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November 9, 2010

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First St NE
Washington, DC 20426

Dear Secretary Bose:

In accordance with Section 205 of the Federal Power Act (“FPA”), 16 U.S.C. § 824d, and Section 35.13 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) regulations issued thereunder, 18 C.F.R. § 35.13 (2010), Commonwealth Edison Company (“ComEd”), on behalf of itself and its wholly-owned subsidiary Commonwealth Edison Company of Indiana, Inc., submits for filing the Transmission Interconnection Upgrade Agreement by and among ComEd, American Transmission Company (“ATC”), Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”), and PJM Interconnection, LLC (“PJM”).¹ ATC has requested that ComEd upgrade certain portions of its transmission system in order to increase reliability on the ATC Transmission System. ComEd requests waiver of the sixty-day notice requirement so as to begin working promptly to upgrade the selected portions of the transmission system. Since these upgrades will improve system reliability, good cause exists to grant waiver of the sixty day notice requirement and permit a November 9, 2010 effective date.

I. Identification of Applicant

ComEd, an Illinois corporation, is an operating subsidiary of Exelon Corporation, a Pennsylvania corporation. ComEd maintains more than 91,000 miles of overhead and underground transmission and distribution facilities in northern Illinois, as well as transmission facilities in Northern Indiana owned by its subsidiary Commonwealth Edison Company of Indiana, and provides delivered electric power to more than 3.8 million customers. ComEd does not own any generation facilities. ComEd transferred operational control over its transmission facilities to PJM Interconnection, LLC (“PJM”) on May 1, 2004. ComEd’s retail electric service is regulated by the Illinois Commerce Commission (“ICC”), while PJM’s provision of

¹ See *Am. Elec. Power. Serv. Corp.*, 110 FERC ¶ 61,276, *order on reh’g* 112 FERC ¶ 61,128 (2005).

Kimberly D. Bose
November 9, 2010
Page 2

transmission service over its transmission facilities and its sales for resale of electric energy in interstate commerce are regulated by this Commission.

II. Persons to Whom Correspondence Should be Addressed

<p>Stan Berman Sidley Austin LLP 701 Fifth Avenue, Suite 4200 Seattle, WA 98104 (206) 262-7681 (P) (415) 772-7400 (F) sberman@sidley.com</p> <p>Heather Curlee Sidley Austin LLP 1501 K Street NW Washington, DC 20005 (202) 736-8838 (P) (202) 736-8711 (F) hcurlee@sidley.com</p>	<p>A. Karen Hill Vice President Federal Regulatory Affairs Exelon Corporation 101 Constitution Avenue, NW Suite 400E Washington, DC 20001 (202) 347-8092 (P) (202) 347-7501 (F) Karen.hill@exeloncorp.com</p> <p>Peter Thornton Assistant General Counsel Exelon BSC Legal Services 10 South Dearborn Street Chicago, IL 60603 312-394-4989 (P) 312-394-3950 (F) peter.thornton@exeloncorp.com</p>
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III. Background and Statement of Nature, Reasons and Basis for Filing

ComEd and ATC entered into an interconnection agreement effective as of April 24, 2010 to govern the interconnection of ComEd and ATC's respective transmission systems. ATC has requested that ComEd upgrade certain portions of its transmission system in order to increase reliability on the ATC Transmission System. Specifically, ATC has requested that ComEd (1) replace two existing wavetraps on Line 2221 at ComEd's Zion substation (one on Phase A and one on Phase C), with at least a 3000 ampere model to match Utility's wavetraps at its Pleasant Prairie substation end of Line 2221; and (2) to replace jumpers identified as next limiting elements at ComEd's Zion substation. ATC has agreed to pay ComEd the costs for such transmission upgrades.² The Transmission Interconnection Upgrade Agreement establishes the requirements, terms, and conditions for the interconnection of the ComEd transmission system and the ATC transmission system and defines the continuing responsibilities and obligations of

² See Transmission Upgrade Agreement at [page/cite] (providing that ATC shall pay ComEd for all actual Costs that ComEd incurs related to the Work).

ComEd and ATC with respect to the upgrade to the interconnection of their systems. A copy of the agreement is included with this filing.

ComEd is a transmission-owning member of PJM. ATC is a transmission-owning member of the Midwest ISO. Consistent with the Commission's findings in *American Electric Power Service Corp.*, regarding utility-to-utility transmission interconnection agreements,³ both Midwest ISO and PJM are signatories to the Transmission Interconnection Upgrade Agreement.⁴ Additionally, the Transmission Interconnection Upgrade Agreement is designated as a service agreement under the PJM Open Access Transmission Tariff ("PJM OATT").

IV. Compliance with Commission Requirements

A. List of Documents Submitted

Applicants submit herewith an original and six copies of:

1. This transmittal letter
2. Copy of the Transmission Interconnection Upgrade Agreement (Attachment 1)
3. Signature pages to the Transmission Interconnection Upgrade Agreement (Attachment 2)

B. Proposed Effective Date

Pursuant to Section 35.11 of the Commission's regulations, ComEd respectfully requests waiver of the sixty day notice requirement and an effective date of November 9, 2010.

