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take delivery services from ComEd related to their auxiliary power requirements.¹ Midwest's interest in this proceeding is to ensure that ComEd's proposed delivery service tariffs, as approved by the Commission, are just and reasonable, consistent with cost-causation standards, and supportive of the competitive generation market in Illinois envisioned under the Act. *See, e.g.,* 220 ILCS 5/1-102, 9-101, 9-201, 16-101A, 16-108, 16-109.

Midwest and ComEd agree—at least in principle—that IPPs are unlike traditional retail customers and in instances where they take auxiliary power over service points primarily designed for generator outflow impose no material distribution facilities costs. (*See Clair/Crumrine Sur., ComEd. Ex. 49.0CR, p. 10, lines 214-20*) For this reason, ComEd has agreed that a separate rate class for IPPs is appropriate. (*Id.*, p. 12, line 261) Based on this foundation, and reasonably taking into account the effects on Illinois consumers and the state's competitive generation market, Midwest has made the following recommendations for an appropriate IPP delivery service rate design:

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 only should reflect the marginal cost of the facilities.²

¹ 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*). (*See* Midwest Br., p. 2, n 2)

² In calculating the marginal cost of the distribution equipment, ComEd should only include its future direct costs associated with the equipment. Furthermore, replacement costs should not be a factor in determining those charges because much of the equipment is part of an outdated configuration and may not be replaced.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)

(Midwest Br., p. 4) The record contains compelling evidence to support Midwest's proposal in the testimony of Midwest's 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 its 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).

In determining an appropriate IPP rate design, Midwest has urged the Commission to consider the effects on Illinois consumers and the state's competitive generation market.

(Midwest Br., pp. 3-4) Midwest's proposed rate design specifically seeks to reduce subsidies between customer classes by recognizing IPPs' "unique nature" as delivery services customers and to lessen competitive "disadvantages" imposed by outdated electrical configurations at older generating stations which reduce market efficiency.³ It is uniquely within the Commission's discretion to determine an appropriate IPP rate design, which reflects the intent of the Act. *Cent. Ill. Pub. Serv. Co. v. Ill. Commerce Comm'n*, 243 Ill. App. 3d 421, 445, 610 N.E.2d 1356, 1372 (4th Dist. 1993) ("*Cent. Ill. Pub. Serv. Co.*")

ComEd has sought to challenge Midwest's proposed IPP rate design on three grounds. First, ComEd asserts that IPPs are retail customers who take delivery services. (ComEd Br., p. 112) This point can be disposed of summarily. Retail customers, including IPPs, who take delivery services, must do so in the manner and under the tariffs prescribed by the Act. *See* 220 ILCS 5/16-102, 16-108. Midwest has not taken a contrary position. Second, ComEd asserts that IPPs use "significant" distribution facilities at most service points where they take auxiliary power and should not be exempted from the Distribution Facilities Charge. (*Id.*, pp. 113-14) As demonstrated *infra*, this assertion is contrary to the record, including the testimony of ComEd's own witnesses. Third, ComEd asserts that Midwest's proposed IPP rate design would result in

³ *See* Clair/Crumrine, Tr. 1164; Naumann Reb., ComEd Ex. 35.0, pp. 14-15, lines 310-18.

cost-shifting to other retail customers. (*Id.*, p. 114) As further demonstrated *infra*, this assertion is unsupported by the evidence, which shows that Midwest's proposed IPP rate design would reduce subsidies between customer classes and improve market efficiency.

In place of Midwest's proposed rate design, ComEd proposes that the Commission approve an auxiliary power rate design for IPPs, applicable at only a limited number of generation outflow connections, under which the Distribution Facilities Charge would be set to zero and ComEd would impose unspecified "rental" charges on any limited incidental distribution facilities at such service points, regardless whether such charges reflect ComEd's marginal costs. (ComEd Br., p. 115) While Midwest agrees that IPPs unique circumstances warrant a separate rate design, the Commission should reject ComEd's specific proposal. It would be unreasonable and contrary to the evidence in this proceeding to limit the service points at which IPPs would be exempt from the Distribution Facilities Charge in the manner contemplated under ComEd's proposed rate design. Similarly, as the record demonstrates, ComEd's proposal would burden IPPs with exorbitant and anticompetitive costs associated with outdated electrical connections at older generating stations and result in harm to generators and consumers in Illinois' restructured electric market.

In sum, as shown herein and in Midwest's Initial Brief, the Commission should adopt Midwest's proposed IPP rate design which, under the Act, is reasonable, consistent with cost-causation standards, and critical for further development of competitive generation in Illinois, and it should reject ComEd's proposed delivery service tariffs to the extent inconsistent with Midwest's proposal.

