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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, the Funds Trust 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, and subject to any limitations set forth in the Midwest ISO Agreement or the Funds Trust Agreement, the President

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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 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 twenty-three (23) 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 (“IPPs”) and exempt wholesale generators (“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,

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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 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

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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 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.

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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 three (3) 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 assumption of liabilities, business combinations, or the purchase or lease of real property or assets; (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.

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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

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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.

4.3 Funds Trust Agreement. The ITC shall agree to sign the Funds Trust Agreement, to be bound by all of its terms, and to make any and all payments or contributions required under the Funds Trust Agreement, and prior to the existence of any right of the ITC to receive revenues from transmission service under the Transmission Tariff shall execute the Funds Trust Agreement.

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.

APPENDIX I

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.

APPENDIX J
REVENUE DISTRIBUTION FOR
SCHEDULE 18

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

A. GridAmerica Companies. The GridAmerica Companies are Ameren Services Company, as agent for its electric utility affiliates Union Electric Company d/b/a AmerenUE and Central Illinois Public Service Company d/b/a AmerenCIPS, America Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp., and Northern Indiana Public Service Company.

B. Initial GridAmerica Companies. The Initial GridAmerica Companies are America Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp., and Northern Indiana Public Service Company.

C. Coordinating Owner. Manitoba Hydro.

D. Owners' and Coordinating Owner's Revenues. Owners' and Coordinating Owner's Revenues are those revenues collected by the Midwest ISO from the GridAmerica Companies' zones pursuant to Schedule 18 for distribution to Owners, other than the GridAmerica Companies, and Coordinating Owner.

APPENDIX J

II. Revenue Distribution.

The Midwest ISO shall cause the distribution monthly of the Owners' and Coordinating Owner's Revenues associated with transmission services under Schedule 18 in accordance with this Appendix J and the Funds Trust Agreement. This Appendix J shall not apply to revenues collected under Schedule 18 by the Midwest ISO from zones other than the GridAmerica Companies' zones for distribution to the GridAmerica Companies. In order to cause the distribution of revenues on a monthly basis, the Midwest ISO may estimate the revenues to be received by each Owner and Coordinating Owner subject to a true-up. The following methodology is used to distribute revenues received associated with charges under Schedule 18:

Revenues shall be fully distributed to the Owners and Coordinating Owner based on each Owner's and Coordinating Owner's relative share of total lost revenues collected from GridAmerica Companies' zones, with those relative shares set out on Appendix J, Attachment 1. For this Section II, lost revenues collected from GridAmerica Companies' zones only reflect those test period revenues that would be eliminated because of the GridAmerica Companies joining the Midwest ISO.

III. Effective Date.

Appendix J will be effective on the first date that one of the GridAmerica Companies have their transmission facilities under the Transmission Tariff and charges under Schedule 18 begin.

**APPENDIX J
 ATTACHMENT 1**

**OWNERS' AND COORDINATING OWNER'S RELATIVE SHARE OF LOST REVENUES
 COLLECTED FROM THE GRIDAMERICA COMPANIES' ZONES UNDER SCHEDULE 18¹**

Transmission Owner	Lost Revenues (all GridAmerica Companies under the Transmission Tariff)	Percentage (all GridAmerica Companies under the Transmission Tariff)	Lost Revenues (Initial Grid- America Companies)	Percentages (Initial Grid-America Companies)
Alliant Energy West (IES Utilities and IPC)	\$112,567	1.23%	\$49,326	0.68%
American Transmission Company LLC	\$137,592	1.50%	\$77,790	1.07%
Central Illinois Light Co.	\$62,938	0.69%	\$19,280	0.27%
Cinergy Services, Inc.	\$3,690,576	40.32%	\$3,043,794	41.94%
City Water L&P, Springfield, Illinois	\$36,288	0.40%	\$4,993	0.07%
Hoosier Energy	\$37,679	0.41%	\$31,050	0.43%
International Transmission Company	\$2,978,631	32.54%	\$2,947,705	40.62%
Indianapolis Power & Light Company	\$82,635	0.90%	\$67,776	0.93%
LG&E Corporation	\$874,381	9.55%	\$563,469	7.76%
Manitoba Hydro	\$104,529	1.14%	\$59,410	0.82%
Michigan Electric Transmission Co. LLC	\$87,183	0.95%	\$72,772	1.00%
Minnesota Power, Inc.	\$34,796	0.38%	\$17,692	0.24%
Montana-Dakota Utilities Co.	\$17,194	0.19%	\$10,182	0.14%
Northern States Power Companies	\$660,510	7.22%	\$199,700	2.75%
Otter Tail Power Company	\$23,736	0.26%	\$13,062	0.18%
Southern Illinois Power Cooperative	\$133,156	1.45%	\$11,756	0.16%
Vectren	\$79,909	0.87%	\$67,587	0.93%
TOTAL	\$9,154,299	100.0%	\$7,257,344	100.0%

