STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	)	
	)	Docket No. 01-0423
Petition for approval of delivery services tariffs and	)	
tariff revisions and residential delivery services	)	
implementation plan, and for approval of certain	)	
other amendments and additions to its rates, terms,	)	
and conditions	)	

INITIAL BRIEF
OF MIDWEST GENERATION, LLC

Dated: December 10, 2001

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COMMONWEALTH EDISON COMPANY	)	
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INITIAL BRIEF
OF MIDWEST GENERATION, LLC

Midwest Generation, LLC ("Midwest"), by its attorneys, hereby submits its Initial Brief to the Illinois Commerce Commission ("Commission") in the above-captioned proceeding. This Initial Brief addresses issues concerning the proper rate design for the delivery of auxiliary power to Midwest and other Independent Power Producers ("IPPs") under the delivery services tariffs proposed by Commonwealth Edison Company ("ComEd" or the "Company"). Midwest respectfully requests that the Commission approve the rate design for the delivery of auxiliary power to IPPs described herein, which is reasonable, consistent with cost-causation standards, and critical for the further development of a competitive generation market in Illinois as envisioned under the Public Utilities Act (the "Act"). 220 ILCS 5/1-101 *et seq.*

I.
Executive Summary

Midwest is an IPP and a significant entrant into the competitive generation market in Illinois. (Long Dir., Midwest Ex. 1.0CR, pp. 2-3, lines 35-45) In December 1999, Midwest acquired 9,287 MW of generating capacity in Illinois, constituting substantially all of the non-nuclear generating assets of ComEd. (*Id.*) The Commission approved the sale in Docket Nos. 99-0273/99-0282, consol. (Order, August 3, 1999). Midwest, like ComEd, is an integral part in

Illinois' restructured electric markets and plays a major role in the delivery of competitive benefits to Illinois consumers.[1]

Under certain conditions, Midwest and other IPPs take delivery services from ComEd related to the provision of auxiliary power to their generating stations.[2] Midwest's interest in this proceeding is to ensure that ComEd's proposed delivery services tariffs, as approved by the Commission, are just and reasonable and consistent with cost-causation standards under the Act, and reflect the fact, which is amply supported by the record, that IPPs are uniquely situated as delivery services customers. (*See, e.g.*, McLeod Dir., Midwest Ex. 2.0, pp. 3-4, lines 59-71; Clair/Crumrine, Tr. 1164) By determining an appropriate rate design for IPPs, the Commission can provide a level playing field for IPPs with plants located in Illinois, including ComEd's nuclear generating affiliate, and encourage the further development of a competitive generation market in Illinois consistent with the Act. *See, e.g.*, 220 ILCS 5/16-101A, 16-109.

In most instances, Midwest and other IPPs take auxiliary power over facilities primarily intended to take power ***out*** of their generating stations, and these facilities would exist regardless of whether the stations required auxiliary power. (*See* McLeod Dir., Midwest Ex. 2.0, pp. 2-3, lines 34-46; p. 8, lines 156-62) Conversely, traditional retail customers take delivery services over facilities designed to bring power ***into*** them. (*See* McCleod Dir., Midwest Ex. 2.0, p. 5, lines 102-05, p. 8, lines 164-69) As a consequence, unlike traditional retail customers, Midwest and other IPPs impose no material distribution facilities costs at service points where IPPs take

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[1] *See* the Electric Service Customer Choice and Rate Relief Law of 1997, P.A. 90-561 (December 16, 1997), as amended by P.A. 91-0050 (June 30, 1999), *codified as amended* at 220 ILCS 5/16-101 *et seq*.

[2] Also known as station service, auxiliary power refers to "the electric energy used for the heating, lighting, air-conditioning, and office equipment needs of the buildings of a generating facility's site, and for operating the electric equipment that is on the generating facility's site." *PJM Interconnection, LLC*, 94 FERC ¶ 61,251, at 61,889, *denied at reh'g*, 95 FERC ¶ 61,333 (2001) (hereinafter *PJM II* and *III*).

auxiliary power. Midwest and ComEd agree—at least in principle—as to this essential fact. (*See* Clair/Crumrine Sur., ComEd Ex. 49.0CR, p. 10, lines 214-20) They differ, however, concerning the determination of an appropriate rate design for IPPs.[3] (*See* McLeod Dir. and Reb., Midwest Exs. 2.0 and 4.0 and Schink Reb., Midwest Ex. 5.0; *cf.* Clair/Crumrine Sur., ComEd Ex. 49.0CR) The Commission has broad powers to address these differences and to determine an appropriate IPP rate design, which is a matter uniquely within the Commission's discretion. *Cent. Ill. Pub. Serv. Co. v. Ill. Commerce Comm'n*, 243 Ill.App. 3d 445, 428, 610 N.E.2d 1356, 1372 (4th Dist. 1993) ("*Cent. Ill. Pub. Serv. Co.*")

In determining an appropriate rate design for IPPs, Midwest respectfully urges the Commission to consider the goals of the Act, including the effects on Illinois consumers and the state's competitive generation market. Foremost in this regard, a rate design that fairly reflects the minimal costs that IPPs impose on the distribution system would reduce existing subsidies between customer classes.[4] (*See* Schink Reb., Midwest Ex. 5.0, p. 8, lines 162-170) Midwest and other IPPs entering Illinois' competitive generation market also should not be disadvantaged through the tariffs adopted in this proceeding due to outdated electrical configurations at older generating stations, which derive from the fact that formerly vertically integrated utilities paid no distribution charges. (Schink Reb., Midwest Ex. 5.0, pp. 3-5; *see* Schink, Tr. 2293-295) ComEd has acknowledged the potential anticompetitive risk associated with such configurations. (Naumann Reb., ComEd Ex. 35.0, pp. 14-15, lines 310-318) Beyond the harm to IPPs, such

[3] Staff has not taken a position as to the appropriate treatment of IPPs under ComEd's proposed delivery service tariffs.

[4] ComEd has advocated the elimination of subsidies between customer classes in this proceeding, *e.g.*, through its proposed Voltage Delivery Services ("HVDS") rider, which Midwest has supported. *See infra*.

distortions in the cost of station service to generators imply higher electricity prices to consumers. (*See* Schink Reb., Midwest Ex. 5.0, pp. 3-5).

