



DIVIDER

STATE OF NORTH DAKOTA
INFORMATION TECHNOLOGY DEPARTMENT
SFN 2053 (4-2002)

PU-401-01-643

Otter Tail Power Company
Transfer Control of Transmission Fac. to MIS
Application

Filed 12/18/2001

Closed 3/4/2002

01

DESCRIPTION

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Northern States Power Company
Transfer Control of Transmission Fac. To MISO
Application

Case No. PU-400-00-91

Otter Tail Power Company
Transfer Control of Transmission Fac. To MISO
Application

Case No. PU-401-01-643

Montana-Dakota Utilities Co.
Transfer Control of Transmission Fac. To MISO
Application

Case No. PU-399-01-651

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **1st day of February, 2002**, she deposited in the United States Mail, Bismarck, North Dakota, **five** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order

The envelopes were addressed as follows:

Mike Swenson
Northern States Power Company
2302 Great Northern Dr
Fargo ND 58102
Cert. No. 7099 3220 0002 8483 1020

Dan Kuntz
P O Box 1695
Bismarck ND 58502-1695
Cert. No. 7099 3229 0002 8483 1037

Pete Beithon
Otter Tail Power Company
215 S Cascade St
Fergus Falls MN 56538-0496
Cert. No. 7099 3220 0002 8483 1044

Don Ball
Montana-Dakota Utilities Co
400 N 4th St
Bismarck ND 58501
Cert. No. 7099 3220 0002 8483 1075


Douglas W Schulz
Montana-Dakota Utilities Co
400 N 4th St
Bismarck ND 58501
Cert. No. 7099 3220 0002 8483 1082

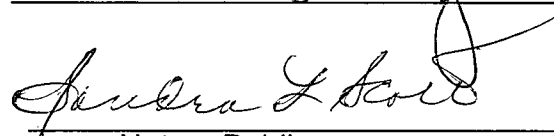
Sharon Helbling further deposes and says that on the **1st day of February, 2002**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Dave Sederquist
Northern Staes Power Company
2302 Great Northern Dr
Fargo ND 58102

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **1st day of February, 2002**.





Notary Public

SEAL



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Northern States Power Company
Transfer Control of Transmission Fac. To MISO
Application

Case No. PU-400-00-91

Otter Tail Power Company
Transfer Control of Transmission Fac. To MISO
Application

Case No. PU-401-01-643

Montana-Dakota Utilities Co.
Transfer Control of Transmission Fac. To MISO
Application

Case No. PU-399-01-651

AFFIDAVIT OF SERVICE BY ORDINARY MAIL OR E-MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **1st day of February, 2002**, she deposited in the United States Mail, Bismarck, North Dakota, envelopes by first class mail, fully prepaid, securely sealed, or by e-mail, the following:

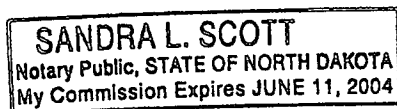
Order

To:

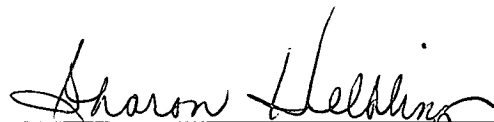
See Attached List


Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **1st day of February, 2002**.



SEAL





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KHND AM Radio
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Harvey ND 58341-0006

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MOTION

January 31, 2002

APPROVED

DATE: 1-31-02
KMF

**Northern States Power Company
Transfer Control of Transmission Facilities To MISO
Application**

Case No. PU-400-00-91

**Otter Tail Power Company
Transfer Control of Transmission Facilities to MISO
Application**

Case No. PU-401-01-643

**Montana Dakota Utilities Co., A Division of MDU
Resources Group, Inc.
Transfer Control of Transmission Facilities to MISO
Application**

Case No. PU-399-01-651

I move the Commission adopt the Order approving the transfer of functional control of certain electric transmission facilities to the Midwest Independent System Operator, Inc., Case Nos. PU-400-00-91, PU-401-01-643, and PU-399-01-651.

JRL/sdh

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Northern States Power Company
Transfer Control of Transmission Facilities to MISO
Application**

Case No. PU-400-00-91

**Otter Tail Power Company
Transfer Control of Transmission Facilities to MISO
Application**

Case No. PU-401-01-643

**Montana Dakota Utilities Co., A Division of MDU
Resources Group, Inc.
Transfer Control of Transmission Facilities to MISO
Application**

Case No. PU-399-01-651

ORDER

January 31, 2002

On March 3, 2000, Northern States Power Company (NSP) (now d/b/a Xcel Energy) filed a petition for approval, to the extent required, to transfer functional control of certain transmission facilities to the Midwest Independent System Operator, Inc. (MISO), Case No. PU-400-00-91. On May 10, 2000, the Commission issued a Notice of Opportunity for Hearing and Notice of Informal Hearing. No comments or requests for hearing were received and an informal hearing was held as scheduled on June 19, 2001.

On December 18, 2001, Otter Tail Power Company (OTP) filed a petition with the Commission for approval, or in the alternative for a finding by the Commission that approval is not necessary, to transfer functional control of certain transmission facilities to MISO, Case No. PU-401-01-643. OTP filed revisions to its list of facilities to be transferred contained in Attachment 3 of its petition on January 18, 2002.

On December 20, 2001, the Federal Energy Regulatory Commission (FERC) issued an order granting Regional Transmission Organization (RTO) status to the MISO, FERC Docket Nos. RT01-87-000 et al.

On December 21, 2001, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (MDU), submitted an informational filing with the Commission regarding transfer of functional control of certain transmission facilities to MISO, Case No. PU-399-01-651.

On December 23, 2001 the Commission issued a combined Notice of Opportunity for Hearing and Notice of Informal Hearing in all three proceedings. The

notice provided until January 23, 2002 for receiving written comments or hearing requests and scheduled an informal hearing for January 25, 2002. The issues identified in the notice were whether transfer of functional control is compatible with the public interest and under what conditions, if any, should the transfers be approved. No comments or hearing requests were received.

On January 25, 2002, an informal hearing in all three proceedings was held as scheduled. Commission staff recommended approval of the transfers subject to certain conditions. At the informal hearing, MDU provided a written memorandum explaining its assertion that approval of the transfer of control is not required because the transfer is not a jurisdictional transfer. NSP and OTP concurred. The companies had previously voiced concerns over the necessity of Commission approval which was addressed by a memo dated December 14, 2001, from the Commission's Chief Counsel.

Each company subsequently filed on January 29, 2002, in response to a request from the Commission, a list indicating the specific staff recommended conditions to which each company would agree. Also on January 29, 2002, NSP filed descriptions that had not been included in its original filing of each specific facility to be transferred.

On January 30, 2002, the Commission's Chief Counsel filed a memorandum responding to the jurisdictional arguments raised by the companies at the informal hearing.

MDU, NSP and OTP are each investor owned electric utilities serving customers in North Dakota. Each company has entered into operating agreements under which MISO will assume functional control of each company's electric transmission lines with operating voltages greater than or equal to 100 kV and network transformers where the two highest tap voltages are greater than or equal to 100 kV. Each company intends to continue to operate and maintain these facilities under the direction of MISO, which will assume ultimate authority and control over facility operations. Each company states that control is being transferred to comply with FERC Order 2000.

Jurisdiction:

On December 14, 2001, by memorandum in response to concerns raised initially in NSP's petition, the Commission's Chief Counsel concluded that the Commission has jurisdiction over transfers of control under N.D.C.C. §49-04-05 because a transfer of control of transmission assets constitutes an encumbrance under that statute. Counsel wrote:

Although a transfer of control, as I understand it, might not transfer possession of the property, it certainly does transfer an interest in the property because it transfers the right of control, and the right of control of the property would result in the diminution of the value of the property. It is my opinion that "transfer of control" constitutes an encumbrance on the

property, and therefore N.D.C.C. Section 49-04-05 requires that the utility obtain Commission approval prior to such transfer.

At the informal hearing, MDU filed a memorandum specifying its objection to the Commission's assertion of jurisdiction over MDU's transfer of functional control of transmission facilities to the MISO. NSP and OTP concurred in MDU's objection.

MDU asserts that the lines involved are subject to the FERC's exclusive jurisdiction, and cites *Northern States Power Co. v. Hagen*, 314 N.W.2d 32 (N.D. 1981) to support its position. MDU asserts that N.D.C.C. § 49-21.1-01.1 provides the demarcation between federal and state jurisdiction over transmission in interstate commerce and local distribution for purposes of N.D.C.C. Title 49 in that lines designed to operate at a voltage of 41.6 kilovolts or more are transmission lines and lines designed to operate at a voltage of less than 41.6 kilovolts are distribution lines. MDU further asserts that the Commission's general jurisdiction pursuant to N.D.C.C. §49-02-01(4) is over electric utilities engaged in generation and distribution and does not include transmission.

The Commission's Chief Counsel filed a memorandum on January 30, 2002, responding to MDU's assertions. Commission Counsel points out that MDU's interpretation that N.D.C.C. § 49-21.1-01.1 establishes for N.D.C.C. Title 49 the demarcation between transmission lines that are interstate in nature and distribution lines that are local is inaccurate. The statute reads as follows:

Electricity transmission and distribution lines – Differentiation.

Except for purposes of transmission siting under chapter 49-22 and regulatory accounting including the determination of the demarcation between federal and state jurisdiction over transmission in interstate commerce and local distribution, for purposes of this title and chapters 57-33 and 57-33.1, lines designed to operate at a voltage of 41.6 kilovolts or more are transmission lines, and lines designed to operate at a voltage of less than 41.6 kilovolts are distribution lines.

Counsel states:

It is important to note that the statute provides an exception that excludes that differentiation and demarcation for purposes of "regulatory accounting including the determination of the demarcation between federal and state jurisdiction over transmission in interstate commerce and local distribution." This law was enacted during the 1999 legislative session. I reviewed the legislative history of this statute, and it is clear that the purpose of the statute was to create a differentiation between transmission and distribution lines for taxation purposes. There is no apparent intent to distinguish between transmission and distribution for state and federal jurisdictional purposes.

Prior to 1999, North Dakota law did not specifically make any specific distinction between transmission and distribution. However, because determination of the demarcation point for regulatory accounting purposes is not established by N.D.C.C. §49-21.1-01.1, the fact that N.D.C.C. §49-02-01(4) does not mention transmission is not particularly relevant for these purposes.

MDU cites the North Dakota Supreme Court, in *Northern States Power Company v. Hagen*, 314 N.W.2d 32 (N.D. 1981), as authority that the lines involved in this filing are subject to the FERC's exclusive jurisdiction. However, the portion of that case relied upon by MDU for its position relates to FERC authority to regulate interstate wholesale utility rates and not for the determination of FERC jurisdiction over transmission lines. The court stated at page 37 that:

Congressional enactments that do not exclude all state legislation in the same field nevertheless override state laws with which they conflict. U.S. Const., Art. VI. The criterion for determining whether or not there is a conflict is whether the state's law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

Because MDU did not cite any federal law that would preempt state law that requires Commission approval for the transfer of control of transmission assets, I don't believe it is necessary to delve into an inquiry about whether there is a conflict between N.D.C.C. §49-04-05 and federal law to determine this issue. Therefore, it remains my opinion Commission approval is required for the transfer of the control of transmission assets to MISO.

The Commission agrees with Counsel that North Dakota law requires the companies to obtain Commission approval prior to the transfer of control contemplated by the filings in this case, and the law requiring such approval has not been federally preempted.

Public Interest:

Maintaining reliable service at reasonable rates is paramount to the public interest. MDU, NSP and OTP each forecast some initial increase in transmission expense due to implementation of a volumetric adder to recover MISO administrative expenses under Schedule 10 of the MISO Open Access Transmission Tariff (OATT). The companies further expect some initial loss of revenue from discontinuance of wholesale transmission transactions presently being conducted through the Mid-Continent Area Power Pool (MAPP). However, these expected costs do not outweigh the potential benefits of a regional transmission system. Potential benefits include gains in market efficiencies from the elimination of rate pancaking and the

establishment of one-stop shopping for regional transmission services. Further gains in operating efficiencies may result from improved congestion management practices, internalized parallel path flows and more regionalized transmission planning.

The FERC found MISO in conformance with Order 2000 short-term reliability requirements when granting RTO status in Docket Nos. RT01-87-000 et al. MISO will have exclusive authority to receive, confirm and implement all interchange schedules and to order redispatch of any generator connected to transmission facilities it operates. MISO will approve or disapprove all scheduled outages of transmission facilities to ensure regional accommodation within established reliability standards. MISO will honor and monitor compliance with reliability standards established by MAPP and other NERC regional reliability councils. MISO will also coordinate transmission planning throughout the region and will continue using MAPP sub regional planning groups.

Generally, centralizing grid operations over a larger region should enhance overall system reliability. However, increased wholesale transactions resulting from increases in market efficiency could lead to more problems with transmission constraints, redispatches and curtailments.

Any abuse of market power within MISO could result in reduced reliability and increased costs. The FERC, in an order issued September 16, 1998 in FERC Docket No. EC98-1438-000, required MISO, on an ongoing basis, to monitor the competitive and reliability effects of allowing current control area operators to continue to perform some control area functions. The FERC required MISO to file an 18-month assessment of control area operations. The FERC further required MISO to include, in its ongoing as well as its 18-month assessments, a report on the effectiveness of the proposed system of fines and penalties and its ability to ensure compliance with the ISO's orders and instructions.

The FERC accepted a market monitoring plan filed by MISO in Docket Nos. RT01-87-000 et al. The plan provides that MISO will enlist an *independent market monitor* to monitor energy markets and provide annual reports to the FERC and state regulatory agencies regarding the competitive performance and efficiency of markets and services.

The Commission finds that the overall effect of the proposed transfers on rates and reliability is not fully known at this time. Preliminary indications are generally positive, but many issues on future impact remain unresolved.

Commission staff recommended approval of the transfers subject to conditions designed to address areas of concern over potential future impacts. All three companies objected to staff's recommendation that approval be conditioned on each company's agreement to not assert federal preemption as a defense challenging a Commission decision disallowing costs from MISO as unreasonable or imprudent. Each company agreed to all remaining staff recommended conditions. The

Commission finds those remaining conditions reasonable and necessary to facilitate the transition to MISO while still protecting the public interest.


Order


The Commission Orders:

1. Transfer of functional control of MDU's transmission facilities to the MISO, as described in MDU's filing of December 21, 2001, is approved subject to the conditions listed in ordering paragraph 4 below.
2. Transfer of functional control of NSP's transmission facilities to the MISO, as described in NSP's filings of March 3, 2000 and January 29, 2002, is approved subject to the conditions listed in ordering paragraph 4 below.
3. Transfer of functional control of OTP's transmission facilities to the MISO, as described in OTP's filings of December 21, 2001 and January 18, 2002, is approved subject to the conditions listed in ordering paragraph 4 below.
4. Approval of each transfer is subject to the following conditions:
 - a. MDU, NSP and OTP shall provide the Commission with notice of all MISO tariff filings and report to the Commission on any proposed changes that may ultimately affect retail rates to North Dakota customers.
 - b. MDU, NSP and OTP shall notify the Commission when tariff or other changes are proposed that may reasonably be construed as having the potential to negatively affect the transmission service priority of native load or otherwise hamper reliability to North Dakota customers.
 - c. Each company shall include in its annual report to the Commission a report and analysis of:
 - i. How MISO membership has affected overall transmission costs and revenues and overall energy costs, including the ability to use least-cost generation and access low-cost power on the wholesale market; and
 - ii. Each instance where MISO directed redispatch of generation owned by each respective company for reliability reasons, including an explanation of financial impact on rates and the reason for redispatch if known.
 - d. MDU, NSP and OTP shall work with the Commission to promote MISO policies that allow each company to continue to meet its obligations to provide least-cost power to retail customers.
 - e. MDU, NSP and OTP shall work with the Commission to address through FERC or the MISO stakeholder advisory process, any reliability concerns that result from the transfer of functional control of transmission facilities to MISO.

- f. MDU, NSP and OTP shall report to the Commission each instance where MISO directed actions result in an interruption of firm retail electric service to retail customers in North Dakota.
 - g. MDU, NSP and OTP shall provide to the Commission a copy of any Form EIA-417R Power System Emergency Report submitted to the United States Department of Energy.
 - h. MDU, NSP and OTP shall provide to the Commission a copy of any MISO report to the FERC regarding competitiveness or reliability of control area operations.
5. MDU, NSP and OTP may coordinate the above reporting requirements with each other or with the MISO to avoid duplicative reporting.
6. This decision does not reach the issue of reasonableness of any costs associated with the transfer of functional control of transmission facilities to the MISO, the MISO's operation of those facilities, the services taken from the MISO by each company, or each company's MISO membership.

PUBLIC SERVICE COMMISSION


Anthony T. Clark
Commissioner


Susan E. Wefald
President


Leo M. Reinbold
Commissioner

MEMORANDUM

TO: Commissioners Wefald, Reinbold and Clark
PUD

FROM: Bill Binek

DATE: January 30, 2002

RE: Transfer of Control of Transmission assets to MISO – Case Nos.
PU-400-00-91, 401-01-643 and 399-01-651

MDU objected to the Commission's assertion of jurisdiction over MDU's operational transfer of transmission facilities to MISO. MDU does not believe the Commission has authority under N.D.C.C. Title 49 over this transfer of control. MDU states that the lines involved are subject to the FERC's exclusive jurisdiction, and cites Northern States Power Co. v. Hagen, 314 N.W.2d 32 (N.D. 1981) to support its position. MDU also states that N.D.C.C. § 49-21.1-01.1 provides the demarcation between federal and state jurisdiction over transmission in interstate commerce and local distribution for purposes of N.D.C.C. Title 49 in that lines designed to operate at a voltage of 41.6 kilovolts or more are transmission lines and lines designed to operate at a voltage of less than 41.6 kilovolts are distribution lines. MDU further states that the Commission's general jurisdiction pursuant to N.D.C.C. §49-02-01(4) is over electric utilities engaged in generation and distribution and does not include transmission. In addition, MDU states that in transferring operational control over its transmission facilities, it is not financially encumbering them, and therefore a transfer of operational control to MISO does not fit the meaning and intent of N.D.C.C. § 49-04-05.

The issue concerning whether or not the transfer of control of the transmission assets to another entity falls within the meaning and intent of N.D.C.C. §49-94-05 is adequately covered in my memorandum of December 14, 2001. It is my opinion that such transfer would constitute an encumbrance as that term is defined. The law does not require that the encumbrance be a financial encumbrance as suggested by MDU. My December 14, 2001 memorandum addressed only the issue of whether or not the transfer of control of the transmission assets constituted an encumbrance under N.D.C.C. §49-04-05

MDU's interpretation that N.D.C.C. § 49-21.1-01.1 establishes for N.D.C.C. Title 49 the demarcation between transmission lines that are interstate in nature and distribution lines that are local is inaccurate. The statute reads as follows:

Electricity transmission and distribution lines – Differentiation.

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more are transmission lines, and lines designed to operate at a voltage of less than 41.6 kilovolts are distribution lines.

It is important to note that the statute provides an exception that excludes that differentiation and demarcation for purposes of **“regulatory accounting including the determination of the demarcation between federal and state jurisdiction over transmission in interstate commerce and local distribution.”** This law was enacted during the 1999 legislative session. I reviewed the legislative history of this statute, and it is clear that the purpose of the statute was to create a differentiation between transmission and distribution lines for taxation purposes. There is no apparent intent to distinguish between transmission and distribution for state and federal jurisdictional purposes.

Prior to 1999, North Dakota law did not specifically make any specific distinction between transmission and distribution. However, because determination of the demarcation point for regulatory accounting purposes is not established by N.D.C.C. §49-21.1-01.1, the fact that N.D.C.C. §49-02-01(4) does not mention transmission is not particularly relevant for these purposes.

MDU cites the North Dakota Supreme Court, in *Northern States Power Company v. Hagen*, 314 N.W.2d 32 (N.D. 1981), as authority that the lines involved in this filing are subject to the FERC’s exclusive jurisdiction. However, the portion of that case relied upon by MDU for its position relates to FERC authority to regulate interstate wholesale utility rates and not for the determination of FERC jurisdiction over transmission lines. The Court stated at page 37 that:

Congressional enactments that do not exclude all state legislation in the same field nevertheless override state laws with which they conflict. U.S. Const., Art. VI. The criterion for determining whether or not there is a conflict is whether the state’s law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”

Because MDU did not cite any federal law that would preempt state law that requires Commission approval for the transfer of control of transmission assets, I don’t believe it is necessary to delve into an inquiry about whether there is a conflict between N.D.C.C. §49-04-05 and federal law to determine this issue. Therefore, it remains my opinion Commission approval is required for the transfer of the control of transmission assets to MISO.

-----Original Message-----

From: Binek, William W.
Sent: Friday, December 14, 2001 10:45 AM
To: Jeffcoat-Sacco, Ilona; Legal; PUD; Comm
Subject: RE: Transfer of Control of Transmission assets to MISO

N.D.C.C. Section 49-04-05 provides that “[a] public utility may not dispose of, encumber, merge, or consolidate its franchise, works, or system necessary or useful in the performance of its duties to the public without prior commission approval.” That section does not say anything about a transfer of control. The only reason that a public utility would need Commission approval for a transfer of control is if a transfer of control would constitute an encumbrance. Ordinarily, an encumbrance is thought of in terms of a lien, lease, mortgage or security interest that diminishes the value of the property.

I believe that the act of transferring control to another entity constitutes the conveyance of some interest in the property. A transfer of control is similar in many respects to a lease of property to another. A lease is a contract by which the owner of the property gives up the possession and use of property to another for a specified period of time. A transfer of control might not transfer possession of the property, but it certainly transfers the use of the property.

The verb “transfer” means “[t]o convey or remove from one place, person, etc., to another; pass or hand over from one to another; to change over the possession or control of. . . .” Black’s Law Dictionary 1497 (6th ed. 1990). The noun “transfer” means “[t]he sale and every other method, direct or indirect, of disposing of or parting with property or with an interest therein, or with the possession thereof, or of fixing a lien upon property or upon an interest therein, absolutely of conditionally, voluntary or involuntary, by or without judicial proceedings, as a conveyance, sale, payment, pledge, mortgage, lien, encumbrance, gift, security, or otherwise.” *Id.* The term “interest” is defined as “any right in the nature of property, but less than title.” *Id.* at 812. An “encumbrance”, as it relates to real property, is defined as “[a]ny right to, or interest in, land which may subsist in another to diminution of its value, . . .” *Id.* at 527. “While encumbrances usually relate to real property, a purchaser of personal property is provided with a warranty against unknown encumbrances.” *Id.*

It appears to me that N.D.C.C. Section 49-04-05 would apply to a “transfer of control.” Although a transfer of control, as I understand it, might not transfer possession of the property, it certainly does transfer an interest in the property because it transfers the right of control, and the right of control of the property would result in the diminution of the value of the property. It is my opinion that “transfer of control” constitutes an encumbrance on the property, and therefore N.D.C.C. Section 49-04-05 requires that the utility obtain Commission approval prior to such transfer.

North Dakota Public Service Commission
INFORMAL HEARING
January 25, 2001

| | |
|--|--|
| Northern States Power Company Transfer Functional Control To MISO | PU-400-00-91 Filed: 3/03/00 |
| Otter Tail Power Company Transfer Functional Control To MISO | PU-401-01-643 Filed: 12/18/01 |
| Montana-Dakota Utilities Co. Transfer Functional Control To MISO | PU-399-01-651 Filed: 12/21/01 |

Summary of Proposals: Northern States Power Company (NSP), Otter Tail Power Company (Otter Tail) and Montana-Dakota Utilities Co. (MDU) have each made filings regarding the transfer of functional control of electric transmission facilities to the Midwest Independent System Operator, Inc. (MISO).

Procedural History:

On March 3, 2000, in Case No. PU-400-00-91, NSP (now Xcel Energy) filed a petition for approval to transfer functional control of certain transmission facilities to MISO. On May 10, 2000, the Commission issued a Notice of Opportunity for Hearing and Notice of Informal Hearing. No comments or requests for hearing were received and an informal hearing was held as scheduled on June 19, 2001. NSP's application has since been on hold due to delays in establishing MISO operations and other factors.

On May 19, 2000, in Docket No. EC00-60-000, the FERC approved NSP's application to transfer operational control of transmission facilities to the MISO.

On October 11, 2001 in Docket No. ER98-1438-007, MISO's Open Access Transmission Tariff (OATT) was approved by the FERC, but revisions have since been filed and not yet approved. MISO's OATT is posted on the web at <http://www.midwestiso.org/tariff.shtml>

On November 21, 2001, in Docket No. EC01-151-000, the FERC approved Otter Tail's application to transfer operational control of transmission facilities to the MISO.

On December 18, 2001, in Case No. PU-401-01-643, Otter Tail filed a petition with the Commission for approval to transfer functional control of certain transmission facilities to MISO.

On December 20, 2001, in Docket Nos. RT01-87-000 et al. the FERC issued an Order determining that MISO satisfies the four characteristics of an RTO (independence, scope and configuration, operational authority and short term reliability) and granting RTO status to MISO. FERC also required that the MISO

make a compliance filing to: 1) eliminate certain veto privileges of transmission owners; 2) allow merchant projects to participate in the transmission planning process; 3) require ancillary services to be provided at least cost; 4) incorporate the market monitoring plan into the Open Access Transmission Tariff (OATT); and 5) revise the market monitoring plan to implement a 45 day deadline for MISO to agree or disagree with a recommendation of the Independent Market Monitor.

On December 21, 2001, in Case No. PU-399-01-651, MDU submitted an informational filing with the Commission regarding transfer of functional control of certain transmission facilities to MISO. MDU's Section 203 filing required by FERC to transfer operational control of certain transmission facilities was also filed on December 21, 2001 and has been designated Docket No. EC02-38-000. No FERC decision has been issued at this time.

On December 23, 2001 the Commission issued a combined Notice of Opportunity for Hearing and Notice of Informal Hearing in all three proceedings. The notice provided until January 23, 2002 for receiving written comments or hearing requests and scheduled an informal hearing for January 25, 2002. No comments or hearing requests have been received. The issues identified in the notice were whether transfer of functional control is compatible with the public interest and under what conditions, if any, should the transfers be approved.

On February 1, 2002, MISO expects to begin administering its Open Access Transmission Tariff (OATT).

Public Interest:

On a national scope, the FERC has determined that transfer of control to an RTO is in the public interest. However, it is not yet as clear whether joining MISO is compatible with the public interest in North Dakota. Generally, Staff views maintaining reliable service at reasonable rates as paramount to the public interest in North Dakota.

Rates:

MISO Adder

Joining MISO will result in a charge on transmission service imposed under MISO OATT Schedule 10 for recovering MISO administrative expenses. This amount is presently capped at \$0.15 per MWH during the initial six years with any over-expenditure deferred to a five-year amortization beginning when the cap expires. Participants withdrawing from MISO before the full amortization will pay their share of the deferral in an exit fee.

The \$0.15 cap amount may have been set higher than necessary now that FERC has required in Opinion 453 that the MISO adder be applied to all transactions, including grandfathered agreements and network services for serving native load. There may be further relief in the adder amount as

additional volumes are brought into MISO from the recently approved Michigan ITC, the SWPP merger and possibly from the Alliance companies. FERC has set some revisions recently proposed to Schedule 10 for settlement procedures before an ALJ in Docket No. ER02-111-000, Order dated December 14, 2001.

Utilities have been paying fees to MAPP for various services that have been unbundled and will be provided by MISO in the future. MAPP has also been charging a transmission adder of \$0.10 per MWh on wholesale transactions. The cost of the MISO adder should be at least partially offset by elimination of the MAPP adder and savings from the unbundling of MAPP fees. The utilities estimate:

| Company | \$.15 Adder Cost | MAPP Fee Savings | Difference |
|---------------|------------------|------------------|------------|
| NSP Companies | \$8 million | No Data | No Data |
| MDU | \$324,000 | \$130,000 | \$196,000 |
| Otter Tail | \$600,000 | \$200,000 | \$400,000 |

MISO adder amounts not offset by MAPP fee savings could be offset by gains in market efficiencies resulting from the removal of artificial boundaries and seems between service areas. A single regional MISO transmission tariff could increase market choices due to one-stop shopping for regional transmission service and elimination of rate pancaking. Improvements in operating efficiencies could also result from improved congestion management practices, internalized parallel path flows and more regionalized transmission planning. However, some of these potential gains may be somewhat dependent on what happens now that FERC has denied the RTO application of the Alliance companies.

Network Service

Native load will be served under the MISO OATT under FERC Opinion No. 453. However, in a December 31, 2001 compliance filing for Opinion No. 453, MISO proposed to not actually bill its Transmission Owners for network service since any monies collected would be subsequently returned to the transmission owner.

Point-to-Point Service

Zonal pricing under the MISO OATT is intended to minimize cost shifting between utilities over an initial transition period of six years. Each control area is designated as a separate pricing zone with transmission rates based on revenue requirements and usage volumes of the zone. Transmission service is to be billed at the zonal rate where the load is located, regardless where the service originated.

Basin Electric Power Cooperative has previously expressed concerns to the Commission that charging the load zone rate would cause cost shifting in the

WAPA control area, where many have been considering whether to form an alternative “Crescent Moon” RTO. Basin estimated that joining MISO would increase its transmission rates from \$3.09/kW month to as much as \$6/kW month and requested the FERC to order mediation concerning the terms on which it could join MISO. The FERC denied Basin’s motion based partially on a response filed by the Missouri River Municipal Power Association and also on concerns that mediation might cause other cost shifting problems. (See page 25 of FERC’s 12/20/01 MISO Order)

MDU is within the WAPA control area, but MISO has agreed to treat MDU as a separate zone. Otter Tail and Excel have their own zones as both operate control areas. This makes the overall transmission revenue requirements and resulting rates for point-to-point service similar to those of each utility’s OATT filed under Order 888. However, these tariffs were not used for transactions that were grandfathered or transacted under MAPP Schedule F. All three utilities preliminarily estimate net revenue loss from the elimination of schedule F:

| Company | Sched.F Revenue | MISO Revenue | Difference |
|---------------|-----------------|--------------|------------|
| NSP Companies | \$4,568,204 | No Data | No Data |
| MDU | \$563,000 | \$0 | -\$563,000 |
| Otter Tail | \$790,000 | \$700,000 | -\$90,000 |

Reviewing transmission revenue requirements and what percentage they are of total overall revenue requirements may help put the above numbers into perspective. The utilities report:

| Company | Annual Transmission Revenue Requirement | Transmission Revenue as Approximate Percentage of Total Overall Revenues |
|---------------|---|--|
| NSP Companies | \$130 million | 6% |
| MDU | \$14 million | 15% |
| Otter Tail | \$19 million | 10 to 11% |

After the six-year transition period, MISO participants will vote whether to switch from zonal rates to a single region-wide “postage stamp” rate. Postage stamp rates would likely be in the public interest of North Dakota where transmission rates are generally above average. However, the MISO participation agreement requires a unanimous vote of the participants before switching and it is doubtful that participants with below-average rates would agree to switch.

Rates under the MISO OATT are posted on the MISO web page at:
http://www.midwestiso.org/news/Dec_10_2001_zonal_pricing.pdf

Reliability:

FERC found MISO in conformance with Order 2000 short-term reliability requirements when granting RTO status last month. Local utility operators will

still perform control area functions, but MISO will have superseding authority. MISO will have exclusive authority to receive, confirm and implement all interchange schedules and to order redispatch of any generator connected to transmission facilities it operates. MISO will approve or disapprove all scheduled outages of transmission facilities to ensure accommodation within established reliability standards. MISO will honor and monitor compliance with reliability standards established by MAPP and other NERC regional reliability councils.

MISO will coordinate long-term system planning throughout the region and will continue using the Missouri Basin, Red River Valley and other MAPP sub regional planning groups.

Generally, centralizing grid operations over a larger region should enhance overall system reliability. However, the MISO OATT will likely cause increased wholesale transactions, which could lead to more problems with constraints, redispatches and curtailments. Also, regional MISO decisions may not always produce the best local results.

Market Power:

MISO will enlist a consulting firm to act as an Independent Market Monitor (IMM). The IMM will monitor energy markets and provide annual reports to the FERC and state regulatory agencies regarding the competitive performance and efficiency of RTO markets and services.

Concerns in other jurisdictions have been raised that MISO may not be truly independent, which could lead to market power abuse resulting in reduced reliability and increased costs.

The Illinois Commerce Commission (ICC) filed a petition with the FERC on January 18, 2002 for rehearing and clarification of its December 19th MISO decision regarding the issues of independence, configuration, and market monitoring. The ICC is concerned that the MISO structure is not truly independent because MISO depends on the participation of market participant utilities that own the transmission facilities MISO operates and MISO can be influenced by those utilities.

Also on January 18, 2002, the FERC announced plans to create a new Office of Market Oversight and Investigations, intended to prevent manipulation of U.S. wholesale energy prices and supplies. FERC expects the office to be operational in 90 days with a staff of more than 50. The office was designed to strengthen FERC's ability to pursue action against companies that engage in questionable market behavior.

The FERC Order issued September 16, 1998 in FERC Docket No. EC98-1438-000 requires MISO to monitor the competitive and reliability effects of allowing

current control area operators to continue to perform some control area functions, not only in an 18-month assessment but also on an ongoing basis. If concerns in this regard arise it is the obligation of the ISO to resolve them. In the event the ISO cannot resolve them, the ISO is obligated to report the problem to FERC and other appropriate regulatory authorities. MISO is further required to include, in its ongoing as well as its 18-month assessments, a report on the effectiveness of the proposed system of fines and penalties and their ability to ensure compliance with the ISO's orders and instructions.

Recommendation:

Staff concludes that the overall effect on rates and reliability is not fully known at this time. Preliminary indications are generally positive, but many issues on future impact remain unresolved.

In order to facilitate the transition while still protecting the public interest, Staff recommends the imposition of reporting requirements designed to address areas of concern over future impacts. Staff recommends approval of each proposed transfer with conditions:

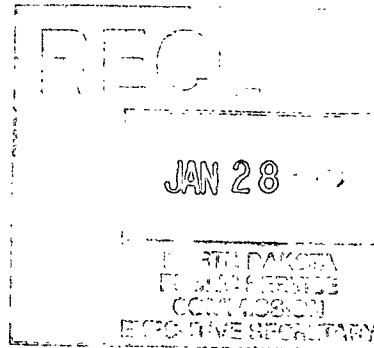
1. Provide the Commission with notice of all MISO tariff filings and report to the Commission on any proposed changes that may ultimately affect retail rates to North Dakota customers.
2. Notify the Commission when tariff or other changes are proposed that may reasonably be construed as having the potential to negatively affect the transmission service priority of native load or otherwise hamper reliability to North Dakota customers.
3. Provide the Commission with an annual report and analysis of:
 - a. How MISO membership has affected overall transmission costs and revenues and overall energy costs, including the ability to use the utilities own least-cost generation and ability to access low-cost power on the wholesale market; and
 - b. Each instance where MISO directed redispatch of utility's owned generation for reliability reasons, including an explanation of financial impact on rates and the reason for redispatch if known.
4. Work with the Commission to promote MISO policies that allow utilities to continue to meet their obligations to provide least-cost power to retail customers.
5. Work with the Commission to address through FERC or the MISO stakeholder advisory process, any reliability concerns that result from the transfer of operational control of transmission facilities to MISO.
6. Report to the Commission each instance where MISO directed actions resulted in an interruption of firm retail electric service to retail customers in North Dakota.

7. Provide to the Commission a copy of any Form EIA-417R Power System Emergency Report submitted to the DOE.
8. Provide to the Commission a copy of any MISO reports to FERC regarding competitiveness or reliability of control area operations.
9. Condition approval on the utility's agreement to not assert federal preemption as a defense challenging a Commission decision disallowing costs from MISO as unreasonable or imprudent.

Staff further recommends the Commission specifically defer any decision regarding the reasonableness of any costs the utilities may seek to recover from retail customers associated with the transfer of operational control of transmission facilities to the MISO, the MISO's operation of those facilities, the services taken from the MISO by the utility, or the utility's MISO membership.

Prepared by: Jerry Lein

215 South Cascade Street
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218 739-8200
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January 16, 2002

VIA FAX and OVERNIGHT MAIL

Mr. Jon H. Mielke
Executive Secretary
North Dakota Public Service Commission
State Capitol – 600 E. Boulevard
Bismarck, ND 58505-0480

Re: Agreement on list of Staff recommendations presented at the January 25, 2002 Informal Hearing on Docket # PU-401-01-643.

Dear Mr. Mielke:

Below is the list of recommendations presented by the Commission Staff at the January 25, 2002 Informal Hearing on Docket # PU-401-01-643. At the request of Commissioner Wefald at the informal hearing, Otter Tail Power Company indicates which recommendations it agrees to use.

Recommendation:

Staff concludes that the overall effect on rates and reliability is not fully known at this time. Preliminary indications are generally positive, but many issues on future impact remain unresolved.

In order to facilitate the transition while still protecting the public interest, Staff recommends the imposition of reporting requirements designed to address areas of concern over future impacts. Staff recommends approval of each proposed transfer with conditions:

1. *Provide the Commission with notice of all MISO tariff filings and report to the Commission on any proposed changes that may ultimately affect retail rates to North Dakota customers. **Otter Tail Power Company will agree to do this.***
2. *Notify the Commission when tariff or other changes are proposed that may reasonably be construed as having the potential to negatively affect the transmission service priority of native load or otherwise hamper reliability to North Dakota customers. **Otter Tail Power Company will agree to do this.***
3. *Provide the Commission with an annual report and analysis of:*
 - a. *How MISO membership has affected overall transmission costs and revenues and overall energy costs, including the ability to use the utilities own least-cost generation and ability to access low-cost power on the wholesale market; and*
 - b. *Each instance where MISO directed redispatch of utility's owned generation for reliability reasons, including an explanation of financial impact on rates and the reason for redispatch if known.*

9 **PU-401-01-643**

Pages: 2

Response to Staff Recommendation

by Otter Tail Power Company

01/28/2002 CC: Comm Legal Illona, Pat, Jerry Mike

Otter Tail Power Company will agree to do this.