1

The percentages of total lost revenues collected from the GridAmerica Companies' zones pursuant to Schedule 18 resulting from the GridAmerica Companies having their transmission facilities under the Transmission Tariff shall be calculated for each Owner based upon the test period used to derive the charges under Schedule 18 of the Transmission Tariff. The percentages reflect all three GridAmerica Companies having their transmission facilities under the Transmission Tariff. For any month in which one or more GridAmerica Companies do not have their transmission facilities under the Transmission Tariff, the Lost Revenues and Percentages columns on the table would need to be revised to reflect only those GridAmerica Companies that do have their transmission facilities under the Transmission Tariff. For any month in which none of the GridAmerica Companies have their transmission facilities under the Transmission Tariff, Schedule 18 shall not apply and both the Lost Revenues and Percentage columns on the table would be zero for all Owners. In addition, if any of the Owners listed on the table withdraw from the Midwest ISO, upon the effectiveness of that withdrawal the Lost Revenues and Percentages columns on the table would need to be revised to reflect that withdrawal.

APPENDIX K

**FILING RIGHTS PURSUANT TO SECTION 205 OF THE FEDERAL POWER
ACT OF THE OWNERS AND THE MIDWEST ISO**

The following represents the agreement of the Transmission Owners and the Midwest ISO on filing rights pursuant to section 205 of the Federal Power Act.

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

A. Appendix I Agreement. One of the following agreements:

(a) "Appendix I Agreement by and Between International Transmission Company and the Midwest Independent Transmission System Operator, Inc." dated August 31, 2001, as amended by the "Supplemental Agreement" by and among the Midwest Independent Transmission System Operator, Inc., International Transmission Company, and undersigned Owners dated November 15, 2001, as such agreement may be amended from time to time; (b) "Second Amended and Restated Appendix I ITC Agreement" by and between the Midwest ISO and GridAmerica LLC, dated as of May 30, 2003, as such agreement may be amended from time to time, and (c) any additional agreement that may be entered into by and between the Midwest ISO and a third party pursuant to Appendix I of the Agreement.

B. Attachment O. The rate formula set out in the Tariff, from Sheet No. 364 through 393, as may be amended from time to time.

- C. **FPA.** The Federal Power Act, 16 U.S.C. § 824 et al.
- D. **Grandfathered Agreements.** The agreements listed on Attachment P of the Transmission Tariff as that attachment may be changed from time to time.
- E. **Non-Jurisdictional Transmission Owners.** Owners of transmission facilities that are not FERC public utilities, but over which service is provided by the Midwest ISO under the Transmission Tariff and who have transferred functional control of those facilities to the Midwest ISO.
- F. **Parties.** The Transmission Owners and the Midwest ISO.
- G. **Transmission Owner.** The owner of, and/or holder of FPA section 205 filing rights with respect to, transmission facilities, service over which is provided by the Midwest ISO under the Transmission Tariff and functional control over which has been transferred to the Midwest ISO, and who is a signatory to the Settlement Agreement Between Transmission Owners and Midwest ISO on Filing Rights, filed with FERC on November 30, 2004 in Docket Nos. RT01-87, ER02-106, and ER02-108. Only Transmission Owners that are public utilities under the FPA are included within this definition of Transmission Owner when the term is used to specify filing rights under FPA section 205.

II. Division Of Filing Rights

A. Transmission Revenue Requirements. Each Transmission Owner shall possess the full and exclusive right to submit filings under FPA section 205 with regard to its transmission revenue requirements. This full and exclusive right shall include the right to propose a new rate formula or any change to any component of any rate formula used to calculate its revenue requirements, if applicable, provided that such a change is related to that Transmission Owner's revenue requirements. A Transmission Owner shall not be required to follow the governance and coordination provisions of Articles III and IV of this Appendix K to exercise the filing right provided for in this Article II, Section A.

