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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.

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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.

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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.

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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

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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

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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

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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.

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**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

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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.

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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.

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- 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.

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- 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.

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- 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.

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- 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.

Exhibit J

The Transaction Is Consistent With The Public Interest

It is well established that the Commission will approve a proposed disposition of control over jurisdictional facilities if it finds that such transaction is consistent with the public interest. In past divestiture transactions filed for approval under section 203 of the FPA, the Commission undertook its public interest evaluation pursuant to the three-pronged test set forth in its Merger Policy Statement. See, e.g., Orange and Rockland Utilities, Inc., 87 FERC ¶ 62,055 (1999); Pacific Gas & Electric Company, 86 FERC ¶ 62,248 (1999); Cambridge Electric Light Company, 85 FERC ¶ 61,217 (1998). In each of these cases, the Commission affirmed the Merger Policy Statement's three-part test, examining the proposed transaction's effect on competition, on rates, and on regulation. In numerous cases, the Commission has found the transfer of operational control over transmission facilities to a proposed RTO to be consistent with the public interest. Most recently, in Minnesota Power, Inc., 96 FERC ¶ 61,153 (2001), the Commission conditionally authorized the disposition of control over certain transmission facilities to the MISO.

The Applicants address the Commission's three-part test below, however a traditional competitive analysis screen is not included. Evaluating filings under Part 33, the Commission has clarified that where a transaction does not raise competitive concerns, then applicants need not submit a traditional

competitive analysis. ^{4/} The transfer of operational control over transmission facilities has no effect on generation market power and the Commission has found that "anticompetitive effects are unlikely to arise for such dispositions." ^{5/}

A. Competition will be Unaffected or Enhanced.

In its Merger Filing NOPR, the Commission noted that its "competitive concern in any type of merger involving jurisdictional electric utilities is whether the merger will result in higher prices or reduced output in electricity markets." 83 FERC at p. 33,365. The transaction at issue here has no effect on generation market power and will not result in higher generation market prices or reduced output in electricity markets.

B. Rates will be Unaffected

The Commission has stated that "the protection of wholesale ratepayers and transmission customers is the Commission's primary concern regarding the effects of a section 203 transaction on rates." New England Power Company, 82 FERC ¶ 61,179 (1998). As this transaction will expand the region over which sellers and buyers can transmit power at non-pancaked rates, it will have a beneficial effect on ratepayers and transmission customers.

C. Regulation will not be Adversely Affected

^{4/} See Revised Filing Requirements Under Part 33 of the Commission's Regulations, 93 FERC ¶ 61,164 (Nov. 15, 2000), mimeo at 85.

^{5/} Minnesota Power, slip op. at 4.

Under the Merger Policy Statement, the Commission requires applicants to evaluate the effect on regulation of a merger or other proposed transaction, both at the state and federal level. The transaction will not have an adverse impact on regulation.

Regarding federal regulation, MISO and UtiliCorp will continue to be regulated by this Commission.

Regarding state regulation, the Missouri and Kansas commissions will have the opportunity to review and must approve the transaction before it can go forward.

Exhibit K

Exhibit K

Map Showing Location of Facilities to be transferred

Attached are transmission system maps of the affected UtiliCorp divisions.

Non-Scannable Map

See Data Center

Exhibit L

Statement as to Other Required Regulatory Approvals

UtiliCorp will file for necessary authorization for the transfer from the Missouri Public Service Commission and from the Kansas Corporation Commission.

Exhibit M

Notice

Attached is a form of notice suitable for publication in the Federal Register. Also attached is a copy of the notice in electronic format on a 3.5 disk.

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

UtiliCorp United Inc.

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Docket No. EC01-____-__

NOTICE OF FILING

Take notice that on August 20, 2001, UtiliCorp United Inc. ("UtiliCorp") filed with the Federal Energy Regulatory Commission ("Commission") an application for approval of the transfer of operational control over the transmission facilities of its Missouri Public Service, St. Joseph Light and Power and WestPlains Energy-Kansas divisions to the Midwest Independent System Operator, Inc. pursuant to section 203 of the Federal Power Act and section 33 of the Commission's regulations.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance of Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § § 385.211 and 35.214). All such motions and protests should be filed on or before _____. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection. This filing also may be viewed on the Internet at <http://www.ferc.fed.us/online/rims.html> (call 202-208-2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 C.F.R. 385.2001 (a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

David P. Boergers
Secretary