

# SCHIFF HARDIN & WAITE

A Partnership Including Professional Corporations

1101 Connecticut Avenue, N.W., Washington, DC 20036  
Telephone (202) 778-6400 Facsimile (202) 778-6460

Debra Ann Palmer  
(202) 778-6439  
[dpalmer@schiffhardin.com](mailto:dpalmer@schiffhardin.com)

Chicago  
Washington  
New York  
Merrillville  
Dublin  
Wilmette  
Lake Forest

July 3, 2002

Magalie Roman Salas, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

Re: GridAmerica Participants and Midwest ISO  
Appendix I Independent Transmission Company Agreement  
Docket No. EC02-\_\_\_\_\_-000  
**EXPEDITED COMMENTS AND CONSIDERATION REQUESTED**

Dear Ms. Salas:

The GridAmerica Participants<sup>1</sup> and the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") are pleased to submit for filing, pursuant to Section 203 of the Federal Power Act ("FPA"), 16 U.S.C. § 824b (1994), an original and six copies of a Participation Agreement which anticipates the execution of the attached Appendix I Independent Transmission Company ("ITC") Agreement ("Agreement"). These agreements were prepared pursuant to the letter of intent and term sheet submitted on June 20, 2002 in Docket No. EL02-65 ("June 20 Filing") and were described at the June 26, 2002 Commission meeting by executives of the GridAmerica Participants. The term sheet committed the parties to file these agreements today, just 12 days after the June 20 Filing. The parties are meeting this expedited schedule in order to provide the Commission with the documents necessary to permit the Commission to approve the establishment of a fully independent ITC within the Midwest ISO, which is the sole Commission-approved RTO in the nation.

**The GridAmerica Participants and Midwest ISO respectfully request the Commission to set July 15, 2002 as the due date for the filing of comments regarding this filing and to issue an order approving the Agreement no later than July 31, 2002.** Expeditious approval of the Agreement will provide the GridAmerica Participants and Midwest ISO with substantial regulatory certainty. Regulatory certainty, in turn, will permit the

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<sup>1</sup> The GridAmerica Participants are Ameren Services Company ("Ameren"), as agent for its electric utility affiliates Union Electric Company, d/b/a AmerenUE, and Central Illinois Public Services Company, d/b/a AmerenCIPS, FirstEnergy Corp. ("FirstEnergy"), on behalf of its subsidiary American Transmission Systems, Incorporated, Northern Indiana Public Service Company ("NIPSCO"), and National Grid USA ("National Grid").

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GridAmerica Participants and Midwest ISO to continue their ongoing efforts to create a fully independent ITC within Midwest ISO as contemplated in the Commission's April 25 Order. *Alliance Cos.*, 99 FERC ¶ 61,105 (2002) ("April 25 Order").<sup>2</sup>

The Agreement sets forth the terms that will permit GridAmerica LLC ("GridAmerica") to join Midwest ISO as an ITC following formation of GridAmerica and the satisfaction of other conditions precedent. Thus, this filing is the first step toward the "hybrid" regional transmission organization ("RTO") model described favorably in the Commission's April 25 Order concerning the Alliance Companies.

The GridAmerica Participants and Midwest ISO note further that certain members of the Commission's Staff have provided invaluable assistance during the negotiation of these unprecedented agreements. The GridAmerica Participants and Midwest ISO remain committed to continue to work toward the formation and operation of GridAmerica within Midwest ISO and hope that these Commission Staff members will continue to provide guidance in these efforts.

## I. NOTICES AND COMMUNICATIONS

Notices and communications with respect to this proceeding and this submission may be addressed to the following:

David A. Whiteley  
Senior Vice President  
Ameren Services Co.  
One Ameren Plaza  
1901 Chouteau Avenue  
P.O. Box 66149, MC 10  
St. Louis, MO 63166-6149  
(314) 554-2942  
[dwhiteley@ameren.com](mailto:dwhiteley@ameren.com)

Debra Ann Palmer  
Schiff Hardin & Waite  
1101 Connecticut Avenue, NW  
Suite 600  
Washington, DC 20036-4390  
(202) 778-6439  
[dpalmer@schiffhardin.com](mailto:dpalmer@schiffhardin.com)

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<sup>2</sup> As noted by many, if not all, of the panelists discussing the RTO decisions of the former Alliance Companies at the June 26, 2002 FERC agenda meeting, the Commission simply must act expeditiously to provide guidance regarding RTO formation if the mutual objectives of the Commission and the parties regarding functioning RTO membership in the near future for the former Alliance Companies are to be achieved.

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Carolyn Y. Thompson  
Jones, Day, Reavis & Pogue  
51 Louisiana Avenue, NW  
Washington, DC 20001-2113  
(202) 879-5426  
[carolynthompson@jonesday.com](mailto:carolynthompson@jonesday.com)

Stanley F. Szwed  
Vice President  
FirstEnergy Corp.  
76 South Main Street  
Akron, OH 44308  
(330) 384-2454  
[sfszwed@firstenergycorp.com](mailto:sfszwed@firstenergycorp.com)

Patrick J. McCormick III  
Balch & Bingham LLP  
1275 Pennsylvania Avenue, NW  
10<sup>th</sup> Floor  
Washington, DC 20004-2404  
(202) 347-6000  
[pmccormick@balch.com](mailto:pmccormick@balch.com)

Frank A. Venhuizen, Director  
Electric Transmission & Market  
Services  
Northern Indiana Public Service  
Co.  
801 East 86<sup>th</sup> Avenue  
Merrillville, IN 46410  
(219) 647-5630  
[favenhuizen@nisource.com](mailto:favenhuizen@nisource.com)

Stephen L. Teichler  
Duane Morris  
1667 K Street, NW  
Suite 700  
Washington, DC 20006-1608  
(202) 776-7830  
[slteichler@duanemorris.com](mailto:slteichler@duanemorris.com)

Nick Winser  
Senior Vice President  
National Grid USA  
25 Research Drive.  
Westborough, MA 01582  
(508) 389-2855  
[nick.winsor@us.ngrid.com](mailto:nick.winsor@us.ngrid.com)

Bruce W. Neely  
LeBoeuf, Lamb, Greene,  
& MacRae, L.L.P.  
1875 Connecticut Avenue, NW  
Suite 1200  
Washington, DC 20009-5728  
(202) 986-8015  
[bwneely@llgm.com](mailto:bwneely@llgm.com)

James P. Torgerson  
President and CEO  
Midwest Independent System  
Operator, Inc.  
701 City Center Drive  
Carmel, IN 46032  
(317) 294-5430  
[jtorgerson@midwestiso.org](mailto:jtorgerson@midwestiso.org)

Stephen G. Kozey  
Vice President, General Counsel  
& Secretary  
Midwest Independent System  
Operator, Inc.  
701 City Center Drive  
Carmel, IN 46032  
(317) 294-5431  
[skozey@midwestiso.org](mailto:skozey@midwestiso.org)

**III. STATEMENT OF NATURE, REASONS, AND BASIS FOR FILING**

The On June 20, 2002, the GridAmerica Participants and Midwest ISO jointly filed letters of intent and term sheets governing the formation and operation of GridAmerica within Midwest ISO. The GridAmerica Participants and Midwest ISO requested that the Commission consider the June 20 Filing as expeditiously as possible and to find that the proposal described in the filing comports with the April 25 Order, Order No. 2000, and the public interest. The June 20 Filing also disclosed that the GridAmerica Participants and Midwest ISO planned to file a number of definitive agreements regarding the formation and operation of GridAmerica within Midwest ISO during the month of July 2002.

This filing contains the first – and arguably most important – of those definitive agreements. The Agreement sets forth the terms pursuant to which GridAmerica will join Midwest ISO as an ITC. The Agreement is very similar to Appendix I agreements that the Commission has previously approved between Midwest ISO and other ITCs. *See, e.g., International Transmission Co.*, 99 FERC ¶ 61,211 (2002). The Agreement is being filed in unexecuted form. The definitive documents necessary for the formation of GridAmerica will be filed in unexecuted form on or before July 31, 2002, and the final documents, including the executed Appendix I Agreement, will be filed after the Commission approves the documents and other conditions precedent have been satisfied. The Participation Agreement requires GridAmerica and Midwest ISO to execute an Appendix I Agreement that is materially identical to this unexecuted Agreement subject to any modifications that may be required by the Commission.

**A. Description of the Agreement**

The Agreement notes, in the Background Section, that Midwest ISO is a Commission-approved RTO<sup>3</sup> with an open architecture that accommodates various forms of ITCs and that Ameren, FirstEnergy, and NIPSCO (the “GridAmerica Three”) wish to comply with Order No. 2000 through the formation of an ITC within Midwest ISO. The Background Section also states that Midwest ISO has refunded to Ameren the \$18 million Ameren paid to leave Midwest ISO pursuant to the settlement approved in *Illinois Power Co.*, 95 FERC ¶ 61,183, *order on reh’g*, 96 FERC ¶ 61,206 (2001).

Article 2 of the Agreement states that the initial term of the agreement is three years, and that the term shall be extended from year to year, unless either party gives the other six months notice prior to the end of any renewal term. Article 2 also permits the parties to withdraw from the Agreement in limited circumstances, such as the sale of facilities covered by the Agreement or the withdrawal of a substantial number of Midwest ISO transmission owners or ITCs from Midwest ISO. Finally, Article 2 sets forth the financial obligations of GridAmerica should it withdraw from Midwest ISO.

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<sup>3</sup> To date, Midwest ISO is the only Commission-approved RTO.

Article 3 of the Agreement describes the structure of the RTO arrangement between the GridAmerica Participants, GridAmerica, and Midwest ISO. GridAmerica will be an ITC within Midwest ISO. To the extent that GridAmerica owns facilities subject to the Agreement, GridAmerica will be treated as a transmission owner pursuant to the Midwest ISO Agreement. In addition, GridAmerica will represent the NDTOs with respect to the governance and activities of Midwest ISO. The NDTOs will have the same rights and voting authority as Midwest ISO transmission owners. The NDTOs or their affiliates will also be permitted to participate in other Midwest ISO governance matters. Section 3.3 provides that, if a particular function is not covered by Schedule 5 to the Agreement – the “Delineation of Functions” between GridAmerica and Midwest ISO – that function is reserved to Midwest ISO.

Article 4, one of the most important articles of the Agreement, sets forth the duties of GridAmerica and Midwest ISO with respect to operation of the transmission facilities of the GridAmerica Three. The Agreement provides that the GridAmerica Three will file applications pursuant to Section 203 of the FPA to transfer functional control of their transmission facilities to GridAmerica. This filing is the first step in the Section 203 process.<sup>4</sup> GridAmerica, for its part, cedes to Midwest ISO those functions assigned to Midwest ISO in the Delineation of Functions. The Delineation of Functions, included in Schedule 5 to the Agreement, is based on the Commission’s orders in *Alliance Cos.*, 99 FERC ¶ 61,105 (2002) and *TransLink Transmission Co., L.L.C.*, 99 FERC ¶ 61,106 (2002). Article 4 states that there will be a two-step process by which GridAmerica and Midwest ISO will obtain control over the functions set forth in the Delineation of Functions. The first step is to complete the development of the systems and assets initially developed for the proposed Alliance RTO and to integrate those systems and assets into the Midwest ISO systems. The second step involves the provision of service over the transmission of facilities of the GridAmerica Three pursuant to the Midwest ISO OATT. Section 4.6 provides that the GridAmerica Three will continue to provide ancillary services under their existing OATTs and may, at their option, continue to self-provide such ancillary services. That section also permits GridAmerica (to the extent permitted by Commission policy and on behalf of the GridAmerica Three) and the GridAmerica Three to participate in any competitive ancillary services markets that may be created within Midwest ISO. Section 4.2 states that, as required by the April 25 Order, Midwest ISO will become the Security Coordinator for the rate zones of the GridAmerica Three. Midwest ISO will also be responsible for congestion management within its footprint.

Article 5 of the Agreement governs pre-existing obligations of the GridAmerica Three. GridAmerica and Midwest ISO will execute an agency agreement (in substantially the same form as that found in Appendix G to the Midwest ISO Agreement) for transmission service over distribution facilities owned and operated by the GridAmerica Three. GridAmerica will execute any necessary agreements for the provision of such service. Midwest ISO will also assume the responsibility to provide transmission service to (1) customers that have previously signed agreements for open access transmission service with the GridAmerica Three under their

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<sup>4</sup> As noted above, the GridAmerica Participants plan to file the definitive agreements governing formation and operation of GridAmerica no later than July 31, 2002. That filing will be the next step in the Section 203 process.

respective open access transmission tariffs ("OATTs") and (2) customers that have transmission service agreements that pre-date the effectiveness of the OATTs of the GridAmerica Three ("grandfathered agreements").

Article 6 of the Agreement complies with the requirements of the April 25 Order in that it provides that Midwest ISO will operate an OASIS. Article 6 also requires GridAmerica and Midwest ISO to approve requests for service, schedule service, and calculate ATC in conformance with the Delineation of Functions.

Article 7 governs facilities' ratings and maintenance. In general, Article 7 permits GridAmerica to provide Midwest ISO with ratings and maintenance schedules, subject to the dispute resolution procedures found in Appendix D to the Midwest ISO Agreement. Unless Midwest ISO's role as a security coordinator requires its position to prevail, GridAmerica's position will prevail pending resolution of the dispute. Similarly, Article 8 requires GridAmerica and Midwest ISO to coordinate construction and planning of the transmission system. Article 9 provides that GridAmerica will be responsible for the provision of generator interconnection service regarding interconnections to the facilities of the GridAmerica Three, but that, pending Commission approval of GridAmerica's interconnection agreement and procedures, Midwest ISO's interconnection protocols shall apply. Article 10 states that, in accordance with Commission policy, Midwest ISO will conduct market monitoring over the GridAmerica system.

Article 11 of the Agreement addresses rates and revenue distribution. Midwest ISO will pay either GridAmerica or the GridAmerica Three any amounts due for transmission service provided over facilities controlled by GridAmerica in the same fashion as Midwest ISO pays similar revenue to other Midwest ISO transmission owners. Midwest ISO will charge the existing transmission rates for service in the Ameren, ATSI, and NIPSCO rate zones and will permit the GridAmerica Three to convert formula rates for network service to stated rates or vice versa. The Agreement also requires Midwest ISO, in order to facilitate competition in wholesale markets, to discount its Drive-Out and Drive-Through rates or to make a filing pursuant to Section 205 to reduce those rates to minimize any disincentives or barriers to sales into other RTOs. Finally, in the rate case that must be filed prior to the commencement of service by GridAmerica, Midwest ISO agrees to support the recovery of lost revenues by the GridAmerica Three resulting from the elimination of rate pancaking. Article 12 provides that any disputes will be resolved using the mechanisms found in Appendix D to the Midwest ISO Agreement.

