



U.S. POST SERVICE

CONFIDENTIAL

December 1, 2003

Top Hat Plan Exemption  
**Pension and Welfare Benefits Administration**  
Room N-5644  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, D.C. 20210

2520040762588

**Re: 457(b) Plan**

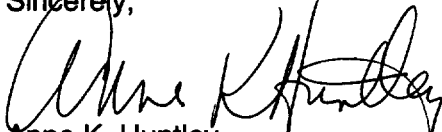
Ladies and Gentlemen:

Pursuant to Department of labor Regulation 2520.1104-23, the following information is being provided regarding a non-qualified deferred compensation plan sponsored by our organization for a select group of management or highly compensated employees.

Name of Employer:	Midwest ISO, Inc.
Employer Identification Number:	43-1827033
Address:	701 City Center Drive Carmel, IN 46032
Number of plans maintained:	2
Number of employees in each plan:	7

We will provide plan documents upon request in accordance with ERISA Section 104(a)(1). Please contact me if you have questions regarding any of the above information.

Sincerely,



Anne K. Huntley  
Director, Shared Services

**COPY**

**MIDWEST ISO SECTION 457(b) PLAN**

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## PLAN EXECUTION

## **INTRODUCTION**

### **Midwest ISO Section 457(b) Plan**

Midwest Independent Transmission System Operator, Inc., referred to in this Plan document as the "Employer," is establishing a deferred compensation arrangement for certain officers effective November 30, 2003. The Employer previously established the Midwest ISO Supplemental Executive Retirement Plan ("SERP Plan") effective August 1, 1999. This Plan has been designed to mitigate the adverse tax consequences to the SERP Plan participants due to the operation of Section 457(f) of the Internal Revenue Code.

This plan is intended to be an unfunded plan for purposes of the Employee Retirement Income Security Act of 1974, and an "eligible deferred compensation plan" under Section 457(b) of the Internal Revenue Code of 1986. The Employer agrees to operate the Plan according to the terms, provisions and conditions set forth in this document.

Any funds accumulated for purposes of providing benefits under this Plan are fully available to satisfy the claims of the Employer's creditors. Participants have no greater rights with regard to such funds than any other general creditor of the Employer.

### **Article I – Definitions**

#### **Section 1.01 – Format**

Words and phrases defined in the DEFINITIONS SECTION of Article I shall have that defined meaning when used in the Plan, unless the context clearly indicates otherwise.

#### **Section 1.02 – Definitions**

ACCOUNT means, for a Participant, the account to Contributions are credited. A Participant's Account shall be reduced by any distribution of his Account. A Participant's Account will be invested in accordance with Section 3.02.

BENEFICIARY means the Beneficiary designated by the Participant to receive any promised benefits under the SERP Plan upon the Participant's death.

BOARD means the Board of Directors of the Employer.

CODE means the Internal Revenue Code of 1986, as amended.

COMMITTEE means those individuals appointed by the Board to administer the Plan. The Committee shall have full power and authority to interpret this Plan. The Committee's interpretations and construction of any provision or action taken under this Plan, including

any valuation of the Participant's Account, shall be binding and conclusive on all persons for all purposes. No member of the Committee shall be liable to any person for any action taken or omitted in connection with the interpretation and administration of this Plan unless attributable to the member's willful misconduct or lack of good faith.

**CONTRIBUTIONS** means contributions to the Participant's Account described in Article II.

**CREDITING RATE** means an annual rate based on the rate effective on the first business day of each calendar quarter for 10-year Treasury constant maturities published in Federal Reserve Statistical Release H.15 – Selected Interest Rates.

**EMPLOYER** means Midwest Independent Transmission System Operator, Inc., a Delaware not-for-profit organization.

**EMPLOYER CONTRIBUTIONS** means the amounts described in Section 3.02 of the SERP Plan.

**EMPLOYER CONTRIBUTION ACCOUNT** means the portion of the Participant's SERP Account attributable to Employer Contributions.