The Commission will permit waiver of the sixty day notice requirement for good cause.⁵ The Commission has recognized the importance of balancing the statutory requirement that utilities file their rates promptly with the utilities' desire to transact business on short notice.⁶ In this instance, waiver of the sixty day prior notice will allow ComEd to begin working promptly

³ See *Am. Elec. Power. Serv. Corp.*, 110 FERC ¶ 61,276, order on reh'g 112 FERC ¶ 61,128 (2005).

⁴ *Am. Elec. Power. Serv. Corp.*, 112 FERC at 61,760-61 ("Requiring the RTO to be a signatory to the agreement versus providing it with just an opportunity to comment ensures that RTO is actively involved and reviews the document in a timely manner to ensure that any reliability and operations-related concerns are addressed prior to the agreement's execution and filing.").

⁵ See, e.g., *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993); *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106 (1992).

⁶ *Central Hudson*, 60 FERC at 61,339.

to upgrade the selected portions of the transmission system. Since these upgrades will improve system reliability, good cause exists to grant waiver of the sixty day notice requirement.

C. Designation

ComEd is a transmission-owning member of PJM. ATC is a transmission-owning member of Midwest ISO. The enclosed Transmission Interconnection Upgrade Agreement will be included as a Service Agreement under the PJM Tariff.⁷ The Service Agreement has been designated as PJM Service Agreement No. 2703.

D. Section 205 Compliance Requirements

1. Names and Addresses of Person to Whom a Copy of this Filing has been Mailed

Pursuant to Section 35.2(e) of the Commission's regulations, a copy of this filing is being served on representatives for ATC, PJM, Midwest ISO, the Illinois Commerce Commission, and the Indiana Utility Regulatory Commission. Copies of this filing are also available for inspection at ComEd's office.

2. Description of the Filing

A description of the filing is set forth above.

3. Statement of the Reasons for the Submission

This transmittal letter and the attachments explain the reasons for the filing.

4. Requisite Agreement

No agreement is required by contract for the filing of proposed changes.

5. Statement Regarding Inclusion of Any Expense of Costs in Cost of Service Statements that Have Been Alleged or Adjudged Illegal, Duplicative, or Unnecessary Costs that are Demonstrably the Product of Discriminatory Employment Practices

There are no costs included in this filing that have been alleged or adjudged in any administrative or judicial proceeding to be illegal, duplicative, or unnecessary costs, nor has any

⁷ See, e.g. Letter Order Accepting Commonwealth Edison's Service Agreement 1587 with Ameren Services Co., Docket No. ER05-1221 (May 1, 2006); *Am. Elec. Power.*, 112 FERC ¶ 61,128.

expense or cost been demonstrated to be the product of discriminatory or employment practices, within the meaning of Section 35.13(d)(3) of the Commission's regulations.

6. Cost of Service and Revenue Information to Support Filing and Request for Waiver

This Rate Schedule does not affect ComEd's cost of service or rate design. Applicants believe that they have provided sufficient information for the Commission to determine the reasonableness of the proposed changes. To the extent that this filing requires waivers of Section 35.13 of the Commission's regulations, Applicants respectfully request such waivers, including waivers of Section 35.13(c), (d), (e), and (h) of the Commission's regulations, 18 C.F.R. §§ 35.13(c), (d), (e), and (h). This filing, and the accompanying attachments, provides ample support for the Commission to accept for filing the Service Agreement. To the extent that this filing fails to contain any information otherwise required for technical compliance with the Commission's regulations, Applicants respectfully request that compliance with such regulations be waived.

Kimberly D. Bose
November 9, 2010
Page 6

V. Conclusion

WHEREFORE, for the foregoing reasons, ComEd respectfully requests the Commission accept the enclosed Transmission Interconnection Upgrade Agreement, effective November 9, 2010.

Very truly yours,

/s/ Stan Berman
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Attorneys for Commonwealth Edison Company

Enclosures

TRANSMISSION UPGRADE AGREEMENT

By and Between

COMMONWEALTH EDISON COMPANY

and

AMERICAN TRANSMISSION COMPANY

Dated

November 8, 2010

PJM Service Agreement No. 2703

TRANSMISSION UPGRADE AGREEMENT

THIS TRANSMISSION UPGRADE AGREEMENT (“Agreement”), dated as of November 8, 2010 is entered into by and between Commonwealth Edison Company, an Illinois company, (hereinafter referred to as “ComEd”), and American Transmission Company (“Utility”). ComEd and Utility are referred to herein individually as “Party” and collectively as “Parties.” For avoidance of doubt, the term Party and Parties shall not include either PJM Interconnection, L.L.C. (“PJM”) or Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”)

RECITALS:

A. ComEd, Utility, PJM, and Midwest ISO entered into a transmission interconnection agreement effective as of April 24, 2010 to govern the interconnection of ComEd and Utility’s respective transmission systems.

B. Utility has requested that ComEd (1) replace two existing wavetraps on Line 2221 at ComEd’s Zion substation (one on Phase A and one on Phase C), with at least a 3000 ampere model to match Utility’s wavetraps at its Pleasant Prairie substation end of Line 2221; and (2) to replace jumpers identified as next limiting elements at ComEd’s Zion substation.