Midwest's recommendations for an appropriate IPP delivery services rate design in this docket are as follows:

1. At service points where IPPs take auxiliary power delivered over connections primarily intended to take power out of their generating stations, IPPs would pay no Distribution Facilities Charge.

2. To the extent that the Commission determines that IPPs should be required to pay for any limited incidental distribution facilities at such service points actually used and needed by IPPs, such charges should be pro-competitive, consistent with cost-causation standards, and reasonably should only reflect the marginal cost of the facilities.

In support of these recommendations, Midwest submitted the testimony of its Vice President and Chief Technical Officer John T. Long (Long Dir. and Reb., Midwest Exs. 1.0CR, 1.0CRP, 3.0CR, and 3.0CRP) and two highly qualified outside experts, Dr. Philip W. McLeod and Dr. George R. Schink (McLeod Dir. and Reb., Midwest Exs. 2.0, 2.0P, and 4.0; Schink Reb., Midwest Ex. 5.0) Mr. Long testified as to Midwest's entry into Illinois' electric generation market through the acquisition of ComEd's non-nuclear generating plants and explained the manner in which Midwest takes auxiliary power at each generating station, including detailed testimony as to the respective station's auxiliary power electrical configurations.[5] (*See* Long Dir. and Reb., Midwest Exs. 1.0CR, 1.0CRP, 3.0CR, and 3.0CRP) The testimony of Drs. McLeod and Schink provide the economic and policy underpinnings for Midwest's proposal.

As Dr. McLeod testified, Midwest's proposal is a simple one: Midwest should not pay for distribution facilities it does not use. (McLeod Reb., Midwest Ex. 4.0, p. 1, lines 14-16) Like

[5] Midwest acquired seven baseload and intermediate non-nuclear generating stations: Collins Station, Crawford Station, Fisk Station, Joliet Station, Powerton Station, Waukegan Station, and Will County Station. (*See* Long Dir., Midwest Exs. 1.0CR and 1.0CRP) Crawford and Fisk stations also have peaking generators. (*Id.*) Midwest also acquired five peaker-only locations: Bloom, Calumet, Electric Junction, Lombard, and Sabrooke. (*Id.*)

other IPPs, Midwest's generating stations were designed to deliver large amounts of power into the interconnected grid over high-voltage transmission lines. (McLeod Dir., Midwest Ex. 2.0, p. 4, lines 74-75) Because these lines and the associated local and remote equipment are more than adequate to deliver any level of auxiliary power back into the stations when Midwest's generators are not operating, Midwest imposes no incremental costs on ComEd's distribution system. (McLeod Dir., Midwest Ex. 2.0, pp. 2-3, lines 39-46, p. 5, lines 95-99; McLeod Reb., Midwest Ex. 4.0, p. 8, lines 159-67) ComEd witnesses Sally T. Clair and Paul R. Crumrine agreed with Dr. McLeod that, to the extent an IPP's service interconnections already have been paid for in relation to the generator's output requirements, the IPP should not be required to pay twice for the same equipment. (Clair/Crumrine Sur., ComEd Ex. 49.0CR, p. 10, lines 214-20)

To implement Midwest's proposal, Dr. McLeod proposed a "production credit," which would be equal to the Distribution Facilities Charge under ComEd's proposed Retail Customer Delivery Service ("RCDS") tariff to be applied at applicable IPP service points. (McLeod Reb., Midwest Ex. 4.0, p. 2, lines 28-31) As specified in the record and discussed below, this production credit would apply to all service points where Midwest takes auxiliary power, regardless of whether Midwest or ComEd own any associated local or remote equipment. (McLeod Dir., Midwest Ex. 2.0, p. 3, lines 52-54, p. 9, lines 179-85) All IPPs would receive the same treatment under Midwest's proposal, including ComEd's nuclear generating affiliate, to ensure a level playing field for competitive generation in Illinois. (McLeod Dir., Midwest Ex. 2.0, p. 13, lines 257-62)

Midwest's proposal is reasonable and consistent with cost-causation principles under the Act. ComEd has agreed that only "minor and coincidental" distribution facilities are involved where IPPs take auxiliary power over "essentially the same facilities that are sized to meet the generator's outflow." (Clair/Crumrine, Tr. 1055) Midwest's proposal would avoid future

disputes over the pricing of such immaterial local and remote facilities associated with the provision of auxiliary power. Finally, the proposed production credit would safeguard Illinois' newly competitive generation market against the "disadvantages" imposed by outdated monopoly electrical configurations as acknowledged by ComEd witness Steven T. Naumann. (*See* Naumann Reb., ComEd Ex. 35.0, pp. 14-15, lines 312-18) Midwest's and other IPPs' chance to compete should not be held hostage to the past.

In its surrebuttal testimony, ComEd proposed that to avoid duplicative charges, the Distribution Facilities Charge for IPPs should be "set to zero" at applicable service points where IPPs take auxiliary power. (Clair/Crumrine Sur., ComEd Ex. 49.0CR, p. 10, lines 221-24) Midwest is concerned, however, that ComEd's proposal misconstrues Midwest's position in this case and unreasonably seeks to limit the service points to which an IPP exemption from the Distribution Facilities Charge would apply. (*See infra*) Also on surrebuttal, ComEd proposed that IPPs should be charged for any limited and incidental distribution facilities at service points where IPPs take auxiliary power in the same way customers can be charged under ComEd's Rider 6 - Optional Facilities. (Clair/Crumrine Sur., ComEd Ex. 49.0CR, p. 10, lines 224-28) Midwest respectfully submits that the Company's proposal is flawed and should not be adopted, because it risks burdening IPPs, including Midwest, with exorbitant costs associated with outdated electrical configurations. (Schink Reb., Midwest Ex. 5.0, p. 6, lines 120-21)

Rather, in the event the Commission determines that IPPs should be charged for any limited incidental distribution facilities used to connect their auxiliary power to the grid, Midwest recommends that ComEd should recover only the marginal cost associated with the facilities. Such a rate design could be determined in a manner similar to the "production adder" recommended by Midwest witness Dr. Schink. (Schink Reb., Midwest Ex. 5.0, p. 9, lines 183-87) This approach would reduce cross-subsidies between retail customers. (*See* Schink Reb.,

Midwest Ex. 5.0, pp. 9-10, lines 190-201) Further, it would ensure that Midwest and other IPPs are not competitively disadvantaged, consistent with the goals of the Act.

