



John Marschewski  
President

February 19, 2002

Mr. Gene Argo	Ms. Trudy Harper	Mr. Richard Spring
Ms. Kim Casey	Mr. Quentin Jackson	Mr. Al Strecker
Mr. David Christiano	Mr. John Marschewski	Mr. Larry Sur
Mr. Roland "Harry" Dawson	Mr. Tom McDaniel	Mr. Richard Verret
Mr. Michael A. Deihl	Mr. Stephen Parr	Mr. Gary Voigt
Mr. Dick Dixon	Mr. J. M. Shafer	
Mr. Jim Eckelberger	Mr. Harry Skilton	

Dear SPP Board Members,

Enclosed is the draft agenda and background material for our upcoming Board of Directors Meeting to be held in the Nova Room at the DFW Airport Hyatt on Tuesday, February 19, 2002, from 9:30 a.m. to 3:00 p.m.

A major part of the agenda focuses on consideration by the Board of the legal documents necessary to effect our merger with the Midwest ISO. I regret that we are not including all the schedules in the P&A agreement that a number of you have requested to see. We will complete the draft of those schedules for SPP and MISO by close of business on Monday and we will make them available to everyone no later than Tuesday.

I would also direct your attention to a number of key items that are included in this distribution:

- A redistribution of expanded Q&A that we provided to the Board and Membership in our January 21 distribution of merger documents;
- An issues and response matrix prepared by Staff based on additional comments received from members on our January 21 distribution; and
- A resolution of the Board authorizing SPP officers to effect the merger based on the presented documents.

Finally, pursuant to Arkansas law, SPP members must approve this sale of assets. As such, our corporate secretary, Nick Brown, is distributing to members under a separate letter a ballot for receiving and recording this vote. We are requesting to receive these ballots by 5:00 p.m. CST on Wednesday, February 20. The Midwest

ISO Board of Directors will vote on the documents at their February 21 meeting. We are arranging teleconference capabilities for our meeting on February 19 to accommodate members who cannot attend in person. Please contact Susan Brown (501-614-3234 or [sdbrown@spp.org](mailto:sdbrown@spp.org)) if you wish to utilize this service.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. O'Connell". The signature is written in a cursive style with a horizontal line extending to the left.

JJM:cr

Enclosure

cc: SPP Membership (via email)

**Southwest Power Pool  
BOARD OF DIRECTORS MEETING  
Tuesday, February 19, 2002  
Dallas/Ft. Worth Airport Hyatt Hotel – NOVA Room**

**- A G E N D A -**

**8:30 a.m. – Continental Breakfast**

**9:30 a.m. – 3:00 p.m. – Meeting**

1. Administrative Items .....Mr. Al Strecker
2. Finance & Security Report..... Mr. Tom Dunn
3. Operations Report..... Mr. Carl Monroe
4. Transco Task Force Report..... Mr. Mel Perkins
5. Reliability Task Force Report..... Mr. David Christiano
6. SPP/MISO Consolidation Report..... Mr. Nick Brown
7. Adjournment.....Mr. Al Strecker

**Southwest Power Pool  
BOARD OF DIRECTORS MEETING  
The Westin – Oklahoma City, OK  
December 12, 2001**

**- Summary of Action Items -**

1. Approved minutes of the October 17, 2001 Board of Directors meeting as presented.
2. Approved Engineering and Operating Committee recommendations to modify SPP Criteria changes: Criteria 4, Criteria 5.2.4.1, Criteria 7.3.1.3, Criteria 9, and Criteria 10.
3. Approved the 2001 SPP Administrative Budget of \$28,488,785 as recommended by the Finance Working Group.
4. Approved SPP Staff's recommendation to terminate ENRON Power Marketing's membership in order to end ENRON's growing debt leaving the remaining financial obligations at approximately \$185,000.
5. Elected Mr. Al Strecker, chair, and Mr. J. M. Shafer, vice chair, for two-year terms.
6. Directed finalization of SPP/MISO merger documents by the February 19, 2002 meeting allowing ample time for review and comment by the SPP Board of Directors and Membership.

**Southwest Power Pool  
BOARD OF DIRECTORS MEETING  
The Westin – Oklahoma City, Oklahoma  
December 12, 2001**

**Agenda Item 1 – Administrative Items**

SPP Chair Mr. Gary Voigt called the meeting to order at 9:58 a.m. The following directors were in attendance or represented by proxy:

Mr. Gene Argo, Midwest Energy, Inc.;

Ms. Kim Casey, Dynegy Marketing and Trade;

Mr. John Stephens, proxy for Mr. David Christiano, City Utilities of Springfield, MO;

Mr. Harry Dawson, OK Municipal Power Authority;

Mr. Michael Deihl, Southwestern Power Administration;

Mr. Jim Eckelberger, and proxy for Mr. Harry Skilton, non-stakeholder directors;

Ms. Trudy Harper, Tenaska Power Services;

Mr. John Marschewski, Southwest Power Pool, Inc.;

Mr. Tom McDaniel, non-stakeholder director;

Mr. Stephen Parr, KS Electric Power Cooperative;

Mr. J. M. Shafer, Western Farmers Electric Cooperative;

Mr. Quentin Jackson, non-stakeholder director;

Mr. Richard Spring, Kansas City Power & Light;

Mr. Al Strecker, OG+E;

Mr. Larry Sur, non-stakeholder director;

Mr. Richard Verret, American Electric Power; and

Mr. Gary Voigt, Chair, Arkansas Electric Cooperative Corp.

There were 41 persons in attendance representing 24 members, 2 guest and 4 regulatory agencies (Attendance List – Attachment 1). The Secretary received 2 proxy statements (Proxies – Attachment 2). Mr. Voigt referred to the agenda (Agenda – Attachment 3) and asked for any modifications to draft minutes of the October 17, 2001 meeting or a motion for approval (10/17/01 Meeting Minutes – Attachment 4). Mr. Sur moved that the minutes be approved as presented. Mr. Dawson seconded this motion, which passed unopposed.

**Agenda Item 2 – Engineering & Operating Committee Recommendations**

Mr. Mel Perkins reviewed and discussed five recommended modifications to SPP criteria (Criteria 4, Criteria 5.2.4.1, Criteria 7.3.1.3, Criteria 9, and Criteria 10) as distributed in the background material for Board of Directors consideration (EOC recommendations – Attachment 5). Mr. Eckelberger suggested in regard to Criteria 10 that SPP should maintain a back up for the satellite system especially for crisis purposes. Mr. Perkins said that would be noted. Mr. Dixon moved to accept Criteria changes as presented. Mr. Sur seconded and the motion passed unopposed.

**Agenda Item 3 – Finance Working Group Recommendations**

Ms. Trudy Harper, acting chair of the Finance Working Group consisting of Mr. Dick Dixon, Mr. Gene Argo, Mr. Jim Eckelberger, Mr. Harry Skilton and Mr. John Marschewski, presented

the 2002 Administrative Budget for approval (FWG Recommendation – Attachment 6). Ms. Harper stated that until the merger is finalized, SPP and MISO both need administrative budgets for 2002. Each organization has approached future budgets with the merger in mind and has the same philosophical approach. Concerns were voiced about the need to continue expenditures for the COSMOS project until the merger is complete and RTO status reached. Staff explained that SPP is currently under contract with Accenture for five years, that it would be costly to terminate, and it is important to maintain a valuable asset. Following discussion, Ms. Harper moved to accept the 2002 Administrative Budget of \$28,488,785. Mr. Verret seconded and the motion passed with one opposing vote from Mr. Dixon.

#### **Agenda Item 4 – Staff Recommendation on Member Termination**

Mr. Nick Brown presented the SPP Staff recommendation to terminate membership of ENRON Power Marketing in light of their December 2, 2001 filing for Chapter 11 bankruptcy protection (Member Termination – Attachment 7). Mr. Brown stated that termination appeared to be in the best interest of both SPP and ENRON ending ENRON's growing debt to SPP as soon as possible. As of December 3, 2001, ENRON has failed to pay SPP its October and November membership assessments. If the Board of Directors terminated ENRON's membership, ENRON's financial obligation to SPP, excluding the delinquent assessments, is approximately \$185,000. Staff has contacted ENRON representatives to discuss a membership termination approach but has been unsuccessful in receiving a response. Ms. Harper moved to terminate ENRON Power Marketing, Inc. conditioned on approval or consent of the Bankruptcy Court. Mr. Dawson seconded and the motion passed unopposed.

#### **Agenda Item 5 – Election of Chair & Vice Chair**

Mr. Brown in the absence of Mr. Dave Christiano presented Nominating Task Force recommendations to fill the Board of Directors chair and vice chair positions. The Nominating Task Force consists of Mr. Christiano, chair; Ms. Kim Casey; Mr. Stephen Parr; Mr. Michael Deihl; Mr. J.M. Shafer and Mr. Al Strecker. Mr. Brown said that typically the vice chair would move up to chair but in this case Mr. Tom Grennan's resignation has left that position open. Recommended nominees are: Mr. Al Strecker for chair and Mr. J. M. Shafer for vice chair. Mr. Dixon moved to accept the slate of officers as presented. Mr. Dawson seconded and the motion passed unopposed. Mr. Voigt turned over the chair to Mr. Strecker who presided over the remainder of the meeting. Mr. Marschewski commended Mr. Voigt on a job well done.

#### **Agenda Item 6 – SPP/MISO Consolidation Report**

Mr. Strecker called on Ms. Stacy Duckett to present the SPP/MISO Consolidation Report (SPP/MISO Consolidation Report – Attachment 8). Ms. Duckett stated that documents for consolidation were about 90-95% complete. The following documents were presented and discussed:

- Purchase and Assumption Agreement
  - Assignment and Assumption Agreement
  - Bill of Sale
  - Certificate of Incorporation
  - Bylaws
  - Services Agreement

SPP Board of Directors Minutes  
December 12, 2001

- Conditional Withdrawal Agreement
- SPP-MISO Membership Agreement Comparison
- SPP-MISO Tariff Comparison

Following questions and discussion, the Board requested that these documents be finalized before February 19, 2001 allowing ample time for Board of Directors and Members review and comments. All comments are to be directed to Ms. Duckett at [sduckett@spp.org](mailto:sduckett@spp.org).

**Adjournment**

At 12:39 a.m., Mr. Strecker thanked everyone for their participation and following a short break, reconvened in executive session to discuss personnel matters.

Nicholas A. Brown, Corporate Secretary



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**SPP COMPARITIVE BALANCE SHEET 1999 - 2001**

Balance Sheet (\$000)	Unqualified <b>1999</b>	Unqualified <b>2000</b>	Co. Prepared <b>2001</b>
<b>Assets</b>			
<b>Current Assets</b>			
Cash and Equivalents	\$7,356	\$17,497	\$9,188
Accounts Receivable	2,141	9,012	7,088
Prepaid Expenses	158	225	225
<b>Total Current Assets</b>	<b>\$9,655</b>	<b>\$26,734</b>	<b>\$16,501</b>
Property and Equipment (net)	2,505	4,777	24,922
Other	123	0	0
<b>TOTAL ASSETS</b>	<b>\$12,283</b>	<b>\$31,511</b>	<b>\$41,423</b>
<b>Liabilities and Member Equity</b>			
<b>Current Liabilities</b>			
Accounts Payable	\$1,985	\$8,223	\$7,834
Customer Deposits	6,930	13,520	5,084
Accrued Expenses	317	451	436
Current Maturities of Short and Long Term Debt	673	5,820	0
<b>Total Current Liabilities</b>	<b>\$9,905</b>	<b>\$28,014</b>	<b>\$13,354</b>
Long Term Obligations	566	0	25,000
<b>Total Liabilities</b>	<b>\$10,471</b>	<b>\$28,014</b>	<b>\$38,354</b>
<b>Member's Equity</b>	<b>\$1,812</b>	<b>\$3,497</b>	<b>\$3,069</b>
<b>TOTAL LIABILITIES AND MEMBER'S EQUITY</b>	<b>\$12,283</b>	<b>\$31,511</b>	<b>\$41,423</b>



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**SPP COMPARITIVE INCOME STATEMENT: 1999 - 2001**

Income Statement (\$000)	Unqualified <b>1999</b>	Unqualified <b>2000</b>	Co. Prepared <b>2001</b>
<b>Income</b>			
Member Assessments	\$6,466	\$7,483	\$9,608
Tariff Fees	2,337	6,521	7,903
Other Income	776	2,337	3,776
<b>Total Income</b>	<b>\$9,579</b>	<b>\$16,341</b>	<b>\$21,287</b>
<b>Expenses</b>			
Salary & Benefits	\$4,716	\$7,114	\$9,835
Employee Travel	298	409	633
Administrative	332	430	550
NERC Assessment	629	733	1,072
SPP/NERC Meetings	119	238	250
Communications	508	587	645
Leases & Maintenance	516	586	793
Office Supplies	356	300	924
Consulting Services	585	1,370	1,931
Depreciation & Amortization	1,309	1,604	2,326
Interest Expense	484	1,285	2,756
<b>Total Expenses</b>	<b>\$9,852</b>	<b>\$14,656</b>	<b>\$21,715</b>
<b>Net Income/(Loss)</b>	<b>(\$273)</b>	<b>\$1,685</b>	<b>(\$428)</b>



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Cash Flow (\$000)	Unqualified <b>1999</b>	Unqualified <b>2000</b>	Co. Prepared <b>2001</b>
<b>OPERATING ACTIVITIES</b>			
Net Income	(\$273)	\$1,685	(\$428)
Depreciation	1,309	1,604	2,326
Changes in Assets and Liabilities			
Accounts Receivable	51	(6,748)	1,924
Prepaid Expenses	(44)	(67)	0
Accounts Payable	324	6,238	(389)
Customer Deposits	6,687	6,590	(8,436)
Accrued Exp.	78	134	(15)
<b>Cash From Operations</b>	<b>\$8,132</b>	<b>\$9,436</b>	<b>(\$5,018)</b>
<b>INVESTING ACTIVITIES</b>			
Purchase of Property and Equipment	(637)	(3,881)	(22,470)
Proceeds from Disposal of Property and Equipment		5	
<b>Cash From Investing</b>	<b>(\$637)</b>	<b>(\$3,876)</b>	<b>(\$22,470)</b>
<b>FINANCING ACTIVITIES</b>			
Contributions from Members	8		
Proceeds from Short-term Financing and Long-term Debt	300	5,252	25,000
Repayment of Capital Lease Obligations	(804)	(671)	(568)
Repayment of Short-term Financing and Long-term Debt	(300)		(5,253)
<b>Cash From Financing</b>	<b>(\$796)</b>	<b>\$4,581</b>	<b>\$19,179</b>
<b>NET INCREASE (DECREASE) IN CASH</b>	<b>\$6,699</b>	<b>\$10,141</b>	<b>(\$8,309)</b>
Cash at Beginning of Year	656	\$7,355	\$17,496
Cash at End of Year	\$7,355	\$17,496	\$9,187



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**FIXED CHARGE COVERAGE CALCULATION**

For the Period January 1, 2001 through December 31, 2001

**Consolidated Cash Flow (\$000)**

Net Income (Loss) for Period	(\$428)
Depreciation and Amortization	2,326
Interest	2,756
Leases and Rents	435
<b>Total Consolidated Cash Flow</b>	<b>\$5,089</b>

**Fixed Charges (\$000)**

Interest	\$2,756
Leases and Rents	435
<b>Total Fixed Charges</b>	<b>\$3,191</b>

<b>Fixed Charge Coverage Ratio</b>	<b>1.59</b>	<b>Actual</b>
	<b>1.00</b>	<b>Covenant</b>

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**February 6, 2002**

**PURCHASE AND ASSUMPTION AGREEMENT**

**by and between**

**MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.**

**and**

**SOUTHWEST POWER POOL, INC.**

**dated as of February \_\_\_\_, 2002**

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## PURCHASE AND ASSUMPTION AGREEMENT

**THIS PURCHASE AND ASSUMPTION AGREEMENT** (the "Agreement") dated as of February \_\_\_, 2002, is entered into by and between MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC., a not-for-profit, non-stock Delaware corporation ("MISO"), and SOUTHWEST POWER POOL, INC., a nonprofit, non-stock Arkansas corporation ("SPP").

**WHEREAS**, MISO desires to purchase from SPP, and SPP desires to sell to MISO all of SPP's right, title and interest in and to substantially all of SPP's tangible and intangible assets, on the terms and conditions set forth herein;

**WHEREAS**, in consideration for MISO's purchase from SPP of SPP's assets as described above, MISO agrees to assume from SPP, and SPP agrees to transfer to MISO, all of SPP's duties and obligations relating to substantially all of its liabilities, on the terms and conditions set forth herein;

**WHEREAS**, it is the intention of the parties hereto that concurrent with the purchase of assets and assumption of liabilities contemplated by this Agreement, MISO will change its name to a name mutually satisfactory to the Boards of Directors of MISO and SPP and, as contemplated by the terms of this Agreement, amend as appropriate the provisions of its bylaws and its membership agreement; and

**WHEREAS**, the Board of Directors of each of MISO and SPP have determined that it is in the best interests of their respective corporations and their stakeholders to consummate the business transactions contemplated herein, subject to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements contained herein, MISO and SPP do hereby agree as follows:

### **ARTICLE I** **DEFINITIONS**

**1.1 Definitions.** As used in this Agreement, the following terms shall have the meanings indicated below:

"Annual Billing Determinants" means billing determinants related to calendar year 2001 (i) with respect to SPP pursuant to Schedule 1 of the SPP Open Access Transmission Tariff and (ii) with respect to MISO pursuant to Schedule 10 of the MISO Open Access Transmission Tariff, each as filed with FERC.

"Assets" has the meaning ascribed to it in Section 2.1.

"Assignment and Assumption" means the Assignment and Assumption Agreement for the Assumed Liabilities, in substantially the form attached hereto as Exhibit A, to be delivered at the Closing.

“Assumed Contracts” has the meaning ascribed to it in Section 2.1(h).

“Assumed Liabilities” has the meaning ascribed to it in Section 2.3(a).

“Assumed Real Property Leases” has the meaning ascribed to it in Section 2.1(g).

“Bill of Sale” means the Bill of Sale for the Assets, in substantially the form attached hereto as Exhibit B, to be delivered at the Closing.

“Closing” has the meaning ascribed to it in Section 4.1.

“Closing Date” has the meaning ascribed to it in Section 4.1.

“Code” means the Internal Revenue Code of 1986, as amended, and all regulations, rulings and other official communications promulgated thereunder.

“Conditional Withdrawal Agreement” means the agreement to be entered into between SPP and each of the SPP Members regarding the SPP Member’s withdrawal from the SPP Agreement, in substantially the form attached hereto as Exhibit C.

“Contracts” means all written and oral contracts, agreements, leases, employment agreements, consulting agreements and service agreements (excluding Real Property Leases), in each case including all amendments thereto.

“Employee Benefit Plan” means any pension, retirement, deferred compensation, bonus, incentive, performance, medical, hospitalization, vision, dental or other health, life, disability, severance, termination or other employee benefit plan, program, arrangement, agreement or policy, whether written or unwritten, to which the company contributes, is obligated to contribute to, is a party to or is otherwise bound, or with respect to which the company may have any direct or indirect liability.

“Encumbrances” means all liabilities, obligations, pledges, security interests, liens, claims, encumbrances or charges.

“Environmental Law” has the meaning ascribed to it in Section 5.15.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and all regulations, rulings and other official communications promulgated thereunder.

“ERISA Affiliate” means (i) a member of any “controlled group,” as defined in Section 414(b) of the Code, of which the company is a member, (ii) a trade or business, whether or not incorporated, under common control (within the meaning of Section 414(c) of the Code) with the company, or (iii) a member of any affiliated service group (within the meaning of Section 414(m) of the Code) of which the company is a member.

“Excluded Assets” has the meaning ascribed to it in Section 2.2.

“FERC” means the Federal Energy Regulatory Commission of the United States or any successor agency.

“GAAP” means generally accepted accounting principles, consistently applied throughout the specified periods.

“Hazardous Material” has the meaning ascribed to it in Section 5.15.

“Intellectual Property” means all patents and patent rights, trademarks and trademark rights, inventions, service marks, designations, logos, copyrights and copyright rights.

“IRS” means the Internal Revenue Service of the United States.

“Litigation” means any litigation, judicial, administrative or arbitral action, suit, proceeding or claim.

“Material Adverse Effect” means any effect that (i) is material and adverse to the party’s financial condition or results of operations or business prospects or (ii) materially impairs the ability of the party to consummate the transactions contemplated by this Agreement.

“Material Assumed Contracts” has the meaning ascribed to it in Section 5.9.

“MISO” has the meaning ascribed to it in the forepart of this Agreement.

“MISO Agreement” means the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc.

“MISO Ancillary Agreements” has the meaning ascribed to it in Section 6.2.

“MISO Employees” has the meaning ascribed to it in Section 6.13.

“MISO Financial Statements” means the audited balance sheets of MISO as of December 31, 2000 and 1999 and the related statements of income and of cash flows for the years then ended and the unaudited balance sheet of MISO as of December 31, 2001 and the related statement of income and cash flow for the twelve months then ended.

“MISO Material Contracts” has the meaning ascribed to it in Section 6.9.

“MISO Members” means those electricity transmission owners who are signatories to the MISO Agreement and those non-transmission owners whose membership applications have been accepted by the MISO Board of Directors.

“NERC” means the North American Electric Reliability Council or any successor organization.

“Permits” means all permits, licenses, franchises, certificates of authority and other governmental authorizations, approvals and consents.

“Permitted Encumbrances” means (i) the Assumed Liabilities, (ii) liens for Taxes and other governmental charges and assessments which are not yet due and payable or, to the extent listed on Schedule 1.1, which are being contested in good faith, and (iii) liens of landlords and liens of carriers, warehousemen, mechanics and materialmen and other like liens arising in the ordinary course of business for sums not yet due and payable or, to the extent listed on Schedule 1.1, which are being contested in good faith.

“Real Property Leases” means all real property leases, easements, licenses and other rights in real property.

“Resulting Company” means MISO, as it exists after the Closing and after giving effect to the name, bylaw and membership agreement changes referred to in the forepart of this Agreement.

“Resulting Company Agreement” means the MISO Agreement, as amended pursuant to the terms of this Agreement, in substantially the form attached hereto as Exhibit D.

“Retained Liabilities” has the meaning ascribed to it in Section 2.4.

“Revised Schedules” has the meaning ascribed to it in Section 4.1.

“Services Agreement” means the agreement to be entered into at Closing between SPP and the Resulting Company regarding the services to be rendered by the Resulting Company to SPP relating to SPP’s ongoing NERC reliability council functions, in substantially the form attached hereto as Exhibit E.

“SPP” has the meaning ascribed to it in the forepart of this Agreement.

“SPP Agreement” means the Southwest Power Pool Membership Agreement, dated July 1999.

“SPP Ancillary Agreements” has the meaning ascribed to it in Section 5.2.

“SPP Business” means the services provided by SPP under the SPP Agreement and SPP Open Access Transmission Tariff, including security coordinator services, transmission services and regional tariff administration and associated services. “SPP Business” does not include services provided in connection with SPP’s NERC-related reliability functions.

“SPP Employees” has the meaning ascribed to it in Section 5.13.

“SPP Financial Statements” means the audited balance sheets of SPP as of December 31, 2000 and 1999 and the related statements of income and members’ equity and of cash flows for the years then ended and the unaudited balance sheet of SPP as of December 31, 2001 and the related statement of income and members’ equity and cash flow for the twelve months then ended.

“SPP Members” means those electricity transmission owners and non-transmission owners who are signatories to the SPP Agreement.

“Tangible Personal Property” means all machinery, mobile or otherwise, equipment (including computer hardware and communications equipment), vehicles, tools, fixtures, furniture and furnishings and other personal property.

“Taxes” means all taxes and related assessments, fees, interest, penalties and governmental charges.

“Third Party Claims” has the meaning ascribed to it in Section 9.3.

- 1.2 Interpretation.** In this Agreement, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine, and vice versa. The term “includes” or “including” shall mean “including without limitation.” References to a Section, Article, Exhibit or Schedule shall mean a Section, Article, Exhibit or Schedule of this Agreement.

## **ARTICLE II**

### **PURCHASE AND SALE OF ASSETS AND ASSUMPTION OF LIABILITIES**

- 2.1 Purchase and Sale of Assets.** Upon the terms and conditions herein set forth, SPP hereby agrees to sell, convey, transfer, assign, grant and deliver to MISO, and MISO hereby agrees to purchase, acquire and accept from SPP at the Closing, all of SPP’s right, title and interest in and to all of SPP’s tangible and intangible assets relating to or used in connection with the SPP Business, including, without limitation, those specifically listed below (collectively, the “Assets”):

- (a) all accounts receivable of SPP or monies otherwise owed to SPP as of the Closing Date;
- (b) all Tangible Personal Property relating to or used in the operations of the SPP Business, including, without limitation, the items of personal property listed on Schedule 2.1(b);
- (c) all software owned by or licensed to SPP and used in connection with the SPP Business (to the extent assignable);
- (d) all Permits used in the conduct of the SPP Business, which Permits are listed on Schedule 2.1(d);
- (e) all correspondence, data, files and records relating to the Assets or the SPP Business in the possession of SPP or its agents;
- (f) all Intellectual Property owned by or licensed to SPP (to the extent assignable) and used or generated in connection with the SPP Business, and all pending applications and registrations therefor, including, without limitation, those set forth on Schedule 2.1(f);

- (g) all Real Property Leases relating to the SPP Business listed on Schedule 2.1(g) (the “Assumed Real Property Leases”);
- (h) all Contracts relating to the SPP Business, including, without limitation, those listed on Schedule 2.1(h) (together with the Assumed Real Property Leases, the “Assumed Contracts”), subject to the provisions of Section 2.3(b);
- (i) all cash and cash equivalents of SPP related to the SPP Business as of the Closing Date; and
- (j) all funds or other assets held in trust for the benefit of SPP Employees;

in each case, except as set forth in Section 2.2.

**2.2 Excluded Assets.** Notwithstanding anything to the contrary contained in Section 2.1, the assets of SPP set forth on Schedule 2.2, whether or not used in connection with the SPP Business, shall not be included in the Assets and shall be retained by SPP (the “Excluded Assets”).

**2.3 Assumption of Liabilities.**

- (a) Except as set forth in Section 2.4, MISO shall assume, pay, perform and discharge all obligations, duties and liabilities of SPP of whatever kind or nature relating to the Assets or arising in connection with the operation of the SPP Business, including, without limitation, the following (collectively, the “Assumed Liabilities”):
  - (i) all liabilities and obligations of SPP under the Assumed Contracts, regardless of the time at which such liabilities and obligations are incurred;
  - (ii) all obligations of SPP related to its debt, whether long term or short term, and lines of credit; and
  - (iii) any obligation of SPP to repay certain SPP Members funds advanced by such SPP Members in excess of the amounts scheduled to be paid as the regional transmission service administration fee, pursuant to the terms of the SPP Bylaws, all as more specifically addressed in the Conditional Withdrawal Agreement.
- (b) Notwithstanding anything to the contrary contained in Section 2.3(a), neither this Agreement nor any other agreement referenced herein shall constitute an assignment of any contract or right or benefit arising thereunder if such assignment would constitute a breach by SPP thereunder. In the event that SPP does not obtain any consent or waiver for the transfer of any Assumed Contract to MISO (to the extent required by the terms of any such Assumed Contract) prior to the Closing and MISO shall have waived its rights, if any, pursuant to Section 8.1(d), SPP shall continue to use reasonable efforts (not to include the expenditure

of any funds or the incurrence of any liabilities) to obtain such consent or waiver and shall use reasonable efforts for a period of six months after the Closing to keep such Assumed Contract in effect for the benefit of the Resulting Company until such consent or waiver is obtained. MISO agrees to indemnify and hold SPP harmless from and against all liabilities arising out of or in relation to SPP's obligations in respect of the Assumed Contracts under this Section 2.3(b), including, without limitation, any failure of the Resulting Company to fully perform thereunder.

**2.4 Retained Liabilities.** Notwithstanding anything to the contrary contained in Section 2.3(a), MISO shall not assume, and shall have no liability under or by reason of this Agreement for any obligations, duties or liabilities of whatever kind or nature relating to (collectively, the "Retained Liabilities"):

- (i) any obligations of SPP under the SPP Agreement; and
- (ii) the obligations, duties and liabilities set forth on Schedule 2.4.

### **ARTICLE III** **CONSIDERATION**

**3.1 Consideration for the Assets.** Subject to the terms and conditions of this Agreement, in consideration of the sale, assignment, transfer and delivery of the Assets to MISO, MISO shall assume the Assumed Liabilities pursuant to the Assignment and Assumption.

**3.2 Allocation of the Consideration.** The parties acknowledge and agree that the consideration shall be allocated for all purposes (including, without limitation, accounting purposes) as indicated on Schedule 3.2 hereto.

### **ARTICLE IV** **THE CLOSING**

**4.1 Closing.** The closing of the purchase and sale of the Assets and assumption of the Assumed Liabilities hereunder (the "Closing") shall take place on the date (the "Closing Date") which, unless otherwise mutually agreed by MISO and SPP, will be the last business day of the month following the month in which all of the conditions set forth in Sections 8.1, 8.2 and 8.3 have been either satisfied or waived by the applicable party. The Closing shall take place at a mutually agreeable site to be determined. The Closing shall be effective as of midnight on the Closing Date. No later than ten days prior to the Closing Date, SPP shall deliver to MISO and MISO shall deliver to SPP a revised set of the Schedules contemplated by Articles V and VI hereof, respectively, which Schedules shall be true and correct as of the Closing Date (such Schedules are hereinafter referred to as the "Revised Schedules"). Delivery of the Revised Schedules will not in any manner alter the efficacy of the representations and warranties made pursuant to this Agreement as of the date hereof. All actions taken and documents delivered as of the Closing shall

be deemed to have been taken and executed simultaneously, and no action shall be deemed taken nor any document delivered until all have been taken and delivered.

**4.2 Delivery of Items by SPP.** SPP shall deliver to MISO at the Closing the items listed below, which shall be in form and substance reasonably satisfactory to MISO and its legal counsel:

- (a) a copy, certified by the Secretary of SPP, of resolutions duly adopted by the Board of Directors of SPP and by the SPP Members authorizing the execution, delivery and performance of this Agreement and the transactions contemplated hereby;
- (b) a certificate, duly executed by an authorized officer of SPP, certifying as to the matters set forth in Section 8.2(a);
- (c) a certificate of incumbency for the officers of SPP signatory to this Agreement or any SPP Ancillary Agreement, duly certified by the Secretary of SPP;
- (d) the Bill of Sale, duly executed by SPP;
- (e) the Assignment and Assumption, duly executed by SPP;
- (f) copies of the consents, waivers and approvals required to be obtained by SPP listed on Schedule 8.1(b);
- (g) physical possession of the Assets where located;
- (h) the Services Agreement, duly executed by SPP; and
- (i) such other documents, instruments or certificates as MISO may reasonably request.

**4.3 Delivery of Items by MISO.** MISO shall deliver to SPP at the Closing the items listed below, which shall be in form and substance reasonably satisfactory to SPP and its legal counsel:

- (a) a copy, certified by the Secretary of MISO, of resolutions duly adopted by the Board of Directors of MISO authorizing the execution, delivery and performance of this Agreement and the transactions contemplated hereby;
- (b) a certificate duly executed by an authorized officer of MISO, certifying as to the matters set forth in Section 8.3(a);
- (c) a certificate of incumbency for the officers of MISO signatory to this Agreement or any MISO Ancillary Agreement, duly certified by the Secretary of MISO;
- (d) the Assignment and Assumption, duly executed by MISO;

- (e) copies of the consents, waivers and approvals required to be obtained by MISO listed on Schedule 8.1(b);
- (f) the Services Agreement, duly executed by MISO; and
- (g) such other documents, instruments or certificates as SPP may reasonably request.

**ARTICLE V**  
**REPRESENTATIONS AND WARRANTIES OF SPP**

SPP hereby makes the following representations and warranties to MISO:

- 5.1 Organization and Good Standing of SPP.** SPP is a nonprofit, non-stock corporation, duly organized, validly existing and in good standing under the laws of the State of Arkansas. SPP is, in all material respects, registered or qualified to do business in all jurisdictions in which it is required to do so.
- 5.2 Powers; Execution.** SPP has all requisite corporate power and authority (i) to own and operate the Assets; (ii) to conduct the SPP Business; and (iii) to execute, deliver and perform this Agreement and all other agreements and documents to be executed and delivered by SPP pursuant to this Agreement (such other agreements and documents, the “SPP Ancillary Agreements”). The execution and delivery by SPP of this Agreement and the SPP Ancillary Agreements have been duly and validly authorized by all necessary corporate action on the part of SPP. Assuming due authorization, execution and delivery by MISO, this Agreement is, and, subject to the approval of the SPP Members, this Agreement and the SPP Ancillary Agreements will be as of the Closing, the valid and binding obligations of SPP, enforceable against SPP in accordance with their respective terms, except to the extent that such enforcement is limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other laws affecting the rights of creditors generally and general equity principles.
- 5.3 Breach of Statute or Contract.**
- (a) Neither the execution and delivery of this Agreement by SPP, nor consummation of the transactions contemplated hereby, nor compliance by SPP with the terms and provisions of this Agreement (i) will, except as set forth on Schedule 5.3(a), (A) violate or conflict with, (B) result in a breach of any of the terms, conditions or provisions of, (C) constitute a default under, or (D) require SPP to obtain any consent, approval or action of, make any filing with or give any notice to any third party under the terms of SPP’s certificate of incorporation or bylaws or any material Contract or other instrument to which SPP is a party or by which SPP is bound; (ii) will result in the creation or imposition of any Encumbrance upon or give to others any interest or rights in or with respect to any of the Assets; or (iii) will violate any law, or any statute or regulation of any governmental authority as such law, statute or regulation relates to SPP, the Assets or the SPP Business.
  - (b) With the exception of the FERC and filing of amendments to SPP’s Articles of Incorporation, no declaration, filing or registration with, or notice to, or

authorization, consent or approval of any governmental or regulatory body or authority is necessary for the consummation by SPP of the transactions contemplated hereby.

**5.4 No Litigation.** Except as set forth on Schedule 5.4, there is no pending or, to the knowledge of SPP, threatened Litigation (or, to the knowledge of SPP, any inquiry or investigation of any governmental authority) involving SPP or its directors or officers or that questions the validity of this Agreement, or any action taken, or to be taken, by SPP in connection with this Agreement or that otherwise relates to the Assets or the SPP Business. There is no judgment, order, injunction, decree or award outstanding (whether rendered by a court, administrative agency or arbitrator), against SPP, or by which SPP or any of the Assets is or may be bound which relates to the transactions contemplated by this Agreement, the Assets or the SPP Business.

**5.5 Legal Compliance.** SPP is not in material violation of any provision of its organizational documents or of any other instrument, permit, decree, or order. SPP has operated and is currently operating the SPP Business and has maintained the Assets in material conformity with all applicable laws, ordinances, regulations and directives (including, without limitation, those pertaining to public health or worker safety, but excluding those pertaining to the environment or the management of pollution or hazardous materials, which are governed by Section 5.15). SPP has in force all Permits (including environmental Permits) necessary to conduct the SPP Business.

**5.6 Financial Statements.**

- (a) SPP has delivered to MISO copies of the SPP Financial Statements. The SPP Financial Statements are true and complete in all material respects and were prepared in accordance with GAAP consistently applied throughout the periods indicated. The SPP Financial Statements fairly set forth the results of operations and financial position of the SPP Business, for the periods or as of the dates indicated, as applicable.
- (b) Since December 31, 2001, except as set forth on Schedule 5.6(b), SPP (i) has not incurred any obligation or liability (absolute, accrued, contingent or otherwise) whether due or to become due, other than in the ordinary course of business consistent in nature and amount with those incurred in comparable prior periods; (ii) has not mortgaged, pledged or subjected to lien, charge, security interest or any other encumbrance or restriction any portion of the Assets; (iii) has not discharged, satisfied or paid any material lien, charge, encumbrance or other obligation other than those then required to be discharged, satisfied or paid; (iv) has not sold, transferred, leased to others or otherwise disposed of any material portion of its assets other than in the ordinary course of business; (v) has not canceled or compromised any debt or claim owed to SPP or released any right of SPP of material value; and (vi) has not received any notice of termination or non-renewal of any Material Assumed Contract or Permit of SPP.

## **5.7 Title to and Condition of Assets.**

- (a) SPP has good and marketable title to all of the Assets, except for Permitted Encumbrances and except as set forth on Schedule 5.7(a). This Agreement and the instruments of transfer to be executed and delivered pursuant hereto will effectively vest in the Resulting Company good and marketable title to all of the Assets free and clear of all Encumbrances other than the Permitted Encumbrances and except as set forth on Schedule 5.7(a). Except as set forth on Schedule 5.7(a), no SPP Member has any direct ownership interest in any of the Assets, and no other person or entity has any ownership interest in any of the Assets.
- (b) Schedule 5.7(b) is a complete and correct list of all Tangible Personal Property of SPP related to or used in connection with the SPP Business which has a net book value in excess of \$10,000. Each item listed on Schedule 5.7(b) is in good condition and repair (subject to ordinary wear and tear, maintenance and repairs) and all such items are sufficient in the aggregate to operate the SPP Business in the ordinary course.
- (c) SPP does not own any real property.

**5.8 No Material Adverse Effect** Since December 31, 2001, (i) SPP has conducted the SPP Business in the ordinary course and consistent with past practice and (ii) no event has occurred or circumstance arisen that, individually or in the aggregate, has had or is reasonably likely to have a Material Adverse Effect.

**5.9 Contracts.** The items listed on Schedule 5.9 include all Contracts and Real Property Leases to which SPP is a party or by which SPP is bound, which relate to the conduct of the SPP Business or SPP's ownership or operation of the Assets. All of the Assumed Contracts (i) which involve a term in excess of one year, (ii) which provide for the receipt or expenditure of funds in excess of \$25,000 or (iii) the termination of which could reasonably be expected to have a Material Adverse Effect (collectively, the "Material Assumed Contracts") are in full force and effect, and neither SPP, nor, to the knowledge of SPP, any other party thereto, is in default in respect of any of the terms or provisions thereof. Except as listed on Schedule 5.9, there are no disputes or disagreements pending or, to the knowledge of SPP, threatened among SPP, and any other party under any of the Material Assumed Contracts, and, to the knowledge of SPP, there is no basis for any such dispute or disagreement. True and correct copies of the written Assumed Contracts have been delivered or made available to MISO prior to the date hereof.

**5.10 Intellectual Property.** Except for Intellectual Property licensed from a third party under any of the Assumed Contracts, the Intellectual Property listed on Schedule 2.1(f) (i) includes all of the Intellectual Property necessary to conduct the SPP Business substantially as conducted on the date hereof and (ii) is owned by SPP. Except as indicated on Schedule 5.10, SPP has not granted, licensed, sublicensed, assigned, transferred or otherwise conveyed any right, title or interest in or to any of its Intellectual Property to any other person, and, to the knowledge of SPP, no person or entity other than SPP has any right to use, license, sublicense or operate under any of its Intellectual

Property. None of SPP's Intellectual Property is subject to any pending or, to the knowledge of SPP, threatened challenge or reversion. To the knowledge of SPP, the use of its Intellectual Property by SPP does not infringe on any proprietary right, trademark, trade name or service mark of any other party, nor has SPP received any written notice of any allegation thereof.

- 5.11 Insurance.** Except as set forth on Schedule 5.11, there are no claims which relate to the SPP Business or the Assets currently pending under any of SPP's insurance policies and, to the knowledge of SPP, there is no basis for any such claims. Copies of all of SPP's insurance policies which relate to the SPP Business or the Assets have been delivered or made available to MISO prior to the date hereof.
- 5.12 Related Party Transactions.** Except as set forth on Schedule 5.12, none of the Assumed Contracts is between or among SPP, on the one hand, and any SPP Member or any party in any way affiliated with any SPP Member or SPP, on the other hand.
- 5.13 SPP Employees.** Schedule 5.13 is a complete and correct list of all current employees of SPP as of the date hereof (the "SPP Employees"). Except as set forth on Schedule 5.13 and except as may be otherwise construed by law, all of the SPP Employees are employed by SPP on an at-will basis and no SPP Employees are party to any collective bargaining or similar agreement. Schedule 5.13 indicates, as to each SPP Employee as of the date hereof, (i) full or part time status; (ii) job title and function; and (iii) date of hire by SPP. Except as set forth in Schedule 5.13, none of the SPP Employees has notified SPP as of the date hereof that such employee intends to terminate his or her employment for any reason other than to accept employment with the Resulting Company.
- 5.14 Tax Returns and Payments.** SPP is, and throughout its entire corporate existence has been, exempt from Federal income tax because it qualifies as an organization described in Section 501(c)(6) of the Code. Except as set forth on Schedule 5.14, all tax returns and reports of SPP of any kind required to be filed on or before the date hereof have been duly prepared, are accurate and complete in all material respects, and have been timely filed on or before their respective due dates, and all Taxes, if any, with respect to such returns and reports, and any other Taxes imposed upon or required to be paid by SPP, have been timely paid in full by SPP. All tax returns and reports of SPP required to be filed after the date hereof in respect of any period prior to or through the Closing Date will be duly prepared, accurate and complete in all material respects, and timely filed, and all Taxes, if any, with respect to such returns and reports, and any other Taxes imposed upon or required to be paid by SPP, will be timely paid in full by SPP. SPP has fully accrued on its books and has established adequate reserves and made provision for the timely payment of all Taxes payable but not yet due. Except as set forth on Schedule 5.14, there are no tax liens on any of the Assets, and there is no basis for the assertion of any such tax liens. Except as set forth on Schedule 5.14, there are no actions or proceedings currently pending or, to the knowledge of SPP, proposed or threatened by any taxing authority against SPP.

### **5.15 Environmental Matters.**

- (a) SPP is in compliance in all material respects with all applicable Environmental Laws in respect of the SPP Business and the Assets.
- (b) SPP has not received notice or indication advising that SPP is or may be responsible for any investigation or response costs with respect to a release, threatened release or cleanup of any Hazardous Materials arising from current or past activities or operations of SPP in connection with the SPP Business.
- (c) For purposes of this Agreement, “Environmental Law” means any law, statute, ordinance, rule, regulation or order relating to human health, safety or protection of the environment or to emissions, discharges, releases or threatened releases of pollutants, contaminants or Hazardous Materials in the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata), or otherwise relating to the treatment, storage, disposal, transport or handling of Hazardous Material. “Hazardous Material” means (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyl (PCBs); (b) any chemicals, materials, substances or wastes which are now or hereafter become defined or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” or words of similar import, under any Environmental Law; and (c) any other chemical, material, substance or waste, exposure to which is now or hereafter prohibited, limited or regulated by any governmental or regulatory authority.

### **5.16 Employee Benefit Plans.**

- (a) Schedule 5.16(a) contains a current, correct and complete list of each Employee Benefit Plan maintained or contributed to by SPP. Copies of the SPP Employee Benefit Plans, including any amendments (and, if applicable, related trust agreements and insurance contracts) have been made available to MISO together with the summary plan description, the most recent determination letter, the most recent annual report (Form 5500 including, if applicable, Schedule B thereto) and the most recent actuarial valuation report prepared in connection with any such plan. SPP does not have any liability with respect to any employee benefit plan, program or arrangement other than with respect to the Employee Benefit Plans listed on Schedule 5.16(a).
- (b) All SPP Employee Benefit Plans conform (and at all times have conformed) in all material respects to, and are being administered and operated (and have at all times been administered and operated) in material compliance with the requirements of all applicable laws including, without limitations, ERISA, the Code and the Age Discrimination in Employment Act, as amended. All returns,

reports and disclosures required to be made under ERISA and the Code with respect to the SPP Employee Benefit Plans have been timely filed or made, and all statements made on such returns, reports and disclosures have been true and complete. SPP has not incurred any liability for any tax, excise tax, penalty or fee with respect to any SPP Employee Benefit Plan, and no event has occurred and no circumstance exists or has existed that could give rise to any such liability.

- (c) Any SPP Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code and exempt from tax under Section 501(a) of the Code has been determined by the IRS to be so qualified. Any such determination that has been issued by the IRS remains in effect and has not been revoked, and with respect to any application that is pending, SPP has no reason to suspect that such application for determination will be denied. Nothing has occurred since the date of any such determination that is reasonably likely to affect adversely such qualification or exemption.
- (d) SPP and its ERISA Affiliates do not sponsor or contribute to, have not in the past sponsored or contributed to, and have no liability with respect to (i) any multi-employer plan (as defined in Section 3(37) of ERISA), or (ii) any non-conforming group health plan (as that term is defined in Code section 5000(c)).
- (e) Except as set forth on Schedule 5.16(e), there are no pending or threatened claims by or on behalf of any such SPP Employee Benefit Plans, or by or on behalf of any individual participants or beneficiaries of any such SPP Employee Benefit Plans, alleging any violation of ERISA or any other applicable laws, or claiming benefit payments (other than those made in the ordinary operation of such plans), nor is there any basis for such claim. No SPP Employee Benefit Plan is the subject of any pending or threatened investigation, audit, litigation or proceeding by the IRS, the U.S. Department of Labor or the Pension Benefit Guaranty Corporation or any other governmental agency or authority.
- (f) SPP has timely made all required payments and contributions under the SPP Employee Benefit Plans, including the payment of all insurance premiums.
- (g) Except as set forth on Schedule 5.16(g), the execution of this Agreement and performance of the transactions contemplated hereby will not (either alone or on the occurrence of any additional or subsequent events) result in any payment, acceleration, vesting or increase in benefits with respect to any SPP Employee or former employee of SPP.
- (h) Except as set forth on Schedule 5.16(h), SPP does not maintain (and has not maintained) any plan or arrangement that provides post retirement medical benefits, post retirement death benefits or other post retirement welfare benefits, other than to the extent required by Part 6 of Title I of ERISA. SPP does not maintain or contribute to (nor has SPP maintained or contributed to) any “welfare benefit fund” (within the meaning of Section 419 of the Code).

- (i) Any SPP Employee Benefit Plan that is a group health plan (within the meaning of Section 4980D(f)(1) of the Code) complies and has been administered in all material respects in accordance with the applicable requirements of Subtitle K of the Code, Part 7 of Title I of ERISA and all other applicable laws.
- (j) Any SPP Employee Benefit Plan that is a group health plan (within the meaning of Section 4980B(g)(2) of the Code) complies and has been administered in all material respects in accordance with the applicable requirements of Section 4980B of the Code, Part 6 of Title I of ERISA and all other applicable laws.
- (k) No fiduciary, party-in-interest, or disqualified person (as such terms are defined in Section 4975 of the Code and Sections 3(14) and 406 of ERISA) with respect to any SPP Employee Benefit Plan has engaged in any transaction described in Section 406(a) or (b) of ERISA or in any transaction described in Section 4975 of the Code.
- (l) The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, will not involve any transaction which will be prohibited by Section 406 of ERISA or in connection with which a tax could be imposed pursuant to section 4975 of the Code.

**5.17 Reliance.** The foregoing representations and warranties are made by SPP with the knowledge and expectation that MISO is relying thereon in entering into, and performing its obligations under, this Agreement.

## **ARTICLE VI** **REPRESENTATIONS AND WARRANTIES OF MISO**

MISO hereby makes the following representations and warranties to SPP:

- 6.1 Organization and Good Standing of MISO.** MISO is a not-for-profit, non-stock corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware. MISO is, in all material respects, registered or qualified to do business in all jurisdictions in which it is required to do so.
- 6.2 Powers; Execution.** MISO has all requisite corporate power and authority (i) to own and operate its assets; (ii) to conduct its business; and (iii) to execute, deliver and perform this Agreement and all other agreements and documents to be executed and delivered by MISO pursuant to this Agreement (such other agreements and documents, the “MISO Ancillary Agreements”). The execution and delivery by MISO of this Agreement and the MISO Ancillary Agreements have been duly and validly authorized by all necessary corporate action on the part of MISO. Assuming due authorization, execution and delivery by SPP, this Agreement is, and this Agreement and, subject to the approval of MISO’s Members, if required, the MISO Ancillary Agreements will be as of the Closing, the valid and binding obligations of MISO, enforceable against MISO in accordance with their respective terms, except to the extent that such enforcement is limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other laws affecting the rights of creditors generally and general equity principles.