4. *Work with the Commission to promote MISO policies that allow utilities to continue to meet their obligations to provide least-cost power to retail customers. **Otter Tail Power Company will agree to do this.***
5. *Work with the Commission to address through FERC or the MISO stakeholder advisory process, any reliability concerns that result from the transfer of operational control of transmission facilities to MISO. **Otter Tail Power Company will agree to do this.***
6. *Report to the Commission each instance where MISO directed actions resulted in an interruption of firm retail electric service to retail customers in North Dakota. **Otter Tail Power Company will agree to do this.***
7. *Provide to the Commission a copy of any Form EIA-417R Power System Emergency Report submitted to the DOE. **Otter Tail Power Company will agree to do this.***
8. *Provide to the Commission a copy of any MISO reports to FERC regarding competitiveness or reliability of control area operations. **Otter Tail Power Company will agree to do this.***
9. *Condition approval on the utility's agreement to not assert federal preemption as a defense challenging a Commission decision disallowing costs from MISO as unreasonable or imprudent. **Otter Tail Power Company will not agree to do this.***

Staff further recommends the Commission specifically defer any decision regarding the reasonableness of any costs the utilities may seek to recover from retail customers associated with the transfer of operational control of transmission facilities to the MISO, the MISO's operation of those facilities, the services taken from the MISO by the utility, or the utility's MISO.

Should you have any questions, please feel free to call me at 218-739-8607.

Thank you for your consideration.

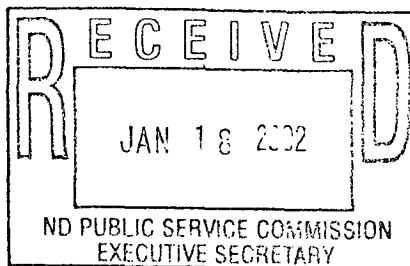
Sincerely,



Pete Beithon
Supervisor, Regulatory Economics
Otter Tail Power Company
Enclosures

215 South Cascade Street
PO Box 496
Fergus Falls, Minnesota 56538-0496
218 739-8200
www.otpco.com (web site)

January 17, 2002



Mr. Jon H. Mielke
Executive Secretary
North Dakota Public Service Commission
State Capitol – 600 E. Boulevard
Bismarck, ND 58505-0480

Re: Revised Facilities List, Attachment C of Otter Tail Power Company's Petition for Approval of Transfer of Operational Control of Certain Transmission Facilities to the MISO. Docket # PU-401-01-643.

Dear Mr. Mielke:

Enclosed for filing please find the original, along with seven copies, a revised facilities list, Attachment C of Otter Tail Power Company's Petition for approval of Transfer of Operational Control of Certain Transmission Facilities to the MISO. The changes include addition of footnotes at the request of Minnkota Power Cooperative and also cleans up some classification errors in the original list.

Should you have any questions, please feel free to call me at 218-739-8607.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Beithon".

Pete Beithon
Supervisor, Regulatory Economics
Otter Tail Power Company

Enclosures

| Circuit Breakers Controlled by Otter Tail Power Control Center Networked > 100 kV (with transformers rated above 100 kV) | Breaker Number | Transmission Operating Voltage | Owner of Facility | Comments |
|--|-----------------------|---------------------------------------|--------------------------|---------------------------|
| Audubon 230 kV Substation | 2115 | 230 | OTP | |
| Audubon 230 kV Substation | 2125 | 230 | OTP | |
| Bemidji Substation | 1235 | 115 | OTP | |
| Bemidji Substation | 1245 | 115 | OTP | |
| Big Stone 230 kV Substation | 1675 | 115 | OTP | |
| Big Stone 230 kV Substation | 1685 | 115 | OTP | |
| Big Stone 230 kV Substation | 2615 | 230 | OTP | |
| Big Stone 230 kV Substation | 2625 | 230 | OTP | |
| Big Stone 230 kV Substation | 2635 | 230 | OTP | |
| Big Stone 230 kV Substation | 2645 | 230 | OTP | |
| Buffalo 345 kV Substation | 1315 | 115 | OTP | |
| Canby 115 kV | 1515 | 115 | OTP | |
| Canby 115 kV | 1525 | 115 | OTP | |
| Center 345 kV Substation | 3215 | 345 | OTP | Joint operation with MPC* |
| Center 345 kV Substation | 3235 | 345 | OTP | Joint operation with MPC* |
| Center 345 kV Substation | 3245 | 345 | OTP | Joint operation with MPC* |
| Crookston 115 kV Substation | 1615 | 115 | OTP | |
| Devils Lake East 115 kV | 1125 | 115 | OTP | |
| Donaldson 115 kV Substation | 1715 | 115 | OTP | |
| Donaldson 115 kV Substation | 1725 | 115 | OTP | |
| Fergus Falls Hoot Lake | 1275 | 115 | OTP | |
| Fergus Falls Hoot Lake | 1295 | 115 | OTP | |
| Fergus Falls Hoot Lake | 1515 | 115 | OTP | |
| Fergus Falls Hoot Lake | 1725 | 115 | OTP | |
| Fergus Falls Hoot Lake | 1755 | 115 | OTP | |
| Fergus Falls Hoot Lake | 1795 | 115 | OTP | |
| Forman 230 kV Substation | 1385 | 115 | OTP | |
| Forman 230 kV Substation | 1395 | 115 | OTP | |
| Hankinson 230 kV Substation | 2525 | 230 | OTP | |
| Hankinson 230 kV Substation | 2515 | 230 | OTP | |
| Hankinson 230 kV Substation | 2535 | 230 | OTP | |
| Jamestown 345 kV Substation | 1115 | 115 | OTP | |
| Jamestown 345 kV Substation | 1125 | 115 | OTP | |
| Jamestown 345 kV Substation | 1135 | 115 | OTP | |
| Jamestown 345 kV Substation | 3115 | 345 | OTP | Joint operation with MPC* |
| Jamestown 345 kV Substation | 3135 | 345 | OTP | Joint operation with MPC* |
| Jamestown Peaking Plant | 1255 | 115 | OTP | |
| Jamestown Peaking Plant | 1265 | 115 | OTP | |

| Circuit Breakers Controlled by Otter Tail Power Control Center Networked > 100 kV (with transformers rated above 100 kV) | Breaker Number | Transmission Operating Voltage | Owner of Facility | Comments |
|--|----------------|--------------------------------|-------------------|----------|
| Ortonville 115 kV Substation | 1445 | 115 | OTP | |
| Ortonville 115 kV Substation | 1455 | 115 | OTP | |
| Ortonville 115 kV Substation | 1465 | 115 | OTP | |
| Wahpeton 230 kV Substation | 1545 | 115 | OTP | |
| Wahpeton 230 kV Substation | 1565 | 115 | OTP | |
| Wahpeton 230 kV Substation | 1575 | 115 | OTP | |
| Wahpeton 230 kV Substation | 1585 | 115 | OTP | |
| Wahpeton 230 kV Substation | 1595 | 115 | OTP | |
| Wahpeton 230 kV Substation | 2335 | 230 | OTP | |
| Wahpeton 230 kV Substation | 2355 | 230 | OTP | |
| Wahpeton 230 kV Substation | 2375 | 230 | OTP | |
| Wilton | 1515 | 115 | OTP | |
| Wilton | 1525 | 115 | OTP | |
| Winger 230 kV Substation | 1335 | 115 | OTP | |
| Winger 230 kV Substation | 1345 | 115 | OTP | |
| Winger 230 kV Substation | 1355 | 115 | OTP | |
| Winger 230 kV Substation | 1915 | 115 | OTP | |
| * Operational control of the Minnkota owned facilities has not been transferred to MISO | | | | |
| | | | | |
| | | | | |

| Transformers Controlled by the Otter Tail Power Company Control Center (with one transformers voltage rated above 100 kV) | Transmission Operating Voltage | Number of Transformers | Facility Owner |
|--|--------------------------------|------------------------|----------------|
| Alice | 115/7.2 | | |
| Aviko | 115/12.5 | | |
| Clearbrook Minnesota Pipeline | 115/4.36 | | |
| Correll | 115/7.2 | | |
| Devils Lake Lakewood | 115/12.5 | | |
| Dumont | 115/12.5 | | |
| Enderlin | 115/12.5 | | |
| Esmond | 115/12.5 | | |
| Fairmount | 115/12.5 | | |
| Fergus Falls Edgetown | 115/12.5 | | |
| Fergus Falls Hoot Lake | 115/12.5 | | |
| Gwinner | 115/12.5 | | |
| Harvey North | 115/12.5 | | |
| Itasca 115 kV | 115/4.36 | | |
| Jamestown Downtown | 115/12.5 | | |
| Jamestown North | 115/12.5 | | |
| Lisbon | 115/12.5 | | |
| Mahnomen | 115/12.5 | | |
| Melroe | 115/12.5 | | |
| Morris South | 115/12.5 | | |
| Odessa | 115/12.5 | | |
| Ortonville Quarry | 115/12.5 | | |
| Oslo | 115/12.5 | | |
| Perham | 115/12.5 | 2 | |
| Selz | 115/7.2 | | |
| Tyler | 115/7.2 | | |
| Viking | 115/12.5 | | |
| Wahpeton North | 115/12.5 | 2 | |
| Wheaton South | 115/12.5 | | |

| Transformers Controlled by the Otter Tail Power Company Control Center (with one transformers voltage rated above 100 kV) | Transmission Operating Voltage | Number of Transformers | Facilty Owner |
|--|--------------------------------|------------------------|--------------------------|
| Bemidji 115 kV | 115/69/13.2 | 1 | |
| Big Stone 230 kV | 230/22.9 | 1 | |
| Big Stone Highway 12 | 115/41.6 | 1 | |
| Browns Valley 230 kV | 230/41.6 | 1 | |
| Canby 115 kV | 115/41.6 | | |
| Cass Lake 115 kV | 115/69/41.6 | | |
| Clearbrook 115 kV | 115/41.6 | | |
| Coyote Station | 345/22.9 | | |
| Coyote Station | 115/13.8 | | |
| Crookston 115 kV | 115/43.8 | 2 | |
| Devils Lake East 115 kV | 115/43.8 | | |
| Devils Lake Southwest 115 kV | 115/43.8 | | |
| Donaldson 115 kV | 115/41.6 | 2 | |
| Fergus Falls Hoot Lake | 115/13.2 | 2 | |
| Fergus Falls Hoot Lake | 115/43.8 | | |
| Fertile | 115/41.6 | | |
| Hensel 115 kV | 115/72/43.8 | | Joint operated with MPC* |
| Jamestown Peaking Plant | 115/43.8 | | |
| Ladish | 115/43.8 | | |
| Marietta | 115/41.6 | | |
| Northwoods 115 kV | 115/41.6 | | |
| Oakes 230 kV | 230/41.6 | | |
| Ortonville 115 kV | 115/43.8 | | |
| Pelican Rapids 115 kV | 115/41.6+B24 | 2 | |
| Pickert 230 kV | 230/72/43.8 | | Joint operated with MPC* |
| Plummer 115 kV | 115/43.8 | | |
| Toronto 115 kV | 115/41.6 | | |
| | | | |

* Operational control of the Minnkota owned facilities has not been transferred to MISO

| Substations Controlled by Otter Tail Company Control Center Networked > 100 kV (with transformers rated above 100 kV) | Transmission Operating Voltage | Number of Transformers | Comments |
|---|--------------------------------|------------------------|----------------------------|
| Big Stone 230 kV Substation | 230/115 kV | 1 | |
| Buffalo 345 kV Substation | 345/115 kV | 1 | Joint controlled with MPC* |
| Forman 230 kV Substation | 230/115 kV | 1 | |
| Jamestown 345 kV Substation | 345/115 kV | 2 | Joint controlled with MPC* |
| Maple River 345 kV Substation | 345/230 kV | 2 | Joint controlled with MPC* |
| Wilton | 230/115 kV | 1 | |
| Winger 230 kV Substation | 230/115 kV | 1 | OTP operates 115 only |
| | | | |
| | | | |
| * Operational control of the Minnkota owned facilities has not been transferred to MISO | | | |

Affidavit of Publication

RECEIVED

State of North Dakota)

County of Burleigh)

JAN 14

Laurie Thiel

, being duly sworn, state as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.
2. The newspapers listed on the exhibits published the advertisement of:
NSP / Otter tail / MDU, 1 time(s)
as required by law or ordinance.
3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

Signed: Laurie Thiel

Subscribed and sworn to before me this 7th day of January, D. 2007.

Laurie Schaffer

LAURIE SCHAFFER
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires DEC. 1, 2005

- 16 **PU-400-00-91** Pages: 1
Affidavit of Publication
by North Dakota Advertising Service, Inc.
01/14/2002 CC: Comm Legal Ilona, Pat, Jerry Mike .
- 7 **PU-401-01-643** Pages: 1
Affidavit of Publication
by North Dakota Advertising Service, Inc.
01/14/2002 CC: Comm Legal Ilona, Pat, Jerry Mike .
- 7 **PU-399-01-651** Pages: 1
Affidavit of Publication
by North Dakota Advertising Service, Inc.
01/14/2002 CC: Comm Legal Ilona, Pat, Jerry Mike .

North Dakota Advertising Service, Inc.

1435 Interstate Loop • Bismarck, ND 58501-0567 • PHONE (701) 223-6397 • FAX (701) 223-8185 • www.ndna.com

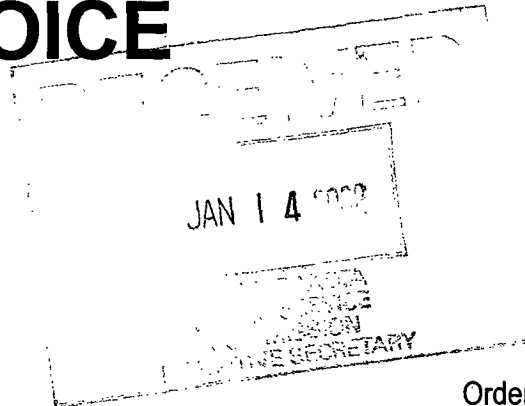
INVOICE

Date: 01/10/2002

Page: 1

To:

JON H. MIELKE
PUBLIC SERVICE COMMISSION
STATE CAPITOL
BISMARCK ND 58505



Client: Public Service Commission

Order: 01125PP0

| Newspaper | Date | Inches | Page# | Rate | Amount |
|---------------------------|-----------------------|--------|-------|------|--------|
| Bismarck Tribune | NSP/ Otter 12/28/2001 | 71.00 | SPR2 | 0.61 | 43.31 |
| Devils Lake Daily Journal | NSP/ Otter 12/28/2001 | 71.00 | SPR3 | 0.59 | 41.89 |
| Dickinson Press | NSP/ Otter 12/28/2001 | 82.00 | SPR3 | 0.64 | 52.48 |
| Fargo, The Forum | NSP/ Otter 12/31/2001 | 71.00 | SPR2 | 0.73 | 51.83 |
| Grand Forks Herald | NSP/ Otter 12/29/2001 | 71.00 | SPR2 | 0.61 | 43.31 |
| Jamestown Sun | NSP/ Otter 12/28/2001 | 82.00 | SPR2 | 0.50 | 41.00 |
| Minot Daily News | NSP/ Otter 12/28/2001 | 114.00 | SPR2 | 0.42 | 47.88 |
| Valley City Times-Record | NSP/ Otter 12/28/2001 | 77.00 | SPR3 | 0.55 | 42.35 |
| Wahpeton Daily News | NSP/ Otter 12/30/2001 | 86.00 | SPR3 | 0.46 | 39.56 |
| Williston Herald | NSP/ Otter 12/28/2001 | 75.00 | SPR2 | 0.54 | 40.50 |

*** ADVERTISING TOTAL 444.11

*** TOTAL DUE 444.11

- 16 PU-400-00-91** Pages: 1
Affidavit of Publication
by North Dakota Advertising Service, Inc.
01/14/2002 CC: Comm Legal Illona, Pat, Jerry Mike .
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- 7 PU-399-01-651** Pages: 1
Affidavit of Publication
by North Dakota Advertising Service, Inc.
01/14/2002 CC: Comm Legal Illona, Pat, Jerry Mike .

This invoice is due and payable upon receipt. Unpaid items over 30 days from invoice date are subject to a finance charge. The finance charge is computed by a periodic rate of 1 3/4 percent per month (or a minimum charge of 50 cents for balances of under \$50), which is an annual percentage rate of 21 percent. Total unpaid balance may be paid at any time.

Please pay from this invoice — No statement will be sent. Return duplicate with remittance to North Dakota Advertising Service, Inc.

Helbling, Sharon D.

From: Helbling, Sharon D.
Sent: Friday, December 21, 2001 10:35 AM
To: ndna (E-mail)
Subject: Attached Notice of Opportunity for Hearing and Notice of Informal Hearing

**Colleen
North Dakota Newspaper Association**

Colleen,

Please have the attached Notice of Opportunity for Hearing and Notice of Informal Hearing published as a legal publication in the next issue of the ten North Dakota daily newspapers.

This notice must be published by December 31, 2001, in order for us to meet our legal obligations. If you can't meet that deadline, please let us know.

Send the bill to the Public Service Commission, along with a tear sheet for billing purposes.

If you have any questions, please call me at 328-4076. Thank you.

Sincerely,

**Sharon Helbling
Public Utilities Division**



1.doc

6 PU-401-01-643

Pages: 1

Notice e-mailed to NDNA requesting
publication
by Public Service Commission

1

12/21/2001 CC: Comm Legal Ilona, Pat, Jerry Mike .

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Northern States Power Company
Transfer Control of Transmission Fac. To MISO
Application

Case No. PU-400-00-91

Otter Tail Power Company
Transfer Control of Transmission Fac. To MISO
Application

Case No. PU-401-01-643

Montana-Dakota Utilities Co.
Transfer Control of Transmission Fac. To MISO
Application

Case No. PU-399-01-651

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **26th day of December, 2001**, she deposited in the United States Mail, Bismarck, North Dakota, **three** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Notice of Opportunity for Hearing and Notice of Informal Hearing

The envelopes were addressed as follows:

Mike Swenson
Northern States Power Company
2302 Great Northern Dr
Fargo ND 58102
Cert. No. 7099 3220 0002 8483 1020

Dan Kuntz
P O Box 1695
Bismarck ND 58502-1695
Cert. No. 7099 3229 0002 8483 1037

Pete Beithon
Otter Tail Power Company
215 S Cascade St
Fergus Falls MN 56538-0496
Cert. No. 7099 3220 0002 8483 1044

Don Ball
Montana-Dakota Utilities Co
400 N 4th St
Bismarck ND 58501
Cert. No. 7099 3220 0002 8483 1075

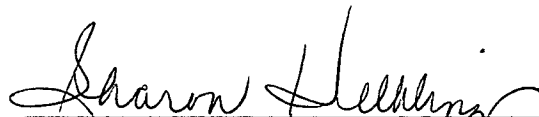
Douglas W Schulz
Montana-Dakota Utilities Co
400 N 4th St
Bismarck ND 58501
Cert. No. 7099 3220 0002 8483 1082


Sharon Helbling further deposes and says that on the **26th day of December, 2001**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Dave Sederquist
Northern Staes Power Company
2302 Great Northern Dr
Fargo ND 58102

Each address shown is the respective addressee's last reasonably ascertainable post office address.

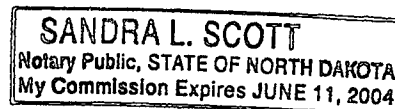
Subscribed and sworn to before me
this **26th day of December, 2001**.





Notary Public

SEAL



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Northern States Power Company
Transfer Control of Transmission Fac. To MISO
Application

Case No. PU-400-00-91

Otter Tail Power Company
Transfer Control of Transmission Fac. To MISO
Application

Case No. PU-401-01-643

Montana-Dakota Utilities Co.
Transfer Control of Transmission Fac. To MISO
Application

Case No. PU-399-01-651

AFFIDAVIT OF SERVICE BY E-MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **21st day of December, 2001**, she deposited in the United States Mail, Bismarck, North Dakota, envelopes by first class mail, fully prepaid, securely sealed, each containing a photocopy of:

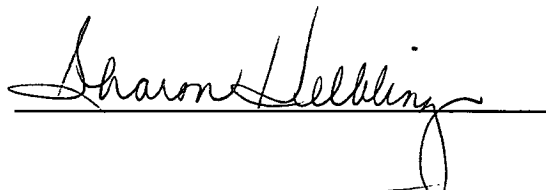
Notice of Opportunity for Hearing and Notice of Informal Hearing

The envelopes were addressed as follows:

See Attached List

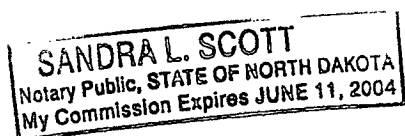
Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **21st day of December, 2001**.



Notary Public

SEAL



akemp@tmnc.com
Ann-Marie Kemp

Lubka@rrnet nm
Lewis Lub.
1723 6th St S
Fargo ND 58103

jason_gustafson@bobcat.com
Jason Gustafson
Melroe Company
P O Box 128
Gwinner ND 58040-0128

craig_scott@bobcat.com
Craig Scott
Melroe Company
P O Box 128
Gwinner ND 58040-0128

shandy@kwh.com
Scott Handy
Cass County Elec Coop Inc
4100 32nd Ave SW
Fargo ND 58104

Mark.Hanson@grandforks.af.mil
Mark Hanson
Grand Forks Air Force Base
319 ARW/JA
460 Steen Blvd Ste 201
Grand Forks ND 58205

itci@hcctel.net
Bruce Reuber
Interstate Telcom Consulting Inc
130 Birch Ave W
Hector MN 55342-0668

Karyn Grass
IPAMS
6620 Denver Club Bldg
518 17th ST
Denver CO 80202-4167
rmattern@badlands.nodak.edu
Rich Mattern
KDSU-FM Radio
PO Box 5347
Fargo ND 58105-5347

d
d d
KDDR
Box 411
Oakes ND 58474-0411

Michel Murray
MCI WorldCom Inc
707 17th St Ste 3600
Denver CO 80202

tom.hopgood@mduresources.com
Tom Hopgood
Montana-Dakota Utilities Co

balld@mdu.mdures.com
Don Ball
Montana-Dakota Utilities Co
400 N 4th St
Bismarck ND 58501

karen.collins@mduresources.com
Karen Collins
Montana-Dakota Utilities Co
400 N 4th St
Bismarck ND 58501

AhernM@moss-barnett.com
Mike Ahern
Moss & Barnett
90 S 7th Street #4800
Minneapolis MN 55402-4129

rlogsdon@navix.net
Robert Logsdon
Nebraska Public Service Commission
PO Box 94927
Lincoln NE 68509-4927

michael.l.swenson@nspco.com
Mike Swenson
Northern States Power Company
PO Box 2747
Fargo ND 58107-2747

bruce.j.kop@nspco.com
Bruce Kop,
Northern States Power Company
PO Box 13038
Grand Forks ND 58208-3038

dave.sederquist@nspco.com
Dave Sederquist
Northern States Power Company
414 Nicollet Mall
Minneapolis MN 55401

bbrutlag@otpc.com
Bernadine Brutlag
Otter Tail Power Company

rcarmody@otpc.com
Roger Carmody
Otter Tail Power Company

dcichos@otpc.com
Dave Cichos
Otter Tail Power Company

dgodel@otpc.com
Dean Godel
Otter Tail Power Company

tgreene@otpc.com
Tim Greene
Otter Tail Power Company

ghammer@otpc.com
Eugene Hammer
Otter Tail Power Company

dross@otpc.com
David Ross
Otter Tail Power Company

sschultz@otpc.com
Steve Schultz
Otter Tail Power Company

jspriggs@otpc.com
Janice Spriggs
Otter Tail Power Company

cvandevoort@otpc.com
Chris Van de Voort
Otter Tail Power Company

dweiby@otpc.com
Dan Weiby
Otter Tail Power Company

pbeithon@otpc.com
Pete Beithon
Otter Tail Power Company
215 S Cascade Street
Fergus Falls MN 56538-0496

bbrutlag@otpc.com
Bernadeen Brutlag
Otter Tail Power Company
215 S Cascade Street
Fergus Falls MN 56538-0496

rdenault@otpc.com
Russel Denault
Otter Tail Power Company
Garrison ND 58540

fjohnson@otpc.com
Francis Johnson
Otter Tail Power Company
Langdon ND 58249

dcichos@otpc.com
Dave Cichos
Otter Tail Power Company
Rugby ND 58368

dreading@micron.net
Don Reading
Simplot
1227 El Pelar Dr
Boise ID 83702-1500

mjohnson@otpc.com
Marlowe Johnson
Otter Tail Power Company
PO Box 2220
Jamestown ND 58402-2220

gcoyne@otpc.com
Geri Coyne
Otter Tail Power Company
PO Box 410
Oakes ND 58474-0410

wpp@pearce-durick.com
William Pearce
Pearce & Durick Attorneys
PO Box 400
Bismarck ND 58502-0400

mdickers@state.nd.us
Marcy Dickerson
State Tax Department
State Capitol
Bismarck ND 58505

Joseph Lamb
PO Box 196
Michigan ND 58259-0196

Myer Shar
Knollwood Place Apts #221
3630 Phillips Pkwy
St Louis Park MN 55426

Peter Hoff
Arveson Donoho Lundeen Etc
125 S Mill St
Fergus Falls MN 56537

Mark Frederiksen
Economic Insights
416 Center St #365
Washington Grove MD 20880

Jerry Tuchscherer
Grand Forks Board of Realtors
1407 24th Ave S #340
Grand Forks ND 58201-6761

KBMR AM-KQDY FM
3500 E Rosser Ave
Bismarck ND 58501

KBMW-AM
PO Box 1115
Wahpeton ND 58074-1115

KCJB AM-FM & KXMC TV
PO Box 1686
Minot ND 58702-1686

KDAK AM
Box 50
Carrington ND 58421-0050

Rod Kleinjan
KDIX Radio
119 2nd Ave W
Dickinson ND 58601-5115

KDLR AM-FM
Box 190
Devils Lake ND 58301-0190

KEYZ-AM
PO Box 2048
Williston ND 58802-2048

KFGO
Box 2966
Fargo ND 58102-2966

Jeff Alexander
KFYR-AM Radio
PO Box 1738
Bismarck ND 58502-1738

Rick Jensen
KHND Radio
PO Box 6
Harvey ND 58341-0006

KHRT AM
PO Box 1210
Minot ND 58702-1210

KKXL-AM/FM
PO Box 13598
Grand Forks ND 58208-3598

KLXX AM
4303 Memorial Hwy
Mandan ND 58554

KMAV-AM
PO Box 36
Mayville ND 58257-0036

KMOT TV
Box 1120
Minot ND 58702-1120

KNDK-AM
HCR 5 Box 9
Langdon ND 58249

KNOX-AM & WRRK-FM
PO Box 13638
Grand Forks ND 58208-3638

KOVC-AM
PO Box 994
Valley City ND 58072-0994

KQDJ-AM
PO Box 1170
Jamestown ND 58402-1170

KQWB-AM/FM Radio
PO Box 9919
Fargo ND 58106-9919

KSJB-AM/KSJZ-FM
PO Box 5180
Jamestown ND 58402-5180

KTGO-AM
Box 457
Tioga ND 58852-0457

KTHI-TV
PO Box 1878
Fargo ND 58107-1878

KUMV-TV
PO Box 1287
Williston ND 58802-1287

KXJB-TV 4
4302 13th Ave S
Fargo ND 58103-3313

News Director
KXMA-TV
Drawer B
Dickinson ND 58602

KXMB TV
Box 1617
Bismarck ND 58502-1617

KXMC TV
Box 1686
Minot ND 58701-1686

KXMD-TV
PO Box 790
Williston ND 58802-0790

KXPO AM & FM Radio
856 W 12 St
Grafton ND 58237

KZZJ-AM
230 Highway 2 SE
Rugby ND 58368-2446

C W Fox
Montana-Dakota Utilities Co
400 N 4th St
Bismarck ND 58501

Ron Tipton
Montana-Dakota Utilities Co
400 N 4th St
Bismarck ND 58501

Mike Foley
NARUC
1101 Vermont Avenue NW Ste 200
Washington DC 20005

Everett Morris
NJ Public Service Electric & Gas
80 Park Pl
Newark NJ 07101

Andrew Anderson
Otter Tail Power Company
215 S Cascade Street
Fergus Falls MN 56538-0496

John MacFarlane
Otter Tail Power Company
215 S Cascade Street
Fergus Falls MN 56538-0496

Jay Myster
Otter Tail Power Company
215 S Cascade Street
Fergus Falls MN 56538-0496

Patricia Estes
Prairie West Publications
PO Box 970
Wahpeton ND 58074-0970

Telecommunications Reports
1333 H St NW 11th Fl W Tower
Washington DC 20005

WDAY AM-FM & TV
PO Box 2466
Fargo ND 58108-2466

WDAZ-TV
PO Box 12639
Grand Forks ND 58208-2639

MOTION

December 21, 2001

**Northern States Power Company
Transfer Control of Transmission Facilities To MISO
Application**

Case No. PU-400-00-91

**Otter Tail Power Company
Transfer Control of Transmission Facilities to MISO
Application**

Case No. PU-401-01-643

**Montana Dakota Utilities Co., A Division of MDU
Resources Group, Inc.
Transfer Control of Transmission Facilities to MISO
Application**

Case No. PU-399-01-651

I move the Commission issue a Notice of Opportunity for Hearing and Notice of Informal Hearing in the captioned applications to transfer operational control of electric transmission facilities to the Midwest Independent System Operator, Case Nos. PU-400-00-91, PU-401-01-643 and PU-399-01-651.

JRL/sdh

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Northern States Power Company
Transfer Control of Transmission Facilities to MISO
Application**

Case No. PU-400-00-91

**Otter Tail Power Company
Transfer Control of Transmission Facilities to MISO
Application**

Case No. PU-401-01-643

**Montana Dakota Utilities Co., A Division of MDU
Resources Group, Inc.
Transfer Control of Transmission Facilities to MISO
Application**

Case No. PU-399-01-651

**NOTICE OF OPPORTUNITY FOR HEARING AND
NOTICE OF INFORMAL HEARING**

December 21, 2001

On March 3, 2000, in Case No. PU-400-00-91, Northern States Power Company (NSP) filed a petition for review or approval of the transfer of operating control of networked NSP electric transmission facilities to the Midwest Independent Transmission System Operator, Inc. (MISO). Similar petitions were filed on December 18, 2001 in Case No. PU-401-01-643 by Otter Tail Power Company and on December 21, 2001 in Case No. PU-399-01-651 by Montana Dakota Utilities Co..

Petitioners intend to transfer operating control of transmission assets as a condition of joining MISO. Petitioners will maintain ownership of the assets, but MISO would control operation of the assets.

The issues to be considered in these proceedings are whether transfer of operating control is compatible with the public interest and under what terms or conditions, if any, should the petitions be granted.


Those interested are invited to comment on these applications in writing. Persons desiring a hearing must file a written request identifying their interest in the proceeding(s) and the reasons for requesting a hearing. Comments and requests for hearing must be received by **January 23, 2002**. If deemed appropriate, the Commission can determine these matters without a hearing.

An informal hearing on these matters will be held on **January 25, 2002 at 9 a.m. (CST)** in the Commission hearing room, State Capitol, 12th Floor, Bismarck, North Dakota 58505. At the informal hearing the petitioners will be given an opportunity to

present an overview of their petitions and interested persons will be given an opportunity to be heard.

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400 or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify, Jon H. Mielke, Executive Secretary.

PUBLIC SERVICE COMMISSION



Anthony T. Clark
Commissioner

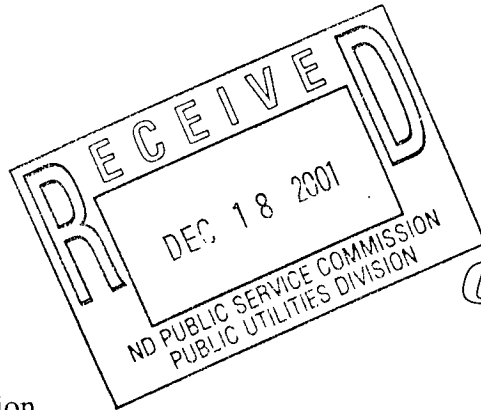


Susan E. Wefald
President



Leo M. Reinbold
Commissioner

215 South Cascade Street
PO Box 496
Fergus Falls, Minnesota 56538-0496
218 739-8200
www.otpco.com (web site)
December 17, 2001



Mr. Jon H. Mielke
Executive Secretary
North Dakota Public Service Commission
State Capitol – 600 E. Boulevard
Bismarck, ND 58505-0480

Re: In the matter of Otter Tail Power Company's Petition for approval of Transfer of Operational Control of Certain Transmission Facilities to the MISO

Dear Mr. Mielke:

Enclosed for filing please find the original, along with seven copies, of Otter Tail Power Company's Petition for approval of Transfer of Operational Control of Certain Transmission Facilities to the MISO.

Should you have any questions, please feel free to call me at 218-739-8607.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Beithon".

Pete Beithon
Supervisor, Regulatory Economics
Otter Tail Power Company
Enclosures

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

In the Matter of a Request by
Otter Tail Power Company for Review
or Approval to Transfer Functional Operating
Control of Certain Transmission Facilities to
The Midwest Independent System Operator, Inc.

CASE NO. PU-400-_____

PETITION FOR REVIEW OR APPROVAL
SUMMARY OF FILING

To the extent required pursuant to N.D. Cent. Code (“NDCC”) § 49-04-05 and 49-03-01 and Section 69-0204-04 of the North Dakota Administrative Code, Otter Tail Power Company submits for filing with the North Dakota Public Service Commission (“Commission” or “NDPSC”) a petition for review to transfer operating control of certain Otter Tail Power Company electric transmission facilities in the State of North Dakota to the Midwest Independent System Operator, Inc. (“MISO”).

Otter Tail Power Company joined MISO in response to the initiatives of the Federal Energy Regulatory Commission (“FERC”) through its Order Nos. 888 and 2000,. Joining MISO requires a transfer of operating control of transmission facilities above certain voltage levels, but does not require a transfer of ownership of any of the facilities. In many respects, function of the MISO will be similar to the level of functions presently performed by the Mid-Continent Area Power Pool (“MAPP”).

Otter Tail Power Company does not believe transferring operating control of its transmission facilities in North Dakota to MISO is subject to any specific statutory filing requirement under the N.D. Cent. Code. This is because Otter Tail Power Company would transfer operational control of the transmission facilities and not ownership of these assets. Nonetheless, the transfer is a significant change and the information contained in this filing should be useful to the Commission. To the extent that the Commission agrees approval is not required, this should be considered an informational filing.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

In the Matter of a Request by
Otter Tail Power Company for Review
or Approval to Transfer Functional Operating
Control of Certain Transmission Facilities to
The Midwest Independent System Operator, Inc.

CASE NO. PU-400-_____

PETITION FOR REVIEW OR APPROVAL

1. INTRODUCTION AND BACKGROUND

On February 28, 2001, Otter Tail Power Company, a division of Otter Tail Corporation, submitted an application and signed agreement for transmission owner membership in the Midwest Independent Transmission System Operator, Inc. ("MISO" or "Midwest ISO").

MISO creation was initiated on January 15, 1998, when certain Midwest public utilities filed an application in Docket No. EC98-24 pursuant to Section 203 of the Federal Power Act for approval of the transfer of operational control of substantial portions of their jurisdictional transmission facilities to the MISO. The MISO participants also filed in Docket No. ER98-1438 an Open Access Transmission Tariff, an agreement setting forth the structure of the MISO and establishing the rights and obligations of the MISO and the various MISO members, and other documents intended. Otter Tail Power Company comprises a NERC certified, electrically metered control area located in Northwest Minnesota, Northeast and Central North Dakota, and Northeast South Dakota (north of Xcel Energy's control area, west of Minnesota Power Company's control area, and east of Western Power Administration's control area). Otter Tail Power Company conducts control area functions at its Energy Control Center located at Fergus Falls, Minnesota.

Transmission service is provided under an open access transmission tariff approved by the FERC in Docket No. OA96-192-000 and appropriate Mid-continent Area Power Pool tariffs.

The MISO Public Utilities that were the subject of the January 15, 1998 filing were The Cincinnati Gas & Electric Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Illinois Power Company, PSI Energy, Inc., Wisconsin Electric Power Company, Union Electric Company, Central Illinois Public Service Company, Louisville Gas & Electric Company and Kentucky Utilities Company. In addition, Hoosier Energy Rural Electric Cooperative, Inc. ("Hoosier") and Wabash Valley Power Association, Inc. ("Wabash") were original signatories to the MISO Agreement. Collectively, Hoosier, Wabash and the Midwest ISO Public Utilities are sometimes referred to as the Midwest ISO Participants. Because Hoosier and Wabash are not subject to this Commission's jurisdiction, they did not join in the section 203 filing to implement the MISO.

