

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE: :
: **DOCKET NO. RPU-2009-0003**
WIND POWER PROJECT STATUS :
UPDATE FOR THE :
IOWA UTILITIES BOARD :

APPLICATION FOR CONFIDENTIAL TREATMENT

COMES NOW, MidAmerican Energy Company (“MidAmerican” or “Company”) and for its Application for Confidential Treatment (“Application”), pursuant to Code of Iowa §22.7 and 199 Iowa Admin. Code §1.9(5) et seq., submits the following:

1. Concurrent with the filing of this Application, the Company filed its Wind Power Project Status Update for the Iowa Utilities Board (“Update”) concerning the Wind VII Iowa Project.

2. As a part of the Update, MidAmerican has provided confidential information (“Confidential Information”) pertaining to the Wind VII Iowa Project, which Confidential Information is comprised of:

Pricing and payment information (collectively, “pricing information”) from MidAmerican’s turbine supply agreement for the supply of 593.4 MW of wind turbines, development costs and balance of plant costs, and

A transmission study (Exhibit A) related to the Eclipse Site of the Wind VII Iowa Project.

A transmission study (Exhibit B) related to the Morning Light Site of the Wind VII Iowa Project.

A transmission study (Exhibit D) related to the Vienna Site of the Wind VII Iowa Project.

3. MidAmerican believes the above-mentioned Confidential Information to be: (i) confidential pricing information that constitutes trade secrets (i.e., the unredacted page 1 of the Update), pursuant to Code of Iowa §22.7(3); (ii) reports to a governmental agency which are of significant commercial and competitive value to MidAmerican, and which, if released, would give advantage to potential vendors and competitors and serve no public purpose (pursuant to Code of Iowa §22.7(6); and (iii) confidential cost information (i.e., the pricing information) and “critical energy infrastructure information” (i.e., the transmission studies – Exhibits A, B & D) as the latter term is used by the Federal Energy Regulatory Commission, which, if released would serve to threaten public safety and convenience—by providing insight and useful information to those who desire to do harm to the country’s critical energy infrastructure (i.e., the transmission studies – Exhibits A, B & D)—or that would give advantage to MidAmerican’s vendors and those who compete with MidAmerican for the purchase of wind generation components and for development of wind farms (the pricing information). MidAmerican is not required to file the said Confidential Information by law, rule, procedure or by contract¹ (as

¹ Board’s Order Granting Waiver, With Conditions, and Requiring Reports, Docket WRU-2010-0009-3886, requires: “If the project is sold, Clipper is...required to file a copy of the asset purchase agreement...includ[ing] provisions requiring the purchaser to comply with this order.” See final paragraph, p. 6. The order (ordering clauses 2 and 3) requires the filing of periodic updates/transmission studies. MidAmerican, however, has its own, pre-existing and independent obligation to file this update per the Board’s Final Order (2009) and the January 25, 2011 compliance filing order in this docket, Docket No. RPU-2009-0003.

noted in Footnote No. 1, the Eclipse site carries with it an updating requirement, however, MidAmerican already had its own, pre-existing and independent obligation to file updates regarding Wind VII sites under the Board's Final Order (2009) and the January 25, 2011 compliance filing order in this Docket No. 2009-0003. Moreover, the Confidential Information is information that MidAmerican would be discouraged from providing were it available for public inspection. (See Code of Iowa §22.7(18).)

In support of its allegations MidAmerican is providing and hereby incorporates herein the Affidavit of Dean A. Crist, Vice President – Regulation and Regulatory Affairs, as required by 199 Iowa Admin. Code 1.9(6)(a) and (b).

4. The Confidential Information has been filed separately with the Iowa Utilities Board and has been identified as “Confidential.”

5. It is not MidAmerican's intent to withhold the Confidential Information from the Iowa Utilities Board or the Office of Consumer Advocate who require it to carry out their statutory responsibilities.

6. Mr. Crist's Affidavit requests that access to the Confidential Information be limited to the review of the Board, Board staff, and the Office of Consumer Advocate without protective order or agreement, and that the Confidential Information be withheld from general public inspection to the extent permitted by statute, the common law, and by the rules of the Board.

Statement of Legal Basis for this Request

Trade Secret §22.7(3)

7. The Confidential Information consists of confidential and proprietary information of MidAmerican, which falls within the purview and protection of the exclusion authorized under Code of Iowa §22.7(3), which is an exception to the right of the general public to otherwise have unrestricted access to said public records.

8. The 73rd General Assembly adopted the Uniform Trade Secrets Act, now Code of Iowa Chapter 550 (2011). This act, at Iowa Code §550.2, defines “trade secret” broadly and would encompass the information sought to be protected herein (the pricing information). The Iowa courts have also consistently given common law protection to trade secrets. They define trade secrets as "...information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it." Farnum v. G.D. Searle, 339 N.W.2d 384, 389 (Iowa 1983). (Citing comment “b” to Restatement of Torts, § 757 (1939)).

9. Potential Wind VII Iowa Project vendors, and MidAmerican’s competitors for the development of wind farms, will obtain a competitive advantage from their knowledge of the information (the pricing information) contained in the Confidential Information. Release of such information is commercially sensitive.

Report to Agency §22.7(6)

10. MidAmerican, by this Application, states that the Confidential Information constitutes a report to this Board which, if released, would threaten the security interests and electric utility service and cost interests of MidAmerican’s customers and serve no public

purpose. Therefore, MidAmerican requests that the same be kept confidential to the full extent permitted by Iowa law. This request is premised on the statutory authority granted under Code of Iowa §22.7(6).

Communication to Agency §22.7(18)

11. MidAmerican further states that the Confidential Information constitutes a communication, not required by law, rule, procedure or contract² (as noted in Footnote No. 2, the Eclipse site carries with it an updating requirement, however, MidAmerican already had its own, pre-existing and independent obligation to file updates regarding Wind VII sites under the Board's Final Order (2009) and the January 25, 2011 compliance filing order in this Docket No. 2009-0003. Moreover, the Confidential Information is information provided to the Board (from persons outside of government) which, if released, would threaten the security interests and electric utility service and cost interests of MidAmerican's customers, serve no public purpose, and would discourage such communications in the future. Therefore, MidAmerican requests that the same be kept confidential to the full extent permitted by Iowa law. This request is premised on the statutory authority granted under Code of Iowa §22.7(18).

WHEREFORE, MidAmerican Energy Company respectfully requests the Iowa Utilities Board to grant this Application for Confidential Treatment, holding confidential the Confidential Information filed in this Update, subject only to the established procedures of the Board in the

2 The Board's Order Granting Waiver, With Conditions, and Requiring Reports, in Docket No. WRU-2010-0009-3886, requires that: "If the project is sold, Clipper Windpower will be required to file a copy of the asset purchase agreement, which should include provisions requiring the purchaser to comply with this order." See final paragraph, p. 6. The order (ordering clauses 2 and 3) requires the filing of periodic updates/transmission studies. MidAmerican is obligated to file this update by the Board's separate orders in this docket, Docket No. RPU-2009-0003.

retention of and public access to such confidential materials. Accordingly, MidAmerican respectfully requests that the Confidential Information, in its entirety, be held by the Board as a confidential record not routinely available for public inspection.

DATED this 14th day of February, 2012.

Respectfully Submitted,

MIDAMERICAN ENERGY COMPANY

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