Article 13 concerns the costs that will be incurred to integrate GridAmerica into Midwest ISO. The article provides that Midwest ISO will reimburse GridAmerica for all such costs. In addition, in consideration of National Grid's performance of the required functions set forth in the Delineation of Functions, Midwest ISO shall compensate National Grid in the amount of \$14.25 million annually, payable in equal monthly installments

In compliance with the April 25 Order, Article 14 permits GridAmerica to purchase, construct, or upgrade facilities under its functional control and to add those facilities to the GridAmerica system. Article 15 requires any amendments to the agreement to be made in

writing, subject to FERC approval, and Article 16 covers certain general responsibilities of the parties.

Article 17 address liability and indemnification issues. In general, Article 17 provides that GridAmerica and Midwest ISO shall indemnify one another for any acts that fail to comport with to the level of gross negligence or willful misconduct. Article 17 provides a process for one party to enforce these indemnification provisions.

Article 18 governs the treatment of confidential information shared between the parties. Article 19 contains standard miscellaneous provisions found in many business arrangements.

Not all of the schedules to the Agreement have been fully completed, but will be completed in the final executed version. Schedule 1 will include a list of facilities over which GridAmerica will exercise functional control. Schedules 3 and 4 will include lists of current OATT agreements entered into by Ameren, ATSI, and NIPSCO and grandfathered service agreements. Schedule 2 is complete and covers Midwest ISO's security coordination obligations. Schedule 5 is the Delineation of Functions and has also been completed.

**B. The Agreement Is In The Public Interest And Should Be Approved Expeditiously.**

As noted above, the Appendix I ITC Agreement between GridAmerica and Midwest ISO is the first step in fulfilling the Commission's goal of establishing a fully independent ITC within Midwest ISO, the only approved RTO. This Agreement lays out the relationship between GridAmerica and Midwest ISO in a manner that is fully consistent with the April 25 Order. It contains rate and revenue distribution provisions that should not result in an increase in Midwest ISO's Schedule 10 rate adder and, therefore, dramatically increases the size of the Midwest ISO footprint without increasing costs to existing Midwest ISO members. In addition, the Agreement is substantially similar to other Appendix I agreements that have been previously approved by the Commission for integration of ITCs into Midwest ISO.

The Agreement will be executed when GridAmerica has been formed and other conditions precedent have been met. The parties fully expect that each of these conditions will be satisfied within the next few months. For this reason, the Agreement is being filed in unexecuted form at this time. The filing of this agreement – less than two weeks after the filing of letters of intent and term sheets governing the GridAmerica transactions – demonstrates the firm commitment of the GridAmerica Participants and Midwest ISO to the formation and operation of GridAmerica within Midwest ISO.

The Commission must recognize that if GridAmerica is to be formed and become operational during the fourth quarter of 2002, the Commission must approve this Agreement in full as expeditiously as possible and in no event later than July 31, 2002. In order to meet this deadline, the GridAmerica Participants and Midwest ISO suggest that the Commission establish a due date for the filing of comments regarding this Agreement no later than Monday, July 15, 2002. The parties are serving copies of this filing upon all persons listed on the official service list compiled by the secretary in this proceeding, so all interested parties will receive actual

notice of this filing. Midwest ISO has emailed a copy of this filing to its stakeholders, including state commissions.

The GridAmerica Three want to comply with the April 25 Order and with Order No. 2000 as soon as possible. The parties need regulatory certainty in order to obtain the funding and to commit the resources needed to complete the development of the proposed Alliance RTO systems and to fully integrate those systems into the MISO systems in time to begin operations during the fourth quarter of 2002. Without the regulatory certainty that will result from a Commission order approving the Agreement, it is far from clear that the parties will be willing to commit the necessary resources and funding to complete development of these assets and systems. Time is, therefore, of the essence with respect to this filing.

### **III. REQUEST FOR WAIVER**

The GridAmerica Participants and Midwest ISO hereby request any waivers necessary to permit prompt consideration of this filing.

### **IV. DOCUMENTS SUBMITTED**

The following documents are being submitted with this filing:

1. An original and six copies of this transmittal letter;
2. An original and six copies of a Participation Agreement executed by the GridAmerica Participants and Midwest ISO and obligating those parties to sign, upon satisfaction of all conditions precedent, an Appendix I Agreement identical in all material respects to the one submitted with this filing;
3. Seven copies of an unexecuted version of an Appendix I Agreement between GridAmerica and Midwest ISO; and
4. Seven copies of a form of notice suitable for publication in the *Federal Register*, along with an electronic version of the form of notice.

### **V. SERVICE**

The GridAmerica Participants and Midwest ISO have served a copy of this filing upon all affected state commissions, state utility consumer advocates, and all parties listed on the official service list compiled by the secretary in Docket No. EL02-65. In addition, the Midwest ISO has emailed a copy of this filing to its stakeholders, including state commissions.



**VI. CONCLUSION**

For the foregoing reasons, the GridAmerica Participants and Midwest ISO respectfully request that the Commission approve the Appendix ITC I Agreement between GridAmerica and Midwest ISO as expeditiously as possible and in no event later than July 31, 2002. In addition, the GridAmerica Participants and Midwest ISO request that the Commission set a comment date with respect to this filing of Monday, July 15, 2002. The Commission should find that the Appendix I Agreement filed herewith comports with the April 25 Order in Docket No. EL02-65, Order No. 2000, and the public interest.

Respectfully submitted,

AMEREN SERVICES COMPANY  
FIRSTENERGY CORP.  
NORTHERN INDIANA PUBLIC SERVICE CORPORATION  
NATIONAL GRID USA  
MIDWEST INDEPENDENT SYSTEM OPERATOR, INC.

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Debra Ann Palmer  
SCHIFF HARDIN & WAITE  
1101 Connecticut Avenue, NW, Suite 600  
Washington, DC 20036-4390  
(202) 778-6439  
*Attorney for Northern Indiana Public  
Service Company*

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Bruce W. Neely  
LeBOEUF, LAMB, GREENE &  
MacRAE LLP  
1875 Connecticut Avenue, NW, Suite 1200  
Washington, DC 20009-5728  
(202) 986-8000  
*Attorney for National Grid USA*

---

Patrick J. McCormick III  
BALCH & BINGHAM LLP  
1275 Pennsylvania Avenue, NW, 10<sup>th</sup> Floor  
Washington, DC 20004-2404  
(202) 347-6000  
*Attorney for FirstEnergy Corp.*

---

Stephen G. Kozey  
Vice President, General Counsel &  
Secretary  
MIDWEST INDEPENDENT SYSTEM  
OPERATOR, INC.  
701 City Center Drive  
Carmel, Indiana 46032  
(317) 249-5431  
*Attorney for Midwest Independent System  
Operator, Inc.*

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Carolyn Y. Thompson

JONES, DAY, REAVIS & POGUE

51 Louisiana Avenue, NW

Washington, DC 20001-2113

(202) 879-5426

*Attorney for Ameren Services Company*

**PARTICIPATION AGREEMENT**

by and among

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

**AMEREN SERVICES COMPANY**

as agent for

Union Electric Company d/b/a AmerenUE and  
Central Illinois Public Service Company d/b/a AmerenCIPS,

**FIRSTENERGY CORP.**

on behalf of

American Transmission Systems, Incorporated,

**NORTHERN INDIANA PUBLIC SERVICE COMPANY**

and

**NATIONAL GRID USA**

Dated as of July 3, 2002

**ANNEXES**

- A Definitions
- B Notice Information

**EXHIBITS**

- A GridAmerica Letter of Intent and Term Sheet
- B Form of Appendix I ITC Agreement

This **PARTICIPATION AGREEMENT** dated as of July 3, 2002 is made and entered into by and among **MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.** (the "Midwest ISO"), **AMEREN SERVICES COMPANY**, a Missouri corporation, as agent for Union Electric Company d/b/a AmerenUE and Central Illinois Public Service Company d/b/a AmerenCIPS, **FIRSTENERGY CORP.**, an Ohio corporation, on behalf of American Transmission Systems, Incorporated, **NORTHERN INDIANA PUBLIC SERVICE COMPANY**, an Indiana corporation, (each of the foregoing companies is referred to herein as a "GridAmerica Company" and, collectively, as the "GridAmerica Companies") and **NATIONAL GRID USA**, a Delaware corporation ("National Grid").

#### RECITALS

WHEREAS, on April 25, 2002, the United States Federal Energy Regulatory Commission (together with any successor agency, the "FERC" or the "Commission") issued an order in Docket No. EL02-65 (99 FERC ¶ 61, 105 (2002) encouraging the formation of an independent transmission company ("ITC") within the Midwest ISO;

WHEREAS, the Midwest ISO is a FERC approved regional transmission organization ("RTO") with an open architecture that accommodates various forms of ITC in its operation;

WHEREAS, the GridAmerica Companies wish to comply with Order No. 2000 through the formation of an ITC within the Midwest ISO;

WHEREAS, the GridAmerica Companies and National Grid ("National Grid") have executed that certain letter of intent dated June 20, 2002, a copy of which is annexed hereto as Exhibit A, regarding the formation and operation of GridAmerica LLC ("GridAmerica") as an ITC within the Midwest ISO;

WHEREAS, GridAmerica will sign Operation Agreements with each of the GridAmerica Companies that will provide GridAmerica with functional control of the transmission facilities of the GridAmerica Companies that are not currently under the operational control of a FERC approved RTO; and

WHEREAS, the Midwest ISO, the GridAmerica Companies and National Grid now desire to enter into this Agreement in order to evidence their desire to execute and deliver the Appendix I ITC Agreement, a copy of which is attached hereto as Exhibit B (the "ITC Agreement"), and to consummate the transactions contemplated hereby and thereby and to evidence their respective obligations as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## ARTICLE I CLOSING

### Section 1.01 Closing.

(a) The closing of the transactions contemplated by this Agreement (the "Closing") will take place at such place as the parties mutually agree at 10:00 A.M. local time, on a date (the "Closing Date") within five (5) Business Days after the date on which all of the conditions precedent set forth in Article III of this Agreement have been satisfied or waived in accordance with the terms of Article III, or at such other place and time as the Parties mutually agree.

(b) At the Closing: (i) the ITC Agreement and such other agreements, instruments, certifications and documents as may be necessary or desirable to effectuate the transactions contemplated by this Agreement and the ITC Agreement, shall be duly executed and delivered by and to each of the intended parties thereto and GridAmerica shall complete the transfer functional control of the transmission facilities of the GridAmerica Companies to the Midwest ISO as contemplated by the ITC agreement; (ii) in consideration for the Midwest ISO's ability to have unrestricted use of the capital assets developed by the Alliance Participants Administrative and Start-up Activities Company LLC ("BridgeCo"), the Midwest ISO shall make (x) a one-time payment equal to the amount contributed by the GridAmerica Companies and the other Midwest ISO members to BridgeCo to develop these assets and the costs incurred hereafter to finish such development and (y) a one-time payment to each GridAmerica Company to reimburse such GridAmerica Company the costs incurred by it in the development of Alliance RTO, such unrestricted use and payments to be made pursuant to an agreement which shall be mutually acceptable to the Parties and which agreement shall be executed and delivered no later than the Closing Date; and (iii) the Midwest ISO shall refund to Ameren Service Company, with interest, the \$18,000,000 payment made by Ameren to leave the Midwest ISO pursuant to the terms of the settlement approved in *Illinois Power Co.*, 95 FERC ¶ 61,183, *order on reh'g*, 96 FERC ¶ 61,206 (2001) . ca Company to reimburse such GridAmerica Company the costs incurred by it in the development of Alliance RTO, such unrestricted use and payments to be made pursuant to an agreement which shall be mutually acceptable to the Parties and which agreement shall be executed and delivered no later than the Closing Date; and (iii) the Midwest ISO shall refund to Ameren Service Company, with interest, the \$18,000,000 payment made by Ameren to leave the Midwest ISO pursuant to the terms of the settlement approved in *Illinois Power Co.*, 95 FERC ¶ 61,183, *order on reh'g*, 96 FERC ¶ 61,206 (2001) .

### Section 1.02 Further Assurances.

Upon the request of a Party, each other Party shall execute and deliver, or shall cause its respective Affiliate(s) to execute and deliver, such other agreements, instruments, certifications or other documents and shall take, and cause its Affiliates to take, such other action as may be reasonably necessary and desirable to implement the transactions contemplated to be implemented at the Closing.

## ARTICLE II COVENANTS OF THE PARTIES

### **Section 2.01 Covenants of GridAmerica Companies.**

Each GridAmerica Company covenants to the Midwest ISO and National Grid and each of the other GridAmerica Companies that, at all times from and after the date hereof until the Closing Date, it shall comply with each of the following covenants.

#### **(a) Required Consents.**

It shall: (i) take commercially reasonable steps necessary and proceed diligently and in good faith to obtain all Required Consents required to be obtained by it to consummate the transactions contemplated hereby; (ii) provide information which may be requested by Governmental Authorities in connection therewith; and (iii) cooperate with the Midwest ISO and National Grid and each other GridAmerica Company in obtaining all Required Consents required of each of them to consummate the transactions contemplated hereby. It shall provide prompt notification to the Midwest ISO and National Grid and each other GridAmerica Company when any Required Consent referred to in clause (i) above is obtained, taken, made or given, as applicable, and shall advise the Midwest ISO and National Grid and each other GridAmerica Company of any material, written, non-confidential communications (and, upon request and unless confidential or precluded by Law, provide copies of any such material communications which are in writing) with any Governmental Authority regarding such Required Consents.

#### **(b) Fulfillment of Conditions.**

It further covenants that it shall exercise commercially reasonable efforts and proceed diligently and in good faith to satisfy the conditions to Closing set forth in Article III upon which the Midwest ISO, National Grid and the other GridAmerica Companies are entitled to rely and which conditions are within its control to satisfy, including taking, and causing each of its Affiliates to take, all reasonable steps necessary or desirable to proceed diligently and in good faith to satisfy its obligations contained in this Agreement and refraining, and causing each of its Affiliates to refrain, from taking any action that could reasonably be expected to result in the non-fulfillment of any such obligation.

### **Section 2.02 Covenants of National Grid.**

National Grid covenants to the Midwest ISO and each GridAmerica Company that, at all times from and after the date hereof until the Closing Date, it shall comply with each of the following covenants.

#### **(a) Required Consents.**

It shall: (i) take commercially reasonable steps necessary and proceed diligently and in good faith to obtain all Required Consents required to be obtained by it to consummate the transactions contemplated hereby; (ii) provide information which may be requested by Governmental Authorities in connection therewith; and (iii) cooperate with the Midwest ISO and each GridAmerica Company in obtaining all Required Consents required of each of them to

consummate the transactions contemplated hereby. It shall provide prompt notification to the Midwest ISO and each GridAmerica Company when any Required Consent referred to in clause (i) above is obtained, taken, made or given, as applicable, and shall advise the Midwest ISO and each GridAmerica Company of any material, written, nonconfidential communications (and, upon request and unless confidential or precluded by Law, provide copies of any such material communications which are in writing) with any Governmental Authority regarding such Required Consents.

