

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On Its Own Motion)	
)	
vs.)	
)	
Central Illinois Light Company)	
Central Illinois Public Services Company)	
Commonwealth Edison Company)	
Illinois Power Company)	
Interstate Power Company)	
MidAmerican Energy Company)	
Mt. Carmel Public Utility Company)	
South Beloit Water, Gas, and Electric Company, and Union Electric Company)	
)	Docket No. 00-0494
Proceeding on the Commission's own motion)	
concerning delivery services tariffs of all Illinois)	
electric utilities to determine what if any)	
changes should be ordered to promote)	
statewide uniformity of delivery services and)	
related tariffed offerings.)	

REPLY BRIEF
OF
MIDAMERICAN ENERGY COMPANY

COMES NOW, MidAmerican Energy Company (“MidAmerican”) and replies to the Initial Briefs filed by the Staff of the Illinois Commerce Commission (“Staff”), the People of the State of Illinois (“The People”), NewEnergy Midwest, L.L.C. and Illinois Industrial Energy Consumers (“NewEnergy/IIEC”), Peoples Energy Services Corporation (“PE Services”), Central Illinois Light Company (“CILCO”), Ameren/CIPS and

Ameren/UE (“Ameren”), Illinois Power Company (“Illinois Power”) and Commonwealth Edison Company (“Com Ed”).

MidAmerican will address the following two issues in its Reply Brief:

- I. The Commission Should Act Now to Affirmatively Promote Competition by Adopting MidAmerican’s Pro Forma Tariff Proposal.
- II. The Commission Should Direct the Utilities to Stop Using the SBO as a Windfall Billing and Collection Tool to Collect Previous Accounts.

ARGUMENT

- I. The Commission Should Act Now to Affirmatively Promote Competition by Adopting MidAmerican’s Pro Forma Tariff Proposal.

The parties have squarely presented the issue of uniformity before the Commission for a decision. Essentially, the Commission now has three choices:

- (1) accept the present state of competition in Illinois with its non-uniform tariffs;
- (2) take a small step toward greater uniformity by adopting a common outline or common index approach; or
- (3) make a substantive move toward achieving greater uniformity by adopting MidAmerican’s or Staff’s pro forma tariff proposals.

It is apparent to MidAmerican that the electric utilities in Illinois will continue to strenuously oppose any substantive move toward achieving greater uniformity of delivery services tariffs in Illinois. MidAmerican believes that, in the absence of a Commission directive, the utilities will continue to assert the laundry list of objections and arguments against taking any positive step to achieve greater uniformity and, thereby, enhance electric competition. The arguments offered against greater uniformity and pro forma tariffs are now all too familiar. Com Ed, Illinois Power, Ameren, and CILCO have again set forth those arguments in their testimony and briefs. The only thing new in this proceeding is that the utilities are not arguing against the concept of a pro forma tariff,

but now have an actual pro forma tariff proposal target at which to vent their displeasure. Accordingly, now the concept of a pro forma tariff is not illegal, untimely, overly difficult, etc.;¹ it is MidAmerican's pro forma tariff proposal that is illegal, untimely, overly difficult, etc. In the absence of a Commission order in this proceeding affirmatively addressing the lack of uniformity, MidAmerican has no doubt the same arguments will again be made in the future if or when greater uniformity of tariffs, and the use of a pro forma tariff as the mechanism to achieve that greater uniformity, is raised as one means of enhancing electric competition in Illinois.