B. Attachment O. In order to change the Attachment O rate formula, the governance and coordination provisions of Articles III and IV of this Appendix K shall apply, provided that those Transmission Owners that do not have their revenue requirements calculated through such formula shall not have voting rights pursuant to Articles III and IV of this Appendix K with respect to such a change.

C. Zonal Rates.

1. Generally. The Transmission Owner(s) whose transmission facilities comprise the facilities within a zone shall possess the full and exclusive right to submit filings under FPA section 205 with regard to the transmission rate design for that zone for network load and transactions sinking within that zone; provided, however, that any filing made pursuant to this Article II, Section C, Paragraph 1 shall not in any

way affect the rates charged or revenues collected in any other zone. Filings that may be made under this Article II, Section C, Paragraph 1 include, but are not limited to the following types of rate design changes: (1) changing from a formula rate to stated rates or vice-versa; (2) changing the form or type of formula rate; (3) proposing incentive rates; and (4) proposing performance-based rates. A Transmission Owner shall not be required to follow the governance and coordination provisions of Articles III and IV of this Appendix K to exercise the filing right provided for in this Article II, Section C, Paragraph 1.

2. Multiple Transmission Owners Within a Zone. If there are multiple Transmission Owners within a zone, those Transmission Owners should seek to reach agreement on a rate design. If no agreement is reached, then each Transmission Owner within the zone shall have the right to submit a FPA section 205 filing proposing an initial rate design or rate design change for the zone. A Transmission Owner shall not be required to follow the governance and coordination provisions of Articles III and IV of this Appendix K to exercise the filing right provided for in this Article II, Section C, Paragraph 2.

3. Zone Boundaries. For filings that propose to realign, eliminate, or otherwise reconfigure rate zones, only those Transmission Owners whose zones would be realigned, eliminated, or otherwise reconfigured by a filing shall possess the corresponding FPA section 205 rights. If there are multiple Transmission Owners whose rate zones would be realigned, eliminated, or otherwise reconfigured pursuant to a filing,

then all such Transmission Owners shall reach agreement before making a filing under this article. Transmission Owners shall not be required to follow the governance and coordination provisions of Articles III and IV of this Appendix K to exercise the filing right provided for in this Article II, Section C, Paragraph 3. Nothing in this Article II, Section C, Paragraph 3 is intended to modify, in any way, existing provisions and limitations applicable to zone boundary changes, including those included in Appendix C of the Agreement.

D. Rates Affecting More Than One Zone and Through and Out Rates.

Except as may be provided in Article II, Section E, Paragraph 2 of this Appendix K, the Transmission Owners shall possess the full and exclusive right to submit filings under FPA section 205 with regard to transmission rate design associated with rates affecting more than one zone as well as for transactions going through or out of the Midwest ISO. The filing right specified in this Article II, Section D shall be subject to the governance and coordination provisions of Articles III and IV of this Appendix K.

Limitations: Notwithstanding the foregoing, each Transmission Owner shall fully control its revenue requirement component used in calculating the total through and out rates set forth in Schedules 7 and 8 of the Transmission Tariff and in any other Transmission Tariff Schedule setting forth rates affecting more than one zone in which individual Transmission Owner revenue requirements are used to derive the rate.

E. Transmission Upgrades and New Transmission Facilities.

1. Each Transmission Owner shall possess the full and exclusive right under FPA section 205 to submit filings with regard to transmission upgrades and new transmission facilities that affect only the rates within the applicable Transmission Owner's Transmission Tariff zone(s). This provision applies to (a) a Transmission Owner constructing transmission upgrades or new transmission facilities in its own zone and seeking recovery of costs through rates that apply only to its zone; (b) a Transmission Owner constructing, or otherwise assuming financial responsibility for, transmission upgrades or new transmission facilities in a zone other than that Transmission Owner's zone and seeking recovery of costs through rates that apply only to its own zone; and (c) a Transmission Owner assigned costs associated with transmission upgrades or new transmission facilities and seeking recovery of costs through rates that apply only to its zone.

2. Both the Transmission Owners and the Midwest ISO shall possess the right to submit filings under FPA section 205 with regard to the allocation of costs associated with transmission upgrades and new transmission facilities affecting multiple Transmission Tariff zones; provided, however, that this filing right shall be subject to the governance provisions of Article III of this Appendix K with regard to filings made by Transmission Owners, and Article IV of this Appendix K with regard to filings made by either the Transmission Owners or the Midwest ISO.

