

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Commonwealth Edison Company)	Docket Nos. 50-254 and 50-265
and)	Facility Operating License Nos.
Iowa-Illinois Gas and Electric Company)	DPR-29 and DPR-30
		Quad-Cities Nuclear Power Station, Units 1 and 2

APPLICATION
of
IOWA-ILLINOIS GAS AND ELECTRIC COMPANY
and
MIDAMERICAN ENERGY COMPANY
for
TRANSFER AND AMENDMENT OF LICENSES

Iowa-Illinois Gas and Electric Company (Iowa-Illinois) and Commonwealth Edison Company (Commonwealth Edison) are the holders of Facility Operating License Nos. DPR-29 and DPR-30 (the Licenses) for Quad-Cities Nuclear Power Station, Units 1 and 2 (Quad Cities Station). By this Application, Iowa-Illinois and MidAmerican Energy Company (MidAmerican) request the consent of the Nuclear Regulatory Commission (NRC), pursuant to 10 C.F.R. § 50.80, for Iowa-Illinois to transfer all of Iowa-Illinois' interests in the Licenses to MidAmerican which will become the surviving corporation and public utility upon the consummation of the merger of Iowa-Illinois, Midwest Resources Inc. (Midwest Resources), Midwest Power Systems Inc. (Midwest Power) and MidAmerican. (Iowa-Illinois and MidAmerican will be collectively referred to in this Application as the Applicants.) In addition, Applicants request, to the extent deemed necessary by the NRC, that the Licenses be amended, pursuant to 10 C.F.R. § 50.90, to reflect the requested transfer of the Licenses.

DISCUSSION:

I. Introduction

Iowa-Illinois, Midwest Resources, Midwest Power and MidAmerican have entered into an Agreement and Plan of Merger, dated as of July 26, 1994, as amended and restated as of September 27, 1994 (the Merger Agreement). A copy of the Merger Agreement is attached as Exhibit 1. Pursuant to the Merger Agreement, the parties will merge all of their business interests, and MidAmerican will remain as the sole surviving corporation and public utility.

Iowa-Illinois is an Illinois corporation engaged in the business of generating, transmitting and distributing electric energy to approximately 200,000 customers in 51 communities in Iowa and Illinois, of which the largest are the Quad Cities metropolitan area of Iowa and Illinois, and Iowa City and Fort Dodge, Iowa. In addition, Iowa-Illinois transports and distributes natural gas at retail in the Quad Cities metropolitan area, and in the Iowa City, Cedar Rapids, Ottumwa and Fort Dodge, Iowa areas.

Midwest Resources, an Iowa corporation, owns all of the outstanding common stock of Midwest Power and is an exempt holding company under Section 3(a)(10) of the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79c(a)(1). Midwest Power, also an Iowa corporation, is engaged principally in the business of generating, transmitting and distributing electric energy to approximately 412,000 customers in 327 communities in Iowa and six communities in South Dakota. The largest communities served by Midwest Power are Des Moines, Sioux City, Waterloo and Council Bluffs, Iowa. In addition, Midwest Power transports and distributes natural gas at retail in Iowa, South

Dakota and Nebraska. Neither Midwest Resources nor Midwest Power owns any interest in nuclear facilities and neither company is a licensee of such facilities. However, Midwest Power is a purchaser of capacity from Cooper Nuclear Station.

MidAmerican is an Iowa corporation formed by Iowa-Illinois and Midwest Resources for the purposes of effectuating the merger and will become the surviving corporation following the merger. At present, it owns no assets and is not engaged in any business.

Quad Cities Station is a nuclear powered electric generating facility which is operated by Commonwealth Edison on behalf of itself and Iowa-Illinois pursuant to the Quad-Cities Station Ownership Agreement, dated as of March 17, 1967, as amended (Ownership Agreement), and the Quad-Cities Operating Agreement, dated as of November 24, 1967, as amended (Operating Agreement), and in accordance with the Licenses. Under the Ownership Agreement and Operating Agreement, Commonwealth Edison acts as agent for Iowa-Illinois and has exclusive responsibility and control over the construction, operation and maintenance of Quad Cities Station. Commonwealth Edison owns a 75% ownership share of Quad Cities Station, and Iowa-Illinois owns the remaining 25% ownership share.

II. The Merger

The merger will be effected through an exchange of stock in which Iowa-Illinois and Midwest Resources shareholders will exchange their shares for shares in MidAmerican as explained in the Merger Agreement. In other words, upon effectuation of the merger,

the holders of MidAmerican's common stock will be the former holders of the common stock of Iowa-Illinois and Midwest Resources. Upon effectuation of the merger, MidAmerican, by reason of the merger, will succeed to the ownership of all of the property of Iowa-Illinois, Midwest Resources and Midwest Power. In addition, MidAmerican and its subsidiaries will assume all of the business activities of its predecessor corporations.

By succeeding to the ownership of all of the property of Iowa-Illinois by reason of the merger, MidAmerican will succeed to ownership of Iowa-Illinois' 25% ownership interest in Quad Cities Station. The merger will not affect the ownership rights of Commonwealth Edison in Quad Cities Station or its operating responsibilities under the Ownership Agreement and the Operating Agreement. Furthermore, neither of these agreements require Iowa-Illinois to obtain the approval of Commonwealth Edison to transfer Iowa-Illinois' interest in Quad Cities Station to MidAmerican by merger. Moreover, MidAmerican will remain subject to both of these agreements.

The proposed merger will have no effect on the operation of Quad Cities Station, its operator or the Licenses. Therefore, Commonwealth Edison will continue to operate Quad Cities Station after the merger as required by the Ownership Agreement, the Operating Agreement and the Licenses.

Proxy materials were distributed to the shareholders of Iowa-Illinois and Midwest Resources during the week of November 7, 1994. Special meetings of the shareholders of Iowa-Illinois and Midwest Resources will be held on December 21, 1994.

In addition to this Application, other applications, reviews or proceedings relating

to the proposed merger are pending before the Federal Energy Regulatory Commission (FERC), the United States Department of Justice (DOJ), the Federal Trade Commission (FTC), the Iowa Utilities Board and the Illinois Commerce Commission. The General Counsel of the South Dakota Public Utilities Commission (SDPUC) has advised Midwest Power in writing that the proposed merger is exempt from review by the SDPUC because it is subject to review by FERC. In addition, there is no state utility regulatory agency in Nebraska which has jurisdiction over the utility business of Midwest Power in that state.

The information required to be included in an application for transfer of a license pursuant to 10 C.F.R. § 50.80, and in an application to amend a license pursuant to 10 C.F.R. § 50.90 is stated below.¹ This information demonstrates that the requested consent is consistent with applicable provisions of law, NRC regulations and NRC orders.

Antitrust information is set forth in Section V. below.

III. Requested Consent

The proposed merger requires no change in the design or operation of Quad Cities Station. Furthermore, the merger does not require or contemplate any change in the terms of the technical specifications for Quad Cities Station. However, the merger may be deemed to effect a change in the control of the owner of Iowa-Illinois' 25% interest in Quad Cities Station. Accordingly, this request is for consent under 10 C.F.R. § 50.80 for

¹ Since MidAmerican will succeed by merger to Iowa-Illinois' ownership interests in Quad Cities Station, no license amendment would seem necessary. However, given NRC precedent, this application proposes to the extent necessary an amendment to reflect in the Licenses the NRC's consent to the merger.

transfer of the Licenses to reflect the effective change in control of such ownership interest, and under 10 C.F.R. § 50.90, for a license amendment to reflect such consent in each of the Licenses.

With regard to the amendment of the Licenses, Applicants specifically request the NRC to add a footnote after the words "Iowa-Illinois Gas and Electric Company" in ¶ 1 a. of DPR-29 which states:

MidAmerican Energy Company is the successor in interest to Iowa-Illinois Gas and Electric Company and its undivided 25% interest in Quad-Cities Nuclear Power Station, Unit 1, by reason of the merger of Iowa-Illinois Gas and Electric Company, Midwest Resources Inc., Midwest Power Systems Inc. and MidAmerican Energy Company.

And, after the words "Iowa-Illinois Gas and Electric Company" in ¶ 1 a. of DPR-30, the Applicants request the NRC to add a footnote which states:

MidAmerican Energy Company is the successor in interest to Iowa-Illinois Gas and Electric Company and its undivided 25% interest in Quad-Cities Nuclear Power Station, Unit 2, by reason of the merger of Iowa-Illinois Gas and Electric Company, Midwest Resources Inc., Midwest Power Systems Inc. and MidAmerican Energy Company.

IV. General Information Concerning the Licensee

A. Name and Address of Current Licensee (Transferor):

Iowa-Illinois Gas and Electric Company
206 East Second Street
P. O. Box 4350
Davenport, Iowa 52808

Name and Address of Proposed Licensee (Transferee):

MidAmerican Energy Company
206 East Second Street
P. O. Box 4350
Davenport, Iowa 52808

Description of Business or Occupation of Proposed Licensee:

Following the merger, MidAmerican will be engaged principally in the generation, transmission, distribution and sale of electricity at retail and wholesale to approximately 611,000 customers in Iowa, Illinois and South Dakota. MidAmerican will also provide retail gas services in Iowa, Illinois, South Dakota and Nebraska.

B. Organization and Management of Licensee:

MidAmerican is a corporation organized under the laws of the state of Iowa. Its corporate headquarters will be in Des Moines, Iowa, and the headquarters for its electric operations will be in Davenport, Iowa.

The officers of Iowa-Illinois, who are all citizens of the United States and can be reached at 206 East Second Street, Davenport, Iowa 52801, and their titles are:

Stanley J. Bright	Chairman, President and Chief Executive Officer
Peter E. Burks	Controller
Lance E. Cooper	Vice President-Finance and Chief Financial Officer

Brent E. Gale	Vice President-General Counsel
Keith M. Giger	Secretary and Treasurer
Stephen E. Hollonbeck	Vice President-Gas Operations
David J. Levy	Vice President-Human Relations
Stephen E. Shelton	Vice President-Electric Operations
Ronald W. Stepien	Vice President-Marketing and Business Development
Barbara A. VenHorst	Assistant Secretary and Assistant Treasurer

The directors of Iowa-Illinois, who are all citizens of the United States and can be reached at Iowa-Illinois Gas and Electric Company, c/o Keith M. Giger, 206 East Second Street, Davenport, Iowa 52801, are:

Stanley J. Bright	Mel Foster, Jr.
Lance E. Cooper	Nancy L. Seifert
John W. Colloton	Stephen E. Shelton
Frank S. Cottrell	W. Scott Tinsman
William C. Fletcher	Leonard L. Woodruff

The current officers of MidAmerican who are all citizens of the United States, their titles and their current business addresses are as follows:

Russell E. Christiansen
 Chairman, Office of the Chief Executive Officer
 MidAmerican Energy Company
 P. O. Box 657
 666 Grand Avenue
 Des Moines, Iowa 50303

Stanley J. Bright
President, Office of the Chief Executive Officer
MidAmerican Energy Company
P. O. Box 4350
206 East Second Street
Davenport, Iowa 52808

Paul J. Leighton
Secretary
MidAmerican Energy Company
666 Grand Avenue
P. O. Box 9244
Des Moines, Iowa 50306-9244

The designated officers² of MidAmerican who are all citizens of the United States, their current business addresses and designated titles are as follows:

Stanley J. Bright
206 East Second Street
P. O. Box 4350
Davenport, Iowa 52808

President, Office of
Chief Executive Officer

James R. Bull
666 Grand Avenue
P. O. Box 9244
Des Moines, Iowa 50306-9244

Vice President, Generation
and Transmission

Russell E. Christiansen
666 Grand Avenue
P. O. Box 9244
Des Moines, Iowa 50306-9244

Chairman, Office of
Chief Executive Officer

Lance E. Cooper
206 East Second Street
P. O. Box 4350
Davenport, Iowa 52808

Group Vice President,
Finance and Accounting

² These designations as officers of MidAmerican are subject to election by the MidAmerican Board of Directors.

Richard C. Engle
401 Douglas Street
P. O. Box 778
Sioux City, Iowa 51102

Executive Vice President

Brent E. Gale
206 East Second Street
P. O. Box 4350
Davenport, Iowa 52808

Vice President, Legal and
Regulatory Affairs

Keith Giger
206 East Second Street
P. O. Box 4350
Davenport, Iowa 52808

Treasurer

Stephen E. Hollonbeck
206 East Second Street
P. O. Box 4350
Davenport, Iowa 52808

Senior Vice President,
Gas Operations

Paul J. Leighton
666 Grand Avenue
P. O. Box 9244
Des Moines, Iowa 50306-9244

Vice President and
Corporate Secretary

David J. Levy
206 East Second Street
P. O. Box 4350
Davenport, Iowa 52808

Vice President-Human
Resources and Information
Services

Philip G. Lindner
666 Grand Avenue
P. O. Box 9244
Des Moines, Iowa 50306-9244

Group Vice President-
Corporate Services

John A. Rasmussen, Jr.
666 Grand Avenue
P. O. Box 9244
Des Moines, Iowa 50306-9244

Group Vice President and
General Counsel

J. Sue Rozema
666 Grand Avenue
P. O. Box 9244
Des Moines, Iowa 50306-9244

Vice President, Investor
Relations

Stephen E. Shelton
206 East Second Street
P. O. Box 4350
Davenport, Iowa 52808

Senior Vice President,
Distribution

Larry M. Smith
206 East Second Street
P. O. Box 4350
Davenport, Iowa 52808

Corporate Controller

Ronald W. Stepien
206 East Second Street
P. O. Box 4350
Davenport, Iowa 52808

Vice President-Strategic
Planning

Lynn K. Vorbrich
666 Grand Avenue
P. O. Box 9244
Des Moines, Iowa 50306-9244

President-Electric Business
Unit

Beverly A. Wharton
401 Douglas Street
P. O. Box 778
Sioux City, Iowa 51102

President-Gas Business Unit

The Merger Agreement provides that the initial number of directors comprising the MidAmerican Board of Directors at the effective time of the merger shall be nineteen (19) with eight (8) designated by Iowa-Illinois and eleven (11) designated by Midwest Resources prior to the effective time of the merger. The designation of directors of MidAmerican has not yet occurred. However, Applicants anticipate that all of the Directors designated by Iowa-Illinois will be from among the current directors of Iowa-Illinois listed above. Applicants further

anticipate that all of the Directors designated by Midwest Resources will be from among the current Directors of Midwest Resources. The current Directors of Midwest Resources who are all citizens of the United States and can be reached at c/o Paul J. Leighton, 666 Grand Avenue, P.O. Box 9244, Des Moines, Iowa 50306-9244, are as follows:

John W. Aalfs	Nolden Gentry
Betty Turner Asher	James M. Hoak, Jr.
Robert A. Burnett	Gerald M. Kirke
Ross D. Christensen	Richard L. Lawson
Russell E. Christiansen	Robert L. Peterson
Jack W. Eugster	Mark W. Putney
	Richard A. Schneider

When the directors of MidAmerican are selected, MidAmerican will promptly notify the NRC and will provide all information required by the NRC regarding any director. Furthermore, all directors selected will be citizens of the United States.

MidAmerican is not now owned, controlled or dominated by an alien, a foreign corporation or a foreign government nor will it be so upon consummation of the merger. Neither Iowa-Illinois nor MidAmerican is acting as agent or representative of any other person in filing this Application.

C. Technical Aspects

Applicants are requesting authority to transfer Class 103 Licenses for the duration of those Licenses, to reflect a change in control of a minority, non-operating, owner of the facility. Applicants are not requesting change in the design

or operation of Quad Cities Station or any change in the terms and conditions of the existing Licenses or technical specifications. Following the merger, MidAmerican and Commonwealth Edison will be the owners and Licensees of Quad Cities Station. In addition, the Applicants are not proposing any change to either the organization or personnel responsible for operation of Quad Cities Station. Therefore, after consummation of the merger, Commonwealth Edison will continue as the operator of Quad Cities Station. Consequently, because there will be no change in the design or operation of the plant or any change in the terms and conditions of the existing Licenses or technical specifications, the significant hazards considerations under 10 C.F.R. § 50.92 are not invoked.

D. Financial Aspects

MidAmerican, as successor in interest to Iowa-Illinois, will be committed under the Ownership Agreement and Operating Agreement to providing, on a pro rata basis in accordance with its respective ownership percentage, all funds necessary for the safe operation, maintenance, repair, decontamination and decommissioning of Quad Cities Station in conformance with NRC regulations, subject to the same obligations, terms and conditions which apply to Iowa-Illinois under the Licenses. After the merger, MidAmerican's financial ability to fund its share of these costs will be equal to, or greater than, that of Iowa-Illinois prior to the merger. In addition, MidAmerican's sources of funds for these costs will be the same as those of Iowa-Illinois. MidAmerican recognizes that it will be obligated to

provide the funds accumulated by Iowa-Illinois prior to the merger for MidAmerican's share of the decommissioning of Quad Cities Station.

Because all costs associated with operating Quad Cities Station will be borne on a pro rata basis in accordance with the respective ownership percentages of MidAmerican and Commonwealth Edison and because MidAmerican's ability to fund these costs will be equal to, or greater than, that of Iowa-Illinois, a full financial qualifications review should not be necessary as a result of the approval requested in this Application. Accordingly, the information required under 10 C.F.R. § 50.33(f) regarding the financial qualifications of the Licensees to carry out the activities described in this Application should not be necessary. However, the Applicants will provide this information if requested by the NRC.

E. Rate Regulation

The names and addresses of each regulatory agency which will have jurisdiction over the rates and services of MidAmerican derived from the Quad Cities Station are:

Federal Energy Regulatory Commission
825 North Capitol Street, N.E.
Washington, D. C. 20426

Iowa Utilities Board
Lucas State Office Building
Des Moines, Iowa 50319

Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701

South Dakota Public Utilities Commission
State Capitol
Pierre, South Dakota 57501-5070

F. Restricted Data

This Application does not contain any restricted data or other classified defense information, and it is not expected that any such information will become involved.

V. Antitrust Considerations

The proposed merger is subject to separate antitrust reviews by the FERC, the DOJ and the FTC. In testimony submitted by Rodney Frame, Vice President of National Economic Research Associates, Inc., with regard to the Joint Application for Authorization and Approval of Merger filed by Iowa-Illinois and Midwest Power in FERC Docket No. EC95-4-000, Mr. Frame concludes that the proposed merger will not create or increase market power in any relevant market. A copy of Mr. Frame's testimony as filed with FERC is attached hereto as Exhibit 2, and made a part hereof, to assist the NRC in determining that no "significant change" will result from the proposed merger. Iowa-Illinois will keep the NRC fully informed of the development of these issues, and on request will provide copies of other testimony before and decisions by the FERC, the DOJ and the FTC, and will promptly supply other additional data, as requested by the Staff of the NRC. Therefore, the NRC need not conduct an extensive antitrust review of

the proposed merger and can conclude that the proposal will not result in a "significant change" in the post-merger activities of MidAmerican from the pre-merger activities of Iowa-Illinois and Midwest Power.

The NRC's deferral to agencies having primary jurisdiction in these proceedings is entirely consistent with Regulatory Guide 9.3, Regulatory Staff Position Statement on Antitrust Matters, which states, in relevant part, as follows:

In general, reliance would be placed on the exercise of [FERC] and state agency jurisdiction regarding the specific terms and conditions of the sale of power, rates for transmission services and such other matters as may be within the scope of their jurisdiction.

Because antitrust issues will be among the issues addressed by the FERC, the DOJ and the FTC as discussed above, the NRC's reliance on these proceedings will be reasonable and proper. In any event, the proposed merger will not result in a significant change in the competitive environment in which Quad Cities Station operates.

VI. Environmental Considerations

The proposed amendments to the Licenses will not result in any change in the types, or any increase in the amounts, of any effluents that may be released offsite, and there will be no increase in individual or cumulative occupational radiation exposure as a result of the merger or license amendment. Accordingly, pursuant to 10 C.F.R. § 51.22 (c) (9), the proposed action is excluded from the need for an environmental assessment or

an environmental impact statement, and special circumstances do not exist to otherwise require such an assessment or statement. Alternatively, the Applicants request that the NRC to issue and publish a finding of no significant environmental impact pursuant to 10 C.F.R. §§ 51.32 and 51.35.

VII. Effective Date

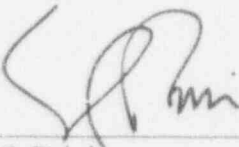
As discussed above, the merger requires the approval of the FERC, the Iowa Utilities Board and the Illinois Commerce Commission. In addition, it is subject to review by the DOJ and the FTC and the expiration of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended. The merging companies intend that the merger will take place as soon as possible after all regulatory approvals have been obtained which is anticipated to be during mid-1995 and in any event prior to September 30, 1995. They are therefore seeking to obtain all necessary approvals prior to that time. Iowa-Illinois requests that the NRC review this request on a schedule that will permit final action on it as promptly as possible and in any event before March 31, 1995, conditioning the effectiveness of this action as it deems necessary upon the consummation of the merger and the receipt of other necessary regulatory approvals. Iowa-Illinois will keep the NRC Staff informed as to the status of the other necessary regulatory approvals and of any changes in the estimated date for consummation of the merger.

VIII. Request for NRC Action

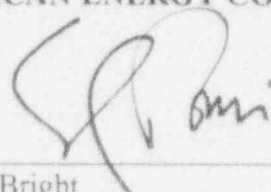
Applicants request, for the reasons stated above, that the NRC consent to the transfer of all of Iowa-Illinois' interests in the Licenses from Iowa-Illinois to MidAmerican by reason of the proposed merger as being consistent with the applicable provisions of law, regulations and the orders issued by the NRC pursuant thereto, and that it do so as promptly as possible. Iowa-Illinois further requests that, to the extent necessary, the NRC issue an amendment to the Licenses to reflect the transfer in ownership of Iowa-Illinois' 25% interest in Quad Cities Station to MidAmerican.

Respectfully submitted,

IOWA-ILLINOIS GAS AND ELECTRIC COMPANY

By 
Stanley J. Bright
Chairman, President and Chief Executive Officer

MIDAMERICAN ENERGY COMPANY

By 
Stanley J. Bright
President, Office of the Chief Executive Officer

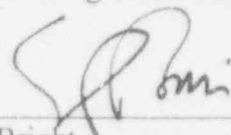
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		Quad-Cities Nuclear Power Station, Units 1 and 2

State of Iowa)
) ss.
County of Scott)

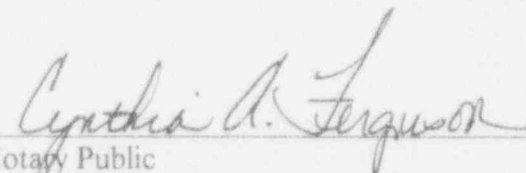
AFFIDAVIT

Stanley J. Bright, being duly sworn, states that he is Chairman, President and Chief Executive Officer of Iowa-Illinois Gas and Electric Company and President, Office of the Chief Executive Officer, of MidAmerican Energy Company, that he is authorized on the part of said companies to sign and file with the Nuclear Regulatory Commission the foregoing Application; and that said Application is true and correct to the best of his knowledge, information and belief

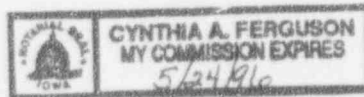


Stanley J. Bright

Subscribed and sworn to before me, a Notary Public, this 21st day of November, 1994.



Notary Public



AGREEMENT AND PLAN OF MERGER

by and among

MIDWEST RESOURCES INC.

and

MIDWEST POWER SYSTEMS INC.

and

IOWA-ILLINOIS GAS AND ELECTRIC COMPANY

and

MIDAMERICAN ENERGY COMPANY

Dated as of July 26, 1994

As

*Amended and Restated
as of September 27, 1994*

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- Exhibit F-3 - Positions and Duties of Mr. Christiansen and
Mr. Bright
- Exhibit G - Severance Plan

AMENDED AND RESTATED
AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated as of July 26, 1994, as amended and restated in its entirety as of September 27, 1994, ("Agreement"), by and among Midwest Resources Inc., an Iowa corporation ("Resources"), Iowa-Illinois Gas and Electric Company, an Illinois corporation ("Iowa-Illinois"), Midwest Power Systems Inc., an Iowa corporation ("Midwest Power") and a subsidiary of Resources and MidAmerican Energy Company, an Iowa corporation ("Company"), 50% of whose outstanding capital stock is owned by Iowa-Illinois and 50% of whose outstanding capital stock is owned by Resources.

WHEREAS, Resources, Midwest Power and Iowa-Illinois have determined to engage in a business combination as peer firms in a merger of equals whereby Iowa-Illinois, Midwest Power and Resources will be merged with and into the Company, with the Company as the surviving corporation in such merger ("Merger"); and

WHEREAS, in furtherance thereof, the respective Boards of Directors of Resources, Midwest Power, Iowa-Illinois and the Company have approved the Merger of Resources, Midwest Power and Iowa-Illinois with and into the Company, all upon the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, for federal income tax purposes, it is intended that the Merger will be treated as a reorganization under Section 368 of the Internal Revenue Code of 1986, as amended (the "Code").

NOW THEREFORE, in consideration of the premises and the representations, warranties, covenants and agreements contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE I

THE MERGER

SECTION 1.1 *The Merger.* Upon the terms and subject to the conditions of this Agreement, at the Effective Time (as defined in Section 1.3), Resources, Midwest Power and Iowa-Illinois shall be merged with and into the Company in accordance with the laws of the States of Illinois and Iowa. The Company shall be the surviving corporation in the Merger and shall continue its corporate existence under the laws of the State of Iowa. The effects and the consequences of the Merger shall be as set forth in Section 1.2.

SECTION 1.2 *Effects of the Merger.* At the Effective Time, (i) the Articles of Incorporation of the Company, as in effect immediately prior to the Effective Time substantially in

the form attached hereto as Exhibit A, shall be the Articles of Incorporation of the Company as the surviving corporation in the Merger until thereafter duly amended and (ii) the by-laws of the Company, as in effect immediately prior to the Effective Time, substantially in the form attached hereto as Exhibit B, shall be the by-laws of the Company as the surviving corporation in the Merger, until thereafter duly amended. Subject to the foregoing, the additional effects of the Merger shall be as provided in the applicable provisions of the Iowa Business Corporation Act ("Iowa Act") and the Illinois Business Corporation Act of 1983 ("Illinois Act").

SECTION 1.3 *Effective Time of the Merger.* On the Closing Date (as defined in Section 3.1), articles of merger substantially in the form attached hereto as Exhibit C ("Articles of Merger") complying with the requirements of the Illinois Act and the Iowa Act shall be executed by Midwest Power, Resources, Iowa-Illinois and the Company and shall be filed with the Secretary of State of the State of Illinois and the Secretary of State of the State of Iowa. The Merger shall become effective at the time that the parties agree to specify in the Articles of Merger ("Effective Time").

ARTICLE II

CONVERSION OF SHARES

SECTION 2.1 *Effect of the Merger on Capital Stock.* At the Effective Time, by virtue of the Merger and without any action on the part of any holder of any capital stock of Iowa-Illinois, Midwest Power, Resources or the Company:

(a) *Cancellation of Certain Common Stock.* Each share of Iowa-Illinois common stock, par value \$1.00 per share ("Iowa-Illinois Common Stock"), and each share of Resources common stock, no par value ("Resources Common Stock"), that is owned by Iowa-Illinois or any of its subsidiaries (as defined in Section 4.1) or by Resources or any of its subsidiaries, and each share of Midwest Power common stock, no par value ("Midwest Power Common Stock"), shall be cancelled and cease to exist, and no consideration shall be delivered in exchange therefor.

(b) *Conversion of Certain Common Stock.* Each share of Iowa-Illinois Common Stock issued and outstanding immediately prior to the Effective Time (other than shares cancelled pursuant to Section 2.1(a) and shares with respect to which the holder thereof duly exercises the right to dissent under applicable law) shall be converted into the right to receive 1.47 shares ("Iowa-Illinois Conversion Ratio") of Company common stock, no par value ("Company Common Stock"), and each share of Resources Common Stock issued and outstanding immediately prior to the Effective Time (other than shares cancelled pursuant to Section 2.1(a) and

shares with respect to which the holder thereof duly exercises the right to dissent under applicable law) shall be converted into the right to receive 1.0 shares ("Resources Conversion Ratio") of Company Common Stock. Upon such conversions as provided for herein, each holder of a certificate formerly representing any such shares of Iowa-Illinois Common Stock or Resources Common Stock shall cease to have any rights with respect thereto, except the right to receive the shares of Company Common Stock to be issued in consideration therefor (and cash in lieu of fractional shares) upon the surrender of such certificate in accordance with Section 2.2.

(c) *Cancellation of Company Common Stock.* Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time shall be cancelled, and no consideration shall be delivered in exchange therefor.

(d) *Cancellation of Certain Preferred Stock and Preference Stock.* Each of the Iowa-Illinois Preference Shares, without par value ("Iowa-Illinois Preference Stock"), and each share of Midwest Power Preferred Stock, no par value ("Midwest Power Preferred Stock"), that is owned by Iowa-Illinois or any of its subsidiaries or by Resources or any of its subsidiaries shall be cancelled and cease to exist, and no consideration shall be delivered in exchange therefor.

(e) *Conversion of Iowa-Illinois Preference Stock.* Each issued and outstanding share of each series of Iowa-Illinois Preference Stock, other than shares cancelled pursuant to Section 2.1(d) and shares with respect to which the holder thereof exercises the right to dissent, shall be converted into and become one duly authorized, validly issued, fully paid and nonassessable share of Company Preferred Stock, without par value ("Company Preferred Stock"), of the respective series specified below:

<u>Iowa-Illinois Preference Stock</u>	<u>Company Preferred Stock</u>
\$7.80 Series	\$7.80 Series
\$5.25 Series	\$5.25 Series

(f) *Conversion of Midwest Power Preferred Stock.* Each issued and outstanding share of each series of Midwest Power Preferred Stock, other than shares cancelled pursuant to Section 2.1(d) and shares with respect to which the holder thereof exercises the right to dissent, shall be converted into and become one duly authorized, validly issued, fully paid and nonassessable share of Company Preferred Stock, of the respective series specified below:

Midwest Power
Preferred Stock

Company
Preferred Stock

\$3.30 Series

\$3.30 Series

\$3.75 Series

\$3.75 Series

\$3.90 Series

\$3.90 Series

\$4.20 Series

\$4.20 Series

\$4.35 Series

\$4.35 Series

\$4.40 Series

\$4.40 Series

\$4.80 Series

\$4.80 Series

\$1.7375 Series

\$1.7375 Series

(g) The Company Preferred Stock issued upon conversion of the Midwest Power Preferred Stock and Iowa-Illinois Preference Stock shall have the preferences, limitations and relative rights which are described in the Articles of Incorporation of the Company substantially in the form attached hereto as Exhibit A.

(h) *Shares of Dissenting Holders.* Any issued and outstanding shares of Resources Common Stock, Iowa-Illinois Common Stock, Iowa-Illinois Preference Stock or Midwest Power Preferred Stock held by a person who objects to the Merger and complies with all applicable provisions of the Iowa Act or the Illinois Act, as applicable, concerning the right of such person to dissent from the Merger and demand appraisal of such shares ("Dissenting Holder") shall not be converted as described in Section 2.1(b), (e) or (f) but shall from and after the Effective Time represent only the right to receive such consideration as may be determined to be due to such Dissenting Holder with respect to such shares pursuant to the Iowa Act or the Illinois Act, as applicable; provided, however, that shares of Resources Common Stock, Iowa-Illinois Common Stock, Iowa-Illinois Preference Stock or Midwest Power Preferred Stock outstanding immediately prior to the Effective Time and held by a Dissenting Holder who shall, after the Effective Time, withdraw the demand for appraisal or lose the right of appraisal of such shares pursuant to the Iowa Act or the Illinois Act, as applicable, shall be deemed to be converted, as of the Effective Time, into the right to receive the Company Common Stock or Company Preferred Stock specified in Section 2.1(b), (e), or (f) and cash in lieu of fractional shares in accordance with Section 2.2, without interest.

SECTION 2.2 *Exchange of Common Stock Certificates.*

(a) *Deposit with Exchange Agent.* As soon as practicable after the Effective Time, the Company shall deposit with a bank, trust company or other agent selected by Iowa-Illinois and Resources ("Exchange Agent") certificates representing shares of Company Common Stock required to effect the conversion of Iowa-Illinois Common Stock and, at the option of the Company, Resources Common Stock, into Company Common Stock referred to in Section 2.1(b).

(b) *Exchange Procedures.* As soon as practicable after the Effective Time, the Exchange Agent shall mail to each holder of record of a certificate or certificates which immediately prior to the Effective Time represented issued and outstanding shares of (i) Iowa-Illinois Common Stock and (ii) if the Company exercises its option pursuant to Section 2.2(a), Resources Common Stock ("Certificates") that were converted ("Converted Shares") into the right to receive shares of Company Common Stock ("Company Shares") pursuant to Section 2.1(b), (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon actual delivery of the Certificates to the Exchange Agent) and (ii) instructions for use in effecting the exchange of Certificates for certificates representing Company Shares. Upon delivery of a Certificate to the Exchange Agent for exchange, together with a duly executed letter of transmittal and such other documents as the Exchange Agent shall require, the holder of such Certificate shall be entitled to receive in exchange therefor a certificate representing that number of whole Company Shares and the amount of cash in lieu of fractional share interests which such holder has the right to receive pursuant to the provisions of this Article II. In the event of a transfer of ownership of Converted Shares which is not registered in the transfer records of Iowa-Illinois or Resources, as the case may be, a certificate representing the proper number of Company Shares may be issued to a transferee if the Certificate representing such Converted Shares is presented to the Exchange Agent, accompanied by all documents required to evidence and effect such transfer and by evidence satisfactory to the Exchange Agent that any applicable stock transfer taxes have been paid. Until delivered as contemplated by this Section 2.2, each Certificate shall be deemed at any time after the Effective Time to represent only the right to receive upon such delivery the certificate representing Company Shares and cash in lieu of any fractional shares of Company Common Stock as contemplated by this Section 2.2.

(c) *Distributions with Respect to Unexchanged Shares.* No dividends or other distributions declared or made after the Effective Time with respect to Company Shares with a record date after the Effective Time shall be paid to the holder of any undelivered Certificate with respect to the Company Shares represented thereby, and no cash payment in lieu of fractional shares shall be paid to any such holder pursuant to Section 2.2(d), until the holder of record of such Certificate (or a transferee as described in Section 2.2(b)) shall have delivered such Certificate as contemplated in Section 2.2(b). Subject to the effect of unclaimed property, escheat and other applicable laws, following delivery of any such Certificate, there shall be paid to the record holder (or transferee) of the certificates representing whole Company Shares issued in exchange therefor, without interest, (i) at the time of such delivery, the amount of any cash payable in lieu of a fractional share of Company Common Stock to which such holder (or transferee) is entitled pursuant to Section 2.2(d) and the amount of dividends or other

distributions with a record date after the Effective Time theretofore paid with respect to such whole Company Shares and (ii) at the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time but prior to delivery and a payment date subsequent to delivery payable with respect to such whole Company Shares, as the case may be.

(d) *No Fractional Shares.* (i) No certificates or scrip representing fractional shares of Company Common Stock shall be issued upon the delivery for exchange of Certificates, and such fractional share interests will not entitle the owner thereof to vote or to any rights of a shareholder of the Company.

(ii) As promptly as practicable following the Effective Time, the Exchange Agent shall determine the excess of (x) the number of full shares of Company Common Stock delivered to the Exchange Agent by the Company pursuant to Section 2.2(a) over (y) the aggregate number of full shares of Company Common Stock to be distributed to holders of Iowa-Illinois Common Stock pursuant to Section 2.2(b) (such excess being herein called the "Excess Shares"). As soon after the Effective Time as practicable, the Exchange Agent, as agent for the holders of Iowa-Illinois Common Stock, shall sell the Excess Shares at then prevailing prices on the New York Stock Exchange ("NYSE"), all in the manner provided in Section 2.2(d) (iii).

(iii) The sale of the Excess Shares by the Exchange Agent shall be executed on the NYSE through one or more member firms of the NYSE and shall be executed in round lots to the extent practicable. Until the net proceeds of such sale or sales have been distributed to the holders of Iowa-Illinois Common Stock, the Exchange Agent shall, until remitted pursuant to Section 2.2(f), hold such proceeds in trust for the holders of Iowa-Illinois Common Stock ("Common Shares Trust"). The Company shall pay all commissions, transfer taxes and other out-of-pocket transaction costs, including the expenses and compensation, of the Exchange Agent incurred in connection with such sale of the Excess Shares. The Exchange Agent shall determine the portion of the net proceeds comprising the Common Shares Trust to which each holder of Iowa-Illinois Common Stock shall be entitled, if any, by multiplying the amount of the aggregate net proceeds comprising the Common Shares Trust by a fraction the numerator of which is the amount of the fractional share interest to which such holder of Iowa-Illinois Common Stock is entitled and the denominator of which is the aggregate amount of fractional share interests to which all holders of Iowa-Illinois Common Stock are entitled.

(iv) As soon as practicable after the sale of Excess Shares pursuant to clause (iii) above and the determination of the amount of cash, if any, to be paid to holders of Iowa-Illinois Common Stock in lieu of any fractional share interests,

the Exchange Agent shall distribute such amounts to holders of Iowa-Illinois Common Stock who have theretofore delivered Certificates for Iowa-Illinois Common Stock for exchange pursuant to this Article II.

(e) *Closing of Transfer Books.* From and after the Effective Time, the stock transfer books with respect to shares of Iowa-Illinois Common Stock and Resources Common Stock issued and outstanding prior to the Effective Time shall be closed and no transfer of any such shares shall thereafter be made. If, after the Effective Time, Certificates are presented to the Company, they shall be cancelled and exchanged for certificates representing the appropriate number of whole Company Shares and cash in lieu of fractional shares of Company Common Stock as provided in this Section 2.2.

(f) *Termination of Exchange Agent.* Any certificates representing Company Shares deposited with the Exchange Agent pursuant to Section 2.2(a) and not exchanged within one year after the Effective Time pursuant to this Section 2.2 shall be returned by the Exchange Agent to the Company, which shall thereafter act as Exchange Agent. All funds held by the Exchange Agent for payment to the holders of undelivered Certificates and unclaimed at the end of one year from the Effective Time shall be remitted to the Company, after which time any holder of undelivered Certificates shall look as a general creditor only to the Company for payment of such funds to which such holder may be due, subject to applicable law. The Company shall not be liable to any person for such shares or funds delivered to a public official pursuant to any applicable abandoned property, escheat or similar law.

SECTION 2.3 *Exchange of Certain Stock Certificates Not Required.*

(a) *Exchange of Midwest Power Preferred Stock and Iowa-Illinois Preference Stock Certificates Not Required.* Holders of Midwest Power Preferred Stock and Iowa-Illinois Preference Stock (other than, in each case, Dissenting Holders thereof) will automatically become holders of Company Preferred Stock in accordance with Section 2.1(e) and (f), and their certificates which represent shares of Midwest Power Preferred Stock or Iowa-Illinois Preference Stock, as the case may be, will automatically represent the shares of Company Preferred Stock into which such shares were converted in the Merger. After the Merger, as presently outstanding certificates of Midwest Power Preferred Stock and Iowa-Illinois Preference Stock are presented for transfer, new stock certificates bearing the name of the Company and the appropriate number of shares of Company Preferred Stock will be issued.

(b) *Exchange of Resources Common Stock Certificates Not Required if Section 2.2(a) Option Not Exercised.* If the Company does not exercise its option pursuant to Section 2.2(a), holders of Resources Common Stock (other than Dissenting Holders thereof) will automatically become holders of Company Common Stock in accordance with Section 2.1(b), and their certificates which represent shares of Resources Common Stock will automatically

represent the shares of Company Common Stock into which such shares were converted in the Merger, and in such case, (i) from and after the Effective Time, the stock transfer books of Resources with respect to shares of Resources Common Stock issued and outstanding prior to the Effective Time shall be closed and no transfer of any such shares will thereafter be made and (ii) after the Merger, as presently outstanding certificates of Resources Common Stock are presented for transfer, new stock certificates bearing the name of the Company and the appropriate number of shares of Company Common Stock will be issued.

SECTION 2.4 *No Further Ownership Rights in Preferred Stock or Preference Stock.* All shares of Company Preferred Stock issued in the Merger upon conversion of shares of Midwest Power Preferred Stock and Iowa-Illinois Preference Stock in accordance with the terms hereof shall be deemed to have been issued in full satisfaction of all rights pertaining to such shares of Midwest Power Preferred Stock or Iowa-Illinois Preference Stock, as the case may be, subject, however, to the obligation of the Company to pay any dividends or make any other distributions with a record date prior to the Effective Time which may have been declared or made by Iowa-Illinois on such shares of Iowa-Illinois Preference Stock or by Midwest Power on such shares of Midwest Power Preferred Stock, and which remain unpaid at the Effective Time, and there shall be no further registration of transfers on the stock transfer books of the Company of the shares of Iowa-Illinois Preference Stock or Midwest Power Preferred Stock which were outstanding immediately prior to the Effective Time.

ARTICLE III

THE CLOSING

SECTION 3.1 *Closing.* The closing (the "Closing") of the Merger shall take place at the offices of Sidley & Austin, One First National Plaza, Chicago, Illinois 60603, at 10:00 A.M., local time, on the second business day immediately following the date on which the last of the conditions set forth in Article VIII hereof is fulfilled or waived, or at such other time and date and place as Resources and Iowa-Illinois shall mutually agree ("Closing Date").

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF RESOURCES AND MIDWEST POWER

Resources and Midwest Power represent and warrant to Iowa-Illinois as follows:

SECTION 4.1 *Organization and Qualification.* Resources and each of its subsidiaries (including Midwest Power) is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, has all requisite power and authority, and has been duly authorized by all necessary regulatory approvals and orders, to own, lease and operate its assets and properties and to carry on its business as it is now being conducted, and is duly qualified and in good standing to do business in each jurisdiction in which the nature of its

business or the ownership or leasing of its assets and properties makes such qualification necessary other than in such jurisdictions where the failure to be so qualified and in good standing will not, when taken together with all other such failures, have a material adverse effect on the business, operations, properties, assets, condition (financial or other), prospects or the results of operations of Resources and its subsidiaries taken as a whole or on the consummation of the transactions contemplated by this Agreement (any such material adverse effect being hereinafter referred to as a "Resources Material Adverse Effect"). As used in this Agreement, the term "subsidiary" of a person shall mean any corporation or other entity (including partnerships and other business associations) in which such person directly or indirectly owns at least a majority of the outstanding voting securities or other equity interests having the power, under ordinary circumstances, to elect a majority of the directors, or otherwise to direct the management and policies, of such corporation or other entity.

SECTION 4.2 *Subsidiaries.* Section 4.2 of the Resources Disclosure Schedule (as defined in Section 7.6(a)(i)) sets forth a description as of the date hereof of all subsidiaries of Resources and their joint ventures, including the name of each such entity, a brief description of the principal line or lines of business conducted by each such entity and the interest of Resources and its subsidiaries therein. Except as set forth in Section 4.2 of the Resources Disclosure Schedule, none of such entities is a "holding company," a "subsidiary company" of a holding company, or an "affiliate" of a holding company within the meaning of Section 2(a)(7), 2(a)(8) or 2(a)(11) of the Public Utility Holding Company Act of 1935, as amended ("1935 Act"), respectively. Except as set forth in Section 4.2 of the Resources Disclosure Schedule, all of the issued and outstanding shares of capital stock of each subsidiary of Resources are validly issued, fully paid, nonassessable and free of preemptive rights, are owned directly or indirectly by Resources free and clear of any liens, claims, encumbrances, security interests, equities, charges and options of any nature whatsoever ("Liens") and there are no outstanding subscriptions, options, calls, contracts, voting trusts, proxies or other commitments, understandings, restrictions, arrangements, rights or warrants, including any right of conversion or exchange under any outstanding security, instrument or other agreement, obligating Resources or any subsidiary of Resources to issue, deliver or sell, or cause to be issued, delivered or sold, shares of the capital stock of any subsidiary of Resources or obligating Resources or any of its subsidiaries to grant, extend or enter into any such agreement or commitment. As used in this Agreement, the term "joint venture" of a person shall mean any corporation or other entity (including partnerships and other business associations and joint ventures) in which such person or one or more of its subsidiaries owns an equity interest that is less than a majority of any class of the outstanding voting

securities or equity of any such entity, other than equity interests held for passive investment purposes which are less than 5% of any class of the outstanding voting securities or equity of any such entity.

SECTION 4.3 Capitalization.

(a) *Resources.* The authorized capital stock of Resources consists of 250,000,000 shares of Resources Common Stock and 100,000,000 shares of Resources Preferred Stock, no par value, none of which are outstanding. As of the close of business on July 22, 1994, 55,279,734 shares of Resources Common Stock were issued and outstanding. All of the issued and outstanding shares of Resources Common Stock are validly issued, fully paid, nonassessable and free of preemptive rights. Except as set forth in Section 4.3(a) of the Resources Disclosure Schedule, there are no outstanding subscriptions, options, calls, contracts, voting trusts, proxies or other commitments, understandings, restrictions, arrangements, rights or warrants, including any right of conversion or exchange under any outstanding security, instrument or other agreement, obligating Resources or any of its subsidiaries to issue, deliver or sell, or cause to be issued, delivered or sold, shares of the capital stock of Resources or obligating Resources or any of its subsidiaries to grant, extend or enter into any such agreement or commitment, other than under the Resources Dividend Reinvestment and Common Stock Purchase Plan, Resources Employee Stock Purchase Plan, Midwest Power 401(k) Plan for Salaried Employees and Midwest Power 401(k) Plan for Bargaining Employees.

(b) *Midwest Power.* The authorized capital stock of Midwest Power consists of 100,000,000 shares of Midwest Power Common Stock and 10,000,000 shares of Midwest Power Preferred Stock. As of the close of business on July 22, 1994, 1,000 shares of Midwest Power Common Stock were issued and outstanding and 2,717,794 shares of Midwest Power Preferred Stock were issued and outstanding; Section 4.3(b) of the Resources Disclosure Schedule lists the numbers of shares of each Series of Midwest Power Preferred Stock outstanding on the date hereof. All of the issued and outstanding shares of Midwest Power Common Stock and Midwest Power Preferred Stock are validly issued, fully paid, nonassessable and free of preemptive rights. Except as set forth in Section 4.3(b) of the Resources Disclosure Schedule, there are no outstanding subscriptions, options, calls, contracts, voting trusts, proxies or other commitments, understandings, restrictions, arrangements, rights or warrants, including any right of conversion or exchange under any outstanding security, instrument or other agreement, obligating Midwest Power to issue, deliver or sell, or cause to be issued, delivered or sold, shares of the capital stock of Midwest Power or obligating Midwest Power or any of its subsidiaries to grant, extend or enter into any such agreement or commitment.

(c) *No Change in Capital Structure.* There has been no material change in the information set forth in Section 4.3(a) or 4.3(b) between the close of business on July 22, 1994, and the date hereof.

SECTION 4.4 *Authority; Non-Contravention; Statutory Approvals; Compliance.*

(a) *Authority.* Each of Resources and Midwest Power has all requisite power and authority to enter into this Agreement and, subject to the applicable Resources Shareholders' Approval and the applicable Midwest Power Shareholders' Approval (as defined in Section 4.13) and the applicable Resources Required Statutory Approvals (as defined in clause (c) below), to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation by Resources and Midwest Power of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Resources and Midwest Power, subject to obtaining the applicable Resources Shareholders' Approval and the Midwest Power Shareholders' Approval. This Agreement has been duly and validly executed and delivered by Resources and Midwest Power and, assuming the due authorization, execution and delivery hereof by Iowa-Illinois, constitutes a valid and binding obligation of each of Resources and Midwest Power enforceable against each of them in accordance with its terms.

(b) *Non-Contravention.* Except as set forth in Section 4.4(b) of the Resources Disclosure Schedule, the execution and delivery of this Agreement by Resources and Midwest Power do not, and, subject to obtaining the Resources Required Statutory Approvals, the Resources Shareholders' Approval and the third-party consents set forth in Section 4.4(b) of the Resources Disclosure Schedule ("Resources Required Consents"), the consummation of the transactions contemplated hereby will not, violate, conflict with, or result in a breach of any provision of, or constitute a default (with or without notice or lapse of time or both) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination, cancellation, or acceleration of any obligation or the loss of a material benefit under, or result in the creation of any Lien upon any of the properties or assets (any such violation, conflict, breach, default, termination, acceleration, right of termination, cancellation or acceleration, loss or creation, a "Violation") of Resources or any of its subsidiaries or of any of their joint ventures pursuant to, any provisions of (i) the articles of incorporation, by-laws or similar governing documents of Resources or any of its subsidiaries or of any of their joint ventures, (ii) any statute, law, ordinance, rule, regulation, judgment, decree, order, injunction, writ, permit or license of any Governmental Authority (as hereinafter defined) applicable to Resources or any of its subsidiaries or any of their joint ventures or any of their respective properties or

assets or (iii) any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, concession, contract, lease or other instrument, obligation or agreement of any kind to which Resources or any of its subsidiaries or any of their joint ventures is now a party or by which they or any of their respective properties or assets may be bound or affected, excluding from the foregoing clauses (ii) and (iii) such Violations as would not, in the aggregate, have a Resources Material Adverse Effect.

(c) *Statutory Approvals.* No declaration, filing or registration with, or notice to or authorization, consent or approval of, any court, governmental or regulatory body (including a stock exchange or other self-regulatory body) or authority, domestic or foreign (each, a "Governmental Authority"), is necessary for the execution and delivery of this Agreement by Resources and Midwest Power or the consummation by Resources and Midwest Power, as the case may be, of the transactions contemplated hereby, the failure of which to obtain, make or give would have, in the aggregate, a Resources Material Adverse Effect, except as described in Section 4.4(c) of the Resources Disclosure Schedule ("Resources Required Statutory Approvals," it being understood that references in this Agreement to "obtaining" such Resources Required Statutory Approvals shall mean making such declarations, filings or registrations; giving such notice; obtaining such authorizations, consents or approvals; and having such waiting periods expire as are necessary to avoid a violation of law).

(d) *Compliance.* Except as set forth in Sections 4.4(d) or 4.11 of the Resources Disclosure Schedule, or as disclosed in the Resources SEC Reports (as defined in Section 4.5), neither Resources nor any of its subsidiaries nor, to the knowledge of Resources, any of their joint ventures, is in violation of or is under investigation with respect to, or has been given notice or been charged with any violation of, any law, statute, order, rule, regulation, ordinance or judgment (including, without limitation, any applicable environmental law, ordinance or regulation) of any Governmental Authority, except for violations which in the aggregate do not, and insofar as reasonably can be foreseen will not, have a Resources Material Adverse Effect. Except as set forth in Sections 4.4(d) or 4.11 of the Resources Disclosure Schedule, Resources and each of its subsidiaries and each of their joint ventures has all permits, licenses, franchises and other governmental authorizations, consents and approvals (collectively, "Permits") necessary to conduct their businesses as presently conducted, except those the failure of which to obtain, in the aggregate do not, and insofar as reasonably can be foreseen will not, have a Resources Material Adverse Effect. Except as set forth in Section 4.4(d) of the Resources Disclosure Schedule, or as disclosed in the Resources SEC Reports, neither Resources nor any of its subsidiaries nor, to the knowledge of Resources, any of their joint ventures, is in

breach or violation of or in default in the performance or observance of any term or provision of, and no event has occurred which, with lapse of time or action by a third party, could result in a default under, (i) the articles of incorporation, by-laws or similar governing documents of Resources or such subsidiary or joint venture or (ii) any contract, commitment, agreement, indenture, mortgage, loan agreement, note, lease, bond, license, approval or other instrument to which Resources or such subsidiary or joint venture is a party or by which it is bound or to which any of its property is subject, except in the case of clause (ii) above, for breaches, violations and defaults which in the aggregate do not, and insofar as reasonably can be foreseen will not, have a Resources Material Adverse Effect.

SECTION 4.5 *Reports and Financial Statements.* The filings required to be made by Resources and each of its subsidiaries under the Securities Act of 1933, as amended ("Securities Act"), the Securities Exchange Act of 1934, as amended ("Exchange Act"), applicable Iowa, South Dakota and Nebraska public utility laws and regulations, the Federal Power Act ("Power Act") and the 1935 Act have been filed with the Securities and Exchange Commission ("SEC"), the appropriate Iowa, South Dakota and Nebraska public utility commissions or the Federal Energy Regulatory Commission ("FERC"), as the case may be, including all forms, statements, reports, agreements (oral or written) and all documents, exhibits, amendments and supplements appertaining thereto, and complied in all material respects with all applicable requirements of the appropriate act and the rules and regulations thereunder. Resources has made available to Iowa-Illinois a true and complete copy of each report, schedule, registration statement and definitive proxy statement and all amendments thereto filed by Resources or any of its subsidiaries with the SEC since January 1, 1991 (as such documents have since the time of their filing been amended, the "Resources SEC Reports"). As of their respective dates, the Resources SEC Reports did not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The audited consolidated financial statements and unaudited interim financial statements of Resources and Midwest Power included in the Resources SEC Reports (collectively, the "Resources Financial Statements") have been prepared in accordance with generally accepted accounting principles applied on a consistent basis ("GAAP") (except as may be indicated therein or in the notes thereto and except with respect to unaudited statements as permitted by Form 10-Q under the Exchange Act) and fairly present the financial position of Resources and Midwest Power, as the case may be, as of the dates thereof and the results of their operations and cash flows for the periods then ended, subject, in the case of the unaudited interim financial statements, to normal, recurring audit adjustments. True, accurate and complete copies of the Articles of Incorporation of Resources and Midwest Power, as in effect on

the date hereof, and true, accurate and complete copies of the by-laws of Resources and Midwest Power, as in effect on the date hereof, are included (or incorporated by reference) in the Resources SEC Reports.

SECTION 4.6 *Absence of Certain Changes or Events; Absence of Undisclosed Liabilities.*

(a) *Absence of Certain Changes or Events.* Except as set forth in the Resources SEC Reports or Section 4.6 of the Resources Disclosure Schedule, since December 31, 1993, Resources and each of its subsidiaries has conducted its business only in the ordinary course of business consistent with past practice and there has not been, and no fact or condition exists which would have or, insofar as reasonably can be foreseen, could have, a Resources Material Adverse Effect.

(b) *Absence of Undisclosed Liabilities.* Neither Resources nor any of its subsidiaries has any liabilities or obligations (whether absolute, accrued, contingent or otherwise) of a nature required by GAAP to be reflected in a consolidated corporate balance sheet, except liabilities, obligations or contingencies which are accrued or reserved against in the consolidated financial statements of Resources and Midwest Power or reflected in the notes thereto for the year ended December 31, 1993, or which were incurred after December 31, 1993 in the ordinary course of business and would not, in the aggregate, have a Resources Material Adverse Effect.

SECTION 4.7 *Litigation.* Except as disclosed in the Resources SEC Reports or as set forth in Sections 4.7 or 4.11 of the Resources Disclosure Schedule, (i) there are no claims, suits, actions or proceedings, pending or, to the knowledge of Resources, threatened, nor are there, to the knowledge of Resources, any investigations or reviews pending or threatened against, relating to or affecting Resources or any of its subsidiaries or any of their joint ventures, (ii) there have not been any material developments since December 31, 1993 with respect to such disclosed claims, suits, actions, proceedings, investigations or reviews and (iii) there are no judgments, decrees, injunctions, rules or orders of any Governmental Authority or any arbitrator applicable to Resources or any of its subsidiaries or any of their joint ventures, which, when taken together with any other nondisclosures described in clauses (i), (ii) or (iii), would, or insofar as reasonably can be foreseen could, have a Resources Material Adverse Effect.

SECTION 4.8 *Registration Statement and Proxy Statement.* None of the information supplied or to be supplied by or on behalf of Resources or Midwest Power for inclusion or incorporation by reference in (i) the registration statement on Form S-4 to be filed with the SEC by the Company in connection with the issuance of shares of Company Common Stock and Company Preferred

Stock in the Merger ("Registration Statement") will, at the time the Registration Statement is filed with the SEC and at the time it becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and (ii) the joint proxy statement in definitive form relating to the meetings of Resources, Midwest Power and Iowa-Illinois shareholders to be held in connection with the Merger ("Joint Proxy Statement") will, at the dates mailed to shareholders of Resources, Midwest Power and Iowa-Illinois and at the times of the meetings of such shareholders to be held in connection with the Merger, include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Registration Statement and the Joint Proxy Statement will comply as to form in all material respects with the provisions of applicable federal securities law.

SECTION 4.9 *Tax Matters.* "Taxes," as used in this Agreement, means any federal, state, county, local or foreign taxes, charges, fees, levies, or other assessments, including all net income, gross income, sales and use, ad valorem, transfer, gains, profits, excise, franchise, real and personal property, gross receipts, capital stock, production, business and occupation, disability, employment, payroll, license, estimated, stamp, custom duties, severance or withholding taxes or charges imposed by any governmental entity, and includes any interest and penalties (civil or criminal) on or additions to any such taxes and any expenses incurred in connection with the determination, settlement or litigation of any Tax liability. "Tax Return," as used in this Agreement, means a report, return, or similar statement or other information required to be supplied to a governmental entity with respect to Taxes including, without limitation, where permitted or required, combined or consolidated returns for any group of entities.

(a) *Filing of Timely Tax Returns.* Except as set forth in Section 4.9(a) of the Resources Disclosure Schedule, Resources and each of its subsidiaries have filed (or will file) all Tax Returns required to be filed by each of them under applicable law. All Tax Returns were in all material respects (and, as to Tax Returns not filed as of the date hereof, will be) true, complete and correct and filed on a timely basis.

(b) *Payment of Taxes.* Resources and each of its subsidiaries have, within the time and in the manner prescribed by law, paid (and until the Closing Date will pay within the time and in the manner prescribed by law) all Taxes that are currently due and payable except for those contested in good faith and for which adequate reserves have been taken.

(c) *Tax Reserves.* Resources and each of its subsidiaries have established (and until the Closing Date will maintain) on their books and records liabilities which adequately reflect its estimate of the amounts required for federal and state income taxes in accordance with GAAP.