The primary agreement governing MISO membership rights is the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock corporation ("MISO Agreement", included as Attachment A to this Petition). By Order issued on September 16, 1998, the Federal Energy Regulatory Commission ("FERC") found that the January 15, 1998 transfer proposal was in the public interest and approved the Section 203 application (subject to certain conditions) and conditionally accepted the MISO Agreement for filing. Various revisions to the MISO Agreement were required, and are reflected in the current version of the agreement (IR: Midwest Independent Transmission System Operator, Inc., Docket ER98-1438-000, 84 FERC ¶61,230). MISO was then duly incorporated in the State of Delaware on December 11, 1998 as a non-stock, not-for-profit corporation, and MISO members elected an independent Board of Directors. MISO membership is open to any Eligible Customer. An Advisory Committee consisting of representatives from various stakeholder groups was established to advise the Board of issues of concern and suggest recommendations. The MISO Agreement (a copy of which is attached to this Petition) and other relevant information is available on the MISO website at www.midwestiso.org/membership.shtml (including the appendices to the MISO Agreement, which were too large to attach to this Petition).

FERC's Order 2000 ("Order 2000") required that all public utilities that own, operate or control interstate transmission to file by October 15, 2000 a proposal for a Regional Transmission

Organization ("RTO") or alternatively, a description of any efforts to participate in an RTO, reasons for not participating, obstacles to participation, and any plans for eventual or actual RTO participation. Order 2000 contemplated that the RTOs would be operational by December 15, 2001. FERC allowed for non-profit independent system operators, for-profit transmission companies, or combinations thereof, and provided for flexible transmission ratemaking to facilitate RTO creation.

FERC stated that the ultimate goals of Order 2000 are to alleviate stress on the bulk power system caused by structural changes in the electric industry; improve transmission grid efficiencies through pricing and congestion management; improve grid reliability; improve energy market performance; increase coordination among state regulatory agencies; reduce transaction costs; facilitate growth and success of state retail access programs; assure non-discriminatory access of transmission systems by separating control of grid operations from the influence of electricity market participants and to facilitate "light-handed" regulation. Order 2000 described four key characteristics and eight required functions of RTOS. The characteristics included independence, scope and regional configuration, operational authority, and short-term reliability. The required functions included tariff administration and design; congestion management; parallel path flows; ancillary services; OASIS; market monitoring; planning and expansion; and interregional coordination. FERC's purpose was to create flexible and evolving RTOs that improve structure, geographic scope, market support and operations to meet changing market, organization and policy needs.

In Order 2000-A, the Commission found that entities that were granted waivers of some of the requirements of Order Nos. 888¹ and 889² would be allowed to make an abbreviated filing to

¹ See *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, *clarified*, 76 FERC ¶ 61,009 and 76 FERC ¶ 61,347 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998) (hereinafter "Order No. 888"), *aff'd in part and remanded in part, sub nom. Transmission Access Policy Study Group, et al. v. FERC*, 2000 WL 762706, (D.C. Cir. June 30, 2000).

² See *Open Access Same Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049 (1997), *order on reh'g*, Order No. 889-B, 81 FERC ¶ 61,253 (1997) (hereinafter "Order No. 889").

comply with Order No. 2000.³ In addition, in a subsequent order, the Commission stated that it “does not wish to burden these small entities with extensive filings, but will find it useful to know the status of all transmission-owning public utilities with respect to regional participation.”⁴

Otter Tail qualified for the abbreviated filing requirements of Order No. 2000 because it is a small utility⁵ (*i.e.*, one which produces a total electric output in the previous fiscal year of less than four (4) million megawatt hours).⁶ Otter Tail’s total production of electricity as reported in its 1999 FERC Form 1, page 401, line 9, was 3,545,992 MWh.

On October 16, 2000 Otter Tail Power Company made its required filing with FERC that indicated the intention of Otter Tail Power Company to join the MISO. However, that filing outlined a number of issues of concern regarding MISO formation, structure and operation, as well as other unresolved issues preventing Otter Tail Power Company from actually joining the MISO at that time. It was also during this time period in late 2000 that original MISO member Illinois Power Company (and later joined by Commonwealth Edison Company and Ameren Services Company) indicated their intent to withdraw from MISO membership. These withdrawals clouded the future viability of MISO operations.

As explained in greater detail in Section IV of this Petition, the Illinois Power and Commonwealth Edison withdrawal requests and issues surrounding MISO's future were resolved through a recent settlement agreement that created a relationship between the MISO and the Alliance RTOs. This settlement agreement necessitated quick action by Otter Tail Power Company and other utilities wishing to join the MISO and receive in return the fullest benefits of MISO membership under the settlement agreement. This prompted Otter Tail Power Company's February 28, 2001 announcement of its MISO membership. Otter Tail Power Company membership participation in MISO is governed by the current version of the MISO Agreement (which has been revised to satisfy the FERC conditional approval). As of February 28, 2001, twenty utilities with service territories over portions of 11 states and the Province of Manitoba,

³ Order No. 2000-A at 31,393.

⁴ *Notice of Guidance for Processing Order No. 2000 Filings*, FERC Stats. & Regs. ¶ 35,040 at 35,308 (2000).

⁵ *Central Minnesota Municipal Power Agency Delano, et al.*, 79 FERC ¶ 61,260 at 61,130 (1997).

⁶ *See* 13 C.F.R. § 121.201 (2000).

Canada had committed to operational control under the MISO Agreement or under a Coordination agreement in the case of Manitoba Hydro.

As of December 14, 2001, the Midwest ISO transmission owners include:

Alliant Energy Corporation for:

- Alliant Energy West (i.e., IES Utilities, Inc. and Interstate Power Co.)

American Transmission Company LLC for:

- Wisconsin Electric Power Company
- Edison Sault Electric Company
- Wisconsin Power & Light Company (a/k/a Alliant Energy East)
- South Beloit Water, Gas & Electric Company
- Madison Gas and Electric Company
- Wisconsin Public Service Corp.
- Upper Peninsula Power Co.

Central Illinois Light Co.

Cinergy Services, Inc. for:

- Cincinnati Gas & Electric Co.,
- PSI Energy, Inc., and
- Union Light Heat & Power Co.

City Water, Light & Power (Springfield, Illinois)

Dairyland Power Cooperative *

Great River Energy *

Hoosier Energy R.E.C.

Indiana Municipal Power Agency

Indianapolis Power & Light

LG&E Energy Corporation for:

- Louisville Gas and Electric Co.
- Kentucky Utilities Co.

Lincoln Electric(Neb.)System

Minnesota Power, Inc. and its subsidiary, Superior Water, Light and Power Company

Montana-Dakota Utilities

Northwestern Wisconsin Electric

Otter Tail Power Co.

Southern Illinois Power Cooperative

Southern Minnesota Municipal Power Agency *

Sunflower Electric Power Corp. *

Utilicorp United, Inc., including:

- Missouri Public Service,
- St. Joseph Light and Power and
- WestPlains Energy-Kansas

Vectren Energy

Wabash Valley Power Association, Inc.

Xcel Energy Inc., formerly Northern States Power Company, for:

- Northern States Power Company (Minnesota) and
- Northern States Power Company (Wisconsin)

Coordination Companies

Manitoba Hydro

Appendix I Companies

International Transmission Company

TRANSLink Transmission Company, LLC **

** Pending FERC approval

* Conditional Member

This list does not include Commonwealth Edison, Illinois Power, Inc. and Ameren, who have withdrawn membership to join the Alliance pursuant to the final Settlement Agreement (Order issued May 8, 2001) reached in Illinois Power, Inc., Docket No. ERO I-123-002, Commonwealth Edison Company, Docket No. ER01-780-000 and Ameren Corporation, Docket No. ER01-966-000. The Alliance Companies (Ameren Corporation, American Electric Power Service Corporation, Consumers Energy Company, Exelon Corporation, First Energy Corporation, Illinois Power Company, Northern Indiana Public Service Company, The Dayton Power and Light Company, The Detroit Edison Company, Virginia Electric and Power Company), Docket Nos. ER99-3144-008, EC99-80-008, and RT01-88-000(not consolidated) are the other parties to the settlement agreement.

Because of applicable federal and state prior approval requirements to transfer operational control of jurisdictional facilities and open issues concerning the Mid-Continent Area Power Pool ("MAPP"), Otter Tail Power Company included a single contingency in its application under the MISO Agreement. That contingency was:

FERC approval of the MISO/Alliance Settlement Agreement and an Inter-RTO Cooperation in Docket No. ER01123-000 et al.

Otter Tail Power Company submits to the North Dakota Public Service Commission (the "Commission" or "NDPSC") this Petition for review or approval of transfer operational control of certain transmission facilities to the MISO at such time as the MISO begins operations in December, 2001, or alternatively, a finding that the Commission's prior approval is not necessary. MISO membership requires the transfer of operational control, but not a transfer of ownership of Otter Tail Power Company's transmission facilities. The functions of the MISO will be similar to the functions currently performed by the Mid- Area Continent Power Pool ("MAPP") with the additional benefits described later in this Petition. This Petition for transfer of operational control does not require at this time the Commission's determination of the functional classification of transmission facilities, and does not require determination of any cost or rate issues (as discussed in Section 11).

Attached to this Petition are the following documents as described in this Petition:

Attachment A - Joint Application to MISO (MISO Agreement with signature page)

Attachment B - §203 Application to FERC & Order

Attachment C - List of Transmission Facilities

Attachment D - MISO Order 2000 Compliance Filings

Attachment E - MISO/Alliance Settlement Agreement

Attachment F - FERC Order in MISO/Alliance Settlement Agreement

II. PROCEDURAL ISSUES

To the extent any statutory provisions apply, Otter Tail Power Company believes that N.D. Cent. Code § 49-04-05 could govern the Commission's review of this Petition. N.D. Cent. Code § 49-04-05 provides, in relevant part, that a "public utility may not dispose of, encumber, merge, or consolidate its franchise, works or system necessary or useful in the performance of its duties to the public without prior Commission approval..."³. Here, however, transferring operating control of Otter Tail Power Company's electric transmission facilities to MISO does not expressly dispose of [or] "encumber..[a public utility's]... works or system" in North Dakota because Otter Tail Power Company would transfer operation control, and transfer of system control is neither an

encumbrance nor disposal. Rather, Otter Tail Power Company will transfer functional control only of “networked” transmission facilities above the 100kV voltage level. Nonetheless, if the Commission determines approval is required under N.D. Cent. Code § 49-04-05, the transfer of the integrated, multi-state electric transmission system owned by Otter Tail Power Company to MISO would serve the public interest.

Specifically, the operational transfer to the Midwest ISO will provide substantial benefits to Otter Tail Power Company’s customers and market participants in North Dakota and the entire Upper Midwest. Elimination of rate pancaking on a regional scale should produce an overall reduction in the costs of transmitting energy within the region. In addition, market participants will benefit from (1) one stop shopping for transmission service, (2) the establishment of uniform and clear rules by the ISO, (3) an enhancement of the separation of control over transmission facilities from marketing functions, (4) large scale regional coordination and planning of transmission and (5) enhanced reliability. The marketplace will be more competitive with sellers having access to more markets for their products and buyers having greater access to sources of supply.

In addition N.D. Century Code § 49-04-01 provides that “no electric public utility shall begin...operation of a public utility plant or system... without first obtaining a from the Commission a certificate that public convenience and necessity require or will require such...operation.” Here, MISO is not an “electric public utility” as defined in ND.D. Cent. Code § 49-04-01.5(1), because MISO is not a privately owned supplier of electricity offering to supply electricity to the general public. Rather, Otter Tail Power Company will continue to be the electric public utility of providing retail supply and delivery service to residents and businesses in North Dakota under rates and tariffs on file with the Commission, and MISO will control the high voltage transmission system in a manner somewhat analogous to the existing MAPP regional oversight of generation and transmission operations.⁵ Otter Tail Power Company thus requests the Commission determine that MISO will not be a public utility operating in the State of North Dakota, and MISO is thus not required to obtain a certificate of public convenience and necessity.

The transfer of control identified in this Petition does not address the ultimate accounting treatment of the affected assets. A MISO tariff has been filed at the FERC and FERC approval has

occurred in advance of each MISO member's transfer of control of facilities to the MISO. Pursuant to the principles of the Settlement or Super-Regional Agreement Rate, appropriate filings will be made by Otter Tail Power Company to provide for the inclusion of a pass-through of the MISO tariffed services in retail rates. Due to the fact that (i) the MISO Transmission Tariff is still in the development process and (ii) the relative costs of the tariff components will change due to changes to ISO design and composition, the MISO Transmission Tariff impact to Otter Tail Power Company customers is difficult to define at this time. Once the tariff is finalized, Otter Tail Power Company will address the impacts of converting from MAPP Schedule F service to MISO transmission service, MAPP administration fees and dues compared to the MISO administrative adder, effects of wholesale customers whose sink is located within the Otter Tail Power Company control area, and sales out of the Otter Tail Power Company control area. Unknown factors currently include the effect of congestion management costs.

Otter Tail Power Company performed a preliminary analysis of the impacts of the MISO tariff on Otter Tail Power Company customers in October 2000 (prior to the recent developments in the MISO/Alliance settlement regarding development of the Super-Regional Rate). This preliminary analysis looked at both the transition period (six years, beginning when MISO becomes operational) and a longer period. During the transition period, the preliminary analysis showed the effect on transmission receipts and payments was favorable, with a slight net increase in transmission revenues from non-retail customers. After the transition period, revenue from non-retail customers may decline up to 10%. Roughly 10% of an Otter Tail Power Company retail customer's bill is transmission. Assuming a worst case scenario for loss of transmission revenues at 10%, and assuming that this cost filters through to the ratepayers the residential customer's bill would increase due to transmission by a fraction of a percent, or roughly 1%. Under that scenario and with those assumptions, an average monthly bill of \$55 would increase by 55 cents. With access to a much larger generation market with predictable transmission fees, the anticipated decline in purchase power cost under MISO (due to access to a broader generation market) will serve to offset increases in transmission costs. As a result of this preliminary analysis, Otter Tail Power Company does not believe any adjustment to its retail rates is necessary as a result of joining MISO. Evolution of the MISO tariff will dictate if any future change to Otter Tail Power Company's rate structure is necessary.

Because the dollar impact on retail rates of the change to the MISO tariff is likely to be small or insignificant, Otter Tail Power Company is not requesting the Commission to consider any cost or rate issues in this filing. Such matters, if they must be addressed, will be addressed in future filings after the tariff issues have been resolved.

Under the MISO Agreement, Otter Tail Power Company is required to transfer operational control of virtually all 100 kV facilities and above, the same facilities that are currently subject to the MAPP Schedule F Tariff. These facilities are identified in Attachment C of the Petition. This list does not constitute Otter Tail Power Company's entire transmission system, rather only those facilities that meet MISO's minimum standards for operational control.

III. THE MISO SETTLEMENT PROCESS

Before a discussion of how the public interest is served by Otter Tail Power Company's transfer of operational control of its transmission facilities to MISO, it is helpful to understand in greater detail how the MISO evolved from its near-dissolution in late 2000 to its re-emergence as a viable Regional Transmission Organization that furthers the federal transmission policy objectives of Order 2000. While each of the RTOs created pursuant to Order 2000 worked to address their organizational and operational issues, MISO's organizational issues culminated with Commonwealth Edison's announced intention to withdraw from MISO to join the Alliance RTO. Illinois Power Company and Ameren also indicated an intention to shift their RTO membership, with Illinois Power claiming that its merger with Dynergy released them from MISO membership. The withdrawal announcements created a dispute over how the withdrawing parties' share of MISO's liabilities would be addressed. These issues were raised in various proceedings initiated at FERC, because FERC approval was required by the withdrawing parties to join the Alliance RTO. As described below, these proceedings were consolidated in the Illinois Power case before FERC, and the underlying issues were ultimately addressed through a settlement process between MISO and Alliance that maintained the development of both RTOs and allowed the shift from MISO to Alliance by certain transmission providers.

Pursuant to FERC order (issued on January 24, 2001 in the Illinois Power Company, Docket No. EROI-123-002), the FERC convened settlement procedures on February 1, 2001 and identified the following goals of a MISO/Alliance settlement:

- 1) the desire of some parties to continue development of an arrangement that would carry forward Independent System Operator ("ISO") features that were critical to certain parties in the MISO;
- 2) the desire of other parties for the different business model that had been developed by the Alliance parties; and
- 3) the desire of transmission customers, state regulators and consumer representatives for an arrangement that would allow the entire Midwest region to operate as a seamless market.

The unanimous settlement reached by the parties under the oversight of Chief Judge Curtis Wagner in that docket appears to dispose of all issues in that proceeding, as well as issues in other related proceedings pending before the FERC. The settlement in Illinois Power Company provides for two RTOs - comprised of MISO and the Alliance Companies (Alliance), with a single "super-regional" rate which removes all seams and pancakes between the two RTOS. The settlement principles also include an agreement for negotiations between PJM, Alliance, and Midwest ISO for a joint through-and-out rate; the approval of the withdrawal of Illinois Power Company, Commonwealth Edison Company, and Ameren Services Company from the Midwest ISO and their membership in Alliance, with an exit fee to Midwest ISO in the amount of \$60 million; and an Inter-RTO Coordination Agreement between Alliance and Midwest ISO.

On March 20, 2001, the parties to that proceeding entered into a Settlement Agreement Involving the Midwest Independent Transmission System Operator, Inc., certain Transmission Owners in the MISO, the Alliance Companies and Other Parties (the "Settlement Agreement") (Attachment G to this Petition). In addition, the proposed Inter-RTO Cooperation Agreement ("IRCA") between the MISO and the Alliance Companies was included as an attachment to the Settlement Agreement. The proposed IRCA commits the MISO and the Alliance Companies to

coordinate activities for Transmission and transmission-related services so that these two RTO regions will be able to operate as a seamless market.

Otter Tail Power Company is a party to the Settlement Agreement. Otter Tail Power Company believes that the FERC should enable the entire Midwest region to operate a seamless market, and at the same time, carry forward the ISO-features critical to some members of MISO and permit other parties to enjoy the different business model developed by Alliance. The settlement addresses energy requirements in this large geographic area. Otter Tail Power Company fully supports the goals set forth by the FERC for the Settlement Agreement and Inter-RTO Cooperation Agreement. The Settlement Agreement preserves ISO features by providing necessary resources, without the need to issue new debt financing, for the MISO to remain viable and to proceed to operations in accordance with Order 2000. The proposed Settlement Agreement preserves the Alliance Companies' business model by providing the regulatory certainty necessary for Alliance Transco to be financed and operated in accordance with Order 2000. The proposed Settlement Agreement will also provide for an arrangement that will preserve the separate organizations and features of the Alliance RTO and the MISO, but allow the Alliance-MISO region to operate as a seamless market. In addition, the Settlement Agreement will establish explicit deadlines and a process for resolving implementation disputes consistent with the Order 2000 requirement of achieving operational status no later than December 15, 2001.

A key component of the settlement provided for an Alliance-MISO Super-Regional Rate methodology. The "Alliance-MISO Super-Region" is the transmission systems of the Alliance Companies and the transmission systems of the MISO Transmission Owners that have signed the Alliance Agreement or MISO Agreement respectively as of February 28, 2001 (including Otter Tail Power Company). To implement the Settlement Agreement, the Alliance Companies will prepare a rate filing with the FERC for approval. The Alliance Companies shall coordinate with the MISO to enable any necessary concurrent rate filing of the MISO. Otter Tail Power Company fully supports the principal goals of the Alliance MISO Super-Regional Rate methodology and is actively involved in the Inter-Regional Transmission Organization Coordination Agreement (IRCA) processes. The rate methodology will reflect the following principles, more fully described in the Settlement Term Sheet in Docket ERO I -123-000.

(i) Electric energy shall be transmitted from any source to any sink within the Alliance-MISO Super-Region for a single rate.

(ii) Such a rate shall be developed based upon the principles of the Alliance rate methodology, which includes a zonal facilities component and a zonal transition adjustment (ZTA). The ZTA responsibility for each zone will be calculated on the basis of lost revenues throughout the Alliance-MISO Super-Region and revenues generated there from will be distributed between the RTOs pursuant to the relative sources of the lost revenues, and subsequently allocated among the transmission owners within the RTOs pursuant to their respective revenue distribution method;

(iii) All load in any Alliance or MISO zone shall pay, or be responsible for the payment of, the ZTA. MISO Transmission Owners that do not take service under the MISO Tariff shall be responsible for ZTA payments as if all of their load were taking service under the MISO Tariff-, and the Super-Regional Rate Methodology shall be effective throughout the Alliance transition pricing period and until replaced by the Post-Transition Rate contained in the Alliance Pricing Protocol.

The terms of the Settlement Agreement obligates the MISO and the Alliance Companies to implement procedures to provide transmission users seamless access to the regions served by the Alliance RTO and the MISO. Otter Tail Power Company forwarded its joint membership application and MISO Agreement signature page on February 28 to the MISO, and has paid the membership fee of \$15,000 to the MISO. The MISO issued a press release on March 2, 2001 welcoming the new members, including Otter Tail Power Company.

Otter Tail Power Company has committed to use its best efforts to obtain the prior regulatory approvals required by law for authorization to transfer operational control of its jurisdictional transmission facilities to MISO.

IV. OTTER TAIL POWER COMPANY'S PETITION IS IN THE PUBLIC INTEREST

Xcel Energy's Petition before the Commission regarding the MISO, and the record in that Docket provides an excellent overview of the significant transmission developments that have occurred in the last ten years. That background information, and the other information regarding the initial organizational efforts of MISO provided in the Xcel Docket, provide a basis for Otter Tail Power Company to update the Commission on the benefits of the MISO.

A. Transmission Provider Functions.

The MISO will be the provider of transmission services to users of the Otter Tail Power Company transmission network in Minnesota, North Dakota and South Dakota. It will calculate available transmission capability (ATC); maintain Open Access Same-time Information System (OASIS) information; receive, approve, schedule and confirm transmission service requests (including interconnection service); and provide or arrange for ancillary services under the tariff. The MISO will also function as the system security coordinator for its transmission-owning members.

Otter Tail Power Company, as a Transmission Owner in the MISO, will retain ownership of its transmission facilities, and Otter Tail Power Company will physically operate and maintain these facilities, subject to the MISO's directions. Accordingly, Otter Tail Power Company intends to continue to act as a control area and, initially, constitute a zone for purposes of the MISO Tariff. Under the MISO Agreement, the Transmission Owners that are currently control area operators will continue to operate their control areas for local generation control and economic dispatch purposes. However, the Transmission Owners will follow the directives of the MISO for redispatching generation and curtailing load. This does not imply that Otter Tail Power Company cannot create a stand-alone transmission affiliate to hold such assets as a part of a reorganization in the future or elect to participate in a Transco, by selling the assets or spinning off to their shareholders at some future date.

Adherence to the MISO operating instructions is assured through a system of penalties and sanctions. (MISO Agreement, Article 3.V). In addition, the FERC mandated additional safeguards to ensure that the MISO will effectively control the operation of the networked transmission system and provide non-discriminatory access. These include the following:

- a requirement the MISO file a detailed summary of its operating and emergency procedures no later than 60 days before control of any facilities is transferred.
- a requirement for ongoing monitoring to determine if the maintenance of existing control areas creates competitive or reliability problems, a reporting requirement and an obligation to propose cost effective cures.
- a requirement that the chief executive officers of the transferring utilities sign a certification that they are satisfied that the MISO is ready to commence reliable operations.

B. Independence.

When it first reviewed the MISO, the FERC expressed concern that the MISO Board's structure might deprive the MISO of the necessary authority to fulfill its responsibility of ensuring reliability in a fair and non-discriminatory manner. FERC was concerned that the qualifications for election to the board of directors, together with the limitations placed on the board's ability to act in certain circumstances resulting from the transmission owners' retained rights, were not consistent with the degree of independence FERC required from an ISO's board of directors. (FERC MISO Order, p. 62,151). To resolve these concerns, FERC required a number of independence safeguards. These include:

- that no board member should be a participant in a pension plan of any member or any affiliate of a member or user. (FERC MISO Order, p. 62,153) This was later modified to permit participation in defined benefit plans. 85 FERC 61,250.
- that the standards of conduct should be revised to prohibit a board member from having direct financial interest in any affiliate of any owner, member, or user of the transmission system. (FERC MISO Order, p. 62,153)

- that while transmission owners could initiate action to unseat the board of directors, any final decision in this regard had to come from the entire ISO membership. (FERC MISO Order, p. 62,151)
- that the pricing and revenue distribution methodology should remain as stated during the six year transition period in order to meet concerns of cost recovery and cost shifting. However, FERC encouraged both the ISO board and the transmission owners to work towards an agreed superseding pricing proposal before the end of the six-year transition period. (FERC MISO Order, pp. 62,167-68).

With these independence conditions, FERC stated that the MISO satisfied its principles regarding independence and provided the Board with sufficient authority to ensure system reliability. On December 31, 1998, the MISO made and filed amendments to the MISO Agreement as to each of FERC's concerns.

C. Reliability.

There is a history of significant reliability problems in the Midwest. The transmission system was originally designed and constructed by individual utilities to cover their respective assigned service territories and native load requirements.

Transmission lines interconnecting individual utilities were constructed for the sharing of reserves, thereby lowering costs to consumers while improving overall reliability. As wholesale markets have evolved, large quantities of electricity have been wheeled between systems and from state to state. The grid of interconnected transmission systems was never intended to carry such large transactions. In addition to the design problems, no single entity has the authority or the ability to control the entire regional transmission grid. This presents a serious deficiency when trying to manage loop flows that can result from transactions occurring several states away. The control of the entire transmission system by one entity will result in an increased ability to address transmission constraints in an orderly fashion. Regional transmission organizations are therefore imperative and within the federal energy policy purview enunciated in FERC's Order No. 2000.

The current and growing geographic scope and configuration of the MISO also permits it to address reliability in several other ways. While the transmission owners will continue to operate their respective control centers and balance load and generation in their control areas, the MISO will operate a large transmission-reliability control area for the MISO region, which includes a security center located in Indianapolis, Indiana to control the operation of the Transmission System. (MISO Agreement, Article 3, Section 1, Part B. Also Appendices B and E to MISO Agreement.)

In addition, the MISO has agreed to buy the Mid-Continent Area Power Pool ("MAPP COR") facilities consisting of the MAPP Security Center and control facilities in St. Paul, Minnesota. MISO will have real time information over the entire Midwest regional geographic area it serves; authority to direct switching, generation redispatch and selective transaction curtailment as necessary to address constraints and resolve reliability problems; and the ability to resolve long-term problems through regional planning and construction of new facilities. (Appendix E of the MISO Agreement). MISO will also have authority over those non-transferred facilities it deems necessary to maintain system reliability. (Appendix B of the MISO Agreement).

Otter Tail Power Company expects to participate in the MAPP Regional Reliability Council for issues such as sharing of operating and planning reserves. Otter Tail Power Company will also look to expand sharing of reserves with certain MISO members, increasing Otter Tail Power Company's ability to take advantage of the economic benefits of having a larger pool to share reserves.

In addition, at a national level, NERC is beginning to develop the framework for reliability standards that will be carried out by RTOs and those that will remain with traditional regional reliability organizations. These changes are likely to be applied to all RTOs and transmission owning members on a going forward basis and Otter Tail Power Company's decision to join MISO will not affect this industry transition.

D. Control Area Operation.

Under the MISO, current control areas will be maintained with the MISO having authority to direct the transmission operations of each control area without having to physically operate switches; existing control area operators will continue to operate their control areas for generation control and economic dispatch purposes. The FERC has specifically addressed the issue of control area operations by noting that while it did not want to impose a single operational arrangement on all utilities seeking to form regional transmission entities, it believed any entity created must assure that fair competition (including open access) and reliability must be primary objectives of the organization. (FERC MISO Order, p. 62,159).

FERC has analyzed the provisions of the MISO regarding control area operations in its discussion of FERC ISO principles 3, 4 and 5. In its Conditional Order Approving the MISO (FERC Decision, p. 16), FERC specifically required that:

- the MISO monitor the competitive and reliability effects of allowing current control area operators to continue to perform some control area functions, not only in its 18 month assessment but also on an ongoing basis. If concerns in this regard arise, it is the obligation of the ISO to resolve them. In the event the ISO cannot resolve them, the ISO is obligated to report the problem to FERC and other appropriate regulatory authorities. (FERC MISO Order, p. 62,160).
- the MISO shall include in its ongoing as well as its 18 month assessment a report on the effectiveness of the proposed system of fines and penalties and their ability to ensure compliance with the ISO's orders and instructions. (FERC MISO Order, p. 62,161)
- the MISO file no later than 60 days prior to the transfer date a detailed summary of its operating and emergency procedures. In the event of any dispute in this regard, the ISO's decision would prevail pending alternative dispute resolution (ADR). (FERC MISO Order, pp. 62,159-82)

- the MISO provide a current list of transmission facilities to be transferred to the ISO and also keep a record of which operating entity has control over each facility. (FERC MISO Order, p. 62,182)
- the MISO develop a streamlined ADR process for disputes relating to ATC determinations and facilities ratings. (FERC MISO Order, p. 62,182)

MISO operating procedures and ongoing monitoring will expose any discriminatory practices affecting access to transmission. The MISO will remedy any such practices and/or deficiencies. Available remedies include the ability to combine control areas or alter division of control area operations. If the ISO cannot implement an effective remedy, it is required to report the discriminatory practice and/or operational deficiency to FERC and all other regulatory bodies. FERC would then take the necessary steps to bring the ISO back into compliance with its ISO principles. In addition, the conditions permit the MISO to become a single control area operator at any time it deems necessary and cost effective to do so. Otter Tail Power Company believes this MISO operating scheme will provide improved regional system reliability.

E. Regional Transmission Planning And Authority To Build New Facilities.

The MISO Planning Staff will develop a long-range plan to address regional transmission needs and analyze the performance of the transmission system under a wide variety of contingency conditions. The Planning Staff shall take into consideration a wide range of inputs, while seeking to coordinate or consolidate plans of individual stakeholders to produce a more cost-effective development plan. The transmission owners shall continue to have planning responsibility for meeting their respective transmission needs in collaboration with MISO subject to requirements of applicable state law or regulatory authority. Disputes between owners and the MISO Planning Staff may be resolved through the Dispute Resolution process provided in the MISO Agreement. Once the MISO Plan is approved by the MISO Board, the affected Owner(s) are required to make a good faith effort to design, certify, and build the designated facilities to fulfill the approved MISO Plan. (Attachment B to MISO Agreement, Section 11). Neither the PSCW nor FERC have

expressed any reservations concerning the authority of MISO to engage in planning and order construction of new facilities.

F. Congestion Management.

The FERC has determined that the facilitation of RTOs and the development of seamless regional markets for electricity are in the public interest. The Alliance Companies and the MISO are committed to facilitating efficient energy markets through the provision of transmission services, which will be further facilitated by cooperation between RTOS. The Alliance and MISO will jointly develop electronic bulletin board system for posting congestion management. On a daily basis, these RTOs shall jointly identify the interfaces that are expected to be constrained, and the principal generators that can relieve those constraints. The RTOs will post the generator shift factors for those generators. These cooperating RTOs will also implement "hybrid" congestion management models, or such other model(s) as may be required by FERC, to fulfill requirements for congestion management under Order No. 2000. The Inter-RTO Cooperation Agreement is expected to address congestion management in further detail.

V. REPORTING OBLIGATIONS

Considering the centralization of decision-making at the MISO by an independent board and its broader geographic scope than that of MAPP, Otter Tail Power Company pledges to continue to keep the Commission informed of MISO activities and developments. This information sharing will allow the Commission to have a greater understanding of MISO activities, and will provide the Commission with necessary background information should the Commission wish to become more involved as a regulatory participant in MISO activities. Specifically, Otter Tail Power Company shall provide all of the reports required by FERC as discussed in Section V. paragraph D. of this Petition, and all similar information.

VII. CONCLUSION

Otter Tail Power Company requests that the Commission issue an Order at this time indicating its approval of Otter Tail Power Company's transfer of operational control of North Dakota transmission facilities to the MISO at such time as the MISO commences operations or, in the alternative, a finding that the Commission's prior approval of such transfer is not necessary. As discussed above, operational control of Otter Tail Power Company transmission by the MISO under terms of the MISO Agreement will provide a variety of public benefits. Elimination of transmission rate pancaking on a regional scale should produce an overall reduction in the costs of transmitting energy within the region. In addition, MISO participants (including MDU, Xcel Energy and Otter Tail Power Company) will benefit from (1) one stop shopping for transmission service at non-pancaked rates, (2) the establishment of uniform and clear transmission usage rules by the MISO, (3) an enhancement of the separation of control over transmission facilities from the influence of electricity market participants, (4) large scale regional coordination and planning of transmission, and (5) enhanced reliability. The wholesale marketplace will become more competitive, with increased access to broader markets for greater access to energy supply sources.

Date: December 17, 2001

Respectfully submitted,



Pete Beithon
Supervisor, Regulatory Economics
Otter Tail Power Company
215 South Cascade Street
Fergus Falls, MN 56537
(218) 739-8353

PETITION ATTACHMENTS

In the Matter of Otter Tail Power Company's Petition for Approval of Transfer of Operational Control of Certain Transmission Facilities to the MISO

**Attachment A – Membership Application to MISO (MISO Agreement with
signature page)**

Attachment B - §203 Application to FERC

Attachment C - List of Transmission Facilities

Attachment D - MISO Order 2000 Compliance Filing

Attachment E –Otter Tail Power Company Order 2000 Compliance Filing

Attachment F - MISO/Alliance Settlement Agreement

Attachment A

MIDWEST ISO

Midwest Independent Transmission System Operator, Inc.
MEMBERSHIP APPLICATION FOR
TRANSMISSION FACILITIES OWNER

1. Applicant's Full Legal Name: Otter Tail Power Company
- a. Main Office Address: 215 South Cascade
Fergus Falls MN 56537
- b. Main Office Telephone Number: (218)739-8200
- c. Applicant is (please check appropriate category)
- A corporation organized under the laws of Minnesota
 - A partnership organized under the laws of _____
 - A cooperative organized under the laws of _____
 - A political subdivision of _____
 - Other (please describe) _____
- d. Applicant presently operates as: Vertically Integrated Utility
- _____

(E.g., Rural Electric Cooperative, Cogenerator, Exempt Wholesale Generator, Municipal Utility, Power Marketing Administration, Vertically Integrated Utility)
- e. Applicant's geographical area of operation: Eastern North Dakota, Northeastern
South Dakota and Western Minnesota

2. Owner membership status (please check appropriate category):

- This Applicant was a signatory to the Midwest ISO Agreement when it was initially filed with the Federal Energy Regulatory Commission and intends to seek a return of start-up costs pursuant to Section IV, Appendix C, Midwest ISO Agreement.
- The Applicant was *not* a signatory to the Midwest ISO Agreement when it was initially filed with the Federal Energy Regulatory Commission, but has made contributions to start-up costs since the date that it did become a signatory to the Midwest ISO Agreement. This Applicant intends to seek the return of post-filing start-up costs after the repayment of all start-up costs incurred before the initial FERC filing date, pursuant to Section IV, Appendix C, Midwest ISO Agreement.
- Applicant is not a signatory to the Midwest ISO Agreement and has not made any contribution to start-up costs, either before or after the initial filing at the Federal Energy Regulatory Commission.

→ Signing the Midwest ISO Agreement today with this application. 2/28/2001

[Handwritten signature]
ACD
2/28/01

3. Persons authorized to deal with ISO:

- a. Name: Daryl Hanson
 - (1) Title: Director-System Engineering & Operations
 - (2) Address: Otter Tail Power Company, 215 S Cascade, Fergus Falls, MN 56537
 - (3) Telephone: (218)739-8260
 - (4) FAX: (218)739-8625
 - (5) Email: darylhanson@otpc.com
- b. Name: Donald Davenport
 - (1) Title: Transmission Administrator-System Operations
 - (2) Address: Otter Tail Power Company, 215 S Cascade, Fergus Falls, MN 56537
 - (3) Telephone: (218)739-8474
 - (4) FAX: (218)739-8625
 - (5) Email: ddavenport@otpc.com
- c. Name: Rodney C.H. Scheel
 - (1) Title: Vice President-Delivery Systems
 - (2) Address: Otter Tail Power Company, 215 S Cascade, Fergus Falls, MN 56537
 - (3) Telephone: (218)739-8204
 - (4) FAX: (218)739-8218
 - (5) Email: rscheel@otpc.com

4. Describe the activities you plan to conduct as a member of the Midwest ISO: To participate as a member

5. Membership Fee:

Pursuant to Article Six of the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO Agreement"), "All entities eligible for membership in the Midwest ISO shall pay an initial membership fee of \$15,000 in order to become Members."

This fee was specifically approved by the Federal Energy Regulatory Commission in its Order conditionally approving the establishment of the Midwest ISO. See Order Conditionally Authorizing Establishment of Midwest Independent Transmission System Operator and Establishing Hearing Procedures, Midwest Indep. Transmission Sys. Operator, Inc., Docket No. ER98-1438-000 (F.E.R.C., Sept. 16, 1998). The Commission also stated that "there is no restriction in the Midwest ISO Agreement to preclude potential Members from pooling financial resources to pay the application fee and annual dues, i.e., have a collective membership interest."

Each Applicant shall submit with its application a check made payable to Midwest Independent Transmission System, Inc. in the amount of \$15,000.

If the Applicant consists of several entities or individuals who wish to share a Membership, the \$15,000 membership fee will cover the group's membership. The group will be entitled to one (1) vote.

Note: The Midwest ISO requires all entities eligible for membership to pay the \$15,000 fee if they desire to participate in the election of the board of directors. This policy will apply to the original signatories to the Midwest ISO Agreement, as well as to any subsequent signatories or other entities who apply for membership and agree to be bound by the terms of the Agreement, as amended.

Article Six states: "All entities eligible for membership in the Midwest ISO shall pay the initial membership fee of \$15,000 in order to become Members. ... All such fees are nonrefundable and may be adjusted from time-to-time, as may be appropriate by the Board."