In sum, as shown above and in greater detail below, Midwest has presented compelling evidence in support of an IPP rate design which, under the Act, is reasonable, consistent with cost-causation standards, and essential for the further development of competitive generation in Illinois. ComEd has agreed to the essence of Midwest's proposed rate design. Midwest respectfully requests that the Commission adopt its proposed IPP rate design and reject ComEd's proposed delivery service tariffs to the extent inconsistent with Midwest's proposal.

II.
Argument

A. Substantive Standards and Policies Governing Requested Rates (I.A.)

Article IX of the Act, which applies to this proceeding, requires that a utility's rates and charges, including its delivery services charges, be just and reasonable. 220 ILCS 5/9-101 *et seq*., 220 ILCS 5/16-108(a); *see, e.g*., *Citizens Util. Bd. v. Ill. Commerce Comm'n*, 276 Ill.App.3d 730, 737, 658 N.E.2d 1194, 1200 (1st Dist. 1995). The utility should exact no more from the public than the services rendered are reasonably worth. 220 ILCS 5/9-101; *see United Cities Gas Co. v. Ill. Commerce Comm'n*, 163 Ill.2d 1, 23-24, 643 N.E.2d 719, 730 (Ill. 1994) ("*United Cities Gas Co.*"). Delivery services charges shall be cost based, 220 ILCS 5/16-108(c); *Commonwealth Edison Co.*, Docket No. 99-0117, pp. 6, 47 (Order August 26, 1999), consistent with the Commission's long-standing policy that cost-causers should be cost payers. 220 ILCS 5/102(d)(iii); *see Cent. Ill. Pub. Serv. Co.* at 421, 1361. Because of the complexity and need to apply informed judgment, rate design is a matter uniquely for the Commission's discretion. *Cent. Ill. Pub. Serv. Co.* at 445, 1372.

B. Marginal Cost Study (II. F.1.a.)

Midwest supports the testimony presented by ComEd witnesses Dr. Kenneth Gordon (*see* Gordon Dir., ComEd Ex. 2.0) and Dr. Jeff Makholm (*see* Makholm Dir., ComEd Ex. 15.0) and Dr. Dale Swan on behalf of the U.S. Department of Energy (*see* Swan Dir., U.S. Department of Energy Ex. 1.0) that the relative prices (rates) for Rate RCDS service for different customer groups should be set based on the relative marginal costs of providing Rate RCDS service to these groups. (Schink Reb., Midwest Ex. 5.0, p. 11, lines 221-27)

C. Generation Facilities Under Rate RCDS (II.G.1.d.)

1. Proposals for Production Credit (II.G.1.d.i.)

Recommendation: At service points where IPPs take auxiliary power delivered over connections primarily intended to take power out of their generating stations, IPPs should pay no Distribution Facilities Charge.

Midwest's proposal rests on a simple fact: Where IPPs take station service over service connections intended to move power **out** of their generating stations, IPPs impose no distribution facilities costs on ComEd. In sum, Midwest should not pay for distribution facilities that it does not use. Midwest witness Dr. McLeod has proposed exempting Midwest, and similarly situated IPPs, from ComEd's Distribution Facilities Charge at applicable service points through a "production credit" or similar rate design. (*See* McLeod Dir., Midwest Ex. 2.0, p. 3, lines 49-54, p. 14, lines 278-83; McLeod Reb., Midwest Ex. 4.0, p. 2, lines 28-31) Midwest's proposal is reasonable under the Act, consistent with the requirement that delivery services be cost-based, and rooted in the Commission's long-standing principle that that cost causers must be cost-payers. 220 ILCS 5/16-108(c); 220 ILCS 5/102(d)(iii); *see Cent. Ill. Pub. Serv. Co.* at 421, 1361.

a) Uniqueness of IPPs as Retail Customers

As the record reflects, Midwest and other IPPs are unique retail customers. (McLeod Dir., Midwest Ex. 2.0, pp. 3-4, lines 63-71) At a traditional retail customer's site, the main

function of any high-voltage lines entering the site is to deliver power from ComEd's system to the customer. (McLeod Dir., Midwest Ex. 2.0, p. 5, lines 102-05) As a result, the design of such lines and the associated local equipment will be based on the customer's maximum load. (*Id*.) Not so with Midwest and other IPPs. The main function of high-voltage transmission lines and generation connections at their sites is to deliver large amounts of power out from their generators and into the interconnected grid. (McLeod Dir., Midwest Ex. 2.0, p. 4, lines 74-75)

On cross-examination, ComEd witness Mr. Crumrine offered the following description of the "unique nature" of IPPs as retail customers:

> [A]s generating facilities whose primary purpose is rather than to use load like most customers, their primary purpose is actually to push power out into the system and that makes them unique and different from most of the other customers ComEd serves.

(Clair/Crumrine, Tr. 1164) As Mr. Crumrine further recognized, this distinction goes beyond IPPs' essential function to push power out onto the system and is rooted in the manner in which IPPs take auxiliary power. (Clair/Crumrine, Tr. 1164-65; *see* McLeod Dir., Midwest Ex. 2.0, pp. 3-4, lines 61-71)

In Midwest's case, power is delivered into ComEd's system over transmission lines rated 138 kV to 765 kV. (McLeod Dir., Midwest Ex. 2.0, p. 4, lines 74-79; *see* Midwest Ex. 2.1P, pp. 1-12) The high-voltage transmission lines interconnected at Midwest's facilities were designed to deliver from 50 MWs to 1,100 MWs of power into ComEd's system; consequently, these lines are more than adequate to deliver any level of auxiliary power back into the facilities when Midwest's generators are not operating.[6] (McLeod Dir., Midwest Ex. 2.0, p. 5, lines 94-99) By rough analogy, these transmission lines can be viewed as enormous pipelines that were

[6] When Midwest's generating units are operating, Midwest is able or should be able to obtain station service in a manner such that station service is netted out of the generator's metered output. (McLeod Dir., Midwest Ex. 2.0, n. 1) *See PJM II* and *III*.