(b) Formation and Business of Initial Member and Company.

Upon the fulfillment of the conditions set forth in Section 3.02, it shall form GridAmerica and cause GridAmerica to execute and deliver the ITC Agreement and such other agreements, instruments, certifications and documents as may be necessary and desirable to effectuate the transactions contemplated by the ITC Agreement as contemplated by Article I.

(c) Fulfillment of Conditions.

It shall exercise commercially reasonable efforts and proceed diligently and in good faith to satisfy the conditions to Closing set forth in Article III upon which the Midwest ISO and the GridAmerica Companies are entitled to rely and which conditions are within its control to satisfy, including taking, and causing each of its Affiliates to take, all reasonable steps necessary or desirable to proceed diligently and in good faith to satisfy its obligations contained in this Agreement and refraining, and causing each of its Affiliates to refrain, from taking any action that could reasonably be expected to result in the non-fulfillment of any such obligation.

**Section 2.03 Covenants of the Midwest ISO.**

The Midwest ISO covenants to National Grid and each of the GridAmerica Companies that, at all times from and after the date hereof until the Closing Date, it shall comply with each of the following covenants.

(a) Required Consents.

It shall: (i) take commercially reasonable steps necessary and proceed diligently and in good faith to obtain all Required Consents required to be obtained by it to consummate the transactions contemplated hereby; (ii) provide information which may be requested by Governmental Authorities in connection therewith; and (iii) cooperate with National Grid and each GridAmerica Company in obtaining all Required Consents required of each of them to consummate the transactions contemplated hereby. It shall provide prompt notification to National Grid and each GridAmerica Company when any Required Consent referred to in clause (i) above is obtained, taken, made or given, as applicable, and shall advise National Grid and each GridAmerica Company of any material, written, non-confidential communications (and, upon request and unless confidential or precluded by Law, provide copies of any such material communications which are in writing) with any Governmental Authority regarding such Required Consents.

(b) Fulfillment of Conditions.



It further covenants that it shall exercise commercially reasonable efforts and proceed diligently and in good faith to satisfy the conditions to Closing set forth in Article III upon which National Grid and the GridAmerica Companies are entitled to rely and which conditions are within its control to satisfy, including taking, and causing each of its Affiliates to take, all reasonable steps necessary or desirable to proceed diligently and in good faith to satisfy its obligations contained in this Agreement and refraining, and causing each of its Affiliates to refrain, from taking any action that could reasonably be expected to result in the non-fulfillment of any such obligation.

### **ARTICLE III CONDITIONS PRECEDENT TO CLOSING**

#### **Section 3.01 Conditions Precedent to Obligations of GridAmerica Companies.**

The obligation of each GridAmerica Company to enter into the transactions to take place at the Closing is subject to the satisfaction, or waiver by such GridAmerica Company, of each of the following conditions precedent:

(a) Performance.

The Midwest ISO, National Grid and each of the other GridAmerica Companies shall have performed and complied, in all material respects, with each of its covenants set forth in this Agreement to be so performed and complied with by it at or prior to the Closing.

(b) Orders and Laws.

There shall not be in effect on the Closing Date any Order or Law restraining, enjoining or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Agreement, the ITC Agreement or the ITC Documents, and there shall not be pending or threatened on the Closing Date any Proceeding in, before or by any Governmental Authority which could reasonably be expected to result in the issuance of any such Order or to prohibit any of such transactions.

(c) Required Consents.

The Commission shall have issued a Final Order which is an Approval Order, and all other Required Consents (including Required Consents to be obtained, made or given by any federal or state Governmental Authorities) shall: (i) have been duly obtained, made or given; (ii) be in form and substance which would not, in its reasonable judgment, and when considered in light of the Final Order and all other Required Consents (A) cause it to fail to realize any material benefit which it reasonably anticipates from the transactions contemplated by the ITC Agreement and the ITC Documents or (B) impose any conditions or requirements which could reasonably be expected to have a material and adverse effect on its or any of its Affiliates' current or planned operations or business activities or its or their prospects; (iii) be in full force and effect and any waiting periods with respect thereto shall have expired; and (iv) not be subject

to any Proceeding which, if determined adversely, could result in the loss, amendment or conditioning thereof.

(d) Effectiveness of ITC Documents.

The ITC Documents, including all schedules, exhibits and appendices thereto, shall have been completed, in form and substance reasonably acceptable to such GridAmerica Company, and such ITC Documents shall have been executed and delivered by each of the intended parties thereto and shall have become effective.

(e) Formation of GridAmerica and Transfer of Functional Control.

GridAmerica shall have been formed and shall have acquired functional control of the transmission facilities of the GridAmerica Companies which are the subject of the ITC Agreement.

**Section 3.02 Conditions Precedent to Obligations of National Grid.**

The obligation of National Grid to enter into the transactions to take place at the Closing is subject to the satisfaction, or waiver by National Grid, of each of the following conditions precedent:

(a) Performance.

The Midwest ISO and each GridAmerica Company shall have performed and complied, in all material respects, with each of its covenants set forth in this Agreement to be so performed and complied with by it at or prior to the Closing.

(b) Orders and Laws.

There shall not be in effect on the Closing Date any Order or Law restraining, enjoining or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Agreement, the ITC Agreement or the ITC Documents, and there shall not be pending or threatened on the Closing Date any Proceeding in, before or by any Governmental Authority which could reasonably be expected to result in the issuance of any such Order or to prohibit any of such transactions.

(c) Required Consents.

The Commission shall have issued a Final Order which is an Approval Order, and all other Required Consents (including Required Consents to be obtained, made or given by any federal or state Governmental Authorities) shall: (i) have been duly obtained, made or given; (ii) be in form and substance which would not, in its reasonable judgment, and when considered in light of the Final Order and all other Required Consents (A) cause it to fail to realize any material benefit which it reasonably anticipates from the transactions contemplated by the ITC Agreement and the ITC Documents or (B) impose any conditions or requirements which could reasonably be expected to have a material and adverse effect on its or any of its Affiliates' current or planned operations or business activities or its or their prospects; (iii) be in full force

and effect and any waiting periods with respect thereto shall have expired; and (iv) not be subject to any Proceeding which, if determined adversely, could result in the loss, amendment or conditioning thereof.

(d) Effectiveness of ITC Documents.

The ITC Documents, including all schedules, exhibits and appendices thereto, shall have been completed, in form and substance reasonably acceptable to National Grid, and such ITC Documents shall have been executed and delivered by each of the intended parties thereto and shall have become effective.

(e) Formation of GridAmerica and Transfer of Functional Control.

GridAmerica shall have been formed and shall have acquired functional control of the transmission facilities of the GridAmerica Companies which are the subject of the ITC Agreement.

**Section 3.03 Conditions Precedent to Obligations of the Midwest ISO.**

The obligation of the Midwest ISO to enter into the transactions to take place at the Closing is subject to the satisfaction, or waiver by the Midwest ISO, of each of the following conditions precedent:

(a) Performance.

National Grid and each GridAmerica Company shall have performed and complied, in all material respects, with each of its covenants set forth in this Agreement to be so performed and complied with by it at or prior to the Closing.

(b) Orders and Laws.

There shall not be in effect on the Closing Date any Order or Law restraining, enjoining or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Agreement, the ITC Agreement or the ITC Documents but only, in the case of the ITC Documents, insofar as the ITC Documents purport to alter or otherwise modify the rights and obligations of the Midwest ISO as set forth in the ITC Agreement, and there shall not be pending or threatened on the Closing Date any Proceeding in, before or by any Governmental Authority which could reasonably be expected to result in the issuance of any such Order or to prohibit any of such transactions.

(c) Required Consents.

The Commission shall have issued a Final Order which is an Approval Order, and all other Required Consents (including Required Consents to be obtained, made or given by any federal or state Governmental Authorities) shall: (i) have been duly obtained, made or given; (ii) be in form and substance which would not, in its reasonable judgment, and when considered in light of the Final Order and all other Required Consents (A) cause it to fail to realize any material benefit which it reasonably anticipates from the transactions contemplated by the the

ITC Agreement or the ITC Documents but only, in the case of the ITC Documents, insofar as the ITC Documents purport to alter or otherwise modify the rights and obligations of the Midwest ISO as set forth in the ITC Agreement or (B) impose any conditions or requirements which could reasonably be expected to have a material and adverse effect on its or any of its Affiliates' current or planned operations or business activities or its or their prospects; (iii) be in full force and effect and any waiting periods with respect thereto shall have expired; and (iv) not be subject to any Proceeding which, if determined adversely, could result in the loss, amendment or conditioning thereof.

(d) Effectiveness of ITC Documents.

The ITC Documents, including all schedules, exhibits and appendices thereto, shall have been completed, and insofar as the ITC Documents purport to alter or otherwise modify the rights and obligations of the Midwest ISO as set forth in the ITC Agreement, shall be in form and substance reasonably acceptable to the Midwest ISO, and such ITC Documents shall have been executed and delivered by each of the intended parties thereto and shall have become effective.

(e) Formation of GridAmerica and Transfer of Functional Control.

GridAmerica shall have been formed and shall have acquired functional control of the transmission facilities of the GridAmerica Companies which are the subject of the ITC Agreement.

**Section 3.04 Limitations.**

Notwithstanding anything to the contrary set forth in Sections 3.01, 3.02 and 3.03, no Party shall be relieved of its obligations under this Agreement due to the failure of any condition if such failure is based on such Party's failure to perform in accordance with the terms of this Agreement.

**ARTICLE IV  
TERMINATION; WITHDRAWAL**

**Section 4.01 Termination.**

This Agreement may be terminated prior to Closing:

- (a) by written agreement executed by each of the Parties;
- (b) by National Grid, upon written notice to each of the other Parties, if the Closing shall not have occurred on or before December 31, 2002 and the failure to achieve Closing is not caused by its failure to perform in accordance with the terms of this Agreement; or
- (c) by National Grid upon issuance by the Commission of a Final Order which is not an Approval Order, provided that National Grid serves notice of termination to the other Parties no later than 20 days after issuance of such Final Order.

**Section 4.02 Effect of Termination.**

If this Agreement is terminated pursuant to Section 4.01, it shall forthwith become null and void and there shall be no liability or obligation on the part of any Party (or any of their respective officers, directors, employees, agents or other representatives or Affiliates), except that notwithstanding any other provisions in this Agreement to the contrary, upon termination of this Agreement pursuant to Section 4.01, each Party will remain liable to each other Party for any willful breach of this Agreement existing at the time of such termination, and each Party may seek such remedies, including damages and reasonable fees and expenses of attorneys, against any other Party with respect to any such breach as are provided in this Agreement or as are otherwise available at Law or in equity, including the right to demand specific performance.

**Section 4.03 Withdrawal.**

At any time prior to Closing, any GridAmerica Company may, in its sole discretion, withdraw as a Party to this Agreement by delivering written notice (a "Withdrawal Notice") to each other Party under the following circumstances: (i) within thirty (30) days after the issuance by the Commission of a Final Order which is not an Approval Order; (ii) within fifteen (15) days after its receipt of a Withdrawal Notice issued pursuant to clause (i) hereof by another GridAmerica Company; (iii) if the Closing shall not have occurred on or before December 31, 2002, and the failure to achieve Closing is not caused by such GridAmerica Company's failure to perform in accordance with the terms of this Agreement; or (iv) if, prior to December 31, 2002, it enters into a definitive agreement, subject to customary terms and conditions, pursuant to which it will be acquired by or merged with another company or it is obligated to transfer all or substantially all of its transmission facilities which are the subject of the ITC Agreement, in each case whether by merger, consolidation, sale of assets or otherwise to any Person or Persons other than one or more of its Affiliates, another GridAmerica Company or National Grid. Upon its withdrawal pursuant to this Section 4.03, a GridAmerica Company shall cease to have any rights, obligations or liabilities under this Agreement (other than rights and obligations as set forth in this Section 4.03 and liabilities that existed prior to the date of withdrawal).

**Section 4.04 Exclusion of Consequential Damages.**

Notwithstanding anything contained in this Agreement to the contrary, no Party shall be liable to any other Party for indirect, consequential, special or punitive damages on account of any Proceeding brought hereunder or related hereto.

**ARTICLE V  
MISCELLANEOUS**

**Section 5.01 Notices.**

Every notice, request, or other statement to be made or delivered to a Party pursuant to this Agreement shall be directed to such Party's representative at the address or facsimile number for such Party set forth on Annex B or to such other address or facsimile number as the Party may designate by written notice to each other Party from time to time. All notices or other communications required or permitted to be given pursuant to this Agreement must be in writing and will be considered as properly given if sent by facsimile transmission (with confirmation

notice sent by first class mail, postage prepaid), by reputable nationwide overnight delivery service that guarantees next Business Day delivery, by personal delivery, or, if mailed from within the United States, by first class United States mail, postage prepaid, registered or certified with return receipt requested. Any notice hereunder will be deemed to have been duly given: (i) on the date personally delivered; (ii) when received, if sent by certified or registered mail, postage prepaid, return receipt requested or if sent by overnight delivery service; or (iii) if sent by facsimile transmission, on the date sent, provided confirmation notice is sent by first-class mail, postage prepaid promptly thereafter.

**Section 5.02 Entire Agreement.**

This Agreement constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements, representations and understandings, written or oral, pertaining thereto but excluding that certain Non-Disclosure Agreement dated as of June 20, 2002 between the Midwest ISO, the GridAmerica Companies and National Grid USA Service Company, Inc.

**Section 5.03 Expenses.**

Except as otherwise expressly provided in this Agreement, each Party will pay its own costs and expenses incurred in connection with the negotiation, execution and closing of this Agreement.

**Section 5.03 Several Obligations.**

Each of the obligations of the GridAmerica Companies or any of them shall be several and not joint and several.

**Section 5.04 Amendment; Waiver.**

No amendment to or modification of this Agreement shall be valid unless the same shall be in writing and signed by the Parties and no waiver of or under any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Party to be bound thereby.

**Section 5.05 No Third-Party Beneficiary.**

This Agreement is intended to be solely for the benefit of the Parties, their successors and permitted assignees, and is not intended to and shall not confer any rights or benefits on any Person not a signatory hereto.

**Section 5.06 No Assignment; Binding Effect.**

Neither this Agreement nor any right, interest or obligation hereunder may be assigned by any Party without the prior written consent of each other Party, and any attempt to do so will be void, except for assignments and transfers: (i) by operation of Law; or (ii) to any Person that acquires any GridAmerica Company's transmission facilities which are the subject of the ITC

Agreement. Subject to the preceding sentence, this Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and assigns.