F. Retail Transmission. Both the Transmission Owners and the Midwest ISO shall possess the right to submit filings under FPA section 205 with regard to revising the Transmission Tariff to include or change the terms or conditions applicable to transmission services for unbundled retail transmission customers. A Transmission Owner shall not be required to follow the governance and coordination provisions of Articles III and IV of this Appendix K to exercise the filing right provided for in this Article II, Section F; provided, however, that any such filing shall not materially affect any other Transmission Owner.

G. Schedule 1 Costs. Each Transmission Owner shall possess the full and exclusive right under FPA section 205 to submit its revenue requirements to be recovered under Schedule 1 of the Transmission Tariff. The Transmission Owners shall possess the full and exclusive right under FPA section 205 to submit changes in rates and rate design under Schedule 1 of the Transmission Tariff subject to the governance and coordination provisions of Articles III and IV of this Appendix K; provided, however, if a rate or rate design proposal affects only one zone, the Transmission Owner(s) in that zone may file under FPA section 205 without following the governance and coordination provisions of Articles III and IV of this Appendix K.

H. Other Costs. Each Transmission Owner shall possess the full and exclusive right under FPA section 205 to file a proposal or rate to recover other costs imposed on it and nothing in this Appendix K shall be interpreted as precluding any Transmission Owner from making a FPA section 205 filing to propose a method or rate

for recovering any other cost the Transmission Owner may incur as a result of Midwest ISO actions (unless expressly dealt with herein in which case the specific provision would apply), provided that such costs are not otherwise recovered in rates. These other costs may include non-transmission costs such as the costs associated with implementing the Midwest ISO's directives with regard to preserving reliability or energy markets, including (but not limited to) directives pursuant to a Midwest ISO Transmission and Energy Markets Tariff (or successor document). A Transmission Owner shall not be required to follow the governance and coordination provisions of Articles III and IV of this Appendix K to exercise the filing right provided for in this Article II, Section H and shall, instead, have a full, exclusive, and unilateral right to submit any filing that only affects the rates within its zone(s); provided, however, that any proposal that requires loads in other zones to bear some or all of the costs shall be subject to Articles III and IV of this Appendix K.

I. Ancillary Services Other Than Schedule 1. Both Transmission Owners that own or control generation or other resources capable of providing ancillary services (offered to customers pursuant to the Transmission Tariff) and the Midwest ISO shall have the right to submit filings under FPA section 205 to govern the rates, terms, and conditions applicable to the provision of ancillary services. A Transmission Owner shall not be required to follow the governance and coordination provisions of Articles III and IV of this Appendix K to exercise the filing right provided for in this Article II,

Section I; provided, however, that any ancillary service proposal with regional impacts shall be subject to the governance and coordination provisions of Articles III and IV of this Appendix K.

J. Seams Agreements. The Midwest ISO shall invite the participation of the Transmission Owners in any discussions with adjoining transmission providers or transmission owners, having as their purpose the consummation of a seams agreement containing provisions that could affect transmission revenues or impose costs or responsibilities on any or all of the Transmission Owners. The execution of agreements with adjoining transmission providers or owners shall be subject to the stakeholder review process provided for in the Agreement. The Midwest ISO shall take appropriate measures, consistent with its responsibilities under Article Three, Section D of the Agreement, to minimize the risk that any seams agreement will result in a net reduction in revenues recoverable by a Transmission Owner.

K. Other Provisions Affecting Transmission Revenues. With regard to any other tariff provision affecting transmission revenues, the Midwest ISO and the Transmission Owners shall each have filing rights under FPA section 205. The filing right specified in this Article II, Section K shall be subject to the limitations set forth in Article II, Section D above, and the governance and coordination provisions of Articles III and IV of this Appendix K.

L. Provisions Not Addressed in Article II, Sections A-K of this Appendix

K. Except as provided herein, the Midwest ISO shall have the full and exclusive right to submit filings under FPA section 205 with regard to its Transmission Tariff and related documents; provided, however, that nothing herein shall prevent the Midwest ISO from inviting the participation of one or more Transmission Owners in any such submission; and provided further that nothing in this provision or Appendix K provides the Midwest ISO with any authority (other than that which it already may possess) to submit revisions to the Agreement or to any documents to which it is not a party.