**ERISA** means the Employee Retirement Income Security Act of 1974, as amended.

**INCLUDIBLE COMPENSATION** means compensation for services performed for the Employer which is currently includable in the Participant's gross income for Federal income tax purposes after giving effect to all provisions of the Code. Includible Compensation shall be determined without regard to community property laws. Compensation deferred under this Plan shall not be included in Includible Compensation except as provided in Code Section 457(e)(5).

**PARTICIPANT** means an Active Participant as defined in Section 1.02 of the SERP Plan.

**PLAN** means the unfunded and unsecured Plan of the Employer set forth in this document, including any later amendments to it.

**PLAN YEAR** for the initial year means the period beginning on the effective date of the Plan through December 31 of that year. For all subsequent years, Plan Year means January 1 through December 31.

**SERP ACCOUNT** means the Participant's Account as defined in Section 1.02 of the SERP Plan.

**SERP Plan** means the Midwest ISO Supplemental Executive Retirement Plan, as amended from time to time.

**TAX DISTRIBUTION** means the amount described in Section 6.02(b) of the SERP Plan.

**VALUATION DATE** means each March 31, June 30, September 30, and December 31, except in the event of severance from employment, the Valuation Date shall be the date described in Section 4.02.

## **Article II – Contributions**

### **Section 2.01 – Eligibility for Contributions**

Except as provided in Section 2.04, the Employer shall make a Contribution to the Participant's Account in any Plan Year during which any portion of the Participant's Employer Contribution Account becomes vested. In addition, during in any Plan Year during which contributions to the Participant's SERP Account are fully vested at the time of contribution, the Employer shall make a Contribution to the Participant's Account.

### **Section 2.02 - Amount of Contribution**

Subject to the limitations of Section 2.05, the Contribution to the Participant's Account in any Plan Year shall be equal to the Participant's Tax Distribution during the Plan Year multiplied by the Crediting Rate in effect at the time of the Tax Distribution.

### **Section 2.03 – Timing of Contributions**

Contributions will be made at the same time as the Tax Distribution is made to the Participant.

### **Section 2.04 – Death of Participant**

In the event the Participant's Employer Contribution Account becomes vested as a result of the death of the Participant, no Contribution shall be made to the Participant's Account.

### **Section 2.05 – Limitation on Contributions**

- (a) In no event shall the total contribution amount made pursuant to Section 2.2 with respect to any Participant during any taxable year exceed the lesser of: (1) the applicable dollar amount set forth in Section 457(e)(15) of the Code (\$12,000 for 2003), or (2) 100% of such Participant's Includible Compensation.
- (b) Notwithstanding any provision in Section 2.02 to the contrary, with respect to any one or more of the three taxable years ending before the date of the Participant's 65<sup>th</sup> birthday, a Participant may elect to have Deferred Compensation contributed to the

Plan in an amount not to exceed the lesser of:

- (1) Twice the dollar amount in effect for such taxable year under Section 457(e)(15) of the Code; or
  - (2) The amount of the Participant's "Underutilized Limitation" for the Participant's taxable year.
- (c) For purposes of this paragraph, the Underutilized Limitation with respect to a Participant shall be equal to the sum of:
- (A) the Participant's contribution limitation as set forth in Section 2.05(b) for such taxable year, and
  - (B) the excess of (i) over (ii) where:
    - (i) equals the sum of the limitations set forth in Section 457(b)(2) of the Code for all taxable years on or after December 31, 1978 in which the Participant was eligible to Participate in this Plan or any other eligible deferred compensation plan maintained by the Employer, and
    - (ii) equals the sum of (x) all Deferred Compensation made on behalf of such Participant for such taxable years under this Plan and any other eligible deferred compensation plan maintained by the Employer and (y) the extent required by applicable regulations or other IRS guidance, amounts contributed to a plan or arrangement required to be coordinated with this Plan pursuant to Section 457(c) of the Code as in effect prior to its amendment by the Economic Growth and Tax Relief Reconciliation Act of 2001.