**Section 5.07 Severability.**

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of that provision in any other jurisdiction.

**Section 5.08 Governing Law; Waiver of Jury Trial.**

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK EXCLUDING ITS CHOICE OF LAW PRINCIPLES THAT WOULD REQUIRE THE LAW OF ANOTHER JURISDICTION TO APPLY. EACH OF THE PARTIES IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

**Section 5.09 Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, notwithstanding that all of the Parties are not signatories to the original or to the same counterpart.

**Section 5.10 No Partnership.**

This Agreement is not intended and shall not be construed, interpreted or applied to create a partnership or joint venture among all or any of the Parties.

**Section 5.11 Definitions.**

Capitalized terms not otherwise defined herein shall have the meanings given in Annex A.

**Section 5.12 Interpretation.**

The following provisions shall be applied wherever appropriate herein:

(a) "herein," "hereby," "hereunder," "hereof," "hereto" and other equivalent words shall refer to this Agreement as an entirety and not solely to the particular portion of this Agreement in which any such word is used;

(b) "including" means "including without limitation" and is a term of illustration and not of limitation;

(c) all definitions set forth herein shall be deemed applicable whether the words defined are used herein in the singular or the plural;

(d) unless otherwise expressly provided, any term defined in Annex A by reference to any other document shall be deemed to be amended herein to the extent that such term is subsequently amended in such document in an amendment entered into in accordance with such document;

(e) wherever used herein, any pronoun or pronouns shall be deemed to include both the singular and plural and to cover all genders;

(f) neither this Agreement nor any other agreement, document or instrument referred to herein or executed and delivered in connection herewith shall be construed against any Person as the principal draftsman hereof or thereof;

(g) the section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such section, or in any way affect this Agreement;

(h) any references herein to a particular Section, Article, Annex, Exhibit or Schedule means a Section or Article of, or an Annex, Exhibit or Schedule to, this Agreement unless another agreement is specified; and

(i) the Annexes, Exhibits and Schedules attached hereto are incorporated herein by reference and shall be considered part of this Agreement.



IN WITNESS WHEREOF, this Agreement has been duly executed, acknowledged and delivered by the duly authorized representatives of the Parties as of the date first written above.

MIDWEST TRANSMISSION SYSTEM  
OPERATOR, INC.

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

AMEREN SERVICES COMPANY

as agent for

Union Electric Company d/b/a AmerenUE and

Central Illinois Public Service Company d/b/a

AmerenCIPS

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

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

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

FIRSTENERGY CORP.

on behalf of

American Transmission Systems, Incorporated,

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

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

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

NORTHERN INDIANA PUBLIC SERVICE  
COMPANY

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

NATIONAL GRID USA

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

ANNEX A

**DEFINITIONS**

The following terms shall have the respective meanings set forth below when used in this Agreement and grammatical variations of such terms shall have correlative meanings, unless otherwise expressly specified herein to the contrary.

"Affiliate" shall mean, with respect to any Person, any other Person directly or indirectly Controlling, Controlled by or under common Control with such Person. As used in this definition, "Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise); provided, however, that in any event, any Person that owns, directly or indirectly, securities having a majority of the voting power for the election of directors or other members of the governing body of a corporation or a majority of the partnership or other ownership interests (that carry voting power) of any other Person will be deemed to Control such corporation or other Person.

"Agreement" shall mean this Participation Agreement, as it may be amended, modified or otherwise supplemented, as in effect from time to time.

"GridAmerica Company" shall have the meaning given in the preamble hereof.

"Approval Order" shall mean a Final Order that approves, without material modification or condition, the ITC Agreement and such of the ITC Documents as to which the approval of the Commission is required under applicable law.

"Business Day" shall mean any day other than Saturday, Sunday or other day on which banks are authorized or required to be closed in New York, New York.

"Closing" shall have the meaning given in Section 1.01.

"Closing Date" shall have the meaning given in Section 1.01.

"Commission" shall have the meaning given in the recitals hereof.

"Company" shall have the meaning given in the recitals hereof.

"Consent" shall mean any authorization, consent, opinion, order, approval, license, franchise, ruling, permit, tariff, rate, certification, exemption, filing or registration from, by, or with any Governmental Authority, any Person or any governing body of any Person.

"Entity" shall mean a corporation, limited liability company, partnership, limited partnership, trust, firm, association or other organization which has a legal existence under the Laws of its jurisdiction of formation which is separate and apart from its owner or owners, and any Governmental Authority.

"Final Order" shall mean a final order issued by the Commission approving the ITC Agreement and such of the ITC Documents as to which approval of the Commission is required under applicable law which is no longer subject to possible rehearing.

"Governmental Authority" shall mean a federal, state, local or foreign governmental authority; a state, province, commonwealth, territory or district thereof; a county or parish; a city, town, township, village or other municipality; a district, ward or other subdivision of any of the foregoing; any executive, legislative or other governing body of any of the foregoing; any agency, authority, board, department, system, service, office, commission, committee, council or other administrative body of any of the foregoing; any court or other judicial body and any officer, official or other representative of any of the foregoing.

"ITC Agreement" shall mean the Appendix I ITC Agreement by and between the Midwest ISO and GridAmerica, a copy of which is annexed hereto as Exhibit B.

"ITC Documents" shall mean such agreements, instruments, certifications and documents as may be necessary to evidence the obligations of the intended parties thereto to implement the transactions contemplated by the Letter of Intent, including without limitation, one or more operation agreements pursuant to which each of the GridAmerica Companies transfers functional control over its transmission facilities which are the subject of the ITC Agreement to GridAmerica.

"Law" shall mean any applicable constitutional provision, statute, act, code, law, regulation, rule, ordinance, order, decree, ruling, proclamation, resolution, judgment, decision, declaration, or interpretive or advisory opinion of a Governmental Authority.

"Letter of Intent" shall mean that letter agreement dated June 20, 2002 among National Grid, Ameren Corporation, FirstEnergy Corp. and Northern Indiana Public Service Company, Inc., a copy of which is annexed hereto as Exhibit A

"National Grid" shall mean National Grid USA, a Delaware corporation.

"Non-Disclosure Agreement" shall mean the Non-Disclosure Agreement, dated as of June 20, 2002, by and among Midwest Transmission System Operator, Inc., FirstEnergy Corp., Ameren Services Company, Northern Indiana Public Service Company and National Grid USA.

"Order" shall mean any writ, judgment, decree, injunction or similar order of any Governmental Authority (in each such case whether preliminary or final).

"Party" shall mean any party from time to time to this Agreement.

"Person" shall mean any natural person or Entity.

"Proceeding" shall mean any action, suit, proceeding, arbitration or Governmental Authority investigation or audit.

"Required Consent" shall mean, collectively, each Consent that must be obtained, satisfied or made to permit the consummation of the transactions contemplated by this

Agreement, the ITC Agreement and the ITC Documents and the performance by each of the parties to the ITC Agreement and the ITC Documents of their respective obligations thereunder, but excluding any Consent which may be required to perform an obligation which, by the terms of the ITC Agreement and the ITC Transaction Documents, will not arise and is not required to be performed except upon the happening of one or more contingencies specified in the ITC Agreement and the ITC Documents.

"Withdrawal Notice" shall have the meaning given in Section 4.03.



**ANNEX B**

**NOTICE INFORMATION**

**Midwest Independent Transmission System Operator, Inc.**

Midwest Independent Transmission System Operator, Inc.  
701 City Center Drive  
Carmel, IN 46032  
Attn: James P. Torgerson  
President and CEO  
Fax: 317-249-5945

**Ameren Services Company**

Ameren Services Company  
One Ameren Plaza  
1901 Chouteau Avenue  
St. Louis, MO 63103  
Attn: David A. Whiteley  
Senior Vice President  
Fax: 314-554-3066

Ameren Services Company  
One Ameren Plaza  
1901 Chouteau Avenue  
St. Louis, MO 63103  
Attn: Steven R. Sullivan  
General Counsel  
Fax: 314-554-4014

**FirstEnergy Corp.**

FirstEnergy Corp.  
76 South Main Street  
Akron, OH 44308  
Attn: Stanley F. Szwed  
Fax: 330-384-4988

**Northern Indiana Public Service Company**

Northern Indiana Public Service Company  
801 E. 86th Avenue  
Merrillville, IN 46410  
Attn: Frank A. Venhuizen  
Fax: 219-647-5630

**National Grid USA**

National Grid USA  
25 Research Drive  
Westborough, MA 01582  
Attn: Nick Winser  
Senior Vice President  
Fax: 508-366-5498  
With a copy to: Lawrence J. Reilly, Esq.  
Senior Vice President and General Counsel  
Fax: 508-389-2605

## **APPENDIX I ITC AGREEMENT**

This APPENDIX I INDEPENDENT TRANSMISSION COMPANY ("ITC") AGREEMENT (the "Agreement") is entered into as of this \_\_\_ day of \_\_\_\_\_, 2002, by and between the MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC. ("Midwest ISO") and GRIDAMERICA LLC ("GridAmerica"). Midwest ISO and GridAmerica are jointly referred to as the "Parties."

### **BACKGROUND**

WHEREAS, on April 25, 2002, the Federal Energy Regulatory Commission ("FERC" or "Commission") issued an order in Docket No. EL02-65 (99 FERC ¶ 61,105 (2002)) encouraging the formation of an independent transmission company ("ITC") within Midwest ISO;

WHEREAS, Midwest ISO is a FERC approved Regional Transmission Organization ("RTO") with an open architecture that accommodates various forms of ITC in its operation;

WHEREAS, Ameren Services Company ("Ameren"), as agent for its electric utility affiliates, Union Electric Company, d/b/a AmerenUE, and Central Illinois Public Service Company, d/b/a AmerenCIPS, American Transmission Systems, Incorporated ("ATSI"), a subsidiary of FirstEnergy Corp., and Northern Indiana Public Service Company ("NIPSCO") wish to comply with Order No. 2000 through the formation of an ITC within Midwest ISO;

WHEREAS, Ameren, ATSI, NIPSCO, and National Grid USA ("National Grid") have executed that certain letter of intent dated June 20, 2002, regarding the formation and operation of GridAmerica as an ITC within Midwest ISO;

WHEREAS, GridAmerica has signed Operation Agreements with Ameren, ATSI, and NIPSCO that provide GridAmerica with functional control of the transmission facilities of Ameren, ATSI, and NIPSCO that are not currently under the operational control of a FERC approved RTO;

WHEREAS, in consideration for Midwest ISO's ability to have unrestricted use of the capital assets developed by the Alliance Participants Administrative and Start-up Activities Company LLC ("BridgeCo"), Midwest ISO has (1) made a one-time payment equal to the amounts contributed by the GridAmerica Participants and other Midwest ISO members to BridgeCo to develop these assets and the costs incurred hereafter to finish such development and (2) fully refunded the costs incurred by Ameren, ATSI, and NIPSCO to develop the Alliance RTO;

WHEREAS, Midwest ISO has refunded to Ameren, with interest, the \$18 million payment made by Ameren to leave Midwest ISO pursuant to the terms of the settlement approved in *Illinois Power Co.*, 95 FERC ¶ 61,183, *order on reh'g*, 96 FERC ¶ 61,206 (2001);

WHEREAS, the Parties desire to set forth the terms and conditions governing GridAmerica's participation in Midwest ISO;

NOW, THEREFORE, the Parties hereby agree as follows:

## **ARTICLE 1**

### **DEFINITIONS**

The terms used in this Agreement shall have the same meaning as in the Agreement Of Transmission Facilities Owners To Organize The Midwest Independent Transmission System Operator, Inc. ("Midwest ISO Agreement") unless otherwise specified herein.

"Ameren Operating Companies" means Union Electric Company, d/b/a AmerenUE, and Central Illinois Public Service Company, d/b/a AmerenCIPS.

"Ameren Zone" means the RTO pricing zone for which the rates accepted or approved by FERC for the Ameren Operating Companies shall apply.

"Ameren Zonal Rate" means the rates applicable to the Ameren Zone, as may be changed from time to time.

"ATC" has the meaning set forth in Schedule 4 ("Delineation of Functions") hereof.

"ATSI Zone" means the RTO pricing zone for which rates for ATSI as accepted or approved by FERC shall apply.

"ATSI Zonal Rate" means the rates applicable to the ATSI Zone, as may be changed from time to time.

"Authority" has the meaning set forth in Section 18.3 hereof.

"Confidential Information" means all (i) information that is furnished to a Recipient by the Disclosing Party or its Representatives, in whatever form, that may constitute or contain confidential, proprietary or trade secret information, or which may otherwise be claimed by the Disclosing Party to be of a market-sensitive, competitive, confidential or proprietary nature, and (ii) all portions of any analyses, compilations, studies or other documents that include any of the foregoing information prepared by or for a Recipient. "Confidential Information" excludes any information that (i) the Disclosing Party notifies the Recipient in writing is not confidential; (ii) becomes available to the Recipient on a non-confidential basis from a source other than (a) the Disclosing Party, its Representatives or another person acting on behalf of the Disclosing Party, or (b) a party who has confidentiality obligations to the Disclosing Party; (iii) is or becomes generally available to the public other than as a result of a disclosure by the Recipient, its Representatives or any person to whom such Recipient or Representatives disclosed the information; (iv) was previously known to the Recipient free and clear of any obligation to keep it confidential; (v) is disclosed to third parties by the Disclosing Party without restriction or obligation of confidentiality; or (vi) is independently developed by the Recipient without reference to the Disclosing Party's Information.

"Control Date" has the meaning set forth in Section 4.1.3 hereof.

“Direct Claim” has the meaning set forth in Section 17.6 hereof.

“Disclosing Party” means either GridAmerica, Ameren, ATSI, or NIPSCO, on the one hand, or Midwest ISO, on the other hand, to the extent either such party is furnishing the other party with Confidential Information concerning itself or its affiliate(s).

“Effective Date” has the meaning set forth in Section 2.2 hereof.

“Facilities” mean those transmission facilities over which GridAmerica has functional control, as set forth on Schedule 1 attached hereto.

“FirstEnergy Operating Companies” means The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company.

“Good Utility Practice” has the meaning set forth in the Midwest ISO Agreement.

“GridAmerica Integration Costs” has the meaning set forth in Section 13.1 hereof.

“GridAmerica Participants” means Ameren, ATSI, NIPSCO, and National Grid.

“GridAmerica System” has the meaning set forth in Section 4.1.3 hereof.

“GridAmerica Three” means Ameren, ATSI, and NIPSCO.

“Indemnifying Party” has the meaning set forth in Section 17.4 hereof.

“Indemnitee” has the meaning set forth in Section 17.4 hereof.

“Member” has the meaning set forth in the Midwest ISO Agreement.

