

**FIFTH
SUPPLEMENTAL INDENTURE**

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BOOK 166 PAGE 538
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MICHELLE UTSLER
RECORDER
MADISON COUNTY, IOWA

MIDWEST POWER SYSTEMS INC.

REC \$ 65.00
AUD \$ _____
R.M.F. \$ 1.00

To

HARRIS TRUST AND SAVINGS BANK,

Trustee

COMPUTER
RECORDED
COMPARED

Dated as of November 1, 1994

Creating an Issue of Mortgage Bonds:

7 7/8% Series due 1999

**Supplemental to General Mortgage Indenture
and Deed of Trust**

Dated as of January 1, 1993

*Cancellation Doc B-7-08
2008-2446*

THIS FIFTH SUPPLEMENTAL INDENTURE, dated as of November 1, 1994, between MIDWEST POWER SYSTEMS INC., an Iowa corporation ("Company"), and Harris Trust and Savings Bank, an Illinois corporation, as successor Trustee under the General Mortgage Indenture and Deed of Trust ("Indenture"), dated as of January 1, 1993, heretofore executed and delivered by the Company to Morgan Guaranty Trust Company of New York, predecessor Trustee, to secure Mortgage Bonds issued by the Company pursuant to the Indenture, unlimited in aggregate principal amount except as therein otherwise provided.

WHEREAS, except for terms defined in this Supplemental Indenture, all capitalized terms used in this Supplemental Indenture have the respective meanings set forth in the Indenture; and

WHEREAS, the Company has heretofore executed and delivered to the Trustee the First, Second and Third Supplemental Indentures dated as of January 1, 1993, January 15, 1993 and May 1, 1993, respectively, creating eleven series of Bonds; and

WHEREAS, effective September 28, 1994, Morgan Guaranty Trust Company of New York resigned as Trustee under the Indenture and Harris Trust and Savings Bank was duly appointed as successor Trustee under the Indenture; and

WHEREAS, the Company has heretofore executed and delivered to the Trustee the Fourth Supplemental Indenture dated as of October 1, 1994 to confirm unto the Trustee and record the description of certain property which is subject to the Lien of the Indenture; and

WHEREAS, the Company desires in and by this Supplemental Indenture to create the twelfth series of Bonds to be issued under the Indenture and to designate such series, to set forth the forms of such Bonds and the maturity date or dates, interest rate or rates and other terms of such Bonds; and

WHEREAS, all acts and things have been done and performed which are necessary to make this Supplemental Indenture, when duly executed and delivered, a valid, binding and legal instrument in accordance with its terms and for the purposes herein expressed; and the execution and delivery of this Supplemental Indenture have been in all respects duly authorized.

NOW THEREFORE, in consideration of the premises and in further consideration of the sum of One Dollar in lawful money of the United States of America paid to the Company by the Trustee at or before the execution and delivery of this Supplemental Indenture, the receipt whereof is hereby acknowledged, and of other good and valuable consideration, it is agreed by and between the Company and the Trustee as follows:

ARTICLE I**MORTGAGE BONDS, 7 $\frac{1}{8}$ % SERIES DUE 1999**

Section 1. (a) There is hereby created a twelfth series of Bonds to be issued under and secured by the Indenture to be designated as "Mortgage Bonds, 7 $\frac{1}{8}$ % Series due 1999" of the Company ("Bonds of Twelfth Series").

(b) Bonds of Twelfth Series may be issued without limitation as to aggregate principal amount except as provided in the Indenture and in this Supplemental Indenture. The Bonds of Twelfth Series shall be registered bonds without coupons and shall be dated as described in *Section 2.03* of the Indenture except that the Bonds of Twelfth Series first issued shall be dated November 1, 1994.

(c) All Bonds of Twelfth Series shall mature on November 1, 1999; the principal of and interest on all the Bonds of Twelfth Series shall be payable in lawful money of the United States of America; the place where such principal shall be payable shall be the principal office of the Trustee in the City of Chicago and State of Illinois (or at the principal office of any successor in trust), and the place where such interest shall be payable shall be the office or agency of the Company in said City of Chicago and State of Illinois, or by check mailed to the Registered Holders of Bonds of Twelfth Series; the rate of interest shall be 7 $\frac{1}{8}$ % per annum, payable semi-annually on May 1 and on November 1, and the first date on which interest shall be payable on Bonds of Twelfth Series shall be May 1, 1995; the interest period for the Bonds of Twelfth Series shall begin on November 1, 1994.