II.
Argument

A. 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 and ComEd agree that IPPs, as unique retail customers, should *not* be over-charged for delivery services. As Midwest witness Dr. McLeod stated: “Midwest should not pay for distribution facilities that it does not use.” (McLeod Reb., Midwest Ex. 4.0, p. 1, lines 15-16) ComEd witnesses Sally T. Clair and Paul R. Crumrine stated 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) Given the numerous contested issues before the Commission in this docket, it is salutary that Midwest and ComEd have found so much common ground.

Based on IPPs’ uniquely limited use of the distribution system, Dr. McLeod proposed exempting them from ComEd’s Distribution Facilities Charge through a “production credit” at auxiliary power service points designed primarily for the generation function. (McLeod Reb., Midwest Ex. 4.0, pp. 3-4, lines 62-74) As demonstrated in the record, a rate design that fairly reflects the minimal costs that IPPs impose on the distribution system would reduce existing subsidies between customer classes. (Schink Reb., Midwest Ex. 5.0, p. 8, lines 162-70) An appropriate, pro-competitive IPP rate design also would benefit all customers in ComEd’s service territory by increasing in economic efficiency, which supports lower electricity costs for consumers. (Schink Reb., Midwest Ex. 5.0, p. 5, lines 90-97)

In its Initial Brief, however, ComEd supports a separate rate design for IPPs, but opposes Midwest's proposed IPP exemption from the Distribution Facilities Charge. (ComEd Br., pp. 113-14) ComEd bases its opposition on two grounds: (1) that Midwest uses "significant" distribution facilities at most service points where they take auxiliary power, and (2) that Midwest's proposed production credit would result in cost-shifting to other retail customers. (*Id.*) As shown *infra*, ComEd's grounds for opposing Midwest's IPP rate design are contrary to the record in this case. In the absence of supporting evidence, ComEd's position should be rejected. *See, e.g., Citizens Util. Bd. v. Ill. Commerce Comm'n*, 276 Ill. App. 3d 730, 738, 658 N.E.2d 1194, 1201 (1st Dist. 1995).

a) Midwest's Limited Use of Distribution Facilities

Midwest's use of the distribution system is a question of fact. Midwest has submitted detailed evidence concerning the wiring of its generation stations to show that, where it takes auxiliary power over service points designed for generation outflow, Midwest imposes little or no costs on the distribution system. (*See, e.g., Long Reb., Midwest Ex. 3.0CRP*, pp. 3-8, lines 72-161) Meanwhile, ComEd's testimony on this subject is vague, and their attention to detail has not improved in the briefing stage of this proceeding.⁴

In its Initial Brief, ComEd seeks to support its proposition that that IPPs use "significant" distribution facilities where they take auxiliary power through a half-dozen bullet points which form the substance, such as it is, of ComEd's argument. (ComEd Br., pp. 113-14) Each of these is examined *infra*, in turn, to demonstrate the inconsistencies between ComEd's argument and the record in this proceeding.

⁴ As noted by Midwest witness Mr. Long:

Q. What is lacking in ComEd's ... testimony?

A. Chiefly, clarity.

(Long Reb., Midwest Ex. 3.0CR, p. 3, lines 58-64)

i) Midwest's Baseload and Intermediate Plants Use No or Only De Minimis Distribution Facilities at Most Auxiliary Power Connections

In its first bullet-point, ComEd asserts:

Delivery of power to Midwest coal stations, even through connections also designed to be capable of receiving power from Midwest's units, can and do [sic] use distribution facilities.⁵

ComEd's assertion is a classic example of the exception devouring the rule. While not cited in the Company's Initial Brief, ComEd witness Paul R. Crumrine conceded as much on cross-examination when he testified:

For the case of IPPs in which the facilities used to serve auxiliary power flow over essentially the same facilities that are sized to meet [a] generator's outflow ... associated with that there are only minor and coincidental uses of distribution or nontransmission equipment.

(Clair/Crumrine, Tr. 1055) (*emphasis added*). The testimony of ComEd witness Michael F. Born, which is cited the Company's Initial Brief, also supports the fact that any distribution equipment at such auxiliary power connections is limited and incidental. (ComEd Br., p. 113 *citing* Born Sur., ComEd Ex. 59.0, p. 4, lines 66-72)

In addition, ComEd cites to virtually the entire cross-examination of Midwest witness John T. Long.⁶ (*Id.*, *citing* Long, Tr. 3148-169) Mr. Long's testimony, however, not only contradicts ComEd's assertion concerning Midwest's use of distribution facilities but covers all twelve of Midwest's generating locations, including its gas-fired peakers, not just Midwest's coal stations. (*See* Long, Tr. 3148-169) For purposes of clarity, then, Midwest again takes this

⁵ ComEd Br., p. 113 (*emphasis added*) (citations omitted).