“Midwest ISO OATT” has the meaning set forth in Section 4.1.5 hereof.

“NDTO” means a non-divesting transmission owner that has signed an Operation Agreement with GridAmerica.

“NIPSCO Zone” means the RTO pricing zone for which rates for NIPSCO as accepted or approved by the Commission shall apply.

“NIPSCO Zonal Rate” means the rates applicable to the NIPSCO Zone, as may be changed from time to time.

“OASIS” has the meaning set forth in Section 6.1 hereof.

“Order No. 2000” means the order of FERC set forth in *Regional Transmission Organizations*, Order No. 2000, FERC Stats and Regs (Regulations Preambles) ¶ 31,089 (1999), *order on reh’g*, Order No. 2000-A, FERC Stats and Regs (Regulations Preambles) ¶ 31,092 (2000).

"Owners" has the meaning set forth in the Midwest ISO Agreement.

"Recipient" means GridAmerica, Ameren, ATSI, or NIPSCO, on the one hand, or Midwest ISO, on the other hand, to the extent such Party is receiving Confidential Information of the Disclosing Party.

"Representatives" means principals, partners, officers, directors, employees, agents, and other representatives, experts and advisors, including without limitation, attorneys, independent accountants, consultants, and financial advisors, and Representatives of such Representatives.

"RTO" means a regional transmission organization, as contemplated in Order No. 2000.

"RTO Services" mean those services and functions which taken together enable Ameren, ATSI, and NIPSCO to comply fully with Order No. 2000, and shall include the transmission services described in, and to be provided by Midwest ISO under, this Agreement.

"Security Coordination Service" has the meaning set forth in Section 4.2.1 hereof.

"Security Coordinator" has the meaning set forth in Section 4.2.3 hereof.

"Superior Term" has the meaning set forth in Section 3.2 hereof.

"Third Party Claim" has the meaning set forth in Section 17.4 hereof.

"Transmission System" has the meaning set forth in the Midwest ISO Agreement.

"Users" has the meaning set forth in the Midwest ISO Agreement.

## **ARTICLE 2**

### **FILING, EFFECTIVE DATE, SERVICE DATE, TERM, AND TERMINATION**

2.1 The GridAmerica Participants, on behalf of GridAmerica, and Midwest ISO shall jointly file with FERC for approval of this Agreement as soon as practicable following the execution hereof. This Agreement shall become effective upon the date that is approved by the FERC (the "Effective Date"). Each Party shall use its best efforts to gain FERC approval of this Agreement on an expedited basis and agrees to provide support for the model set forth in this Agreement in public fora and elsewhere. If the FERC accepts and generally approves this Agreement but requires a compliance filing by either of the Parties, the Parties shall evaluate whether such required compliance filing materially changes or frustrates the intent of this Agreement. The Parties agree to negotiate in good faith to establish new terms and conditions that place the Parties in the same position as bargained for in this Agreement. In the event that the Parties cannot reach an agreement within 30 days of FERC action on new terms and conditions, or the new terms and conditions are not subsequently accepted by the FERC, the GridAmerica Participants and GridAmerica may withdraw its application to join Midwest ISO upon thirty days written notice.

2.2 Subject to Sections 2.4 and 2.5, this Agreement shall remain in effect following the Effective Date for an initial term ending at midnight Carmel, Indiana time on [fill in date three years after transmission service date], which initial term shall be automatically extended from year to year unless either party shall have given the other six months written notice of termination prior to the end of the initial term, or at the end of any renewal term if such notice is given at least six months prior to the term then ending.

2.3 Notwithstanding anything to the contrary set forth in this Agreement, if ownership of all or a substantial portion of the NDTOs or their transmission facilities is changed as a result of sale, merger, or acquisition involving a party other than an affiliate of the NDTOs, then the new owner may withdraw its facilities from GridAmerica and from Midwest ISO at any time following thirty days written notice to Midwest ISO, subject to FERC approval.

2.4 Notwithstanding anything to the contrary set forth in this Agreement, GridAmerica has the right to withdraw from Midwest ISO upon 30 days written notice, subject to FERC approval, if other Midwest ISO Owners or ITCs withdraw from Midwest ISO where either: a) GridAmerica is no longer directly interconnected with a remaining Midwest ISO member; or b) a material portion of the transmission facilities under Midwest ISO's operational control are removed by Midwest ISO members.

2.5 If GridAmerica withdraws from Midwest ISO, GridAmerica will remain responsible for all financial obligations it incurs under the Midwest ISO Agreement and Midwest ISO OATT before the date of its withdrawal.

2.6 Should, upon the withdrawal of GridAmerica from the Midwest ISO, the NDTOs remain in the Midwest ISO either in another ITC or as Owners, GridAmerica will not be liable to the Midwest ISO for the shares of the unamortized GridAmerica Integration Costs applicable to those NDTOs that remain in Midwest ISO.

### **ARTICLE 3**

#### **STRUCTURE OF RTO ARRANGEMENT**

3.1 GridAmerica agrees to be treated as an ITC within Midwest ISO pursuant to the terms and conditions of this Agreement. GridAmerica will be treated as an Owner under the Midwest ISO Agreement to the extent it owns transmission facilities within Midwest ISO. GridAmerica will represent the NDTOs with respect to the governance and activities of Midwest ISO. The NDTOs will have the same rights and voting authority as Owners under the Midwest ISO Agreement. Nothing in this Agreement will preclude the NDTOs or any of their affiliates from participating in appropriate Midwest ISO matters. Although this Agreement, and the relationship between GridAmerica and Midwest ISO as set forth herein, incorporates certain provisions of the Midwest ISO Agreement, any incorporation of the terms of the Midwest ISO Agreement herein shall not make GridAmerica an obligor under that agreement, nor shall incorporation of such terms make GridAmerica in any way a party to the Midwest ISO Agreement. References to the Midwest ISO Agreement in this Agreement shall mean the Midwest ISO Agreement and the Appendices thereto as the same exist on the date hereof and as the same may be amended from time to time but only if and not until such amendments, insofar

as affecting this Agreement or the rights, entitlements or obligations of GridAmerica, are also documented hereunder pursuant to Section 19.2 hereof. In the event of a conflict between any provision of this Agreement and any provision of the Midwest ISO Agreement, the provisions of this Agreement shall govern.

3.2 With respect to its supply of RTO Services under this Agreement, notwithstanding any other provision of this Agreement, Midwest ISO shall not discriminate against GridAmerica *vis-a-vis* other Midwest ISO Members (including without limitation Owners or other ITCs) or Users to which it supplies identical or substantially similar services. In furtherance of the foregoing and not in limitation thereof, in the event that, subsequent to the date hereof, Midwest ISO enters into any agreement or arrangement with or with respect to any current or future Midwest ISO Member or any other ITC, User or transmission customer containing any term with respect to the cost or provision of, or liability for services which are identical or substantially similar in nature to those being provided under or as contemplated by this Agreement, which term is more favorable to such Midwest ISO Member or ITC, User or customer (a "Superior Term") than any comparable term contained herein is to GridAmerica, at the option of GridAmerica and subject to FERC approval, if required, this Agreement shall be deemed amended, on and as of the later of the effectiveness of such Superior Term or any required FERC approval, to the extent necessary or appropriate to incorporate such Superior Term herein in lieu of any such comparable term so that such Superior Term thereafter governs the cost or provision of, or liability for (as the case may be) services under or as contemplated by this Agreement and the relationship of Midwest ISO and GridAmerica under this Agreement. GridAmerica hereby recognizes that, as of the date of this Agreement, approval of the TransLink ITC is pending before the Commission.

3.3 Except to the extent inconsistent with the terms of this Agreement or as otherwise provided herein, the same procedures and protocols described in Appendix E to the Midwest ISO Agreement shall govern and apply to the relationship of the Parties and the provision of RTO Services by Midwest ISO hereunder, to the same extent as if GridAmerica were an Owner for purposes of such Appendix E.

#### **ARTICLE 4**

##### **TRANSMISSION FACILITIES OPERATED BY GRIDAMERICA SUBJECT TO THE DIVISION OF FUNCTIONS SET FORTH IN SCHEDULE 5 TO THIS AGREEMENT AND TO CERTAIN PROTOCOLS SET FORTH IN VARIOUS SCHEDULES TO THIS AGREEMENT**

#### **4.1 Functional Control. Reliability. Provision of Regional Transmission Service.**

4.1.1 GridAmerica will exercise functional control over the Facilities. The NDTOs will file applications with the Commission, pursuant to Section 203 of the Federal Power Act ("FPA") to transfer functional control over their transmission facilities to GridAmerica.

4.1.2 After receiving authorization to exercise functional control over the Facilities, GridAmerica will cede to Midwest ISO those functions set forth in Schedule 5 to this



Agreement that are to be performed by Midwest ISO. GridAmerica shall perform those functions set forth in Schedule 5 to this Agreement that are to be performed by GridAmerica. Schedule 4 to this Agreement sets forth the "Delineation of Functions" approved by FERC in *Alliance Companies*, 99 FERC ¶ 61,105 (2002); *TransLink*, 99 FERC ¶ 61,106 (2002). The Parties recognize that, prior to full operations pursuant to the Delineation of Functions in Schedule 5, the development of the BridgeCo systems and assets must be completed and integrated into the Midwest ISO systems. Following complete integration of systems, service over the Facilities will be provided under the Midwest ISO OATT.

4.1.3 Each of Midwest ISO and GridAmerica shall promptly notify the other in writing of the satisfaction of all applicable legal requirements, system readiness, and systems integration necessary for Midwest ISO to assume its responsibilities under the Delineation of Functions. On the first day of the month following the receipt of such written notices, but no sooner than the fifth day following the date of such notice by Midwest ISO (the "Control Date"), GridAmerica and Midwest ISO shall assume their respective responsibilities under the Delineation of Functions over the facilities constituting the GridAmerica transmission system ("GridAmerica System. Midwest ISO will thereafter exercise its delineated functions over the Facilities and the GridAmerica System consistent with its responsibilities under Article Three, Section 1.A of the Midwest ISO Agreement.

4.1.4 On and after the Control Date, Midwest ISO shall have responsibility for the reliability of the GridAmerica System consistent with its responsibilities under the Delineation of Functions and Article Three, Section 1.B of and Appendices B and E to the Midwest ISO Agreement. Should the Commission, as contemplated by the April 25 Order in Docket No. EL02-65, modify the delineation of functions between ITCs and RTOs, the parties agree to negotiate to effectuate the Commission's intent with respect to such modified delineation of functions.

4.1.5 On and after the Control Date, GridAmerica and Midwest ISO will provide transmission service over the GridAmerica System and in the Ameren, ATSI, and NIPSCO Zones on a nondiscriminatory basis under, and in accordance with, the Delineation of Functions and the Midwest ISO Open Access Transmission Tariff on file with FERC or any successor tariff (the "Midwest ISO OATT"), subject to and in accordance with the provisions and limitations of Sections 3.3, 11 and 13 hereof Midwest ISO shall administer the Midwest ISO OATT.

4.1.6 Following such date, Midwest ISO shall offer within the Ameren, ATSI, and NIPSCO Zones, as part of the Midwest ISO OATT, all such ancillary services as are required by FERC to be offered under the Midwest ISO Tariff. Midwest ISO shall obtain such services from providers in a manner that minimizes cost, consistent with its reliability responsibilities and other obligations under this Agreement. In obtaining such ancillary services, Midwest ISO shall afford no undue preference or disadvantage to any generation supplier. The NDTOs shall maintain those Schedules in the Open Access Transmission Tariffs permitting the provision of ancillary services and nothing in this Agreement shall preclude an NDTO from self-supplying any necessary ancillary services. Moreover, nothing in this Agreement shall preclude GridAmerica (consistent with FERC policy and on behalf of the NDTOs) or the NDTOs from

participating in any competitive ancillary services markets that may be created within Midwest ISO.

4.1.7 On and after the Control Date, Midwest ISO will perform congestion management functions with respect to the GridAmerica System consistent with its responsibilities under Attachment K of the Midwest ISO OATT or any other FERC approved congestion management plan that may be administered by Midwest ISO from time to time.

4.1.8 Legal and equitable title to the respective properties comprising the GridAmerica System, including all land and land rights, and to all the Facilities or any facilities with GridAmerica may hereafter build or acquire, shall remain with the respective NDTOs (unless the NDTOs transfer title to another entity) and is not changed by this Agreement. The NDTOs shall retain all rights incident to such legal and equitable title, including, but not limited to, the right, subject to applicable federal or state regulatory approvals and third party rights, to build, acquire, sell, dispose of, use as security or convey any part of such property, or use such property for purposes other than providing transmission services (such as the use of such property for telecommunications purposes), provided that the exercise of any such rights shall not impair the reliability of the Transmission System.

#### 4.2 Security Coordination Service.

4.2.1 On and after the Control Date, Midwest ISO will be the Security Coordinator for the Ameren, ATSI, and NIPSCO Zones, and shall enter into any such arrangements as are necessary to perform this function. Midwest ISO shall supply the service specified in Schedule 2 to this Agreement ("Security Coordination Service") together, in conjunction with, and as a part of, the security coordination function performed by Midwest ISO under the Midwest ISO Agreement.

4.2.2 If appropriate, GridAmerica may take actions to preserve the security of the GridAmerica System before requesting assistance from Midwest ISO. GridAmerica shall inform Midwest ISO of any such actions and coordinate such actions with Midwest ISO.

4.2.3 Notwithstanding any other provision of this Agreement, Midwest ISO may intercede and direct appropriate actions in its role as the regional security coordinator (the "Security Coordinator"). If such Midwest ISO action is disputed by GridAmerica, Midwest ISO's position shall control pending resolution of the dispute.

4.2.4 Without limiting Midwest ISO's general obligation under this Agreement to ensure non-discriminatory service to GridAmerica, Midwest ISO shall take no discriminatory action in carrying out Security Coordination Service which would advantage the transmission transactions scheduled on the system(s) of any other Midwest ISO Members, Owners, other ITCs or Users over transactions scheduled on the GridAmerica System.

## ARTICLE 5

### PREEXISTING OBLIGATIONS

5.1 Agency Agreement. GridAmerica and Midwest ISO will execute agency agreements in substantially the same form as Appendix G to the Midwest ISO Agreement, for transmission service provided over distribution facilities owned and operated within the Ameren, ATSI, and NIPSCO Zones by the Ameren Operating Companies, the FirstEnergy Operating Companies, or NIPSCO. GridAmerica will execute new agreements or modify existing agreements with the Ameren Operating Companies, the ATSI Operating Companies, and NIPSCO as are necessary to perform its obligations under the agency agreement. Notwithstanding any other provision in Appendix G, the agency authorization shall not be construed as authorizing Midwest ISO to enter into any agreement that creates any liability, cost or other obligation to be borne by the owners or by the GridAmerica Three or Grid America that is not expressly set forth in the Midwest ISO OATT.