(d) So long as there is no continuing default in the payment of interest on the Bonds of Twelfth Series, the person in whose name any Bond of Twelfth Series is registered at the close of business on any record date with respect to any interest payment date shall be entitled to receive the interest payable on such interest payment date, notwithstanding any transfer or exchange of such Bond of Twelfth Series subsequent to the record date and on or prior to such interest payment date, except as and to the extent the Company shall default in the payment of the interest due on such interest payment date, in which case such defaulted interest shall be paid to the person in whose name such Bond of Twelfth Series is registered on the date of payment of such defaulted interest.

(e) As used in this *Section 1*, the term "default in the payment of interest" means failure to pay interest on the applicable interest payment date disregarding any period of grace permitted by *Section 12.02* of the Indenture, and the term "record date" with respect to each May 1 interest payment date means the April 15 immediately preceding such May 1, and with respect to each November 1 interest payment date means the October 15 immediately preceding such November 1.

Section 2. (a) The Bonds of Twelfth Series are not redeemable at the option of the Company.

Section 3. The Bonds of Twelfth Series shall be registered Bonds without coupons. Bonds of Twelfth Series shall be issued in the denomination of \$1,000 and integral multiples thereof, and numbered from R-1 upwards.

Section 4. The form of Bonds of Twelfth Series shall be substantially as follows (any provisions of such Bonds may be set forth on the reverse side thereof):

(FORM OF BOND OF TWELFTH SERIES)

MIDWEST POWER SYSTEMS INC.
MORTGAGE BOND, 7½% SERIES DUE 1999
DUE NOVEMBER 1, 1999

§

MIDWEST POWER SYSTEMS INC., an Iowa corporation ("Company"), for value received, hereby promises to pay to _____ or registered assigns, on November 1, 1999, at the principal office of the Trustee hereinafter named, in the City of Chicago and State of Illinois (or at the principal office of any successor in trust), the sum of _____ Dollars in lawful money of the United States of America, and to pay interest thereon from the date hereof at the rate of 7½% per annum, in like lawful money, payable semi-annually at the office or agency of the Company in the City of Chicago and State of Illinois, or by check mailed to the Registered Holder of this Bond on April 15 and on October 15 in each year until the obligation of the Company with respect to the payment of such principal sum shall be discharged as provided in the indenture hereinafter mentioned; *provided* that, so long as there is no continuing default in the payment of interest and except for the payment of defaulted interest, the interest payable on any May 1 will be paid to

the person in whose name this Bond was registered at the close of business on the preceding April 15, or on any November 1 will be paid to the person in whose name this Bond was registered at the close of business on the preceding October 15. The first date on which interest is payable on this Bond is May 1, 1995.

This Bond is one, of the series hereinafter specified, of the bonds of the Company ("Bonds") known as its "Mortgage Bonds," issued and to be issued in one or more series under and secured by a General Mortgage Indenture and Deed of Trust dated as of January 1, 1993 ("Indenture"), duly executed by the Company to Morgan Guaranty Trust Company of New York, a New York corporation, predecessor Trustee, Harris Trust and Savings Bank, an Illinois corporation, successor Trustee ("Trustee"), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the property mortgaged and pledged, the nature and extent of the security, the terms and conditions upon which the Bonds are, and are to be, issued and secured, and the rights of the owners of the Bonds and to the Trustee in respect of such security and the prior liens to which the security for the Bonds is junior; capitalized terms used in this Bond have the respective meanings set forth in the Indenture. As provided in the Indenture, the Bonds may be in various principal sums, are issuable in series, may mature at different times, may bear interest at different rates and may otherwise vary as therein provided; and this Bond is one of a series entitled "Mortgage Bonds, 7 $\frac{1}{8}$ % Series due 1999," created by a Fifth Supplemental Indenture dated as of November 1, 1994, as provided for in the Indenture. With the consent of the holders of more than 50% in aggregate principal amount of the Outstanding Bonds, the Company and the Trustee may from time to time and at any time, enter into a Supplemental Indenture for the purpose of adding any provisions to or changing in any manner or eliminating any provision of the Indenture or of any Supplemental Indenture or of modifying in any manner the rights of the holders of Bonds and any coupons; *provided*, however, that (i) no such Supplemental Indenture shall, without the consent of the holder of each Outstanding Bond affected thereby (A) extend the fixed maturity of any Bonds, change any terms of any sinking, improvement, maintenance, replacement or analogous fund or conversion rights with respect to any Bonds, or reduce the rate or extend the time of payment of interest thereon, or reduce the principal amount thereof, or, subject to certain exceptions,

limit the right of a holder of Bonds to institute suit for the enforcement of payment of principal of or premium, if any, or interest on such Bonds in accordance with the terms of such Bonds, or (B) reduce the aforesaid percentage of Outstanding Bonds, the holders of which are required to consent to any such Supplemental Indenture, or (C) permit the creation by the Company of any Prior Lien, and (ii) no such action which would materially adversely affect the rights of the holders of Bonds of one or more but less than all series may be taken unless approved by the holders of not less than 60% in aggregate principal amount of the Outstanding Bonds of such series so affected (which need not include 60% of the aggregate principal amount of the Outstanding Bonds of each of such series).

