any Regional Transmission Organization that operates in Illinois; "not subject to," includes those interconnections that are not defined in the laws or rules governing an agency or organization, or any interconnection, over which, any one of the agencies or organizations defined herein, has declined to assert jurisdiction; the rulemaking shall be completed within 270 days of the date of this Order.

By Order of the Commission this 10th day of June, 2008.

(SIGNED) CHARLES E. BOX

Chairman