A Participant may not elect to apply the 457(b) catch-up limitation described above more than once, regardless of whether the full amount of the limitation is utilized or whether the limitation is utilized for all three years.

### **ARTICLE III – Maintenance of Accounts and Investment of Contributions**

#### **Section 3.01— Investment of Contributions**

The Account of a Participant shall be credited with earnings calculated based on the Crediting Rate. Such earnings will be credited to the Participant's Account on a quarterly basis. Calendar quarters shall begin on January 1, April 1, July 1, and October 1 of each year.

#### **Section 3.02 – Control of Assets**

All investments made by the Committee under this Plan will be at the Committee's sole discretion and for the purpose of aiding the Employer in meeting its obligations under this Plan. The Employer will be named sole owner of all such investments and of all rights and privileges conferred by the terms of the instruments evidencing such investments. The

terms of this Plan place no obligation upon the Employer to invest or to continue to invest any portion of the amount in the Account, to invest in or to continue to invest in any specific asset, to liquidate any particular investment, or to apply in any specific manner the proceeds from the sale, liquidation, or maturity of any particular investment. Finally, nothing stated herein will cause such investments to be treated as anything but the general assets of the Employer, nor will anything stated herein cause such investments to represent the vested, secured, or preferred interest of the Participant or his Beneficiaries designated to receive benefits under this Plan.

### **Section 3.03—Vesting**

The entire balance of a Participant's Account shall be fully vested and nonforfeitable at all times.

## **Article IV - Benefits**

### **Section 4.01—Eligibility**

A Participant shall be entitled to receive the benefits in his Account from the Plan upon severance from employment with the Employer.

### **Section 4.02— Form and Timing of Distribution**

Each Participant shall receive a single lump sum benefit from this Plan as soon as practicable following the 30<sup>th</sup> day after the Participant's severance from employment, in an amount equal to the value of his Account as of the Valuation Date occurring on the date of distribution (or, if no valuation occurs on such date, the Valuation Date immediately preceding the date of distribution). No benefit, other than a distribution in connection with a qualified domestic relations order, shall be made prior to the 30<sup>th</sup> day following a Participant's severance from employment.

### **Section 4.03—Death Benefits**

If a Participant's death occurs before he receives the single lump sum from the Plan as described in Section 4.02, the Participant's Account shall be payable to his or her Beneficiary as soon as practicable following the 30<sup>th</sup> day after the Participant's Severance from Employment.

## **Article V – General Provisions**

### **Section 5.01 – Amendments**

The Board may amend this Plan at any time, including any remedial retroactive changes (within the specified period of time as may be determined by Internal Revenue Service regulations) to comply with the requirements of any law or regulation issued by any governmental agency to which the Employer is subject.

### **Section 5.02 – Employment Status**

Nothing contained in this Plan gives an Employee the right to be retained in the Employer's employ nor to interfere with the Employer's right to discharge any Employee.

### **Section 5.03 – Rights to Plan Assets**

No Participant shall have any right to or interest in any assets used to informally fund the Plan upon termination of his employment or otherwise except as specifically provided under this Plan, and then only to the extent of the benefits payable to such Active Participant in accordance with Plan provisions. A Participant holds an unsecured and unfunded promise to pay future benefits.

Any final payment or distribution to a Participant or his legal representative or to any beneficiaries or spouse of such Participant under the Plan provisions shall be in full satisfaction of all claims against the Plan, the Committee, and the Employer arising under or by virtue of the Plan.

### **Section 5.04 – Non-alienation of Benefits**

Benefits payable under the Plan are not subject to the claims of any creditor of any Participant. A Participant does not have any rights to alienate, anticipate, commute, pledge, encumber, sell, transfer, attach, garnish or assign any of such benefits. The preceding sentences shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant according to a domestic relations order, unless such order is determined by the Committee to be a qualified domestic relations order, as defined in ERISA Section 206(d), or any domestic relations order entered before January 1, 1985.