⁶ ComEd also cites to selected portions of the testimony of its witness Steven T. Naumann. The cited portion of Mr. Naumann's Rebuttal Testimony, which references certain unspecified distribution facilities at Midwest's Waukegan, Joliet, and Will County stations, does not contradict Midwest's position in this case. (ComEd Br., p. 113, *citing* Naumann Reb., ComEd Ex. 35.0, p. 16, lines 339-55) Mr. Naumann's cited Surrebuttal Testimony is simply vague. (*Id.* *citing* Naumann Sur., ComEd Ex. 58.0, p. 3, lines 61-66)

opportunity to specify the service connections at which its proposed production credit would apply. (See Midwest Br., pp. 16-18, *citing, inter alia*, Long Reb., Midwest Ex. 3.0CRP, pp. 3-6; *see also* Long T. 3148-169, *referencing* ComEd Cross Ex. 68)

At Midwest's seven baseload and intermediate generating stations, the proposed production credit would apply wherever Midwest takes auxiliary power over service connections designed for generation outflow, as follows:

- The 765 kV and 345 kV auxiliary power service connections at Midwest's Collins Station use *no* distribution facilities of any kind and should not pay the Distribution Facilities Charge. (See ComEd Cross Ex. 68, "Sta.23 Collins" at 23-1, 23-3, 23-5)
- Any distribution facilities at the 345 kV auxiliary power service connections at Midwest's Powerton Station are *de minimis*, if they exist at all, and should not be subject to the Distribution Facilities Charge. (*Id.*, "Sta.03 Powerton" at 03-5, 03-6) The record in this proceeding does not evidence the existence of *any* distribution facilities at these auxiliary power connections.
- The 138 kV high-voltage auxiliary power service connections at Midwest's Crawford Station are configured in the same manner and, to the extent any distribution facilities exist, they are *de minimis* and/or wholly the result of outdated configurations, and should not incur Distribution Facilities Charges. (*Id.*, "Sta.13 Crawford," at 13-12, 13-13)

Furthermore, at Midwest's Crawford, Fisk, Waukegan, Will County, and Joliet stations, the generators and auxiliary power are connected to the transmission system via common connections and auxiliary power is served at 12 kV or 34 kV through ComEd-owned transformers located on site on the adjacent switchyards.⁷ (See ComEd Cross Ex. 68, "Sta.13 Crawford" at 13-14, 13-15, 13-16, 13-17, "Sta.11 Fisk" at 11-9, 11-10, 11-11, 11-12; "Sta.16 Waukegan" at 16-7, 16-8, 16-9, 16-10 and 16-11, 16-12, 16-13, "Sta.18 Will County" at 18-7, 18-8, "Sta.9 Joliet 6" at 09-6, 09-9) But for ComEd's ownership of these transformers located in the adjacent or onsite switching facilities, these low-voltage station service connections are

⁷ The collocation of ComEd's switching facilities and Midwest's generating stations is virtually unique to Midwest and the result of ComEd's former ownership of the generating stations as a vertically integrated monopoly.

indistinguishable from the high-voltage connections described *supra*, where Midwest owns the transformers and ComEd has agreed that an exemption from the Distribution Facilities Charge is appropriate. (See Clair/Crumrine Sur., ComEd Ex. 49.0CR, p. 10, lines 214-20) (emphasis added) ComEd’s proposed Rate RCDS would impose exorbitant and anticompetitive costs on Midwest and similarly situated IPPs at such service points, if an exemption from the Distribution Facilities Charge were not available.⁸ (See McLeod Dir., Midwest Ex. 2.0, p. 9, lines 179-185; McLeod Reb., Midwest Ex. 4.0, pp. 3-4, lines 66-74)

ii-iii) Midwest Would Pay The Distribution Facilities Charge Where It Takes Auxiliary Power Like Any Other Retail Customer At Its Baseload and Intermediate Plants

In its second and third bullet points, ComEd asserts:

*Service to Midwest’s base load facilities also include high-voltage connections that do not provide an output path for their generating units (e.g., for fuel handling and cooling). These facilities are properly functionalized entirely as distribution and account for significant distribution assets.*⁹

*Midwest’s base load facilities also each have a number of lower voltage interconnections, not designed for outflow. Midwest acknowledges that these are best thought of as conventional distribution connections.*¹⁰