5.2 Existing Ameren, ATSI, and NIPSCO OATT agreements. Midwest ISO agrees to assume all rights and obligations under the Ameren, ATSI, and NIPSCO OATT agreements entered into prior to the Control Date, including, but not limited to agreements for network integration service, firm point-to-point transmission service, and generator interconnection service. A list of such agreements is attached as Schedule 3 to this Agreement.

5.3 Transmission agreements predating the Ameren, ATSI, and NIPSCO OATTs. Midwest ISO will comply with all obligations to provide transmission service incurred by the Ameren Operating Companies, the FirstEnergy Operating Companies, and NIPSCO pursuant to agreements with third parties entered into prior to the effective date of the Ameren, ATSI, and NIPSCO OATTs. Midwest ISO may satisfy these obligations, in whole or in part, through the agreement for network integration service between Midwest ISO and the Ameren Operating Companies, the FirstEnergy Operating Companies, and NIPSCO. A list of such agreements is attached as Schedule 4 to this Agreement.

5.4 Regulatory obligations. Midwest ISO acknowledges that Ameren, ATSI, and NIPSCO have certain obligations to transmission customers as a result of orders issued by the FERC or other government authorities. GridAmerica will identify such obligations to Midwest ISO prior to the Control Date. To the extent that GridAmerica is unable to perform such obligations following the Control Date, Midwest ISO will use its best efforts to perform such obligations on GridAmerica's behalf, consistent with the Midwest ISO Agreement and the Midwest ISO Tariff.

5.5 Limitation on Midwest ISO's obligations. Nothing in this Article 5 requires Midwest ISO to assume obligations for transmission service provided outside of the Ameren, ATSI, and NIPSCO Zones or to perform any act prohibited by law.

## **ARTICLE 6**

### **ATC AND OASIS**

6.1 On or before the Control Date, Midwest ISO shall implement and shall thereafter maintain an Open Access Same-time Information System or Systems ("OASIS") or successor system(s) pursuant to the Midwest ISO OATT. The OASIS shall conform to the requirements for such systems as specified by FERC.

6.2 On and after the Control Date, GridAmerica and Midwest ISO shall review and approve, as appropriate, requests for service and schedule transmission transactions occurring over the GridAmerica System in the manner set forth in the Delineation of Functions. GridAmerica and Midwest ISO shall also determine available transmission capability ("ATC") for the GridAmerica System in the manner set forth in the Delineation of Functions.

## **ARTICLE 7**

### **RATINGS AND TRANSMISSION MAINTENANCE**

7.1 On and after the Control Date, GridAmerica shall provide to Midwest ISO ratings and operating procedures for the Facilities that make up the GridAmerica System subject to dispute resolution as set forth in Appendix D to the Midwest ISO Agreement if Midwest ISO disagrees. GridAmerica's position shall prevail pending resolution of the dispute.

7.2 On and after the Control Date, GridAmerica may set its own transmission maintenance and outage schedules (subject to dispute resolution pursuant to Section 12 hereof if Midwest ISO objects to such schedules). GridAmerica shall coordinate such transmission maintenance and outage schedules with Midwest ISO as described in the Delineation of Functions. With regard to disputes concerning such schedules, GridAmerica's position shall prevail pending resolution of the dispute, unless Midwest ISO, acting in its role as Security Coordinator under Section 4.2 hereof, determines that system security is involved, in which case Midwest ISO's determination shall prevail pending resolution of the dispute. GridAmerica shall maintain the Facilities in accordance with Good Utility Practice.

## **ARTICLE 8**

### **CONSTRUCTION AND PLANNING**

8.1 On and after the Control Date, and until the implementation of planning processes and protocols pursuant to Section 8.2 of this Agreement, GridAmerica shall plan the GridAmerica System in coordination with Midwest ISO consistent with the Delineation of Functions and the provisions and protocols provided for in Appendix B to the Midwest ISO Agreement. Midwest ISO has the same obligations and responsibilities to GridAmerica that Midwest ISO has to Owners under Appendix B of the Midwest ISO Agreement.

8.2 The Parties agree to develop and implement streamlined coordinated planning processes and protocols which grant GridAmerica, as a fully independent ITC, greater discretion

and authority to plan its system to meet customer needs than is currently granted to Owners under Appendix B to the Midwest ISO Agreement. Any such plan shall be approved by FERC prior to implementation.

8.3 Notwithstanding any other provisions of this Article 8, GridAmerica shall use commercially reasonable efforts to construct transmission facilities as directed by Midwest ISO consistent with the provisions of Article Four, Section I.C of the Midwest ISO Agreement.

## **ARTICLE 9**

### **RESPONSIBILITY FOR GENERATOR INTERCONNECTION SERVICE**

On and after the Control Date, GridAmerica shall be responsible for generator interconnection service within the Ameren, ATSI, and NIPSCO Zones and shall have the right to establish the terms and conditions thereof, provided that FERC has approved GridAmerica's procedures and form of agreement for such interconnection service. Until FERC approval of such procedures and form of agreement, on and after the Control Date, Midwest ISO's interconnection protocols shall govern GridAmerica's provision of generator interconnection service within the Ameren, ATSI, and NIPSCO Zones, except to the extent provided in Section 5.2. The Parties also recognize that the Commission has issued a Notice of Proposed Rulemaking regarding generator interconnection agreements and procedures in Docket No. RM02-1 and intend that GridAmerica will fully comply with FERC's policy on generator interconnections.

## **ARTICLE 10**

### **MARKET AND OTHER MONITORING, PENALTIES**

10.1 On and after the Control Date, Midwest ISO, in accordance with FERC policy and directives, will conduct market monitoring within the Ameren, ATSI, and NIPSCO Zones consistent with the terms of Article 8 of the Midwest ISO Agreement.

10.2 On and after the Control Date, Midwest ISO shall impose and collect penalties within the Ameren, ATSI, and NIPSCO Zones as currently provided in Article 8 of the Midwest ISO Agreement and the Midwest ISO OATT.

## **ARTICLE 11**

### **RATES AND REVENUE DISTRIBUTION**

11.1 In a Section 205 rate case to be filed prior to the operation of GridAmerica within the Midwest ISO, Midwest ISO will support the recovery of lost revenues of each of the GridAmerica Three resulting from the elimination of multiple zonal transmission rate charges and the corresponding revenue allocation consistent with the treatment of other Owners and ITCs. The Parties will immediately commence and participate in a collaborative process with the Owners and other Midwest ISO stakeholders regarding such lost revenues and distribution method necessary to achieve these goals. Nothing herein shall be construed as a waiver of any of

the Parties' rights to file with FERC for changes to the Midwest ISO pricing and revenue distribution protocols. GridAmerica reserves the right to proffer as part of such filing, individually or with other companies, the Alliance rate design endorsed by FERC in its April 25, 2002 *Order on Petition for Declaratory Order* in Docket Nos. EL02-65-000, et al. Nothing in this Agreement will preclude GridAmerica or the NDTOs from participating in or protesting any such FERC filings and proceedings.

11.2 On and after the Control Date, Midwest ISO shall distribute to GridAmerica or the NDTOs (at the election of GridAmerica or the NDTOs) on a monthly basis any amounts due to GridAmerica or the NDTOs which result from the provision of transmission service under the Midwest ISO OATT, consistent with Appendix C to the Midwest ISO Agreement and this Agreement. GridAmerica may take no unilateral action which interferes with or affects the revenue distribution provided for in Appendix C of the Midwest ISO Agreement or which interferes with the collection by Midwest ISO of the revenues due it for services it provides or arranges pursuant to the Midwest ISO OATT, unless such action by GridAmerica has been approved by the FERC.

### 11.3 Rate and Tariff Term Dovetailing.

11.3.1 On and after the Control Date, Midwest ISO shall charge the Ameren, ATSI, and NIPSCO Zonal Rates for all applicable transactions under the Midwest ISO OATT. In the development of regional rates, Midwest ISO shall use the Ameren, ATSI, and NIPSCO Zonal Rates as an input to the rate calculations.

11.3.2 Midwest ISO will support the use of the existing Ameren, ATSI, and NIPSCO OATT rates and rate design for use within the Ameren, ATSI, and NIPSCO Zones, respectively, and will permit Ameren, ATSI, and NIPSCO, at their option, to convert their OATT rates for network integration service to a formula rate or a stated rate. Midwest ISO will support the use of Ameren, ATSI, and NIPSCO's rate structure for operations within Midwest ISO to the greatest extent possible.

11.3.3 To facilitate competition in wholesale power markets, Midwest ISO will either discount its total charges in the Midwest ISO OATT for Drive-Out and Drive-Through Service or make a Section 205 application with the FERC to lower the cap on its total charges in the Midwest ISO OATT for Drive-Out and Drive-Through Service. The new cap on its total charges for Drive-Out and Drive-Through Service, whether achieved by discount or application to the FERC, will be formulated to provide flexibility for the Midwest ISO to maximize revenue while minimizing the charges applicable to this service. The GridAmerica and the NDTOs may intervene in and/or protest the Section 205 filing described in this section.

## ARTICLE 12

### DISPUTE RESOLUTION

Any dispute as to any matter not governed by the terms of the Midwest ISO OATT and arising under or in connection with this Agreement between or among GridAmerica and

Midwest ISO, any Owner, or any other Member shall be subject to the same dispute resolution procedures as are set forth in Appendix D to the Midwest ISO Agreement.

## **ARTICLE 13**

### **PROVISIONS REGARDING INTEGRATION COSTS**

13.1 GridAmerica and Midwest ISO will agree upon a plan for integration of GridAmerica systems into Midwest ISO systems, including a budget for integration activities. Midwest ISO will reimburse GridAmerica for all of its costs incurred pursuant to the integration plan at the completion of integration activities.

13.2 In consideration of GridAmerica's performance of the required functions set forth in the Delineation of Functions, and the resulting cost savings to Midwest ISO, Midwest ISO will compensate GridAmerica in the amount of \$14.25 million per year, payable on a monthly basis.

13.3 Midwest ISO will make no special assessment or other allocation to GridAmerica or other Midwest ISO Owners or ITCs of capital costs associated with the development and implementation of a standard market design. In the event that a standard market design is required by the FERC or otherwise proposed by Midwest ISO, Midwest ISO will present its proposal to recover the costs of development and implementing the standard market design to its stakeholders. The recovery mechanism proposed by Midwest ISO, including any Section 205 application to the FERC, must provide for recovery of standard market design costs from all market participants through a user based mechanism consistent with Midwest ISO Schedule 10. GridAmerica and the NDTOs may intervene in or protest any such filing or FERC proceeding.

13.4 Midwest ISO will make no special assessment or other allocation to GridAmerica or other Midwest ISO Owners or ITCs of capitalized costs associated with the integration of the Southwest Power Pool, its transmission owners or members into Midwest ISO. Midwest ISO will recover such costs under Midwest ISO Schedule 10.

## **ARTICLE 14**

### **INCLUSION OF ADDITIONAL FACILITIES BY GRIDAMERICA**

In the event that GridAmerica acquires or otherwise operates transmission facilities not identified in Schedule 1 to this Agreement, such facilities shall not be deemed "Facilities" or become part of the "GridAmerica System" unless GridAmerica so chooses to designate or assign such facilities, such designation or assignment may occur on a case-by-case basis or on a continuous basis at GridAmerica's option. In no event, however, shall any such facilities be deemed to be "Facilities" or become part of the "GridAmerica System" unless they are located in or electrically interconnected to Midwest ISO systems.

## **ARTICLE 15**

### **CHANGES OR AMENDMENTS TO THIS AGREEMENT**

This Agreement may not be amended or changed without the written agreement of the Parties and acceptance by FERC, as required.

## **ARTICLE 16**

### **GENERAL RESPONSIBILITIES**

16.1 On and after the Control Date, Midwest ISO shall have with respect to its relationship with GridAmerica, and performance of RTO Services contemplated by this Agreement, all those responsibilities to GridAmerica, which Midwest ISO has to other ITC within Midwest ISO, as well as all other obligations of Midwest ISO set forth in Article Three, Sections III and IV of the Midwest ISO Agreement.

16.2 Midwest ISO and its directors, officers, employees, contractors and agents shall, at all times, adhere to the Standards of Conduct set forth in Appendix A to the Midwest ISO Agreement.

16.3 GridAmerica will be subject to Article Four, Section II of the Midwest ISO Agreement in the same manner as an Owner.

16.4 On and after the Control Date, GridAmerica shall be subject to Midwest ISO's Enforcement Authority in the same manner as an Owner under Article Three, Section V of the Midwest ISO Agreement.

## **ARTICLE 17**

### **ASSUMPTION OF LIABILITY**

17.1 Midwest ISO shall assume liability for any injury or damage to persons or property arising from Midwest ISO's own acts or neglect, including the acts or neglect of its Representatives and contractors, and shall release, indemnify and hold harmless GridAmerica from and against all damages, losses, claims, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising from Midwest ISO's gross negligence or willful misconduct in the performance of its duties under this Agreement, except in cases where, and only to the extent that, the gross negligence or willful misconduct of GridAmerica or its Representatives or contractors contributes to the claimed injury or damage.

17.2 GridAmerica shall assume liability for any injury or damage to persons or property arising from its own acts or neglect, including the acts or negligence of its Representatives or contractors, and shall indemnify and hold harmless Midwest ISO from any damages, losses, claims, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or of third parties, arising from GridAmerica's gross negligence or willful misconduct in performing its duties under this Agreement, except in cases where, and



only to the extent that, the gross negligence or intentional willful of Midwest ISO or its Representatives or contractors contributes to the claimed injury or damage. For purposes of Article Two, Section VIII(C) of the Midwest ISO Agreement, GridAmerica and the NDTOs shall be treated as Owners. Nothing in this Agreement shall preclude GridAmerica from seeking indemnification or recovery from its NDTOs.

17.3 GridAmerica shall not be liable to Midwest ISO for any action taken at the direction of Midwest ISO, except in cases of the failure to comport with good business practice or gross negligence of GridAmerica.

17.4 If a Party (or its Representative(s) or contractor(s)) entitled to indemnification or assumption of liability by the other Party under this Agreement (an "Indemnitee") receives written notice of the assertion of any claim or of the commencement of any claim, action, or proceeding made or brought by any person or entity who is not a Party to this Agreement or any affiliate of a Party to this Agreement (a "Third Party Claim") with respect to which indemnification or assumption of liability is to be sought from the other Party (an "Indemnifying Party"), the Indemnitee will give such Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) days after the Indemnitee's receipt of written notice of such Third Party Claim. Such notice shall describe the nature of the Third Party Claim in reasonable detail. The Indemnifying Party will have the right to participate in or, by giving written notice to the Indemnitee, to elect to assume the defense of, any Third Party Claim at such Indemnifying Party's own expense and by such Indemnifying Party's own counsel, and the Indemnitee will cooperate in good faith and may participate in such defense at such Indemnitee's own expense.