C. Utility has agreed to pay ComEd for such transmission upgrades in accordance with the terms herein.

D. The Federal Energy Regulatory Commission require the Parties to include the Midwest ISO and PJM as signatories to this Agreement in order to ensure that the Midwest ISO and PJM are kept fully apprised of the matters addressed herein and so that the Midwest ISO and PJM may be kept aware of any reliability and planning issues that may arise.

NOW THEREFORE, in consideration of the mutual representations, covenants, and agreements hereinafter set forth, and intending to be legally bound hereby, the Parties hereto agree as follows:

ARTICLE 1 **DEFINITIONS**

1.1 **Definitions.** Wherever used in this Agreement with initial capitalization, the following terms shall have the meanings specified or referred to in this Article 1.

1.1.1 “Agreement” shall mean this Agreement by and between ComEd and Utility, including all schedules attached hereto, as the same may be amended, supplemented, revised, altered, changed or restated in accordance with its terms.

1.1.2 “Cancellation Costs” means ComEd charges, actual costs and liabilities incurred by ComEd upon the termination of the Agreement pursuant to Articles 12 and 13 in taking one or more of the following actions: (a) canceling supplier and

contractor orders and agreements entered into by ComEd to design, construct, and install the transmission upgrades, (b) removing such transmission upgrades, (c) partially or entirely completing the transmission upgrades as necessary to preserve the integrity or reliability of the ComEd Transmission System, and (d) undoing the changes to the ComEd Transmission System that were made pursuant to this Agreement.

- 1.1.3 “ComEd Transmission System” shall mean the facilities owned by ComEd for purposes of providing transmission service under the PJM Tariff.
- 1.1.4 “Costs” shall mean ComEd charges, direct and indirect costs, and expenses, including, but not limited to, Phase I Engineering, Phase II Engineering, construction, and capital expenditures, if applicable, the costs of financing and taxes, Cancellation Costs, and any incidental expenses for the Work.
- 1.1.5 “Effective Date” shall mean the effective date of this Agreement as set forth in Section 2.1 of this Agreement.
- 1.1.6 “FERC” shall mean the Federal Energy Regulatory Commission or its successor.
- 1.1.7 “Force Majeure Event” means acts of God, war, terrorism, civil commotion, embargoes, strikes, epidemic, fires, cyclones, droughts, floods, emergencies, labor, production or transportation difficulties or accidents to or involving machinery, equipment or lines of pipe, shortages of materials, power, fuel, equipment, transportation or labor (or the inability to obtain the same without litigation or paying penalties, premiums or unusual prices or otherwise agreeing to unreasonable terms or conditions), or any governmental law, regulation (or its interpretation), order, request, instruction or injunction, or failure to provide or cancellation of rights-of-way, permits, licenses or other authorization, whether valid or invalid, or any other cause whether or not similar to the foregoing, beyond the reasonable control of a Party hereto, *provided* that a Force Majeure Event shall not include events caused by the willful misconduct of the Party claiming the Force Majeure Event.
- 1.1.8 “Good Utility Practice” shall mean any of the applicable practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment by a Party in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition, giving due regard to the requirements of governmental agencies having jurisdiction. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather includes all acceptable practices, methods, or acts generally accepted in the region as they may be applicable to either Party.
- 1.1.9 “IRS” shall mean the Internal Revenue Service.

- 1.1.10 “Midwest ISO” shall mean the Midwest Independent Transmission System Operator, Inc., or its successor or equivalent, an entity to which Utility has transferred or will transfer responsibility to direct the operation of the Utility Transmission System.
- 1.1.11 “Midwest ISO Tariff” shall mean that certain Open Access Transmission Tariff on file with FERC, as it may be amended or superseded from time to time, under which transmission service is provided over the Utility Transmission System and elsewhere within the Midwest ISO.
- 1.1.12 “Phase I Engineering” shall mean scoping, Cost estimates and preliminary Schedule of Work.
- 1.1.13 “Phase II Engineering” shall mean detailed engineering, including project diagrams and prints, and Schedule of Work.
- 1.1.14 “PJM” shall mean the PJM Interconnection, L.L.C., or its successor or equivalent, an entity to which ComEd has transferred or will transfer responsibility to direct the operation of ComEd Transmission System.
- 1.1.15 “PJM Tariff” shall mean that certain Open Access Transmission Tariff on file with FERC, as it may be amended or superseded from time to time, under which transmission service is provided over the ComEd Transmission System and elsewhere within PJM.
- 1.1.16 “Regulatory Requirements” shall mean any of the applicable laws, and regulations and tariffs of FERC, PJM, or other governmental agencies or regional transmission operators having jurisdiction over the Parties with regard to the subject matter of this Agreement, or the successor of any of them.
- 1.1.17 “Schedule of Work” shall mean that schedule setting forth the timing of Work to be performed by ComEd pursuant to this Agreement.
- 1.1.18 “System Reliability Work” shall mean all of the materials, labor, engineering, supervision, administration, equipment, construction, contractor services and other services identified as necessary to complete work required by PJM for ComEd Transmission System reliability.
- 1.1.19 “Utility Transmission System” shall mean the facilities owned by Utility for purposes of providing transmission service under the Midwest ISO Tariff.
- 1.1.20 “Work” shall mean all of the materials, labor, engineering, supervision, administration, equipment, Phase II Engineering, construction, contractor services and other services identified in the Scope of Work or otherwise required to complete the transmission upgrades, but excluding Phase I Engineering.