⁸ The Commission may take note that ComEd still owned all the generating stations sold to Midwest at the time the Company’s existing delivery service tariffs became effective. See Commonwealth Edison Co., Docket No. 99-0117 (Order August 26, 1999). At the time, ComEd paid no Distribution Facilities Charge, or tariffed charges of any kind, related to the stations’ auxiliary power requirements, which ComEd simply netted out from the stations’ gross production. In effect, ComEd treated the plants as if they *never* used distribution facilities. The Federal Energy Regulatory Commission (“FERC”) has determined that under these circumstances ComEd may not charge Midwest for the *sale* of auxiliary power (the commodity) previously netted out of gross production, “*simply because the generating facility in question has changed ownership.*” *PJM II* at 61,893 (*emphasis added*). This question currently is being litigated before the Commission (Docket No. 01-0562) and the FERC (Docket No. EL01-109-000). While questions concerning the legality of ComEd’s sale of auxiliary power to Midwest are not at issue in this docket, the Commission may take notice of these cases in determining an appropriate auxiliary power IPP rate design. In this respect, the Commission could determine that IPPs should not be required to pay the Distribution Facilities Charge at any service connection where netting is or should be available. (See Midwest Br., p. 9, n. 1 citing McLeod Dir., Midwest Ex. 2.0, p. 2, n. 1)

⁹ ComEd Br., p. 113 (*emphasis added*) (citations omitted)

¹⁰ *Id.*

Where Midwest (or another IPP) takes auxiliary power in a manner similar to any other retail customer (*i.e.*, over lines dedicated to delivering power into the site), it would pay the Distribution Facilities Charge, subject to any applicable credit. Such service points exist at voltages ranging from 4 kV to 138 kV at Midwest’s coal and oil-fired generating stations. (*See* ComEd Ex. 68, “Sta.03 Powerton” at 03-7, “Sta.13 Crawford” at 13-18, “Sta.18 Will County” at 18-9, 18-10, 18-11, 18-12 and 18-13, 18-14, 18-15, “Sta.23 Collins” at 23-7, 23-8, “Sta.9 Joliet 6” at 09-4, 09-5 and 09-7, 09-8 and 09-10, 09-11, 09-12, “Sta.29 Joliet 7&8” at 29-5, 29-6 and 29-7) Midwest has not disputed that the Rate RCDS Distribution Facilities Charge would apply at such connections. (*See* McLeod Reb., Midwest Ex. 4.0, p. 4, lines 74-80) The cited testimony of ComEd witness Mr. Born, which provides a vague reference to the 138 kV connection at Collins, does not contradict Midwest’s position in this case. (ComEd Br., p. 113 *citing* Born Sur., ComEd Ex. 37.0, p. 8, lines 155-56; *see* Long Reb., Midwest Ex. 3.0CR, p. 14, lines 289-91) ComEd’s assertion that Midwest’s baseload stations have low-voltage interconnections not designed for outflow, while true in limited circumstances (specified *supra*), is unsupported based on ComEd’s citations.¹¹

iv) Midwest Should Not Pay A&G and General and Intangible Plant Costs Where It Imposes No Marginal Costs on ComEd

In its fourth bullet point, ComEd asserts:

*In addition to directly using distribution facilities, this service is properly allocated a share of the General and Intangible Plant and A&G Expenses that are allocated based on use of distribution facilities.*¹²

¹¹ In this regard, ComEd cites to selected portions of Mr. Long’s cross-examination that include references to Powerton Station (*citing* Long Tr. 3148-152), which has no low-voltage service connections, and to the Calumet and Bloom peaker locations, which are not baseload stations (*citing* Long TR. 3163-166). ComEd’s Brief contains numerous other such citation errors which Midwest has sought to correct in this Reply Brief.

¹² ComEd Br., p. 113 (*emphasis added*) (citations omitted).

ComEd's assertion that Midwest should pay an allocable share of A&G and General and Intangible Plant costs is inappropriate where Midwest's use of distribution facilities imposes no incremental costs on ComEd.¹³ (*See* McLeod Reb., Midwest Ex. 4.0, p. 6, n.1) However, where Midwest takes auxiliary power over service points designed for generation outflow, the record overwhelmingly demonstrates that it imposes no costs on the distribution system. (*See, e.g.,* Long Reb., Midwest Ex. 3.0CRP, pp. 3-8, lines 72-161) Accordingly, if Midwest imposes little or no costs on the distribution system, it logically follows that that Midwest should not be allocated a share of the General and Intangible Plant and A&G Expenses.