(d) *Tax Liens.* There are no material Tax liens upon any assets of Resources or any of its subsidiaries except liens for Taxes not yet due.

(e) *Withholding Taxes.* Resources and each of its subsidiaries have complied (and until the Closing Date will comply) in all material respects with the provisions of the Code relating to the payment and withholding of Taxes, including, without limitation, the withholding and reporting requirements under Code §§ 1441 through 1464, 3401 through 3406, and 6041 through 6049, as well as similar provisions under any other laws, and have, within the time and in the manner prescribed by law, withheld from employee wages and paid over to the proper governmental authorities all amounts required.

(f) *Extensions of Time for Filing Tax Returns.* Except as disclosed in Section 4.9(f) of the Resources Disclosure Schedule, neither Resources nor any of its subsidiaries has requested or been granted any extension of time within which to file any Tax Return, which Tax Return has not since been timely filed.

(g) *Waivers of Statute of Limitations.* Except as disclosed in Section 4.9(g) of the Resources Disclosure Schedule, neither Resources nor any of its subsidiaries has executed any outstanding waivers or comparable consents regarding the application of the statute of limitations with respect to any Taxes or Tax Returns.

(h) *Expiration of Statute of Limitations.* Except as disclosed in Section 4.9(h) of the Resources Disclosure Schedule, the statute of limitations for the assessment of all Taxes has expired for all applicable Tax Returns of Resources and each of its subsidiaries or those Tax Returns have been examined by the appropriate taxing authorities for all tax periods ending before the date hereof, and no deficiency for any Taxes has been proposed, asserted or assessed against Resources or any of its subsidiaries that has not been resolved and paid in full.

(i) *Audit, Administrative and Court Proceedings.* Except as disclosed in Section 4.9(i) of the Resources Disclosure Schedule, no audits or other administrative proceedings or court proceedings are presently pending with regard to any Taxes or Tax Returns of Resources or any of its subsidiaries.

(j) *Powers of Attorney.* Except as disclosed in Section 4.9(j) of the Resources Disclosure Schedule, no power of attorney

currently in force has been granted by Resources or any of its subsidiaries concerning any Tax matter.

(k) *Tax Rulings.* Except as disclosed in Section 4.9(k) of the Resources Disclosure Schedule, neither Resources nor any of its subsidiaries has received or requested a Tax Ruling (as defined below) or entered into a Closing Agreement (as defined below) with any taxing authority that would have a continuing effect after the Closing Date. "Tax Ruling," as used in this Agreement, shall mean a written ruling of a taxing authority relating to Taxes. "Closing Agreement," as used in this Agreement, shall mean a written and legally binding agreement with a taxing authority relating to Taxes.

(l) *Availability of Tax Returns.* As soon as practicable after the date hereof, Resources and its subsidiaries will make available to Iowa-Illinois complete and accurate copies, covering all years ending on or after December 31, 1989, of (i) all Tax Returns, and any amendments thereto, filed by Resources or any of its subsidiaries, (ii) all audit reports received from any taxing authority relating to any Tax Return filed by Resources or any of its subsidiaries and (iii) any Tax Ruling or request for a Tax Ruling applicable to Resources or any of its subsidiaries and any Closing Agreements entered into by Resources or any of its subsidiaries.

(m) *Tax Sharing Agreements.* Except as disclosed in Section 4.9(m) of the Resources Disclosure Schedule, no agreements relating to allocating or sharing of Taxes exist between or among Resources and any of its subsidiaries.

(n) *Code § 341(f).* Neither Resources nor any of its subsidiaries has filed (or will file prior to the Closing) a consent pursuant to Code § 341(f) or has agreed to have Code § 341(f)(2) apply to any disposition of a subsection (f) asset (as that term is defined in Code § 341(f)(4), owned by Resources or any of its subsidiaries.

(o) *Code § 168.* Except as set forth in Section 4.9(o) of the Resources Disclosure Schedule, no property of Resources or any of its subsidiaries is property that Resources or any such subsidiary or any party to this transaction is or will be required to treat as being owned by another person pursuant to the provisions of Code § 168(f)(8) (as in effect prior to its amendment by the Tax Reform Act of 1986) or is "tax-exempt use property" within the meaning of Code § 168(h).

(p) *Code § 481 Adjustments.* Except as set forth in Section 4.9(p) of the Resources Disclosure Schedule, neither Resources nor any of its subsidiaries is required to include in income for any tax period ending after the date hereof any adjustment pursuant to Code § 481(a) by reason of a voluntary change in accounting method initiated by Resources or any of its

subsidiaries, and to the knowledge of Resources the Internal Revenue Service ("IRS") has not proposed any such adjustment or change in accounting method.

(q) *Acquisition Indebtedness.* Except as set forth in Section 4.9(q) of the Resources Disclosure Schedule, no indebtedness of Resources or any of its subsidiaries is "corporate acquisition indebtedness" within the meaning of Code § 279(b).

(r) *Intercompany Transactions.* Except as set forth in Section 4.9(r) of the Resources Disclosure Schedule, neither Resources nor any of its subsidiaries has engaged in any intercompany transactions within the meaning of Treasury Regulations 1.1502-13 or -14 or Temporary Treasury Regulation § 1.1502-13T or -14T for which any income or gain remains unrecognized as of the close of the last taxable year prior to the Closing Date, and no excess loss account within the meaning of Treasury Regulation §§ 1.1502-14, -19 or -32 exists with respect to Resources or any of its subsidiaries.

(s) *Code § 280G.* Except as set forth in Section 4.9(s) of the Resources Disclosure Schedule, neither Resources nor any of its subsidiaries is a party to any agreement, contract, or arrangement that could result, on account of the transactions contemplated hereunder, separately or in the aggregate, in the payment of "excess parachute payments" within the meaning of Code § 280G.

(t) *Consolidated Tax Returns.* Neither Resources nor any of its subsidiaries has ever been a member of an affiliated group of corporations (within the meaning of Code § 1504(a)) filing consolidated returns, other than the affiliated group of which Resources is the common parent.

(u) *NOLs.* As of December 31, 1992, Resources and its subsidiaries had net operating loss carryovers available to offset future income as set forth in Section 4.9(u) of the Resources Disclosure Schedule. Section 4.9(u) of the Resources Disclosure Schedule sets forth the amount of and year of expiration of each company's net operating loss carryovers.

(v) *Credit Carryovers.* As of December 31, 1992, Resources and its subsidiaries had tax credit carryovers available to offset future tax liability as set forth in Section 4.9(v) of the Resources Disclosure Schedule. Section 4.9(v) of the Resources Disclosure Schedule sets forth the amount and year of expiration of each company's tax credit carryovers.

(w) *Code § 338 Elections.* Except as set forth in Section 4.9(w) of the Resources Disclosure Schedule, no election under Code § 338 (or any predecessor provision) has been made by or

with respect to Resources or any of its subsidiaries or any of their respective assets or properties.

SECTION 4.10 *Employee Matters; ERISA.*

(a) *Benefit Plans.* As used in this Section 4.10, "Plan" shall mean any employee plan, practice, arrangement (including, without limitation, any employee benefit plan within the meaning of ERISA §3(3), employee pension benefit plan, program, arrangement or agreement, any health, medical, welfare, disability, life insurance, bonus, severance pay, and other employee benefit or fringe benefit plan) maintained by or with respect to which Resources has any fixed or contingent, direct or indirect liability; and "Resources Benefit Plan" shall mean any Plan that provides benefits with respect to employees or former employees of Resources or any of its subsidiaries. Section 4.10(a) of the Resources Disclosure Schedule contains a true and complete list of all Plans.

(b) *Contributions.* Except as set forth in Section 4.10(b) of the Resources Disclosure Schedule, all material contributions and other payments required to be made by Resources or any of its subsidiaries to any Resources Benefit Plan (or to any person pursuant to the terms thereof) have been made or the amount of such contribution or payment obligation has been reflected in the Resources Financial Statements. Except as set forth in Section 4.10(b) of the Resources Disclosure Schedule, the current value of all accrued benefits under any Resources Benefit Plan which is a defined benefit plan did not, as of the date of the most recent actuarial valuation for such plan, exceed the then current value of the assets of such plan, based on the actuarial assumptions set forth in such valuation for calculating the minimum funding requirements of Code § 412. Neither Resources nor any entity which is or ever has been considered as a single employer together with Resources or Midwest Power pursuant to § 414 of the Code contributes or has ever contributed to a multiemployer plan (as defined in Section 3(37) of ERISA) or has any liability under ERISA § 4203 or § 4205 in respect of any such plan.

(c) *Qualification; Compliance.* Except as set forth in Section 4.10(c) of the Resources Disclosure Schedule, each of the Resources Benefit Plans intended to be "qualified" within the meaning of Code § 401(a) has been determined by the IRS to be so qualified, and, to the knowledge of Resources and any of its subsidiaries, no circumstances exist that are reasonably expected by Resources or any of its subsidiaries to result in the revocation of any such determination. Resources and each of its subsidiaries is in compliance in all respects with, and each of the Resources Benefit Plans is and has been operated in all respects in compliance with the terms thereof and all applicable laws, rules and regulations governing such plan, including, without limitation, ERISA and the Code, except for any violations that would not, or insofar as reasonably can be foreseen, could

not, give rise to a Resources Material Adverse Effect. Except as set forth in Section 4.10(c) of the Resources Disclosure Schedule, each Resources Benefit Plan intended to provide for the deferral of income or the reduction of salary or other compensation is effective to provide such deferral or reduction.

(d) *Liabilities.* With respect to the Plans individually and in the aggregate, there are no actions, suits or claims pending or, to the knowledge of Resources, threatened (other than routine claims for benefits) and no event has occurred, and, to the knowledge of Resources and any of its subsidiaries, as of the date hereof there exists no condition or set of circumstances, that could subject Resources or any of its subsidiaries to any liability arising under the Code, ERISA or any other applicable law (including, without limitation, any liability of any kind whatsoever, whether direct or indirect, contingent, inchoate or otherwise, to any such plan or the Pension Benefit Guaranty Corporation ("PBGC")), or under any indemnity agreement to which Resources or any of its subsidiaries is subject, which liability, excluding liability for benefit claims and funding obligations payable in the ordinary course, would have, or insofar as reasonably can be foreseen, could have, a Resources Material Adverse Effect.

(e) *Welfare Plans.* Except as set forth in Section 4.10(e) of the Resources Disclosure Schedule, none of the Resources Benefit Plans that are "welfare plans," within the meaning of Section 3(1) of ERISA, provides for any benefits payable to or on behalf of any employee or director after termination of employment or service, as the case may be, other than elective continuation required pursuant to Code § 4980B or coverage which expires at the end of the calendar month following such event, and each such plan that is a "group health plan" (as defined in Code §4980B(g)) has been operated in compliance with Code §4980B at all times, except for any non-compliance that would not, or insofar as reasonably can be determined could not, give rise to a Resources Material Adverse Effect.

(f) *Documents Made Available.* Resources has made available to Iowa-Illinois a true and correct copy of each collective bargaining agreement to which Resources or any of its subsidiaries is a party or under which Resources or any of its subsidiaries has obligations and, with respect to each Resources Benefit Plan, to the extent applicable (i) such plan and summary plan description (including all amendments to each such document), (ii) the most recent annual report filed with the IRS, (iii) each related trust agreement, insurance contract, service provider or investment management agreement (including all amendments to each such document), (iv) the most recent determination of the IRS with respect to the qualified status of such plan, (v) the most recent actuarial report or valuation, and (vi) all material employee communications.

(g) *Payments Resulting from Mergers.* Except as set forth in Section 4.10(g) of the Resources Disclosure Schedule, (i) the announcement or consummation of any transaction contemplated by this Agreement will not (either alone or upon the occurrence of any additional or further acts or events) result in any (A) payment (whether of severance pay or otherwise) becoming due from Resources or any of its subsidiaries to any officer, employee, former employee or director thereof or to the trustee under any "rabbi trust" or similar arrangement that would not have been paid without regard to such announcement or consummation or (B) benefit being established or becoming accelerated, vested or payable under any Resources Benefit Plan and (ii) neither Resources nor any of its subsidiaries is a party to (A) any management, employment, deferred compensation, severance (including any payment, right or benefit resulting from a change in control), bonus or other contract for personal services with any officer, director or employee, (B) any consulting contract with any person who prior to entering into such contract was a director or officer of Resources or any of its subsidiaries or (C) any material plan, agreement, arrangement or understanding similar to the foregoing.

(h) *Labor Agreements.* As of the date hereof, except as set forth in Section 4.10(h) of the Resources Disclosure Schedule, neither Resources nor any of its subsidiaries is a party to any collective bargaining agreement or other labor agreement with any union or labor organization. To the knowledge of Resources and its subsidiaries, as of the date hereof, there is no current union representation question involving employees of Resources or any of its subsidiaries, nor does Resources nor any of its subsidiaries know of any activity or proceeding of any labor organization (or representative thereof) or employee group to organize any such employees. Except as disclosed in the Resources SEC Reports or in Section 4.10(h) of the Resources Disclosure Schedule, (i) there is no unfair labor practice, employment discrimination or other complaint against Resources or any of its subsidiaries pending, or, to the knowledge of Resources or any of its subsidiaries, threatened, which has or reasonably may be expected by Resources or any of its subsidiaries to have, a Resources Material Adverse Effect, (ii) there is no strike, dispute, slowdown, work stoppage or lockout or other significant labor controversy pending, or, to the knowledge of Resources or any of its subsidiaries, threatened, against or involving Resources or any of its subsidiaries which has or, insofar as reasonably can be foreseen, could have, a Resources Material Adverse Effect and (iii) there is no proceeding, claim, suit, action or governmental investigation pending or, to the knowledge of Resources or any of its subsidiaries, threatened, in respect of which any director, officer, employee or agent of Resources or any of its subsidiaries is or may be entitled to claim indemnification from Resources or any of its subsidiaries pursuant to their respective articles of incorporation or by-laws. Except as set forth in Section 4.10(h) of the Resources

Disclosure Schedule, Resources and its subsidiaries have, to the knowledge of Resources and its subsidiaries, complied in all material respects with all laws relating to the employment of labor, including without limitation any provisions thereof relating to wages, hours, collective bargaining, and the payment of social security and similar taxes, and no person has, to the knowledge of Resources or any of its subsidiaries, asserted that Resources or any of its subsidiaries is liable in any material amount for any arrears of wages or any taxes or penalties for failure to comply with any of the foregoing.

SECTION 4.11 *Environmental Protection.*

(a) *Compliance.* Except as set forth in Section 4.11(a) of the Resources Disclosure Schedule, Resources and each of its subsidiaries is in compliance with all applicable Environmental Laws (as hereinafter defined), except where the failure to be in compliance would not have a Resources Material Adverse Effect. Except as set forth in Section 4.11(a) of the Resources Disclosure Schedule, neither Resources nor any of its subsidiaries has received any communication (written or oral) from any person or Governmental Authority that alleges that Resources or any of its subsidiaries is not in such compliance with applicable Environmental Laws, except where the failure to be in compliance would not have a Resources Material Adverse Effect.

(b) *Environmental Permits.* Except as set forth in Section 4.11(b) of the Resources Disclosure Schedule, Resources and each of its subsidiaries has obtained or has applied for all permits, registrations and governmental authorizations required under any Environmental Law (collectively, the "Environmental Permits") necessary for the construction of its facilities or the conduct of its operations, and all such permits are in good standing or, where applicable, a renewal application has been timely filed and is pending agency approval, and Resources and its subsidiaries are in material compliance with all terms and conditions of the Environmental Permits, except where the failure to obtain or be in compliance with such Environmental Permit would not have a Resources Material Adverse Effect.

(c) *Environmental Claims.* Except as set forth in Section 4.11(c) of the Resources Disclosure Schedule, to the best knowledge of Resources upon diligent review, there is no Environmental Claim (as hereinafter defined) pending or threatened (i) against Resources or any of its subsidiaries or any of their joint ventures, (ii) against any person or entity whose liability for any Environmental Claim Resources or any of its subsidiaries or any of their joint ventures has or may have retained or assumed either contractually or by operation of law or (iii) against any real or personal property or operations which Resources or any of its subsidiaries or any of their joint ventures owns, leases or manages, in whole or in part, which, if

adversely determined, would have in the aggregate a Resources Material Adverse Effect.

(d) *Releases.* Except as set forth in Section 4.11(c) of the Resources Disclosure Schedule or Section 4.11(d) of the Resources Disclosure Schedule, Resources and each of its subsidiaries has no knowledge of any Releases (as hereinafter defined) of any Hazardous Material (as hereinafter defined) that would be reasonably likely to form the basis of any Environmental Claim against Resources or any of its subsidiaries or any of their joint ventures, or against any person or entity whose liability for any Environmental Claim Resources or any of its subsidiaries or any of their joint ventures has or may have retained or assumed either contractually or by operation of law, except for Releases of Hazardous Materials, the liability for which would not have, in the aggregate, a Resources Material Adverse Effect.

(e) *Predecessors.* Except as set forth in Section 4.11(e) of the Resources Disclosure Schedule, neither Resources nor any of its subsidiaries has knowledge, with respect to any predecessor of Resources or any of its subsidiaries or any of their joint ventures, of any Environmental Claim pending or threatened, or of any Release of Hazardous Materials that would be reasonably likely to form the basis of any Environmental Claim, which would have, or which Resources or any of its subsidiaries reasonably believes would have, a Resources Material Adverse Effect.

(f) *Disclosure.* Resources has disclosed to Iowa-Illinois all material facts which Resources or any of its subsidiaries reasonably believes form the basis of a Resources Material Adverse Effect arising from (i) the cost to Resources or any of its subsidiaries of pollution control equipment (including, without limitation, upgrades and other modifications to existing equipment) currently required or known to be required in the future; (ii) current costs to Resources or any of its subsidiaries of remediation or costs to Resources or any of its subsidiaries of remediation known to be required in the future; or (iii) any other environmental matter affecting Resources or any of its subsidiaries which would have, or which Resources or any of its subsidiaries reasonably believes would have, a Resources Material Adverse Effect.

(g) As used in this Agreement:

(i) "Environmental Claim" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, directives, claims, liens, investigations, proceedings or notices of noncompliance or violation (written or oral) by any person or entity (including any Governmental Authority) alleging potential liability (including, without limitation, potential liability for

enforcement, investigatory costs, cleanup costs, governmental response costs, removal costs, remedial costs, natural resources damages, property damages, personal injuries, or penalties) arising out of, based on or resulting from: (A) the presence, or Release or threatened Release into the environment, of any Hazardous Materials at any location, whether or not owned, operated, leased or managed by Resources or any of its subsidiaries or any of their joint ventures (for purposes of this Section 4.11), or by Iowa-Illinois or any of its subsidiaries or any of their joint ventures (for purposes of Section 5.11); or (B) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law; or (C) any and all claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from the presence or Release of any Hazardous Materials.

(ii) "Environmental Laws" means all federal, state and local statutes, regulations, ordinances and regulatory common law or equitable doctrine relating to pollution control or protection of the environment, human health or safety (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws and regulations relating to Releases or threatened Releases of Hazardous Materials, or otherwise relating to the manufacture, generation, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.

(iii) "Hazardous Materials" means: (A) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls ("PCBs"); and (B) any chemicals, materials or substances which are now defined as or included in the definition of "hazardous substances", "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," or words of similar import, under any Environmental Law; and (C) any other chemical, material, substance or waste, exposure to which is now prohibited, limited or regulated under any Environmental Law in a jurisdiction in which Resources or any of its subsidiaries or any of their joint ventures operates (for purposes of this Section 4.11) or in which Iowa-Illinois or any of its subsidiaries or any of their joint ventures operates (for purposes of Section 5.11).

(iv) "Release" means any release, spill, emission, leaking, injection, deposit, disposal, discharge, dispersal,

leaching or migration into the atmosphere, soil, surface water, groundwater or property.

SECTION 4.12 *Regulation as a Utility.* Midwest Power is regulated as a public utility in the States of Iowa, South Dakota and Nebraska. Except as set forth in the preceding sentence, neither Resources nor any "subsidiary company" or "affiliate" of Resources is subject to regulation as a public utility or public service company (or similar designation) by a state in the United States or any foreign country. As used in this Section 4.12 and in Section 5.12, the terms "subsidiary company" and "affiliate" shall have the respective meanings ascribed to them in the 1935 Act. Resources is an exempt holding company under Section 3(a)(1) of the 1935 Act.

SECTION 4.13 *Vote Required.* The approval by the holders of a majority of the votes entitled to be cast by all holders of outstanding shares of (i) Resources Common Stock, voting as a single class ("Resources Shareholders' Approval"), and (ii) Midwest Power Preferred Stock, voting as a single class, Midwest Power Common Stock, voting as a single class, and Midwest Power Common Stock and Midwest Power Preferred Stock, voting together as a single class (collectively, "Midwest Power Shareholders' Approval") are the only votes of the holders of any class or series of the capital stock of Resources or Midwest Power required to approve this Agreement and the transactions contemplated hereby.

SECTION 4.14 *Accounting Matters.* Neither Resources, Midwest Power nor, to their knowledge, any of their affiliates has taken or agreed to take any action that would prevent the Company from accounting for the Merger as a pooling of interests in accordance with GAAP and applicable SEC regulations. As used in this Agreement, the term "affiliate," except where otherwise defined herein, shall mean, as to any person, any other person which directly or indirectly controls, or is under common control with, or is controlled by, such person. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interest, by contract or otherwise).

SECTION 4.15 *Opinion of Financial Advisor.* Resources has received the opinion of PaineWebber Incorporated on July 26, 1994, to the effect that, as of July 26, 1994, the Resources Conversion Ratio and the consideration to be received by the holders of Resources Common Stock is fair from a financial point of view to the holders of Resources Common Stock.

SECTION 4.16 *Insurance.* Except as set forth in Section 4.16 of the Resources Disclosure Schedule, Resources and each of

its subsidiaries is, and has been continuously since January 1, 1989, insured with financially responsible insurers in such amounts and against such risks and losses as are customary for companies conducting the business as conducted by Resources and its subsidiaries during such time period. Except as set forth in Schedule 4.16 of the Resources Disclosure Schedule, neither Resources nor any of its subsidiaries has received any notice of cancellation or termination with respect to any material insurance policy of Resources or any of its subsidiaries. The insurance policies of Resources and each of its subsidiaries are valid and enforceable policies.

SECTION 4.17 *Ownership of Iowa-Illinois Capital Stock.* Resources does not "beneficially own" (as such term is defined in Rule 13d-3 under the Exchange Act) any shares of Iowa-Illinois Common Stock, Iowa-Illinois Preferred Shares, par value \$100 per share ("Iowa-Illinois Preferred Stock"), or Iowa-Illinois Preference Stock.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF IOWA-ILLINOIS

Iowa-Illinois represents and warrants to Resources and Midwest Power as follows:

SECTION 5.1 *Organization and Qualification.* Iowa-Illinois and each of its subsidiaries is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, has all requisite power and authority, and has been duly authorized by all necessary regulatory approvals and orders, to own, lease and operate its assets and properties and to carry on its business as it is now being conducted, and is duly qualified and in good standing to do business in each jurisdiction in which the nature of its business or the ownership or leasing of its assets and properties makes such qualification necessary other than in such jurisdictions where the failure to be so qualified and in good standing will not, when taken together with all other such failures, have a material adverse effect on the business operations, properties, assets, condition (financial or other) prospects or the results of operations of Iowa-Illinois and its subsidiaries taken as a whole or on the consummation of the transactions contemplated by this Agreement (any such material adverse effect being hereinafter referred to as an "Iowa-Illinois Material Adverse Effect").

SECTION 5.2 *Subsidiaries.* Section 5.2 of the Iowa-Illinois Disclosure Schedule (as defined in Section 7.6(a)(ii)) sets forth a description as of the date hereof of all subsidiaries of Iowa-Illinois and their joint ventures, including the name of each such entity, a brief description of the principal line or lines of business conducted by each such entity and the

interest of Iowa-Illinois and its subsidiaries therein. Except as set forth in Section 5.2 of the Iowa-Illinois Disclosure Schedule, none of such entities is a "holding company," a "subsidiary company" of a holding company or an "affiliate" of a holding company within the meaning of Section 2(a)(7), 2(a)(8) or 2(a)(11) of the 1935 Act, respectively. Except as set forth in Section 5.2 of the Iowa-Illinois Disclosure Schedule, all of the issued and outstanding shares of capital stock of each subsidiary of Iowa-Illinois are validly issued, fully paid, nonassessable and free of preemptive rights, are owned directly or indirectly by Iowa-Illinois free and clear of any Liens, and there are no outstanding subscriptions, options, calls, contracts, voting trusts, proxies or other commitments, understandings, restrictions, arrangements, rights or warrants, including any right of conversion or exchange under any outstanding security, instrument or other agreement, obligating Iowa-Illinois or any subsidiary of Iowa-Illinois to issue, deliver or sell, or cause to be issued, delivered or sold, shares of the capital stock of any subsidiary of Iowa-Illinois or obligating Iowa-Illinois or any of its subsidiaries to grant, extend or enter into any such agreement or commitment.

SECTION 5.3 Capitalization. (a) The authorized capital stock of Iowa-Illinois consists of 80,000,000 shares of Iowa-Illinois Common Stock, 400,000 shares of Iowa-Illinois Preferred Stock, and 2,386,250 shares of Iowa-Illinois Preference Stock. As of the close of business on July 22, 1994, (i) 29,491,416 shares of Iowa-Illinois Common Stock were issued and outstanding, (ii) 198,288 shares of Iowa-Illinois Preferred Stock were issued and outstanding and 500,000 shares of Iowa-Illinois Preference Stock were issued and outstanding; Section 5.3 of the Iowa-Illinois Disclosure Schedule lists the numbers of shares of each Series of Iowa-Illinois Preferred Stock and Iowa-Illinois Preference Stock outstanding on the date hereof. All of the issued and outstanding shares of the capital stock of Iowa-Illinois are validly issued, fully paid, nonassessable and free of preemptive rights. Except as set forth in Section 5.3 of the Iowa-Illinois Disclosure Schedule, there are no outstanding subscriptions, options, calls, contracts, voting trusts, proxies or other commitments, understandings, restrictions, arrangements, rights or warrants, including any right of conversion or exchange under any outstanding security, instrument or other agreement, obligating Iowa-Illinois or any of its subsidiaries to issue, deliver or sell, or cause to be issued, delivered or sold, shares of the capital stock of Iowa-Illinois or obligating Iowa-Illinois or any of its subsidiaries to grant, extend or enter into any such agreement or commitment other than under the Iowa-Illinois Dividend Reinvestment Plan, Iowa-Illinois Key Employee Performance Plan or the Iowa-Illinois Shareholders Rights Agreement dated as of February 25, 1992 ("Iowa-Illinois Shareholders Rights Plan").

(b) *No Change in Capital Structure.* There has been no material change in the information set forth in Section 5.3(a) between the close of business on July 22, 1994, and the date hereof.

SECTION 5.4 *Authority; Non-Contravention; Statutory Approvals; Compliance.*

(a) *Authority.* Iowa-Illinois has all requisite power and authority to enter into this Agreement and, subject to the applicable Iowa-Illinois Shareholders' Approval (as defined in Section 5.13) and the applicable Iowa-Illinois Required Statutory Approvals (as defined in clause (c) below), to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation by Iowa-Illinois of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Iowa-Illinois, subject to obtaining the applicable Iowa-Illinois Shareholders' Approval. This Agreement has been duly and validly executed and delivered by Iowa-Illinois and, assuming the due authorization, execution and delivery hereof by Resources and Midwest Power, constitutes a valid and binding obligation of Iowa-Illinois enforceable against it in accordance with its terms.

(b) *Non-Contravention.* Except as set forth in Section 5.4(b) of the Iowa-Illinois Disclosure Schedule, the execution and delivery of this Agreement by Iowa-Illinois does not, and, subject to obtaining the Iowa-Illinois Required Statutory Approvals, the Iowa-Illinois Shareholders' Approval and the third-party consents set forth in Section 5.4(b) of the Iowa-Illinois Disclosure Schedule ("Iowa-Illinois Required Consents"), the consummation of the transactions contemplated hereby will not, violate, conflict with, or result in a breach of any provision of, or constitute a default (with or without notice or lapse of time or both) under, or result in any Violation by Iowa-Illinois or any of its subsidiaries or any of their joint ventures pursuant to, any provisions of (i) the articles of incorporation, by-laws or similar governing documents of Iowa-Illinois or any of its subsidiaries or of any of their joint ventures, (ii) any statute, law, ordinance, rule, regulation, judgment, decree, order, injunction, writ, permit or license of any Governmental Authority applicable to Iowa-Illinois or any of its subsidiaries or any of their joint ventures, or any of their respective properties or assets, or (iii) any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, concession, contract, lease or other instrument, obligation or agreement of any kind to which Iowa-Illinois or any of its subsidiaries or any of their joint ventures is now a party or by which they or any of their respective properties or assets may be bound or affected, excluding from the foregoing clauses (ii) and (iii) such Violations as would not, in the aggregate, have an Iowa-Illinois Material Adverse Effect.

(c) *Statutory Approvals.* No declaration, filing or registration with, or notice to or authorization, consent or approval of, any Governmental Authority is necessary for the execution and delivery of this Agreement by Iowa-Illinois or the consummation by Iowa-Illinois of the transactions contemplated hereby, the failure of which to obtain, make or give would have, in the aggregate, an Iowa-Illinois Material Adverse Effect, except as described in Section 5.4(c) of the Iowa-Illinois Disclosure Schedule ("Iowa-Illinois Required Statutory Approvals," it being understood that references in this Agreement to "obtaining" such Iowa-Illinois Required Statutory Approvals shall mean making such declarations, filings or registrations; giving such notice; obtaining such authorizations, consents or approvals; and having such waiting periods expire as are necessary to avoid a violation of law).

(d) *Compliance.* Except as set forth in Sections 5.4(d) or 5.11 of the Iowa-Illinois Disclosure Schedule, or as disclosed in the Iowa-Illinois SEC Reports (as defined in Section 5.5), neither Iowa-Illinois nor any of its subsidiaries nor, to the knowledge of Iowa-Illinois or any of its subsidiaries, any of their joint ventures, is in violation of, or is under investigation with respect to or has been given notice or been charged with any violation of, any law, statute, order, rule, regulation, ordinance or judgment (including, without limitation, any applicable environmental law, ordinance or regulation) of any Governmental Authority, except for violations which in the aggregate do not, and insofar as can reasonably be foreseen will not, have an Iowa-Illinois Material Adverse Effect. Except as set forth in Sections 5.4(d) or 5.11 of the Iowa-Illinois Disclosure Schedule, Iowa-Illinois and each of its subsidiaries and each of their joint ventures has all Permits necessary to conduct their businesses as presently conducted except those which the failure to obtain in the aggregate do not, and insofar as reasonably can be foreseen will not, have an Iowa-Illinois Material Adverse Effect. Except as set forth in Section 5.4(d) of the Iowa-Illinois Disclosure Schedule, or as disclosed in the Iowa-Illinois SEC Reports, neither Iowa-Illinois nor any of its subsidiaries nor, to the knowledge of Iowa-Illinois, any of their joint ventures, is in breach or violation of or in default in the performance or observance of any term or provision of, and no event has occurred which, with lapse of time or action by a third party, could result in a default under, (i) the articles of incorporation, by-laws or similar governing documents of Iowa-Illinois or such subsidiary or joint venture or (ii) any contract, commitment, agreement, indenture, mortgage, loan agreement, note, lease, bond, license, approval or other instrument to which Iowa-Illinois or such subsidiary or joint venture is a party or by which it is bound or to which any of its property is subject, except in the case of clause (ii) above, for breaches, violations and defaults which in the aggregate do not, and insofar as reasonably can be foreseen will not, have an Iowa-Illinois Material Adverse Effect.

SECTION 5.5 *Reports and Financial Statements.* The filings required to be made by Iowa-Illinois and each of its subsidiaries under the Securities Act, the Exchange Act, applicable Iowa and Illinois public utility laws and regulations, the Power Act, the 1935 Act and the Atomic Energy Act have been filed with the SEC, the appropriate Iowa and Illinois public utility commissions, the FERC or the Nuclear Regulatory Commission, as the case may be, including all forms, statements, reports, agreements (oral or written) and all documents, exhibits, amendments and supplements appertaining thereto, and complied in all material respects with all applicable requirements of the appropriate act and the rules and regulations thereunder. Iowa-Illinois has made available to Resources a true and complete copy of each report, schedule, registration statement and definitive proxy statement and all amendments thereto filed by Iowa-Illinois with the SEC since January 1, 1991 (as such documents have since the time of their filing been amended, the "Iowa-Illinois SEC Reports"). As of their respective dates, the Iowa-Illinois SEC Reports did not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The audited consolidated financial statements and unaudited interim financial statements of Iowa-Illinois included in the Iowa-Illinois SEC Reports ("Iowa-Illinois Financial Statements") have been prepared in accordance with GAAP (except as may be indicated therein or in the notes thereto and except with respect to unaudited statements as permitted by Form 10-Q under the Exchange Act) and fairly present the financial position of Iowa-Illinois as of the dates thereof and the results of its operations and cash flows for the periods then ended, subject, in the case of the unaudited interim financial statements, to normal, recurring audit adjustments. True, accurate and complete copies of the Articles of Incorporation and by-laws of Iowa-Illinois, as in effect on the date hereof, are included (or incorporated by reference) in the Iowa-Illinois SEC Reports.

SECTION 5.6 *Absence of Certain Changes or Events; Absence of Undisclosed Liabilities.*

(a) *Absence of Certain Changes or Events.* Except as set forth in the Iowa-Illinois SEC Reports or Section 5.6 of the Iowa-Illinois Disclosure Schedule, since December 31, 1993, Iowa-Illinois and each of its subsidiaries has conducted its business only in the ordinary course of business consistent with past practice and there has not been any Iowa-Illinois Material Adverse Effect, and no fact or condition exists which would have, or, insofar as reasonably can be foreseen, could have, an Iowa-Illinois Material Adverse Effect.

(b) *Absence of Undisclosed Liabilities.* Neither Iowa-Illinois nor any of its subsidiaries has any liabilities or

obligations (whether absolute, accrued, contingent or otherwise) of a nature required by GAAP to be reflected in a consolidated corporate balance sheet, except liabilities, obligations or contingencies which are accrued or reserved against in the consolidated financial statements of Iowa-Illinois or reflected in the notes thereto for the year ended December 31, 1993, or which were incurred after December 31, 1993 in the ordinary course of business and would not, in the aggregate, have an Iowa-Illinois Material Adverse Effect.

SECTION 5.7 *Litigation.* Except as disclosed in the Iowa-Illinois SEC Reports or as set forth in Sections 5.7 or 5.11 of the Iowa-Illinois Disclosure Schedule, (i) there are no claims, suits, actions or proceedings, pending or, to the knowledge of Iowa-Illinois or its subsidiaries, threatened, nor are there, to the knowledge of Iowa-Illinois, any investigations or reviews pending or threatened against, relating to or affecting Iowa-Illinois or any of its subsidiaries or any of their joint ventures, (ii) there have not been any material developments since December 31, 1993 with respect to such disclosed claims, suits, actions, proceedings, investigations or reviews and (iii) there are no judgments, decrees, injunctions, rules or orders of any Governmental Authority or any arbitrator applicable to Iowa-Illinois or any of its subsidiaries or any of their joint ventures, which, when taken together with any other nondisclosures described in clause (i), (ii) or (iii), would, or insofar as reasonably can be foreseen could, have an Iowa-Illinois Material Adverse Effect.

SECTION 5.8 *Registration Statement and Proxy Statement.* None of the information supplied or to be supplied by or on behalf of Iowa-Illinois for inclusion or incorporation by reference in (i) the Registration Statement will, at the time the Registration Statement is filed with the SEC and at the time it becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and (ii) the Joint Proxy Statement will, at the date mailed to shareholders of Resources, Midwest Power and Iowa-Illinois and at the times of the meetings of such shareholders to be held in connection with the Merger, include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Registration Statement and the Joint Proxy Statement will comply as to form in all material respects with the provisions of applicable federal securities law.

SECTION 5.9 *Tax Matters.*

(a) *Filing of Timely Tax Returns.* Except as set forth in Section 5.9(a) of the Iowa-Illinois Disclosure Schedule, Iowa-Illinois and each of its subsidiaries have filed or will file all

Tax Returns required to be filed by each of them under applicable law. All Tax Returns were in all material respects (and, as to Tax Returns not filed as of the date hereof, will be) true, complete and correct and filed on a timely basis.

(b) *Payment of Taxes.* Iowa-Illinois and each of its subsidiaries have, within the time and in the manner prescribed by law, paid (and until the Closing Date will pay within the time and in the manner prescribed by law) all Taxes that are currently due and payable except for those contested in good faith and for which adequate reserves have been taken.

(c) *Tax Reserves.* Iowa-Illinois and each of its subsidiaries have established (and until the Closing Date will maintain) on their books and records liabilities which adequately reflect its estimate of amounts required for federal and state income taxes in accordance with GAAP.

(d) *Tax Liens.* There are no material Tax liens upon any assets of Iowa-Illinois or any of its subsidiaries except liens for Taxes not yet due.

(e) *Withholding Taxes.* Iowa-Illinois and each of its subsidiaries have complied (and until the Closing Date will comply) in all material respects with the provisions of the Code relating to the payment and withholding of Taxes, including, without limitation, the withholding and reporting requirements under Code §§ 1441 through 1464, 3401 through 3406, and 6041 through 6049, as well as similar provisions under any other laws, and have, within the time and in the manner prescribed by law, withheld from employee wages and paid over to the proper governmental authorities all amounts required.

(f) *Extensions of Time for Filing Tax Returns.* Except as set forth in Section 5.9(f) of the Iowa-Illinois Disclosure Schedule, neither Iowa-Illinois nor any of its subsidiaries has requested or been granted any extension of time within which to file any Tax Return, which Tax Return has not since been timely filed.

(g) *Waivers of Statute of Limitations.* Except as set forth in Section 5.9(g) of the Iowa-Illinois Disclosure Schedule, neither Iowa-Illinois nor any of its subsidiaries has executed any outstanding waivers or comparable consents regarding the application of the statute of limitations with respect to any Taxes or Tax Returns.

(h) *Expiration of Statute of Limitations.* Except as set forth in Section 5.9(h) of the Iowa-Illinois Disclosure Schedule, the statute of limitations for the assessment of all Taxes has expired for all applicable Tax Returns of Iowa-Illinois and each of its subsidiaries or those Tax Returns have been examined by the appropriate taxing authorities for all tax periods ended

before the date hereof, and no deficiency for any Taxes has been proposed, asserted or assessed against Iowa-Illinois or any of its subsidiaries that has not been resolved and paid in full.

(i) *Audit, Administrative and Court Proceedings.* Except as set forth in Section 5.9(i) of the Iowa-Illinois Disclosure Schedule, no audits or other administrative proceedings or court proceedings are presently pending with regard to any Taxes or Tax Returns of Iowa-Illinois or any of its subsidiaries.

(j) *Powers of Attorney.* Except as set forth in Section 5.9(j) of the Iowa-Illinois Disclosure Schedule, no power of attorney currently in force has been granted by Iowa-Illinois or any of its subsidiaries concerning any Tax matter.

(k) *Tax Rulings.* Except as set forth in Section 5.9(k) of the Iowa-Illinois Disclosure Schedule, neither Iowa-Illinois nor any of its subsidiaries has received or requested a Tax Ruling or entered into a Closing Agreement with any taxing authority that would have a continuing effect after the Closing Date.

(l) *Availability of Tax Returns.* As soon as practicable after the date hereof, Iowa-Illinois and its subsidiaries will make available to Resources and Midwest Power complete and accurate copies, covering all years ending on or after December 31, 1989, of (i) all Tax Returns, and any amendments thereto, filed by Iowa-Illinois or any of its subsidiaries, (ii) all audit reports received from any taxing authority relating to any Tax Return filed by Iowa-Illinois or any of its subsidiaries and (iii) any Tax Ruling or request for a Tax Ruling applicable to Iowa-Illinois or any of its subsidiaries and any Closing Agreements entered into by Iowa-Illinois or any of its subsidiaries.

(m) *Tax Sharing Agreements.* Except as disclosed in Section 5.9(m) of the Iowa-Illinois Disclosure Schedule, no agreements relating to allocating or sharing of Taxes exist between or among Iowa-Illinois and any of its subsidiaries.

(n) *Code § 341(f).* Neither Iowa-Illinois nor any of its subsidiaries has filed (or will file prior to the Closing) a consent pursuant to Code § 341(f) or has agreed to have Code § 341(f)(2) apply to any disposition of a subsection (f) asset (as that term is defined in Code § 341(f)(4)) owned by Iowa-Illinois or any of its subsidiaries.

(o) *Code § 168.* Except as set forth in Section 5.9(o) of the Iowa-Illinois Disclosure Schedule, no property of Iowa-Illinois or any of its subsidiaries is property that Iowa-Illinois or any such subsidiary or any party to this transaction is or will be required to treat as being owned by another person pursuant to the provisions of Code § 168(f)(8) (as in effect

prior to its amendment by the Tax Reform Act of 1986) or is "tax-exempt use property" within the meaning of Code § 168(h).

(p) *Code § 481 Adjustments.* Except as set forth in Section 5.9(p) of the Iowa-Illinois Disclosure Schedule, neither Iowa-Illinois nor any of its subsidiaries is required to include in income for any tax period ending after the date hereof any adjustment pursuant to Code § 481(a) by reason of a voluntary change in accounting method initiated by Iowa-Illinois or any of its subsidiaries, and to the knowledge of Iowa-Illinois, the IRS has not proposed any such adjustment or change in accounting method.

(q) *Acquisition Indebtedness.* Except as set forth in Section 5.9(q) of the Iowa-Illinois Disclosure Schedule, no indebtedness of Iowa-Illinois or any of its subsidiaries is "corporate acquisition indebtedness" within the meaning of Code § 279(b).

(r) *Intercompany Transactions.* Except as set forth in Section 5.9(r) of the Iowa-Illinois Disclosure Schedule, neither Iowa-Illinois nor any of its subsidiaries has engaged in any intercompany transactions within the meaning of Treasury Regulations 1.1502-13 or - 14 or Temporary Treasury Regulation § 1.502-13T or -14T for which any income or gain remains unrecognized as of the close of the last taxable year prior to the Closing Date and no excess loss account within the meaning of Treasury Regulation § 1.502-14, -19 or -32 exists with respect to Iowa-Illinois or any of its subsidiaries.

(s) *Code § 280G.* Except as set forth in Section 5.9(s) of the Iowa-Illinois Disclosure Schedule, neither Iowa-Illinois nor any of its subsidiaries is a party to any agreement, contract, or arrangement that could result, on account of the transactions contemplated hereunder, separately or in the aggregate, in the payment of any "excess parachute payments" within the meaning of the Code § 280G.

(t) *Consolidated Tax Returns.* Neither Iowa-Illinois nor any of its subsidiaries has ever been a member of an affiliated group of corporations (within the meaning of Code § 1504(a)) filing consolidated returns, other than the affiliated group of which Iowa-Illinois is the common parent.

(u) *NOLs.* As of December 31, 1992, Iowa-Illinois and its subsidiaries had net operating loss carryovers available to offset future income as set forth in Section 5.9(u) of the Iowa-Illinois Disclosure Schedule. Section 5.9(u) of the Iowa-Illinois Disclosure Schedule sets forth the amount of and year of expiration of each company's net operating loss carryovers.

(v) *Credit Carryovers.* As of December 31, 1992, Iowa-Illinois and its subsidiaries had tax credit carryovers available

to offset future tax liability as set forth in Section 5.9(v) of the Iowa-Illinois Disclosure Schedule. Section 5.9(v) of the Iowa-Illinois Disclosure Schedule sets forth the amount and year of expiration of each company's tax credit carryovers.

(w) *Code § 338 Elections.* Except as set forth in Section 5.9(w) of the Iowa-Illinois Disclosure Schedule, no election under Code § 338 (or any predecessor provision) has been made by or with respect to Iowa-Illinois or any of its subsidiaries or any of their respective assets or properties.

SECTION 5.10 *Employee Matters; ERISA.*

(a) *Benefit Plans.* As used in this Section 5.10, "Plan" shall mean any employee plan, practice, arrangement (including, without limitation, any employee benefit plan within the meaning of ERISA §3(3), employee pension benefit plan, program, arrangement or agreement, any health, medical, welfare, disability, life insurance, bonus, severance pay, and other employee benefit or fringe benefit plan) maintained by or with respect to which Iowa-Illinois has any fixed or contingent, direct or indirect liability; and "Iowa-Illinois Benefit Plan" shall mean any Plan that provides benefits with respect to employees or former employees of Iowa-Illinois or any of its subsidiaries. Section 5.10(a) of the Iowa-Illinois Disclosure Schedule contains a true and complete list of all Plans.

(b) *Contributions.* Except as set forth in Section 5.10(b) of the Iowa-Illinois Disclosure Schedule, all material contributions and other payments required to be made by Iowa-Illinois or any of its subsidiaries to any Iowa-Illinois Benefit Plan (or to any person pursuant to the terms thereof) have been made or the amount of such contribution obligation has been reflected in the Iowa-Illinois Financial Statements. Except as set forth in Section 5.10(b) of the Iowa-Illinois Disclosure Schedule, the current value of all accrued benefits under any Iowa-Illinois Benefit Plan which is a defined benefit plan did not, as of the date of the most recent actuarial valuation for such plan, exceed the then current value of the assets of such plan, based on the actuarial assumptions set forth in such valuation for calculating the minimum funding requirements of Code § 412. Neither Iowa-Illinois nor any entity which is or ever has been considered as a single employer together with Iowa-Illinois pursuant to § 414 of the Code contributes or has ever contributed to a multiemployer plan (as defined in Section 3(37) of ERISA) or has any liability under ERISA §4203 or §4205 in respect of any such Plan.

(c) *Qualification; Compliance.* Except as set forth in Section 5.10(c) of the Iowa-Illinois Disclosure Schedule, each of the Iowa-Illinois Benefit Plans intended to be "qualified" within the meaning of Code § 401(a) has been determined by the IRS to be

so qualified, and, to the knowledge of Iowa-Illinois and any of its subsidiaries, no circumstances exist that are reasonably expected by Iowa-Illinois or any of its subsidiaries to result in the revocation of any such determination. Iowa-Illinois and each of its subsidiaries is in compliance in all respects with, and each Iowa-Illinois Benefit Plan is and has been operated in all respects in compliance with the terms thereof and all applicable laws, rules and regulations governing such plan, including, without limitation, ERISA and the Code, except for any violations that would not, or insofar as can reasonably be foreseen, could not give rise to an Iowa-Illinois Material Adverse Effect. Except as set forth in Section 5.10(c) of the Iowa-Illinois Disclosure Schedule, each Iowa-Illinois Benefit Plan intended to provide for the deferral of income or the reduction of salary or other compensation is effective to provide such deferral or reduction.

(d) *Liabilities.* Except with respect to the Iowa-Illinois Severance Plan, the Iowa-Illinois Supplemental Retirement Plan for Designated Officers, the Iowa-Illinois Key Employee Sustained Performance Plan, the Iowa-Illinois Compensation Deferral Plan for Designated Officers and the Iowa-Illinois Compensation Deferral Plan for Key Executives, there are no actions, suits or claims pending or, to the knowledge of Iowa-Illinois, threatened (other than routine claims for benefits) and no event has occurred with respect to the Plans individually and in the aggregate, and, to the knowledge of Iowa-Illinois and any of its subsidiaries, as of the date hereof there exists no condition or set of circumstances, that could subject Iowa-Illinois or any of its subsidiaries to any liability arising under the Code, ERISA or any other applicable law (including, without limitation, any liability of any kind whatsoever, whether direct or indirect, contingent, inchoate or otherwise, to any such plan or the PBGC), or under any indemnity agreement to which Iowa-Illinois or any of its subsidiaries is subject, which liability, excluding liability for benefit claims and funding obligations payable in the ordinary course, would have, or insofar as reasonably can be foreseen, could have, an Iowa-Illinois Material Adverse Effect.

(e) *Welfare Plans.* Except as set forth in Section 5.10(e) of the Iowa-Illinois Disclosure Schedule, none of the Iowa-Illinois Benefit Plans that are "welfare plans," within the meaning of Section 3(1) of ERISA, provides for any benefits payable to or on behalf of any employee or director after termination of employment or service, as the case may be, other than elective continuation required pursuant to Code §4980B or coverage which expires at the end of the calendar month following such event, and each such plan that is a "group health plan" (as defined in Code §4980B(g)) has been operated in compliance with Code §4980B at all times, except for any non-compliance that would not, or insofar as reasonably can be determined could not, give rise to an Iowa-Illinois Material Adverse Effect.

(f) *Documents Made Available.* Iowa-Illinois has made available to Resources a true and correct copy of each collective bargaining agreement to which Iowa-Illinois or any of its subsidiaries is a party or under which Iowa-Illinois or any of its subsidiaries has obligations, and with respect to each Iowa-Illinois Benefit Plan, to the extent applicable (i) such plan and summary plan description (including all amendments to each such document), (ii) the most recent annual report filed with the IRS, (iii) each related trust agreement, insurance contract, service provider or investment management agreement (including all amendments to each such document), (iv) the most recent determination of the IRS with respect to the qualified status of such plan, (v) the most recent actuarial report or valuation and (vi) all material employee communications.

(g) *Payments Resulting from Mergers.* Except as set forth in Section 5.10(g) of the Iowa-Illinois Disclosure Schedule, (i) the announcement or consummation of any transaction contemplated by this Agreement will not (either alone or upon the occurrence of any additional or further acts or events) result in any (A) payment (whether of severance pay or otherwise) becoming due from Iowa-Illinois or any of its subsidiaries to any officer, employee, former employee or director thereof or to the trustee under any "rabbi trust" or similar arrangement that would not have been paid without regard to such announcement or consummation or (B) benefit established or becoming accelerated, vested or payable under any Iowa-Illinois Benefit Plan and (ii) neither Iowa-Illinois nor any of its subsidiaries is a party to (A) any management, employment, deferred compensation, severance (including any payment, right or benefit resulting from a change in control), bonus or other contract for personal services with any officer, director or employee, (B) any consulting contract with any person who prior to entering into such contract was a director or officer of Iowa-Illinois or any of its subsidiaries or (C) any material plan, agreement, arrangement or understanding similar to any of the foregoing.

(h) *Labor Agreements.* As of the date hereof, except as set forth in Section 5.10(h) of the Iowa-Illinois Disclosure Schedule, neither Iowa-Illinois nor any of its subsidiaries is a party to any collective bargaining agreement or other labor agreement with any union or labor organization. To the knowledge of Iowa-Illinois and any of its subsidiaries, as of the date hereof, except as set forth in Section 5.10(h) of the Iowa-Illinois Disclosure Statement, there is no current union representation question involving employees of Iowa-Illinois or any of its subsidiaries, nor does Iowa-Illinois know of any activity or proceeding of any labor organization (or representative thereof) or employee group to organize any such employees. Except as disclosed in the Iowa-Illinois SEC Reports or in Section 5.10(h) of the Iowa-Illinois Disclosure Schedule, (i) there is no unfair labor practice, employment discrimination or other complaint against Iowa-Illinois or any of its subsidiaries pending, or, to

the knowledge of Iowa-Illinois or any of its subsidiaries, threatened, which has or reasonably may be expected by Iowa-Illinois or any of its subsidiaries to have an Iowa-Illinois Material Adverse Effect, (ii) there is no strike, dispute, slowdown, work stoppage or lockout or other significant labor controversy, pending, or, to the knowledge of Iowa-Illinois or any of its subsidiaries, threatened, against or involving Iowa-Illinois or any of its subsidiaries which has or, insofar as reasonably can be foreseen, could have, an Iowa-Illinois Material Adverse Effect and (iii) there is no proceeding, claim, suit, action or governmental investigation pending or, to the knowledge of Iowa-Illinois or any of its subsidiaries, threatened, in respect of which any director, officer, employee or agent of Iowa-Illinois or any of its subsidiaries is or may be entitled to claim indemnification from Iowa-Illinois or any of its subsidiaries pursuant to their respective charters or by-laws. Except as set forth in Section 5.10(h) of the Iowa-Illinois Disclosure Schedule, Iowa-Illinois and its subsidiaries have, to the knowledge of Iowa-Illinois and its subsidiaries, complied in all material respects with all laws relating to the employment of labor, including without limitation any provisions thereof relating to wages, hours, collective bargaining, and the payment of social security and similar taxes, and no person has, to the knowledge of Iowa-Illinois or any of its subsidiaries, asserted that Iowa-Illinois or any of its subsidiaries is liable in any material amount for any arrears of wages or any taxes or penalties for failure to comply with any of the foregoing.

SECTION 5.11 *Environmental Protection.*

(a) *Compliance.* Except as set forth in Section 5.11(a) of the Iowa-Illinois Disclosure Schedule, Iowa-Illinois and each of its subsidiaries is in compliance with all applicable Environmental Laws, except where the failure to be in compliance would not have an Iowa-Illinois Material Adverse Effect. Except as set forth in Section 5.11(a) of the Iowa-Illinois Disclosure Schedule, neither Iowa-Illinois nor any of its subsidiaries has received any communication (written or oral) from any person or Governmental Authority, that alleges that Iowa-Illinois or any of its subsidiaries is not in such compliance with applicable Environmental Laws, except where the failure to be in compliance would not have an Iowa-Illinois Material Adverse Effect.

(b) *Environmental Permits.* Except as set forth in Section 5.11(b) of the Iowa-Illinois Disclosure Schedule, Iowa-Illinois and each of its subsidiaries has obtained or has applied for all Environmental Permits necessary for the construction of its facilities or the conduct of its operations, and all such permits are in good standing or, where applicable, a renewal application has been timely filed and is pending agency approval, and Iowa-Illinois and its subsidiaries are in material compliance with all terms and conditions of the Environmental Permits, except where

the failure to obtain or be in compliance with the Environmental Permit would not have an Iowa-Illinois Material Adverse Effect.

(c) *Environmental Claims.* Except as set forth in Section 5.11(c) of the Iowa-Illinois Disclosure Schedule, to the best knowledge of Iowa-Illinois and each of its subsidiaries upon diligent review, there is no Environmental Claim pending or threatened (i) against Iowa-Illinois or any of its subsidiaries or any of their joint ventures, (ii) against any person or entity whose liability for any Environmental Claim Iowa-Illinois or any of its subsidiaries or any of their joint ventures has or may have retained or assumed either contractually or by operation of law or (iii) against any real or personal property or operations which Iowa-Illinois or any of its subsidiaries or any of their joint ventures owns, leases or manages, in whole or in part, which if adversely determined, would have in the aggregate an Iowa-Illinois Material Adverse Effect.

(d) *Releases.* Except as set forth in Section 5.11(c) of the Iowa-Illinois Disclosure Schedule or Section 5.11(d) of the Iowa-Illinois Disclosure Schedule, Iowa-Illinois and each of its subsidiaries has no knowledge of any Releases of any Hazardous Material that would be reasonably likely to form the basis of any Environmental Claim against Iowa-Illinois or any of its subsidiaries or any of their joint ventures, or against any person or entity whose liability for any Environmental Claim Iowa-Illinois or any of its subsidiaries or any of their joint ventures has or may have retained or assumed either contractually or by operation of law, except for Releases of Hazardous Materials, the liability for which would not have, in the aggregate, an Iowa-Illinois Material Adverse Effect.

(e) *Predecessors.* Except as set forth in Section 5.11(e) of the Iowa-Illinois Disclosure Schedule, neither Iowa-Illinois nor any of its subsidiaries has knowledge, with respect to any predecessor of Iowa-Illinois or any of its subsidiaries or any of their joint ventures, of any Environmental Claim pending or threatened, or of any Release of Hazardous Materials that would be reasonably likely to form the basis of any Environmental Claim, which would have, or which Iowa-Illinois or any of its subsidiaries reasonably believes would have, an Iowa-Illinois Material Adverse Effect.

(f) *Disclosure.* Iowa-Illinois has disclosed to Resources all material facts which Iowa-Illinois reasonably believes form the basis of an Iowa-Illinois Material Adverse Effect arising from (i) the cost of Iowa-Illinois pollution control equipment (including, without limitation, upgrades and other modifications to existing equipment) currently required or known to be required in the future; (ii) current Iowa-Illinois remediation costs or Iowa-Illinois remediation costs known to be required in the future; or (iii) any other environmental matter affecting Iowa-Illinois which would have, or which Iowa-Illinois or any of its

subsidiaries reasonably believes would have, an Iowa-Illinois Material Adverse Effect.

SECTION 5.12 *Regulation as a Utility.* Iowa-Illinois is regulated as a public utility in the States of Iowa and Illinois and in no other state. Neither Iowa-Illinois nor any "subsidiary company" or "affiliate" of Iowa-Illinois is subject to regulation as a public utility or public service company (or similar designation) by any other state in the United States or any foreign country. Iowa-Illinois is not a holding company under the 1935 Act.

SECTION 5.13 *Vote Required.* The approval by the holders of two-thirds of the votes entitled to be cast by all holders of outstanding shares of (i) Iowa-Illinois Preference Stock, voting as a single class, (ii) Iowa-Illinois Common Stock, voting as a single class, and (iii) Iowa-Illinois Preference Stock and Iowa-Illinois Common Stock, voting together as a single class (collectively, "Iowa-Illinois Shareholders' Approval") are the only votes of holders of any class or series of the capital stock of Iowa-Illinois required to approve this Agreement and the transactions contemplated hereby assuming the redemption or purchase of the Iowa-Illinois Preferred Stock in accordance with Section 7.16.

SECTION 5.14 *Accounting Matters.* Neither Iowa-Illinois nor, to its knowledge, any of its affiliates has taken or agreed to take any action that would prevent the Company from accounting for the Merger as a pooling of interests in accordance with GAAP and applicable SEC regulations.

SECTION 5.15 *Opinion of Financial Advisor.* Iowa-Illinois has received the opinion of Dillon, Read & Co. Inc. on July 26, 1994, to the effect that, as of July 26, 1994, the Iowa-Illinois Conversion Ratio and consideration to be received by the holders of the Iowa-Illinois Common Stock is fair from a financial point of view to the holders of Iowa-Illinois Common Stock.