sized to move huge amounts of power out of Midwest's generating stations. (*See* McLeod, Tr. 2337-339) As Dr. McLeod testified, when Midwest's auxiliary power is connected at the same service point as these oversized transmission lines, the only reason these lines would be unable to meet Midwest's station service needs would be if Midwest's auxiliary power demand was greater than the generator station's maximum output—and that is never the case.[7] (McLeod, Tr. 2337-339; *see* Midwest Redirect Ex. 47.0)

b) Cost Causation by IPPs

Because ComEd's proposed delivery services tariffs allocate costs to customers based on incremental cost causation, the delivery (back flow) of auxiliary power to Midwest via large scale transmission lines built to transfer power from the generation station to the grid does not impose incremental costs on ComEd. (McLeod Dir., Midwest Ex. 2.0, pp. 2-3, lines 41-46, p. 12, lines 249-251) For large customers (i.e., those with demands greater than 3,000 kW), the incremental cost of distribution facilities dedicated to serving customers' loads is associated with two components: the coincident class peak component and the noncoincident class peak component ("NCP"). (McLeod Dir., Midwest Ex. 2.0, pp. 5-8; *see* Alongi/Kelly Dir., ComEd Ex. 13.0CR, p. 16, lines 338-39)

ComEd defines its coincident class peak cost as the cost for standard distribution equipment to serve a geographic area or larger group of customers during peak periods. (McLeod Dir., Midwest Ex. 2.0, pp. 5-6, lines 107-10; *see* Alongi/Kelly Dir., ComEd Ex. 13.0CR, p. 17, lines 356-58) For large customers, such as Midwest, ComEd's coincident

[7] For this reason, ComEd witness Mr. Naumann's position concerning the engineering of Midwest's auxiliary power connections is not persuasive. (*See* Naumann Reb., ComEd Ex. 35.0, p. 17, lines 364-77) As demonstrated by Dr. McLeod, Mr. Naumann's related theory concerning certain supposed costs imposed by congestion and/or power losses at IPP auxiliary power connections lacks substance. (McLeod Reb., Midwest Ex. 4.0, pp. 11-12, lines 243-54; *cf.* Naumann Reb., ComEd Ex. 35.0, p. 17, lines 379-82)

class peak costs include only investments in ComEd's Transmission Distribution Centers ("TDCs"). (McLeod Dir., Midwest Ex. 2.0, p. 6, lines 113-24; *see* Along/Kelly Dir., ComEd Ex. 13.0CR, p. 17, lines 363-65) Because the transmission lines and generation connections providing station service to Midwest's generating stations tie directly into ComEd's transmission system, however, ComEd does not have to size its TDCs to meet Midwest's coincident peak period demand.[8] (McLeod Dir., Midwest Ex. 2.0, pp. 6-7)

Similarly, ComEd defines the NCP component of its marginal distribution capacity costs as the cost for standard system elements likely to be sized to meet individual customers' maximum loads. (McLeod Dir., Midwest Ex. 2.0, p. 7, lines 143-147; *see* Alongi/Kelly Dir., ComEd Ex. 13.0CR, p. 16, lines 347-49) As previously noted, the main function of high-voltage lines entering a traditional retail customer's site is to deliver power from ComEd's system; therefore, these lines and the associated local equipment are designed to meet the customer's maximum load. (McLeod Dir., Midwest Ex. 2.0, p. 5, lines 102-05, p. 6, lines 164-69) ComEd's NCP incremental costs for high-voltage customers will depend on the equipment necessary to provide a standard level of service to accommodate the customers' peak demand. (*Id.*) However, the high-voltage transmission lines entering Midwest's generating stations were designed to take between 50 MWs and 1,100 MWs of power out on lines rated from 138 kV to 765 kV. (McLeod Dir., Midwest Ex. 2.0, p. 8, lines 156-62) Therefore, any associated local system elements will be more than adequate to meet Midwest's generating stations' peak auxiliary power demands. (*Id.*)

[8] The same is true for other retail customers connected through high-voltage transmission lines, as noted in ComEd's response to the Department of Energy's Data Request, DOE 1-2a(iii), which stated: "For a customer for which ComEd's distribution facilities enter the customer's premises at a voltage of 69,000 volts or higher no TDC is utilized to provide standard service to the customer." (McLeod Dir., Midwest Ex. 2.0, p. 7, lines 134-140)

In sum, Midwest's generating stations impose minimal, if any, incremental distribution facilities costs on ComEd under either the coincident class peak component or the NCP component.[9] (McLeod Dir., Midwest Ex. 2.0, pp. 5-8) The fundamental concept behind ComEd's rate design methodology is the assumption that all customers within a class impose essentially the same cost burden on ComEd's system. (McLeod Dir., Midwest Ex. 2.0, p. 12, lines 241-44) As applied to Midwest and other IPPs, however, the application of this methodology is flawed, because these unique delivery service customers in most instances take power for station service over high-voltage transmission lines or generation connections sized to deliver much larger amounts of power out onto the grid. (McLeod Dir., Midwest Ex. 2.0, p. 12, lines 246-54) Therefore, under the Act, it is unreasonable and counter to cost-causation standards to include Midwest and other IPPs in a sample of traditional distribution customers for purposes of determining the group average distribution investment per kW to be used as the basis for a distribution facilities charge applied to all customers in the class. (*Id*.)

c) IPP Exemption from the Distribution Facilities Charge

To correct ComEd's flawed rate design, Dr. McLeod offered a simple, straightforward solution: Midwest and other IPPs would be exempt from ComEd's Distribution Facilities Charge where they take station service over transmission lines or generation service connections intended to move power out of their generating stations. (McLeod Dir., Midwest Ex. 2.0, p. 3,

[9] ComEd witness Mr. Naumann testified that "the contention that a customer does not put incremental load on a facility is not a basis for excusing that customer for [sic] paying for use of the facility." (Naumann Reb., ComEd Ex. 35.0, p. 18, lines 397-99) As shown by Dr. McLeod, however, this statement is contradictory to essential principle underlying ComEd's rate design methodology that cost should be tied to causation. (McLeod Reb., Midwest Ex. 4.0, p. 10, lines 215-21) The non-binding administrative decisions cited by Mr. Naumann neither support his conclusion nor bear any resemblance to the facts involved in this proceeding. *See Allengheny Power Sys., Inc*., 80 FERC ¶ 61,143, at 58, n. 185 (1997) (discussing issues unrelated to the incremental cost of transmission service); *Tennessee Power Co*., 88 FERC ¶ 61,252, at 4 (1999) (discussing generation output costs unrecovered under FERC tariffs).