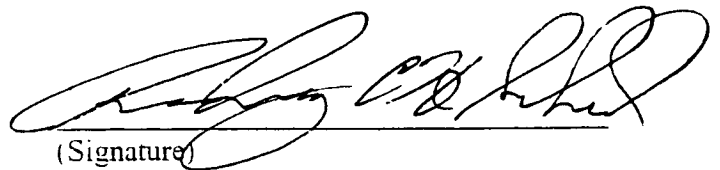
Any start-up costs borne by the original or subsequent transmission owner signatories may be recovered pursuant to the procedure set forth in Section IV to Appendix C, Midwest ISO Agreement. Requests for return of start-up costs shall be presented to the board of directors after it is elected.

This application and the membership fee shall be forwarded to:

Karl Zobrist
Secretary and Counsel
Midwest ISO
c/o Blackwell Sanders Peper Martin LLP
2300 Main Street, Suite 1100
Kansas City, Missouri 64108

(816) 983-8171 (Telephone)
(816) 983-8080 (FAX)
kzobrist@bspmlaw.com (Email)

The Applicant certifies that the above information is accurate and complete, and agrees to be bound by the provisions of the Midwest ISO Agreement, consistent with any rulings or orders of the Federal Energy Regulatory Commission or other pertinent authority.



(Signature)

Rodney C.H. Scheel
(Print name)

Title: Vice President-Delivery Systems

Date: February 28, 2001

Midwest ISO
FERC Electric Tariff, First Revised Rate Schedule No. 1

Original Sheet No. 93

Article Nine

IN WITNESS WHEREOF, the Owners have caused their duly authorized representatives to execute and attest this Agreement, on their respective behalves, as of the day of February __, 2001, subject to the contingencies listed below.


Signature

Otter Tail Power Company
Name of Owner

Vice President, Delivery Systems
Title of Signatory

Contingencies

1. Closing of sale of MAPPCOR assets to MISO by December 31, 2001.
2. FERC approval of a final Settlement Agreement and an Inter-RTO Cooperation Agreement in the proceedings regarding Illinois Power Docket No. ER01-123-000, relating to withdrawal of ComEd, Illinois Power and Ameren from the MISO and specifically including super-regional rate (which would apply to Otter Tail) substantially in conformance with the Settlement term sheet and ALJ's Report(s) to the Commission.
3. FERC approval of filing for opinion of electing network service for MAPP members addressed in Docket No. ER01-479.

If these contingencies are not satisfied or waived by Otter Tail Power Company, this Agreement shall be null and void.

Attachment B



Fargo office: 3203 32nd Avenue S.W.
Suite 110, P.O. Box 9156
Fargo, ND
58106-9156
Fax: 701-232-4108

Fergus Falls office: 215 S. Cascade Street
P.O. Box 496
Fergus Falls, MN
56538-0496
Fax: 218-998-3165

1-866-410-8780 • www.ottertail.com

September 5, 2001

David P. Boergers
Secretary
Federal Energy Regulatory Commission
Dockets Room, Room 1A
888 First Street, NE
Washington, DC 20426

Re: Docket No. EC01- -000

Dear Mr. Boergers:

Pursuant to Section 203 of the Federal Power Act, 16 U. S.C. Section 824b, and Part 33 of the Federal Energy Regulatory Commission's ("Commission") Regulations, Otter Tail Power Company, a division of Otter Tail Corporation on behalf of itself submits this Application. Otter Tail Power Company comprises a NERC control area in Minnesota, North Dakota and South Dakota and operates under a singular open access transmission tariff. Otter Tail Power Company also has transmission lines and operations in the Northern States Power Company and Western Area Power Administration control areas in North and South Dakota.

Through this filing, Otter Tail Power Company seeks to obtain Commission approval of the transfer of operational control over jurisdictional transmission facilities to the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO"). Otter Tail request that the Commission's approval be effective on the date that the Midwest ISO commences operations. .

Otter Tail Power Company is a member of the Midwest ISO. The date of the Otter Tail Power Company membership application as a Midwest ISO Transmission Owner was February 28, 2001, and the Midwest ISO Board subsequently approved Otter Tail Power Company's application to become a member.

Otter Tail requests that the Commission issue its order approving this Application no later than December 15, 2001, so that the integration of Otter Tail's transmission facilities into the Midwest ISO structure can be accomplished in conjunction with the anticipated Midwest ISO Operational Date.

Enclosed for filing pursuant to 18 C.F.R. 33.6 are an original plus eight copies of this Application.

David P. Boergers
September 5, 2001
Page 2

Contents of filing: This filing consists of an original and eight copies of each of the following: 1) this letter; 2) Otter Tail Power Company's Section 203 Application; 3) a list of recipients receiving a copy of this filing and 4) a Notice of Filing suitable for publication in the

Federal Register as required by 18 C.F.R. Section 33.2. An electronic copy of the Notice of Filing is enclosed.

Administrative Issues: Please direct questions to:
Pete Beithon
Supervisor, Regulatory Economics
Otter Tail Power Company
215 South Cascade
Fergus Falls, MN 56537
218-739-8607 (phone), 218-739-8218 (fax)
pbeithon@OTPCo.com (e-mail)

A copy of this filing has been mailed to the Minnesota Public Utilities Commission, the Public Service Commission of North Dakota and the South Dakota Public Utilities Commission.

Please acknowledge receipt of this filing by time stamping and returning one copy in the envelope provided.

Respectfully submitted,

Bruce Gerhardson
Associate General Counsel
Otter Tail Corporation
215 South Cascade Street
Fergus Falls, MN 56537
(218) 739-8350

Enclosures

Service List:

c:
Minnesota Public Utilities Commission
Public Service Commission of North Dakota
South Dakota Public Utilities Commission

Doug Kjellerup
Rod Scheel
John MacFarlane
Daryl Hanson

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Otter Tail Power Company,
a division of Otter Tail Corporation

Docket No. EC01-__-000

**APPLICATION TO TRANSFER OPERATIONAL CONTROL OVER
TRANSMISSION FACILITIES TO THE
MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.**

Pursuant to Section 203 of the Federal Power Act ("FPA"), 16 U.S.C. § 824b, and Part 33 of the Federal Energy Regulatory Commission's ("Commission") or ("FERC") Rules and Regulations 18 C.F.R. Part 33, Otter Tail Power Company, a division of Otter Tail Corporation,¹ petitions for approval of the transfer of operational control over the jurisdictional transmission facilities of Otter Tail Power Company to the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO"). Otter Tail requests that the Commission approve the proposed transfer to be effective on the date the Midwest ISO becomes operational. Until such date the Applicants will retain full operational control over these facilities. In support of this application, Otter Tail Power Company states the following.

Otter Tail Corporation is a Minnesota corporation whose Otter Tail Power Company division provides electric service in Minnesota, North Dakota and South Dakota and as such, is a public utility as defined in Minnesota Statutes, Section 216B.02 subd. 4. Otter Tail Power Company's principal office is at 215 South Cascade Street, Fergus Falls, MN 56537. Otter Tail Power Company generates, transmits and distributes electricity to more than 125,000 customers in a 50,000 square mile area of northwestern Minnesota, northeastern South Dakota and eastern and central North Dakota.

¹ On April 9, 2001 Otter Tail Power Company changed its corporate name to Otter Tail Corporation. The name change was not the result of a merger or acquisition. The name Otter Tail Power Company continues to be used to refer to Otter Tail Corporation's electric utility division. Secretary Boergers was notified of the name change April 11, 2001.

Otter Tail Power Company owns and operates 5,284 miles of transmission lines in Minnesota, North Dakota and South Dakota. These transmission lines include 48 miles of 345 kV lines, 363 miles of 230 kV lines, 720 miles of 115 kV lines, 218 miles of 69kV lines and 3,935 miles of 41.6 kV lines.

Otter Tail Power Company is directly interconnected with 11 other utility transmission systems. The interconnections include a 345 kV interconnection with Minnkota Power Cooperative ("MPC"). There are also 230 kV connections with the Manitoba Hydro Electric Board ("MHEB") (via a coordination agreement with MPC and Northern States Power Company ("NSP")), Minnesota Power Company ("MP"), MPC, Western Area Power Administration/Basin Electric Integrated System ("WAPA, Basin/WAPA IS"), NSP, Great River Energy ("GRE") and Montana Dakota Utilities ("MDU"). Otter Tail Power Company also has numerous connections with other utilities at 115 kV, 69 kV and 41.6kV as well as interconnections with numerous municipal utility systems, small cooperatives and independent power producers. Otter Tail Power Company is a party to grandfathered integrated transmission agreements with: (1) MPC, (2) Missouri River Energy Services ("MRES"), (3) GRE and (4) Central Power Electric Cooperative ("CPEC"). These grand-fathered agreements give Otter Tail Power Company use of over 527 miles of 115 kV lines, 128 miles of 69 kV lines & 297 miles of 41.6 kV lines. Otter Tail Power Company also has transmission rights created by other grand fathered agreements. The additional agreements with MPC, MDU and GRE give Otter Tail Power Company use of 250 miles of 345 kV and 700 miles of 230 kV lines.

Otter Tail Power Company comprises a NERC control area that spans Minnesota, North Dakota and South Dakota. Otter Tail Power Company also has transmission lines and operations in the Northern States Power Company and Western Area Power Administration control areas in North and South Dakota. Otter Tail provides transmission service over its transmission facilities under an open access transmission tariff approved by the Commission in Docket OA96-192-000. Otter Tail Power Company is a Member of the Mid-Continent Area Power Pool. Transmission Service over Otter Tail's transmission facilities is also provided by MAPP under FERC approved Mid-Continent Area Power Pool ("MAPP") tariffs.

The Illinois Power and Commonwealth Edison withdrawal requests and issues surrounding MISO's future were resolved through a recent settlement agreement ("Settlement Agreement") and Commission Order dated May 8, 2001 that created a relationship between the MISO and the Alliance RTOS (Illinois Power, Inc., Docket No. ER01-123-002, Commonwealth Edison Company, Docket No. ER01-780-000 and Ameren Corporation, Docket No. ER01-966-000). This settlement agreement necessitated quick action by Otter Tail Power Company and other utilities wishing to join the MISO and receive in return the fullest benefits of MISO membership under the settlement agreement. This prompted Otter Tail Power Company's February 28, 2001 announcement of its MISO membership. Otter Tail Power Company membership participation in MISO is governed by the current version of the MISO Agreement (which has been revised to satisfy the FERC conditional approval of the Settlement Agreement). As of February 28, 2001, twenty utilities with service territories over portions of 11 states and the Province of Manitoba, Canada had committed to operational control under the MISO Agreement or under a Coordination agreement in the case of Manitoba Hydro.

I. Introduction

On January 15th, 1998 certain Midwest ISO public utilities² ("Participants") filed an application in Docket No. EC98-24, pursuant to Section 203 of the FPA, for approval of the transfer of operational control of substantial portions of their jurisdictional transmission facilities to the Midwest ISO². Participants filed in Docket No. ER98-1438 an Open Access Transmission Tariff, and agreement setting forth the structure of the Midwest ISO and establishing the rights and obligations of the ISO and the various ISO members, and other documents intended to implement the Midwest ISO. The full name of this Agreement is the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware non-stock corporation ("MISO Agreement").

² The Midwest ISO public Utilities that were the subject of the January 15, 1998 filing were The Cincinnati gas & Electric Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Illinois Power Company, PSI Energy Company, Inc., Wisconsin Electric Power Company, Union electric Company, Central Illinois Public Service Company, Louisville Gas & Electric Company, and Kentucky Utilities Company. In addition, Hoosier Energy Rural Electric Cooperative, Inc. and Wabash Valley Power Association, Inc. ("Wabash") were original signatories to the Midwest ISO Agreement.

By Order issued on September 16, 1998, the Commission found that the transfer proposed in the January 15, 1998 filing was in the public interest and approved the Section 203 application, subject to certain conditions and accepted the MISO Agreement for filing. Midwest Independent Transmission System Operator, Inc.³, 84 FERC ¶61,231 at 62,161, 62,181, (1998) Order on Rehearing 84 FERC ¶61,372 (1998).

II. Allowing additional Midwest ISO public utilities to transfer the subject facilities will provide substantial public benefits.

The Commission has found that the establishment of the Midwest ISO, along with the proposed transfer of facilities, was consistent with public interest and would provide substantial operational and economic benefits. 84 FERC at 62,163, 62,181; See also 84 FERC Order at 62,185. The Midwest ISO will serve to benefit sellers and buyers of electricity alike by providing for regional transmission service and non-pancaked rates (84 FERC at 62,167) and increasing reliability and the ability to address transmission constraints on a region-wide basis (84 FERC at 62,163). Otter Tail Power Company's membership in the Midwest ISO will serve to increase the Midwest ISO's ability to provide these public benefits, by enlarging the transmission system under the Midwest ISO's operational control and the system subject to the Super-Regional Rate tariff achieved in the Settlement Agreement.

III. Description of Facilities.

The transmission facilities that Otter Tail Power Company is transferring, to the Midwest ISO's functional control ("Transferred Facilities") are listed and shown in the system schematics included as Exhibit 1 to this Application. These facilities consist of all Otter Tail Power Company's network facilities above 100 kV and networked transformers whose two highest voltages are above 100 kV. The guidelines for the facilities to be transferred are set forth at Article 1, Section L of the ISO Agreement and Appendix H to the ISO Agreement. Otter Tail Power Company believes that the transmission facilities listed on Exhibit 1 comply with these Midwest ISO guidelines.

IV. Public Interest of the Proposed Transfer.

In previous cases, the Commission has determined that the transfer of operational authority over transmission facilities to the Midwest ISO is clearly consistent with the public interest. Midwest Independent Transmission System Operator, Inc., 84 FERC ¶61,231 at 62,161, 62,181, (1998) Order on Rehearing 85 FERC ¶61,372 (1998). The Commission should find here that the proposed transfer of operational authority over the Transferred Facilities to the Midwest ISO is also consistent with the public interest. By increasing the scope of facilities over which the Midwest ISO has operational authority, reliability in the Midwest will be enhanced, and the Midwest ISO's ability to address transmission constraints will be increased. Finally, the expansion of the facilities under the Midwest ISO's operational authority will expand the region over which sellers and buyers can ³transmit power at non-pancaked rates, the addition of these new members further substantiates the fact that the proposed transfer is in the public interest.

As of February 28, 2001, the Midwest ISO transmission owners include American Transmission Company, LLC; Alliant Energy Corporation Central Illinois Light Co.; Cinergy Services, Inc.; Hoosier Energy Rural Electric Cooperative, Inc.; LG&E Corporation (for Louisville Gas and Electric Co. and Kentucky Utilities Co.); Northwestern Wisconsin Electric Co.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Wabash Valley Power Association, Inc.; WPS Resources Corporation; Xcel Energy, Inc.; Lincoln Electric System³; Sunflower Electric Power Corporation³; UtiliCorp United, Inc.³; Indianapolis Power & Light Company³; Indiana Municipal Power Agency³; Otter Tail Power Company and MP/SWLP³.

The Manitoba Hydro Electric Board has also signed a memorandum of understanding, as a Canadian Province, to participate as a transmission owner and the Super-Regional rate through a Coordination Agreement arrangement. Otter Tail Power Company believes that the geographic size and scope of this expanded Midwest ISO transmission owner membership will greatly enhance regional planning, and congestion management in the Midwest portion of the United States of America and Canada.

³ Conditional Members

V. Jurisdiction.

Otter Tail Power Company owns electric transmission facilities subject to this Commission's jurisdiction under Sections 201 and 203 of the Federal Power Act. In accordance with *Atlantic City, Electric Company*, 76 FERC ¶61,306 at 62,515(1996) and with the Midwest ISO Order 84, FERC at ¶62,139 note 5, it requires that Otter Tail Power Company obtain prior Commission approval to transfer operational control over their transmission facilities to the Midwest ISO.

VI. Request for Waiver.

In the January 15, 1998 filing, the Midwest ISO Public Utilities noted that the Commission generally has not applied the filing requirements set forth at 18 C.F.R. §§33.2 and 33.3 to the transfers of facilities pursuant to the establishment of an independent system operator, and requested waiver of these regulations. The Commission granted that waiver. *Midwest Independent System Operator, Inc.*, 84 FERC ¶62,231 at 62,161, 62,181, (1998) Order on Rehearing 85 FERC ¶61,372 (1998). Otter Tail Power Company requests that same waiver in this Application. The Commission should grant a similar waiver here because good cause exists. These filing requirements are intended to ensure that Section 203 applicants such as Otter Tail Power Company supply the Commission with sufficient information to determine whether the proposed transfer is consistent with the public interest. The detailed information contained in this Application should provide the Commission with sufficient information to evaluate this Application. The Commission, which has already found that the transfer of similar facilities by the initial group of Midwest ISO Public Utilities is in the public interest, has a sufficient record upon which it can conclude the proposed transfer is similarly consistent with the public interest.

VII. Notice.

To fulfill the service requirement of Section 203 that the Commission provide reasonable notice to certain identified officials and agencies, a copy of this filing has been served on the Public Service Commission of North Dakota, the Minnesota Public Utilities Commission and the South Dakota Public Utilities Commission.

Otter Tail Power Company requests that correspondence and communications with respect to this pleading be sent to, and that the Commission secretary include on the official service list established in this proceeding, the following:

Bruce G. Gerhardson
Associate General Counsel
Otter Tail Corporation, Inc. 215 South Cascade Street
Fergus Falls, MN 56537
(218) 739-8353

Finally, included as Exhibit 2 is a list of contracts and agreements that would be considered grandfathered under the Midwest ISO Tariff. This list includes information similar to that set forth in Attachment P of the Midwest ISO Tariff.

VIII. Conclusion.

Otter Tail Power Company requests the Commission issue an order pursuant to Section 203 of the Federal Power Act, finding that the proposed transfer of operational control over the Transferred Facilities to the Midwest ISO is consistent with the public interest. Otter Tail requests that the Commission issue such order to be effective on the date that the Midwest ISO becomes operational, and Otter Tail requests that the Commission issue such order no later than [DATE], so that the integration of Otter Tail's transmission facilities into the Midwest ISO structure can be accomplished in conjunction with the anticipated Midwest ISO Operational Date..

Dated: September 5, 2001

Respectfully submitted.

Bruce G. Gerhardson
Associate General Counsel
Otter Tail Corporation, Inc. 215 South Cascade Street
Fergus Falls, MN 56537
(218) 739-8353

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Otter Tail Power Company.

Docket No. EC01-_____

NOTICE OF FILING

September____, 2001

Take notice that on September____, 2001, Otter Tail Power Company, a division of Otter Tail Corporation, tendered for filing, an Application to Transfer Operational Control Over Transmission Facilities to the Midwest Independent Transmission System Operator. Inc. under Section 203 of the Federal Power Act.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Dockets Room, Room IA. 888 First Street N.E., Washington. DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. 385.211 and 18 C.F.R. 385.214). All such motions or protests should be filed on or before September____, 2001. 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 proceedings. Any person wishing, to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers

Secretary

Attachment C

**TRANSMISSION CIRCUIT MILES
230 kV**

OTTER TAIL POWER COMPANY

| LINE SECTION 230 KV (H - FRAME) | OTP Owned MILES | MDU Owned MILES | NPS Owned MILES | MRES Owned MILES | TOTAL MILES |
|---|-----------------------|-----------------------|-----------------------|------------------------|----------------|
| FERGUS FALLS - HENNING | 19.40 | | | 10.97 | 30.37 |
| FERGUS FALLS - WAHPETON | 28.80 | | | | 28.80 |
| WAHPETON - HANKINSON | 25.55 | | | | 25.55 |
| HANKINSON - FORMAN | 36.46 | | | | 36.46 |
| FORMAN - ELLENDALE | 47.31 | | | | 47.31 |
| AUDUBON - BADOURA (OTP SECTION) | 5.88 | | | | 5.88 |
| AUDUBON - SHEYENNE (WEST FARGO) OTP SECTION | 42.38 | | | | 42.38 |
| WINGER - WILTON (OTP SECTION) | 17.55 | | | | 17.55 |
| GRAND FORKS - WINNEPEG (OTP SECTION) | 27.24 | | | | 27.24 |
| HANKINSON - BIG STONE | 22.62 | 47.55 | | | 70.17 |
| BIG STONE - GARY | 14.96 | | 18.17 | | 33.13 |
| HARVEY - UNDERWOOD | 72.09 | | | | 72.09 |
| UNDERWOOD - COAL CREEK | 2.83 | | | | 2.83 |
| TOTAL MILES | 363.07 | 47.55 | 18.17 | 10.97 | 439.76 |

TRANSMISSION CIRCUIT MILES
115 kV Transmission Lines
 OTTER TAIL POWER COMPANY

| LINE SECTION 115 KV (H - FRAME) | OTP Owned MILES | MRES Owned MILES | TOTAL MILES |
|---|-----------------------|------------------------|----------------|
| FERGUS FALLS - MORRIS | 4.51 | 46.11 | 50.62 |
| GRANT CO. SW STA-BRANDON | | 20.25 | 20.25 |
| BRANDON - OSAKIS | 5.16 | 15.28 | 20.44 |
| ORTONVILLE-MORRIS | 1.56 | 24.08 | 25.64 |
| BIG STONE-ORTONVILLE | 1.33 | | 1.33 |
| BIG STONE-CANBY | 45.33 | | 45.33 |
| BURR TAP - TORONTO | 24.67 | | 24.67 |
| CANBY - GRANITE FALLS | 39.22 | | 39.22 |
| FERGUS FALLS (H.L.) - FERGUS FALLS 230 KV SUB | 2.06 | | 2.06 |
| AUDUBON-FERGUS FALLS | 1.63 | 29.65 | 31.28 |
| FERGUS FALLS TAP - EDGETOWN | 2.77 | | 2.77 |
| CASS COUNTY - WAPA SUB (WEST FARGO) | 5.68 | | 5.68 |
| AUDUBON - WINGER | 49.01 | | 49.01 |
| WINGER - CROOKSTON | 38.96 | | 38.96 |
| WINGER - PLUMMER TAP (PUMPING STATION) | 24.75 | | 24.75 |

| | | OTP Owned MILES | MRES Owned MILES | TOTAL MILES |
|--|--|-----------------------|------------------------|----------------|
| LINE SECTION 115 KV (H - FRAME) | | | | |
| PLUMMER TAP(PUMPING STA.) - PLUMMER PUMPING STA. | | 0.14 | | 0.14 |
| WINGER - BAGLEY | | 28.14 | | 28.14 |
| BAGLEY - BEMIDJI | | 26.75 | | 26.75 |
| BEMIDJI-BADOURA | | 14.79 | | 14.79 |
| VIKING TAP - KARLSTAD | | 28.27 | | 28.27 |
| VIKING TAP - VIKING PUMPING STATION NO.1 | | 0.11 | | 0.11 |
| VIKING TAP - VIKING PUMPING STATION NO.2 | | 0.07 | | 0.07 |
| VIKING TAP - THIEF RIVER FALLS | | 10.19 | | 10.19 |
| DONALDSON (SOUTH SUBSTATION) - WARSAW | | 25.15 | | 25.15 |
| DONALDSON (SOUTH SUB.) - DONALDSON PUMPING STA. | | 0.14 | | 0.14 |
| UPA - OTP (DEVILS LAKE) | | 0.09 | | 0.09 |
| WAPA SUB - EAST 115 KV SUB (OTP) (DEVILS LAKE) | | 2.23 | | 2.23 |
| DEVILS LAKE-LANGDON | | 27.73 | | 27.73 |
| | | | | |

| Substations Controlled by Otter Tail Company Control Center Networked > 100 kV (with transformers rated above 100 kV) | Transmission Operating Voltage | Number of Transformers | Comments |
|---|--------------------------------|------------------------|---------------------------|
| Big Stone 230 kV Substation | 230/115 kV | 1 | |
| Buffalo 345 kV Substation | 345/115 kV | 1 | |
| Forman 230 kV Substation | 230/115 kV | 1 | |
| Jamestown 345 kV Substation | 345/115 kV | 2 | |
| Maple River 345 kV Substation | 345/230 kV | 2 | Joint controlled with MPC |
| Wilton | 230/115 kV | 1 | |
| Winger 230 kV Substation | 230/115 kV | 1 | OTP operates 115 only |

| Transformers Controlled by the Otter Tail Power Company Control Center (with one transformers voltage rated above 100 kV) | Transmission Operating Voltage | Number of Transformers | Facility Owner |
|---|---------------------------------------|-------------------------------|-------------------------|
| Bemidji 115 kV | 115/69/13.2 | 1 | |
| Big Stone 230 kV | 230/22.9 | 1 | |
| Big Stone Highway 12 | 115/41.6 | 1 | |
| Browns Valley 230 kV | 230/41.6 | 1 | |
| Canby 115 kV | 115/41.6 | | |
| Clearbrook 115 kV | 115/41.6 | | |
| Coyote Station | 345/22.9 | | |
| Coyote Station | 115/13.8 | | |
| Crookston 115 kV | 115/43.8 | 2 | |
| Devils Lake East 115 kV | 115/43.8 | | |
| Devils Lake Southwest 115 kV | 115/43.8 | | |
| Donaldson 115 kV | 115/41.6 | 2 | |
| Fergus Falls Edgetown | 115/12.5 | | |
| Fergus Falls Hoot Lake | 115/12.5 | | |
| Fergus Falls Hoot Lake | 115/13.2 | 2 | |
| Fergus Falls Hoot Lake | 115/43.8 | | |
| Hensel 115 kV | 115/72/43.8 | | |
| Itasca 115 kV | 115/4.36 | | |
| Jamestown Peaking Plant | 115/43.8 | | |
| Ladish | 115/43.8 | | |
| Marietta | 115/41.6 | | |
| Northwoods 115 kV | 115/41.6 | | |
| Oakes 230 kV | 230/41.6 | | |
| Ortonville 115 kV | 115/43.8 | | |
| Pelican Rapids 115 kV | 115/41.6+B24 | 2 | |
| Perham | 115/12.5 | 2 | |
| Pickert 230 kV | 230/72/43.8 | | Joint operated with MPC |
| Plummer 115 kV | 115/43.8 | | |
| Toronto 115 kV | 115/41.6 | | |
| Wahpeton North | 115/12.5 | 2 | |

| Transformers Controlled by the Otter Tail Power Company Control Center (with one transformers voltage rated above 100 kV) | Transmission Operating Voltage | Number of Transformers | Facility Owner |
|--|--------------------------------|------------------------|----------------|
| | | | |
| Alice | 115/7.2 | | |
| Aviko | 115/12.5 | | |
| Clearbrook Minnesota Pipeline | 115/4.36 | | |
| | | | |
| Correll | 115/7.2 | | |
| Dumont | 115/12.5 | | |
| Enderlin | 115/12.5 | | |
| Esmond | 115/12.5 | | |
| Fairmount | 115/12.5 | | |
| Gwinner | 115/12.5 | | |
| Harvey North | 115/12.5 | | |
| Jamestown Downtown | 115/12.5 | | |
| Jamestown North | 115/12.5 | | |
| Lisbon | 115/12.5 | | |
| Mahnomon | 115/12.5 | | |
| Melroe | 115/12.5 | | |
| Morris E, S, W | 115/12.5 | | |
| Odessa | 115/12.5 | | |
| Ortonville Quarry | 115/12.5 | | |
| Oslo | 115/12.5 | | |
| Selz | 115/7.2 | | |
| Tyler | 115/7.2 | | |
| Viking | 115/12.5 | | |
| Wheaton South | 115/12.5 | | |

| Circuit Breakers Controlled by Otter Tail Power Control Center Networked > 100 kV (with transformers rated above 100 kV) | Breaker Number | Transmission Operating Voltage | Owner of Facility | Comments |
|--|-----------------------|---------------------------------------|--------------------------|--------------------------|
| Audubon 230 kV Substation | 2115 | 230 | OTP | |
| Audubon 230 kV Substation | 2125 | 230 | OTP | |
| Bemidji Substation | 1235 | 115 | OTP | |
| Bemidji Substation | 1245 | 115 | OTP | |
| Big Stone 230 kV Substation | 1675 | 115 | OTP | |
| Big Stone 230 kV Substation | 1685 | 115 | OTP | |
| Big Stone 230 kV Substation | 2615 | 230 | OTP | |
| Big Stone 230 kV Substation | 2625 | 230 | OTP | |
| Big Stone 230 kV Substation | 2635 | 230 | OTP | |
| Big Stone 230 kV Substation | 2645 | 230 | OTP | |
| Buffalo 345 kV Substation | 1315 | 115 | OTP | |
| Canby 115 kV | 1515 | 115 | OTP | |
| Canby 115 kV | 1525 | 115 | OTP | |
| Center 345 kV Substation | 3215 | 345 | OTP | Joint operation with MPC |
| Center 345 kV Substation | 3235 | 345 | OTP | Joint operation with MPC |
| Center 345 kV Substation | 3245 | 345 | OTP | |
| Crookston 115 kV Substation | 1615 | 115 | OTP | |
| Devils Lake East 115 kV | 1125 | 115 | OTP | |
| Donaldson 115 kV Substation | 1715 | 115 | OTP | |
| Donaldson 115 kV Substation | 1725 | 115 | OTP | |
| Fergus Falls Hoot Lake | 1275 | 115 | OTP | |
| Fergus Falls Hoot Lake | 1295 | 115 | OTP | |
| Fergus Falls Hoot Lake | 1515 | 115 | OTP | |
| Fergus Falls Hoot Lake | 1725 | 115 | OTP | |
| Fergus Falls Hoot Lake | 1755 | 115 | OTP | |
| Fergus Falls Hoot Lake | 1795 | 115 | OTP | |
| Forman 230 kV Substation | 1385 | 115 | OTP | |
| Forman 230 kV Substation | 1395 | 115 | OTP | |
| Hankinson 230 kV Substation | 2525 | 230 | OTP | |
| Hankinson 230 kV Substation | 2515 | 230 | OTP | |
| Hankinson 230 kV Substation | 2535 | 230 | OTP | |
| Jamestown 345 kV Substation | 1115 | 115 | OTP | |
| Jamestown 345 kV Substation | 1125 | 115 | OTP | |
| Jamestown 345 kV Substation | 1135 | 115 | OTP | |
| Jamestown 345 kV Substation | 3115 | 345 | OTP | Joint operation with MPC |
| Jamestown 345 kV Substation | 3135 | 345 | OTP | Joint operation with MPC |
| Jamestown Peaking Plant | 1255 | 115 | OTP | |
| Jamestown Peaking Plant | 1265 | 115 | OTP | |
| Ortonville 115 kV Substation | 1445 | 115 | OTP | |

Attachment D



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Vice President
General Counsel
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E-mail: skozey@midwestiso.org

Midwest Independent Transmission System Operator | 5517 West 74th Street | Indianapolis, IN 46268
317-295-5400 | 317-347-9685 FAX

VIA HAND DELIVERY

January 16, 2001

David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: The Midwest ISO Order No. 2000 Compliance Filing
Docket No. RT01-___-000

Dear Mr. Boergers:

Pursuant to Section 205 of the Federal Power Act ("FPA"), 16 U.S.C. § 824d, and Section 35.34 of the Federal Energy Regulatory Commission's ("Commission") regulations, 18 CFR § 35.34 (2000), the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") hereby submits an original and fourteen (14) copies of this transmittal letter and its filing with attachments in compliance with Commission's December 20, 1999 Order on Regional Transmission Organizations ("Order No. 2000"), the subsequent February 25, 2000 Order ("Order No. 2000-A") and the July 20, 2000 Notice of Guidance Order ("Guidance Order"). The Midwest ISO requests that the Commission find that the Midwest ISO satisfies the Commission's requirements for RTOs as set forth in Order Nos. 2000 and 2000-A.

I. EXECUTIVE SUMMARY

The Midwest ISO, as it is currently configured, readily satisfies all four of the minimum characteristics and eight functions of Order No. 2000. This remains true only if the Midwest ISO retains its present scope and configuration. If the Midwest ISO's scope and configuration is permitted to erode, it's ability to maintain conformance with the other characteristics deteriorates in parallel with the diminished scope and configuration. The Midwest ISO meets the requirements of Order Nos. 2000 and 2000-A as follows:

A. Characteristics of Order No. 2000

1. **Independence** – The Midwest ISO currently complies with the independence standard because it meets each of the four elements of independence: (a) the Board of Directors, the Midwest ISO management, and employees have no financial interests in the Midwest ISO; (b) the Midwest ISO has independent decision-making responsibilities; (c) the Midwest ISO has independent capitalization capabilities (although this capability is currently in jeopardy); and (d) the Midwest ISO has the ability to file tariff changes over a broad scope of issues.

2. **Appropriate Scope and Configuration** – The current scope and configuration of the Midwest ISO is adequate to comply with this characteristic. However, if the Commission approves the impending departures of Ameren, Commonwealth Edison and/or Illinois Power, this would greatly diminish the adequacy of the Midwest ISO's scope and configuration. This action by the Commission would eventually lead to the departure of all other existing Midwest ISO Members to the point where the Midwest ISO would no longer be an operationally viable RTO under Order No. 2000. This point has been further amplified by the conditional withdrawals of the remaining members, steadfastly committed to the Midwest ISO, yet forced to leave if the impending departures of ComEd, Illinois Power, and/or Ameren are permitted.

3. **Operational Authority** – The Midwest ISO is in conformance with all aspects pertaining to the operational authority provisions of Order No. 2000. The Midwest ISO will have functional control of all networked transmission facilities owned and operated at 100 kV or above. The Midwest ISO will serve as the security coordinator for the transmission systems subject to its functional control and will also have emergency plans and procedures in place in the event of a system emergency.

4. **Authority to Maintain Short-Term Reliability** – The Midwest ISO has the exclusive authority to receive, confirm, and implement all interchange schedules and the Midwest ISO has the authority to order redispatch of any generator connected to transmission facilities it operates if necessary for the reliable operation of these facilities. Obviously, this authority would be greatly compromised if Members were allowed to withdraw at this time. The Midwest ISO will have authority to approve and disapprove all requests for scheduled outages of transmission facilities to ensure that the outages can be accommodated within established reliability standards. The Midwest ISO also will honor and monitor compliance with reliability standards established by ECAR, MAIN and MAPP regional reliability councils.

B Functions of Order No. 2000 – The Midwest ISO is in conformance with the eight RTO minimum functions of Order No. 2000 as set out below:

1. **Tariff Administration** - The Midwest ISO will be the sole administrator of its own FERC-approved tariff, and it will be the entity with the sole authority to receive, evaluate, and approve or deny all requests for transmission service.
2. **Congestion Management** - The Midwest ISO believes that its existing congestion management provisions, particularly as they relate to facilitating new service, are in technical compliance with the requirements of Order No. 2000 for Day 1 operations and has begun work on a hybrid approach to address long-term congestion management, building on the strengths of locational marginal pricing and physical flowgates.
3. **Parallel Path Flow** - The Midwest ISO's size allows it to internalize most, if not all, of the effects of parallel path flow in its scheduling and pricing process. As presently structured, and given the pending addition of many of the transmission-owning entities within MAPP, the Midwest ISO will internalize significant flow issues within its region and many of the loop flows that exist in the Eastern Interconnection.
4. **Ancillary Services** - The Midwest ISO will offer to provide all ancillary services as defined and required under the Midwest ISO Tariff and will serve as the provider of last resort for all ancillary services required by Order No. 888. Because the Midwest ISO will not be a control area, its role as provider rather than seller will be to secure ancillary services on behalf of customers and pass payment for such services directly to the supplying entity.
5. **OASIS Operation** - The Midwest ISO will be the single OASIS administrator for all transmission facilities under its control and will independently calculate Total Transfer Capability ("TTC").
6. **Market Monitoring** - The Midwest ISO plans to implement an Independent Market Monitoring ("IMM") function in compliance with the sixth minimum function and remains hopeful that several regional RTOs will use the same entity to provide these services on a larger scale.
7. **Planning and Expansion** - The Midwest ISO will play a key role with overall responsibility for coordinating regional transmission system planning and expansion once it becomes operational.

8. **Interregional Coordination** - The Midwest ISO has been instrumental in inter-regional coordination. The Midwest ISO has expended substantial time and energy discussing the seams issues with adjacent transmission owners and has authored and/or coordinated many strawmen proposals on technical topics such as One-Stop Shopping and Long-Term Planning Coordination, which eventually led to agreement among the participating RTO representatives.

C. Other Requirements

1. **Open Architecture** - The Midwest ISO has already demonstrated architectural flexibility through the accommodation of properly structured Independent Transmission Companies ("ITCs") via Appendix I to the Midwest ISO Agreement, by supporting changes to accommodate the formation of Wisconsin's American Transmission Company LLC ("ATC LLC"). The Midwest ISO believes that an umbrella organization (details contained in the compliance filing at page 82) responsible for reliability, system security and the coordination of numerous seams issues, coupled with business functions performed by the Transcos, ITCs, ISOs and participating public power entities in the region, can accomplish the goals envisioned by FERC under Order No. 2000 under a multi-layered approach. Each of the transmission-related entities alone, whether it be the MTCA presented here, an ITC developed pursuant to Appendix I or the American Transmission Company, standing individually on their own merits, would not fully satisfy the Order No. 2000 standards which would make them a compliant RTO unto themselves. Collectively, with a proper segregation of functional responsibilities and resolution of several technical issues, each entity, including the Alliance and transmission systems operated by large public power agencies, cooperatives, federal power marketing authorities can contribute to solving the RTO puzzle for the region. In addition, the Midwest ISO is actively considering options to alter its current non-stock, not-for-profit organizational structure if circumstances warrant movement in a different direction from the current structure and implement innovative ratemaking and performance-based rate approval.