### **6.3 Breach of Statute or Contract.**

- (a) Neither the execution and delivery of this Agreement by MISO, nor consummation of the transactions contemplated hereby, nor compliance by MISO with the terms and provisions of this Agreement (i) will, except as set forth on Schedule 6.3(a), (A) violate or conflict with, (B) result in a breach of any of the terms, conditions or provisions of, (C) constitute a default under, or (D) require MISO to obtain any consent, approval or action of, make any filing with or give any notice to any third party under the terms of MISO's certificate of incorporation or bylaws or any material Contract or other instrument to which MISO is a party or by which MISO is bound; (ii) will result in the creation or imposition of any Encumbrance upon or give to others any interest or rights in or with respect to any of MISO's assets; or (iii) will violate any law, or any statute or regulation of any governmental authority as such law, statute or regulation relates to MISO.
- (b) With the exception of the FERC and filing of the amended Certificate of Incorporation for MISO, no declaration, filing or registration with, or notice to, or authorization, consent or approval of any governmental or regulatory body or authority is necessary for the consummation by MISO of the transactions contemplated hereby.

**6.4 No Litigation.** Except as set forth on Schedule 6.4, there is no pending or, to the knowledge of MISO, threatened Litigation (or, to the knowledge of MISO, any inquiry or investigation of any governmental authority) involving MISO or its directors or officers that questions the validity of this Agreement, or any action taken, or to be taken, by MISO in connection with this Agreement or that otherwise relates to MISO's material assets or business. There is no judgment, order, injunction, decree or award outstanding (whether rendered by a court, administrative agency or arbitrator), against MISO, or by which MISO or any of its material assets is or may be bound which relates to the transactions contemplated by this Agreement.

**6.5 Legal Compliance.** MISO is not in material violation of any provision of its organizational documents or of any other permit, decree, or order. MISO has operated and is currently operating its business in material conformity with all applicable laws, ordinances, regulations and directives (including, without limitation, those pertaining to public health or worker safety, but excluding those pertaining to the environment or the management of pollution or hazardous materials, which are governed by Section 6.15). MISO has in force all Permits (including environmental Permits) necessary to conduct its business.

### **6.6 Financial Statements.**

- (a) MISO has delivered to SPP copies of the MISO Financial Statements. The MISO Financial Statements are true and complete in all material respects and were prepared in accordance with GAAP consistently applied throughout the periods indicated. The MISO Financial Statements fairly set forth the results of

operations and financial position of MISO's business, for the periods or as of the dates indicated, as applicable.

- (b) Since December 31, 2001, except as set forth on Schedule 6.6(b), MISO (i) has not incurred any obligation or liability (absolute, accrued, contingent or otherwise) whether due or to become due, other than in the ordinary course of business consistent in nature and amount with those incurred in comparable prior periods; (ii) has not mortgaged, pledged or subjected to lien, charge, security interest or any other encumbrance or restriction any portion of its assets; (iii) has not discharged, satisfied or paid any material lien, charge, encumbrance or other obligation other than those then required to be discharged, satisfied or paid; (iv) has not sold, transferred, leased to others or otherwise disposed of any material portion of its assets other than in the ordinary course of business; (v) has not canceled or compromised any debt or claim owed to MISO or released any right of MISO of material value; and (vi) has not received any notice of termination or non-renewal of any material Contract or Permit of MISO.

**6.7 Title to and Condition of Assets.**

- (a) Except as set forth on Schedule 6.7(a), no MISO Member has any direct ownership interest in any of MISO's material assets, and no other person or entity has any ownership interest in any of such material assets.
- (b) Each item of Tangible Personal Property of MISO related to or used in connection with MISO's business is in good condition and repair (subject to ordinary wear and tear, maintenance and repairs) and all such items are sufficient in the aggregate to operate MISO's business in the ordinary course.

**6.8 No Material Adverse Effect** Since December 31, 2001, (i) MISO has conducted its business in the ordinary course and consistent with past practice and (ii) no event has occurred or circumstance arisen that, individually or in the aggregate, has had or is reasonably likely to have a Material Adverse Effect.

**6.9 Contracts.** The items listed on Schedule 6.9 include all Contracts and Real Property Leases to which MISO is a party or by which MISO is bound (i) which involve a term in excess of one year, (ii) which provide for the receipt or expenditure of funds in excess of \$25,000 or (iii) the termination of which could reasonably be expected to have a Material Adverse Effect (collectively, the "MISO Material Contracts"). Such MISO Material Contracts are in full force and effect, and neither MISO, nor, to the knowledge of MISO, any other party thereto, is in default in respect of any of the terms or provisions thereof. Except as listed on Schedule 6.9, there are no disputes or disagreements pending or, to the knowledge of MISO, threatened among MISO, and any other party under any of the MISO Material Contracts, and, to the knowledge of MISO, there is no basis for any such dispute or disagreement. True and correct copies of the written MISO Material Contracts have been delivered or made available to SPP prior to the date hereof.

- 6.10 Intellectual Property.** Set forth on Schedule 6.10 is a listing of the Intellectual Property used by MISO in the conduct of its business which is either licensed from a third party or is owned by MISO, and such Intellectual Property includes all of the Intellectual Property necessary to conduct MISO's business substantially as conducted on the date hereof. Except as indicated on Schedule 6.10, MISO has not granted, licensed, sublicensed, assigned, transferred or otherwise conveyed any right, title or interest in or to any of its Intellectual Property to any other person, and, to the knowledge of MISO, no person or entity other than MISO has any right to use, license, sublicense or operate under any of its Intellectual Property. None of MISO's Intellectual Property is subject to any pending or, to the knowledge of MISO, threatened challenge or reversion. To the knowledge of MISO, the use of its Intellectual Property by MISO does not infringe on any proprietary right, trademark, trade name or service mark of any other party, nor has MISO received any written notice of any allegation thereof.
- 6.11 Insurance.** Except as set forth on Schedule 6.11, there are no claims which relate to MISO's business currently pending under any of MISO's insurance policies and, to the knowledge of MISO, there is no basis for any such claims. Copies of all of MISO's insurance policies which relate to its business have been delivered or made available to SPP prior to the date hereof.
- 6.12 Related Party Transactions.** Except as set forth on Schedule 6.12, none of the MISO Material Contracts is between or among MISO, on the one hand, and any MISO Member or any party in any way affiliated with any MISO Member or MISO, on the other hand.
- 6.13 MISO Employees.** Schedule 6.13 is a complete and correct list of all current employees of MISO as of the date hereof (the "MISO Employees"). Except as set forth on Schedule 6.13 and except as may be otherwise construed by law, all of the MISO Employees are employed by MISO on an at-will basis and no MISO Employees are party to any collective bargaining or similar agreement. Schedule 6.13 indicates, as to each MISO Employee as of the date hereof, (i) full or part time status; (ii) job title and function; and (iii) date of hire by MISO. Except as set forth in Schedule 6.13, none of the MISO Employees has notified MISO as of the date hereof that such employee intends to terminate his or her employment.
- 6.14 Tax Returns and Payments.** MISO is exempt from Federal income tax because it qualifies as an organization described in Section 501(c)(4) of the Code. Except as set forth on Schedule 6.14, all tax returns and reports of MISO required to be filed on or before the date hereof have been duly prepared, are accurate and complete in all material respects, and have been timely filed on or before their respective due dates, and all Taxes, if any, with respect to such returns and reports have been timely paid in full by MISO. MISO has fully accrued on its books and has established adequate reserves and made provision for the timely payment of all Taxes payable but not yet due. Except as set forth on Schedule 6.9, there are no actions or proceedings currently pending or, to the knowledge of MISO, proposed or threatened by any taxing authority against MISO.

**6.15 Environmental Matters.**

- (a) MISO is in compliance in all material respects with all applicable Environmental Laws.
- (b) MISO has not received notice or indication advising that MISO is or may be responsible for any investigation or response costs with respect to a release, threatened release or cleanup of any Hazardous Materials arising from current or past activities or operations of MISO.

**6.16 Employee Benefit Plans.**

- (a) Schedule 6.16(a) contains a current, correct and complete list of each Employee Benefit Plan maintained or contributed to by MISO. Copies of the MISO Employee Benefit Plans, including any amendments (and, if applicable, related trust agreements and insurance contracts) have been made available to SPP together with the summary plan description, the most recent determination letter, the most recent annual report (Form 5500 including, if applicable, Schedule B thereto) and the most recent actuarial valuation report prepared in connection with any such plan. MISO does not have any liability with respect to any employee benefit plan, program or arrangement other than with respect to the Employee Benefit Plans listed on Schedule 6.16(a).
- (b) All MISO Employee Benefit Plans conform (and at all times have conformed) in all material respects to, and are being administered and operated (and have at all times been administered and operated) in material compliance with the requirements of all applicable laws including, without limitations, ERISA, the Code and the Age Discrimination in Employment Act, as amended. All returns, reports and disclosures required to be made under ERISA and the Code with respect to the MISO Employee Benefit Plans have been timely filed or made, and all statements made on such returns, reports and disclosures have been true and complete. MISO has not incurred any liability for any tax, excise tax, penalty or fee with respect to any MISO Employee Benefit Plan, and no event has occurred and no circumstance exists or has existed that could give rise to any such liability.
- (c) The MISO Employee Benefit Plan is intended to be qualified under Section 401(a) of the Code and exempt from tax under Section 501(a) of the Code and MISO will apply to the IRS for a determination letter to such effect no later than February 28, 2002, and MISO has no reason to suspect that such application for determination will be denied.
- (d) MISO and its ERISA Affiliates do not sponsor or contribute to, have not in the past sponsored or contributed to, and have no liability with respect to (i) any multi-employer plan (as defined in Section 3(37) of ERISA), or (ii) any non-conforming group health plan (as that term is defined in Code section 5000(c)).
- (e) There are no pending or threatened claims by or on behalf of any such MISO Employee Benefit Plans, or by or on behalf of any individual participants or

beneficiaries of any such MISO Employee Benefit Plans, alleging any violation of ERISA or any other applicable laws, or claiming benefit payments (other than those made in the ordinary operation of such plans), nor is there any basis for such claim. No MISO Employee Benefit Plan is the subject of any pending or threatened investigation, audit, litigation or proceeding by the IRS, the U.S. Department of Labor or the Pension Benefit Guaranty Corporation or any other governmental agency or authority.

- (f) MISO has timely made all required payments and contributions under the MISO Employee Benefit Plans, including the payment of all insurance premiums.
- (g) Except as set forth on Schedule 6.16(g), the execution of this Agreement and performance of the transactions contemplated hereby will not (either alone or on the occurrence of any additional or subsequent events) result in any payment, acceleration, vesting or increase in benefits with respect to any MISO Employee or former employee of MISO.
- (h) Except as set forth on Schedule 6.16(h), MISO does not maintain (and has not maintained) any plan or arrangement that provides post retirement medical benefits, post retirement death benefits or other post retirement welfare benefits, other than to the extent required by Part 6 of Title I of ERISA. MISO does not maintain or contribute to (nor has MISO maintained or contributed to) any “welfare benefit fund” (within the meaning of Section 419 of the Code).
- (i) Any MISO Employee Benefit Plan that is a group health plan (within the meaning of Section 4980D(f)(1) of the Code) complies and has been administered in all material respects in accordance with the applicable requirements of Subtitle K of the Code, Part 7 of Title I of ERISA and all other applicable laws.
- (j) Any MISO Employee Benefit Plan that is a group health plan (within the meaning of Section 4980B(g)(2) of the Code) complies and has been administered in all material respects in accordance with the applicable requirements of Section 4980B of the Code, Part 6 of Title I of ERISA and all other applicable laws.
- (k) No fiduciary, party-in-interest, or disqualified person (as such terms are defined in Section 4975 of the Code and Sections 3(14) and 406 of ERISA) with respect to any MISO Employee Benefit Plan has engaged in any transaction described in Section 406(a) or (b) of ERISA or in any transaction described in Section 4975 of the Code.
- (l) The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, will not involve any transaction which will be prohibited by Section 406 of ERISA or in connection with which a tax could be imposed pursuant to section 4975 of the Code.

**6.17 Reliance.** The foregoing representations and warranties are made by MISO with the knowledge and expectation that SPP is relying thereon in entering into, and performing its obligations under, this Agreement.

**ARTICLE VII**  
**CONDUCT OF BUSINESS**

- 7.1 Conduct of SPP Business.** SPP covenants and agrees with MISO that from the date of this Agreement to the Closing Date, except as expressly contemplated or permitted otherwise by this Agreement or with the prior written consent of MISO:
- (a) The SPP Business will be conducted by SPP in the ordinary course and consistent with past practice, subject to matters beyond SPP's reasonable control.
  - (b) SPP will use all commercially reasonable efforts to preserve the SPP Business, keep available to itself and MISO the present services of the SPP Employees, and preserve for itself and MISO the goodwill of the SPP Members and others with whom business relationships exist.
  - (c) SPP shall not amend its certificate of incorporation, bylaws, the SPP Agreement or other organizational documents.
  - (d) SPP shall not incur or permit to be incurred any indebtedness, except in the ordinary course and consistent with past practice.
  - (e) SPP shall not enter into or, except as may be required by law, modify any SPP Employee Benefit Plan, make any contribution to the SPP Employee Benefit Plans, except as required by the presently existing terms thereof or the policies under which it is operated as of the date hereof.
  - (f) SPP shall not change its method of accounting, except as required by changes in laws or regulations or GAAP.
  - (g) SPP shall not make any capital expenditures in excess of \$75,000 individually or \$200,000 in the aggregate, other than pursuant to binding commitments existing on the date hereof or as otherwise set forth in SPP's budget for 2002. A copy of SPP's budget for 2002 has been previously provided to MISO.
  - (h) SPP will maintain, or cause to be maintained, insurance on the Assets and the SPP Business substantially as in effect as of the date hereof and consistent with commercially reasonable standards.
  - (i) No increase in the base pay, commission rate, bonus or other compensation to any of the SPP Employees will be announced, instituted or paid (except for normal increases and earned bonuses given in the ordinary course of business).
  - (j) No contract, agreement, arrangement or commitment related to the SPP Business or the Assets will be entered into by SPP except in the ordinary course of business and consistent with past practice.

- (k) None of the Assumed Contracts will be terminated, extended or amended by SPP in any respect outside of the ordinary course of business and consistent with past practice.
- (l) SPP will notify MISO within five business days of the withdrawal of or notice of withdrawal by any SPP Member or the termination of any such membership by the Board of Directors of SPP.
- (m) SPP will use commercially reasonable efforts to maintain the existing good condition and repair of the Assets.
- (n) SPP will not sell, transfer, license, otherwise dispose of (other than in the ordinary course of business), or create or permit to become effective any Encumbrance on, any of the Assets (other than the Permitted Encumbrances), nor will SPP agree or commit to do any of the foregoing.
- (o) Upon receipt of actual knowledge thereof, SPP will promptly advise MISO of the commencement or threat against SPP of any Litigation relating to or affecting SPP, the SPP Business or the Assets.
- (p) Neither SPP nor any of its officers, directors, SPP Employees or representatives will, directly or indirectly, solicit, review, discuss, negotiate or otherwise consider or accept any inquiry or proposal relating to the sale of any of the Assets or the SPP Business.

**7.2 Conduct of MISO Business.** MISO covenants and agrees with SPP that from the date of this Agreement to the Closing Date, except as expressly contemplated or permitted otherwise by this Agreement or with the prior written consent of SPP:

- (a) MISO will conduct its business in the ordinary course and consistent with its stated intent to administer its regional tariff by February 2, 2002, subject to matters beyond MISO's reasonable control.
- (b) MISO will use all commercially reasonable efforts to preserve its business, keep available to itself the present services of its employees and preserve the goodwill of its members and others with whom business relationships exist.
- (c) MISO shall not amend its certificate of incorporation, bylaws, the MISO Agreement or other organizational documents.
- (d) MISO shall not incur or permit to be incurred any indebtedness, except in the ordinary course and consistent with past practice, provided, however, that this provision shall not apply to credit facilities in place as of the date hereof, incurred in connection with the transactions contemplated by this Agreement or in connection with membership or affiliation of transmission owners formerly pursuing the formation of the Alliance Regional Transmission Organization.

- (e) MISO shall not enter into or, except as may be required by law, modify any MISO Employee Benefit Plan or make any contribution to the MISO Employee Benefit Plans, except as required by the presently existing terms thereof or the policies under which it is operated as of the date hereof.
- (f) MISO shall not change its method of accounting, except as required by changes in laws or regulations or GAAP.
- (g) MISO shall not make any capital expenditures in excess of \$75,000 individually or \$200,000 in the aggregate, other than pursuant to binding commitments existing on the date hereof or as otherwise set forth in MISO's budget for 2002. A copy of MISO's budget for 2002 has been previously provided to SPP.
- (h) MISO will maintain, or cause to be maintained, insurance on its assets and with respect to its business substantially as in effect as of the date hereof and consistent with commercially reasonable standards.
- (i) No increase in the base pay, commission rate, bonus or other compensation to any of the MISO Employees will be announced, instituted or paid (except for normal increases and earned bonuses given in the ordinary course of business).
- (j) No contract, agreement, arrangement or commitment related to MISO's business or its material assets will be entered into by MISO except in the ordinary course of business and consistent with past practice.
- (k) None of the MISO Material Contracts will be terminated, extended or amended by MISO in any respect outside of the ordinary course of business and consistent with past practice.
- (l) MISO will notify SPP within five business days of the withdrawal of any MISO Member or the termination of any such membership by the Board of Directors of MISO.
- (m) MISO will use commercially reasonable efforts to maintain the existing good condition and repair of its assets.
- (n) Other than in the ordinary course of business, MISO will not sell, transfer, license, otherwise dispose of or create or permit to become effective any Encumbrance on any of its assets, nor will MISO agree or commit to do any of the foregoing.
- (o) Upon receipt of actual knowledge thereof, MISO will promptly advise SPP of the commencement or threat against MISO of any Litigation relating to or affecting the business or operations of MISO.
- (p) Neither MISO nor any of its officers, directors, employees or representatives will, directly or indirectly, solicit, review, discuss, negotiate or otherwise consider or accept any inquiry or proposal relating to MISO's merger or consolidation.

- 7.3 **Access to Information.** From the date of this Agreement to the Closing Date, the parties hereto shall provide each other and their representatives with reasonable access, during normal business hours and upon advance notice, to their officers and employees, books, records, properties and operational information in order that each party will have the opportunity to make reasonable investigation. MISO and SPP will engage and cooperate in the operational planning and preparation of an integration and transition plan for the Resulting Company.
- 7.4 **Best Efforts.** From the date of this Agreement to the Closing Date, MISO and SPP shall use their respective best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary, including such as are necessary under applicable laws and regulations, to consummate the transactions contemplated by this Agreement.
- 7.5 **Litigation.** Between the date hereof and the Closing Date, upon receipt of actual knowledge thereof, each party hereto will promptly advise the other party hereto of the commencement or threat of any Litigation relating to or affecting the transactions contemplated by this Agreement.

## **ARTICLE VIII** **CONDITIONS TO CLOSING; TERMINATION**

- 8.1 **Conditions to the Obligations of Both Parties to Close.** The obligations of MISO and SPP to close the transactions contemplated by this Agreement shall be subject to satisfaction or waiver by MISO and SPP of the following conditions at or prior to the Closing:
- (a) No provision of any applicable law or regulation and no judgment, injunction, order or decree shall prohibit the consummation of the transactions contemplated by this Agreement.
  - (b) MISO and SPP shall have obtained all regulatory and third-party consents, waivers and approvals necessary to consummate the transactions contemplated by this Agreement and as more fully described on Schedule 8.1(b), each without the imposition of any term or condition that could materially reduce the benefit of the transactions contemplated by this Agreement to MISO and SPP, and any waiting periods in respect thereof shall have expired.
  - (c) All amendments to MISO organizational and operational documents contemplated by Section 10.2 hereof shall have been approved and adopted by the MISO Board of Directors and, if necessary, the MISO Members by the requisite vote requirement and become effective, except for such adoption which by its terms cannot become effective until following the Closing.
  - (d) MISO shall have begun administering service under the MISO Open Access Transmission Tariff.

- (e) A FERC Order shall have issued recognizing the Resulting Company as a Regional Transmission Organization (RTO) in compliance with FERC Order 2000.
- (f) A FERC Order shall have issued accepting the Resulting Company Agreement and accepting Schedule 10 of the MISO Open Access Transmission Tariff as the mechanism for recovery of all costs incurred in connection with this transaction.

**8.2 Conditions to the Obligation of MISO to Close.** The obligation of MISO to close the transactions contemplated by this Agreement shall, in addition to satisfaction or waiver by MISO of the conditions set forth in Section 8.1, be subject to satisfaction or waiver by MISO of the following conditions at or prior to the Closing:

- (a) Each of the representations and warranties of SPP made pursuant to this Agreement shall be true and correct as of the date hereof and as of the Closing Date as though made on and as of the Closing Date, except that such representations and warranties expressly made as of a specific date need only be true as of such specified date, and each of the covenants and agreements of SPP to be performed on or prior to the Closing Date shall have been duly performed in all material respects.
- (b) There shall have been no Material Adverse Effect with respect to SPP since December 31, 2001.
- (c) SPP shall have delivered, or caused to be delivered, to MISO at the Closing, duly executed copies of the Bill of Sale, the Assignment and Assumption and the Services Agreement and the other Closing deliveries contemplated by Section 4.2.
- (d) All SPP Members shall have executed a Conditional Withdrawal Agreement, in form and substance acceptable to MISO, and SPP Members representing at least 207,000 GWh of Annual Billing Determinants shall have signed the Resulting Company Agreement, thereby becoming members of the Resulting Company.
- (e) SPP shall have amended or replaced its articles of incorporation, bylaws and the SPP Agreement to provide that, after the Closing Date, SPP shall provide only NERC-related liability council functions.

**8.3 Conditions to the Obligation of SPP to Close.** The obligation of SPP to close the transactions contemplated by this Agreement shall, in addition to satisfaction or waiver by SPP of the conditions set forth in Section 8.1, be subject to satisfaction or waiver by SPP of the following conditions at or prior to the Closing:

- (a) Each of the representations and warranties of MISO made pursuant to this Agreement shall be true and correct as of the date hereof and as of the Closing Date as though made on and as of the Closing Date, except that such representations and warranties expressly made as of a specific date need only be true as of such specified date, and each of the covenants and agreements of MISO

to be performed on or prior to Closing shall have been duly performed in all material respects.

- (b) There shall have been no Material Adverse Effect with respect to MISO since December 31, 2001.
- (c) MISO shall have delivered, or caused to be delivered, to SPP at the Closing, duly executed copies of the Assignment and Assumption and the Services Agreement and the other Closing deliveries contemplated by Section 4.3.
- (d) MISO Members representing at least 372,000 GWh of Annual Billing Determinants shall not have provided the required written notice of their intent to withdraw as members of MISO or the Resulting Company.
- (e) The transactions contemplated by this Agreement shall have been approved by the requisite vote of the SPP Members.

**8.4 Effect of Certain Waiver of Closing Conditions.** If prior to the Closing, either party hereto has knowledge of any breach by the other party of any representation, warranty or covenant contained in this Agreement and such knowledgeable party proceeds with the Closing, such party shall be deemed to have waived such breach, notwithstanding anything to the contrary herein.

**8.5 Termination.** This Agreement may be terminated at any time prior to the Closing:

- (a) by the mutual written consent of MISO and SPP;
- (b) by either MISO or SPP in writing if any court or governmental body or agency thereof shall have enacted, promulgated or issued any statute, rule, regulation, ruling, writ or injunction, or taken any other action, (i) restraining, (ii) enjoining, (iii) prohibiting or (iv) otherwise preventing the parties from the practical realization of the benefits contemplated by this Agreement and all appeals and means of appeal therefrom have been exhausted, and, in the case of clause (iv), MISO and SPP have used their respective best efforts to negotiate a mutually-satisfactory alternative, but have failed to reach an agreement on any such alternative;
- (c) by either MISO or SPP in writing if the Closing shall not have occurred by December 31, 2002, unless the action or inaction of the party seeking to terminate was the cause of or resulted in the failure to close the transactions contemplated by this Agreement;
- (d) by either MISO or SPP in writing if the other shall have been in breach of any representation and warranty in any material respect (as if such representation and warranty had been made on and as of the date hereof and on the date of the notice of breach), or in breach of any covenant, undertaking or obligation contained herein, and such breach has not been cured by the earlier of 15 calendar days after giving of notice to the breaching party of such breach or the Closing Date;

- (e) by MISO in writing if the conditions set forth in Sections 8.1 and 8.2 of this Agreement needing to be fulfilled by SPP shall not have been met by SPP or waived by MISO prior to the date fixed for Closing, provided that MISO's failure to perform an obligation in breach of its obligations under this Agreement was not the cause of, or resulted in, SPP's failure to fulfill any such condition; or
- (f) by SPP in writing if the conditions set forth in Sections 8.1 and 8.3 of this Agreement needing to be fulfilled by MISO shall not have been met by MISO or waived by SPP prior to the date fixed for Closing, provided that SPP's failure to perform an obligation in breach of its obligations under this Agreement was not the cause of, or resulted in, MISO's failure to fulfill any such condition.

**8.6 Effect of Termination.** If this Agreement is terminated pursuant to Section 8.5(a) hereof, this Agreement shall forthwith become null and void and there shall be no liability on the part of any party hereto. In the event of any other termination, the parties shall retain any and all rights, claims or causes of action in existence at the time of such termination which are based upon, or arose incidental to a breach of any covenant, representation or warranty made hereunder.

## **ARTICLE IX** **INDEMNITIES**

**9.1 General Indemnification by SPP.** After the Closing Date, SPP agrees, subject to the other provisions of this Article IX, to protect, defend, indemnify and hold harmless the Resulting Company, its members, directors, officers, employees, representatives, agents and affiliates and their respective successors and assigns, from, against and in respect of any and all losses, costs, damages, charges or expenses of any nature (including reasonable attorney's fees) resulting from or relating to the Retained Liabilities and the Excluded Assets.

**9.2 General Indemnification by the Resulting Company.** After the Closing Date, the Resulting Company agrees, subject to the other provisions of this Article IX, to protect, defend, indemnify and hold harmless SPP, its members, directors, officers, employees, representatives, agents and affiliates, and their respective successors and assigns, from, against and in respect of any and all losses, costs, damages, charges or expenses of any nature (including reasonable attorney's fees) resulting from or relating to the conduct of the SPP Business or the Assumed Liabilities.

**9.3 Notification of Claims.** The parties hereto shall provide each other with (a) written notice of all third party actions, suits, proceedings, claims, demands or assessments subject to the indemnification provisions of this Article IX (collectively, "Third Party Claims") brought at any time following the Closing Date within 30 days of the date such Third Party Claim arises, and (b) prompt written notice of all other claims or demands for indemnification pursuant to the provisions of this Article IX; provided, however, that the failure to provide timely notice shall not affect the indemnification obligations of any party except to the extent such party shall have been materially prejudiced as a result of such failure. The party against whom a Third Party Claim is brought shall make

available to the indemnifying party all relevant information material to the defense of such claim. The indemnifying party shall have the right to control the defense of all Third Party Claims with counsel of its choice, subject to the indemnified party's right to participate in the defense. The indemnified party shall have the right to elect to join or participate in the defense of any Third Party Claim at its sole expense, and no claim shall be settled or compromised without the consent of the indemnified party, which consent shall not be unreasonably withheld or delayed; provided, however, that in the event consent is so withheld, the indemnifying party shall have no liability in excess of the settlement amount for which consent was sought.

- 9.4 Mitigation, Etc.** Any party seeking indemnification for any damages for which it is entitled to seek indemnification shall use its best efforts to mitigate its damages in connection with such indemnity claim. The indemnification obligation of any party shall be adjusted so as to give credit to such party for (i) any tax benefits, to the party seeking indemnification, calculated at the marginal U.S. federal and state corporate tax rates, resulting from the claim for indemnification, except that tax benefits relating to timing differences shall be valued at net present value with a discount rate equal to the indemnified party's average cost of capital for the previous year, or (ii) any other recovery available to the party being indemnified, including, without limitation, insurance, net of any retro-premium adjustment or similar program or plan, and contractual or other rights to indemnification available from third parties.

## **ARTICLE X** **FURTHER COVENANTS**

### **10.1 Resulting Company Employees.**

- (a) The Resulting Company intends to offer employment to all SPP Employees actively employed by SPP and intends to continue to employ the MISO employees as of the Closing Date, provided that nothing contained herein shall obligate the Resulting Company to continue to employ these employees for any specified period of time following the Closing Date.
- (b) SPP shall affirmatively advise the SPP Employees, in accordance with the requirements of the Worker Adjustment and Retraining Notification Act, that their current positions with SPP will terminate as of the Closing Date and that the Resulting Company intends to offer employment to SPP Employees to commence the day following the Closing Date. The Resulting Company shall be responsible for any other notices required by, and all liabilities arising under, the Worker Adjustment and Retraining Notification Act.
- (c) Following the date hereof, the parties shall permit representatives of SPP and MISO, at reasonable times and upon reasonable notice, to examine and inspect records relating to active employees of both parties and to meet with such employees concerning their possible employment with the Resulting Company.

- (d) Effective as of the day following the Closing Date, the Resulting Company shall assume all liability and obligations related to SPP's Employee Benefit Plans. The employee benefits to be provided by the Resulting Company shall, in the aggregate, be comparable to the benefits currently enjoyed by the employees of MISO and SPP. However, the provisions of the preceding sentence shall not obligate the Resulting Company to incur a material increase in the costs of providing such employee benefits. Further, the combined benefit program will be sensitive to late-career employees (defined as either those who are within 10 years of their earliest retirement age or those who are within 15 years of their normal retirement age) and will not result in intentional reductions of employee retirement benefits to existing employees of either party who meet this definition. So long as the intent stated in the preceding three sentences is accomplished, the provisions of this Section 10.1(d) do not prohibit the Resulting Company, in the exercise of its reasonable judgment, from adopting, merging, terminating, or otherwise modifying the terms and provisions of any assumed SPP Employee Benefit Plan. Years of service with SPP (as reflected in the records of SPP) will be deemed to be service with the Resulting Company if the former SPP Employee is having his or her benefit moved from the assumed SPP Employee Benefit Plan to a plan maintained by the Resulting Company.
- (e) Except as may be required by law or as may be necessary to preserve an SPP Employee Benefit Plan's tax qualified status under Section 401 of the Code, prior to the Closing Date, neither SPP nor its ERISA Affiliates will adopt, terminate, amend, extend, or otherwise change any SPP Employee Benefit Plan without the prior written consent of MISO and SPP shall give MISO prior written notice of SPP's intention to take any such action required by law or that is necessary to continue the tax qualified status of any SPP Employee Benefit Plan.

**10.2 Amendments to Certain MISO Documents.** Simultaneously with the Closing, MISO shall amend its certificate of incorporation and its bylaws, and adopt certain amendments to the MISO Agreement which will create the Resulting Company Agreement, so as to effect the intentions of the parties hereto and consummate the transactions contemplated by this Agreement. The amended certificate of incorporation, bylaws and amendments to the MISO Agreement (the Resulting Company Agreement) will be in substantially the form as attached hereto as Exhibits F, G and D, respectively. The Resulting Company Agreement shall be in a form mutually acceptable to and approved by the Boards of Directors of MISO and SPP. MISO and SPP agree that the amendment to MISO's certificate of incorporation will include, among other things, the change of MISO's name to a name mutually acceptable and as agreed to prior to the Closing by the Boards of Directors of MISO and SPP.

**10.3 Resulting Company Operations.** Following the Closing, the Resulting Company will:

- (a) maintain a significant presence in Little Rock, Arkansas; and
- (b) continue to have on file with the FERC Appendix I of the MISO Agreement (in the form in effect on the date of this Agreement) or an appropriate substitute to

accommodate the business needs of Transcos or ITCs, and continue to recognize the proposed memorandum of understanding between SPP and Entergy.

- 10.4 Other Mail and Communications.** SPP shall promptly remit to the Resulting Company any checks, cash, payments, mail or other communications relating to the Assets, the SPP Business or the Assumed Liabilities which are received by SPP after the Closing Date. The Resulting Company shall promptly remit to SPP any checks, cash, payments, mail or other communications relating to the Excluded Assets or the Retained Liabilities which are received by the Resulting Company after the Closing Date.
- 10.5 Taxes.** All tax returns and reports of SPP required to be filed after the Closing Date in respect to any period prior to or through the Closing Date will be duly and timely filed by SPP, with the assistance of and at the expense of the Resulting Company. The Resulting Company shall pay when due any Taxes due with regard to such post-Closing filings, and any sales, transfer, excise or value added which may be imposed by any state or governmental agency in connection with the sale and transfer of the Assets to MISO.
- 10.6 Further Assurances.** Upon the request and at the expense of the Resulting Company, but without further consideration, SPP shall do, execute, acknowledge, deliver and file, or shall cause to be done, executed, acknowledged, delivered and filed, all such further acts, deeds, transfers, conveyances, assignments or assurances as may be reasonably required for the efficient transferring, conveying and assigning to the Resulting Company, or for aiding and assisting in the reducing to possession by the Resulting Company, of any of the Assets.
- 10.7 Expenses and Finder's Fees.** SPP, on the one hand, and MISO, on the other hand, shall each bear their own expenses incurred in connection with the negotiation, execution and performance of this Agreement; provided, however, that any such expenses of SPP that remain unpaid as of the Closing Date shall be included in the Assumed Liabilities to be paid by the Resulting Company. The parties each represent and warrant that they have not engaged or dealt with any broker, investment banker, finder, or agent so as to create or incur any obligation for any brokerage fees, finder's fees or other commissions in connection with this Agreement or the consummation of the transaction contemplated hereby.
- 10.8 Bulk Sales Laws.** SPP covenants that there is no bulk sale, bulk transfer or similar law applicable to the transfer of the Assets pursuant to this Agreement.
- 10.9 Directors.** MISO agrees to take all action necessary to amend its corporate governance documents, effective as of the Closing Date and subject to any required regulatory or member approval, (a) in order to establish for the Resulting Company an eleven person Board of Directors initially consisting of seven members of MISO's Board of Directors (the then-current members of the MISO Board of Directors, excluding the MISO Chief Executive Officer) and four members to be selected by SPP's Board of Directors (from SPP's then duly elected and qualified independent board members) immediately prior to the Closing and (b) to provide that for a period of six (6) months following the Closing Date, the following actions of the Resulting Company can be taken only upon the

affirmative vote of two-thirds of the members of the Resulting Company's Board of Directors:

- (i) the incurrence of any additional indebtedness by the Resulting Company;
- (ii) any merger, consolidation or combination involving the Resulting Company or the sale of all or substantially all of the assets of the Resulting Company;
- (iii) any liquidation or dissolution of the Resulting Company;
- (iv) any significant modification or deviation from the business strategy set forth in the Resulting Company's business plan;
- (v) any material modification to the Resulting Company's then existing budget; and
- (vi) any change in the composition of the Resulting Company's executive management.

**10.10 Disclosure Supplements.** From time to time prior to the Closing Date, each party shall promptly supplement or amend any materials previously disclosed and delivered to the other party pursuant hereto with respect to any matter hereafter arising which, if existing, occurring or known at the date of this Agreement, would have been required to be set forth or described in the Schedules delivered to the other party or which is necessary to correct any information in such materials which has been rendered materially inaccurate thereby; no such supplement or amendment to such materials shall be deemed to have modified the representations, warranties and covenants of the parties for the purpose of determining whether the conditions set forth in Sections 8.2(a) and 8.3 (a) hereof have been satisfied.

## **ARTICLE XI** **GENERAL**

**11.1 Waiver.** Any failure of the parties hereto to comply with any of its obligations or agreements or to fulfill any conditions herein contained may be waived only by a written waiver from the other party. No failure by any party hereto to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder by such party preclude any other or future exercise of that right or any other right hereunder by that party.

**11.2 Notices.** All notices, requests or other communications required or permitted hereunder shall be given in writing by hand delivery, registered mail, certified mail or overnight courier, return receipt requested, postage prepaid, to the party to receive the same at its respective address set forth below, or at such other address as may from time to time be designated by such party to the other in accordance with this Section 11.2:

If to SPP, to: Southwest Power Pool, Inc.  
415 N. McKinley  
Little Rock, Arkansas 72205  
Attn: John Marschewski

with a copy to: Wright, Lindsey & Jennings LLP  
200 West Capitol Avenue  
Suite 2200  
Little Rock, Arkansas 72201  
Attn: John R. Tisdale, Esq.  
Walter E. May, Esq.

If to MISO, to: Midwest Independent Transmission System Operator, Inc.  
701 City Center Drive  
Carmel, Indiana 46032  
Attn: James P. Torgerson

with copy to: Duane Morris  
1667 K Street, N.W., Suite 700  
Washington, D.C. 20006  
Attn: Daniel P. Weitzel, Esq.

All such notices and communications hereunder shall be deemed given when received, as evidenced by the acknowledgment of receipt issued with respect thereto by the applicable postal authorities or the signed acknowledgment of receipt of the person to whom such notice or communication shall have been addressed.

- 11.3 No Third Party Beneficiaries.** Neither this Agreement nor any provision hereof, nor any Schedule hereto or document executed or delivered herewith, shall create any right in favor of or impose any obligation upon any person or entity other than the parties hereto and their respective successors and permitted assigns other than as set forth in Article IX hereof.
- 11.4 Headings.** Captions and paragraph headings used herein are for convenience only, are not a part of this Agreement and shall not be used in construing it.
- 11.5 Entire Agreement.** The making, execution and delivery of this Agreement by the parties has been induced by no representations, statements, warranties or agreements other than those herein expressed. This Agreement, together with the Exhibits, Schedules and the other agreements and documents referred to herein, embodies the entire understanding of the parties hereto and there are no other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof, except as specifically referenced herein. This Agreement may be amended or modified only by a written instrument signed by the parties. This Agreement supersedes and terminates all prior discussions, negotiations, understandings, arrangements and agreements between the parties relating to the subject matter hereof.

- 11.6 Counterparts.** This Agreement may be executed in any number of duplicate counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.
- 11.7 Assignability.** Neither of the parties hereto may assign this Agreement or its rights and obligations hereunder to any other person or entity without the prior written consent of the other. Any impermissible attempted assignment of this Agreement without such prior written consent shall be void.
- 11.8 Successors and Assigns.** This Agreement and the provisions hereof shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the parties hereto.
- 11.9 Survival of Representations, Warranties and Covenants.** All representations, warranties and covenants in this Agreement or in any instrument delivered pursuant hereto shall expire on, and be terminated and extinguished, on the Closing Date other than covenants that by their terms are to be performed after the Closing Date, including, without limitation, the covenants set forth in Article IX and Sections 10.1(d), 10.3, 10.4, 10.5, 10.6, and 10.9 hereof.
- 11.10 Knowledge.** Except as otherwise expressly provided for herein, the term “SPP’s knowledge,” or words to that effect shall mean the knowledge of the officers and directors of SPP and the term “MISO’s knowledge,” or words to that effect shall mean the knowledge of the officers and directors of MISO, in each case following reasonable inquiry.
- 11.11 Remedies.** The parties acknowledge that either party’s breach of any provision of this Agreement will cause substantial, irreparable harm to the other party, which cannot be adequately compensated by monetary damages alone. In the event of either party’s violation or threatened violation of any provision of this Agreement, such party agrees that the other party, without limiting any other legal or equitable remedies available to it, shall be entitled to equitable relief by injunction or otherwise from any court of competent jurisdiction.
- 11.12 Governing Law.** The parties hereto have agreed that the validity, construction, operation and effect of any and all of the terms and provisions of this Agreement shall be determined and enforced in accordance with the substantive laws of the State of Delaware without giving effect to principles of conflicts of law thereunder.
- 11.13 Construction.** The parties hereto agree that this Agreement is the product of negotiation between sophisticated parties, each of which were represented by counsel, and each of whom had an opportunity to participate in and did participate in, the drafting of each provision hereof. Accordingly, ambiguities in this Agreement, if any, shall not be construed strictly or in favor of or against any party hereto but rather shall be given a fair and reasonable construction without regard to the rule of contra proferentum.
- 11.14 Public Announcements.** MISO and SPP shall agree with each other as to the form and substance of any press release related to this Agreement or the transactions contemplated

hereby, and consult with each other as to the form and substance of other public disclosures which may relate to the transactions contemplated by this Agreement, provided, however, that nothing contained herein shall prohibit either party, following notification to the other party, from making any disclosure which is required by law or regulation.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers the day and year first written above.

**MIDWEST INDEPENDENT  
TRANSMISSION SYSTEM  
OPERATOR, INC.**

**SOUTHWEST POWER POOL, INC.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

## **EXHIBITS**

- A - Form of Assignment and Assumption Agreement
- B - Form of Bill of Sale
- C - Form of Conditional Withdrawal Agreement
- D - Form of Resulting Company Agreement
- E - Form of Services Agreement
- F - Form of Amended Certificate of Incorporation
- G - Form of Amended Bylaws

## **SCHEDULES**

1.1	--	Permitted Encumbrances
2.1(b)	--	Tangible Personal Property relating to the Business
2.1(d)	--	Permits relating to the Business
2.1(f)	--	Intellectual Property relating to the Business
2.1(g)	--	Assumed Real Property Leases
2.1(h)	--	Contracts relating to the Business
2.2	--	Excluded Assets
2.4	--	Excluded Liabilities
3.2	--	Allocation of the Consideration
5.3(a)	--	Breach of Contract
5.4	--	Litigation
5.6(b)	--	Financial Statements
5.7(a)	--	Title to Assets
5.7(b)	--	Tangible Personal Property in Excess of \$10,000
5.9	--	Contracts
5.10	--	Intellectual Property
5.11	--	Insurance Claims
5.12	--	Related Party Transactions
5.13	--	SPP Employees
5.14	--	Tax Matters
5.16(a)	--	SPP Employee Benefit Plans
5.16(e)	--	Violations of Applicable Law
5.16(g)	--	Benefit Increase
5.16(h)	--	Post Retirement Payments
6.3(a)	--	Breach of Contract
6.4	--	Litigation
6.6(b)	--	Financial Statements
6.7(a)	--	Title to Assets
6.9	--	Contracts
6.10	--	Intellectual Property
6.11	--	Insurance Claims
6.12	--	Related Party Transactions
6.13	--	MISO Employees
6.14	--	Tax Matters
6.16(a)	--	MISO Employee Benefits Plans
6.16(g)	--	Benefit Increase
6.16(h)	--	Post Retirement Payments
8.1(b)	--	Consents, Waivers and Approvals

**FORM OF  
ASSIGNMENT AND ASSUMPTION AGREEMENT**

This **ASSIGNMENT AND ASSUMPTION AGREEMENT** is made and entered into effective as of midnight on \_\_\_\_\_, 2002, by and between **SOUTHWEST POWER POOL, INC.**, a nonprofit, non-stock Arkansas corporation (“Assignor”) and **MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.**, a not-for-profit, non-stock Delaware corporation (“Assignee”).

RECITALS

A. Pursuant to the Purchase and Assumption Agreement dated as of \_\_\_\_\_, 2002, by and between Assignor and Assignee (the “Purchase Agreement”), Assignor has agreed to sell, convey, transfer, assign, grant and deliver to Assignee all of the tangible and intangible assets relating to or used in connection with the SPP Business (as such term is defined in the Purchase Agreement), other than the Excluded Assets (as such term is defined in the Purchase Agreement).

B. The Purchase Agreement requires Assignor and Assignee to execute and deliver an agreement by which, in exchange for the sale, conveyance, transfer, assignment, grant and delivery of the assets, Assignee agrees to assume, pay, perform and discharge all obligations, duties and liabilities of Assignor of whatever kind or nature relating to the assets or arising in connection with the operation of the SPP Business, except for Retained Liabilities (as such term is defined in the Purchase Agreement).

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in the Purchase Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignor hereby assigns, conveys, transfers and sets over to Assignee all of Assignor’s right, title and interest in and to the fixtures, accounts, accounts receivable, contracts, contract rights, agreements, leases, licenses, permits, franchises, commitments and undertakings listed in Schedule 1 attached hereto (the “Assets”), subject to all the restrictions, disabilities, debts, liabilities, duties and obligations of Assignor associated therewith, and Assignee hereby accepts such assignment.

2. Except for Retained Liabilities, Assignee hereby undertakes, assumes, and agrees to pay, perform and discharge all unperformed and unfulfilled debts, liabilities, duties and obligations of Assignor, of whatever kind or nature, relating to the Assets or arising in connection with the operation of the SPP Business, including, without limitation, the following (collectively, the “Assumed Liabilities”):

(a) all liabilities and obligations of Assignor under the Assumed Contracts, regardless of the time at which such liabilities and obligations were incurred;

(b) all obligations of Assignor related to its debt, whether long-term or short-term, and lines of credit; and

(c) any obligation of Assignor to repay certain members of Assignor funds advanced by such members in excess of the amounts scheduled to be paid as the regional transmission service administration fee, pursuant to the terms of the Assignor's Bylaws;

and Assignee further agrees that any such debts, liabilities, duties and obligations may be enforced against it to the same extent as if such debts, liabilities, duties and obligations had been incurred or contracted by it; provided, however, that nothing contained herein shall require Assignee to pay or discharge any debts, liabilities, duties or obligations expressly assumed hereby so long as Assignee shall in good faith contest or cause to be contested the amount or validity thereof.

3. This Assignment and Assumption Agreement is made pursuant to, and subject to the terms of, the Purchase Agreement, including, without limitation, the provisions of Section 2.3(b) thereof as to agreements the assignment of which would constitute a breach by Assignor, and the provisions of Article IX thereof as to indemnification. Capitalized terms used in this Assignment and Assumption Agreement (including the Schedule hereto) and not defined herein are used as defined in the Purchase Agreement.

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IN WITNESS WHEREOF, the parties hereto have duly executed this Assignment and Assumption Agreement effective as of the date and year first above written.

**ASSIGNOR:**

SOUTHWEST POWER POOL, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

MIDWEST INDEPENDENT TRANSMISSION  
SYSTEM OPERATOR, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **Schedule 1 to Assignment and Assumption Agreement**

**FORM OF  
BILL OF SALE**

KNOW ALL MEN BY THESE PRESENTS THAT:

**SOUTHWEST POWER POOL, INC.**, a nonprofit, non-stock Arkansas corporation (“Seller”), for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration in hand paid and delivered by **MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.**, a not-for-profit, non-stock Delaware corporation (“Buyer”), the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, transfer and deliver to Buyer the goods and chattels described on Exhibit A attached hereto and incorporated herein.

TO HAVE AND TO HOLD the same unto the said Buyer and its successors and assigns forever.

Seller does hereby warrant and agree to defend the title to all such property for the benefit of Buyer and its successors and assigns, against all persons whomsoever, except persons claiming under or pursuant to liabilities of Seller which are assumed by Buyer pursuant to the terms of the Purchase and Assumption Agreement dated \_\_\_\_\_, between Buyer and Seller.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale effective as of midnight on \_\_\_\_\_, 200\_\_.

SOUTHWEST POWER POOL, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF ARKANSAS

COUNTY OF PULASKI

On this the \_\_\_th day of \_\_\_\_\_, 200\_\_, before me, a Notary Public, personally appeared \_\_\_\_\_, who acknowledged that he/she is \_\_\_\_\_ of Southwest Power Pool, Inc. and that, in such capacity, he/she executed the foregoing instrument for the purposes and consideration mentioned therein.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

Description of Goods and Chattels

## **CONDITIONAL WITHDRAWAL AGREEMENT**

This **CONDITIONAL WITHDRAWAL AGREEMENT** (“Agreement”) is made as of \_\_\_\_\_, 2002, by and among **SOUTHWEST POWER POOL, INC.** (“SPP”) and the undersigned parties (each, a “Member” and, collectively, the “Members”), each of whom is a signatory to that certain Southwest Power Pool Membership Agreement dated July 1999 (the “SPP Membership Agreement”).

### **RECITALS**

A. SPP and Midwest Independent Transmission System Operator, Inc. (“MISO”) have entered into a Purchase and Assumption Agreement dated as of \_\_\_\_\_, 2002 (the “Purchase Agreement”), under which MISO has agreed to purchase substantially all of SPP’s tangible and intangible assets and assume substantially all of SPP’s obligations, as of the closing date described therein (the “Closing Date”).

B. It is the intention of SPP and MISO that, following the Closing Date, MISO (as restructured in accordance with the terms of the Purchase Agreement) will make available to such of the Members who elect to become members of MISO substantially the same services currently provided them under the SPP Membership Agreement, excluding only NERC-related reliability council functions that will remain with SPP.

