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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of MidAmerican Energy Company for Certification as A Retail Generation Provider	)))	Case No. 00-1786-EL-CRS

MOTION FOR PROTECTIVE ORDER

Now comes MidAmerican Energy Company, an independent electric generator, seeking renewal of its certification as a retail generation provider and power marketer; and pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code ("O.A.C.") moves for a protective order to keep Exhibit C-5 to its renewal application for certification confidential and not part of the public record. The reasons underlying this motion are detailed in the attached Memorandum in Support. Consistent with the requirements of the above cited Rule, three (3) unredacted copies of Exhibit C-5 is presented under seal.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

MidAmerican requests that Exhibit C-5 of its Renewal Application for Certification as a Retail Generation Provider and Power Marketer be protected from public disclosure. The information for which protection is sought covers financial forecasts. Such information if released to the public would harm MidAmerican by providing its competitors proprietary information in what is designed by statute to now be a competitive service. It may also impair MidAmerican's ability to do conduct normal capital financing.

Rule 4901-1-24(D) of the Ohio Administrative Code provides that the Commission or certain designated employees may issue an order which is necessary to protect the confidentiality of information contained in documents filed with the Commission's Docketing Division to the extent that state or federal law prohibits the release of the information and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code. State law recognizes the need to protect certain types of information which are the subject of this motion. The non-disclosure of the information will not impair the purposes of Title 49. The Commission and its Staff have full access to the information in order to fulfill its statutory obligations. No purpose of Title 49 would be served by the public disclosure of the information.

The need to protect the designated information from public disclosure is clear, and there is compelling legal authority supporting the requested protective order. While the Commission has often expressed its preference for open proceedings, the Commission also long ago recognized its statutory obligations with regard to trade secrets:

> The Commission is of the opinion that the "public records" statute must also be read in pari materia with Section 1333.31, Revised Code ("trade secrets" statute). The latter statute must be interpreted as evincing the recognition, on the part of the General Assembly, of the value of trade secret information.

In re: General Telephone Co., Case No. 81-383-TP-AIR (Entry, February 17, 1982.) Likewise, the Commission has facilitated the protection of trade secrets in its rules (O.A.C. § 4901-1-24(A)(7)).

The definition of a "trade secret" is set forth in the Uniform Trade Secrets Act:

> "Trade secret" means information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, patter, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information or listing of names, addresses, or telephone numbers, that satisfies both of the following:
>
> (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
>
> (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

R.C. § 1333.61(D). This definition clearly reflects the state policy favoring the protection of trade secrets such as the information which is the subject of this motion.

Courts of other jurisdictions have held that not only does a public utilities commission have the authority to protect the trade secrets of the companies subject to its jurisdiction, the trade secrets statute creates a duty to protect them. New York Tel. Co. v. Pub. Serv. Comm. N.Y., 56 N.Y. 2d 213 (1982). Indeed, for the Commission to do otherwise would be to negate the protections the Ohio General Assembly has granted to all businesses, including public utilities, and now the new entrants who will be providing power through the Uniform Trade Secrets Act. This Commission has previously carried out its obligations in this regard in

numerous proceedings. See, e.g., Elyria Tel. Co., Case No. 89-965-TP-AEC (Finding and Order, September 21, 1989); Ohio Bell Tel. Co., Case No. 89-718-TP-ATA (Finding and Order, May 31, 1989); Columbia Gas of Ohio, Inc., Case No. 90-17-GA-GCR (Entry, August 17, 1990).

In Pyromatics, Inc. v. Petruziello, 7 Ohio App. 3d 131, 134-135 (Cuyahoga County 1983), the Court of Appeals, citing Koch Engineering Co. v. Faulconer, 210 U.S.P.Q. 854, 861 (Kansas 1980), has delineated factors to be considered in recognizing a trade secret:

> (1) The extent to which the information is known outside the business, (2) the extent to which it is known to those inside the business, i.e., by the employees, (3) the precautions taken by the holder of the trade secret to guard the secrecy of the information, (4) the savings effected and the value to the holder in having the information as against competitors, (5) the amount of effort or money expended in obtaining and developing the information, and (6) the amount of time and expense it would take for others to acquire and duplicate the information.

Applying these factors to the exhibit MidAmerican seeks to keep confidential, it is clear that a protective order should be granted.

As a private concern MidAmerican must raise capital in order to secure the necessary equipment for generation. Under Am. Sub. S.B. 3 it is clear that the risk of such investments will be on the shoulders of MidAmerican and MidAmerican alone. No captive customers under a regulatory compact theory can be called upon to shore-up generation investments. Contained in Exhibit C-5 is confidential forecasted financial information of the type MidAmerican must develop and present for financing. This includes a forecasted income statement, cash flow statement and balance sheet. Such sensitive information is generally not disclosed. Further, public disclosure of such information could impair MidAmerican in its efforts to secure private financing at commercially attractive rates. On the other hand, public

disclosure of this information is not likely to assist the Commission in carrying out its duties under CRES rules.

MidAmerican sought and was granted confidential treatment for Exhibit C-5 when it filed its original application in 2000, and again when it filed renewal certification applications in 2002 and 2004.

WHEREFORE, for the above reasons, MidAmerican requests the Commission to grant its motion to protect Exhibit C-5 of its Renewal Application for Certification as a Retail Generation Provider and Power Marketer and to maintain such exhibit under seal.

Respectfully submitted,

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