ARTICLE 2
EFFECTIVE DATE AND DURATION

- 2.1 Effective Date. Subject to any applicable regulatory acceptance, this Agreement shall be effective on the date first written above (“Effective Date”).
- 2.2 Duration. This Agreement shall remain in effect from the Effective Date until 180 days after ComEd’s completion of the Work.
- 2.3 FERC Filing. Promptly after execution of this Agreement by ComEd, Utility, PJM and the Midwest ISO, ComEd will file this Agreement with FERC as a transmission upgrade agreement under the PJM Tariff, and request that FERC accept it for filing effective as of the Effective Date.

ARTICLE 3
PHASE I ENGINEERING

- 3.1 Phase I Engineering. Within five (5) days after the execution of this Agreement, Utility agrees to pay ComEd a \$50,000 advance payment to commence performance of Phase I Engineering. ComEd shall invoice Utility in advance for any Phase I Engineering costs and fees that exceed the \$50,000 payment, and Utility shall pay such invoices within ten (10) days after receipt. ComEd may suspend or terminate Phase I Engineering if Utility fails to timely pay such invoices. If the payments made by Utility under this paragraph exceed the actual Phase I Engineering costs and fees, ComEd will return the difference to Utility if no Notice to Proceed is subsequently issued, or apply the difference to the cost of the Work if Utility does issue a Notice to Proceed. Any refund by ComEd to Utility will be made in accordance with Section 6.4 of this Agreement

ARTICLE 4
GENERAL CONSTRUCTION OBLIGATIONS

- 4.1 Notice to Proceed. Utility shall notify ComEd within thirty (30) days after its receipt of the Phase I Engineering study regarding its determination whether to proceed with the Work. If Utility fails to notify ComEd within such period, ComEd may terminate this Agreement subject to the required government approvals.
- 4.2 Schedule of Work. If Utility notifies ComEd to proceed with the Work in accordance with Section 4.1 above, ComEd shall perform the Work in accordance with the Schedule of Work agreed to by the Parties.
- 4.3 Warranties. ComEd warrants that the Work will be performed in accordance with this Agreement, Good Utility Practice, and any applicable PJM requirements.
- 4.4 Disclaimer of Warranties. EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 4.3 HEREIN, COMED MAKES NO OTHER WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING THE WORK, INCLUDING THOSE AS TO ACCURACY, RELIABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

- 4.5 Access to Property and Facilities by Utility. Utility shall provide ComEd such easements and access rights as may be necessary for ComEd's performance of its obligations under this Agreement. Any easements or access rights granted by Utility shall not be exercised by ComEd so as to interfere with Utility's use of its premises.
- 4.6 Inspection and Testing. ComEd shall inspect and test the Work upon completion. Utility shall have the right to attend and observe such inspection and testing.
- 4.7 Work Defects. If either Party discovers any defects in the Work, ComEd shall take actions to correct such defects. Utility shall be responsible for the costs of any such work to correct defects unless such Work is defective due to the negligence or willful misconduct of ComEd.
- 4.8 PJM Requirements. If PJM determines that System Reliability Work is necessary as a direct result of the Work, ComEd shall provide Utility with the estimated costs of such work. Utility shall instruct ComEd within thirty (30) days after its receipt of the estimated costs either to (i) proceed with the System Reliability Work or (ii) restore the ComEd Transmission System to its operating condition prior to the commencement of the Work, with all restoration costs paid for by Utility. If Utility fails to notify ComEd within such period, the System Reliability Work is deemed approved by Utility and ComEd may proceed with performing the System Reliability Work. If ComEd proceeds with System Reliability Work in accordance with this section, the System Reliability Work will be considered part of the Work for the purpose of this Agreement.

ARTICLE 5

PERMITS, LICENSES AND APPROVALS

- 5.1 Applications. ComEd shall make applications to obtain from appropriate governmental authorities any permit, license or approval required to perform the Work, but ComEd shall not be obligated to exercise the power of eminent domain in furtherance of the performance of the Work. Utility shall provide any assistance reasonably requested by ComEd to enable ComEd to obtain any such permit, license or approval.
- 5.2 Costs of Obtaining Approvals. Utility shall pay ComEd in advance all estimated Costs associated with obtaining any permit, license or approval required to perform the Work.

ARTICLE 6

COSTS; PAYMENTS

- 6.1 Responsibility for Actual Costs. Utility shall be responsible for, and shall pay ComEd, all actual Costs that ComEd incurs related to the Work.
- 6.2 Estimated Costs. ComEd shall invoice Utility in advance for the estimated Costs of the Work and Utility shall pay the estimated Costs in accordance with this Article 6. Utility's payment of such estimated Costs shall not diminish, change or affect Utility's obligation to pay ComEd's actual Costs.