C. The closing of the transactions contemplated by the Purchase Agreement (the “Closing”) is subject to the satisfaction of certain conditions, including the conditions that all signatories to the SPP Membership Agreement either agree to withdraw from the SPP Membership Agreement or are removed from membership pursuant to the SPP Bylaws and, further, that SPP members representing a specified minimum amount of Annual Billing Determinants, as defined in the Purchase Agreement, have executed the membership agreement of MISO.

D. The Members and SPP intend that certain obligations between them that arise under the SPP Membership Agreement and survive the withdrawal of the Members shall be assigned to and assumed by MISO upon the Closing.

E. SPP has previously collected amounts from the Members to cover tariff income shortfalls, and may collect additional amounts prior to the Closing Date. Any amounts so collected are subject to repayment under the Repayment Policy adopted by the SPP Board of Directors at the meeting held on November 8-9, 1999 (the “Repayment Policy”). The exact amount to be repaid to the Members by SPP will be determined as of the Closing Date. Concurrent with the Closing, SPP will issue promissory notes to the Members representing such repayment and, pursuant to the Purchase Agreement, the SPP promissory notes and all obligations thereunder will be assumed by MISO immediately following the Closing.

F. Upon a Member’s withdrawal from SPP, it becomes obligated to pay to SPP its pro rata share of all financial obligations of SPP incurred prior to such withdrawal. If the

Member chooses not to become a member of MISO following its withdrawal from the SPP Membership Agreement pursuant to this Agreement, the Member shall issue to SPP a promissory note representing the Member's obligation to pay to SPP its pro rata share of all financial obligations of SPP incurred prior to the Closing Date, whether or not such financial obligations are then presently due and payable. The exact amount of the promissory note to be issued by the Member to SPP will be determined as of the Closing Date, which will also be the date upon which the Member's promissory note will be issued. It is expressly understood by the Member that the Member's promissory note and all rights thereunder may be transferred and assigned to MISO.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, SPP and the Members hereby agree as follows:

1. **Conditional Withdrawal of Members.** Upon the terms and subject to the conditions set forth herein, and as of the Effective Time (as defined in Section 5 below), each Member shall be deemed to have withdrawn as a member of SPP and from the SPP Membership Agreement and shall thereafter have the rights and obligations of a withdrawing member as provided in the SPP Membership Agreement, in Section 4.2 and elsewhere, and the rights and obligations provided in this Agreement. SPP and each Member hereby consent to withdrawals effected under this Agreement notwithstanding the fact that such withdrawals fail to comply with all the terms set forth in the SPP Membership Agreement pertaining to Member withdrawals. Following the Member's withdrawal from the SPP Membership Agreement and its ceasing to be a member of SPP, the Member has the express right to rejoin, at no cost or charge, SPP in its capacity as the provider of services in connection with SPP's NERC-related reliability functions.

2. **Consent to Assignment and Assumption.** At the Effective Time, some or all of the rights and obligations of SPP under the SPP Membership Agreement (which, in light of the withdrawal or removal of all signatories to the SPP Membership Agreement, shall consist only of rights and obligations in respect of withdrawing members, herein called "Withdrawn Member Obligations") may, at MISO's discretion, be assigned to and assumed by MISO. The following Withdrawn Member Obligations shall be assigned to and assumed by MISO.

(a) the obligations of the Members to pay, and the corresponding rights of SPP to collect from the Members, any assessments under the SPP Membership Agreement that are accrued and unpaid at the Effective Time; and

(b) the obligations of the Members to pay, and the corresponding rights of SPP to collect from the Members, their respective pro rata shares of all financial obligations of SPP incurred prior to the Effective Time, whether or not such obligations are then due and payable, including but not limited to obligations in respect of SPP's \$25 Million Senior Unsecured Notes, all as specifically described in Section 4 below.

Each Member (regardless of whether it becomes a member of MISO) hereby (i) consents to the assignment and assumption of the Withdrawn Member Obligations and (ii) agrees that the Withdrawn Member Obligations shall be valid, binding and enforceable between it and MISO,

and that MISO, as assignee, shall be entitled to enforce any of the Withdrawn Member Obligations.

3. **Repayment of Tariff Income Shortfalls.** SPP and the Members hereby agree that the attached Schedule 1 accurately reflects, as of February \_\_, 2002 , the repayment obligations of SPP to the various SPP members under the Repayment Policy (such repayment obligations, together with any additional repayment obligations accrued during the period between February \_\_, 2002 and the Effective Date being referred to, collectively, as the “Repayment Obligations”). Simultaneously with the Closing, SPP agrees that it shall issue to each Member a promissory note, substantially in the form attached hereto as Exhibit A, in the principal amount of the Repayment Obligation then accrued in respect of such Member (collectively, the “SPP Notes”). The Members (regardless of whether they become members of MISO) hereby agree that such SPP Notes, when issued, will constitute full satisfaction for the amounts payable under the Repayment Policy, and consent to the assignment to, and assumption by, MISO of the SPP Notes at the Effective Time.

4. **Payment by the Member of Obligations Upon Withdrawal.** SPP and the Members hereby agree that any Member which elects not to become a member of MISO, notwithstanding such Member’s withdrawal as a member of SPP and from the SPP Membership Agreement pursuant to the terms of this Agreement, will issue, as of the Effective Time, a promissory note payable to SPP representing such Member’s obligation to pay to SPP upon withdrawal its pro rata share of all financial obligations of SPP incurred prior to its withdrawal as of the Effective Time, whether or not such financial obligations are then presently due and payable. As of February \_\_, 2002, the amount of each Member’s obligation is reflected on Schedule 2. The amount of each Member’s obligation will be recalculated on or before, but as of, the Effective Time. Simultaneously with the Closing, each Member which elects not to become a member of MISO agrees that it shall issue to SPP a promissory note, substantially in the form attached hereto as Exhibit B, in a principal amount equal to the Member’s obligation as of the Effective Time (the “Member Note”). SPP hereby agrees that such Member Note when issued, will constitute full satisfaction for the amounts payable by such Member to SPP. The Member hereby agrees and consents to the transfer of the Member Note and all rights thereunder to MISO.

5. **Effectiveness.** Section 1 of this Agreement shall become effective upon the Closing described in the Purchase Agreement, and the term “Effective Time” as used in this Agreement shall mean the effective time of the Closing under the Purchase Agreement. Notwithstanding anything to the contrary herein, Section 1 of this Agreement shall not become effective except upon satisfaction of each of the following conditions:

(a) All of the signatories to the SPP Membership Agreement shall have signed this Agreement or been removed as members of SPP under the SPP Bylaws prior to the Effective Time and none of the Members that have signed this Agreement shall have taken any action to withdraw from or disavow its obligations under this Agreement;

(b) All of the conditions precedent to the Closing described in the Purchase Agreement shall have been satisfied or waived; and

(c) SPP shall have issued the SPP Notes as provided in Section 3.

Should any Member described in Section 4 above refuse to execute and deliver its Member Note, SPP (or MISO as SPP's assignee) shall be entitled to withhold the issuance of such Member's SPP Note and pursue and enforce its rights under the SPP Membership Agreement and this Agreement or otherwise under applicable law for collection in full of the amounts payable by such Member to SPP plus reasonable attorneys' fees.

This Agreement shall be void and of no further force and effect if, and at the same time as, the Purchase Agreement shall be terminated for any reason.

6. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any counterpart signature page delivered by facsimile transmission shall be deemed to be and have the same force and effect as an originally executed signature page. This Agreement shall be binding, as between SPP and any Member, upon such Member's execution and delivery to SPP of the Member's counterpart signature page, subject to approval(s) of federal or state regulatory agencies, if any, that may be required to be obtained by such Member.

7. **Assignment.** SPP may, at the Effective Time or any time thereafter, assign all or part of its rights under this Agreement to MISO.

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned, by its duly authorized officer, has caused this Conditional Withdrawal Agreement to be signed as of the date set forth first above, to be effective subject to the conditions recited therein.

SOUTHWEST POWER POOL, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\*\*\*\*\*

IN WITNESS WHEREOF, the undersigned, by its duly authorized officer, has caused this Conditional Withdrawal Agreement to be signed as of the date set forth first above, to be effective subject to the conditions recited therein.

MEMBER COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Schedule 1 to Conditional Withdrawal Agreement**

Repayment Obligations as of \_\_\_\_\_, 2002

**Schedule 2 to Conditional Withdrawal Agreement**

Members Pro Rata Portion of SPP Financial Obligations as of \_\_\_\_\_, 2002

**Exhibit A to Conditional Withdrawal Agreement**

Form of SPP Note

PROMISSORY NOTE

\$ \_\_\_\_\_

Little Rock, Arkansas  
\_\_\_\_\_, 2002

For value received, SOUTHWEST POWER POOL, INC. (“Maker”) promises to pay to \_\_\_\_\_ the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), without interest. Principal shall be due and payable in nine (9) equal annual installments, the first such installment being due and payable on the second (2d) anniversary of the date of this promissory note and subsequent installments being due and payable on each anniversary thereafter until paid in full.

Maker shall have the right to prepay all or any part of the amount due hereunder without penalty at any time.

If this obligation after default is placed in the hands of an attorney for collection, Maker agrees to pay the holder, as an additional sum, a reasonable attorney’s fee not to exceed ten percent (10%) of the unpaid principal.

Maker hereby waives presentment for payment, notice of non-payment and protest.

Maker’s obligations hereunder may be assigned to Midwest Independent Transmission System Operator, Inc. (“MISO”) in connection with the transactions contemplated by the Purchase and Assumption Agreement, dated \_\_\_\_\_, 2002, between Maker and MISO, and, upon such assignment, shall be the exclusive obligations of MISO.

SOUTHWEST POWER POOL, INC.

By \_\_\_\_\_  
Name:  
Title:

**Exhibit B to Conditional Withdrawal Agreement**

Form of Member Note

PROMISSORY NOTE

\$ \_\_\_\_\_

[City, State]  
\_\_\_\_\_, 2002

For value received, \_\_\_\_\_ (“Maker”) promises to pay to Southwest Power Pool, Inc. or its assigns the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), without interest. Principal shall be due and payable in \_\_\_\_\_ (\_\_\_\_\_) equal annual installments, the first such installment being due and payable on the \_\_\_\_\_ (\_\_\_\_\_) anniversary of the date of this promissory note and subsequent installments being due and payable on each anniversary thereafter until paid in full.

Maker shall have the right to prepay all or any part of the amount due hereunder without penalty at any time.

If this obligation after default is placed in the hands of an attorney for collection, Maker agrees to pay the holder, as an additional sum, a reasonable attorney’s fee not to exceed ten percent (10%) of the unpaid principal.

Maker hereby waives presentment for payment, notice of non-payment and protest.

Southwest Power Pool, Inc.’s interests herein and rights hereunder may be assigned to Midwest Independent Transmission System Operator, Inc. (“MISO”) in connection with the transactions contemplated by the Purchase and Assumption Agreement, dated \_\_\_\_\_, 2002, between Southwest Power Pool, Inc. and MISO. Maker may not transfer or assign its obligations under this note without holder’s prior consent.

[MAKER NAME]

By \_\_\_\_\_  
Name:  
Title:

AGREEMENT OF  
TRANSMISSION FACILITIES OWNERS TO ORGANIZE  
THE  
MIDWEST INDEPENDENT TRANSMISSION SYSTEM  
OPERATOR, INC., A DELAWARE NON-STOCK CORPORATION

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## **APPENDICES**

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**Appendix H** - Transmission System Facilities

**Appendix I**      Open Architecture  
                         Independent Transmission Companies

## Article One

THIS AGREEMENT, including all appendices attached hereto (hereinafter "Agreement"), is entered into by the undersigned owners of electric transmission facilities for the purpose of organizing the Midwest Independent Transmission System Operator, Inc., a Delaware non-stock corporation (hereinafter "Midwest ISO").

### ARTICLE ONE

#### DEFINITIONS

##### I. In General.

Unless the context otherwise specifies or requires, the following terms used in this Agreement, or in any appendix to this Agreement, shall have the respective meanings set forth below. Additional terms are defined for convenience of reference in other provisions of this Agreement. When used in this Agreement, or in any appendix to this Agreement, such additional terms shall have the respective meanings set forth in such other provisions of this Agreement.

**A. Agency Agreement.** The agreement appended hereto as Appendix G which allows Non-transferred Transmission Facilities to be offered for transmission service under the Transmission Tariff.

**B. Effective Date.** The effective date as to any signatory to this Agreement is the date this Agreement is signed by the signatory, except as to Governmental Entities, as to whom this Agreement will become effective only upon fulfillment of the conditions specified in Article Seven, Paragraph C of this Agreement.

**Article One**

**C. FERC.** The Federal Energy Regulatory Commission, or any successor agency.

**D. Good Utility Practice** . Any of the 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 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. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be a range of acceptable practices, methods, or acts generally accepted in the region.

**E. He, Him, or His**. Includes "she," "her", or "hers", respectively.

**F. Member**. A person or business entity which is (i) an Eligible Customer, as defined in the Transmission Tariff, or (ii) an Owner, as defined herein, and which pays to the Midwest ISO, the non-refundable membership fees as required herein. Such person or entity shall be a Member during the period covered by the applicable membership fees unless earlier terminated pursuant to this Agreement.

**G. Non-owner Member**. A Member which is not an Owner.

## Article One

**H. Non-transferred Transmission Facilities.** The booked transmission facilities not identified in Appendix H to this Agreement which are the subject of the Agency Agreement.

**I. Owner.** A utility or other entity which owns, operates, or controls facilities for the transmission of electricity in interstate commerce (as determined by the Midwest ISO by applying the seven-factor (7-factor) test of the FERC set forth in FERC Order No. 888, 61 Fed. Reg. 21,540, 21,620 (1996), or any successor test adopted by the FERC) and which is a signatory to this Agreement. A public utility holding company system shall be treated as a single Owner for purposes of this Agreement. Each Owner shall pay the applicable membership fees and become a Member. Any termination of a utility's or entity's status as an Owner shall be determined pursuant to this Agreement.

**J. Transfer Date.** The date established pursuant to Article Two, Section X, Paragraph B of this Agreement.

**K. Transmission Tariff.** The transmission tariff on file with the FERC under which the Midwest ISO will offer transmission service, or any successor tariff.

**L. Transmission System.** The transmission facilities of the Owners which are committed to the operation of the Midwest ISO by this Agreement. These facilities shall include (i) all networked transmission facilities above 100 kilovolts (hereinafter "kV"); and (ii) all networked transformers where the two (2) highest voltages qualify under the voltage criteria of item (i) above. The facilities may also include other facilities that the Midwest

**Article One**

ISO directs the Owner(s) to assign to it subject to the procedures set forth in Appendix B to this Agreement. The facilities comprising the Transmission System are identified in Appendix H to this Agreement. Appendix H shall be amended from time to time to reflect the addition of facilities to, or removal of facilities from, the Transmission System.

**M. User.** A Transmission Customer under the Transmission Tariff or an entity that is a party to a transaction under the Transmission Tariff.

**Article Two**

**ARTICLE TWO**

**ORGANIZATION AND GOVERNANCE OF THE MIDWEST ISO**

**I. Character Of The Organization.**

**A. Organization of Non-stock, Not-for-profit Corporation.**

1. This Agreement sets forth the terms and conditions pursuant to which the Midwest ISO shall be governed and, to the extent provided herein, pursuant to which it shall be operated.

2. The Midwest ISO is to be organized as a non-stock, not-for-profit corporation, pursuant to Title 8, Chapter 1 of the laws of the State of Delaware. The Midwest ISO is not to be organized for profit and shall be operated exclusively for the promotion of social welfare, in furtherance of the public policy reflected in the Order of the FERC approving this Agreement and FERC Order No. 888. The Midwest ISO intends to file an application with the Department of the Treasury, Internal Revenue Service, for recognition of exemption from federal taxation pursuant to Section 501 of the Internal Revenue Code of 1986, as amended, or a successor provision (hereinafter "Internal Revenue Code").

3. No part of the net earnings, if any, of the Midwest ISO shall inure to the benefit of any Midwest ISO Member, Director, Officer, employee, or any other interested private person. The Midwest ISO is authorized and empowered to pay reasonable compensation for services actually rendered and to make payments or distributions in furtherance of the purposes and objectives set forth in this Agreement, the attachments hereto, and the Transmission Tariff. No

## Article Two

substantial part of the activities of the Midwest ISO shall be carrying on propaganda or otherwise attempting to influence legislation. The Midwest ISO shall not participate in or intervene in any political campaign on behalf of any candidate for public office.

4. Notwithstanding any other provision of this Agreement, if the Internal Revenue Service determines that the Midwest ISO qualifies as a tax-exempt, not-for-profit corporation, the Midwest ISO shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt from taxation under the Internal Revenue Code, or successor provisions in any subsequent federal tax laws, or such other provision or successor provisions under which the Internal Revenue Service may recognize that the Midwest ISO is exempt from taxation. If the Midwest ISO does not qualify for such tax exemption, the Midwest ISO shall, consistent with its other obligations under this Agreement, minimize its federal and state tax obligations.

**B. Declaration.** By agreeing to and executing this Agreement, the Owners declare that (i) the Transmission System committed to the operation and control of the Midwest ISO, (ii) the Non-transferred Transmission Facilities, and (iii) all revenues from the provision of transmission service provided by the Midwest ISO shall be managed, administered, received, and collected, in the manner and subject to the terms and conditions set forth in this Agreement and any amendments to this Agreement.

## Article Two

**C. Appendices.** This Agreement shall include all appendices, and, in the event of a conflict between this Agreement and any appendix, the appendix shall prevail as the intent of the signatories. All appendices to this Agreement are incorporated into this Agreement and expressly made a part hereof. In the event of a conflict between this Agreement, including any appendices, and the Transmission Tariff, the Transmission Tariff shall prevail as the intent of the signatories.

**D. Purpose of Authorization.** The authorization granted by the Owners to the Midwest ISO, subject to the terms of this Agreement, shall be sufficient to commit the operation and control of the Transmission System to the Midwest ISO for the following three purposes: (i) providing non-discriminatory open access transmission service over the Transmission System to transmission customers, including the Owners, who may lawfully request such service pursuant to a single tariff filed with the FERC; (ii) receiving funds associated with transmission services from transmission customers solely as agent for the Owners or their designee(s) and distributing such funds to the Owners or their designee(s) in accordance with this Agreement and Appendix C to this Agreement; and (iii) being responsible for regional system security, in accordance with the provisions of this Agreement. Such authorization shall be effective on the Transfer Date. With regard to the Non-transferred Transmission Facilities, the Midwest ISO shall have such authority as is provided for in the Agency Agreement attached hereto as Appendix G. During the Transition Period, as defined in Appendix C to this Agreement, the Owners reserve for themselves the right to use their own

## Article Two

transmission facilities to the extent required to transmit electric power and energy to their customers being served under bundled rates comparable to firm service under the Transmission Tariff.

**E. Title to Remain with Owners.** Legal and equitable title to the respective properties comprising the Transmission System, including all land and land rights, and to all transmission facilities which they may hereafter build or acquire, in accordance with Appendix B to this Agreement, shall remain with each respective Owner (unless the Owner transfers title to another entity), and is not changed by this Agreement. The respective Owners shall retain all rights incident to such legal and equitable title, including, but not limited to, the right, subject to applicable federal or state regulatory approvals, to build, acquire, sell, dispose of, use as security, convey any part of their property, or use such property for purposes other than providing transmission services (such as the use of such property for telecommunications purposes), provided that the exercise of any such rights shall not impair the reliability of the Transmission System.

**F. Bylaws.** The Bylaws of the Midwest ISO shall at all times be consistent with this Agreement and any amendments thereto. Appendix F to this Agreement shall be the initial Bylaws of the Midwest ISO.

## II. Name, Location, And Start-up Functions.

**A. Name.** The name of the corporation is the Midwest Independent Transmission System Operator, Inc., in which name it may make and execute contracts and all kinds of instruments, acquire and convey real or personal

## Article Two

property, sue and be sued, and conduct business, all as provided by applicable law and pursuant to the terms and conditions of this Agreement.

**B. Principal Office.** The principal office of the Midwest ISO shall be determined by the initial Board of Directors.

**C. Place of Business.** The Board may establish such branch offices or places of business as it shall determine to be in the best interests of the Midwest ISO consistent with the provisions of Article Three, Section IV, Paragraph F of this Agreement.

**D. Start-up.** The Owners may select and employ a person or an entity (or persons or entities) to perform such administrative and start-up functions as in the Owners' judgment may be necessary or desirable until the Board is elected. Such person or entity shall serve in such capacity until the election of the initial Board, and, during such service, shall exercise the authority and perform the duties of the Board and the President.

## Article Two

### III. Board Of Directors.

#### A. In General.

1. Initial Board of Directors. There shall be a Board of Directors of the Midwest ISO (hereinafter sometimes referred to as "Board"), consisting of seven (7) persons plus the President. The initial Board shall be elected by the Members at their initial meeting as specified in Article Two, Section V, Paragraph B of this Agreement from a slate of candidates presented to them by an independent executive search firm chosen by a majority vote of the signatories to this Agreement, with each signatory having one vote. Such firm shall select such candidates consistent with the qualification requirements set forth in Subparagraph 2 of this Paragraph A. The slate shall include at least two (2) candidates with the appropriate type of qualifications for each Board position. Each Member shall be entitled to cast a single vote for each of the seven (7) positions on the Board from among the candidates for each position. The candidates with the most votes shall fill the Director positions for which they were nominated. In the event of a tie among the candidates for a Board position, one (1) of the candidates shall be selected by a drawing. Two (2) Directors shall hold office for one (1) year; two (2) Directors shall hold office for two (2) years; and the final three (3) Directors shall hold office for three (3) years; and, in each foregoing case, until their respective successors are duly elected and qualified, or until their earlier resignation or removal. At the first meeting of the initial Board,

## Article Two

the Directors shall determine each of their respective terms hereunder by a drawing.

2. Qualifications. A Director shall not be, and shall not have been at any time within two (2) years prior to or subsequent to election to the Board, a director, officer, or employee of a Member, User, or an affiliate of a Member or User. At all times while serving on the Board, and for two (2) years thereafter, a Director shall have no material business relationship or other affiliation with any Member or User or an affiliate of a Member or User. A Director's participation in a pension plan of a Member or User or an affiliate thereof shall not be deemed to be a material business relationship as long as such pension plan is a defined benefit pension plan that does not involve ownership of the securities of the company sponsoring such plan. Of the seven (7) Directors, four (4) shall have expertise and experience in corporate leadership at the senior management or board of directors level, or in the professional disciplines of finance, accounting, engineering, or utility laws and regulation. Of the other three (3) Directors, one (1) shall have expertise and experience in the operation of electric transmission systems, one (1) shall have expertise and experience in the planning of electric transmission systems, and one (1) shall have expertise and experience in commercial markets and trading and associated risk management.

3. Succeeding Boards of Directors. After the election of the initial Board as provided above, succeeding Directors shall be elected to terms of three (3) years, except for any Director elected to fill a vacancy in the remainder of the term.

## **Article Two**

Before the term of a Director expires, a nominating committee consisting of three Board Members whose terms are not expiring appointed by the Board and two members of the Advisory Committee selected by the Advisory Committee shall select an executive search firm to provide at least two (2) candidates to the nominating committee for each open Director position. Members may submit the names of candidates directly to the nominating committee. The Nominating Committee shall then provide at least two (2) candidates to the Board for each open position. The candidates for a specific Director position shall have the same type of qualifications as the Director being replaced, as set forth in Subparagraph 2 of this Paragraph A. At least thirty (30) days prior to the meeting of the Members at which the Directors will be elected, the Board shall distribute to the Members a slate of candidates consisting of one (1) candidate for each Director position to be filled. The Board shall also provide the Members with information on the qualifications and experience of the candidate to fill the Director seat for which each candidate is proposed. A candidate receiving a majority of the votes cast by the Members shall be elected. Should the Members fail to elect a candidate from the slate proposed by the Board, the Board shall prepare a new slate using the procedures set forth above for consideration by the Members at a meeting of the Members to be called no later than seventy-five (75) days after such election. Each Director shall serve until his successor shall have been duly elected and qualified, or until his earlier resignation or removal. Vacancies on the Board caused by a Director leaving office before the expiration of his term shall be filled by vote of the Board, which shall choose a candidate having the same type of qualifications as his predecessor from a list prepared by the

**Article Two**

nominating committee in consultation with an executive search firm chosen by the nominating committee. A Director selected to fill such a vacancy shall serve out the term of his predecessor.

## Article Two

4. Chairman of the Board. The Board shall select from among its members a Chairman of the Board. The Chairman shall serve in such capacity at the pleasure of the Board until the first meeting of the Board following the next succeeding annual meeting of the Members, or until his successor shall have been elected and have qualified. The Chairman of the Board shall, unless otherwise determined by the Board, preside over all meetings of the Board and Members, and shall sign, with the Secretary, certificates of membership, the issuance of which shall have been authorized by the Board. The Chairman shall perform all duties incident to the office of Chairman of the Board and such other duties as from time to time may be assigned to him by the Board.

5. Vice Chairman. The Board shall select from among its members a Vice Chairman of the Board. The Vice Chairman shall serve in such capacity at the pleasure of the Board until its first meeting following the next succeeding annual meeting of the Members, or until his successor shall have been elected and have qualified. In the absence of the Chairman of the Board, or in the event of his inability or refusal to act, the Vice Chairman shall perform the duties of the Chairman of the Board, and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the Chairman of the Board. The Vice Chairman shall also perform such other duties as from time to time may be assigned to him by the Board.

Issued by: James P. Torgerson, Issuing Officer  
Effective \_\_\_\_\_

Issued on: July \_\_, 2001 (Accepted by FERC Order dated September 16, 1998)

## Article Two

6. Resignation of Directors. Any Director may resign his office by submitting a signed notice of resignation, delivered or mailed to the principal office of the Midwest ISO. Such notice of resignation shall indicate the effective date of the resignation. If it does not indicate an effective date, the resignation shall take effect upon receipt of the notice at the principal office of the Midwest ISO.

7. Removal of Directors.

a. Removal by Members. The Members may remove a Director by a vote of a majority of the Members. Removal proceedings may only be initiated by a petition signed by not less than twenty percent (20%) of all Members. The petition shall state the specific grounds for removal. A copy of the petition shall be provided to the FERC and to each appropriate state regulatory authority. A Director sought to be removed shall be given fifteen (15) days to respond in writing to any charges set forth in the petition. The petition shall specify either that the removal vote shall be taken at the next regular meeting of the Members or at a special meeting of the Members at a designated date, place, and time.

Issued by: James P. Torgerson, Issuing Officer  
Effective \_\_\_\_\_

Issued on: July \_\_, 2001 (Accepted by FERC Order dated September 16, 1998)

**Article Two**

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Issued by: James P. Torgerson, Issuing Officer  
Effective \_\_\_\_\_

Issued on: July \_\_, 2001 (Accepted by FERC Order dated September 16, 1998)

## **Article Two**

### **B. Duties and Powers.**

1. General. The management of all the property, business, and affairs of the Midwest ISO shall be vested in the Board. The Board may exercise all of the powers of the non-stock corporation and do all lawful acts and things (including the adoption of such rules and regulations for the conduct of its meetings, the exercise of its powers, and the management of the Midwest ISO) as it may deem proper and consistent with applicable law, this Agreement, the Transmission Tariff, the articles of incorporation, and the Bylaws of the Midwest ISO, provided that authority for such actions is not reserved to the Members or Owners. Except as provided in Article Two, Section IX, Paragraphs B and C of this Agreement, the enumeration of specific duties and powers in this Agreement shall not be construed in any way as a limitation on the general powers intended to be conferred on the Board.

2. Bylaws and regulations. The Board shall have the obligation to adopt such bylaws, regulations, policies, and practices as are not inconsistent with this Agreement and the Transmission Tariff that it deems necessary or desirable for the conduct of the business of the Midwest ISO and for the governance of itself, the President, and all agents, employees, and representatives of the Midwest ISO, without undue discrimination.

3. Board oversight. The Board shall have responsibility to oversee the President's performance of the obligations of the Midwest ISO specified in Article Three of

## **Article Two**

this Agreement. The performance of such obligations shall be carried out and executed by the President with oversight as appropriate by the Board. The Board shall establish general policies to be followed by the President and employees of the Midwest ISO in the conduct of their duties.

4. Standards of Conduct. The Directors shall comply with the Standards of Conduct set forth in Appendix A to this Agreement.

5. Collections and payments. The Board shall have the obligation to assure that the President accounts for all transactions on the Transmission System and other activities of the Midwest ISO; submits bills for such transactions; pays the expenses of operation of the Midwest ISO; collects monies for transmission service from customers solely as agent for Owners or their designee(s) in accordance with the Transmission Tariff; and distributes monies to the Owners or their designee(s) in accordance with this Agreement, any associated agreements referred to in this Agreement, and the Transmission Tariff.

6. Employ staff. The Board shall have the power to employ staff, auditors, counsel, and other personnel as necessary to carry out the business of the Midwest ISO and may delegate to the President all or part of such authority to employ such staff, auditors, counsel, and other personnel.

7. Board Committees. The Board may appoint such internal committees of the Board (hereinafter "Board Committees") as are necessary and

## **Article Two**

appropriate for the conduct of the business of the Midwest ISO, provided that final responsibility for any action recommended by any such committee remains with the Board.

### **C. Meetings of the Board.**

1. Meetings. Regular meetings of the Board shall be held at least quarterly, and other meetings shall be held from time to time on the call of the President, Chairman, or a majority of the Board. A Director may participate in a meeting personally or by electronic means. Written notice of the date, location, and time of each meeting of the Board must be provided by first-class mail or by telefacsimile to each Director no later than seven (7) calendar days prior to the date of the meeting. Participation in a meeting by a Director is a waiver of any objection that the Director may make to any failure to give adequate notice under this provision. Any action required or permitted to be taken at any meeting of the Board, or of any Board Committee, may be taken without a meeting if all Directors or Board Committee members, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or Board Committee. Consistent with this Agreement, the Board shall have all procedural authority provided and options available under Title 8 of the Delaware Corporation Law, section 141.

2. Voting. Five (5) Directors shall constitute a quorum of the Board. Except as provided in Article Two, Section VIII, Paragraph C, Subparagraph 5 of this

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Agreement, the affirmative vote of a majority of the Directors present at a meeting is required to constitute any act or decision rendered by the Board.

3. Accounting. At each quarterly meeting of the Board, or such other time as the Board directs, the Board shall require the President to submit for Board approval a full statement of the conditions of the Midwest ISO, and all business transacted by it, and, when the statement is approved, shall cause a copy of it to be sent to each Member.

4. Minutes and reports. The Board shall cause to be kept by the Secretary, elected by it, a record of all meetings of the Board, Members, and Board Committees. Insofar as non-Members of the Midwest ISO are concerned, these records shall be conclusive for the Board of the facts and activities stated and recorded therein.

### **D. Compensation of Directors; Reimbursement of Expenses**

1. Director compensation. Directors shall receive from the Midwest ISO such compensation, regular or special, as is set pursuant to this provision. The independent executive search firm chosen to select a slate of candidates for election for Director positions shall set Director compensation following such election, subject to approval of the Members. If two-thirds (2/3) or more of the Members vote to reject the search firm's recommended compensation, then the recommended compensation shall be rejected. In establishing the compensation for the initial Board, if there are not yet Members, then a vote of two-thirds (2/3) or more of the signatories to this Agreement shall

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be required to reject the search firm's recommended compensation. If the recommended compensation is rejected, then the search firm shall be requested to submit another recommendation or another search firm may be hired for such purpose.

2. **Expenses.** Directors, and their successors and assigns, shall have the right to reimbursement by the Midwest ISO for all of their actual expenses reasonably incurred or accrued in the performance of their duties as Directors of the Midwest ISO.

### **IV. Officers Of The Midwest ISO.**

**A. Titles.** The Officers of the Midwest ISO shall be the President, one or more Vice Presidents (in the discretion of the Board), and a Secretary.

**B. Election and Term of Office.** The Officers of the Midwest ISO shall be elected from time to time by the Board. Each Officer shall hold office at the pleasure of the Board.

**C. Removal of Officers by Directors.** Any Officer may be removed by the Board whenever, in the Board's judgment, the best interests of the Midwest ISO will be served thereby.

**D. President.** The President shall serve on the Board of the Midwest ISO. The President may vote on any matter presented at a Board meeting except when the President's vote would create a tied Board vote. In that circumstance, the President shall be barred from voting. The President also may not vote on the selection of, or continued employment of, the President or on the President's compensation. The President shall be

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included in the determination of a quorum of the Board for any meeting of the Board and in the determination of a majority vote of the Board for any purpose. The duties of the President are as follows:

1. Right of President to manage. The right of the President to exercise functional control over the operation of the Transmission System, insofar as is necessary to carry out the rights, duties, and obligations of the Midwest ISO as set forth in this Agreement, shall be absolute, unconditional, and free from the control and management of the Owners, who shall have only the rights specifically set forth in this Agreement. The President shall have the authority to act for the Midwest ISO before any and all applicable federal or state regulatory authorities to carry out the business of the Midwest ISO.

2. General powers. The President shall possess and exercise any and all such additional powers as are reasonably implied from the powers contained in this Agreement such as may be necessary or convenient in the conduct of any business or enterprise of the Midwest ISO. The President may (i) do and perform everything that (a) he deems necessary, suitable, or proper for the accomplishment of any of the purposes, or the attainment of any one or more of the objectives, enumerated in this Agreement, or (b) that shall at any time appear conducive to, or expedient for, the protection or benefit of the Midwest ISO, and (ii) do and perform all other acts or things that are deemed necessary or incidental to the purposes set forth in this Agreement.

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3. Acquire property. The President shall have power to purchase, or otherwise acquire through leases, such property, except for transmission facilities which shall be governed by Appendix B to this Agreement, as necessary to carry out the obligations of the Midwest ISO as specified in Article Three of this Agreement.

4. Prosecute claims. The President shall have full and exclusive power and authority to demand, sue for, claim, and receive any and all revenues and monies due the Midwest ISO.

5. Borrow. The President shall have the power to borrow money up to the level authorized by the Board for the purposes of the Midwest ISO and to give the obligations of the Midwest ISO to secure such indebtedness.

6. Contracts. The President shall have the authority and power to make all such contracts as he may deem expedient and proper in conducting the business of the Midwest ISO, except as may be limited by the Board.

7. Taxes and assessments. The President shall have the power (i) to pay all taxes or assessments of whatever kind or nature imposed upon or against the Midwest ISO in connection with the Midwest ISO property, or upon or against the Midwest ISO property, or any part of such property; (ii) to do all acts and things as may be required or permitted by any present or future law for the purpose of making the activities of the Midwest ISO exempt from taxation; and, (iii) for any of the above-stated purposes, to do all such other acts and things as may be deemed by him necessary or desirable.

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8. Depository. In accordance with policies set by the Board, the President shall have the power to select a depository, and to deposit any monies or securities held by the Midwest ISO in connection with the performance of its obligations under this Agreement, with any one or more banks, trust companies, or other banking institutions deemed by the President to be responsible, such monies or securities to be subject to withdrawal on notice upon demand or in such manner as the President may determine, with no responsibility upon the President for any loss that may occur by reason of the failure of the person with whom the monies or securities had been deposited properly to account for the monies or securities so deposited.

E. Vice President. The Vice President or, if there be more than one, the Vice President designated by the Board, shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. Each Vice President shall exercise such other powers and perform such other duties as shall be prescribed by the Board consistent with this Agreement. No Vice President shall be eligible to serve on the Board of the Midwest ISO except when performing the duties of the President as above provided.

F. Secretary. The Secretary shall be responsible for the following duties:

1. Keeping the minutes of the applicable meetings in one or more books provided for that purpose;

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2. Seeing that all notices are duly provided in accordance with this Agreement, policies of the Midwest ISO, and any and all other documents which provide for the governance of the Midwest ISO;

3. Maintaining custody of the records of the business of the Midwest ISO and the seal of the Midwest ISO, and affixing such seal to all certificates of membership prior to the issuance thereof and to all documents, the execution of which, on behalf of the Midwest ISO, under its seal, is duly authorized in accordance with the provisions of this Agreement;

4. Keeping a register of the names and post office addresses of all Members and Directors;

5. Signing with the Chairman of the Board certificates of membership, the issuance of which shall have been authorized by the Board;

6. Keeping on file at all times at the principal office of the Midwest ISO a complete copy of this Agreement, and all amendments thereto, together with the corporate Bylaws and any policies concerning the governance of the Midwest ISO, and, at the expense of the Midwest ISO, forwarding or otherwise making available copies of such information to each of the Members and to the public to the extent required by law; and generally performing all duties instant to the office of Secretary and such other duties that, from time to time, may be assigned to the Secretary by the Board.

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**G. Standards of Conduct.** The Officers, agents, and employees of the Midwest ISO shall comply with the Standards of Conduct set forth in Appendix A to this Agreement.

**H. Bonds of Officers.** Any Officer, employee, or agent of the Midwest ISO charged with the responsibility for the custody of any of its funds or property may be required to give bond in such sums, and with such sureties, as the Board shall determine. The Board, in its discretion, may also require any other Officer, agent, or employee of the Midwest ISO to give bond in such amount, with such surety, as it shall determine. All premiums of the aforesaid bonds shall be paid by the Midwest ISO.

**I. Compensation.** Compensation of the Officers, agents, and employees of the Midwest ISO shall be established by the Board or pursuant to the policies approved by the Board.

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### V. Members.

#### A. General Provisions.

1. Application for membership. New Members may join the Midwest ISO upon submittal of an application in a form approved by the President (or the person designated pursuant to Article Two, Section II, Paragraph D of this Agreement), and payment of the fees set forth in Article Six of this Agreement. Action upon any application for membership shall be taken at the first meeting of the Board pursuant to Article Two, Section III, Paragraph C of this Agreement following submission of the application, except as otherwise provided in Article Two, Section II, Paragraph D of this Agreement.

2. Owner status. A new Member may join as an Owner, provided that it (i) owns, operates, or controls facilities used for the transmission of electricity in interstate commerce (as determined by the Midwest ISO by applying the seven-factor (7-factor) test set forth in FERC Order No. 888, 61 Fed. Reg. 21,540, 21,620 (1996), or any successor test adopted by the FERC or the state regulatory authority) that are physically interconnected with the facilities of an existing Owner; and (ii) agrees to sign this Agreement, to be bound by all of its terms, and to make any and all payments or contributions required by this Agreement. Upon fulfillment of these conditions, and upon completion of any physical integration of the new Owner's facilities with the Transmission System in a fashion consistent with the President's direction, the Board shall allow the new Member to become a signatory to this Agreement. In general, an Owner must own,

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operate, or control interstate transmission facilities as detailed above; however, on a case-by-case basis, the Board may waive the requirement that such facilities be physically interconnected if allowing the Member also to become an Owner will result in significant net benefits to the Midwest ISO and its Members.

3. Subject to Agreement. The rights of Members in the Midwest ISO shall be subject to all of the terms and conditions of this Agreement.

4. Manage or control by Members. No Member shall have any rights to manage or control the property, affairs, or business of the Midwest ISO, or any power to control the Directors in these respects.

5. Partition rights. No Member shall have any right to a partition of the property of the Midwest ISO during the continuance of the Midwest ISO; any partition shall be subject to all laws applicable to Delaware non-stock corporations and, in the event the Midwest ISO is exempt from taxation under any law, in accordance with all laws applicable to such exemption.

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### B. Members' Meetings; Elections.

1. Meeting times. The Members shall hold their initial meeting at the principal office of the Midwest ISO, or other location designated by the Board, or by the person or entity selected pursuant to Article Two, Section II, Paragraph D of this Agreement, on the date designated by the Board or such person or entity, and shall hold meetings at such location on the third Monday of the same month each year thereafter, or such other day of said month as may be designated by the Board, for the purpose of electing Directors and of exercising and discharging any other powers or duties vested in them by this Agreement. Members shall hold their initial meeting on July 1, 1998, or as soon thereafter as is reasonably practical; provided, however, that the signatories to this Agreement, by majority vote (with each signatory having one vote), may extend this date if there exists significant uncertainty as to whether this Agreement will obtain necessary regulatory and tax approvals in a form satisfactory to the signatories by July 1, 1998.

2. Special meetings. After the Members' initial meeting, the Board or any twenty-five percent (25%) of the Members may call a special meeting of the Members at any time.

3. Notification. The Secretary shall provide notice to appropriate state regulatory authorities, the FERC, the members of the Board Advisory Committee (established pursuant to Section VI of this Article Two), and the public by posting on the Midwest ISO's Internet World-Wide Web Site or equivalent form of electronic posting at

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least seven (7) days prior to the meeting, of the time and place of all meetings of Members, whether regular or special.

4. Notification to Members. Notice mailed or sent by telefacsimile no later than seven (7) days prior to the date of the meeting, directed to the Member at the address as shown on the books of the Midwest ISO, shall be deemed sufficient for the provisions of this paragraph and for all other purposes, unless written notice of change of such address has been previously given to the Midwest ISO. In the case of special meetings, the Secretary shall also give notice to all Members of the general purpose of the meeting and the nature of the business to be considered at such meeting. Such a special meeting shall be limited to the business thus specified in the call, unless at least twenty-five percent (25%) of the Members consent in writing to the consideration of other matters. The Members of record eligible to participate in any meeting shall be determined as of the date notice of the meeting is provided to the Members.

5. Voting. At all meetings of Members, the Chairman, or such other person as may be designated by the Board, shall preside. Each Member shall be entitled to one vote, and Members may vote by proxy. Twenty-five percent (25%) of the Members, or their proxies, shall constitute a quorum for the purpose of any such meeting. The Board shall review from time to time the quorum requirements. Except where it is otherwise provided in this Agreement, a vote of a majority of the Members represented and voting at the meeting shall control.

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**C. Limited Liability.** All persons dealing with, or having any claim against, any Director, Officer, agent, or employee of the Midwest ISO acting on behalf of the Midwest ISO shall look only to the Midwest ISO for the payment of any debt, claim, damage, judgment, or decree of the Midwest ISO, or of any money or thing that may become due or payable in any way by the Midwest ISO, whether founded on contract or tort, and the Members shall not be personally or individually liable for any such debt, claim, damage, judgment, or decree.

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### VI. External Committees.

#### A. Advisory Committee.

1. At all times there shall exist an Advisory Committee to the Board consisting of a total of twenty-three representatives from the following stakeholder groups chosen as follows: (i) three (3) representatives of Owners, with one (1) seat assigned to an Owner who was a member of the Mid-Continent Area Power Pool ("MAPP") as of March 1, 2000; (ii) three (3) representatives of municipal and cooperative electric utilities and transmission-dependent utilities, with one (1) seat assigned to a Member of this group who was a member of MAPP as of March 1, 2000; (iii) three (3) representatives of independent power producers (hereinafter "IPPs") and exempt wholesale generators (hereinafter "EWGs"), with one (1) seat assigned to a Member of this group who was a member of MAPP as of March 1, 2000, or who is actively involved in the MAPP region (as it existed on March 1, 2000); (iv) three (3) representatives of power marketers and brokers, with one (1) seat assigned to a Member of this group who was a member of MAPP as of March 1, 2000, or who is actively involved in the MAPP region (as it existed on March 1, 2000); (v) three (3) representatives of eligible end-use customers, with one (1) seat assigned to a Member of this group who was a member of MAPP as of March 1, 2000, or who is actively involved in the MAPP region (as it existed on March 1, 2000); (vi) three (3) representatives of state regulatory authorities, with one (1) seat assigned to a Member of this group who was a member of MAPP as of March 1, 2000, or who is actively involved in

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the MAPP region (as it existed on March 1, 2000); (vii) two (2) representatives of public consumer groups, with one (1) seat assigned to a Member of this group who was a member of MAPP as of March 1, 2000, or who is actively involved in the MAPP region (as it existed on March 1, 2000); (viii) two representatives of environmental and other stakeholder groups, with one (1) seat assigned to a Member of this group who was a member of MAPP as of March 1, 2000, or who is actively involved in the MAPP region (as it existed on March 1, 2000); and (ix) one (1) representative of Members who, being legally unable to transfer operational control to the Midwest ISO, have entered into coordination or agency agreements with the Midwest ISO (“Coordination Members”). The Board may revise or expand the stakeholder groups as circumstances and industry structures change. The Board shall be responsible for facilitating meetings of the Advisory Committee, which shall be held at least quarterly. At such quarterly meetings, the President and at least two (2) other members of the Board shall meet with the Advisory Committee. Upon request of the Advisory Committee, Board members and the President shall use their best efforts to attend other Advisory Committee meetings. The Advisory Committee shall be a forum for its members to be apprised of the Midwest ISO’s activities and to provide information and advice to the Board on policy matters of concern to the Advisory Committee, or its constituent stakeholder groups, but neither the Advisory Committee nor any of its constituent groups shall exercise control over the Board or the Midwest ISO. Nothing in this Agreement shall prohibit a corporate or other entity from participating in more than one

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stakeholder group provided it meets the approved eligibility criteria. The reports of the Advisory Committee and any minority reports shall be presented by the President to the Board. The Board shall determine how and when it shall consider and respond to such reports. The President shall inform the Advisory Committee of any Board determination(s) with respect to such report.

2. Members of the Advisory Committee shall be selected in the following manner:

a. The Owners' representatives on the Advisory Committee shall be selected in accordance with Article Two, Section VI, Paragraph B of this Agreement.

b. The representatives of municipal and cooperative electric utilities and transmission-dependent utilities, IPPs and EWGs, power marketers and brokers, eligible end-use customers, and Coordination Members on the Advisory Committee shall be chosen by the Members belonging to such groups. Such Member groups shall propose to the Board their own methods of eligibility and voting. Approval by the Board of such procedures shall not be unreasonably withheld.

c. The representatives of state regulatory authorities on the Advisory Committee shall be chosen by the state public service commissions which regulate the retail electric or distribution rates of the Owners who are signatories to this Agreement.

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d. The representatives of public consumer groups and environmental and other stakeholder groups on the Advisory Committee shall be chosen by recognized consumer, environmental, and other stakeholder organizations having an interest in the activities of the Midwest ISO. The Board shall certify the organizations eligible to participate in the selection of such representatives to the Advisory Committee. Such certification shall not unreasonably be withheld. The groups so certified shall propose to the Board their own methods of eligibility and voting. Approval of such procedures shall not unreasonably be withheld.

e. Meetings of the constituent stakeholder groups represented on the Advisory Committee need not be open to the public.

**B. Owners' Committee.** An Owners' Committee shall exist throughout the period of this Agreement. The Owners' Committee shall consist of one (1) person representing each of the Owners who are signatories to this Agreement. The Owners' Committee shall meet at its discretion to exercise the authority granted to the Owners as a group under this Agreement, including voting upon the matters set forth in Article Two, Section III, Paragraph A, Subparagraph (7b) of this Agreement, and Article Two, Section IX, Paragraph C of this Agreement. The Owners' Committee shall select three (3) representatives to serve on the Advisory Committee established pursuant to Article Two, Section VI, Paragraph A of this Agreement.

**VII. Open Meetings.**

**A. In General.** Except as provided herein, all meetings of the Board, all meetings of committees (also sometimes referred to herein as “internal committees”) and working groups of the Board (hereinafter “Board Committees and working groups”), all meetings of the Advisory Committee and all Members’ meetings convened under Article Two, Section V, Paragraph B of this Agreement, shall be open to the public. Timely notice of such meetings and copies of all materials to be addressed at such meetings shall be provided to the members of the Advisory Committee, appropriate state regulatory authorities, and the FERC and posted on the Midwest ISO’s Internet World-Wide Web site or equivalent form of electronic posting. The procedures adopted by the Board for the conduct of such meetings shall allow interested members of the public, including those stakeholders represented on the Advisory Committee, to provide oral and written comments at such meetings concerning any matter that may come before the Board, Board Committees and working groups, Advisory Committee, or Members, whichever is applicable, during the open portion of such meetings.

**B. Availability of Minutes.** The meeting minutes of all meetings of the Board, Board Committees and working groups, Advisory Committee, and Members addressed in Paragraph A of this Section VII shall be made available to the public and furnished to appropriate state regulatory authorities and the FERC, upon request; provided, however, that materials or information which is privileged or confidential pursuant to Paragraph C of this Section VII may be redacted from such minutes. Copies of executed or final

documents, such as contracts, leases, and agreements, not otherwise required to be treated as confidential, shall be made available for review. In the event the basis for information being treated as confidential ceases to exist, said information shall thereafter be available for review.