SECTION 5.16 *Insurance.* Except as set forth on Section 5.16 of the Iowa-Illinois Disclosure Schedule, Iowa-Illinois and each of its subsidiaries is, and has been continuously since January 1, 1989, insured with financially responsible insurers in such amounts and against such risks and losses as are customary for companies conducting the business as conducted by Iowa-Illinois and its subsidiaries during such time period. Except as set forth on Schedule 5.16 of the Iowa-Illinois Disclosure Schedule, neither Iowa-Illinois nor any of its subsidiaries has received any notice of cancellation or termination with respect to any material insurance policy of Iowa-Illinois or any of its subsidiaries. The insurance policies of Iowa-Illinois and each of its subsidiaries are valid and enforceable policies.

SECTION 5.17 *Ownership of Resources Common Stock.* Iowa-Illinois does not "beneficially own" (as such term is defined in Rule 13d-3 under the Exchange Act) any shares of Resources Common Stock.

ARTICLE VI

CONDUCT OF BUSINESS PENDING THE MERGER

SECTION 6.1 *Covenants of the Parties.* From and after the date hereof, and prior to the Effective Time or earlier termination of this Agreement, Resources and Iowa-Illinois each agrees as to itself and its subsidiaries, except as expressly contemplated or permitted in this Agreement, or to the extent the other parties hereto shall otherwise consent in writing:

(a) *Ordinary Course of Business.* Each party hereto shall, and shall cause its respective subsidiaries to, carry on their respective businesses in the usual, regular and ordinary course in substantially the same manner as heretofore conducted and use all commercially reasonable efforts to preserve intact their present business organizations and goodwill, preserve the goodwill and relationships with customers, suppliers and others having business dealings with them and, subject to prudent management of workforce needs and ongoing or planned programs relating to downsizing, re-engineering and similar matters, keep available the services of their present officers and employees to the end that their goodwill and ongoing businesses shall not be impaired in any material respect at the Effective Time.

(b) *Dividends.* No party shall, nor shall any party permit any of its subsidiaries to: (i) declare or pay any dividends on or make other distributions in respect of any of their capital stock other than (A) to such party or its wholly-owned subsidiaries, (B) dividends on Midwest Power Common Stock held by Resources, (C) dividends required to be paid on any series of Iowa-Illinois Preferred Stock, Iowa-Illinois Preference Stock or Midwest Power Preferred Stock in accordance with the respective terms thereof, (D) regular quarterly dividends on Resources Common Stock with usual record and payment dates not in excess of 100% of the average quarterly dividend for the four quarterly dividend payments immediately preceding the date hereof with respect thereto and (E) regular quarterly dividends on Iowa-Illinois Common Stock with usual record and payment dates not in excess of 100% of the average quarterly dividend for the four quarterly dividend payments immediately preceding the date hereof with respect thereto; (ii) split, combine or reclassify any of their capital stock or issue or authorize or propose the issuance of any other securities in respect of, in lieu of, or in substitution for, shares of its capital stock; or (iii) redeem, repurchase or otherwise acquire any shares of their capital stock other than

redemptions, repurchases and other acquisitions of shares of capital stock in the ordinary course of business including, without limitation, repurchases, redemptions and other acquisitions in connection with employee benefit plans or in accordance with the terms of securities issued and outstanding on the date hereof or hereafter issued in accordance with Section 6.1(c).

(c) *Issuance of Securities.* Except as described on Schedule 6.1(c) of the Resources and Iowa-Illinois Disclosure Schedules, no party shall, nor shall any party permit any of its subsidiaries to, issue, deliver or sell, or authorize or propose the issuance, delivery or sale of, any shares of their capital stock of any class or any securities convertible into or exchangeable for, or any rights, warrants or options to acquire, any such shares or convertible or exchangeable securities, other than (i) the issuance of common stock or stock appreciation or similar rights, as the case may be, pursuant to (x) the Iowa-Illinois Dividend Reinvestment and Share Purchase Plan, the Iowa-Illinois Key Employee Sustained Performance Plan or the Iowa-Illinois Shareholders Rights Plan, and (y) Resources Dividend Reinvestment and Stock Purchase Plan, Resources Employee Stock Purchase Plan, Midwest Power 401(k) Plan for Salaried Employees or Midwest Power 401(k) Plan for Bargaining Employees, in each case consistent in kind and amount with past practice and in the ordinary course of business under such plans in accordance with their present terms, (ii) issuances by a wholly-owned subsidiary of its capital stock to its parent, (iii) issuance and reservation of the Iowa-Illinois Common Stock pursuant to the Iowa-Illinois Shareholders Rights Plan, and (iv) issuance and reservation of Resources Common Stock pursuant to any rights plan adopted pursuant to Section 6.1(i).

(d) *Charter Documents.* Except as set forth in Section 6.1(d) of the Resources Disclosure Schedule or the Iowa-Illinois Disclosure Schedule, no party shall amend or propose to amend its respective articles of incorporation or by-laws, except as contemplated herein, in any way adverse to the other party.

(e) *Acquisitions.* Except (i) as set forth in Section 6.1(e) of the Resources Disclosure Schedule or the Iowa-Illinois Disclosure Schedule, and (ii) acquisitions not exceeding \$15 million in the aggregate in the case of, on the one hand, Resources and Midwest Power and, on the other hand, Iowa-Illinois, no party shall, nor shall any party permit any of its subsidiaries to, acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial equity interest in or a substantial portion of the assets of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof or otherwise acquire or agree to acquire any assets in each case which are material, individually or in the aggregate, to such party and its subsidiaries taken as a whole.

(f) *No Dispositions.* Except as disclosed on Schedule 6.1(f) to the Resources or Iowa-Illinois Disclosure Schedule and other than (i) dispositions not exceeding \$15 million in the aggregate, in the case of, on the one hand, Resources and Midwest Power and, on the other hand, Iowa-Illinois, which dispositions do not, individually or in the aggregate, have a Resources Material Adverse Effect or an Iowa-Illinois Material Adverse Effect, as the case may be, as may be required by law to consummate the transactions contemplated hereby or (iii) in the ordinary course of business consistent with prior practice, no party shall, nor shall any party permit any of its subsidiaries to, sell, lease, license, encumber or otherwise dispose of, any of its assets which are material, individually or in the aggregate, to such party and its subsidiaries taken as a whole.

(g) *Indebtedness.* Except as disclosed in Section 6.1(g) of the Resources Disclosure Schedule and the Iowa-Illinois Disclosure Schedule and as otherwise contemplated by this Agreement, no party shall, nor shall any party permit any of its subsidiaries to, incur or guarantee any indebtedness (including any debt borrowed or guaranteed or otherwise assumed, including, without limitation, the issuance of debt securities or warrants or rights to acquire debt) other than (i) short-term and long-term indebtedness and guarantees incurred in the ordinary course of business consistent with past practice (such as refinancings, the issuance of commercial paper or the use of existing credit facilities); (ii) long-term indebtedness not aggregating more than (x) in the case of Resources and its subsidiaries, \$60 million and (y) in the case of Iowa-Illinois and its subsidiaries, \$60 million.

(h) *Rights Plans.* Nothing contained herein shall be deemed to prohibit Resources from adopting a shareholder rights plan, provided that (i) no such plan shall prohibit the transactions contemplated hereby, be "triggered" by the transactions contemplated hereby, or otherwise have an Iowa-Illinois Material Adverse Effect or a Resources Material Adverse Effect or materially change the number of outstanding equity securities of Resources at the Effective Time and (ii) any such rights plan shall provide that any rights or other securities issued thereunder or pursuant thereto shall, at the Effective Time and without further action by any of the parties or any affiliates thereof, be redeemed at an aggregate redemption price not in excess of \$600,000 and shall thereafter not be outstanding. If any such rights plan is adopted, nothing herein shall be deemed to prohibit Resources from redeeming the rights issued thereunder.

(i) *Compensation, Benefits.* Except as disclosed in Section 6.1(i) of the Resources Disclosure Schedule and Iowa-Illinois Disclosure Schedule, no party shall, nor shall any party permit any of its subsidiaries to, (i) enter into, adopt or amend (except as may be required by applicable law), or increase the amount or accelerate the payment or vesting of any benefit or amount payable under, any employee benefit plan or other contract, agreement,

commitment, arrangement, plan or policy maintained by, contributed to or entered into by such party or any of its subsidiaries, or increase, or enter into any contract, agreement, commitment or arrangement to increase in any manner, the compensation or fringe benefits, or otherwise to extend, expand or enhance the engagement, employment or any related rights, of any director, officer or other employee of such party or any of its subsidiaries, except pursuant to binding legal commitments and except for normal or promotional increases in the ordinary course of business consistent with past practice that, in the aggregate, do not result in a material increase in benefits or compensation expense to such party or any of its subsidiaries or (ii) enter into or amend any employment, severance, special pay arrangement with respect to termination of employment or other similar contract, agreement or arrangement with any director or officer other than in the ordinary course of business consistent with past practice.

(j) *1935 Act.* No party shall, nor shall any party permit any of its subsidiaries to, except as required or contemplated by this Agreement, engage in any activities which would cause a change in its status, or that of its subsidiaries, under the 1935 Act, or that would impair the ability of Resources or Iowa-Illinois, respectively, to claim an exemption as of right under Rule 2 under the 1935 Act.

(k) *Accounting.* No party shall, nor shall any party permit any of its subsidiaries to, make any changes in their accounting methods, except as required by law, rule, regulation or GAAP.

(l) *Pooling.* No party shall, nor shall any party permit any of its subsidiaries to, take any actions which would, or would be reasonably likely to, prevent the Company from accounting for the Merger as a pooling of interests in accordance with GAAP and applicable SEC regulations.

(m) *Tax-Free Status.* No party shall, nor shall any party permit any of its subsidiaries to, take any actions which would, or would be reasonably likely to, adversely affect the status of the Merger as a reorganization under Code §368.

(n) *Cooperation, Notification.* Each party shall: (i) confer on a regular and frequent basis with one or more representatives of each other party to discuss the general status of its ongoing operations; (ii) promptly notify each other party of any significant changes in its business, properties, assets, condition (financial or other) or results of operations; (iii) advise each other party of any change or event which has had or, insofar as reasonably can be foreseen, is reasonably likely to result in, a Resources Material Adverse Effect or an Iowa-Illinois Material Adverse Effect, as the case may be; and (iv) promptly provide each other party with copies of all filings made by such party or any of its subsidiaries with any state or federal court,

administrative agency, commission or other Governmental Authority in connection with this Agreement and the transactions contemplated hereby.

(o) *Rate Matters.* Other than currently pending rate filings, each party shall, and shall cause its subsidiaries to, discuss with each other party any changes in its or its subsidiaries' regulated rates or charges (other than pass-through fuel and gas rates or charges), standards of service or accounting from those in effect on the date hereof and consult with the other parties prior to making any filing (or any amendment thereto), or effecting any agreement, commitment, arrangement or consent, whether written or oral, formal or informal, with respect thereto, and no party will make any filing to change its rates on file with the public utility commission of any state or FERC that would have a material adverse effect on the benefits associated with the business combination provided herein.

(p) *Third-Party Consents.* Resources shall, and shall cause its subsidiaries to, use all commercially reasonable efforts to obtain all Resources Required Consents. Resources shall promptly notify Iowa-Illinois of any failure or anticipated failure to obtain any such consents and, if requested by Iowa-Illinois, shall provide copies of all Resources Required Consents obtained by Resources to Iowa-Illinois. Iowa-Illinois shall, and shall cause its subsidiaries to, use all commercially reasonable efforts to obtain all Iowa-Illinois Required Consents. Iowa-Illinois shall promptly notify Resources of any failure or anticipated failure to obtain any such consents and, if requested by Resources, shall provide copies of all Iowa-Illinois Required Consents obtained by Iowa-Illinois to Resources.

(q) *No Breach, Etc.* No party shall, nor shall any party permit any of its subsidiaries to, take any action that would or is reasonably likely to result in a material breach of any provision of this Agreement or in any of its representations and warranties set forth in this Agreement being untrue on and as of the Closing Date.

(r) *Tax-Exempt Status.* No party shall, nor shall any party permit any subsidiary to, take any action that would likely jeopardize the qualification of the outstanding revenue bonds issued for the benefit of Iowa-Illinois or for the benefit of Midwest Power which qualify on the date hereof under Code §142(a) as "exempt facility bonds" or as tax-exempt industrial development bonds under Section 103(b)(4) of the Internal Revenue Code of 1954, as amended prior to the Tax Reform Act of 1986.

(s) *Transition Management.* The parties shall create two special transition management task forces ("Task Forces"), a "Diversified Industries Task Force" and a "Corporate/Utility Task Force". The composition of the Task Forces shall be as indicated on Exhibit D attached hereto. The Task Forces shall examine

various alternatives regarding the manner in which to best organize and manage the business of the Company after the Effective Time. Don Heppermann will manage and be responsible for the day-to-day activities and operations of the Diversified Industries Task Force and Richard Engle shall manage and be responsible for the day-to-day activities and operations of the Corporate/Utility Task Force.

(t) *Insurance.* Each party shall, and shall cause its subsidiaries to, maintain with financially responsible insurance companies insurance in such amounts and against such risks and losses as are customary for companies engaged in the electric and gas utility industry and employing methods of generating electric power and fuel sources similar to those methods employed and fuels used by such party or such party's subsidiaries.

(u) *Permits.* Each party shall, and shall cause its subsidiaries to, use reasonable efforts to maintain in effect all existing Permits pursuant to which such party or such party's subsidiaries operate.

(v) *Certain Information Relating to Commercial and Industrial Customers.* No party shall, nor shall any party permit any of its subsidiaries to, use any Evaluation Material (as defined in the Confidentiality and Standstill Agreement, effective June 5, 1994, between Resources and Iowa-Illinois ("Confidentiality Agreement")) in connection with any solicitation, inquiry, proposal, arrangement, understanding or agreement with any person relating to the provision of electric or gas utility service by Iowa-Illinois or any of its subsidiaries, on the one hand, or Resources or any of its subsidiaries, on the other hand, to commercial and industrial customers in the service territory of the other party.

ARTICLE VII

ADDITIONAL AGREEMENTS

SECTION 7.1 *Access to Information.* Upon reasonable notice, each party shall, and shall cause its subsidiaries to, afford to the officers, directors, employees, accountants, counsel, investment bankers, financial advisors and other representatives of the other (collectively, "Representatives") reasonable access, during normal business hours throughout the period prior to the Effective Time, to all of its properties, books, contracts, commitments, forecasts, plans and records (including, but not limited to, Tax Returns) and, during such period, each party shall, and shall cause its subsidiaries to, furnish promptly to the other (i) a copy of each report, schedule and other document filed or received by it or any of its subsidiaries pursuant to the requirements of federal or state securities laws or filed with the SEC, the FERC, the public

utility commission of any State, the Nuclear Regulatory Commission, the Department of Justice, the Federal Trade Commission, or any other federal or state regulatory agency or commission, and (ii) all information concerning themselves, their subsidiaries, directors, officers and shareholders and such other matters as may be reasonably requested by the other party in connection with any filings, applications or approvals required or contemplated by this Agreement. Each party shall, and shall cause its subsidiaries and Representatives to, hold in strict confidence all documents and information concerning the other furnished to it in connection with the transactions contemplated by this Agreement in accordance with the Confidentiality Agreement.

SECTION 7.2 *Joint Proxy Statement and Registration Statement.*

(a) *Preparation and Filing.* The parties will prepare and file with the SEC as soon as reasonably practicable after the date hereof the Registration Statement and the Joint Proxy Statement (together, the "Joint Proxy/Registration Statement"). The parties hereto shall each use reasonable efforts to cause the Registration Statement to be declared effective under the Securities Act as promptly as practicable after such filing. The Company shall also take such action as may be reasonably required to cause the shares of the Company Preferred Stock and the Company Common Stock issuable in connection with the Merger to be registered or to obtain an exemption from registration under applicable state "blue sky" or securities laws; provided, however, that the Company shall not be required to register or qualify as a foreign corporation or to take other action which would subject it to service of process in any jurisdiction where it will not be, following the Merger, so subject. Each of the parties hereto shall furnish all information concerning itself which is required or customary for inclusion in the Joint Proxy/Registration Statement. The Company shall use its best efforts to cause the shares of the Company Common Stock and the \$1.7375 Series of Company Preferred Stock issuable in the Merger to be approved for listing on the NYSE upon official notice of issuance. The information provided by or on behalf of any party hereto for use in the Joint Proxy/Registration Statement shall be true and correct in all material respects without omission of any material fact which is required to make such information not false or misleading. No representation, covenant or agreement is made by any party hereto with respect to information supplied by any other party for inclusion in the Joint Proxy/Registration Statement.

(b) *Letter of Accountants for Iowa-Illinois.* Iowa-Illinois shall use best efforts to cause to be delivered to Resources a letter of Deloitte & Touche, dated a date within two business days before the date of the Joint Proxy/Registration Statement, and addressed to Resources, in form and substance reasonably satisfactory to Resources and customary in scope and substance for

"cold comfort" letters delivered by independent public accountants in connection with registration statements on Form S-4.

(c) *Letter of Accountants for Resources.* Resources shall use best efforts to cause to be delivered to Iowa-Illinois a letter of Arthur Andersen & Co., dated a date within two business days before the date of the Joint Proxy/Registration Statement, and addressed to Iowa-Illinois, in form and substance reasonably satisfactory to Iowa-Illinois and customary in scope and substance for "cold comfort" letters delivered by independent public accountants in connection with registration statements on Form S-4.

(d) *Fairness Opinions.* It shall be a condition to the mailing of the Joint Proxy Statement to the shareholders of Iowa-Illinois, Midwest Power and Resources that (i) Iowa-Illinois shall have received an opinion from Dillon, Read & Co. Inc., dated the date of the Joint Proxy Statement, to the effect that, as of the date thereof, the Iowa-Illinois Conversion Ratio and the consideration to be received by the holders of Iowa-Illinois Common Stock is fair from a financial point of view to the holders of Iowa-Illinois Common Stock and (ii) Resources shall have received an opinion from PaineWebber Incorporated, dated the date of the Joint Proxy Statement, to the effect that, as of the date thereof, the Resources Conversion Ratio and the consideration to be received by the holders of Resources Common Stock is fair from a financial point of view to the holders of Resources Common Stock.

SECTION 7.3 *Regulatory Approvals and Other Matters.*

(a) *HSR Filings.* Each party hereto shall file or cause to be filed with the Federal Trade Commission and the Department of Justice any notifications required to be filed under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act"), and the rules and regulations promulgated thereunder with respect to the transactions contemplated hereby. Such parties will use all commercially reasonable efforts to make such filings promptly and to respond promptly to any requests for additional information made by either of such Governmental Authorities.

(b) *Other Approvals.* Each party hereto shall cooperate and use its best efforts to promptly prepare and file all necessary documentation, to effect all necessary applications, notices, petitions, filings and other documents, and to use all commercially reasonable efforts to obtain all necessary Permits, consents, approvals and authorizations of all Governmental Authorities and all other persons necessary or advisable to consummate the transactions contemplated by this Agreement, including, without limitation, the Iowa-Illinois Required Statutory Approvals, the Iowa-Illinois Required Consents, the Resources Required Statutory Approvals and the Resources Required Consents. Iowa-Illinois shall have the right to review and

approve in advance all characterizations of the information relating to Iowa-Illinois, on the one hand, and Resources shall have the right to review and approve in advance all characterizations of the information relating to Resources and Midwest Power, on the other hand, in either case, which appear in any filing made in connection with the transactions contemplated by this Agreement or the Merger. Iowa-Illinois, Midwest Power and Resources agree that they will consult with each other with respect to the obtaining of all such necessary or advisable permits, consents, approvals and authorizations of Governmental Authorities.

SECTION 7.4 *Shareholder Approval.*

(a) *Approval of Resources Shareholders.* Resources shall, as soon as reasonably practicable after the date hereof, (i) take all steps necessary duly to call, give notice of, convene and hold a special meeting of its shareholders ("Resources Special Meeting") for the purpose of securing the Resources Shareholders' Approval, (ii) distribute to its shareholders the Joint Proxy Statement in accordance with applicable federal and state law and with its Articles of Incorporation and by-laws, (iii) subject to the fiduciary duties of the Board of Directors of Resources, recommend to its shareholders the approval of this Agreement, and (iv) cooperate and consult with Iowa-Illinois with respect to each of the foregoing matters.

(b) *Approval of Iowa-Illinois Shareholders.* Iowa-Illinois shall, as soon as reasonably practicable after the date hereof, (i) take all steps necessary to call, give notice of, convene and hold a special meeting of its shareholders ("Iowa-Illinois Special Meeting") for the purpose of securing the Iowa-Illinois Shareholders' Approval, (ii) distribute to its shareholders the Joint Proxy Statement in accordance with applicable federal and state law and its Articles of Incorporation and by-laws, (iii) subject to the fiduciary duties of the Board of Directors of Iowa-Illinois, recommend to its shareholders the approval of this Agreement and (iv) cooperate and consult with Resources with respect to each of the foregoing matters.

(c) *Approval of Midwest Power Shareholders.* Midwest Power shall, as soon as reasonably practicable after the date hereof, (i) take all steps necessary to call, give notice of, convene and hold a special meeting of its shareholders ("Midwest Power Special Meeting") for the purpose of securing the Midwest Power Shareholders' Approval, (ii) distribute to its shareholders the Joint Proxy Statement in accordance with applicable federal and state law and its Articles of Incorporation and by-laws, (iii) subject to the fiduciary duties of the Board of Directors of Midwest Power, recommend to its shareholders the approval of this Agreement and (iv) cooperate and consult with Iowa-Illinois with respect to each of the foregoing matters.

(d) *Meeting Date.* The Resources Special Meeting for the purpose of securing the Resources Shareholders' approval, the Iowa-Illinois Special Meeting for the purpose of securing the Iowa-Illinois Shareholders' Approval, and the Midwest Power Special Meeting for the purpose of securing the Midwest Power Shareholders' Approval, shall be held on or before such date or dates as Resources and Iowa-Illinois shall jointly determine.

SECTION 7.5 *Directors' and Officers' Indemnification.*

(a) *Indemnification.* From and after the Effective Time, the Company shall, to the fullest extent not prohibited by applicable law, indemnify, defend and hold harmless the present and former officers and directors of Iowa-Illinois, Resources and Midwest Power (each an "Indemnified Party" and collectively, the "Indemnified Parties") against all losses, expenses (including reasonable attorney's fees), claims, damages or liabilities or, subject to the proviso of the next succeeding sentence, amounts paid in settlement arising out of actions or omissions occurring at or prior to the Effective Time that are in whole or in part based on, or arising out of the fact that such person is or was a director or officer of Iowa-Illinois, Midwest Power or Resources arising out of or pertaining to the transactions contemplated by this Agreement. In the event of any such loss, expense, claim, damage or liability (whether or not arising before the Effective Time), (i) the Company shall pay the reasonable fees and expenses of counsel selected by the Indemnified Parties, which counsel shall be reasonably satisfactory to the Company (which consent shall not be unreasonably withheld), promptly after statements therefor are received and otherwise advance to such Indemnified Party upon request reimbursement of documented expenses reasonably incurred, in either case to the extent not prohibited by the Iowa Act or the Illinois Act, (ii) the Company will cooperate in the defense of any such matter and (iii) any determination required to be made with respect to whether an Indemnified Party's conduct complies with the standards set forth under the Iowa Act or the Illinois Act and the Company's Articles of Incorporation or by-Laws shall be made by independent counsel mutually acceptable to the Company and the Indemnified Party; provided, however, that the Company shall not be liable for any settlement effected without its written consent (which consent shall not be unreasonably withheld). The Indemnified Parties as a group may retain only one law firm with respect to each related matter except to the extent there is, in the sole opinion of counsel to an Indemnified Party, under applicable standards of professional conduct, a conflict on any significant issue between positions of any two or more Indemnified Parties.

(b) *Insurance.* For a period of six (6) years after the Effective Time, the Company shall cause to be maintained in effect the policies of directors' and officers' liability insurance maintained by Iowa-Illinois, Resources and Midwest Power; provided that the Company may substitute therefor policies of at least the

same coverage containing terms that are no less advantageous with respect to matters occurring prior to the Effective Time to the extent such liability insurance can be maintained annually at a cost to the Company not greater than 150 percent of the respective current annual premiums for their directors' and officers' liability insurance; provided, further, that if such insurance cannot be so maintained or obtained at such cost, the Company shall maintain or obtain as much of such insurance for each of Iowa-Illinois, Resources and Midwest Power as can be so maintained or obtained at a cost equal to 150 percent of the respective current annual premiums of each of Iowa-Illinois, Midwest Power and Resources for their directors' and officers' liability insurance.

(c) *Successors.* In the event that the Company or any of its successors or assigns (i) consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any person, then and in either such case, proper provision shall be made so that the successors and assigns of the Company shall assume the obligations set forth in this Section 7.5.

(d) *Survival of Indemnification.* To the fullest extent not prohibited by law, from and after the Effective Time, all rights to indemnification as of the date hereof in favor of the employees, agents, directors or officers of Iowa-Illinois and its subsidiaries and Resources and its subsidiaries with respect to their respective activities as such prior to the Effective Time, as provided in their respective articles of incorporation or by-laws, in effect on the date thereof or otherwise in effect on the date hereof, shall survive the Merger and shall continue in full force and effect for a period of not less than six (6) years from the Effective Time.

SECTION 7.6 *Disclosure Schedules.*

(a) Within ten days following the date of execution of this Agreement, (i) Resources shall deliver to Iowa-Illinois a schedule ("Resources Disclosure Schedule"), which shall be accompanied by a certificate signed by the chief financial officer of Resources stating that the Resources Disclosure Schedule is being delivered pursuant to this Section 7.6(a)(i) and (ii) Iowa-Illinois shall deliver to Resources a schedule ("Iowa-Illinois Disclosure Schedule"), which shall be accompanied by a certificate signed by the chief financial officer of Iowa-Illinois stating that the Iowa-Illinois Disclosure Schedule is being delivered pursuant to this Section 7.6(a)(ii). The Resources Disclosure Schedule and the Iowa-Illinois Disclosure Schedule are collectively referred to herein as the "Disclosure Schedules." The Disclosure Schedules, when so delivered, shall be deemed to constitute an integral part of this Agreement and to modify the respective representations, warranties, covenants or agreements of the parties hereto contained herein to the extent that such representations,

warranties, covenants or agreements expressly refer to the Disclosure Schedules. Anything to the contrary contained herein or in the Disclosure Schedules notwithstanding, any and all statements, representations, warranties or disclosures set forth in the Disclosure Schedules shall be deemed to have been made on and as of the date hereof.

(b) For the period of 20 days (or, if extended pursuant to the following sentence, 40 days) following the date of the execution of this Agreement (the "Due Diligence Period"), each of Resources and Iowa-Illinois shall provide the other party and its representatives access pursuant to Section 7.1 in order for the other party to complete its due diligence investigation of the party providing access pursuant to Section 7.1. Upon the expiration of the Due Diligence Period, either Resources or Iowa-Illinois may terminate this Agreement pursuant to and in accordance with Section 9.1(i) (in the case of a termination by Resources) or Section 9.1(j) (in the case of a termination by Iowa-Illinois); provided, however, that it is expressly understood and agreed that, if neither Resources nor Iowa-Illinois terminates this Agreement pursuant to and in accordance with Section 9.1(i) or 9.1(j), as the case may be, then neither Resources nor Iowa-Illinois may thereafter assert a failure of the condition set forth in Section 8.2(b) or in Section 8.3(b), as the case may be, based on any information provided to it during the Due Diligence Period. Either Iowa-Illinois or Resources may extend the Due Diligence Period until 40 days after the date of execution hereof by delivering written notice to Resources or Iowa-Illinois, as the case may be, before 5:00 p.m. Central Time on the 20th day following the date of execution of this Agreement if it determines in good faith that it will be unable to complete its due diligence investigation of the other party and its subsidiaries by the conclusion of such 20th day.

SECTION 7.7 *Public Announcements.* Subject to each party's disclosure obligations imposed by law, Midwest Power, Resources and Iowa-Illinois will cooperate with each other in the development and distribution of all news releases and other public information disclosures with respect to this Agreement or any of the transactions contemplated hereby and shall not issue any public announcement or statement prior to consultation with the other party.

SECTION 7.8 *Rule 145 Affiliates.* Iowa-Illinois and Resources shall each identify in a letter to the Company all persons who are, at the Closing Date, "affiliates" of Iowa-Illinois or of Resources, as the case may be, as such term is used in Rule 145 under the Securities Act. Iowa-Illinois and Resources shall each use their best efforts to cause their respective affiliates to deliver to the Company on or prior to the Closing Date a written certificate substantially in the form described in Section 8.2(g) and Section 8.3(g).

SECTION 7.9 *No Solicitations.* No party hereto shall, and each such party shall cause its subsidiaries not to, permit any of its Representatives to, and shall use its best efforts to cause such persons not to, directly or indirectly: initiate, solicit or encourage, or take any action to facilitate the making of any offer or proposal which constitutes or is reasonably likely to lead to any Takeover Proposal (as defined below), or, in the event of any unsolicited Takeover Proposal, engage in negotiations or provide any confidential information or data to any person relating to any Takeover Proposal. Each party hereto shall notify the other party orally and in writing of any such inquiries, offers or proposals (including, without limitation, the terms and conditions of any such proposal and the identity of the person making it), within 24 hours of the receipt thereof and shall give the other party five days' advance notice of any agreement to be entered into with or any information to be supplied to any person making such inquiry, offer or proposal in accordance with the last sentence of this Section 7.9. Each party hereto shall immediately cease and cause to be terminated all existing discussions and negotiations, if any, with any parties conducted heretofore with respect to any Takeover Proposal. As used in this Section 7.9, "Takeover Proposal" shall mean any tender or exchange offer, proposal for a merger, consolidation or other business combination involving Midwest Power, Resources or Iowa-Illinois, or any proposal or offer to acquire in any manner a substantial equity interest in, or a substantial portion of the assets of Midwest Power, Resources or Iowa-Illinois, other than pursuant to the transactions contemplated by this Agreement. Notwithstanding anything in this Section 7.9 to the contrary, unless the Resources Shareholders' Approval, the Midwest Power Shareholders' Approval and the Iowa-Illinois Shareholders' Approval have all been obtained, any party hereto may, to the extent required by the fiduciary duties of the Board of Directors of such party under applicable law (as determined in good faith by the Board of Directors of such party based on the advice of outside counsel), participate in discussions or negotiations with, furnish information to, and afford access to the properties, books and records of such party and its subsidiaries to any person in connection with a possible Takeover Proposal with respect to such party by such person.

SECTION 7.10 *Expenses.* Subject to Section 9.3, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses, except that those expenses incurred in connection with printing the Joint Proxy/Registration Statement, as well as the filing fee relating thereto, shall be paid 50% by Resources and 50% by Iowa-Illinois.

SECTION 7.11 *Board of Directors.*

(a) *Initial Composition.* The initial number of directors comprising the Board of Directors of the Company at the Effective

Time shall be nineteen (19) persons, eleven (11) of whom shall be designated by Resources prior to the Effective Time and eight (8) of whom shall be designated by Iowa-Illinois prior to the Effective Time; provided, however, that if prior to the Effective Time any of such designees shall decline or otherwise be unable to serve, the party which designated such person shall be entitled to designate a replacement.

(b) *Initial Board Committees.* The committees of the Board of Directors of the Company at the Effective Time shall consist of an equal number of Resources Designees and Iowa-Illinois Designees. The initial Board committees and their respective chair and vice-chair designations shall be as set forth on Exhibit E.

(c) *Composition After Transition.* The parties recognize the desirability of an objective of reducing the size of the Board of Directors of the Company in an orderly manner, while preserving the benefits associated with the familiarity of management, policies, and operations derived from the ratio of Iowa-Illinois Designees (as defined in Section 10.8) to Resources Designees (as defined in Section 10.8) established in Section 7.11(a). Toward that objective, the Board of Directors, after the Effective Time, shall implement a plan to reduce the number of outside directors to no more than 14 by June 1, 1997. The Nominating Committee of the Board shall be responsible for the initial preparation of the plan. The plan, as implemented, shall contain at least the following three features:

- (i) until June 1, 1997 the mandatory retirement age of seventy (70) for directors shall be waived to the extent necessary to maintain the ratio of Iowa-Illinois Designees to Resources Designees established in Section 7.11(a);
- (ii) any nomination of persons for election to the Board of Directors of the Company or designation of persons for the filling of vacancies on the Board (other than vacancies resulting from a reduction in the size of the Board in accordance with this Section 7.11(c)) shall be effectuated by nominating or selecting, as the case may be, Iowa-Illinois Designees or Resources Designees so as to maintain the ratio of Iowa-Illinois Designees to Resources Designees established in Section 7.11(a); and
- (iii) any reduction in the number of directors prior to June 1, 1997 shall be accomplished so as to maintain the ratio of Iowa-Illinois Designees to Resources Designees established in Section 7.11(a) until June 1, 1997.

SECTION 7.12 *Officers.* On or prior to the Effective Time, the Company shall enter into employment agreements ("Employment

Agreements") with Russell Christiansen and Stanley Bright, respectively, substantially in the form of Exhibits F-1 and F-2, attached hereto. From and after the Effective Time, pursuant to the Employment Agreements and the terms hereof, Mr. Christiansen and Mr. Bright shall hold the respective positions and perform the duties set forth in Exhibit F-3. The terms and provisions of the Employment Agreements, this Section 7.12 and Exhibit F-3 shall not be modified prior to December 31, 1999, unless and until the terms of such modification are approved by (i) Mr. Christiansen, in the case of a proposed modification to his Employment Agreement, or Mr. Bright, in the case of a proposed modification to his Employment Agreement, and (ii) a vote of sixty-six and two-thirds percent (66-2/3%) of the members of the Board of Directors of the Company.

SECTION 7.13 *Employment Agreements and Workforce Matters. Certain Employee Agreements.* The Company shall after the Effective Time honor, without modification, all contracts, agreements, collective bargaining agreements and commitments of the parties prior to the date hereof which apply to any current or former employee or current or former director of any of the parties hereto; provided, however, that this undertaking is not intended to prevent the Company from enforcing such contracts, agreements, collective bargaining agreements and commitments in accordance with their terms, including, without limitation, any reserved right to amend, modify, suspend, revoke or terminate any such contract, agreement, collective bargaining agreement or commitment.

SECTION 7.14 *Severance Plan.* At the Effective Time the Severance Plan attached hereto as Exhibit G shall become effective.

SECTION 7.15 *Post-Merger Operations.*

(a) Following the Effective Time, the Company shall maintain (i) its corporate headquarters, the principal office of the Chief Executive Officer and the corporate functions (without limitation) of finance, treasury, secretary, shareholder services, human resources and general counsel in Des Moines, Iowa; (ii) the headquarters of the electric division and the office of the most senior executive of such division in Davenport, Iowa; and (iii) the headquarters of the gas division and the office of the most senior executive of such division in Sioux City, Iowa. This provision shall not be modified prior to June 1, 1997, unless and until the terms of such modification are approved by a vote of sixty-six and two-thirds percent (66-2/3%) of the members of the Board of Directors of the Company.

(b) During the period from the Effective Time until June 1, 1997, the Company's name, as agreed upon by the Resources board of directors and the Iowa-Illinois board of directors prior to the Effective Time, shall not be modified unless and until the terms

of such modification are approved by a vote of sixty-six and two-thirds percent (66-2/3%) of the members of the Board of Directors of the Company and any required vote of the shareholders of the Company under applicable law.

SECTION 7.16 *Purchase or Redemption of Iowa-Illinois Preferred Stock.* Iowa-Illinois shall purchase or call for redemption all issued and outstanding shares of Iowa-Illinois Preferred Stock in accordance with the terms of the Iowa-Illinois Articles of Incorporation such that at the date of the Iowa-Illinois Special Meeting no such shares shall be outstanding or entitled to vote on the approval of this Agreement and the transactions contemplated hereby.

ARTICLE VIII

CONDITIONS

SECTION 8.1 *Conditions to Each Party's Obligations to Effect the Merger.* The respective obligations of each party to effect the Merger shall be subject to the satisfaction on or prior to the Closing Date of the following conditions, except, to the extent permitted by applicable law, that such conditions may be waived in writing pursuant to Section 9.5 by the joint action of the parties hereto:

(a) *Shareholder Approvals.* The Resources Shareholders' Approval the Midwest Power Shareholders' Approval and the Iowa-Illinois Shareholders' Approval shall have been obtained.

(b) *No Injunction.* No temporary restraining order or preliminary or permanent injunction or other order by any federal or state court preventing consummation of the Merger shall have been issued and continuing in effect, and the Merger and the other transactions contemplated hereby shall not have been prohibited under any applicable federal or state law or regulation.

(c) *Registration Statement.* The Registration Statement shall have become effective in accordance with the provisions of the Securities Act, and no stop order suspending such effectiveness shall have been issued and remain in effect.

(d) *Listing of Shares.* The shares of Company Common Stock and the shares of \$1.7375 Series of Company Preferred Stock issuable in the Merger shall have been approved for listing on the NYSE upon official notice of issuance.

(e) *Statutory Approvals.* The Iowa-Illinois Required Statutory Approvals and the Resources Required Statutory Approvals shall have been obtained at or prior to the Effective Time, such approvals shall have become Final Orders (as hereinafter defined) and such Final Orders shall not impose terms or conditions which,

in the aggregate, would have, or insofar as reasonably can be foreseen, could have, a material adverse effect on the business, operations, properties, assets, condition (financial or other), prospects or the results of operations of Iowa-Illinois as if it were organized as a separate division of the Company or a material adverse effect on the business, operations, properties, assets, condition (financial or other), prospects or the results of operations of Midwest Power as if it were organized as a separate division of the Company, or which would be inconsistent with the agreements of the parties contained herein. A "Final Order" means action by the relevant regulatory authority which has not been reversed, stayed, enjoined, set aside, annulled or suspended, with respect to which any waiting period prescribed by law before the transactions contemplated hereby may be consummated has expired, and as to which all conditions to the consummation of such transactions prescribed by law, regulation or order have been satisfied.

(f) *Pooling.* Each of Iowa-Illinois and Resources shall have received a letter of its independent public accountants, dated the Closing Date, in form and substance reasonably satisfactory to Iowa-Illinois and Resources, as the case may be, stating that the Merger will qualify as a pooling of interests transaction under GAAP and applicable SEC regulations.

(g) All applicable waiting periods under the HSR Act shall have expired or been terminated.

SECTION 8.2 Conditions to Obligations of Resources and Midwest Power to Effect the Merger. The obligations of Resources and Midwest Power to effect the Merger shall be further subject to the satisfaction, on or prior to the Closing Date, of the following conditions, except as may be waived by Resources and Midwest Power in writing pursuant to Section 9.5:

(a) *Performance of Obligations of Iowa-Illinois.* Iowa-Illinois shall have performed in all material respects its agreements and covenants contained in or contemplated by this Agreement required to be performed by it at or prior to the Effective Time.

(b) *Representations and Warranties.* The representations and warranties of Iowa-Illinois set forth in this Agreement shall be true and correct in all material respects (or where any statement in a representation or warranty expressly includes a standard of materiality, such statement shall be true and correct in all respects) as of the date hereof (except to the extent such representations and warranties speak as of an earlier or later date) and as of the Closing Date as if made on and as of the Closing Date, except as otherwise contemplated by this Agreement.

(c) *Iowa-Illinois Material Adverse Effect.* No Iowa-Illinois Material Adverse Effect shall have occurred and there shall exist

no fact or circumstance which would, or insofar as reasonably can be foreseen, could, have an Iowa-Illinois Material Adverse Effect.

(d) *Resources Required Consents.* The material Resources Required Consents shall have been obtained.

(e) *Closing Certificate.* Midwest Power and Resources shall have received a certificate on behalf of Iowa-Illinois signed by the chief executive officer and the chief financial officer of Iowa-Illinois, dated the Closing Date, to the effect that, to the best of each such officer's knowledge, the conditions set forth in Sections 8.2(a), 8.2(b), 8.2(c) and 8.2(d) have been satisfied.

(f) *Tax Opinion.* Resources shall have received an opinion of its special tax counsel, Sidley & Austin, in form and substance satisfactory to Resources, dated the Effective Time, or a ruling from the IRS, in form and substance satisfactory to Resources, to the effect that Resources and Midwest Power and their respective shareholders (except to the extent any Resources or Midwest Power shareholders receive cash in the Merger) will recognize no gain or loss for federal income tax purposes as a result of consummation of the Merger and in connection with the delivery of its opinion pursuant to this Section 8.2(f), Sidley & Austin may request certificates of officers of Resources and Midwest Power.

(g) *Affiliate Certificates.* The Company shall have received a certificate dated the Closing Date from each person who is an affiliate of Iowa-Illinois to the effect that: (i) such person has no present plan or intention to transfer, sell or otherwise dispose of any Company Common Stock such person may receive as a result of the Merger; (ii) until such time as financial results covering at least thirty (30) days of post-closing combined operations of Iowa-Illinois, Resources, Midwest Power and the Company have been published, such person shall not sell such Company Common Stock in any transaction, private or public, or in any other way reduce such person's risk relative to any Company Common Stock that such person receives as a result of the Merger; (iii) any future disposition by such person of any Company Common Stock such person receives as the result of the Merger will be accomplished in accordance with Rule 145(d) under the Securities Act; and (iv) such person agrees that the following legend be placed upon the certificates evidencing ownership of the Company Common Stock that such person receives as a result of the Merger:

THESE SHARES ARE SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER APPLICABLE TO AFFILIATES OF THE ISSUER AS SET FORTH IN RULES 144 AND 145 PROMULGATED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE SOLD, HYPOTHECATED, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO THE PROCEDURES DESCRIBED THEREIN.

(h) *Fairness Opinion.* The fairness opinion letter from PaineWebber Incorporated to Resources referred to in Section 7.2(d)(ii) shall not, in good faith, have been withdrawn by

PaineWebber Incorporated as of the date it issued such opinion letter based upon its having obtained information material to its opinions set forth in such letter, which information was in existence but unavailable to it at the time it issued such opinion letter and which, had such existing information been in its possession at such time, would have caused it not to have issued such opinion letter.

(i) The Company shall have duly executed and delivered to Russell Christiansen an employment agreement substantially in the form of Exhibit F-1 attached hereto, and such agreement shall be in full force and effect.

SECTION 8.3 *Conditions to Obligations of Iowa-Illinois to Effect the Merger.* The obligations of Iowa-Illinois to effect the Merger shall be further subject to the satisfaction, prior to the Closing Date, of the following conditions, except as may be waived by Iowa-Illinois in writing pursuant to Section 9.5:

(a) *Performance of Obligations of Resources and Midwest Power.* Each of Resources and Midwest Power shall have performed in all material respects its agreements and covenants contained in or contemplated by this Agreement required to be performed by each of them at or prior to the Effective Time.

(b) *Representations and Warranties.* The representations and warranties of each of Resources and Midwest Power set forth in this Agreement shall be true and correct in all material respects (or where any statement in a representation and warranty expressly includes a standard of materiality, such statement shall be true and correct in all respects) as of the date hereof (except to the extent such representations and warranties speak as of an earlier or later date) and as of the Closing Date as if made on and as of the Closing Date, except as otherwise contemplated by this Agreement.

(c) *Resources Material Adverse Effect.* No Resources Material Adverse Effect shall have occurred and there shall exist no fact or circumstance which would, or insofar as reasonably can be foreseen, could, have a Resources Material Adverse Effect.

(d) *Iowa-Illinois Required Consents.* The material Iowa-Illinois Required Consents shall have been obtained.

(e) *Closing Certificate.* Iowa-Illinois shall have received a certificate on behalf of Midwest Power and Resources signed by their respective chief executive officers and chief financial officers, dated the Closing Date, to the effect that, to the best of each such officer's knowledge, the conditions set forth in Sections 8.3(a), 8.3(b), 8.3(c) and 8.3(d) have been satisfied.

(f) *Tax Opinion.* Iowa-Illinois shall have received an opinion of its special tax counsel, LeBoeuf, Lamb, Greene &

MacRae, in form and substance satisfactory to Iowa-Illinois, dated the Effective Time, or a ruling from the IRS, in form and substance satisfactory to Iowa-Illinois, to the effect that Iowa-Illinois and its shareholders (except to the extent any Iowa-Illinois shareholders receive cash in the Merger) will recognize no gain or loss for federal income tax purposes as a result of consummation of the Merger and in connection with the delivery of its opinion pursuant to this Section 8.3(f), LeBoeuf, Lamb, Greene & MacRae may request certificates of officers of Iowa-Illinois;

(g) *Affiliate Certificates.* The Company shall have received a certificate dated the Closing Date from each person who is an affiliate of Resources to the effect that: (i) such person has no present plan or intention to transfer, sell or otherwise dispose of any Company Common Stock such person may receive as a result of the Merger; (ii) until such time as financial results covering at least thirty (30) days of post-closing combined operations of Iowa-Illinois, Resources, Midwest Power and the Company have been published, such person shall not sell such Company Common Stock in any transaction, private or public, or in any other way reduce such person's risk relative to any Company Common Stock that such person receives as a result of the Merger; (iii) any future disposition by such person of any Company Common Stock such person receives as the result of the Merger will be accomplished in accordance with Rule 145(d) under the Securities Act; and (iv) such person agrees that the following legend be placed upon the certificate evidencing ownership of the Company Common Stock that such person receives as a result of the Merger:

THESE SHARES ARE SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER APPLICABLE TO AFFILIATES OF THE ISSUER AS SET FORTH IN RULES 144 AND 145 PROMULGATED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE SOLD, HYPOTHECATED, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO THE PROCEDURES DESCRIBED THEREIN.

(h) *Fairness Opinion.* The fairness opinion letter from Dillon, Read & Co. Inc. to Iowa-Illinois referred to in Section 7.2(d)(i) shall not, in good faith, have been withdrawn by Dillon, Read & Co. Inc. as of the date it issued such opinion letter based upon its having obtained information material to its opinion set forth in such letter, which information was in existence but unavailable to it at the time it issued such opinion letter and which, had such existing information been in its possession at such time, would have caused it not to have issued such opinion letter.

(i) The Company shall have duly executed and delivered to Stanley Bright an employment agreement substantially in the form of Exhibit F-2 attached hereto, and such agreement shall be in full force and effect.

ARTICLE IX

TERMINATION, AMENDMENT AND WAIVER

SECTION 9.1 Termination. This Agreement may be terminated at any time prior to the Closing Date, whether before or after approval by the shareholders of the respective parties hereto contemplated by this Agreement:

(a) by mutual written consent of the Boards of Directors of Midwest Power, Resources and Iowa-Illinois;

(b) by any party hereto, by written notice to the other, if the Effective Time shall not have occurred on or before December 31, 1995; provided that such date shall automatically be changed to June 30, 1996 if on December 31, 1995 the condition set forth in Section 8.1(e) has not been satisfied or waived and the other conditions to the consummation of the transactions contemplated hereby are then capable of being satisfied, and the approvals required by Section 8.1(e) which have not yet been obtained are being pursued with diligence; and provided, further, that the right to terminate this Agreement under this Section 9.1(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Effective Time to occur on or before such date;

(c) by any party hereto, by written notice to the other party, if the Iowa-Illinois Shareholders' Approval shall not have been obtained at a duly held Iowa-Illinois Special Meeting, including any adjournments thereof; the Resources Shareholders' Approval shall not have been obtained at a duly held Resources Special Meeting, including any adjournments thereof; or the Midwest Power Shareholders' Approval shall not have been obtained at a duly held Midwest Power Special Meeting, including any adjournments thereof;

(d) by any party hereto, if any state or federal law, order, rule or regulation is adopted or issued, which has the effect, as supported by the written opinion of outside counsel for such party, of prohibiting the Merger, or by any party hereto, if any court of competent jurisdiction in the United States or any State shall have issued an order, judgment or decree permanently restraining, enjoining or otherwise prohibiting the Merger, and such order, judgement or decree shall have become final and nonappealable;

(e) by Iowa-Illinois, upon two days' prior notice to Resources, if, as a result of a tender offer by a party other than Resources or any of its affiliates or any written offer or proposal with respect to a merger, sale of a material portion of its assets or other business combination (each, a "Business Combination") by a party other than Resources or any of its

affiliates, the Board of Directors of Iowa-Illinois determines in good faith that their fiduciary obligations under applicable law require that such tender offer or other written offer or proposal be accepted; provided, however, that (i) the Board of Directors of Iowa-Illinois shall have been advised in writing by outside counsel that notwithstanding a binding commitment to consummate an agreement of the nature of this Agreement entered into in the proper exercise of their applicable fiduciary duties, such fiduciary duties would also require the directors to reconsider such commitment as a result of such tender offer or other written offer or proposal; and, (ii) prior to any such termination, Iowa-Illinois shall, and shall cause its respective financial and legal advisors to, negotiate with Resources to make such adjustments in the terms and conditions of this Agreement as would enable Iowa-Illinois to proceed with the transactions contemplated herein; provided, further, that Iowa-Illinois and Resources acknowledge and affirm that notwithstanding anything in this Section 9.1(e) to the contrary, the parties hereto intend this Agreement to be an exclusive agreement and, accordingly, nothing in this Agreement is intended to constitute a solicitation of an offer or proposal for a Business Combination, it being acknowledged and agreed that any such offer or proposal would interfere with the strategic advantages and benefits which the parties expect to derive from the Merger.

(f) by Resources, upon two days' prior notice to Iowa-Illinois if, as a result of a tender offer by a party other than Iowa-Illinois or any of its affiliates or any written offer or proposal with respect to a Business Combination by a party other than Iowa-Illinois or any of its affiliates, the Board of Directors of Resources determines in good faith that their fiduciary obligations under applicable law require that such tender offer or other written offer or proposal be accepted; provided, however, that (i) the Board of Directors of Resources shall have been advised in writing by outside counsel that notwithstanding a binding commitment to consummate an agreement of the nature of this Agreement entered into in the proper exercise of their applicable fiduciary duties, such fiduciary duties would also require the directors to reconsider such commitment as a result of such tender offer or other written offer or proposal; and (ii) prior to any such termination, Resources shall, and shall cause its respective financial and legal advisors to, negotiate with Iowa-Illinois to make such adjustments in the terms and conditions of this Agreement as would enable Resources to proceed with the transactions contemplated herein; provided, further, that Iowa-Illinois and Resources acknowledge and affirm that notwithstanding anything in this Section 9.1(f) to the contrary, the parties hereto intend this Agreement to be an exclusive agreement and, accordingly, nothing in this Agreement is intended to constitute a solicitation of an offer or proposal for a Business Combination, it being acknowledged and agreed that any such offer or proposal would interfere with the strategic advantages and benefits which the parties expect to derive from

the Merger.

(g) by Iowa-Illinois, by written notice to Resources, if (i) there shall have been any material breach of any representation or warranty, or any material breach of any covenant or agreement of Resources or Midwest Power, hereunder, and such breach shall not have been remedied within twenty days after receipt by Resources of notice in writing from Iowa-Illinois, specifying the nature of such breach and requesting that it be remedied; or (ii) the Board of Directors of Resources (A) shall withdraw or modify in any manner adverse to Iowa-Illinois its approval of this Agreement and the transactions contemplated hereby or its recommendation to its shareholders regarding the approval of this Agreement, (B) shall fail to reaffirm such approval or recommendation upon the request of Iowa-Illinois, (C) shall approve or recommend any acquisition by a third party of Resources or a material portion of its assets or any tender offer for the Resources Common Stock, or (D) shall resolve to take any of the actions specified in clause (A), (B) or (C); provided, however, that Iowa-Illinois and Resources acknowledge and affirm that notwithstanding anything in this Section 9.1(g)(ii) to the contrary, the parties hereto intend this Agreement to be an exclusive agreement and, accordingly, nothing in this Agreement is intended to constitute a solicitation of an offer or proposal for a Business Combination, it being acknowledged and agreed that any such offer or proposal would interfere with the strategic advantages and benefits which the parties expect to derive from the Merger.

(h) by Resources, by written notice to Iowa-Illinois, if (i) there shall have been any material breach of any representation or warranty, or any material breach of any covenant or agreement of Iowa-Illinois, hereunder, and such breach shall not have been remedied within twenty days after receipt by Iowa-Illinois of notice in writing from Resources, specifying the nature of such breach and requesting that it be remedied; or (ii) the Board of Directors of Iowa-Illinois (A) shall withdraw or modify in any manner adverse to Resources its approval of this Agreement and the transactions contemplated hereby or its recommendation to its shareholders regarding the approval of this Agreement, (B) shall fail to reaffirm such approval or recommendation upon the request of Resources, (C) shall approve or recommend any acquisition by a third party of Iowa-Illinois or a material portion of its assets or any tender offer for the Iowa-Illinois Common Stock, or (D) shall resolve to take any of the actions specified in clause (A), (B) or (C); provided, however, that Iowa-Illinois and Resources acknowledge and affirm that notwithstanding anything in this Section 9.1(h)(ii) to the contrary, the parties hereto intend this Agreement to be an exclusive agreement and, accordingly, nothing in this Agreement is intended to constitute a solicitation of an offer or proposal for a Business Combination, it being acknowledged and agreed that any such offer or proposal would interfere with the strategic advantages and benefits which the parties expect to derive from the Merger.

(i) by Resources by written notice delivered to Iowa-Illinois prior to 5:00 p.m. Central Time on September 4, 1994, if Resources reasonably determines that its due diligence investigation of Iowa-Illinois and its subsidiaries uncovered information or matters which are (i) reasonably likely to have a material adverse effect on the business, operations, properties, assets, condition (financial or other), prospects or the results of operations of Iowa-Illinois as if it were organized as a separate division of the Company (an "Iowa-Illinois Divisional Adverse Effect") or a material adverse effect on the business, operations, properties, assets, condition (financial or other), prospects or the results of operations of Resources as if it were organized as a separate division of the Company (a "Resources Divisional Adverse Effect") or (ii) in the event the Merger is consummated, reasonably likely to have a material adverse effect on the holders of Resources Common Stock.

(j) by Iowa-Illinois by written notice delivered to Resources prior to 5:00 p.m. Central Time on September 4, 1994, if Iowa-Illinois reasonably determines that its due diligence investigation of Resources and its subsidiaries uncovered information or matters which are (i) reasonably likely to have a Iowa-Illinois Divisional Adverse Effect or a Resources Divisional Adverse Effect or (ii) in the event the Merger is consummated, reasonably likely to have a material adverse effect on the holders of Iowa-Illinois Common Stock.

SECTION 9.2 *Effect of Termination.* In the event of termination of this Agreement by either Resources or Iowa-Illinois pursuant to Section 9.1, there shall be no liability on the part of either Iowa-Illinois, Resources or Midwest Power or their respective officers or directors hereunder, except Section 7.10 and 9.3 and the agreement contained in Section 6.1(v) and in the last sentence of Section 7.1 shall survive the termination.

SECTION 9.3 *Termination Fee; Expenses.*

(a) *Termination Fee.* If this Agreement is terminated (i) at such time that this Agreement is terminable pursuant to one of Section 9.1(g)(i) or Section 9.1(h)(i) (other than solely pursuant to a non-curable breach of a representation or warranty unless such breach was willful) but not the other, or (ii) is terminated pursuant to Section 9.1(e) or Section 9.1(f), then (A) in the event of a termination pursuant to Section 9.1(f) or Section 9.1(g)(i), Midwest Power shall pay to Iowa-Illinois, and (B) in the event of a termination pursuant to Section 9.1(e) or Section 9.1(h)(i), Iowa-Illinois shall pay to Midwest Power, promptly (but not later than five business days after such notice is received pursuant to Section 9.1(g)(i) or Section 9.1(h)(i) or is given pursuant to Section 9.1(e) or Section 9.1(f)) an amount equal to \$15 million in cash if required to be paid by Iowa-Illinois and \$15 million in cash if required to be paid by Midwest Power, plus in each case cash in an amount equal to all documented out-of-

pocket expenses and fees incurred by the other party (including, without limitation, fees and expenses payable to all legal, accounting, financial, public relations and other professional advisors arising out of, in connection with or related to the Merger or the transactions contemplated by this Agreement) not in excess of \$6 million.

(b) *Additional Termination Fee and Subsequent Transaction Fee.* If (i) this Agreement (x) is terminated by any party pursuant to Section 9.1(e) or Section 9.1(f), (y) is terminated following a failure of the shareholders of Midwest Power or Resources or Iowa-Illinois to grant the necessary approvals described in Section 4.13 or Section 5.13 or (z) is terminated as a result of such party's material breach of Section 7.4, and (ii) at the time of such termination or prior to the meeting of such party's shareholders there shall have been a third-party tender offer for shares of, or a third-party offer or proposal with respect to a Business Combination involving, such party or its affiliates which at the time of such termination or of the meeting of such party's shareholders shall not have been (x) rejected by such party and its Board of Directors and (y) withdrawn by the third-party and (iii) within 2½ years of any such termination described in clause (i) above, the party or its affiliate which is the subject of the tender offer or offer or proposal with respect to a Business Combination ("Target Party") becomes a subsidiary of such offeror or a subsidiary of an affiliate of such offeror, or merges with and into the offeror or a subsidiary or affiliate of the offeror or enters into a definitive agreement to consummate a Business Combination with such offeror or affiliate thereof, then (A) in the event Resources or one of its affiliates is the Target Party, Midwest Power shall pay to Iowa-Illinois and (B) in the event Iowa-Illinois or one of its affiliates is the Target Party, Iowa-Illinois shall pay to Midwest Power, at the closing of the transaction (and as a condition to the closing) in which such Target Party becomes a subsidiary or such Business Combination occurs ("Subsequent Transaction"), (1) a termination fee equal to \$30 million in cash if required to be paid by Iowa-Illinois and \$30 million in cash if required to be paid by Midwest Power plus (2) a Subsequent Transaction fee payable in cash equal to 20% of the difference between (I) \$815,376,077 (if Resources or any of its affiliates is the Target Party), or \$637,751,871 (if Iowa-Illinois or any of its affiliates is the Target Party) and (II) the number of shares of Target Party common stock outstanding at the time of the closing of the Subsequent Transaction multiplied by the higher of (a) the average daily closing price of Target Party common stock on the NYSE, or if such common stock is not admitted to trading on the NYSE, on the market on which such common stock is traded which has the highest volume of trades, on the ten NYSE trading days immediately preceding the date of such closing, or (b) the amount of cash plus the fair market value on the day prior to such closing of any non-cash consideration to be received for each share of Target Party common stock by the holder thereof in the Subsequent Transaction (including in such fair

market value the fair market value of any Target Party common stock retained by such holder as a result of the Subsequent Transaction). The fair market value of any such non-cash consideration shall be determined by a nationally recognized accounting firm selected jointly by Resources and Iowa-Illinois at least 60 days prior to the date of such closing. The Target Party shall pay all of the fees and expenses of such accounting firm for making such determination. The Target Party shall agree to indemnify such accounting firm against any and all liabilities, costs and expenses of whatever nature such accounting firm may incur in connection with its determination of such fair market value. The Target Party shall provide to such accounting firm such security for the fee and expense payment and indemnification obligations of the Target Party to such accounting firm as it may request and the other party shall have no liability for any of such fees and expenses nor shall it have any obligation to indemnify such accounting firm for anything.

