

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

ARTI, LLC,

Complainant,

v.

MIDAMERICAN ENERGY COMPANY,

Respondent.

DOCKET NO. FCU-2014-0016

**APPLICATION FOR RECONSIDERATION,
PETITION FOR IMMEDIATE STAY
AND
MOTION FOR CONTINUANCE OF HEARING**

COMES NOW Arti, LLC (“*Arti*”) and submits the following application for reconsideration of confidentiality orders issued on July 29, 2015, and July 31, 2015, petition for an immediate stay of the effect of such orders, and motion for continuance of the hearing currently scheduled for August 18, 2015:

1. On May 18, 2015, Arti filed its written direct testimony and exhibits. A request for confidential treatment of certain portions of the direct testimony and certain direct exhibits, along with a supporting affidavit, was included in the filing. Arti’s confidentiality request stated that the confidential information is extremely sensitive information about Arti’s business and operations, that it maintains this information on an extremely secure, confidential, and proprietary basis, and that the information should be treated as confidential pursuant to Iowa Code § 22.7(3) as trade secrets and/or Iowa Code § 22.7(6) as a report to a

government agency that, if released, would give advantage to competitors and serve no public purpose.

2. On July 29, 2015, the Iowa Utilities Board (“*Board*”) issued an order (the “*July 29 Confidentiality Order*”) granting in part and denying in part Arti’s confidentiality request. The stated basis for the denial of Arti’s confidentiality request with respect to some of the information deemed confidential by Arti is that such information has already been made public in the order opening this formal complaint docket issued on November 21, 2014 (the “*Docketing Order*”) or in other unidentified dockets, and that one specific direct exhibit (Exhibit MEB-4) is a letter that was made public in Docket No. TF-2014-0338. The July 29 Confidentiality Order specifically states that all of the information in the Docketing Order “was obtained from the initial complaint submitted by Arti during the informal complaint process with no indication that it was considered confidential.” Docketing Order, at p. 4 (emphasis added). The July 29 Confidentiality Order concludes with the following order: “Arti, LLC, shall have 14 days from the date of this order [*i.e.*, until August 12, 2015] to seek court action to prevent disclosure of the information for which confidential treatment is denied.”

3. On June 19, 2015, MidAmerican Energy Company (“*MidAmerican*”) filed its written rebuttal testimony and exhibits. A request for confidential treatment of certain portions of the rebuttal testimony and certain rebuttal exhibits, along with a supporting affidavit, was included in the filing. Arti’s confidential information was included in the rebuttal testimony and exhibits that were the subject of MidAmerican’s request for confidential treatment. MidAmerican’s confidentiality request stated that the confidential information includes specific customer information related to customer billing statements

usage, and specific customer rate components, that MidAmerican has a nondisclosure agreement in place with the customers, that the Board has issued orders that have granted confidential treatment to similar – and, in some instances, the same – information in several dockets (including Docket Nos. RPU-2013-0004 and TF-2014-0338), and that the information should be treated as confidential pursuant to Iowa Code § 22.7(3) as trade secrets and/or Iowa Code § 22.7(6) as a report to a government agency that, if released, would give advantage to competitors and serve no public purpose. On July 21, 2015, MidAmerican filed a revised rebuttal exhibit along with a similar request for confidential treatment of the revised exhibit.

4. On July 31, 2015, the Board issued an order (the “*July 31 Confidentiality Order*”) granting in part and denying in part MidAmerican’s confidentiality request submitted on June 19, 2015, and granting MidAmerican’s confidentiality request submitted on July 21, 2015. The stated basis for the denial of MidAmerican’s confidentiality request with respect to some of the information deemed confidential by MidAmerican is that, “as pointed out in the Arti order,” such information has already been made public in the Docketing Order or in other unidentified dockets.

5. The underlying premise of the July 29 Confidentiality Order – namely, that there was no indication that the initial complaint submitted by Arti during the informal complaint process was considered confidential – is incorrect. Arti relied on previous practice before the Board that C-filings are not provided to the public and on an email from the Board complaint staff that it would have an opportunity to claim information included in its C-filing as confidential. As shown in a two-message email string (set forth in Attachment A to this pleading) sent to Board complaint staff on October 23, 2015, Arti clearly indicated Arti deemed some of the information it submitted to the Board to be “extremely sensitive

confidential information.” (Although one piece of confidential information has been redacted in one of the email messages in Attachment A, the redaction does not alter the sense of either message.) In an email message response sent to Arti on the same date, Board complaint staff confirmed that the Board does not normally have confidential filings in the informal complaint process and that Arti would be able to request confidential treatment following the docketing of Arti’s informal complaint as a formal complaint proceeding. Despite assurance that Arti would have an opportunity to request confidential treatment, the Board issued a Docketing Order disclosing the sensitive confidential information for which Arti sought confidentiality protection in its email message before Arti could make the request for confidential information.

6. Because the Board mistakenly disclosed confidential information in Arti’s initial complaint in the Docketing Order, the disclosure of that information in the Docketing Order does not constitute sufficient grounds for denial of confidential treatment of such information by the July 29 Confidentiality Order or the July 31 Confidentiality Order. Arti’s confidential information that is the subject of Arti’s confidentiality requests and MidAmerican confidentiality requests remains highly commercially sensitive information and its disclosure would put Arti at a competitive disadvantage and serve no public purpose.