17.5 If within ten (10) calendar days after an Indemnitee provides written notice to the Indemnifying Party of any Third Party Claim, the Indemnitee receives written notice from the Indemnifying Party that such Indemnifying Party has elected to assume the defense of such Third Party Claim as provided in the last sentence of Section 17.4, the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, however, that the Indemnitee may assume its own defense by giving written notice to the Indemnifying Party, and the Indemnifying Party will be liable for all reasonable expenses thereof, (i) if the Indemnitee at any time reasonably determines that there may be a conflict between the positions of the Indemnifying Party and of the Indemnitee in conducting the defense of any Third Party Claim, or that there may be legal defenses available to any Indemnitee different from or in addition to those available to the Indemnifying Party; or (ii) if the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Third Party Claim within twenty (20) calendar days (unless waiting twenty (20) calendar days would prejudice the Indemnitee's rights) after receiving notice from the Indemnitee that the Indemnitee believes the Indemnifying Party has failed to take such steps. If, within ten (10) calendar days after an Indemnitee has provided written notice to the Indemnifying Party of any Third Party Claim, the Indemnifying Party has not given written notice to the Indemnitee that such Indemnifying Party has elected to assume the defense of such Third Party Claim, the Indemnifying Party shall be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof. Without the prior written consent of the Indemnitee, the Indemnifying Party will not enter into any settlement of any Third Party Claim. If the Indemnifying Party desires to enter into a settlement of any Third Party Claim, and such

settlement would neither (i) lead to liability or create any financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification or assumption of liability by the other Party hereunder, or (ii) reasonably be construed as an admission of culpability or liability by the Indemnitee or expected to create an adverse precedent which could undermine the Indemnitee's defense of or position with respect to any future claims by third parties; then, in such event, the Indemnifying Party will give written notice to the Indemnitee to that effect. If the Indemnitee fails to consent to such settlement within ten (10) business days after its receipt of such notice, the Indemnitee may assume or continue the defense of such Third Party Claim and, in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnitee up to the date of such notice. Notwithstanding the foregoing, the Indemnitee shall have the right to pay, compromise, or settle any Third Party Claim at any time, provided that in such event the Indemnitee shall waive any right to indemnify or assumption of liability hereunder unless the Indemnitee shall have first sought the consent of the Indemnifying Party in writing to such payment, settlement, or compromise and such consent was either obtained or was unreasonably withheld or delayed, in which event no claim for indemnification or assumption of liability with respect thereto shall be waived.

17.6 Any claim by an Indemnitee under this Article 17 which does not result from a Third Party Claim (a "Direct Claim") will be asserted by giving the Indemnifying Party reasonably prompt written notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable (provided that such estimate shall in no event limit the amount which the Indemnitee is entitled to recover under this Article 17, but in any event not later than thirty (30) calendar days after the Indemnitee becomes aware of such Direct Claim, and the Indemnifying Party will have a period of thirty (30) calendar days within which to respond to such Direct Claim. If the Indemnifying Party does not respond within such thirty (30) calendar day period, the Indemnifying Party will be deemed to have accepted such Direct Claim. If the Indemnifying Party rejects such Direct Claim, the Indemnitee may seek enforcement of its rights under this Agreement.

17.7 If the amount of any loss or damages recoverable under this Article 17, at any time subsequent to the making of a payment in respect thereof, is reduced by recovery, settlement, or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement, or payment by or against any other entity, the amount of such reduction, less any costs, expenses, or premiums incurred in connection therewith (together with interest thereon from the date of payment thereof at the prime rate as published in *The Wall Street Journal*) will promptly be repaid by the Indemnitee to the Indemnifying Party. Upon making any indemnity payment, the Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of the Indemnitee against any third party in respect of the claim to which the payment relates; provided, however, that until the Indemnitee recovers full payment of its loss or damages, any and all claims of the Indemnifying Party against any such third party on account of said payment are hereby made expressly subordinated and subjected in right of payment to the Indemnitee's rights against such third party. Without limiting the generality or effect of any other provision hereof, each such Indemnitee and Indemnifying Party will duly execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

17.8 A failure to give timely notice as provided in this Article 17 will not affect the rights or obligations of any Party hereunder except if, and only to the extent that, as a result of such failure, the Party which was entitled to receive such notice was actually prejudiced as a result of such failure.

## ARTICLE 18

### CONFIDENTIALITY

18.1 Identification of Confidential Information. Each Party acknowledges the importance to the other Party of preserving the confidentiality of the Confidential Information and that a Disclosing Party will comply with this Article 18 in furnishing Confidential Information to a Recipient in connection with the matters contemplated by this Agreement.

18.2 Non-Disclosure to Third Parties. The Recipient shall treat all Confidential Information as the proprietary, sensitive and strictly confidential information of a Disclosing Party, and shall not reveal, divulge or disclose any Confidential Information, at any time or for any reason, to any person or entity, except to the Representatives of such Recipient who have a need to know such Confidential Information for the purposes authorized in this Agreement; provided that such Representatives have been advised and instructed by such Recipient that the Confidential Information is and is to be treated as strictly confidential in accordance with this Agreement. The Recipient shall safeguard the Confidential Information at least to the same extent that it would its own proprietary, sensitive, and confidential information. The Recipient will instruct all of its Representatives to maintain the confidentiality of all Confidential Information and will be responsible for any breach of any obligation set forth in this Article 18 that is caused by any of them.

18.3 Limited Exception Permitted Disclosure of Confidential Information. Notwithstanding the foregoing provisions of Section 18.2, the Recipient may disclose Confidential Information to the extent but only to the extent (a) expressly approved by the Disclosing Party in writing or (b) required by law, a court, or a governmental authority (each, an "Authority"), but only if (i) the Recipient attempts to notify the Disclosing Party as far in advance as practicable prior to making disclosure of its intent to disclose Confidential Information and of the content and mode of communication of the disclosure, and (ii) the Recipient cooperates with the Disclosing Party's efforts to obtain a protective order protecting the Confidential Information from disclosure. In addition, if disclosure is required by an Authority, the Recipient to the extent practicable, will (a) promptly notify the Disclosing Party of the circumstances surrounding the requirement, (b) consult with the Disclosing Party on the advisability of taking legally available steps to resist or narrow the request or requirement, and (c) disclose such Confidential Information only after using all reasonable efforts to comply with clauses (a) and (b) and after cooperating with the Disclosing Party's reasonable efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded to any portion of the Confidential Information designated for such treatment by the Disclosing Party. If such protective order or other assurance is not obtained, the Recipient will furnish only that portion of the Confidential Information that is required, and will seek, to the extent reasonable under the circumstances, to obtain assurances that confidential treatment will be accorded to the Confidential Information by the party(ies) to whom the Recipient is required to disclose.

Anything in this Agreement to the contrary notwithstanding, a Recipient may disclose Confidential Information to FERC; provided such disclosure relates to FERC's evaluation or consideration of matters contemplated by this Agreement and provided that the Recipient seeks to the maximum extent permitted by law and by FERC's regulations to compel FERC to keep the information confidential.

18.4 Ownership and Use of Confidential Information. All Confidential Information delivered by a Disclosing Party to a Recipient pursuant to this Agreement shall be and remain the property of the Disclosing Party, and such Confidential Information shall be promptly returned to the Disclosing Party upon request or the termination of this Agreement. Promptly after performing its obligations under the preceding sentence, the Recipient will, upon request, furnish the Disclosing Party with a certificate executed by an officer, certifying such return. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for a Recipient and all Confidential Information that is oral will be kept by the Recipient subject to the terms of this Agreement or destroyed. Neither the Recipient nor any of its Representatives shall use the Confidential Information for any purpose whatsoever except to consider, evaluate or effectuate matters or services contemplated by this Agreement.

18.5 Term. The obligations of the Parties under this Article 18 shall survive the termination of this Agreement and shall remain binding for a period of two (2) years thereafter; provided, however, that a Recipient's obligations under Section 18.2 with respect to any trade secrets or other proprietary information that are clearly and conspicuously identified as such by the Disclosing Party at the time of disclosure and under the third sentence of Section 18.4 shall continue, without limitation, and nothing in this Section 18.5 shall limit or be construed to limit the term of protection of any laws otherwise protecting such Confidential Information under intellectual property laws.

18.6 Disclaimer of Warranties. Although each of the Parties hereby agrees to use reasonable efforts to include in Confidential Information furnished to the other Party data and information believed by it to be relevant to the discussions, consideration and effectuation, if any, of any actions or matters contemplated by this Agreement, each Party hereby disclaims and does not make hereby any express or implied representation or warranty concerning the accuracy or completeness of any Confidential Information, and no Disclosing Party shall have liability to a Recipient for Recipient's use of any Confidential Information of the Disclosing Party. In addition, determination of the amount of Confidential Information to be disclosed resides solely with the Disclosing Party and disclosure of information of any nature shall not obligate the Disclosing Party to disclose any further Confidential Information.

18.7 No License. No license to a Party, under any trademark, patent, copyright or other intellectual property right is either granted or implied by the conveying of Confidential Information to such Party. None of the Confidential Information which may be disclosed or exchanged by the Parties shall constitute any representation, warranty, assurance, guarantee or inducement by any Party to the other Parties of any kind, and, in particular, with respect to the non-infringement of trademarks, patents, copyrights, or any other intellectual property rights, or other rights of third persons.

18.8 Intellectual Property. Midwest ISO shall not use or display any logo, tradename, trademark, service mark or other intellectual property of GridAmerica or the GridAmerica Three without the prior written consent of GridAmerica to such use or display. Any use or display by Midwest ISO of any logo, tradename, trademark, service mark or other intellectual property of GridAmerica shall be deemed to be pursuant to a non-exclusive, non-transferable, non-assignable license to use such item solely as consented to by GridAmerica, which license will terminate upon any termination of this Agreement, and shall in no way be construed to mean that Midwest ISO has acquired any ownership interest therein. Other issues related to intellectual property will be addressed in certain of the agreements described in the Participation Agreement dated July 3, 2002.

## **ARTICLE 19**

### **MISCELLANEOUS**

19.1 Binding Effect. The obligations of the Parties shall be binding on and inure to the benefit of their respective heirs, successors, assigns, and affiliates.

19.2 Integration, Amendment, and Waiver. This Agreement constitutes the Parties' entire agreement concerning the subject matter hereof and may be amended or modified only by a subsequent agreement in writing. A waiver, discharge, amendment, modification, or termination of this Agreement or any provision hereof, shall be valid and effective only if in writing and executed by both Parties. A written waiver of a right, remedy or obligation under a provision of this Agreement will not constitute a waiver of the provision itself, a waiver of any succeeding right, remedy or obligation under the provision, or a waiver of any other right, remedy, or obligation under this Agreement. Any delay or failure by a Party in enforcing any obligation or in exercising any right or remedy shall not operate as a waiver of it or affect that Party's right later to enforce the obligation or exercise the right or remedy, and a single or partial exercise of a right of remedy by a Party does not preclude any further exercise of it or the exercise of any other right or remedy of that Party.

19.3 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable in any respect or with respect, such provision in all other respects and the remaining provisions of this Agreement, shall nevertheless continue in full force and effect without being impaired or invalidated and shall be enforced to the full extent permitted by law.

19.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

19.5 Notices. Every notice, consent or approval required or permitted under this Agreement shall be valid only if in writing, delivered personally or by mail, confirmed telefacsimile, or commercial courier, and sent by the sender to each other Party at its address or number below, or to such other address or number as each Party may designate by notice to the other Party. A validly given notice, consent or approval will be effective when received if

delivered personally or by telefacsimile, or commercial courier, or certified mail with return receipt requested, postage prepaid.

If to GridAmerica, to:

Nick Winser  
Senior Vice President  
National Grid USA  
25 Research Drive  
Westborough, MA 01582  
(508) 389-2855

If to Midwest ISO, to:

Midwest Independent transmission System Operator, Inc.  
701 City Center Drive  
Carmel, IN 46032  
Attention: James P. Torgerson, President and CEO  
Fax No.: (317) 249-5945

19.6 Governing Law. This Agreement shall be construed and enforced according to the laws of the State of New York (other than the choice of law provisions thereof), except to the extent preempted by the federal law of the United States of America.

19.7 Construction. As used in this Agreement, the words "herein," "hereof and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular article, section, paragraph, or other subdivision. Unless the context of this Agreement otherwise requires, (a) words of any gender will be deemed to include each other gender; (b) words using the singular or plural number will also include the plural or singular number, respectively; (c) the terms or "Section" or "subparagraph" will refer to the specified Section or subparagraph of this Agreement; (d) the term "or" will mean "and/or"; and. (e) the headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

19.8 Injunctive Relief, if a Recipient breaches or threatens to breach any of its obligations contained in Article 18 of this Agreement, the Disclosing Party of the pertinent Confidential Information will be deemed to be irreparably harmed and entitled to seek the issuance of a temporary restraining order or preliminary injunction enforcing this Agreement, and to judgment for damages caused by breach, and to any other remedies provided by applicable law. The non-breaching Party shall also be entitled to recover its attorneys' fees and costs incurred as a result of such breach.

19.9 Assignment. Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, except that (i) GridAmerica may assign its rights and obligations hereunder without such consent to any successor entity by reason of a merger, consolidation,

reorganization, sale of assets, spin-off, foreclosure or other transaction, as a result of which substantially all of the Facilities are acquired by such successor; and (ii) Midwest ISO may assigns its rights and obligations hereunder without such consent to any successor entity by reason of a merger, consolidation, reorganization, sale of assets, spin-off, foreclosure or other transaction, as a result of which substantially all of the assets of Midwest ISO are acquired by such successor.

19.10 Independent Contractors. The Parties hereto acknowledge and agree that in the performance of their respective duties and obligations hereunder they are acting as independent contractors of each other, and neither Party shall represent that an employer/employee, partnership, joint venture, or agency relationship exists between them or between GridAmerica any Owner or other Member, nor shall either Party have the power nor will either Party represent that it has the power to bind the other Party hereto to any contract or agreement.

19.11 Further Assurances. Upon the reasonable request of the other Party, each Party hereto agrees to take any and all such actions as are necessary or appropriate to give effect to the terms set forth in this Agreement and are not inconsistent with the terms hereof.