- 6.3 Increases in Estimated Costs. If ComEd increases the estimated Costs after commencement of the Work, ComEd may provide Utility with subsequent invoices for the additional estimated Costs and Utility shall pay such invoices within ten (10) days after receipt. ComEd may suspend or terminate the Work if Utility fails to timely pay such invoices.
- 6.4 Reconciliation. Within ninety (90) days after completion of the Work or termination of this Agreement, ComEd shall provide Utility a reconciliation setting forth the nature and amount of the Costs ComEd actually incurred in performing its obligations under this Agreement. If the total of such Costs exceed the total payments made by Utility to ComEd, Utility shall be responsible for and shall pay to ComEd any such differential within thirty (30) days after Utility's receipt of the final reconciliation. If total payments made by Utility to ComEd exceed such Costs, ComEd shall refund to Utility within thirty (30) days after issuance of the reconciliation any such overpayment.

ARTICLE 7

BILLING PROCEDURES

- 7.1 Payment. ComEd shall prepare and deliver to Utility an invoice setting forth the estimated Costs for the Work. Payment of the invoice shall be due within thirty (30) days after Utility's receipt. ComEd shall have no obligation to commence Work until it has received payment in full of the estimated Costs. All payments by Utility shall be made to ComEd as instructed by ComEd in its invoice.
- 7.2 Payments for Increases in Estimated Costs. If the estimated Costs increase after Utility's payment to ComEd in accordance with Section 6.1, ComEd may prepare and deliver to Utility invoices setting forth any increases in the estimated Costs. Utility shall pay such increases in the estimated Costs within thirty (30) days after its receipt of ComEd's invoices.

ARTICLE 8

SUSPENSION OF PERFORMANCE

- 8.1 Failure to Pay. If Utility fails to remit any payment to ComEd under this Agreement by the day such payment is due, ComEd may, in addition to any other remedy or right it may have under this Agreement, suspend performance of the Work.
- 8.2 Resumption of Work. If ComEd suspends performance of Work, its shall resume Work in accordance with Good Utility Practice, after receipt of all payments due and owing by Utility. ComEd shall revise the Schedule of Work as may be necessary to reflect the suspension and subsequent resumption of ComEd's performance of the Work.

ARTICLE 9

TAXES

- 9.1 Tax Liability. The Parties intend that all Costs paid by Utility to ComEd for materials, labor, supervision, administration, equipment, contractor services and other services identified in the Scope of Work or otherwise required to complete the Work, including

studies, engineering, design, construction, installation, and testing, shall be non-taxable contributions to capital, and shall not be taxable as contributions in-aid of construction (“CIAC”).

- 9.2 Tax Indemnity. Utility shall indemnify ComEd for any income tax liability plus any applicable interest and/or penalty charged to ComEd that ComEd incurs in the event that the IRS and/or a state department of revenue (“State”) determines that the Costs paid by Utility with respect to the Work is taxable income to ComEd. Upon any notification by the appropriate governmental body to ComEd of any such potential income tax liability, ComEd shall promptly notify Utility. Utility shall have the right to intervene and contest the imposition of any such income tax at its own expense. In such event, ComEd shall be obligated to provide Utility with any such documentation and other information or support reasonably necessary, at Utility’s expense, to assist Utility in such proceedings. ComEd may choose, but is not obligated, to contest such assessment on its own behalf and at its own expense. Notwithstanding any pending intervention by Utility to contest the imposition of any such income tax, Utility shall pay to ComEd the amount of any income taxes that the IRS or a State assesses to ComEd in connection with such transfer of property and/or money, plus any applicable interest and/or penalty charged to ComEd at least ten (10) days prior to the date such taxes, interest and/or penalty charged are due. If either Utility or ComEd prevail in reducing or eliminating the tax, interest and/or penalty assessed against it, ComEd shall refund to Utility the excess of the payment made by Utility to ComEd over the amount of the tax, interest and/or penalty for which ComEd is finally determined to be liable.

ARTICLE 10 **REGULATORY AUTHORITY**

- 10.1 Regulatory Authorities. This Agreement is made subject to the jurisdiction of any governmental authorities having jurisdiction over the Parties, the transmission systems of the Parties, this Agreement or the subject matter hereof.
- 10.2 Adverse Regulatory Change. ComEd shall submit the filing of this Agreement with the FERC. Any changes or conditions imposed by the FERC or any other governmental authority with competent jurisdiction in connection with such submission or otherwise in respect of this Agreement, any of which are unacceptable to a Party after the Parties’ good faith attempt to negotiate a resolution to such objectionable change or condition, shall be cause for termination of this Agreement upon thirty (30) days’ prior written notice by the non-consenting Party to the other Party.

ARTICLE 11 **FORCE MAJEURE**

- 11.1 Force Majeure. If ComEd is prevented from or delayed in performing any of its obligations under this Agreement by reason of a Force Majeure Event, ComEd shall notify Utility in writing as soon as practicable after the onset of such Force Majeure Event and shall be excused from the performance of its obligations under this Agreement to the extent such Force Majeure Event has interfered with such performance. ComEd’s failure to perform as a result of a Force Majeure shall not be deemed a Default.