Nowhere in the record does ComEd provide any support for this bullet point. The cited Rebuttal Testimony of ComEd witnesses Ms. Clair and Mr. Crumrine is inaccurate as previously shown by Midwest witness Dr. McLeod. (ComEd Br., p 113, *citing* Clair/Crumrine Reb., ComEd Ex. 31.0, p. 31, lines 700-04, *cf.* McLeod Reb., Midwest Ex. 4.0, pp. 6-7, lines 106-121, n. 1)

v) Midwest's Peakers Use No or Only *De Minimis* Distribution Facilities at Most Auxiliary Power Connections

In its fifth bullet point ComEd asserts:

*Service to Midwest's natural gas peaking facilities is generally provided at lower voltages. Service to these facilities use significant distribution assets, including distribution lines and substation facilities.*¹⁴

ComEd's assertion flatly contradicts the record concerning Midwest's use of distribution facilities for station service at its peaking locations. These locations include the peaking generators at four of Midwest's baseload and intermediate stations and its five peaker-only sites.

¹³ As discussed *infra*, however, if the Commission adopts either ComEd's IPP rate design proposal or Midwest's production adder alternative, the charges for such incidental components should only include ComEd's direct costs, and not A&G and replacement costs.

¹⁴ ComEd Br., p. 114 (*emphasis added*) (citations omitted).

Again, for purposes of clarity, Midwest's proposed production credit would apply as follows to the service connections at its peaking locations.

- In the great majority of cases, Midwest's auxiliary power connects directly to the transmission system through Midwest-owned transformers, also used for generator outflow, and imposes no or only *de minimis* distribution facilities costs on ComEd. (See ComEd Cross Ex. 68, "Sta.13 Crawford" at 13-9, 13-10, 13-11, "Sta.16 Waukegan" at 16-6, "Sta.9 Joliet 6" at 09-3, "TSS 111 Electric Junction Peakers" at 111-1, 111-2, 111-3, "TSS 120 Lombard Peakers" at 120-1, 120-2, "TSS 150 Calumet Peakers" at 150-1, 150-2, "TSS 179 Bloom Peakers" at 179-1, 179-2, "TSS 194 Sabrooke Peakers" at 194-3) Midwest should not pay the Distribution Facilities Charge at these service points.
- At Midwest's Fisk Station and Sabrooke peaking locations, ComEd owns the transformer that connects the generator to the grid, and Midwest takes auxiliary power off the low-voltage end of the transformer. (See ComEd Cross Ex. 68, "Sta.11 Fisk" at 11-5, 11-6, 11-7, 11-8, "TSS 194 Sabrooke Peakers" at 194-1, 194-2) These transformers are functionalized as distribution. (See Long, Tr. 3153, 3169) This functionalization reasonably should not affect the application of Midwest's proposed production credit at Fisk and Sabrooke, however, because these transformers primarily are used to step-up these peakers' output to transmission voltage.

In this respect, as shown by Midwest witness Dr. McLeod, if ComEd never utilized the transformers at Fisk and Sabrooke for auxiliary power, these same transformers still would be required to serve the Midwest peakers' production function. (McLeod Reb., Midwest Ex. 4.0, pp. 6-7, lines 128-45) Therefore, Midwest imposes no additional facilities costs on ComEd related to station service. (*Id.*) Notably, 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)

Where Midwest's peaking locations take auxiliary power in a manner like any other retail customer, Midwest has not disputed that Distribution Facilities Charges would apply. (See ComEd Cross Ex. 68, "TSS 111 Electric Junction Peakers" at 111-4, 111-5, "TSS 120 Lombard Peakers" at 120-3, "TSS 150 Calumet Peakers" at 150-3, TSS 179 Bloom Peakers" at 179-3, "TSS 194 Sabrooke Peakers" at 194-4, 194-5)

vi) At Most Auxiliary Power Connections, Midwest Imposes No Incremental Costs on ComEd

In its sixth and final bullet point, ComEd asserts:

When interconnections are designed to be capable of handling generator outflow, that does not mean, either theoretically or in practice, that distribution facilities are not used, especially when those connections are also carrying inflow.¹⁵

ComEd's assertion is based on the portion of its witness Mr. Naumann's Rebuttal Testimony that seeks to respond to Midwest's showing that ComEd incurs no incremental cost to deliver auxiliary power at service points used to take power out of Midwest's generating stations. (ComEd Br., p. 114, *citing* Naumann Reb., ComEd 35.0, pp. 16-17, lines 356-382 *responding to* McLeod Dir., Midwest Ex. 2.0, p. 8, lines 161-62) As shown in Midwest's Initial Brief and demonstrated by Dr. McLeod, Mr. Naumann's testimony lacks substance and is based on a distortion of Dr. McLeod's statements. (*See* Midwest Br., pp. 10-12; McLeod Reb., Midwest Ex. 4.0, pp. 11-12, lines 243-54)

b) Subsidies in ComEd's Proposed Delivery Service Tariffs

In its Initial Brief, ComEd also asserts that Midwest's proposed IPP rate design would result in cost shifting to other retail customers. (ComEd Br., p. 114) This assertion is contrary to the record in this case, which shows that Midwest's proposed IPP rate design would reduce subsidies between customers and improve market efficiency. ComEd's argument, like the testimony of its witnesses, further ignores not only the specifics of how IPPs take auxiliary power and the actual costs they impose on the distribution system but the consequences of an unreasonable IPP rate design.