None of the Mortgage Bonds, 7½% Series due 1999 may be redeemed at the option of the Company.

In the event that this Bond shall not be presented for payment when the principal hereof becomes due, either at maturity or otherwise, and the Company shall have on deposit with the Trustee in trust for the purpose, on the date when such principal is due, funds sufficient to pay the principal of this Bond, together with any premium and all interest due hereon to such date, for the use and benefit of the Registered Holder hereof, then all liability of the Company to the owner of this Bond for the payment of the principal hereof and any premium and interest hereon shall forthwith cease, determine and be completely discharged and such owner shall no longer be entitled to any lien or benefit of the Indenture.

In case an event of Default shall occur, the principal of this Bond may become or be declared due and payable in the manner, with the effect and subject to the conditions provided in the Indenture.

This Bond is transferable by the Registered Holder hereof in person or by attorney duly authorized in writing, at the principal office of the Trustee in the City of Chicago and State of Illinois, (or at the principal office of any successor in trust), upon surrender and cancellation of this Bond, and upon any such transfer a new registered Bond without coupons of the same series for the same principal amount will be issued to the transferee in exchange herefor and Bonds of this series may, at the option of the Registered Holder and upon surrender at said office of the Trustee (or of any successor in trust), or at said office or agency of the Company, be exchanged for registered Bonds of this series of the same aggregate principal amount of other authorized denominations, all without service charge (except for any stamp tax or other governmental charge).

The Company and the Trustee may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment and for all other purposes, and neither the Company nor the Trustee shall be affected by any notice to the contrary.

No recourse shall be had for the payment of the principal of, or the premium, if any, or interest on, this Bond, or for any claim based hereon or otherwise in respect of this Bond, the Indenture or any Supplemental Indenture, against any incorporator or any past present or future subscriber to the capital stock, shareholder, officer, director, agent or representative of the Company or of any predecessor or successor corporation, as such, either directly or through the Company or any predecessor or successor corporation under any rule of law, statute or constitution or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, any and all such rights and claims against every such incorporator, subscriber to the capital stock, shareholder, officer director, agent or representative being released and waived by every owner hereof by the acceptance of this Bond and as part of the consideration for the issue hereof, and being likewise released and waived by the terms of the Indenture.

This Bond shall not be valid or become obligatory for any purpose unless and until the certificate of authentication hereon shall have been executed by the Trustee or its successor in trust under said Indenture.

IN WITNESS WHEREOF, MIDWEST POWER SYSTEMS INC. has caused this Bond to be executed in its name by the manual or facsimile signature of its Chairman of the Board or its President or one of its Vice Presidents, and attested by the manual or facsimile signature of its Secretary or one of its Assistant Secretaries.

MIDWEST POWER SYSTEMS INC.

By _____
President

Dated:

Attest:

Secretary

The form of Trustee's certificate to appear on all Bonds of Twelfth Series shall be substantially as follows:

(FORM OF TRUSTEE'S CERTIFICATE)

This Bond is one of the Bonds of the series designated therein, described in the within-mentioned Indenture.

HARRIS TRUST AND SAVINGS BANK,
as Trustee

By _____
Authorized Officer

Section 5. (a) Bonds of Twelfth Series shall be transferable and exchangeable at the option of the Registered Holders thereof and upon surrender thereof at the principal office of the Trustee in the City of Chicago and State of Illinois, for registered Bonds of Twelfth Series without coupons of the same aggregate principal amount but of different authorized denomination or denominations, and such exchanges and any transfer of Bonds of Twelfth Series will be made without service charge (except for any stamp tax or other governmental charge).

(b) The Company shall not be required to make any exchange or any transfer of any Bond of Twelfth Series after it has been selected for redemption, but may do so at its option.

Section 6. Until Bonds of Twelfth Series in definitive form are ready for delivery, the Company may execute, and upon its request in writing the Trustee shall authenticate and deliver, Bonds of Twelfth Series in temporary form as provided in *Section 2.08* of the Indenture.

Section 7. Definitive Bonds of Twelfth Series may be in the form of fully engraved Bonds or Bonds printed or lithographed with steel engraved borders.

ARTICLE II

ISSUE OF BONDS OF TWELFTH SERIES

Bonds of Twelfth Series may be executed, authenticated and delivered from time to time as permitted by *Article III, IV, V or VI* of the Indenture.