ARTICLE 12
LIABILITY; INDEMNIFICATION

- 12.1 Limitation on Liability. IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL COMED BE LIABLE TO UTILITY FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING LOSS OF PROFITS OR REVENUE, OR COST OF CAPITAL. NOTHING IN THIS AGREEMENT SHALL CREATE OR GIVE RISE TO ANY LIABILITY ON THE PART OF THE MIDWEST ISO AND PJM AND THE PARTIES EXPRESSLY WAIVE ANY CLAIMS THAT MAY ARISE AGAINST THE MIDWEST ISO AND PJM UNDER THIS AGREEMENT.
- 12.2 Indemnity Obligation. Each Party shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the other Party and its officers, directors, employees, agents, representatives, subsidiaries, affiliates, successors, and assigns (“Indemnified Parties”) against all losses, claims, damages, expense (including reasonable attorneys’ fees) and liabilities sustained or incurred by the Indemnified Parties for any damage, loss or injury of any kind, direct or indirect, to any property or person (including death), arising out of any negligence or willful misconduct by indemnifying party, its contractors or subcontractors or their respective officers, directors, employees, agents, representative, subsidiaries, successors, or assigns (“Indemnifying Parties”) in connection with its obligations under this Agreement.
- 12.3 Indemnification for Claims by Governmental Authorities or Others. The Indemnifying Parties shall indemnify, defend, and hold harmless the Indemnified Parties from any liability, damage, expense, suit, or demand (including reasonable attorneys’ fees and costs) for claims by governmental authorities or others for any (i) actual or asserted failure of the Indemnifying Parties to comply with any law or regulation or (ii) any actual or asserted failure of any of the Indemnified Parties to comply with any law or regulation by reason of any act, omission, conduct, negligence or default by Indemnifying Parties.

ARTICLE 13
BREACH, CURE AND DEFAULT

- 13.1 Breach. A breach of this Agreement shall occur upon the failure by a Party to perform or observe any material term or condition of this Agreement. A breach of this Agreement shall include:
- 13.2.1 The failure to pay any amount when due;
- 13.2.2 The failure to comply with any material term or condition of this Agreement, including but not limited to any material breach of a representation, warranty or covenant made in this Agreement;
- 13.2.3 If a Party: (i) by decree of a court of competent jurisdiction, is adjudicated bankrupt or insolvent; (ii) files a voluntary petition in bankruptcy under any provision of any Federal or state bankruptcy law or shall consent to the filing of any bankruptcy or reorganization petition against it under any similar law; (iii)

makes a general assignment for the benefit of its creditors; or (iv) consents to the appointment of a receiver, trustee or liquidator;

13.2.4 Assignment of this Agreement in a manner inconsistent with the terms of this Agreement;

13.2.5 Failure of any Party to provide such easement or access rights, or a Party's attempt to revoke or terminate such easement or access rights, as provided under this Agreement; or

12.2.6 Failure of any Party to provide information to the other Party as required under this Agreement.

13.3 Cure and Default.

13.3.1 Upon the occurrence of any breach of this Agreement, the Party not in breach (hereinafter the "Non-Breaching Party"), when it becomes aware of any such breach, shall give written notice of the breach to the breaching Party (the "Breaching Party"). Such notice shall set forth, in reasonable detail, the nature of the breach, and where known and applicable, the steps necessary to cure such breach. Upon receiving written notice of the breach hereunder, the Breaching Party shall have thirty (30) days to cure such breach. If the breach is such that it cannot be cured within such thirty (30) day time period, the Breaching Party will commence in good faith all steps as are reasonable and appropriate to cure the breach within such thirty (30) day time period and thereafter diligently pursue such action to completion. If the Breaching Party fails to cure the breach, or to commence reasonable and appropriate steps to cure the breach, within such thirty (30) day time period, the Breaching Party will be in "Default" of the Agreement.

13.3.2 Upon the occurrence of a Default, the Non-Breaching Party may, terminate this Agreement by providing written notice of termination to the Breaching Party.

13.4 Right to Compel Performance. Notwithstanding the foregoing, upon the occurrence of a Default, any Non-Breaching Party shall be entitled to: (i) commence an action to require the Breaching Party to remedy such default and specifically perform its duties and obligations hereunder in accordance with the terms and conditions hereof, and (ii) exercise such other rights and remedies as it may have in equity or at law.

ARTICLE 14 **TERMINATION**

14.1 Termination. This Agreement may be terminated: (i) if the Parties mutually agree or (ii) by any Party upon the occurrence of any of the following events: (a) removal of either Party's transmission system from service; or (b) a Default occurs in accordance with Article 13, or (c) as otherwise expressly provided for in this Agreement.

14.2 FERC Approval. No termination hereunder shall become effective until the terminating Party (or the Parties jointly) tender(s) to FERC any required notification of termination of this Agreement and obtains such acceptance thereof by the FERC as may be necessary to comply with applicable Regulatory Requirements.

- 14.3 Cancellation Costs. If ComEd incurs Cancellation Costs, ComEd shall serve Utility with invoices for such costs, and Utility shall make payment to ComEd for all Cancellation Costs within ten (10) days after Utility's receipt of such invoices.
- 14.4 Survivability. The provisions of this Agreement, and rights and obligations of each Party, including with respect to Costs, payment, indemnification, limitation of liability, and confidentiality, shall survive expiration or termination of this Agreement and shall survive indefinitely, except to the extent that such provision by its express terms ends.

ARTICLE 15

CONTRACTORS AND SUBCONTRACTORS

- 15.1 Contractors and Subcontractors. Nothing in this Agreement shall prevent a Party from utilizing the services of contractors and subcontractors as it deems appropriate to perform its obligations under this Agreement; *provided however*, that each Party shall require its contractors and subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services.