### **Section 5.05 - Construction**

The validity of the Plan or any of its provisions is determined under and construed according to Federal law and, to the extent permissible, according to the laws of the state in which the Employer has its principal office. In case any provision of this Plan is held illegal or invalid for any reason, such determination shall not affect the remaining

provisions of this Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had never been included.

#### **Section 5.06—Legal Actions**

The Plan and the Committee are the necessary parties to any action or proceeding involving the assets held with respect to informally funding the Plan or administration of the Plan.

No person employed by the Employer, no Participant, former Participant or their beneficiaries or any other person having or claiming to have an interest in the Plan is entitled to any notice of process. A final judgment entered in any such action or proceeding shall be binding and conclusive on all persons having or claiming to have an interest in the Plan.

#### **Section 5.07 – Word Usage**

The masculine gender, where used in this Plan, shall include the feminine gender and the singular words as used in this Plan may include the plural, unless the context indicates otherwise.

#### **Section 5.08 – Termination of Plan**

The Employer expects to continue the Plan indefinitely but reserves the right to terminate the Plan in whole or in part at any time upon giving written notice to all parties concerned. In the event that the SERP Plan is terminated, each Participant will receive a payment of benefits payable under this Plan within 90 days of the termination date of the SERP Plan and this Plan will then be terminated.

#### **Section 5.09 – Governing Law**

The provisions of this Plan shall be interpreted according to state of Indiana law.

#### **Section 5.10 – Claims Procedure**

The following claims procedure shall apply to the Plan:

- a. **Filing of a Claim for Benefits.** The Participant or his beneficiary shall make a claim for benefits by delivering a written request to the Committee.
- b. **Claim Approval or Denial With Respect To Plan Benefits.** With respect to a claim for benefits, the Committee shall review and make decisions on claims for benefits. The Committee shall have complete and sole discretionary authority to determine eligibility for benefits and to construe the terms of the Plan.
- c. **Notification to Claimant of Decision.** If a claim is wholly or partially denied, notice of the decision, meeting the requirements of paragraph d. following, shall

be furnished to the claimant within a reasonable period of time after the claim has been filed, but not later than ninety (90) days after the claim is filed, unless special circumstances require an extension of time for processing the claim, in which case a decision shall be rendered no later than ninety (90) additional days after the claim is filed.

- d. **Content of Notice.** The Committee shall provide to any claimant whose claim for benefits is denied in whole or in part a written notice setting forth, in a manner calculated to be understood by the claimant, the following:
- (1) The specific reason or reasons for the denial or partial denial;
  - (2) Specific reference to pertinent Plan provisions on which the denial is based;
  - (3) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and
  - (4) An explanation of the Plan's claim review procedure, as set forth in paragraphs e. and f. following.
- e. **Review Procedure.** The purpose of the review procedure set forth in this paragraph and in paragraph f. following is to provide a procedure by which a claimant under the Plan may have a reasonable opportunity to appeal a denial or partial denial of a claim and request a full and fair review. To accomplish that purpose, the claimant or a duly authorized representative:
- (1) May request a review by written application to the Committee;
  - (2) May review pertinent Plan documents or agreements; and
  - (3) May submit issues and comments in writing.

A claimant (or duly authorized representative) shall request a review at any time within sixty (60) days by filing a written application after receipt by the claimant of written notice of denial of his or her claim.

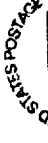
- f. **Decision on Review.** A decision on review of a denial of a claim shall be made in the following manner:
- (1) The Committee, who may in his or her discretion hold a hearing on the denied claim, shall make the decision on review. The Committee shall make its decisions within sixty (60) days of receipt of the request for review within a reasonable period of time, unless special circumstances (such as the need to hold a hearing) require an extension of time for processing, in which case a decision shall be rendered no later than sixty (60) additional days after receipt of the request for review.
  - (2) The decision on review shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood

by the claimant, and specific references to the pertinent Plan provisions on which the decision is based.

In witness whereof, the Employer has caused this Plan to be executed this 25<sup>th</sup> day of November, 2003.

By: Michael P. Huber

Vice President & CFO  
Title



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