Midwest's proposal is straightforward: Midwest should not be required to pay for distribution facilities it does not use. (*See, e.g.,* McLeod Reb., Midwest Ex. 4.0, p. 1,

¹⁵ ComEd Br., p. 114 (*emphasis added*) (citations omitted).

lines 14-17) (emphasis added) Under the Act, Midwest's proposal is a reasonable rate design, consistent with cost-causation standards, and well within the Commission's discretion to approve. *See, e.g.*, 220 ILCS 5/16-108(c); 220 ILCS 4/102(d)(iii); *Cent. Ill. Pub. Serv. Co.* at 428, 1361, 445, 1372. For these reasons, the Rebuttal Testimony of ComEd's witness Mr. Naumann, on which the Company seeks to rely is unavailing. (ComEd Br., p. 114 *citing* Naumann Reb., ComEd Ex. 35.0, p. 19, lines 407-09 and 418-20 (implying erroneously that Midwest's proposal would allow IPPs to use the distribution system without paying for it)

As further demonstrated by Dr. Schink, if Midwest and other IPPs pay for the incremental costs allocated with their use of the distribution system, other end-use customers actually will be better off than when ComEd was a vertically integrated electric utility and paid no distribution charges (or any charges) associated with station service. (Schink Reb., Midwest Ex. 5.0, p. 7, lines 141-46) In other words, so long as Midwest pays for the incremental costs, if any, caused by its use of the distribution system for auxiliary power then other end-use customers will pay the same amount for delivery services that would be paid if Midwest did not use the system at all. (Schink Reb., Midwest Ex. 5.0, p. 8, lines 165-70)

Mr. Naumann's Surrebuttal Testimony on supposed cost shifting cited by ComEd adds nothing of substance. Midwest takes each piece of cited evidence in turn:

- Mr. Naumann again mischaracterizes Midwest's proposal as seeking to avoid costs Midwest imposes on the distribution system. (ComEd Br., p. 114 *citing* Naumann Sur., ComEd Ex. 58.0, p. 3, lines 45-54) Rather, Midwest should not be required to pay for distribution facilities it does *not* use. (*See, e.g.*, McLeod Reb., Midwest Ex. 4.0, p. 1, lines 14-17)
- Mr. Naumann repeats this mischaracterization in the context of his argument that the Commission should employ *caveat emptor* principles in this proceeding. ComEd, however, has not pursued Mr. Naumann's *caveat emptor* argument in its Initial Brief, and Mr. Naumann's mischaracterization of Midwest's proposal in

this context is unpersuasive.¹⁶ (ComEd Br., p. 114, *citing* Naumann Sur., ComEd Ex. 58.0, lines 99-101)

- Finally, Mr. Naumann mischaracterizes Midwest's proposal in seeking to respond to Midwest witness Dr. Schink's testimony that an appropriate pro-competitive IPP rate design will benefit all customers in ComEd's service territory through an increase in economic efficiency, which supports lower electricity costs for consumers. (ComEd Br., 114 *citing* Naumann Sur., ComEd Ex. 58, p. 11, lines 230-45, *responding to* Schink Reb., Midwest Ex. 5.0, p. 5, lines 90-97) Aside from the factually inaccurate nature of Mr. Naumann's testimony, Midwest respectfully urges the Commission to disregard Mr. Naumann's opinion on the concept of economic efficiency, which Mr. Naumann by his admission is unqualified to render. (Naumann, Tr. 1666)

* * *

In sum, for the reasons stated *supra*, Midwest respectfully urges the Commission to adopt its proposed rate design exempting IPPs from the Distribution Facilities Charge at applicable service points through a production credit or similar vehicle and to 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 only should reflect the marginal cost associated with these facilities.

