



withhold the Confidential Information from general public inspection would, if granted in the Board's discretion, require the Board to continue to maintain the confidentiality of the Confidential Information as records not routinely available for public inspection subject to such other limitations as the Board may consider appropriate.

7. ICEE, by this Request, hereby further states that Environmental Intervenors Exhibit 222 constitutes a report to this Board which, if released, would give advantage to competitors and serve no public purpose. This specific request is premised on the statutory authority granted under Code of Iowa §22.7(6) (2013).

8. ICEE, by this Request, hereby states that Confidential Information consists of trade secrets of a private company, which are recognized and protected as such by law, and requests that the same be kept confidential to the full extent permitted by Iowa law. This specific request is premised on the statutory authority granted under Code of Iowa §22.7(3) (2013).

9. In support of its allegations that Confidential Information constitutes a report pursuant to Code of Iowa §22.7(6) to the Board which, if released, would give advantage to competitors and serve no public purpose, and further that the confidential materials constitute a trade secret pursuant to Code of Iowa §22.7(3), ICEE attaches hereto and incorporates herein the affidavit of Brad Davis.

### **Statement of Legal Basis for this Request**

#### **Trade Secret Section 22.7(3)**

10. The responses to Data Requests marked Confidential consist of the private corporation's confidential and proprietary information and are trade secrets which are protected by Iowa Code Section 22.7(3), an exception to the right of the public to have unrestricted access to public records.

11. In Iowa Code Section 550.2, the legislature has defined "trade secret" as: ...information, including but not limited to a formula, pattern, compilation, program, device, method, technique, or process that is both of the following: *a.* Derives

independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by a person able to obtain economic value from its disclosure or use. *b.* Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

12. The Iowa Supreme Court has given § 550.2(4) a broad reading and has found that business information in many forms may also fall within the definition of trade secret. *Economy Roofing & Insulating Co. v. Zumaris*, 538 N.W.2d 641, 646-47 (Iowa 1995) (acknowledging the Court's broad interpretation of the kinds of information which can legally constitute trade secrets).

13. The information in the data request response consists of information about Gold Eagle Cooperative's plant operations, plant improvements, energy efficiency projects, financial information, and staffing information and is a trade secret.

#### Report to Agency Section 22.7(6)

14. The Confidential Information also contains information which, if released to the general public, would give an unfair advantage to competitors and is protected by Iowa Code Section 22.7(6), an exception to the right of the public to have unrestricted access to public records. *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 768 (U.S.C.A. 1974).

15. The release of the Confidential Information would serve no public purpose, and thus the Confidential Information qualifies as an exclusion to the general rule of public access to reports made to governmental agencies under Iowa Code §22.7(6) (2013).

16. Competitors of Gold Eagle Cooperative will obtain unfair competitive advantage from their knowledge of the information in the data request response marked Confidential. Iowa Code Section 22.7(6) 11. The data request response contains information about plant operations, plant improvements, energy efficiency projects, financial information, and staffing information which, if released to the general public, would give an unfair advantage to competitors of the private corporation.

17. If this information is released to the general public, the competitors of the private corporation would receive an unfair advantage and the release of the information would serve no public purpose.

**WHEREFORE**, Iowa Customers for Energy Efficiency respectfully requests the Iowa Utilities Board to grant this Application for Confidential Treatment, holding confidential the Confidential Information in Environmental Intervenors Exhibit 224 filed in this proceeding, subject only to the established procedures of the Board in the retention of and public access to such confidential materials. Accordingly, Iowa Customers for Energy Efficiency 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 11th day of September, 2013.

Respectfully Submitted,

/s/

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