2. **Transmission Ratemaking Policy** - The Midwest ISO was approved with a rate structure that eliminates "pancaked" rates consistent with the requirements of FERC Order No. 888. Nevertheless, the Midwest ISO intends to collaborate with its transmission owners with the intent of filing an innovative ratemaking approach to address revenue neutrality upon receiving FERC approval that the Midwest ISO is a compliant RTO pursuant to Order No. 2000.

II. HISTORY OF THE MIDWEST ISO

On January 15, 1998, nine public utilities¹ filed an application under Section 203 of the Federal Power Act for Commission approval of the transfer of the operational control over their jurisdictional facilities to the Midwest ISO. Concurrently, those same utilities filed under Section 205 of the FPA for approval of the Midwest ISO Open Access Transmission Tariff and the Midwest ISO Agreement.

The January filing was the product of a long and sometimes painful gestation period. As set forth in their Section 205 Application, for almost two years prior to January of 1998, approximately 25 Midwestern utilities representing most of the MAIN and ECAR reliability regions met at least bi-weekly to discuss formation of the Midwest ISO. All parties had seemingly come to agreement in late 1997, with a joint signing ceremony taking place on December 11th. However, on December 9th, some of the utilities started balking. Notwithstanding, the remaining Midwest ISO Participants soldiered on, not willing to drop their desire for a MAIN/ECAR ISO and the benefits that such an ISO would bring. Subsequently, other transmission-owning utilities joined the ranks of the Midwest ISO.²

On September 16, 1998, the Commission issued an "Order Conditionally Authorizing Establishment of the Midwest Independent Transmission System Operator and Establishing Hearing Procedures" ("Midwest ISO Order"). The Commission found that the Midwest ISO's size and configuration were adequate and that such a filing was overall consistent with the eleven principles of ISO formation under Order No. 888.

¹ Cinergy Corp. (on behalf of Cincinnati Gas & Electric Company, PSI Energy, Inc. and Union Light, Heat & Power), ComEd (including Commonwealth Edison Company of Indiana), Wisconsin Electric Power Company, Hoosier Energy Rural Electric Cooperative, Inc., Wabash Valley Power Association, Inc., Ameren (on behalf of Central Illinois Public Service Company and Union Electric Company), Kentucky Utilities Company, Louisville Gas & Electric Company, and Illinois Power Company are hereinafter referred to as the "Midwest ISO Participants."

² Additional Members include: Alliant Energy, American Transmission Company LLC (including Madison Gas and Electric, Northwestern Wisconsin Electric Company, and WPS Resources Corporation), Southern Illinois Power Cooperative, Southern Indiana Gas and Electric Company, and Xcel Energy (formerly Northern States Power).

In compliance with the Midwest ISO Order, on April 17, 2000, the Midwest ISO filed a Section 204 application to incur debt necessary to acquire the facilities and equipment necessary to assume the functions assigned to it, as well as to pay start-up expenses. On May 4, 2000, the Commission issued an order authorizing the Midwest ISO to incur \$100 million in debt to self-fund its start-up costs. On June 1, 2000, the Midwest ISO issued \$100,000,000 in senior notes bearing interest at 8-3/4 percent with a maturity of 2012. In the intervening months, the Midwest ISO has made great strides in acquiring the staff, the facilities, and the equipment necessary to assume operational control of the transmission facilities in the fourth quarter of 2001. The Midwest ISO Board selected a President and CEO in July of 1999. In March 2000, the Midwest ISO signed an agreement to acquire substantially all of the assets and liabilities of the service entity affiliated with the Mid-Continental Area Power Pool ("MAPP").

On October 13, 2000, Dynegy Inc., Illinois Power's corporate parent, filed a letter with this Commission for authorization to withdraw Illinois Power from the Midwest ISO and subsequently, on December 22, 2000 ComEd followed suit. Ameren provided notice to Midwest ISO of its intent to leave but has not yet filed for approval with the FERC.

December of 2000 brought additional changes to the Midwest ISO. On December 16, 2000, Chief Executive Officer and President, Matthew Cordaro announced his resignation with the Board unanimously electing Chief Financial Officer, James P. Torgerson as the new CEO and President. Then, in response to the notices of withdrawal mentioned above, the remaining transmission-owning Members of the Midwest ISO filed for or noticed their request for conditional withdrawal if Illinois Power, ComEd or Ameren withdrawals are approved.

Recently, two transmission owners and numerous market participants requested that the Commission appoint a settlement judge to oversee uniting the Midwest ISO and the Alliance RTO to form a single, large RTO in the Midwest or in the alternative, to have two RTOs in the Midwest that effectively function as a single RTO from the perspective of all transmission stakeholders.

As to the status of the Midwest ISO infrastructure, the building in Carmel, Indiana is 85% complete with the telecommunication and network systems set for installation in the first quarter of this year in preparation for market trials on June 1st. Because of the uncertainties discussed in the filing, additional staffing hires have been frozen and current staffing remains at approximately 80 employees of a proposed 190.

III. DOCUMENTS SUBMITTED AS PART OF THE FILING

A. *Attachments*

Pursuant to the Commission's rules and regulations and for ease of reading, the Midwest ISO has attached the following documents to the compliance filing:

- | | |
|---------------|---|
| Attachment A: | A form of Federal Register notice; |
| Attachment B: | The Agreement of Transmission Facilities Owners To Organize the Midwest Independent Transmission System Operator, Inc., A Delaware Non-Stock Corporation; and |
| Attachment C: | A list of parties served. |

B. *Diskette*

A diskette containing the form of notice in WordPerfect format is enclosed. An electronic copy of the compliance filing is also enclosed on a separate CD Rom. In addition, an electronic copy is also being forwarded by email to ro@ferc.fed.us, as suggested by the Commission in its Guidance Order dated July 20, 2000.

C. *Request for Waiver on Service List*

A copy of this filing on compact disk has been served on all Midwest ISO Members, as well as, on all state commissions within the region. The Midwest ISO hereby requests waiver of the requirements set forth in 18 CFR 385.2010 (2000) to allow it to serve compact disks on these parties and make the filing available on the Midwest ISO website at www.midwestiso.org under the heading "FERC Filings" for the other interested parties in this matter. Good cause exists for granting this waiver due to the volume of the filing, the limited resources available to make service, the unavailability of potential transmission customer names and addresses and the financial burden to the Midwest ISO in copying and mailing hard copies of this filing to over 600 entities. Many parties, in fact, prefer receiving their copy of the filing in CD format or by printing it from the website. Any party who wishes to receive a hard copy of this filing may contact counsel of record, Stephen G. Kozey or Lori A. Spence at the Midwest ISO at (317) 295-5400 to obtain a copy.

IV. SATISFACTION OF RTO PRINCIPLES AND EFFECT OF WITHDRAWAL ON THOSE PRINCIPLES

Notwithstanding the potential withdrawal notifications, the Midwest ISO believes that it currently meets the characteristics and functions of a regional transmission organization as set out in Order No. 2000. The compliance filing addresses the Midwest ISO's compliance with each characteristic and function and then addresses the potential effects member withdrawal has on these characteristics and functions. It also addresses the Midwest ISO's active efforts to evolve its organizational structure and develop innovative rate methodologies proposed by other organizations since the formation of the Midwest ISO in 1998.

As the Midwest ISO has discussed in its responses to the various member withdrawals, these potential withdrawals not only affect the Midwest ISO's ability to meet the scope and regional configuration requirements of Order No. 2000, but they have broader ramifications to the financing capabilities of the Midwest ISO, the ability to hire and retain qualified employees to develop and implement the start-up of the organization, the ability to develop and implement congestion management methodologies, to negotiate seams issues, to negotiate transmission planning and expansion needs, etc. The Midwest ISO's compliance filing further details the effect withdrawal has on each characteristic and function.

The effects of withdrawal will reach outside the Midwest ISO. Instability in membership will affect all regional transmission organizations and subject the Commission's RTO policy to a slow and painful death that could have been avoided. Companies that have not yet committed to a regional transmission organization are questioning the functionality of such organizations and whether their customers' transmission needs are best served in this manner.

V. REQUESTED ACTION DATE

The Commission is requested to accept this compliance filing and issue an order that the Midwest ISO is an Order No. 2000 compliant RTO within thirty (30) days of the date of this filing.

VI. ORDER 614 COMPLIANCE

The Midwest ISO formatted the Midwest ISO Agreement and the Midwest ISO Open Access Transmission Tariff in conformance with Order 614³ in a filing dated November 20, 2000 in Docket No. ER01-479-000. For ease of reference, the Midwest ISO has attached the Order No. 614 conformance version of the Midwest ISO Agreement to the compliance filing as Attachment B, although such version has not yet been deemed effective.

VII. ADDITIONAL INFORMATION

Correspondence and communications regarding this filing should be directed to the following individuals:

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³ *Designation of Electric Rate Schedule Sheets*, Order No. 614, III FERC Stats. & Regs. Preamble § 31,096 (2000).

David P. Boergers
January 16, 2001
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VIII. CONCLUSION

For the reasons stated above and in the attached compliance filing, the Midwest ISO requests the Commission to issue, no later than thirty (30) days from the date of this filing, an order recognizing the Midwest ISO as an RTO which satisfies the Commission's RTO characteristics and functions under Order No. 2000 and subsequent Orders.

Respectfully submitted,

THE MIDWEST INDEPENDENT
TRANSMISSION SYSTEM
OPERATOR, INC.

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ATTORNEYS FOR THE
MIDWEST ISO

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

Please note that revisions filed at the Federal Energy Regulatory Commission ("Commission") on November 20, 2000 (and reflected herein) proposing to:

- (i) modify the Agreement to expand the Midwest ISO Advisory Committee to include certain Mid-Continent Area Power Pool ("MAPP") members and**
- (ii) modify the revenue distribution allocations set forth in the Agreement to state that MAPP Transmission Owners that elect Network Transmission Service on behalf of their bundled retail load will not receive certain revenues associated with Point-to-Point Transmission Service**

have not been accepted by the Commission. An order is expected at the end of January 2001.

Issued by: James P. Torgerson, Issuing Officer
Issued on: November 20, 2000

Effective _____
(Accepted by FERC Order dated September 16, 1998.)

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Appendix H - Transmission System Facilities

Article One

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

ARTICLE ONE

DEFINITIONS

I. In General.

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

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

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

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

D. **Good Utility Practice**. Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be a range of acceptable practices, methods, or acts generally accepted in the region.

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

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

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

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

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

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

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

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

Article One

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

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

Article Two

ARTICLE TWO

ORGANIZATION AND GOVERNANCE OF THE MIDWEST ISO

I. Character Of The Organization.

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

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

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

3. No part of the net earnings, if any, of the Midwest ISO shall inure to the benefit of any Midwest ISO Member, Director, Officer, employee, or any other interested private person. The Midwest ISO is authorized and empowered to pay reasonable compensation for services actually rendered and to make payments or

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distributions in furtherance of the purposes and objectives set forth in this Agreement, the attachments hereto, and the Transmission Tariff. No substantial part of the activities of the Midwest ISO shall be carrying on propaganda or otherwise attempting to influence legislation. The Midwest ISO shall not participate in or intervene in any political campaign on behalf of any candidate for public office.

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

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

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

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

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

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

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

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

A. Name. The name of the corporation is the Midwest Independent Transmission System Operator, Inc., in which name it may make and execute contracts

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and all kinds of instruments, acquire and convey real or personal property, sue and be sued, and conduct business, all as provided by applicable law and pursuant to the terms and conditions of this Agreement.

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

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

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

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III. Board Of Directors.

A. In General.

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

2. Qualifications. A Director shall not be, and shall not have been at any time

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

3. Succeeding Boards of Directors. After the election of the initial Board as provided above, succeeding Directors shall be elected to terms of three (3) years, except for any Director elected to fill a vacancy in the remainder of the term. Before the term of a Director expires, the Board shall select an executive search firm to provide at least two (2) candidates for each open Director position. Each Director shall serve until his

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successor shall have been duly elected and qualified, or until his earlier resignation or removal. The two (2) candidates for a specific Director position shall have the same type of qualifications as the Director being replaced, as set forth in Subparagraph 2 of this Paragraph A. At a meeting of the Members, each Member shall be entitled to cast a single vote for each open Director position from among the candidates provided for such position. The candidates with the most votes shall fill the respective Director positions for which they were nominated. In the event of a tie among candidates for a specific Director position, one (1) of the candidates shall be selected by a drawing among the tied candidates. Vacancies on the Board caused by a Director leaving office before the expiration of his term shall be filled by vote of the Board, which shall choose a candidate having the same type of qualifications as his predecessor from a list prepared by an executive search firm chosen by the Board. A Director selected to fill such a vacancy shall serve out the term of his predecessor.

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

Article Two

Board. The Chairman shall perform all duties incident to the office of Chairman of the Board and such other duties as from time to time may be assigned to him by the Board.

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

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

7. Removal of Directors.

a. Removal by Members. The Members may remove a Director by a vote of a majority of the Members. Removal proceedings may only be initiated by a petition signed by not less than twenty percent (20%) of all Members. The petition shall

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state the specific grounds for removal. A copy of the petition shall be provided to the FERC and to each appropriate state regulatory authority. A Director sought to be removed shall be given fifteen (15) days to respond in writing to any charges set forth in the petition. The petition shall specify either that the removal vote shall be taken at the next regular meeting of the Members or at a special meeting of the Members at a designated date, place, and time.

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Article Two

B. Duties and Powers.

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

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

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

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

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

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

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

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

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

C. Meetings of the Board.

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

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

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

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

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

D. Compensation of Directors; Reimbursement of Expenses

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

Article Two

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

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

IV. Officers Of The Midwest ISO

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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VI. External Committees.

A. Advisory Committee.

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

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

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

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

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

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

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

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

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

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

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VII. Open Meetings.

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

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

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this Section VII may be redacted from such minutes. Copies of executed or final documents, such as contracts, leases, and agreements, not otherwise required to be treated as confidential, shall be made available for review. In the event the basis for information being treated as confidential ceases to exist, said information shall thereafter be available for review.

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

Issued by: James P. Torgerson, Issuing Officer
Issued on: November 20, 2000

Effective _____
(Accepted by FERC Order dated September 16, 1998.)

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VIII. Due Diligence, Limited Liability, And Indemnification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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IX. Amendments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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X. Duration And Termination.

A. Period. This Agreement shall continue for a period of thirty (30) years from the earliest Effective Date for any signatory to this Agreement. Thereafter, it shall be renewed for successive five-year (5-year) terms unless, no later than two years prior to the end of any term, a majority of the Owners vote not to renew this Agreement.

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

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

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

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

Article Three

ARTICLE THREE

RIGHTS, POWERS, AND OBLIGATIONS OF THE MIDWEST ISO

I. Operation And Planning.

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

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

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

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

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II. Non-discriminatory Transmission Service.

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

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

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

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

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

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III. Responsibilities Of The Midwest ISO To The Owners.

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

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

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

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

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

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IV. Additional Obligations.

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

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

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

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

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

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

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

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

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

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

V. Enforcement Authority.

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

1. Material and willful violations of Midwest ISO policies;

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

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

4. Willful violation of Midwest ISO operating standards; or

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

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

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

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

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

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

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

Article Four

ARTICLE FOUR

RIGHTS, POWERS, AND OBLIGATIONS OF THE OWNERS AND USERS

I. Operation And Planning.

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

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

Article Four

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

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

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

Article Four

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

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

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

Article Four

II. Additional Obligations.

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

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

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

Article Four

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

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

Article Five

ARTICLE FIVE

WITHDRAWAL OF MEMBERS

I. Withdrawal Notice.

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

Issued by: James P. Torgerson, Issuing Officer
Issued on: November 20, 2000

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

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

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

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

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

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

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

III. Regulatory And Other Approvals Or Procedures.

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

IV. Withdrawal Because of Midwest ISO Configuration

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

Issued by: James P. Torgerson, Issuing Officer
Issued on: November 20, 2000

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(Accepted by FERC Order dated September 16, 1998.)

Article Six

ARTICLE SIX

MEMBERSHIP FEES

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

Article Seven

ARTICLE SEVEN

REGULATORY, TAX, AND OTHER AUTHORITIES

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

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

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

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

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

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

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

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

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

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

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exclusion from gross income of interest on any such outstanding bonds issued to finance transmission and distribution facilities under the Internal Revenue Code of 1986, as amended; 2. Receipt of an unqualified opinion of a nationally recognized bond counsel and general counsel to such Governmental Entity to the effect that the provisions of this Agreement do not constitute a breach or impairment of, or a default under, any agreement to which such Governmental Entity is a party, including, but not limited to, its master bond resolution, as amended, and any power sales contracts with its municipal members (if any), as amended, or other agreements;

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

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

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

Issued by: James P. Torgerson, Issuing Officer
Issued on: November 20, 2000

Effective _____
(Accepted by FERC Order dated September 16, 1998.)

Article Eight

ARTICLE EIGHT

MONITORING PROCEDURES AND ISO ASSESSMENT

A. Monitoring Procedures.

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

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B. Midwest ISO Assessment

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

Article Nine

ARTICLE NINE

MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

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

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

1. The Owner is duly organized, validly existing, and in good standing under the laws of the jurisdiction where organized.

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

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

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

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

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

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

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

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

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

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

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

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

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

Attachment E

II. COMMUNICATIONS.

All communications, orders and notices regarding this filing should be directed to the following:

George Koeck
General Counsel
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215 South Cascade Street
Fergus Falls, Minnesota 56537
(218) 739-8350
gkoeck@otpc.com

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Antoine P. Cobb
Amie V. Colby
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401 9th Street, N.W., Suite 1000
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(202) 274-2950
antoine.cobb@troutmansanders.com

III. DESCRIPTION OF OTTER TAIL.

The exact legal name of Otter Tail is Otter Tail Power Company. Otter Tail is a corporation organized and existing under the laws of the State of Minnesota. Otter Tail is an investor-owned public utility headquartered in Fergus Falls, Minnesota, which owns, operates, and controls facilities used for the generation, transmission, and distribution of electric power. Otter Tail serves approximately 423 communities in a 50,000 square mile service area, and provides retail electric service to approximately 126,000 customers throughout the three states of Minnesota, North Dakota and South Dakota. Although Otter Tail directly or indirectly owns several subsidiary operations, none are involved in the business of generating, transmitting, or delivering electric power.

Otter Tail is a member of the Mid-Continent Area Power Pool (“MAPP”), a voluntary organization of 76 utilities and other members located in seven states and two Canadian provinces. MAPP performs three critical functions. First, MAPP is a Reliability Council,

responsible for the safety and reliability of the bulk electric system, under the North American Electric Reliability Council (“NERC”). Second, MAPP is a regional transmission group responsible for facilitating open access transmission service. And third, the MAPP region is a power and energy market, where both members and non-members can buy and sell electricity.

IV. BACKGROUND.

On May 13, 1999, the Commission issued a Notice of Proposed Rulemaking in which it proposed that the creation of RTOs would be the best way to support and foster competition in wholesale electric markets. On December 20, 1999, the Commission issued its final order, Order No. 2000, which established minimum characteristics and functions of an acceptable RTO. In Order No. 2000, the Commission established a timetable for each public utility owning interstate transmission facilities either to establish or to participate in an RTO. Specifically, the Commission required all public utilities that own, operate or control transmission facilities used in interstate commerce to file with the Commission by October 15, 2000, an RTO proposal with the minimum characteristics and functions set out in Order No. 2000. Alternatively, the Commission required all public utilities that own, operate or control transmission facilities used in interstate commerce to file with the Commission by October 15, 2000, a description of efforts to participate in an RTO, any existing obstacles to RTO participation, and plans to join or participate in an RTO.

Otter Tail, pursuant to 18 C.F.R. § 35.34(g), is submitting this abbreviated filing, that (1) describes its efforts to participate in an RTO; (2) provides a detailed explanation of reasons Otter Tail has not yet joined an RTO; and (3) describes its plans to participate in an RTO.

V. OTTER TAIL, AS A SMALL PUBLIC UTILITY, QUALIFIES TO MAKE AN ABBREVIATED FILING.

For small public utilities such as Otter Tail, the Commission has specified that an abbreviated filing detailing the utility's efforts to participate in an RTO is a sufficient Order No. 2000 compliance filing. In Order 2000-A, the Commission found that entities that were granted waivers of some of the requirements of Order Nos. 888³ and 889⁴ would be allowed to make an abbreviated filing to comply with Order No. 2000.⁵ In addition, in a subsequent order, the Commission stated that it "does not wish to burden these small entities with extensive filings, but will find it useful to know the status of all transmission-owning public utilities with respect to regional participation."⁶

Otter Tail qualifies for the abbreviated filing requirements of Order No. 2000 because it is a small utility⁷ (*i.e.*, one which produces a total electric output in the previous fiscal year of less

³ See *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, *clarified*, 76 FERC ¶ 61,009 and 76 FERC ¶ 61,347 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998) (hereinafter "Order No. 888"), *aff'd in part and remanded in part, sub nom. Transmission Access Policy Study Group, et al. v. FERC*, 2000 WL 762706, (D.C. Cir. June 30, 2000).

⁴ See *Open Access Same Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049 (1997), *order on reh'g*, Order No. 889-B, 81 FERC ¶ 61,253 (1997) (hereinafter "Order No. 889").

⁵ Order No. 2000-A at 31,393.

⁶ *Notice of Guidance for Processing Order No. 2000 Filings*, FERC Stats. & Regs. ¶ 35,040 at 35,308 (2000).

⁷ *Central Minnesota Municipal Power Agency Delano, et al.*, 79 FERC ¶ 61,260 at 61,130 (1997).

than four (4) million megawatt hours).⁸ Otter Tail's total production of electricity as reported in its 1999 FERC Form 1, page 401, line 9, was 3,545,992 MWh.

VI. COMPLIANCE WITH REQUIREMENTS OF SECTION 35.34(G).

A. Otter Tail's Efforts to Participate in an RTO.

Otter Tail has long been a supporter of large regional transmission organizations. Otter Tail has consistently voted in favor of expanding and changing MAPP so that it would more closely resemble an independent system administrator or operator. Otter Tail intervened aggressively in several MAPP dockets calling for additional measures that would have enhanced the open access transmission service over the MAPP grid.

1. Description of Efforts Made by MAPP to Form a Regional Transmission Organization.

As a member of MAPP, Otter Tail has been participating in the extensive MAPP independent system operator ("ISO") and RTO deliberations. MAPP and its members worked long and hard to establish an ISO. In March of 1998, MAPP participated in a call for comments from FERC concerning the Commission's Policy on Independent System Operators.⁹ On November 3, 1998, despite Otter Tail's vote in its favor, the MAPP membership rejected the formation of a MAPP ISO and the MAPP regional tariff.¹⁰

⁸ See 13 C.F.R. § 121.201 (2000).

⁹ See *Inquiry Concerning the Commission's Policy on Independent System Operators*, Docket No. PL98-5-000.

¹⁰ After the rejection of the formation of the ISO, the MAPP Regional Transmission Committee worked to revise the tariff. In May of 1999, the members of MAPP approved a revised regional tariff, referred to as the Regional Open Access Transmission Tariff. The tariff offered point-to-point transmission service throughout the region. Transmission customers would use the tariff for all transactions through or out of the MAPP region and for all transactions between transmission zones. The tariff proposed to provide MAPP the ability to create a "one stop shopping" area for all types of transmission service within its region. MAPP filed its tariff with the Commission on RTO Compliance Filing.doc

In December of 1999, Midwest ISO approved a Memorandum of Understanding (“MOU”) with MAPP for the purpose of integrating various MAPP functions, assets and personnel into the Midwest ISO. After the MOU was approved, MAPP and the Midwest ISO entered into a set of definitive agreements that provide the details of the proposed combination of their organizations. The definitive agreements consist of: (1) an Asset Purchase Agreement that details the Midwest ISO’s purchase of defined MAPPCOR¹¹ assets, assumption of liabilities, and hiring of employees; (2) a Transition Services Agreement that covers the period between execution of the Definitive Agreements and closing; (3) a Transmission-Related Service Agreement that is a service agreement for the benefit of MAPP members who do not join the Midwest ISO; and (4) a Reliability-Related Services Agreement that assures MAPP members that reliability-related services will be provided under the MAPP Restated Agreement for at least six years from the Midwest ISO’s operational date.

On April 28, 2000, all 39 transmission owning members of MAPPCOR, including Otter Tail, voted to approve the sale of the MAPPCOR assets to Midwest ISO. The next step in this process is to have the MAPP members representing two-thirds of MAPP load join the Midwest ISO.

June 21, 1999. Otter Tail also voted in favor of the tariff and the Commission approved it, as revised, in an order issued on April 14, 2000. However, as a result of the Commission’s imposed revisions to the tariff, the MAPP withdrew the tariff.

¹¹ MAPPCOR acts as an impartial entity that represents MAPP members that own and operate transmission facilities. MAPPCOR also carries title to MAPP assets, and is the employer of MAPP personnel.

2. **Efforts of Otter Tail to Participate in the Midwest Independent System Operator.**

Over the last half-year, Otter Tail has come together with other Minnesota public and non-public utilities to investigate participation in the Midwest ISO. Specifically, Otter Tail has been working with Minnesota Power, Great River Energy, Southern Minnesota Municipal Power Agency, Dairyland Power Cooperative, Rochester Public Utilities, and Minnkota Power Cooperative (hereafter the “Minnesota Transmission Owners”) to analyze all potential advantages and barriers of joining the Midwest ISO.¹² The Minnesota Transmission Owners have been regularly attending Midwest ISO meetings and have had the opportunity to analyze how the Midwest ISO rate and governance structures affect the group as a whole and individually. One major item the group has been investigating with the Midwest ISO is the possibility of combining several “rate zones” into one larger rate zone as a way of reducing adverse cost shifts. Many other issues have been pursued, as discussed below. While not all of Otter Tail’s concerns have been satisfactorily resolved at this time, Otter Tail nonetheless is prepared to join Midwest ISO as a full member no later than December 31, 2000. After that date, Otter Tail will continue to work within the Midwest ISO framework to resolve outstanding issues.

¹² The Minnesota Transmission Owners represent, for the most part, smaller transmission systems that serve mainly small municipal and rural loads in Minnesota, Wisconsin, and the Dakotas whose systems are uniquely integrated and dependent upon one another. Given that the Minnesota Transmission Owners are comprised mostly of non-jurisdictional utilities, the group is also submitting a filing in the Commission’s “NJ” Docket established for that purpose. Although Otter Tail is not one of the signatories to the group’s NJ filing, it nonetheless endorses and incorporates by reference the comments expressed therein.

B. Detailed Explanation of the Economic, Operational, Commercial, and Regulatory Reasons Otter Tail has not made a filing to participate in a Regional Transmission Organization.

The barriers presented by turning over control of transmission facilities located in some of the most rural parts of the country and which have been operated reliably and at reasonable prices for close to a century are many. A few are presented below.

1. Economic Barriers – Cost Shifts.

Otter Tail is concerned about the potential for harmful cost shifts to its customers in its move to the Midwest ISO. The Commission, of course, is cognizant of the problems associated with cost shifts caused by trying to develop a single system-wide rate from an amalgamation of many different cost structures. But, considering that the bulk of Otter Tail's transmission system consists of approximately 4,000 miles of 41.6 kV facilities located throughout a sparsely populated 50,000 square-mile service territory, costs shifts are of special concern to Otter Tail. Although the Commission has historically included Otter Tail's low voltage transmission on a "rolled-in" basis, it is unclear whether these lower voltage facilities will continue to be included once the Midwest ISO moves to its "postage stamp" pricing, as proposed. Excluding lower voltage transmission could have a potentially significant impact on Otter Tail's transmission customers. Upon joining the Midwest ISO, Otter Tail will strive to ensure that proper rate treatment is given to all of its transmission facilities.

2. Operational Barriers.

a. The Integrated System. As a public utility, Otter Tail's transmission system may be unique throughout the country. Otter Tail's customer base is

primarily rural and spread out over a 50,000 square mile service territory. Approximately 84 percent of the cities served by Otter Tail have less than 600 residents, and the largest city served by Otter Tail has a population of just over 15,000. Additionally, Otter Tail's transmission system is overwhelmingly comprised of transmission lines at or below 69 kV. Through agreements that date back generations, Otter Tail's transmission system is closely integrated with surrounding utilities – mostly systems owned by rural electric cooperatives and municipal providers. The system, for the most part, was jointly planned, constructed and operated along with neighboring utilities as a way of providing service to the utilities' respective customers at low cost. In this region, it is quite common to have two or three entities own one section of line, and to have several utilities hold title to different equipment within one substation. There are many areas throughout the system where one utility's load is actually served from another utility's system, and vice versa.

In moving to an RTO, physically and operationally unbundling the integrated system presents an enormous task to a small utility. These complexities have made it extremely difficult to analyze the costs and benefits of joining an RTO, and specifically the Midwest ISO. At the same time, Otter Tail recognizes that many of the issues encountered by it are not necessarily unique. That explains, in part, why Otter Tail is committed to joining the Midwest ISO despite having some questions, which are, as of yet, unanswered.

b. Sub-regional reliability. Otter Tail generally believes the bigger the RTO region the better. It is crucial that a single RTO region be as large as functionally possible. One matter that needs additional answers, however, is how the Midwest ISO will

manage and react to problems in the sub-regions, especially in rural areas. Otter Tail believes that the Midwest ISO must maintain a sub-regional office (for instance at MAPP's current headquarters in St. Paul), to effectuate Midwest ISO-western area reliability rules and first-line response during multiple contingency periods throughout the system. As a small utility serving the rural Midwest, Otter Tail is concerned that Midwest ISO attention at the control center will focus only on the large urban centers to the detriment of rural customers.

c. Independence. Otter Tail continues to be concerned about certain provisions in the Midwest ISO that call into question Midwest ISO's independence. For instance, Midwest ISO proposes a six-year transition period during which "in" and "within" transactions are subject to "license plate" pricing. Under the Midwest ISO proposals, however, a single transmission owner has veto power over when and if the RTO moves to a system-wide, postage stamp pricing methodology. This is problematic for Otter Tail and other transmission owning utilities located between generation sources and the large urban load centers. Without the certainty of future postage stamp pricing, incumbent customers caught in the middle are likely to bear the cost of any new construction that is needed because of flows for which they are not responsible. Once a member of the Midwest ISO, Otter Tail will continue to press for pricing mechanisms that spread the cost of a reliable system over all beneficiaries.

d. Reliability rule changes. The rapid transitions within MAPP, Midwest ISO, and NERC/NAERO regarding reliability of the transmission system also present a concern. Changes in the reliability rules require deliberate, peer-reviewed, thoughtful consideration. The rush to commercialization of the transmission infrastructure for open access

has impacted system operators' ability to "keep the lights on." While Otter Tail favors further change in the reliability rules, such changes must occur carefully and according to standards that clearly delineate lines of authority and responsibility.

3. **Regulatory Barriers.**

a. **Multi-state utility and the seven-factor test.** One regulatory barrier to RTO participation is uncertainty regarding the treatment Otter Tail will receive from the states and the FERC upon undertaking a seven-factor analysis. Under Midwest ISO's proposal, members are required to undertake a seven-factor test to separate transmission from distribution within four years of Midwest ISO's operational date. This includes approval by respective state commissions and recommendations to the FERC. As a multi-state utility, Otter Tail is concerned whether it will receive similar treatment for similar assets from each of its three state commissions and the FERC. Theoretically, Otter Tail could end up with four different views on how much and to what extent Otter Tail's low voltage facilities qualify as "transmission."

b. **Level playing field.** Otter Tail has been an active and consistent participant on the debate over the role of public power in the evolving industry. Otter Tail has consistently argued that the national public interest requires there be a level playing field throughout the industry in order for all citizens to benefit from RTOs and restructuring in general. Only when all transmission owners are subject to the same rules and regulations regarding their separation from affiliated generation, open access, just and reasonable rates, and publication of available transmission capacity, can a level playing field develop. Without a level playing field, it is difficult to conceive how RTOs can bring about fair or workable competition.

C. Otter Tail's Plans to Continue Discussions Toward Its Participation in the Midwest ISO.

As noted above, Otter Tail intends to join Midwest ISO no later than December 31, 2000.

Until now, Otter Tail, as a small public utility, has relied on its MAPP membership and its collaboration with Minnesota Transmission Owners to help guide its pursuit of RTO compliance.

VII. CONCLUSION.

WHEREFORE, Otter Tail respectfully requests that the Commission accept its Order No. 2000 compliance filing.

Respectfully submitted,

OTTER TAIL POWER COMPANY

George Koeck
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Attorneys for Otter Tail Power Company

Dated: October 16, 2000
Washington, D.C.

Appendix A

**Service List for Otter Tail Power Company's
Order No. 2000 Compliance Filing**

Otter Tail Power Company's Service List

Mr. Shawn Washington
Ameren Services Co.
400 South Fourth Street
St. Louis MO 68102-1826

Ronald J. Knauss
Minnesota Power & Light Co.
30 West Superior Street
Duluth, MN. 55802

Bruce Glorvigen, Manager
Otter Tail Wholesale Marketing
215 South Cascade Street
Fergus Falls, MN 56537

Thomas L. Gilbert
PECO Energy
2004 Renaissance Boulevard
King of Prussia, PA 19405

Ms. Lynn Baker
Tenaska Power Services Co.
2000 E. Lamar Blvd., Suite 450
Arlington, TX 76006

Fran Duran
Sr. Contract Administrator
Williams energy Services Company
P.O. Box 2848
Tulsa, OK 74101-9567

Mr. Malcolm L. Bertsch
Wholesale Market Coordinator
Wisconsin Electric Power Company
231 W. Michigan
P.O. Box 2046
Milwaukee, WI 53201-2046

Oklahoma Corporation Commission
2101 N. Lincoln Blvd.
P.O. Box 52000-2000
Oklahoma City, OK 57501

Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, Minnesota 55101-2116

Missouri Public Utilities Commission
PO Box 360
Truman State Office Building
Jefferson City, Missouri 65102

North Dakota Public Service Commission
State Capitol
Bismarck, North Dakota 58505

Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Public Service Commission of Wisconsin
Post Office Box 7854
Madison, WI 53707

Public Utility Commission of Texas
1701 N. Congress Avenue
PO Box 13326
Austin, TX 78711-3326

South Dakota Public Utilities Commission
500 East Capitol
Pierre, South Dakota 57501

II. COMMUNICATIONS.

All communications, orders and notices regarding this filing should be directed to the following:

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401 9th Street, N.W., Suite 1000
Washington, DC 20004
(202) 274-2950
antoine.cobb@troutmansanders.com

III. DESCRIPTION OF OTTER TAIL.

The exact legal name of Otter Tail is Otter Tail Power Company. Otter Tail is a corporation organized and existing under the laws of the State of Minnesota. Otter Tail is an investor-owned public utility headquartered in Fergus Falls, Minnesota, which owns, operates, and controls facilities used for the generation, transmission, and distribution of electric power. Otter Tail serves approximately 423 communities in a 50,000 square mile service area, and provides retail electric service to approximately 126,000 customers throughout the three states of Minnesota, North Dakota and South Dakota. Although Otter Tail directly or indirectly owns several subsidiary operations, none are involved in the business of generating, transmitting, or delivering electric power.

IV. BACKGROUND.

On October 16, 2000, Otter Tail filed with the Commission its efforts to participate in an RTO. Otter Tail stated that it was in negotiations to join the Midwest ISO. Otter Tail also stated that while not all of its concerns had been satisfactorily resolved regarding the Midwest ISO, it

was still prepared to join the Midwest ISO no later than December 31, 2000. *See Otter Tail Power Company*, Docket No. RT01-63-000, at 1, 7.

On October 13, 2000, Dynegy Inc., on behalf of Illinois Power Company (“Illinois Power”), filed with the Commission seeking approval to withdraw from the Midwest ISO and announced plans to join the Alliance Regional Transmission Organization, Inc. (“Alliance RTO”). *Dynegy Inc. and Illinois Power Company*, Docket No. ER01-123-000 (October 13, 2000). Since Dynegy’s October 13th filing both Exelon Inc., on behalf of Commonwealth Edison, and Ameren Corporation have also announced plans to withdraw from the Midwest ISO and join the Alliance RTO. *See* Press Release, Commonwealth Edison, *ComEd to Withdraw from Midwest ISO, Will Join Alliance RTO* (Oct. 31, 2000) (available at http://www.ucm.com/news/comed/display.asp?a=ComEd&rec_id=453); and Press Release, Ameren Corporation, *Ameren to Join Alliance RTO, Announces Intent to Withdraw from Midwest ISO* (Nov. 9, 2000) (available at <http://www.ameren.com/News/newsfull.asp?NewsSeqID=167>).

V. OTTER TAIL’S CONCERNS WITH MIDWEST ISO PARTICIPATION.

If the Commission approves the withdrawal of Illinois Power, Commonwealth Edison or Ameren, Otter Tail is concerned that both the Midwest ISO and its remaining members could be negatively affected. The withdrawal of any or all of these major transmission facilities from the Midwest ISO could significantly impact the financial viability and economic benefits of the Midwest ISO, as well its scope. With Otter Tail’s announced intentions to join the Midwest ISO the withdrawal of any of these companies from the Midwest ISO would have a direct impact on Otter Tail. Notwithstanding the Commission’s decisions with respect to these three utilities,

Otter Tail will still comply with Order No. 2000 by joining an RTO. However depending on if the Commission allows any or all of these utilities to withdraw, Otter Tail will have to reassess which RTO is best suited to meet Otter Tail's needs.