**C. Executive Sessions to Preserve Confidentiality.** Executive sessions (closed to the public) shall be held as necessary to safeguard the confidentiality of (i) personnel-related information; (ii) information subject to the attorney-client privilege or to confidential treatment under the attorney-work product doctrine or concerning pending or threatened litigation; (iii) information that is confidential under Appendix A to this Agreement; (iv) consideration of assumption of liabilities, business combinations, or the purchase or lease of real property or assets; (v) except as may be required by law, consideration of the sale or purchase of securities, investments, or investment contracts; (vi) strategy and negotiation sessions in connection with a collective bargaining agreement; (vii) discussion of emergency and security procedures; (viii) consideration of matters classified as confidential by federal or state law; (ix) matters to protect trade secrets, proprietary information, specifications for competitive bidding, or to discuss a specific proposal if open discussion would jeopardize the cost or siting or give an unfair competitive or bargaining advantage to any person or entity; and (x) discussion of proceedings by the Alternate Dispute Resolution Committee established under Appendix D to this Agreement.

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**VIII. Due Diligence, Limited Liability, And Indemnification.**

**A. Due Diligence Duties.** It shall be the duty of Directors, Officers, employees, agents, and other representatives of the Midwest ISO (i) to faithfully and diligently administer the Midwest ISO as would reasonable and prudent persons acting in their own behalf; (ii) to keep correct and accurate records of all business transacted; (iii) to exercise prudence and economy in the business of the Midwest ISO, including the minimization of tax liability if the Midwest ISO is not tax-exempt; (iv) to act in good faith, and only for the best interests of the Midwest ISO; (v) to annually render a full and correct account of the Midwest ISO business; and (vi) at the termination of the Midwest ISO, to render and to deliver all the properties and funds of the Midwest ISO in accordance with this Agreement and applicable law.

**B. Limitations on Liability.** No Director, Officer, agent, employee, or other representative of the Midwest ISO, and no corporation or other business organization that employs a Director of the Midwest ISO, or any Director, Officer, agent, or employee of such corporation or other business organization, shall be personally liable to the Midwest ISO, any Member, or any User for any act or omission on the part of any such Director, Officer, agent, employee, or other representative of the Midwest ISO, which was performed or omitted in good faith in his official capacity as a Director, Officer, agent, employee, or other representative of the Midwest ISO pursuant to the operation of this Agreement, or in any other capacity he may hold, at the request of the Midwest ISO, as its

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representative in any other organization. However, this release of liability shall not operate to release such a Director, Officer, agent, employee, or other representative of the Midwest ISO from any personal liability resulting from willful acts or omissions knowingly or intentionally committed or omitted by him in breach of this Agreement, for improper personal benefit, or in bad faith. Directors, Officers, agents, employees, or other representatives of the Midwest ISO also shall not be personally liable for any actions or omissions of others, including Owners, whose actions or omissions may relate to the Midwest ISO, or any property or property rights forming, or intended or believed to form, part of the Midwest ISO's property, or for any defect in the title to, or liens or encumbrances on, any such property or property rights.

**C. Indemnification.** It is the intent of the Midwest ISO to indemnify its Directors, Officers, agents, employees, or other representatives to the maximum extent allowed by law consistent with this Agreement. Each Director, Officer, agent, employee, or other representative of the Midwest ISO shall be indemnified by the Midwest ISO against all judgments, penalties, fines, settlements, and reasonable expenses, including legal fees, incurred by him as a result of, or in connection with, any threatened, pending or completed civil, criminal, administrative, or investigative proceedings to which he may be made a party by reason of his acting or having acted in his official capacity as a Director, Officer, agent, employee, or representative of the Midwest ISO, or in any other capacity which he

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may hold at the request of the Midwest ISO, as its representative in any other organization, subject to the following conditions:

1. Such Director, Officer, agent, employee, or other representative must have conducted himself in good faith and, in the case of criminal proceedings, he must have had no reasonable cause to believe that his conduct was unlawful. When acting in his official capacity, he must have reasonably believed that his conduct was in the best interests of the Midwest ISO, and, when acting in any other capacity, he must have reasonably believed that his conduct was at least not opposed to the best interests of the Midwest ISO.

2. If the proceeding was brought by or on behalf of the Midwest ISO, however, indemnification shall be made only with respect to reasonable expenses referenced above. No indemnification of any kind shall be made in any such proceeding in which the Director, Officer, agent, employee, or other representative shall have been adjudged liable to the Midwest ISO.

3. In no event, however, will indemnification be made with respect to any described proceeding which charges or alleges improper personal benefit to a Director, Officer, agent, employee, or other representative and where liability is imposed upon him on the basis of the receipt of such improper personal benefit.

4. In order for any Director, Officer, agent, employee, or other representative to receive indemnification under this provision, he shall vigorously assert

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and pursue any and all defenses to those claims, charges, or proceedings covered hereby which are reasonable and legally available and shall fully cooperate with the Midwest ISO or any attorneys involved in the defense of any such claim, charges, or proceedings on behalf of the Midwest ISO.

5. No indemnification shall be made in any specific instance until it has been determined by the Midwest ISO that indemnification is permissible in that specific case, under the standards set forth herein and that any expenses claimed or to be incurred are reasonable. These two (2) determinations shall be made by a majority vote of at least a quorum of the Board consisting solely of Directors who were not parties to the proceeding for which indemnification or reimbursement of expenses is claimed. If such a quorum cannot be obtained, a majority of at least a quorum of the full Board, including Directors who are parties to said proceeding, shall designate a special legal counsel who shall make said determinations on behalf of the Midwest ISO. In making any such determinations, the termination of any proceeding (except proceedings referred to in Article Two, Section VIII, Paragraph C, (2) of this Agreement) by judgment, order, settlement, conviction, or upon plea of *nolo contendere*, or its equivalent, shall not, in and of itself, be conclusive that the person did not meet the standards set forth herein.

6. Any reasonable expenses, as shall be determined above, that have been incurred by a Director, Officer, agent, employee, or other representative who has been made a party to a proceeding as defined herein, may be paid or reimbursed in

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advance upon a majority vote of a quorum of the full Board, including those who may be a party to the same proceeding. However, such Director, Officer, agent, employee, or other representative shall have provided the Midwest ISO with (i) a written affirmation under oath that he, in good faith, believes that he has met the conditions for indemnification herein, and (ii) a written undertaking that he shall repay any amounts advanced, with interest accumulated at a reasonable rate, if it is ultimately determined that he has not met such conditions. In addition to the indemnification and reimbursement of expenses provided herein, the President shall, if reasonably practical, purchase insurance that would protect the Midwest ISO, its Directors, Officers, agents, employees, or other representatives against reasonably expected liabilities and expenses arising out of the performance of their duties for the Midwest ISO.

**D. Reliance on Information Provided.** In addition to and without limiting the provisions contained in Paragraph B of this Section VIII, Directors, Officers, agents, employees, or other representatives of the Midwest ISO shall be fully protected in, and shall incur no personal liability to the Midwest ISO or its Members for acting on any notice, request, consent, certificate, affidavit, statement, resolution, or other instrument, paper, or document believed in good faith by them to be genuine and to be signed and certified by the person stated in such instrument, paper, or document to be familiar with the facts set forth in such instrument, paper, or document. Directors, Officers, agents, employees, or other representatives may, however, in their sole discretion, require any such instrument,

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paper, or document to be sworn to, before their acceptance of such instrument, paper, or document, or before any duty shall devolve on them to act on such instrument, paper, or document. Directors, Officers, agents, employees, or other representatives may also reasonably rely upon information provided by professionals and consultants of the Midwest ISO within the area of their expertise, provided such reliance is undertaken in good faith.

**E. Annual Report.** The Board shall annually make a written report showing the financial results of the Midwest ISO's operations during the preceding fiscal year. A copy of such report shall be furnished to each Member.

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### IX. Amendments.

A. Amendments by Board. Except as provided in Article Two, Section IX, Paragraphs B and C of this Agreement, this Agreement, including all appendices, may be amended by the Board from time to time, subject to the receipt of any necessary federal and state regulatory approvals. The provisions of this Paragraph A cannot be amended except by unanimous vote of the Owners who are signatories to this Agreement.

B. Amendments Requiring Approval of Owners. The provisions of Paragraph C of this Section IX are regarded as basic to the Owners' bargain in surrendering operation of their transmission facilities to the Midwest ISO as provided herein, and, therefore, cannot be amended except by vote of the Owners who are signatories to this Agreement, in the manner specified in Paragraph C and subject to the receipt of any applicable federal and state regulatory approvals. The provisions of this Paragraph B cannot be amended except by unanimous vote of the Owners who are signatories to this Agreement.

C. Amendments by Owners. The matters referred to in Subparagraphs 6 and 7 of this Paragraph C may be changed by action of the Owners, as set forth in such Subparagraphs, without approval by the Board, subject to the receipt of any necessary federal and state regulatory approvals. The matters referred to in Subparagraphs 1 through and including 5 and 8 of this Paragraph C may be changed by action of the

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Owners, as set forth in such Subparagraphs, with approval by the Board, subject to the receipt of all necessary federal and state regulatory approvals.

1. Ownership rights. The ownership rights set forth in Article Two, Section I, Paragraph E of this Agreement shall not be changed except by unanimous vote by the Owners.

2. Board. The qualifications for, and total number of Directors on, the Board, as set forth in Article Two, Section III of this Agreement, shall not be changed for a period of five (5) years following the Transfer Date except by unanimous vote of the Owners. Thereafter, the qualifications and total number of Directors may be changed by action of the Board, subject to approval by the FERC, without approval by the Owners.

3. Duties. The relationship established pursuant to Article Three, Section III, Paragraph A of this Agreement, and the duties specified in Article Three, Section III, Paragraphs B, C, and D of this Agreement, shall not be changed except by unanimous vote of the Owners.

4. Access to books and records. The right of the Owners, individually and collectively, to have access to the books and records of the Midwest ISO, as established pursuant to Article Three, Section IV, Paragraph C of this Agreement, shall not be changed except by unanimous vote of the Owners.

5. Compliance with requirements. The responsibility of the Midwest ISO to comply with the guidelines, standards, policies, rules, regulations, orders, license

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conditions, and all other requirements of the North American Electric Reliability Council applicable regional reliability councils, or any successor organizations, applicable federal regulatory authorities, including the Nuclear Regulatory Commission and the FERC or any successor authorities, and state regulatory authorities, as set forth in Article Three, Section I, Paragraph A of this Agreement, shall not be changed except by unanimous vote of the Owners.

6. Revenue distribution and methodology and return of start-up costs.

The distribution of transmission service revenues collected by the Midwest ISO and the methodology for determining such distribution, as set forth in Appendix C to this Agreement, and the return of start-up costs, provided for in Appendix C to this Agreement, also shall not be changed except by unanimous vote of the Owners.

7. Pricing. The pricing approach set forth in Appendix C to this Agreement for the "Transition Period," as defined in such Appendix C, shall not be changed except by unanimous approval of the Owners. After the Transition Period, the pricing approach set forth in such Appendix C may be changed by a three-fourths (3/4) affirmative vote of the Owners with each Owner having one vote.

8. Withdrawal rights. The withdrawal rights set forth in Articles Five and Seven of this Agreement shall not be changed except by unanimous vote by the Owners.

**Article Two**

**X. Duration And Termination.**

**A. Period.** Except with respect to Governmental Entities, as defined in Article Seven, Section C, this Agreement shall continue for a period of thirty (30) years from the earliest Effective Date for any signatory to this Agreement. Thereafter, it shall be renewed for successive five-year (5-year) terms unless, no later than two years prior to the end of any term, a majority of the Owners vote not to renew this Agreement. Notwithstanding any other provisions of this Agreement, the appendices thereto or the Transmission Tariff, as to Governmental Entities, who become signatories to this Agreement, the initial term of the Agreement shall begin as of the Effective Date applicable to the Governmental Entity, as provided in Article One, Section 1, through and including December 31 of the calendar year of execution. Thereafter, as to such Governmental Entities, this Agreement shall have a term of one (1) year and shall be automatically renewed for successive one (1) year terms; provided, however, that either the Midwest ISO or such Governmental Entity may cancel this Agreement at the end of each one (1) year term, including the initial term, without cause upon prior written notice to the other party at least thirty (30) days prior to the expiration of the then current term.

## **Article Two**

**B. Transfer Date.** The transfer of operational control of the Transmission System from the respective Owners to the Midwest ISO pursuant to this Agreement shall not take place until the Midwest ISO can demonstrate that it is functionally able and ready to take over the provision of transmission service under the Transmission Tariff from the Owners. To reach this end, the Midwest ISO shall move as quickly as is reasonably practical to take the actions necessary for the Midwest ISO to begin providing such transmission services. The President shall notify the Owners of the date (hereinafter "Transfer Date") when such transfer is proposed to take place. The President shall provide, no later than sixty (60) days prior to the proposed Transfer Date, a technical demonstration of the ability of the Midwest ISO to perform such functions. Following such technical demonstration, the Owners' Committee may, by majority vote, postpone the Transfer Date if the technical demonstration raises reasonable concerns as to whether the Midwest ISO is capable of taking over the provision of transmission service from the Owners.

## Article Two

**C. Interim Operations.** Nothing in this Agreement shall preclude the Midwest ISO from providing transmission service before it possesses the capability to implement full operations and responsibilities as described in this Agreement, provided that the Midwest ISO shall begin such “interim operations” only if all of the Owners agree. Both the Owners and the Midwest ISO shall investigate such interim operations.

**D. Withdrawal Notification.** An Owner may withdraw from the Midwest ISO at any time, but only upon notice as provided in Article Five, Sections I and IV, and Article Seven of this Agreement.

**E. Termination.** Upon the termination of the Midwest ISO, the Board shall, consistent with applicable federal and state regulatory requirements, liquidate the Midwest ISO, wind up its affairs, and dispose of its property and assets in the manner required by Delaware law applicable to non-stock corporations. Furthermore, in the event that the Midwest ISO is determined to be exempt from taxation by the Internal Revenue Service or any state governmental authorities, then such disposition shall be in accordance with all laws applicable to entities subject to the exemption granted.

**Article Three**

**ARTICLE THREE**

**RIGHTS, POWERS, AND OBLIGATIONS OF THE MIDWEST ISO**

**I. Operation And Planning.**

**A. Functional Control.** By this Agreement, each of the Owners authorizes the Midwest ISO to exercise functional control over the operation of the Transmission System as necessary to effectuate transmission transactions administered by the Midwest ISO. Such control shall be exercised in accordance with Good Utility Practice and shall conform to applicable reliability guidelines, policies, standards, rules, regulations, orders, license requirements and all other requirements of the North American Electric Reliability Council, applicable regional reliability councils, or any successor organizations, each Owner's specific reliability requirements and operating guidelines, and all applicable requirements of federal or state laws or regulatory authorities. Disputes regarding reliability requirements and operating guidelines may be resolved through the Dispute Resolution process provided for in Appendix D to this Agreement. Pending resolution of such disputes, the Owners' criteria shall be used by the Midwest ISO until the issue is resolved. The methods of functional control are set forth in more detail in Appendix E to this Agreement.

### **Article Three**

**B. Reliability.** The Midwest ISO shall have responsibility for the reliability of the Transmission System in connection with its rights, powers, and obligations under this Agreement. The division of responsibility between the Midwest ISO and the Owners in maintaining the reliability of the Transmission System is set forth in more detail in Appendices B and E to this Agreement.

**C. Planning Activities.** The Midwest ISO shall engage in such planning activities as are necessary to fulfill its obligations under this Agreement and the Transmission Tariff. Such planning shall conform to applicable reliability requirements of the North American Electric Reliability Council, applicable regional reliability councils, or any successor organizations, each Owner's specific reliability requirements and operating guidelines, and all applicable requirements of federal or state laws or regulatory authorities. Such planning shall seek to minimize costs, consistent with the reliability and other requirements set forth in this Agreement. The division of responsibility between the Owners and the Midwest ISO for planning the Transmission System is set forth in more detail in Appendix B to this Agreement.

**D. Performance of Regulatory Obligations.** The Midwest ISO shall comply with existing transmission operation and planning obligations of an Owner, imposed by federal or state laws or regulatory authorities, which can no longer be performed solely by the Owner following transfer of functional control of its transmission facilities to the Midwest ISO, until such time as such obligations are changed or revised.

### Article Three

#### II. Non-discriminatory Transmission Service.

**A. Type of Service.** The Midwest ISO shall offer transmission service over the entire Transmission System and over Non-transferred Transmission Facilities to all "Eligible Customers," as defined in the Transmission Tariff, including the Owners, on a non-discriminatory basis, pursuant to the Transmission Tariff and Agency Agreement attached hereto as Appendix G. The Transmission Tariff shall offer both network and point-to-point transmission service, as presently described in the FERC's pro-forma tariff adopted pursuant to FERC Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), or other forms of service pursuant to any superseding tariff. The Midwest ISO shall administer the Transmission Tariff.

**B. Pricing.** In connection with its administration of the Transmission Tariff, the Midwest ISO may propose to the FERC such transmission pricing for transmission service as is necessary to fulfill its obligations under this Agreement and may propose to the FERC such changes in prices, pricing methods, terms, and conditions as are necessary to continue to fulfill such obligations; provided, however, that the pricing approach set forth in Appendix C to this Agreement shall be changed only in accordance with Article Two, Section IX, Paragraphs B and C of this Agreement.

**Article Three**

**C. Standards of Conduct.** The Midwest ISO, its Directors, Officers, employees, contractors, and agents shall adhere to the Standards of Conduct set forth in Appendix A to this Agreement.

**D. OASIS.** The Midwest ISO shall implement an Open Access Same-time Information System or Systems (hereinafter sometimes referred to as "OASIS") or successor system(s) pursuant to the Transmission Tariff. The OASIS shall conform to the requirements for such systems as specified by the FERC.

**E. Ancillary Services.** The Midwest ISO shall offer, as part of the Transmission Tariff, such ancillary services as are required by the FERC to be offered. The Midwest ISO shall obtain such services from providers, in a manner which minimizes cost, consistent with its reliability responsibilities and other obligations under this Agreement. In obtaining such ancillary services, the Midwest ISO shall afford no undue preference or disadvantage to any supplier, including the Owners or their affiliates.

**Article Three**

**III. Responsibilities Of The Midwest ISO To The Owners.**

**A. Relationship.** The Midwest ISO and its Directors, Officers, employees, and agents shall have a custodial trust relationship to the Owners in performing the obligations set forth in Paragraphs B, C, and D of this Section III.

**B. Promise Not to Impair Value.** In performing their obligations under this Agreement, the Midwest ISO, its Directors, Officers, employees, and agents shall use their individual and collective best efforts to avoid physical damage to the Transmission System or any property of the Owners affected by the Midwest ISO's activities.

**C. Revenues.** All revenues received by the Midwest ISO for transmission service shall be held, used, managed, and distributed in accordance with this Agreement and the Transmission Tariff.

**D. Duty to Maximize Revenues.** It shall be the duty of the Midwest ISO, its Directors, Officers, employees, and agents to maximize transmission service revenues associated with "Transmission Services," as defined in the Transmission Tariff, so as to most efficiently utilize the Transmission System as it exists at any given time consistent with Appendices B and E to this Agreement. The Board shall establish incentives for the Officers, employees, and agents of the Midwest ISO to meet this obligation.

**E. Revenue Distribution.** The Midwest ISO shall distribute on a monthly basis to each Owner or its designee(s) an amount determined in accordance with Appendix C to this Agreement.

### Article Three

#### IV. Additional Obligations.

**A. Assume Liability.** With respect to the signatories to this Agreement, the Midwest ISO shall assume liability for any injury or damage to persons or property arising from the Midwest ISO's own acts or neglect, including the acts or neglect of its Directors, Officers, employees, agents, and contractors, and shall release, indemnify, and hold harmless each Owner, and the Owners as a group, from and against all damages, losses, claims, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising from the Midwest ISO's performance or neglect of its obligations under this Agreement, except in cases where, and only to the extent that, the gross negligence or intentional wrongdoing of an Owner, or the Owners as a group, contributes to the claimed injury or damage.

**B. Dispute Resolution.** The Midwest ISO shall resolve disputes between and among the Midwest ISO and the Owners, individually or collectively, and Users other than the Owners, in accordance with the procedures set forth in Appendix D to this Agreement. This provision does not apply to disputes covered under the Transmission Tariff.

**C. Inspection and Auditing Procedures.** The Midwest ISO shall grant each Member, its employees or agents, external auditors, and federal and state regulatory authorities having jurisdiction over the Midwest ISO or an Owner, such access to the Midwest ISO's books and records as is necessary to verify compliance by the Midwest ISO with this Agreement and to audit and verify transactions under this Agreement. Such

### **Article Three**

access shall be at reasonable times and under reasonable conditions. The Midwest ISO shall also comply with the reporting requirements of federal and state regulatory authorities having jurisdiction over the Midwest ISO with respect to the business aspects of its business operations, including, but not limited to, the State of Delaware. Contacts between Officers, employees, and agents of any Owner and those of the Midwest ISO pursuant to this Paragraph C shall be strictly limited to the purposes of this Paragraph C and shall comply with the Standards of Conduct set forth in Appendix A to this Agreement.

**D. Stranded Cost Recovery Charges.** The Midwest ISO shall collect and distribute, as appropriate, any stranded cost recovery charges pursuant to applicable schedules accepted by the FERC.

**E. Performance Incentives.** The Midwest ISO shall develop appropriate incentives for efficient management and administration and shall file such incentives with the FERC.

**F. Location for Midwest ISO Operations.** The Midwest ISO shall promptly choose the location for Midwest ISO operations. The Midwest ISO shall review and give consideration to the report of any independent consultant hired by the Owners or by the Midwest ISO to identify and/or evaluate locations for Midwest ISO operations.

**G. Standards Governing Post-Employment Restrictions, Gifts, and Other Matters.**

### **Article Three**

The Midwest ISO shall develop “ethics” standards governing, among other things, post-employment restrictions and gifts. As to post-employment restrictions, the Midwest ISO shall prohibit Directors and key employees (as identified by the Board) from having any involvement for twelve (12) months after they leave the Midwest ISO on behalf of any parties other than the Midwest ISO with regard to any matters in which they were substantially involved when serving for, or employed by, the Midwest ISO.

**H. Incentives Regarding Location of Generation.** The Midwest ISO shall consider whether incentives are necessary to ensure that new generators are located in areas that better facilitate transmission and do not detrimentally affect Available Transmission Capability, as defined in the Transmission Tariff. If it determines that such incentives are necessary, the Midwest ISO shall develop and file with the FERC any such incentives. Any such filing must comply with the requirements of Article Two, Section IX of this Agreement, if applicable.

**V. Enforcement Authority.**

**A. Violations.** The Midwest ISO shall have the authority to impose penalties or other sanctions for any of the following actions by an Owner or User (subject to the Dispute Resolution procedures discussed below):

1. Material and willful violations of Midwest ISO policies;

### **Article Three**

2. Intentionally ignoring or disobeying any material directive from the Midwest ISO including, without limitation, operating orders or directives issued by the Midwest ISO;

3. Engaging in willful behavior which manipulates Available Transmission Capability to the detriment of other Users;

4. Willful violation of Midwest ISO operating standards; or

5. Willful violation of material provisions of this Agreement or the Transmission Tariff.

**B. Penalties.** Penalties or other sanctions for such violations may include one or more of the following:

1. Imposition of a penalty which shall be no more than \$10,000 per day, per violation.

2. Ability to withhold transmission revenues from an Owner until the violation ceases and any forfeiture is fully paid.

3. Termination of service to a User that consistently or habitually ignores or disobeys directives from the Midwest ISO, provided that the Midwest ISO complies with any applicable FERC requirements before such termination becomes effective.

**C. Offset of Expenses.** The Midwest ISO shall use revenues from any penalties under this Section V to offset Midwest ISO expenses.

**Article Three**

**D. Dispute Resolution.** All enforcement actions of the Midwest ISO, except for actions under Subparagraph 3 of Paragraph B of this Section V shall be subject to the Dispute Resolution provisions of Appendix D to this Agreement. The Midwest ISO shall be required to refund any forfeitures, including interest, which it is determined that the Midwest ISO was not justified in imposing. In such event, the Midwest ISO shall not be subject to any additional liability.

**Article Four**

**ARTICLE FOUR**

**RIGHTS, POWERS, AND OBLIGATIONS OF THE OWNERS AND USERS**

**I. Operation And Planning.**

**A. Redispatch and Curtailment.** Each Owner shall follow the directions of the Midwest ISO, its Officers, employees, or agents, in operating the Transmission System, redispatching generation, providing reactive supply and voltage control from generation sources or other ancillary services, and curtailing load, if so directed, in accordance with the Transmission Tariff. No Owner shall take any action which unduly interferes with the provision of transmission service by the Midwest ISO. Users that own or control generation that could affect the reliability or capability of the Transmission System and that are not Owners similarly shall follow the directions of the Midwest ISO in redispatching generation, providing reactive supply and voltage control from generation sources, and in providing other ancillary services consistent with the Transmission Tariff. Similarly, Users shall follow directives of the Midwest ISO to curtail load in accordance with the Transmission Tariff.

**B. Maintenance Practices.** Each Owner shall maintain its transmission facilities in accordance with Good Utility Practice. Each Owner shall follow the maintenance requirements set forth in more detail in Appendix E to this Agreement for both generation and transmission facilities. Users that own or control generation facilities

## Article Four

that could affect the reliability or capability of the Transmission System similarly shall follow the requirements in Appendix E to this Agreement.

**C. Construction.** Each Owner shall use due diligence to construct transmission facilities as directed by the Midwest ISO in accordance with Article Three, Section I, Paragraph C of this Agreement and Appendix B to this Agreement, subject to such siting, permitting, and environmental constraints as may be imposed by state, local, and federal laws and regulations, and subject to the receipt of any necessary federal or state regulatory approvals. Such construction shall be performed in accordance with Good Utility Practice, industry standards, and any applicable requirements of federal or state laws or regulatory authorities. Each Owner shall be fully compensated for the costs of construction undertaken by such Owner in accordance with this Agreement, which compensation shall be in accordance with the Transmission Tariff and Appendix C to this Agreement.

**D. Acquisition.** In the event an Owner acquires transmission facilities not identified in Appendix H to this Agreement, such facilities shall not become part of the Transmission System unless the Midwest ISO, on its own initiative or in response to the request of any person, directs the Owner to assign such facilities to its control in accordance with Appendix E to this Agreement. In no event, however, shall any such facilities become part of the Transmission System or otherwise become subject to the

**Article Four**

Midwest ISO's control unless they are electrically connected to the Transmission System or, if not so connected, unless the Owner consents.

**E. Use of Distribution.** Each Owner shall provide such service over its distribution facilities as is necessary to effectuate transmission transactions administered to eligible customers under the Transmission Tariff by the Midwest ISO, at approved rates.

**F. Other Obligations.** Both Owners and Users, where applicable, shall comply with the requirements of Appendices B and E to this Agreement.

## Article Four

### II. Additional Obligations.

A. Providing Information. Each Owner and User shall provide such information to the Midwest ISO as is necessary for the Midwest ISO to perform its obligations under this Agreement and the Transmission Tariff. Information may be treated as confidential as more fully described in Appendix A to this Agreement.

B. Facilities Access. Each Owner shall allow the Midwest ISO, its Officers, employees, or agents, such access to Transmission System facilities as is necessary for the Midwest ISO to perform its obligations under this Agreement. Such access shall be at reasonable times and under reasonable conditions.

C. Inspection and Auditing Procedures. Each Owner shall grant the FERC, the Midwest ISO, its Officers, employees, and agents, and each state regulatory authority having jurisdiction over that Owner, such access to the Owner's books and records as is necessary for the Midwest ISO to perform its obligations under this Agreement and to audit and verify transactions under this Agreement. Such access shall be at reasonable times and under reasonable conditions. Each Owner shall comply with the reporting requirements of any federal or state regulatory authorities having jurisdiction over the Owner with respect to the business aspects of the Midwest ISO's business operations, including, but not limited to, the State of Delaware. Pursuant to this Paragraph C, contacts between Officers, employees, and agents of the Midwest ISO and those of any Owner

## Article Four

shall be strictly limited to the purpose of this Paragraph C and shall conform to the Standards of Conduct set forth in Appendix A to this Agreement.

**D. Assume Liability.** With respect to the parties to this Agreement, each Owner (hereinafter "Indemnifying Owner") shall assume liability for any injury or damage to persons or property arising from its own acts or neglect, including the acts or neglect of its officers, employees, agents, or contractors, and shall indemnify and hold harmless the Midwest ISO and each other Owner (hereinafter "Indemnified Owners") from any damages, losses, claims, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or of third parties, arising from the Indemnifying Owner's performance or neglect of its obligations under this Agreement or from the Indemnifying Owner's exercise of the rights and powers preserved to it by this Agreement, except, and to the extent that, the gross negligence or intentional wrongdoing of the Midwest ISO or the Indemnified Owner(s) contributes to the claimed injury or damage. Except as provided in the Transmission Tariff, no Owner shall be liable for any costs or expenses relating to the operation, repair, maintenance, or improvement of any of the transmission facilities committed to the Transmission System by any other Owner.

**Article Five**

**ARTICLE FIVE**

**WITHDRAWAL OF MEMBERS**

**I. Withdrawal Notice.**

A Member who is not an Owner may, upon submission of a written notice of withdrawal to the President, withdraw from membership in the Midwest ISO at any time which withdrawal shall be effective thirty (30) days after the receipt of such notice by the President. A Member who is also an Owner may, upon submission of a written notice of withdrawal to the President, commence a process of withdrawal of its facilities from the Transmission System. Such withdrawal shall not be effective until December 31 of the calendar year following the calendar year in which notice is given, nor shall any such notice of withdrawal become effective any earlier than five (5) years following the date that the Owner signed this Agreement except as provided for in Article Five, Section IV and Article Seven of this Agreement. Notwithstanding this limitation on withdrawals during the first five years, in the event of a merger, consolidation, reorganization, sale, spin-off, or foreclosure, as a result of which substantially all of an Owner's transmission facilities which are part of the Transmission System are acquired by another entity, that entity shall have the right to withdraw its facilities from the Midwest ISO upon providing one (1) year's notice to the Midwest ISO. Such withdrawal, however, may become effective only if FERC approves the withdrawal. If any withdrawal creates a situation where an Owner's or Owners' transmission system is not physically interconnected with the Transmission

## **Article Five**

System, the Midwest ISO shall determine if such withdrawal affects the ability of such Owner(s) to continue as an Owner(s). With regard to these withdrawal rights, the Owner shall remain a Member with all rights and obligations of a Member who is an Owner until such time as the FERC approves the withdrawal, as appropriate. However, no further FERC approval of the withdrawal is required for withdrawals pursuant to Article Five, Section IV and Article Seven of this Agreement, or for withdrawals by an Owner who is not subject to the jurisdiction of the FERC at the time it executes this Agreement.

### **II. Effect Of Withdrawal By An Owner On Contractual Obligations.**

In the event of withdrawal of an Owner pursuant to Section I of this Article Five:

**A. Users Held Harmless.** Users taking service which involves the withdrawing Owner and which involves transmission contracts executed before the Owner provided notice of its withdrawal shall continue to receive the same service for the remaining term of the contract at the same rates, terms, and conditions that would have been applicable if there were no withdrawal. The withdrawing Owner shall agree to continue providing service to such Users and shall receive no more in revenues for that service than if there had been no withdrawal by such Owner.

**B. Existing Obligations.** All financial obligations incurred and payments applicable to time periods prior to the effective date of such withdrawal shall be honored by the Midwest ISO and the withdrawing Owner.

## **Article Five**

**C. Construction of Facilities.** Obligations relating to the construction of new facilities pursuant to an approved plan of the Midwest ISO shall be renegotiated as between the Midwest ISO and the withdrawing Owner. If such obligations cannot be resolved through negotiations, they shall be resolved in accordance with Appendix D to this Agreement.

**D. Other Obligations.** Other obligations between the Midwest ISO and the withdrawing Owner shall be renegotiated as between the Midwest ISO and the withdrawing Owner.

### **III. Regulatory And Other Approvals Or Procedures.**

Except as provided in Section IV of this Article Five, the withdrawal by an Owner of its facilities from the Midwest ISO shall be subject to applicable federal and state regulatory approvals or procedures as set forth in Article Five, Section I of this Agreement.

### **IV. Withdrawal Because of Midwest ISO Configuration**

In the event that a signatory to this Agreement determines in its sole judgment that the Owners executing this Agreement do not form an acceptable Midwest ISO, then that signatory shall have the right to withdraw from the Agreement. This right of withdrawal will expire at Midnight on December 31, 1998. Any withdrawing Owner shall file a notice of withdrawal from the Agreement with the FERC. Such withdrawal may become effective only if such notice is approved or accepted by FERC or FERC otherwise allows the notice to become effective.

**Article Six**

**ARTICLE SIX**

**MEMBERSHIP FEES**

All entities eligible for membership in the Midwest ISO shall pay an initial membership fee of \$15,000 in order to become Members. On January 1 of each year, each Member shall pay an additional fee of \$1,000 to the Midwest ISO to retain its membership. All such fees are nonrefundable and may be adjusted from time to time, as may be appropriate, by the Board.

**Article Seven**

**ARTICLE SEVEN**

**REGULATORY, TAX, AND OTHER AUTHORITIES**

**A. Regulatory And Other Authorities.** This Agreement and the participation of the signatories to this Agreement is subject to acceptance or approval by the FERC and may be subject to actions of respective state regulatory authorities to which respective signatories may be subject and to the actions of any other governmental body which may affect the ability of any signatory to participate in this Agreement. This paragraph describes the signatories' rights and obligations in the event required regulatory and other approvals or acceptances are not obtained.

1. In the event the FERC disapproves or refuses in whole or in part to accept this Agreement or the Transmission Tariff, then this Agreement shall cease to be effective except that the signatories shall be obligated to attempt expeditiously and in good faith to negotiate a substitute agreement and tariff which address the reasons for such FERC action. If despite such good faith negotiation, the signatories are unable to produce such a substitute agreement and tariff, then the signatories shall have no further obligations under this Agreement, the Transmission Tariff or any filing associated herewith.

2. In the event the FERC by order imposes conditions on approval of the Agreement or the Transmission Tariff which adversely affect any signatory in the sole judgement of that signatory, each such signatory may, no later than thirty (30) days after the date of such order and upon notice to all signatories, withdraw from this Agreement. In

## **Article Seven**

such event, the signatories shall in good faith, negotiate to determine whether changes should be made to this Agreement or the Transmission Tariff to address the reasons for such signatory's withdrawal.

3. In the event any state regulatory authority refuses to permit participation by a signatory or imposes conditions on such participation which adversely affect a signatory in the sole judgement of that signatory, such signatory or any other signatory that is, in its sole judgement, adversely affected by such regulatory action (whether or not the signatory is subject to that regulatory authority's jurisdiction) may, no later than thirty (30) days after the date of such action, or after any such signatory concludes reasonably that the state regulatory authority has refused to act, and upon notice to all signatories, withdraw from this Agreement. In such event, the signatories shall, negotiate in good faith to determine whether changes should be made to this Agreement or the Transmission Tariff to address the reasons for such signatory's withdrawal.

4. In the event any other governmental body takes an action (or fails to take a necessary action) which adversely affects a signatory, in the sole judgment of such signatory, such signatory, that is, in its sole judgement, adversely affected by such governmental action or any other signatory (whether or not the signatory is subject to that regulatory authority's jurisdiction) may, no later than thirty (30) days after the date of such action, or after any such signatory concludes reasonably that the governmental body has

## Article Seven

refused to act, and upon notice to all signatories, withdraw from this Agreement without any additional FERC authorization. In such event, the signatories hereto shall, in good faith, negotiate to determine whether changes should be made to this Agreement or the Transmission Tariff to address the reasons for such signatory's withdrawal.

**B. Tax Authorities.** If the Internal Revenue Service or any other federal or state taxing authority issues, or fails to issue, any ruling, or imposes any requirement or obligation, in connection with this Agreement or the Midwest ISO, adverse to any signatory (in the sole judgment of such signatory), then, within thirty (30) days of the date of such final action, or after the signatory concludes reasonably that the governmental body has refused to act, and upon notice to all signatories, such signatory may withdraw from this Agreement without any additional FERC authorization. In such event, the signatories shall, in good faith, negotiate to determine whether changes should be made to this Agreement to address the reasons for such signatory's withdrawal.

**C. Effectiveness As To Certain Owners.** The effectiveness of this Agreement as to an Owner which is a political subdivision of a state (hereinafter "Governmental Entity") and which has outstanding tax-exempt bonds issued to finance, in whole or in part, transmission or distribution facilities is dependent upon satisfaction or written waiver of the following conditions:

1. Receipt of an unqualified opinion of a nationally recognized bond counsel to the effect that the provisions of this Agreement do not adversely affect the

## **Article Seven**

exclusion from gross income of interest on any such outstanding bonds issued to finance transmission and distribution facilities under the Internal Revenue Code of 1986, as amended;

2. Receipt of an unqualified opinion of a nationally recognized bond counsel and general counsel to such Governmental Entity to the effect that the provisions of this Agreement do not constitute a breach or impairment of, or a default under, any agreement to which such Governmental Entity is a party, including, but not limited to, its master bond resolution, as amended, and any power sales contracts with its municipal members (if any), as amended, or other agreements;

3. Receipt of a certificate of the Trustee for any such outstanding bonds issued for transmission and distribution facilities to the effect that the Governmental Entity's entry into this Agreement is permitted under the master bond resolution, as amended; and

4. Receipt of an opinion of a nationally recognized bond counsel and general counsel to the Governmental Entity that such Governmental Entity has full constitutional and statutory authority to enter into this Agreement. In the event that any of the foregoing conditions are not satisfied or waived by a Governmental Entity, then the adversely affected Governmental Entity shall promptly give notice of its objections or conditions which have not been satisfied to the other signatories, and the signatories shall expeditiously attempt in good faith to negotiate a substitute agreement.

**Article Seven**

**D. Regulatory Approvals of Withdrawals.** No signatory shall withdraw from this Agreement pursuant to the provision of this Article Seven, unless such signatory shall have filed a notice of withdrawal with the FERC and FERC has approved or accepted such notice or has otherwise allowed the notice to become effective.

**Article Eight**

**ARTICLE EIGHT**

**MONITORING PROCEDURES AND ISO ASSESSMENT**

**A. Monitoring Procedures.**

The Midwest ISO shall develop monitoring procedures to be effective before the Transfer Date. It shall file such procedures with FERC. In order to carry out this monitoring, the Midwest ISO shall establish procedures for independent monitoring either within the Midwest ISO or by contract with an independent entity. These procedures shall allow reports to be submitted directly to regulatory agencies. The monitoring entity's duties shall include monitoring the behavior of the Owners, generators, and Users to determine if there are any attempts to create transmission constraints to exclude competitors, or any other behavior that undermines the provision of transmission service. Such monitoring also shall include monitoring of the relationship between control areas and the Midwest ISO on an ongoing basis to determine if the split of functions between the control areas and the Midwest ISO creates any competitive or reliability problems affecting the Midwest ISO's provision of nondiscriminatory transmission service. The monitoring entity shall make recommendations in its reports or elsewhere for any changes to Midwest ISO rules or protocols that it believes are necessary.

## **Article Eight**

### **B. Midwest ISO Assessment**

No later than eighteen months after the Transfer Date, the Midwest ISO shall submit a report to the FERC assessing its operations. Among other things, the report shall assess (1) the relationship between existing generation control areas and the Midwest ISO to determine if the relationship needs to be revised or improved to allow the Midwest ISO to better assure reliability and to provide nondiscriminatory transmission service; (2) whether the Midwest ISO's approach to managing congestion needs to be revised; (3) the effectiveness of the system of functional control together with the penalties and sanctions provisions; (4) the need for generation redispatch to provide non-firm transmission service; and (5) whether the Midwest ISO requires other changes to better carry out its responsibilities. In addition, the report shall include a discussion of the additional data and analyses that the Midwest ISO may need in order to perform on-going and comprehensive market monitoring. In developing the report, the input of the Members shall be solicited and considered.

**Article Nine**

**ARTICLE NINE**

**MISCELLANEOUS PROVISIONS**

**A. Descriptive Headings.** The descriptive headings of Articles, Sections, Paragraphs, Subparagraphs, and other provisions of this Agreement have been inserted for convenience of reference only and shall not define, modify, restrict, construe, or otherwise affect the construction or interpretation of any of the provisions of this Agreement.

**B. Governing Law.** This Agreement shall be interpreted, construed, and governed by the laws of the State of Delaware, except to the extent preempted by the laws of the United States of America.

**C. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument, binding upon all of the Owners, notwithstanding that all such Owners may not have executed the same counterpart.

**D. Successors And Assigns.** This Agreement shall inure to the benefit of, and be binding upon, the Owners, their respective successors and assigns permitted hereunder, but shall not be assignable by any Owner, by operation of law or otherwise, without the approval of the Board, except as to a successor in the operation of the Owner's transmission facilities committed to the operation of the Midwest ISO by reason of a merger, consolidation, reorganization, sale, spin-off, or foreclosure, as a result of

## Article Nine

which substantially all such transmission facilities are acquired by such successor and such successor becomes an Owner under this Agreement.

**E. No Implied Waivers.** The failure of an Owner to insist upon or enforce strict performance of any of the specific provisions of this Agreement at any time shall not be construed as a waiver or relinquishment to any extent of such Owner's right to assert or rely upon any such provisions, rights, or remedies in that or any other instance, or as a waiver to any extent of any specific provision of this Agreement; rather the same shall be and remain in full force and effect.

**F. Severability.** Except for Article Two, Section IX, Article Five, and Article Seven of this Agreement, each provision of this Agreement shall be considered severable, and if for any reason any provision of this Agreement, or the application thereof to any person, entity, or circumstance, is determined by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, then the remaining provisions of this Agreement shall continue in full force and effect and shall in no way be affected, impaired, or invalidated, and such invalid, void, or unenforceable provision shall be replaced with a suitable and equitable provision in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid, void, or unenforceable provision.

**G. Renegotiation.** If any provision of this Agreement, or the application thereof to any person, entity, or circumstance, is held by a court or regulatory authority

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of competent jurisdiction to be invalid, void, or unenforceable, or if a modification or condition to this Agreement is imposed by a regulatory authority exercising jurisdiction over this Agreement, then the Owners shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the Owners under this Agreement immediately prior to such holding, modification, or condition. If such negotiations are unsuccessful, then the Owners may exercise their individual or collective withdrawal or termination rights available under this Agreement.

**H. Representations And Warranties.** Each Owner represents and warrants to the other Owners that as of the later of the date it becomes an Owner under this Agreement or the Effective Date of this Agreement as to such Owner:

1. The Owner is duly organized, validly existing, and in good standing under the laws of the jurisdiction where organized.
2. Subject to any necessary approvals by federal or state regulatory authorities of the Midwest ISO, the Owner's participation in the Midwest ISO, or any transactions or actions covered by this Agreement, the execution and delivery by the Owner of this Agreement and the performance of its obligations hereunder have been duly and validly authorized by all requisite action on the part of the Owner and do not conflict with any applicable law or with any other agreement binding upon the Owner, other than third-party joint agreements covered by Paragraph N of this Article Nine.

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3. This Agreement has been duly executed and delivered by the Owner, and, subject to the conditions set forth in Subparagraph 2 of this Section H, this Agreement constitutes the legal, valid, and binding obligation on the part of the Owner, enforceable against it in accordance with its terms except insofar as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or other similar laws affecting the enforcement of creditor's rights generally, and by general principles of equity regardless of whether such principles are considered in a proceeding at law or in equity.

4. There are no actions at law, suits in equity, proceedings, or claims pending or, to the knowledge of the Owner, threatened against the Owner before or by any federal, state, foreign, or local court, tribunal, or governmental agency or authority that might materially delay, prevent, or hinder the performance by the Owner of its obligations hereunder.

I. **Further Assurances.** Each Owner agrees that it shall hereafter execute and deliver such further instruments, provide all information, and take or forbear such further acts and things as may be reasonably required or useful to carry out the intent and purpose of this Agreement and as are not inconsistent with the provisions of this Agreement.

J. **Delivery Of Notices.** Except as otherwise expressly provided herein, notices required under this Agreement shall be in writing and shall be sent to an Owner,

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Member, or the Midwest ISO by U.S. mail, overnight courier, hand delivery, telefacsimile, or other reliable electronic means. Any notice required under this Agreement shall be deemed to have been given either upon delivery, if by U.S. mail, overnight courier, or hand delivery, or upon confirmation, if given by telefacsimile or other reliable electronic means.

**K. Limitations On Liability.** No Owner, Member, or User shall be liable to any other Owner, Member, or User for any actions taken pursuant to the direction of the Midwest ISO except in cases of the gross negligence or intentional wrong-doing of such Owner, Member or User.

**L. Entire Agreement.** This Agreement, including the appendices attached hereto, the Transmission Tariff, the Agency Agreement and other agreements referenced herein constitute the entire agreement among the Owners with respect to the subject matter of this Agreement, and no previous or contemporary oral or written representations, agreements, or understandings made by any officer, agent, or employee of any Owner shall be binding on any Owner unless contained in this Agreement, including the appendices attached hereto, the Transmission Tariff, the Agency Agreement, or other agreements referenced herein..

**M. Good Faith Efforts.** Each Owner agrees that it shall in good faith take all reasonable actions necessary to permit such Owner to fulfill its obligations under this Agreement. Where the consent, agreement, or approval of any Owner must be

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obtained hereunder, such consent, agreement, or approval shall not be unreasonably withheld, conditioned, or delayed. Where any Owner is required or permitted to act, or omit to act, based on its opinion or judgment, such opinion or judgment shall not be unreasonably exercised. To the extent that the jurisdiction of any federal or state regulatory authority applies to any part of this Agreement and/or the transactions or actions covered by this Agreement, each Owner shall cooperate with all other Owners to secure any necessary or desirable approval or acceptance of such regulatory authorities of such part of this Agreement and/or such transactions or actions.

**N. Third-Party Joint Agreements.** This Agreement, including the appendices to this Agreement, the Transmission Tariff, and the Agency Agreement shall not be construed, interpreted, or applied in such a manner as to cause any Owner to be in material breach, anticipatory or otherwise, of any agreement (in effect on the later of the Effective Date of this Agreement as to such Owner or the date that it becomes an Owner under this Agreement) between such Owner and one or more third parties who are not Owners under this Agreement (regardless of the inclusion of one or more other Owners as parties to such agreement) for the joint ownership, operation, or maintenance of any electrical facilities covered by this Agreement, the Transmission Tariff, or the Agency Agreement. An Owner who has such a third-party joint agreement shall discuss with the Board and the other Owners under this Agreement any material conflict between such third-party joint agreement and this Agreement, the Transmission

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Tariff, or the Agency Agreement raised by a third party to such joint agreement, but the resolution of such a conflict shall, vis-à-vis the Board and the other Owners under this Agreement, be and remain within the sole discretion of such Owner; provided, however, that such Owner shall, if otherwise unresolved, utilize the available remedies and dispute resolution procedures to resolve such conflict, including, but not limited to, submitting such conflict to the FERC for resolution; provided, further, that in no event shall such Owner enter into a resolution of such conflict which would impair the reliability of the Transmission System.

O. **No Partnership.** The Owners do not intend that the Midwest ISO constitute a partnership or joint venture, and no Owner shall be entitled to act as an agent for any other Owner with respect to the Midwest ISO.

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IN WITNESS WHEREOF, the Owners have caused their duly authorized representatives to execute and attest this Agreement, on their respective behalves, as of the day of \_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Owner

\_\_\_\_\_  
Title of Signatory

**APPENDIX A**

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**STANDARDS OF CONDUCT**

**I. Background.**

It is the policy of the Midwest ISO to operate in a fair and non-discriminatory manner and to implement such rules and regulations in the governance of the organization as necessary to prevent control, or the appearance of control, of the decision-making process by any Owner, Member, or User of the Transmission System; and

It is the policy of the Midwest ISO to operate and plan the Transmission System without adverse distinction or preference to any Owner, Member, or User of the Transmission System, and that investments in facilities be made by the Owners as directed by the Midwest ISO without discrimination; and

It is the policy of the Midwest ISO that the Directors, agents, Officers, and employees of the organization shall not have a direct financial interest in, or a conflict of interest with, any Owner, Member, or User of the Transmission System or any affiliates of such entities.