If the past three years is any indication, there will always be a proceeding which is either ongoing or imminent to support Com Ed's belief that "now is a uniquely bad time" to consider uniformity. In the past, it was the imminent filing of the initial delivery services tariffs by the utilities. Now, it is the imminent filing of the residential delivery services tariffs. It remains MidAmerican's belief that now is the appropriate time to take a substantive step toward greater uniformity. The parties have some experience with a competitive market, although the extent of that experience is less than many parties were contemplating. The basic processes and procedures are in place and are functioning fairly well. Illinois is at an interim stage before competition is extended to the residential class which, of course, constitutes the vast majority of customers in the state. MidAmerican, and others, believe the time to achieve greater uniformity is now before full competition is extended to all customers on a statewide basis. MidAmerican is extremely concerned that once the next step in competition has been taken, it will be very difficult to revise the procedures of eight electric utilities. After the residential delivery

¹ Although Illinois Power now states it is not opposed per se to the ultimate development of a pro forma DST template. [Illinois Power Brief at 4].

services tariffs have been approved, MidAmerican anticipates the same arguments will be presented that have been raised in this proceeding. The time to achieve uniformity is before those eight different systems are placed into full operation.

MidAmerican has presented the Commission with a comprehensive pro forma tariff proposal suitable for implementation on a statewide basis. The proposal was specifically designed with a sufficient level of flexibility to permit it to recognize and accommodate individual differences in utilities where those differences need to be recognized and where competition will not be sacrificed.

The utilities complain that MidAmerican's pro forma tariff proposal would be too costly to implement. MidAmerican does not believe it will be any easier or less costly to implement a pro forma tariff proposal at a later date, especially after competition has been extended to all customers statewide. Is there any reason to believe that changes will be less expensive to make later than they are now? MidAmerican thinks not. While MidAmerican agrees that cost is one factor to be taken into account when contemplating any change, MidAmerican does not believe that cost alone is a sufficient basis for thwarting the development of competition. In the transition to a true marketplace, parties must recognize that change will become the norm and that change involves costs being incurred. Utilities have the ability to seek to recover such prudent and reasonable costs as may be necessary. In any case, no utility has presented specific cost recovery proposals or specific cost information in this case and MidAmerican agrees this case is not the proper forum to make such determinations.

Ameren states it is not opposed to a reasonable level of tariff uniformity—"if it does not involve a complete reworking of our DS Tariffs." [Ameren Ex. 4 at 4]. The

other utilities express the same sentiment. Essentially, Ameren supports the appearance of greater uniformity so long as nothing substantive is required. Cutting and pasting a utility's existing tariffs so that the same non-uniform tariffs are now located in a different part of the utility's non-uniform tariff book does little to promote greater uniformity. It certainly does not rise to the level of substantive greater uniformity that MidAmerican believes the Commission contemplated when it commenced this proceeding.

Ameren criticizes Staff's support of uniformity stating that Staff has no specific information to believe that a "lack of uniformity will eventually retard the growth of competitive markets, if it hasn't already." [Ameren Brief at 3]. What kind of "specific information" would satisfy Ameren? Customers who are experiencing the difficulties presented by a lack of uniformity unequivocally support the move towards greater uniformity in pro forma tariffs. Similarly, the only active independent marketer in this proceeding clearly champions the movement towards greater uniformity in pro forma tariffs as a mechanism to achieve such uniformity. Staff, who must deal with the differing sets of delivery services tariffs, supports, in principle, MidAmerican's proposal. All have submitted testimony detailing the reasons for their support.

Presumably, Ameren would be satisfied if MidAmerican had submitted a mathematical analysis replete with statistical probabilities of the likelihood of greater competition in the presence of greater uniformity. MidAmerican submits this is not the type of policy question that can be reduced to a precise mathematical analysis.

Com Ed's claims that MidAmerican's pro forma tariff proposal is illegal are nonsense, especially when the claims come from a party who proceeded to conduct a detailed analysis of MidAmerican's proposal. MidAmerican has already responded to

Com Ed's allegations in its initial brief and will not repeat those responses here.

[MidAmerican Brief at 10-13].