Furthermore, the Midwest ISO has announced that its funding requirements will be met through a \$0.15 MWH rate adder applied to the Midwest ISO transmission load, which will be subject to a monthly true-up to assure recovery of actual Midwest ISO operating costs. However, in the initial decision concerning the Midwest ISO, the Administrative Law Judge ("ALJ") found the cost adder to be unjust and unreasonable. *Midwest Independent Transmission System Operator, Inc.*, 89 FERC ¶ 63,008 (1999) (Commission review pending). While the initial proposed cost adder has been found to be unjust and unreasonable by the ALJ, the Midwest ISO in all likelihood will still apply some sort of cost adder to its members. If the cost adder is based on load, the withdrawal of any utility will raise the amount all remaining members of the Midwest ISO will have to incur, since load will decrease but the costs of running the Midwest ISO will not. In sum, Otter Tail is concerned about the financial impact on the remaining Midwest ISO members or potential members if the Commission gives any of the three utilities approval to withdraw from the Midwest ISO. Without assessing its options upon the Commission's decision regarding the withdrawal of Illinois Power, Commonwealth Edison or Ameren from the Midwest ISO, a small utility like Otter Tail could be forced to bear an inordinate share of the Midwest ISO's costs.

Moreover, on November 20, 2000, the Missouri River Energy Services ("MRES") filed comments with respect to MidContinent Area Power Pool ("MAPP") members' RTO filings and

asked that FERC convene a technical conference to address the rate design and revenue allocation with respect to a MAPP area RTO. *Comments of Missouri River Energy Services (1) Responding to Filings that Reflect a Breakdown of Efforts to Form an RTO Encompassing all of MAPP, and (2) Proposing a Two Step Procedure for Resolving the Rate Design Obstacle to Formation of a MAPP/MISO RTO*, Docket Nos. RT01-1-000, RT01-38-000, RT01-40-000, RT01-44-000, RT01-53-000, RT01-63-000, and RT01-78-000 (November 20, 2000) (“MRES Comments”). In its comments, MRES requested that the Commission “convene a technical conference, consisting of all MAPP members that own transmission as well as interested transmission users, to address and resolve the rate design issue on a basis acceptable to the majority of MAPP members (“Step 1”).” MRES Comments at 7. Furthermore, MRES requested that if a consensus concerning rate design could be developed in the technical conference, the “Commission should facilitate a conference of [the Midwest ISO’s] current and prospective membership to determine how the MAPP consensus rate design and revenue allocation scheme from Step 1 can be incorporated into the overall [Midwest ISO] rate structure (“Step 2”).” Otter Tail is very much in favor of a technical conference and supports MRES’ efforts in this regard. If the Commission convenes the technical conference that MRES is requesting, MRES’ proposal may present another viable option for Otter Tail’s Order No. 2000 compliance.

As a result of these recent developments, Otter Tail is considering all of its options with respect to joining an RTO. While it is still in negotiations to join the Midwest ISO, the recent developments of the announced withdrawal of three major utilities from the Midwest ISO and open issues regarding MAPP utilities’ membership in the Midwest ISO must effectively

postpone Otter Tail's December 31, 2000, target date for joining the Midwest ISO. Otter Tail plans to wait for the Commission's decision with respect to all three utilities' petitions to withdraw before it makes any final decision to join the Midwest ISO, and is interested in participating in the MAPP-issues technical conference requested by MRES.

VII. CONCLUSION.

WHEREFORE, Otter Tail respectfully requests that the Commission accept its Amendment to its Order No. 2000 compliance filing.

Respectfully submitted,

OTTER TAIL POWER COMPANY

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Attorneys for Otter Tail Power Company

Dated: November 27, 2000
Washington, D.C.

Attachment F

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ATTORNEYS AT LAW

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March 21, 2001

David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

RE: Docket Nos. ER01-123-000, ER01-780-000, ER01-966-000, ER99-3144-00_,
EC99-80-00_, and RT01-88-000

Dear Mr. Boergers:

Please find enclosed an original and fourteen (14) copies of the Settlement Agreement Involving the Midwest Independent Transmission System Operator, Inc., Certain Transmission Owners in the Midwest ISO, the Alliance Companies and Other Parties ("Settlement Agreement"). The Settlement Agreement was reached during the settlement proceedings conducted by Chief Judge Curtis Wagner in Docket No. ER01-123-000, however, the Settlement Agreement involves resolution of some or all of the issues in each of the dockets identified above. Copies of this letter and all enclosures are being served on all parties of record in each of the identified proceedings.

The Settlement Agreement is entered into by the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO"), certain Midwest ISO Transmission Owners and the Alliance Companies, although other parties may also execute the agreement. The Settlement Agreement is an offer of settlement to all other parties in each of these proceedings submitted in accordance with Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.602 (2000).

Parties may support the Settlement Agreement by submitting signature pages or by filing comments in support of the Settlement. Consistent with the agreement of the parties participating in the Settlement Conference, Judge Wagner established a deadline of March 23, 2001 for the submission of signature pages to the Settlement Agreement and deadlines for comments and reply comments on the Settlement Agreement of March 30, 2001 and April 4,

2001, respectively. The parties submitting this Settlement Agreement request that the Commission approve the Settlement Agreement by May 1, 2001.

This filing includes the following documents:

1. an Explanatory Statement;
2. the Settlement Agreement;
3. Attachment A to the Settlement Agreement: an Inter-RTO Cooperation Agreement, signed by the Midwest ISO and Alliance Companies; and
4. a certificate of service

Parties signing the agreement may submit signatory pages no later than Friday, March 23, 2001.

If you have any questions regarding this Settlement Agreement, please call me at the phone number listed above. Thank you for your attention.

Respectfully submitted,

Becky M. Bruner
Vinson & Elkins L.L.P.
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-1008
Attorneys for the Alliance Companies

Enclosures

cc: The Honorable Curtis Wagner
Service Lists

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

| | | |
|--|---|----------------------------------|
| Illinois Power Company |) | Docket No. ER01-123-000 |
| |) | |
| Commonwealth Edison Company |) | Docket No. ER01-780-000 |
| |) | |
| Ameren Corporation |) | Docket No. ER01-966-000 |
| |) | |
| Alliance Companies: |) | |
| Ameren Corporation |) | |
| American Electric Power Service Corporation |) | Docket No. ER99-3144-00 _ |
| Consumers Energy Company |) | |
| Exelon Corporation |) | |
| |) | |
| FirstEnergy Corp. |) | Docket Nos. EC99-80-00 __ |
| Illinois Power Company |) | |
| |) | and |
| Northern Indiana Public Service Company |) | |
| The Dayton Power and Light Company |) | Docket No. RT01-88-000 |
| The Detroit Edison Company |) | |
| Virginia Electric and Power Company |) | |
| | | (not consolidated) |

EXPLANATION IN SUPPORT OF SETTLEMENT AGREEMENT

This Explanation In Support Of Settlement Agreement (“Explanatory Statement”) is submitted by the Midwest Independent Transmission System Operator, Inc.. (“Midwest ISO”), certain transmission owners in the Midwest ISO (“Midwest ISO Transmission Owners”)¹ and the Alliance Companies² (collectively, “Executing Parties”)³ pursuant to Section 385.602 of the

¹ American Transmission Company LLC; Alliant Energy Corporation (for IES Utilities, Inc. and Interstate Power Company); Central Illinois Light Company; Cinergy Corp. (for The Cincinnati Gas & Electric Company, PSI Energy, Inc. and Union Light, Heat & Power Company); Hoosier Energy Rural Electric Cooperative, Inc.; LG&E Energy Corp. (for Louisville Gas and Electric Company and Kentucky Utilities Company); Otter Tail Power Company; Northwestern Wisconsin Electric Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Wabash Valley Power Association, Inc.; Upper Peninsula Power Company; and Northern States Power Company and Northern States Power Company (Wisconsin).

² Ameren Corporation (on behalf of Union Electric Company and Central Illinois Public Service Company) (“Ameren”); American Electric Power Service Corporation (on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company); Consumers Energy Company; Exelon Corporation, on behalf of Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.

Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2000). The "Settlement Agreement Involving The Midwest Independent Transmission System Operator, Inc., Certain Transmission Owners In The Midwest ISO, The Alliance Companies And Other Parties" ("Settlement Agreement") constitutes an offer of settlement under Rule 602 to parties in each of the above-captioned proceedings that have not executed the Settlement Agreement.

The intended purposes of the Settlement Agreement are to afford an opportunity, without the need to issue new debt financing, for the Midwest ISO to remain financially viable and for it to proceed to operations in accordance with Order No. 2000; to preserve the Alliance Companies' business model by providing the regulatory certainty deemed by the Alliance Companies and others to be necessary for Alliance Transco to be formed, financed and become operational in accordance with Order No. 2000; and to create the basis for an arrangement that will preserve the separate organizations and features of the Alliance Regional Transmission Organization ("Alliance RTO") and the Midwest ISO, while allowing the regions served by the Alliance RTO and the Midwest ISO to operate as a seamless market. In addition, the Inter-RTO Cooperation Agreement ("IRCA") between the Midwest ISO and the Alliance Companies, included as Attachment A to the Settlement Agreement, commits the Midwest ISO and the Alliance Companies to coordinate activities for transmission and transmission-related services so that the regions will be able to operate as a seamless market. The Midwest ISO and the Alliance Companies or, upon its creation, the Alliance RTO, will develop procedures and protocols through the processes set forth in the IRCA that will coordinate transmission services for a

("ComEd"); FirstEnergy Corp. (on behalf of American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company); Illinois Power Company ("Illinois Power"); Northern Indiana Public Service Company; The Dayton Power and Light Company; The Detroit Edison Company; and Virginia Electric and Power Company.

³ Wabash Valley Power Association, Inc. and Southern Illinois Power Cooperative are not Executing Parties.

seamless power market in the regions served by the Alliance RTO and the Midwest ISO. In addition, the Settlement Agreement establishes explicit deadlines and a process for resolving implementation disputes consistent with the Order No. 2000 requirement of achieving operational status no later than December 15, 2001.

I. PROCEDURAL BACKGROUND

Illinois Power, ComEd and Ameren (collectively the "Departing Companies")⁴ submitted filings in Docket Nos. ER01-123-000, ER01-780-000 and ER01-966-000, respectively, requesting Commission approval of their proposed withdrawals from the Midwest ISO. Each of the Departing Companies indicated their intention to join the Alliance RTO and each is an applicant in Docket No. RT01-88-000 seeking approval of the Alliance RTO under the requirements of Order No. 2000.

The Commission has not yet issued orders in Docket Nos. ER01-780-000 and ER01-966-000 involving ComEd and Ameren, respectively. However, the Commission on January 24, 2001 issued an order in Docket No. ER01-123-000 concerning the proposed withdrawal of Illinois Power. In that order, the Commission initiated settlement judge proceedings related to the withdrawal of the Illinois Power from the Midwest ISO. In another order issued on January 24, 2001, in Docket Nos. ER99-3144-003 et al., the Commission directed the Alliance Companies to participate in the settlement judge procedures and to negotiate "seams" agreement with neighboring RTOs, including the Midwest ISO.

Settlement discussions in Docket No. ER00-123-000 were convened on February 1, 2001 before Chief Administrative Law Judge Curtis L. Wagner, Jr. Chief Judge Wagner granted intervention in Docket No. ER00-123-000 to numerous parties, including all parties in the Alliance dockets (Docket No. ER99-3144-000 et al. and EC99-80-000 et al.). Settlement

discussions concluded on February 23, 2001, and culminated in a settlement in principle, which was achieved on that date.

The Midwest ISO, the Midwest ISO Transmission Owners and the Alliance Companies hereby express their gratitude to Chief Judge Wagner for his indispensable work in bringing these proceedings to settlement. The Settlement Agreement is a product of the parties' discussions and negotiations carried out under Judge Wagner's supervision.

II. SUBSTANTIVE PROVISIONS

Article I is a preamble that outlines in broad terms the general objectives of the Settlement Agreement.

Article II contains definitions used throughout the Settlement Agreement.

Article III relates to the IRCA which has been executed by the Midwest ISO and the Alliance Companies and is attached as Attachment A to the Settlement Agreement. The IRCA commits the Midwest ISO and the Alliance Companies (and, the Alliance RTO, upon its creation) to provide the basis for the development of a seamless market throughout the regions served by the Midwest ISO and the Alliance RTO and to use the processes and timeframes contained in the IRCA to meet this objective in a timely fashion. The IRCA provides that the parties to that agreement will develop procedures and protocols in several areas, including: coordinated transmission planning; security coordination; congestion management; independent market monitoring; accommodation of one-stop shopping; compatible real-time balancing markets; common generation interconnection agreement; compatible business practices; and dispute resolution procedures for resolving real-time operational disputes.

Article IV pertains to certain of the financial considerations associated with the withdrawal of the three Departing Companies from the Midwest ISO. The Departing Companies

⁴ Capitalized words are intended to have the same definition as is applied in the Settlement Agreement.

agree to pay the Midwest ISO an aggregate Settlement Amount of \$60 million, which amount reflects the Departing Companies' fair share of the Midwest ISO's Start-Up Costs. This payment is contingent upon the approval of the Settlement Agreement, including authorization for the withdrawal of the Departing Companies from the Midwest ISO, without modification.

Paragraph 4.2 disclaims any liability by the Midwest ISO Transmission Owners and the Departing Companies for any obligations of the Midwest ISO. Nevertheless, the Departing Companies and the Midwest ISO Transmission Owners make certain commitments to each other in the event third parties seek to hold them liable for claims against the Midwest ISO or relating to the determination of the Departing Companies to withdraw from the Midwest ISO (Paragraphs 4.2 and 4.3).

The Midwest ISO Transmission Owners and the Departing Companies provide specific mutual releases of claims each of them may or could have against the other relating to the obligations of the Midwest ISO (Paragraphs 4.4 and 4.6). The Midwest ISO agrees to hold the Departing Companies harmless from any claims the Midwest ISO may have against the Departing Companies and from claims by third parties who have provided credit, goods or services to the Midwest ISO (Paragraphs 4.5 and 4.6).

Paragraphs 4.7 through 4.9 concern credits (to be negotiated with the Midwest ISO) which the Departing Companies may receive in connection with services which the Midwest ISO provides to the Alliance Companies. The Departing Companies are to receive a credit against their combined portion of a service fee for services rendered, if any, by the Midwest ISO to the Alliance RTO. The Departing Companies will also receive a credit to be applied against the amount each pays with respect to the capital cost component of the administrative cost adder under Schedule 10 of the Midwest ISO Open Access Transmission Tariff ("OATT").

Subject to the provisions in Paragraph 4.10 of the Settlement Agreement, the Departing Companies and Midwest ISO Transmission Owners commit to remain as members of the Alliance RTO and the Midwest ISO, respectively, until at least December 31, 2002. Paragraph 4.11 permits the Departing Companies to withdraw from the Midwest ISO and to join the Alliance RTO upon the Commission's issuance of an initial order accepting the Settlement Agreement.

Paragraph 4.12 is a subrogation provision. Paragraph 4.13 provides for the assignment and the release of a Midwest ISO Transmission Owner's indemnification and hold harmless obligations under certain conditions if it divests all or substantially all of its transmission facilities.

Article V relates to the development and application of single (non-pancaked) rates, based on the Alliance Companies' rate methodology and principles, as stated in Paragraph 5.2. The single (non-pancaked) rates would apply to transmission service within the Alliance-Midwest ISO Super Region ("Super Region") during a Transition Period. The Super Region is defined in Article II and Paragraphs 5.1 and 5.2. Any eligible customer taking service under the Midwest ISO OATT or the Alliance RTO OATT will be able to obtain transmission service at single (non-pancaked) rates for service within the Super Region provided that the eligible customer's requested transaction involves transmission of electric energy from any Source in the Super Region to any Sink in the Super Region.

The rates described in Article V will be effective until the later of December 31, 2004 or until such time as they are superceded by effective post-transition rates applicable to the Alliance RTO or to the Super Region (Paragraph 5.3). The Alliance Companies will coordinate with the Midwest ISO to submit rate filings under Section 205 of the Federal Power Act ("FPA") no later

than 120 days before the respective operational dates of the Alliance RTO and the Midwest ISO. Parties may file comments or protests to the rate filing(s), including challenges to the calculation of lost revenues and zonal transmission adjustments ("ZTAs"), however, parties may not challenge the rate methodology principles described in Paragraph 5.2.

Article VI provides that the Midwest ISO, the Alliance RTO, the Alliance Companies and the Midwest ISO Transmission Owners will negotiate in good faith with PJM and all PJM transmission owners to develop a joint rate methodology for transactions involving all three RTOs (the Midwest ISO, the Alliance RTO and PJM) and associated revenue distribution. The negotiations may continue through November 15, 2001, after which, if there is no agreement among the parties, the Alliance Companies (or, upon its creation, the Alliance RTO), the Midwest ISO or PJM may file proposals under Section 205 of the FPA to implement the joint rate described in Article VI.

Article VII reaffirms the goal of both the Alliance Companies and the Midwest ISO to achieve operations on or before December 15, 2001. As an incentive to be operational by that date, Article VII provides for the advancement of the end of the Transition Period one month for each month that operations are delayed beyond December 15, 2001, subject to the exceptions of Paragraph 7.1. If the end of the Transition Period is advanced in accordance with Paragraph 7.1, the transmission owners participating in the RTO for which the end of the transition period is advanced may not recover revenues under the ZTAs applicable to the Super Region.

Article VIII provides that the rate moratorium proposed by the Alliance Companies on September 15, 2000 in Docket No. ER99-3144-004 will be accepted by the Commission and will remain in effect through December 31, 2004, unless extended by the Commission. The rate

moratorium shall also apply to the single (non-pancaked) rates developed in accordance with Article V of the Settlement Agreement.

Article IX of the Settlement Agreement identifies the issues in each of the above-captioned proceedings that the Parties agree to resolve as part of this Settlement Agreement. All issues in Dockets ER01-123-000, ER01-780-000 and ER99-966 are resolved. Subject to certain limitations in Paragraph 9.1(b), Paragraph 9.3 provides that protests and requests for rehearing in Docket Nos. ER99-3144-000, EC99-80-00 and RT01-80-000 are deemed withdrawn and of no effect. Paragraph 9.5 binds the Alliance RTO to the terms of the Settlement Agreement and the IRCA as if it were an Executing Party. Paragraph 9.6 specifies that the scope and configuration of the Midwest ISO and the Alliance RTO satisfy Order No. 2000 requirements.

Article X establishes an effective date for the Settlement Agreement, but also states that the Alliance Companies, or upon its creation the Alliance RTO, and the Midwest ISO will perform all actions identified in Article III or in the IRCA by the dates specified.

Article XI contains a nonseverability clause: provisions for nullification of the Settlement Agreement in the event that one of its essential purposes, namely approval of the Departing Companies' withdrawal from the Midwest ISO, is denied, conditioned or modified in a final, non-appealable order; a provision establishing that the Settlement Agreement does not constitute approval of a precedent; a request for waiver of Commission rules and regulations as necessary to implement the Settlement Agreement; a provision that the discussions leading to the Settlement Agreement are privileged and confidential; a stipulation that the Settlement Agreement may be executed in counterparts; and a provision that the descriptive headings used throughout the Settlement Agreement are for convenience only and do not affect the construction or interpretation of any of the provisions contained therein.

The Midwest ISO, the Midwest ISO Transmission Owners and the Alliance Companies represent that the Settlement Agreement will resolve serious and complex disputes and provides the basis for the attainment of important public interest benefits. Accordingly, the Commission is asked to accept the Settlement Agreement without revision or amendment and to do so as expeditiously as possible so that the public interest benefits of the Settlement Agreement can be achieved.

Respectfully submitted,

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On Behalf of Certain Midwest ISO Transmission Owners

March 20, 2001

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

| | | |
|--|---|-----------------------------------|
| Illinois Power Company |) | Docket No. ER01-123-000 |
| |) | |
| Commonwealth Edison Company |) | Docket No. ER01-780-000 |
| |) | |
| Ameren Corporation |) | Docket No. ER01-966-000 |
| |) | |
| Alliance Companies: |) | |
| Ameren Corporation |) | |
| American Electric Power Service Corporation |) | Docket No. ER99-3144-00 _, |
| Consumers Energy Company |) | |
| Exelon Corporation |) | |
| FirstEnergy Corp. |) | Docket Nos. EC99-80-00 __, |
| Illinois Power Company |) | and |
| Northern Indiana Public Service Company |) | |
| The Dayton Power and Light Company |) | Docket No. RT01-88-000 |
| The Detroit Edison Company |) | |
| Virginia Electric and Power Company |) | |
| | | (not consolidated) |

**SETTLEMENT AGREEMENT INVOLVING THE MIDWEST INDEPENDENT
TRANSMISSION SYSTEM OPERATOR, INC., CERTAIN TRANSMISSION OWNERS
IN THE MIDWEST ISO, THE ALLIANCE COMPANIES AND OTHER PARTIES**

This Settlement Agreement is made and entered into as of the 20th day of March, 2001, by the Midwest Independent Transmission System Operator, Inc.. ("Midwest ISO"), certain transmission owners in the Midwest ISO, and the Alliance Companies, all of whom are "Executing Parties"; is also binding on other parties who execute the Settlement Agreement; and is to be treated as an Offer of Settlement, pursuant to Section 385.602 of the Commission's Rules of Practice and Procedure, to parties who do not execute the Settlement Agreement.

ARTICLE I

PREAMBLE

In the Commission's January 24, 2001 Order in Docket No. ER01-123-000 establishing settlement procedures, the Commission identified the following goals that the parties believe will be satisfied by this Settlement Agreement in all its parts:

- 1) the desire of some parties to continue development of an arrangement that would carry forward Independent System Operator ("ISO") features that were critical to certain parties in the Midwest ISO;
- 2) the desire of other parties for the different business model that had been developed by the Alliance parties; and
- 3) the desire of transmission customers, state regulators and consumer representatives for an arrangement that would allow the entire Midwest region to operate as a seamless market.

The intended purposes of this Settlement Agreement are to afford an opportunity, without the need to issue new debt financing, for the Midwest ISO to remain financially viable and for it to proceed to operations in accordance with Order No. 2000; to preserve the Alliance Companies' business model by providing the regulatory certainty deemed by the Alliance Companies and others to be necessary for Alliance Transco to be formed, financed and become operational in accordance with Order No. 2000; and to create the basis for an arrangement that will preserve the separate organizations and features of the Alliance Regional Transmission Organization ("Alliance RTO") and the Midwest ISO, while allowing the regions served by the Alliance RTO and the Midwest ISO to operate as a seamless market. In addition, the Inter-RTO Cooperation Agreement ("IRCA") between the Midwest ISO and the Alliance Companies, included as Attachment A to this Settlement Agreement, commits the Midwest ISO and the Alliance Companies to coordinate activities for transmission and transmission-related services so that the regions will be able to operate as a seamless market. The Midwest ISO and the Alliance Companies or, upon its creation, the Alliance RTO, will develop procedures and protocols

through the processes set forth in the IRCA that will coordinate transmission services for a seamless power market in the regions served by the Alliance RTO and the Midwest ISO. In addition, this Settlement Agreement establishes explicit deadlines and a process for resolving implementation disputes consistent with the Order No. 2000 requirement of achieving operational status no later than December 15, 2001.

ARTICLE II DEFINITIONS

Capitalized terms used in this Settlement Agreement without other definitions shall have the meanings set forth below.

Alliance Agreement: The Alliance Agreement Establishing The Alliance Independent Transmission System Operator, Inc., Alliance Transmission Company, Inc., and Alliance Transmission Company, LLC dated May 27, 1999 and filed in Docket Nos. ER99-3144-000 and EC99-80-000.

Alliance Companies: Ameren Corporation (on behalf of Union Electric Company and Central Illinois Public Service Company) ("Ameren"); American Electric Power Service Corporation (on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company); Consumers Energy Company; Exelon Corporation, on behalf of Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. ("ComEd"); FirstEnergy Corp. (on behalf of American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company); Illinois Power Company ("Illinois Power"); Northern Indiana Public Service Company; The Dayton Power and Light Company; The Detroit Edison Company; and Virginia Electric and Power Company.

Alliance RTO: The Regional Transmission Organization proposed by the Alliance Companies on September 15, 2000 (and amended on September 22, 2000) in Docket Nos. ER-99-3144-004, ER99-3144-005, EC99-80-004 and EC99-80-005, and filed on January 16, 2001 in Docket No. RT01-88-000.

Alliance-Midwest ISO Super Region: The transmission systems and the NERC-certified electrically metered control areas of the Alliance Companies and of the Midwest ISO Transmission Owners (including the ATC LLC Companies).

Alliance Transco: The Alliance Transco Limited Liability Company proposed by the Alliance Companies as the Alliance RTO.

ATC LLC Companies: Madison Gas and Electric Company, Wisconsin Electric Power Company, Wisconsin Power and Light Company, and Wisconsin Public Service Corporation.

Commission: Federal Energy Regulatory Commission or its successor organization.

Departing Companies: Illinois Power, Ameren and ComEd.

Executing Parties: The Alliance Companies; the Midwest ISO; American Transmission Company LLC; Alliant Energy Corporation (for IES Utilities, Inc. and Interstate Power Company); Central Illinois Light Company; Cinergy Corp. (for The Cincinnati Gas & Electric Company, PSI Energy, Inc. and Union Light, Heat & Power Company); Hoosier Energy Rural Electric Cooperative, Inc.; LG&E Energy Corp. (for Louisville Gas and Electric Company and Kentucky Utilities Company); Otter Tail Power Company; Northwestern Wisconsin Electric Company; Southern Indiana Gas & Electric Company; Upper Peninsula Power Company; and Northern States Power Company and Northern States Power Company (Wisconsin).

FPA: The Federal Power Act, 16 U.S.C. 791a-825r.

Indemnifiable Claim: Any and all claims, damages, liabilities, demands, obligations, penalties, fines, losses, and judgments, whether based on law, contract, tort or other grounds, whether absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured, and whether at law or in equity.

IRCA: The Inter-RTO Cooperation Agreement between the Alliance Companies and the Midwest ISO, executed as of March 20, 2001 and attached to this Settlement Agreement as Attachment A.

Midwest ISO Transmission Owners: American Transmission Company LLC; Alliant Energy Corporation (for IES Utilities, Inc. and Interstate Power Company); Central Illinois Light Company; Cinergy Corp. (for The Cincinnati Gas & Electric Company, PSI Energy, Inc. and Union Light, Heat & Power Company); Hoosier Energy Rural Electric Cooperative, Inc.; LG&E Energy Corporation (for Louisville Gas and Electric Company and Kentucky Utilities Company); Otter Tail Power Company; Northwestern Wisconsin Electric Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Wabash Valley Power Association, Inc.; Upper Peninsula Power Company; and Northern States Power Company and Northern States Power Company (Wisconsin).

Midwest ISO: The Midwest Independent Transmission System Operator, Inc.

Midwest ISO Agreement: Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc.

OATT: Open Access Transmission Tariff.

Order No. 2000: Order issued by Commission on December 20, 1999 and cited as Regional Transmission Organizations, III FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, III FERC Stats. & Regs. ¶ 31,092 (2000).

Party or Parties: A person(s) that is an applicant or has been granted intervention in any of the proceedings in which this Settlement Agreement is filed.

PJM: PJM Interconnection, L.L.C.

PJM Transmission Owners: Owners of transmission facilities that are included, or expected to be included, in the PJM OATT.

Post-Transition Rate: Rate(s) based upon a pricing structure that is developed consistent with the terms of the IRCA.

Released Party: Any person or entity identified as such in Article IV.

Releasing Party: Any person or entity identified as such in Article IV.

Settlement Amount: Sixty million dollars in U.S. currency paid by the Departing Companies (in the portions specified in Paragraph 4.1) to the Midwest ISO upon the withdrawal of the Departing Companies from the Midwest ISO in accordance with the terms of Article IV of this Settlement Agreement.

Sink: The NERC-certified control area in which the load is located.

Source: The NERC-certified control area in which the generation source is located.

Start-Up Costs: All obligations and liabilities incurred by, or expenditures made by, the Midwest ISO prior to the date it commences operation as an ISO, or RTO, and related to, or arising from, such commencement or preparation therefor.

State Commissions: The state regulatory commissions that have jurisdiction over any of the Alliance Companies or the Midwest ISO Transmission Owners and are parties to any of the proceedings in which this Settlement Agreement is filed.

Third Party or Third Persons: Any person or entity other than Midwest ISO, the Midwest ISO Transmission Owners, the Departing Companies and the affiliates of the foregoing.

Transition Period: The transition period ending December 31, 2004, as filed by the Alliance Companies on September 15, 2000 (and amended on September 22, 2000) in Docket Nos. ER00-3144-004, ER99-3144-005, EC99-80-004 and EC99-80-005, and filed on January 16, 2001 in Docket No. RT01-88-000, which proposal includes Section 2.1 of the Pricing Protocol (Attachment F to September 15, 2000 filing).

Transmission Service Date: The respective effective dates upon which transmission service begins under the Alliance RTO OATT or the Midwest ISO OATT.

Withdrawal Date: The effective date of the withdrawal of the Departing Companies from Midwest ISO as set forth in Paragraph 4.11.

ARTICLE III INTER-RTO COOPERATION AGREEMENT

3.1. **IRCA.** The Midwest ISO and the Alliance Companies, on March 20, 2001, executed the IRCA, which is part of this Settlement Agreement and which is attached as Attachment A. The Alliance Companies will assign their rights and obligations under the IRCA to the Alliance RTO upon its creation and the Alliance RTO will accept assignment. In accordance with the IRCA, the Midwest ISO and the Alliance Companies (and, the Alliance RTO, upon its creation) agree to provide the basis for the development of a seamless market throughout the regions served by the Midwest ISO and the Alliance RTO and agree to use the processes and timeframes contained in the IRCA to meet this objective in a timely fashion. To ensure the compatibility of transmission and transmission-related services across the regions served by the Midwest ISO and the Alliance RTO, the IRCA provides for the development of procedures and protocols. The IRCA, and the procedures and protocols developed in accordance with the IRCA, are important to the consistent provision of transmission services needed to support a seamless power market within the Midwest ISO and the Alliance RTO regions. The Alliance Companies and the Midwest ISO commit, through the IRCA, to develop and implement procedures and protocols as set forth in this Paragraph 3.1 in a manner that provides transmission users seamless access to such markets throughout the regions served by the Alliance RTO and the Midwest ISO as the organizations evolve. These include:

- (i) Coordinated Transmission Planning (achieved as part of executed IRCA; see Article V of the IRCA);

- (ii) Security Coordination and Available Transfer Capability (“ATC”) determination and coordination, including Transmission Loading Relief (“TLR”) protocol (to be achieved by May 31, 2001; see Sections 3.2, 3.3 and 3.5 of the IRCA);
- (iii) Congestion Management, Day 1 (achieved as part of executed IRCA; see Section 4.1 of the IRCA) and Long Term (to be achieved by December 31, 2001; see Section 4.2 of the IRCA);
- (iv) Independent market monitoring (achieved as part of executed IRCA; see Article VIII of the IRCA);
- (v) Accommodation of One-Stop Shopping (objectives specified as part of executed IRCA; see Article X of the IRCA);
- (vi) Compatible real-time balancing markets (to be developed by May 31, 2001; see Section 3.6 of the IRCA);
- (vii) A common Generation Interconnection Agreement (to be developed by June 30, 2001; see Article IX of the IRCA);
- (viii) Compatible business practices (to be developed by October 15, 2001; see Article XI of the IRCA); and
- (ix) Dispute Resolution Procedures for real-time operational disputes (to be developed by October 15, 2001; see Section 3.7 of the IRCA).

In the event of a conflict between this Settlement Agreement and the IRCA, this Settlement Agreement shall govern.

3.2. Deadlines and Commission Review.

(a) The Midwest ISO and the Alliance RTO will file the IRCA with the Commission pursuant to Section 205 of the FPA within ten (10) days of its assignment to the Alliance RTO. The Midwest ISO Transmission Owners and the Alliance Companies may protest or comment on the IRCA filed by the Midwest ISO and the Alliance RTO only to the extent that it differs from Attachment A of this Settlement Agreement. Nothing in this Settlement Agreement shall imply the agreement of any other Party or person to the terms of the IRCA. Nothing in this Settlement

Agreement shall constitute a waiver of any Party of its right to protest or comment on the IRCA filed by the Midwest ISO and the Alliance RTO.

(b) As procedures and protocols are finalized in accordance with the IRCA, they will be posted on the websites of the Alliance RTO and the Midwest ISO and, to the extent required by Section 205 of the FPA, filed with the Commission. The Alliance RTO and the Midwest ISO shall request expedited consideration by the Commission of any filings necessary to implement protocols and procedures applicable to the items in Paragraph 3.1. Nothing in this Settlement Agreement shall constitute a waiver by any Party or person to file protests or comments to such filings. If protocols and procedures for the items in Paragraph 3.1 are not mutually agreed to and adopted by the Midwest ISO and the Alliance Companies (or, upon its creation, the Alliance RTO) by the deadlines indicated, either party to the IRCA, or any other interested person, including the Midwest Transmission Owners, may make unilateral proposals to the Commission pursuant to Section 205 of the FPA for the procedures and protocols affecting both RTOs. No person shall make such unilateral filings prior to expiration of the applicable deadlines. The Executing Parties will not challenge the legal authority of any Party to make a filing or the ability of the Commission to consider and accept for filing a proposal that is consistent with the provisions of this Article III.

3.3. Stakeholder Involvement. Consistent with the requirements of the January 24, 2001 Order in Docket Nos. ER99-3144-003, et al. and EC99-80-003, et al., the Alliance Companies, in consultation with stakeholders, shall establish and implement a process for securing on-going stakeholder involvement in the Alliance RTO. The Alliance Companies will begin the development of such a process at a meeting with stakeholders on March 22, 2001. The process will be proposed to the Commission no later than May 15, 2001. The purpose of the

stakeholder process will be to provide a forum(s) for stakeholders to provide on-going advice to the Alliance Companies and, in turn, upon its creation, the Alliance RTO.

ARTICLE IV

WITHDRAWAL OF DEPARTING COMPANIES FROM THE MIDWEST ISO

4.1. Settlement Amount. The Departing Companies agree to pay the Midwest ISO the aggregate Settlement Amount, in the following shares: ComEd: \$35.5 million (59.2%); Illinois Power: \$6.5 million (10.8%); Ameren: \$18 million (30%). All of the Midwest ISO Transmission Owners agree that this payment reflects the Departing Companies' fair share of Midwest ISO's Start-Up Costs. Payment to the Midwest ISO will be made, by wire transfer, no later than three (3) business days after the Commission's issuance of an initial order approving this Settlement Agreement and permitting the withdrawal of the Departing Companies from the Midwest ISO.

4.2. Disclaimer. Except for express, written guarantees to which the Departing Companies and the Midwest ISO Transmission Owners, individually or jointly, were signatories, the Departing Companies and the Midwest ISO Transmission Owners expressly disclaim any and all liability or obligation, direct or indirect, as primary obligors, sureties, guarantors or otherwise, for the obligations or liabilities of the Midwest ISO. Notwithstanding such disclaimer, in the event that Indemnifiable Claims are asserted or assessed against any of the Departing Companies and/or the Midwest ISO Transmission Owners for any obligation or liability of the Midwest ISO, the Midwest ISO Transmission Owners and Departing Companies agree as follows:

(a) **Claims Up To \$145 Million.** The Departing Companies shall have no liability, and the Midwest ISO Transmission Owners will jointly and severally indemnify

and defend the Departing Companies against any Indemnifiable Claim with respect to, arising out of or related to the obligations or liabilities of the Midwest ISO incurred prior to the Withdrawal Date to the extent that the total of the amount assessed against the Midwest ISO Transmission Owners and the Departing Companies is equal to or less than \$145 million; but the Midwest ISO Transmission Owners expressly disclaim any obligation to indemnify or hold harmless the Departing Companies from Third Party claims for any amount in excess of the first \$145 million, except as provided in the following Paragraph 4.2(b). The total amount that Departing Companies are entitled to collect pursuant to Paragraph 4.5 and this Paragraph 4.2 (a) for an Indemnifiable Claim will not exceed in the aggregate the actual amount of such Indemnifiable Claim.

(b) **Post-Withdrawal Claims.** Without limitation, the Departing Companies shall have no liability, and the Midwest ISO Transmission Owners will jointly and severally indemnify and defend the Departing Companies against any Indemnifiable Claim asserted or assessed with respect to, arising out of or related to obligations or liabilities of the Midwest ISO that are incurred on or after the Withdrawal Date. The preceding sentence does not apply with respect to Indemnifiable Claims asserted or assessed with respect to, arising out of or related to obligations or liability of the Midwest ISO that are incurred prior to the Withdrawal Date, or arising under employment contracts, agreements or severance payment policies that exist as of the Withdrawal Date with respect to claims by current or former employees, without regard to when such Indemnifiable Claims are asserted.

4.3. Claims Due To The Withdrawal Decision. The Departing Companies each, individually and jointly (collectively, "Releasing Parties") release and waive any claim for

indemnity, defense or contribution from the Midwest ISO Transmission Owners, (collectively the "Released Parties") for Third Party claims asserted or assessed directly against the Departing Companies, individually or jointly, alleging damage, loss, obligation, cost, expense, injury, or other harm or liability of any kind to such Third Party arising from the determination of the Departing Companies to withdraw from the Midwest ISO, including but not limited to claims by a Third Party based solely upon an actual or alleged increase in transmission costs resulting from the withdrawal of the Departing Companies from Midwest ISO. Nothing in this Paragraph 4.3. applies to obligations or liabilities of the Midwest ISO, or limits the liabilities or obligations of the Midwest ISO Transmission Owners, individually or jointly, pursuant to Paragraph 4.2.