Nothing in this Appendix A is intended to restrict or expand any rights that any federal or state regulatory authorities may have to receive or have access to any information.

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**II. Standards.**

In furtherance of the above policies, the Standards of Conduct for the Midwest ISO shall include, but not be limited to, the following Standards:

**A.** The Midwest ISO, its Directors, agents, Officers, and employees shall operate and plan the Transmission System without adverse distinction or preference to any Owner, Member, or User of the Transmission System. In addition, the Transmission Tariff shall be applied to any Owner, Member, or User of the Transmission System without adverse distinction or preference to any of the Owners, Members, or Users of the Transmission System.

**B.** The operation of the Midwest ISO shall be conducted in such a manner that it shall be separate from the operations of the Owners, Members, or Users of the Transmission System.

**C.** The Midwest ISO, in operating its business, shall require any consultant, contractor, and/or subcontractor of the Midwest ISO to disclose to the Midwest ISO all financial affiliations and conflicts of interest with Owners, Members, or Users of the Transmission System. The Midwest ISO shall have the discretion to determine if the contents of such disclosure warrant disqualification of such consultant, contractor, or subcontractor.

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**D.** No Midwest ISO Director, agent, Officer, or employee shall have any involvement in the sale of electric energy at wholesale or retail except as required or allowed by the Agreement or the Transmission Tariff.

**E.** The Directors, agents, Officers, and employees of the Midwest ISO shall not have a direct financial interest in, or stand to be financially benefited by, any transaction with any of the Owners, Members, or Users of the Transmission System. Each Director, agent, Officer, and employee of the Midwest ISO in a decision-making position shall certify in writing that he does not have a direct financial interest in any Owner, Member, or User of the Transmission System and that a conflict of interest does not exist. To that end, no Midwest ISO Director, agent, Officer, or employee may directly own securities issued by any Owner, Member, or User of the Transmission System, except under the following circumstances:

1. Each Midwest ISO Director, agent, Officer, or employee shall dispose of those securities within six (6) months of the time of his affiliation or employment with the Midwest ISO.
2. Each Midwest ISO Director, agent, Officer, or employee shall dispose of those securities within six (6) months of the time a new Owner or Member is added, or a new User of the Transmission System begins taking service under the Transmission Tariff, where the Midwest ISO

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Director, agent, Officer, or employee owns securities of such User, Owner, or Member.

3. If a Midwest ISO Director, agent, Officer, or employee receives a gift or inheritance of those securities, he must dispose of such securities within six (6) months of the date of receipt.
4. Nothing in this Paragraph E shall be interpreted to preclude a Director, agent, Officer, or employee of the Midwest ISO from indirectly owning securities issued by an Owner, Member, or User of the Transmission System through a mutual fund or similar arrangement (other than a fund or arrangement specifically targeted towards the electric industry or the electric utility industry, or any segments thereof) under which the Director, agent, Officer, or employee does not control the purchase or sale of such securities.
5. Participation in a pension plan of an Owner, Member, or User of the Transmission System shall not be deemed to be a direct financial benefit as long as such pension plan is a defined benefit pension plan that does not involve ownership in the securities of the company sponsoring such plan.

**F.** The Midwest ISO Directors, agents, Officers and employees shall not provide non-public transmission and reliability (hereinafter "T/R") information (including T/R

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information obtained from the Owners, Members, and Users of the Transmission System in the normal course of Midwest ISO business) to anyone outside the Midwest ISO, except for such disclosure of information to T/R employees of Owners (as determined under the applicable standards of the FERC) to the extent necessary to transact Midwest ISO business. Those T/R employees, in turn, are governed by the FERC Order No. 889, 61 Fed. Reg. 21737 (May 10, 1996), order on reh'g, 62 Fed. Reg. 12484 (March 14, 1997) or successor standards of the FERC -- standards of conduct -- as far as sharing any such information with their respective merchant employees, as determined under the applicable standards of the FERC. The Midwest ISO shall maintain the confidentiality of any market information obtained from merchant employees of any User of the Transmission System or other entity.

**G.** If an employee of the Midwest ISO discloses confidential information relating to the operation or function of the organization, which disclosure is contrary to the Standards of Conduct, then notice of such disclosure shall be posted immediately on the Midwest ISO OASIS (or successor system as approved by the FERC).

**H.** The Midwest ISO Directors, agents, Officers, and employees shall treat all information supplied by an entity seeking transmission service under the Transmission Tariff, or supplied in connection with Midwest ISO coordination center(s) operations, as confidential, unless the information is required to be put on the Midwest ISO OASIS, or the

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entity seeking transmission service agrees that the information can be disclosed, or the information is otherwise publicly available.

Notwithstanding the restrictions contained in this Paragraph H, Midwest ISO Directors, agents, Officers, and employees may share information with third parties where required to satisfy the Operating Standards and Policies of the North American Electric Reliability Council (hereinafter "NERC") or successor reliability entity. A confidentiality statement must be executed by the third party before any such information is disclosed. To the extent required by FERC regulations, such information shall be put on the Midwest ISO OASIS.

I. Midwest ISO Directors, agents, Officers, and employees shall not give preferential access to transmission information, or any other information, to any third party.

Midwest ISO Directors, agents, Officers, and employees shall be prohibited from providing to any entity engaged in wholesale or retail sales of electric energy, or to any employee, representative, or agent of any such entity (except T/R employees as provided in Paragraph F, Section II of the Appendix A), information regarding the Transmission System covered by the Transmission Tariff, unless that information is: (i) posted on the Midwest ISO OASIS; (ii) otherwise available to the general public without restriction; or (iii) is the type of information disclosed to any third party on a nonpreferential basis.

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Any disclosures of transmission information not in compliance with this Paragraph I shall be posted immediately on the Midwest ISO OASIS.

**J.** Directors, Officers, agents, and employees of the Midwest ISO shall strictly enforce all Transmission Tariff provisions established by the Midwest ISO. In the event any Director, Officer, agent, or employee of the Midwest ISO may exercise his discretion, or is allowed by the Transmission Tariff to exercise his discretion, with respect to transactions or actions covered by the Transmission Tariff, then such discretion shall be exercised fairly and impartially, and such event shall be logged and available for FERC audit.

**K.** No employee, agent, or contractor of any entity engaged in wholesale or retail sales of electric energy shall have access to the Midwest ISO coordination center(s), except for educational tours approved by the Midwest ISO President where notification of such tours is posted on the Midwest ISO OASIS.

**L.** Notices shall be posted on the Midwest ISO OASIS of any employee engaged in transmission and/or reliability functions who is terminated or transferred from the Midwest ISO. The posted information shall include the name of the employee, the title of the employee while performing service for the Midwest ISO, and the effective date of the transfer or termination.

**M.** The Midwest ISO shall maintain its books and records separately from those of any Owner, Member, or User of the Transmission System.

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**N.** The Midwest ISO shall establish and file with the Board of Directors a complaint procedure for alleged violations of any of the Standards of Conduct set forth in this Appendix A. The complaint procedure shall provide for the opportunity of alternative dispute resolution, as set forth in the Agreement.

**O.** The Midwest ISO shall inform and train Midwest ISO Directors, agents, Officers, and employees with regard to these Standards of Conduct. The Midwest ISO shall distribute copies of these Standards of Conduct to each Midwest ISO Director, agent, Officer, and employee, and require that each such Director, agent, Officer and employee execute the attached compliance statement. The Midwest ISO shall monitor compliance with these Standards of Conduct. Any Director, agent, Officer, or employee of the Midwest ISO failing to comply with these Standards of Conduct may be subject to disciplinary action. Discipline may take the form of reprimand, suspension without pay, limitation in the scope of responsibilities, monetary fines, or termination, which discipline shall be within the discretion of the Midwest ISO.

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**COMPLIANCE STATEMENT**

I, \_\_\_\_\_, have read the Midwest ISO's Standards  
of Conduct and agree to comply with these Standards.

Date: \_\_\_\_\_

\_\_\_\_\_

(Signature)

\_\_\_\_\_

(Position)

## **APPENDIX B**

### **APPENDIX B**

#### **PLANNING FRAMEWORK**

##### **I. Overview.**

This Appendix B describes the process to be used by the Midwest ISO in planning the Transmission System. Nothing in this Appendix is intended to restrict or expand existing state laws or regulatory authority.

The following transmission facilities of the Owners shall constitute the Transmission System for which the Midwest ISO shall be responsible for operating and planning by the terms of the Agreement: (i) all networked transmission facilities above 100 kilovolts (hereinafter "kV"); and (ii) all networked transformers whose two (2) highest voltages qualify under the voltage criteria of item (i).

Network transmission facilities (including terminal equipment) are (i) transmission elements capable of carrying power in both directions for sustained periods, and (ii) components that are connected to such transmission facilities and are used for voltage or stability control of the Transmission System, including shunt inductors, shunt capacitors, and synchronous condensers. Appendix H to the Agreement identifies the facilities that constitute the Transmission System for which the Midwest ISO shall have operating and planning responsibility.

The Midwest ISO may direct the Owners to assign Non-transferred Transmission Facilities to its control as part of the Transmission System, subject to obtaining any necessary approvals of federal or state regulatory authorities, when such action is determined to be necessary to relieve a constraint or for security purposes. The

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Midwest ISO also may require that Owners take back control of facilities included in the Transmission System subject to any such necessary approvals. If an Owner disputes such an order from the Midwest ISO, the dispute shall be resolved pursuant to the dispute resolution provisions set forth in Appendix D to the Agreement.

With regard to Non-transferred Transmission Facilities, the Midwest ISO shall review and comment on the plans developed by the Owners of these facilities. With respect to such facilities, the Midwest ISO shall have only that planning authority necessary to carry out its responsibilities under the Transmission Tariff. Thus, the Midwest ISO, when performing System Impact and Facilities Studies under the Transmission Tariff, shall treat these Non-transferred Transmission Facilities just as it would facilities comprising the Transmission System. Similarly, the Midwest ISO shall require Owners to make Available Transmission Capability (hereinafter "ATC") determinations involving such Non-transferred Transmission Facilities under the Transmission Tariff. The Midwest ISO shall coordinate the analyses of ATC associated with Non-transferred Transmission Facilities with the affected Owners. Any disputes concerning Non-transferred Transmission Facilities shall be subject to the dispute resolution procedures under the Agreement.

The planning of all Non-transferred Transmission Facilities, as well as all distribution facilities, shall be done by the Owners. Furthermore, each Owner, in carrying out its planning responsibilities to meet the reliability needs of all loads connected to the Owner's transmission facilities may, as appropriate, develop and propose plans involving modifications to any of the Owner's transmission facilities which

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are part of the Transmission System. All such plans developed by the Owners may be incorporated into the Midwest ISO regional plan, as described in Section VI of this Appendix B. Plans developed by the Owners that involve only Non-transferred Transmission Facilities may be incorporated into the Midwest ISO regional plan, as appropriate. The Owners shall continue to have planning responsibilities for meeting their respective transmission needs in collaboration with the Midwest ISO subject to the requirements of applicable state law or regulatory authority.

### **II. The Midwest ISO Planning Staff And The Planning Advisory Committee.**

The planning function of the Midwest ISO shall be the responsibility of the Midwest ISO Planning Staff (hereinafter "Planning Staff"). The process for carrying out the planning of the Midwest ISO shall be collaborative with Owners, Users, and other interested parties. The Midwest ISO shall be organized to engage in such planning activities as are necessary to fulfill its obligations under the Agreement and the Transmission Tariff. In exercising such authority, the Midwest ISO shall (i) evaluate and respond to requests for transmission service that extend into or fall within the "Planning Time Horizon" (defined as two (2) weeks and beyond); and (ii) develop a comprehensive Midwest ISO-wide transmission plan (hereinafter the "Midwest ISO Plan"). In order to carry out this planning function, the Planning Staff shall have the following responsibilities, set forth in more detail in subsequent Sections of this Appendix B: (i) to calculate ATC in the Planning Time Horizon; (ii) to process transmission service requests in the Planning Time Horizon; (iii) to develop cost-effective plans to resolve transmission constraints that would otherwise preclude

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requested transmission service; (iv) to create the Midwest ISO Plan by integrating, evaluating, and modifying the transmission plans, and other findings from (a) Facilities Studies, (b) plans and analyses developed by the individual Owners, and/or sub-regional groups, to define needs within the Owner's system(s), (c) plans and analyses developed by the Planning Staff to define regional needs, and (d) Planning Staff analyses giving consideration to information from the Planning Advisory Committee (established under this Appendix B) and other sources. The Midwest ISO shall make the final determination in the process, subject to the Dispute Resolution procedures under the Agreement and subject to review by the FERC or state regulatory authorities where appropriate.

There is hereby created a Planning Advisory Committee consisting of one (1) representative from each of the constituent groups represented on the Advisory Committee established pursuant to Article Two, Section VI, Paragraph A of the Agreement. The Planning Advisory Committee shall be a source of input to the Planning Staff concerning the development of the Midwest ISO Plan. The Planning Staff shall exercise its discretion in how it utilizes this advice in carrying out its responsibilities.

### **III. Calculation Of ATC.**

The Planning Staff shall be responsible for calculating ATC of the Transmission System for the Planning Time Horizon. In calculating ATC, the Planning Staff shall: (i) take into account transmission limits that may appear regardless of whether such limits involve transferred Transmission System facilities or Non-transferred Transmission

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Facilities; (ii) use planning criteria which are compatible with operations, including the use of appropriate equipment ratings; (iii) follow the general principles set forth in the NERC documents, *Transfer Capability* (May 1995) and *Available Transfer Capability: Definition and Determination* (June 1996), as those documents may be revised from time to time; (iv) provide for projected load growth, all relevant committed transactions and their resulting power flows throughout the interconnection; and (v) use appropriate analytical tools to determine thermal, voltage, and stability constraints.

The Planning Staff shall adhere to applicable reliability criteria of NERC, and regional reliability councils, or successor organizations, and Owner's planning criteria filed with federal, state, or local regulatory authorities. In the event that the Planning Staff questions the appropriateness of such Owner's planning criteria, the matter may be resolved through the Dispute Resolution process provided for in Appendix D to the Agreement. Until any such dispute is resolved, the Owner's criteria shall govern. The Planning Staff shall also apply equipment capability ratings provided by the Owners for their respective Transmission System facilities. The process to be used by the Planning Staff to validate the ratings is discussed in Section V of this Appendix B. Disputes regarding equipment capability ratings may be resolved through the Dispute Resolution process provided for in Appendix D to the Agreement. The Planning Staff shall at all times comply with the procedures of the Transmission Tariff for calculating ATC.

### **IV. Evaluation Of Transmission Service Requests.**

The Planning Staff shall receive, evaluate, and respond to all requests for transmission service that extends into or occurs within the Planning Time Horizon and

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involves the use of the Transmission System. With respect to all such requests, the Planning Staff shall analyze and make the determination on access to the Transmission System, including the amount of firm (non-recallable) and/or non-firm (recallable) service which the Transmission System can support. The Planning Staff shall document all requests for transmission service, the disposition of those requests, and supporting data. The Planning Staff shall coordinate with the Owners to process requests for service involving the use of Non-transferred Transmission Facilities and distribution facilities relating to service under the Transmission Tariff. The Planning Staff shall consult with the transmission planning representatives of the Owners and/or operators of the affected transmission facilities on matters such as equipment, procedures, maintenance, reliability, and public or worker safety. The Planning Staff shall provide the transmission planning representatives of each Owner with sufficient information to model local conditions and to monitor local consequences of Midwest ISO decisions by the Planning Staff related to ATC values and requests for transmission service. Any dispute regarding ATC calculations shall be subject to the applicable Dispute Resolution procedures.

### **V. Resolution Of Transmission Constraints.**

When the evaluation of posted ATCs reveals apparent transmission constraints that would preclude a requested firm transaction, the Planning Staff shall investigate the ability of operating guides and redispatch of generation to permit the transaction to proceed, to the extent that available information, in the form of existing studies and

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models, permit. In evaluating and resolving transmission constraints, the Planning Staff shall act in a manner consistent with the provisions of the Transmission Tariff.

The Planning Staff shall follow the procedures of the Transmission Tariff when conducting System Impact and Facilities Studies. Upon receipt of an approved Facilities Study Agreement, the Planning Staff shall form, chair, and direct the activities of an Ad Hoc Planning Committee that includes representatives of all affected Owners. The Ad Hoc Planning Committee shall develop expansion alternatives, perform the described studies, and develop the resulting options, costs, and service agreement which shall be provided to the transmission customer by the Planning Staff.

Each Owner shall file with the Midwest ISO information regarding the physical ratings of all of its equipment in the Transmission System. This information is intended to reflect the normal and emergency ratings routinely used in regional load flow and stability analyses. In carrying out its responsibilities, the Midwest ISO shall apply ratings that have been provided by the respective Owners and have been verified and accepted as appropriate by the Midwest ISO where such ratings affect Midwest ISO reliability. When requested by the Midwest ISO, Owners shall provide specific methods by which the ratings of equipment are calculated. If the Planning Staff and the Owners' respective planning representatives cannot reach agreement on a rating, the dispute shall be resolved through the Dispute Resolution process provided in Appendix D to the Agreement. However, the Midwest ISO shall use the ratings provided by the Owner unless and until such ratings are changed through the Dispute Resolution process or by voluntary agreement with the affected Owner.

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### **VI. Development Of The Midwest ISO Transmission Plan.**

The Planning Staff, working in collaboration with representatives of the Owners and the Planning Advisory Committee, shall develop the Midwest ISO Plan, consistent with Good Utility Practice and taking into consideration long-range planning horizons, as appropriate. The Planning Staff shall develop this plan for expected use patterns and analyze the performance of the Transmission System under a wide variety of contingency conditions. This analysis and planning process shall integrate into the development of the Midwest ISO Plan among other things: (i) the transmission needs identified from Facilities Studies carried out in connection with specific transmission service requests; (ii) the transmission needs identified by the Owners in connection with their planning analyses to provide reliable power supply to their connected load customers; (iii) the transmission planning obligations of an Owner, imposed by federal or state law(s) or regulatory authorities, which can no longer be performed solely by the Owner following transfer of functional control of its transmission facilities to the Midwest ISO; (iv) the inputs provided by the Planning Advisory Committee; and (v) the inputs, if any, provided by the state regulatory authorities having jurisdiction over any of the Owners. In the course of this process, the Planning Staff shall seek out opportunities to coordinate or consolidate, where possible, individually defined transmission projects into more comprehensive cost-effective developments subject to the limitations imposed by prior commitments and lead time constraints. This multi-party collaborative process is designed to ensure the development of the most efficient and cost-effective Midwest ISO Plan, while giving consideration to the inputs from all stakeholders.

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The Planning Staff shall test the Midwest ISO Plan for adequacy and security based on all applicable criteria. The Midwest ISO Plan shall adhere to applicable reliability requirements of NERC, regional reliability councils, or successor organizations, Owners' planning criteria filed with federal, state, or local regulatory authorities, and applicable federal, state and local system planning and operating reliability criteria. If the Planning Staff and any Owner's planning representatives cannot reach agreement on any element of the Midwest ISO Plan, the dispute may be resolved through the Dispute Resolution process provided in Appendix D to the Agreement or by the FERC or state regulatory authorities, where appropriate. The Midwest ISO Plan shall have as one of its goals the satisfaction of all regulatory requirements. That is, the Midwest ISO shall not require that projects be undertaken where it is expected that the necessary regulatory approvals for construction and cost recovery will not be obtained.

The Planning Staff shall present the Midwest ISO Plan, along with a summary of relevant alternatives that were not selected, to the Board for approval on a biennial basis, or more frequently if needed. The proposed Midwest ISO Plan shall include specific projects already approved as a result of the Midwest ISO entering into service agreements with transmission customers where such agreements provide for identification of needed transmission construction, its timetable, cost, and Owner or other parties' construction responsibilities. Ownership and the responsibility to construct facilities which are connected to a single Owner's system belong to that Owner, and that Owner is responsible for maintaining such facilities. Ownership and the responsibilities to construct facilities which are connected between two (2) or more Owners' facilities belong

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equally to each Owner, unless such Owners otherwise agree, and the responsibility for maintaining such facilities belongs to the Owners of the facilities unless otherwise agreed by such Owners. Finally, ownership and the responsibility to construct facilities which are connected between an Owner(s)' system and a system or systems that are not part of the Midwest ISO belong to such Owner(s) unless the Owner(s) and the non-Midwest ISO party or parties otherwise agree; however, the responsibility to maintain the facilities remains with the Owner(s) unless otherwise agreed.

If the designated Owner is financially incapable of carrying out its construction responsibilities or would suffer demonstrable financial harm from such construction, alternate construction arrangements shall be identified. Depending on the specific circumstances, such alternate arrangements could include solicitation of other Owners or others to take on financial and/or construction responsibilities. In the event interest among other Owners or other entities is not sufficient to proceed, all Owners, subject to applicable regulatory requirements, shall be responsible for sharing in the financing of the project and/or hiring of a contractor(s) to construct the needed transmission facility; provided, however, the Owners' obligations under this sentence shall be subject to the Owners being satisfied that they will be compensated fully for their investments and will not be subject to additional regulatory requirements, unless the Owners otherwise agree to waive either or both of these requirements.

Approval of the Midwest ISO Plan by the Board certifies it as the Midwest ISO's plan for meeting the transmission needs of all stakeholders subject to any required approvals by federal or state regulatory authorities. The Midwest ISO shall provide a

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copy of the Midwest ISO Plan to all applicable federal and state regulatory authorities. The affected Owner(s) shall make a good faith effort to design, certify, and build the designated facilities to fulfill the approved Midwest ISO Plan. However, in the event that a proposed project is being challenged through the Dispute Resolution process under the Agreement, the obligation of the Owners to build that specific project (subject to required approvals) is waived until the project emerges from the Dispute Resolution process as an approved project. The Board shall allow the Owners to optimize the final design of specific facilities and their in-service dates if necessary to accommodate changing conditions, provided that such changes comport with the approved Midwest ISO Plan and provided that any such changes are accepted by the Midwest ISO. Any disagreements concerning such matters shall be subject to the Dispute Resolution process under Appendix D to the Agreement.

The Planning Staff shall assist the affected Owner(s) in justifying the need for, and obtaining certification of, any facilities required by the approved Midwest ISO Plan by preparing and presenting testimony in any proceedings before state or federal courts, regulatory authorities, or other agencies as may be required. The Midwest ISO shall publish annually, and distribute to all Members and all appropriate state regulatory authorities, a five-to-ten-year (5-to-10-year) planning report of forecasted transmission requirements. Annual reports and planning reports shall be available to the general public upon request.

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### **VII. Planning Responsibilities Of Owners.**

To fulfill their roles in the collaborative process for the development of the Midwest ISO Plan, the Owners shall develop expansion plans for their transmission facilities while taking into consideration the needs of (i) connected loads, including load growth, (ii) new customers and new generation sources within the Owner's system, and (iii) known transmission service requests. Any plans that call for modifications to the Transmission System which would significantly affect ATC must be approved by the Midwest ISO before being implemented. However, the Midwest ISO shall develop a streamlined approval process for reviewing and approving projects proposed by the Owners so that decisions will be provided to the Owner within thirty (30) days of the projects submittal to the Midwest ISO unless a longer review period is mutually agreed upon. Any dispute concerning such matters shall be subject to the Dispute Resolution procedures under Appendix D to the Agreement. In the event that the Midwest ISO fails to act or produce results through the Dispute Resolution procedures under the Agreement within a reasonable time (as determined by the Board) of the Owner's submission of its proposed projects, approval of the proposed project(s) by the Midwest ISO shall be automatically conveyed to the affected Owner(s), subject to all requisite approvals.

Owners shall provide to the Planning Staff any necessary modeling or supporting data, planning criteria applicable to the Owner's system, and system-specific operating procedures. Owners shall carry out other duties deemed appropriate by the Owners that support the objectives of the Midwest ISO planning process, the calculation of ATC,

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or regional reliability analyses. Owners shall participate in the integration and testing of the Midwest ISO Plan. Owners shall serve on Ad Hoc Planning Committees established by the Planning Staff to respond to transmission service requests and other matters. Owners shall also calculate ATC at points of delivery to or receipt from Non-transferred Transmission Facilities and distribution facilities.

### **VIII. Coordination Between Midwest ISO Operating And Planning Staffs.**

The Planning Staff shall provide support to the Midwest ISO Operating Staff (hereinafter "Operating Staff") in determining and posting ATC during the Operating Time Horizon (as defined by the Operating Staff) and in developing and reviewing operating procedures. The Planning Staff also shall assist the Operating Staff by performing operational planning assessments for near-term system configurations. Within their respective time horizons, the Operating and Planning Staffs shall have the same general responsibilities for determining whether the Transmission System can accommodate a specific transaction. The Planning Staff shall be responsible for all responses to requests for transmission service that require an expansion of the Transmission System or Non-transferred Transmission Facilities.

### **IX. Miscellaneous Responsibilities Of Planning Staff.**

Among its general responsibilities, the Planning Staff shall: (i) review and comment on Owners' transmission plans; (ii) provide general oversight of all studies performed by Owners for the Midwest ISO; (iii) identify alternatives for further study and review that could increase the efficient and economic use of the Transmission System; (iv) analyze and assess the Transmission System periodically to ensure operational

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reliability, adequacy, and security, and that the long-term needs of transmission customers are being met; (v) facilitate communications among Owners, transmission customers, generation suppliers, and other stakeholders; and (vi) periodically monitor real-time data to identify emerging trends that require modification of planning assumptions to assure the reliable operation of the Transmission System in the future.

**APPENDIX C**

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PRICING AND REVENUE DISTRIBUTION,  
**RETURN OF START-UP COSTS, AND  
RENEGOTIATION PROCEDURES FOR  
GRANDFATHERED AGREEMENTS**

The following represents the agreement of the Owners on pricing, revenue distribution, the return of Start-up Costs contributed by the Owners, and on the renegotiation procedures for certain Grandfathered Agreements.

**I. Additional Definitions.** Unless the context otherwise specifies or requires, the following additional definitions apply to this Appendix C, and, when used in this Appendix C, the following terms shall have the respective meanings set forth below.

**A. Border Transmission Owner.** A Midwest ISO Owner whose transmission facilities are interconnected with those of a non-Midwest ISO owner.

**B. Bundled Load.** The aggregate usage of customers who purchase electric service as a single service rather than services, including transmission service, which may be purchased separately.

**C. Drive-in.** Point-to-Point Transmission Service where the generation source is outside the Midwest ISO and the load is located within the Midwest ISO.

**D. Drive-out.** Point-to-Point Transmission Service where the generation source is located within the Midwest ISO and the load is located outside of the Midwest ISO.

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**E. Drive-through.** Point-to-Point Transmission Service where both the generation source and the load are located outside of the Midwest ISO.

**F. Drive-within.** Point-to-Point Transmission Service where both the generation source and the load are located within the Midwest ISO.

**G. First Substantive Order.** The first order in which the FERC accepts for filing this Agreement and the Transmission Tariff (or if separately accepted, the later of the two (2) orders), even if the FERC orders changes to this Agreement or the Transmission Tariff, or sets for hearing the question of the justness or reasonableness of the Agreement or the Tariff.

**H. Grandfathered Agreements.** For revenue distribution purposes, the following types of agreements shall be considered Grandfathered Agreements: (i) non open access tariff transmission service agreements executed before the First Substantive Order date; (ii) bundled contracts which include transmission service as part of the contract executed prior to the First Substantive Order date; (iii) network and long-term firm Point-to-Point Transmission Service agreements executed prior to the First Substantive Order date; and (iv) accepted and confirmed short-term firm and non-firm Point-to-Point Transmission transactions under open access transmission tariffs which were accepted and confirmed prior to the First Substantive Order date.

For pricing purposes, the first two categories above shall be Grandfathered Agreements. The third and fourth categories of agreements shall be considered only Grandfathered Agreements for pricing purposes if the pricing terms cannot be changed

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under sections 205 and 206 of the FPA (except under the Mobile-Sierra “public interest” standard).

I. **Host Zone.** The Zone where load is physically connected to the Midwest ISO transmission network either directly or through a distribution system.

J. **Network Transmission Service.** Defined the same as in the definition of Network Integration Transmission Service in the Transmission Tariff.

K. **Point-to-Point Transmission Service.** Defined the same as in the definition of the same term in the Transmission Tariff.

L. **Transition Period.** The Transition Period begins on the Transfer Date and ends on the sixth anniversary of the Transfer Date.

M. **Zone(s).** The transmission pricing zone(s) identified in the Transmission Tariff as it (they) may be changed pursuant to this Appendix C.

### II. **Pricing.**

#### A. **Rates and Procedures Applicable during the Transition Period.**

The following are the major elements of Midwest ISO pricing during the Transition Period:

##### 1. **Transition Period Rates.**

a. During the Transition Period, the Midwest ISO shall employ a Zonal pricing structure for both Network Transmission Service and Point-to-Point Transmission Service associated with loads physically located within a Midwest ISO Zone. The Zonal rates for each Zone shall be based on the costs of the booked

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transmission facilities within the Zone. Payment of the Zonal rate allows the customer to obtain transmission service over the facilities covered by the Transmission Tariff without paying additional base transmission charges. The Zones shall be as specified in the Transmission Tariff submitted as part of the initial filing with the FERC to establish the Midwest ISO. The Zones only may be changed to reflect the effectuation of a merger (or consolidation and reorganization), to add a new Owner that operates a control area in existence on or before the date of the initial filing with the FERC to establish the Midwest ISO, or to reflect the withdrawal from the Midwest ISO of an Owner or Owners.

b. The rates for Network Transmission Service and Drive-in and Drive-within Point-to-Point Transmission Service shall be the rates for the Zone in which the load is located. The rates for Drive-through and Drive-out Point-to-Point Transmission Service shall be the single Midwest ISO system-wide rate calculated as set forth in the Transmission Tariff.

### 2. Special pricing rules during the Transition Period.

a. Each Owner shall take Network Transmission Service or Point-to-Point Transmission Service from the Midwest ISO at its Zonal rate for the retail electric load it continues to serve that has the right to choose a different power supplier under a state retail access program or legislation and that was served by the Owner prior to the retail load receiving such right to choose a different power supplier. Each Owner also shall take Network Transmission Service or Point-to-Point Transmission Service from the

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Midwest ISO at the appropriate Zonal rate for any sales to customers taking requirements wholesale electric service which FERC requires to be unbundled unless such service is arranged by another entity or is pursuant to a Grandfathered Agreement.

b. Firm or non-firm Point-to-Point Transmission Service shall be taken from the Midwest ISO for a sale of power by one Owner to another within the Midwest ISO. However, the Point-to-Point Transmission Service arranged in connection with such a power sale shall, for billing purposes, be reduced to reflect the portion of the buying Owner's load, if any, served by Midwest ISO Network Transmission Service.

c. Owners that are transmission-dependent utilities within a Zone, that is, their transmission facilities within a Zone are insufficient to deliver the electric service requirements of their customers within that same Zone, may elect Network or Point-to-Point Transmission Service for customers or electric loads within that Zone. All other Owners shall not have the option of electing Network Transmission Service for loads or customers that do not have the right to choose a different power supplier during the Transition Period; provided, however, Transmission Owners required by state law to take transmission service from the Midwest ISO for bundled retail load may elect Network Integration Transmission Service for such loads even if those loads or customers do not possess the right to choose a different supplier.

d. Service under Grandfathered Agreements shall continue according to their terms rather than under the Transmission Tariff. Grandfathered Agreements are (or will be) listed in Attachment P to the Transmission Tariff.

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e. The requirements and restrictions in subsections (b) and (c) are limited by Section 37.5 of the Transmission Tariff.

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**B. Rates and Procedures Applicable after the Transition Period**

1. Rates.

a. The rates for Point-to-Point and Network Transmission Service shall be the same as the rates during the Transition Period which are specified in Section II, Paragraph A.1 above except under the conditions specified in subparagraphs b or c of this paragraph B.1.

b. The Midwest ISO shall file to combine zones (i) if all of the Owners in the Zones to be combined that are paying the Midwest ISO for transmission service associated with Bundled Load agree to combine such zones; (ii) if all of the Owners in contiguous Zones that are paying the Midwest ISO for transmission service associated with Bundled Load are allowed to recover amounts they pay the Midwest ISO for such transmission service in the applicable rates; provided, however, any Owner may agree to have zones combined whether or not the Owner recovers or is assured recovery of payments to the Midwest ISO; or (iii) if there are contiguous zones that are to be combined where there are no Owners paying the Midwest ISO for transmission service associated with Bundled Load.

c. The Midwest ISO shall file a revision to the rate formula which is set forth in Attachment O to the Transmission Tariff to implement Midwest ISO system-wide transmission rates (i.e., the same transmission rate shall apply to all customers) (i) if all Owners paying the Midwest ISO for transmission service associated with Bundled Load agree; (ii) if all Owners that are paying the Midwest ISO for transmission service

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associated with Bundled Load are allowed to recover such payments; or (iii) there are no Owners paying the Midwest ISO for transmission service associated with Bundled Load.

d. In order to implement and facilitate any rate revisions to paragraphs b and c of this Section II.B.1., the Midwest ISO shall establish procedures to provide for the development and submission of a filing to FERC, which shall be submitted at least six months before the end of the Transition Period.

### **2. Load under Transmission Tariff.**

The Midwest ISO Transmission Tariff shall be applicable to all transmission service arranged over Midwest ISO transmission facilities whether for Bundled Load, for electric load that is not Bundled Load, or for deliveries made pursuant to Grandfathered Agreements; provided, however, that Grandfathered Agreements shall not be abrogated or modified by this Agreement. Owners shall be required to take transmission service under the Midwest ISO Transmission Tariff to serve Bundled Load to which they are providing bundled electric service unless some other entity is obtaining the necessary transmission service from the Midwest ISO.

### **C. Other Pricing Matters.**

1. Owners shall be appropriately compensated for the construction of transmission facilities required by the Midwest ISO. The appropriate compensation or compensation requirements are set forth in Attachment N to the Transmission Tariff submitted as part of the initial filing with the FERC to establish the Midwest ISO.

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2. Prior to the end of the fourth (4th) year of the Transition Period, each Owner shall file a request with the appropriate regulatory authority or authorities (unless a proceeding has already been initiated or completed) for a determination of which of its facilities are transmission facilities or which are distribution in accordance with the seven (7) factor test set forth in FERC Order No. 888, 61 Fed. Reg. 21,540, 21,620 (1996), or any applicable successor test. Each Owner shall use its best effort to cause these determinations to be made before the end of the Transition Period. Owners that are not subject to regulation by a regulatory authority shall apply to the Midwest ISO for such a determination.

3. The ISO Cost Adder mechanism for the Transition Period shall be calculated as set forth in Schedule 10 to the Transmission Tariff submitted as part of the initial filing with the FERC to establish the Midwest ISO.

### **III. Revenue Distribution.**

Notwithstanding any language to the contrary in this Appendix C or the Agreement, the Midwest ISO shall pass through monthly the Owners' revenues associated with transmission services to the LLC established by the Owners in accordance with this Appendix C. If the Owners participating in the LLC unanimously agree, the Owners may designate some other entity or entities to recover the revenues from the Midwest ISO. In any event, any distribution of revenues to and among the Owners by the LLC shall be consistent with this Appendix C.

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The revenues subject to this Section III are the transmission revenues associated with charges under Schedules 7, 8, and 9 to the Transmission Tariff.

### **A. Revenue Distribution during Transition Period.**

1. Except by mutual agreement of the parties to a Grandfathered Agreement, the Midwest ISO shall not collect or distribute any revenues for transmission service related to such agreements during the Transition Period. The Owner providing the transmission service under a Grandfathered Agreement shall continue to receive payment directly from the customer under the Grandfathered Agreement. Nothing contained in this paragraph affects any rights of any party to unilaterally make application to FERC to alter, amend, or terminate a Grandfathered Agreement.

2. Revenues collected by the Midwest ISO for transmission services involving retail electric load that had the right to choose a different supplier under a state retail access program or legislation, shall be fully distributed to the Host Zone, regardless of whether the customers comprising such retail electric load have exercised such right to choose.

3. Revenues collected by the Midwest ISO for transmission services associated with power transactions where the generation source(s) and load(s) are physically located within the same Host Zone shall be fully distributed to that Host Zone whether the generation source is controlled by the Owner or another entity.

4. Revenues collected by the Midwest ISO for Network Transmission Service shall be fully distributed to the Host Zone.

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5. Revenues collected by the Midwest ISO for Point-to-Point Transmission Service for delivery directly to a wholesale requirements customer or a former wholesale requirements customer shall be distributed to the Host Zone.

6. Revenues collected by the Midwest ISO for Drive-in Point-to-Point Transmission Service shall be fully distributed to the Border Transmission Owner if that Owner purchases power from outside the Midwest ISO for delivery to its Zone and pays the Midwest ISO for such transmission service to effectuate that purchase.

7. All other Midwest ISO transmission revenues (*i.e.*, other than those revenues specified in Paragraphs 1-6 above) shall be distributed among Zones as follows: (i) fifty percent (50%) of such revenues shall be distributed in proportion to transmission investment (calculated each month based on the relative proportion of transmission investment reflected in the then applicable rates determined by the formula in Attachment O to the Transmission Tariff); and (ii) fifty percent (50%) of such revenues shall be shared based upon power flows. Such power flows shall be calculated using load flow analysis techniques to develop transaction participation factors. The methodology for developing transaction participation factors is described in Appendix C-1. Participation factors less than three percent (3%) shall be ignored.

Notwithstanding the foregoing in this paragraph 7, Transmission Owners that are also Mid-Continent Area Power Pool ("MAPP") members electing to take Network Integration Transmission Service pursuant to Section 37.5 of the Transmission Tariff shall receive no revenues under this paragraph from Point-to-Point Transmission

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Service associated with Transmission Owner purchases of power. Such MAPP Transmission Owners shall participate in all other revenue sharing under this paragraph 7.

8. The Owners located within a Zone that has more than one (1) Owner shall appoint a single Owner or designee to receive the revenues allocated to the Zone and to further distribute such revenues pursuant to agreement of the Owners within the Zone. If the Owners in a Zone cannot agree to a methodology for distributing such revenues, Owners may seek recourse through the Dispute Resolution procedures under Appendix D to the Agreement or the Owners may go to the FERC for resolution. An intra-Zonal revenue distribution methodology shall, to the greatest extent possible, minimize cost shifts so that the Owners shall continue to receive the revenues they would have received absent the formation of the Midwest ISO.

**B. Revenue Distribution after the Transition Period Ends.**

1. Each Owner shall receive revenues, on a monthly basis, based on its revenue requirement calculated in accordance with a formula filed with the FERC.

2. If Midwest ISO revenues are insufficient to satisfy revenue requirements in any year for any reason, then the shortfall shall be apportioned on a proportionate basis of revenue requirements (e.g., an Owner whose revenue requirements are ten percent (10%) of the total Midwest ISO revenue requirements shall bear \$1 million

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of a total \$10 million shortfall). If Midwest ISO revenues exceed revenue requirements in any year, then any additional revenues shall be distributed on the same basis used for apportioning shortfalls.

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**IV. Return Of Start-up Costs.**

The Midwest ISO shall pay back an Owner's contributions to the Start-up Costs, plus reasonable interest; provided, however, only Owners that are signatories to the Agreement when it is initially filed with the FERC shall receive a return of their contribution to the Start-up Costs incurred prior to the date of filing. Those Owners that are not signatories at the time of filing shall forfeit any right to a return of their contributions to Start-up Costs incurred prior to the date of the initial filing. For those Owners that become signatories after the initial filing with FERC and make contributions to Start-up Costs after the date they become signatories, the Midwest ISO shall return those post-filing Start-up Costs after paying back all Start-up Costs incurred before the initial FERC filing date. The Midwest ISO shall obtain financing as soon as is reasonably possible to pay back such Owners and shall do so promptly upon receiving the necessary monies. The Midwest ISO also shall use any membership fees to pay back such Owners as soon as possible but no later than twelve (12) months after the date of the First Substantive Order. The Start-up Costs shall include only the following costs:

**A.** Contributions to cover outside joint expenses (i.e., outside legal costs and consultant or contractor costs) relating to the development of the Midwest ISO filing and implementation of the Agreement.

**B.** Costs associated with joint meetings of Owners and others relating to the formation of the Midwest ISO.

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**C.** Contributions relating to equipment, software, or other items related to the start-up of the Midwest ISO. These contributions include monies spent associated with equipment, software, and other items for (1) the Midwest ISO's systems; and (2) the Owners' systems where such expenditures are necessary to allow the Owners' systems to interface with the ISO. Payments made to consultants related to the start-up of the Midwest ISO are included within such expenditures.

**D.** Contributions to allow the Midwest ISO to obtain financing.

**E.** Contributions or monies paid relating to the recruitment, hiring, and/or employment of Directors, Officers, employees, and contractors by the Midwest ISO including salaries and other compensation and insurance premiums and any monies paid to any person or entity performing administrative and start-up functions until the Midwest ISO Board is elected.

**F.** Any other contributions by Owners to Midwest ISO expenses or costs in response to a request of the Midwest ISO Board or Officers.

For any facilities, software, or other items involving modifications or additions to the Owners' systems for which the Owners receive reimbursement of their costs under this Article IV, the Owners shall not include such facilities, software, or other items, or portions thereof, in their rates or in any charges to the Midwest ISO.

**V. Renegotiation Procedures For Certain Grandfathered Agreements.**

For Grandfathered Agreements where the agreements result in the payment of pancaked rates within the Midwest ISO, the parties to the agreement shall enter into

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good faith negotiations to consider the amendment or termination of the agreement. These negotiations shall conclude no later than the first day on which the Midwest ISO begins providing service under the Transmission Tariff. During this negotiating period, the parties to the Grandfathered Agreement cannot raise any issues regarding amendment or termination of such Grandfathered Agreement with the FERC. At the end of the negotiating period, if the parties to the Grandfathered Agreement are unable to reach agreement, then either party may utilize whatever rights it otherwise would have to request that the FERC consider the need for an amendment or to terminate the Grandfathered Agreement. Except as specifically provided in this Section V, this provision does not affect any rights or arguments that a party to a Grandfathered Agreement may have.

## APPENDIX C-1

### APPENDIX C-1

#### DEVELOPMENT OF TRANSACTION PARTICIPATION FACTORS

In developing transaction participation factors (hereinafter "TPFs") for use in transmission revenue distribution, the Midwest ISO shall employ the principles outlined in this Appendix C-1, as described below.

Power Flow Models: The Midwest ISO shall develop power flow base cases with sufficient detail to represent the transmission systems of the Midwest ISO and surrounding networks, using the NERC power flow base case library. Power flow base cases should be developed annually for a number of load levels and various seasons (such as summer and winter) to recognize changes in the transmission system configuration, load level, and power flow patterns. Transformer taps and switched shunts should be held fixed and the phase angle regulators should be modeled as they would be in transmission reliability studies. Other modeling adjustments should be incorporated as appropriate.

Power Transaction Simulations: Each potential power transaction should be simulated by scaling load down in the selling (or from) control area by an appropriate amount (e.g., 100 MW) and scaling load up by the same amount in the buying (or to) control area, making a corresponding adjustment in the scheduled interchange of the affected control areas. Each power flow simulation should be solved using an AC solution.

Calculations of TPFs: Tables showing the TPF for each Midwest ISO Zone shall be constructed for each simulated transaction. When a Midwest ISO control area is host to the load or power source for a transaction, the TPF for that control area shall be 100%. A TPF which represents the response of each other Midwest ISO system affected by the simulated transaction shall be calculated. This calculation may be accomplished in several steps as follows:

- Algebraically sum the tie line flows between each affected control area and each interconnected control area neighbor of such control area (i.e., determine the net flow in (+) or out (-) over all ties of each control area to control area interface) for the base case and corresponding transaction simulation case;
- Compare the corresponding base case and transaction simulation case results and determine the tie line power flow change for each such control area interface;
- Sum the absolute values of such changes in tie line flows over all the control area interfaces of such control area; and
- Divide the sum by two and the simulation transaction amount, setting all TPF of less than 0.03 (3%) to zero.

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**DISPUTE RESOLUTION**

**I. Applicability.**

**A.** The Dispute Resolution procedures set forth herein shall be applicable, under the conditions hereinafter provided, to all disputes as to any matter governed by this Appendix D arising between or among any two (2) or more parties in one or more of the following groups: Owners, Members, Users, and the Midwest ISO; provided, however, that these Dispute Resolution procedures do not apply to any matters covered by the Dispute Resolution procedures of the Transmission Tariff. Nothing in this Appendix is intended to restrict or expand existing state laws or regulatory authority.

**II. Informal Dispute Resolution Procedures.**

**A. When Required.** Any dispute as to a matter governed by this Appendix D shall be subject to the informal Dispute Resolution procedures specified herein.

**B. Procedures.**

1. Each Owner, each Member, each User, and the Midwest ISO shall designate an employee or representative who shall be their initial contact for resolving disputes involving them as to matters governed by this Appendix D. Each party to such a dispute shall raise all issues regarding the dispute with the designated representative of the other party or parties to such dispute in the first (1st) instance. The designated representatives shall work together to resolve the relevant issues in a manner that

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meets the interests of such parties, or until the issues are referred to the designated officers of the parties as set forth in Subparagraph 2 of this Paragraph B.

2. Each Owner, each Member, each User, and the Midwest ISO shall designate an officer who shall review disputes as to any matter governed by this Appendix D involving them that their designated representatives are unable to resolve. In the case of the Midwest ISO, this officer shall be designated by the Board. The applicable officers of the parties involved in such dispute shall work together to resolve the disputes so referred in a manner that meets the interests of such parties, either until such agreement is reached, or until an impasse is declared by any party to such dispute.

### III. Mediation.

A. When Required. Any dispute as to a matter governed by this Appendix D shall be subject to non-binding mediation subsequent to informal dispute resolution, but prior to the initiation of arbitration, regulatory, judicial, or other dispute resolution proceedings, unless an Alternate Dispute Resolution Committee (discussed in Section V of this Appendix D), or similar body as appointed by the Board (hereinafter "Committee"), shall determine, from the nature of the dispute, the positions of the parties, and other relevant facts and circumstances, that mediation would be highly unlikely to lead to resolution of the dispute.

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**B. Procedures.**

1. The parties to a dispute as to a matter governed by this Appendix D shall notify the Committee in writing of the existence and nature of the dispute prior to commencing mediation for resolution of the dispute. The Committee shall have ten (10) days in which to determine whether mediation would be highly unlikely to lead to resolution of the dispute. At the earlier of (i) the expiration of such ten-day (10-day) period, (ii) a determination by the Committee that mediation is appropriate, or (iii) agreement of the parties involved in this dispute, such parties shall proceed to mediation as provided in this Appendix D.

2. A neutral mediator shall be selected by the Chair of the Committee after consultation with the parties involved in the dispute. The Chair of the Committee also may consult with the other representatives on the Committee concerning the selection of a mediator. The mediator selected shall (i) be knowledgeable in the subject matter of the dispute, and (ii) have no official, financial, or personal conflict of interest with respect to the parties or the issues involved in the dispute, unless such interest is fully disclosed in writing to all parties involved in the dispute and all such parties waive in writing any objection to the interest.

3. The parties involved in the dispute shall attempt in good faith to resolve their dispute in accordance with the procedures and timetable established by the mediator. In furtherance of the mediation efforts, the mediator may, among other actions:

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- a. Require such parties to meet for face-to-face discussions, with or without the mediator;
- b. Act as an intermediary between such parties;
- c. Require such parties to submit written statements of issues and positions; and
- d. If requested by such parties at any time in the mediation process, provide a written recommendation on resolution of the dispute including, if requested, the mediator's assessment of the merits of the principal positions being advanced by each such party.

4. If a resolution of the dispute is not reached by the parties in the dispute by the thirtieth (30<sup>th</sup>) day after the appointment of the mediator, or such later date as may be agreed to by such parties, and, if not previously requested to do so, the mediator shall promptly provide such parties with a written, confidential, non-binding recommendation on resolution of the dispute, including the mediator's assessment of the merits of the principal positions being advanced by each of the parties, or, if such a request has previously been made, shall provide any additional recommendations or assessments the mediator shall deem appropriate. At a time and place specified by the mediator after delivery of the foregoing recommendation for the parties involved in the dispute, such parties shall meet in a good faith attempt to resolve the dispute in light of

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the mediator's recommendation. Each party shall be represented at the meeting by a person with authority to settle the dispute, along with such other persons as each such party shall deem appropriate. If the parties are unable to resolve the dispute at or in connection with this meeting, then, (i) any party involved in the dispute may commence such arbitration proceedings, or such judicial, regulatory, or other proceedings as may be appropriate as permitted by the provisions of Section IV, Paragraph A of this Appendix D; (ii) the recommendation of the mediator shall have no further force or effect and shall not be admissible for any purpose in any subsequent arbitration, administrative, judicial, or other proceeding; and (iii) the mediator may not be compelled to testify concerning the mediation in any subsequent arbitration, judicial, or other proceeding.