Com Ed claims MidAmerican witness Rea "appeared to retreat from certain aspects of MidAmerican's proposal." [Com Ed Brief at 14]. There is no retreat. There was never anything in MidAmerican's proposal to prevent another party from proposing different terms from those contained in MidAmerican's pro forma tariffs. In addition, the proposed schedule for the pro forma tariff proceeding was discussed as early as Mr. Rea's direct testimony. [MidAmerican Exhibit No. 1.0 at 9-10]. The bifurcation discussed by Mr. Rea was in response to a constructive suggestion by Staff witness Dr. Schlaf. The flexibility to permit deviations from MidAmerican's proposed pro forma tariff has always been a cornerstone of MidAmerican's proposal. Mr. Rea did accept, as constructive comments, the extensive analysis produced by Com Ed witness Alongi. Many of these comments referred to punctuation, grammatical, and other nonsubstantive enhancements. Is MidAmerican's acceptance of these constructive comments to be perceived as a "retreat" from MidAmerican's proposal? MidAmerican's proposal is not the inflexible and rigid proposal that Com Ed would have the Commission believe. Indeed, the flexibility of MidAmerican's proposal to reasonably accommodate changes is one of its strengths. MidAmerican does not believe that any proposal is so perfect that it cannot be improved. It is apparent that Com Ed does not favor MidAmerican's proposal, but MidAmerican submits that the actual proposal it made is the one that should be reviewed, not one hypothecated by Com Ed because it presents an easier target for criticism.

PE Services applauds MidAmerican's efforts to draft and advocate pro forma tariffs and believes they would be useful in the long run. [PE Services Brief at 3]. In the short-run, PE Services favors the common outlines submitted by Com Ed witness Alongi. PE Services' support appears to be predicated, in part, on how to best employ its limited resources. PE Services' support is also contingent upon Com Ed (1) moving provisions within the body of its current tariffs to the appropriate sections in the proposed outline structure; (2) Com Ed implementing the electronic bookmark or roadmap system on Com Ed's Web site; and (3) Com Ed meeting with Staff and other parties to develop uniform definitions for the terms in the delivery services tariffs by June 1, 2001. Notably, PE Services supports Staff's position that the utilities be ordered to adopt pro forma residential delivery services tariffs. [PE Services Brief at 3-4].

MidAmerican appreciates the limited resources available to PE Services to deploy toward the myriad issues and proceedings connected with implementing delivery services. MidAmerican believes, however, that now is the appropriate time to make a decision on the use of pro forma tariffs. MidAmerican has made a proposal that was designed to provide the Commission with what it believes is an efficient mechanism to accomplish a significant increase in delivery service tariff uniformity throughout the state. Its proposal was designed to be appropriate for statewide implementation, and was crafted with thought given to the adequate preservation of the utilities' legal rights (hence the second proceeding to allow for additional input by the utilities and other parties). It also takes into consideration that there can be very real differences between utilities that require different terms and conditions (hence the ability to file terms and conditions that are different from the template).

MidAmerican's intent was to offer the Commission a very real vehicle to substantively address uniformity—rather than only prolong the ongoing dialog—freeing the limited resources of all participants to be more efficiently utilized.

If, in spite of the factors arguing in favor of prompt action to achieve uniformity, the Commission determines that a longer period of time is necessary to achieve a set of pro forma tariffs, MidAmerican urges the Commission to still make a definitive decision regarding the use of pro forma tariffs in this case. Even if the implementation of a pro forma tariff is delayed because of current time and resource constraints, for example, it does not make sense to delay the decision on whether a pro forma tariff should be adopted. At the very least, that decision should be made in this case.

II. The Commission Should Direct the Utilities to Stop Using the SBO as a Windfall Billing and Collection Tool to Collect Previous Accounts.

Com Ed, Ameren and CILCO interpret Section 16-118(b) as permitting them to require RESs to act as the billing and de facto collection agents for outstanding balances incurred by customers prior to those customers going on delivery services.

MidAmerican, Staff, the IIEC, NewEnergy, and The People oppose such an interpretation. Illinois Power recognized the uncertainty of the Com Ed/Ameren/CILCO result and implemented a process by which the same result advocated by MidAmerican, et al., was achieved. MidAmerican may disagree with Illinois Power's rationale supporting its change, but Illinois Power's conclusion was absolutely correct. The Com Ed, Ameren and CILCO position is that the SBO enables them to bill for, apparently, any outstanding charges for any services [so long as they are tariffed] regardless of when those services were provided.