7. With respect to Arti’s Exhibit MEB-4, the exhibit is entitled to confidential treatment in the specific context of this docket even though it takes the form of a letter that was made public in Docket No. TF-2014-0338. Read in conjunction with the testimony that incorporates and discusses the exhibit, Exhibit MEB-4 discloses the rate schedule under which Arti is currently served, which Arti information Arti regards as confidential for the reasons set forth in its confidentiality request filed on May 18, 2015. For that same reason,

Exhibit MEB-1, which is another exhibit for which Arti sought confidential treatment in its confidentiality request filed on May 18, 2015, should not be publicly disclosed in the specific context of this docket even though it takes the form of a section of MidAmerican's public tariff.

8. For the foregoing reasons, Arti respectfully requests that the Board reconsider the July 29 Confidentiality Order and the July 31 Confidentiality Order and, based on such reconsideration: (a) modify both orders by granting Arti's confidentiality request filed on May 18, 2015, and MidAmerican's confidentiality request filed on June 19, 2015, in their entirety; and (b) replace the Docketing Order with a suitably redacted order consistent with such modified orders granting Arti's and MidAmerican's confidentiality requests.

9. For the foregoing reasons, Arti also requests that the Board: (a) stay the public disclosure of the information for which confidential treatment is denied by the July 29 Confidentiality Order and the July 31 Confidentiality Order; (b) take action on Arti's stay request immediately so that Arti can determine whether it is necessary to seek court action by August 12, 2015, to prevent public disclosure of any of the information it deems confidential; and (c) order that the stay remain in effect until the later of the following two dates: 14 days after the date upon which the Board issues an order granting Arti's application for reconsideration; or the date of the ultimate decision in any court action (including appeals) Arti brings to prevent disclosure of any information for which confidential treatment is denied.

10. In addition, Arti moves the Board to issue an order continuing the hearing, which is currently scheduled for August 18, 2015, to a later date that will allow Arti to prevent public disclosure at the hearing, whether by Board action or the filing of a court

action, of the information for which confidential treatment is denied by the July 29 Confidentiality Order and the July 31 Confidentiality Order.

WHEREFORE, Arti respectfully requests that the Board:

A. Reconsider the July 29 Confidentiality Order and the July 31 Confidentiality Order.

B. Based on such reconsideration, modify both orders by granting Arti's confidentiality request filed on May 18, 2015, and MidAmerican's confidentiality request filed on June 19, 2015, in their entirety.

C. Replace the Docketing Order with a suitably redacted order consistent with such modified orders granting Arti's and MidAmerican's confidentiality requests.

D. Stay the public disclosure of the information for which confidential treatment is denied by the July 29 Confidentiality Order and the July 31 Confidentiality Order.

E. Take action on Arti's stay request immediately so that Arti can determine whether it is necessary to seek court action by August 12, 2015, to prevent public disclosure of any of the information it deems confidential.

F. Order that the stay remain in effect until the later of the following two dates: 14 days after the date upon which the Board issues an order granting Arti's application for reconsideration; or the date of the ultimate decision in any court action (including appeals) Arti brings to prevent disclosure of any information for which confidential treatment is denied.

G. Grant a continuance of the hearing currently scheduled for August 18, 2015, to a later date that will allow Arti to prevent public disclosure at the hearing, whether by Board

action or the filing of a court action, of the information for which confidential treatment is denied by the July 29 Confidentiality Order and the July 31 Confidentiality Order.

Dated August 6, 2015.

Respectfully submitted,

/s/ Philip E. Stoffregen

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ATTORNEY FOR ARTI, LLC

Attachment A

Stoffregen, Philip E.

From: Ganpat-Puffett, Tara [IUB] <Tara.Ganpat-puffett@iub.iowa.gov>
Sent: Thursday, October 23, 2014 4:00 PM
To: Stoffregen, Philip E.
Subject: RE: File No. C-2014-0145

Hi Phil,

Since it is a C-file, we don't normally have confidential filings. However, for your information, we are getting ready to combine all these cases (about 13 files as of yesterday) regarding the complaint we received on MEC rates, into one formal complaint (FCU). At that point you should be able to request confidential treatment and keep the information confidential. I am hoping we would have that accomplish before MEC file its reply. Once I know there is an FCU number I will let you know so you can submit your request in the FCU. Cecil Wright should be able to answer your questions on this matter also.

Please let me know if I can help further.

Thanks,
Tara



Tara Ganpat-Puffett
Utility Analyst II
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Local 725-7321
Direct (515) 725-7317
E-Mail: tara.ganpat-puffett@iub.iowa.gov

From: Stoffregen, Philip E. [<mailto:stoffregen@brownwinick.com>]
Sent: Thursday, October 23, 2014 3:11 PM
To: Ganpat-Puffett, Tara [IUB]
Subject: File No. C-2014-0145

My client, Arti LLC, has some concerns about how it should go about ensuring that certain extremely sensitive confidential information (primarily relating to the [REDACTED] current and forecasted load and any information from which the current or forecasted load could be derived or inferred) is treated as confidential by the IUB. Is this something I can talk to you about on the phone or is there someone else at the IUB to whom I should speak?



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