lines 49-52, p. 14, lines 278-80) Dr. McLeod recommended implementing this exemption through a production credit at applicable IPP service points, equal to ComEd's Distribution Facilities Charge. (McLeod Sur., Midwest Ex. 4.0, p. 2, lines 28-31) Importantly, where IPPs take auxiliary power in a manner like any other customers (i.e., over lines dedicated to delivering power into their sites), they would continue to pay the Distribution Facilities Charge.[10] (Midwest Ex. 2.0, p. 3, lines 54-57, p. 14, lines 286-93; McLeod Reb., Midwest Ex. 4.0, p. 4, lines 74-80) In every instance, IPPs still would pay the monthly customer charge and the standard metering service charge. (McLeod Dir., Midwest Ex. 2.0, p. 14, lines 283-85)

Midwest and ComEd do not disagree as the basic principle underlying Midwest's proposal in this docket. ComEd witnesses Sally T. Clair and Paul R. Crumrine testified that, to the extent an IPP's service interconnections already have been paid for in relation to the generator's output requirements, the IPP should not be required to pay twice for the same equipment. (Clair/Crumrine Sur., ComEd Ex. 49.0CR, p. 10, lines 214-19) "It appears, therefore," Ms. Clair and Mr. Crumrine stated, "that we do not significantly disagree with respect to the end result."[11] (Clair/Crumrine Sur., ComEd Ex. 49.0CR, p. 10, lines 219-20) As previously noted, however, Ms. Clair and Mr. Crumrine in their Surrebuttal Testimony appear to seek to limit the scope of the IPP exemption from Distribution Facilities Charges proposed by Midwest witness Dr. McLeod, described above, by reading a "significant modification" into Midwest's rebuttal testimony. (Clair/Crumrine Sur., ComEd Ex. 49.0CR, p. 9, lines 186-88) Midwest was not afforded an opportunity to respond to this evidence; suffice it to say, however,

[10] Subject to any applicable credits, *e.g.*, ComEd's propose Rider HVDS.

[11] On cross-examination, ComEd witness Mr. Naumann also agreed that '[t]here are cases where Midwest Gen self-supplies its auxiliary power where units are connected at high-voltages [and] that they do not use the distribution system." (Naumann, Tr. 1671)

that to the extent Ms. Clair and Mr. Crumrine view Midwest's rebuttal testimony as modifying its basic position in this case, they are wrong.

Ms. Clair and Mr. Crumrine recommended that, instead of Midwest's proposed production credit, the Commission should approve a rate design under which the Distribution Facilities Charge is "set to zero" at applicable IPP service points. (Clair/Crumrine Sur., ComEd Ex. 49.0CR, p. 10, lines 221-224) Ms. Clair and Mr. Crumrine further testified that such a rate design could be incorporated into Rate RCDS, as part of this proceeding. (Clair/Crumrine Sur., ComEd. Ex. 49.0CR, p. 12, line 253; Clair/Crumrine Tr. 1195) While not afforded an opportunity to respond to this late proposal, Dr. McLeod earlier testified as to the possible incorporation of Midwest's proposed production credit into Rate RCDS, so the parties do not disagree as to this approach. (McLeod Reb., Midwest Ex. 4.0, p. 3, lines 45-47) Finally, Ms. Clair and Mr. Crumrine correctly anticipate that the implementation of an IPP rate design in conformity with the Commission's order in this proceeding will require the cooperation of the Company, Midwest, and Staff and could be subject to a compliance proceeding. (Clair/Crumrine Sur., ComEd Ex. 49.0CR, p. 12, lines 275-77; Clair/Crumrine, Tr. 1195)

i) Standards for IPP Rate Design

To ensure development of an appropriate IPP rate design, Midwest respectfully urges the Commission to set standards in its Order that considers the effects of such a rate design on the state's consumers and generation market. Of primary importance, a fair rate design that reflects the minimal costs that IPPs impose on the distribution system reduces existing subsidies between customer classes. (Schink Reb., Midwest Ex. 5.0, p. 5, lines 90-97, p. 8, lines 162-70) Rather, it will reduce existing subsidies between customers and improve overall market efficiency.[12] (*Id.*)

[12] Any positive amount that Midwest pays makes other end-use customers better off relative to when ComEd owned the non-nuclear generation stations and paid no distribution charges in connection with these plants whatsoever. (*Id.*)

In this respect, Midwest's proposed production credit and ComEd's Rider HVDS are similar, because both are designed to reconcile the amounts paid for distribution facilities with the costs caused by customers' use of the distribution system. (*See* Schink Reb., Midwest Ex. 5.0, p. 8, lines 157-58) As demonstrated by Midwest witness Dr. Schink, an appropriate pro-competitive IPP rate design also will benefit all customers in ComEd's service territory through a resulting increase in economic efficiency, which supports lower electricity costs for consumers.[13] (Schink Reb., Midwest Ex. 5.0, p. 5, lines 90-97)

The Commission also should make certain that Midwest and other entrants into Illinois' newly competitive generation market are not disadvantaged through the tariffs adopted in this proceeding due to outdated electrical configurations at older generating plants. (Schink Reb., Midwest Ex. 5.0, pp. 3-5; *see* Schink, Tr. 2293-295) ComEd witness Mr. Naumann acknowledged the anticompetitive risk associated with such configurations at the plants acquired by Midwest from ComEd. (Naumann Reb., ComEd Ex. 35.0, pp. 14-15, lines 312-18; *see* Schink Reb., Midwest Ex. 5.0, p. 4, lines 72-76) Mr. Naumann, however, did not offer a solution. (*See* Long Reb., Midwest Ex. 3.0CR, p. 11, lines 225-26)

These outdated configurations at the former ComEd generating plants derive from the fact that as a formerly vertically integrated monopoly, ComEd could recover all its costs on a bundled basis and, thus, did not wire its generating stations to minimize delivery service costs under the current rate structure. (Schink Reb., Midwest Ex. 5.0, pp. 3-4, lines 58-69; *see* McLeod Dir., Midwest Ex. 2.0, p. 9, lines 179-85) As Midwest witness Dr. Schink stated: "No customer who had to pay Distribution Facilities Charges would have wired these merchant plants