**C. Costs.** The costs of the time, expenses, and other charges of the mediator and common costs of the mediation process shall be borne by the parties involved in the dispute, with each side (treating all parties as aligned with either the plaintiff side or the defendant side of the dispute) in the mediated matter bearing one-half (1/2) of such costs. Each party involved in the dispute shall bear its own costs and attorney's fees incurred in connection with any mediation under this Appendix D.

### IV. Arbitration.

**A. When Required.** Any dispute governed by this Appendix D that has not been resolved through the procedures specified herein (hereinafter "Dispute") shall be

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resolved by arbitration in accordance with the procedures specified herein; provided, however, that any Dispute involving the obligation to build or enlarge transmission facilities shall be subject to resolution by the appropriate regulatory authority if (a) the regulatory authority has (i) jurisdiction over the subject matter of the Dispute, (ii) jurisdiction to grant the relief sought by one (1) or more parties to the Dispute, and (iii) jurisdiction over the party from which such relief is sought; and (b) at least one (1) of the parties to the Dispute demands that the matter be submitted to such regulatory authority; and provided, further, that any assertion that any provision of the Agreement, including any principle, standard, requirement, plan, or procedure, or that any act or failure to act of the Midwest ISO, any Owner, Member, User, or other person or entity, is contrary to any federal or state law or regulation, shall only be heard by a court or agency having jurisdiction thereof and over the parties, unless all parties consent to arbitration of such assertion. A party seeking to invoke jurisdiction of the appropriate regulatory authority of a Dispute for which arbitration has been demanded by another party shall so notify the other parties involved in the Dispute within fourteen (14) days of receiving the demand for arbitration, and shall thereafter have a further sixty (60) days in which to make the necessary filing to commence proceedings at such regulatory authority. If the filing necessary to commence proceedings before such regulatory authority is not made within the foregoing sixty-day (60-day) period, then the Dispute shall revert to arbitration.

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**B. Initiation.** Subject to the appeal and reconsideration provisions of this Appendix D and to the provisions of Paragraphs B and C of this Section IV, a party to a Dispute wishing to commence arbitration shall send a written demand for arbitration via first class registered mail, return receipt requested, to an officer or managing or general agent (or other agent authorized by appointment or law to receive service of process) of each party to the Dispute, and to the secretary of the Committee. The demand for arbitration shall state each claim for which arbitration is being demanded, the relief being sought, a brief summary of the grounds for such relief, and the basis for the claim, and shall identify all other parties to the Dispute.

**C. Selection of Arbitrator(s).** The parties to a Dispute for which arbitration has been demanded may unanimously agree on any person to serve as a single arbitrator, or shall endeavor in good faith to agree on a single arbitrator from a list of arbitrators prepared for the Dispute by the Committee and delivered to the parties by facsimile or other electronic means promptly after receipt by the Committee of a demand for arbitration. If the parties to a Dispute are unable to agree on a single arbitrator by the fourteenth (14<sup>th</sup>) day following delivery of the foregoing list of arbitrators, or such other date as agreed to by the parties, then, not later than the end of the seventh (7<sup>th</sup>) business day thereafter, the party or parties demanding arbitration on the one hand, and the party or parties responding to the demand for arbitration on the other, shall each (treating all parties as aligned with either the plaintiff side or the defendant side of the Dispute) designate an arbitrator from a list for the Dispute

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prepared by the Committee, pursuant to procedures for such designation established by the Committee. The arbitrators so chosen shall then choose a third arbitrator.

**D. Procedures.** The Committee shall compile and make available to the arbitrator(s) and the parties standard procedures for the arbitration of Disputes, which may be modified or adopted for use in a particular proceeding as the parties mutually agree or as the arbitrator(s) deem appropriate. Upon selection of the arbitrator(s), arbitration shall go forward in accordance with applicable procedures.

**E. Intervention.** The arbitrator(s) may permit any Owner or Member to intervene in the proceeding upon the filing of a timely application which demonstrates that the Owner or Member has a direct monetary interest that will be materially affected by the decision of the arbitrator(s) and that it will not be represented adequately by an existing party to the proceeding. Any Owner or Member seeking to intervene in a Dispute shall indicate in its intervention papers whether it believes that it should be aligned with either the plaintiff side or the defendant side of the Dispute. Any party to the Dispute may challenge such proposed alignment. The arbitrator(s) shall determine the actual alignment of the parties to a Dispute based upon the comparability of the specific positions advanced by each party concerning the issues involved in the Dispute.

**F. Summary Disposition and Interim Measures.**

1. The procedures for arbitration of a Dispute shall provide a means

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for summary disposition of a demand for arbitration, or response to a demand for arbitration, that in the reasoned opinion of the arbitrator(s) does not have a good faith basis either in law or fact. If the arbitrator(s) determine that a demand for arbitration, or response to a demand for arbitration, does not have a good faith basis either in law or fact, the arbitrator(s) shall have discretion to award the costs of the time, expenses, and other charges of the arbitrator(s) to the prevailing party.

2. The procedures for the arbitration of a Dispute shall provide a means for summary disposition without discovery if there is no dispute as to any material fact, or with such limited discovery as the arbitrator(s) shall determine is reasonably likely to lead to the prompt resolution of any disputed issue of material fact.

3. The procedures for arbitration of a Dispute shall permit any party to a Dispute to request the arbitrator(s) to render a written interim decision requiring that any action or decision that is the subject of a Dispute not be put into effect, or imposing such other interim measures as the arbitrator(s) deem necessary or appropriate, to preserve the rights and obligations secured by the Agreement during the pendency of the arbitration proceeding. The arbitrator(s) may grant or deny, in whole or in part, a request for such a written interim decision. Owners, Members, and Users shall be bound by any such written decision pending the outcome of the arbitration proceeding.

### **G. Discovery of Facts.**

1. The arbitration procedures for the resolution of a Dispute shall

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include adequate provision for the discovery of relevant facts, including the taking of testimony under oath, production of documents and things, and inspection of land and tangible items. The nature and extent of such discovery shall be determined as provided herein and shall take into account (i) the complexity of the Dispute, (ii) the extent to which facts are disputed, and (iii) the amount in controversy.

2. The sole arbitrator, or the arbitrator selected by the arbitrators chosen by the parties (hereinafter the "Procedures Arbitrator"), as the case may be, shall be responsible for establishing the timing, amount, and means of discovery, and for resolving discovery and other pre-hearing disputes. If a Dispute involves contested issues of fact, promptly after the selection of the arbitrator(s), the Procedures Arbitrator shall convene a meeting of the parties for the purpose of establishing a schedule and plan of discovery and other pre-hearing actions.

**H. Evidentiary Hearing.** The procedures established by the arbitrator(s) shall provide for an evidentiary hearing, with provision for the cross-examination of witnesses, unless all parties consent to the resolution of the matter on the basis of a written record. The forms and methods for taking evidence shall be as described in the then current version of the Federal Rules of Evidence, except as modified by the arbitrator(s) or agreement of the parties. The arbitrator(s) may require such written or other submissions from the parties as shall be deemed appropriate, including submission of the direct testimony of witnesses in written form. The arbitrator(s) may

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exclude any evidence that is irrelevant, immaterial, or unduly repetitious, and, except to the extent hereinafter otherwise provided, shall exclude any material which is covered by the attorney-client privilege, the accountant-client privilege, other evidentiary privileges, or the attorney-work product doctrine. Any party or parties may arrange for the preparation of a record of the hearing, and, except to the extent otherwise provided, shall pay the costs thereof. Such party or parties shall have no obligations to provide, or agree to the provision of, a copy of the record of the hearing to any party that does not pay a proportionate share of the cost of the record. At the request of any party, the arbitrator(s) shall determine a fair and equitable allocation of the costs of the preparation of a record between or among the parties to the proceeding who are willing to share such costs.

### **I. Confidentiality.**

1. Any document or other information requested from another party in the course of an arbitration proceeding, and not otherwise available to the receiving party, including any such information contained in documents or other means of recording information created during the course of the proceeding, may be designated "Confidential" by the producing party. The party designating documents or other information as "Confidential" shall have twenty (20) days from the request for such material to submit a request to the Procedures Arbitrator to establish such requirements for the protection of such documents or other information designated as "Confidential"

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as may be reasonable and necessary to protect the confidentiality and commercial value of such information and the rights of the parties. Prior to the decision of the Procedures Arbitrator on a request for confidential treatment, documents or other information designated as "Confidential" need not be produced. Confidential information shall not be used by the arbitrator(s), or anyone working for or on behalf of any of the foregoing, for any purpose other than the arbitration proceeding, and shall not be disclosed in any form to any person or entity not involved in the arbitration proceeding without the prior written consent of the party producing the information or as permitted by the Procedures Arbitrator.

2. Any person or entity receiving a request or demand for disclosure, whether by compulsory process, discovery request, or otherwise, of documents or information obtained in the course of an arbitration proceeding that have been designated "Confidential" and that are subject to a non-disclosure requirement under this Appendix D, or a decision of the Procedures Arbitrator, shall immediately inform the person or entity from which the information was obtained, and shall take all reasonable steps to afford the person or entity from which the information was obtained an opportunity to protect the information from disclosure. Any person disclosing information in violation of this Appendix D or requirements established by the Procedures Arbitrator shall be deemed to waive any right to introduce or otherwise use

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such information in any judicial, regulatory, or other legal or dispute resolution proceeding, including the proceeding in which the information was obtained.

3. Nothing in this Appendix D shall preclude any person or entity from using documents or information properly and previously obtained outside of an arbitration proceeding, or otherwise public, for any legitimate purpose, notwithstanding that the information was also obtained in the course of the arbitration proceeding.

**K. Timetable.** Promptly after the selection of the arbitrator(s), the arbitrator(s) shall set a date for the issuance of the arbitration decision, which shall be not later than eight (8) months (or such earlier date as may be agreed to by the parties) from the date of the selection of the arbitrator(s), with other dates, including the dates for an evidentiary hearing, or other final submissions of evidence, set in light of this date. The date for the evidentiary hearing, or other final submission of evidence, shall not be changed absent extraordinary circumstances. The arbitrator(s) shall have the power to impose sanctions for dilatory tactics or undue delay in completing the arbitration proceedings.

**L. Decisions.** The arbitrator(s) shall issue a written decision, which may, at the arbitrator(s) discretion, include findings of fact. The arbitration decision shall be based on (i) the evidence in the record; (ii) the terms of the Agreement, including any principle, standard, requirement, procedure, plan, or other right or obligation established

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by or pursuant to the Agreement; (iii) applicable federal and state legal standards, including the FPA and any applicable state and FERC regulations and decisions; and (iv) relevant decisions in previous arbitration proceedings under the Agreement which shall be available subject to applicable confidentiality provisions. All decisions of the arbitrator(s) shall be maintained by the Committee and shall, subject to any applicable confidentiality provisions, be made available to all Owners, Members, and state regulatory authorities on request. The arbitrator(s) shall have no authority to revise or alter any provision of the Agreement. Any arbitration decision that affects matters subject to the jurisdiction of the FERC under section 205 or section 206 of the FPA shall be filed with the FERC and any arbitration decision that affects matters subject to the jurisdiction of a state authority shall be filed with that authority.

**M. Costs.** Unless the arbitrator(s) shall decide otherwise, the costs of the time, expenses, and other charges of the arbitrator(s) shall be borne by the parties to the Dispute, with each side on an arbitrated issue bearing one-half (1/2) of such costs, and each party to an arbitration proceeding shall bear its own costs and fees. The arbitrator(s) may require all of the costs of the time, expenses, and other charges of the arbitrator(s), plus all or a portion of the costs of arbitration, attorney's fees, and the costs of mediation, if any, to be paid by any party that substantially loses on an issue determined by the arbitrator(s) to have been raised without a substantial basis.

**N. Enforcement.** The decision of the arbitrator(s) shall be binding, subject to applicable state and federal laws and approvals.

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**O. FERC Jurisdiction.** If a party fails to invoke FERC jurisdiction of a Dispute involving matters subject to FERC jurisdiction within sixty (60) days in accordance with Section IV, Paragraph A of this Appendix D, the party shall be deemed to have waived its right to invoke such jurisdiction; provided, however, that this waiver only applies to the party and does not affect any right that the FERC may have to act on its own. If such party nonetheless invokes FERC jurisdiction following the arbitration proceedings provided for herein, that party shall be responsible for all attorney's fees incurred by other parties to the Dispute and the Midwest ISO, whether or not the FERC concludes that such party has waived its right to invoke FERC jurisdiction.

**V. Alternate Dispute Resolution Committee.**

**A. Membership.**

1. The Committee shall be composed of six (6) representatives selected by the Board, which shall use its best efforts to select a Committee that reflects the diversity, in terms of size, type of entity, and geographic location, of Owners and Members. No more than one (1) representative on the Committee may be a representative of the same Owner or Member.

2. Representatives on the Committee shall serve for terms of three (3) years, beginning on the first day of the month following the annual meeting of the Board, and may serve additional terms, except that, of the representatives first elected to the Committee, two (2) representatives shall serve terms of one (1) year, and two (2) representatives shall serve terms of two (2) years.

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**B. Voting Requirements.** Approval or adoption of measures by the Committee shall require two-thirds (2/3) of the votes of the representatives present and voting, but in no event less than three (3) votes. Two-thirds (2/3) of the representatives on the Committee shall constitute a quorum for the conduct of the business of the Committee.

**C. Officers.** At the first meeting of the Committee following the annual meeting of the Board, the representatives on the Committee shall choose a Chair and Vice Chair from among the representatives on the Committee. The Chair and the Vice Chair shall each serve a term of three (3) years, unless earlier terminated by a two-thirds (2/3) vote of the representatives on the Committee. The Chair of the Committee shall preside at meetings of the Committee, and shall have the power to call meetings of the Committee and to exercise such other powers as are specified in this Appendix D or authorized by the Committee.

**D. Meetings.** The Committee shall meet at such times and places as determined by the Committee, or at the call of the Chair. The Chair shall call a meeting of the Committee upon the request of two (2) or more members of the Committee.

**E. Responsibilities.** The duties of the Committee include, but are not limited to, the following:

1. Maintain a pool of persons qualified by temperament and experience, and with technical or legal expertise in matters likely to be the subject of Disputes, to serve as mediators and arbitrators under this Appendix D;

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2. Determine the rates and other costs and charges that shall be paid to mediators and arbitrators for, or in connection with, their services;
3. Select mediators for disputes;
4. Determine whether mediation is not warranted in a particular Dispute;
5. Provide to the parties involved in a Dispute lists of arbitrators qualified by temperament and experience, and with appropriate technical or legal expertise, to resolve particular Disputes, such lists to include only neutral persons who have no official, financial, or personal conflict of interest with respect to the parties or the issues involved in the Dispute;
6. Compile and make available to Owners, Members, Users, arbitrators, and other interested parties suggested procedures for the arbitration of Disputes in accordance with Section IV, Paragraph D of this Appendix D;
7. Maintain and make available to Owners, Members, Users, mediators, arbitrators, and other interested parties the written decisions required by Section IV, Paragraph L of this Appendix D;
8. Establish such procedures and schedules, in addition to those specified herein, as it shall deem appropriate to further the prompt, efficient, fair, and equitable resolution of disputes; and

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9. Provide such oversight and supervision of the dispute resolution processes and procedures instituted pursuant to this Appendix D as may be appropriate to facilitate the prompt, efficient, fair, and equitable resolution of disputes.

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**FRAMEWORK FOR OPERATIONAL RESPONSIBILITIES**

**I. General Description Of Midwest ISO's Operational Responsibilities.**

**A. Midwest ISO Responsibilities.** The Midwest ISO shall be responsible for the following operational functions:

1. The Midwest ISO shall have functional control of the Transmission System as set forth in Section II of this Appendix E and as defined in Article One, Section I, Paragraph L of the ISO Agreement.

2. The Midwest ISO shall review and approve, as appropriate, requests for service and schedule transmission transactions as set forth in Section III of this Appendix E and shall determine available transmission capability (hereinafter "ATC") under the Transmission Tariff as set forth in Section III of this Appendix E, and in Appendix B to the Agreement.

3. The Midwest ISO shall implement and administer the Transmission Tariff applicable to the Transmission System and Non-transferred Transmission Facilities as set forth in Section IV of this Appendix E, and in Appendix B to the Agreement.

4. The Midwest ISO shall be responsible for the security of the Transmission System as set forth in Section V of this Appendix E.

5. The Midwest ISO shall offer ancillary services required to support transmission service as set forth in Section VI of this Appendix E.

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6. The Midwest ISO shall approve the scheduling of maintenance of all transmission facilities making up the Transmission System and shall coordinate with generation owners, as appropriate, the scheduling of maintenance on generation facilities as set forth in Section VII of this Appendix E.

7. The Midwest ISO shall be responsible for operations of OASIS system(s) in accordance with the Transmission Tariff.

8. The Midwest ISO shall monitor and coordinate voltage levels that shall be the responsibility of the control areas to maintain.

**B. Owners' and Users' Responsibilities.** As described more fully below, the Owners and Users, as appropriate, shall have the following responsibilities:

1. The Owners shall retain ownership of their transmission facilities comprising the Transmission System, and shall physically operate these facilities, subject to the Midwest ISO's direction, and maintain those facilities, subject to the Midwest ISO's scheduling approval as set forth in Sections II and VII of this Appendix E.

2. The Owners who are control area operators shall continue to operate their control areas for local generation control and economic dispatch as set forth in Section III of this Appendix E.

3. The Owners shall provide transmission service through their transmission facilities at the direction of the Midwest ISO pursuant to the terms of the Transmission Tariff as set forth in Section IV of this Appendix E.

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4. The Owners and Users shall comply with the instructions of the Midwest ISO in its role as System Security Coordinator as set forth in Section V of this Appendix E.

5. The Owners shall perform maintenance on their transmission facilities included in the Transmission System under schedules as approved by the Midwest ISO, and shall coordinate maintenance on their Non-transferred Transmission Facilities and generation facilities significantly affecting Midwest ISO transmission capability or transmission reliability with the Midwest ISO as set forth in Section VII of this Appendix E. All Users that are not Owners shall coordinate maintenance on their generation facilities significantly affecting such transmission capability or reliability with the Midwest ISO.

6. The Owners and Users, where appropriate, shall offer to redispatch generating units in accordance with the Transmission Tariff, when feasible, subject to receiving appropriate compensation. The Owners and Users shall submit and coordinate unit schedules with the Midwest ISO that affect transmission capability or transmission reliability.

7. The Owners shall obtain approval of the Midwest ISO before taking transmission facilities included in the Transmission System out of service except in cases involving endangerment to the safety of employees or the public or damage to facilities. With regard to Non-transferred Transmission Facilities, the Owners shall

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provide notice to the Midwest ISO, as required from time to time by the Midwest ISO, before taking such facilities out of service.

### II. Control Over Transmission Facilities.

#### A. Midwest ISO Control.

1. The Midwest ISO shall have functional control over the combined transmission facilities of the Owners that make up the Transmission System. Appendix H to the Agreement specifies all transmission facilities that initially shall constitute the Transmission System.

2. The Midwest ISO shall periodically review whether the Transmission System facilities under its functional control constitute all of the Owners' facilities necessary to provide reliable transmission service contemplated under the Agreement and the Transmission Tariff.

3. The Midwest ISO may exercise temporary operational control over any Non-transferred Transmission Facilities or associated non-generation facilities of an Owner in order to prevent or remedy a system emergency.

4. The Midwest ISO shall maintain a publicly available registry of all facilities that constitute the Transmission System.

5. The Midwest ISO shall, in consultation with affected Owners, other affected Members, and the Advisory Committee develop, and then revise from time-to-

## APPENDIX E

time as appropriate, operating procedures governing its exercise of operational control over the Transmission System (hereinafter "Operating Procedures"). The Operating Procedures shall be provided to the Owners, and, except to the extent determined by the Board as otherwise necessary for emergency or security reasons, such procedures shall be made available to the public. The Midwest ISO shall comply with its Operating Procedures in exercising its functional control over the Transmission System. To the extent required, such Operating Procedures shall be filed with the appropriate regulatory agency or agencies.

6. The Midwest ISO shall not exercise its operational control of the Transmission System in such a way as to interfere with rights of Users in contracts between an Owner and a User that are in effect as of the Effective Date of the Agreement (hereinafter "Existing Contracts").

7. The Midwest ISO shall be responsible for coordinating with the applicable regional reliability councils and shall join such councils as appropriate.

8. The Midwest ISO shall comply with any transmission operating obligations of an Owner imposed by Federal or state law or authorities which can no longer be performed solely by the Owner following transfer of functional control of its transmission facilities to the Midwest ISO, until such obligations are revised or changed.

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9. The Midwest ISO (i) shall take no action that would impair the safety and reliability of nuclear facilities; and (ii) shall take actions consistent with nuclear license conditions or requirements or as otherwise required by the Nuclear Regulatory Commission (“NRC”).

### **B. Owner Responsibilities.**

1. The Owners shall be obligated to physically operate and maintain their transmission facilities that are part of the Transmission System, and to comply with the directions of the Midwest ISO with respect to such operation and maintenance issued in compliance with the Operating Procedures.

**C. Retained Rights of Owners.** The Owners shall retain all rights of ownership in their transmission facilities, subject to the Midwest ISO’s functional control of the Transmission System in accordance with the terms of this Appendix E. Nothing in this Appendix E shall be deemed to restrict or prohibit access to transmission facilities by the Owners, or those acting under their authority, when such access does not involve the removal of a transmission element from service or otherwise affect the provision of transmission services. To the extent required by the Midwest ISO, the Midwest ISO shall be notified by the Owners when maintenance is being performed on a facility that could result in unplanned outages of a transmission line or transformer.

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**III. Determination Of Available Transmission Capability And Transmission Scheduling.**

**A. Available Transmission Capability.** For transactions of less than two (2) weeks' duration, the Midwest ISO operations staff shall determine the ATC consistent with the terms of the Transmission Tariff and Appendix B to the Agreement. See Appendix B to the Agreement for ATC determinations of two (2) weeks or more.

1. The Midwest ISO shall review all data received from non-Midwest ISO control areas, independent transmission system operators, regional reliability councils, or other entities that impact ATC calculations.

2. The Midwest ISO shall share data with non-Midwest ISO control areas, independent transmission system operators, regional reliability councils, or other entities with whom data must be exchanged, as requested, in order to determine ATC.

**B. Transmission Service Requests.** The Midwest ISO shall receive and process all transmission service requests in accordance with the Transmission Tariff. As a result:

1. The Midwest ISO shall be ultimately responsible for conducting all System Impact Studies associated with a request for transmission service. The analysis required shall be coordinated between the Midwest ISO and the Owners as follows:

a. The Midwest ISO shall provide sufficient information to the transmission/reliability representatives of all affected Owners to allow them to model local consequences of the requested service.

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b. The Midwest ISO shall coordinate with affected Owners' transmission/reliability representatives when processing requests for service into and out of Non-transferred Transmission Facilities or distribution facilities.

c. The Midwest ISO shall consult with Owners with respect to equipment-specific and Non-transferred Transmission Facilities issues.

2. Upon completion of any required System Impact Studies, the Midwest ISO shall be responsible for making the final determination as to the amount of firm and non-firm transmission capacity that is available under the Transmission Tariff, and for resolving requests for transmission service in accordance with the terms of the Transmission Tariff.

3. When there is not adequate transmission capability to satisfy a transmission request, the Midwest ISO shall relieve or facilitate the relief of the transmission constraint consistent with the terms of the Transmission Tariff.

4. The Midwest ISO shall be responsible for documenting all transmission service requests under the Transmission Tariff, the disposition of such requests, and any supporting data required to support the decision with respect to such requests.

**C. Scheduling Transmission Service Transactions.** The Midwest ISO shall schedule all transmission service transactions involving the Transmission Tariff, including transactions under Existing Contracts, as follows:

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1. The Midwest ISO shall schedule and curtail transmission service and schedule the allocation of losses and ancillary services in accordance with the Transmission Tariff.

2. The Midwest ISO shall, in consultation with the affected Owners, other affected Members, and the Advisory Committee, develop and from time-to-time, amend when necessary, detailed scheduling protocols (hereinafter "Scheduling Protocols"), which shall be provided to all Members and made publicly available. For Members and Users who are operators of nuclear generating facilities, the Midwest ISO shall enter into written agreements, which define scheduling protocols, limitations, and restrictions necessary to ensure the safety and reliability of such facilities. The Scheduling Protocols shall not conflict with the provisions of the Transmission Tariff. All scheduling shall be performed in accordance with the Scheduling Protocols. To the extent required, such Scheduling Protocols shall be filed with the appropriate regulatory agency or agencies.

3. In performing its scheduling functions, the Midwest ISO shall ensure that the Transmission System is operated in compliance with applicable NERC, regional reliability council or successor organizations, and all other applicable operating reliability criteria.

4. The Midwest ISO shall inform all control areas and the transmission reliability representatives of all Owners of the approved schedules under the Transmission Tariff, and of any subsequent changes made thereto.

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5. The Midwest ISO shall perform all inadvertent flow accounting for Member control areas and shall coordinate the performance of such accounting with non-Member entities.

**D. Owners' Responsibilities.** The Owners who are control area operators shall continue to operate their control areas for local generation control and economic dispatch purposes. In so doing, the Owners shall comply with the scheduling instructions of the Midwest ISO issued pursuant to the Scheduling Protocols.

**IV. Administration Of Transmission Tariff.**

**A. Midwest ISO Responsibilities.**

1. The Midwest ISO shall be solely responsible for administering the Transmission Tariff.

2. The Midwest ISO shall negotiate as appropriate to develop reciprocal service, equitable tariff application, compensation principles, and any related arrangements.

3. The Midwest ISO shall monitor the service provided under the Transmission Tariff to determine if any hoarding of transmission capacity is occurring. The Midwest ISO shall attempt to eliminate the hoarding initially through direct contacts with the customer. If hoarding continues, then the Midwest ISO may file a complaint with FERC or develop and file with FERC other procedures or mechanisms to address hoarding.

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**B. Owner Responsibilities.** The Owners shall provide transmission service through their transmission facilities that are subject to the Transmission Tariff as directed by the Midwest ISO pursuant to the Transmission Tariff.

### **V. Security Of The Transmission System.**

#### **A. General.**

1. The security and reliability of the Transmission System shall be the responsibility of the Midwest ISO.

2. The Owners who are control area operators shall continue to be responsible for operating their control areas in a secure and reliable manner, subject to the requirements of this Appendix E.

3. The Midwest ISO is hereby designated and shall be the Security Coordinator of the Transmission System for the Owners. In this role, the Midwest ISO shall have security monitoring and emergency response functions, as described in more detail in Section V, Paragraphs B and C of this Appendix E.

#### **B. Security Monitoring.**

1. The Midwest ISO shall periodically perform load-flow and stability studies of the Transmission System to identify and address security problems.

2. The Owners shall continue to monitor their own control areas for system security. They shall be responsible for identifying and addressing local security problems, consistent with the requirements of this Appendix E.

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3. The Owners shall continuously provide the Midwest ISO with all data required to assess the security of the Transmission System consistent with NERC (or successor organizations) requirements, and consistent with regional requirements and the Standards of Conduct.

4. The Midwest ISO shall exchange necessary security information with other non-Member control areas, independent transmission system operators and regional reliability councils consistent with NERC (or successor organizations) requirements, with regional requirements and the Standards of Conduct.

5. The Midwest ISO shall monitor real-time data to determine whether any control areas are experiencing generation capacity deficiencies. If a generation capacity deficiency event threatens the security of the system, the Midwest ISO shall take appropriate action, including if necessary ordering the shedding of firm load.

### **C. Emergency Response.**

1. The Midwest ISO shall work with the Owners, appropriate state agencies, regional reliability councils, and other security coordinators to develop regional security plans and emergency operating procedures.

2. The Midwest ISO shall, in coordination with the Members and the Advisory Committee and in compliance with applicable state and federal laws and standards, develop, and from time-to-time update, procedures for responding to emergencies (hereinafter the "Emergency Procedures"). The Emergency Procedures shall be provided to all Members and shall be made available to the public.

## APPENDIX E

a. The Emergency Procedures shall include procedures for responding to specified critical contingencies.

b. The Midwest ISO shall continuously analyze issues that may require the initiation of emergency response actions. Such analysis shall be made at the Midwest ISO's initiative or at the request of Members, regional reliability councils, or other independent system operators or control areas. The Emergency Procedures shall be amended to include any changes or additions resulting from such analysis.

c. The Emergency Procedures shall make provision for system restoration including priority restoration of off-site power to nuclear generating facilities.

3. The Midwest ISO shall direct the response to any emergency in the Transmission System pursuant to the Emergency Procedures. Individual Owners, Users, and control areas shall carry out the required emergency actions as directed by the Midwest ISO, including the shedding of firm load if required for regional security.

4. After the conclusion of an emergency condition, any affected entity that disagrees with the Midwest ISO's handling of the emergency may resolve that disagreement pursuant to the dispute resolution procedures of Appendix D to the Agreement or the Transmission Tariff, as appropriate.

### VI. Ancillary Services.

A. The Midwest ISO shall offer to provide all Ancillary Services as defined and required under the Transmission Tariff.

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**B.** As part of its scheduling function, the Midwest ISO shall ensure that every scheduled transaction is supported by the required ancillary services and shall deny any scheduling request where the required ancillary services have not been arranged.

**C. Owners' and Other Generators' Responsibilities.**

1. All Owners and Users that own generation within the Midwest ISO shall be required to offer to provide ancillary services to the extent required under the Transmission Tariff. For FERC regulated public utilities, the charges by the generation owners for such ancillary services shall be in accordance with FERC accepted or approved rate schedules.

**VII. Transmission And Generation Maintenance.**

**A. Planned Transmission Maintenance.** The Midwest ISO's approval is required for all planned maintenance of facilities in the Transmission System. The approval process shall be as follows:

1. All Owners shall submit their planned transmission maintenance schedules to the Midwest ISO for a minimum of a rolling one-year (1-year) period. The planned maintenance schedules shall be updated daily.

2. Planned transmission maintenance requests shall be submitted to the Midwest ISO for its approval at least two (2) weeks in advance of an outage.

## APPENDIX E

3. The Midwest ISO shall determine if, and the extent to which, such planned transmission maintenance requests affect ATC, Ancillary Services, the security of the Transmission System, and any other relevant effects. This determination shall include appropriate analytical detail. Within two (2) business days of receiving a planned maintenance request, the Midwest ISO shall either approve the request or deny the request and provide an acceptable time frame in which the maintenance can be performed. Failure by the Midwest ISO to act within the two (2) day period shall be deemed as approval of the request.

4. The Midwest ISO shall have the authority to revoke any previously-approved planned transmission maintenance outages if forced transmission outages or other circumstances compromise the integrity or reliability of the Transmission System. The Midwest ISO shall notify the Owner of the decision to revoke approval of the maintenance as soon as possible after the circumstances arise that create the need for the revocation. If an Owner incurs any additional costs associated with the deferred transmission maintenance, the Owner shall be compensated for those costs pursuant to procedures adopted by the Midwest ISO, applied on a non-discriminatory basis to all Owners, and filed with FERC.

5. As part of its review process, the Midwest ISO shall identify planned transmission maintenance schedules that limit ATC and, if requested by a User, shall identify opportunities and associated costs for rescheduling planned maintenance to enhance ATC.

## APPENDIX E

6. The Midwest ISO shall be responsible for documenting all planned transmission maintenance requests, the disposition of those requests, and all data supporting the disposition of each request.

**B. Unplanned and Emergency Transmission Maintenance.** The Midwest ISO shall coordinate with the Owners to implement schedules for unplanned transmission maintenance. For emergency transmission maintenance, when conditions endanger the safety of employees or the public, or may result in damage to facilities, the Owners shall notify the Midwest ISO of such emergency maintenance. Approval by the Midwest ISO for such emergency transmission maintenance is not required.

**C. Generation Maintenance.** The Midwest ISO shall coordinate the maintenance of generating units of the Owners and other generating units as appropriate to the extent such generation maintenance affects the transmission capability or transmission reliability of the Midwest ISO as follows:

1. All Owners and Users owning or controlling generation affecting Midwest ISO transmission capability or security shall submit their planned generating unit maintenance schedules to the Midwest ISO for a minimum of a rolling one-year (1-year) period. The planned maintenance schedules shall be updated daily.

## APPENDIX E

2. The Midwest ISO shall analyze a planned generating unit maintenance schedule to determine its effect on ATC, ancillary services, the security of the Transmission System, and any other relevant effects. The Midwest ISO shall inform a Member or User if its maintenance schedule is expected to have an impact on the security of the Transmission System.

3. As part of its review process, the Midwest ISO shall identify generating unit maintenance schedules that limit ATC and shall identify opportunities and associated costs for rescheduling planned maintenance to enhance ATC. Owners or Users shall be compensated for additional costs associated with rescheduling such planned generating unit maintenance pursuant to procedures adopted by the Midwest ISO, applied on a non-discriminatory basis to all Owners and Users, and filed with FERC.

4. The Midwest ISO shall be responsible for documenting all planned generating unit maintenance schedules, all schedule changes, and all studies and services performed with respect to planned generation maintenance.

5. For Members and Users who are operators of nuclear generating facilities, the Midwest ISO shall enter into written agreements which define planned transmission and generating unit maintenance scheduling criteria, limitations and restrictions necessary to insure the safety and reliability of such facilities.

**APPENDIX F**

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**BYLAWS**

**of the**

**MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.**

A Delaware Non-Stock Corporation

**ARTICLE I**

**DEFINITIONS AND INTERPRETATION**

**Section 1.1. *Definitions.*** Unless the context otherwise specifies or requires, certain capitalized terms are used in these Bylaws and the attached appendices with the meanings set forth below or in other provisions of these Bylaws.

***Agency Agreement*** - The agreement allowing Non-transferred Transmission Facilities to be offered by the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") for transmission service under the Transmission Tariff. The Agency Agreement is Appendix G to the Midwest ISO Agreement.

***Effective Date*** - The effective date of the Midwest ISO Agreement.

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**FERC** - The Federal Energy Regulatory Commission, or any successor agency.

**Good Utility Practice** - Any of the 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 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. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be a range of acceptable practices, methods, or acts generally accepted in the region.

**He, Him, or His** - Includes "she," "her," or "hers."

**Member** - A person or business entity which is (i) an Eligible Customer, as defined in the Transmission Tariff, or (ii) an Owner, as defined herein, and which pays to the Midwest ISO, the non-refundable membership fees as required herein. Such person or entity shall be a Member during the period covered by the applicable membership fees unless earlier terminated pursuant to the Bylaws.

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***Midwest ISO Agreement*** - The Agreement Of Transmission Facilities Owners To Organize The Midwest Independent Transmission System Operator, Inc., A Delaware Non-Stock Corporation, and any amendments thereto, and as accepted by the FERC.

***Non-owner Member*** - A Member which is not an Owner.

***Non-transferred Transmission Facilities*** - The booked transmission facilities not identified in Appendix F to the Midwest ISO Agreement which are the subject of the Agency Agreement.

***Owner*** - A utility or other entity which owns, operates, or controls facilities for the transmission of electricity in interstate commerce (as determined by the Midwest ISO by applying the seven-factor (7 – factor) test of the FERC set forth in FERC Order No. 888, 61 Fed. Reg. 21,540, 21,620 (1996), or any successor test adopted by the FERC) and which is a signatory to the Midwest ISO Agreement. A public utility holding company system shall be treated as a single owner for purposes of the Midwest ISO Agreement. Each Owner shall pay the applicable membership fees and become a Member. Any termination of a utility's or entity's status as an Owner shall be determined pursuant to the Midwest ISO Agreement and these Bylaws.

***Person*** - Any general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, governmental agency, cooperative, association,

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other entity, or individual, and the heirs, executors, administrators, legal representatives, successors, and assigns of such person, as the context may require.

*Transmission Tariff* - The transmission tariff on file with the FERC under which the Midwest ISO will offer transmission service, or any successor tariff.

*Transmission System* - The transmission facilities of the Owners which are committed to the operation of the Midwest ISO by the Midwest ISO Agreement. The facilities comprising the Transmission System are identified in Appendix H to the Midwest ISO Agreement.

*User* - A Transmission Customer under the Transmission Tariff or an entity that is a party to a transaction under the Transmission Tariff.

**Section 1.2. Interpretation.** In the event of any conflict between these Bylaws and the Midwest ISO Agreement, the Midwest ISO

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Agreement shall control. The descriptive headings of Articles and Sections of these Bylaws have been inserted for convenience of reference only and shall not define, modify, restrict, construe, or otherwise affect their construction or interpretation.

### ARTICLE II

#### GENERAL PROVISIONS

**Section 2.1. *Organization.*** The Midwest ISO is a non-stock, not-for-profit corporation, pursuant to Title 8, Chapter 1 of the laws of the State of Delaware. The Midwest ISO shall be operated exclusively for the promotion of social welfare, in furtherance of the public policy reflected in the Order of the FERC approving the Midwest ISO Agreement and FERC Order No. 888. No part of the net earnings, if any, of the Midwest ISO shall inure to the benefit of any Midwest ISO Member, Director, Officer, employee, or any other interested private person. The Midwest ISO is authorized and empowered to pay reasonable compensation for services actually rendered and to make payments or distributions in furtherance of the purposes and objectives set forth in the Midwest ISO Agreement and the Transmission Tariff. No substantial part of the activities of the Midwest ISO shall be carrying on propaganda or otherwise attempting to influence legislation. The Midwest ISO shall not participate in or intervene in any political campaign on behalf of any candidate for

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public office. In the event that the Internal Revenue Service deems the Midwest ISO to be exempt from federal taxation under § 501(c) of the Internal Revenue Code, the Midwest ISO shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt from taxation under the Internal Revenue Code, or successor provisions in any subsequent federal tax laws, or such other provision or successor provisions under which the Internal Revenue Service may recognize that the Midwest ISO is exempt from taxation. If the Midwest ISO is not tax-exempt, the Midwest ISO shall minimize its federal and state tax obligations.

**Section 2.2. *Offices.*** The principal office of the Midwest ISO shall be located as determined by the initial Board of Directors. The Board may establish such branch offices or places of business as it shall determine to be in the best interests of the Midwest ISO.

**Section 2.3. *Start-up.*** The Owners may select and employ a person or an entity (or persons or entities) to perform such administrative and start-up functions as in the Owners' judgment may be necessary or desirable until the Board is elected. Such person or entity shall serve in such capacity until the election of the initial Board, and, during such service, shall exercise the authority and perform the duties of the Board and the President.

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**ARTICLE III**

**MEMBERS**

**Section 3.1. *Qualifications; Membership Fees; Term.*** (a) Qualifications. Any Person which (i) is an Eligible Customer (as defined in the Transmission Tariff) or an Owner and (ii) pays to the Midwest ISO the non-refundable membership fees set forth in Section 3.1(b) shall be eligible to become a Member. A person may apply to become a Member of the Midwest ISO by submitting an application in the form then approved by the President and making payment of the membership fees set forth in Section 3.1(b) of these Bylaws. Action upon any application for membership shall be taken at the first meeting of the Board following submission of the membership application.

(b) Membership Fees. All entities eligible for membership in the Midwest ISO shall pay an initial membership fee of \$15,000 in order to become Members. On January 1 of each year, each Member shall pay an additional fee of \$1,000 to the Midwest ISO to retain its membership. All such fees are nonrefundable and may be adjusted from time to time, as may be appropriate, by the Board.

(c) Term. A Person shall be a Member during the period covered by the applicable membership fees unless earlier terminated as provided in these Bylaws.

(d) Withdrawal of Members. A Member who is not an Owner may, upon submission of a written notice of withdrawal to the President, withdraw from membership in the

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Midwest ISO at any time, which withdrawal shall be effective thirty (30) days after the receipt of such notice by the President. A Member who is also an Owner may, upon submission of a written notice of withdrawal to the President, commence a process of withdrawal of its facilities from the Transmission System. The terms and conditions of such withdrawal are specified in the Midwest ISO Agreement.

**Section 3.2. *Owner Status.*** Members admitted to Membership after the start-up of the Midwest ISO who wish also to have the status as Owners, must (i) own, operate, or control facilities used for the transmission of electricity in interstate commerce (as determined by the Midwest ISO by applying the seven factor (7-factor) test set forth in FERC Order No. 888, 61 Fed. Reg. 21,540, 21,620 (1996), or any successor test adopted by the FERC) that are physically interconnected with the facilities of an existing Owner; and (ii) express its agreement to become a signatory to the Midwest ISO Agreement, to be bound by all of its terms, and to make any and all payments or contributions required by the Midwest ISO Agreement. Upon fulfillment of these conditions, and upon completion of any physical integration of the new Owner's facilities with the Transmission System in a fashion consistent with the

## APPENDIX F

President's direction, the Board shall allow the new Member to become a signatory to the Midwest ISO Agreement. In general, an Owner must own, operate, or control interstate transmission facilities as detailed above; however, on a case-by-case basis, the Board may waive the requirement that such facilities be physically interconnected if allowing the Member also to become an Owner will result in significant net benefits to the Midwest ISO and its Members.

**Section 3.3. *No Rights of Members to Manage or Control.*** No Member shall have any rights to manage or control the property, affairs, or business of the Midwest ISO, or any power to control the Board in these respects.

**Section 3.4. *Regular Meetings.*** The Members shall hold their initial meeting at the principal office of the Midwest ISO, or other location designated by the Board, or by the person or entity selected pursuant to Section 2.3 of these Bylaws, on the date designated by the Board or such person or entity, and shall hold meetings at such location on the third Monday of the same month each year thereafter, or such other day of said month as may be designated by the Board, for the purpose of electing Directors and of exercising and discharging any other powers or duties vested in them by the Midwest ISO Agreement and the Bylaws. Members shall hold their initial meeting on July 1, 1998, or as soon

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thereafter as is reasonably practical. Provided, however, that the signatories to the Midwest ISO Agreement, by majority vote (with each signatory having one vote), may, pursuant to the terms and conditions of the Midwest ISO Agreement, extend this date.

**Section 3.5. *Special Meetings.*** The Board or any twenty-five percent (25%) of the Members may call special meetings of the Members at any time.

**Section 3.6. *Notification.*** (a) The Secretary shall provide notice to appropriate state regulatory authorities, FERC, the members of the Board Advisory Committee (established pursuant to the Midwest ISO Agreement), and the public by posting on the Midwest ISO's Internet World-Wide Web Site or equivalent form of electronic posting at least seven (7) days prior to the meeting, of the time and place of all meetings of Members, whether regular or special.

(b) Notice mailed to a Member or sent by telefacsimile no later than seven (7) days prior to the date of the meeting, directed to the Member at the address as shown on the books of the Midwest ISO, shall be deemed sufficient for the provisions of this provision and for all other purposes, unless written notice of change of such address has been previously given to the Midwest

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ISO. In the case of special meetings, the Secretary shall also give notice to all Members of the general purpose of the meeting and the nature of the business to be considered at such meeting. Such a special meeting shall be limited to the business thus specified in the case, unless at least twenty-five percent (25%) of the Members consent in writing to the consideration of other matters. The Members of record eligible to participate in any meeting shall be determined as of the date notice of the meeting is provided to the Members.

**Section 3.7. *Conduct of Meetings; Quorum; Voting.*** At all meetings of Members, the Chairman of the Board, or such other person as may be designated by the Board, shall preside. Each Member shall be entitled to one vote, and Members may vote by proxy. Twenty-five percent (25%) of the Members, or their proxies, shall constitute a quorum for the purpose of any such meeting. Except where it is otherwise provided in these Bylaws, a vote of a majority of the Members represented and voting at the meeting shall control.

## ARTICLE IV

### BOARD OF DIRECTORS

**Section 4.1. *General Powers.*** There shall be a Board of Directors of the Midwest ISO which shall consist of seven (7) persons plus the President. The Board may exercise all of the powers of the non-stock corporation and do all lawful acts and things (including the adoption of such rules and regulations for the conduct of its meetings, the exercise of its powers, and the management of the Midwest ISO) as it may deem proper and consistent with applicable law, the

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Midwest ISO Agreement, the Transmission Tariff, the articles of incorporation, and these Bylaws, provided that authority for such actions is not reserved to the Members or Owners.

**Section 4.2. *Qualifications.*** A Director shall not be, and shall not have been at any time within two (2) years prior to or subsequent to election to the Board, a Director, Officer, or employee of a Member, User, or an affiliate of a Member or User. At all times while serving on the Board, and for two (2) years thereafter, a Director shall have no material business relationship or other affiliation with any Member or User or an affiliate of a Member or User. A Director's participation in a pension plan of a Member or User or an affiliate thereof shall not be deemed to be a material business relationship if the Member's or User's financial performance has no material effect on such pension plan. Of the seven (7) Directors, four (4) shall have expertise and experience in corporate leadership at the senior management or board of directors level, or in the professional disciplines of finance, accounting, engineering, or utility laws and regulation. Of the other three (3) Directors, one (1) shall have expertise and experience in the operation of electric transmission systems, one (1) shall have expertise and experience in the planning of electric transmission systems, and one (1) shall have expertise and experience in commercial markets and trading and associated risk management.

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**Section 4.3. *Number; Election.*** (a) Initial Board. The initial Board shall be elected by the Members at their initial meeting from a slate of candidates presented to them by an independent executive search firm chosen by a majority vote of the signatories to the Midwest ISO Agreement, with each signatory having one vote. Such firm shall select such candidates consistent with the qualification requirements set forth in Section 4.2. The slate shall include at least two (2) candidates with the appropriate type of qualifications for each Board position. Each Member shall be entitled to cast a single vote for each of the seven (7) positions on the Board from among the candidates for each position. The candidates with the most votes shall fill the Director positions for which they were nominated. In the event of a tie among the candidates for a Board position, one (1) of the candidates shall be selected by a drawing. Two (2) Directors shall hold office for one (1) year; two (2) Directors shall hold office for two (2) years; and the final three (3) Directors shall hold office for three (3) years; and, in each foregoing case, until their respective successors are duly elected and qualified, or until their earlier resignation or removal. At the first meeting of the initial Board, the Directors shall determine each of their respective terms hereunder by a drawing.

(b) Succeeding Boards. After the election of the initial Board as provided above, succeeding Directors shall be elected to terms of three (3) years, except for any Director elected to fill a vacancy in the remainder of the term. Before

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the term of a Director expires, the Board shall select an executive search firm to provide at least two (2) candidates for each open Director position. Each Director shall serve until his successor shall have been duly elected and qualified, or until his earlier resignation or removal. The two (2) candidates for a specific Director position shall have the same type of qualifications as the Director being replaced, as set forth in Section 4.2 of these Bylaws. At a meeting of the Members, each Member shall be entitled to cast a single vote for each open Director position from among the candidates provided for such position. The candidates with the most votes shall fill the respective Director positions for which they were nominated. In the event of a tie among candidates for a specific Director position, one (1) of the candidates shall be selected by a drawing among the tied candidates. Vacancies on the Board caused by a Director leaving office before the expiration of his term shall be filled by vote of the Board, which shall choose a candidate having the same type of qualifications as his predecessor from a list prepared by an executive search firm chosen by the Board. A Director selected to fill such a vacancy shall serve out the term of his predecessor.

**Section 4.4. *Chairman of the Board.*** The Board shall select from among its members a Chairman of the Board. The Chairman shall serve in such capacity at the pleasure of the Board until the first meeting of the Board following the next succeeding annual meeting of the Members, or until his successor shall have been elected and have qualified. The Chairman of the Board shall, unless otherwise determined by the Board, preside over all meetings of the Board and Members, and shall sign, with the Secretary, certificates of membership, the issuance of which shall have been authorized by the Board. The Chairman shall perform all duties incident to the office of

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Chairman of the Board and such other duties as from time to time may be assigned to him by the Board.