19.12 Third-Party Joint Agreements. This Agreement shall not be construed, interpreted, or applied in such a manner as to cause GridAmerica to be in material breach, anticipatory or otherwise, of any agreement (in effect on the Effective Date) between GridAmerica and one or more third parties for the joint ownership, operation, sharing (including costs, responsibilities and/or revenues) or maintenance of any electrical facilities covered by this Agreement. GridAmerica shall discuss with Midwest ISO any material conflict between any such third-party joint agreement and this Agreement raised by a third party to such joint agreement, but the resolution of such a conflict shall be and remain within the sole discretion of GridAmerica; provided, however, that GridAmerica shall, if otherwise unresolved, utilize available remedies and dispute resolution procedures to resolve such conflict, including, but not limited to, submitting such conflict to FERC for resolution; provided, further, that in no event shall GridAmerica enter into a resolution of such conflict which would impair the reliability of the Transmission System.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

MIDWEST TRANSMISSION SYSTEM  
OPERATOR, INC.

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



GRIDAMERICA LLC

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

**SCHEDULE 1**

[LIST OF TRANSMISSION FACILITIES]

## **Schedule 2**

### **Security Coordination Service**

The security and reliability of the GridAmerica System shall be the responsibility of Midwest ISO.

GridAmerica is responsible for operating the control areas within its footprint in a secure and reliable manner, and in accordance with the requirements of this Schedule 2. GridAmerica shall operate the control areas within its footprint in coordination with Midwest ISO.

Midwest ISO shall honor the terms of any sub-control area (or like arrangement) entered into by Ameren, ATSI, or NIPSCO in their respective zones that predates this Agreement, and shall work with any such sub-control area to arrange for ongoing coordination of Midwest ISO's security coordinator function with such sub-control area as necessary.

Midwest ISO shall be the Security Coordinator for the GridAmerica System. In this role, Midwest ISO shall conduct security monitoring and emergency response services as referenced in this Schedule.

The rights and obligations of Midwest ISO and GridAmerica with regard to the security monitoring and emergency response aspects of Security Coordination Service shall be identical to the relative rights and responsibilities of Midwest ISO and its member Owners as set out in Sections V.B. ("Security Monitoring") and V.C. ("Emergency Response") of Appendix E to the Midwest ISO Agreement.

### **Schedule 3**

#### **List of Ameren, ATSI, and NIPSCO Pre-existing Transmission Agreements for Service Under OATTs**

Schedule 4

LIST OF AMEREN, ATSI, AND NIPSCO GRANDFATHERED CONTRACTS

SCHEDULE 5  
DELINEATION OF FUNCTIONS

<b>Responsibility</b>	<b>RTO</b>	<b>GridAmerica</b>	<b>Functions performed by MIDWEST ISO</b>	<b>Functions performed by GridAmerica under contract to MIDWEST ISO</b>	<b>Functions performed by GridAmerica</b>
Tariff Administration	Single tariff administered by the RTO.	Unilateral filing rights under sec. 205 for revenue requirements including rate design and incentive rates within its footprint, after consultation with the RTO; separate schedules, but not separate tariff.	Approval of all transmission service except those not handled by MIDWEST ISO OASIS Automation that sinks and sources in GridAmerica footprint respecting all MIDWEST ISO flowgates. Settlement of all transmission service except those that sink and source in GridAmerica although the exception to this provision will not initially apply. One bill to customer including GridAmerica calculated settlement information.	Approval of transmission service not handled by MIDWEST ISO OASIS Automation that sinks and sources in GridAmerica respecting all MIDWEST ISO flowgates. Settlement of transmission service that sinks and sources in GridAmerica although this provision will not initially apply. Transmission of Settlement data to MIDWEST ISO to include on bill.	Settlement of all special services and products offered. Transmission of Settlement data to MIDWEST ISO to include on bill.

**Schedule 5 - Delegation of Functions Allowed by this Order**

<b>Responsibility</b>	<b>RTO</b>	<b>GridAmerica</b>	<b>Functions performed by MIDWEST ISO</b>	<b>Functions performed by GridAmerica under contract to MIDWEST ISO</b>	<b>Functions performed by GridAmerica</b>
OASIS	Single OASIS node.	Site page for GridAmerica service under RTO OASIS node.	OASIS maintenance. Link to page for GridAmerica to offer special services or products. Manage the Transmission Service Request queue for all requests	Coordinate response to Transmission Service Request.	Provide link for GridAmerica special services or products.
ATC/TTC - interim	RTO assures consistency with its processes.	Calculates ATC/AFC, subject to approval by RTO and consistency with RTO processes.	Validates AFC, ATC, CBM, TRM, and TTC calculation. Provides OASIS reservations and schedules to GridAmerica. Calculates AFC/ATC for all MIDWEST ISO footprint. AFC/ATC overrides AFC/ATC by GridAmerica if disputed.	Calculates AFC/ATC with validated calculation. Provides all schedules to MIDWEST ISO. Loads OASIS with AFC/ATC unless disputed.	Calculates TTC, CBM, TRM based on validated calculation.



**Schedule 5 - Delegation of Functions Allowed by this Order**

<b>Responsibility</b>	<b>RTO</b>	<b>GridAmerica</b>	<b>Functions performed by MIDWEST ISO</b>	<b>Functions performed by GridAmerica under contract to MIDWEST ISO</b>	<b>Functions performed by GridAmerica</b>
ATC/TTC - long-term	RTO provides inputs for CBM and TRM and calculates ATC.	Determines TTC using RTO formulas and methodologies.	Calculates all AFC/ATC. Validates TTC calculation.		Provides ratings and parameters for transmission facilities to be used in ATC calculation based on validated calculation. To support MIDWEST ISO in determining policy for calculating TTC, ATC, CBM and TRM.
Maintenance outages	RTO approves maintenance for critical transmission facilities.	Coordinates maintenance of generators and non-critical transmission facilities in its area. Obtains approval for critical transmission facilities.	Identifies all critical transmission facilities for MIDWEST ISO footprint. Approves all outages except generator and non-critical transmission facilities in GridAmerica.	Gathers all transmission outages.	Submit all critical transmission facilities in GridAmerica for MIDWEST ISO approval. Approves all non-critical transmission facilities and coordinates all generator facilities in GridAmerica.

**Schedule 5 - Delegation of Functions Allowed by this Order**

<b>Responsibility</b>	<b>RTO</b>	<b>GridAmerica</b>	<b>Functions performed by MIDWEST ISO</b>	<b>Functions performed by GridAmerica under contract to MIDWEST ISO</b>	<b>Functions performed by GridAmerica</b>
<b>Operational Authority</b>	Operates into, out of, and through transactions.	Schedules and physically operates transmission with source and sink inside footprint.	Approves and implements all schedules in MIDWEST ISO footprint as the Transmission provider. Will have ultimate authority for any disputes with approvals or schedules.	GridAmerica will coordinate actions with MIDWEST ISO and will respect any impacts on MIDWEST ISO flowgates. Monitors all requests and schedules that are not exclusively source and sink transactions.	Monitors or approves and implements all schedules with source and/or sink in GridAmerica as a Scheduling Agent for the Control Areas in the GridAmerica footprint.
<b>Reliability, Security and Coordination</b>	Responsible for reliability for entire region.	Takes corrective action for reliability inside footprint under RTO supervision.	Monitors all critical transmission facilities in MIDWEST ISO footprint. Monitors and approves GridAmerica actions. Interim – Contracts with GridAmerica for MAIN and ECAR to perform Reliability Services.	Monitors critical transmission facilities in GridAmerica footprint. Interim – implement contract to undertake Reliability Service for MAIN and ECAR to continue to provide service.	Monitor GridAmerica footprint and implement corrective action under MIDWEST ISO supervision.

**Schedule 5 - Delegation of Functions Allowed by this Order**

<b>Responsibility</b>	<b>RTO</b>	<b>GridAmerica</b>	<b>Functions performed by MIDWEST ISO</b>	<b>Functions performed by GridAmerica under contract to MIDWEST ISO</b>	<b>Functions performed by GridAmerica</b>
Parallel Path Flows	Manages parallel path flow for region.	Assists in the management of parallel path flows during emergencies.	Monitors all critical transmission facilities for parallel path flow and provides remedial action when needed. Directs GridAmerica in management during emergencies.	Monitors all critical and non-critical transmission facilities in GridAmerica footprint for parallel path flow at all time.	Implements actions for parallel path flow remediation when directed by MIDWEST ISO.

**Schedule 5 - Delegation of Functions Allowed by this Order**

<b>Responsibility</b>	<b>RTO</b>	<b>GridAmerica</b>	<b>Functions performed by MIDWEST ISO</b>	<b>Functions performed by GridAmerica under contract to MIDWEST ISO</b>	<b>Functions performed by GridAmerica</b>
Congestion Management	Responsible for implementing congestion management.	No responsibilities authorized at this time.	Implements TLR for all MIDWEST ISO footprint. Interim – will not implement TLRs for GridAmerica footprint. Implements market based congestion management for all MIDWEST ISO footprint.	Interim - Implement TLRs for GridAmerica footprint.	GridAmerica supplies options for GridAmerica. Takes financial responsibility for all actions that it contracts for.

**Schedule 5 - Delegation of Functions Allowed by this Order**

<b>Responsibility</b>	<b>RTO</b>	<b>GridAmerica</b>	<b>Functions performed by MIDWEST ISO</b>	<b>Functions performed by GridAmerica under contract to MIDWEST ISO</b>	<b>Functions performed by GridAmerica</b>
Ancillary Services	Provider of last resort for ancillary services other than scheduling, system control and dispatch; voltage control; and regulation.	Provide ancillary services, scheduling, system control and dispatch; voltage control; and regulation service. GridAmerica may provide non-real time imbalance energy and ancillary services upon a showing of no harm to an RTO's ancillary service and imbalance energy markets. <sup>1</sup>	Validates provision of ancillary services by GridAmerica to meet tariff requirements.	Monitors provision of ancillary services in GridAmerica footprint.	Proposes and implements approved provision of ancillary services allowed. Any financial obligations that are in addition to standard tariff terms will be borne by GridAmerica in accordance with any contract terms that are negotiated

<sup>1</sup> Ancillary services will be provided and procured in accordance with Section 4.1.6 of the Appendix I Agreement executed by Midwest ISO and GridAmerica.

**Schedule 5 - Delegation of Functions Allowed by this Order**

<b>Responsibility</b>	<b>RTO</b>	<b>GridAmerica</b>	<b>Functions performed by MIDWEST ISO</b>	<b>Functions performed by GridAmerica under contract to MIDWEST ISO</b>	<b>Functions performed by GridAmerica</b>
Planning and Expansion	Authority for region. Directs expansions as required. Develop joint planning protocol.	Develop joint planning protocol. Responsible for planning and expansion of its own system, but where RTO has ultimate authority when there are material impacts outside of GridAmerica.	Approval of GridAmerica planning in GridAmerica footprint when plans have material affect in non-GridAmerica MIDWEST ISO footprint.		Develop plans in GridAmerica footprint.
Market Monitoring	Monitors market for entire region.	No market monitoring duties requested. Proposal to impose and collect penalties is rejected without prejudice.	Provides independent market monitoring in MIDWEST ISO footprint.		

**Schedule 5 - Delegation of Functions Allowed by this Order**

<b>Responsibility</b>	<b>RTO</b>	<b>GridAmerica</b>	<b>Functions performed by MIDWEST ISO</b>	<b>Functions performed by GridAmerica under contract to MIDWEST ISO</b>	<b>Functions performed by GridAmerica</b>
Losses - interim	RTO assures consistency with its processes.	Proposed procedure for losses, subject to approval by RTO and consistency with processes.	MIDWEST ISO approves GridAmerica calculation, application for scheduling, and settlement of losses in GridAmerica footprint.	GridAmerica applies losses in scheduling and settlement in GridAmerica footprint. Both loss methods may be used during the interim period until a single loss method is adopted, but all MIDWEST ISO Transmission Owners will be compensated for losses created by all MIDWEST ISO transactions. Other actions will be taken if this objective puts an early implementation at risk.	GridAmerica develops and proposes calculation of losses in GridAmerica footprint.
Losses - long-term	Single method/system.	No responsibilities authorized at this time.	MIDWEST ISO provides losses for application in scheduling and settlement by GridAmerica in GridAmerica footprint.	Uses MIDWEST ISO provided losses for scheduling and settlement in GridAmerica footprint.	

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

<b>In the Matter of</b>	)	
	)	
<b>AMEREN SERVICES COMPANY</b>	)	<b>Docket No. EC02-_____</b>
<b>FIRSTENERGY CORP.</b>	)	
<b>NORTHERN INDIANA PUBLIC</b>	)	
<b>SERVICE COMPANY</b>	)	
<b>NATIONAL GRID USA</b>	)	
<b>MIDWEST INDEPENDENT SYSTEM</b>	)	
<b>OPERATOR, INC.</b>	)	

**NOTICE OF FILING**

Please take notice that, pursuant to Section 203 of the Federal Power Act ("FPA") on July 3, 2002, Ameren Services Company ("Ameren"), acting as agent for its electric utility affiliates Union Electric Company d/b/a AmerenUE and Central Illinois Public Service Company d/b/a/ AmerenCIPS, FirstEnergy Corp. ("FirstEnergy"), on behalf of its subsidiary American Transmission Systems, Inc., Northern Indiana Public Service Company ("NIPSCO"), National Grid USA ("National Grid") and the Midwest Independent System Operator, Inc. ("Midwest ISO") tendered for filing a Participation Agreement and a pro forma Appendix I Agreement concerning the operation of GridAmerica LLC ("GridAmerica") within the Midwest ISO.

The Participation Agreement obligates the parties, upon receipt of Commission approval and satisfaction of other conditions precedent, to form GridAmerica and to sign the Appendix I Agreement with no material modifications. The Appendix I Agreement will govern the relationship between GridAmerica and the Midwest ISO. Pursuant to the Appendix I Agreement, Ameren, FirstEnergy, and NIPSCO are seeking authorization, under Section 203 of the FPA, to transfer functional control of their transmission facilities to GridAmerica. In turn, GridAmerica will cede certain functions, set forth in Schedule 5 ("Delineation Functions") to the Appendix I Agreement. The Delineation of Functions is fully consistent with the Commission's policy concerning functions that may be performed by an independent transmission company and those which must be performed by a non-profit regional transmission organization. The Appendix I Agreement also addresses rates and revenue allocation in accordance with recent Commission pronouncements. Specifically, in the Appendix I Agreement, the Midwest ISO agrees to support the recovery of lost revenues by Ameren, FirstEnergy, and NIPSCO due to the elimination of rate pancaking. The parties also expect that integration of GridAmerica into the Midwest ISO will not increase the Midwest ISO's Schedule 10 rate adder.



In order to permit the parties to complete the development of the GridAmerica systems, and to integrate those systems into the Midwest ISO systems, in time to permit the commencement of operations during the fourth quarter of 2002, the parties seek an expedited time schedule. The parties have requested that comments regarding this filing be due on July 15, 2002, and that the Commission issue an order approving the filing no later than July 31, 2002.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions (call 202-208-2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: July 15, 2002

Magalie Roman Salas  
Secretary

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