[13] Midwest respectfully requests that the Commission disregard Mr. Naumann's Surrebuttal Testimony on the concept of economic efficiency on the grounds that Mr. Naumann by his admission is unqualified as a witness to render such an opinion. (Naumann, Tr. 1666; *see* Naumann Sur., ComEd Ex. 58.0, p. 11, lines 230-37)

in the *ad hoc* manner in which they were wired by ComEd." (Schink Reb., Midwest Ex. 5.0, p. 3, lines 64-66; *see* Long Reb., Midwest Ex. 3.0CR, p. 12, lines 249-54) Midwest has tried to reduce the distribution facilities costs imposed by the outdated configurations since acquiring the generating stations. (*See* Long Dir., Midwest Ex. 1.0CR, p. 6, lines 113-119; McLeod Dir., Midwest Ex. 2.0, p. 9, lines 188-93) However, this solution is not necessarily the best one from an overall economic perspective. (Schink Reb., Midwest Ex. 5.0, p. 10, lines 204-13)

On this point, Midwest respectfully submits that the Commission can provide for a level playing field for all IPPs by applying Midwest's proposed production credit consistently at all service points designed to move power out of their generating stations. This approach, which is reasonable and consistent with cost-causation standards under the Act, would have the added administrative benefit of avoiding future disputes over charges associated with any limited and incidental distribution facilities that may be related to the provision of auxiliary power to IPP generating stations at service points where IPPs take auxiliary power.

ii) Application of IPP Rate Design

As Midwest witness Mr. Long testified, ComEd's is not completely clear in its response to Midwest's proposal to exempt IPPs from the Distribution Facilities Charge at service points primarily used to take power out of their generation stations. (*See* Long Reb., Midwest Ex. 3.0CR, p. 3, lines 64-66) Midwest has sought to provide specifics on the record as to the service connections at each of its generating stations in support of its proposal. (*See, e.g.*, Long Reb., Midwest Ex. 3.0CRP, pp. 3-6) While ComEd plainly agrees to the principle underlying Midwest's proposal (*see* Clair/Crumrine Sur., ComEd Ex. 49.0CR, p. 10, lines 214-20), Midwest is concerned that ComEd does not fully appreciate the economic and policy bases for Midwest's proposal and the resulting application.

For example, the proposed production credit would apply at service connections where ComEd owns the local step-up transformer and the generation station takes auxiliary power off the low-voltage end of the transformer. (McLeod Dir., Midwest Ex. 2.0, p. 3, lines 52-54) ComEd has presented testimony that such transformers in place at Midwest's Fisk and Sabrooke peaker locations are functionalized as distribution. (Born Reb., ComEd Ex. 37.0, p. 8, lines 145-46) As demonstrated by Dr. McLeod, however, this functionalization reasonably should not affect the application of the proposed production credit, because with respect to Midwest (or another similarly situated IPP) these transformers primarily are used to step-up the low-voltage output of these peaker locations' combustion turbines to transmission system voltage. (McLeod Reb., Midwest Ex. 4.0, pp. 6-7, lines 128-45) As Dr. McLeod shows, if ComEd never utilized the step-up transformers at Fisk and Sabrooke to deliver (back flow) auxiliary power into these locations, these same transformers still would be required to serve the Midwest peakers' primary production function. (*Id.*) Therefore, Midwest imposes no additional cost on ComEd if such transformers are used for station service.[14] (*Id.*)

Similarly, IPPs would be exempt from the Distribution Facilities Charge where their generators and auxiliary power are connected to the transmission system via common electrical connections but auxiliary power is served at low voltages via ComEd-owned step-down transformers. (McLeod Dir., Midwest Ex. 2.0, p. 9, lines 179-185; McLeod Reb., Midwest Ex. 4.0, pp. 3-4, lines 66-74) These types of auxiliary power connections exist at Midwest's Crawford, Fisk, Joliet, Will County and Waukegan stations and, under ComEd's proposed Rate RCDS, would impose exorbitant and anticompetitive costs on Midwest and similarly situated

[14] This conclusion applies regardless of whether ComEd serves other distribution load off the same local facilities at Sabrooke and Fisk. (McLeod, Tr. 2337-2339; *see* Midwest Redirect Ex. 47.0)

IPPs, if an exemption from the Distribution Facilities Charge were not available.[15] (Long Reb., Midwest Ex. 3.0CRP, pp. 3-6; McLeod Dir., Midwest Ex. 2.0, p. 9, lines 179-185; McLeod Reb., Midwest Ex. 4.0, pp. 3-4, lines 66-74; *see* ComEd Cross Ex. 68.0P) As previously described, these types of connections reflect ComEd's history as a formerly vertically integrated monopoly. (McLeod Dir., Midwest Ex. 2.0, p. 9, lines 179-185; McLeod Reb., Midwest Ex. 4.0, pp. 3-4, lines 66-74) Because ComEd did not have to pay itself Distribution Facilities Charges (or any charges) for station service, the distorted cost of such connections in a competitive generation market did not enter into the determination of how generating facilities would be connected into the transmission system. (*Id*.) Moreover, but for ComEd's ownership of the local step-down transformer, these low-voltage auxiliary power connections are indistinguishable from the high-voltage station service connections, where Midwest owns the local transformers and ComEd has agreed an exemption from the Distribution Facilities Charge is appropriate. (*See, e.g.*, Long Reb., Midwest Ex. 3.0CRP, pp. 3-6)

It is well within the Commission's discretion to redress this competitive anachronism in the context of this proceeding. *Cent. Ill. Pub. Serv. Co.* at 421, 445, 1361, 1372; *see United Cities Gas Co.* at 23-24, 730.