III. TRANSMISSION OWNER GOVERNANCE ISSUES

A. FPA section 205 filings subject to this Article III, as provided for in Article II of this Appendix K, shall not be made by individual Transmission Owners. Instead, it is the intention of all Parties that Transmission Owners will coordinate the filing rights subject to this Article III through the development of joint filings of the type set forth herein. Decisions on whether or not to make a joint section 205 filing shall be made by majority vote, on a “one Transmission Owner – one vote” basis; provided that any entity that has one or more written delegations of authority to exercise section 205 rights on the matter that is the subject of a vote shall be authorized to cast a vote under each such delegation of authority. A minority of Transmission Owners may submit a filing under FPA section 205, provided the minority consists of at least three (3) Transmission Owners that either own or have been delegated authority to

exercise section 205 rights concerning combined gross transmission plant of at least \$2,500,000,000 as calculated based on the gross transmission plant reported by each Transmission Owner in its most recent FERC Form No. 1 filing (or equivalent data for Transmission Owners that do not file FERC Form No. 1 reports).

IV. COORDINATION

A. Transmission Owners Coordination. Transmission Owner(s), whether acting individually or jointly pursuant to Article III of this Appendix K, shall provide the Midwest ISO and all other Transmission Owners with at least thirty (30) days' notice before submitting any FPA section 205 filing that is subject to this Article IV as provided for in Article II of this Appendix K, unless circumstances require a shorter notice, in which case the Transmission Owner(s) shall use reasonable efforts to provide as much notice before the filing as possible. In the notice, the Transmission Owner(s) will use best efforts to provide as detailed a description of the filing and its rate impacts as possible. The Midwest ISO will circulate this information to its members, advisory committee, and state commission representatives. If the Midwest ISO believes it necessary, the Transmission Owner(s) will participate in a pre-filing meeting to discuss the filing and issues unless precluded by time exigencies.

B. Transmission Owners and Midwest ISO Coordination for Midwest ISO Filings. On any filing in which both the Midwest ISO and the Transmission Owners possess filing rights under FPA section 205 and which the Midwest ISO proposes to file, the Midwest ISO will provide advance notice to the Transmission Owners of at least

thirty (30) days before making a filing under FPA section 205, unless circumstances require a shorter notice, in which case the Midwest ISO shall use reasonable efforts to provide as much notice before the filing as possible. In the notice, the Midwest ISO will use best efforts to provide as detailed a description of the filing and its rate impacts as possible. The Midwest ISO will circulate this information to its members, advisory committee, and state commission representatives. If the Transmission Owners believe it necessary, the Midwest ISO will participate in a pre-filing meeting to discuss the filing and issues unless precluded by time exigencies.

C. **Transmission Owners and Midwest ISO Coordination.** In instances in which both the Midwest ISO and the Transmission Owners in whole or in part intend to submit FPA section 205 filings on the same or similar subjects or tariff provisions, the Midwest ISO and the Transmission Owners shall meet to determine if a joint filing could be submitted. If the Midwest ISO and the Transmission Owners cannot agree to a joint filing, then separate filings may be submitted.

V. **MISCELLANEOUS**

A. **Jurisdiction.** Nothing in this Appendix K is intended to provide FERC with jurisdiction over Non-Jurisdictional Transmission Owners who may rely on the Midwest ISO to submit filings for them with regard to their individual revenue requirements or rate designs.

B. **FPA Section 206 Rights.** Nothing in this Appendix K is intended to limit or in any way abridge the rights of any Transmission Owner or the Midwest ISO to seek revisions to any document pursuant to FPA section 206. Moreover, nothing in this

Appendix K is intended to limit or in any way abridge the rights of any Transmission Owner or the Midwest ISO to intervene in any proceeding before FERC or to protest or comment upon any filing made with FERC.

C. **Appendix I of the Agreement.** Nothing in this Appendix K is intended to affect or in any way abridge the rights of Independent Transmission Companies under their respective Appendix I Agreement(s) and related agreements, as may be supplemented from time to time.

D. **Agreement and Transmission Revenue Distribution.** Nothing in this Appendix K is intended to modify or affect the filing rights of Transmission Owners and restrictions on such filing rights relating to the Agreement set forth in the Agreement or to provide the Midwest ISO with any filing rights with regard to transmission revenue distribution.