(c) *Expenses.* The parties agree that the agreements contained in this Section 9.3 are an integral part of the transactions contemplated by the Agreement and constitute liquidated damages and not a penalty. If one party fails to pay promptly to the other any expense and/or fee due hereunder, the defaulting party shall pay the costs and expenses (including legal fees and expenses) in connection with any action, including the filing of any lawsuit or other legal action, taken to collect payment, together with interest on the amount of any unpaid fee at the publicly announced prime rate of Citibank, N.A. from the date such fee was required to be paid.

(d) *Limitation of Fees.* Notwithstanding anything herein to the contrary, the aggregate amount payable by Resources and its affiliates pursuant to Section 9.3(a) and Section 9.3(b) shall not exceed \$51 million and the aggregate amount payable by Iowa-Illinois and its affiliates pursuant to Section 9.3(a) and Section 9.3(b) shall not exceed \$51 million.

SECTION 9.4 *Amendment.* This Agreement may be amended by the directors of the parties hereto, at any time before or after approval hereof by the shareholders of Iowa-Illinois, Midwest Power and Resources and prior to the Effective Time, but after such approvals, no such amendment shall (i) alter or change the amount or kind of shares, rights or any of the proceeds of the conversion under Article II, or (ii) alter or change any of the terms and conditions of this Agreement if any of the alterations or changes, alone or in the aggregate, would materially adversely affect the rights of holders of Iowa-Illinois Common Stock, Iowa-Illinois Preferred Stock, Iowa-Illinois Preference Stock, Midwest Power Preferred Stock or Resources Common Stock. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

SECTION 9.5 *Waiver*. At any time prior to the Effective Time, the parties hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid if set forth in an instrument in writing signed on behalf of such party.

ARTICLE X

GENERAL PROVISIONS

SECTION 10.1 *Non-Survival of Representations, Warranties and Agreements*. No representations, warranties and agreements in this Agreement shall survive the Merger, except as otherwise provided in this Agreement and except for the agreements contained in this Section 10.1 and in Article II, Section 6.1(v), the last sentence of Section 7.1, Section 7.5, Section 7.10, Section 7.11, Section 7.12, Section 7.13, Section 7.14, Section 7.15, Section 9.3 and Section 10.8.

SECTION 10.2 *Brokers*. Except as previously disclosed to Iowa-Illinois, Resources and Midwest Power represent and warrant that, except for PaineWebber Incorporated, their investment banking firm, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Merger or the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Resources or Midwest Power. Except as previously disclosed to Resources and Midwest Power, Iowa-Illinois represents and warrants that, except for Dillon, Read & Co. Inc., its investment banking firm, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Merger or the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Iowa-Illinois.

SECTION 10.3 *Notices*. All notices and other communications hereunder shall be in writing and shall be deemed given if (i) delivered personally, or (ii) sent by reputable overnight courier service, or (iii) telecopied (which is confirmed), or (iv) five days after being mailed by registered or certified mail (return receipt requested) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) If to Resources and/or Midwest Power, to:

Midwest Resources Inc.
Midwest Power Systems Inc.
666 Grand Avenue
P.O. Box 657
Des Moines, Iowa 50303
Attention: Chief Executive Officer
Telephone: 515-242-4300
Telecopy: 515-281-2981

with a concurrent copy to:

Sidley & Austin
One First National Plaza
Chicago, Illinois 60603
Attention: R. Todd Vieregge, P.C.
Telephone: 312-853-7470
Telecopy: 312-853-7036

(b) If to Iowa-Illinois, to:

Iowa-Illinois Gas and Electric Company
206 E. Second Street
Davenport, Iowa 52801-
Attention: Chief Executive Officer
Telephone: 319-326-7243
Telecopy: 319-326-7670

with a concurrent copy to:

LeBoeuf, Lamb, Greene & MacRae
125 West 55th Street
New York, New York 10019
Attention: Douglas W. Hawes
Telephone: 212-424-8000
Telecopy: 212-424-8500

SECTION 10.4 *Miscellaneous.* This Agreement (including the documents and instruments referred to herein) (i) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof other than the Confidentiality Agreement; (ii) shall not be assigned by operation of law or otherwise; and (iii) shall be governed by and construed in accordance with the Illinois Act, the Iowa Act and otherwise in accordance with the laws of the State of Iowa applicable to contracts executed in and to be fully performed in such State, without giving effect to its conflicts of law, rules or

principles. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect. The parties hereto agree that they will negotiate in good faith to replace any provision of this Agreement so held invalid or unenforceable, with a valid provision that is as similar as possible in substance to the invalid or unenforceable provision.

SECTION 10.5 *Interpretation.* When a reference is made in this Agreement to Sections or Exhibits, such reference shall be to a Section or Exhibit of this Agreement, respectively, unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

SECTION 10.6 *Counterparts; Effect.* This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

SECTION 10.7 *Specific Performance.* The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties hereto will be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.


SECTION 10.8 *Parties in Interest.* This Agreement shall be binding upon and inure solely to the benefit of each party hereto, and, except for rights of Indemnified Parties as set forth in Section 7.5, nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement. Notwithstanding the foregoing and any other provision of this Agreement, and in addition to any other required action of the Board of Directors of the Company, (i) a majority of the Iowa-Illinois Designees serving on the Board of Directors of the Company shall be entitled during the five year period commencing at the Effective Time (the "Five Year Period") to enforce the provisions of Sections 7.11, 7.12 and 7.14 on behalf of the Iowa-Illinois officers, directors and employees, as the case may be, and (ii) a majority of the Resources Designees serving on the Board of Directors of the Company shall be entitled during the Five Year Period to enforce the provisions of Section 7.11, 7.12 and 7.14 on behalf of the Resources officers, directors and

employees, as the case may be. Such directors' rights and remedies under the preceding sentence are cumulative and are in addition to any other rights and remedies they may have at law or in equity, but in no event shall this Section 10.8 be deemed to impose any additional duties on any such directors. The Company shall pay, at the time they are incurred, all costs, fees and expenses of such directors incurred in connection with the assertion of any rights on behalf of the persons set forth above pursuant to this Section 10.8. For purposes of this Section 10.8 and Section 7.11, a "Iowa-Illinois Designee" or "Resources Designee", as the case may be, shall at any time mean a person who at such time is a member of the Board of Directors of the Company who either (a) was designated a member of the Board of Directors of the Company by Iowa-Illinois or by Resources, as the case may be, pursuant to Section 7.11(a) or (b) was designated (before his or her initial election as a member of the Board of Directors of the Company as contemplated by Section 7.11(c)(ii)) as a "Iowa-Illinois Designee" or a "Resources Designee" by a majority of the then Iowa-Illinois Designees or Resources Designees, as the case may be.

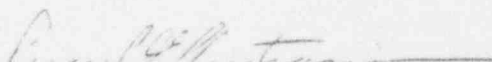
SECTION 10.9 *Further Assurances.* Each party will execute such further documents and instruments and take such further actions as may reasonably be requested by any other party in order to consummate the Merger in accordance with the terms hereof. Iowa-Illinois, Resources and Midwest Power expressly acknowledge that, although it is their current intention to effect a business combination among themselves and the Company by means of the Merger, it may be preferable for Iowa-Illinois, Resources and Midwest Power to effectuate such a business combination by means of an alternative structure in light of the conditions set forth in Sections 8.2(d) and 8.3(d). Accordingly, if the only conditions to the parties' obligations to consummate the Merger which are not satisfied or waived are receipt of Resources Required Consents, Resources Required Statutory Approvals, Iowa-Illinois Required Consents and Iowa-Illinois Required Statutory Approvals that, in the reasonable judgment of Iowa-Illinois or Resources, would be rendered unnecessary by adoption of an alternative structure that otherwise substantially preserves for Iowa-Illinois, Resources and Midwest Power the economic benefits of the Merger, Iowa-Illinois or Resources, as the case may be, shall notify the other of such judgment no later than 5:00 p.m. Central Time on December 31, 1995 and thereafter the parties shall use their best efforts to effect a business combination among themselves by means of a structure other than the Merger that so preserves such benefits; provided that all material third party and Governmental Authority declarations, filings, registrations, notices, authorizations, consents or approvals necessary for the effectuation of such alternative business combination shall have been obtained and all other conditions to the parties' obligations to consummate the Merger, as applied to such alternative business combination, shall have been satisfied or waived.

IN WITNESS WHEREOF, Midwest Resources Inc., Midwest Power Systems Inc., Iowa-Illinois Gas and Electric Company, and MidAmerican Energy Company have caused this Agreement, as amended and restated as of September 27, 1994, to be signed by their respective officers thereunto duly authorized.

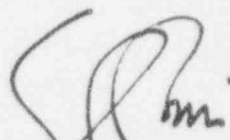
MIDWEST RESOURCES INC.

By: 
Name: Russell E. Christiansen
Title: Chairman, President and
Chief Executive Officer

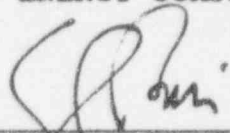
MIDWEST POWER SYSTEMS INC.

By: 
Name: Russell E. Christiansen
Title: Chairman, President and
Chief Executive Officer

IOWA-ILLINOIS GAS AND ELECTRIC
COMPANY

By: 
Name: Stanley J. Bright
Title: Chairman and Chief
Executive Officer

MIDAMERICAN ENERGY COMPANY

By: 
Name: Stanley J. Bright
Title: President, Office of
the Chief Executive
Officer

RESTATED)
ARTICLES OF INCORPORATION
OF
MIDAMERICAN ENERGY COMPANY

TO THE SECRETARY OF STATE
OF THE STATE OF IOWA:

Pursuant to the provisions of Sections 490.201 and 202 of the Iowa Business Corporation Act, the undersigned incorporator hereby adopts the following Restated Articles of Incorporation ("Articles of Incorporation"):

ARTICLE I

The name of the corporation is "MidAmerican Energy Company" (hereinafter sometimes called the "Corporation") and its registered office shall be located at 666 Grand Avenue, Des Moines, Iowa 50306 with the right to establish and maintain branch offices at such other points within and without the State of Iowa as the Board of Directors of the Corporation may, from time to time, determine. The name of the Corporation's registered agent at such registered office is Paul J. Leighton, Vice President and Secretary.

ARTICLE II

The nature of the business or purposes to be conducted or promoted is to engage in any or all lawful act or activity for which a corporation may be incorporated under the Iowa Business Corporation Act.

ARTICLE III

A. The aggregate number of shares which the Corporation shall have authority to issue is 350,000,000 shares of Common Stock, no par value ("Common Stock"), and 100,000,000 shares of Preferred Stock, no par value ("Preferred Stock").

B. The shares of authorized Common Stock shall be identical in all respects and shall have equal rights and privileges. For all purposes, each registered holder of Common Stock shall, at each meeting of shareholders, be entitled to one vote for each share of Common Stock held, either in person or by proxy duly authorized in writing. Except to the extent required by law or as permitted by these Articles of Incorporation, as amended from time to time, the registered holders of the shares of Common Stock shall have unlimited and exclusive voting rights.

C. The Board of Directors, at any time or from time to time, may, and is hereby authorized to, issue and dispose of any

of the authorized and unissued shares of Common Stock and any treasury shares for such kind and amount of consideration and to such persons, firms or corporations, as may be determined by the Board of Directors, subject to any provisions of law then applicable. The holders of Common Stock shall have no preemptive rights to acquire or subscribe to any shares, or securities convertible into shares, of Common Stock.

D. The Board of Directors, at any time or from time to time may, and is hereby authorized to, divide the authorized and unissued shares of Preferred Stock into one or more classes or series and in connection with the creation of any class or series to determine, in whole or in part, to the full extent now or hereafter permitted by law, by adopting one or more articles of amendment to the Articles of Incorporation providing for the creation thereof, the designation, preferences, limitations and relative rights of such class or series, which may provide for special, conditional or limited voting rights, or no rights to vote at all, and to issue and dispose of any of such shares and any treasury shares for such kind and amount of consideration and to such persons, firms or corporations, as may be determined by the Board of Directors, subject to any provisions of law then applicable.

E. The Board of Directors, at any time or from time to time may, and is hereby authorized to, create and issue, whether or not in connection with the issue and sale of any shares of its Common Stock, Preferred Stock or other securities of the Corporation, warrants, rights and/or options entitling the holders thereof to purchase from the Corporation any shares of its Common Stock, Preferred Stock or other securities of the Corporation. Such warrants, rights, or options shall be evidenced by such instrument or instruments as shall be approved by the Board of Directors of the Corporation. The terms upon which, the time or times (which may be limited or unlimited in duration) at or within which, and the price or prices (which shall be not less than the minimum amount prescribed by law, if any) at which any such shares or other securities may be purchased from the Corporation upon the exercise of any such warrant, right or option shall be fixed and stated in the resolution or resolutions of the Board of Directors of the Corporation providing for the creation and issue of such warrants, rights or options. The Board of Directors of the Corporation is hereby authorized to create and issue any such warrants, rights or options from time to time for such consideration, if any, and to such persons, firms or corporations, as the Board of Directors may determine.

F. The Corporation may authorize the issue of some or all of the shares of any or all of the classes of its capital stock without certificates.

G. The Corporation shall not be required to issue certificates representing any fraction or fractions of a share of stock of any class but may issue in lieu thereof one or more non-dividend bearing and non-voting scrip certificates in such form or forms as shall be approved by the Board of Directors of the Corporation, each scrip certificate representing a fractional interest in one share of stock of any class. Such scrip certificates upon presentation together with similar scrip certificates representing in the aggregate an interest in one or more full shares of stock of any class shall entitle the holders thereof to receive one or more full shares of stock of such class. Such scrip certificates may contain such terms and conditions as shall be fixed by the Board of Directors of the Corporation and may become void and of no effect after a period to be determined by the Board of Directors and to be specified in such scrip certificates.

H. The Corporation shall be entitled to treat the person in whose name any share of Common Stock or Preferred Stock is registered as the owner thereof for all purposes and shall not be bound to recognize any equitable or other claim to, or interest in, such share on the part of any person, whether or not the Corporation shall have notice thereof except as may be expressly provided otherwise by the laws of the State of Iowa.

ARTICLE IV

The term of corporate existence of the Corporation shall be perpetual.

ARTICLE V

A. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of, the Board of Directors. The number of directors of the Corporation shall be fixed by the Bylaws but shall be no less than ten (10) and no greater than twenty-two (22), and such number may be increased or decreased from time to time in accordance with the Bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. Directors shall be elected by the shareholders at each annual meeting of the Corporation as specified herein and in the Bylaws. Directors need not be shareholders.

B. Each director shall serve until his or her successor is elected and qualified or until his or her prior death, retirement, resignation or removal. Should a vacancy occur or be created, whether arising through death, resignation or removal of a director or through an increase in the number of directors, such vacancy shall be filled solely by a majority vote of the remaining directors though less than a quorum of the Board of Directors. A director so elected to fill a vacancy shall

serve for the remainder of the then present term of office of the Board of Directors.

C. Any director or the entire Board of Directors may be removed for cause as set forth in this paragraph C. Removal of a director for cause must be approved by the affirmative vote of the holders of shares of capital stock of the Corporation having at least 75% of the votes of all outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, only at a meeting called for the purpose of removing the director and after notice stating that the purpose, or one of the purposes, of the meeting is removal of the director. Any action for removal of a director must be taken within one year of such cause.

D. The Board of Directors, by a vote of a majority of the entire Board, may appoint from the directors an executive committee and such other committees as they may deem judicious; and to such extent as shall be provided in the resolution of the Board or in the Bylaws, may delegate to such committees all or any of the powers of the Board of Directors which may be lawfully delegated, and such committees shall have and thereupon may exercise all or any of the powers so delegated to them. The Board of Directors of the Corporation or the Bylaws may provide the number of members necessary to constitute a quorum of any committee and the number of affirmative votes necessary for action by any committee.

E. The Board of Directors shall elect such officers of the Corporation as specified in the Bylaws. All vacancies in the offices of the Corporation shall be filled by the Board of Directors. The Board of Directors shall also have authority to appoint such other managing officers and agents as they may from time to time determine.

ARTICLE VI

Special meetings of shareholders of the Corporation may be called at any time by the Chairman of the Board of Directors or by the President on at least ten days' notice to each shareholder entitled to vote at the special meeting, by mail at such shareholder's last known post office address, specifying the time, place and purpose or purposes of the special meeting.

ARTICLE VII

The private property of the shareholders of the Corporation shall be exempt from all corporate debts.

ARTICLE VIII

A. In addition to any affirmative vote required by law or under any other provision of these Articles of Incorporation:

(i) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with or into any Other Entity (as hereinafter defined); or

(ii) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of related transactions) to or with any Other Entity of any assets of the Corporation or any Subsidiary having an aggregate Fair Market Value (as hereinafter defined) of \$25,000,000 or more; or

(iii) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of related transactions) of any securities of the Corporation or any Subsidiary to any Other Entity in exchange for cash, securities or other property (or a combination thereof) having an aggregate Fair Market Value of \$25,000,000 or more; or

(iv) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation; or

(v) any reclassification of securities (including any reverse stock split), recapitalization, reorganization, merger or consolidation of the Corporation with any of its Subsidiaries or any similar transaction (whether or not with or into or otherwise involving any Other Entity) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Other Entity; or

(vi) any direct or indirect purchase or other acquisition by the Corporation of any equity security (as defined in Rule 3a11-1 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on June 30, 1994) of any class from any Interested Securityholder (as hereinafter defined) who has beneficially owned such securities for less than two years prior to the date of such purchase or any agreement in respect thereof,

shall require the affirmative vote of the holders of shares of capital stock of the Corporation having at least 75% (excluding, in the case of (i) through (v) above, shares beneficially owned by a 25% Shareholder (as hereinafter defined), and, in the case of (vi) above, shares beneficially owned by such Interested Securityholder) of the votes of all outstanding shares of capital

stock of the Corporation entitled to vote generally in the election of directors, considered for the purpose of this Article VIII as one class ("Voting Shares"). Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that some lesser percentage vote may be specified, by law or in any agreement with any national securities exchange or otherwise.

B. The provisions of paragraph A of this Article VIII shall not be applicable to any particular Business Combination (as hereinafter defined), and such Business Combination shall require only such affirmative vote as is required by law and any other provision of these Articles of Incorporation, if all of the conditions specified in either of the following subparagraphs 1 and 2 shall have been satisfied.

1. A majority of the Continuing Directors (as hereinafter defined) shall have approved the Business Combination (but only if a majority of the Board of Directors are Continuing Directors); or

2. All of the following conditions shall have been met:

a. The ratio of:

(i) the aggregate amount of the cash and the Fair Market Value as of the date of consummation of the Business Combination of other consideration to be received per share by holders of a particular class or series of Voting Shares in such Business Combination

to

(ii) the Fair Market Value per share of such class or series of Voting Shares on the date of the first public announcement of such Business Combination or the date on which any 25% Shareholder became a 25% Shareholder, whichever is higher

is at least as great as the ratio (which ratio shall equal the number one in the event that such 25% Shareholder has never beneficially owned any shares of such class or series of Voting Shares) of

(x) the highest per share price (including brokerage commissions, transfer taxes and soliciting dealers' fees) which such 25% Shareholder has theretofore paid for any share of such class or series of Voting Shares acquired by it

to

(y) the Fair Market Value per share of such class or series of Voting Shares on the date of the initial acquisition by such 25% Shareholder of any share of such class or series of Voting Shares;

b. The aggregate amount of the cash and Fair Market Value as of the date of consummation of the Business Combination of other consideration to be received per share by holders of each class or series of Preferred Stock in such Business Combination is not less than the highest preferential amount per share to which holders of shares of such class or series of Preferred Stock would, respectively, be entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, regardless of whether the Business Combination to be consummated constitutes such an event;

c. The consideration to be received by holders of a particular class or series of Voting Shares in such Business Combination shall be in cash or in the same form and of the same kind as the consideration paid by the 25% Shareholder in acquiring the shares of such class or series of Voting Shares already owned by it;

d. After such 25% Shareholder has acquired ownership of not less than 25% of the then outstanding Voting Shares (a "25% Interest") and prior to the consummation of such Business Combination:

(i) the 25% Shareholder shall have taken steps to ensure that the Corporation's Board of Directors includes at all times representation by Continuing Director(s) proportionate to the ratio that the Voting Shares which from time to time are owned by persons who are not 25% Shareholders ("Public Holders") bear to all Voting Shares outstanding at such respective times (with a Continuing Director to occupy any resulting fractional board position):

(ii) there shall have been no reduction in the rate of distributions ("Dividends") payable on the Common Stock except as may have been approved by a majority vote of the Continuing Directors;

(iii) such 25% Shareholder shall not have acquired any newly issued shares of stock, directly or indirectly, from the Corporation (except upon conversion of convertible securities

acquired by it prior to obtaining a 25% Interest or as a result of a pro rata stock Dividend or stock split); and

(iv) such 25% Shareholder shall not have acquired any additional Voting Shares or securities convertible into or exchangeable for Voting Shares except as a part of the transaction which resulted in such 25% Shareholder acquiring its 25% Interest;

e. Prior to or upon the consummation of such Business Combination, such 25% Shareholder shall not have (i) received the benefit, directly or indirectly (except proportionately as a shareholder), of any loans, advances, guarantees, pledges or other financial assistance or tax credits provided by the Corporation, or (ii) made any major change in the Corporation's business or equity capital structure without the unanimous approval of the entire Board of Directors; and

f. A proxy statement responsive to the requirements of the Securities Exchange Act of 1934 and the General Rules and Regulations promulgated thereunder shall have been mailed to all holders of Voting Shares for the purpose of soliciting shareholders' approval of such Business Combination. Such proxy statement shall contain at the front thereof in a prominent place, any recommendations as to the advisability (or inadvisability) of the Business Combination which the Continuing Directors, or any of them, may have furnished in writing and, if deemed advisable by a majority of the Continuing Directors, an opinion of a reputable investment banking firm as to the, fairness (or lack of fairness) of the terms of such Business Combination, from a financial point of view, to the holders of Voting Shares other than any 25% Shareholder (such investment banking firm to be selected by a majority of the Continuing Directors, to be furnished with all information it reasonably requests and to be paid a reasonable fee for its services upon receipt by the Corporation of such opinion).

C. For the purposes of this Article VIII:

1. The term "Business Combination" shall mean any transaction which is referred to in any one or more of clauses (i) through (v) of paragraph A of this Article VIII;

2. The term "Other Entity" shall include (a) any 25% Shareholder and (b) any other person (whether or not itself a 25%

Shareholder) which after any Business Combination, would be an Affiliate (as hereinafter defined) of any 25% Shareholder;

3. The term "person" shall mean any individual, firm, trust, partnership, association, corporation or other entity;

4. The term "25% Shareholder" shall mean, in respect to any Business Combination, any person (other than the Corporation or any Subsidiary) who or which, as of the record date for the determination of shareholders entitled to notice of and to vote on such Business Combination, or immediately prior to the consummation of any such transactions,

(a) is the beneficial owner, directly or indirectly, of not less than 25% of the Voting Shares, or

(b) is an Affiliate of the Corporation and at any time within five years prior thereto was the beneficial owner, directly or indirectly, of not less than 25% of the then outstanding Voting Shares, or

(c) is an assignee of or has otherwise succeeded to any shares of capital stock of the Corporation which were at any time within five years prior thereto beneficially owned by any 25% Shareholder, and such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933;

5. A person shall be the beneficial owner of any Voting Shares

(a) which such person or any of its Affiliates and Associates (as hereinafter defined) beneficially own, directly or indirectly, or

(b) which such person or any of its Affiliates or Associates has (i) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (ii) the right to vote pursuant to any agreement, arrangement or understanding, or

(c) which are beneficially owned, directly or indirectly, by any other person with which such first mentioned person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of capital stock of the Corporation;

6. The outstanding Voting Shares shall include shares deemed owned through application of subparagraph 5 of this paragraph C above but shall not include any other Voting Shares which may be issuable pursuant to any agreement or upon exercise of conversion rights, warrants or options, or otherwise;

7. The term "Continuing Director" shall mean (a) a person who was a member of the Board of Directors of the Corporation elected by the Public Holders prior to the date as of which any 25% Shareholder acquired in excess of 10% of the then outstanding Voting Shares or (b) a person designated (before his or her initial election as a director) as a Continuing Director by a majority of the then Continuing Directors;

8. The term "other consideration to be received" shall include, without limitation, Voting Shares retained by Public Holders in the event of a Business Combination in which the Corporation is the surviving corporation;

9. The terms "Affiliate" and "Associate" shall have the respective meanings given those terms in Rule 12b-2, of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on June 30, 1994;

10. The term "Subsidiary" shall mean any corporation or other entity of which a majority of the outstanding voting securities or other equity interests having the power, under ordinary circumstances, to elect a majority of the directors, or otherwise to direct the management and policies, of such corporation or other entity, is owned, directly or indirectly, by the Corporation.

11. The term "Interested Securityholder" shall mean, with respect to any transaction which is referred to in Clause (vi) of paragraph A of this Article VIII, any person (other than the Corporation or any Subsidiary) who or which, as of the record date for the determination of shareholders entitled to notice of and to vote on such transaction, or immediately prior to the consummation of any such transaction,

(a) is the beneficial owner, directly or indirectly, of not less than five percent of the Voting Shares, or

(b) is an Affiliate of the Corporation and at any time within two years prior thereto was the beneficial owner, directly or indirectly, of not less than five percent of the then outstanding Voting Shares, or

(c) is an assignee of or has otherwise succeeded to any shares of the class of securities to be acquired which were at any time within two years prior thereto beneficially owned by an Interested Securityholder, and such assignment or succession shall have occurred in the course of a

transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933; and

12. The term "Fair Market Value" shall mean (i) in the case of capital stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such capital stock on the Composite Tape for New York Stock Exchange-Listed Stocks, or, if such capital stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such capital stock is not listed on such exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such capital stock is listed, or, if such capital stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such capital stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or if no such quotations are available the fair market value on the date in question of a share of such capital stock as determined by a majority of the Continuing Directors in good faith; and (ii) in the case of property other than cash or capital stock, the fair market value of such property on the date in question as determined in good faith by a majority of the Continuing Directors; provided that any such determination by the Continuing Directors shall only be effective if made at a meeting at which a majority of Continuing Directors is present.

D. A majority of the Continuing Directors shall have the power and duty to determine for purposes of this Article VIII, on the basis of information known to them, (i) the number of Voting Shares beneficially owned by any person, (ii) whether a person is an Affiliate or Associate of another, (iii) whether a person has an agreement, arrangement or understanding with another as to the matters referred to in subparagraph 4 of paragraph C, (iv) whether the assets subject to any Business Combination have an aggregate Fair Market Value of \$25,000,000 or more, and (v) such other matters with respect to which a determination is required under this Article VIII.

E. Nothing contained in this Article VIII shall be construed to relieve any 25% Shareholder from any fiduciary obligation imposed by law.

ARTICLE IX

Any amendment, alteration, change or repeal of Article VA, VB and VC, Article VIII or this Article IX of these Articles of Incorporation shall require the affirmative vote of the holders of shares of capital stock of the Corporation having at least 75% of the votes of all outstanding Voting Shares (as defined in Article VIII), excluding from such affirmative vote shares beneficially owned by any 25% Shareholder or by any

Interested Securityholder in the case of an amendment of the provisions of paragraph A of Article VIII that exclude from an affirmative vote required pursuant to such paragraph A shares beneficially owned by 25% Shareholders or shares beneficially owned by Interested Securityholders, as the case may be.

ARTICLE X

The Board of Directors may make Bylaws, and from time to time may alter, amend or repeal any Bylaws; but any Bylaws made by the Board of Directors may be altered or repealed by the shareholders entitled to vote generally at any annual meeting, or at any special meeting provided notice of such proposed alteration or repeal be included in the notice of meeting.

ARTICLE XI

A. A director of the Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except for liability:

(i) for any breach of the director's duty of loyalty to the Corporation or its shareholders; or

(ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

(iii) for any transaction from which the director derives an improper personal benefit; or

(iv) under Section 490.833, or a successor provision, of the Iowa Business Corporation Act.

B. If, after the date these Articles of Incorporation are filed with the Iowa Secretary of State, the Iowa Business Corporation Act is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be deemed eliminated or limited to the fullest extent permitted by the Iowa Business Corporation Act, as so amended. Any repeal or modification of Section A, or this Section B of this Article XI, by the shareholders of the Corporation shall be prospective only and shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE XII

A. Each person who was or is a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative, investigative or arbitration and whether formal or informal ("proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity while serving as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Iowa Business Corporation Act (the "Act"), as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than the Act permitted the Corporation to provide prior to such amendment), against all reasonable expenses, liability and loss (including without limitation attorneys' fees, all costs, judgments, fines, Employee Retirement Income Security Act excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith. Such right shall be a contract right and shall include the right to be paid by the Corporation expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that the payment of such expenses incurred by a director, officer, employee or agent in his or her capacity as a director, officer, employee or agent (and not in any other capacity in which service was or is rendered by such person while a director, officer, employee or agent including, without limitation, service to an employee benefit plan) in advance of the final disposition of such proceeding, shall be made only upon delivery to the Corporation of (i) a written undertaking, by or on behalf of such director, officer, employee or agent, to repay all amounts so advanced if it should be determined ultimately that such director, officer, employee or agent is not entitled to be indemnified under this Article XII or otherwise, or (ii) a written affirmation by or on behalf of such director, officer, employee or agent that, in such person's good faith belief, such person has met the standards of conduct set forth in the Act.

B. If a claim under Section A is not paid in full by the Corporation within thirty (30) days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expenses

of prosecuting such claim. It shall be a defense to any such action that the claimant has not met the standards of conduct which make it permissible under the Act for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. The failure of the Corporation (including its Board of Directors, independent legal counsel, or its shareholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Act, shall not be a defense to the action or create a presumption that the claimant had not met the applicable standard of conduct.

C. Indemnification provided hereunder shall, in the case of the death of the person entitled to indemnification, inure to the benefit of such person's heirs, executors or other lawful representatives. The invalidity or unenforceability of any provision of this Article XII shall not affect the validity or enforceability of any other provision of this Article XII.

D. Any action taken or omitted to be taken by (i) any director, officer, employee or agent in good faith and in compliance with or pursuant to any order, determination, approval or permission made or given by a commission, board, official or other agency of the United States or of any state or other governmental authority with respect to the property or affairs of the Corporation or any such business corporation, not-for-profit corporation, joint venture, trade association or other entity over which such commission, board, official or agency has jurisdiction or authority or purports to have jurisdiction or authority or (ii) by any director of the Corporation pursuant to Section D of Article VIII shall be presumed to be in compliance with the standard of conduct set forth in Section 490.851 (or any successor provision) of the Act whether or not, in the case of clause (i), it may thereafter be determined that such order, determination, approval or permission was unauthorized, erroneous, unlawful or otherwise improper.

E. Unless finally determined, the termination of any litigation, whether by judgment, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not create a presumption that the action taken or omitted to be taken by the person seeking indemnification did not comply with the standard of conduct set forth in Section 490.851 (or any successor provision) of the Act.

F. The rights conferred on any person by this Article XII shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Articles of Incorporation, Bylaws, agreement, vote of shareholders or disinterested directors or otherwise.

G. The Corporation may maintain insurance, at its expense, to protect itself and any such director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Act.

ARTICLES OF AMENDMENT
TO
RESTATED
ARTICLES OF INCORPORATION
OF
MIDAMERICAN ENERGY COMPANY

To the Secretary of State
of the State of Iowa:

These Articles of Amendment are delivered to you for filing pursuant to the provisions of Section 490.601, and in accordance with Section 490.602(4), of the Iowa Business Corporation Act.

- (a) The name of the Corporation is:

MidAmerican Energy Company

- (b) As of _____, 199_, the Board of Directors of MidAmerican Energy Company, an Iowa corporation ("Corporation"), duly adopted the following Articles of Amendment to the Restated Articles of Incorporation ("Articles of Incorporation") of the Corporation, determining certain terms of its class of shares designated in Article III of its Articles of Incorporation as Preferred Stock, no par value ("Preferred Stock"), and creating and determining the terms of the ten series of Preferred Stock (collectively, the "Merger Series") to be issued on the date on which the merger ("Merger") of Midwest Resources Inc., an Iowa corporation, Midwest Power Systems Inc., an Iowa corporation ("Midwest Power"), and Iowa-Illinois Gas and Electric Company, an Illinois corporation ("Iowa-Illinois"), with and into the Corporation becomes effective ("Effective Date of the Merger"), upon the conversion of (i) all shares of each series of Midwest Power Preferred Stock, no par value ("Midwest Power Preferred Stock"), into shares of a particular series of Preferred Stock, and (ii) all shares of each series of Iowa-Illinois Preference Shares, without par value ("Iowa-Illinois Preference Stock"), into shares of a particular series of Preferred Stock, including the certain preferences, limitations and relative rights of holders of shares of Preferred Stock, and the designation, preferences, limitations and relative rights of each Merger Series.
- (c) The text of the Amendment determining the terms of the Preferred Stock and the terms of each Merger Series, is as follows:

(A) *Designations.* Each Merger Series is given one of the following distinguishing designations:

\$1.7375	Series
\$3.30	Series
\$3.75	Series
\$3.90	Series
\$4.20	Series
\$4.35	Series
\$4.40	Series
\$4.80	Series
\$5.25	Series
\$7.80	Series

(B) *Number of Shares.* Each Merger Series shall consist of the following number of shares of Preferred Stock:

<u>Series</u>	<u>Number of Shares</u>
\$1.7375 Series	2,400,000
\$3.30 Series	49,632
\$3.75 Series	38,320
\$3.90 Series	32,636
\$4.20 Series	47,369
\$4.35 Series	49,950
\$4.40 Series	50,000
\$4.80 Series	49,898
\$5.25 Series	100,000
\$7.80 Series	400,000

(C) *Distributions ("Dividends").*

- (1) The holders of the shares of each Merger Series in preference to the holders of Common Stock and the holders of any other shares of the Corporation which rank junior to the Preferred Stock, shall be entitled to receive, but only when and as declared by the Board of Directors, out of any assets legally available therefor, Dividends in lawful money of the United States of America, in the amount per annum set forth in the designation of such Merger Series in these Articles of Amendment creating such Merger Series, and no more.
- (2) Dividends on the Merger Series shares shall be payable quarterly on the first day of each of the months of March, June, September and December ("Dividend Payment Date") with respect to the quarterly Dividend period ending on the date preceding each such Dividend Payment Date, to shareholders of record as of a date to be fixed by the Board of Directors, not exceeding thirty (30) days and not less than ten (10) days preceding

such Dividend Payment Dates; provided, however, that the first Dividend payable on the \$5.25 Series and the \$7.80 Series shall be paid as follows:

(a) if a regular Dividend payment date for the shares of Iowa-Illinois Preference Stock which were converted into shares of such Merger Series in the merger of Midwest Resources Inc., Midwest Power and Iowa-Illinois with and into the Corporation ("Iowa-Illinois Payment Date"), occurs after the Effective Date of the Merger but before the first Dividend Payment Date after the Effective Date of the Merger ("First Dividend Payment Date"), then

(i) a Dividend shall be paid on the shares of such Merger Series on the Iowa-Illinois Payment Date in the regular quarterly amount, and

(ii) a Dividend shall be paid on the shares of such Merger Series on the First Dividend Payment Date, but only in the amount obtained by multiplying the regular quarterly amount of such Dividend by a fraction (A) the numerator of which is the number of days in the period commencing on the Iowa-Illinois Payment Date and ending on and including the day prior to the First Dividend Payment Date, and (B) the denominator of which is the number of days in the period commencing on the Dividend Payment Date preceding the Effective Date of the Merger and ending on and including the day prior to the First Dividend Payment Date; or

(b) if the First Dividend Payment Date occurs before an Iowa-Illinois Payment Date, a Dividend shall be paid on the shares of such Merger Series on the First Dividend Payment Date, but only in the amount obtained by multiplying the regular quarterly amount of such Dividend by a fraction (i) the numerator of which is the number of days in the period commencing on the Iowa-Illinois Payment Date preceding the Effective Date of the Merger and ending on and including the day prior to the First Dividend Payment Date, and (ii) the denominator of which is the number of days in the period commencing on the Dividend Payment Date preceding the Effective Date of the Merger and ending on and including the day prior to the First Dividend Payment Date.

(3) Except as provided in Section (C)(2), Dividends on each Merger Series share shall be cumulative from the Dividend Payment Date preceding the Effective Date of the Merger. Accumulations of Dividends shall not bear interest.

- (4) Except as provided in Section (C) (2), no Dividend shall be paid upon, or declared and set apart for, any Merger Series share for any quarterly period or portion thereof unless (i) at the same time a like proportionate Dividend for the same quarterly period or portion thereof shall be paid upon, or declared and set aside, for all Merger Series shares and all other shares of Preferred Stock on which Dividends are payable on a Dividend Payment Date and (ii) no Dividends on any other shares of Preferred Stock are accrued and unpaid.
- (5) So long as any Merger Series shares are outstanding, the Corporation shall not (i) pay or declare or set aside any Dividend or other distribution on any shares of Common Stock or on any other junior shares of the Corporation which rank below the Preferred Stock with respect to any assets, Dividends or other distributions or upon Liquidation or (ii) purchase, redeem or otherwise acquire for value any shares of Common Stock or such junior shares, in each case unless and until full Dividends have been declared and paid upon or set apart for payment on all shares of Preferred Stock, with respect to all Dividend periods and the Dividend period which includes the date of such Dividend or distribution on Common Stock or such junior shares; provided, however, that the foregoing terms of this Section (C) (5) shall not apply to the declaration and payment of Dividends or other distributions on any shares of Common Stock or such junior shares if payable solely in shares of Common Stock or such junior shares, nor to the acquisition of shares of Common Stock or such junior shares in exchange for, or through the application of the proceeds of the sale of, any shares of Common Stock or such junior shares.

(D) *Redemption.*

- (1) Subject to the limitations set forth in Section (F), the outstanding shares of each Merger Series may be redeemed by the Corporation, at its option, by action of its Board of Directors, as a whole at any time or in part from time to time, by paying in cash on a redemption date specified by the Board of Directors, the following redemption prices, in each case plus an amount equal to accrued and unpaid Dividends thereon to such redemption date:

\$1.7375 Series:

\$26.7375 per share through November 30, 1994

\$26.3900 per share on December 1, 1994 through November 30, 1995

\$26.0425 per share on December 1, 1995
 through November 30, 1996
 \$25.6950 per share on December 1, 1996
 through November 30, 1997
 \$25.3475 per share on December 1, 1997
 through November 30, 1998
 \$25.0000 per share on or after
 December 1, 1998
 \$3.30 Series:
 \$101.50 per share
 \$3.75 Series:
 \$102.75 per share
 \$3.90 Series:
 \$105.00 per share
 \$4.20 Series:
 \$103.439 per share
 \$4.35 Series:
 \$102.00 per share
 \$4.40 Series:
 \$101.50 per share
 \$4.80 Series:
 \$102.70 per share
 \$5.25 Series:
 \$101.97 per share on November 1, 1998
 through October 31, 1999
 \$101.31 per share on November 1, 1999
 through October 31, 2000
 \$100.66 per share on November 1, 2000
 through October 31, 2001
 \$100.00 per share on or after November
 1, 2001
 \$7.80 Series:
 \$107.80 per share on May 1, 1996 through
 April 30, 2001
 \$103.90 per share on May 1, 2001 through
 April 30, 2002
 \$101.95 per share on or after May 1,
 2002

provided, however, that (i) prior to December 1, 1998,
 no shares of the \$1.7375 Series may be redeemed through
 a refunding, directly or indirectly, by or in
 anticipation of the incurring of any debt which has an
 interest cost, or the issuance of stock ranking equally
 with or prior to the \$1.7375 Series as to Dividends or
 assets which has a Dividend cost to the Corporation
 (computed in accordance with generally accepted
 financial practice), of less than 7.15% per annum, (ii)
 prior to November 1, 1998, no shares of the \$5.25
 Series may be redeemed at the option of the
 Corporation, and (iii) prior to May 1, 1996, no shares

of the \$7.80 Series may be redeemed at the option of the Corporation.

- (2) Subject to the limitations set forth in Section (F), the Corporation shall on November 1, 2003 redeem all shares of the \$5.25 Series then outstanding at \$100.00 per share, plus accrued and unpaid Dividends thereon through October 31, 2003.
- (3) "Accrued and unpaid Dividends" as used in this Amendment with respect to any Merger Series share means the amount, if any, by which the applicable amount of Dividend per annum from the date after which Dividends on such share become cumulative to the date in question, exceeds the Dividends actually paid or declared and set aside for payment thereon.
- (4) Notice of any proposed redemption of any Merger Series shares shall be given by the Corporation by mailing a copy of such notice not more than sixty (60) nor less than thirty (30) days prior to the date fixed for such redemption to the holders of record of such shares to be redeemed, at their respective addresses then appearing on the books of the Corporation; but no failure to mail such notice or any defect therein, or in the mailing thereof, shall affect the validity of the proceedings for the redemption of any Merger Series shares so to be redeemed.
- (5) In case of redemption of only a part of the shares of any Merger Series at the time outstanding, the shares of such Merger Series to be redeemed shall be selected by lot in such manner as the Board of Directors may determine.
- (6) On the redemption date specified in the notice of such redemption the Corporation shall, and at any time within sixty (60) days prior to such redemption date may, deposit in trust, for the account of the holders of the Merger Series shares to be redeemed, funds necessary for such redemption with a bank or trust company in good standing, organized under the laws of the United States of America or of the State of Iowa, doing business in the City of Des Moines, Iowa, having combined capital, surplus and undivided profits of at least \$2,500,000 and designated in such notice of redemption.
- (7) Notice having been given and funds necessary for such redemption having been deposited, all as provided in this Section (D), all Merger Series shares with respect to the redemption of which such notice shall be given and deposit made, shall thenceforth, whether or not the

date fixed for such redemption shall have yet occurred, or the certificates for such shares shall have been surrendered for cancellation, be deemed no longer to be outstanding for any purpose, and all rights with respect to such shares shall thereupon cease and terminate except only the right of the holders of the certificates for such shares to receive, out of the funds so deposited in trust, upon or after the redemption date (unless an earlier date is fixed by the Board of Directors of the Corporation), the redemption funds, without interest, to which they are entitled upon endorsement, if required, and surrender of their certificates for such shares.

(8) At the expiration of six (6) years after the redemption date such trust shall terminate and any such moneys then remaining on deposit with such bank or trust company which are unclaimed by the holders of the certificates for the Merger Series shares which have been so redeemed, plus interest thereon, if any, shall be paid by such bank or trust company to the Corporation, free of trust, and thereafter the holders of the certificates for such shares shall have no claim against such bank or trust company but only claims as unsecured creditors against the Corporation for the amount payable upon the redemption thereof, without interest.

(9) Any interest on or other accretions to funds deposited with such bank or trust company pursuant to this Section (D) shall belong to the Corporation.

(E) *Sinking Fund.*

Subject to the limitations set forth in Section (F), while any shares of the \$7.80 Series shall remain outstanding, the Corporation shall on or before May 1, 2001, and on or before May 1 of each year thereafter to and including May 1, 2005 (each such May 1 being hereinafter in this Section (E) called a "Sinking Fund Redemption Date"), set aside, separate and apart from its other funds, an amount equal to \$6,660,000 (or such lesser amount as may be sufficient to redeem all of the shares of the \$7.80 Series then outstanding) as a mandatory sinking fund payment for the exclusive benefit of shares of the \$7.80 Series, plus such further amount as shall equal the accrued and unpaid Dividends on the shares of the \$7.80 Series to be redeemed out of such payment (as hereinafter in this Section (E) provided) through the day preceding the applicable Sinking Fund Redemption Date. The obligation of the Corporation to make such payments shall be cumulative, so that if for any reason the full amount thereof shall not be set aside for any year, the amount of the deficiency from time to time

shall be added to the amount due from the Corporation on subsequent Sinking Fund Redemption Dates until the deficiency shall have been fully satisfied. The Corporation shall be entitled to credit against any such mandatory sinking fund payment shares of the \$7.80 Series redeemed, purchased or otherwise acquired by the Corporation, except through application of any sinking fund payment (whether mandatory or optional), and not theretofore so credited, at the sinking fund redemption price hereinafter specified in this Section (E).

In addition to the mandatory sinking fund payments required by the immediately preceding paragraph, the Corporation may at its option, in respect of any Sinking Fund Redemption Date, set aside, separate and apart from its other funds, an amount not in excess of \$6,660,000 as an optional sinking fund payment for the exclusive benefit of shares of the \$7.80 Series, plus such further amount as shall equal the accrued and unpaid Dividends on the shares of the \$7.80 Series to be redeemed out of such payment (as hereinafter in this Section (E) provided) through the day preceding the applicable Sinking Fund Redemption Date. The privilege of making such payments shall not be cumulative, and no such payment shall relieve the Corporation to any extent from its obligation to make any subsequent mandatory sinking fund payment.

Any amounts set aside by the Corporation pursuant to this Section (E) shall be applied on the date of such setting aside if a Sinking Fund Redemption Date or otherwise on the first Sinking Fund Redemption Date occurring thereafter to the redemption of shares of the \$7.80 Series at \$100.00 per share, plus accrued and unpaid Dividends through the day preceding the applicable Sinking Fund Redemption Date, in the manner and upon the notice provided in Section (D). If any Sinking Fund Redemption Date shall be a Saturday, Sunday or other day on which banking institutions in Chicago, Illinois or New York, New York are authorized or obligated to remain closed, such term shall be construed to refer to the next preceding business day.

Subject to the limitations stated in Section (F), the Corporation shall on May 1, 2006 redeem any shares of the \$7.80 Series then outstanding at \$100.00 per share, plus accrued and unpaid Dividends through April 30, 2006.

(F) *Repurchase.*

- (1) The Corporation may from time to time purchase or otherwise acquire Merger Series shares at a price not exceeding the amount at the time payable in the event of redemption thereof otherwise than through the operation of the applicable sinking fund, if any.

(2) If and so long as the Corporation shall be in default in the payment of any quarterly Dividend on any Merger Series shares, or shall be in default in the payment of funds into or the setting aside of funds for any sinking fund created for any Merger Series shares, the Corporation shall not (other than by the use of unapplied funds, if any, paid into or set aside for a sinking fund or funds prior to such default):

(a) redeem any Merger Series shares, unless all Merger Series shares are redeemed, or

(b) purchase or otherwise acquire for a valuable consideration any Merger Series shares, except pursuant to offers of sale made by the holders of Merger Series shares in response to an invitation for tenders given by mail by the Corporation simultaneously to the holders of record of all Merger Series shares then outstanding, at their respective addresses then appearing on the books of the Corporation.

(G) *Preference on Liquidation.*

(1) Before any distribution of any assets of the Corporation shall be made to the holders of any Common Stock or any other junior shares of the Corporation which rank below the Preferred Stock with respect to any assets, Dividends or other distributions:

(a) in the event of any liquidation, dissolution or winding up ("Liquidation") of the Corporation which is voluntary:

(i) the holders of the shares of the \$1.7375 Series, \$3.30 Series, \$3.75 Series, \$4.35 Series, \$4.40 Series, \$4.80 Series, \$5.25 Series and \$7.80 Series shall be entitled to receive an amount per share equal to the amount which would then be payable upon such share in the event of redemption thereof in accordance with Section (D)(1), except that prior to November 1, 1998, the holders of the shares of the \$5.25 Series shall be entitled to receive \$105.25 per share and prior to May 1, 2001, the holders of the shares of the \$7.80 Series shall be entitled to receive \$107.80 per share, and no more; and

(ii) the holders of the shares of the \$3.90 Series and \$4.20 Series shall be entitled to receive the amount of one hundred dollars (\$100) per share plus accrued and unpaid Dividends to the date of payment of such amount, and no more.

(b) in the event of any Liquidation of the Corporation which is involuntary:

(i) the holders of the shares of the \$3.30 Series, \$3.75 Series, \$3.90 Series, \$4.20 Series, \$4.35 series, \$4.40 Series, \$4.80 Series, \$5.25 Series and \$7.80 Series shall be entitled to receive the amount of one hundred dollars (\$100) per share plus accrued and unpaid Dividends to the date of payment of such amount, and no more; and

(ii) the holders of the shares of the \$1.7375 Series shall be entitled to receive the amount of twenty-five dollars (\$25.00) per share plus accrued and unpaid Dividends to the date of payment of such amount, and no more.

- (2) If upon any Liquidation the assets distributable among the holders of the shares of Preferred Stock shall be insufficient to permit the payment of the full preferential amounts to which they shall be entitled, then the entire assets of the Corporation to be distributed shall be distributed among the holders of the shares of Preferred Stock then outstanding ratably in proportion to the amounts to which such holders are respectively entitled.
- (3) If upon any Liquidation the holders of the shares of Preferred Stock shall receive the full preferential amounts to which they shall be entitled, the remaining assets and funds of the Corporation shall be distributed among the holders of the shares of Common Stock and of any other junior shares of the Corporation which rank below the Preferred Stock with respect to any assets, or Dividends or other distributions, according to their respective rights and preferences and according to their respective shares.
- (4) Neither a consolidation nor a merger of the Corporation, nor a sale or transfer of substantially all its assets as an entirety, nor a redemption or a purchase or other acquisition by the Corporation of less than all of its shares of any class at the time outstanding, shall be regarded as a Liquidation within the meaning of this Section (G).

(H) *Voting Rights.*

- (1) Except to the extent required by law or as permitted by this Section (H), the holders of Merger Series shares shall have no voting rights.

- (2) If at any time Dividends on any Preferred Stock shall be accrued and unpaid in an amount equivalent to six or more full quarterly Dividends, the holders of all shares of Preferred Stock, voting together as a single class for such purpose, shall be entitled until, but only until, all Dividends accrued and unpaid on all shares of Preferred Stock shall have been paid (or deposited in trust for payment on or before the next succeeding Dividend Payment Date with respect to Merger Series shares, and on or before the next succeeding date or dates upon which Dividends are payable on other series of Preferred Stock), to elect two (2) Directors of the Corporation.
- (3) While the holders of the shares of Preferred Stock remain entitled to elect two Directors of the Corporation, the payment of Dividends on Preferred Stock, including accrued and unpaid Dividends, shall not be unreasonably withheld if the financial condition of the Corporation permits payment thereof.
- (4) The right of the holders of the shares of Preferred Stock under this Section (H) to elect two Directors of the Corporation may be exercised at any annual meeting of shareholders or, within the limitations of this Section (H), at a special meeting of shareholders held for such purpose; whenever such right shall have become vested, upon request signed by any holder of record of shares of Preferred Stock and delivered to the Corporation at its principal office not less than ninety (90) days prior to the date for the annual meeting next following the date of such vesting, the President of the Corporation shall call a special meeting of shareholders, to be held within sixty (60) days after the receipt of such request, for the purpose of electing a new Board of Directors, of which two shall, subject to the provisions of this Section (H), be elected by a vote of the holders of the Preferred Stock to serve until the next annual meeting or until their successors shall be elected and shall qualify.
- (5) No such special meeting shall be required to be held within 120 days after such a prior special meeting, and the term of office of each Director of the Corporation shall terminate at the time of any such special meeting or adjournment thereof, notwithstanding that the term for which such Director had been elected shall not then have expired, and provided that the successor of such Director is duly elected and qualified.
- (6) In the event that at any special meeting at which the holders of the shares of Preferred Stock shall be entitled to elect two Directors of the Corporation, a

quorum of the holders of the shares of Preferred Stock shall not be present in person or by proxy, the holders of Common Stock, if a quorum thereof be present in person or by proxy, shall temporarily elect the Directors of the Corporation, which holders of the shares of Preferred Stock were entitled but failed to elect, such Directors to be designated as having been so elected and their respective terms of office to expire at such times thereafter as their successors shall be elected by holders of the shares of Preferred Stock as provided in this Section (H).

- (7) Whenever the holders of the shares of Preferred Stock shall be entitled to elect two Directors, any holder of record of a share of Preferred Stock shall have the right, during regular business hours, in person or by a duly authorized representative, to examine the Corporation stock records of the Preferred Stock for the purpose of communicating with other holders of Preferred Stock with respect to the exercise of such right of election, and to make a list of such holders.
- (8) Whenever, under the terms of this Section (H), the holders of the shares of Preferred Stock shall be divested of the right to elect two Directors, upon request signed by any holder of record of Common Stock and delivered to the Corporation at its principal office not less than ninety (90) days prior to the date for the annual meeting next following the date of such divesting, the President of the Corporation shall call a special meeting of the holders of Common Stock to be held within sixty (60) days after the receipt of such request for the purpose of electing a new Board of Directors to serve until the next annual meeting or until their respective successors shall be elected and shall qualify.
- (9) The term of office of each Director of the Corporation shall terminate at the time of any such special meeting or adjournment thereof at which a quorum of holders of Common Stock shall be present in person or by proxy, notwithstanding that the term for which such Director had been elected shall not then have expired, and provided that the successor to such Director is duly elected and qualified.
- (10) If, during any interval between annual meetings of shareholders for the election of Directors and while the holders of the shares of Preferred Stock shall be entitled to elect two Directors, a Director in office who has been elected by the holders of the shares of Preferred Stock, shall, by reason of resignation, death or removal, cease to be a Director, (a) the vacancy or

vacancies shall be filled by vote of the remaining Director then in office who was elected by the holders of the shares of Preferred Stock or who succeeded to a Director so elected, and (b) if any vacancy which occurred more than six months prior to the date of the next ensuing annual meeting is not so filled within forty (40) days after the occurrence thereof, the President of the Corporation shall call a special meeting of the holders of the shares of Preferred Stock and such vacancy shall be filled at such special meeting.

- (11) A Director elected by holders of the shares of Preferred Stock may be removed from office only by vote of the holders of a majority of the votes of the outstanding shares of Preferred Stock.
- (12) At any annual or special meeting of the shareholders held for any purpose including the purpose of electing Directors when the holders of the shares of Preferred Stock shall be entitled to elect two Directors, the presence in person or by proxy of holders of a majority of the votes of the outstanding shares of Preferred Stock shall be required to constitute a quorum of the holders of the shares of Preferred Stock.
- (13) At any meeting of shareholders at which the holders of the shares of Preferred Stock are required to vote by law or are permitted to vote by any articles of amendment to the Articles of Incorporation, each holder of Merger Series shares shall have one vote for each such Merger Series share except the holders of \$1.7375 Series shares, which shall have $\frac{1}{4}$ vote for each such \$1.7375 Series share, and each holder of shares of each other series of Preferred Stock shall have the number or fraction of votes set forth for each such share in the articles of amendment to the Articles of Incorporation in which the terms of such series are determined, in each case standing in the name of such holder on the books of the Corporation on the record date fixed for such purpose, or, if no record date is fixed, on the date on which such vote is taken.
- (14) The holders of shares of Preferred Stock shall not be entitled to receive notice of any meeting at which they are not entitled to vote.

(I) *No Preemptive Rights.* No holder of Merger Series shares as such shall have any preemptive or preferential right to purchase or subscribe for any shares of stock or rights or options to purchase stock or any other securities of the Corporation of any kind whatsoever whether now or hereafter authorized.

AMENDED AND RESTATED

BYLAWS

OF

MIDAMERICAN ENERGY COMPANY

(an Iowa Corporation)

ARTICLE I.

Offices.

Section 1. Principal Office. The principal office of the Corporation shall be in the City of Des Moines, Polk County, Iowa. The Corporation may also have an office or offices at such other place or places either within or without the State of Iowa as the Board of Directors from time to time determine or the business of the Corporation may require.

Section 2. Registered Office. The registered office of the Corporation required by the Iowa Business Corporation Act to be maintained in the State of Iowa may be, but need not be, the same as the principal office of the Corporation in the State of Iowa, and the address of the registered office may be changed from time to time by the Board of Directors.

ARTICLE II.

Shareholders' Meetings.

Section 1. Place. All meetings of the shareholders shall be held in such place as may be ordered by the Board of Directors.

Section 2. Annual Meetings. The annual meeting of shareholders shall be held on the Wednesday next preceding the last Thursday of April in each year, at ten o'clock in the morning, when they shall elect the Board of Directors and transact such other business as may properly be brought before the meeting. The Board of Directors may, in its discretion, change the date or time, or both, of the annual meeting of shareholders.

Section 3. Special Meetings. Special meetings of the shareholders for any purpose or purposes may be called by the President, or by a Vice President (under such conditions as are prescribed in these bylaws), or by the Chairman of the Board of Directors (if there be one), or by the Vice Chairman of the Board of Directors (if there be one), or by the Board of Directors.

Section 4. Notice. Notice, in accordance with the Iowa Business Corporation Act, stating the place, day and hour of the annual meeting and of any special meeting, and in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given so that it is effective not less than ten (10) nor more than sixty (60) days before the date of the meeting, by or at the direction of the President, or the Secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting.