ARTICLE III

THE TRUSTEE

Section 1. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or the due execution hereof by the Company, or for or in respect of the recitals and statements contained herein, all of which recitals and statements are made solely by the Company.

Section 2: Except as herein otherwise provided, no duties, responsibilities or liabilities are assumed, or shall be construed to be assumed, by the Trustee by reason of this Supplemental Indenture other than as set forth in the Indenture; and this Supplemental Indenture is executed and accepted on behalf of the Trustee, subject to all the terms and conditions set forth in the Indenture, as fully to all intents as if the same were herein set forth at length.

ARTICLE IV**MISCELLANEOUS PROVISIONS**

Section 1. Except insofar as herein otherwise expressly provided, all the provisions, definitions, terms and conditions of the Indenture, as it may from time to time be amended, shall be deemed to be incorporated in and made a part of, this Supplemental Indenture; and the Indenture as supplemented by this Supplemental Indenture is in all respects ratified and confirmed; and the Indenture, as amended, and this Supplemental Indenture shall be read, taken and construed as one and the same instrument.

Section 2. Nothing in this Supplemental Indenture is intended, or shall be construed, to give to any person or corporation, other than the parties hereto and the Registered Holders of Bonds issued and to be issued under and secured by the Indenture, any legal or equitable right, remedy or claim under or in respect of this Supplemental Indenture, or under any covenant, condition or provision herein contained, all the covenants, conditions and provisions of this Supplemental Indenture being intended to be, and being, for the sole and exclusive benefit of the parties hereto and of the Registered Holders of Bonds issued and to be issued under the Indenture and secured thereby.

Section 3. All covenants, stipulations and agreements in this Supplemental Indenture contained by or on behalf of the Company shall bind its successors and assigns, whether so expressed or not.

Section 4. This Supplemental Indenture may be executed in any number of counterparts, and each of such counterparts when so executed shall be deemed to be an original; but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, MIDWEST POWER SYSTEMS INC. has caused this Supplemental Indenture to be executed by its President or one of its Vice Presidents and duly attested by its Secretary or its Assistant Secretary (Midwest Power Systems Inc. has no seal), and the Trustee has caused the same to be executed by one of its Vice Presidents and its corporate seal to be hereunto affixed, duly attested by one of its Assistant Secretaries, as of the day and year first above written.

MIDWEST POWER SYSTEMS INC.

By *R. E. Christiansen*

R. E. Christiansen
President

Attest:

P. J. Leighton
P. J. Leighton
Secretary

Signed, acknowledged and delivered by Midwest Power Systems Inc. in the presence of:

J. A. Williams
J. A. Williams
S. M. Hanson
S. M. Hanson

HARRIS TRUST AND SAVINGS BANK,
Trustee

By *J. Bartolini*

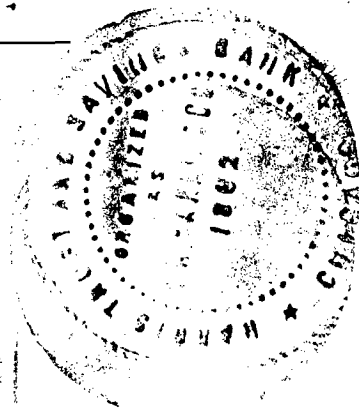
J. Bartolini
Vice President

[Corporate Seal]

Attest:

C. Potter

C. Potter
Assistant Secretary



Signed, sealed, acknowledged
and delivered by Harris Trust
and Savings Bank in the
presence of:

D. Donovan

D. Donovan

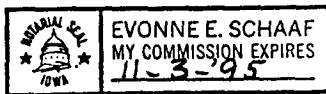
K. Richardson

K. Richardson

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STATE OF IOWA }
 COUNTY OF POLK } ss.

On this 1st day of November, 1994, before me appeared R. E. Christiansen to me personally known, who, being by me duly sworn, did say that he is the President of Midwest Power Systems Inc., a corporation described in and which executed the foregoing instrument, and that said instrument was signed on behalf of said corporation by authority of its board of directors, and said R. E. Christiansen acknowledged said instrument to be the free act and deed of said corporation.



Evonne E. Schaaf
 Evonne E. Schaaf,
 Notary Public

STATE OF ILLINOIS }
 COUNTY OF COOK } ss.

On this 31st day of October, 1994, before me appeared J. Bartolini, to me personally known, who, being by me duly sworn, did say that she is a Vice President of Harris Trust and Savings Bank, an Illinois corporation described in and which executed the foregoing instrument, and that the seal affixed to the foregoing instrument is the seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and said J. Bartolini acknowledged said instrument to be the free act and deed of said corporation.

T. Muzquiz
 T. Muzquiz,
 Notary Public