**Section 4.5. *Vice Chairman.*** The Board shall select from among its members a Vice Chairman of the Board. The Vice Chairman shall serve in such capacity at the pleasure of the Board until its first meeting following the next succeeding annual meeting of the Members, or until his successor shall have been elected and have qualified. In the absence of the Chairman of the Board, or in the event of his inability or refusal to act, the Vice Chairman shall perform the duties of the Chairman of the Board, and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the Chairman of the Board. The Vice Chairman shall also perform such other duties as from time to time may be assigned to him by the Board.

**Section 4.6. *Resignation of Directors.*** Any Director may resign his office by submitting a signed notice of resignation, delivered or mailed to the principal office of the Midwest ISO. Such notice of resignation shall state the effective date of resignation. If the notice does not indicate an effective date, the resignation shall take effect upon receipt of the notice at the principal office of the Midwest ISO.

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**Section 4.7. *Removal of Directors.*** (a) Removal by Members. The Members may remove a Director by a vote of a majority of the Members. Removal proceedings may only be initiated by a petition signed by not less than twenty percent (20%) of all Members. The petition shall state the specific grounds for removal. A copy of the petition shall be provided to the FERC and to each appropriate state regulatory authority. A Director sought to be removed shall be given fifteen (15) days to respond in writing to any charges set forth in the petition. The petition shall specify either that the removal vote shall be taken at the next regular meeting of the Members or at a special meeting of the Members at a designated date, place, and time.

(b) Removal by Owners for Unauthorized Acts. If the Board of the Midwest ISO changes, or attempts to change, any of the provisions of the Midwest ISO Agreement identified in Article Two, Section IX, Paragraph C of the Midwest ISO Agreement without obtaining the requisite approval of the Owners as specified therein, or if the Board fails to enact these Bylaws or enacts any Bylaws contrary to the Midwest ISO Agreement, or if the Board fails or refuses to fulfill the duties owed to the Owners set forth in Article Three, Section III, Paragraphs B and C of the Midwest ISO Agreement, then the Board shall be deemed to have acted without authorization, and may be removed in its entirety by unanimous vote of the Owners' Committee (established by

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Article Two, Section VI, Paragraph B of the Midwest ISO Agreement), provided that such removal shall be subject to approval by the FERC. Removal proceedings hereunder shall be initiated only by the delivery by the Owners' Committee to the Chairman of the Board of a statement specifying in detail the manner in which the Board has acted without authorization. The Board shall have sixty (60) days to respond to such a statement, after which the Owners may, by unanimous vote of the Owners' Committee, reaffirm their proposal to remove the Board if they are not satisfied with the Board's response. If the Owners vote unanimously to reaffirm their proposal, they shall file such proposal with the FERC and provide notice to the appropriate state regulatory authorities. Upon the FERC's approval of such proposal, the Board shall be removed in its entirety and a new Board shall be selected in accordance with the provisions for the selection of an initial Board specified in these Bylaws. The new Board so selected shall have all of the powers specified herein as belonging to the Board, including the power to replace the President and other Officers, employees, or agents of the Midwest ISO chosen by the removed Board or its predecessors. Nothing herein shall be deemed to prejudice any right any Owner may otherwise have under the FPA or other provisions of law.

**Section 4.8. Meetings; Notification.** Regular meetings of the Board shall be held at least quarterly, and other meetings shall be held from time to time on the call of the President, Chairman, or a majority of the

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Board. A Director may participate in a meeting personally or by electronic means. Written notice of the date, location, and time of each meeting of the Board must be provided by first-class mail or by telefacsimile to each Director no later than seven (7) calendar days prior to the date of the meeting. Participation in a meeting by a Director is a waiver of any objection that the Director may make to any failure to give adequate notice under this provision. Any action required or permitted to be taken at any meeting of the Board, or of any Board Committee, may be taken without a meeting if all Directors or Board Committee members, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or Board Committee. Consistent with the Midwest ISO Agreement, the Board shall have all procedural authority provided and options available under Title 8 of the Delaware Corporation Law, section 141, as such law may be amended or, any successor provision thereto.

**Section 4.9. *Quorum; Voting.*** Five (5) Directors shall constitute a quorum of the Board. Except as provided in Section 4.7 of these Bylaws, the affirmative vote of a majority of the Directors present at a meeting is required to constitute any act or decision rendered by the Board.

**Section 4.10. *Accounting.*** At each quarterly meeting of the Board, or such other time as the Board directs, the Board shall require

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the President to submit for Board approval a full statement of the conditions of the Midwest ISO, and all business transacted by it, and, when the statement is approved, shall cause a copy of it to be sent to each Member.

**Section 4.11. *Minutes and Reports.*** The Board shall cause to be kept by the Secretary, elected by it, accurate minutes of all meetings of the Board, Members, and Board Committees. Insofar as non-Members of the Midwest ISO are concerned, these records shall be conclusive for the Board of the facts and activities stated and recorded therein.

**Section 4.12. *Director Compensation and Expenses.*** Directors shall receive from the Midwest ISO such compensation, regular or special, subject to the terms and conditions stated in the Midwest ISO Agreement, Article Two, Section Three, Paragraph D, Subparagraph 1. The independent executive search firm chosen to select a slate of candidates for election for Director positions shall set Director compensation following such election, subject to approval of the Members. If two-thirds (2/3) or more of the Members vote to reject the search firm's recommended compensation, then the recommended compensation shall be rejected. In establishing the compensation for the initial Board, if there are not yet Members, then a vote of two-thirds (2/3) or more of the signatories to the

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Midwest ISO Agreement shall be required to reject the search firm's recommended compensation. If the recommended compensation is rejected, then the search firm shall be requested to submit another recommendation or another search firm may be hired for such purpose. Directors, and their successors and assigns, shall have the right to reimbursement by the Midwest ISO for all of their actual expenses reasonably incurred or accrued in the performance of their duties as Directors of the Midwest ISO.

**Section 4.13. *Annual Report.*** The Board shall annually make a written report showing the financial results of the Midwest ISO's operations during the preceding fiscal year. A copy of such report shall be furnished to each Member.

**Section 4.14. *Board Oversight.*** The Board of Directors shall oversee the President's performance of the obligations of the Midwest ISO specified in the Midwest ISO Agreement and these Bylaws. The performance of such obligations shall be carried out and executed by the President with oversight as appropriate by the Board. The Board shall establish general policies to be followed by the President and employees of the Midwest ISO in the conduct of their duties. The Board shall have the obligation to assure that the President accounts for all transactions on the Transmission System and other activities of the

## APPENDIX F

Midwest ISO; submits bills for such transactions; pays the expenses of operation of the Midwest ISO; collects monies for transmission service from customers solely as agent for Owners or their designee(s) in accordance with the Transmission Tariff; and distributes monies to the Owners or their designee(s) in accordance with the Midwest ISO Agreement, any associated agreements referred to in the Midwest ISO Agreement, and the Transmission Tariff.

**Section 4.15. *Standards of Conduct.*** The Directors shall comply with the Standards of Conduct set forth in Appendix A to the Midwest ISO Agreement, and, by direction or oversight, shall require that the Officers and employees of the Midwest ISO also comply with such standards.

**Section 4.16. *Employ Staff.*** The Board shall have the power to employ staff, auditors, counsel, and other personnel as necessary to carry out the business of the Midwest ISO, and may delegate to the President all or part of such authority to employ such staff, auditors, counsel, and other personnel.

**Section 4.17. *Board Committees.*** The Board may appoint such committees of the Board of Directors as are necessary and appropriate for the conduct of the Midwest ISO's business, provided that final responsibility for any action recommended by any such committee remains with the Board.

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**ARTICLE V**

**OFFICERS**

**Section 5.1. *Titles.*** The Officers of the Midwest ISO shall be the President, one or more Vice Presidents (in the discretion of the Board), and a Secretary.

**Section 5.2. *Election and Term of Office.*** The Officers of the Midwest ISO shall be elected from time to time by the Board. Each Officer shall hold office at the pleasure of the Board.

**Section 5.3. *Removal of Officers by Directors.*** Any Officer may be removed by the Board whenever, in the Board's judgment, the best interests of the Midwest ISO will be served thereby.

**Section 5.4. *President.*** The President shall serve on the Board of the Midwest ISO. The President may vote on any matter presented at a Board meeting except when the President's vote would create a tied Board vote. In that circumstance, the President shall be barred from voting. The President also may not vote on the selection of, or continued employment of the President or on the President's compensation. The President shall be included in the determination of a quorum of the Board for any meeting of the Board and in the determination of a majority vote of the Board for any purpose. The duties of the President are as follows:

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(a) Right of President to Manage. The right of the President to exercise functional control over the operation of the Transmission System, insofar as is necessary to carry out the rights, duties, and obligations of the Midwest ISO as set forth in the Midwest ISO Agreement, shall be absolute, unconditional, and free from the control and management of the Owners, who shall have only the rights specifically set forth in the Midwest ISO Agreement. The President shall have the authority to act for the Midwest ISO before any and all applicable federal or state regulatory authorities to carry out the business of the Midwest ISO.

(b) General Powers. The President shall possess and exercise any and all such additional powers as are reasonably implied from the powers contained in the Midwest ISO Agreement such as may be necessary or convenient in the conduct of any business or enterprise of the Midwest ISO. The President may (i) do and perform everything that (a) he deems necessary, suitable, or proper for the accomplishment of any of the purposes, or the attainment of any one or more of the objectives, enumerated in the Midwest ISO Agreement, or (b) that shall at any time appear conducive to, or expedient for, the protection or benefit of the Midwest ISO, and (ii) do and perform all other acts or things that are deemed necessary or incidental to the purposes set forth in the Midwest ISO Agreement.

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(c) Acquire Property. The President shall have power to purchase, or otherwise acquire through leases, such property, except for transmission facilities which shall be governed by Appendix B to the Midwest ISO Agreement, as necessary to carry out the obligations of the Midwest ISO as specified in Article Three of the Midwest ISO Agreement.

(d) Prosecute Claims. The President shall have full and exclusive power and authority to demand, sue for, claim, and receive any and all revenues and monies due the Midwest ISO.

(e) Borrow. The President shall have the power to borrow money up to the level authorized by the Board for the purposes of the Midwest ISO and to give the obligations of the Midwest ISO to secure such indebtedness.

(f) Contracts. The President shall have the authority and power to make all such contracts as he may deem expedient and proper in conducting the business of the Midwest ISO, except as may be limited by the Board.

(g) Taxes and Assessments. The President shall have the power (i) to pay all taxes or assessments of whatever kind or nature imposed upon or against the Midwest ISO in connection with the Midwest ISO property, or upon or against the Midwest ISO property, or any part of such property; (ii) to do all acts and things as may be required or permitted by any present or future law for the purpose of making the activities of the Midwest ISO exempt from taxation; and (iii) for any of the above-stated purposes, to do all such other acts and things as may be deemed by him necessary or desirable.

(h) Depository. In accordance with policies set by the Board, the President shall have the power to select a depository, and to deposit any monies or securities held by the Midwest

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ISO in connection with the performance of its obligations under the Midwest ISO Agreement, with any one or more banks, trust companies, or other banking institutions, that are federally insured and deemed by the President to be responsible, such monies or securities to be subject to withdrawal on notice upon demand or in such manner as the President may determine, with no responsibility upon the President for any loss that may occur by reason of the failure of the person with whom the monies or securities had been deposited properly to account for the monies or securities so deposited.

**Section 5.5. *Vice President.*** The Vice President or, if there be more than one, the Vice President designated by the Board, shall in the absence or disability of the President, exercise the powers and perform the duties of the President. Each Vice President shall exercise such other powers and perform such other duties as shall be prescribed by the Board consistent with these Bylaws. No Vice President shall be eligible to serve on the Board of the Midwest ISO except when performing the duties of the President as provided in the Midwest ISO Agreement.

**Section 5.6. *Secretary.*** The Secretary shall be responsible for the following duties:

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(a) Keeping the minutes of the applicable meetings in one or more books provided for that purpose;

(b) Seeing that all notices are duly provided in accordance with these Bylaws, policies of the Midwest ISO, and any and all other documents which provide for the governance of the Midwest ISO;

(c) Maintaining custody of the records of the business of the Midwest ISO and the seal of the Midwest ISO, and affixing such seal to all certificates of membership prior to the issuance thereof and to all documents, the execution of which, on behalf of the Midwest ISO, under its seal, is duly authorized in accordance with the provisions of these Bylaws;

(d) Keeping a register of the names and post office addresses of all Members and Directors;

(e) Signing with the Chairman of the Board certificates of membership, the issuance of which shall have been authorized by the Board or Members;

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(f) Keeping on file at all times at the principal office of the Midwest ISO a complete copy of the Midwest ISO Agreement, and all amendments thereto, together with these Bylaws and any policies concerning the governance of the Midwest ISO, and, at the expense of the Midwest ISO, forwarding or otherwise making available copies of such information to each of the Members and to the public to the extent required by law; and generally performing all duties instant to the office of Secretary and such other duties that, from time to time, may be assigned to the Secretary by the Board.

**Section 5.7. *Standards of Conduct.*** The Officers, agents, and employees of the Midwest ISO shall comply with the Standards of Conduct set forth in Appendix A to the Midwest ISO Agreement.

**Section 5.8. *Bonds of Officers.*** Any Officer, employee, or agent of the Midwest ISO charged with the responsibility for the custody of any of its funds or property shall give bond in such sums, and with such sureties, as the Board shall determine. The Board, in its discretion, may also require any other Officer, agent, or employee of the Midwest ISO to give bond in such amount, with such surety, as it shall determine. All premiums of the aforesaid bonds shall be paid by the Midwest ISO.

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**Section 5.9. Compensation.** Compensation of the Officers, agents, and employees of the Midwest ISO shall be established by the Board or pursuant to the policies approved by the Board.

### ARTICLE VI

#### EXTERNAL COMMITTEES

**Section 6.1. Advisory Committee.** (a) At all times there shall exist an Advisory Committee to the Board consisting of a total of fourteen (14) representatives from the following stakeholder groups chosen as follows: (i) two (2) representatives of Owners; (ii) two (2) representatives of municipal and cooperative electric utilities and transmission-dependent utilities; (iii) two (2) representatives of IPPs and EWGs; (iv) two (2) representatives of power marketers and brokers; (v) two (2) representatives of eligible end-use customers; (vi) two (2) representatives of state regulatory authorities; (vii) one (1) representative of public consumer groups; and (viii) one (1) representative of environmental and other stakeholder groups. The Board may revise or expand the stakeholder groups as circumstances and industry structures change. The Board shall be responsible for facilitating meetings of the Advisory Committee, which shall be held at least quarterly. At such quarterly meetings, the President and at least two (2) other members of the

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Board shall meet with the Advisory Committee. Upon request of the Advisory Committee, Board members and the President shall use their best efforts to attend other Advisory Committee meetings. The Advisory Committee shall be a forum for its members to be apprised of the Midwest ISO's activities and to provide information and advice to the Board on policy matters of concern to the Advisory Committee, or its constituent stakeholder groups, but neither the Advisory Committee nor any of its constituent groups shall exercise control over the Board or the Midwest ISO. Nothing in the Midwest ISO Agreement shall prohibit a corporate or other entity from participating in more than one stakeholder group provided it meets the approved eligibility criteria. The reports of the Advisory Committee and any minority reports shall be presented by the President to the Board. The Board shall determine how and when it shall consider and respond to such reports. The President shall inform the Advisory Committee of any Board determination(s) with respect to such report.

(b) Members of the Advisory Committee shall be selected in the following manner:

(i) The Owners' representatives on the Advisory Committee shall be selected in accordance with Section 6.2 of these Bylaws.

(ii) The representatives of municipal and cooperative electric utilities and other transmission-dependent utilities, IPPs and EWGs, power marketers and brokers, and eligible end-use customers on the Advisory Committee shall be chosen by the Members belonging to such groups. Such Member groups shall propose to the Board their own methods of eligibility and voting. Approval by the Board of such procedures shall not be unreasonably withheld.

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(iii) The representatives of state regulatory authorities on the Advisory Committee shall be chosen by the state public service commissions which regulate the retail electric or distribution rates of the Owners who are signatories to the Midwest ISO Agreement.

(iv) The representatives of public consumer groups and environmental and other stakeholder groups on the Advisory Committee shall be chosen by recognized consumer, environmental, and other stakeholder organizations having an interest in the activities of the Midwest ISO. The Board shall certify the organizations eligible to participate in the selection of such representatives to the Advisory Committee. Such certification shall not unreasonably be withheld. The groups so certified shall propose to the Board their own methods of eligibility and voting. Approval of such procedures shall not unreasonably be withheld.

(v) Meetings of the constituent stakeholder groups represented on the Advisory Committee need not be open to the public.

(c) In order to ensure appropriate representation on the Advisory Committee, the Board may change the size and composition of the Advisory Committee at three-year (3-year) intervals.

**Section 6.2. *Owners' Committee.*** An Owners' Committee shall exist throughout the period of the Midwest ISO Agreement. The Owners' Committee shall consist of one (1) person representing each of the

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Owners who are signatories to the Midwest ISO Agreement. The Owners' Committee shall meet at its discretion to exercise the authority granted to the Owners as a group under these Bylaws, including voting upon the matters set forth in Sections 4.8(b) and 8.2(b) of these Bylaws, and under the Midwest ISO Agreement. The Owners' Committee shall select two (2) representatives to serve on the Advisory Committee established pursuant to Section 6.1 of these Bylaws.

### ARTICLE VII

#### OPEN MEETINGS

**Section 7.1. *Open Meetings.*** Except as provided herein, all meetings of the Board, all meetings of Board Committees and working groups, all meetings of the Advisory Committee and all Members' meetings shall be open to the public. Timely notice of such meetings and copies of all materials to be addressed at such meetings shall be provided to the members of the Advisory Committee, appropriate state regulatory authorities, and the FERC and posted on the Midwest ISO's Internet World-Wide Web Site or equivalent form of electronic posting. The procedures adopted by the Board for the conduct of such meetings shall allow interested members of the public, including those stakeholders represented on the Advisory Committee, to provide oral and written comments at such meetings concerning any matter that may come before the Board, Board Committees and working groups, Advisory Committee, or Members, whichever is applicable, during the open portion of such meetings.

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**Section 7.2. *Minutes.*** The meeting minutes of all meetings of the Board, Board Committees and working groups, Advisory Committee, and Members shall be made available to the public and furnished to appropriate state regulatory authorities and the FERC, upon request; provided, however, that materials or information which is privileged or confidential pursuant to Section 7.3 of these Bylaws may be redacted from such minutes. Copies of executed or final documents, such as contracts, leases, and agreements, not otherwise required to be treated as confidential shall be made available for review. In the event the basis for information being treated as confidential ceases to exist, said information shall thereafter be available for review.

**Section 7.3. *Executive Sessions to Preserve Confidentiality.*** Executive sessions (closed to the public) shall be held as necessary to safeguard the confidentiality of (a) personnel-related information; (b) information subject to the attorney-client privilege or to confidential treatment under the attorney-work product doctrine or concerning pending or threatened litigation; (c) information that is confidential under Appendix A to the Midwest ISO Agreement; (d) consideration of the purchase or lease of real property; (e) except as may be required by law, consideration of the sale or purchase of securities, investments, or investment contracts; (f) strategy and negotiation sessions in connection with a collective bargaining agreement; (g) discussion of

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emergency and security procedures; (h) consideration of matters classified as confidential by federal or state law; (i) matters to protect trade secrets, proprietary information, specifications for competitive bidding, or to discuss a specific proposal if open discussion would jeopardize the cost or siting or give an unfair competitive or bargaining advantage to any person or entity; and (j) discussion of proceedings by the Alternate Dispute Resolution Committee established under Appendix D to the Midwest ISO Agreement.

### ARTICLE VIII DUE DILIGENCE, LIABILITY, AND INDEMNIFICATION

**Section 8.1. *Due Diligence Duties.*** It shall be the duty of Directors, Officers, employees, agents, and other representatives of the Midwest ISO (a) to faithfully and diligently administer the Midwest ISO as would reasonable and prudent persons acting in their own behalf; (b) to keep correct and accurate records of all business transacted; (c) to exercise prudence and economy in the business of the Midwest ISO, including the minimization of tax liability if the Midwest ISO is not-tax exempt; (d) to act in good faith, and only for the best interests of the Midwest ISO; (e) to annually render a full and correct account of the Midwest ISO business; and (f) at the termination of the Midwest ISO, to render and to deliver all the properties and funds of the Midwest ISO in accordance with the Midwest ISO Agreement and applicable law.

**Section 8.2. *Limitations on Liability.*** No Director, Officer, agent, employee, or other representative of the Midwest ISO, and no corporation or other business organization that employs a Director of the Midwest ISO, or any Director, Officer, agent, or employee of such

## APPENDIX F

corporation or other business organization, shall be personally liable to the Midwest ISO, any Member, or any User for any act or omission on the part of any such Director, Officer, agent, employee, or other representative of the Midwest ISO, which was performed or omitted in good faith in his official capacity as a Director, Officer, agent, employee, or other representative of the Midwest ISO pursuant to the operation of the Midwest ISO Agreement, or in any other capacity he may hold, at the request of the Midwest ISO, as its representative in any other organization. However, this release of liability shall not operate to release such a Director, Officer, agent, employee, or other representative of the Midwest ISO from any personal liability resulting from willful acts or omissions knowingly or intentionally committed or omitted by him in breach of the Midwest ISO Agreement, for improper personal benefit, or in bad faith. Directors, Officers, agents, employees, or other representatives of the Midwest ISO also shall not be personally liable for any actions or omissions of others, including Owners, whose actions or omissions may relate to the Midwest ISO, or any property or property rights forming, or intended or believed to form, part of the Midwest ISO's property, or for any defect in the title to, or liens or encumbrances on, any such property or property rights.

**Section 8.3. *Indemnification.*** The Midwest ISO shall indemnify each Director, Officer, agent, employee, or other representative strictly in accordance with the terms and conditions of the Indemnification provisions of the Midwest ISO Agreement, Article II, Section VIII.

**APPENDIX F**

**ARTICLE IX**  
**AMENDMENTS**

**Section 9.1. *Amendment.*** These Bylaws may be amended by the Board from time to time, subject to the receipt of all necessary federal and state regulatory approvals, and provided that no amendment is contrary to the Midwest ISO Agreement.

**ARTICLE X**  
**MISCELLANEOUS MATTERS**

**Section 10.1. *Dispute Resolution.*** The Midwest ISO shall resolve disputes between and among the Midwest ISO and the Owners, individually or collectively, and Users other than the Owners, in accordance with the procedures set forth in Appendix D to the Midwest ISO Agreement. This provision does not apply to disputes covered under the Transmission Tariff.

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**Section 10.2. *Inspection and Auditing Procedures.*** The Midwest ISO shall grant each Member, its employees or agents, external auditors, and federal and state regulatory authorities having jurisdiction over the Midwest ISO or an Owner, such access to the Midwest ISO's books and records as is necessary to verify compliance by the Midwest ISO with the Midwest ISO Agreement and to audit and verify transactions under the Midwest ISO Agreement. Such access shall be at reasonable times and under reasonable conditions. The Midwest ISO shall also comply with the reporting requirements of federal and state regulatory authorities having jurisdiction over the Midwest ISO with respect to the business aspects of its business operations, including, but not limited to, the State of Delaware. Contacts between Officers, employees, and agents of any Owner and those of the Midwest ISO pursuant to this Section 10.2 shall be strictly limited to the purposes of this Section 10.2 and shall comply with the Standards of Conduct set forth in Appendix A to the Midwest ISO Agreement.

## ARTICLE XI

### WITHDRAWAL OR TERMINATION OF MEMBERS

**Section 11.1. *Withdrawal Notice.*** A Member who is not an Owner may, upon submission of a written notice of withdrawal to the President, withdraw from membership in the Midwest ISO at any time, which withdrawal shall be effective thirty (30) days after the receipt of such notice by the President.

A Member who is also an Owner may withdraw under the procedures and rights specified in the Midwest ISO Agreement and shall be subject to the regulatory approvals referred to

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in that Agreement or as provided by applicable law. The effect of such withdrawal shall be as stated in that Agreement.

**APPENDIX G**

**APPENDIX G**

**AGENCY AGREEMENT FOR OPEN ACCESS  
TRANSMISSION SERVICE  
OFFERED BY THE MIDWEST ISO FOR  
NONTRANSFERRED TRANSMISSION FACILITIES**

Through this Agreement (“Agency Agreement”), the entity executing this Agency Agreement (“Transmission Owner”), allows the Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”) to offer and provide transmission service over certain facilities as detailed below.

**RECITALS**

- A. A group of Owners will be filing or will have filed an Open Access Transmission Tariff (“Transmission Tariff”) with the Federal Energy Regulatory Commission (“FERC”) as part of a proposal for the Midwest ISO to become an Independent System Operator (“ISO”). Upon FERC approval and the transfer of those facilities in accordance with the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation (“Agreement”), the Midwest ISO will control certain transmission facilities, control of which will be transferred to it under Section 203 of the Federal Power Act, 16 U.S.C. § 824b. The Midwest ISO will offer to provide open access transmission service across those facilities. Through the Transmission Tariff, it is intended that the Midwest ISO also will offer to provide transmission service over other booked transmission facilities, control of which will not be transferred to the Midwest ISO under Section 203 of the Federal Power

**APPENDIX G**

Act as part of the initial filings. These other booked transmission facilities are the “Non-transferred Transmission Facilities.”

- B. The Owners are or will be members of the Midwest ISO. The Owners will or may maintain control of Non-transferred Transmission Facilities that are offered for service under the Midwest ISO Transmission Tariff.
- C. In order for the Midwest ISO to offer service over Non-transferred Transmission Facilities, it is necessary that Owners provide the authority to the Midwest ISO to provide the transmission and other services necessary to effectuate the Transmission Tariff.
- D. The Owners also will be entering into or will have entered into the Agreement which will detail the rights and responsibilities of the Owners, members and of the Midwest ISO.
- E. Each Owner will enter into an Agency Agreement to authorize the Midwest ISO to act as its agent in the performance of its tariff administration duties with regard to Non-transferred Transmission Facilities; to commit Non-transferred Transmission Facilities and services as required for the performance of service agreements and of the Transmission Tariff; to arrange for dispute resolution; and for other purposes as specified herein and in the Agreement. This Agency Agreement pertains only to the Non-transferred Transmission Facilities and has no affect or bearing on service over any other transmission or other facilities.

**APPENDIX G**

**TERMS OF AGREEMENT**

**1. Incorporation Of Transmission Tariff.**

1.1 Incorporation Of Transmission Tariff Into Agreement.

The Transmission Tariff, including each and every constituent part, is incorporated into this Agency Agreement as though set forth herein in its entirety. In the event of any conflict between any provision of this Agency Agreement and the Transmission Tariff, the Transmission Tariff shall control.

**2. Appointment Of Midwest ISO As Agent.**

The Transmission Owner appoints the Midwest ISO as its agent to enter into service agreements in conformity with the Transmission Tariff on its behalf with regard to service involving Non-transferred Transmission Facilities. It is agreed that all such service agreements will bind the Transmission Owner to perform to the requirements and specifications of the Transmission Tariff and service agreements where appropriate.

**3. Performance By Transmission Owner.**

The Transmission Owner agrees to provide all services necessary or appropriate for performance under the Transmission Tariff and service agreements thereunder with regard to service involving Non-transferred Transmission Facilities. Upon the Midwest ISO's request, the Transmission Owner further agrees to provide the Midwest ISO with all information necessary or appropriate relating to the Non-transferred Transmission Facilities to permit or facilitate the Midwest ISO to perform its tariff administration functions under the Transmission Tariff and service agreements relating to such facilities.

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**4. Payment Of Transmission Owners.**

The Midwest ISO shall distribute revenues associated with service under the Transmission Tariff among Transmission Providers in accordance with Appendix C to the Agreement.

**5. Effectiveness, Duration Of Agency Agreement, and Withdrawal Rights.**

The Agency Agreement is effective on the Transfer Date as defined in the Agreement unless the Owner withdraws from the Agreement before the Transfer Date. In that event, this Agency Agreement shall not become effective. The term of this Agency Agreement shall thereafter be coextensive with the duration of the Transmission Owner's participation as an Owner under the Agreement. The Transmission Owner's withdrawal rights and obligations associated with such withdrawal under this Agency Agreement shall be as set forth in the Agreement.

**6. Liability And Indemnification.**

The liability and indemnification provisions governing the Midwest ISO's liability to the Transmission Owner and any indemnification shall be the same as set forth in either the Transmission Tariff or the Agreement, whichever provision is applicable.

**7. Dispute Resolution Procedures.**

Any dispute between or among the Midwest ISO and the Transmission Owner shall be resolved in accordance with the Dispute Resolution Procedures of either the Transmission Tariff or the Agreement, whichever procedures are applicable.

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**8. Integration And Amendment.**

This is an integrated agreement which contains all terms and conditions of agreement between the parties concerning the subject matter. Any prior or oral agreements concerning the subject matter not stated herein are superseded by this Agency Agreement. This Agency Agreement may be amended only by an executed writing.

**9. Authority.**

The Transmission Owner hereto represents that the person executing this agreement on its behalf is authorized to execute this agreement and bind such Transmission Owner to its terms, and that such authorization has been made in compliance with all applicable laws, articles of incorporation, bylaws, and resolutions and in a manner that the authorization is binding upon the Transmission Owner.

TRANSMISSION OWNER

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX H

### APPENDIX H

#### TRANSMISSION SYSTEM FACILITIES

This Appendix provides the description and supporting documents for the Transmission System transferred to Midwest ISO for the purposes of planning and operation. In general, the criteria defining the Transmission System include:

1. All networked facilities above 100 kV.
2. All transformers whose two highest voltages qualify under the above voltage criteria.
3. All substation equipment that form the endpoints of the transmission lines in item 1, terminate the transformers in item 2, or provide voltage/stability control.

Each Transmission Owner provided, as a minimum, the following information on their facilities:

The descriptions of the transmission lines, including:

1. The names of the substations associated with a transmission line (the two endpoints for a two terminal line or the two endpoints and intermediate taps for multi-tapped lines).
2. The voltage level of each line.
3. Circuit maps containing each line or documents describing each line.
4. The mileage associated with each transmission line or tap section was optional and was provided by some Transmission Owners.
5. Ratings of each line were optional and were provided by some Transmission Owners.

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Descriptions of the transformers meeting criteria 2 above, including:

1. Name of substation where transformer is located.
2. Voltage levels.
3. Number of windings (Optional).
4. Tap changing capabilities -- load and no load taps (Optional).
5. Ratings of each transformer were optional and were provided by some Transmission Owners.

If the map or circuit diagram provided by a Transmission Owner contained Non-transferred Transmission Facilities, these Non-transferred Transmission Facilities were marked out indicating that they were not included in the facilities to be controlled and planned by the Midwest ISO.

In cases of jointly owned facilities, there was an indication of the jointly owned facilities through symbols or specific notations.

Interconnections between transmission systems (Midwest ISO Transmission Owners and non-Midwest ISO Owners) are clearly marked on the system one-line drawings. The names or initials of the companies who own the facilities on each side of the interconnections are provided.

## APPENDIX H

The following Transmission Owners provided descriptions of their Transmission System facilities:

1. Central Illinois Public Service Company (CIPSCo)
2. Cinergy
3. Commonwealth Edison Company (ComEd)
4. Hoosier Energy
5. Illinois Power Company
6. Kentucky Utilities (KU)
7. Louisville Gas & Electric Company (LG&E)
8. Union Electric Company (UE)
9. Wisconsin Electric Power Company (WEPCo)
10. Wabash Valley Power Association (WVPA)

## **APPENDIX I**

### **APPENDIX I INDEPENDENT TRANSMISSION COMPANIES**

This Appendix sets forth a general framework for the development and operation of Independent Transmission Companies (“ITC’s”) within the Midwest ISO. Any conflict between Appendix I and other provisions of this Agreement or the Transmission Tariff shall be governed by the provisions of this Appendix. Under Appendix I, certain responsibilities which currently reside with the Midwest ISO may be assigned to an ITC, if it chooses to accept those responsibilities and if the Federal Energy Regulatory Commission (“FERC”) acceptance or approval of the assignment is obtained as provided herein.

This Appendix I is intended to describe broad areas regarding the assignment of certain rights, responsibilities, and functions to an ITC. Any entity or entities submitting a proposal to become an ITC (“Filing Entity”) shall submit a filing with FERC detailing each of the rights, responsibilities, and functions the ITC proposes to assume from the Midwest ISO together with specifics on implementing any of these assigned rights, responsibilities, and functions. The Filing Entity may do this through multiple filings as the ITC develops or through a single filing. Before submitting any filing to FERC, however, the Filing Entity shall provide details of the filing to the Midwest ISO at least thirty days before the filing date. In the filing to FERC, the Filing Entity shall demonstrate to FERC that the rights, responsibilities and functions proposed to be assigned to the ITC are appropriate by showing, among other things, that the proposed ITC’s governance and structure assures independence of the ITC from any market participant and that the proposed ITC is of sufficient size and configuration to assume such rights, responsibilities, and functions appropriately. The Midwest ISO, its members, and others shall have the right to intervene, comment, or protest any such ITC filing or to file a complaint under Section 206 of the Federal Power Act with regard to any such ITC filing or document.

#### **1. FERC APPROVAL**

- 1.1 FERC Acceptance As A Prerequisite. Before receiving the rights and responsibilities provided for under this Appendix I, the Filing Entity shall apply for and receive a FERC order accepting the ITC proposal to be implemented and finding that the proposed ITC satisfies FERC’s independence criteria and any other applicable criteria such that the entity may be treated as an ITC under this Appendix I.
- 1.2 Effect of FERC Acceptance. Once FERC issues an order accepting the filing and providing the finding required under Section 1.1, then the ITC may operate within the Midwest ISO consistent with the rights, responsibilities, and functions that have been accepted or approved by FERC.

## APPENDIX I

- 1.3 Effect of FERC Denial. A Filing Entity which does not receive a FERC order finding satisfaction of FERC's independence and other applicable criteria shall be treated as an Owner under this Agreement once it executes the Agreement and Agency Agreement (if applicable). It shall not be considered an ITC eligible to assign the responsibilities detailed in this Appendix I until such time as it receives the necessary FERC order.

### 2. SECURITY COORDINATION

- 2.1 Regional Security Coordinator. The Midwest ISO shall be the regional security coordinator and shall perform the functions specified in Appendix E, Section V of this Agreement for all Midwest ISO transmission systems, including any ITC transmission systems.
- 2.2 ITC Actions. An ITC may take actions to preserve the security of the ITC system before requesting assistance from the Midwest ISO. The ITC shall inform the Midwest ISO of any such actions and coordinate such actions with the Midwest ISO.
- 2.3 Ultimate Authority. Notwithstanding any other provision in this Appendix I, the Midwest ISO may intercede and direct appropriate actions in its role as the regional security coordinator. If such Midwest ISO action is disputed, the Midwest ISO's position shall control pending resolution of the dispute.

### 3. BASE TRANSMISSION RATES

- 3.1 Right to File Rate Changes. The ITC shall possess the unilateral right, without receiving any Midwest ISO approval, to make filings at FERC proposing rate or rate structure changes (including incentive rate structures) involving base transmission charges for service to load within the ITC. Base transmission charges as used herein refer to the charges in Schedules 7, 8, and 9 of the Midwest ISO tariff or such other similar schedules used by the ITC. All other service to load outside the ITC is subject to the Midwest ISO base transmission charges. However, in the development of the "Drive-through" and "Drive-out" Midwest ISO rates, the ITC may submit inputs to the rate calculation for the ITC's facilities and costs which differ from the Midwest ISO rate formula that is part of the Transmission Tariff so long as the ITC has sought and received FERC authorization for the inclusion of such inputs in the Midwest ISO "Drive-through" and "Drive-out" transmission rates.

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- 3.2 Limitations. The ITC may not unilaterally propose transmission rates to FERC that do not preserve revenues or payments due Midwest ISO Owners that are outside the ITC.
- 3.3 No Rate Pancaking. Notwithstanding its rights under Section 3.1, the ITC shall not implement rates or a rate structure which results in a transmission customer paying the ITC and the Midwest ISO more than one base transmission charge for any one transaction.

### 4. REVENUE DISTRIBUTION

- 4.1 ITC Receipt of Transmission Revenues. The ITC shall receive and/or retain revenues resulting from the provision of transmission service under the Tariff in accordance with Appendix C of this Agreement. The ITC may take no unilateral action which interferes with or affects the revenue distribution provided for in Appendix C of this Agreement or which interferes with the collection by the Midwest ISO of the revenues due it for services it provides or arranges. If the ITC receives revenues which other Owners or the Midwest ISO are entitled to receive, the ITC shall forward such revenues to the Owners or the Midwest ISO as soon as possible.
- 4.2 Redistribution of Revenues. The ITC may distribute the revenues due it in accordance with Appendix C of this Agreement in any manner it wishes subject to receiving any necessary regulatory approvals, without involvement of the Midwest ISO.

### 5. CONGESTION MANAGEMENT

- 5.1 ITC Congestion Management. Before filing any congestion management mechanism for constraints within the ITC, the ITC shall advise the Midwest ISO of its proposed filing, and both the ITC and the Midwest ISO shall use reasonable efforts to reach agreement on the filing. After a reasonable consultation process and even without agreement being reached, the ITC shall possess the right to file at FERC, without Midwest ISO approval, a mechanism for congestion management for constraints within the ITC.

## APPENDIX I

5.2 Limitations. Any such ITC congestion management mechanism shall not operate in instances where its operation would cause a material adverse effect upon the Midwest ISO transmission system outside of the ITC or upon the users of that system. In addition, before the ITC congestion management mechanism becomes effective, the ITC and the Midwest ISO shall develop protocols detailing when the Midwest ISO and ITC congestion management mechanisms would operate. The ITC shall file such protocols with FERC and the protocols must be accepted or approved by FERC before the ITC congestion management mechanism becomes effective.

### 6. LOSSES

6.1 Right to File. The ITC shall possess the unilateral right to file at FERC, without any Midwest ISO approval, a mechanism for determining loss responsibility within the ITC, provided that this method does not affect the losses received by Transmission Owners and generators in areas outside of the ITC.

### 7. TARIFF ADMINISTRATION

7.1 Service under the Midwest ISO Tariff. Customers will receive transmission service under a single Midwest ISO Tariff which will apply to transmission service over the entire Midwest ISO (including the ITC), subject to changes to the Tariff accepted by FERC that the ITC may propose pursuant to this Appendix I. Customers will apply for service on the Midwest ISO OASIS. The Midwest ISO will execute the agreements with the customers for service and studies. The ITC shall make all decisions on rate discounts for ITC-only transactions.

7.2 Studies. If a system impact or other study is required to evaluate the ability of the ITC to provide the transmission service and the transaction is within the ITC, then the ITC shall possess the right to assume responsibility for the study, subject to coordination with the Midwest ISO. If a facilities study is required to study a constraint within the ITC, then the ITC shall possess the right to assume responsibility for the study in coordination with the Midwest ISO. With regard to such studies, the Midwest ISO shall administer the contracts with the customers and shall provide the notices and make the filings under the Transmission Tariff.

## APPENDIX I

- 7.3 ATC. The Midwest ISO shall administer the ATC calculation in accordance with this Agreement and shall calculate CBM and TRM, provided that the ITC shall possess the unilateral right to provide the ratings, operating guides, and assumptions to be used in calculating ATC over the ITC facilities. If the Midwest ISO disagrees with these ratings, operating guides, or assumptions, the ITC's position shall prevail pending dispute resolution.
- 7.4 Scheduling. Customers will schedule through the processes established by the Midwest ISO. Scheduling protocols will be between the Midwest ISO and the control areas and/or the ITC.

### 8. CURTAILMENTS

- 8.1 ITC Responsibilities. For curtailments of transmission pursuant to the Tariff, if the curtailment involves a transaction within the ITC or is the result of a system problem or constraint within the ITC, then the ITC will have the first opportunity to address the need for or to carry out the curtailment of transactions within the ITC, subject to the Midwest ISO's authority to act as regional security coordinator. The ITC and the Midwest ISO shall develop protocols for the coordination of curtailments.
- 8.2 Midwest ISO Responsibilities. If the ITC is unsuccessful in addressing the curtailment as provided in Section 8.1, then the Midwest ISO shall assume responsibility for carrying out the curtailment provisions of the Tariff. In all circumstances other than those provided in Section 8.1, the Midwest ISO shall possess full responsibility for addressing the curtailment consistent with the Transmission Tariff and this Agreement.

### 9. OPERATIONS

- 9.1 Ratings and Operating Procedures. The ITC may establish ratings and operating procedures for its facilities subject to dispute resolution if the Midwest ISO disagrees. The ITC's position shall prevail pending dispute resolution.
- 9.2 Transmission Maintenance. The ITC may set its own transmission maintenance and outage schedules subject to dispute resolution if the Midwest ISO disagrees. The ITC shall coordinate such transmission maintenance and outage schedules with the Midwest ISO. With regard to such schedules, the ITC's position shall prevail during the dispute resolution process unless the Midwest ISO determines that system security is involved, in which case the Midwest ISO's determination shall prevail pending dispute resolution.

## APPENDIX I

- 9.3 **Generation Maintenance.** The ITC may assume from the Midwest ISO the coordination of generator maintenance for generators within the ITC with regard to those generators which are required to coordinate maintenance pursuant to Appendix E, Section VII of this Agreement. The ITC shall inform the Midwest ISO of those maintenance activities.
- 9.4 **Congestion Management and Must Run Units.** The ITC may control congestion management consistent with Section V of this Appendix I and must run units to the extent permitted by FERC.
- 9.5 **Temporary Operational Control.** The Midwest ISO may assume temporary operational control over the ITC's facilities when required to return the Midwest ISO system to a secured state as required by its role as a regional security coordinator.

## 10. PLANNING

- 10.1 **ITC Plan.** The ITC may develop its plan for the construction of transmission facilities within the ITC. The ITC shall inform and provide a copy of its plan to the Midwest ISO as soon as it is available and shall coordinate with the Midwest ISO to the maximum extent practicable. Midwest ISO approval is not required for the ITC plan, subject to any dispute resolution as provided in Section 10.2 of this Appendix. Such ITC plan shall become part of the Midwest ISO regional plan, subject to Section 10.2. If the Midwest ISO believes that an ITC planned facility will have a material impact on facilities outside of the ITC which are located within the Midwest ISO, the ITC planned facility shall not be placed into operation until such time as the Midwest ISO has a reasonable time to review the ITC plan and any disputes are resolved.
- 10.2 **Midwest ISO Disagreement.** If the Midwest ISO disagrees with the ITC's plan, the Midwest ISO's disagreement with the plan will be resolved through dispute resolution.
- 10.3 **Regional Planning.** Nothing in this Section X is intended to change the responsibility of the Midwest ISO to develop a regional plan, including the ITC facilities, as provided in this Agreement.

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### 11. BILLING AND REMITTANCE

- 11.1 ITC Responsibilities. For transactions occurring solely within the ITC or where the load is located within the ITC, the ITC possesses the right to perform the Midwest ISO billing, credit, and accounting responsibilities for those transactions.
- 11.2 Return of Revenues. If the ITC receives revenues which it is not entitled to receive pursuant to Appendix C of this Agreement, it shall as soon as possible remit those revenues to the Midwest ISO.

### 12. MONITORING AND PENALTIES

- 12.1 Midwest ISO Responsibilities. The Midwest ISO will continue to impose and collect penalties as currently provided in the Agreement and Tariff, and to perform the monitoring functions pursuant to this Agreement for transactions involving the ITC.
- 12.2 Exception. The ITC will be allowed to impose and collect penalties approved by FERC associated with its congestion management program so long as any such penalty does not cause an entity to be subjected to a penalty by both the Midwest ISO and the ITC for the same violation.
- 12.3 Monitoring and Assessment of ITC-Midwest ISO Relationship. The Midwest ISO shall monitor the ITC-Midwest ISO relationship to determine if the division of functions creates a competitive or reliability problem that affects the Midwest ISO's ability to provide reliable, non-discriminatory transmission service.
- 12.4 The Midwest ISO will monitor markets operating by an ITC.

### 13. LIABILITY

- 13.1 Assumption of Liability. The ITC shall assume all liabilities associated with its acts or omissions regarding those functions for which it has assume responsibility. The ITC shall indemnify and hold harmless the Midwest ISO for any and all liabilities associated with the ITC's actions.

### 14. DISPUTE RESOLUTION

- 14.1 Dispute resolution as used in this Appendix I refers to the dispute resolution procedures included as Appendix D to this Agreement, as it may be amended. The Midwest ISO shall consider whether any changes to its dispute resolution procedures need to be made to implement this Appendix I.

**APPENDIX I**

15. NOTIFICATION OF ASSUMPTION OF RESPONSIBILITIES

15.1 The ITC shall provide notice to the Midwest ISO of its election to assume the responsibilities described in Sections 7.2-7.4, 8.1, 9.1-9.4, 10.1, and 11.1 of this Appendix I. The ITC must provide notice to allow the Midwest ISO sufficient time to implement procedures to allow coordinated operation of the ITC together with the Midwest ISO.

16. OPERATING PROCEDURES AND PROTOCOLS

16.1 The ITC and the Midwest ISO shall cooperate and use their best efforts to develop the necessary operating procedures and protocols to allow timely start-up of the ITC pursuant to this Appendix I. Any disagreements shall be resolved pursuant to dispute resolution. Once such procedures and protocols have been developed, either through agreement or after dispute resolution, the Midwest ISO shall post such procedures and protocols on its website.

**DRAFT**

*For Discussion Purposes Only  
January 15, 2002*

**AMENDMENTS TO  
MEMBERSHIP AGREEMENT OF  
THE MIDWEST INDEPENDENT TRANSMISSION OPERATOR, INC.**

The following amendments are made to the Agreement of Transmission Facilities Owners To Organize The Midwest Independent Transmission System Operator, Inc. with an effective date of November 20, 2000 (the Membership Agreement):

**Article Two, III.A.1.**

The Board of Directors will have no less than eight (8) and no more than thirteen (13) members as of the Closing Date of the SPP-MISO consolidation. The Board shall initially consist of seven (7) of the then-current MISO Board members (excluding the President), and four (4) of the then-current SPP non-stakeholder Board members (excluding the President). At the first meeting of this Board, the SPP Directors shall determine each of their respective terms by a drawing. By a unanimous vote of the Board of Directors, up to two (2) senior officers of the Resulting Company may be named as Directors.

**Article Two, III.A.2.**

Of the Directors, one (1) shall have expertise and experience in the operation of electric transmission systems; one (1) shall have expertise and experience in the planning of electric transmission systems; one (1) shall have expertise and experience in commercial markets and trading and associated risk management; and the balance shall have expertise and experience in corporate leadership at the senior management or board of directors level, or in the professional disciplines of finance, accounting, engineering, or utility laws and regulation.

**Article Two, III.C.2.**

Two-thirds (2/3) of the Directors shall constitute a quorum of the Board. For a period of six (6) months following the Closing Date, the following actions of the Resulting Company can be taken only upon the affirmative vote of two-thirds of the members of the Resulting Company's Board of Directors:

- (i) the incurrence of any additional indebtedness by the Resulting Company;
- (ii) any merger, consolidation or combination involving the Resulting Company or the sale of all or substantially all of the assets of the Resulting Company;
- (iii) any liquidation or dissolution of the Resulting Company;
- (iv) any significant modification or deviation from the business strategy set forth in the Resulting Company's business plan;
- (v) any material modification to the Resulting Company's then existing budget; and
- (vi) any change in the composition of the Resulting Company's executive management.

## **DRAFT**

*For Discussion Purposes Only  
January 15, 2002*

### **Article Two, VI.A.1.**

At all times there shall exist an Advisory Committee to the Board consisting of:

- (a) one representative from each member company, which Member may participate in any of the following sectors for which it is eligible: Owners; municipal and cooperative electric utilities and transmission-dependent utilities; independent power producers (“IPPs”) and exempt wholesale generators (“EWGs”); power marketers and brokers; and
- (b) three (3) representatives of eligible end-use customers, with one (1) seat assigned to a member of this group who was a member of MAPP as of March 1, 2000, or who is actively involved in the MAPP region (as it existed on March 1, 2000), and one (1) seat assigned to a member of this group who was a member of SPP as of *date*, or who is actively involved in the SPP region (as it existed on *date*); three (3) representatives of state regulatory authorities, with one (1) seat assigned to a member of this group who was a member of MAPP as of March 1, 2000, or who is actively involved in the MAPP region (as it existed on March 1, 2000), and one (1) seat assigned to a member of this group who was a member of SPP as of *date*, or who is actively involved in the SPP region (as it existed on *date*); three (3) representatives of public consumer groups, with one (1) seat assigned to a member of this group who was a member of MAPP as of March 1, 2000, or who is actively involved in the MAPP region (as it existed on March 1, 2000), and one (1) seat assigned to a member of this group who was a member of SPP as of *date*, or who is actively involved in the SPP region (as it existed on *date*); three (3) representatives of environmental and other stakeholder groups, with one (1) seat assigned to a member of this group who was a member of MAPP as of March 1, 2000, or who is actively involved in the MAPP region (as it existed on March 1, 2000), and one (1) seat assigned to a member of this group who was a member of SPP as of *date*, or who is actively involved in the SPP region (as it existed on *date*); and two (2) representatives of Members who, being legally unable to transfer operational control to the Resulting Company, have entered into coordination or agency agreements with the Resulting Company (“Coordination Members”).