[15] These configurations are distinct from service connections where Midwest and IPPs take auxiliary power over distribution facilities that feed separately into their sites unrelated to the generation function. Such connections exist at various Midwest generating stations (*e.g.*, Collins, Crawford, Joliet, and Will County stations) at various voltages and Midwest has not disputed that Rate RCDS Distribution Facilities Charges apply at such connections. (*See* McLeod Reb., Midwest Ex. 4.0, p. 4, lines 74-80)

d) Rejection of *Caveat Emptor* Principles

Finally, Midwest respectfully urges the Commission to reject the *caveat emptor* approach to ratemaking urged by ComEd witness Mr. Naumann.[16] (*See* Naumann Reb., ComEd Ex. 35.0, pp. 14-15, lines 316-318) On the one hand, Mr. Naumann correctly has acknowledged that outdated auxiliary power service connections can "create disadvantages" for IPPs—and will do exactly that in the case of Midwest.[17] (Naumann Reb., ComEd Ex. 35.0, p. 14, lines 312-18) On the other hand, Mr. Naumann has asked the Commission to disregard these competitive inequities, and the consumer harm imposed by inefficiencies in the generation market, based on his presumptions concerning the transaction under which Midwest acquired its generating stations from ComEd. (*Id.*; Naumann Sur, ComEd Ex. 58.0, p. 4, lines 73-83)

The Commission should reject this invitation. As a threshold matter, any agreements between Midwest and ComEd concerning the provision of auxiliary power are not in evidence in this docket, and Mr. Naumann has conceded that he has little, if any, direct knowledge concerning the sale of the generation plants. (Naumann, Tr. 1675-1677) More pointedly, Mr. Naumann's contract theory is misplaced. As he eventually conceded, such a standard has no place in a ratemaking proceeding. (Naumann, Tr. 1684)

As Midwest's Mr. Long explained:

> This is not a breach of contract case between ComEd and Midwest. It is a rate case. Rate design goes beyond Midwest and ComEd and involves the citizens of the State of Illinois.

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[16] ComEd witnesses Clair and Crumrine raise a similar point in their Rebuttal Testimony. (Clair/Crumrine Reb., ComEd Ex. 31.0, p. 30, lines 671-76) Ms. Clair and Mr. Crumrine, however, do not return to this argument in their Surrebuttal Testimony. (*See* Clair/Crumrine Sur., ComEd Ex. 49.0CR)

[17] As Midwest witness Mr. Long testified: "[I]f ComEd is sincere in its claims about encouraging the development of competitive generation in Illinois, ComEd should seek to eliminate, not perpetuate, such competitive disadvantages." (Long Reb., Midwest Ex. 3.0CR, p. 11, lines 238-41)

(Long Reb., Midwest Ex. 3.0CR, p. 11, lines 231-41) The vital interest of Illinois' citizens is in the benefits to be secured by an efficient generating market, which include lower electricity costs for consumers. (Schink Dir., Midwest Ex. 5.0, p. 5, lines 90-97)

* * *

For all these reasons, Midwest respectfully requests that the Commission adopt its proposed rate design exempting Midwest and similarly situated IPPs from ComEd's Distribution Facilities Charge at applicable service points through a "production credit" or similar vehicle and reject ComEd's proposed tariffs to the extent inconsistent with this proposal.

2. Proposals for Production Adder (II.G.1.d.ii.)

Recommendation: To the extent the Commission determines that IPPs should be required to pay for any limited incidental distribution facilities at service points actually used and needed by IPPs, such charges should be pro-competitive, consistent with cost-causation standards, and reasonably should only reflect the marginal cost associated with these facilities.

In the preceding section, Midwest discussed its proposal for a delivery services rate design that reflects IPPs "unique nature" as end-use customers.[18] Under the Act, this rate design, which Midwest has recommended implementing through a "production credit" equal to the Distribution Facilities Charge at service points where IPPs take auxiliary power, is reasonable, consistent with cost-causation standards, and critical for the further development of competitive generation in Illinois. Nonetheless, should the Commission determine that IPPs, such as Midwest, should be charged for the limited incidental distribution facilities, if any, at such

[18] *See* Clair/Crumrine, Tr. 1164

service points, ComEd's recovery reasonably should be limited to ComEd's marginal cost associated with the facilities.[19]

Such an alternative rate design could be accomplished in a manner similar to the "production adder" recommended by Midwest witness Dr. Schink.[20] (Schink Reb., Midwest Ex. 5.0, p. 9, lines 183-187) Importantly, Dr. Schink showed that if Midwest were required to pay full Distribution Facilities Charges for the outdated distribution facilities that may be involved in the provision of auxiliary power at certain service points, the economic alternative for Midwest would be to rewire its generating stations to eliminate any such use. (*Id*.) The total cost of the distribution facilities Midwest was able to avoid then would become the responsibility of other end-use customers and their delivery service rates would be higher than if the proposed production adder were approved. (*Id*.) As Dr. Schink also testified, the better economic result for all concerned would be implementation of the production adder, or a similar vehicle, in which case Midwest would save money by not rewiring, other customers would pay less than they did when ComEd owned the generating stations and/or if Midwest rewired, and ComEd would recover the full cost of its distribution system. (*Id*.)

Two additional aspects of this alternative approach should be noted. First, by providing for the recovery of the marginal costs associated with the limited incidental facilities associated with the provision of station service at service points where IPPs take auxiliary power, the

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[19] In calculating the marginal cost of the distribution equipment, ComEd should only include its future direct costs associated with the equipment. Replacement costs should not be a factor in determining those changes because much of the equipment is part of an outdated configuration and may not be replaced. (*See, e.g.,* Schink Reb., Midwest Ex. 5.0, pp. 3-4; Long Reb., Midwest Ex. 3.0CR, p. 12, lines 248-53)

[20] ComEd witnesses Ms. Clair and Mr. Crumrine apparently have misunderstood Dr. Schink's testimony, which supports Dr. McLeod's proposed rate design as a stand-alone proposition and offers Dr. Schink's proposed "production adder" as an *alternative* approach. (Schink Reb., Midwest Ex. 5.0, pp. 8-10; *see* Long Reb., Midwest Ex. 3.0CR, p. 3, lines 162-68; *cf*. Clair/Crumrine Sur., ComEd Ex. 49.0CR, pp. 9-11, lines 194-230)

Commission can ensure two things: that ComEd will be made whole for any expenditures associated with these components and that IPPs, such as Midwest, will not be charged a rate based on the replacement cost of equipment that would not exist if the same generating plants were built today. (*See, e.g.*, Schink Reb., Midwest Ex. 5.0, pp. 3-5; Long Reb., Midwest Ex. 3.0CR, p. 12, lines 248-253) As Dr. Schink testified: "There are some circumstances where these plants were wired in an *ad hoc* and inefficient fashion and while some of this equipment may be used, it really isn't necessary to provide the service." (Schink, Tr. 2294)

Furthermore, as evidenced in Dr. Schink's testimony, many of the distribution components at issue will not be replaced because Midwest is working to reconfigure many of many of the configurations. (Schink Reb., Midwest Ex. 5.0, pp. 9-10; lines 188-213) As such, any costing methodology adopted must only make ComEd whole for marginal costs that may incur with respect to this equipment. A cost methodology that incorporates, for example, replacement costs does not reflect the fact that over time, Midwest may rewire its generating stations to eliminate the use of these components.