In addition to Staff, IIEC, and NewEnergy, The People expressed their support for MidAmerican’s interpretation of the SBO in their Brief. The People believe the plain language of Section 16-118(b) limits utility billings on the SBO to the utility’s delivery services charges. The People agree with Staff witness Dr. Schlaf that Section 16-118(b) refers to the payment of charges for delivery services only, rather than to payment for any other services such as bundled services or non-electric services. [The People Brief at 3]. The People believe Com Ed’s interpretation of Section 16-118(b) to the contrary is misplaced. As the People noted, the “tariffed services” contemplated by Section 116-118(b) can only be the tariffed delivery services provided after the retail customer elects to take its supply services from a RES and its delivery services from the utility. The language of the statute is in the present tense. There is no indication that the legislature intended the SBO to be a windfall collection tool for the utility to bill and collect for preexisting bundled service amounts—or natural gas amounts. That is the improbable, and MidAmerican believes unsupportable, result of the Com Ed, Ameren, and CILCO position. MidAmerican finds the reasoning of the People to be compelling and persuasive.

If the legislature had intended the SBO to produce such a windfall, it surely would have included language to that effect. This could have been done by including past tense language, as suggested by The People, or by definitively stating that the SBO could be used to compel a RES to include previous unpaid bundled services bills or natural gas bills with the SBO. The legislature did neither. Com Ed, Ameren, and CILCO should not be permitted to expand the statute to include such items through their interpretations.

CILCO says the SBO proposal should also be rejected because “it would necessitate a revision of the SBO credit.” [CILCO Brief at 5]. This may or may not be true depending on what components are currently included in the SBO credit. In any case, this is not a reason to reject a proper reading of Section 16-118(b). MidAmerican believes the only issue with the SBO credit is that it should be calculated correctly. The SBO credit should provide for services that are included, and should not provide for services that are not. MidAmerican does not believe either the legislature or the parties in the delivery services cases contemplated that charges for previously incurred bundled services or natural gas services would be included in the SBO or the SBO credit.

CILCO opposes the SBO proposal supported by Staff, MidAmerican, IIEC, The People, and NewEnergy on the basis that the proposal results in multiple bills “instead of the single bill envisioned by the statute.” [CILCO Brief at 4-5]. CILCO apparently believes that the SBO was intended to guarantee the customer would always receive only one bill—no matter what services were provided, or when those services were provided. MidAmerican believes the legislature intended a single bill be provided for services provided during the time the customer is on the SBO, but not before or, for that matter, after.

WHEREFORE, MidAmerican Energy Company reiterates its request that the Illinois Commerce Commission issue an Order finding that the currently effective sets of electric utility delivery services tariffs, by virtue of a lack of uniformity, constitute rates that are unjust, unreasonable, discriminatory and preferential. MidAmerican also requests the Commission state that changes should be ordered in the delivery services tariffs of each Illinois electric utility to render such tariffs just, reasonable and sufficient.

MidAmerican further requests that the Commission order that the pro forma tariffs proposed by MidAmerican be adopted as the standard for achieving uniformity among the Illinois utilities' delivery services tariffs and that the Commission initiate a second proceeding to investigate such revisions to the pro forma tariffs.

MidAmerican also requests that the Commission issue an Order determining that RES are not required to include outstanding balances for previous bundled services owed to a utility on their bills to their customers. MidAmerican further requests a finding that a RES is not required to include in its bills to its customers outstanding previous balances owed to another RES. MidAmerican requests a clarification that billing for such outstanding balances for bundled services and delivery services are the responsibility of the entity to whom the debt is owed, in the absence of an express agreement to the contrary.

Respectfully submitted,

MIDAMERICAN ENERGY COMPANY

By -----Robert P. Jared-----
One of Its Attorneys

Robert P. Jared
Senior Attorney
MidAmerican Energy Company
One RiverCenter Place
106 East Second Street
P. O. Box 4350
Davenport, Iowa 52808
Telephone: 319-333-8005
Facsimile: 319-333-8021
rpjared@midamerican.com