As shown *supra*, Midwest's proposal for a delivery services rate design that would exempt IPPs from the Distribution Facilities Charge at most auxiliary power service points is reasonable, consistent with cost-causation standards, and vital for the further development of competitive generation in Illinois. Nonetheless, should the Commission determine that IPPs, such as Midwest, should be charged for use of any limited incidental distribution facilities at service points where they take auxiliary power, ComEd's recovery reasonably should be limited to its marginal cost associated with such facilities. As discussed in Midwest's Initial Brief, such

¹⁶ See Naumann, Tr. 1684 (conceding *caveat emptor* principles do not apply in a ratemaking proceeding).

an alternative rate design could be accomplished in a manner similar to the “production adder” proposed by Midwest witness Dr. Schink. (Midwest Br., pp. 20-25, *citing* Schink Reb., Midwest Ex. 5.0, p. 9, lines 183-87)

In its Initial Brief, ComEd asks the Commission instead to adopt a proposed IPP rate design under which the Distribution Facilities Charge would be set to zero at applicable auxiliary power service connections and IPPs would be charged an “optional or ‘non-standard’” facilities charge based on ComEd’s existing tariffed rates, including potentially Rider 6 and Rider 7. (ComEd Br., p. 115) Midwest respectfully notes that the use of Rider 7 in connection with ComEd’s proposed IPP rate design was not discussed in ComEd’s pre-filed testimony or during evidentiary hearings, and Midwest has not had an opportunity to address this portion of the Company’s proposal on the record. In any case, for the reasons discussed in Midwest’s Initial Brief and *infra*, ComEd’s proposed rate design could result in unreasonable charges unrelated to cost-causation being imposed on IPPs and, therefore, should be rejected.

Between the two proposals, only Midwest’s proposed production adder meets the Act’s requirement of a reasonable nexus between the rates charged and the services provided, as well as the goal of delivering competitive benefits to Illinois consumers. *See* 220 ILCS 5/9-101; *United Cities Gas Co. v. Ill. Commerce Comm’n*, 163 Ill. 2d 1, 23-26, 643 N.E.2d 719, 730-31 (“*United Cities Gas Co.*”) By providing for the recovery of ComEd’s marginal costs associated with any limited incidental facilities used where IPPs take auxiliary power at connections intended for generating outflow, the Commission can ensure that ComEd is made whole for these costs and that IPPs, such as Midwest, are not charged an unreasonable rate that ignores their “unique nature” as retail customers.¹⁷ (*See, e.g.,* Clair/Crumrine, Tr. 1055)

¹⁷ *E.g.*, IPPs at such service points should not be charged a rate based on the replacement cost of outdated electrical configurations that that would not exist if the same generating plants were built today. (Midwest Br., p. 22, *citing* Schink Reb., Midwest Ex. 5.0, pp. 3-5; Long Reb., Midwest Ex. 3.0CR, p. 12, lines 248-53)

By setting appropriate standards for pricing any limited and incidental distribution facilities where IPPs take auxiliary power, the Commission also can ensure a level playing field for competitive generators in Illinois. (*See* Schink Reb., Midwest Ex. 5.0, pp. 3-5) As

Dr. Schink testified:

Such a leveling of the competitive playing field would benefit all of ComEd's customers due to the resulting increase in economic efficiency which supports lower electricity costs for consumers.

(*Id.*, lines 95-97) In this respect, Midwest's proposed rate design would help to remedy the competitive "disadvantages" Midwest faces created by outdated auxiliary power configurations at the former ComEd plants, which ComEd has acknowledged but declined to address. (*See*, e.g., Long Reb., Midwest Ex. 3.0CR, p. 11, lines 225-26; *cf.* Naumann Reb., ComEd Ex. 35.0, pp. 14-15, lines 310-18)

Midwest's proposed rate design further would help avoid the harmful consequences that could result from ComEd's proposed delivery services tariffs. (Schink Reb., Midwest Ex. 5.0, pp. 9-10, lines 182-213) As Dr. Schink testified, if Midwest were required to pay full Distribution Facilities Charges for the outdated distribution facilities that may be involved at certain auxiliary power service points, the economic alternative would be for Midwest 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 these customers' delivery services rates would be higher than if Midwest's proposed production adder were approved. (*Id.*) As Dr. Schink also demonstrated, 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.*)

ComEd's proposed IPP rate design flatly ignores the effects on Illinois consumers and the state's competitive generation market. Under ComEd's proposal, IPPs would be "assigned the costs of all of the distribution facilities [they] use" as an offset to a "zero" Distribution Facilities Charge at service points primarily designed for generation outflow. (See ComEd Br., pp. 115-16) To implement this offset, ComEd would rely on unspecified "existing" tariffed rates, including possibly Rider 6.¹⁸ (*Id.*) Yet, by shoehorning IPPs into an existing tariff, such as Rider 6, ComEd could impose on them anticompetitive and unduly excessive costs for station service arising from outdated auxiliary power configurations at older generating stations, with the consequent harm to market efficiency and end-use consumers described *supra*. (See also Midwest Br., pp. 23-24)