Section 5. Right to Vote. Except as provided in Sections 8 and 9 of this Article II, only shareholders owning shares of stock of a class entitled to vote as required by the Iowa Business Corporation Act or as provided in the Articles of Incorporation, of record on the books of the Corporation on the day fixed by the Board of Directors for the closing of the stock transfer books of the Corporation prior to any meeting of the shareholders, or, if the stock transfer books be not closed, of record on the books of the Corporation at the close of business on the day fixed by the Board of Directors as the record date for the determination of the shareholders entitled to vote at such meeting, shall be entitled to notice of and shall have the right to vote (either in person or by proxy) at such meeting.

Section 6. Closing of Transfer Books or Fixing of Record Date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the Board of Directors of the Corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, seventy (70) days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the stock transfer books, the Board of Directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than (70) days prior to the date on which the particular action requiring such determination of shareholders is to be taken. Except as provided in the articles of amendment to the Articles of Incorporation establishing one or more classes or series of Preferred Stock, if the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date immediately preceding the date on which notice of the meeting is mailed, or the date on which the resolution of the Board of Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in

this Section 6, such determination shall apply to any adjournment thereof, except that the Board of Directors must fix a new record date if the meeting is adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting.

Section 7. Voting Lists. The officer or agent having charge of the stock transfer books for shares of stock of the Corporation shall make a complete list of the shareholders entitled to vote at a meeting of shareholders or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which list shall be kept on file at the registered office of the Corporation and shall be subject to inspection by any shareholder at any time during usual business hours beginning two business days after notice of such meeting is given for which such list was prepared. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original stock transfer books shall be prima facie evidence as to who are the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders. Failure to comply with the requirement of this Section 7 shall not affect the validity of any action taken at any such meeting.

Section 8. Voting of Shares by Certain Holders. Shares standing in the name or another corporation, domestic or foreign, may be voted by such officer, agent or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the Board of Directors of such corporation may determine.

Shares held by a person who is an administrator, executor, guardian or conservator may be voted by such person, either in person or by proxy, without the transfer of such shares into the name of such person. Shares standing in the name of a trustee may be voted by such trustee, either in person or by proxy, but no trustee shall be entitled to vote shares held by such trustee without a transfer of such shares into the name of such trustee.

Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into the name of such receiver if authority so to do is contained in an appropriate order of the court by which such receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

On and after the date on which written notice of redemption of redeemable shares has been given to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares.

Shares of the Corporation are not entitled to be voted if they are owned, directly or indirectly, by a second corporation, and the Corporation owns, directly or indirectly, a majority of the shares entitled to vote for the election of directors of such second corporation, nor shall any such shares be counted in determining the total number of outstanding shares at any given time.

At all meetings of shareholders, a shareholder may vote either in person or by proxy appointment form executed in writing by the shareholder or by the duly authorized attorney-in-fact of such shareholder. Such proxy appointment and any revocation thereof shall be filed with the Secretary of the Corporation. No proxy appointment shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

Section 9. Proxies. When a valid proxy appointment form is filed with the Secretary of the Corporation, the proxy named therein (or the duly appointed substitute of such proxy, if the proxy appointment permits the appointment of a substitute) shall be entitled to enter and be present at the shareholders' meeting designated in the proxy appointment, and to exercise the power granted to such proxy under such proxy appointment, notwithstanding that the shareholder who gave the proxy appointment is personally present at the meeting, unless and until such proxy appointment is revoked by a written instrument of revocation, stating the time and date of revocation of the proxy appointment, duly signed by the shareholder who executed the proxy appointment, and filed with the Secretary of the Corporation at or prior to the meeting. Subject to any express limitation or restriction in any such proxy appointment contained, a vote, consent or action taken by a proxy prior to revocation thereof, as hereinbefore provided, shall be valid and binding on the shareholder who gave the proxy appointment. Each proxy appointment, and also each instrument of revocation thereof, shall be retained by the Secretary of the Corporation as required by regulatory authorities.

Section 10. Quorum. The holders of a majority of the votes of the shares entitled to vote thereat, represented in person or by proxy, shall constitute a quorum for the transaction of business at all meetings of the shareholders except as otherwise provided by the Iowa Business Corporation Act, the

Articles of Incorporation or these bylaws. The holders of a majority of the votes of the shares present in person or by proxy at any meeting and entitled to vote thereat shall have power successively to adjourn the meeting to a specified date whether or not a quorum be present. The time and place to which any such adjournment is taken shall be publicly announced at the meeting, and no further notice thereof shall be necessary. At any such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally called.

Section 11. Manner of Voting. Upon demand of any shareholder entitled to vote thereon, the vote on any question before the meeting shall be by ballot. If a quorum is present, the affirmative vote of the holders of a majority of the votes of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by the Iowa Business Corporation Act or the Articles of Incorporation.

Section 12. Officers of the Meeting-Powers. The Chairman of the Board of Directors (if there be one), or in the absence of the Chairman of the Board, the Vice Chairman of the Board (if there be one), or the President of the Corporation shall call meetings of the shareholders to order and shall act as chairman thereof. The Board of Directors may appoint any shareholder to act as chairman of any meeting in the absence of the Chairman of the Board and the President, and in the case of the failure of the Board to appoint a chairman, the shareholders present at the meeting shall elect a chairman who shall be either a shareholder or a proxy of a shareholder.

The Secretary of the Corporation shall act as secretary at all meetings of shareholders. In the absence of the Secretary at any meeting of shareholders, the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 13. Power of Chairman. The chairman of any shareholders' meeting shall have power to determine the eligibility of votes, and may reject votes, whether cast in person or by proxy, as irregular, unauthorized, or not cast in accordance with the Articles of Incorporation or these bylaws. The decisions of such chairman as to such matters shall be final unless challenged from the floor, immediately after being announced and overruled by the vote of the holders of a majority of the votes of the shares represented at the meeting. Such chairman may appoint tellers to count ballots, whenever voting is by ballot. Such chairman shall have power to order any unauthorized persons to leave the meeting and to enforce such orders, and shall have and exercise all power and authority, and perform all duties customarily possessed and performed by the presiding officer of such a meeting.

ARTICLE III

Board of Directors

Section 1. Powers. The business and affairs of the Corporation shall be managed by the Board of Directors.

Section 2. Number and Qualification of Directors. The number of directors may be increased or decreased from time to time by resolution of the Board of Directors within the range established in the Articles of Incorporation, provided no decrease shall have the effect of shortening the term of any incumbent director. A director may but need not be a shareholder or a resident of the State of Iowa. Each director shall be elected to serve until the next annual meeting of the shareholders and until the successor of such director shall be elected or appointed as provided in Section 4 of this Article III, and shall have qualified.

Section 3. Nominations. Nominations for the election of directors may be made by the Board of Directors or a committee appointed by the Board of Directors or by any shareholder entitled to vote in the election of directors generally. However, any shareholder entitled to vote in the election of directors generally may nominate one or more persons for election as directors at a meeting only if written notice of such shareholder's intent to make such nomination or nominations has been given, either by personal delivery or by United States mail, postage prepaid, to the Secretary of the Corporation not later than (a) with respect to an election to be held at an annual meeting of shareholders, 90 days in advance of such meeting, and (b) with respect to an election to be held at a special meeting of shareholders for the election of directors, the close of business on the seventh day following the date on which notice of such meeting is first given to shareholders. Each such notice shall set forth: (i) the name and address of the shareholder who intends to make the nomination and of the person or persons to be nominated; (ii) a representation that the shareholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; (iii) a description of all arrangements or understandings between the shareholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the shareholder; (iv) such other information regarding each nominee proposed by such shareholder as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission had the nominee been nominated, or intended to be nominated, by the Board of Directors; and (v) the consent of each nominee to serve as a director of the Corporation if so elected. The Chairman of the

meeting may refuse to acknowledge the nomination of any person not made in compliance with the foregoing procedure.

Section 4. Vacancies. In accordance with Article VI of the Articles of Incorporation, if a vacancy in the Board of Directors shall occur, a majority of the remaining directors, though less than a quorum, may appoint a director to fill such vacancy, who shall hold office for the unexpired term of the directorship in respect of which such vacancy occurred or for the full term of any new directorship caused by any increase in the number of members.

Section 5. Place of Meetings. The Board of Directors may hold its meetings, regular or special, within or without the State of Iowa at such place or places as it may from time to time determine, or as may be specified in the notice of the meeting.

Section 6. Time and Place of Meeting. Regular meetings of the Board shall be held, without notice other than this bylaw, quarterly on the Wednesday next preceding the last Thursday of each January, April, July, and October at the principal office of the Corporation in Des Moines at ten o'clock in the morning. The Chairman of the Board of Directors (if there be one), the Vice Chairman of the Board of Directors (if there be one), or the President may direct a different date, time or place for the holding of a regular meeting and the Secretary shall advise the directors of any such change at least three days in advance of the meeting date in the manner provided in Section 8 of this Article III.

The Chairman of the Board of Directors (if there be one) or the President shall have power to cancel not more than two successive regular meetings of the Board of Directors by causing not less than one day's notice of such cancellation to be given to the directors.

Section 7. Special Meetings. Special meetings of the Board of Directors for any purpose or purposes may be called by the Chairman of the Board of Directors (if there be one), the Vice Chairman of the Board of Directors (if there be one), by the President or a majority of the members of the Board, and shall be held at such place as may be fixed by the person or persons calling such meeting and as shall be specified in the notice of such meeting. The Secretary or an assistant secretary shall give not less than three (3) days' notice of the date, time and place of each such meeting to each director in the manner provided in Section 8 of this Article III. Neither the business to be transacted at, nor the purpose of, any special meeting of the Board of Directors need be specified in the notice given, or waiver of notice obtained, of such meeting as provided in Section 8 or 9, as the case may be, of Article III.

Section 8. Manner of Giving Notice of Meetings.

Notice of any special meeting of the Board of Directors may be given to any director by telephone, facsimile or by telegram addressed to such director at such address as last appears in the records of the Secretary of the Corporation or by mail by depositing the same in the post office or letter box in a postpaid, sealed envelope addressed to such director at such address.

It shall be the duty of every director to furnish the Secretary of the Corporation with the post office address of such director and to notify the Secretary of any change therein.

Section 9. Waiver of Notice.

Whenever any notice is required to be given to directors under the provisions of the Iowa Business Corporation Act or of the Articles of Incorporation or these bylaws, a waiver thereof in writing signed by the director entitled to such notice, whether before, at or after the time stated therein, shall be deemed equivalent thereto. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 10. Quorum.

At all meetings of the Board, a majority of the number of directors fixed by these bylaws shall constitute a quorum for the transaction of business. The act of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors, except as may be otherwise specifically provided by the Iowa Business Corporation Act or by the Articles of Incorporation or by these bylaws. If a quorum shall not be present at any meeting of directors, the director or directors present may adjourn the meeting to a specified time, without notice other than announcement at the meeting.

Section 11. Conduct of Meetings.

The Chairman of the Board of Directors (if there be one) or, in the absence of the Chairman of the Board, the Vice Chairman of the Board (if there be one), or the President of the Corporation shall act as the presiding officer at Board meetings, and the Secretary or an assistant secretary of the Corporation shall act as the secretary of the meeting. In the absence of the Chairman of the Board of Directors (if there be one), the Vice Chairman of the Board (if there be one), and the President, the Board may appoint a director to act as the presiding officer. The presiding officer at Board meetings shall be entitled to vote as a director on all questions.

Minutes of all meetings of the Board shall be permanently kept by the Secretary, and all minutes shall be signed by the secretary of the meeting.

The Board shall have power to formulate rules and regulations governing the conduct of Board meetings and the procedure thereat.

Section 12. Executive and Other Committees. The Board of Directors may, by resolution adopted by a majority of the number of directors fixed by these bylaws, designate from among its members an executive committee, and one or more other committees each of which, to the extent provided in such resolution and permitted by the Iowa Business Corporation Act, shall have and may exercise all the authority of the Board of Directors. Unless otherwise provided by resolution of the Board of Directors, a quorum of each such committee shall consist of a majority of its members, and if a quorum is present when a vote is taken, the affirmative vote of a majority of the members present shall be the act of such committee.

Section 13. Compensation of Directors. The Board of Directors shall have the authority to fix the compensation of directors. Any director may serve the Corporation in any other capacity and receive compensation therefor.

Section 14. Indemnification of Directors, Officers, Employees and Agents.

(a) Right to Indemnification. Each person who was or is a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative, investigative or arbitration and whether formal or informal ("proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity while serving as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Iowa Business Corporation Act (the "Act"), as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than the Act permitted the Corporation to provide prior to such amendment), against all reasonable expenses, liability and loss (including, without limitation, attorneys' fees, all costs, judgments, fines, Employee Retirement Income Security Act excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith. Such right shall be a contract right and shall include the right to be paid by the Corporation expenses incurred in defending any such

proceeding in advance of its final disposition; provided, however, that, the payment of such expenses incurred by a director, officer, employee or agent in his or her capacity as a director, officer, employee or agent (and not in any other capacity in which service was or is rendered by such person while a director, officer, employee or agent including, without limitation, service to an employee benefit plan) in advance of the final disposition of such proceeding, shall be made only upon delivery to the Corporation of (i) a written undertaking, by or on behalf of such director, officer, employee or agent, to repay all amounts so advanced if it should be determined ultimately that such director, officer, employee or agent is not entitled to be indemnified under this Section or otherwise, or (ii) a written affirmation by or on behalf of such director, officer, employee or agent that, in such person's good faith belief, such person has met the standards of conduct set forth in the Act.

(b) Right of Claimant to Bring Suit. If a claim under paragraph (a) is not paid in full by the Corporation within thirty (30) days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expenses of prosecuting such claim. It shall be a defense to any such action that the claimant has not met the standards of conduct which make it permissible under the Act for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. The failure of the Corporation (including its Board of Directors, independent legal counsel, or its shareholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Act, shall not be a defense to the action or create a presumption that the claimant had not met the applicable standard of conduct.

(c) Benefit. Indemnification provided hereunder shall, in the case of the death of the person entitled to indemnification, inure to the benefit of such person's heirs, executors or other lawful representatives. The invalidity or unenforceability of any provision of this Section 14 shall not affect the validity or enforceability of any other provision of this Section 14.

(d) Certain Actions: Presumption of Standard of Conduct. Any action taken or omitted to be taken by (i) any director, officer, employee or agent in good faith and in compliance with or pursuant to any order, determination, approval or permission made or given by a commission, board, official or other agency of the United States or of any state or other governmental authority with respect to the property or affairs of the Corporation or any such business corporation, not-for-profit

corporation, joint venture, trade association or other entity over which such commission, board, official or agency has jurisdiction or authority or purports to have jurisdiction or authority or (ii) by any director of the Corporation pursuant to Section D of Article VIII of the Restated Articles of Incorporation shall be presumed to be in compliance with the standard of conduct set forth in Section 490.851 (or any successor provision) of the Act whether or not, in the case of clause (i), it may thereafter be determined that such order, determination, approval or permission was unauthorized, erroneous, unlawful or otherwise improper.

(e) Litigation; Presumption of Standard of Conduct. Unless finally determined, the termination of any litigation, whether by judgment, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not create a presumption that the action taken or omitted to be taken by the person seeking indemnification did not comply with the standard of conduct set forth in Section 490.851 (or successor provision) of the Act.

(f) Non-Exclusivity of Rights. The rights conferred on any person by this Section 14 shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Articles of Incorporation, Bylaws, agreement, vote of shareholders or disinterested directors or otherwise.

(g) Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any such director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Act.

Section 15. Action by Directors Without a Meeting. Any action required to be taken at a meeting of the Board of Directors or a committee of directors and any other action which may be taken at a meeting of the Board of Directors or a committee of directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors or all of the members of the committee of directors, as the case may be, entitled to vote with respect to the subject matters thereof.

ARTICLE IV.

Officers

At the first regular meeting of the Board of Directors following each annual meeting of the shareholders, the Board shall elect a President, one or more Vice Presidents as prescribed by these bylaws, a Secretary and a Treasurer; and the Board may at any meeting elect or appoint a Chairman of the Board of Directors, Vice Chairman, additional vice presidents and other officers or assistants to officers.

The Chairman of the Board of Directors (if there be one), the Vice Chairman of the Board of Directors (if there be one), and the President shall be selected from among the members of the Board. Other officers of the Corporation may be, but are not required to be, directors. An officer may, but need not be, a shareholder of the Corporation.

Subject to the power of the Board to remove any officer from office at any time when in its judgment the best interests of the Corporation will be served thereby, each officer shall serve until the successor of such officer is elected or appointed, unless the tenure of such officer is otherwise fixed by the Board by resolution, contract or agreement for a different period of time.

The Board shall have power to fix the compensation of each officer, to prescribe the duties of such officer, to decrease or increase such compensation, change the nature of such duties, or remove such officer from office and elect or appoint the successor of such officer, in each case subject to the terms of any agreement between such officer and the Corporation.

Section 1. Chairman of the Board of Directors. The Chairman of the Board of Directors (if there be one) shall preside at all meetings of the shareholders and of the directors, at which the Chairman is present. The Chairman shall perform all duties incident to the office of Chairman of the Board of Directors and such other duties as, from time to time, may be assigned to the Chairman by the Board of Directors, and, if so designated by an appropriate resolution of the Board of Directors or an agreement between the Chairman and the Corporation, shall be the chief executive officer of the Corporation, subject however, to the right of the Board of Directors to delegate any specific power to any other officer or officers of the Corporation; and the Chairman shall see that all orders and resolutions of the Board are carried into effect.

Section 2. Vice Chairman of the Board of Directors. The Board of Directors may elect or appoint a Vice Chairman who shall, in the absence or disability of the Chairman or in case of vacancy in the office, assume all duties of the Chairman and such

other duties as, from time to time, may be assigned to the Vice Chairman by the Board of Directors.

Section 3. President. The President of the Corporation shall have general and active management of and exercise general supervision of the business and affairs of the Corporation and, if so designated by an appropriate resolution of the Board of Directors or an agreement between the President and the Corporation, shall be the chief executive officer of the Corporation, subject, however, to the right of the Board of Directors to delegate any specific power to any other officer or officers of the Corporation; and the President shall see that all orders and resolutions of the Board are carried into effect. The President shall have concurrent power with the Chairman of the Board of Directors to sign bonds, mortgages, certificates for shares, and other contracts and documents, except in cases where the signing and execution thereof shall be expressly delegated by law, by the Board of Directors, or by these bylaws to some other officer or agent of the Corporation. In the absence of the Chairman of the Board of Directors or in the event of the disability or refusal of the Chairman to act, and in the absence of the Vice Chairman of the Board of Directors or in the event of the disability or refusal of the Vice Chairman to act, the President shall have such other powers as are vested in the Chairman of the Board of Directors. In general the President shall perform the duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 4. Executive Vice President. The Board of Directors may designate an Executive Vice President who shall, in the absence of disability of the President, or in case of a vacancy in that office, assume all duties of the President.

Section 5. Vice Presidents. The Vice Presidents, including the Executive Vice President and Vice Presidents designated by the Board of Directors as Senior Vice Presidents, shall perform such of the duties and exercise such of the powers of the President as shall be assigned to them from time to time by the Board of Directors or the President, and shall perform such other duties as the Board of Directors or the President shall from time to time prescribe. Any Vice President may sign certificates for shares of the Corporation and any deeds, mortgages, bonds, contracts or other instruments which the Board of Directors has authorized to be executed, which authorizations may be either specific or general. In case of the death, disability or absence of the Chairman of the Board of Directors (if there be one) and the President and the Executive Vice President, the Senior Vice President (or, if there be more than one, the Senior Vice President designated by the Board of Directors) shall perform the duties of the President, including interim duties, and when so acting shall have all the powers of and be subject to all restrictions upon the President.

Section 6. Secretary. The Secretary shall attend all meetings of the shareholders and of the Board of Directors and shall keep the minutes of such meetings. The Secretary shall perform like duties of the standing committees of the Board of Directors when required. Except as otherwise provided by these bylaws or by the Iowa Business Corporation Act, the Secretary shall give, or cause to be given, notice of all meetings of the shareholders and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or the Chairman of the Board of Directors (if there be one) or the President.

The Secretary shall have custody of the minute books, containing the minutes of shareholders' and directors' meetings, of the stock books of the Corporation, and of all corporate records. The Secretary shall have the duty to see that the books, reports, statements, certificates and all other documents and reports of the Corporation required by law are properly prepared, kept and filed. The Secretary shall, in general, perform all duties incident to the office of Secretary.

Section 7. Assistant Secretaries. The assistant secretaries shall perform such of the duties and exercise such of the powers of the Secretary as shall be assigned to them from time to time by the Board of Directors or the Chairman of the Board of Directors (if there be one) or the President or the Secretary, and shall perform such other duties as the Board of Directors or the Chairman of the Board of Directors (if there be one) or the President shall from time to time prescribe.

Section 8. Treasurer. The Treasurer shall have the custody of all moneys, stocks, bonds and other securities of the Corporation, and of all other papers on which moneys are to be received and of all papers which relate to the receipt or delivery of the stocks, bonds, notes and other securities of the Corporation in the possession of the Treasurer. The Treasurer is authorized to receive and receipt for stocks, bonds, notes and other securities belonging to the Corporation or which are received for its account, and to place and keep the same in safety deposit vaults rented for the purpose, or in safes or vaults belonging to the Corporation. The Treasurer is authorized to collect and receive all moneys due the Corporation and to receipt therefor, and to endorse all checks, drafts, vouchers or other instruments for the payment of money payable to the Corporation when necessary or proper and to deposit the same to the credit of the Corporation in such depositories as the Treasurer may designate for the purpose, and the Treasurer may endorse all commercial documents for or on behalf of the Corporation. The Treasurer is authorized to pay interest on obligations when due and dividends on stock when duly declared and payable. The Treasurer shall, when necessary or proper, disburse the funds of the Corporation, taking proper vouchers for such disbursements. The Treasurer shall cause to be kept in the

office of the Treasurer true and full accounts of all receipts and disbursements, and shall render to the Board of Directors and the Chairman of the Board of Directors (if there be one) or the President, whenever they may require it, an account of all transactions as Treasurer and of the financial condition of the Corporation. The Treasurer shall also perform such other duties as may be prescribed by the Board of Directors or the Chairman of the Board of Directors (if there be one) or the President. The Treasurer shall, in general, perform all duties usually incident to the office of Treasurer.

Section 9. Assistant Treasurers. The assistant treasurers shall perform such of the duties and exercise such of the powers of the Treasurer as shall be assigned to them from time to time by the Board of Directors or the Chairman of the Board of Directors (if there be one) or the President or the Treasurer, and shall perform such other duties as the Board of Directors or the Chairman of the Board of Directors (if there be one) or the President shall from time to time prescribe.

ARTICLE V

Stock Certificates

Section 1. Registrars and Transfer Agents. The Board of Directors shall determine the form of and provide for the issue, registration and transfer of any stock certificates representing stock of the Corporation, and may appoint registrars and transfer agents, who may be natural persons or corporations. The office of any transfer agent or registrar may be maintained within or without the State of Iowa.

Section 2. Signatures. Any stock certificates issued by the Corporation shall bear the signatures of the Chairman of the Board of Directors (if there be one), or the Vice Chairman of the Board of Directors (if there be one), or the President or any Vice President and of the Secretary or any Assistant Secretary and such officers are hereby authorized and empowered to sign such certificates when the issuance thereof has been duly authorized by the Board of Directors; provided, however, that if certificates representing shares of any class or series of stock issued by the Corporation are countersigned by manual signature by a transfer agent, other than the Corporation or its employee, or registered by manual signature by a registrar, other than the Corporation or its employee, another signature on such certificate may be a facsimile, engraved, stamped or printed. In case any person who is an officer who has signed or whose facsimile signature has been placed upon such certificate representing stock of the Corporation shall cease to be such officer of the Corporation before such certificate is issued, such certificate may be issued by the Corporation with

the same effect as if such person was such officer at the date of its issue.

Section 3. Transfers. Transfers of shares shall be made on the books of the Corporation only by the registered owner thereof (or the legal representative of such owner, upon satisfactory proof of authority therefor), or by the attorney of such owner lawfully constituted in writing by documents filed with the Secretary or transfer agent of the Corporation, and only upon surrender of any certificate to be transferred, or delivery in order of such owner if such shares are not represented by a certificate, and payment of applicable taxes with respect to such transfer, unless otherwise ordered by the Board of Directors.

Section 4. Lost or Destroyed Certificates. New certificates may be issued to replace lost, stolen or destroyed certificates, upon such terms and conditions as the Board of Directors may prescribe.

Section 5. Rights of Registered Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered or shown on its books as the owner of shares of its stock to receive dividends or any other distribution thereon, or to vote such shares, and to treat such person as the owner of such shares for all purposes and the Corporation shall not be bound to recognize any equitable or other claim to or interest in its shares on the part of any person other than the registered or record owner thereof, whether or not it shall have notice thereof.

ARTICLE VI

General Provisions

Section 1. Instruments Affecting Real Estate. Deeds, mortgages and other instruments affecting real estate owned by the Corporation, the execution of which has been duly authorized by the Board of Directors, shall be signed on behalf of the Corporation by the Chairman of the Board of Directors (if there be one), the Vice Chairman of the Board of Directors (if there be one), or the President or any Vice President and by the Secretary or any Assistant Secretary. Leases, contracts to purchase, and other instruments whereby the Corporation acquires, in the ordinary course of business, an interest in real estate owned by others may be executed on behalf of the Corporation by the Chairman of the Board of Directors (if there be one), the Vice Chairman of the Board of Directors (if there be one), or the President or by any Vice President so authorized.

Section 2. Other Instruments. Bonds, notes and other secured or unsecured obligations of the Corporation, when duly authorized by the Board of Directors, may be executed on

behalf of the Corporation by the Chairman of the Board of Directors (if there be one), the Vice Chairman of the Board of Directors (if there be one), or the President or any Vice President, or by any other officer or officers thereunto duly authorized by the Board of Directors and the signature of any such officer may, if the Board of Directors shall so determine, be a facsimile. Contracts and other instruments entered into executed in the ordinary course of business may be signed on behalf of the Corporation by the Chairman of the Board of Directors (if there be one), the Vice Chairman of the Board of Directors (if there be one), or the President or by any officer, employee or agent of the Corporation thereunto authorized by the Chairman of the Board of Directors (if there be one), the Vice Chairman of the Board of Directors (if there be one), or the President, without obtaining specific authorization therefor from the Board of Directors.

Section 3. Destruction of Records. The Chairman of the Board of Directors (if there be one), the Vice Chairman of the Board of Directors (if there be one), or the President or any Vice President appointed by the President to serve in place of the President, the Secretary and the Treasurer shall constitute a committee for the destruction of records and shall meet from time to time at the call of the Secretary who shall be chairman of such committee. It shall have power to order and cause the destruction of any corporate records, the preservation of which has been found by it to be no longer necessary or desirable.

Section 4. Fiscal Year. The fiscal year of the Corporation shall be the calendar year.

Section 5. Annual Report. As soon as practicable after the close of each fiscal year, the Board of Directors shall cause an annual report of the business and affairs of the Corporation to be made to the shareholders.

Section 6. No Corporate Seal. The Corporation shall have no corporate seal.

Section 7. Stock in Other Corporations. Unless otherwise ordered by the Board of Directors, the Chairman of the Board of Directors (if there be one), the Vice Chairman of the Board of Directors (if there be one), or the President or any Vice President of the Corporation (1) shall have full power and authority to act and vote, in the name and on behalf of the Corporation, at any meeting of shareholders of any corporation in which the Corporation may hold stock, and at any such meeting shall possess and may exercise any and all of the rights and powers incident to the ownership of such stock, and (2) shall have full power and authority to execute, in the name and on behalf of the Corporation, proxies appointing any suitable person or persons to act and to vote at any meeting of shareholders of

any corporation in which the Corporation may hold stock, and at any such meeting the person or persons so designated shall possess and may exercise any and all of the rights and powers incident to the ownership of such stock.

ARTICLE VII

Amendments

These bylaws may be altered, amended or repealed and new bylaws may be adopted by vote of a majority of the number of directors fixed by these bylaws at any regular or special meeting of the Board.

ARTICLES OF MERGER
OF
MIDAMERICAN ENERGY COMPANY

To the Secretary of State
of the State of Iowa:

Pursuant to the provisions of 490.1105 and 1107 of the Iowa Business Corporation Act, the undersigned corporation hereby executes and adopts the following Articles of Merger for the purpose of merging each of Midwest Resources Inc., an Iowa corporation ("Resources"), Midwest Power Systems Inc., an Iowa corporation ("Midwest Power"), and Iowa-Illinois Gas and Electric Company, an Illinois corporation ("Iowa-Illinois") with and into MidAmerican Energy Company, an Iowa corporation ("Company"), which will be the surviving corporation. Resources, Midwest Power, Iowa-Illinois and the Company are sometimes referred to individually as a "Constituent Corporation" and collectively as the "Constituent Corporations".

1. The Agreement and Plan of Merger ("Plan of Merger"), dated as of July 26, 1994, as amended and restated as of September 27, 1994, a copy of which is attached hereto as Annex A and is incorporated by reference herein, was approved by the shareholders of each of the Constituent Corporations.

2. The laws of Illinois, the state under which Iowa-Illinois is organized, permit such merger.

3. As to each Constituent Corporation, the designation, number of shares outstanding, and the number of votes entitled to be cast by each voting group entitled to vote separately on the Plan of Merger is as follows:

<u>Name</u>	<u>Class</u>	<u>Outstanding</u>	<u>Entitled to Vote</u>
The Company	Common		
Resources	Common		
Midwest Power	Common		
	Preferred		
	Common and Preferred, together as a class		
Iowa- Illinois	Common		
	Preference		
	Common and Preference together as a class		

4. As to each Constituent Corporation, the total number of shares voted for and against the Plan of Merger by each voting group entitled to vote separately on the Plan of Merger is as follows:

<u>Name</u>	<u>Class</u>	<u>Total Shares Voted For</u>	<u>Total Voted Against</u>	<u>Abstained</u>
The Company	Common			
Resources	Common			
Midwest Power	Common			
	Preferred			
	Common and Preferred together as a class			
Iowa- Illinois	Common			
	Prefer- ence			
	Common and Prefer- ence together as a class			

5. The number of votes cast for the Plan of Merger by each voting group was sufficient for approval by that voting group.

6. The Merger shall become effective on _____, _____.

MIDAMERICAN ENERGY COMPANY

By: _____
Its:

File # _____

ARTICLES OF MERGER

1. The names of the corporations proposing to merge, and the respective states of their incorporation:

<u>Name of Corporation</u>	<u>State or Country of Incorporation</u>
MidAmerican Energy Company	Iowa
Midwest Resources Inc.	Iowa
Midwest Power Systems Inc.	Iowa
Iowa-Illinois Gas and Electric Company	Illinois

2. The laws of the state under which each corporation is incorporated permit such merger.
3. (a) Name of the surviving corporation: MidAmerican Energy Company

(b) It shall be governed by the laws of: the State of Iowa
4. The Plan of Merger is set forth as Exhibit A attached hereto.
5. The Plan of Merger was approved, as to each corporation not organized in Illinois, in compliance with the laws of the state under which it is organized, and (b) as to each Illinois corporation, as follows:

Name of Illinois Corporation

Approval

Iowa-Illinois Gas and Electric
Company

By the shareholders, a resolution of the board of directors having been duly adopted and submitted to a vote at a meeting of shareholders. Not less than the minimum number of votes required by statute and by the articles of incorporation voting in favor of the action taken.

6. It is agreed that, upon and after the issuance of a certificate of merger by the Secretary of State of the State of Illinois:
- a. The surviving corporation may be served with process in the State of Illinois in any proceeding for the enforcement of any obligation of any corporation organized under the laws of the State of Illinois which is a party to the merger and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such corporation organized under the laws of the State of Illinois against the surviving corporation.
 - b. The Secretary of State of the State of Illinois shall be and hereby is irrevocably appointed as the agent of the surviving corporation to accept service of process in any such proceedings, and
 - c. The surviving corporation will promptly pay to the dissenting shareholders of any corporation organized under the laws of the State of Illinois which is a party to the merger the amount, if any, to which they shall be entitled under the provisions of "The Business Corporation Act of 1983" of the State of Illinois with respect to the rights of dissenting shareholders.

8. Each of the undersigned corporations has caused these articles to be signed by its duly authorized officers, each of whom affirms, under penalties of perjury, that the facts stated herein are true.

Dated _____, 19____ MIDAMERICAN ENERGY COMPANY
attested by _____ by _____

Dated _____, 19____ MIDWEST RESOURCES INC.
attested by _____ by _____

Dated _____, 19____ MIDWEST POWER SYSTEMS INC.
attested by _____ by _____

Dated _____, 19____ IOWA-ILLINOIS GAS AND ELECTRIC
COMPANY
attested by _____ by _____

TRANSITION TEAMS

(Charge and mission to be prepared by Mr. Christiansen and Mr. Bright)

DIVERSIFIED	CORPORATE (UTILITY)
Don Heppermann John Rasmussen Dennis Melstad Dan Lonergan	Richard Engle Steve Shelton Steve Hollonbeck John Rasmussen Brent Gale Ron Stepien Bev Wharton Jack Alexander (Luis Baez)

BOARD COMMITTEES		
EXECUTIVE	NOMINATING	AUDIT
Christiansen - Chair Bright - V. Chair Foster Eugster Woodruff Peterson	Foster - Chair Christensen - V. Chair Colloton Peterson	Aalfs - Chair Fletcher - V. Chair Lawson Cottrell Asher Tinsman
FINANCE	STRATEGY	COMPENSATION
Tinsman - Chair Hoak - V. Chair Woodruff Putney Bright Christiansen	Bright - Chair Gentry - V. Chair Kirke Christensen Seifert Cottrell	Eugster - Chair Seifert - V. Chair Schneider Colloton

July 26, 1994

Mr. Russell E. Christiansen
666 Grand Avenue
Des Moines, IA 50306-9244

Dear Mr. Christiansen:

Pursuant to the Agreement and Plan of Merger ("Merger Agreement") dated as of July 26, 1994, by and among Midwest Resources Inc., Midwest Power Systems Inc., Iowa-Illinois Gas and Electric Company and MidAmerican Energy Company ("Company"), Midwest Resources Inc., Midwest Power Inc. and Iowa-Illinois Gas and Electric Company will be merged into the Company. In recognition of the value of your past services to Midwest Resources Inc. and its subsidiaries, and in anticipation of your contribution to the future growth and success of the Company and its subsidiaries, the Company wishes to provide itself and its subsidiaries the continuing benefits of your service as a senior executive officer of the Company and its subsidiaries on the terms and conditions set forth below.

This letter sets forth our agreement with respect to your employment with the Company and its subsidiaries during the period commencing on the Effective Time (as defined in the Merger Agreement) and ending on the date your employment with the Company and its subsidiaries terminates (as defined herein, "Employment Period") and beyond the Employment Period, with respect to your acting as a consultant and advisor to the Company during the period commencing at the end of the Employment Period and ending on the third anniversary of the retirement date ("Consulting Period") or until such earlier date as otherwise may be determined hereunder.

1. (a) If the Effective Time occurs (i) on or before May 31, 1995, then during the periods commencing on (x) the Effective Time and ending on May 31, 1996, you shall serve as Chairman of the Board of the Directors of the Company, ("Chairman") and Chairman, Office of the Chief Executive Officer of the Company, performing those responsibilities set forth on Exhibit A attached hereto and (y) June 1, 1996 and ending on May 31, 1997, you shall serve as Chairman, (ii) between June 1, 1995 and May 31, 1996, then during the period commencing on (x) the Effective Time and ending on the first anniversary of the Effective Time, you shall serve as Chairman and Chairman, Office of the Chief Executive Officer of the Company and (y) the first anniversary of the Effective Time and ending on May 31, 1997, you shall serve as Chairman or (iii) after May 31, 1996, then commencing on the Effective Time and ending on the first anniversary of the Effective Time, you shall serve as Chairman and Chairman, Office of the Chief Executive Officer of the Company, all of the foregoing shall constitute the "Employment Period". During the Employment Period your duties and services generally shall be performed by you on regular business days during normal business hours, and you agree to be present as required

and for as much time as is necessary to perform your duties and services for the business of the Company and its subsidiaries. You shall be entitled to vacation in accordance with the policy from time to time in effect for senior executive officers of the Company and its subsidiaries with credit for past service with Midwest Resources Inc. and its subsidiaries and predecessors of each. During the Employment Period you shall be reimbursed by the Company in accordance with the Company's policy from time to time in effect for any expenses commensurate with your position which you may reasonably incur in the performance of your duties and services hereunder and which are properly substantiated.

(b) In consideration of and as compensation for your services hereunder and your agreement not to compete with the Company as set forth herein, during the Employment Period the Company will pay to you, in equal installments with the same frequency as for other executives of the Company, but at least monthly, a base salary at the annual rate of not less than \$400,000, such base salary to be subject to adjustment during the Employment Period in accordance with the Company's policy for executives, and shall never be less than the base salary of the Chief Executive Officer or President of the Company. In addition to such salary, you shall be eligible to receive, as additional compensation, appropriate management bonuses, long-term incentive awards and such other compensation elements as are applicable, in amounts not less than those paid or accrued for the Chief Executive Officer or President of the Company, in relation to the achievement by the Company and its subsidiaries of corporate goals and objectives and the Company will provide to you all other benefits accorded to full-time senior executive employees of the Company from time to time, provided that such benefits shall be not less in the aggregate than those in effect at Midwest Resources Inc., Midwest Power Systems, Inc. and Iowa-Illinois Gas and Electric Company as of the Effective Time. The Company's obligations to make the salary payments and to provide the other benefits provided for by this paragraph 1(b) shall be expressly contingent upon, and subject to, your observance of, and substantial compliance with, all of the terms and provisions hereof.

2. (a) During the Consulting Period, you shall serve as consultant and advisor to the Company. You agree, in your capacity as consultant and advisor, to hold yourself ready to and to render such advice and counsel to the Company and any of its subsidiaries and affiliates as may be requested from time to time with reasonable advance notice by the Board of Directors or Chief Executive Officer of the Company; provided, that you shall not be required to devote in excess of sixty (60) days in any twelve-month period to your duties as a consultant hereunder, and provided further that telephonic consultation shall not require advance notice. It is understood and agreed that such requests for consultation shall not unreasonably interfere with your employment with any other employer. You shall report during the Consulting Period directly to the Chief Executive Officer of the Company, who shall represent the Company in all matters relating to the performance of this Agreement. During the Consulting Period, you shall be reimbursed for any expenses which you may reasonably incur in the performance of your duties hereunder and which are properly substantiated.

(b) In consideration of and as compensation for your services as a consultant and advisor to the Company hereunder, and your agreement not to compete with the Company as set forth herein, during the Consulting Period the Company will pay to you in equal monthly installments a consulting fee at a rate of \$50,000 per annum. The Company shall not be obligated to make such payments in respect of any period following the Employment Period if you continue to be actively employed by the Company or any subsidiary or affiliate after the Employment Period. During the Consulting Period the Company shall provide to you the benefits described in paragraph 1 (other than the base salary, bonus, long-term incentive and other cash compensation elements referred to therein), including office space, equipment and furnishings and a full-time secretary, selected by you, at the expense of the Company in quarters agreed upon by you and the Company. The Company's obligations to pay the consulting fee and benefits provided for by this paragraph 2(b) shall be expressly contingent upon, and subject to, your observance of, and substantial compliance with, all of the terms and provisions hereof.

3. You agree that during the Employment Period and the Consulting Period, and any additional period during which you are employed by or act as a consultant to the Company or any subsidiary or affiliate, except with the prior written consent of the Company, you will not in any way, directly or indirectly, own, manage, operate, control, accept employment or a consulting position with, or otherwise advise or assist or be actively connected with or have any financial interest in, directly or indirectly, any enterprise which engages in, or otherwise carries on, any business activity in competition with the business of the Company in any geographic area in which it engages in such business. You further agree that during the Employment Period, the Consulting Period, and any additional period during which you are employed by the Company or any subsidiary or an affiliate and, in any event, until the sixth anniversary of the Effective Time, subject to the foregoing, you will not take any action which might divert from the Company or any of its subsidiaries or affiliates, successors or assigns any opportunity which would be within the scope of its or their respective present or future operations or business. It is understood that ownership of not more than one percent (1%) of the equity securities of a public company shall in no way be prohibited pursuant to the foregoing provisions.

4. Notwithstanding any of the foregoing provisions of this Agreement, the Company may terminate your duties and services hereunder during the term hereof and discharge you (i) in the event of a breach of this Agreement by you in any material respect as determined by the affirmative vote of two-thirds of the membership of the Company's Board of Directors ("Board"), provided that the Board shall have given you written notice of such breach, and you shall have failed to remedy such breach within thirty (30) days of receipt of such notice, (ii) for cause, upon the affirmative vote of two-thirds of the membership of the Board (cause, for purposes of this Agreement, shall mean persistent incompetence, willful misconduct, dishonesty or conviction of a felony), or (iii) upon the affirmative vote of two-thirds of the membership of the Board, provided, in the case of (iii), the Company shall be obligated to make the salary payments to and provide the other benefits provided for by paragraph 1(b)

through the remainder of the Employment Period and the salary payments and other benefits provided for by paragraph 2(b) through the remainder of the Consulting Period notwithstanding such termination. Your duties and services hereunder shall terminate in the event of your death or your physical inability to perform the services required to be performed by you hereunder, provided such inability shall have persisted for a continuous period of 270 days. Should your services be terminated by reason of your breach of this Agreement, or for cause, the Company shall pay to you your salary or consulting fee, as the case may be, only through the end of the calendar month in which such termination occurs, and if your services are terminated by reason of your death prior to the Retirement Date or your physical inability to perform the services required to be performed by you hereunder, your salary hereunder shall terminate on the date benefits in respect of your death or physical disability are made available to your estate or personal representative under the Company's benefit plans.

In the event of a breach of the Agreement by the Company in any material respect, such breach shall be deemed to constitute a constructive termination of your employment in contravention of this Agreement, qualifying you for payment pursuant to paragraph 4(iii) above and such other remedies as are available in law or in equity; provided, however, that you shall have given the Board of the Company written notice of such breach, and the Board shall have failed to cause the Company to remedy such breach within thirty (30) days of receipt of such notice.

5. It is understood and agreed that the services to be rendered under this Agreement by you are special, unique and of an extraordinary character, and, more particularly, that in the event of any breach or threatened breach by you of the provisions of paragraph 3 hereof, the Company shall have no adequate remedy in law. Consequently, in the event of a breach or threatened breach by you of the provisions of paragraph 3 hereof, in addition to the Company's right to terminate this Agreement pursuant to paragraph 4 hereof, the Company shall be entitled to an injunction restraining you from any such breach or threatened breach.

6. Any paragraph, sentence, phrase or other provision of this Agreement which is in conflict with any applicable statute, rule or other law shall be deemed, if possible, to be modified or altered to conform thereto or, if not possible, to be omitted herefrom. The invalidity of any portion hereof shall not affect the force and effect of the remaining valid portions hereof.

7. This Agreement is governed by and is to be construed in accordance with the substantive law (and not the choice of law rules) of the State of Iowa. This Agreement (and the Merger Agreement at Section 7.12 and Exhibit F-3) constitutes the entire understanding between you and the Company with respect to the subject matter contained herein and, except as otherwise set forth in this paragraph 7, supersedes and cancels any and all prior written or oral understandings and agreements with respect to such matters, including the employment agreement dated March 15, 1990. It is understood and agreed that the Merger of Midwest Resources Inc., Midwest Power Systems Inc. and Iowa-Illinois Gas and Electric Company into the Company ("Merger") as contemplated in the Merger Agreement shall not

constitute a Change in Control for purposes of the Agreement between you and Midwest Resources Inc., as successor to Midwest Energy Company, dated April 19, 1989 ("MWE Agreement") only, and that notwithstanding the foregoing, the MWE Agreement shall remain in full force and effect in accordance with the terms thereof with respect to any event, transaction or circumstance other than the Merger.

8. Any notice or other communication required or permitted under this Agreement shall be effective only if it is in writing and delivered personally or sent by registered or certified mail, postage prepaid, or sent by an overnight delivery service, addressed as follows:

If to the Company:

MidAmerican Energy Company
666 Grand Avenue
Des Moines, IA 50306-9244

If to you:

Mr. Russell E. Christiansen
666 Grand Avenue
Des Moines, IA 50306-9244

or to such other address as either party may designate by notice to the other, and shall be deemed to have been given upon receipt.

9. This Agreement may be amended only by an instrument in writing signed by the parties hereto, and any provision hereof may be waived only by an instrument in writing signed by the party or parties against whom or which enforcement of such waiver is sought. The failure of either party hereto at any time to require the performance by the other party hereto of any provision hereof shall in no way affect the full right to require such performance at any time thereafter, nor shall the waiver by either party hereto of a breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or a waiver of the provision itself or a waiver of any other provision of this Agreement.

10. This Agreement is binding on and is for the benefit of the parties hereto and their respective successors, heirs, executors, administrators and other legal representatives. Neither this Agreement nor any right or obligation hereunder may be assigned by the Company or by you.

11. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

12. This Agreement shall have no force and effect unless and until the Effective Time.

Very truly yours,

MIDAMERICAN ENERGY COMPANY

By /s/ Stanley J. Bright
Stanley J. Bright
President, Office of the
Chief Executive Officer

Accepted and agreed to as
of the date first written
above.

/s/ Russell E. Christiansen
Russell E. Christiansen

EXHIBIT A

RESPONSIBILITIES OF CHAIRMAN, OFFICE OF THE CEO

- Shareholder Meetings
- Meetings of the Board of Directors and Committees of the Board.
(The Chairman would preside and the President would have a principal presentation role.)
- Agenda setting for board and board committee meetings to be done by the Chairman, Office of the CEO, with concurrence of the President, Office of the CEO.
- Committees of the Board
 - Executive (Chairman, Office of the CEO, to serve as chairman; President, Office of the CEO, to serve as vice chairman.)
 - Nominating
 - Finance (Chairman, Office of the CEO, and President, Office of the CEO, to be members.)
 - Audit
 - Management Development and Compensation
 - Strategic Planning (President, Office of the CEO, to serve as chairman)
- Corporate Charter and By Law Revisions
- Major Economic Development Initiatives
- Major Governmental or Regulatory Initiatives and programs undertaken by the Company at the federal, state or local level.
- Major Industry Initiatives

July 26, 1994

EXHIBIT F-2

Mr. Stanley J. Bright
206 East Second Street
Davenport, IA 52801

Dear Mr. Bright:

Pursuant to the Agreement and Plan of Merger ("Merger Agreement") dated as of July 26, 1994, by and among Midwest Resources Inc., Midwest Power Systems Inc., Iowa-Illinois Gas and Electric Company and MidAmerican Energy Company ("Company"), Midwest Resources Inc., Midwest Power Systems Inc. and Iowa-Illinois Gas and Electric Company will be merged into the Company. In recognition of the value of your past services to Iowa-Illinois Gas and Electric Company and its subsidiaries, and in anticipation of your contribution to the future growth and success of the Company and its subsidiaries, the Company wishes to provide itself and its subsidiaries the continuing benefits of your services as a senior executive officer of the Company and its subsidiaries on the terms and conditions set forth below.

This letter sets forth our agreement with respect to your employment with the Company and its subsidiaries during the period commencing on the Effective Time (as defined in the Merger Agreement) and ending on the fifth anniversary of the Effective Time (such period herein referred to as the "Employment Period").

1. (a) If the Effective Time occurs (i) on or before May 31, 1995, then during the periods commencing on (x) the Effective Time and ending on May 31, 1996, you shall serve as President of the Company ("President") and President, Office of the Chief Executive Officer of the Company performing those responsibilities set forth on Exhibit A attached hereto, (y) June 1, 1996 and ending on May 31, 1997, you shall serve as President and Chief Executive Officer of the Company and (z) June 1, 1997 and ending on the fifth anniversary of the Effective Time, you shall serve as Chairman of the Board of Directors of the Company ("Chairman") and Chief Executive Officer of the Company, (ii) between June 1, 1995 and May 31, 1996, then during the periods commencing on (x) the Effective Time and ending on the first anniversary of the Effective Time, you shall serve as President and President, Office of the Chief Executive Officer of the Company and (y) the first anniversary of the Effective Time and ending on May 31, 1997, you shall serve as President and Chief Executive Officer of the Company and (z) June 1, 1997 and ending on the fifth anniversary of the Effective Time, you shall serve as Chairman and Chief Executive Officer of the Company, or (iii) after May 31, 1996, then commencing on (x) the Effective Time and ending on the first anniversary of the Effective Time, you shall serve as President and President, Office of the Chief Executive Officer of the Company and (y) the first anniversary of the Effective Time and ending on the fifth anniversary of the Effective Time, you shall serve as Chairman and Chief Executive Officer of the Company. Any service required to be performed by you hereunder shall be of the type usually performed by the officer holding such title at a major public company.

Your duties and services generally shall be performed by you on regular business days during normal business hours, and you agree to be present in Des Moines, Iowa, as required and for as much time as is necessary to perform your duties and services for the business of the Company and its subsidiaries. You shall be entitled to vacation in accordance with the policy from time to time in effect for senior executive officers of the Company and its subsidiaries with credit for past service with Iowa-Illinois Gas and Electric Company and its subsidiaries. During the Employment Period you shall be reimbursed by the Company in accordance with the Company's policy from time to time in effect for any expenses commensurate with your position which you may reasonably incur in the performance of your duties and services hereunder and which are properly substantiated.

(b) In consideration of and as compensation for your services hereunder and your agreement not to compete with the Company as set forth herein, during the Employment Period the Company will pay to you, while serving as President and President, Office of the Chief Executive Officer, in equal installments with the same frequency as for other executives of the Company, but at least monthly, a base salary at the annual rate of not less than \$350,000, such base salary to be subject to adjustment during the Employment Period in accordance with the Company's policy for executives. At such time as you shall serve as President and Chief Executive Officer of the Company in accordance with paragraph 1(a), you will be paid a base salary not less than the base salary paid the Chairman. In addition to such salary, you shall be eligible to receive, as additional compensation, appropriate management bonuses, long-term incentive awards and such other compensation elements as are applicable, in amounts not less than those paid or accrued for the Chairman of the Company, in relation to the achievement by the Company and its subsidiaries of corporate goals and objectives and the Company will provide to you all other benefits accorded to full-time senior executive employees of the Company from time to time, provided that such benefits shall be not less in the aggregate than those in effect at Midwest Resources Inc., Midwest Power Systems Inc. and Iowa-Illinois Gas and Electric Company as of the Effective Time. The Company's obligations to make the salary payments and to provide the other benefits provided for by this paragraph 1(b) shall be expressly contingent upon, and subject to, your observance of, and substantial compliance with, all of the terms and provisions thereof.

2. You agree that during the Employment Period, and any additional period during which you are employed by or act as a consultant to the Company or any subsidiary or affiliate, except with the prior written consent of the Company, you will not in any way, directly or indirectly, own, manage, operate, control, accept employment or a consulting position with or otherwise advise or assist or be actively connected with, or have any financial interest in, directly or indirectly, any enterprise which engages in, or otherwise carries on, any business activity in competition with the business of the Company in any geographic area in which it engages in such business. You further agree that during the Employment Period, and any additional period during which you are employed by the Company or any subsidiary or an affiliate and, in any event, until the sixth anniversary of the Effective Time, subject to the

foregoing, you will not take any action which might divert from the Company or any of its subsidiaries or affiliates, successors or assigns any opportunity which would be within the scope of its or their respective present or future operations or business. It is understood that ownership of not more than one percent (1%) of the equity securities of a public company shall in no way be prohibited pursuant to the foregoing provisions.

3. Notwithstanding any of the foregoing provisions of this Agreement, the Company may terminate your duties and services hereunder during the term hereof and discharge you (i) in the event of a breach of this Agreement by you in any material respect as determined by the affirmative vote of two-thirds of the membership of the Company's Board of Directors ("Board"), provided that the Board shall have given you written notice of such breach, and you shall have failed to remedy such breach within thirty (30) days of receipt of such notice, (ii) for cause, upon the affirmative vote of two-thirds of the membership of the Board (cause, for purposes of this Agreement, shall mean persistent incompetence, willful misconduct, dishonesty or conviction of a felony), or (iii) upon the affirmative vote of two-thirds of the membership of the Board, provided, in the case of (iii), the Company shall be obligated to make the salary payments to and provide the other benefits provided for by paragraph 1(b) through the remainder of the Employment Period notwithstanding such termination. Your duties and services hereunder shall terminate in the event of your death or your physical inability to perform the services required to be performed by you hereunder, provided such inability shall have persisted for a continuous period of 270 days. Should your services be terminated by reason of your breach of this Agreement, or for cause, the Company shall pay to you your salary only through the end of the calendar month in which such termination occurs, and if your services are terminated by reason of your death or your physical inability to perform the services required to be performed by you hereunder prior to the Retirement Date, your salary hereunder shall terminate on the date benefits in respect of your death or physical disability are made available to your estate or personal representative under the Company's benefit plans.

In the event of a breach of this Agreement by the Company in any material respect, such breach shall be deemed to constitute a constructive termination of your employment in contravention of this Agreement, qualifying you for payment pursuant to paragraph 3(iii) above and such other remedies as are available in law or in equity; provided, however, that you shall have given the Board of the Company written notice of such breach, and the Board shall have failed to cause the Company to remedy such breach within thirty (30) days of receipt of such notice.

4. It is understood and agreed that the services to be rendered under this Agreement by you are special, unique and of an extraordinary character, and, more particularly, that in the event of any breach or threatened breach by you of the provisions of paragraph 2 hereof, the Company shall have no adequate remedy in law. Consequently, in the event of a breach or threatened breach by you of the provisions of paragraph 2 hereof, in addition to the Company's right to terminate this Agreement pursuant to paragraph 3 hereof, the Company shall be entitled to an injunction restraining you from any such breach or threatened breach.

5. Any paragraph, sentence, phrase or other provision of this Agreement which is in conflict with any applicable statute, rule or other law shall be deemed, if possible, to be modified or altered to conform thereto or, if not possible, to be omitted herefrom. The invalidity of any portion hereof shall not affect the force and effect of the remaining valid portions hereof.

6. This Agreement is governed by and is to be construed in accordance with the substantive law (and not the choice of law rules) of the State of Iowa. This Agreement (and the Merger Agreement at Section 7.12 and Exhibit F-3) constitutes the entire understanding between you and the Company with respect to the subject matter contained herein and, except as otherwise set forth in this paragraph 6, supersedes and cancels any and all prior written or oral understandings and agreements with respect to such matters.

7. Any notice or other communication required or permitted under this Agreement shall be effective only if it is in writing and delivered personally or sent by registered or certified mail, postage prepaid, or sent by an overnight delivery service, addressed as follows:

If to the Company:

MidAmerican Energy Company
666 Grand Avenue
Des Moines, Iowa 50306-9244

If to you:

Mr. Stanley J. Bright
206 East Second Street
Davenport, IA 52808

or to such other address as either party may designate by notice to the other, and shall be deemed to have been given upon receipt.

8. This Agreement may be amended only by an instrument in writing signed by the parties hereto, and any provision hereof may be waived only by an instrument in writing signed by the party or parties against whom or which enforcement of such waiver is sought. The failure of either party hereto at any time to require the performance by the other party hereto of any provision hereof shall in no way affect the full right to require such performance at any time thereafter, nor shall the waiver by either party hereto of a breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or a waiver of the provision itself or a waiver of any other provision of this Agreement.

9. This Agreement is binding on and is for the benefit of the parties hereto and their respective successors, heirs, executors, administrators and other legal representatives. Neither this Agreement nor any right or obligation hereunder may be assigned by the Company or by you.

10. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

11. This Agreement shall have no force and effect unless and until the Effective Time.

Very truly yours,

MIDAMERICAN ENERGY COMPANY

By: /s/ Russell E. Christiansen
Russell E. Christiansen
Chairman, Office of the
Chief Executive Officer

Accepted and agreed to as
of the date first written
above:

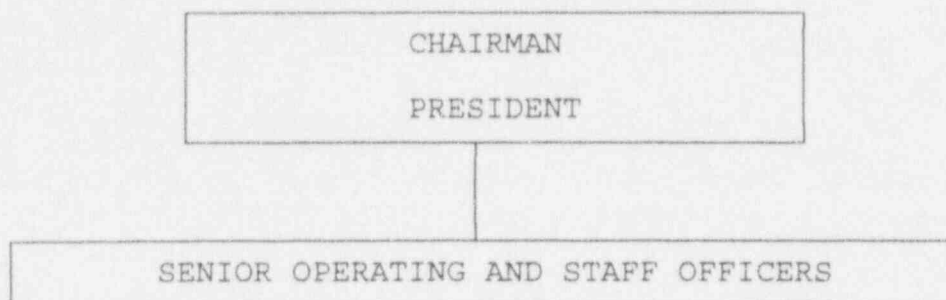
/s/ Stanley J. Bright
Stanley J. Bright

EXHIBIT A

RESPONSIBILITIES OF PRESIDENT, OFFICE OF THE CEO:

- Development of Strategic Alternatives and Merger Implementation
- All Operating Functions
- Financial Management
 - Budgeting, Financial Planning and Financial Analysis
 - Treasury Functions
 - Finance, including relationships with Institutional Investors, Analysts and other shareholders; Investment Banking Relationships and Dealing with Credit Rating Agencies
 - Dealings with External Auditors
 - Accounting, Financial Reporting, and Taxation
- Legal Affairs
- Corporate Development
- Rates and Regulatory Matters
- Governmental Affairs
- Marketing and Economic Development
- Human Resources
- Other Administrative Functions (e.g., Purchasing and Management Information Services)

OFFICE OF THE CEO



Office of the Chief Executive Officer:

Upon approval of the merger of Midwest Resources Inc., Midwest Power Systems Inc. and Iowa-Illinois Gas and Electric Company into the Company, the Office of the Chief Executive Officer would be formed, composed of the CEO of Midwest Resources Inc. and the CEO of Iowa-Illinois Gas and Electric Company. If the Effective Time occurs (i) on or before May 31, 1995, then during the periods commencing on (x) the Effective Time and ending on May 31, 1996, Russell E. Christiansen shall serve as Chairman of the Board of Directors of the Company ("Chairman") and Chairman, Office of the Chief Executive Officer of the Company and Stanley J. Bright shall serve as President of the Company ("President") and President, Office of the Chief Executive Officer of the Company and (y) June 1, 1996 and ending on May 31, 1997, Russell E. Christiansen shall serve as Chairman and Stanley J. Bright shall serve as President and Chief Executive Officer, (ii) between June 1, 1995 and May 31, 1996, then during the period commencing on (x) the Effective Time and ending on the first anniversary of the Effective Time, Russell E. Christiansen shall serve as Chairman and Chairman, Office of the Chief Executive Officer of the Company and Stanley J. Bright shall serve as President and President, Office of the Chief Executive Officer of the Company and (y) the first anniversary of the Effective Time and ending on May 31, 1997, Russell E. Christiansen shall serve as Chairman and Stanley J. Bright shall serve as President and Chief Executive Officer or (iii) after May 31, 1996, then commencing on the Effective Time and ending on the first anniversary of the Effective Time, Russell E. Christiansen shall serve as Chairman and Chairman, Office of the Chief Executive Officer of the Company and Stanley J. Bright shall serve as President and President, Office of the Chief Executive Officer of the Company. At such time as Russell E. Christiansen retires as Chairman (which shall be the later of May 31, 1997 or one year after the Effective Time), then Stanley J. Bright shall become Chairman.