Second, by setting appropriate standards for pricing limited and incidental distribution facilities that may be located at service points where IPPs take auxiliary power, the Commission can facilitate the establishment of a level playing field for competitive generators in Illinois, which does not discriminate against new entrants such as Midwest, who happen to operate older generating plants. (*See* Schink Reb., Midwest Ex. 5.0, pp. 3-5) Furthermore, this level playing field would ensure that IPPs are treated in the same fashion as ComEd's own nuclear facilities. This approach would help to remedy the competitive "disadvantages" Midwest faces created by anachronistic auxiliary power configurations at the former ComEd plants. (*Id.*; *see* Long Reb., Midwest Ex. 3.0CR, p. 11, lines 225-26; *cf.* Naumann Reb., ComEd Ex. 35.0, pp. 14-15, lines 312-18)

For the first time in surrebuttal testimony, ComEd proposed that IPPs should be charged for any limited and incidental distribution facilities at service point where IPPs take auxiliary power in a manner similar to the tariff charges for optional facilities Rider 6.[21] (Clair/Crumrine Sur., ComEd Ex. 49.0CR, p. 10, lines 224-28) Because ComEd's proposal was introduced in the final round of testimony, Midwest did not have an opportunity to respond. Based on Ms. Clair and Mr. Crumrine's testimony, the standards and methodology that might be associated with ComEd's proposal are not entirely clear, *e.g.*, "This would be handled *in a manner similar* to that which ComEd currently uses under Rider 6 - Optional Facilities" (*emphasis added*). (Clair/Crumrine, ComEd Ex. 49.0CR, p. 10, lines 224-28) It is Midwest's position that costs associated with the applicable distribution facilities at IPP service points is fundamentally different in nature than other ComEd distribution facilities and, therefore, a separate rider incorporating standards that address these differences is more appropriate.

Midwest is concerned that such a Rider 6 approach would exacerbate the disconnect between cost and cost-causation, as applied to IPPs, which already exists in ComEd proposed delivery services tariffs. ComEd's witnesses have acknowledged that the distribution facilities at IPP service points generally are "minor and coincidental" (Clair/Crumrine, Tr. 1055) and, thus, immaterial for purposes of cost causation. (*See, e.g.,* Born Sur., ComEd Ex. 59.0, p. 4, lines 69-72) Yet Midwest is concerned that ComEd will price these outmoded components in a manner that burdens IPPs with excessive "rental" costs to the extent ComEd via Rider 6 (or the like) seeks to assign directly to the IPPs costs associated with outdated and inefficient electrical configurations for station service. (*See, e.g.*, Schink, Tr. 2293-295; Schink Reb., Midwest Ex. 5.0, p. 6, lines 120-21) These uneconomic historic costs would not exist but for the

[21] The Company has not sought to revise its Rider 6 - Optional Facilities in this proceeding.

Company's prior existence as a vertically integrated monopoly and, as previously discussed, threaten to distort prices in Illinois' still-developing generation market. (*See supra*)

If the Commission adopts ComEd's IPP rate design proposal, then the Commission should only allow ComEd to recover the marginal costs associated with the facilities. The Commission's goal should be to make ComEd whole for any expenditures while, at the same time, preventing excessive lease payments that do not reflect the actual nature of the facilities. Other costs, such as for example replacement costs, should not be considered. For these reasons, Midwest respectfully submits that ComEd's proposal to use Rider 6 as a vehicle for pricing limited and incidental distribution facilities at service points where IPPs take auxiliary power is flawed and should not be adopted.

Midwest's pricing proposal is a reasonable compromise in light of the fact that if these plants were built today, they would clearly include less distribution equipment. (*See, e.g.*, Schink Reb., Midwest Ex. 5.0, pp. 3-4, lines 58-69; Long Reb., Midwest Ex. 3.0CR, p. 12, lines 248-253) Adopting this methodology would lessen the competitive disadvantage that even ComEd has acknowledged currently exists with respect to certain Midwest generating stations. A fair and reasonable rate design also will assure that the IPPs located in Illinois are on a level playing field with each other and with ComEd's nuclear affiliates. By lessening some of the disadvantages that currently exist, the Commission is encouraging the further development of a competitive generation market in Illinois consistent with the Act. *See* 220 ILCS 5/16-109.

In sum, if the Commission determines that Midwest must pay for the limited and incidental distribution components at issue, the Commission should establish a pricing methodology that takes into account the fact that many of the facilities are components of outmoded configurations that will not be replaced. Clearly, it is better for all parties involved, if the pricing is limited to making ComEd whole with respect to any expenditure it will make

relating to these facilities. This is true whether the Commission adopts Midwest's adder proposal or ComEd's separate IPP rate design proposal.

D. Rider HVDS (II.G.2.)

Midwest supports the proposed Rider HVDS consistent with the testimony presented on behalf of the U.S. Department of Energy by Dr. Dale E. Swan. (Swan Dir. and Reb., Department of Energy, Exs. 1.0-A and 2.0CR)

III.
Conclusion

For all the foregoing reasons, Midwest respectfully requests that the Commission adopt its proposed IPP rate design. Midwest's proposal is based on substantial and compelling evidence. Moreover, the proposal serves to meet the Act, is reasonable, consistent with cost-causation standards, and essential for the further development of competitive generation in Illinois. Accordingly, the Commission should reject ComEd's proposed delivery services tariffs to the extent inconsistent with Midwest's proposal.

Dated: December 10, 2001

Respectfully submitted:

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CERTIFICATE OF SERVICE

I, Michael Guerra, an attorney, hereby certify that I served a copy of Midwest Generation's Initial Brief in Docket No. 01-0423 to all parties on the service list by e-mail on December 10, 2001.

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Michael Guerra