In this respect, ComEd's proposal is contrary to its own testimony showing that IPPs are "unique" retail customers that use only "minor and coincidental" distribution facilities at service points designed for generation outflow.¹⁹ (See Clair/Crumrine, Tr. 1055, 1164; see also Born Sur., ComEd Ex. 59.0, p. 4, lines 66-72, discussed *supra*) The Commission further may take administrative notice that Rider 6 is intended to apply prospectively to non-standard equipment installed by agreement between ComEd and its customer.²⁰ Rider 6 is forward-looking, because under the Act a utility cannot unreasonably and arbitrarily impose costs on its customers that they do not cause. See 220 ILCS 5/1-101; *United Cities Gas. Co.* at 23-26, 730-31. As Midwest

¹⁸ As noted in Midwest's Initial Brief, the Company has not sought to revise its Rider 6 - Optional Facilities tariff in this proceeding. (Midwest Br., p. 23, n. 21)

¹⁹ The testimony of Ms. Clair and Mr. Crumrine, which ComEd cites to describe Midwest's auxiliary power connections, provides only generalities concerning the electrical configurations at the Midwest generating stations and does not contradict the uniqueness of Midwest and other IPPs as delivery service customers. (ComEd Br., p. 114 *citing* Clair/Crumrine Reb., ComEd Ex. 31.0, pp. 29-30, lines 661-76) Mr. Naumann's cited testimony, which is equally generic, simply mischaracterizes Midwest's use of auxiliary power in most instances. (ComEd Br., p. 114 *citing* Naumann Reb., ComEd Ex. 35.0, pp. 13-14, lines 287-98)

²⁰ "The type, extent and location of such service facilities shall be determined by agreement between the Company and the customer." (Rider 6, Ill. C.C. No. 4, 6th Revised Sheet No. 67)

witness Dr. Schink correctly observed, however: “No customer who had to pay Distribution Facilities Charges would have wired these merchant plants in the *ad hoc* manner in which they were wired by ComEd.” (Schink Reb., Midwest Ex. 5.0, p. 3, lines 64-67)

Importantly, ComEd’s Brief also demonstrates the impracticability of its proposal and the likelihood that its proposed “rental” charges at IPP auxiliary power connections would be exorbitant. In its Initial Brief, ComEd asserts that it “has detailed records of its distribution facilities, including each such interconnection, enabling ComEd to make an individual assessment of the specific distribution facilities, and their costs, at each interconnection with reasonable effort.” (ComEd Br., pp. 114-15) For support, ComEd cites to the Direct Testimony of its witness Mr. Born. (ComEd Br., pp. 114-15, *citing* Born Dir., ComEd Ex. 17.0, pp. 6-7, lines 127-30) Mr. Born’s cited testimony, however, shows that ComEd does *not* have such information for transmission and distribution projects placed in service prior to 1999, which accounts for virtually all of Midwest’s auxiliary power interconnections. (*Id.*) In fact, Mr. Born specifically states that the improvements to ComEd’s project cost recording system discussed in this portion of his Direct Testimony only would take effect on a “*going forward*” basis. (*Id.*) (*emphasis added*)

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. (*See* Midwest Br., p. 23)

In sum, to the extent the Commission determines that IPPs should be charged for the use of any limited and incidental distribution facilities at auxiliary power connections primarily intended for generation outflow, the Commission should establish a pricing methodology that recognizes the unique nature of IPPs as retail customers and goals of the Act. Importantly, ComEd’s recovery reasonably should be limited to its marginal cost associated with such

facilities—excluding both A&G expenses and the cost of replacing outdated configurations.²¹ This approach would result in ComEd being made whole for any direct expenditures associated with these components while at the same time lessening the disadvantageous nature of the electrical configurations. To accomplish this rate design, a separate IPP rider is appropriate, and ComEd’s proposed use of existing tariffs, *e.g.*, Rider 6, should be rejected. (*See Midwest Br.*, p. 23)

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. Under the Act, Midwest’s proposal is reasonable, consistent with cost-causation standards, and essential for further development of competitive generation in Illinois. The Commission should reject ComEd’s proposed delivery service tariffs to the extent inconsistent with Midwest’s proposal.

Dated: December 21, 2001

Respectfully submitted:

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²¹ This methodology should apply regardless whether the Commission adopts Midwest’s or ComEd’s proposal.

CERTIFICATE OF SERVICE

I, Michael Guerra, an attorney, hereby certify that I served a copy of Midwest Generation's Reply Brief in Docket No. 01-0423 to all parties on the service list by e-mail on December 21, 2001.

Michael Guerra