ARTICLE 16

CONFIDENTIALITY

- 16.1 Nondisclosure. No Party shall disclose the other Party's Confidential Information to any person or entity other than its contractors and subcontractors who need to know in connection with performing the Work under this Agreement. Nothing contained herein shall be deemed to prevent a receiving party from disclosing any of the Confidential Information if such disclosure is legally required to be made in a judicial, administrative, or governmental proceeding pursuant to a valid subpoena or other applicable order; provided, however, the receiving party shall give the disclosing party prompt prior written notice before disclosing any of the Confidential Information in any such proceeding and, in making such disclosure, the receiving party shall disclose only that portion thereof required to be disclosed and shall take all reasonable efforts to preserve the confidentiality thereof, including obtaining protective orders.
- 16.2 Definition. "Confidential Information" means any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise. Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by either of the Parties to the other prior to the execution of this Agreement. Confidential Information shall not include information that the receiving Party can demonstrate: (i) is generally available to the public other than as a result of a disclosure by the receiving Party; (ii) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (iii) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party, was under no obligation to the other Party to keep such information

confidential; or (iv) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party.

- 16.3 Standard of Care. Each Party shall protect Confidential Information it receives using at least the same standard of care its uses to protect its own Confidential Information, but in any event, no less than a reasonable standard of care.

ARTICLE 17

NOTICES AND COMMUNICATIONS

- 17.1 Notice Delivery. Unless otherwise specified herein, all notices, requests, claims, demands and other communications required or permitted to be given under this Agreement must be in writing, and must be given by hand delivery, overnight express delivery, or by mail (registered or certified, postage prepaid) to the respective parties as follows:

To Utility:

American Transmission Company LLC
Attn: Manager, Interconnection Services
W234 N2000 Ridgeview Parkway Court
Waukesha, WI 53188-1022
Telephone: (262) 506-6700
Facsimile: (262) 506-6939
Email: gioanotices@atcllc.com

To ComEd:

Thomas W. Kay
Manager, Interconnection Services
Commonwealth Edison Company
9th floor, Two Lincoln Centre
Oakbrook Terrace, IL 60181-4260
Telephone: (630) 437-2758
Email: thomas.kay@exeloncorp.com

To PJM:

General Counsel
PJM Interconnection, L.L.C.
955 Jefferson Avenue
Valley Forge Corporate Center
Norristown, PA 19403-2497
Telephone: (610)666-4367
Email: duanev@pjm.com

To Midwest ISO:

Midwest ISO
Attn: Director, Transmission Access Planning
P.O. Box 7202
Carmel, IN 46082-4202
Telephone: (317) 249-5729
Email: elaverty@midwestiso.org

for overnight deliveries:
720 City Center Drive
Carmel, IN 46032

Any such notice or communication will be deemed to have been given as of the date received.

- 17.2 Change of Address. Either party may change its address or designated representative for notices by notice to the other in the manner provided above.

ARTICLE 18 **MISCELLANEOUS**

- 18.1 Governing Law. This Agreement and all rights and obligations of the Parties hereunder will be governed by the laws of the State of Illinois, without reference to its rules relating to choice of law, except to the extent preempted by the laws of the United States of America. Except for those matters covered in this Agreement that are jurisdictional to FERC, any action arising out of or concerning this Agreement must be brought in a state or federal court of competent jurisdiction located in Cook County, Illinois.
- 18.2 Compliance With Law. In performing its obligations under this Agreement, each Party shall comply with all applicable laws and Regulatory Requirements.
- 18.3 Relationship of the Parties. Nothing in this Agreement is intended to create a partnership, joint venture, or other joint legal entity making any Party jointly or severally liable for the acts of the other Party. Unless otherwise agreed to in a writing signed by both Parties, neither Party shall have any authority to create or assume in the other Party's name or on its behalf any obligation, express or implied or to act or purport to act as the other Party's agent or legally-empowered representative for any purpose whatsoever.
- 18.4 No Third Party Rights. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the Parties hereto, any benefits, interests, rights, or remedies under or by reason of the Agreement.
- 18.5 Waiver. Except as otherwise provided in this Agreement, a Party's compliance with any obligation, covenant, agreement, or condition herein may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement, or condition will not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.
- 18.6 Midwest ISO and PJM Acknowledgment. The Parties acknowledge and understand that the signatures of the authorized officers of the Midwest ISO and PJM on this Agreement

is for the limited purpose of acknowledging that representatives of the Midwest ISO and PJM have read the terms of this Agreement. The Parties, Midwest ISO and PJM, further state that they understand that FERC desires that the Parties keep the Midwest ISO and PJM fully apprised of the matters addressed herein as well as any reliability and planning issues that may arise under this Agreement, and that the signature of the Midwest ISO and PJM officers shall not in any way be deemed to imply that the Midwest ISO and PJM are taking responsibility for the actions of any Party, that the Midwest ISO and PJM have any affirmative duties under this Agreement or that the Midwest ISO and PJM are liable in any way under this Agreement.