All business must be approved by at least sixty-six percent (66%) of the average of the ratio of approving votes to voting Members in each category. If no Members are present within a category, the single present category voting ratio will determine approval.

### **Article Six**

The initial Membership Fee of \$15,000 will be waived for current SPP Members that join the Resulting Company within two (2) months of the Closing Date of the SPP-MISO consolidation.

**DRAFT**

*For Discussion Purposes Only  
January 15, 2002*

*[The following concept has to be included—open to suggestion as to which section(s) are referenced. It may be Appendix C.]*

Until consolidation of the SPP Open Access Transmission Tariff (OATT) and the MISO Open Access Transmission Tariff into a single tariff, revenue distribution and rates for SPP Members will be determined in accordance with the SPP OATT as accepted by FERC.

AGREED AND ACCEPTED BY

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**FORM OF**  
**SERVICES AGREEMENT**

This Agreement is entered into this XX day of, 200X, between *Resulting Company name* (“XXX”), a Delaware not-for-profit corporation, and Southwest Power Pool, Inc. (“SPP”), an Arkansas non-profit corporation, which may be individually referred to herein as “Party” or collectively as “the Parties”.

WHEREAS SPP is an independent Regional Reliability Council for interconnected electric systems in the Southwest as part of the United States; and

WHEREAS, SPP wishes to contract for performance of certain functions as described in this Agreement related to its role as a Regional Reliability Council; and

WHEREAS, *Resulting Company name* possesses the necessary competency and experience to perform the functions in question and is willing to perform such functions under the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

**Section 1 –Scope of Services.**

1.1 *Resulting Company name* shall perform the following functions on behalf of SPP, associated with administration of: *list functions*

**Section 2 – Independence.**

2.1 All functions shall be performed by employees of *Resulting Company name*. No such employees shall be employed by, or have a financial interest in any Market Participant as defined in 18 C.F.R. §35.34 (a) (2). Any employee owning securities in any affiliate of a Market Participant shall divest such securities within six months of his or her employment by *Resulting Company name*. Nothing in this section shall be interpreted to preclude any such employee from indirectly owning securities issued by any affiliate of a Market Participant through a mutual fund or similar arrangement (other than a fund or arrangement specifically targeted toward the electric industry or the electric utility industry or any segment thereof) under which the employee does not control the purchase or sale of such securities. Participation in a pension plan of a Market Participant shall not be deemed to be a direct financial interest if the plan is a defined-benefit plan that does not involve ownership of the securities.

2.2 All employees of *Resulting Company name* performing functions on behalf of SPP under this Agreement shall be treated, for purposes of the FERC's Standards of Conduct set forth in 18 C.F.R. § 37.4, as the equivalent of reliability employees of SPP, and all restrictions relating to information sharing and other relationships shall apply to such employees. Such employees shall abide by the SPP Standards of Conduct.

### **Section 3 – Compensation, Billing and Payment.**

3.1 SPP shall reimburse *Resulting Company name* for all reasonable and necessary costs incurred in performing functions on its behalf pursuant to this Agreement. Reimbursable expenses shall include employee salaries and benefits, office space, supplies and equipment, computer hardware and software lease costs and other information technology costs, reasonable travel and other business expenses, legal, accounting, and other necessary corporate services. Such expenses shall be directly assigned to *Resulting Company name*'s performance of its responsibilities under this agreement when possible, and shall be based upon time billing or other reasonable allocation methods when such direct assignment is not possible.

3.2 *Resulting Company name* shall render to SPP monthly statements by regular mail, facsimile, electronic mail or other acceptable means. Such statement shall set forth any reimbursable costs incurred by *Resulting Company name* during the month in question. SPP shall make payment of the amount shown to be payable by wire transfer to an account specified by *Resulting Company name* not later than the twentieth (20<sup>th</sup>) day after receipt of the statement, unless such day is not a business day, in which case payment shall be made on the next business day. All such payments shall be deemed to be made when said wire transfer is received by *Resulting Company name*. Overdue payments shall accrue interest daily at the then current prime interest rate (the base corporate loan interest rate) published in the Money and Investing Section of the Wall Street Journal, or, if no longer published, in any mutually agreeable publication, plus 2% per annum, from the due date of such unpaid amount until the date paid.

3.3 In case of a default by SPP, *Resulting Company name* may terminate this Agreement without notice. In the event of a billing dispute between the Parties, *Resulting Company name* will continue to perform its responsibilities under this Agreement so long as (i) SPP continues to make all payments not in dispute, and (ii) SPP pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute.

3.4 Upon request by SPP, *Resulting Company name* shall allow SPP and its representatives access to only that portion of its books and records necessary, to verify transactions and billings under this Agreement, during normal business hours at its offices in XXX. *Resulting Company name*'s books and records related to this agreement shall be subject to and part of its annual audit performed under National Accounting Standards with results made available to SPP. *Resulting Company name* shall maintain such books and records for one (1) year after termination or expiration of this Agreement, or longer if necessary to resolve a pending dispute.

#### **Section 4 - Term and Termination.**

4.1 The initial term of this Agreement shall begin on the Closing Date of the transaction contemplated under the Purchase and Assumption Agreement dated February \_\_\_\_, 2002, between SPP and Midwest Independent Transmission System Operator, Inc. (“MISO”) (“the Purchase Agreement”) and shall end on *date*. The Agreement shall automatically renew for one (1) additional year on each *date* thereafter unless a Party provides three calendar months’ written notice to the other. *Resulting Company name* shall be compensated for reasonable costs incurred prior to such termination.

4.2 *Resulting Company name* shall begin performing the functions required by Section 1.1 simultaneously with the Closing under the Purchase Agreement (“Date of Transfer”), and shall cease performing such functions at midnight on the date the Agreement expires or is terminated, except as otherwise agreed.

4.3 It is the intent of the Parties to transfer the functions from SPP to *Resulting Company name* without any interruption in the administration of SPP’s obligations as a Regional Reliability Council. To this end, the Parties shall, prior to the Date of Transfer, cooperate to establish the necessary practices, routines, installation of equipment, establishment of communication links, and all other activities necessary to allow *Resulting Company name* to begin performance of the required functions without interruption.

#### **Section 5 – Standard of Performance.**

5.1 *Resulting Company name* shall perform the functions specified in this Agreement in accordance with Good Utility Practice and shall conform to applicable reliability criteria, policies, standards, rules, regulations and other requirements of SPP, the North America Electric Reliability Council (NERC) or its successor organization, and all applicable requirements of federal and state regulatory authorities.

#### **Section 6 – Data, Systems and Personnel.**

6.1 SPP shall supply to *Resulting Company name*, both initially and throughout the term of this Agreement, all data that *Resulting Company name* deems necessary to perform the functions required to be performed under this Agreement. The Parties shall agree upon the necessary data and the format and manner in which it shall be provided prior to the Date of Transfer.

6.2 SPP shall reimburse *Resulting Company name* in accordance with Section 3 for computer hardware and software and any incremental licensing costs necessary to allow *Resulting Company name* to perform its responsibilities under this Agreement. Such arrangements may involve hardware and/or software leases and/or maintenance agreements with SPP, as determined by *Resulting Company name*.

## **Section 7 – Waiver of Liability and Indemnification.**

7.1 Neither *Resulting Company name*, its directors, officers, agents nor employees shall be liable to SPP for damages arising out of or related to performance of *Resulting Company name*'s obligations under this Agreement; provided, however, that this section shall not apply to actions which are unlawful, undertaken in bad faith, or are the direct result of gross negligence or willful misconduct on the part of *Resulting Company name* or its employees.

7.2 SPP hereby agrees to indemnify and hold harmless *Resulting Company name*, its directors, officers, agents and employees against and from any and all claims, demands, causes of action, losses and liabilities (including any cost and expense of litigation and reasonable attorneys fees incurred by *Resulting Company name* in defending any action, suit or proceeding, provided that *Resulting Company name* affords SPP a reasonable opportunity in such action, suit or proceeding to conduct *Resulting Company name*'s defense and to approve any settlement agreements) for or on account of damages arising out of or related to performance by *Resulting Company name* of its obligations under this Agreement, except to the extent that such claims, demands, causes of action, losses and liabilities are attributable to actions of *Resulting Company name* or its directors, officers, agents or employees which are unlawful, undertaken in bad faith, or are the result of gross negligence or willful misconduct.

## **Section 8 - Dispute Resolution.**

8.1 Any dispute under this Agreement shall be resolved in accordance with the dispute resolution procedures set forth in the SPP Bylaws. For purposes of such disputes, *Resulting Company name* shall be regarded as a "consenting non-member".

## **Section 9 - Data Management.**

9.1 For purposes of this Section 9:

a) "Data" means all information, text, drawings, diagrams, images or sounds which are embodied in any electronic or tangible medium and which are supplied or are accessible to *Resulting Company name* under this Agreement.

b) "Processes" means software, base data models and operating procedures for software or base data models.

9.2 *Resulting Company name* acknowledges that SPP's Data and Processes are the property of SPP. SPP hereby reserves all related intellectual property rights which may exist. *Resulting Company name* shall not delete or remove any copyright notices contained within or relating to SPP's Data or Processes.

9.3 Having due regard for the nature of their respective obligations under this Agreement:

9.3.1 *Resulting Company name* shall use its best efforts to preserve the integrity of SPP's Data and Processes, to prevent any corruption or loss of SPP's Data; and

9.3.2 SPP shall use its best efforts to preserve the integrity of its Data and Processes by, as a minimum, continuing to employ its own established internal procedures in relation to the same.

9.4 Without limiting the foregoing obligations of either Party, SPP shall reasonably assist *Resulting Company name* in establishing measures to preserve the integrity and prevent any corruption or loss of SPP's Data, and shall reasonably assist *Resulting Company name* in the recovery of any corrupted or lost data.

9.5 *Resulting Company name* shall retain and preserve SPP's Data until such reasonable time following the termination or expiration of this Agreement that it is transferred, or ordered destroyed or returned as directed by SPP at its expense.

## **Section 10 - Insurance.**

10.1 *Resulting Company name* shall furnish and require its sub-contractors to furnish certain insurance coverage. Insurance shall be placed with insurance carriers acceptable to SPP, such acceptance not to be unreasonably withheld. *Resulting Company name* shall maintain and cause its sub-contractors to maintain the following:

10.1.1 coverage for the legal liability of *Resulting Company name* or its sub-contractors under the workers' compensation and occupational disease law of the state in which the services are performed according to the following:

10.1.1.1 in the states of Indiana and Arkansas, *Resulting Company name* or its sub-contractors shall be contributors to the state workers' compensation fund and shall furnish a certificate to that effect; and

10.1.1.2 in states other than Indiana and Arkansas, SPP or its sub-contractors shall maintain an insurance policy for workers' compensation from an insurance carrier approved for contracting workers' compensation business in the state in which the services are to be performed; and

10.1.1.3 if *Resulting Company name* or its sub-contractor is a legally permitted and qualified self-insurer in the state in which the Services are to be performed, it may furnish proof that it is such a self-insurer in lieu of submitting proof of insurance.

10.1.2 commercial general liability insurance with limits of not less than \$1,000,000 (one million dollars) each occurrence and aggregate;

10.1.3 professional liability insurance with a limit of not less than \$\_\_\_,000,000 (\_\_\_\_\_ million dollars) each occurrence and aggregate, providing coverage for claims arising out of the performance of professional services under this Agreement and resulting from any error, omission, or negligent act for which *Resulting Company name* is held liable. *Resulting Company name* shall maintain this insurance for a minimum period of 5 (five) years after the completion of the Agreement; and

10.1.4 property insurance with a limit of liability necessary to restore and replace all physical and intellectual assets necessary to the Services under this Agreement including SPP Data. This insurance shall include, but not be limited to the following coverages:

10.1.4.1 mechanical breakdown and artificially generated electrical current;

10.1.4.2 changes in temperature and humidity;

10.1.4.3 computer viruses;

10.1.4.4 off-premises services;

10.1.4.5 transportation of goods;

10.1.4.6 loss of project (to protect the physical damage to R&D property, as well as, additional costs to recreate, restore and reproduce the damaged property);

10.1.4.7 delayed introduction of product (to protect loss from delays in bringing the Services to SPP); and

10.1.4.8 extended period of indemnity (to extend business income period of indemnity for whatever reasonable time needed to restore/resume operations after a loss.).

10.2 *Resulting Company name* shall submit two copies of certificates of insurance for the insurances required in Sections 10.1.1 through 10.1.4. Such certificates shall state that the insurance carrier has issued the policies providing for the insurance specified herein, that such policies are in force, and that the insurance carrier will give SPP 30 (thirty) calendar days prior written notice of any material change in or cancellation of such policies. If such insurance policies are subject to any exceptions to the terms specified herein, such exceptions must be explained in full in such certificates. SPP may, at its discretion, require *Resulting Company name* to obtain insurance policies that are not subject to any exceptions.

10.3 Insurance policies written on a “claims-made” basis shall be maintained by *Resulting Company name* or its sub-contractors for a minimum of 5 (five) years after completion of the Services under this Agreement.

10.4 *Resulting Company name* and its sub-contractors shall obtain waivers of subrogation on all their insurance whether required by this Agreement or in excess of the Agreement requirements; such waivers shall be for the benefit of SPP and its affiliated companies. Notwithstanding the foregoing, SPP shall not require waiver of subrogation on commercial general liability, professional liability and workers compensation insurance. Furthermore, SPP shall not require waiver of subrogation on *Resulting Company name* and its sub-contractors business auto policy provided that it follows the industry standard definition of “insured” which includes SPP’s usage with permission. *Resulting Company name* and its sub-contractors shall obtain a waiver of subrogation on such policies as property, inland marine and crime.

### **Section 11 - Confidentiality.**

11.1 Both Parties hereby agree that:

11.1.1 "Confidential Information" means all information designated as such by either Party in writing;

11.1.2 any person employed or engaged by the Parties shall only use Confidential Information for the purposes of this Agreement;

11.1.2.1 any person employed or engaged by either Party shall not disclose any Confidential Information to any third party without the prior written consent of both Parties.

11.1.3 both Parties shall take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed or used other than for the purposes of this Agreement by their employees, servants, agents or sub-contractors.

11.2 The provisions of Section 11.1 shall not apply to any information which:

11.2.1 is or becomes public knowledge other than by breach of this Agreement;

11.2.2 is in the possession of the receiving Party without restriction in relation to disclosure;

11.2.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

11.2.4 is independently developed without access to the Confidential Information, provided that such independent development can be evidenced; or

11.2.5 is required to be disclosed by law, regulatory authority or stock exchange.

11.3 SPP's Data shall be regarded as Confidential Information and *Resulting Company name's* rights with respect to the use, sale, reproduction, modification and distribution of the same shall be limited to the extent necessary so as to enable it to fulfill its obligations under this Agreement.

11.4 Nothing in this Section 11 shall prevent either Party from using data processing techniques, ideas and know-how gained during the performance of this Agreement in the furtherance of its normal business, to the extent that this does not relate to a disclosure of SPP's Data, any data generated from SPP's Data, a disclosure of any Confidential Information, or an infringement by either Party of any intellectual property right.

## **Section 12 – Force Majeure.**

12.1 For purposes of this Agreement the expression "Force Majeure" shall mean any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, or happening which are beyond its reasonable control including but not limited to governmental regulations, fire, flood, any natural disaster or a labor dispute that results in work stoppage.

12.2 Neither Party shall be liable to the other for any loss of any kind whatsoever including but not limited to any damages whether directly or indirectly caused to or incurred by the other Party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. If *Resulting Company name* fails to perform or is delayed in performing due to an act of Force Majeure, SPP shall be entitled to a refund of any advance payments made up to the date such Force Majeure event occurs less any amounts earned and due, and shall not be required to make further payments until such time as *Resulting Company name* resumes its full performance. Notwithstanding the foregoing, each Party shall use all reasonable endeavors to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure events. If *Resulting Company name* fails to perform or is delayed in performing its obligations due to Force Majeure, SPP may during the period of Force Majeure, utilize a third party to perform *Resulting Company name's* obligations. *Resulting Company name* shall use reasonable efforts to cooperate with SPP in effecting a transition to such alternative services.

12.3 If either of the Parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part, it shall forthwith notify the other by the most expeditious method then available

and shall inform the other of the period which it is estimated that such failure or delay shall continue.

12.4 It is expressly agreed that any failure or delay by *Resulting Company name* to perform its obligations under this Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which it shall have entered into any such contract, supply arrangement or sub-contract or otherwise, shall be regarded as a failure or delay due to Force Majeure only in the event that (a) such person, firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure (b) the contract, supply arrangement or subcontract is essential to *Resulting Company name's* performance, and (c) *Resulting Company name* has exercised its best efforts to find substituted goods or services on terms generally equivalent to those agreed under such contract, supply arrangement or sub-contract.

12.5 If the event of Force Majeure prevents either Party from performing all or a substantial part of its obligations for a consecutive period of 90 (ninety) calendar days, the other Party may terminate this Agreement upon written notice, provided always that *Resulting Company name* shall be reimbursed for all direct costs incurred under this Agreement up to the effective date of such termination, provided always that such costs take account of:

12.5.1 any recoveries made by *Resulting Company name* pursuant to its insurance policies;

12.5.2 all charges paid by SPP hereunder.

### **Section 13 – Amendments to Agreement.**

13.1 This Agreement shall not be modified or amended unless such modification or amendment is agreed in writing by duly authorized representatives of the Parties.

### **Section 14 - Notices.**

14.1 Notices. Any notice, demand or request required or authorized by this Agreement to be given by one Party to the other shall be in writing. It shall be personally delivered, transmitted by telecopy or facsimile equipment (with receipt verbally and electronically confirmed), sent by overnight courier, or sent via registered mail, return receipt requested, to the other Party at the address designated in this Article 14. Any such notice, demand or request so delivered or mailed shall be deemed received when so delivered.

14.2 Addresses of the Parties. Notices and other communications shall be addressed to:

SPP  
*name*  
Southwest Power Pool, Inc.  
415 North McKinley Street  
#900 Plaza West  
Little Rock, AR 72205-3020

Resulting Company name  
*Name*  
*Resulting Company name*  
*Address*  
*Address*

Or such other address(es) as may be provided in writing by a Party.

### **Section 15 - Miscellaneous Provisions.**

15.1 Governing Law. This Agreement shall be interpreted, construed, and governed by the laws of the State of XXXX, except to the extent preempted by the law and/or unless a court with jurisdiction rules otherwise, provided, however, that all matters relating to real property or any interest in realty shall be governed by the laws of the State wherein such real property or interest in realty is physically located.

15.2 Successors and Assigns. This Agreement shall inure to the benefit of, and be binding upon the Parties, their respective successors and assigns permitted hereunder, but shall not be assignable by a Party, by operation of law or otherwise, without the approval of the other Party which approval shall not be unreasonably withheld.

15.3 No Implied Waivers. The failure of a Party to insist upon or enforce strict performance of any of the specific provisions of this Agreement at any time shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions, rights, or remedies in that or any other instance, or as a waiver to any extent of any specific provision of this Agreement; rather the same shall be and remain in full force and effect.

15.4 Severability. Each provision of this Agreement shall be considered severable, and if for any reason any provision of this Agreement, or the application thereof to any person, entity, or circumstance, is determined by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, then the remaining provisions of this Agreement shall continue in full force and effect and shall in no way be affected, impaired, or invalidated, and such invalid, void, or unenforceable provision shall be replaced with a suitable and equitable provision in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid, void, or unenforceable provision.

15.5 Renegotiation. If any provision of this Agreement, or the application thereof to any person, entity or circumstance, is held by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, or if a modification or condition to this Agreement is imposed by a regulatory authority exercising jurisdiction over this Agreement, then the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification, or condition. If after sixty (60) days such negotiations are unsuccessful, then either Party may terminate this Agreement pursuant to Section 4.

15.6. Representations and Warranties. Each Party represents and warrants to other signatories that as of the date it executes this Agreement:

15.6.1 It is duly organized, validly existing, and in good standing under the laws of the jurisdiction where organized;

15.6.2 Subject to any necessary approvals by federal or state regulatory authorities, the execution and delivery by each Party, and the performance of its obligations hereunder have been duly and validly authorized by all requisite action on the part of the signatories. This Agreement has been duly executed and delivered by the Parties, and, subject to the conditions set forth in this Agreement, constitutes the legal, valid, and binding obligation on the part of each Party, enforceable against it in accordance with its terms except insofar as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or other similar laws affecting the enforcement of creditor's rights generally, and by general principles of equity regardless of whether such principles are considered in a proceeding at law or in equity.

15.6.3 There are no actions at law, suits in equity, proceedings, or claims pending or, to the knowledge of each Party, threatened against such Party before or by any federal, state, foreign or local court, tribunal, or governmental agency or authority that might materially delay, prevent, or hinder the performance by such entity of its obligations hereunder.

15.7 Further Assurances. Each Party agrees that it shall hereafter execute and deliver such further instruments, provide all information, and take or forbear such further acts and things as may be reasonably required or useful to carry out the intent and purpose of this Agreement and as are not inconsistent with the provisions of this Agreement.

15.8 Entire Agreement. This Agreement, including applicable appendices and their duly approved replacements, constitute the entire agreement between the Parties with respect to the subject matter of this Agreement, and no previous oral or written representations, agreements, or understandings made by any officers, agent, or employee of any Party shall be binding on any such Party.

15.9 Good Faith Efforts. Each Party agrees that it shall in good faith take all reasonable actions necessary to permit it and other signatories to fulfill their obligations under this Agreement. Where the consent, agreement, or approval of any Party must be obtained hereunder, such consent, agreement, or approval shall not be unreasonably withheld, conditioned, or delayed. Where any Party is required or permitted to act, or omit to act, based on its opinion or judgment, such opinion or judgment shall not be unreasonably exercised. To the extent that the jurisdiction of any federal or state regulatory authority applies to any part of this Agreement and/or the transactions or actions covered by this Agreement, each Party shall cooperate with all other signatories to secure any necessary or desirable approval or acceptance of such regulatory authorities of such part of this Agreement and/or such transactions or actions.

15.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument, binding upon the Parties, notwithstanding that the Parties may not have executed the same counterpart.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute and attest this Agreement, on their respective behalves.

**RESULTING COMPANY NAME**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

**SOUTHWEST POWER POOL, INC.**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

WSH\58361.2

**FORM OF**  
**AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
*Resulting Company Name*

1. **Name of corporation.** The name of the corporation is *Resulting Company Name*.
2. **Address.** The address of the registered office of the corporation in the State of Delaware is:

The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
City of Wilmington  
County of New Castle

3. **Nature or purpose of the business of the corporation.**
  - A. The purpose of the corporation is to promote the social welfare by providing transmission services associated with electric energy, operating a related security center, and taking other actions necessary for reliable transmission operations in furtherance of the public policy reflected in: (i) the Order of the Federal Energy Regulatory Commission (herein “FERC”), designated Order No. 888, 61 Fed. Reg. 21,540 (1996); (ii) other orders of the FERC related thereto; and (iii) such orders of the FERC as may concern the organization and operation of the corporation.
  - B. To take any other action determined appropriate by the members or board of directors for the purpose of facilitating the foregoing purposes.
  - C. The foregoing enumeration of purposes shall not be construed to limit or restrict the general powers otherwise conferred upon the corporation by the laws of the State of Delaware.
  - D. The corporation shall not participate in any activity or take any action inconsistent with tax exempt status under Section 501(c)(4) of the Internal Revenue Code (“IRC”)(or the corresponding provision of any United States Internal Revenue law enacted in the future) or other subsection under Section 501(c) of the IRC (or the corresponding provision of any United States Internal Revenue law enacted in the future) under which the Internal Revenue Service may recognize that the corporation is exempt from federal income taxation. No part of the net earnings, if any, of the corporation shall inure to

the benefit of any member, director, officer, employee of the corporation, or any other private person. The corporation is authorized and empowered to pay reasonable compensation for services actually rendered and to make payments in furtherance of the purposes and objectives set forth herein. No substantial part of the activities of the corporation shall be carrying on propaganda or otherwise attempting to influence legislation other than as permitted under Section 501(h) of the IRC (or the corresponding provisions of any United States Internal Revenue law enacted in the future). The corporation shall not participate in or intervene in any political campaign on behalf of any candidate for public office.

E. Upon the dissolution of the corporation, the board of directors shall, after paying or making provision for payment of all the liabilities of the corporation, dispose of all assets of the corporation in such manner, or to such organization or organizations established and operated exclusively for the purposes set forth in this third Article, which shall at the time qualify as an exempt organization or organizations under Section 501(c)(4) of the IRC or other subsection under Section 501(c) of the IRC under which the Internal Revenue Service may recognize that the corporation is exempt from federal income taxation, as the board of directors shall determine. Any remaining assets shall be disposed of pursuant to applicable law or regulation.

F. Notwithstanding any other provision of these Articles, the corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt from taxation under 501(c)(4) of the IRC or other subsection under Section 501(c) of the IRC under which the Internal Revenue Service may recognize that the corporation is exempt from federal income taxation.

G. The corporation is a non-stock, nonprofit corporation.

4. **No stock.** The corporation shall not have any capital stock.
5. **Conditions of membership.** The conditions of membership shall be stated in the bylaws of the corporation.
6. **Duration.** The corporation shall have perpetual existence.
7. **Power of board of directors.** In furtherance and not in limitation of the powers conferred by statute, the board of directors is expressly authorized to make, alter or repeal the bylaws of the corporation, provided that any such alteration or repeal does not violate the Agreement of Transmission Facilities Owners of *Resulting Company Name*, A Delaware Non-Stock Corporation filed with the FERC on \_\_\_\_\_.
8. **Meetings of members.** Meetings of members may be held within or without the State of Delaware, as the bylaws may provide. The books of the corporation may be

kept (subject to any provision of law) outside the State of Delaware at such place or places as may be designated from time to time by the board of directors or in the bylaws of the corporation.

9. **Repeal or amendment of Certificate.** The corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon members herein are granted subject to this reservation.

## **DRAFT**

*For Discussion Purposes Only  
January 16, 2002*

# **AMENDMENTS TO SOUTHWEST POWER POOL, INC. BYLAWS dated January 1, 2000**

## **INSERT**

### **Section 2.3 Member Responsibilities and Obligations**

Members recognize that SPP exists and operates for the benefit of the bulk electric transmission system and to ensure the reliability of the nation's power supply. As such, Members are required to act to further these goals, including participation in projects, execution of changes resulting from regulatory changes, and consent to consolidation with another entity through any legal means determined appropriate by the SPP Board of Directors. Failure to comply with this provision will be considered a violation of these Bylaws and the Member may be removed in accordance with the provisions for Removal of Members in the SPP Membership Agreement.

## **AMEND**

### **2.3-4 Removal and Reinstatement**

The Board of Directors may terminate the Membership of any Member: (1) in accordance with the Membership Agreement; or (2) in the event of the sale of substantially all of the assets of SPP. The President shall promptly give written notice of the removal to all other Members. Any former Member seeking to rejoin SPP shall apply to the Board of Directors for reinstatement. In its application for reinstatement, the former Member shall: (i) provide evidence that it has fully paid any accrued financial obligation to SPP; (ii) demonstrate it has corrected the reason for its removal; and (iii) establish that it will be in compliance with SPP Membership requirements.

## **AMEND**

Section 2.4 is re-numbered to be Section 2.5

## **AMEND**

### **9.0 Effective Date and Transition Provisions**

~~Except for provisions of Section 4.2 pertaining to independent directors, these~~ These Bylaws shall become effective ~~January 1, 2000~~ date and remain in force thereafter as may be amended. These Bylaws hereby cancel and supersede SPP Bylaws dated ~~July 20,~~

## **DRAFT**

*For Discussion Purposes Only*

*January 16, 2002*

~~1999~~January 1, 2000; provided, that these Bylaws do not relieve any Member from any financial obligation incurred thereunder. Binding obligations entered into by authority of officers or the Board of Directors under these Bylaws are hereby assumed and confirmed as obligations of SPP under these Bylaws. ~~The terms of all officers and directors elected or appointed, all organizational group assignments, and all scheduled meetings made under these Bylaws shall be assumed under these Bylaws. As soon as practical following the effective date of these Bylaws, the Board of Directors shall commence a process for the nomination of independent directors pursuant to Section 4.2, who shall be elected at a Meeting of Members to be held just prior to the May 2000 meeting of the Board of Directors.~~

## **SPP Cost Assignment Comparison**

**January 21, 2002**

Upon consummation of an SPP-MISO consolidation, the allocation of SPP costs among members and customers will change. Currently, SPP's costs, if not otherwise met, are allocated to members 75% on net energy for load and 25% on a per member basis. SPP's total costs are attributed 80% to Tariff operation and 20 % to the reliability council function. Accordingly, the SPP Tariff was designed to recover up to 80% of SPP's total cost through Schedule 1 of the Tariff. To the extent that Schedule 1 does not recoup the 80% of costs attributed to Tariff operation, the balance is assessed to the members through the normal cost allocation for dues (along with the 20% for the reliability council function).

In the context of RTO operations, FERC policy now requires that all load within the RTO footprint take RTO transmission service and bear the RTO's administrative costs on a load ratio share basis.

The attached table reflects 2002 costs assigned: (1) on an SPP RTO stand-alone basis, assuming continuation of present tariff operations and no new load under the Tariff but assigned on the basis of prior SPP practice; and (2) on a basis reflecting a combined SPP-MISO RTO with all costs assigned consistent with FERC policy.

At face value the table would seem to illustrate a significant increase in members' costs. However, all loads taking RTO Network Service will receive RTO-wide service and will not be subject to incremental Point-To-Point Service for deliveries sunk within the RTO footprint. To the extent that load had previously taken Point-To-Point service directly or indirectly, it ultimately bore the cost of the Point-To-Point Service and the Schedule 1 charges, whether service had been taken in its own name or not. In the context of RTO Network Service, these charges will be avoided, representing a savings due to RTO formation. Additionally, the SPP budget does not include cash outflows related to repayment of SPP's long-term debt obligation (approximately \$.02/MWh). This outflow is included in the consolidated SPP-MISO expenses.

## **SPP-MISO MERGER QUESTIONS & ANSWER**

### ***How is the merger being accomplished?***

MISO is purchasing the assets and assuming the liabilities of SPP. This was determined to be the most expeditious method of consolidating the two companies. However, the obligations of each company are in parity throughout the documents, reflecting the intent of the parties.

### ***Why is my company being asked to execute a Conditional Withdrawal Agreement?***

The Conditional Withdrawal Agreement was developed as the best mechanism for SPP members to move their membership to the new organization. The current withdrawal process would have required SPP members to provide notice in October 2001. The Conditional Withdrawal Agreement allows withdrawal to occur automatically at the time the SPP-MISO consolidation is completed.

### ***How will my company's assessments for tariff income shortfalls be refunded?***

Each member will receive a non-interest-bearing promissory note for the total amount it has been assessed to cover SPP's tariff income shortfalls (i.e., assessments for anything more than 20% of SPP's operating expenses). Those promissory notes, which will be assumed by MISO, will be payable in nine annual installments, beginning two years after the Closing.

### ***What happens to my company's share of SPP's financial obligations?***

The SPP membership agreement provides that a withdrawing member remains obligated for its pro-rata share of SPP's existing financial obligations. In the past, withdrawing members have been required to cover those obligations with a lump-sum payment at the time of withdrawal. The Conditional Withdrawal Agreement effectively waives the requirement to cover SPP's financial obligations for SPP members that join MISO, since those members will continue to be part of an entity (MISO) that has assumed and will be responsible for SPP's financial obligations. However, SPP members that do not join MISO will be required by the Conditional Withdrawal Agreement to deliver a non-interest-bearing promissory note for their pro-rata shares of SPP's financial obligations. Those notes, which will be assigned to MISO, will be payable in installments over the remaining life of the obligation.

***What are SPP's existing financial obligations and what is my company's share?***

SPP's primary financial obligation is for \$25 million in 7.5% Senior notes due March 15, 2008. Additionally, your company will be responsible for any unpaid assessments at the time the consolidation is completed. Your company's share of those obligations will be computed using the current SPP formula for cost recovery. A worksheet showing the current amount of your company's obligations will be provided to you when the Conditional Withdrawal Agreement is distributed for signature.

***What if my company does not execute the Conditional Withdrawal Agreement?***

The Board of Directors of SPP is prepared to revise the SPP Bylaws so that any member may be removed in connection with a sale or disposition of substantially all of SPP's assets. If there are members who do not sign the Conditional Withdrawal Agreement, they can be removed under the procedures in the revised Bylaws and current SPP Membership Agreement. Removed members will be entitled to reimbursement of their assessments of tariff income shortfalls, the same as members signing the Conditional Withdrawal Agreement. However, removed members may be required to pay their share of SPP's financial obligations in a lump-sum payment.

***Will SPP still be a NERC reliability council?***

Yes—a new membership agreement and bylaws are being developed for SPP to exist as a reliability council only. These will be distributed for consideration soon.

***Does my company have to join SPP as a reliability council?***

No—that will be optional as it is now for all reliability councils.

***Does my company have to join MISO/Resulting Company as an RTO?***

No—FERC currently does not require membership in an RTO. However, there are many benefits to participating in an RTO and membership is strongly encouraged:

- The membership fee (\$15,000) will be waived for current SPP members that join Resulting Company within 2 months of the consolidation.
- Since MISO/Resulting Company is assuming the debt of SPP, an SPP member's share of the long-term debt procured by SPP (\$25 million) will be absorbed if that member joins.
- As is the case at SPP and MISO now, only members will have voting rights in MISO/Resulting Company in policy matters.

***What is the plan/schedule for approving the consolidation documents?***

The SPP Board of Directors will vote on the documents at their February 19 meeting. The SPP Membership will receive a ballot; votes will be tallied at 5:00 p.m. central time on Wednesday, February 20. The MISO Board of Directors will vote on the documents at their February 21 meeting.

***Why were the Schedules not included? When will they be available?***

The schedules were not included with the Purchase and Assumption Agreement because these types of schedules generally are not considered material to the transaction. The schedules will provide certain details relevant to the corresponding section (as an example, a list of all property—desks, computers, etc.).

Some have felt the schedules are relevant in evaluating the financial aspects of this consolidation. It is important to remember that there is no assessment mechanism within the MISO/Resulting Company structure. To the extent that tariff revenues do not cover costs, those costs that are not covered and are incurred during the start-up or transition phases will be capitalized and recovered in the future. If future tariff revenue is not sufficient to cover costs, then Resulting Company would have to make a case to FERC to increase its tariff fee. Once combined, cost shortfalls are not borne by either MISO or SPP members; instead they are borne by all tariff customers.

The schedules are being developed for distribution the week of February 12.

**SPP-MISO CONSOLIDATION DOCUMENTS**  
**Member Comments and Questions**

<b>BY</b>	<b>ISSUE/COMMENT</b>	<b>RESPONSE</b>
ETEC	Cannot fully evaluate until AEP West plans known.	
ETEC	Will only transfer control of transmission facilities to RTO if compensated.	The Resulting Company will maintain the current SPP tariff for the current SPP footprint and the MISO tariff for the MISO until a single Resulting Company tariff is adopted and approved by FERC.
ETEC and KCP&L	The consolidation documents should include a definitive statement of the obligation of MISO to assume the obligation of repayment of the administrative costs paid by members.	The documents require MISO to assume this obligation and memorialize it in the form of a promissory note, this guaranteeing repayment, which guarantee is not currently provided.
ETEC	One of the conditions to closing is that SPP members representing at least 174,000 GWh of energy sign the new membership agreement. If AEP and/or other SPP members decide not to join the Resulting Company, the consolidation could be in jeopardy.	Any of the conditions to closing may be waived by either party, but, yes, the consolidation could be in jeopardy if a sufficient number of SPP members decide not to join Resulting Company.
ETEC, SPA, OG&E and KCP&L	Schedule attachments are missing and need to be provided.	The schedules to be provided by each company are under development. The agreement contemplates that the schedules will be representative of conditions at signing, and renewed prior to closing.
ETEC	Section 8.1(e) – it is important that the former members of SPP have access to the Super-Regional rate.	This condition was stricken as it is not considered that FERC will uphold the super-regional rate since it has denied the Alliance RTO status.
ETEC	Sections 10.9(iv) and (v), among the instances when 2/3 <sup>rd</sup> vote of Board is required, are vague. Further, these sections refer to a business plan and existing budgets. Do these items exist?	A business plan will be developed upon determination that this consolidation is proceeding. A combined budget for the Resulting Company has been prepared and was distributed before the January Board of Directors meeting.
ETEC	The proposed consolidation anticipates that the two organizations' start-up costs will be combined and shared. The current SPP members should be provided with the analysis to demonstrate that tariff revenues are expected to be sufficient to recover the combined start up costs. If such revenues are not sufficient, any shortfall of MISO start up costs should not be borne by former SPP members.	Analysis of tariff revenue determined that the annual budget of the combined entity represented \$0.127 / MWh. To the extent that tariff revenues do not cover costs, those costs will be capitalized and recovered in the future. Once combined, cost shortfalls are not borne by either MISO or SPP members; they are borne by all tariff customers.
ETEC	A revised membership agreement should be developed and circulated to all SPP and MISO members prior to any FERC filing.	The necessary membership revisions will be addressed by the draft amendments that were provided for review.

BY	ISSUE/COMMENT	RESPONSE
ETEC and SPA	The MISO definition of Transmission System includes facilities operated at 100 kV or above and transformers where the two highest voltages are above 100 kV. There has been no justification for applying the MISO standard to the SPP members.	The SPP standard of facilities 60 kV and above and transformers with two primary windings of 60 kV and above will be maintained for the current SPP footprint until a single tariff is adopted.
ETEC and OMPA	Will the SPP members be considered “new members” subject to the “7-Factor test?”	Current SPP members will be eligible for membership in Resulting Company so long as they execute the membership agreement within 2 months of closing.
ETEC	The Resulting Company should adopt a Code of Conduct to govern the activities of the Board of Directors.	There is a provision in the MISO Agreement requiring Board members to execute the same Code of Conduct as staff. This provision will be retained.
ETEC	Customers taking service under agreements that are eligible for grandfathered status under the SPP tariff must not be subject to the Commission’s Order requiring all grandfathered load to pay the MISO cost adder.	Since MISO is purchasing SPP, the MISO footprint will expand to include SPP, and current FERC orders will apply.
OMPA	The provisions dealing with withdrawal of Tax Authorities and Governmental Entities in the MISO Membership Agreement require FERC approval. OMPA is not regulated by FERC and this provision should not apply to non-jurisdictional entities.	As SPP has done in the past, it is anticipated that the Resulting Company will accommodate any legal obligations that current SPP governmental members have in order to allow participation in a FERC approved RTO.
OMPA	The dispute resolution provisions in the MISO Membership Agreement require binding arbitration. The SPP Agreement includes the option of non-binding arbitration.	Correct.
OMPA	Section 6.1 provides that nothing in the membership agreement shall prohibit a corporate or other entity from participating in more than one stakeholder group. This is counter to the principle of balanced representation.	A proposal to allow each member to hold a seat on the Advisory Committee and impose weighted sector voting is currently under consideration.
OMPA	Distribution Facilities used for wholesale transactions. These are addressed in the SPP agreement, but the comparison of the SPP/MISO agreements is silent.	The Resulting Company will maintain the current SPP tariff for the current SPP footprint and the MISO tariff for the MISO until a single Resulting Company tariff is adopted and approved by FERC.
OMPA	The concept of collecting a charge to make up revenue lost due to elimination of “pancaking” is unjustified.	The Resulting Company will maintain the current SPP tariff for the current SPP footprint and the MISO tariff for the MISO until a single Resulting Company tariff is adopted and approved by FERC.

BY	ISSUES/COMMENTS	RESPONSE
OMPA	Re: direct assignment of new facilities: OMPA believes that Owners should make their case to FERC on a case-by-case basis and let FERC adjudicate the issue based on the law and FERC policy.	The Resulting Company will maintain the current SPP tariff for the current SPP footprint and the MISO tariff for the MISO until a single Resulting Company tariff is adopted and approved by FERC.
OMPA	The MISO proposal for a congestion management system includes charges for marginal losses.	The design of a congestion management system has yet to be determined.
SPA	Will the \$15,000 initial membership fee apply to those owners and users who were members of SPP on the date of the merger?	The fee will be waived for those SPP members that join within 2 months of the closing.
SPA	Would MISO consider a sector in the Advisory Committee structure to represent Federal agencies such as the Power Marketing Administrations or the Tennessee Valley Authority?	A proposal to allow each member to hold a seat on the Advisory Committee and impose weighted sector voting is currently under consideration.
SPA	Agreement with Southwestern, a Federal entity, can only be assigned with its consent.	Understood.
SPA	Southwestern does not have the authority to indemnify another entity. (Purchase and Assumption Agreement)	As SPP has done in the past, it is anticipated that the Resulting Company will accommodate any legal obligations that a current SPP governmental members have in order to allow participation in a FERC approved RTO.
SPA	“SPP-MISO Tariff Comparison” states that all generators are required to submit offers to redispatch with MISO. Hydroelectric projects from which SPA markets power and energy are owned and controlled by the Corps. SPA would coordinate to the extent possible to effectuate redispatch, but it cannot be required to submit offers into the market.	As SPP has done in the past, it is anticipated that the Resulting Company will accommodate any legal obligations that a current SPP governmental members have in order to allow participation in a FERC approved RTO.
SPA	Why are there three different methods for ex-SPP members to pay for their portion of the SPP debt, dependent upon the decision to sign the Conditional Withdrawal Agreement and to join MISO?	The differing methods provide flexibility to current SPP members given the various decisions they may make.
SPA	Why wouldn't the settlement terms be the same for both the SPP and the SPP member?	The terms of the promissory note a non-joining member would provide to SPP are designed to mirror the repayment terms if there was no merger. The note provided by SPP to members is designed to commit to the repayment of amounts that may or may not ever become due under current terms.

BY	ISSUES/COMMENTS	RESPONSE
SPA	SPP should provide what compensation the members are due from SPP when the CWA is sent out, not only what members owe SPP.	The amount owed to a member is available at any time by request. The amount to be included in a promissory note cannot be ascertained until the last day of operation of SPP in its current state.
SPA	If a current SPP Transmission Owning member elects not to join the Resulting Company, would revenues from existing transmission contracts using the current SPP regional tariff continue to be allocated to the departing Transmission Owner?	Yes, in accordance with Section 4.2.1 of the SPP Membership Agreement.
SPA	Is there any estimate of the annual cost to companies for SPP to perform solely as a reliability council?	Preliminary estimate is that SPP will require \$2.5 million to perform its reliability functions under contract with MISO.
SPA	Does joining MISO commit the Transmission Owner to five years of that agreement?	Yes.
SPA	The SPP Board of Directors is prepared to revise the SPP Bylaws so that any member not executing the Agreement is considered in default. Has the legality of such a revision been researched?	The SPP Bylaws allow the Board of Directors to make revisions to the Bylaws as needed.
SPA	What constitutes a Coordination or Agency Agreement? (MISO Membership Agreement Amendment, Page 2)	This method of participation is available only to entities that are non-jurisdictional <u>AND</u> for legal/tax reasons cannot sign the membership agreement.
SPA	“... revenue distribution and rates for SPP members will be determined in accordance with the SPP OATT as accepted by FERC.” Is that referring to the SPP OATT as <i>currently</i> accepted at FERC, or does it imply future FERC approval of the SPP OATT in light of the merger?	It will be the SPP OATT in effect at closing.
SPA	<u>Form of Service Agreement:</u> SPA, as a Federal agency, cannot agree to be bound by the waiver of liability/indemnification provisions or participate in binding arbitration.	Members are not a party to this agreement. This is an agreement between Resulting Co. and SPP (as a reliability council) for necessary services.
SPA	Southwestern does not have authority to accept promissory notes in lieu of payment as to monies currently due and owing.	These monies are not currently due and owing. The promissory note will secure repayment to members.

BY	ISSUES/COMMENTS	RESPONSE
SPA	Southwestern does not have the authority to issue promissory notes or other forms of indebtedness.	Any member has the option of paying amounts owed in a lump sum at departure rather than issuing a note.
SPA	<u>Purchase and Assumption Agreement:</u> Southwestern facilities cannot be assigned without its consent. (Page 1)	Understood.
SPA	<u>Purchase and Assumption Agreement:</u> Why is “members equity” deleted from the audited MISO balance sheets? (Page 3)	Because MISO will never have Member Equity.
SPA	Suggest adding to the list of actions requiring two-thirds approval from the Directors: “any change in governance of the resulting Company, including Board of Directors makeup.”	Any changes to governance would be a result of a collaborative process among stakeholders, and would require FERC approval.
SPA	<p>Issues specific to Federal agency status:</p> <ul style="list-style-type: none"> <li>• delivery of Federal Power will be a preference, discriminatory or not</li> <li>• in certain circumstances may disregard its directives</li> <li>• non-jurisdictional participant is not subject to regulatory approval for withdrawal</li> <li>• will not participate in binding arbitration</li> <li>• would control facilities pursuant to agreement rather than Section 203 of the Federal Power Act</li> </ul>	As SPP has done in the past, it is anticipated that the Resulting Company will accommodate any legal obligations that a current SPP governmental members have in order to allow participation in a FERC approved RTO.
OG&E and SPA	No withdrawal of a MISO member is to become effective any earlier than 5 years following the date that the member signs the MISO Membership Agreement. It is unclear what a member’s responsibility would be should it determine to commit its transmission assets to a Transco. Need to include the ability to join a Transco or other organization under the MISO footprint without incurring a penalty.	Transfers of assets from one or more transmission owning members to a new member have been granted under these circumstances within MISO.

BY	ISSUES/COMMENTS	RESPONSE
OG&E	It would appear that the Transmission Owners' Committee established under Article Two, VI.B. is to become a sub-group under the Advisory Committee.	The Owners' Committee is a separate Committee corresponding directly with the Board of Directors. It is not a sub-group of the Advisory Committee. Owners are also represented on the Advisory Committee.
OG&E	OG&E proposes that a new subparagraph (d) be added to §5 of the Conditional Withdrawal Agreement to provide "The regulated signatory to this Conditional Withdrawal Agreement shall have obtained all necessary approvals from federal and state regulatory agencies necessary for said regulated signatory to be in compliance with state and federal law."	Agree with the concept. Revision has been made to Section 6 in the Conditional Withdrawal Agreement to reflect.
KCP&L	Can we expect to move through the slow regulatory processes and meet the termination date of December 31, 2002?	This date may be waived and/or changed by the parties if necessary. Some date needed to be set for all to work toward.
KCP&L	Do not feel that SPP staff has provided sufficient valuation information to conclude that the value of the assets being conveyed to MISO is equal to the assumed liabilities.	The assets are valued at book value (since SPP is a non-profit). It is important to remember that there is no assessment mechanism within the Resulting Company structure. To the extent that tariff revenues do not cover costs, those costs will be capitalized and recovered in the future. If future tariff revenue is not sufficient, Resulting Company would have to make a case to FERC to increase its tariff fee. Once combined, cost shortfalls are borne by all tariff customers.
KCP&L	There are various warranties and representation, which don't have a termination date. We suggest specifying a time period for all Warranties and representations.	Refer to Section 11.9- certain reps and warranties will expire at closing; others do not because they refer to things happening after the closing.
KCP&L	Have all FERC orders been incorporated in the MISO tariff provided us for review?	The tariff provided contains approved and pending items (pending have no reference info on the page). The MISO tariff can also be accessed on the MISO website.
KCP&L	It is not clear how Grandfathered Transmission Service Agreements will be handled or what qualifies as a grandfathered agreement.	The Resulting Company will maintain the current SPP tariff for the current SPP footprint and the MISO tariff for the MISO until a single Resulting Company tariff is adopted and approved by FERC.