E. **Others' Filing Rights.** Nothing in this Appendix K is intended to affect the FPA section 205 filing rights of any entity which is not a Party. Nor is anything in this Appendix K intended to affect the procedural rights of any other interested party, including state regulatory commissions, regarding a filing submitted by the Midwest ISO or a Transmission Owner (or both) pursuant to Article II of this Appendix K.

F. **Midwest ISO Administration of Transmission Tariff.** Nothing in this Appendix K is intended to eliminate the Midwest ISO's responsibility for administering the Transmission Tariff in a prudent manner, consistent with the Agreement and FERC requirements. To that end, the Midwest ISO shall continue its administrative functions with regard to the Transmission Tariff in which, for example, it is responsible for

ensuring that the formatting of the Transmission Tariff pages (including those pages submitted by Transmission Owners for advance Midwest ISO review pursuant to Article IV, Section A of this Appendix K) is in compliance with FERC requirements, and in which it remains the administrator of the Transmission Tariff even for Transmission Tariff provisions over which the Transmission Owners possess FPA section 205 filing rights under this Appendix K. In addition, nothing in this Appendix K is intended to affect the rights the Midwest ISO possesses to discount transmission service under the Transmission Tariff consistent with the provisions of this Appendix K. Additionally, nothing in this Appendix K forbids the Midwest ISO, if specifically authorized by a Transmission Owner or by multiple Transmission Owners, as appropriate, from making a filing on behalf of the Transmission Owner(s).

G. Grandfathered Agreements. Nothing in the Appendix K is intended to affect or modify whatever rights any entity may possess to seek modification of any Grandfathered Agreements.

H. Appendix K Modifications. It is the intent of the Parties that the provisions of this Appendix K, and the conforming changes to the Transmission Tariff and the Agreement required by this Appendix K, shall be subject to change solely by written amendment executed by the Midwest ISO and the Transmission Owners, with execution by the Transmission Owners requiring approval by a majority of the Transmission Owners provided, however, that any such amendment is not affirmatively opposed by three (3) or more Transmission Owners collectively owning gross transmission plant of at least \$2,500,000,000 as calculated based on the gross

transmission plant reported by each Transmission Owner in its most recent FERC Form No. 1 filing (or equivalent data for Transmission Owners that do not file FERC Form No. 1 reports). Otherwise, no Party may make a FPA section 205 filing that, if accepted or approved by FERC, would in any way have the effect of (1) canceling, modifying or limiting the FPA section 205 filing rights of any other Party provided for in this Appendix K, or (2) converting exclusive FPA section 205 filing rights of a Party provided for in this Appendix K into non-exclusive rights.

I. Mobile-Sierra Standard. It is the intent of the Parties that any change to any provision of this Appendix K, or to any conforming change to the Transmission Tariff or the Agreement, that is not proposed pursuant to Article V, Section H of this Appendix K whether proposed by a Party, non-Party, or the FERC shall be limited to the maximum extent permissible by law and shall be subject to the Mobile-Sierra public interest standard of review applicable to fixed rate agreements; provided, however, that beginning five years from the date of execution of the Settlement Agreement Between Transmission Owners and Midwest ISO on Filing Rights (filed at FERC on November 30, 2004 in Docket Nos. RT01-87, ER02-106, and ER02-108), actions initiated by the FERC, acting *sua sponte* pursuant to FPA section 206, shall be governed by the just and reasonable standard.

VI. TERM

This Appendix K shall remain in effect for 5 years from the date it becomes effective and shall remain in effect from year to year thereafter unless (a) it is deemed withdrawn pursuant Section 6.12 of the Settlement Agreement Between

Transmission Owners and Midwest ISO on Filing Rights (filed at FERC on November 30, 2004 in Docket Nos. RT01-87, ER02-106, and ER02-108) (referred to as "Filing Rights Settlement" for purposes of this Article VI, Section A), (b) it is withdrawn pursuant to a modification or amendment executed pursuant to Sections 6.8 and/or 6.9 of the Filing Rights Settlement, or (c) three-fourths of the Transmission Owners then subject to this Appendix K give one year advance notice in writing that they wish to terminate this Appendix K; provided, however, that unless expressly stated otherwise, this Appendix K shall not be deemed withdrawn if modified or amended under Sections 6.8 and/or 6.9 of the Filing Rights Settlement; and provided further that a Transmission Owner shall not be subject to, or otherwise bound by, this Appendix K at any time following its effective withdrawal from either the Agreement or an Appendix I Agreement.