- 18.7 Amendment. Except as otherwise set forth herein, this Agreement may be amended or modified only by a writing executed by the authorized representatives of both Parties. Any amendment or modification that is not in writing and so executed shall be null and void from its inception.
- 18.8 Severability. If any term, condition, covenant, restriction or other provision of this Agreement is held by a court or regulatory agency of competent jurisdiction or by legislative enactment to be invalid, void or otherwise unenforceable, the remainder of the terms, conditions, covenants restrictions and other provisions of this Agreement shall remain in full force and effect unless such an interpretation would materially alter the rights and privileges of any Party hereto. If any term, condition, covenant, restriction or other provision of this Agreement is held invalid, void or otherwise unenforceable, the Parties shall attempt to negotiate an appropriate and equitable replacement, revision or adjustment to the provision of this Agreement to restore the benefits and obligations conferred under the original Agreement.
- 18.9 Headings and Captions. Article headings, section headings, and/or other captions are included in this Agreement for reference purposes only and shall not constitute a part of this Agreement or in any way affect the meaning or interpretation of this Agreement.
- 18.10 Entire Agreement. This Agreement, including all schedules, and other attachments hereto and made part hereof, sets forth the entire understanding and agreement of the parties as to the subject matter of this Agreement and supersedes all prior written and oral understandings, offers, agreements, commitments, representations, writings, discussions or other communications of every kind between the parties pertaining to the Work and constitutes the entire agreement between the Parties with respect to its subject matter, and as to all other representations, understandings, or agreements which are not fully expressed herein.
- 18.11 Rights Cumulative. The rights and remedies set forth in this Agreement are cumulative and non-exclusive.
- 18.12 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this Agreement as of the date first above written.

COMMONWEALTH EDISON COMPANY

By: _____
Name:
Title:

AMERICAN TRANSMISSION COMPANY LLC
By its corporate manager, ATC Management Inc.

By: _____
Name: Mike Rowe
Title: Vice President of Construction

THE SIGNATURE OF PJM AND MIDWEST ISO BY THEIR AUTHORIZED OFFICER IS FOR THE LIMITED PURPOSE OF ACKNOWLEDGING THAT AN AUTHORIZED OFFICER OF PJM AND THE MIDWEST ISO HAS REVIEWED THIS AGREEMENT.

REVIEWED AND ACKNOWLEDGED:

PJM INTERCONNECTION, L.L.C.

By: _____
Name:
Title:

MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.

By: _____
Name:
Title:

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this Agreement as of the date first above written.

COMMONWEALTH EDISON COMPANY

By: Susan O. Ivey
Name: Susan O. Ivey
Title: Vice President, Transmission Operations and Planning

AMERICAN TRANSMISSION COMPANY LLC

By its corporate manager, ATC Management Inc.

By: _____
Name: Mike Rowe
Title: Vice President of Construction

THE SIGNATURE OF PJM AND MIDWEST ISO BY THEIR AUTHORIZED OFFICER IS FOR THE LIMITED PURPOSE OF ACKNOWLEDGING THAT AN AUTHORIZED OFFICER OF PJM AND THE MIDWEST ISO HAS REVIEWED THIS AGREEMENT.

REVIEWED AND ACKNOWLEDGED:

PJM INTERCONNECTION, L.L.C.

By: _____
Name:
Title:

MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.

By: _____
Name:
Title:

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this Agreement as of the date first above written.

COMMONWEALTH EDISON COMPANY

By: _____
Name:
Title:

AMERICAN TRANSMISSION COMPANY LLC
By its corporate manager, ATC Management Inc.

By:  _____
Name: Mike Rowe
Title: Vice President of Construction

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REVIEWED AND ACKNOWLEDGED:

PJM INTERCONNECTION, L.L.C.

By: _____
Name:
Title:

MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.

By: _____
Name:
Title:

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COMMONWEALTH EDISON COMPANY

By: _____
Name:
Title:


AMERICAN TRANSMISSION COMPANY LLC
By its corporate manager, ATC Management Inc.

By: _____
Name: Mike Rowe
Title: Vice President of Construction

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REVIEWED AND ACKNOWLEDGED:

PJM INTERCONNECTION, L.L.C.

By:  _____
Name:
Title: Steven R. Herling
Vice President, Planning

MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.

By: _____
Name:
Title:

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this Agreement as of the date first above written.

COMMONWEALTH EDISON COMPANY

By: _____
Name:
Title:

AMERICAN TRANSMISSION COMPANY LLC
By its corporate manager, ATC Management Inc.

By: _____
Name: Mike Rowe
Title: Vice President of Construction

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REVIEWED AND ACKNOWLEDGED:

PJM INTERCONNECTION, L.L.C.

By: _____
Name:
Title:

MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.

By: _____
Name: 
Title: WILLIAM C. PHILLIPS
Vice President
Standards Compliance & Strategy


10-04-10

CERTIFICATE OF SERVICE

In accordance with 18 C.F.R. § 385.2010(f) (2008), I hereby certify that I have, on this day, served a copy of the foregoing upon representative for PJM, the Midwest ISO, the Illinois Commerce Commission, the Indiana Regulatory Commission, and American Transmission Company. PJM has posted a copy of this filing under the FERC filings section of the PJM website.

Dated this 9th day of November, 2010.

/s/ Heather Curlee

Heather Curlee
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
(202) 736-8711 (fax)
hcurlee@sidley.com