General Policy:

During the period the Office of the CEO exists, the Chairman and the President would confer on all matters of importance. In general, the Chairman would have the primary responsibility for matters relating to Corporate Governance and the President would have the primary responsibility for Strategic Direction and Executive Management. However, the Chairman would participate fully in the development of alternatives leading to major decisions having strategic importance. As a general guideline, the following chart sets forth the primary respective responsibilities of the Chairman and the President. The term "primary," as used in this context, refers to the officer having the principal decision-making role with respect to issues relating to such responsibility, it being understood that the Chairman and the President would confer on major decisions. Senior operating and staff officer appointments or other officer appointments would be approved by the Board of Directors upon the recommendation of the President with the concurrence of the Chairman. Other executive appointments would be made by the President.

Corporate Governance:

(Responsibilities of Chairman, Office of the CEO)

- Shareholder Meetings
- Meetings of the Board of Directors and Committees of the Board.
(The Chairman would preside and the President would have a principal presentation role.)
- Agenda setting for board and board committee meetings to be done by the Chairman, Office of the CEO, with concurrence of the President, Office of the CEO.
- Committees of the Board
 - Executive (Chairman, Office of the CEO, to serve as chairman; President, Office of the CEO, to serve as vice chairman.)
 - Nominating
 - Finance (Chairman, Office of the CEO, and President, Office of the CEO, to be members.)
 - Audit
 - Management Development and Compensation
 - Strategic Planning (President, Office of the CEO, to serve as chairman)
- Corporate Charter and By Law Revisions
- Major Economic Development Initiatives
- Major Governmental or Regulatory Initiatives and programs undertaken by the Company at the federal, state or local level.
- Major Industry Initiatives

Executive Management of Electric and Gas Utility Operations and non-regulated businesses.

(Responsibilities of President, Office of the CEO):

- Development of Strategic Alternatives and Merger Implementation
- All Operating Functions
- Financial Management
 - Budgeting, Financial Planning and Financial Analysis
 - Treasury Functions
 - Finance, including relationships with Institutional Investors, Analysts and other shareholders; Investment Banking Relationships and Dealing with Credit Rating Agencies
 - Dealings with External Auditors
 - Accounting, Financial Reporting, and Taxation
- Legal Affairs
- Corporate Development
- Rates and Regulatory Matters
- Governmental Affairs
- Marketing and Economic Development
- Human Resources
- Other Administrative Functions (e.g., Purchasing and Management Information Services)

SEVERANCE PLAN FOR SPECIFIED OFFICERS**1. Purpose**

The purpose of this Severance Plan is to encourage the continued attention and dedication of the Specified Officers to their assigned duties, without distraction, in the face of the potentially disruptive circumstances that accompany a merger of companies.

2. Qualification for Severance Benefits

A Specified Officer shall be entitled to receive Severance Benefits if, during the Term of the Severance Plan, such Specified Officer incurs a Qualifying Termination. No Severance Benefits shall become due or payable unless and until the occurrence of such Qualifying Termination. At the time of a Qualifying Termination, a Specified Officer eligible for severance benefits under both this Plan and the Severance Plan In The Event Of A Change In control of Iowa-Illinois shall elect coverage under one of the two Plans, but not both.

3. Specified Officers

The position titles of the persons who are potentially eligible to receive benefits under this Severance Plan are set forth in Appendix I, attached hereto and incorporated herein. Persons occupying these positions are herein referred as "Specified Officers."

4. Qualifying Termination

For the purpose of this Severance Plan, a "Qualifying Termination" shall mean a termination of employment of a Specified Officer occurring within the Term of this Severance Plan either (a) involuntarily for any reason (except in the instance of a felony as provided in this Section) or (b) voluntarily if the Specified Officer has furnished the President of the Company with six (6) months prior written notice of the intent to voluntarily terminate employment.

Termination of employment due, in whole or in part, to the commission of a felony by a Specified Officer shall not constitute a Qualifying Termination under this Severance Plan. All Severance Benefits for a Specified Officer charged with a felony shall be suspended until such time as the felony charge is finally disposed. Conviction of a felony or a plea of no contest to a felony charge shall be sufficient to disqualify the Specified Officer for Severance Benefits.

5. Severance Benefits

For the purpose of this Severance Plan, "Severance Benefits" shall mean:

- a. an amount equal to two (2) times the Specified Officer's highest Total Cash Compensation, said amount to be paid in a lump sum on the effective date of his/her Qualifying Termination (except in the circumstance of a felony charge as provided above); and
- b. the Specified Officer's accrued vacation pay through the effective date of his/her Qualifying Termination, said amount to be paid in a lump sum on the effective date of such Qualifying Termination (except in the circumstance of a felony charge as provided above); and
- c. a continuation of the welfare benefits of health insurance, disability insurance, and group term life insurance for twenty-four (24) full calendar months after the effective date of the Specified Officer's Qualifying Termination, at the same premium cost and at the same coverage level as in effect on such effective date; provided, however, in the event the premium cost and/or coverage level shall change at any time during the twenty-four (24) month period for all welfare benefit participants, then the premium cost and/or coverage level likewise shall change for such Specified Officer in a corresponding manner; and
- d. standard outplacement services from a nationally recognized firm of the Specified Officer's selection for a period up to twenty-four (24) full calendar months after the effective date of the Qualifying Termination or until such Specified Officer obtains employment, whichever is less. The cost of such services shall not exceed twenty percent (20%) of the Specified Officer's Total Cash Compensation.

6. Term

This Severance Plan shall be effective for a term commencing at the Effective Time (as defined in the Agreement and Plan of Merger by and among Midwest Resources Inc., Midwest Power Systems Inc., Iowa-Illinois Gas and Electric Company and MidAmerican Energy Company ("Company")) and terminating two (2) years thereafter. The Plan shall not be amended during its term except with the written consent of all Specified Officers.

7. Total Cash Compensation

The term "Total Cash Compensation" shall mean the amount payable to a Specified Officer by the Company or its predecessors as annual salary and Bonus, without regard to deferrals. For the purpose of this Plan, "Bonus" shall mean the larger of (i) the three-year average of bonuses actually paid to the Specified Officer or (ii) the three-year average of

accruals to the account of the Specified Officer under any incentive compensation plan. In the event that less than three years of payments or accruals have occurred, then the average of any payments or accruals, respective, shall be used.

8. Taxes

- A. The corporation paying the Severance Benefits shall be entitled to withhold all Federal, state, city, or other taxes legally required, subject to subparagraphs B, C and D hereof.
- B. In the event any of the Severance Benefits payable to a Specified Officer are subject to the tax ("Excise Tax") imposed by Section 4999 of the Internal Revenue Code of 1986 (or any similar tax that may hereafter be imposed) ("Code"), the corporation paying such Severance Benefits shall pay to the Specified Officer in cash an additional amount ("Gross-Up Payment") such that the net amount retained by the Specified Officer after deduction of any Excise Tax payable on the Severance Benefits and any Federal, state, and local income tax and Excise Tax payable upon the Gross-Up Payment shall be equal to the Severance Benefits. Such Gross-Up Payment shall be made by the corporation to the Specified Officer on the effective date of his/her Qualifying Termination.
- C. For the purpose of determining whether any of the Severance Benefits will be subject to the Excise Tax and the amount of such Excise Tax:
 - (a) any other payments of benefits received or to be received by a Specified Officer in connection with his/her termination of employment (whether pursuant to the terms of this Plan or any other plan, arrangement, or agreement) shall be treated as "parachute payments" within the meaning of Section 280G(b)(2) of the Code, and all "excess parachute payments" within the meaning of Section 280G(b)(1) shall be treated as subject to the Excise Tax, unless in the opinion of tax counsel, selected by such Specified Officer, such other payments or benefits (in whole or in part) do not constitute parachute payments, or that such excess parachute payments (in whole or in part) represent reasonable compensation for services actually rendered within the meaning of Section 280G(b)(4) in excess of the base amount within the meaning of Section 280G(b)(3), or are otherwise not subject to the Excise Tax; and
 - (b) the amount of Severance Benefits which shall be treated as subject to the Excise Tax shall be equal to the lesser of: (i) the total amount of Severance Benefits; or (ii) the amount of excess parachute payments within

the meaning of Section 280G(b)(1) of the Code (after applying clause (a) above; and

- (c) the value of any noncash benefits or any deferred payment or benefit shall be determined by the independent auditors of the corporation paying such Severance Benefits in accordance with the principles of Sections 280G(d) of the Code and applicable regulations.

For the purpose of determining the amount of the Gross-Up Payment, the Specified Officer shall be deemed to pay Federal income taxes at the highest marginal rate of Federal income taxation in the calendar year in which such Gross-Up Payment is to be made and state and local income taxes at the highest marginal rate of taxation in the state and locality of the Specified Officer's residence on the effective date of his/her Qualifying Termination, net of the maximum reduction in Federal income taxes which could be obtained from deduction of such state and local taxes.

- D. In the event the Internal Revenue Service adjusts the computations under paragraph C hereof such that the Specified Officer does not receive the maximum Severance Benefits (including Gross-Up Payment) permitted by this Plan, the corporation paying such Severance Benefits shall reimburse the Specified Officer for the full amount necessary to make him/her whole, plus interest from the date such additional Severance Benefits became due to the date of such payment at the prime rate as may be established by The First National Bank of Chicago from time-to-time.

9. Employment Status

In no event shall any Specified Officer be obligated to seek other employment or to take other action by way of mitigation of the amounts payable to such Officer under the provisions of this Severance Plan, nor shall the amount of any payment hereunder be reduced by any compensation earned by such Specified Officer as a result of employment by another employer.

Nothing herein contained shall be deemed to create an employment agreement with the Specified Officer providing for the employment of such Specified Officer for any fixed period of time.

10. Other Benefits

Neither the provisions of this Severance Plan nor the right to receive Severance Benefits shall reduce any amounts otherwise payable to any Specified Officer or in any way diminish his/her rights under any benefit, bonus, incentive, stock option, stock bonus or other stock

purchase plan, or any employee agreement, or any other plan, program, policy or practice for which the Specified Officer may qualify. Vested benefits and other amounts which the Specified Officer is otherwise entitled to receive under any plan, program, policy or practice at or subsequent to the effective date of such Specified Officer's Qualifying Termination shall be payable in accordance with such plan, program, policy or practice.

11. Contractual Rights

This Plan establishes in each Specified Officer a right to the benefits to which he or she is entitled hereunder. This Plan shall inure to the benefit of, and be enforceable by, each Specified Officer's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If a Specified Officer dies while any Severance Benefits would still be payable to him/her under this Severance Plan, all such unpaid amounts shall be paid to such Specified Officer's designated beneficiaries or, in the absence thereof, to such Specified Officer's estate.

12. No Separate Fund Required

Nothing herein contained shall require or be deemed to require, or prohibit or be deemed to prohibit, that the Company segregate or otherwise set aside any funds or other assets, in trust or otherwise, to provide for the payment of Severance Benefits.

13. Legal Remedies

- A. To the extent permitted by law, the corporation obligated to pay any Severance Benefits shall pay all legal fees, cost of litigation, prejudgment interest, and other expenses incurred in good faith by each Specified Officer as a result of such corporation's refusal to provide the Severance Benefits to which the Specified Officer becomes entitled under this Plan, or as a result of such corporation's contesting the validity, enforceability, or interpretation of this Plan, or as a result of any conflict pertaining of this Plan.
- B. Each Specified Officer shall have the right and option to elect (in lieu of litigation) to have any dispute or controversy arising under or in connection with this Plan settled by arbitration conducted by an arbitrator in accordance with the rules of the American Arbitration Association then in effect. A Specified Officer's election to arbitrate and the decision of the arbitrator in that proceeding shall be binding on the parties to such arbitration.

Judgement may be entered on the award of the arbitrator in any court having jurisdiction. All expenses of such arbitration, including the fees and expenses of the counsel for the Specified Officer, shall be borne by the corporation which is the party to the arbitration.

14. Severability

In the event any provision of this Severance Plan shall be held illegal or invalid for any reason, such illegality or invalidity shall not effect the remaining parts of this Plan, and this Plan shall be construed and enforced as if the illegal or invalid provision had not been included.

15. Captions

The captions of this Severance Plan are not a part of the provisions hereof and shall have no force and effect.

16. Applicable Law

This Severance Plan shall be interpreted in accordance with the laws of the State of Iowa.

APPENDIX I

Spec'fied Officers

A. Specified Officers of Midwest Resources Inc. and Midwest Power Systems Inc.

1. Richard C. Engle
2. Lynn K. Vorbrich
3. Beverly A. Wharton
4. Philip G. Lindner
5. John A. Rasmussen

B. Specified Officers of Iowa-Illinois Gas and Electric Company.

1. Stephen E. Shelton
2. Ronald W. Stepien
3. Lance E. Cooper
4. Donald C. Heppermann
5. Brent E. Gale

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Power Systems Inc. and) Docket No. EC95-___-000
Iowa-Illinois Gas and Electric Company)

PREPARED DIRECT TESTIMONY OF
RODNEY FRAME

WITNESS IDENTIFICATION

I. QUALIFICATIONS

- 1 Q. Please state your name and position.
- 2 A. My name is Rodney Frame. I am a Vice President of National Economic Research
3 Associates, Inc. (NERA).
- 4 Q. What is your business address?
- 5 A. My business address is 1800 M Street, N.W., Washington, D.C. 20036.
- 6 Q. What is NERA?
- 7 A. NERA is a consulting firm founded in 1961 to provide business, government and the
8 legal profession with research and analysis in microeconomics—a field that
9 encompasses price and cost determination, the behavior of firms and consumers, and
10 the impact of competition and regulation upon the efficiency of firms, markets, and the
11 economy as a whole. We have nine offices in the US and a staff of approximately 200.
12 We have offices overseas in London and Madrid.
- 13 Q. What is your formal educational background?

1 A. I received a Bachelors degree in Business Administration from George Washington
2 University in 1970. Also at George Washington I completed all requirements for my
3 Ph.D. in economics with the exception of the thesis. My graduate studies at George
4 Washington were funded under the National Science Foundation Graduate Traineeship
5 program.

6 **Q. Please describe your professional experience.**

7 A. I have been employed at NERA since 1984, originally as a Senior Consultant and since
8 1990 as a Vice President. Most of my work has involved consulting with electric
9 utility clients on various competition-related matters including retail competition, bulk
10 power markets and competition, transmission access and pricing, partial requirements
11 ratemaking, contractual terms for wholesale service, mergers and contracting for
12 generation supplies from nonutility generators.

13 From 1976 to 1984 I was a Senior Economist at Transcomm, Inc.
14 (Transcomm), in Falls Church, Virginia. There I directed a number of projects
15 concerning market structure and ratemaking in the telecommunications industry,
16 competition among electric utilities and postal ratemaking. Prior to my affiliation with
17 Transcomm I worked as an independent economic consultant advising clients mostly
18 on telecommunications issues.

19 I have testified in federal-district court in electric utility antitrust cases and
20 before state regulatory commissions. I submitted testimony to the Commerce
21 Commission of New Zealand on the competitive implications of alternative
22 transmission pricing proposals. I provided an affidavit and supporting competitive

1 analyses in Federal Energy Regulatory Commission (FERC or Commission) Docket
2 No. EC92-5-000 concerning the merger of Iowa Power Inc. (IPR) and Iowa Public
3 Service Company (IPS). I submitted prepared direct testimony in FERC Docket Nos.
4 ER93-465-000 and ER93-922-000 concerning competitive issues raised by Florida
5 Power & Light Company's proposed interchange contract modifications, wholesale
6 electric service tariff revisions and "open access" transmission tariffs. In the same
7 proceeding I also submitted separate pieces of testimony relating to "comparability" of
8 transmission service and the appropriateness of crediting transmission rates to account
9 for customer-owned transmission facilities. In FERC Docket No. ER93-498-000 I
10 submitted prepared answering and prepared rebuttal testimony concerning allegations
11 that a contractual agreement entered into by Central Louisiana Electric Company
12 constitutes predatory pricing by that entity. On numerous occasions I have spoken
13 before electric industry groups on transmission access and pricing and other
14 competition-related matters.

15 A copy of my resume is attached as Exhibit ____ (RWF-2).

16 **Q. By whom have you been retained in this proceeding?**

17 A. I have been retained by Midwest Power Systems Inc. (Midwest Power) and Iowa-
18 Illinois Gas and Electric Company (Iowa-Illinois), collectively referred to as
19 "Applicants."

20 **II. PURPOSE OF TESTIMONY AND SUMMARY**
21 **OF CONCLUSIONS**

22 **Q. What is the purpose of your testimony?**

1 A. Midwest Power and Iowa-Illinois have proposed to merge to create MidAmerican
2 Energy Company (MidAmerican).¹ My testimony considers whether a merger
3 between Midwest Power and Iowa-Illinois is likely to create or increase market power
4 and significantly affect competition. I separately address the effects of the proposed
5 merger on the supply of transmission services, various wholesale or bulk power
6 markets and various retail markets. I also consider whether there are important
7 vertical concerns raised by the merger.

8 **Q. Please summarize your conclusions.**

9 A. I conclude that the merger will not create or increase market power in any relevant
10 market. Concerning transmission, Midwest Power and Iowa-Illinois are filing open
11 access transmission tariffs (for firm point-to-point service, for nonfirm point-to-point
12 service and for network transmission service) which by themselves should mitigate
13 concern that the merger will create market power in bulk power markets. For firm
14 service, the tariff includes, among other things, pricing based upon accepted FERC
15 cost-of-service principles, an obligation to expand the transmission system if needed to
16 accommodate customer demands, a firmness of service equal to that which
17 MidAmerican provides to its own native load customers, and flexibility in changing
18 receipt and delivery points. The nonfirm service includes pricing on an hourly basis
19 and allows customers to reserve service in advance so long as they are willing to pay
20 for the amounts reserved. MidAmerican agrees to use these same point-to-point

¹ Abbreviations are used throughout this testimony to identify utilities and regional reliability councils. A list of all such abbreviations is contained in Volume 1, Appendix 1 of the *Joint Application For Authorization and Approval of Merger of Midwest Power and Iowa-Illinois*.

1 transmission tariffs itself, both firm and nonfirm, when it engages in off system bulk
2 power transactions on its own account or through its affiliates. The network service
3 tariff allows customers to dispatch their resources in merit-order fashion to serve load
4 located in MidAmerican's service area and, as required, to integrate new resources into
5 that process.

6 In addition to the competition-enhancing inference logically associated with the
7 filing of the open access tariffs, existing structural conditions in and around the areas
8 served by Applicants also mitigate concern that the merger will create or enhance
9 market power. Both Midwest Power and Iowa-Illinois, along with 27 other area
10 utilities, including many of those interconnected with Midwest Power and Iowa-
11 Illinois, are full participant members of the Mid-Continent Area Power Pool (MAPP).
12 Through MAPP, each of the full participants can exchange a variety of energy and
13 capacity services with each of the other full participants. So long as adequate capacity
14 is available, they can use the transmission facilities owned by other full participants to
15 facilitate these exchanges. Additionally, for the most part, entities interconnected with
16 both Midwest Power and Iowa-Illinois have interconnections with other utilities such
17 that the merger-induced reduction of one trading partner will not significantly affect
18 their bulk power sales or purchase opportunities. Where Midwest Power and Iowa-
19 Illinois do have important transmission rights which overlap (i.e., the ability to trade
20 power between MAPP and areas to the south), the merger reduces by one the number
21 of entities with such transmission rights but still leaves many others. Accordingly, the
22 merger of Midwest Power and Iowa-Illinois does not create any concerns about

1 reduced transmission alternatives.

2 I also conclude that the merger will not create or increase market power in
3 specific relevant wholesale bulk power markets. The specific bulk power markets I
4 examine are those which have been considered in other cases involving either mergers
5 or proposals to sell bulk power at market-driven prices—short term capacity, long
6 term capacity and nonfirm energy. Of course, the filing of the open access
7 transmission tariffs, by itself, mitigates concern that the merger could create or
8 increase market power in these markets. But even without the open access tariffs,
9 there are no market power concerns that are raised by the proposed merger. With
10 respect to long term capacity, as explained in the testimony of Mr. Dean Crist from
11 Midwest Power and Mr. James Averweg and Mr. Stephen Hollonbeck from Iowa-
12 Illinois, the merged firm would not unduly control scarce generating sites or other key
13 inputs (e.g., fuel supplies or fuel transport capability) which might otherwise be used
14 to thwart potential competitors. Moreover, the recent experience elsewhere in the
15 country with nonutility generation suggests that there is no shortage of competitive
16 suppliers of new capacity. There is no reason to think that the experience in MAPP
17 (and nearby regions) will be any different once the point in time is reached where new
18 generation is required. A merger of Midwest Power and Iowa-Illinois will not change
19 this. Midwest Power's own recent experience when it sought new capacity from
20 competitive suppliers reinforces the view that competition to supply capacity
21 requirements is robust.

22 As to short term capacity, for various first tier markets, I examine how the

1 proposed merger would affect market share measures for both total generation
2 capability and surplus or uncommitted generation capacity. First tier utilities are those
3 that are interconnected with either Midwest Power or Iowa-Illinois or both, and the
4 "market" for each first tier utility consists of Iowa-Illinois or Midwest Power or both,
5 as appropriate, plus all other entities with which the first tier utility is interconnected.
6 I find that, when the effects of Applicants' proposed open access tariff are considered,
7 in none of the first tier markets does the merger produce market share figures which
8 exceed the threshold values which regulators have used to suggest that further inquiry
9 is necessary. The maximum MidAmerican market share figure is 10.0 percent for total
10 generation capacity and 13.3 percent for surplus or uncommitted generation capacity.
11 Additionally, I examine how the merger affects the concentration of surplus capacity
12 within MAPP, using several different definitions of surplus, and find that no market
13 power concerns are raised. For the years during which both parties reasonably could
14 be considered sellers of short term capacity, 1995 and 1996, the merged firm's share of
15 total surplus capacity within MAPP is at most 13.8 percent.

16 My conclusions concerning nonfirm energy markets are similar. Nonfirm
17 energy markets encompass a variety of closely substitutable interchange transactions
18 that generating utilities engage in principally to improve the economics of dispatch. A
19 buyer whose own capacity resources are sufficient to accommodate its needs
20 nevertheless may choose to purchase nonfirm energy from another supplier if doing so
21 allows it to lower its total generation cost. But its desire to do so will be limited by
22 the prices which interchange suppliers seek and so, in that sense, the buyer's own

1 generation is a substitute product. Typically vertically integrated suppliers in this
2 country engage in nonfirm energy markets as both suppliers and purchasers, depending
3 upon their demands and resources and market conditions at a point in time. Both
4 Midwest Power and Iowa-Illinois engage in nonfirm energy transactions with other
5 MAPP utilities and with utilities in nearby regions with whom they have direct
6 connections, e.g., Associated Electric Cooperative, Inc. (AEC), Kansas City Power
7 and Light Company (KCPL), St. Joseph Light and Power Company (SJLP) and Union
8 Electric Company (UE) for Midwest Power and Commonwealth Edison Company
9 (CE), Illinois Power Company (IP) and UE for Iowa-Illinois.

10 Defining the proper geographic scope of nonfirm energy markets is generally
11 not a task that can be performed with precision given the limited publicly-available
12 data and because of the possibility that in some cases energy can move long distances
13 through buy and resell transactions. My analysis below uses three alternative
14 geographic market definitions—one that is narrower in scope, one that is broader, and
15 one that is somewhere in between—and several alternative definitions of precisely
16 what transactions ought to be included, and concludes that in none of the cases
17 examined do standard concentration measures based on historical transactions data
18 suggest market power concerns from the proposed merger for sales of nonfirm energy.
19 For the various alternatives considered, the merged firm's market share generally is
20 less than 10 percent and never rises above 15.5 percent. Post-merger Herfindahl-
21 Hirshmann Indexes (HHIs) generally fall into the range considered by the Department
22 of Justice (DOJ) to portray "unconcentrated" markets. Where the post-merger HHIs

1 suggest that the markets are "moderately concentrated" under DOJ guidelines, the
2 merger-induced HHI increases are below the threshold levels for concern about market
3 power.

4 This same conclusion also is applicable concerning potential buyer market
5 power in nonfirm energy markets. Several different possible market definitions were
6 examined. Based upon historical data, the merged firm's market shares again are
7 low—a maximum of 13.2 percent—as are the post-merger HHIs. The merger-induced
8 HHI increases also fall short of threshold levels for concern.

9 Because the data used to develop the concentration measures for nonfirm
10 energy markets represents a time period prior to the Applicants' filing of their open
11 access transmission tariffs, the conclusions reached would only be reinforced by the
12 operation of those tariffs.

13 I also conclude that the merger will not significantly affect electric versus
14 electric retail competition. This conclusion holds for each of the types of retail electric
15 competition that sometimes are discussed—franchise competition, yardstick
16 competition, locational or customer competition, and fringe area competition.

17 I also conclude that the merger will not significantly affect gas versus electric
18 competition at the retail level. Both Midwest Power and Iowa-Illinois sell gas and
19 electricity to retail customers, but there are only a few situations where an individual
20 retail customer at any one specific location can purchase electricity from Midwest
21 Power and gas from Iowa-Illinois and none where a customer can purchase gas from
22 Midwest Power and electricity from Iowa-Illinois. Thus, there is virtually no potential

1 for direct gas versus electric competition between the two firms pre-merger, and
2 therefore virtually no such competition which the merger could reduce.

3 **Q. Does your testimony address possible vertical effects of a merger between**
4 **Midwest Power and Iowa-Illinois?**

5 A. Yes. I conclude that Applicants' proposed open access transmission tariff should
6 eliminate concern that MidAmerican might favor itself or its marketing subsidiaries
7 over its competitors where both might seek to engage in bulk power transactions that
8 require use of MidAmerican's transmission system. In addition, based upon the
9 testimony of Mr. Hollonbeck identifying open access gas transmission arrangements of
10 Midwest Power, Iowa-Illinois and interstate pipelines serving the service territories of
11 the two, I conclude that Applicants will not be able to withhold transportation of
12 natural gas to those who might construct new generation in competition with them.

13 **Q. How is your testimony organized?**

14 A. My testimony is organized as follows: Section III following describes the general
15 approach which is appropriate for analyzing the competitive effects of mergers;
16 Section IV discusses transmission issues including the Applicants' proposed open
17 access transmission tariffs and the effects of the merger on transmission availability;
18 Section V discusses the effects of the merger on individual bulk power markets (short
19 term capacity, long term capacity, and nonfirm energy); Section VI addresses retail
20 electric and gas versus electric competition issues; and Section VII addresses potential
21 vertical concerns.

1 **III. APPROACH TO ANALYZING COMPETITIVE EFFECTS**
2 **ASSOCIATED WITH ELECTRIC UTILITY MERGERS**

3 **Q. What is the purpose of a competitive analysis of a merger between Midwest**
4 **Power and Iowa-Illinois?**

5 A. As would be true for a competitive analysis of any other proposed merger, the purpose
6 is to determine whether a merger of Midwest Power and Iowa-Illinois will create or
7 increase market power in any relevant market, or facilitate its exercise through
8 collusion. The usual focus in such a competitive investigation is on possible merger-
9 induced increases in seller market power, but in some cases there may also be concern
10 about possible increases in buyer market power.

11 **Q. How could a merger allow the exercise of seller or buyer market power?**

12 A. Seller market power exists when sellers can raise prices above competitive levels and
13 increase profits by doing so. If buyers have relatively few good alternatives, the sellers
14 are able to make their above-competitive level prices hold in the marketplace. If the
15 buyers did have good alternatives they would simply switch to those other suppliers
16 when the firm seeking to exercise market power raised prices. The sought-after price
17 increases would not hold. In theory a horizontal merger, which is one where pre-
18 merger the parties compete or potentially could compete in the same market, could
19 create or increase market power because it would reduce by one the number of
20 alternative suppliers to whom customers could turn if the merged firm sought to
21 increase price. A merger also could facilitate the exercise of seller market power if the
22 number of surviving firms was small enough such that they could collude on pricing

1 and output decisions.

2 Buyer market power exists when those who purchase inputs are able to restrict
3 the amount of such purchases and therefore depress the price paid below competitive
4 levels. If sellers have relatively few good alternatives for marketing their output, the
5 buyers can make the price reduction hold in the marketplace. If the sellers did have
6 good alternatives, they would simply turn to them when the firm seeking to exercise
7 buyer market power lowered the price it would pay. The sought-after price decrease
8 would not hold. A horizontal merger in theory could create or increase buyer market
9 power because it would reduce by one the number of alternative buyers to whom
10 sellers could turn. Likewise, a merger could facilitate the exercise of buyer market
11 power if the number of surviving firms was small enough such that they could collude
12 on purchasing policies.

13 **Q. What are relevant markets?**

14 A. A relevant market is a market which bears directly upon activities considered in an
15 antitrust analysis. In this case, Midwest Power and Iowa-Illinois seek to merge; thus
16 the areas of interest which are affected by such a merger are the areas of actual and
17 potential competitive overlap between the business activities of Midwest Power and
18 the business activities of Iowa-Illinois. This overlap should be defined with both
19 product and geographic dimensions.

20 **Q. How are relevant markets defined for a merger analysis?**

21 A. The analysis begins with the actual or potential overlap between the business activities
22 of the merging parties. By way of example, both Midwest Power and Iowa-Illinois

1 make nonfirm energy sales (or sales of closely substitutable products) to other MAPP
2 members and to other nearby utilities. Therefore, this is one area of overlap to
3 consider in a competitive analysis of the merger's effects. By contrast, Midwest Power
4 sells electricity to individual retail customers located primarily in central and western
5 Iowa whereas Iowa-Illinois sells electricity to individual retail customers located
6 primarily in eastern Iowa and central Illinois. These sales of electricity to individual
7 retail customers do not represent an area of overlap to consider in a merger analysis
8 because there is no existing competition between the two firms for making sales to
9 individual retail customers in these areas. This situation will not change unless
10 institutional arrangements in the industry are dramatically altered.

11 Once the realistic overlap areas between the business activities of the merging
12 firms are determined, each is expanded, as appropriate, to reflect both demand- and
13 supply-side substitutability. Demand-side substitutability means that the analysis must
14 encompass not only products and services sold by the merging parties, but also other
15 products or services that consumers believe are reasonably interchangeable with these.
16 Competition from substitute products places constraints on the prices which can be
17 charged for products in the overlap area. Supply-side substitutability refers to the
18 ability of firms not currently in the market to alter their productive processes to
19 produce the product or service in question. Firms that can alter their productive
20 processes easily ought to be considered as part of the relevant market because the
21 potential for competition from them acts as a constraint on price. The goal is to define
22 the relevant market to include sufficiently close substitutes to those in the overlap area

1 but to exclude those that are remote. A similar expansion process must be undertaken
2 to determine the appropriate geographic bounds of a relevant market.

3 **Q. Is defining relevant markets a task which can be performed with precision?**

4 A. Generally not. Decisions about where boundaries ought to be drawn, and which
5 suppliers and products ought to be included and which ought to be excluded,
6 frequently must be based upon imperfect or less-than-complete information. Because
7 there generally are not clear breaks in the "chain of substitution," the exercise of
8 judgment by the analyst is important.

9 **Q. How does the approach which you have outlined for defining relevant markets
10 correspond to that contained in the Department of Justice and Federal Trade
11 Commission *Horizontal Merger Guidelines* dated April 2, 1992 (*Merger
12 Guidelines*)?**

13 A. The framework outlined above is substantially the same as that contained in the
14 *Merger Guidelines*. The *Merger Guidelines* define a relevant market as the smallest
15 grouping of substitute products and geographic areas for which a hypothetical profit-
16 maximizing firm could impose a "small but significant and nontransitory" price
17 increase. If, in response to such a price increase, reductions in sales reduce
18 profitability, substitutes must be added to this preliminary version of the market until
19 this is no longer the case. Once defined, according to the *Merger Guidelines*,
20 participants in the relevant market will include "firms currently providing or selling the
21 market's products in the market's geographic area" and "may include other firms
22 depending on their likely supply responses to a small but significant and nontransitory

1 price increase." These adjustments essentially are the same as described above, i.e.,
2 expanding the boundaries of the overlap area, as appropriate, to reflect both demand-
3 and supply-side substitutability.

4 The *Merger Guidelines*, however, also provide precise criteria to determine
5 breaks in the chain of substitutability. Thus, the *Merger Guidelines* specify a "price
6 increase of five percent lasting for the foreseeable future" for "the small but significant
7 and nontransitory increase in price" (although suggesting that different figures might
8 be appropriate for different industries) and indicate that firms not currently producing
9 the relevant product in the relevant market will be considered as participants if
10 probable supply responses by them could occur within one year.

11 **Q. How are relevant markets used to determine whether a proposed merger is likely
12 to create or increase market power, or facilitate its exercise through collusion?**

13 **A.** Relevant markets provide a useful analytical construct to focus the required
14 competitive investigation on areas that potentially may present problems as opposed to
15 those which obviously will not. Once relevant markets are defined, the usual
16 approach, if available, is to use market share and other concentration measures for
17 those markets to distinguish between mergers which require further investigation and
18 those which do not. Relatively high values for these indicators signal that market
19 power concerns may be present, and therefore represent a call for more detailed
20 analyses. Conversely, relatively low values for these measures suggest that market
21 power concerns almost certainly are absent and, therefore, that no detailed analyses
22 need be undertaken. Thus, these summary statistical indicators are a screening device.

1 The *Merger Guidelines* principally use the HHI as such a screening device. An
2 HHI is calculated by summing the squared market shares of all firms in the market.
3 The maximum possible HHI (i.e., $100^2 \times 1 = 10,000$) is present in a market that has
4 only a single supplier. A market with ten equally-sized firms has an HHI of 1,000 (i.e.,
5 $10^2 \times 10 = 1,000$). The *Merger Guidelines* consider markets with post-merger HHIs
6 below 1,000 to be "unconcentrated." Mergers in unconcentrated markets "ordinarily
7 require no further analyses." The *Merger Guidelines* consider markets with post-
8 merger HHIs between 1,000 and 1,800 to be "moderately concentrated." If a merger
9 in such a market causes the HHI to increase by more than 100, the merger "potentially
10 raise[s] significant competitive concerns" depending on other factors such as ability to
11 collude and barriers to entry. The *Merger Guidelines* consider markets with post-
12 merger HHIs greater than 1,800 to be "highly concentrated." If a merger in such a
13 market causes the HHI to increase by more than 50, the merger "potentially raise[s]
14 significant competitive concerns" depending again on other factors. I develop HHI
15 data below for my analysis of nonfirm energy markets and short term capacity
16 markets.

17 **Q. Are there other summary screening measures used for merger analyses?**

18 **A.** Yes. The *Merger Guidelines* also include market share as a screening device in
19 merger analyses- Under some circumstances a post-merger market share of 35 percent
20 for the merging parties "may be relied upon to demonstrate that there is a significant
21 share of sales in the market accounted for by consumers who would be adversely
22 affected by the merger." Also, on other occasions (e.g., *Public Service Company of*

1 *Indiana*, 51 FERC ¶ 61,367; *Entergy Services, Inc.*, 58 FERC ¶ 61,234; and
2 *Louisville Gas and Electric*, 62 FERC ¶ 61,016), FERC has used a 20 percent market
3 share figure for the analysis of capacity markets to distinguish between firms which
4 may or may not have market power over generation. My discussion below develops
5 market shares for both the nonfirm energy market and the short term capacity market,
6 under a variety of different formulations.

7 **Q. What relevant bulk power markets have you examined in this case?**

8 A. As indicated earlier, I have examined the same wholesale bulk power markets that
9 have been examined in other merger investigations at FERC: short term capacity, long
10 term capacity and nonfirm energy. I also have considered whether the merger will
11 affect electric versus electric and gas versus electric competition at the retail level.

12 IV. TRANSMISSION

13 **Q. What set of topics are discussed in this section of your testimony?**

14 A. This section discusses several transmission-related topics concerning the effect of the
15 proposed merger on other entities' bulk power trading options. I first identify utilities
16 interconnected with Midwest Power and Iowa-Illinois, or both, and conclude that in
17 no case does the proposed merger represent a threat to competition because the
18 number of direct interconnections that any party might have is reduced as a result of
19 the merger. I then describe generally my understanding of MidAmerican's proposed
20 open access transmission tariff and why this further should mitigate concern about
21 merger-induced increases in market power. Finally, I describe specific overlaps
22 between the transmission systems of Midwest Power and Iowa-Illinois and conclude

1 that the merger does not create market power concerns by reducing the number of
2 participants in the overlap areas.

3 **A. Interconnections**

4 **Q. With what other entities does Midwest Power have interconnections?**

5 A. These interconnections are identified in the testimony of Mr. Crist. Through the West
6 345 kV Line (West Line) Midwest Power is interconnected with Northern States
7 Power Company (NSP), Interstate Power Company (IPW), Omaha Public Power
8 District (OPPD), SJLP and KCPL. Through the East 345 kv Line (East Line)
9 Midwest Power is interconnected with NSP, IPW, IES, Iowa-Illinois and UE.
10 Through the MINT Line, Midwest Power is interconnected with Nebraska Public
11 Power District (NPPD), Lincoln Electric System (LES), OPPD, AEC, SJLP and
12 KCPL. Midwest Power also has other, direct interconnections with several of these
13 same entities (IES, IPW, Iowa-Illinois, SJLP, AEC, OPPD and UE), as well as with
14 three other (besides AEC) generation and transmission (G&T) cooperatives [Central
15 Iowa Power Cooperative (CIPCO), Northwest Iowa Power Cooperative (NIPCO) and
16 Corn Belt Power Cooperative (CBPC)], eight municipal systems (Ames, Atlantic,
17 Harlan, Indianola, Montezuma, Pella, Cedar Falls and Waverly) and one Federal
18 government agency [Western Area Power Administration (WAPA)]. In addition to
19 the above, Midwest Power also has an interconnection with East River Electric Power
20 Coop Inc. (East River), a distributive cooperative, that is normally open and only used
21 to support limited retail sales of Midwest Power during emergency conditions.

22 In addition to the above interconnections, Midwest Power, as a member of

1 MAPP, has the right to exchange bulk power with the 28 other members of MAPP
2 under the terms and conditions of the various MAPP service schedules. These service
3 schedules encompass a broad range of typical interutility energy and capacity
4 transactions ranging from hourly economy energy up to capacity and energy
5 transactions of four years duration. The MAPP agreement obligates MAPP
6 participants to make their transmission facilities available to other MAPP participants
7 to engage in transactions under the MAPP agreement, so long as adequate capacity is
8 available. Historically, members have been compensated only for transmission losses
9 when they provided this service. Newly proposed rules would increase prices
10 somewhat, if accepted by the Commission, but those prices would remain discounted
11 below full cost-of-service levels. Thus, under the MAPP Agreement, each of the
12 MAPP participants can exchange capacity and energy with each of the other MAPP
13 participants under the MAPP service schedules. The MAPP Agreement does not
14 expire on a date certain, but any participant may terminate its participation by
15 providing four years notice to the other participants. As a practical matter, this four
16 year time period presents a potential limit to the duration of transactions entered into
17 under the MAPP service schedules.

18 **Q. With what other entities does Iowa-Illinois have interconnections?**

19 **A.** Iowa-Illinois interconnections are identified in the testimony of Mr. Averweg
20 Through the East Line, Iowa-Illinois has interchange rights with NSP, IES, IPW,
21 Midwest Power and UE. Within MAPP, Iowa-Illinois also has additional, direct
22 interconnections with Midwest Power, IES and IPW, two G&T cooperatives (CBPC

1 and CIPCO), and two municipal systems [Muscatine Power & Water (MPW) and
2 Geneseo]. Outside of MAPP, Iowa-Illinois has additional interconnections with IP,
3 CE and UE, the last of these through contractual arrangements with IES. Of course,
4 as is true for Midwest Power, Iowa-Illinois is a member of MAPP and can exchange
5 capacity and energy with the other members under the terms and conditions of the
6 service schedules which are part of the MAPP agreement.

7 **Q. What other entities have interconnections with both Midwest Power and Iowa-**
8 **Illinois?**

9 A. Entities interconnected with both Midwest Power and Iowa-Illinois are, within MAPP,
10 IES, IPW, NSP, CBPC and CIPCO and, outside of MAPP, UE.

11 **Q. Will the merger of Midwest Power and Iowa-Illinois have a significant adverse**
12 **affect upon these entities' participation in regional bulk power markets?**

13 A. No. While the entities which are directly interconnected with both Midwest Power
14 and Iowa-Illinois will have one less interconnected trading partner post-merger, there
15 are at least three reasons to believe that this reduction in number of interconnected
16 trading partners will not adversely affect these entities' participation in regional bulk
17 power markets.

18 First, all but UE are members of MAPP and will retain their existing rights
19 under the MAPP-agreement to utilize the MAPP service-schedules to participate in
20 bulk power market transactions.

21 Second, as indicated, Midwest Power and Iowa-Illinois are filing open access
22 transmission tariffs which should mitigate concern that competitive or market power

1 problems will be created by the proposed merger. These tariffs, described more fully
2 in Section IV.B. below, include one for firm point-to-point transmission service, one
3 for nonfirm point-to-point transmission service and one for what recently has come to
4 be known as network transmission service. These tariffs will allow entities directly
5 interconnected with both Midwest Power and Iowa-Illinois to transact with others
6 with whom they are not now directly interconnected.

7 Third, although it is true that each of the utilities interconnected with both
8 Midwest Power and Iowa-Illinois will see a reduction in their number of
9 interconnected trading partners, each still will have several others with which it can
10 engage in purchase and sale transactions. Exhibit ___(RWF-3) identifies these post-
11 merger interconnections for each of the utilities now interconnected with both of the
12 merging partners. For example, pre-merger, UE has 19 interconnected trading
13 partners whereas, post merger, it will still have 18. For NSP, IES, IPW, CIPCO, and
14 CBPC, the post-merger number of interconnections are 17, 9, 12, 5 and 4,
15 respectively. Figures this large should mitigate concern about possible market power.
16 Moreover, as stated, all of these entities except UE are members of MAPP and
17 therefore can engage in reliability-enhancing and cost-reducing bulk power
18 transactions with other MAPP members. All entities including UE will be eligible to
19 use the open-access transmission tariffs which Midwest Power and Iowa-Illinois are
20 filing, which will expand the number of bulk power trading partners available to them.

21 **Q. Are there any other entities that might be effected by a merger between Midwest**
22 **Power and Iowa-Illinois?**

1 A. Yes. There are several municipal electric systems that now obtain some or all of their
2 bulk power needs in the form of requirement purchases from either Midwest Power or
3 Iowa-Illinois but which were not included in the above listing of interconnections.
4 Several of them also receive bulk power from other sources which is wheeled to them
5 by Midwest Power or Iowa-Illinois. The full or partial requirements customers of
6 Iowa-Illinois are the municipal electric systems in Buffalo, Callendar and Eldridge,
7 Iowa. The full or partial requirements customers of Midwest Power are the municipal
8 electric systems in Auburn, Carlisle, Denver, Estherville, Hudson, Livermore,
9 Pocahontas, Rockford, Sergeant Bluff, Breda, Fonda, Lake View, Neola and Wall
10 Lake, Iowa. Each of these full or partial requirements customers is connected only to
11 Midwest Power or Iowa-Illinois but not both, and thus the merger does not reduce
12 their number of direct connections. The open access transmission tariffs would make
13 available to these entities transmission alternatives that were not available previously,
14 and therefore will increase their bulk power options.

15 **B. Open Access Transmission Tariff**

16 **Q. Please briefly describe the open access transmission tariffs which Midwest Power**
17 **and Iowa-Illinois are filing.**

18 A. There are three such tariffs. The firm point-to-point tariff allows Eligible Customers
19 [other utilities, wholesale customers, nonutility generators (NUGs) or marketers] to
20 transmit power across or within MidAmerican's transmission system for time periods
21 up to 50 years. Included among the terms and conditions are the following: (i) an
22 obligation on the part of MidAmerican to expand its transmission system if required to

1 accommodate a customer's request for service; (ii) pricing on the basis of rolled-in
2 embedded costs except in cases where facility expansions are required or opportunity
3 costs are incurred, in which case FERC's "or" pricing rule applies; (iii) a firmness or
4 priority of service that is equivalent to that of MidAmerican's service to its own native
5 load customers; (iv) flexibility for customers to change receipt and delivery points;
6 (v) the ability of customers to assign their entitlements; (vi) nonfirm use involving
7 additional receipt and/or delivery points if the firm contract demand is not being fully
8 utilized; (vii) posting of information about available capacity and requests for service
9 on an electronic bulletin board; and (viii) provision by MidAmerican of a variety of
10 ancillary or control area services including losses, load following, operating reserves,
11 and regulation.

12 The nonfirm point-to-point transmission tariff provides nonfirm transmission
13 service across and within MidAmerican's transmission system to the same grouping of
14 Eligible Customers. Pricing is on an hourly, daily, weekly or monthly basis, and
15 customers may "reserve" service in advance so long as they are willing to pay fully for
16 the amounts reserved whether or not actually scheduled. Service will be available for
17 time periods between one hour and four months.

18 MidAmerican's proposed Network Integration Service Tariff will allow
19 customers with load in MidAmerican's service area to use MidAmerican's transmission
20 system to dispatch their resources in merit-order fashion to serve that load and, as
21 required, to integrate new resources into that process. Customers must designate
22 which resources provide firm capacity to meet their requirements (with a size cap of

1 125 per cent of the customer's load) but retain flexibility to change these designations
2 and, as well, to use MidAmerican's transmission system for imports on a nonfirm basis.
3 There is no restriction on where the customers' resources can be located, but the
4 customers are responsible for arranging for any transmission required to bring the
5 output of their resources to MidAmerican's transmission system. Network Integration
6 Service customers must purchase control area services from MidAmerican if they have
7 not made arrangements to purchase such services from others or to perform these
8 functions themselves. Customers will pay a load-based pro rata share of
9 MidAmerican's total transmission costs including those for redispatch. Network
10 customers wishing to make off-system sales must purchase transmission service
11 separately for those sales under MidAmerican's point-to-point transmission tariffs,
12 which is the same procedure MidAmerican will use when it engages in off-system sales
13 on its own account.

14 C. Transmission Overlaps

15 **Q. Are Midwest Power and Iowa-Illinois actual and potential competitors for the**
16 **supply of transmission services between utilities that are directly interconnected**
17 **with both?**

18 **A.** For the most part, as a practical matter, no.

19 **Q. Please explain.**

20 **A.** There are four investor-owned utilities (IOUs) interconnected with both Midwest
21 Power and Iowa-Illinois. These four are IES, IPW, NSP, and UE. The
22 interconnections with NSP are only through the jointly-owned transmission

1 lines—both the East and West Lines for Midwest and the East Line for Iowa-
2 Illinois—while the interconnections with the other three are through jointly-owned
3 lines as well as other facilities.

4 In principle, the merger could reduce transmission alternatives available to
5 these four systems if they required wheeling service to or from each other. Thus, pre-
6 merger, if IES wanted to transact with IPW, as an example, it could do so by wheeling
7 through either Midwest Power or Iowa-Illinois. But, post-merger, there would be but
8 a single firm, MidAmerican, and so it would not have such a choice. Its alternatives
9 would be reduced by one. But because IES already has its own interconnections with
10 IPW, and because both also are participants in the East Line and in MAPP, this
11 merger-induced reduction in potential wheeling paths has no practical significance. If
12 IES wishes to transact with IPW, almost inevitably it will do so through either a
13 MAPP service schedule, the East Line agreement or its own interconnections with
14 IPW rather than paying extra to wheel over a third party system, whether that third
15 party is Midwest Power or Iowa-Illinois on a stand-alone pre-merger basis, or
16 MidAmerican on a post-merger basis.

17 This same conclusion holds for any other possible transmission path among
18 these four IOUs. All are East Line participants and therefore have that option
19 available to them for bulk power exchanges. IPW and NSP also are West Line
20 participants and also can use that vehicle for bulk power exchanges. All but UE are
21 members of MAPP and therefore can exchange power under the MAPP agreement
22 and receive low-priced transmission service under MAPP's Service Schedule F. IPW

1 and NSP also have direct interconnections which they can use for bulk power
2 exchanges with each other as do UE and IES. There is simply no obvious reason for
3 these entities to seek transmission service from the merging partners, either pre- or
4 post-merger, for bulk power exchanges with each other.

5 **Q. Earlier you indicated that there are two other entities (CIPCO and CBPC)**
6 **which are interconnected with both Midwest Power and Iowa-Illinois. Would**
7 **the proposed merger reduce transmission alternatives available to these two**
8 **entities?**

9 **A.** No. As MAPP members they retain the opportunity to engage in bulk power
10 transactions under the MAPP agreement and receive transmission service under
11 Service Schedule F. The availability of transmission services through MAPP
12 participation sharply reduces the demand for transmission provided directly by the
13 merging partners. Also, both CIPCO and CBPC have interconnections with both IES
14 and IPW. Because they would use their own interconnections for transactions with
15 these two parties rather than wheeling over the Midwest Power and/or Iowa-Illinois
16 systems, the merger does not deprive them of valuable alternatives for transacting with
17 IES or IPW. What the merger would do for CBPC and CIPCO is to reduce from two
18 to one the number of paths (i) between the two and (ii) between either of the two and
19 UE to the south. Rather than having the potential of two independent alternatives for
20 such transactions, CBPC and CIPCO would have only MidAmerican's open access
21 transmission tariff. This would be disadvantageous to them only to the extent that,
22 without the merger, Midwest Power and/or Iowa-Illinois would be willing to provide

1 this service at rates below those contained in MidAmerican's tariff. But even so,
2 assessment of the net effect upon these entities would have to incorporate the affects
3 of the open access tariffs which allow them to access numerous other bulk power
4 suppliers with whom they are not interconnected and therefore expands their trading
5 opportunities.

6 **Q. Are there specific transmission corridors in which both Midwest Power and**
7 **Iowa-Illinois have transmission rights?**

8 A. Within the area served by and surrounding the merging parties, energy tends to be less
9 expensive to the north and more expensive to the south. Thus, there is some demand
10 to move energy from the north to the south, and both Midwest Power and Iowa-
11 Illinois (along with other entities) own transmission capacity that allows them to make
12 such transactions. In that sense, they are actual or potential competitors, and the
13 number of such actual or potential competitors is reduced by one if the merger takes
14 place.

15 **Q. Does this reduction raise concern about market power?**

16 A. This reduction could create market power concerns if the number of competitors
17 which remains, post-merger, is small, but it should not if, as I explain below, the
18 number which remains is large.

19 **Q. What rights do Midwest Power have which allow it to engage in bulk power**
20 **transactions between MAPP and areas to the south?**

21 A. Transmission links between MAPP and areas south, including those of Midwest Power
22 and Iowa-Illinois, are summarized in Exhibit ___(RWF-4). Midwest Power is a joint

1 owner of both the East and West Lines. Its East Line ownership allows it directly to
2 exchange power with UE to the south. UE is located in the MidAmerica
3 Interconnected Network (MAIN) reliability council, most of which is situated to the
4 east of MAPP. Midwest Power also retains the rights formerly held by IPR, one of its
5 predecessors, to exchange power directly with UE at the Hills substation which
6 connects with UE's segmented ownership share of the East Line. Midwest Power's
7 West Line ownership allows it directly to exchange power with KCPL and SJLP to the
8 south, both of which are located in the Southwest Power Pool (SPP). Midwest Power
9 is also a participant in the MINT Line which allows it to exchange power with SPP
10 members AEC, KCPL and SJLP. In addition to these higher voltage interconnections
11 with entities to the south, Midwest Power also has a 161 kv interconnection with SJLP
12 and a 69 kv interconnection with AEC.

13 **Q. What transmission rights do Iowa-Illinois have which allow it to engage in bulk**
14 **power transactions between MAPP and areas to the south?**

15 **A.** Iowa-Illinois is a joint owner of the East Line and through the terms of that agreement
16 can transact with UE in MAIN. Iowa-Illinois also has a separate 161 kv contractual
17 interconnection with UE through the IES system. Iowa-Illinois has no
18 interconnections with any SPP utilities.

19 **Q. What other MAPP entities have transmission rights which allow them to**
20 **exchange power directly with areas to the south?**

21 **A.** MAPP members NSP, IPW and IES also are joint owners of the East Line and
22 through it can directly exchange bulk power with UE in MAIN. IES also has two 161

1 kv interconnections with UE and two 69 kv ties with AEC. MAPP members NSP,
2 OPPD, and IPW are joint owners of the West Line and, through the terms of the
3 ownership agreement, can directly exchange bulk power with KCPL and SJLP in the
4 SPP. MAPP members OPPD, NPPD and LES are joint owners of the MINT Line
5 and, through the terms of the agreement governing it, can exchange bulk power with
6 AEC, KCPL and SJLP in the SPP.

7 Other transmission lines between MAPP and SPP include the following (i) a
8 161 kv tie between WAPA and AEC, which is used for transactions between WAPA
9 and SPA; (ii) a 161 kv tie between OPPD and Western Resources Inc. (WR); and
10 (iii) a 345 kv tie between NPPD and the Sunflower Electric Power Corporation, Inc.
11 (SEC) in Kansas.

12 **Q. Are competitive concerns raised by the reduction in the number of independent**
13 **MAPP entities that can exchange power with entities to the south?**

14 A. No. Most obviously, even post-merger there still will be eight MAPP entities
15 (MidAmerican, IPW, IES, LES, OPPD, NPPD, NSP and WAPA) that possess direct
16 rights to exchange bulk power with utilities located to the south of MAPP. This seems
17 like an ample amount to ensure competitive alternatives to MidAmerican's
18 transmission paths. The merger does not reduce transmission capability held by these
19 other suppliers to engage in bulk power transactions with entities located to the south.
20 Moreover, were MidAmerican to seek to restrict its use of the East and West Lines
21 and the unallocated portion of the MINT Line, the capacity which it chose not to use
22 automatically would become available to other owners under the terms of those

1 agreements.

2 Second, the terms of the proposed open access transmission tariffs also should
3 allay fears about merger-induced control of these transmission paths. The open access
4 transmission tariffs can be used by those who have access to MidAmerican's
5 transmission system in MAPP to transact with all entities to the south with which
6 Midwest Power and Iowa-Illinois have direct interconnections including AEC, KCPL,
7 SJLP and UE. The amount of transmission capacity between MAPP and areas to the
8 south does not change as a result of the merger. However, as a result of the filing of
9 the open access transmission tariffs, the number of entities that can use that
10 transmission capacity increases.

11 Third, a more complete analysis of the effect of the proposed merger on bulk
12 power markets will focus upon all options available to origin area sellers and
13 destination area buyers, and how those options might be affected by a merger, rather
14 than just upon the options provided by individual transmission paths and ownership or
15 control of them. For origin area sellers, where MAPP is the origin area, these options
16 include direct sales with other interconnected parties, wheeling over other utilities'
17 transmission systems, and direct sales under MAPP service schedules with
18 transmission service provided under MAPP Service Schedule F. They also include
19 wheeling under MidAmerican's proposed open access transmission tariff, which
20 provides access to systems to the east of MAPP as well. Given this plethora of
21 options, it is simply not plausible that the merger of Midwest Power and Iowa-Illinois
22 will adversely affect alternatives available to origin area sellers. More likely, because

1 of the filing of the option access transmission tariff, the set of viable trading
2 alternatives will be expanded.

3 The view that there are no competitive concerns for origin area sellers is
4 reinforced by the market share and HHI data reported in Section V below for nonfirm
5 energy. That data show relatively low historical purchase shares for both Midwest
6 Power and Iowa-Illinois for nonfirm energy sold within MAPP. These low shares
7 indicate that sellers within MAPP have viable alternatives to dealing with the merged
8 entity.

9 A similar conclusion follows if we examine the effects of the proposed merger
10 on destination area buyers, where the destination area consists of the utilities on the
11 southern end of the north-to-south transmission lines identified above. Collectively
12 those utilities have numerous options for meeting their bulk power needs including
13 transacting with the merged entity, transacting with other MAPP entities that have
14 interconnections to the south, transacting with other MAPP or non-MAPP entities
15 through use of the proposed open access tariff, and transacting with non-MAPP
16 entities with which they are interconnected. For energy transactions they also have the
17 opportunity to generate out of their own resources. Finally, much of the energy which
18 flows south from MAPP is actually resold by the direct purchasers to entities located
19 further south. A complete-destination area analysis also must incorporate options
20 available to these ultimate purchasers. This plethora of options suggests that the
21 merger will not create market power as a result of excessive control of transmission
22 lines between MAPP and areas south.

1 Q. Are the transmission lines between MAPP and areas to the south fully utilized at
2 all times?

3 A. No. The transmission paths between MAPP and areas south are very important to
4 their owners because of the reliability benefits they supply and because they allow
5 cost-reducing and profit-enhancing bulk power transactions. But these lines are fully
6 utilized only a relatively small percentage of the time. This reinforces the view that the
7 merger will not facilitate the exercise of market power. Because there generally is
8 unused capacity on these lines, any attempt by the merged firm to increase the
9 effective price for use of these lines would cause buyers and sellers to arrange
10 alternative transactions through others that have north-to-south transmission rights
11 which are not being utilized fully.

