FILED WITH
Executive Secretary
September 17, 2013
IOWA UTILITIES BOARD

**STATE OF IOWA**
**DEPARTMENT OF COMMERCE**
**BEFORE THE UTILITIES BOARD**

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| **IN RE:** | ) | |
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| | ) | **DOCKET NO. EEP-2012-0002** |
| **MIDAMERICAN ENERGY COMPANY** | ) | |
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**APPLICATION FOR CONFIDENTIAL TREATMENT**

**COMES NOW** Iowa Customers for Energy Efficiency (ICEE) and for its Application for Confidential Treatment, filed pursuant to Iowa Code Section 22.7 (2013) and 199 Iowa Admin. Code 1.9(5) et. seq. , submits the following:

1. The Iowa Utilities Board (Board) conducted a hearing in this proceeding on August 28, 2013.

2. At the hearing, an exhibit identified as Environmental Intervenors Exhibit 226 was admitted into the evidentiary record.

3. Environmental Intervenors Exhibit consists of a data request response which contains confidential information of a member of the ICEE, Nor-Am, including information about its plant operations, plant improvements, energy efficiency projects, financial information, and staffing information (collectively, Confidential Information).

4. The information was provided by the ICEE to the Environmental Intervenors pursuant to protective agreement..

**5.** If this information became publicly available, it would be of significant competitive value to Nor-Am's competitors because it would give them information about its operations and finances.

6. The Board has established rules governing the examination of all public records of the Board as set out in 199 IAC 1.9. The request of ICEE for the Board to 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 226 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 Greg Brandt.

## **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 Nor-Am'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 Nor-Am 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 226 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 13th day of September, 2013.

Respectfully Submitted,

/s/

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