4.4. Mutual Release. The Midwest ISO Transmission Owners and the Departing Companies, individually and jointly, on their own behalf and on behalf of each of their subsidiaries, parents, affiliates, predecessors and successors in interest (collectively, "Releasing Parties"), waive and release any claims by them as to the others (collectively the "Released Parties") relating to or arising out of any Midwest ISO obligation or liability, or otherwise relating to or arising out of the Departing Companies' withdrawal from the Midwest ISO, except with respect to rights and obligations pursuant to or arising out of, including without limitation the right to enforce, this Agreement. Notwithstanding the foregoing, in lieu of releasing claims on behalf of its affiliates, American Transmission Company LLC shall fully defend, indemnify and hold the Departing Companies harmless from any Indemnifiable Claims by such affiliates, which indemnity is separate from and in addition to the indemnities provided in Paragraph 4.2 hereof and shall not be applied toward the limit of indemnities under Paragraph 4.2. The Midwest ISO Transmission Owners specifically agree not to implead, assert cross-claims against, or demand contributions from the Departing Companies with respect to obligations or

liabilities asserted against or assessed on the Midwest ISO Transmission Owners, individually or jointly, that arise from or relate to any obligation or liability of the Midwest ISO, except with respect to rights and obligations pursuant to or arising out of, including without limitation the right to enforce, this Agreement. The Midwest ISO and the Midwest ISO Transmission Owners acknowledge and agree that, upon payment of the Settlement Amount, the Departing Companies shall have fully satisfied any and all obligations to the Midwest ISO and to the Midwest ISO Transmission Owners with respect to Start-Up Costs. The Midwest ISO further acknowledges that the Departing Companies have fully satisfied all other liabilities or obligations they may have to the Midwest ISO. The Midwest ISO and the Midwest ISO Transmission Owners specifically waive any rights they may have to require or assert a claim against the Departing Companies to make a further contribution toward the Midwest ISO Start-Up Costs.

4.5. Release By The Midwest ISO. The Midwest ISO, on its own behalf and on behalf of its affiliates and successors in interest (collectively "Releasing Parties") waives and releases the Departing Companies, their respective predecessors and successors in interest and each past and present officer, director, agent, counsel, employee and representative of any of them ("Released Parties") from any claims the Midwest ISO has or may have as to any of them relating to the Midwest ISO or arising out of any Midwest ISO obligation or liability. The Midwest ISO shall defend and hold each and all of the Departing Companies harmless from any and all Indemnifiable Claims based upon any obligation or liability of the Midwest ISO, including, without limitation, claims by Third Parties (including the Midwest ISO employees) who have provided credit, goods, or services to the Midwest ISO at any time prior to the date that the Midwest ISO becomes operational. Notwithstanding the foregoing, this hold harmless provision shall not apply to claims asserted directly against the Departing Companies by any

Third Person based solely upon an actual or alleged increase in transmission costs resulting from the withdrawal of the Departing Companies from the Midwest ISO.

4.6. Releases, Waivers and Indemnities. The following shall apply with respect to the releases, waivers and indemnities set forth in Paragraphs 4.3, 4.4 and 4.5 above:

- (a) Such releases and waivers shall take effect upon payment by the Departing Companies of the amount provided in Paragraph 4.1.
- (b) In connection with such release and waiver, each Releasing Party acknowledges that it is aware that it may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true, with respect to the matters released hereby. Nevertheless, it is the intention of each Releasing Party through such release or waiver, and with the advice of counsel, fully, finally, and forever to settle and release all such matters, and any and all claims relative thereto, which heretofore have existed, now exist, or hereafter may exist between the Releasing Parties, or any of them, and the Released Parties, or any of them, to the extent provided herein. In furtherance of such intention, any such release or waiver, if and when effective in accordance with the terms hereof, shall be and remain in effect as a full and complete release of any and all such claims provided for herein notwithstanding the discovery or existence of any such additional or different claims or facts relative thereto.
- (c) Each Releasing Party represents and warrants that it is duly authorized and empowered to grant such releases and waivers and that it has not heretofore assigned or transferred, or purported or attempted to assign or transfer, to any person or entity any claims or other matters released or waived hereby.
- (d) Such releases and waivers shall not be modified in any way unless in writing and expressly agreed and consented to by a duly authorized agent of the Releasing Party and a duly authorized agent of the Released Party in writing.

4.7. Service Fee Credits. The Departing Companies will receive a credit (to be negotiated with the Midwest ISO) against their combined portion of the service fees owed by the Alliance RTO for any services that the Midwest ISO provides to the Alliance RTO. The Departing Companies agree to allocate such credits among themselves in proportion to the percentages set forth in Paragraph 4.1 above with respect to their portions of the Settlement Amount.

4.8. Schedule 10 Credits. The Departing Companies will also receive credits against the amounts owed for transmission services provided by the Midwest ISO to the Departing Companies or their current affiliates (or their successors or assigns) up to the Settlement Amount of \$60 million, which credits will be applied only against the amount each Departing Company or any of their current affiliates (or their successors or assigns) pays with respect to the capital cost component of the Administrative Cost Adder under Schedule 10 of the Midwest ISO OATT and implemented through an alternate Administrative Cost Adder to the Midwest ISO OATT, subject to transfer of the benefit of such credits beyond any Departing Company's portion of the Settlement Amount to the other Departing Companies as provided in Paragraph 4.9 below. The terms of the said alternate adder are to be negotiated by the Departing Companies and the Midwest ISO.

4.9. Credit Limits. The total credits to be provided to the Departing Companies under Paragraphs 4.7 and 4.8 shall not exceed \$60 million, and no Paragraph 4.8 credits shall be provided in connection with services rendered after December 15, 2013. When any of the Departing Companies has received credits equal to its share of the Settlement Amount as provided in Paragraph 4.1, the remaining Departing Companies shall be entitled to the benefit of any additional credits that would otherwise have been due to the Departing Company that has received its share of the Settlement Amount (including further credits based on transmission service provided to such Departing Company or its affiliates), in allocable shares.

4.10. Membership Commitments. The Departing Companies agree to stay in the Alliance RTO until December 31, 2002. The Midwest ISO Transmission Owners agree to stay in the Midwest ISO until December 31, 2002, and agree that they shall not seek a regulatory out under the Midwest ISO Agreement due to the Commission's final action in Docket ER98-1438.

subject to the preservation of existing state regulatory out rights under the Midwest ISO Agreement exercised in good faith. Except as provided in Paragraph 4.11, nothing in this Paragraph shall supersede any other commitments or obligations of any Midwest ISO Transmission Owner or any of the Departing Companies to join or remain in an ISO or RTO.

4.11. Departing Companies' Withdrawals. Upon issuance of an initial order approving this Settlement Agreement by the Commission, the Departing Companies will be permitted to withdraw from the Midwest ISO and to join the Alliance RTO.

4.12. Defense of Claims. Each Departing Company agrees to promptly notify in writing each of the Midwest ISO Transmission Owners and the Midwest ISO of any suit or other action for which such Departing Company requests indemnification pursuant to Paragraphs 4.2 or 4.5. The indemnifying party shall defend such Indemnifiable Claim through counsel of its choice, subject to the right of an indemnified party to object to such counsel on reasonable grounds. The Departing Company(ies) requesting indemnification agree to cooperate, at its (their) expense, as may be reasonably requested in connection with such defense or settlement. Any indemnified party shall have the right to participate in the defense of any action or claim with its own counsel at its own expense. No indemnifying party shall have the right to settle any Indemnified Claim without the consent of the indemnified party other than Indemnified Claims involving only the payment of money damages by the indemnifying party and with no prejudice to the indemnified party.

4.13. Continuing Responsibility. To the extent that any Midwest ISO Transmission Owner assumes an indemnification or hold harmless obligation pursuant to this Article IV, and such Midwest ISO Transmission Owner sells, disposes of or otherwise transfers ownership of all or substantially all of its transmission facilities (a "Divesting Owner"), such Divesting Owner

may assign the indemnification or hold harmless obligations hereunder to the new owner without consent of the Departing Companies; provided that the Divesting Owner shall not be released from further indemnification or hold harmless obligation hereunder without the consent of the Departing Companies, which consent will not be unreasonably withheld if the new owner is, in the reasonable judgment of the Departing Companies, a sufficiently creditworthy entity and such new owner delivers to the Departing Companies a written assumption and agreement to be bound to such obligations. The Divesting Owner will provide written notice of such assignment and assumption to the Departing Companies. The obligations of the Midwest ISO and the Midwest ISO Transmission Owners may not otherwise be assigned without the express written consent of the Departing Companies. The Departing Companies hereby acknowledge and agree that American Transmission Company LLC (“ATC LLC”) is a sufficiently creditworthy entity to support the assignment of indemnification or hold harmless obligations of Upper Peninsula Power Company (“UPPCo”) to ATC LLC upon transfer of ownership of UPPCo’s transmission assets to ATC LLC. This Agreement shall otherwise inure to the benefit of the successors and permitted assigns of the parties.

ARTICLE V

SINGLE RATE METHODOLOGY FOR THE ALLIANCE-MIDWEST ISO SUPER REGION

5.1. Application Of The Rate.

(a) For purposes of this Settlement Agreement, single (non-pancaked) rates based upon the rate methodology described below shall apply to the Alliance-Midwest ISO Super Region during the Transition Period. Any person qualifying as an eligible customer under the Alliance RTO OATT or the Midwest ISO OATT will be able to obtain transmission service within the Alliance–Midwest ISO Super Region during the Transition Period at the single (non-

pancaked) rates provided that the eligible customer's requested transaction satisfies the requirements of Paragraph 5.2(i).

(b) The Alliance-Midwest ISO Super Region shall encompass the transmission systems and the electrically metered NERC-certified control areas of the Alliance Companies that have signed the Alliance Agreement as of February 28, 2001 and the transmission systems and the electrically metered NERC-certified control areas of the Midwest ISO Transmission Owners (including the ATC LLC Companies) that have signed the Midwest ISO Agreement as of February 28, 2001. The rate methodology may be applied to additional transmission systems and NERC-certified control areas of the Midwest ISO and of the Alliance RTO upon the mutual written agreement of the Midwest ISO and the Alliance RTO (or, prior to its creation, the Alliance Companies) or by order of the Commission.

5.2. Rate Methodology. The Alliance Companies shall develop and provide to the Midwest ISO a proposed rate methodology for the single (non-pancaked) rates described in Paragraph 5.1 by March 31, 2001. The Midwest ISO shall, in turn, transmit the proposed rate methodology to the Midwest ISO Transmission Owners in accordance with the procedural requirements of the Midwest ISO Agreement concerning rate filings. The rate methodology shall reflect the following principles:

- (i) Under the terms for point-to-point and network service of the Alliance RTO OATT and the Midwest ISO OATT, electric energy shall be transmitted to any Sink within the Alliance-Midwest ISO Super Region from any Source in said Region, for a single (non-pancaked) rate;
- (ii) Single (non-pancaked) rates shall be developed based upon the principles of the transition rate methodology proposed by the Alliance Companies for the Alliance RTO, which includes a zonal facilities component and a zonal transition adjustment (ZTA). The ZTA responsibility for each zone will be calculated on the basis of lost revenues throughout the Alliance-Midwest ISO Super Region and revenues collected from the ZTAs will be distributed between the two RTOs pursuant to the relative sources of the lost revenues, and subsequently allocated

among the transmission owners within the RTOs pursuant to their respective revenue distribution methods; and

- (iii) Transmission service to all load taking service under the single (non-pancaked) rates applicable to the Alliance–Midwest ISO Super Region, including retail bundled load, in any Alliance RTO or Midwest ISO zone shall be priced to include the ZTA applicable to the zone where the load is located. Midwest ISO Transmission Owners that, as load serving entities, do not take transmission service for all of their load under the Midwest ISO OATT shall be responsible for ZTA payments as if such Midwest ISO Transmission Owners do take transmission service for all of their load under the Midwest ISO OATT. Nothing in this Paragraph 5.2(iii) shall be applied or construed to deprive State Commissions of their authority over retail rates or to exercise the discretion contemplated by Paragraph 5.5.

5.3. Effective Period. The single (non-pancaked) rates and the rate methodology described in this Article V shall be effective throughout the Transition Period and until such time as they are superseded by effective Post-Transition Rates applicable to the Alliance RTO or to the Alliance–Midwest ISO Super Region; provided, however, that if the end of the Transition Period is advanced in accordance with the provisions of Paragraph 7.1, the single (non-pancaked) rates shall remain in effect until the later of December 31, 2004 or until superseded, except that the transmission owners participating in the RTO for which the end of the Transition Period is advanced may not recover revenues under the ZTAs applicable to the Alliance–Midwest ISO Super Region for the period of advancement.

5.4. Rate Filing Procedures. After the Midwest ISO and the Midwest ISO Transmission Owners have had the opportunity to review and comment upon the proposed rate methodology, the Alliance Companies shall file under Section 205 of the FPA proposed rates based on this Article V methodology for the Alliance RTO region. The Alliance Companies shall coordinate with the Midwest ISO to enable the necessary concurrent rate filing by the Midwest ISO for the Midwest ISO region. Such filings shall occur at the earliest feasible date, but no later than 120 days before the respective Transmission Service Date of the RTO for which

the filing is made. The filings shall propose that the rates become effective upon the Transmission Service Date of the RTO for which the filing is made. Parties retain their rights to file comments or protests to the Section 205 rate filing(s) described in this Article V (including challenges to the calculation of lost revenues and ZTAs); provided, however, that such comments or protests may not challenge the rate methodology principles described in Paragraph 5.2.

5.5. State Regulatory Commissions. State Commissions shall take reasonable action consistent with state law, including state-approved settlements, after giving due consideration to the positions of all persons, to consider petitions filed at the state level for cost recovery of the ZTAs that result from the Alliance-Midwest ISO Super Region rate methodology.

ARTICLE VI

ALLIANCE – MIDWEST ISO – PJM JOINT RATE

6.1. Negotiations. The Midwest ISO, the Alliance RTO (upon its creation), the Alliance Companies and the Midwest ISO Transmission Owners shall negotiate in good faith with PJM and all PJM Transmission Owners to develop a joint rate methodology for transactions involving all of the three RTOs (the Midwest ISO, the Alliance RTO and PJM) and associated revenue distribution. These negotiations may continue through November 15, 2001. An objective of maintaining revenue neutrality is consistent with good faith participation in these negotiations.

6.2. Section 205 Filing Rights. After November 15, 2001, if there is no agreement among the parties identified in Paragraph 6.1, the Alliance Companies (or, upon its creation, the Alliance RTO), the Midwest ISO or PJM each may file proposals under Section 205 of the FPA to implement the joint rate contemplated by Paragraph 6.1. The proposals may not seek to alter existing or planned congestion management programs within any of the RTOs. The Executing

Parties will not challenge the legal authority of the Alliance RTO, the Midwest ISO or PJM to propose a joint rate methodology consistent with this Article VI under Section 205 of the FPA or the authority of the Commission to accept such a proposal for filing.

ARTICLE VII

OPERATIONAL DATE

7.1. Operational Objective.

It is the goal of both the Alliance Companies and the Midwest ISO to achieve operations of the Alliance RTO and the Midwest ISO, respectively, on or before December 15, 2001. As an incentive to be operational by that date, the end of the Transition Period will be advanced, consistent with Paragraph 5.3, one month for each month that operations are delayed beyond such date, subject to the following exceptions:

- (i) In consideration of the duration of these settlement proceedings such advancement would not be imposed if the affected RTO is operational by January 15, 2002.
- (ii) If the operational date under Order No. 2000 (December 15, 2001) is modified by the Commission in a ruling of generic applicability these incentive provisions would be adjusted accordingly.
- (iii) The end of the Transition Period shall not be advanced if the Alliance RTO (or, prior to its creation, the Alliance Companies) or the Midwest ISO can demonstrate to the Commission's satisfaction that good cause exists for a delay in the December 15, 2001 operational date of the Alliance RTO or the Midwest ISO (as applicable); provided, however that the Commission determines such delay is no longer than is reasonably necessary and that the applicant has taken all reasonable measures to avoid the cause of the delay. Good cause for delay may include the failure or refusal of a State Commission to grant any necessary approvals, so long as the other requirements for good cause are met.
- (iv) Advancement of the end of the Transition Period applies only to the RTO that fails to meet the operational date.

7.2. Mutual Support For RTO Status. The Alliance Companies and Midwest ISO Transmission Owners will support RTO status for both the Alliance RTO and the Midwest ISO, notwithstanding the withdrawal of the Departing Companies from the Midwest ISO.

ARTICLE VIII

MORATORIUM ON TRANSITION PRICING

As a condition of this Settlement Agreement, the Alliance Companies' proposal for a rate moratorium for the Alliance RTO during the Transition Period, as contained in Section 2.1 of the Pricing Protocol filed by the Alliance Companies on September 15, 2000 (and amended on September 22, 2000) in Docket Nos. ER99-3144-004, ER99-3144-005, EC99-80-004 and EC99-80-005 (Attachment F to the September 15, 2000 filing) shall be accepted by the Commission and shall remain in effect through December 31, 2004, unless extended by the Commission. The rate moratorium shall be applicable to the single (non-pancaked) rates developed in accordance with Article V of this Settlement Agreement for the Alliance-Midwest ISO Super Region. The rate moratorium will apply only to Schedules 7, 8 and 9 of the Alliance RTO OATT and to the ZTA components of the Midwest ISO Transmission Owners' zonal rates.

ARTICLE IX

FINAL RESOLUTION

9.1. Proceedings.

(a) This Settlement Agreement is a complete and final resolution of all issues raised, or that reasonably could have been raised, in the Docket No. ER01-123-000; Docket No. ER01-780-000; and Docket No. ER01-966-000.

(b) This Settlement Agreement is not intended to waive any Party's right to protest or comment on: (i) issues that are the subject of any future compliance filings in Docket Nos. ER99-3144-000, EC99-80-000 and RT01-88-000 (including all subdockets), other than the issue

of a rate moratorium which is resolved by Article VIII; (ii) issues raised in Docket No. RT01-88-000 concerning selection of a managing member for the Alliance RTO; (iii) issues raised in Docket No. RT01-88-000 concerning long-term congestion management; and (iv) issues raised in Docket No. RT01-88-000 concerning terms and conditions for participation of municipal and cooperative utilities in the Alliance RTO.

(c) Nothing in this Settlement Agreement is intended to affect the obligations, if any, of ComEd under Article V, Section II.A. of the Midwest ISO Agreement with respect to transmission service agreements executed by ComEd and Wisconsin Public Power, Inc., Wisconsin Electric Power Company or Madison Gas and Electric Company prior to November 1, 2000, for transmission service occurring after the Transition Period.

9.2 Role Of The Chief Administrative Law Judge. It is understood that the Chief Administrative Law Judge will remain available throughout the negotiations for a joint rate mechanism to mediate disputes or logjams between the parties when and if requested.

9.3. Withdrawal Of Protests and Requests for Rehearing. Upon issuance of a Final Order approving this Settlement Agreement, all protests to the withdrawal of the Departing Companies from the Midwest ISO shall be deemed withdrawn in Docket Nos. ER01-123-000, ER01-780-000 and ER01-960-000. All requests for rehearing of the January 24, 2001 Order in Docket Nos. ER99-3144-000 and EC99-80-000 shall be deemed withdrawn and of no effect. Protests and requests for rehearing filed by a Party in Docket No. RT01-88-000 shall be limited to the issues identified in Paragraph 9.1(b). Any protests or requests for rehearing addressing issues other than those identified in Paragraph 9.1(b) shall be deemed withdrawn and of no effect.

9.4. State Implementation. State Commissions will fully consider any requests for regulatory approvals that may be necessary for transmission owners to participate in the Alliance RTO or the Midwest ISO, respectively, in accordance with state law and procedures.

9.5. The Alliance RTO. It is an essential condition of this Settlement Agreement that the Commission's order approving this Settlement Agreement has the effect of binding the Alliance RTO upon its creation to the provisions of this Settlement Agreement and the provisions of the IRCA the same as if the Alliance RTO was an Executing Party.

9.6. Scope and Configuration. The Commission's approval of this Settlement Agreement constitutes approval of the scope and configuration (RTO Characteristic 2 as set forth in Order No. 2000) of the Midwest ISO and the Alliance RTO.

9.7. The Effect of Dissolution of the Midwest ISO. This Settlement Agreement shall be withdrawn and shall be of no force and effect if, prior to the payment of the Settlement Amount by the Departing Companies, the Board of Directors of the Midwest ISO votes to dissolve and wind-up the affairs of the Midwest ISO or the Midwest ISO shall have ceased operations.

ARTICLE X EFFECTIVE DATE

10.1. Effective Date. Except for Article IV, Paragraph 4.1, the effectiveness of which shall be governed by the terms of Article IV, this Settlement Agreement shall become effective on the first day of the first month following issuance by the Commission of a Final Order approving it without modification or condition. The Executing Parties may unanimously agree to waive this requirement to permit the Settlement Agreement to become effective at any time after the issuance of an initial Commission order approving the terms and conditions without modification or condition. Notwithstanding the foregoing, the Alliance Companies, or upon its

creation, the Alliance RTO and the Midwest ISO will perform all actions identified either in Article III of this Settlement Agreement or in the IRCA (Attachment A) by the dates indicated therein.

10.2. Final Order. As used throughout this Settlement Agreement, a Commission order becomes a Final Order (a) on the day after the last day for filing a request for rehearing, when no such request has been filed, or (b) if requests for rehearing are filed, on the day after the last day for filing a notice of appeal of the Commission's substantive order on rehearing.

ARTICLE XI RESERVATIONS

11.1. Nonseverability.

(a) The individual components of this Settlement Agreement are not severable. This Settlement Agreement is expressly conditioned on the Commission's acceptance of all provisions herein without change or condition. If this Settlement Agreement is not accepted in its entirety, without modification or condition, it shall be deemed withdrawn unless all Executing Parties agree to all of the required changes or conditions. If the Settlement Agreement is deemed withdrawn, it shall not constitute any part of the record in any of the captioned proceedings and shall not be used for any other purpose.

(b) Notwithstanding the foregoing, should a final, non-appealable order deny the right of the Departing Companies to withdraw from the Midwest ISO pursuant to Paragraph 4.11 above or modify or condition such right in a manner unacceptable to the Departing Companies in their sole discretion, this Settlement Agreement shall be null and void, except for the provisions of this Paragraph 11.1, and the Midwest ISO will be obligated to repay the Settlement Amount paid pursuant to Paragraph 4.1 of this Settlement Agreement to the Departing Companies, net of

any amounts paid to the Departing Companies with respect to credits pursuant to Paragraphs 4.7 and 4.8 above. The Midwest ISO shall render such repayment by the earlier of 180 days from the date of such final order or the date that the Midwest ISO obtains financing pursuant to its existing authorization granted by the Commission under Section 204 of the FPA on February 6, 2001 in Docket No. ES01-13-000. Such repayment will include an interest charge computed at the interest rate then available to a utility company rated BBB+ by Standard & Poor's for unsecured notes having a term comparable to the period since the Settlement Amount was paid. In the event that this Settlement Agreement shall become void in accordance with the foregoing, the Departing Companies will not be deemed to have been granted the right to withdraw from the Midwest ISO.

11.2. Compromise and Settled Practices. This Settlement Agreement is a compromise for the purpose of settlement, and the Commission's approval of it shall not constitute approval of, or precedent regarding, any principle or issue or methodology underlying its provisions. Nor shall this Settlement Agreement establish a "settled practice" within the meaning of Public Service Commission v. Federal Energy Regulatory Commission, 642 F.2d 1335 (D.C. Cir. 1980).

11.3. Waiver. Approval of this Settlement Agreement shall constitute a waiver of any and all Commission rules and regulations that may be necessary to effectuate the Settlement Agreement in accordance with its terms.

11.4. Declaration of Privilege. The discussions that produced this Settlement Agreement have been conducted on the explicit understanding that all offers of settlement and all settlement discussions and negotiations relating thereto are and shall remain privileged and

confidential, and are not to be used in any manner in connection with these proceedings or otherwise.

11.5. Execution of Counterparts. This Settlement Agreement may be executed in two or more counterparts, all of which will be considered one and the same Settlement Agreement and each of which will be deemed an original.

11.6 Descriptive Headings. The descriptive headings of Articles and other provisions of this Settlement Agreement have been inserted for convenience or reference only and will not define, modify, restrict, construe or otherwise affect the construction or interpretation of any of the provisions of this Settlement Agreement.

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Inter-RTO Cooperation Agreement between the Alliance Companies and the Midwest ISO

This Inter-RTO Cooperation Agreement (the "Cooperation Agreement" or this "Agreement") is made and entered into as of March 20, 2001, by and among the Midwest Independent Transmission System Operator, Inc. and the Alliance Companies in order to set forth agreements with respect to the cooperation between regional transmission organizations, and the coordination of transmission services in a manner that provides transmission users seamless access to markets throughout the regions served by the Alliance RTO and the Midwest ISO as the organizations evolve, on the terms and subject to the conditions stated herein.

The Federal Energy Regulatory Commission ("Commission") has determined that the facilitation of Regional Transmission Organizations ("RTOs") is in the public interest.

The Alliance Companies and the Midwest ISO are committed to facilitating efficient energy markets through the provision of transmission services which will be further facilitated by cooperation between RTOs.

Such cooperation should be done consistent with the spirit and requirements of Order No. 2000's Eighth RTO Function: Interregional Coordination and the Settlement Agreement.

THEREFORE, the undersigned parties agree as follows:

ARTICLE I DEFINITIONS

Capitalized terms used in this Agreement without other definition shall have the meanings as set forth below.

Alliance Companies means Ameren Corporation (on behalf of Union Electric Company and Central Illinois Public Service Company) ("Ameren"); American Electric Power Service Corporation (on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company); Consumers Energy Company; Exelon Corporation, on behalf of Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. ("ComEd"); FirstEnergy Corp. (on behalf of American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company); Illinois Power Company ("Illinois Power"); Northern Indiana Public Service Company; The Dayton Power and Light Company; The Detroit Edison Company; and Virginia Electric and Power Company.

Alliance RTO means the Regional Transmission Organization proposed by the Alliance Companies on September 15, 2000 (and amended on September 22, 2000) in Docket Nos. ER99-3144-004, ER99-3144-005, EC99-80-004 and EC99-80-005, and filed on January 16, 2001 in Docket No. RT01-88-000.

Alliance-Midwest ISO Super Region means the transmission systems and the NERC-certified electrically metered control areas of the Alliance Companies and of the Midwest ISO Transmission Owners (including the ATC LLC Companies).

ATC LLC Companies means Madison Gas and Electric Company, Wisconsin Electric Power Company, Wisconsin Power and Light Company, and Wisconsin Public Service Corporation.

Cooperating RTOs mean the signatories to this Agreement.

FERC or Commission means the Federal Energy Regulatory Commission or its successor organization.

Inter-RTO Transition Period means the earliest concluding FERC-approved Transition Period, with respect to transmission rates, of the Parties.

Midwest ISO means the Midwest Independent Transmission System Operator, Inc.

Midwest ISO Agreement means the Agreement Of Transmission Facilities Owners To Organize The Midwest Independent Transmission System Operator, Inc.

Midwest ISO Transmission Owners means the American Transmission Company LLC; Alliant Energy Corporation (for IES Utilities, Inc. and Interstate Power Company); Central Illinois Light Company; Cinergy Corp. (for The Cincinnati Gas & Electric Company, PSI Energy, Inc. and Union Light, Heat & Power Company); Hoosier Energy Rural Electric Cooperative, Inc.; LG&E Energy Corp. (for Louisville Gas and Electric Company and Kentucky Utilities Company); Otter Tail Power Company; Northwestern Wisconsin Electric Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Wabash Valley Power Association, Inc.; Upper Peninsula Power Company; and Northern States Power Company and Northern States Power Company (Wisconsin).

Multi-RTO Transmission Transaction means use or reservation of the transmission systems of multiple RTOs, using Point-To-Point and/or Network Integration Transmission Service pursuant to a Service Agreement and the respective RTO OATTs.

NERC means the North American Electric Reliability Council or its successor organization.

OATT means Open Access Transmission Tariff.

Order No. 2000 means the order issued by FERC on December 20, 1999 and cited as Regional Transmission Organizations, III FERC Stats. and Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, III FERC Stats. and Regs. ¶ 31,092 (2000).

Parallel Path Flow means the difference between the scheduled and actual power flow, assuming zero inadvertent interchange, on given transmission facilities within one or more of the Cooperating RTO systems.

Parties means the signatories to this Agreement except where the term is used in a context to mean a subset of signatories to this Agreement.

Point of Delivery shall have the meaning as defined in the OATTs of the respective Cooperating RTOs.

Point of Receipt shall have the meaning as defined in the OATTs of the respective Cooperating RTOs.

Post Inter-RTO Transition Period Pricing Structure means a pricing structure agreed to by some or all of the Cooperating RTOs to be put into effect by such Cooperating RTOs upon the completion of the Inter-RTO Transition Period.

Settlement or Settlement Agreement means the settlement entered into as of March 20, 2001 in FERC Docket Nos. ER01-123-000, *et al.*

Sink means the NERC-certified control area in which the load is located.

Source means the NERC-certified control area in which the generation is located.

Super Regional Rate Arrangement means the pricing structure for certain Multi-RTO Transmission Transactions during the Inter-RTO Transition Period as described in Section 2.1 of this Agreement.

Transition Period means the transition period ending December 31, 2004, as filed by the Alliance Companies on September 15, 2000 (and amended on September 22, 2000) in Docket Nos. ER99-3144-004, ER99-3144-005, EC99-80-004 and EC99-80-005, and filed on January 16, 2001 in Docket No. RT01-88-000, which proposal includes Section 2.1 of the Pricing Protocol (Attachment F to September 15, 2000 filing).

Transmission Owner shall have the meaning as defined in the OATTs of the respective Cooperating RTOs.

Transmission Service Date means the respective effective dates upon which transmission service begins under the Alliance RTO OATT or the Midwest ISO OATT.

ARTICLE II PRICING OF TRANSMISSION SERVICE

2.1 Super Regional Rate Arrangement

- 2.1.1 The Cooperating RTOs agree to implement a Super Regional Rate Arrangement during the Inter-RTO Transition Period, which provides for single (non-pancaked) rates, based upon the rate methodology described in this Section 2.1.
- 2.1.2 Any person qualifying as an eligible customer under the Alliance RTO OATT or the Midwest ISO OATT will be able to obtain transmission service within the Alliance–Midwest ISO Super Region during the Transition Period at the single (non-pancaked) rates provided that the eligible customer's requested transaction satisfies the requirements of Paragraph 2.1.4 (a) below.
- 2.1.3 The Alliance-Midwest ISO Super Region shall encompass the transmission systems and the electrically metered NERC-certified control areas of the Alliance Companies that have signed the Alliance Agreement as of February 28, 2001 and the transmission systems and the electrically metered NERC-certified control areas of the Midwest ISO Transmission Owners (including the ATC LLC Companies) that have signed the Midwest ISO Agreement as of February 28, 2001. The rate methodology may be applied to additional transmission systems and NERC-certified control areas of the Midwest ISO and of the Alliance RTO upon the mutual written agreement of the Midwest ISO and the Alliance RTO (or, prior to its creation, the Alliance Companies) or by Commission order.

2.1.4 The Super Regional Rate Arrangement Methodology shall reflect the following principles:

- (a) Under the terms for point-to-point and network service of the Alliance RTO OATT and the Midwest ISO OATT, electric energy shall be transmitted to any Sink within the Alliance-Midwest ISO Super Region from any Source in said Region. for a single (non-pancaked) rate;
- (b) Single (non-pancaked) rates shall be developed based upon the principles of the transition rate methodology proposed by the Alliance Companies for the Alliance RTO, which includes a zonal facilities component and a zonal transition adjustment (ZTA). The ZTA responsibility for each zone will be calculated on the basis of lost revenues throughout the Alliance-Midwest ISO Super Region and revenues collected from the ZTAs will be distributed between the two RTOs pursuant to the relative sources of the lost revenues, and subsequently allocated among the transmission owners within the RTOs pursuant to their respective revenue distribution methods; and
- (c) Transmission service to all load taking service under the single (non-pancaked) rates applicable to the Alliance-Midwest ISO Super Region, including retail bundled load, in any Alliance RTO or Midwest ISO zone shall be priced to include the ZTA applicable to the zone where the load is located. Midwest ISO Transmission Owners that, as load serving entities, do not take transmission service for all of their load under the Midwest ISO OATT shall be responsible for ZTA payments as if such Midwest ISO Transmission Owners do take transmission service for all of their all of their load under the Midwest ISO OATT. Nothing in this Paragraph 2.1.4 (c) shall be applied or construed to deprive State Commissions of their authority over retail

rates or to exercise the discretion contemplated by Paragraph 5.5 of the Settlement Agreement.

2.1.5 Super Regional Rate Arrangement Development

- (a) The Alliance Companies shall develop and provide to the Midwest ISO a proposed rate methodology for the single (non-pancaked) rates described in Section 2.1.4 by March 31, 2001.
- (b) The Midwest ISO shall, in turn, transmit the proposed rate methodology to the Midwest ISO Transmission Owners in accordance with the procedural requirements of the Midwest ISO Agreement concerning rate filings.
- (c) After the Midwest ISO and the Midwest ISO Transmission Owners have had the opportunity to review and comment upon the proposed rate methodology, the Alliance Companies shall file under Section 205 of the FPA proposed rates based on this Section 2.1 methodology for the Alliance RTO region.
- (d) The Alliance Companies shall coordinate with the Midwest ISO to enable the necessary concurrent rate filing by the Midwest ISO for the Midwest ISO region. Such filings shall occur at the earliest feasible date, but no later than 120 days before the respective Transmission Service Date of the RTO for which the filing is made.
- (e) The filings shall propose that the rates become effective upon the Transmission Service Date of the RTO for which the filing is made.
- (f) The Cooperating RTOs retain their rights to file comments or protests to the Section 205 rate filing(s) described in this Section 2.1 (including challenges to the calculation of lost revenues and ZTAs); provided, however, that such comments or protests may not challenge the rate methodology principles described in Section 2.1.4.

2.1.6 Recovery of ZTA Revenues

The single (non-pancaked) rates and the rate methodology described in this Section 2.1 shall be effective throughout the Transition Period and until such time as they are superseded by effective post-transition rates applicable to the Alliance RTO or to the Alliance-Midwest ISO Super Region; provided, however, that if the end of the Transition Period is advanced in accordance with the provisions of Section 2.1.7, the single (non-pancaked) rates shall remain in effect until the later of December 31, 2004 or until superseded, except that the Transmission Owners participating in the Cooperating RTO for which the end of the Transition Period is advanced may not recover revenues under the ZTAs applicable to the Alliance RTO-Midwest ISO Super Region for the period of advancement.

2.1.7 Early Ending of Inter-RTO Transition Period

It is the goal of both the Alliance Companies and the Midwest ISO to achieve operations of the Alliance RTO and the Midwest ISO, respectively, on or before December 15, 2001. As an incentive to be operational by that date, the end of the Transition Period will be advanced, consistent with Section 2.1.6 above, one month for each month that operations are delayed beyond such date, subject to the following exceptions:

- (i) In consideration of the duration of these settlement proceedings such advancement would not be imposed if the affected RTO is operational by January 15, 2002;
- (ii) If the operational date under Order No. 2000 (December 15, 2001) is modified by the Commission in a ruling of generic applicability these incentive provisions would be adjusted accordingly; and
- (iii) The end of the Transition Period shall not be advanced if the Alliance RTO (or, prior to its creation, the Alliance Companies) or

the Midwest ISO can demonstrate to the Commission's satisfaction that good cause exists for a delay in the December 15, 2001 operational date of the Alliance RTO or the Midwest ISO (as applicable); provided, however that the Commission determines such delay is no longer than is reasonably necessary and that the applicant has taken all reasonable measures to avoid the cause of the delay. Good cause for delay may include the failure or refusal of a State Commission to grant any necessary approvals, so long as the other requirements for good cause are met.

- (iv) Advancement of the end of the Transition Period applies only to the Cooperating RTO that fails to meet the operational date.

2.2 Alliance – Midwest ISO – PJM Joint Rate

2.2.1 The Midwest ISO, the Alliance RTO (upon its creation), the Alliance Companies and the Midwest ISO Transmission Owners shall negotiate in good faith with PJM and all PJM Transmission Owners to develop a joint rate methodology for transactions involving all of the three RTOs (the Midwest ISO, the Alliance RTO and PJM) and associated revenue distribution. These negotiations may continue through November 15, 2001. An objective of maintaining revenue neutrality is consistent with good faith participation in these negotiations.

2.2.2 After November 15, 2001, if there is no agreement among the parties identified in Section 2.2.1, the Alliance Companies (or, upon its creation, the Alliance RTO), the Midwest ISO or PJM each may file proposals under Section 205 of the FPA to implement the joint rate contemplated by Section 2.2.1. The proposals may not seek to alter existing or planned congestion management programs within any of the RTOs. The Cooperating RTOs will not challenge the legal authority of the Alliance RTO, the Midwest ISO, or PJM to propose a joint rate methodology consistent with this Section 2.2 under Section 205 of the Federal Power

Act or the authority of the Commission to accept such a proposal for filing.

2.3 Incremental Pricing

2.3.1 The parties hereto anticipate that the Super Regional Rate Arrangement and the Alliance – Midwest ISO – PJM Rate, described in Sections 2.1 and 2.2 of this Agreement, respectively, will result in an increase in transmission transactions in the affected areas; and that an incremental pricing approach is needed to stimulate sufficient investment to meet the (increased) demand for transmission system use stimulated by the introduction of pricing reciprocity and the further expansion of competitive markets. Each Cooperating RTO shall develop and/or support, as necessary and appropriate, an “incremental” (known as “and pricing”) pricing structure to compensate transmission owners for both embedded cost and the incremental cost of transmission upgrades necessary to relieve constraints and maintain reliability that may result from the increased transactions.