12 Q. Will some of this unused capability be available to power marketers or suppliers
13 outside of MAPP after the filing of Applicant's open access transmission tariff?

14 A. Yes. Under the firm and nonfirm point-to-point tariffs power marketers will be able to
15 receive transmission service which allows them to move power from MAPP to areas
16 south. Moreover, entities outside of MAPP such as CE and IP will be able to use the
17 open access tariffs to move power to areas south of MAPP.

18 Q. You have discussed the effects of the proposed merger on the control of
19 transmission between MAPP and areas to the south. Does the merger present
20 concerns about concentration of control of transmission between MAPP and
21 areas to the east?

22 A. No. To the east, Iowa-Illinois is interconnected with CE and IP, both of which, along

1 with UE, are in MAIN. However, Midwest Power has no interconnections with
2 entities in MAIN other than UE, which was discussed in the context of north-to-south
3 transmission. Accordingly, the merger cannot increase concentration of control of
4 west-to-east transmission. What does occur, with the filing of the open access
5 transmission tariffs, is an increase in the number of entities that can move power
6 between MAPP and areas to the east. Moreover, because the open access tariffs apply
7 to the consolidated Midwest Power plus Iowa-Illinois transmission system, it allows
8 transactions that formerly might have required two wheeling charges now to occur
9 with payment of only a single wheeling charge. As an example, CE now will be able
10 to transact with AEC, LES, OPPD, NPPD and WAPA, through payment of just a
11 single wheeling charge whereas prior to the merger two wheeling charges would be
12 required. A similar conclusion holds if IP wishes to transact with LES, NPPD or
13 OPPD.

14 **Q. What do you conclude about the affect of the merger on control of transmission?**

15 **A.** As is true with any merger, it is axiomatic that a merger of Midwest Power and Iowa-
16 Illinois will reduce by one the number of independent market participants. However,
17 such a reduction does not create competitive concerns in the case of a Midwest
18 Power-Iowa-Illinois merger because each potentially affected party still will have
19 numerous other independent trading alternatives available. These independent trading
20 alternatives include those available from the potentially affected entities'
21 interconnections with other systems, from participation in MAPP, and from other
22 transmission path owners. They also include the expanded trading alternatives made

1 available as a result of Applicants' proposed open access transmission tariff.

2 **V. BULK POWER**

3 **Q. Please describe your approach to defining bulk power markets.**

4 A. Ultimately electric utilities are seeking to assemble a low cost firm power supply for
5 resale to their customers. There are a variety of components that can be packaged
6 together to achieve this goal. These components include generating resources which
7 utilities construct and operate themselves as well as very long term (perhaps life-of-
8 unit) purchases such as many utilities have made from nonutility generators (NUGs) in
9 recent years. Owned or purchased resources can take many forms, differing by fuel
10 type, size, technology and mode of operation (peaking versus baseload), among other
11 things. The components used to assemble a low cost firm power supply also include a
12 variety of shorter term bulk power purchases that generating utilities engage in to
13 improve the economics of dispatch, enhance reliability and/or correct short term
14 capacity imbalances. Examples include economy energy, emergency and scheduled
15 outage energy, seasonal participation power, short term capacity and energy of various
16 durations, peaking power, and others. The existing MAPP agreement contains a
17 variety of service schedules which are used for these purposes. Demand side
18 management (DSM) measures also in recent years have become increasingly important
19 components available to utilities.

20 These various components can be substituted for one another to varying
21 degrees. For example, a utility with an approaching capacity deficiency may elect to
22 buy under a long term contract from a NUG (or other utility) in the marketplace

1 instead of building its own new generation capacity. The substitution is also very
2 direct when a utility elects to purchase economy energy from another supplier rather
3 than generating additional output from its own units.

4 Thus, alone or in combination, these various components are substitutable with
5 one another in the development of the firm power package which utilities require for
6 sale to their customers. Because of this substitutability, one approach for defining
7 relevant markets would be to include all of these separate components (including DSM
8 and self-generation) in the same relevant market within which the market power
9 effects of the proposed merger would be examined. Such an approach would include
10 relatively disparate components (e.g. economy energy and construction of a new
11 baseload generating station) that obviously are not directly substitutable. Another
12 approach would be to examine multiple groupings of products, where each such
13 grouping is more compact and homogeneous. Examples include short term capacity,
14 longer term capacity and nonfirm energy. This is the approach which FERC has
15 utilized in the past in market power investigations and is the one utilized below.

16 **Q. What relevant bulk power markets have you examined?**

17 A. Consistent with previous investigations in merger proceedings before FERC, I have
18 examined whether the proposed merger would create or increase market power in the
19 following three bulk power markets: (i) short term capacity; (ii) long term capacity,
20 and (iii) nonfirm energy. The usual distinction between the first two of these, short
21 and long term capacity, is that the former generally excludes sales from capacity not
22 yet in commercial operation (unless the date for commercial operation is very near)

1 whereas the time period for the latter extends far enough into the future such that new
2 capacity can be constructed to compete for the sale. Long term capacity also can
3 include purchases made out of existing surpluses where those surpluses are expected
4 to extend well into the future. Options for obtaining long term capacity generally
5 include the construction of new generating units, life extension of existing units, the
6 purchase of long term (perhaps life-of-unit) interests in units to be constructed by
7 others, and purchase from existing surpluses that are expected to be long-lived.
8 Options for short term capacity consist predominately of purchases from the surpluses
9 that other in-region or nearby utilities hold.

10 Nonfirm energy and other closely substitutable interchange transactions are
11 transactions that generating utilities engage in principally to improve the economics of
12 dispatch. Although I use the expression nonfirm energy to describe this market, many
13 of the types of transactions which are included actually are styled as very short term
14 capacity and energy transactions. An example would be daily or weekly capacity that
15 one utility might sell to another, not because the buyer was short of capacity but rather
16 because it wished to receive (and was willing to pay for) the low cost energy
17 associated with that capacity. Paying the demand charge for the capacity and
18 receiving the low cost energy associated with it may be better for the buyer than
19 paying no demand charge and, instead, operating its own higher fuel cost units. This is
20 the same reason that a party would purchase economy (or another form of nonfirm)
21 energy, to reduce the need to generate from its own higher cost units.

22 **Q. Are there distinct boundaries for each of these three relevant bulk power**

1 markets?

2 A. No. Because of substitutability among components, the boundaries between these
3 three separate relevant markets can blur. Moreover, some potentially close substitutes
4 (i.e., DSM measures or self-generation as an alternative to purchased economy
5 energy) are excluded from all three when perhaps, if they are price competitive, they
6 ought to be included.

7 **Q. What are the implications if relevant markets are defined too narrowly?**

8 A. A principal implication from defining relevant markets too narrowly is that data on
9 market concentration (market shares or HHIs) may support an inference that market
10 power is present (or likely to result from a merger) when in fact no such inference is
11 justified. Of course, if markets have been defined narrowly and the summary
12 concentration measures do not support an inference about the creation or enhancement
13 of market power, one can be comforted that using a broader, more correct relevant
14 market definition would only reinforce such a conclusion. Such is the case here where
15 the analyses presented below use relatively narrow relevant market definitions but
16 nevertheless conclude that the proposed merger does not present market power
17 concerns.

18 **Q. Are there general considerations which figure into your analyses of bulk power**
19 **markets in this case?** -----

20 A. Yes. There are several considerations which suggest on an *a priori* basis that this is
21 not a merger likely to create or enhance market power in bulk power markets. The
22 merging partners comprise only a small portion of aggregate load (13.3 percent) and

1 resources (13.4 percent) in the power pool of which they are members. That power
2 pool allows all full participant members to exchange power with all other full
3 participant members through payment under the pool's relatively low-priced
4 transmission service schedule. Utilities interconnected with both merging parties
5 appear to have numerous alternative trading partners. Important transmission
6 "corridors" are not dominated by but a few entities. Bulk power markets historically
7 have been competitive. Finally, as discussed, Applicants are filing an open access
8 transmission tariff which can allay residual concerns about the creation of market
9 power.

10 A. Short Term Capacity

11 **Q. I would like to begin with the effects of the merger on the short term capacity**
12 **market. Please repeat your description of this product.**

13 **A.** Short term capacity refers to purchases and sales of firm power over time periods too
14 short to allow new construction to compete for those transactions. There is no precise
15 number of years that demarcates short term from long term although, except for
16 peakers, it seems unlikely that significant quantities of new capacity could be brought
17 on line in less than four years. Where surpluses are substantial, and not expected to
18 dissipate quickly, the appropriate period for a short term capacity market analysis may
19 be even longer.—Although new capacity might be constructed in such a longer time
20 period to compete with existing surpluses, it may not be economic to do so given the
21 prices that competitors with surpluses are likely to charge.

22 **Q. Are Midwest Power and Iowa-Illinois competitors to sell short-term capacity?**

1 A. Yes, but only to a limited extent in the very near term.

2 **Q. Please explain.**

3 A. As indicated in Mr. Averweg's testimony, Iowa-Illinois expects to have capacity in
4 excess of MAPP's 15 percent reserve capability obligation until at least the year 2005,
5 the last year for which data is provided. Except for the years 2004 and 2005, when
6 Iowa-Illinois' projected reserve margins are 22 percent and 21 percent respectively, the
7 amounts always exceed the 18 to 22 percent reserve levels which Mr. Averweg
8 testifies are typically held by MAPP members to protect against peaks resulting from
9 unusual weather conditions. Thus, to the extent that its expected reserve margins
10 exceed this 18 to 22 percent level, and through at least the year 2003, a stand-alone
11 Iowa-Illinois may be viewed as a potential seller of short-term capacity. Somewhat in
12 contrast, Midwest Power projects a normal weather surplus which is expected to last
13 only through 1999, a much shorter time period than that for which Iowa-Illinois shows
14 a surplus, and a hot weather surplus which is expected to last only through 1996. As
15 Mr. Crist testifies, it is the latter measure which is used by Midwest Power to
16 determine whether or not it has surplus capacity which it can market to others.
17 Accordingly, a stand-alone Midwest Power reasonably can be viewed as a potential
18 seller of short-term capacity only through the year 1996. But at least through that
19 point in time, however, Midwest Power and Iowa-Illinois can be viewed as potential
20 competitors to sell short term capacity.

21 **Q. Are there other potential competitors?**

22 A. Yes. All but two of the full participant members in MAPP project generation

1 surplus for summer 1995, where surplus refers to the excess of a participant's net
2 capability—total generation adjusted for purchases and sales—over its peak plus a 15
3 percent reserve margin. The total amount of surplus projected by all MAPP members
4 projecting a surplus for summer 1995 is 2385 MW. All but four of the full participant
5 members in MAPP project generation surpluses for summer 1996 on this same basis.
6 The total amount of surplus projected by all MAPP members projecting a surplus for
7 summer 1996 is 2461 MW.

8 **Q. How much surplus is projected for these years based upon 18 percent and 22**
9 **percent reserve margins?**

10 A. Based upon an 18 percent reserve margin, 22 MAPP members project surpluses
11 totalling 1545 MW in 1995 and 1643 MW in 1996. Based upon a 22 percent reserve
12 margin, 16 MAPP members project a total surplus of 949 MW in 1995 and 17 MAPP
13 members project a total surplus of 1067 MW in 1996.

14 **Q. Are there utilities adjacent to MAPP that also project surpluses?**

15 A. Yes. AEC and UE located to the south of MAPP also project significant surpluses
16 during this same time period as do CE and IP located to the east, and Manitoba Hydro
17 (MH), a liaison member of MAPP.

18 **Q. How have you addressed whether the merger is likely to raise market power**
19 **concerns in the short term capacity market?**

20 A. I have done two things. First I have examined the relative surpluses and deficits
21 projected by the merging parties in comparison to those projected by other MAPP
22 members. This allows me to determine whether the merger will endow one party with

1 an inordinate share of that surplus. Such an inordinate share of the region's surplus
2 arguably might allow the merged party to exercise seller market power. Second, I
3 have examined how the merger might affect the short term capacity or purchase
4 opportunities of individual first tier utilities connected to the merging parties. It is
5 those systems which are most likely to see their market opportunities altered by the
6 proposed merger.

7 **Q. Please describe your analysis of surpluses and deficits within MAPP.**

8 A. Exhibits ___(RWF-5) through (RWF-7) provide data on total surplus projected by all
9 MAPP members collectively and by Midwest Power and Iowa-Illinois individually, as
10 well as shares for Midwest Power, Iowa-Illinois and MidAmerican, and pre-merger
11 and post-merger HHIs based on the assumption that MAPP alone constitutes an
12 appropriate relevant market. The exhibits contain data only for the years 1995 and
13 1996 because, as indicated, 1996 is the last year during which a stand-alone Midwest
14 Power reasonably could be expected to be a seller of short term capacity other than
15 through buy and resell transactions. Each of the exhibits contains two sets of
16 calculations, one which is labelled "Unadjusted" and one which is labelled "Capped".
17 The Unadjusted computations are based upon the data found in or derivable from the
18 raw data sources, principally MAPP's Load and Capability report and the load and
19 capability reports included in Mr. Crist's and Mr. Averweg's testimony. The Capped
20 computations limit the amount of capacity that any seller might offer in any one year to
21 the size of the total market where that total market size is determined by summing the
22 deficits of all entities projecting deficits. As used here deficit means the amount by

1 which a participant's net capability falls short of the sum of its peak and the reserve
2 requirement employed in the analysis, i.e., 15 percent, 18 percent or 22 percent as
3 discussed below.

4 The three exhibits are formatted identically, but employ different definitions of
5 what constitutes a surplus. In Exhibit ___(RWF-5) surplus is considered to be the
6 amount by which a participant's accredited capability exceeds its forecast peak plus 15
7 percent reserve obligation in MAPP. Exhibits ___(RWF-6) and ___(RWF-7) employ
8 a slightly more stringent concept of surplus which, as suggested in the testimony of
9 Mr. Crist and Mr. Averweg, more realistically portrays the amount of capacity the
10 participants might have available at peak times for marketing to others. With the
11 exception of Midwest Power and MidAmerican that amount is, in Exhibit ___(RWF-
12 6), the amount by which a participant's accredited capability exceeds forecast peak
13 plus an 18 percent reserve requirement and, in Exhibit ___(RWF-7), the amount by
14 which a participant's accredited capability exceeds its forecast peak plus a 22 percent
15 reserve requirement. The 18 and 22 percent figures were selected to comport with
16 Mr. Averweg's testimony that MAPP participants typically hold reserves in this range
17 to protect against peaks which result from abnormal weather conditions, and the
18 subsequent penalty payments which result if MAPP's 15 percent reserve requirement is
19 not met.

20 **Q.** How were the surpluses for Midwest Power and MidAmerican determined in
21 Exhibits ___(RWF-5) and ___(RWF-7)?

22 **A.** The surplus figures for Midwest, for both exhibits, are those from its hot weather

1 forecast. As stated, Mr. Crist testifies that it is this forecast which determines the
2 amount of capacity that Midwest Power might have available for marketing to others
3 on a short term basis. The surplus figures for MidAmerican are the sum of the stand-
4 alone surplus figures for Midwest Power (calculated from the hot weather forecast as
5 described) and Iowa-Illinois (based on an 18 percent or 22 percent reserve margin as
6 appropriate), plus an upwards adjustment of approximately 20 MW to account for
7 demand diversity. This adjustment reflects that the sum of the stand-alone peaks of
8 Midwest Power and Iowa-Illinois is slightly less than the peak of the merged firm.

9 **Q. Please explain in more detail how these exhibits can be read.**

10 A. Exhibit ___(RWF-5) may be used as an example. It provides summary data where the
11 surplus is defined as capability in excess of forecast peak plus a 15 percent reserve
12 margin. The two columns on the left use unadjusted data while the two on the right
13 employ the capping procedure I described above. It is these which I consider most
14 useful for the task at hand. Using 1996 as an example, the sum of surpluses of all
15 MAPP members reporting surpluses, after capping each as appropriate at the total
16 market size of 253, is 1937 MW. Midwest Power's surplus is 192 MW or 9.9 percent
17 of this total while Iowa-Illinois' surplus is 111 MW or 5.7 percent of the total.
18 MidAmerican's surplus for the computation is capped at 253 MW and therefore is less
19 than the sum of the Midwest Power and Iowa-Illinois figures. MidAmerican's share of
20 the total surplus, reflecting the cap, is 13.4 percent. The pre-merger HHI is 845, the
21 post-merger HHI is 933, and the merger-induced HHI increase is 87. The other
22 columns in Exhibit ___(RWF-5) and all columns in Exhibit Nos. ___(RWF-6) and

1 ___(RWF-7) can be interpreted similarly.

2 **Q. What do Exhibits ___(RWF-5) through ___(RWF-7) indicate?**

3 A. For 1995 and 1996 these exhibits provide summary statistics about the concentration
4 of surplus capacity with MAPP under a number of different assumptions about how
5 that surplus capacity should be measured. MidAmerican's post-merger market
6 shares—the maximum level among all of the formulations is 13.8 percent—always fall
7 well below the threshold values which FERC and the *Merger Guidelines* have used to
8 suggest that further inquiry may be required. Similarly, the post-merger HHI values,
9 taken in conjunction with the merger-induced HHI increases, always fall into ranges
10 which suggest that no further inquiry is required under the *Merger Guidelines*. In
11 some cases the post-merger HHI increases fall in the range which the *Merger*
12 *Guidelines* suggest as portraying highly concentrated markets, but the merger-induced
13 HHI change in all of these actually is negative. This somewhat counterintuitive result
14 occurs as a result of the combination of (i) the increase in surplus resulting from
15 demand diversity among the merging parties and (ii) the relatively high percentage of
16 total surplus held by one of the participants, Basin Electric Power Cooperative
17 (BEPC).

18 Collectively these three exhibits suggest that there should be no concern about
19 the merger-induced concentration of surplus capacity within MAPP. Such a
20 conclusion, of course, is reinforced when it is considered in conjunction with
21 MidAmerican's proposed open access transmission tariffs and the fact that several
22 entities directly connected with MAPP participants also project surpluses during this

1 time period but have not been included in this MAPP-only analysis, e.g., UE, AEC,
2 MH, CE and IP.

3 **Q. Please turn now to your analysis of first tier markets. What is a first tier**
4 **market?**

5 A. A first tier utility is a utility that is directly interconnected with Midwest Power or
6 Iowa-Illinois or both. The "market" for each first tier utility consists of Iowa-Illinois
7 or Midwest Power or both, as appropriate, plus all other entities with which it is
8 directly interconnected.

9 Consider the simple example shown on page 1 of Exhibit ___(RWF-8) where
10 the circled letters represent utilities and the lines represent interconnections between
11 them. A and B propose to merge. First tier utilities for A are C, F, G, H and, of
12 course, B. First tier utilities for B are C, D, E, F, H and, of course, A. The market for
13 each first tier utility consists of all entities with which it has interconnections. For
14 example, the market for G consists of A, F, H, K and L. Moreover, because G is
15 interconnected with only with one of the merging partners, A, and not the other, B, its
16 market essentially is unchanged by the merger of A and B. There are five entities with
17 which it can directly transact with or without a merger. This is not the case for F
18 which is interconnected with both A and B. Pre-merger there are five entities with
19 which it can transact through interconnections (A, B, E, G, and L), whereas post-
20 merger there are only four (merged A-B, E, G, and L). The previous discussion does
21 not contemplate that A and B might file an open access transmission tariff. Were they
22 to do so, the trading opportunities for first tier utilities could be expanded. For

1 example, for F they would now include merged A-B, E, G and L, as discussed above,
2 but also C, D and H. Page 2 of Exhibit ___(RWF-8) shows how the various first tier
3 markets change as a result of an A-B merger and the merging parties' filing of an open
4 access transmission tariff.

5 **Q. What first tier markets are appropriate for an assessment of the effects of a
6 merger between Midwest Power and Iowa-Illinois?**

7 A. Those first tier markets are identified in Exhibit ___(RWF-9). This exhibit identifies
8 each utility that is: (i) interconnected with both Midwest Power and Iowa-Illinois,
9 (ii) interconnected with Midwest Power but not Iowa-Illinois; and (iii) interconnected
10 with Iowa-Illinois but not Midwest Power. For each of these utilities it identifies the
11 other utilities with which there are interconnections, both before and after the
12 proposed merger, and the additional utilities which could be accessed via
13 MidAmerican's proposed open access transmission tariff. Those that can be accessed
14 only through the open access tariff and not a direct interconnection are those in
15 Column (3) of Exhibit ___(RWF-9) that have an asterisk (*). In these analyses I do
16 not include East River as a system interconnected with Midwest Power. Because East
17 River has no generation, none of the computations are affected by this exclusion.

18 **Q. Have you prepared computations which assess the effect of the merger on
19 concentration in these first tier markets?**

20 A. Yes. Those computations are shown in Exhibits ___(RWF-10) and ___(RWF-11).
21 The procedures used are similar to those used in other FERC proceedings assessing
22 competitive conditions.

1 Q. Please describe Exhibit ___(RWF-10).

2 A. Exhibit ___(RWF-10) concerns total generating capability, which is the sum of owned
3 generation and firm purchases less firm sales. Each of the first tier utilities are listed
4 along the left and the four columns contain summary concentration data concerning
5 each of these markets. The first column shows Midwest Power's share of total
6 generation capability in each first tier market pre-merger while the second column
7 shows the pre-merger share of Iowa-Illinois. The third column shows the post-merger
8 share of MidAmerican without expanding the market to incorporate the effects of the
9 open access tariff while the fourth column shows MidAmerican's share after the effects
10 of the open access tariff are incorporated. The numbers in Column (4) necessarily are
11 less than or equal to those in Column (3).

12 Q. Please explain this exhibit with an example.

13 A. Consider IES which is shown on the third line of Exhibit ___(RWF-10). From Exhibit
14 ___(RWF-9) we see that pre-merger IES has interconnections with Iowa-Illinois,
15 Midwest Power, IPW, NSP, UE, Central Illinois Public Service Company (CIPS),
16 AEC, CIPCO, CBPC and WAPA. These ten utilities comprise its first tier market pre-
17 merger. From Column (1) of Exhibit ___(RWF-10) we see that Midwest Power
18 controls 8.8 percent of the total generating capability held by all firms in this first tier
19 market whereas Iowa-Illinois controls 4.3 percent. The merged firm, MidAmerican,
20 controls 13.1 percent of the total before the effects of its open access transmission
21 tariff are considered. This is shown in the third column. MidAmerican's open access
22 transmission tariff will allow IES to transact with several additional entities beyond

1 those included in its first tier market. Those additional entities are identified with an
2 asterisk (*) in the column from Exhibit ___(RWF-9) which is labelled Post Merger
3 Market Participants. These additional entities consist of CE, IP, KCPL, SJLP,
4 NIPCO, OPPD, NPPD, LES, Geneseo and several Iowa generating municipal systems.
5 Column 4 of Exhibit ___(RWF-10) indicates that MidAmerican's share of total
6 generating capability in this expanded market is only 6.2 percent.

7 **Q. How are the utilities in Exhibit ___ (RWF-10) organized?**

8 A. Exhibit ___(RWF-10) includes all first tier utilities for Midwest Power and Iowa-
9 Illinois, grouped into two categories, Larger Systems and Smaller Systems. The
10 Larger Systems include eight IOUs (CE, IES, IP, IPW, KCPL, NSP, SJLP and UE),
11 two public power districts (NPPD and OPPD), one relatively large municipal system
12 (LES), one large G&T cooperative (AEC) and one Federal government agency
13 (WAPA). Each of these entities is interconnected with several other utilities and most
14 own significant generation and transmission assets. The smallest, SJLP, has a peak
15 demand of 336 MW but owns interests in both the West Line and the MINT Line. In
16 contrast, most of the Smaller Systems have only a single interconnection with other
17 utility systems and only MPW, CBPC and CIPCO have peaks in excess of 100 MW.
18 Among the Smaller Systems, CBPC and CIPCO are exceptions in that, as discussed
19 earlier, each has multiple interconnections both pre- and post-merger. NIPCO and
20 MPW also have interconnections with one or more entities other than one of the
21 merging parties.

22 **Q. Please summarize the information shown in Exhibit ___(RWF-10).**

1 A. Pre-merger Midwest Power and Iowa-Illinois have large shares of total generating
2 capability only for the smaller systems [(Columns (1) or (2)]. This result is natural
3 because, for all the smaller systems except CBPC, CIPCO, MPW and NIPCO, the
4 smaller systems' first tier markets consist only of themselves and Midwest Power or
5 Iowa-Illinois. Post-merger MidAmerican's share remains large before the effects of
6 the open access tariffs are incorporated [(Column (3))], but drops to 7.4 percent after
7 those effects are incorporated [(Column (4))]. For the larger systems, the post-merger
8 shares of MidAmerican range between 4.4 percent (UE) up to 26.6 percent (LES)
9 before considering the effects of the open access tariffs, but drop to a maximum of
10 10.0 percent (NSP) after the effects of those tariffs are included.

11 **Q. How are the effects of the open access transmission tariff incorporated in these**
12 **calculations?**

13 A. As described earlier, the pre-merger market for a first tier utility consists of Iowa-
14 Illinois or Midwest Power, or both, plus all other entities with which it is directly
15 interconnected. With the open access tariff this market is expanded to include all other
16 entities interconnected directly with either Iowa-Illinois or Midwest Power. When
17 these additional entities are added the share which MidAmerican comprises of the total
18 market necessarily falls.

19 **Q. Are there exceptions?**

20 A. There is one. The only interconnections which either Midwest Power or Iowa-Illinois
21 have with NSP are through the jointly owned East and West Lines. Because the
22 agreements covering those lines historically have not been interpreted to accommodate

1 third party wheeling, I have not included NSP as a party accessible via MidAmerican's
2 proposed open access tariff. Accordingly, NSP's first tier market is not expanded as a
3 result of the merger in the Exhibit ___(RWF-10) calculations, nor are other entities'
4 first tier markets expanded to include NSP. This same consideration does not apply to
5 any of the other East or West Line owners because there are other interconnections
6 available for assessing each of them. As I explain below, excluding NSP as an entity
7 accessible under Applicants' proposed open access transmission tariffs does not change
8 my conclusions about the lack of competitive concerns from the merger.

9 **Q. Is there a limitation on the usefulness of Exhibit ___(RWF-10) for examining the**
10 **competitive implications in short term capacity markets of a merger between**
11 **Midwest Power and Iowa-Illinois?**

12 A. Yes.

13 **Q. Please explain.**

14 A. Exhibit ___(RWF-10) concerns total generation capability. But because this an
15 industry where traditional suppliers are vertically integrated and operate under an
16 obligation to serve, most of the capacity shown in this exhibit is dedicated to serve
17 native load customers and is not available to serve the demands of other utilities who
18 temporarily may be short of capacity or who otherwise might find it economical to
19 make capacity purchases in the marketplace. If most of the capacity covered by this
20 exhibit is not available for sale in the market being examined, it stands to reason that
21 concentration measures based upon it are not useful for examining the effects of the
22 merger in this market. This general argument can be restated as follows: undoubtedly

1 it is correct that, if circumstances caused the price for electric generation capacity to
2 rise dramatically in the short term, Midwest Power and Iowa-Illinois, and the other
3 electric systems included in the analyses, by virtue of their obligations to serve, and
4 regulatory mandates, would be unable to redirect capacity formerly used to serve
5 native load customers to more profitable entrepreneurial sales in the marketplace.

6 **Q. Please describe Exhibit ___(RWF-11).**

7 A. Exhibit ___(RWF-11) is formatted identically to Exhibit ___(RWF-10) except that it
8 concerns only uncommitted capacity, which is defined to be only that which remains
9 after a utility has satisfied its reserve responsibilities. The reserve responsibilities are
10 those established by the reliability council or other pooling organization of which the
11 utility is a member. For example, for MAPP it is the 15 percent reserve margin
12 referred to earlier. For SPP it is a reserve margin of 18 percent. For CE it is the 18
13 percent reserve margin which that utility uses for planning purposes while for UE and
14 IP it is the 15 percent reserve margin which is one of the Illinois-Missouri Pool's
15 criteria for planning reserves. For systems where the reserve margin was not known
16 default values of 15 percent or 18 percent were used depending on the region in which
17 they are located.

18 **Q. Please summarize the information shown in Exhibit ___(RWF-11).**

19 A. This table shows the same general relationships as Exhibit ___(RWF-10). Not
20 surprisingly, pre-merger Iowa-Illinois or Midwest Power have relatively large market
21 shares for the smaller systems' first tier markets. These are virtually unchanged post-
22 merger before the effects of the open access tariffs are incorporated, but drop to 13.3

1 percent after the effects of those tariffs are reflected. For the larger systems, the post-
2 merger shares range between 11.7 percent (CE) and 31.5 percent (LES) before the
3 effects of the open access tariffs are considered and between 8.2 percent (CE and UE)
4 and 13.3 percent (LES and NSP) after the effects of those tariffs are incorporated.

5 **Q. What do you conclude from Exhibits ___(RWF-10) and ___(RWF-11)?**

6 A. These exhibits provide pre- and post-merger market shares for total and surplus or
7 uncommitted generation capacity in various first tier markets. In all cases, after the
8 market-expanding effects of Applicants' open access transmission tariff are
9 incorporated, the shares so computed are well below the 20 percent level which FERC
10 has suggested might be appropriate as a threshold for distinguishing dominant firms.

11 **Q. Please summarize your analysis of the effects of a merger between Midwest
12 Power and Iowa-Illinois on sales of short term capacity.**

13 A. The merging partners are potential competitors in markets to sell short-term capacity
14 only through 1996. But there are also many other potential participants in such
15 markets, including other MAPP members and nearby interconnected utilities.
16 Moreover, as is also true for other wholesale bulk power markets, the filing by
17 Applicants of their open access transmission tariff mitigates concern that the merger
18 will create or enhance market power. In any case, market shares and HHI changes
19 concerning concentration of surplus capacity fall short of threshold levels for concern
20 about possible market power.

21 **Q. How are your conclusions affected by the fact that your computations do not
22 include NSP as an entity accessible via Applicants' open access transmission**

1 **tariffs?**

2 A. The computations assume that access to NSP via the open access transmission tariffs
3 is not available. Were access to NSP to be available, whether via MidAmerican's open
4 access tariffs and a reformulation of existing East and West Line agreements, or via
5 filings under Section 211 of the Federal Power Act, or some combination,
6 MidAmerican's shares in various of the first tier markets would fall below the already
7 low levels shown. Accordingly, questions about whether access to NSP is or is not
8 available under existing and proposed arrangements do not affect my conclusions.

9 **Q. Are there any other important considerations involved in examining short term
10 capacity markets?**

11 A. Yes. While I do not believe that, when properly examined, the merger of Midwest
12 Power and Iowa-Illinois presents the opportunity for the exercise of market power in
13 short term capacity markets, I think that it is important to stress that, even if it existed,
14 the exercise of market power in short term capacity markets does not present the same
15 concerns that the exercise of market power in other markets might, such as those for
16 longer term capacity. For one thing, because of the very nature of surplus in this
17 business, any adverse effects that do exist will be short-lived. This is especially true
18 for this merger because a stand-alone Midwest Power would have a marketable
19 surplus only through 1996. Moreover, the surplus capacity that might support a
20 strong position in short term capacity markets usually is something that suppliers seek
21 to avoid rather than obtain. Those holding large surpluses are usually those whose
22 demand forecasts which formed the basis for their capacity additions were most at

1 odds with actual occurrences. But more importantly, because the short term market
2 consists largely of sales from existing surpluses, the actual exercise of market power in
3 this market would have at most only minimal efficiency consequences and produce
4 only transitory redistributive effects. However undesirable these consequences may
5 appear, they pale in significance next to the possible distortions from the exercise of
6 market power in long term capacity markets, where billions of dollars of new
7 investment may be undertaken. It is these latter markets therefore that ought to figure
8 most prominently in any investigation about the potential creation of market power
9 from this merger.

10 **Q. Have you considered whether a merger of Midwest Power and Iowa-Illinois**
11 **could raise prices in short term power markets by facilitating collusion among**
12 **sellers?**

13 **A.** Yes. This is a relatively remote possibility. For one thing, the emergence of marketers
14 greatly expands to pool of entities that would be required for coordinating policies.
15 The more such entities, the more difficult it is to maintain the collusion. Also, capacity
16 (with associated energy) is not a homogeneous product and many variations among
17 suppliers' offerings are plausible (e.g., in firmness, energy pricing and points of
18 delivery). These variations make it difficult for suppliers to coordinate about pricing
19 and output decisions and for cheaters to be detected. Such conditions undermine
20 collusion.

21 **Q. Your discussion of the possible effects of a merger of Midwest Power and Iowa-**
22 **Illinois on short term capacity markets has focused on seller market power only.**

1 The ability to undertake new construction, both of generation and transmission, should
2 mitigate a market power inference in most situations.

3 The dramatic emergence of NUGs in recent years reinforces this view. In
4 recent years 50 percent of the new generation in this country has come from NUGs, as
5 opposed to traditional utility sources, and utility after utility issuing RFPs for new
6 capacity consistently has received offers that far exceeded the supply blocks sought.
7 This trend began before the passage of the National Energy Policy Act of 1992, which
8 includes provisions about transmission access and exempt wholesale generators that
9 could only reinforce it. Midwest Power's own recent experience seeking capacity in
10 the market is consistent with this view. During late 1992 and early 1993 Midwest
11 Power conducted a capacity solicitation seeking a total of 210 MW of intermediate
12 and baseload capacity, with 80 MW to be available in 1996 and 130 MW to be
13 available in 2000. It received 21 responses offering a total of 4,100 MW. Midwest
14 Power conducted a second solicitation for long term peaking alternatives in early
15 1993, seeking between 60 and 110 MW. In response it received six acceptable
16 proposals offering approximately 450-550 MW to be provided from existing
17 generation.

18 In Docket No. ER94-1045-000 involving KCPL, FERC recognized that
19 market power in long term bulk power markets is unlikely (67 FERC ¶ 61,183) but
20 still considered whether various entry barriers might be present. Entry barriers could
21 include: (i) control of transmission; (ii) control of generating sites at which new
22 generation might be constructed; (iii) control of fuel supplies; or (iv) control of fuel

1 transport facilities. Such entry barriers, if present and significant, presumably could
2 support an inference that market power might be present in long term capacity
3 markets.

4 As concerns item (i) from this listing, the discussion in Section IV indicates
5 that the merger of Midwest Power and Iowa-Illinois will not provide the merged firm
6 with control over transmission such that it might exercise market power. Most
7 importantly, the proposed open access transmission tariff will allow those that would
8 construct new generation capacity the certain knowledge that they can obtain cost-
9 based transmission service for long time periods under terms and conditions similar to
10 those approved by FERC in other cases.

11 As concerns item (ii), Mr. Crist concludes that there are many potential sites at
12 which new generation in Iowa could be located which are not under the control of
13 MidAmerican.

14 As concerns item (iii), control of fuel supplies, Mr. Crist indicates that
15 Midwest Power does not own coal supplies other than those used at its power plants
16 and that neither it nor its affiliates is engaged in the mining or marketing of coal to
17 others. Mr. Averweg makes similar statements about Iowa-Illinois. As such, the
18 merger cannot possibly concentrate control of this fuel source nor, with respect to the
19 supply of coal, create an entry barrier to thwart potential competitors. As concerns
20 natural gas, Mr. Hollonbeck testifies that while both Midwest Power and Iowa-Illinois
21 have affiliates that engage in gas marketing, and that Iowa-Illinois makes some
22 unregulated gas sales to end users, there are many firms active in gas marketing in the

1 region. This, combined with Mr. Hollonbeck's testimony about the existence of
2 tariffed arrangements for natural gas transportation, and the fact that there are
3 thousands of entities in this country owning natural gas reserves, suggests that there
4 should be no concern about the proposed merger creating entry barriers to the
5 construction of new electric generation capacity by virtue of control of natural gas
6 supplies.

7 As concerns item (iv), Mr. Averweg testifies that Iowa-Illinois' coal transport
8 facilities are confined to those used to supply coal to its own generating plants and are
9 not used to provide coal transport to others. Mr. Crist describes Midwest Power's
10 coal transport services through its UNITRAIN affiliate and concludes that competitors
11 are numerous in all segments of its operations. Accordingly, those who would
12 construct new coal-fired generation will not be blocked from doing so by virtue of
13 MidAmerican's being the only possible coal transport source. Finally, Mr. Hollonbeck
14 testifies that there are three interstate pipelines that transport natural gas into the
15 service territories of Midwest Power and Iowa-Illinois and that the merger will not
16 alter this. He also testifies that open access transportation for natural gas will be
17 available across MidAmerican's natural gas distribution system post-merger. Based on
18 this testimony I conclude that unavailability of natural gas transport will not represent
19 an entry barrier for new natural gas fueled electric generation capacity in
20 MidAmerican's service territory.

21 In short, based on the evidence outlined, I do not believe that control of
22 electric transmission, generating sites, fuel supplies or fuel transport represent entry

1 barriers for the construction of new generating capacity in competition with
2 MidAmerican.

3 **Q. Your discussion of the long term capacity market concerns whether the merged**
4 **firm might be able to exercise market power as a seller of long term capacity,**
5 **and concludes that it could not. Have you separately considered whether the**
6 **merged firm could exercise market power as a purchaser of such capacity?**

7 **A.** Yes. Such a possibility seems very remote indeed. Even after the merger
8 MidAmerican will account for only approximately 13.3 percent of total load in MAPP.
9 Even if a potential supplier were forced to deal in this region alone, MidAmerican will
10 comprise only a small portion of total demand. Moreover, most entities that would
11 construct new capacity would have the possibility of relocating and dealing with other
12 potential purchasers if the merged firm sought to depress the price paid for its output.
13 Any residual fears that the merged entity might be able to exercise monopsony power
14 over would-be developers should be allayed by the open access tariff which Midwest
15 Power and Iowa-Illinois are filing. The developers can market their output to others if
16 the merged firm seeks to depress price or impose overly burdensome terms and
17 conditions.

18 **C. Nonfirm Energy**

19 **Q. Please repeat your description of the market for nonfirm energy.**

20 **A.** Nonfirm energy encompasses a variety of closely substitutable interchange transactions
21 that generating utilities engage in principally to improve the economics of dispatch. A
22 buyer whose own capacity resources are sufficient to accommodate its needs

1 nevertheless may choose to purchase nonfirm energy from another supplier if that
2 other supplier can provide energy to it at a lower delivered price than the purchaser's
3 own incremental generating cost. The pricing procedures which are employed for
4 these transactions share the benefits—the difference between the seller's incremental
5 cost and the buyer's decremental cost—between the two parties. Whether through
6 ordinary bilateral transactions, or more formalized broker or power pool
7 arrangements, virtually all generating utilities engage in this type of transaction to
8 some extent, sometimes as buyers and sometimes as sellers. Actual or potential
9 market participants also include brokers who buy from one generating entity and sell
10 to another.

11 Economy energy is the most recognizable type of nonfirm energy transaction,
12 and frequently is provided under split savings pricing rules. Close substitutes for
13 economy energy are the replacement or substitute energy transactions which utilities in
14 some regions use, where prices are based upon incremental cost plus a modest adder
15 (e.g., 10 percent), and "term" or "general purpose" energy transactions such as under
16 MAPP's Service Schedule M, where "up to" prices provide substantial flexibility for
17 buyers and sellers to converge on market-level prices. Also substitutable are very
18 short term—daily, weekly, monthly, and even seasonal—capacity plus energy
19 transactions where the buyer does not need additional capacity to meet its reliability
20 goals but, through its purchase, is able to obtain lower cost energy than that which is
21 available from its own generating units. The total purchase price—a modest demand
22 charge plus an incremental cost-based energy charge—is less than the incremental

1 generating costs which the buyer would incur if instead it had generated from its own
2 units.

3 **Q. Are there substitute products for nonfirm energy?**

4 A. Yes. Most obviously, any utility that is a buyer of nonfirm energy must have available
5 its own generating capability to draw upon if the nonfirm supply is interrupted. This
6 generation acts as an important force policing the prices which those selling nonfirm
7 energy may charge. Buyers retain the option to generate from their own sources if
8 sellers attempt to raise prices. Energy taken from longer term purchases can serve
9 precisely the same purpose. More generally, as I described earlier, there is broad
10 substitutability among individual bulk power products in the sense that utilities may
11 use varying mixes of these products to develop the firm power product which they
12 need to sell to their customers.

13 **Q. Who are the buyers and sellers of nonfirm energy?**

14 A. Virtually all generating utilities participate as both buyers and sellers in nonfirm energy
15 markets. Whether they are sellers or buyers at a particular point in time will depend
16 upon relative costs, but can change as a result of load level changes, outages and other
17 factors. But some may be predominately net sellers while others may be
18 predominately net buyers. For example, both Midwest Power and Iowa-Illinois,
19 because of their relatively low energy costs, are net sellers today. During 1993,
20 Midwest Power sold 2,237 GWh of nonfirm energy (and closely substitutable firm
21 products) to other utilities (approximately 15.8 percent of its total system input) and
22 purchased only 783 GWh. Its principle customers were AEC, UE, IES and IIGE.

1 Iowa-Illinois sold 1,249 GWh of nonfirm energy (and closely substitutable firm
2 products) in 1993 (approximately 19.1 percent of its total system input) and purchased
3 730 GWh. Its principal customers were UE, IES, IP and Enerex.

4 **Q. Are Midwest Power and Iowa-Illinois actual or potential competitors for sales of**
5 **nonfirm energy?**

6 A. Yes, but there also are many other competitors in the nonfirm markets in which
7 Midwest Power and Iowa-Illinois sell.

8 **Q. How have you proceeded to analyze the effects of the merger on nonfirm energy**
9 **markets?**

10 A. One thing I have done is to examine the trading arrangements available to the parties
11 through the MAPP agreement and through individual interconnections. The
12 extensiveness of the trading opportunities which are available, taken in conjunction
13 with the relative size of the merged entity compared to the entire power pool and other
14 regional utilities, suggests that merger-induced concerns about market power in
15 nonfirm energy markets are likely to be unfounded. This view is reinforced by the
16 testimony of Mr. Crist and Mr. Averweg who indicate that regional energy markets
17 are highly competitive. I also have used publicly available (i.e., Form 1 or equivalent)
18 data on nonfirm energy (and substitute short term capacity and energy) transactions by
19 MAPP members and other in-region and nearby utilities to develop market share and
20 HHIs concerning the merging partners and the effects of the proposed merger.

21 **Q. What geographic market did you examine for nonfirm energy sales?**

22 A. Just as it is difficult to draw clean boundaries between products which should and

1 should not be included in a relevant product market, it likewise can be difficult to
2 determine precise and unambiguous geographic market bounds. For example, through
3 displacement, energy can move relatively long distances. One utility may buy nonfirm
4 energy from suppliers located to the north of its system and resell it to the south, to
5 other utilities who may do much the same thing, i.e., buy in the north and sell in the
6 south, etc. Prices for nonfirm energy may tend to move in the same direction over
7 very broad areas, which could suggest that a broad relevant geographic market
8 definition ought to be employed. The approach which I have used defines three
9 geographic markets for nonfirm energy sales, one which is relatively narrow and two
10 which are somewhat broader but still narrow when the full range of possibilities is
11 considered.

12 The narrowest market which I use ("MAPP Only") consists of nonfirm energy
13 sales (including close substitutes) made to MAPP members by other MAPP members.
14 The only buyers and sellers in this market therefore are the 29 full participant members
15 of MAPP. This narrow relevant market is based upon the existing MAPP agreement
16 which, as indicated, allows all full participant members to transact with all other full
17 participant members using transmission service provided under MAPP Service
18 Schedule F.

19 The second geographic market definition which I have employed ("MAPP
20 Area") includes as buyers all MAPP region entities, whether or not members of
21 MAPP, and includes as sellers all entities, whether or not located in MAPP, from
22 whom the MAPP area utilities purchase nonfirm energy.

1 The third geographic market definition which I employ ("MAPP Plus")
2 includes as buyers all of those included in the MAPP Area market as well as those
3 entities to the east and south that in the past have purchased energy from the merging
4 partners. These entities include CE, IP, UE, AEC, KCPL and SJLP. This broader
5 market recognizes that actual trades take place over a much broader region than
6 MAPP alone although, as a practical matter, even this broader definition is too narrow.
7 It is too narrow because, as noted, through buy and resale transactions, energy can
8 move over much greater distances than suggested by even this broader geographic
9 market definition. It is also too narrow from a product standpoint because it excludes
10 self-generation which is substitutable for nonfirm energy purchased in the market.

11 **Q. Why have you not therefore included even broader geographic and product**
12 **market definitions in your analysis?**

13 **A.** One reason is that it is unnecessary for the task at hand, which is to assess whether a
14 merger between Midwest Power and Iowa-Illinois will create or enhance market
15 power. Using the narrow relevant geographic and product market definitions
16 produces summary market share and HHI data which support a conclusion that the
17 merger will not create or enhance market power in regional nonfirm energy markets.
18 Expanding the geographic or product market could only reinforce this conclusion. A
19 second reason is more pragmatic. An expanded market that includes buy and resell
20 transactions inevitably will include many double counts that cannot be eliminated
21 through publicly-available data sources.

22 **Q. Please describe the computations you have performed concerning the nonfirm**

1 **energy market as described.**

- 2 A. Summary data concerning these computations is contained in Exhibits ___(RWF-12)
3 through ___(RWF-15).

4 Exhibits ___(RWF-12) through ___(RWF-14) are formatted identically and
5 address the MAPP Only, MAPP Area, and MAPP Plus geographic markets
6 respectively. For each of 1992 and 1993, these exhibits contain summary data
7 concerning total market size, Midwest Power's sales and share, and Iowa-Illinois' sales
8 and share. Moreover, each exhibit contains this data under four alternative definitions
9 of which transactions to include in the relevant market. The first of these is labelled
10 All Transactions and includes all qualifying transactions [(i.e., for Exhibit ___(RWF-
11 12) all sales by MAPP members to other MAPP members] from the raw data sources
12 except those that clearly are labelled in a fashion such that they ought to be excluded,
13 e.g., as when a long term unit sale, long term firm sale or requirements sale is
14 identified. The second, third, and fourth alternatives recognize that the data sources
15 may be somewhat imprecise in identifying transactions which properly ought to be
16 included and therefore make an additional screen on the basis of price. The second
17 alternative includes only transactions that are priced at less than or equal to 30 mills
18 per kwh (rolling in both capacity and energy charges if appropriate) while the third
19 alternative includes only transactions that are priced at less than or equal to 20 mills
20 per kwh. Because this is a region with relatively low energy costs and prices, the
21 fourth alternative includes only transactions that are priced at less than or equal to 15
22 mills per kwh. The size of the market obviously decreases as the market is narrowed

1 through use of these price screens. These separate price screens allow an examination
2 of the effects of the merger if more narrow relevant market definitions are believed to
3 be appropriate for examining the effects of the merger, e.g., all very low priced energy.
4 As a practical matter, using these different alternatives does not really affect any
5 conclusion which may be drawn from the computations. The shares of Midwest
6 Power and Iowa-Illinois generally increase when moving to more narrow and lower
7 priced relevant market definitions but, in any case, are far below those which might
8 suggest concern about market power.

9 Exhibit ___(RWF-15) provides a summary of the HHI computations for each
10 relevant geographic market definition, alternative scope of market and year examined
11 Because there are three relevant geographic market definitions (MAPP, MAPP Area
12 and MAPP Plus), four alternative market scopes for each (All Transactions, 30 Mill
13 Cap, 20 Mill Cap and 15 Mill Cap), and two years (1992 and 1993), there are a total
14 of 24 sets (3x4x2) of summary HHI data.

15 **Q. What conclusions do you derive from Exhibits ___(RWF-12) through**
16 **___(RWF-15).**

17 **A.** These exhibits present historical data about concentration of nonfirm energy sales
18 under several alternative market definitions. In all cases the figures are far below
19 levels which might suggest concern about market power. For the two years and
20 various alternative market definitions studied, the HHI increases never exceed 59. In
21 most cases the post-merger HHIs are less than 1000, which is considered in the
22 *Merger Guidelines* to portray an "unconcentrated" market. Where the post-merger

1 HHIs rise to the *Merger Guidelines*' "moderately concentrated" range, the merger-
2 induced HHI increases are well below the threshold levels for concern. Moreover, the
3 merged firm's post-merger market share usually is less than 10 percent and never
4 exceeds 15.5 percent. Figures this low provide ample support for a conclusion that a
5 Midwest Power-Iowa-Illinois merger does not raise concerns about the creation or
6 enhancement of market power in nonfirm energy markets.

7 **Q. Have you conducted any additional analyses of energy sales markets that might**
8 **be affected by a merger of Midwest Power and Iowa-Illinois?**

9 A. Yes. That information is contained in Exhibits ___(RWF-16) to ___(RWF-23). These
10 exhibits are formatted identically to Exhibits ___(RWF-12) through ___(RWF-15)
11 with the only differences being as follows: Exhibits ___(RWF-16) through ___(RWF-
12 19) add energy from long term firm sales (as labelled in the regulatory filings which
13 comprise the raw data) to the nonfirm sales included in Exhibits ___(RWF-12)
14 through ___(RWF-15) while Exhibits ___(RWF-20) through ___(RWF-23) add
15 energy from both long term firm sales and long term unit sales to data for nonfirm
16 sales alone.

17 **Q. Why did you perform these additional analyses?**

18 A. I performed them because of the possibility of differences among utilities in the way in
19 which they classified transactions in the raw data. Including these broader categories
20 can lessen the effects of such differences.

21 **Q. What do you conclude from Exhibits ___(RWF-16) to ___(RWF-23)?**

22 A. As a general matter the markets themselves change very little in total size as new

1 transaction types are added, especially at the lower price levels and when adding only
2 long term firm transactions but not long term unit sales also. The greatest expansion
3 of market size from adding additional transactions is only 23 percent for the "MAPP
4 Plus" market for "All Transactions". Because the total market size changes very little
5 when additional transaction types are added, it is not surprising that the relative shares
6 of Midwest Power and Iowa-Illinois also change very little. In any case, as is true
7 when the analysis is confined just to transactions clearly labelled "non-firm", the
8 market share measures and HHI changes are far below levels which might suggest
9 concern about market power. Accordingly, my conclusions from the discussions
10 concerning Exhibits ___(RWF-12) to ___(RWF-15) are reinforced by examining
11 Exhibits ___(RWF-16) to ___(RWF-23). In short, a merger of Midwest Power and
12 Iowa-Illinois does not raise concerns about creation or enhancement of market power
13 in energy markets more broadly defined from a product vantage point.

14 **Q. Are there obvious limitations associated with Exhibits ___(RWF-12) through**
15 **___(RWF-23).**

16 **A.** Yes. There are at least two, and both suggest that the data contained therein overstate
17 any market power concerns that otherwise might be suggested by the merger. More
18 importantly, as noted, these data do not reflect own generation alternatives that buyers
19 might have available to defeat any merger-created ability to raise nonfirm energy
20 prices. If the merged firm seeks to raise price, buyers by definition can turn to their
21 own generation alternatives. Readily available data does not allow these own
22 generation alternatives to be included in concentration measures such as those

1 provided in Exhibits ___(RWF-12) through ___(RWF-23). Second, because the data
2 are historical, they do not reflect any competition-enhancing effects that flow from
3 MidAmerican's proposed open access transmission tariffs. To the extent that these
4 tariffs broaden the scope of the appropriate geographic market, it necessarily follows
5 that historical concentration data overstate the likely effects of the merger.

6 **Q. Earlier you stated that mergers could raise market power concerns if they**
7 **facilitated collusion among sellers. Is such collusion among sellers likely in**
8 **nonfirm energy markets?**

9 A. No. One reason is that this is an industry where all market participants are likely to be
10 very well informed about both demand levels and the various features (fuel prices, heat
11 rates, major outages) which determine sellers' costs. They ought to be able to estimate
12 relatively accurately what the market-clearing price for nonfirm energy is likely to be,
13 and therefore determine whether the price which suppliers seek from them is greater
14 than that level. This can help determine whether collusion is present. A second reason
15 is that, depending upon various conditions, individual entities are likely to participate
16 in the market both as buyers and sellers. There is less incentive to participate in a
17 price-increasing conspiracy as a seller if the increased prices work to your
18 disadvantage at times when you are a buyer.

19 **Q. Have you also considered whether the merger of Midwest Power and Iowa-**
20 **Illinois is likely to create concerns about monopsony power in nonfirm energy**
21 **markets?**

22 A. Yes. Monopsony power is present when a purchaser of a particular product is able to

1 lower the price it pays by restricting its purchases. Because the sellers have relatively
2 few good alternatives, the buyers are able to make that price reduction hold in the
3 marketplace. If the sellers did have good selling alternatives, they would simply sell to
4 others when the would-be monopsonist sought to lower the price that it paid. The
5 sought-after price decrease would not hold.

6 The same common sense considerations mentioned earlier suggest that a
7 merger between Midwest Power and Iowa-Illinois is unlikely to present concerns
8 about monopsony power in nonfirm energy markets. The merging parties represent
9 only a small percentage of potential demand in the power pool and region of which
10 they are a part. Moreover, with so many other possible buying entities within MAPP,
11 and the availability of MAPP Service Schedule F for low-priced transmission service
12 (as well as MidAmerican's proposed open access tariffs and the transmission access
13 provisions of the National Energy Policy Act), would-be energy sellers need not rely
14 upon making sales just to the merged entity. Hypothetically, if the merged entity seeks
15 to reduce the price that it pays for energy, by restricting purchases, the aggrieved
16 would-be sellers can simply market their energy elsewhere. They have numerous
17 opportunities to do so within MAPP, and several of the key participants also can do so
18 with trading partners outside of MAPP. In such circumstances, it is implausible that
19 buyer market power concerns will be present with a merger between Midwest Power
20 and Iowa-Illinois.

21 **Q. Have you developed any summary market share or other concentration data**
22 **addressing concerns about merger-induced monopsony power in nonfirm energy**

1 **markets?**

2 A. Yes. That information is provided in Exhibits ___(RWF-24) through ___(RWF-27).

3 **Q. What data are contained in these exhibits?**

4 A. These exhibits are formatted identically to Exhibits ___(RWF-12) through
5 ___(RWF-15). Exhibits ___(RWF-24) through ___(RWF-26) concern potential buyer
6 or monopsony power in the MAPP, MAPP Area, and MAPP Plus geographic markets
7 respectively. For 1992 and 1993 these exhibits contain data concerning total market
8 size, Midwest Power purchases and share of total purchases, and Iowa-Illinois
9 purchases and share of total purchases. These exhibits contain the same alternative
10 sets of transactions as used in the seller market power analyses, All Transactions, 30
11 Mill Cap, 20 Mill Cap, and 15 Mill Cap.

12 Exhibit ___(RWF-27) is similar to Exhibit ___(RWF-15) and provides a
13 summary of the HHI computations for each relevant geographic market definition,
14 alternative scope of market, and year examined—again, a total of 24 sets of summary
15 HHI data.

16 **Q. What conclusions do you derive from Exhibits ___(RWF-24) through**
17 **___(RWF-27)?**

18 A. These exhibits present historical data about concentration of nonfirm energy purchases
19 under several alternative market definitions. In all cases the summary figures are far
20 below levels which might suggest concern about buyer market power. For the two
21 years, and the various alternative market definitions studied, the HHI increases never
22 exceed 46. In all cases the post-merger HHI falls into ranges considered in the *Merger*

1 *Guidelines* to be either unconcentrated or moderately concentrated. Where the post-
2 merger HHI falls into the moderately concentrated category, the merger-induced HHI
3 increases are well below threshold levels for concern. The merged firm's share of total
4 purchases under the alternative market definitions exceeds 10 percent only twice,
5 reaching a maximum value of only 13.2 percent.

6 **Q. Please summarize your conclusions about the effects of the merger on nonfirm**
7 **energy markets.**

8 A. Midwest Power and Iowa-Illinois compete as sellers and buyers of nonfirm energy and
9 so the merger will reduce by one the number of sellers and buyers in nonfirm energy
10 markets. However, many other buyers and sellers remain in the markets in which
11 Midwest Power and Iowa-Illinois buy and sell nonfirm energy. Existing trading
12 arrangements (including the MAPP agreement, the East and West Line agreements,
13 and the MINT agreement), the extensiveness of the interconnections and trading
14 opportunities of most directly affected trading partners of Midwest Power and Iowa-
15 Illinois, the potential for energy to move relatively long distances through buy and
16 resell transactions, and the market-expanding effects of MidAmerican's proposed open
17 access transmission tariffs and the transmission access provisions of NEPA all suggest
18 that this is a merger which is unlikely to create or enhance market power in nonfirm
19 energy markets. This view is reinforced by an examination of historical transactions
20 data which shows concentration data far below the threshold levels which may suggest
21 potential concern about market power. Moreover, certain characteristics of nonfirm
22 energy markets suggest that collusion among groups of sellers or groups of buyers is

1 not significantly affect the prospects for it. Any franchise competition that, but for the
2 merger, would take place between Midwest Power or Iowa-Illinois and an actual or
3 potential municipal distribution system, still can take place post-merger between that
4 actual or potential municipal distribution system and the merged entity.

5 **Q. What is yardstick competition?**

6 A. Yardstick competition usually refers to a striving by utilities to rank more favorably in
7 comparative evaluations (of rates, costs or other performance measures) made by their
8 regulators.

9 **Q. Will a merger of Midwest Power and Iowa-Illinois significantly affect prospects**
10 **for yardstick competition in Iowa?**

11 A. No. It might have such an affect if regulators in Iowa were able to use only Iowa
12 utilities in any yardstick or performance comparisons that they wanted to make. This
13 is because the merger will reduce the number of IOUs selling electricity in Iowa from
14 four (Midwest Power, Iowa-Illinois, IPW, and IES) to three (MidAmerican, IPW and
15 IES). However, the electric utility industry can be distinguished by the wide array of
16 data on costs, price, and operations which is available publicly. Accordingly,
17 regulators seeking to make yardstick comparisons need not be confined to a sample
18 that includes only utilities under their jurisdiction but can include utilities nationwide if
19 they so desire. Indeed, such larger-samples generally will produce more meaningful
20 performance comparisons anyway. Because the universe of utilities available for
21 comparative purposes is so large, the merger of two, even if they both serve in a single
22 state, does not significantly affect the scope of useful comparisons which can be made.

1 Q. **What is locational or customer competition?**

2 A. Locational or customer competition usually refers to efforts by electric suppliers to
3 keep their prices low so they can induce relatively large electricity consumers to locate
4 or expand operations in their service territory as opposed to the service territory of
5 another supplier.

6 Q. **Will a merger between Midwest Power and Iowa-Illinois significantly affect
7 prospects for locational competition?**

8 A. No. By logic, locational competition can be significant only for the relatively small
9 grouping of customers whose electricity purchases comprise a relatively high
10 percentage of their total costs. But where electric costs are important, customers have
11 the incentive to shop over relatively broad areas, nationwide and beyond. Area
12 development professionals at both Iowa-Illinois and Midwest Power recognize that in
13 most cases utility costs (including natural gas) are a relatively insignificant locational
14 determinant. They also recognize that an individual "prospect's" competitive
15 alternatives will vary from case to case but are likely to encompass broad multi-state
16 regions, e.g., Indiana to Nebraska for agriculturally-related businesses. The merger of
17 two IOUs within such broad areas should not significantly reduce prospects for
18 locational competition.

19 Q. **What is fringe area competition?**

20 A. Fringe area competition refers to competition to serve individual customers located
21 near the boundaries of the service territories of more than one supplier.

22 Q. **Will a merger of Midwest Power and Iowa-Illinois significantly affect prospects**

1 **for fringe area competition in Iowa?**

2 A. No. Because the retail service territories of most electric suppliers tend to be well
3 defined and exclusive, customers located at a particular site generally do not have a
4 choice of suppliers. As a result, this form of retail competition usually is not
5 significant in this country. This general situation, which predominates elsewhere, is no
6 different for Midwest Power and Iowa-Illinois concerning the boundaries of their
7 service territories.

8 **Q. Will the merger of Midwest Power and Iowa-Illinois affect interfuel competition**
9 **between gas and electricity at the retail level.**

10 A. Mr. Hollonbeck testifies that there are no customers that receive retail gas service
11 from Midwest Power and retail electric service from Iowa-Illinois. Mr. Hollonbeck
12 also testifies that there is a very small overlap between Iowa-Illinois's retail gas
13 operations and Midwest Power's retail electric operations. This overlap consists of 90
14 residential and 17 commercial customers, located in rural areas near Oskaloosa, Iowa
15 and in the communities of Cedar and Wright, Iowa, that receive gas service from
16 Iowa-Illinois and electric service from Midwest Power. In theory therefore, the
17 merger will eliminate the opportunity that these few customers have to select among
18 alternative suppliers for applications where natural gas and electricity are competitive.
19 Because of the small quantity of such customers, and the regulatory protections which
20 remain, this merger-induced reduction in possible competition seems insignificant.

21 **VII. VERTICAL ISSUES**

22 **Q. Are there any significant vertical concerns presented by the proposed merger?**

1 A. No.

2 Q. **Please explain.**

3 A. Principal areas for concern about potential vertical effects of a merger of electric
4 utilities appear to relate to any ability that might be present for the merged firm to
5 favor itself or its affiliates in the terms and conditions on which access to key inputs is
6 granted, where such favorable access terms might harm its competitors. Of course, by
7 logic, for this to represent a merger-related concern, it must be one that is created or
8 enhanced as a result of the merger and not something which existed previously. In any
9 case, the possibility for such favoritism does not appear to be present here.

10 Applicants are filing open access transmission tariffs which should eliminate
11 concern that they will favor themselves or their affiliates in use of their transmission
12 system. Applicants and their affiliates must use the transmission tariffs to engage in off
13 system transactions on the same terms and conditions as other eligible customers.
14 Moreover, the electronic bulletin board which Applicants are proposing to implement
15 should contain data which allows interested parties to determine whether Applicants in
16 fact have engaged in favoritism.

17 In addition to the above concern about vertical effects flowing from Applicants'
18 transmission ownership, because both Applicants own natural gas distribution
19 facilities, there presumably may be a potential concern that they will provide gas
20 transport services for their own generation or that of their affiliates on more favorable
21 terms than for their competitors, and that the merger might enhance their ability to do
22 so or increase its benefits. However, based upon Mr. Hollonbeck's testimony, such a

1 concern appears unjustified. Both Midwest Power and Iowa-Illinois provide gas
2 transportation under filed tariffs now and MidAmerican commits to do the same post-
3 merger. Moreover, natural gas transmission to the MidAmerican service territory is
4 available now from three interstate pipelines, and is expected to be available from them
5 in the future. It would not appear possible therefore that the merged firm will be able
6 to block transport of natural gas to would-be competitors.

7 **Q. Does this conclude your testimony?**

8 **A. Yes.**

RODNEY FRAME

BUSINESS ADDRESS:

National Economic Research Associates, Inc.
1800 M Street, N.W.
Suite 600 South
Washington, D.C. 20036
(202) 466-3510

Mr. Frame graduated from George Washington University and pursued graduate work there under a National Science Foundation Traineeship. His areas of specialization were public finance and urban economics. He completed all requirements for his Ph.D. degree with the exception of the thesis.

Before joining NERA, he was a senior economist at Transcomm, Inc., where he directed a number of projects concerning market structure and ratemaking in the telecommunications industry, competition among electric utilities, and postal ratemaking.

At NERA he has consulted with electric utility clients on a variety of matters including retail competition, bulk power markets and competition, transmission access and pricing, partial requirements ratemaking, contractual terms for wholesale service, bidding for nonutility generation, least-cost planning and retail wheeling. Much of the work has been in conjunction with litigated antitrust proceedings. He was a principal participant in NERA's transmission research group consortium which examined a number of issues which arise when transmission access by customers is contemplated. More recently, he has been involved in the design of competitive capacity procurement programs ("bidding" systems) to which utilities have increasingly turned to supply new capacity and replace mandated PURPA avoided cost purchases.

He has spoken before various electric industry groups, testified in Federal District Court in electric utility antitrust cases, and testified before federal and state regulatory commissions concerning telecommunications issues.

EDUCATION:

GEORGE WASHINGTON UNIVERSITY

B.B.A. 1970

GEORGE WASHINGTON UNIVERSITY

Completed all requirements for Ph.D. in economics
except thesis, 1970-1973

EMPLOYMENT:

- 1990- NATIONAL ECONOMIC RESEARCH ASSOCIATES, INC.
Vice President. Has participated in projects dealing with retail competition between utilities, bulk power markets, electric utility mergers, transmission access and pricing, partial requirements ratemaking, contractual terms for wholesale service, bidding for new capacity (including that supplied by conservation), least-cost planning and retail wheeling. Principal clients have been investor-owned electric utilities. Has testified in Federal District Court in antitrust cases and spoken before various industry and client study groups.
- 1984-1989 Senior Consultant.
- 1975-1984 TRANSCOMM, INC.
Senior Economist. Worked on a variety of projects concerning market structure, pricing and cost development in regulated industries. Clients included the U.S. Departments of Commerce, Defense and Energy, the Nuclear Regulatory Commission, the State of Oregon, bulk mailers and various communications equipment manufacturers and service providers. Participated in numerous federal and state regulatory proceedings and was principal investigator for a multi-year Department of Energy study addressing various aspects of electric utility competition.
- 1974-1975 INDEPENDENT ECONOMIC CONSULTANT
Advised telephone equipment manufacturers concerning cost and rate development for competitive telephone offerings, analyzed alternative travel agent compensation arrangements and examined nonbank activity by bank holding company firms.
- 1973-1974 PROGRAM OF POLICY STUDIES IN SCIENCE AND TECHNOLOGY
Research Staff.
- 1973 URBAN INSTITUTE
Research Staff.

SELECTED REPORTS AND SPEECHES

"Recent Developments in North American Electric Generation Capacity Procurement Systems" with Mahim Chellappa, prepared for Electricité de France (EDF), France, August 1994. This report updates an earlier report prepared for EDF on U.S. bidding systems, providing summary information on types of systems, evaluation factors, and treatment of risk.

"Current Transmission Topics" and "Trans Alta's Unbundled Rate Proposal," presented to the Canadian Electrical Association, Montreal, PQ, Canada, May 9, 1994.

"Retail Wheeling Issues," speech presented to the Edison Electric Institute National Accounts Workshop, Atlanta, Georgia, February 7, 1994.

"Retail Wheeling: Doing It the Right Way," speech presented to the Retail Wheeling Conference, Denver, Colorado, November 8, 1993.

"Retail Wheeling," speech presented to the Missouri Valley Electric Association Division Conference, Kansas City, Missouri, October 22, 1993.

"An Economic Perspective on Current Transmission Pricing Issues," speech presented to the Edison Electric Institute 1993 Fall Legal Committee Meeting, Minneapolis, Minnesota, October 7, 1993.

"Comments on Transmission Reform Proposals," report prepared for the Edison Electric Institute, October 1993.

"Sunk Transmission Cost Recovery Issues," report prepared for The Electricity Industry Committee, New Zealand, September 1, 1993.

"Characteristics of a 'Good' Retail Wheeling System," speech presented to the Second Annual Electricity Conference sponsored by Executive Enterprises, Inc., Washington, D.C., April 21-22, 1993.

"Characteristics of a 'Good' Retail Wheeling System," speech presented to the Electric Utility Business Environment Conference sponsored by Electric Utility Consultants, Inc., Denver, Colorado, March 16-17, 1993.

"Change in the Industry," seminar presentation on privatization and service unbundling to Ontario Hydro management and special strategy task force, February 3, 1993, Ontario, Canada.

"The U.S. Experience and What Is To Come," speech presented to NERA Seminar on Competition in the Regulated Industries (Electric/Telecommunications), Rye Town Hilton, Rye Town, New York, October 30, 1992.

"Emerging Transmission Pricing Issues," speech presented to Electric Utility Consultants, Inc.'s 3rd Annual Transmission & Wheeling Conference., September 22-23, 1992, Chicago, Illinois.

"Emerging Transmission Pricing Issues," speech presented to Executive Enterprises, Inc., 1992 Electricity Conference: Restructuring the Electricity Industry, September 15-16, 1992, Washington, D.C.

"Opportunity Cost Pricing for Electric Transmission: An Economic Assessment," report prepared for Edison Electric Institute, June 1992.

"A Pragmatic Look at Open Access," presented to DOE/NARUC Workshop on Electricity Transmission, Stockbridge, Massachusetts, June 2, 1992.

"Some Thoughts About Open Access," presented to EMA's Issues and Outlook Forum, Atlanta, Georgia, May 5, 1992.

"Transmission Access and Pricing: What Does A Good 'Open Access' System Look Like." NERA Working Paper #14, January 1992.

"Transmission Access: How Should We Proceed?" speech presented to the Second Annual Transmission and Wheeling Conference, Denver, Colorado, November 21, 1991.

"Evaluation of Qualifying Facility Proposals," prepared for Florida Power Corporation, March 1991.

"Design of Capacity Procurement Systems," prepared for Electricité de France, January 1991.

"Issues in the Design of Generating Capacity Procurement Systems," prepared for TransAlta Utilities, January 1991.

"A Critique and Evaluation of the Large Public Power Council's Transmission Access and Pricing Proposal," prepared for Edison Electric Institute, December 1990.

"The Effects of a Premature Shutdown of the Trojan Nuclear Power Plant," prepared for Portland General Electric Company, October 1990.

"Can We Implement Reasonable Transmission Pricing and Access Procedures?" presented to the Edison Electric Institute System Planning Committee, Dallas, Texas, October 24, 1990.

"An Examination of the Proper Role for Utilities in Promoting Conservation Expenditures," prepared for Public Service Electric & Gas Company, 1990, with T. Scott Newlon.

"Issues in the Design of Competitive Bidding Systems," presented at the Pennsylvania Electric Association System Planning Meeting," 1990.

"Should We Use Opportunity Cost Pricing for Transmission?" presented to the Edison Electric Institute Interconnection Arrangements Committee, 1990.

"Issues Concerning Selection Criteria Development for Capacity RFPs." prepared for the Bonneville Power Administration, 1990.

"Nonutility Generators and Bonneville Power Administration Resource Acquisition Policy," prepared for the Bonneville Power Administration, 1990, with David L. Weitzel.

"An Evaluation of Resource Solicitation Alternatives," prepared for the Bonneville Power Administration, 1990.

"Recent Changes in the Electric Power Industry and Pressures on the Transmission System." presented at seminar "Competitive Electricity: Why the Debate?" sponsored by the Electricity Consumers Resource Council, 1988.

"Some Thoughts on New Transmission Access and Pricing Proposals," presented at conference "Transmission Pricing and Access: Reinventing the Wheel." sponsored by Cogeneration and Independent Power Coalition of America and American Cogeneration Association, 1988.

"Approaching the Transmission Access Debate Rationally," Transmission Research Group Working Paper Number 1, 1987, with Joe D. Pace.

"The Essential Facilities Doctrine," NERA, 1985.

"The Nuclear Regulatory Commission's Antitrust Review Process: An Analysis of the Impacts." Transcomm, Inc., prepared for the U.S. Department of Energy, 1981.

"Competitive Aspects of Utility Involvement in Cogeneration and Solar Programs," Transcomm, Inc., prepared for the U.S. Department of Energy, 1981.

"An Appraisal of Antitrust Review Extension in the Context of Small Utility Fuel Use Act Compliance," Transcomm, Inc., prepared for the U.S. Department of Energy, 1980.

"Analysis of Proposed License Conditions with Respect to Antitrust Deficiencies," Transcomm, Inc., prepared for the U.S. Nuclear Regulatory Commission, 1978.

"Analysis of NRC Staff's Proposed License Conditions for Midland Units," Transcomm, Inc., prepared for the U.S. Nuclear Regulatory Commission, 1978.

TESTIMONY

Deposition on behalf of Florida Power Corporation in re: Orlando Cogen (I), Inc., et al., v. Florida Power Corporation, Case No. 94-303-CIV-ORL-18, US District Court in and for the Middle District of Florida, Orlando Division, August 30, 1994. Case involved a contract dispute between FPC and one of its NUG suppliers.

Deposition on behalf of Virginia Electric & Power Co. in re: Doswell Limited Partnership v. Virginia Electric & Power Co., Circuit Court for the City of Richmond, Case No. LW-730-4, April 5, 1994. The case involves an alleged fraud and breach of contract relating to payments by VEPCO to one of its NUG suppliers.

Prepared Final Rebuttal Testimony, March 16, 1994, and Prepared Rebuttal Testimony on behalf of Central Louisiana Electric Company before FERC in *FERC Docket No. ER93-498-000*, December 23, 1993, examining an allegation of a municipal joint action agency that Central Louisiana's contract to provide bulk power service to a new municipal system customer constituted predatory pricing. Cross-examination at FERC on prefiled testimony addressing allegations that Central Louisiana Electric Company's contract with St. Martinville, LA municipal system constitutes predatory pricing, June 16 and 17.

"Comments on the Commerce Commission's Draft Determination Concerning Trans Power's Proposal to Recover Fixed/Sunk Transmission Costs," testimony prepared at the request of The Electricity Industry Committee, New Zealand, November 30, 1993.

Prepared Direct Testimony on behalf of Florida Power & Light Company in *Florida Power & Light Company, Docket Nos. ER93-465-000 and ER93-922-000* concerning competitive implications of wholesale tariff revisions, interchange contract revisions and a proposed "open access" transmission tariff, November 26, 1993. Prepared Answering Testimony concerning (i) whether municipal systems should receive billing credits for certain transmission facilities which they own which were argued to be part of an "integrated" transmission grid, and (ii) FPL's obligation to sell wholesale power under its Nuclear Regulatory Commission antitrust license conditions, July 7, 1994. Prepared Direct Testimony on Comparability Issues concerning a discussion of the differences between types of transmission services, usage of transmission systems by their owners, transmission services that FPL provides, and how those services compare and contrast with FPL's own uses of the transmission system, August 5, 1994.

Deposition on Behalf of Florida Power and Light in *Florida Municipal Power Agency v. Florida Power & Light Co. Case No. 92-35-CIV-ORL-22* concerning damage related issues, July 21 and 22, 1993.

Affidavit on Behalf of Florida Power and Light in *Florida Municipal Power Agency v. Florida Power & Light Co. Case No. 92-35-CIV-ORL-22* concerning damage related issues, July 14, 1993.

Prepared Direct Testimony on behalf of the Detroit Edison Company *In the Matter of the Application of the Association of Businesses Advocating Tariff Equity for Approval of an experimental retail wheeling tariff for Consumers Power Company, Case No. U-10143*, and

In the Matter on the Commission's own motion, to consider approval of an experimental retail wheeling tariff for The Detroit Edison Company, Case No. U-10176 before the Michigan Public Service Commission, March 1, 1993.

Deposition In the Matter of Florida Municipal Power Agency vs. Florida Power & Light Company, a Florida Corporation, United States District Court, Middle District of Florida, Orlando Division, Case No. 92-35-CTV-ORL-18, February 23, 24 and 25.

Affidavit on behalf of Iowa Power Inc. and Iowa Public Service Company, Federal Energy Regulatory Commission, Concerning the Competitive Effects of a Merger of the Two Companies, 1991.

Testimony on behalf of Defendants Union Electric and Missouri Utilities, In City of Malden, Missouri v. Union Electric Company and Missouri Utilities Company, U.S. District Court, Eastern District of Missouri, Southeastern Division, Civil Action No. 83-2533-C, 1988.

Testimony on behalf of Defendant Union Electric, In City of Kirkwood, Missouri v. Union Electric Company, U.S. District Court, Eastern District of Missouri, Civil Action No. 86-1787-C-6 (deposition testimony).

Testimony on behalf of Defendant Union Electric Company, In Citizens Electric Corporation v. Union Electric Company, U.S. District Court, Eastern District of Missouri, Eastern Division, Civil Action No. 83-2756C(c), 1986.

Testimony on behalf of Advo-System, Inc., before the Postal Rate Commission, Docket No. R84-1, Concerning Rates for Third Class Mail, 1984.

Testimony on behalf of D/FW Signal, Inc., before the Federal Communications Commission, Docket No. CC83-945, Concerning Cellular Telephone Service in Dallas-Fort Worth, 1983.

Testimony on behalf of the Department of Defense, before the Montana Public Service Commission, Docket No. 82.2.8, Concerning Telephone Service Rate Structure, 1982.

Testimony on behalf of Multnomah County, before the Public Utility Commissioner of Oregon, Docket UF 3565, Concerning Telephone Service Rate Structure.

Testimony on behalf of the Louisiana Consumer League, before the Louisiana Public Service Commission, Docket No. U-14078, Concerning Marginal Cost Pricing for Louisiana Power and Light Company, 1979.

Testimony on behalf of the State of Oregon, City of Portland, and County of Multnomah, before the Public Utility Commissioner of Oregon, Dockets UF3342 and UF3343, Concerning Rates for Centrex and ESSX Telephone Service, 1978.

In the Matter on the Commission's own motion, to consider approval of an experimental retail wheeling tariff for The Detroit Edison Company, Case No. U-10176 before the Michigan Public Service Commission, March 1, 1993.

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Testimony on behalf of Defendant Union Electric Company, In Citizens Electric Corporation v. Union Electric Company, U.S. District Court, Eastern District of Missouri, Eastern Division, Civil Action No. 83-2756C(c), 1986.

Testimony on behalf of Advo-System, Inc., before the Postal Rate Commission, Docket No. R84-1, Concerning Rates for Third Class Mail, 1984.

Testimony on behalf of D/FW Signal, Inc., before the Federal Communications Commission, Docket No. CC83-945, Concerning Cellular Telephone Service in Dallas-Fort Worth, 1983.

Testimony on behalf of the Department of Defense, before the Montana Public Service Commission, Docket No. 82.2.8, Concerning Telephone Service Rate Structure, 1982.

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November, 1994



Consulting Economists

**POST MERGER INTERCONNECTIONS OF
ENTITIES INTERCONNECTED WITH BOTH
MIDWEST POWER AND IOWA-ILLINOIS**

Entity	Post-Merger Interconnections
MAPP Members	
IES (9)	AEC, CBPC, CIPCO, CIPS, IPW, MEC, NSP, UE, WAPA
IPW (12)	CBPC, CE, CIPCO, Dairyland Power Cooperative, IES, KCPL, MEC, NSP, OPPD, SJLP, Southern MN Municipal Power Agency, UE
NSP (17)	BEPC, Central Power Electric Cooperative, Dairyland Power Cooperative, IES, IPW, KCPL, MEC, MH, Minnkota Power Cooperative, Inc., MP, NWPS, OPPD, OTP, SJLP, UE, United Power Association, WAPA
CBPC (4)	IES, IPW, MEC, WAPA
CIPCO (5)	IES, IPW, MEC, MPW, WAPA
Outside MAPP	
UE (18)	AEC, Central Power Electric Cooperative, City of Sikeston, CSW, Electric Energy Inc., Entergy, IES, IP, IPW, KCPL, KU, MoPub, NSP, SJLP, SPA, TVA, WR

() figures in parentheses indicate number of postmerger interconnections

**TRANSMISSION LINES BETWEEN MAPP
AND AREAS TO THE SOUTH**

Line	Size	MAPP Owners/ Participants	Southern Owners
East Line	345kv	Midwest Power, IES, Iowa-Illinois, IPW, NSP	UE
West Line	345kv	Midwest Power, IPW, NSP, OPPD	KCPL, SJLP
MINT Line	345kv	Midwest Power, LES, NPPD, OPPD	AEC, KCPL, SJLP
Red Willow-Mingo	345kv	NPPD	SCE
Humboldt-Kelly	161kv	OPPD	WR
Creston-Maryville	161kv	WAPA	AEC
Clarinda-Maryville	161kv	Midwest Power	SJLP
Appanoose-Adair	161kv	IES	UE
Denmark-Viele	161kv	IES, Iowa-Illinois	UE
Sidney-Hamburg	69kv	Midwest Power	AEC
Appanoose-Stueben	69kv	IES	AEC
Ottumwa-Lancaster	69kv	IES	AEC

- * MPS also can transact with UE over UE's segmented ownership share of the East Line through other contractual arrangements.

Summary Data
 Concentration of Surplus Capacity
 Within MAPP
 15% Reserve Margin

	Unadjusted			Capped	
	1995	1996		1995	1996
Sum of Individual Members' Surplus	2385	2461		753	1937
Midwest Power Surplus	218	192		41	192
Iowa-Illinois Surplus	94	111		41	111
Midwest Power Share (%)	9.1	7.8		5.4	9.9
Iowa-Illinois Share (%)	3.9	4.5		5.4	5.7
MEC Share* (%)	13.8	13.1		5.8	13.4
Pre-merger HHI	1404	1208		470	845
Post-merger HHI	1474	1278		493	933
Change in HHI	70	70		23	87

*Reflects diversity adjustment

Summary Data
 Concentration of Surplus Capacity
 Within MAPP
 18% Reserve Margin

	Unadjusted			Capped	
	1995	1996		1995	1996
Sum of Individual Members' Surplus	1545	1643		852	1443
Midwest Power Surplus*	56	29		56	29
Iowa-Illinois Surplus	59	76		59	76
Midwest Power Share (%)	3.6	1.8		6.6	2.0
Iowa-Illinois Share (%)	3.8	4.6		6.9	5.3
MEC Share** (%)	8.6	7.6		13.5	8.6
Pre-merger HHI	2029	1674		826	1276
Post-merger HHI	2024	1666		920	1281
Change in HHI	(5)	(8)		94	5

* Based on hot weather forecast

** Reflects diversity adjustment

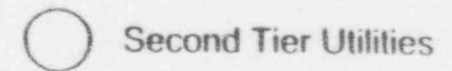
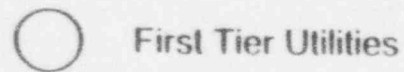
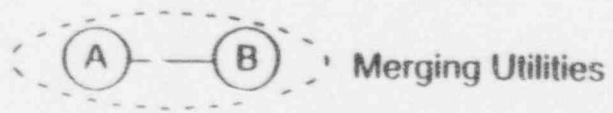
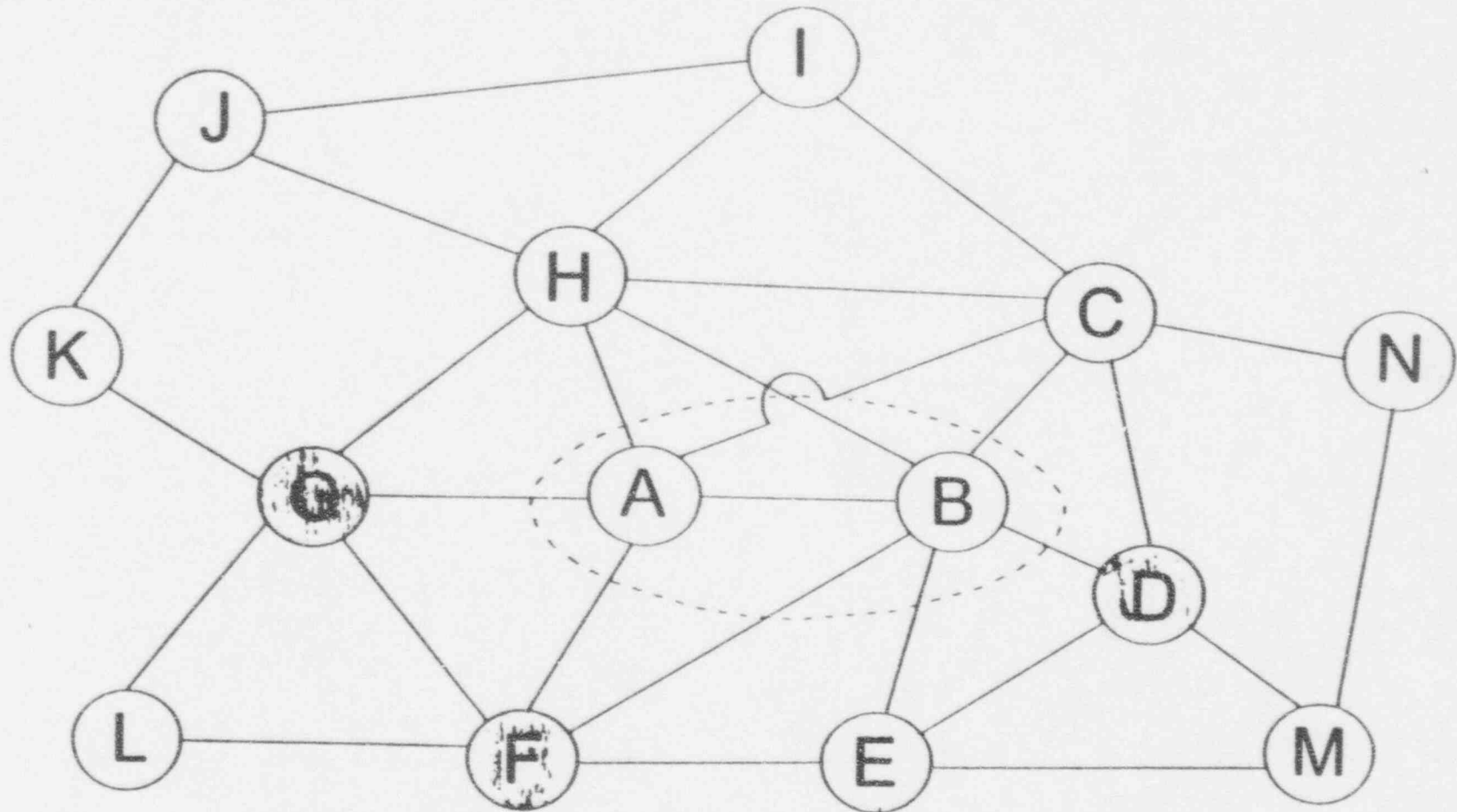
Summary Data
 Concentration of Surplus Capacity
 Within MAPP
 22% Reserve Margin

	Unadjusted			Capped	
	1995	1996		1995	1996
Sum of Individual Members' Surplus	949	1067		852	1067
Midwest Power Surplus*	56	29		56	29
Iowa-Illinois Surplus	11	30		11	30
Midwest Power Share (%)	5.9	2.7		6.6	2.7
Iowa-Illinois Share (%)	1.2	2.8		1.3	2.8
MEC Share** (%)	9.0	7.4		10.0	7.4
Pre-merger HHI	3494	2811		3014	2811
Post-merger HHI	3400	2741		2937	2741
Change in HHI	(94)	(70)		(77)	(70)

* Based on hot weather forecast

** Reflects diversity adjustment

FIRST TIER UTILITIES



FIRST TIER UTILITIES

<u>A's First Tier Utilities</u>	<u>Pre-Merger Market</u>	<u>Post-Merger Market</u>	<u>Post-Merger/ Open Access Market</u>
B	N/A	N/A	N/A
C	A, B, D, H, I, N	A-B, D, H, I, N	A-B, D, E*, F*, G*, H, I, N
F	A, B, E, G, L	A-B, E, G, L	A-B, C*, D*, E, G, H*, L
G	A, F, H, K, L	A-B, F, H, K, L	A-B, C*, D*, E*, F, H, K, L
H	A, B, C, G, I, J	A-B, C, G, I, J	A-B, C, D*, E*, F*, G, I, J,
<u>B's First Tier Utilities</u>			
A	N/A	N/A	N/A
C	A, B, D, H, I, N	A-B, D, H, I, N	A-B, D, E*, F*, G*, H, I, N
D	B, C, E, M	A-B, C, E, M	A-B, C, E, F*, G*, H*, M
E	B, D, F, M	A-B, D, F, M	A-B, C*, D, F, G*, H*, M
F	A, B, E, G, L	A-B, E, G, L	A-B, C*, D*, E, G, H*, L
H	A, B, C, G, I, J	A-B, C, G, I, J	A-B, C, D*, E*, F*, G, I, J

* Utilities added as a result of open access tariff.

FIRST TIER MARKETS

First Tier Market	Pre Merger Market Participants	Post Merger Market Participants
Utilities Interconnected With Midwest Power and Iowa-Illinois		
IES	AEC, CBPC, CIPCO, CIPS, Iowa-Illinois, IPW, Midwest Power, NSP, UE, WAPA	AEC, CBPC, CIPCO, CIPS, IPW, MEC, NSP, UE, WAPA, CE, * Geneseo*, Iowa Municipals, * IP, * KCPL, * LES, * MPW, * NIPCO, * NPPD, * OPPD, * SJLP*
IPW	CBPC, CE, CIPCO, Dairyland, IES, Iowa-Illinois, KCPL, Midwest Power, NSP, OPPD, SJLP, SMMP, UE	CBPC, CE, CIPCO, Dairyland, IES, KCPL, MEC, NSP, OPPD, SJLP, SMMP, UE, AEC, * Geneseo*, Iowa Municipals, * IP, * LES, * MPW, * NIPCO, * NPPD, * WAPA*
NSP	BEPC, Central, Dairyland, Generating Munic, Iowa-Illinois, IES, IPW, KPCL, MH, Midwest Power, Minnkota, MPL, NWPS, OPPD, OTP, SJLP, UE, United, WAPA	BEPC, Central, Dairyland, Generating Munic, IES, IPW, KCPL, MEC, MH, Minnkota, MPL, NWPS, OPPD, OTP, SJLP, UE, United, WAPA, MPW*
UE	AEC, CIPS, CSW, EEI, Entergy, IES, Iowa-Illinois, IP, IPW, KCPL, KU, Midwest Power, MoPub, NSP, SIKE, SJLP, SPA, TVA, WR	AEC, CIPS, CSW, EEI, Entergy, IES, IP, IPW, KCPL, KU, MEC, MoPub, NSP, SIKE, SJLP, SPA, TVA, WR, CBPC, * CE, * CIPCO, * Geneseo*, Iowa Municipals, * LES, * MPW, * NIPCO, * NPPD, * OPPD, * WAPA, *
CBPC	IES, Iowa-Illinois, IPW, Midwest Power, WAPA	CIPCO, IES, IPW, MEC, WAPA, AEC, * CE, * Geneseo*, Iowa Municipals, * IP, * KCPL, * LES, * MPW, * NIPCO, * NPPD, * OPPD, * SJLP, * UE*
CIPCO	IES, Iowa-Illinois, IPW, Midwest Power, MPW, WAPA	IES, IPW, MEC, WAPA, AEC, * CBPC, * CE, * Geneseo*, Iowa Municipals, * IP, * KCPL, * LES, * MPW, * NIPCO, * NPPD, * OPPD, * SJLP, * UE*
Utilities Interconnected With Midwest Power But Not Iowa-Illinois		
KCPL	AEC, BPU, Empire, IND, IPW, LES, Midwest Power, MoPub, NPPD, NSP, OPPD, SJLP, UE, WR	AEC, BPU, Empire, IND, IPW, LES, MEC, MoPub, NPPD, NSP, OPPD, SJLP, UE, WR, CBPC, * CE, * CIPCO, * Geneseo*, IES, * Iowa Municipals, * IP, * MPW, * NIPCO, * WAPA*
SJLP	AEC, IPW, KCPL, LES, Midwest Power, NPPD, NSP, OPPD, UE	AEC, IPW, KCPL, LES, MEC, NPPD, NSP, OPPD, UE, CBPC, * CE, * CIPCO, * Geneseo*, IES, * Iowa Municipals, * IP, * NIPCO, * WAPA*

First Tier Market	Pre Merger Market Participants	Post Merger Market Participants
OPPD	AEC, IPW, KCPL, LES, Midwest Power, NPPD, NSP, SJLP, WR	AEC, IPW, KCPL, LES, MEC, NPPD, NSP, SJLP, WR, CBPC, CE, CIPCO, Geneseo, IES, Iowa Municipals, IP, MPW, NIPCO, UE, WAPA
NPPD	AEC, BEPC, KCPL, LES, Midwest Power, OPPD, SEC, SJLP, WAPA	AEC, BEPC, KCPL, LES, MEC, OPPD, SEC, SJLP, WAPA, CBPC, CE, CIPCO, Geneseo, IES, Iowa Municipals, IP, IPW, MPW, NIPCO, UE
WAPA	BEPC, CBPC, CIPCO, IES, MDU, Midwest Power, NIPCO, NPPD, NSP, NWPS, OTP,	BEPC, CBPC, CIPCO, IES, LES, MDU, MEC, MPW, NIPCO, NPPD, NSP, NWPS, OTP, AEC, CE, Geneseo, Iowa Municipals, IP, IPW, KCPL, OPPD, SJLP, UE
LES	AEC, KCPL, Midwest Power, NPPD, OPPD, SJLP	AEC, KCPL, MEC, NPPD, OPPD, SJLP, CBPC, CE, CIPCO, Geneseo, IES, Iowa Municipals, IP, IPW, MPW, NIPCO, UE, WAPA
AEC	CSW, Empire, Entergy, GRPA, IES, KCPL, LES, Midwest Power, MoPub, NPPD, OPPD, SJLP, SPA, UE, WR	CSW, Entergy, GRPA, IES, KCPL, LES, MEC, MoPub, MPW, NIPCO, NPPD, OPPD, SJLP, SPA, UE, WR, CBPC, CE, CIPCO, Geneseo, Iowa Municipals, IP, IPW, WAPA
NIPCO	Midwest Power, WAPA	MEC, MPW, WAPA, AEC, CBPC, CE, CIPCO, Geneseo, IES, Iowa Municipals, IP, IPW, KCPL, LES, NPPD, OPPD, SJLP, UE
AMES	Midwest Power	MEC, AEC, CBPC, CE, CIPCO, Geneseo, IES, Iowa Municipals, IP, IPW, KCPL, LES, MPW, NIPCO, NPPD, OPPD, SJLP, UE, WAPA
Atlantic	Midwest Power	MEC, WAPA, AEC, CBPC, CE, CIPCO, Geneseo, IES, Iowa Municipals, IP, IPW, KCPL, LES, MPW, NIPCO, NPPD, OPPD, SJLP, UE
Cedar Falls	Midwest Power	MEC, AEC, CBPC, CE, CIPCO, Geneseo, IES, Iowa Municipals, IP, IPW, KCPL, LES, MPW, NIPCO, NPPD, OPPD, SJLP, UE, WAPA
Harlan	Midwest Power	MEC, AEC, CBPC, CE, CIPCO, Geneseo, IES, Iowa Municipals, IP, IPW, KCPL, LES, MPW, NIPCO, NPPD, OPPD, SJLP, UE, WAPA

First Tier Market	Pre Merger Market Participants	Post Merger Market Participants
Indianola	Midwest Power	MEC, AEC,* CBPC,* CE,* CIPCO,* Geneseo,* IES,* Iowa Municipals,* IP,* IPW,* KCPL,* LES,* MPW,* NIPCO,* NPPD,* OPPD,* SJLP,* UE,* WAPA*
Montezuma	Midwest Power	MEC, AEC,* CBPC,* CE,* CIPCO,* Geneseo,* IES,* Iowa Municipals,* IP,* IPW,* KCPL,* LES,* MPW,* NIPCO,* NPPD,* OPPD,* SJLP,* UE,* WAPA*
Pella	Midwest Power	MEC, AEC,* CBPC,* CE,* CIPCO,* Geneseo,* IES,* Iowa Municipals,* IP,* IPW,* KCPL,* LES,* MPW,* NIPCO,* NPPD,* OPPD,* SJLP,* UE,* WAPA*
Waverly	Midwest Power	MEC, AEC,* CBPC,* CE,* CIPCO,* Geneseo,* IES,* Iowa Municipals,* IP,* IPW,* KCPL,* LES,* MPW,* NIPCO,* NPPD,* OPPD,* SJLP,* UE,* WAPA*
Utilities interconnected With Iowa-Illinois But Not Midwest Power		
CE	AEP, CILCO, CIPS, Iowa-Illinois, IP, IPW, NIPS, WEP, WPL	AEP, CILCO, CIPS, IP, IPW, MEC, MPW, NIPS, WEP, WPL, AEC,* CBPC,* CIPCO,* Geneseo,* IES,* Iowa Municipals,* KCPL,* LES,* NIPCO,* NPPD,* OPPD,* SJLP,* UE,* WAPA*
IP	AEP, CE, CILCO, CIPS, EEI, Iowa-Illinois, KU, SIPC, Springfield, TVA UE	AEP, CE, CILCO, CIPS, EEI, KU, MEC, MPW, SIPC, Springfield, TVA, UE, AEC,* CBPC,* CIPCO,* Geneseo,* IES,* Iowa Municipals,* IPW, KCPL,* LES,* NIPCO,* NPPD,* OPPD,* SJLP,* UE,* WAPA*
MPW	Iowa-Illinois, CIPCO	MEC, AEC,* CBPC,* CE,* CIPCO,* Geneseo,* IES,* Iowa Municipals,* IP,* IPW,* KCPL,* LES,* NIPCO,* NPPD,* OPPD,* SJLP,* UE,* WAPA*
Geneseo	Iowa-Illinois	MEC, AEC,* CBPC,* CE,* CIPCO,* IES,* Iowa Municipals,* IP,* IPW,* KCPL,* LES,* MPW,* NIPCO,* NPPD,* OPPD,* SJLP,* UE,* WAPA*

* Utility accessible through proposed open access tariff

Merged Firm's Share
of Total Generating Capability
First Tier Markets

First Tier Market	Midwest Power Share	Iowa-Illinois Share	MEC Share	MEC Share With Open Access Tariff
Larger Systems				
AEC	5.2	0.0	7.5	4.8
CE	0.0	2.1	6.2	4.5
IES	8.8	4.3	13.1	6.2
IP	0.0	1.5	4.5	3.7
IPW	5.3	2.6	7.9	6.3
KCPL	7.0	0.0	10.1	5.7
LES	19.6	0.0	26.6	7.4
NPPD	15.0	0.0	20.8	7.1
NSP	6.7	3.3	10.0	10.0
OPPD	9.8	0.0	13.9	6.0
SJLP	8.9	0.0	12.7	6.5
UE	3.0	1.5	4.4	3.4
WAPA	13.8	0.0	19.3	6.2
Smaller Systems				
Ames	96.1	0.0	97.4	7.4
Atlantic	99.3	0.0	99.5	7.4
Cedar Falls	96.3	0.0	97.5	7.4
Eldridge	0.0	99.8	99.9	7.4
Geneseo	0.0	98.1	99.4	7.4
Harlan	99.8	0.0	99.9	7.4
Indianola	98.9	0.0	99.2	7.4
Montezuma	99.6	0.0	99.8	7.4
Muscatine	0.0	68.8	87.0	7.4
NIPCO	52.9	0.0	62.6	7.4
Pella	98.8	0.0	99.2	7.4
Waverly	99.0	0.0	99.3	7.4

Merged Firm's Share
Uncommitted Capacity Less Reserves
First Tier Markets

First Tier Market	MPS Share	IIGE Share	MEC Share	MEC Share With Open Access Tariff
Larger Systems				
AEC	11.9	0.0	16.4	10.0
CE	0.0	3.3	11.7	8.2
IES	13.0	4.9	18.6	10.6
IP	0.0	3.7	13.0	8.8
IPW	12.3	4.7	17.8	11.2
KCPL	12.0	0.0	16.6	10.2
LES	24.1	0.0	31.5	13.3
NPPD	14.0	0.0	19.2	11.3
NSP	9.2	3.5	13.3	13.3
OPPD	14.8	0.0	20.2	11.2
SJLP	14.6	0.0	19.9	11.4
UE	8.2	3.1	11.8	8.2
WAPA	15.1	0.0	20.5	10.0
Smaller Systems				
Ames	96.9	0.0	97.9	13.3
Atlantic	98.8	0.0	99.2	13.3
Cedar Falls	94.4	0.0	96.1	13.3
Geneseo	0.0	89.8	97.1	13.3
Harlan	100.0	0.0	100.0	13.3
Indianola	97.3	0.0	98.1	13.3
Montezuma	98.1	0.0	98.7	13.3
Muscarine	0.0	64.6	87.6	13.3
NIPCO	49.1	0.0	58.4	13.3
Pella	100.0	0.0	100.0	13.3
Waverly	98.8	0.0	99.2	13.3

Summary Data for
Energy Markets
NonFirm Sales
"MAPP Only"

	1992	1993
All Transactions		
Size (gwh)	18,034	17,088
MPS Sales (gwh)	901	596
IIGE Sales (gwh)	285	457
MPS Share (%)	5.0	3.5
IIGE Share (%)	1.6	2.7
30 Mill Cap		
Size (gwh)	16,777	15,770
MPS Sales (gwh)	897	584
IIGE Sales (gwh)	282	457
MPS Share (%)	5.3	3.7
IIGE Share (%)	1.7	2.9
20 Mill Cap		
Size (gwh)	14,086	13,617
MPS Sales (gwh)	878	511
IIGE Sales (gwh)	281	455
MPS Share (%)	6.2	3.8
IIGE Share (%)	2.0	3.3
15 Mill Cap		
Size (gwh)	10,111	8,613
MPS Sales (gwh)	725	460
IIGE Sales (gwh)	275	195
MPS Share (%)	7.2	5.3
IIGE Share (%)	2.7	2.3

Summary Data for
Energy Markets
NonFirm Sales
"Mapp Area"

	1992	1993
All Transactions		
Size (gwh)	35,123	31,332
MPS Sales (gwh)	1,248	970
IIGE Sales (gwh)	312	459
MPS Share (%)	3.6	3.1
IIGE Share (%)	0.9	1.5
30 Mill Cap		
Size (gwh)	28,502	29,000
MPS Sales (gwh)	1,225	958
IIGE Sales (gwh)	306	457
MPS Share (%)	4.3	3.3
IIGE Share (%)	1.1	1.6
20 Mill Cap		
Size (gwh)	22,247	19,752
MPS Sales (gwh)	1,121	795
IIGE Sales (gwh)	281	455
MPS Share (%)	5.0	4.0
IIGE Share (%)	1.3	2.3
15 Mill Cap		
Size (gwh)	16,892	13,204
MPS Sales (gwh)	901	696
IIGE Sales (gwh)	275	195
MPS Share (%)	5.3	5.3
IIGE Share (%)	1.6	1.5

Summary Data for
Energy Markets
NonFirm Sales
"MAPP Plus"

	1992	1993
All Transactions		
Size (gwh)	49,038	54,401
MPS Sales (gwh)	3,810	2,237
IIGE Sales (gwh)	974	1,193
MPS Share (%)	7.8	4.1
IIGE Share (%)	2.0	2.2
30 Mill Cap		
Size (gwh)	41,345	51,164
MPS Sales (gwh)	3,787	2,225
IIGE Sales (gwh)	969	1,191
MPS Share (%)	9.2	4.3
IIGE Share (%)	2.3	2.3
20 Mill Cap		
Size (gwh)	34,730	39,233
MPS Sales (gwh)	3,683	2,062
IIGE Sales (gwh)	876	1,189
MPS Share (%)	10.6	5.3
IIGE Share (%)	2.5	3.0
15 Mill Cap		
Size (gwh)	25,086	27,101
MPS Sales (gwh)	3,340	1,760
IIGE Sales (gwh)	557	816
MPS Share (%)	13.3	6.5
IIGE Share (%)	2.2	3.0

Energy Market HHIs
NonFirm Sales

	1992			1993		
	PreMerger HHI	PostMerger HHI	Change	Premerger HHI	Postmerger HHI	Change
MAPP						
All Transactions	802	817	16	759	777	19
30 Mill Cap	815	833	18	770	791	21
20 Mill Cap	837	862	25	825	850	25
15 Mill Cap	901	940	39	1029	1053	24
MAPP Area						
All Transactions	908	914	6	939	948	9
30 Mill Cap	842	851	9	1046	1056	10
20 Mill Cap	1075	1088	13	653	671	19
15 Mill Cap	1559	1576	17	866	882	16
MAPP Plus						
All Transactions	604	635	31	552	570	18
30 Mill Cap	567	610	43	600	620	20
20 Mill Cap	652	705	53	575	607	32
15 Mill Cap	1010	1069	59	724	763	39

Summary Data for
Energy Markets
NonFirm and LongTerm Firm Sales
"MAPP Only"

	1992	1993
All Transactions		
Size (gwh)	18,435	18,083
MPS Sales (gwh)	901	596
IIGE Sales (gwh)	285	483
MPS Share (%)	4.9	3.3
IIGE Share (%)	1.5	2.7
30 Mill Cap		
Size (gwh)	17,178	15,785
MPS Sales (gwh)	897	584
IIGE Sales (gwh)	292	457
MPS Share (%)	5.2	3.7
IIGE Share (%)	1.6	2.9
20 Mill Cap		
Size (gwh)	14,089	13,632
MPS Sales (gwh)	878	511
IIGE Sales (gwh)	281	455
MPS Share (%)	6.2	3.7
IIGE Share (%)	2.0	3.3
15 Mill Cap		
Size (gwh)	10,111	8,613
MPS Sales (gwh)	725	460
IIGE Sales (gwh)	275	195
MPS Share (%)	7.2	5.3
IIGE Share (%)	2.7	2.3

Summary Data for
Energy Markets
NonFirm and LongTerm Firm Sales
"MAPP Area"

	1992	1993
All Transactions		
Size (gwh)	35,585	33,195
MPS Sales (gwh)	1,308	1,045
IIGE Sales (gwh)	312	485
MPS Share (%)	3.7	3.1
IIGE Share (%)	0.9	1.5
30 Mill Cap		
Size (gwh)	28,962	29,339
MPS Sales (gwh)	1,285	1,016
IIGE Sales (gwh)	306	457
MPS Share (%)	4.4	3.5
IIGE Share (%)	1.1	1.6
20 Mill Cap		
Size (gwh)	22,250	19,767
MPS Sales (gwh)	1,121	795
IIGE Sales (gwh)	281	455
MPS Share (%)	5.0	4.0
IIGE Share (%)	1.3	2.3
15 Mill Cap		
Size (gwh)	16,892	13,204
MPS Sales (gwh)	901	696
IIGE Sales (gwh)	275	195
MPS Share (%)	5.3	5.3
IIGE Share (%)	1.6	1.5

Summary Data for
Energy Markets
NonFirm and LongTerm Firm Sales
"MAPP Plus"

	1992	1993
All Transactions		
Size (gwh)	50,059	57,273
MPS Sales (gwh)	4,176	2,845
IIGE Sales (gwh)	1,226	1,483
MPS Share (%)	8.3	5.0
IIGE Share (%)	2.4	2.6
30 Mill Cap		
Size (gwh)	42,312	52,266
MPS Sales (gwh)	4,101	2,782
IIGE Sales (gwh)	1,221	1,455
MPS Share (%)	9.7	5.3
IIGE Share (%)	2.9	2.8
20 Mill Cap		
Size (gwh)	34,984	39,674
MPS Sales (gwh)	3,683	2,487
IIGE Sales (gwh)	1,127	1,189
MPS Share (%)	10.5	6.3
IIGE Share (%)	3.2	3.0
15 Mill Cap		
Size (gwh)	25,086	27,103
MPS Sales (gwh)	3,340	1,762
IIGE Sales (gwh)	557	816
MPS Share (%)	13.3	6.5
IIGE Share (%)	2.2	3.0

**Energy Market HHIs
NonFirm and LongTerm Firm Sales**

	1992			1993		
	PreMerger HHI	PostMerger HHI	Change	Premerger HHI	Postmerger HHI	Change
MAPP						
All Transactions	830	845	15	801	819	18
30 Mill Cap	850	867	17	770	791	21
20 Mill Cap	837	862	25	824	849	25
15 Mill Cap	901	940	39	1029	1053	24
MAPP Area						
All Transactions	930	936	6	889	898	9
30 Mill Cap	844	854	9	1029	1039	11
20 Mill Cap	1075	1087	13	652	671	19
15 Mill Cap	1559	1576	17	866	882	16
MAPP Plus						
All Transactions	617	658	41	531	557	26
30 Mill Cap	573	629	56	590	619	30
20 Mill Cap	646	714	68	575	613	38
15 Mill Cap	1010	1069	59	724	763	39

Summary Data for
Energy Markets
NonFirm, LongTerm Firm and LongTerm Unit Sales
"MAPP Only"

	1992	1993
All Transactions		
Size (gwh)	22,938	21,965
MPS Sales (gwh)	1,299	1,214
IIGE Sales (gwh)	285	483
MPS Share (%)	5.7	5.5
IIGE Share (%)	1.2	2.2
30 Mill Cap		
Size (gwh)	20,967	16,993
MPS Sales (gwh)	897	1,202
IIGE Sales (gwh)	282	457
MPS Share (%)	4.3	7.1
IIGE Share (%)	1.3	2.7
20 Mill Cap		
Size (gwh)	14,089	13,632
MPS Sales (gwh)	878	511
IIGE Sales (gwh)	281	455
MPS Share (%)	6.2	3.7
IIGE Share (%)	2.0	3.3
15 Mill Cap		
Size (gwh)	10,111	8,613
MPS Sales (gwh)	725	460
IIGE Sales (gwh)	275	195
MPS Share (%)	7.2	5.3
IIGE Share (%)	2.7	2.3

Summary Data for
Energy Markets
NonFirm, LongTerm Firm and LongTerm Unit Sales
"MAPP Area"

	1992	1993
All Transactions		
Size (gwh)	40,087	39,207
MPS Sales (gwh)	1,705	1,662
IIGE Sales (gwh)	311	485
MPS Share (%)	4.3	4.2
IIGE Share (%)	0.8	1.2
30 Mill Cap		
Size (gwh)	32,751	32,677
MPS Sales (gwh)	1,285	1,634
IIGE Sales (gwh)	306	457
MPS Share (%)	3.9	5.0
IIGE Share (%)	0.9	1.4
20 Mill Cap		
Size (gwh)	22,250	19,767
MPS Sales (gwh)	1,121	795
IIGE Sales (gwh)	281	455
MPS Share (%)	5.0	4.0
IIGE Share (%)	1.3	2.3
15 Mill Cap		
Size (gwh)	16,892	13,204
MPS Sales (gwh)	901	696
IIGE Sales (gwh)	275	195
MPS Share (%)	5.3	5.3
IIGE Share (%)	1.6	1.5

Summary Data for
Energy Markets
NonFirm, LongTerm Firm and LongTerm Unit Sales
"MAPP Plus"

	1992	1993
All Transactions		
Size (gwh)	59,607	66,983
MPS Sales (gwh)	4,574	3,462
IIGE Sales (gwh)	1,226	1,483
MPS Share (%)	7.7	5.2
IIGE Share (%)	2.1	2.2
30 Mill Cap		
Size (gwh)	51,146	59,297
MPS Sales (gwh)	4,101	3,399
IIGE Sales (gwh)	1,221	1,455
MPS Share (%)	8.0	5.7
IIGE Share (%)	2.4	2.5
20 Mill Cap		
Size (gwh)	39,197	42,348
MPS Sales (gwh)	3,683	2,487
IIGE Sales (gwh)	1,127	1,189
MPS Share (%)	9.4	5.9
IIGE Share (%)	2.9	2.8
15 Mill Cap		
Size (gwh)	28,200	29,778
MPS Sales (gwh)	3,340	1,761
IIGE Sales (gwh)	557	816
MPS Share (%)	11.8	5.9
IIGE Share (%)	2.0	2.7

Energy Market HHIs
NonFirm, LongTerm Firm and LongTerm Unit Sales

	1992			1993		
	PreMerger HHI	PostMerger HHI	Change	Premerger HHI	Postmerger HHI	Change
MAPP						
All Transactions	1,135	1,149	14	890	914	24
30 Mill Cap	1,227	1,239	12	770	808	38
20 Mill Cap	837	862	25	824	849	25
15 Mill Cap	901	940	39	1029	1053	24
MAPP Area						
All Transactions	1,101	1,108	7	787	797	10
30 Mill Cap	942	950	7	907	921	14
20 Mill Cap	1075	1087	13	652	671	19
15 Mill Cap	1559	1576	17	866	882	16
MAPP Plus						
All Transactions	649	680	32	468	491	23
30 Mill Cap	562	601	38	511	539	28
20 Mill Cap	586	640	54	545	578	33
15 Mill Cap	921	968	47	680	713	32

Summary Data for
Energy Markets
NonFirm Purchases
"MAPP Only"

	1992	1993
All Transactions		
Size (gwh)	18,034	17,088
MPS Purchases (gwh)	1,239	618
IIGE Purchases (gwh)	227	306
MPS Share (%)	6.9	3.6
IIGE Share (%)	1.3	1.8
30 Mill Cap		
Size (gwh)	16,777	15,770
MPS Purchases (gwh)	1,237	615
IIGE Purchases (gwh)	226	304
MPS Share (%)	7.4	3.9
IIGE Share (%)	1.3	1.9
20 Mill Cap		
Size (gwh)	14,086	13,617
MPS Purchases (gwh)	1,221	592
IIGE Purchases (gwh)	217	294
MPS Share (%)	8.7	4.3
IIGE Share (%)	1.5	2.2
15 Mill Cap		
Size (gwh)	10,111	8,613
MPS Purchases (gwh)	1,137	343
IIGE Purchases (gwh)	207	276
MPS Share (%)	11.2	4.0
IIGE Share (%)	2.0	3.2

Summary Data for
Energy Markets
NonFirm Purchases
"MAPP Area"

	1992	1993
All Transactions		
Size (gwh)	35,123	31,332
MPS Purchases (gwh)	1,408	783
IIGE Purchases (gwh)	269	730
MPS Share (%)	4.0	2.5
IIGE Share (%)	0.8	2.3
30 Mill Cap		
Size (gwh)	28,502	29,000
MPS Purchases (gwh)	1,406	776
IIGE Purchases (gwh)	269	728
MPS Share (%)	4.9	2.7
IIGE Share (%)	0.9	2.5
20 Mill Cap		
Size (gwh)	22,247	19,752
MPS Purchases (gwh)	1,354	679
IIGE Purchases (gwh)	259	706
MPS Share (%)	6.1	3.4
IIGE Share (%)	1.2	3.6
15 Mill Cap		
Size (gwh)	16,892	13,204
MPS Purchases (gwh)	1,219	397
IIGE Purchases (gwh)	233	277
MPS Share (%)	7.2	3.0
IIGE Share (%)	1.4	2.1

Summary Data for
Energy Markets
NonFirm Purchases
"MAPP Plus"

	1992	1993
All Transactions		
Size (gwh)	49,038	54,401
MPS Purchases (gwh)	1,408	783
IIGE Purchases (gwh)	269	730
MPS Share (%)	2.9	1.4
IIGE Share (%)	0.5	1.3
30 Mill Cap		
Size (gwh)	41,345	51,164
MPS Purchases (gwh)	1,406	776
IIGE Purchases (gwh)	269	728
MPS Share (%)	3.4	1.5
IIGE Share (%)	0.7	1.4
20 Mill Cap		
Size (gwh)	34,730	39,233
MPS Purchases (gwh)	1,354	679
IIGE Purchases (gwh)	259	706
MPS Share (%)	3.9	1.7
IIGE Share (%)	0.7	1.8
15 Mill Cap		
Size (gwh)	25,086	27,101
MPS Purchases (gwh)	1,219	397
IIGE Purchases (gwh)	233	277
MPS Share (%)	4.9	1.5
IIGE Share (%)	0.9	1.0

Energy Market HHIs
NonFirm Purchases

	1992			1993		
	PreMerger HHI	PostMerger HHI	Change	Premerger HHI	Postmerger HHI	Change
MAPP						
All Transactions	1068	1085	17	1103	1116	13
30 Mill Cap	1049	1069	20	1140	1155	15
20 Mill Cap	1261	1288	27	1278	1297	19
15 Mill Cap	1263	1309	46	1192	1218	25
MAPP Area						
All Transactions	949	955	6	1171	1182	12
30 Mill Cap	1219	1228	9	1144	1157	13
20 Mill Cap	1461	1475	14	867	892	25
15 Mill Cap	1456	1476	20	897	909	13
MAPP Plus						
All Transactions	707	711	3	933	937	4
30 Mill Cap	838	842	4	947	951	4
20 Mill Cap	950	956	6	954	960	6
15 Mill Cap	1056	1065	9	1005	1008	3