- a) The proposed incremental cost rate approach shall apply, at a minimum, when needed system reinforcements would occur between Cooperating RTOs. The affected Cooperating RTOs shall work together to develop an appropriate pricing approach to ensure that sufficient financial incentives exist to build the needed system expansion.
- b) If Cooperating RTOs are unable to agree upon a mutual incremental pricing approach, the Cooperating RTOs will support attempts by other Cooperating RTOs to propose incremental pricing, which may be needed to spur such investment.

2.3.2 Incremental pricing proposals, pursuant to this section, shall be developed consistent with FERC Order No. 2000, Section III.G.7.(c). Such pricing proposals shall be submitted to the Commission pursuant to the provisions of Section 205 of the Federal Power Act ("FPA") for approval or disapproval.

2.4 Post Inter-RTO Transition Period Pricing Structure Development

2.4.1 Cooperating RTOs shall negotiate to achieve an equitable and efficient methodology for pricing for Multi-RTO Transmission Transactions for the period of time after the conclusion of the Inter-RTO Transition Period (Post-Transition Pricing Structure).

- a) Starting no later than June 29, 2003, the Cooperating RTOs shall undertake to determine an appropriate Post-Transition Pricing Structure that will create price signals for the efficient use of the RTO transmission systems and for the efficient location of new generation and transmission. The pricing methodologies that the Cooperating RTOs shall investigate shall include, but shall not be limited to:
 - (i) A distance-sensitive rate-making structure;
 - (ii) A postage stamp rate equal to a regional average of the zonal rates of the Transmission Owners;
 - (iii) A separation of transmission assets and associated rates for "throughput" facilities and "local" facilities;
 - (iv) A separate rate structure for injection (generation) and withdrawal (load); and
 - (v) A license plate approach.

- b) The Cooperating RTOs shall work to select a proposed Post Inter-RTO Transition Period Pricing Structure in accordance with the procedure described in Section 2.4.2 below.

2.4.2 No later than June 29, 2003, the Cooperating RTOs shall commence a process for developing a Post Inter-RTO Transition Period Pricing Structure.

- a) The process for developing a Post Inter-RTO Transition Period Pricing Structure shall include, but not be limited to, an explicit evaluation of:
 - (i) how the proposed pricing structure will provide economically efficient incentives for use and expansion of the transmission systems of the Cooperating RTOs and for the siting of new generation;
 - (ii) the merits of a distance-sensitive rate, which could include a rate comprised of a full or partial MW-mile billing determinant; a methodology where generators in zones defined by electric characteristics (not corporate boundaries) pay different fixed connection charges; or other methodologies which recognize the economic and physical impact of distance on transmission of electricity;
 - (iii) the merits of all other pricing methodologies considered and rejected by the Cooperating RTOs; and
 - (iv) the application of performance-based rate-making and incentives.
- b) Nothing in this section requires Cooperating RTOs to agree to a Post-Transition Pricing Structure, nor are Cooperating RTOs required to discard their transition period pricing structures upon completion of the Inter-RTO Transition Period.

- c) Any agreement among the Cooperating RTOs on a Post Inter-RTO Transition Period Pricing Structure shall be presented to the Transmission Owners and other interested parties of the Cooperating RTOs, for their non-binding review, no later than 3 months prior to its anticipated effective date.
- d) The Cooperating RTOs shall design any Post-Transition Pricing Structure in light of the provisions of state rate moratoriums, such that providers of last resort to retail customers who serve such customers subject to state rate moratoriums do not incur trapped costs.
- e) In the limited circumstances described in this Section 2.4.2(e), any Post Inter-RTO Transition Period Pricing Structure may not be fully applicable. If a Transmission Owner would not recover a material portion of its revenue requirement due to increased transmission charges in its provision of electricity service to bundled load as a result of a Cooperating RTO progressing from the Transition Period Pricing Structure to a Post- Transition Period Pricing Structure, the Transmission Owner may proceed as follows:
 - (i) It shall first make a good faith effort to obtain relief from the state regulatory authority in the state(s) in which it serves bundled load. The Cooperating RTOs shall support the Transmission Owner in its efforts.
 - (ii) If the Transmission Owner fails to obtain satisfactory relief from its state regulatory authority(-ies), the Transmission Owner may choose to retain its pricing zone while the other pricing zones of the Cooperating RTOs move to the post Inter-RTO Transition Period pricing structure.

- (iii) If a Pricing Zone is retained, the zonal rate shall be applied to all transmission transactions whose Point of Delivery is in the pricing zone.
- (iv) Such Transmission Owner shall immediately move to the Post-Transition Pricing Structure once its inability to recover transmission costs has been relieved due to unbundling or other state regulatory action affecting bundled load. Nothing shall prevent the Transmission Owner from electing to move to the Post-Transition Pricing Structure before this time.
- (v) The Cooperating RTOs shall not oppose a Transmission Owner's claim to an exemption from the Post Transition Pricing Structure pursuant to this Section 2.4.2(e) if the Transmission Owner demonstrates that the portion of its revenue requirement that the Transmission Owner will not recover is material and the Transmission Owner has complied with this Section 2.4.2(e).

2.5 Term of Inter-RTO Pricing Agreements

2.5.1 The Cooperating RTOs will work to harmonize the end of their respective Transition Periods, taking into consideration the transition period requirements of Order No. 2000.

2.5.2 The provisions of Sections 2.1, 2.2, and 2.3 of this Agreement shall be in effect until the completion of the Inter-RTO Transition Period, unless altered per the provisions of Section 2.1.6. The duration of the pricing structure that may be developed pursuant to Section 2.4 shall be subject to the negotiations between the Cooperating RTOs at such time.

ARTICLE III INTER-RTO OPERATIONS

3.1 Inter-RTO Operation Coordination

The Cooperating RTOs commit to develop and implement appropriate mechanisms to coordinate super regional operations and to assure the compatibility of their operations in the functions covered in this Article. These include data sharing protocols, security coordination protocols, ATC coordination, operational planning, congestion management practices, transmission loading relief (TLR) processes, imbalance markets, and combined reservations/ schedules.

3.1.1 Data Exchange Protocol

The Cooperating RTOs recognize that sharing operating data between neighboring RTOs is critical to effectively coordinating operations and maintaining regional system reliability, while assuring the maximum commercial flexibility for market participants. The Cooperating RTOs commit to develop compatible protocols and formats that define data exchange and are consistent with industry efforts. The Cooperating RTOs will participate in industry efforts and will initiate joint work groups with each other where industry efforts do not exist. The scope of the compatible data exchange protocols should (a) include common operations data exchange formats; (b) include an enhanced inter-RTO TLR process; and (c) promote proactive involvement with transmission customers and other interested parties.

3.1.2 Shared Infrastructure Cost Reductions

The Cooperating RTOs agree to seek to reduce overall operations infrastructure costs through appropriate and compatible systems development and sharing agreements. In part this will be accomplished through the development and use of standardized processes, the use of compatible infrastructure and applications, and to the extent feasible and

appropriate, common systems. The Cooperating RTOs further agree to seek other areas for shared cost reductions including coordinated development of models for ATC calculations and a regional planning model to be used for inter-regional planning load flows.

3.1.3 Protocol for Operational Planning Coordination

The Cooperating RTOs will jointly develop protocols for sharing transmission and generation outage schedule data. To improve the operational planning of each Cooperating RTO, the protocols will include mutually agreed upon sharing of SCADA data between Cooperating RTOs. The Cooperating RTOs encourage adoption of consistent modeling protocols for planning and operating studies to further enhance operational planning efforts.

3.2 ATC Determination and Coordination

The Cooperating RTOs agree to develop necessary protocols to determine and coordinate the posting of compatible ATCs with any regional seam. This is viewed as critical to assessing the impacts of loop (parallel) flows and to facilitating one-stop shopping. A joint working group has been meeting, and will continue to meet to finalize a compatible methodology for protocols for determining, coordinating, and posting ATC values impacting the Cooperating RTOs. The posted values shall reflect a rational evaluation of the systems being modeled as an "inter-regional" system instead of as independent "regional" systems. The Cooperating RTOs will support the development of standardized processes for ATC determination and supporting applications to be applied on a super regional RTO basis. The development of initial procedures and protocols for ATC determination and coordination shall be completed by May 31, 2001.

3.3 Security Coordination

3.3.1 *Security Data Sharing*

The Cooperating RTOs agree to share security information among themselves and with neighboring RTOs to coordinate and improve the security coordination function. Such information shall include but not be limited to Interchange Security Network (ISN) data 10-minute and real-time Area Control Error (ACE) data, and Interchange Distribution Calculator (IDC) data. Load flow modeling information, including outage coordination data, will be shared to facilitate the determination of Parallel Path Flows and the mitigation of their effects. Each Cooperating RTO will prepare and share annual forecasts as a base case. Results of monthly, weekly, daily and real-time studies recognizing changing system topology will be shared per criteria to be determined by the Cooperating RTOs. The development of initial procedures and protocols for the cooperation in Security Coordination activities shall be completed by May 31, 2001.

3.3.2 *Industry Security Coordinator Initiatives*

The Cooperating RTOs agree to adopt, as applicable, the results of initiatives NERC currently has underway to improve coordination between security coordinators, potentially resulting in a broader approach that may align security coordinators on an RTO basis.

The Cooperating RTOs will participate in developing solutions to congestion/system security issues, and will participate in and adopt all NERC-approved regional pilots and/or proposals. Current initiatives include the Market Interface Committee (MIC) and Market Redispatch ("MRD").

3.3.3 *Redispatch Sharing Agreement*

The Cooperating RTOs agree to take a leadership role in industry efforts such as Lake Erie Emergency Redispatch (“LEER”), MRD and Transmission Loading Relief (“TLR”) and to work toward developing a redispatch sharing agreement with adjacent RTOs to resolve congestion on flowgates. This effort would expand the current redispatch for reliability purposes to allow customers to request continuation of non-firm transmission service by requesting the RTO to provide redispatch service on the unconstrained side of a constraint in a neighboring RTO. Such a congestion management/redispatch agreement would also include appropriate financial settlements. The results of such agreements will be advanced to support compatible market development efforts that recognize the financial settlements aspects and provide a vehicle to settle payments external to the operations of the Cooperating RTOs.

3.4 Combined Reservations/Schedules

The Cooperating RTOs commit to cooperate in developing an interface between OASIS, tagging and scheduling systems across multiple regions to accommodate populating the Energy Management Systems (EMS) of all participants at the same time. The development of such an interface is expected to simplify the market participants’ acquisition of transmission information, and thus further facilitate one-stop shopping for transmission service. As part of this effort, the Cooperating RTOs shall consider equating tags and schedules in the respective OASIS systems, adoption of software to validate schedules and tags to streamline this process, and the potential for a transmission business-to-business exchange. The development of initial procedures and protocols shall be completed by July 31, 2001.

3.5 Coordination of Transmission Loading Relief (TLR)

- 3.5.1 To the extent that Implementation of TLR curtailments are necessary, the Cooperating RTOs shall work together whenever feasible to implement and to minimize such curtailments, subject to appropriate compensation.
- 3.5.2 Once TLR curtailments are implemented and ready for restoration, the Cooperating RTOs shall coordinate such restoration and ramp-ups.
- 3.5.3 The development of initial procedures and protocols for TLR Coordination shall be completed by May 31, 2001.

3.6 Imbalance Markets

- 3.6.1 The Cooperating RTOs shall implement imbalance markets to fulfill their imbalance market requirements pursuant to the guidelines of Order No. 2000.
- 3.6.2 Each Cooperating RTO shall be responsible for implementing its own imbalance market.
- 3.6.3 The Cooperating RTOs shall cooperate in the development of their individual imbalance markets to ensure their compatibility in their application of Multi-RTO Transmission Transactions. The development of initial procedures and protocols for imbalance markets shall be completed by May 31, 2001.
- 3.6.4 The Cooperating RTOs will work to jointly issue requests for proposals (“RFPs”), when feasible.

3.7 Real-Time Operational Disputes

The Cooperating RTOs shall develop procedures to address real-time operational disputes, including disputes initiated by customers of the Cooperating RTOs, no later than October 15, 2001.

ARTICLE IV
CONGESTION MANAGEMENT

4.1 Day One Congestion Management between Cooperating RTOs

- 4.1.1 The Cooperating RTOs agree to jointly develop an open, accessible electronic bulletin board system for posting congestion management information including generator shift factors. On a daily basis, the Cooperating RTOs shall jointly identify the interfaces that are expected to be constrained and the generators that can significantly relieve those constraints. The Cooperating RTOs will post the generator shift factors for those generators.
- 4.1.2 The Cooperating RTOs agree to require that generators, to the extent necessary for inter-RTO congestion management objectives, to provide bids to increase or reduce generation on either or both sides of the interfaces. Cooperating RTOs shall require generators to submit bids to raise or lower generation to relieve transmission constraints related to Inter-RTO congestion. The bids will be submitted initially on a bulletin board operated by an entity that is independent of transmission owners and market participants.
- 4.1.3 The Cooperating RTOs commit to facilitate the formation of third party exchanges. In advance of the development of such exchanges, the bulletin board mechanism will facilitate congestion management by providing comparable information and method of matching market participants/transmission customers with the appropriate generators.
- 4.1.4 In processing day-ahead transmission requests, the Cooperating RTOs shall identify for the transmission customers the generators on both sides of the interface that can significantly relieve the congestion. After having the opportunity to contract with the appropriate generators, the transmission customer may then resubmit its request.

- 4.1.5 The Cooperating RTOs shall coordinate their reservations and energy schedules through the constrained interfaces as well as other reservations and energy schedules that may impact the transmission capacity of those interfaces.
- 4.1.6 The Cooperating RTOs shall establish a Joint Congestion Management Committee, which shall:
- (a) Further refine the congestion management procedure and protocol;
 - (b) Identify congestion management issues for resolution;
 - (c) Seek market-oriented foundations/enhancements for incorporation into congestion management methodologies;
 - (d) Formulate congestion management proposals for adoption by Cooperating RTOs; and
 - (e) Formulate compatible definitions, terminology, and applications of congestion management systems.

The Cooperating RTOs shall name representatives to the Joint Congestion Management Committee no later than April 1, 2001.

- 4.1.7 The foregoing shall be accomplished by July 31, 2001 to the extent required to carry out market trials.

4.2 Development of Long-Term Congestion Management Mechanisms

- 4.2.1 The Cooperating RTOs agree to implement “hybrid” (flowgate/location marginal pricing models) congestion management models to fulfill their requirements for a market-oriented congestion management methodology pursuant to the guidelines of Order No. 2000.
- 4.2.2 Each Cooperating RTO shall be responsible for implementing its own hybrid model in a manner consistent with section 4.2.3.
- 4.2.3 The Cooperating RTOs shall cooperate in the development of their individual congestion management systems to ensure their compatibility in their application of Multi-RTO Transmission Transactions. The development of initial procedures and protocols for long-term congestion management shall be completed by December 31, 2001.
- 4.2.4 The Cooperating RTOs will work to jointly issue requests for proposals, when feasible.

ARTICLE V INTER-RTO REGIONAL PLANNING

5.1 Coordinated Planning

Each Cooperating RTO shall coordinate its long-term (greater than twelve months) transmission planning activities with the other Cooperating RTO(s) to ensure the compatibility of planning across the entire region. Each Cooperating RTO will develop and prepare an annual transmission planning report for its region, such planning reports will be coordinated to the maximum extent possible with the other Cooperating RTOs and an annual Joint RTO Transmission Planning Report will be produced.

5.2 RTO Individual Responsibilities

Each Cooperating RTO shall engage in such transmission planning activities as are necessary to fulfill its obligations under its agreements and open access transmission tariff. Such planning shall conform to applicable reliability requirements of the North American Electric Reliability Council, applicable regional reliability councils, or any successor organizations, and all applicable requirements of federal or state laws or regulatory authorities. Such planning activities shall coordinate transmission plans among the Cooperating RTOs to maintain adequate reliability, alleviate transmission constraints (either within each RTO or between RTOs) and satisfy other requirements set forth in each RTO's agreements while minimizing overall costs.

5.3 Joint RTO Planning Committee

- 5.3.1 A Joint RTO Transmission Planning Committee shall be established and each Cooperating RTO shall assign an official representative to this Committee.
- 5.3.2 The Joint RTO Transmission Planning Committee shall be responsible for coordinating planning activities for all facilities under the functional control of each Cooperating RTO.
- 5.3.3 The Joint RTO Transmission Planning Committee shall meet on at least a semi-annual basis to review and coordinate current RTO transmission planning activities.
- 5.3.4 The responsibilities of the Joint RTO Transmission Planning Committee shall include, but not be limited to:
 - a) Coordination of ATC calculation methodology between RTOs.
 - b) Coordination of long-term transmission service requests between RTOs, including coordination of System Impact and Facilities Studies if request is expected to affect neighboring RTOs.

- c) Development of cost-effective plans to resolve transmission constraints that would otherwise preclude requested transmission service between RTOs.
- d) Creation of an annual Joint RTO Transmission Planning Report by evaluating and integrating the transmission plans and other findings from each RTO.
- e) Supporting approval at the state and federal agency levels of necessary transmission plans.
- f) Supporting the development of multi-state agreements to facilitate new inter-state transmission facility additions to alleviate constraints and enhance transmission network reliability.
- g) Further refinement of the Joint Planning Procedure and Protocol.

5.3.5 The Joint RTO Transmission Planning Committee shall establish two subcommittees, which will ensure coordination of transmission planning activities, the Planning Advisory Subcommittee and the Reliability Planning Subcommittee.

- a) The Planning Advisory Subcommittee shall be established to ensure adequate mechanisms for representatives of regulatory authorities and all market participants to have input in the planning process. Responsibilities of the Planning Advisory Subcommittee shall include:
 - (i) Reviewing transmission plans and providing input for consideration in the development of the Joint RTO Transmission Planning Report;
 - (ii) Recommending additional studies or evaluation of plans;
 - (iii) Reviewing planning standards and guidelines, and
 - (iv) Recommending additional alternative system reinforcements for consideration, including distributed generation and demand-side management measures that

would mitigate congestion, relieve constraints, or improve reliability.

- b) The Reliability Planning Subcommittee will be established to provide a vehicle through which coordinated reliability planning activities will be conducted. Responsibilities of the Reliability Planning Subcommittee will include:
 - (i) Developing, coordinating, and distributing computer simulation models needed to support planning activities;
 - (ii) Identifying the need for system expansion or reinforcement through assessment of the ability of the planned system to meet reliability needs and to support transmission service requests;
 - (iii) Defining coordinated planning studies to be conducted under its direction (including study assumptions) and developing work assignments and schedules for conducting such studies; and
 - (iv) Reviewing and coordinating each RTO's reliability study reports.

5.3.6 Additional facilities may be incorporated into the Joint RTO Transmission Planning Committee's responsibilities if such facilities are deemed necessary to relieve a constraint or for security purposes.

5.4 Data Exchange

The Cooperating RTOs shall foster improved transmission planning through a coordinated planning process in which RTOs, independent system operators, Transmission Owners, local distribution utilities, and transmission customers and users exchange necessary data and system plans.

5.5 Performance Assessments

The Cooperating RTOs shall collectively assess the expected performance of the electrical network and jointly develop necessary reinforcement alternatives. This process shall recognize the potential effects of each system's plans on the other interconnected systems in matters of efficiency and reliability.

ARTICLE VI PARALLEL PATH FLOWS

6.1 Internalization

Each of the Cooperating RTOs has adopted, or will adopt prior to its initial operations, transmission scheduling and pricing policies that will internalize most, if not all, Parallel Path Flows within its own region. The Cooperating RTOs expect that through coordination between themselves, pursuant to the other provisions of this Agreement, they will be able to mitigate Parallel Path Flow issues.

6.2 Cooperation with NERC

The Cooperating RTOs shall work with NERC to address Parallel Path Flow issues within the Eastern Interconnection.

6.3 Development of Procedures

No later than December 15, 2004, or no later than such date after December 15, 2004 as FERC may permit for compliance with Function 3 of Order No. 2000, the Cooperating RTOs shall have procedures in place to address Parallel Path Flow issues between their respective transmission systems.

ARTICLE VII
ALTERNATIVE DISPUTE RESOLUTION

7.1 Disputes

The procedures set forth in this Article VII are applicable only to disputes between two or more Cooperating RTOs that arise out of or in connection with this Agreement, and are not applicable where alternate procedures are provided in the Settlement Agreement.

7.2 Negotiations

Any disputes between two or more Cooperating RTOs arising out of, or in connection with, this Agreement shall be referred as promptly as possible to a designated senior representative of each Party. The designated senior representatives shall meet in person or via teleconference as soon as mutually practicable to consider ways to resolve the dispute on an informal basis. If the designated senior representatives are unable to resolve such dispute within thirty 30 days (or such other period as they may agree upon) of their first meeting, the dispute may be submitted to arbitration and resolved in accordance with the arbitration procedures set forth in Section 7.3.

7.3 Arbitration

Any arbitration initiated under this Article VII shall be referred to a neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, the Parties shall request the American Arbitration Association to designate a neutral arbitrator or agree upon a method for setting a panel of arbitrators. Any panel of arbitrators selected must contain at least one neutral arbitrator and must consist of an odd number of arbitrators. Each of the arbitrators selected shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties a chance to be heard and, except as otherwise provided herein, shall generally conduct the arbitration in

accordance with the Commercial Arbitration Rules of the American Arbitration Association and any applicable FERC regulations.

7.4 Arbitration Decisions

Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days after their appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Agreement, and any related agreements or tariffs. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service or facilities.

7.5 Costs

Each Party shall be responsible for its own costs incurred during the arbitration process and its share of the costs for the arbitrator(s).

7.6 Rights Under the Federal Power Act

Nothing in this Article VII shall restrict the rights of any Party under the provisions of the Federal Power Act.

ARTICLE VIII
MARKET MONITORING

8.1 Scope of Market Monitoring

8.1.1 The Cooperating RTOs agree to monitor the following markets or activities:

- a) Attempts to create transmission constraints or to affect the provision of transmission service.
- b) Transmission, ancillary service and imbalance markets.
- c) Congestion management market if run by the Cooperating RTOs. and
- d) Interaction with related markets
- e) Any other market which FERC directs.

8.1.2 The Cooperating RTOs agree not to monitor the following markets or activities, unless otherwise directed by FERC:

- a) Energy and capacity markets, and
- b) Generation market power except as related to markets run by the Cooperating RTOs.

8.1.3 The market monitoring activities undertaken pursuant to this section shall be designed to fulfill the market monitoring requirements, as defined by FERC, of each of the Cooperating RTOs.

8.2 Provision of Market Monitoring Service

8.2.1 The Cooperating RTOs shall agree upon an independent market monitor (IMM) to provide market monitoring service to all of the Cooperating RTOs.

8.2.2 The IMM shall:

- a) Assist in development of plan and creation of screens;
- b) Analyze activities or events which fail initial screens;
- c) Recommend efficiencies and improvements to markets run by the Cooperating RTOs;
- d) Develop and file periodic reports with FERC and other appropriate regulatory agencies; and
- e) Determine if RTOs' markets which are run independently are compatible.

8.3 Market Monitoring Committee

8.3.1 The Cooperating RTOs shall create a Market Monitoring Committee, consisting of one (1) representative appointed by each Cooperating RTO.

8.3.2 The Market Monitoring Committee shall:

- a) Be responsible for management of the agreement and interface with the IMM;
- b) Determine in concert with the IMM appropriate data collection and screens;
- c) Evaluate the need for remedies;
- d) Approve periodic reports;
- e) Propose new market monitoring activities as appropriate;
- f) Receive requests for investigations from market participants or regulators, except with respect to issues related to the RTO.

8.3.3 In the event that an Interregional Transmission Service Coordinator (ITSC) is created pursuant to Article XII of this Agreement, the Market Monitoring Committee may be replaced by a committee appointed by the ITSC Board.

8.4 Responsibilities of Cooperating RTOs

Cooperating RTOs shall take the following actions in order to facilitate market monitoring:

- (a) Collect data;
- (b) Determine failures to pass predetermined screens;
- (c) Perform initial evaluation of failures;
- (d) Identify non-screen related events;
- (e) Evaluate and recommend inter-RTO market effects.

8.5 Remedial Actions

Upon recommendation of the IMM, the Market Monitoring Committee may suggest to the FERC such remedial actions and modification of market rules as may be within FERC's authority.

ARTICLE IX INTERCONNECTION AGREEMENTS

9.1 Development of a Common Generation Interconnection Agreement.

9.1.1 The Cooperating RTOs agree to work together to create a common *pro forma* Generator Interconnection Agreement for all generators that are attached to the transmission systems of the respective RTOs, using the *pro forma* Generation Interconnection Agreement filed on September 15, 2000 by the Alliance Companies (as modified in accordance with FERC's order of January 24, 2001) as the starting-point basis for such discussions. This

negotiation process would include a collaborative process explicitly including generators pursuant to the directives of the January 24, 2001 Alliance Order.

- 9.1.2 Such an Inter-RTO common *pro forma* Generator Interconnection Agreement should be developed at the earliest possible time so as to create certainty for the developers of necessary generation. The parties shall strive to have this completed prior to June 30, 2001.

9.2 Sovereignty of Commonly-developed pro forma Generator Interconnection Agreements.

As of effective date of this Agreement, neither the Alliance RTO nor the Midwest ISO has a *pro forma* Generator Interconnection Agreement approved by FERC. Once approved by FERC, an Inter-RTO common *pro forma* Generator Interconnection Agreement created pursuant to Section 9.1 would supersede prospectively any *pro forma* Generator Interconnection Agreements that the respective Cooperating RTOs might file in the interim or of Transmission Owner members of such Cooperating RTOs.

9.3 Coordination of Generator Interconnection Agreement Implementation

The Cooperating RTOs agree to coordinate generation interconnection study requests, and coordinate the necessary network reinforcements which result from them.

ARTICLE X

ONE-STOP SHOPPING

10.1 Objectives

The Cooperating RTOs will work to facilitate One-Stop Shopping (“OSS”), where a transmission customer, on its own or through a OSS provider, could make a transaction across the transmission systems of multiple Cooperating RTOs through a single point of contact. The objectives of facilitating OSS are:

- 10.1.1 OSS should provide value to market participants while addressing FERC’s concerns about the lack of procedures and rate structure to coordinate operation between adjacent transmission providers and regional entities and to facilitate efficient transmission.
- 10.1.2 OSS recommendations must be operationally efficient and administratively feasible.
- 10.1.3 OSS services must be consistent with or exceed the requirements of FERC Order No. 888 and its progeny and Order No. 2000.
- 10.1.4 OSS recommendations should be compatible with the processes, procedures and tariffs of the participating regional entities and individual transmission providers.

10.2 General Cooperating RTO Actions

Cooperating RTOs should work to:

- 10.2.1 Coordinate internal procedures and protocols to allow OSS and minimize differences where cost effective.
- 10.2.2 Offer OSS as an option that customers could select when initiating requests.
- 10.2.3 Coordinate and/or standardize modeling of the grid to provide consistent transmission capability results.

10.2.4 Consider modifications to hardware, software and communications systems to accommodate the necessary changes.

10.3 Specific Cooperating RTO Actions

In order to facilitate One-Stop-Shopping, Cooperating RTOs shall:

10.3.1 Participate in a task force to:

- a) Further refine the joint OSS facilitation procedure and protocol; and
- b) Develop an implementation plan which may consider independent companies as providers of OSS.

The task force should consider a phased in approach by first addressing those issues that are simpler to change and implement.

10.3.2 Consider modifications to their tariffs to accommodate changes once the joint OSS facilitation procedure and protocol is further refined.

10.3.3 Agree to dedicate resources so that OSS can be implemented as early as possible; at the same time, participants agree that OSS implementation should not delay RTO implementation.

10.3.4 Participate in ongoing enhancements, refinements and modifications as necessary.

10.3.5 Secure endorsements of other organizations that wish to participate.

ARTICLE XI
SEAMLESS MARKETS/COMMON BUSINESS PRACTICES

11.1 General Agreement

Through this Agreement and by working to create common or fully compatible business practices and rules, the Cooperating RTOs intend to provide transmission users seamless access to markets throughout the regions served by the Alliance RTO and the Midwest ISO as the organizations evolve.

11.2 Compatibility Upon Commencement of Operations

11.2.1 Each Cooperating RTO shall identify the lead business practices representative during the implementation process for the respective Cooperating RTOs. Such lead representatives shall periodically meet to ensure that the business practices of the Cooperating RTOs are compatible.

11.2.2 By October 15, 2001, the Cooperating RTOs shall mutually confirm that their business practices are, in fact, compatible for the commencement of their respective operations.

11.3 Ongoing Compatibility

To the extent that “seams issues” arise which are detrimental to seamless markets and have not been specifically identified in this Agreement, the Cooperating RTOs shall collaborate, with input from other interested parties, to resolve said issues.

ARTICLE XII
INTERREGIONAL TRANSMISSION SERVICE COORDINATOR

The Cooperating RTOs, in conjunction with additional RTOs which may, in the future, become signatories to this Agreement, or similar agreements, shall investigate the delegation of certain common functions to an Interregional Transmission Service Coordinator ("ITSC"). The ITSC and such signatories collectively shall possess all required RTO characteristics and perform all required RTO functions. Such delegated functions shall not include those which, in the sole judgment of a signatory, are necessary for the fulfillment of its fiduciary responsibilities to its investors.

ARTICLE XIII
COOPERATION COMMITTEE

13.1 Cooperation Committee

A Cooperation Committee shall be established, by September 15, 2001, to carry out the objectives of this Agreement. Each Cooperating RTO shall designate in writing two (2) representatives (a principal and an alternate) for the Cooperation Committee. Until the Alliance RTO is formed, the Alliance Companies collectively shall have one principal representative and one alternate representative on the Cooperation Committee. Each Cooperating RTO shall continuously have on record with the other Cooperating RTO(s) the names of its principal representative and alternate representative of the Cooperation Committee. The expenses necessary for the establishment and maintaining of this Cooperation Committee shall be the responsibility of each individual Party as regards its respective personnel. Any expenses jointly incurred for activities to implement and administer this Agreement, other than for the Parties' personnel, shall be shared equally by the Cooperating RTOs.

13.2 Cooperation Committee Responsibilities

The responsibilities of the Cooperation Committee include:

- (a) Consideration of any matters in connection with the administration of this Agreement as may, from time to time, arise, including the determination of arrangements necessary to permit other Regional Transmission Organizations to become parties to this Agreement,
- (b) Creation of recommendations to the Cooperating RTOs in regard to those matters on which the Cooperation Committee is not empowered to act,
- (c) Formulation, preparation, approval and implementation of procedures and protocols to implement this Agreement, and
- (d) Formation of, and general supervision over, any committees, subcommittees or task forces as necessary to address any matters in connection with the administration of this Agreement.

13.3 Creation of Procedures and Protocols

13.3.1 In the event that protocols and procedures are not executed by the Cooperating RTOs on the dates indicated in Sections 3.2, 3.3, 3.4.1, 3.6, 3.7, 4.2, 9.1.2 or 11.2 of this Agreement, the Cooperating RTOs, or any non-Parties to this Agreement, may unilaterally make proposals for the applicable procedures and protocols to the FERC.

13.3.2 The Cooperating RTOs shall request expedited consideration by the FERC of any such filings.

13.3.3 The Cooperating RTOs shall make no such filings prior to expiration of the applicable dates indicated in Sections 3.2, 3.3, 3.4.1, 3.6, 3.7, 4.2, 9.1.2 or 11.2 of this Agreement.

13.3.4 The Cooperating RTOs shall obtain timely advice from customers, state regulators, and other interested parties in accordance with their respective stakeholder advisory processes.

ARTICLE XIV
MISCELLANEOUS PROVISIONS

14.1 Descriptive Headings

The descriptive headings of Articles and other provisions of this Agreement have been inserted for convenience of reference only and will not define, modify, restrict, construe or otherwise affect the construction or interpretation of any of the provisions of this Agreement.

14.2 Relationship to OATT

In the event of a conflict between this Agreement, including any Appendices, Attachments, or Exhibits, and the OATT of a Party, the OATT shall prevail.

14.3 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same instrument.

14.4 Successors and Assigns

This Agreement shall inure to the benefit of, and be binding upon, the Cooperating RTOs, their respective successors and assigns permitted hereunder, but, with the exception of the assignment of the Agreement by the Alliance Companies to the Alliance RTO, shall not be assignable by any of the Cooperating RTOs (except by assignment to a wholly-owned affiliate of a Cooperating RTO) by operation of law or otherwise, without the approval of the remaining Parties, which approval shall not be unreasonably withheld. A Cooperating RTO may not assign an obligation under this Agreement to an assignee that is not capable of fulfilling the assigned obligation. The Alliance RTO shall accept assignment of this Agreement from the Alliance Companies if the Commission binds the Alliance RTO to the Settlement Agreement.

14.5 No Implied Waivers

The failure of a Cooperating RTO to insist upon or enforce strict performance of any of the specific provisions of this Agreement at any time will not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions, rights or remedies in that or any other instance, or as a waiver to any extent of any specific provision of this Agreement.

14.6 Representations and Warranties

Each Cooperating RTO represents and warrants to the other Parties that, as of the date it executes this Agreement:

- (i) Subject to any necessary approvals by federal and state regulatory authorities, the Cooperating RTO's participation in this Agreement, the execution and delivery by the Cooperating RTO of this Agreement and the performance of its obligations hereunder have been duly and validly authorized by all requisite action on the part of the Cooperating RTO and do not conflict with any applicable law. This Agreement has been duly executed and delivered by the Cooperating RTO and this Agreement constitutes the legal, valid and binding obligation on the part of the Party, enforceable against it in accordance with its terms except insofar as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting the enforcement of creditor's rights generally, and by general principles of equity regardless of whether such principles are considered in a proceeding at law or in equity.
- (ii) There are no actions at law, suits in equity, proceedings or claims pending or, to the knowledge of the Cooperating RTO, threatened against the Cooperating RTO before or by any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the performance by the Cooperating RTO of its obligations hereunder.

14.7 Further Assurances

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

14.8 Delivery of Notices

Notices required under this Agreement shall be in writing and shall be sent to a Cooperating RTO by U.S. mail, overnight courier, hand delivery, facsimile or other reliable electronic means. Any notice required under this Agreement shall be deemed to have been given either upon delivery, if by U.S. mail, overnight courier or hand delivery, or upon confirmation, if given by telecopier or other reliable electronic means to the respective Secretary of each of the Cooperating RTO at the principal place of business of such Party.

14.9 Limitations on Liability

No Cooperating RTO shall be liable to any other Party for any claim for indirect, incidental, special, consequential, or exemplary damages, including, but not limited to, the loss of profits or revenues, cost of financing, loss of goodwill and cost of replacement power arising from such Cooperating RTO carrying out, or failing to carry out, any obligations contemplated by this Agreement. Nothing in this Section 14.9 shall affect any obligations under Article IV of the Settlement Agreement.

14.10 Entire Agreement

This Agreement, including any Appendix or Exhibit to this Agreement, together with the Settlement Agreement, constitutes the entire agreement among the Cooperating RTOs with respect to the subject matter of this Agreement, and no previous or contemporary oral or written representations, agreements, or understandings made by any officer, agent, or employee of any Cooperating RTO shall be binding unless contained in

this Agreement, including the Appendices and Exhibit attached hereto and the Settlement Agreement.

14.11 Good Faith Efforts

Each Cooperating RTO agrees that it shall in good faith take all reasonable actions necessary to permit such Party to fulfill its obligations under this Agreement. Where the consent, agreement or approval of any Cooperating RTO must be obtained hereunder, such consent, agreement or approval shall not be unreasonably withheld, conditioned or delayed. To the extent that the jurisdiction of any federal or state regulatory authority applies to any part of this Agreement and/or the transactions or actions covered by this Agreement, each Cooperating RTO will cooperate with all other Parties to secure any necessary or desirable approval or acceptance of such regulatory authorities of such part of this Agreement and/or such transactions or actions. Each Cooperating RTO shall notify the other Parties of any delay in its ability to fulfill its obligations under this Agreement or any inability to fulfill its obligations under this Agreement.

14.12 Third Party Agreements

This Agreement shall not be construed, interpreted or applied in such a manner as to cause any Cooperating RTO to be in material breach, anticipatory or otherwise, of any agreement between such Party and one or more third parties who are not parties under this Agreement (regardless of the inclusion of one or more other parties as parties to such agreement) for the joint ownership, operation or maintenance of any electrical facilities affected by this Agreement.

14.13 No Partnership

This Agreement is not intended, and shall not be construed, interpreted or applied, to create a partnership or joint venture, and no Cooperating RTO shall be entitled to act as an agent for any other Cooperating RTO with respect to this Agreement.

14.14 Dispute Resolution

If any dispute arises among any of the Cooperating RTOs regarding the terms of this Agreement, it will be resolved in accordance with Article VII of this Agreement.

14.15 Effective Date and Termination

This Agreement shall be deemed to be effective as of the date of its execution and delivery among the initial signatories hereto. This Agreement shall continue in force and effect until its termination is accepted by the Commission.

14.16 Amendments

Except for the specified unilateral Section 205 filing rights identified in Article II herein, any amendments to this Agreement shall be reduced to writing and shall require unanimous consent of the Parties, which consent shall not be unreasonably withheld.

DC:134301 v 2

HARD COPY OF Map

DOCKET SEQUENCE NO. _____

EXHIBIT _____

CASE NO. PU-401-01-643

ON FILE IN

STATE ARCHIVES

CONTROL NUMBER: 80051