

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: John Wine, Chair
 Cynthia L. Claus
 Brian J. Moline

*In the Matter of the Filing of Written Documents and)
Gas Purchase Reports by Midwest Energy, Inc. as) Docket No. 02-MDWG-517-GPR
Prescribed by Commission Order Dated June 21, 2001,)
in Docket No. 106,850 / 75-GIMC-099-GIG.)*

PROTECTIVE ORDER

The above matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration of the issuance of a Protective Order. Being fully advised of all matters of record, the Commission finds:

1. In the filing of Written Documents and Gas Purchase Reports, as required by Commission Order in Docket No. 106,850 / 75-GIMC-099-GIG, Midwest Energy, Inc. has requested that it's filings in this case be treated as confidential. In the above cited order, the Commission recognized the need for treating these filings in a confidential manner. The Commission finds that it is appropriate to issue a Protective Order to protect confidential data and information in this proceeding.

2. A Protective Order places limits on who may view Confidential Information and how Confidential Information may be used in a proceeding before the Commission. It provides an interim procedure to facilitate the prompt and orderly conduct of the proceeding which will govern the treatment and handling of Confidential Information until further order of the Commission. The granting of a Protective Order does not affirmatively establish that Information designated as Confidential will be entirely undiscoverable. Nor does it prejudice the Confidential nature of any

documents involved in the proceeding. A party may designate as Confidential any information that it believes, in good faith, to be a trade secret or other confidential commercial information. Nonetheless, the burden to prove the Confidential status of a document remains with the party claiming Confidentiality; once the Confidential status of the information is challenged, the party claiming Confidentiality must establish that the information should remain classified as Confidential. Commission Staff should be prepared to challenge a confidential designation when the information does not meet the definition of Confidential Information.

3. K.S.A. 66-1220a prohibits the Commission from disclosing or allowing the inspection by anyone of any trade secret or confidential commercial information pertaining to a regulated entity. However, K.S.A. 66-1220a(a)(4) allows the Commission to consider disclosure alternatives that will serve the public interest and protect the regulated entity. To that end, the Commission issues this Protective Order subject to the terms and conditions as set forth below.

4. This Protective Order applies to all parties in this proceeding, unless specifically otherwise set forth. Staff and any experts used by Staff shall conform to the provisions of the Protective Order, except as limited herein.

5. The terms and conditions of this Protective Order are as follows:

A. The following definitions shall apply:

INFORMATION: Information refers to all documents, data, including electronic data, studies, and other materials furnished pursuant to requests for information or other modes of discovery, or any other information which is otherwise a part of the Commission record.

CONFIDENTIAL INFORMATION: Confidential Information refers to Information which, if disclosed, would likely result in harm to a party's economic or competitive interest or which would result in harm to the public interest generally and which is not otherwise available from public sources. Confidential Information may include: (1) material or documents that contain information relating directly to specific customers; (2) employee-sensitive information; (3) marketing analyses or other market-specific information relating to

services offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants; (5) strategies employed, to be employed, or under consideration in contract negotiations; and (6) information concerning trade secrets, as well as private technical, financial and business information.

B. A party may designate or claim Information as Confidential but shall make such Confidential Information available to the party seeking access or discovery under the restrictions set out in this Protective Order if such disclosure is not otherwise privileged or objectionable on any other evidentiary grounds. The party designating the Information as Confidential shall provide to counsel for the requesting party, at the time the designation is made, the ground or grounds for the designation.

C. A party may claim or designate its prefiled testimony and exhibits as Confidential pursuant to this Protective Order. The prefiled testimony shall indicate the ground or grounds for the Confidential designation. Any party obtaining Confidential Information may use such information in prefiled or oral testimony provided that the Confidentiality is maintained, unless otherwise ordered by the Commission. To the extent possible, Confidential Information shall be segregated. Only those portions of the prefiled testimony designated as Confidential should be filed under seal, and should be marked in a manner which clearly indicates that the prefiled testimony contains Confidential Information. If the Confidential portion of a pleading or testimony cannot be conveniently segregated, then the entire pleading or testimony shall be deemed Confidential. Prefiled testimony designated as Confidential shall be filed under seal and served upon all attorneys of record. Attorneys upon whom prefiled testimony designated as Confidential has been served shall make such testimony available only to those persons authorized to review such testimony under the restrictions in this Protective Order.

D. If Information to be disclosed in response to a data request contains Confidential Information concerning another party, the furnishing party shall notify the other party of the intent to disclose the information. The other party may then choose to designate the information as Confidential under the provisions of this Protective Order. If Confidential Information has been obtained from sources outside of this proceeding, the party intending to use such Confidential Information must ascertain from the source whether such information is Confidential for purposes of the instant proceeding.

E. If a party seeking access disagrees with the Confidential designation of a discovery response or a party disagrees with the Confidential designation of other confidential information, including prefiled testimony, the parties shall first attempt to resolve the dispute on an informal basis. If the parties cannot resolve the dispute informally, the party contesting the Confidential designation shall file a motion with the Commission challenging the designation within five (5) business days after service of the Confidential Information. The motion should identify the contested information and reason(s) the information should not be classified as Confidential. Within five (5) business days after the filing of the challenge, the party claiming Confidentiality must file an answer submitting reasons justifying the

Confidential designation. The Commission may rule on any challenge to the Confidential designation prior to hearing or at the hearing and will treat any challenge to the Confidential designation on an expedited basis. To that end, an answer, protest or other responsive pleading may not be made to the answer filed by the party claiming Confidentiality unless otherwise permitted by the Commission. A party challenging the claimed designation may seek leave to file a response if the party claiming Confidentiality raises a new ground in its Answer not previously disclosed to the challenging party. The contested information shall not be disclosed pending the Commission's ruling on the motion.

F. If a party claiming Confidentiality believes more stringent restrictions or protections are necessary for particular Confidential Information, then the party claiming Confidentiality shall file a motion with the Commission outlining its concerns and the relief sought.

G. Disclosure of Confidential Information shall be made to attorneys of record and authorized representatives, including outside experts, who are consulting with such attorneys or intend to file testimony in this proceeding. Attorneys or authorized representatives seeking access to Confidential Information shall first read this Protective Order and sign the Nondisclosure Certificate as provided in Appendix A. In cases in which a utility's rates are being reviewed, attorneys and representatives of the utility whose rates are being reviewed are not required to sign Nondisclosure Certificates in order to receive copies of documents containing Confidential Information. An executed Nondisclosure Certificate shall contain the signatory's full name, permanent address, title or position, date signed, and an affirmation that the signer is acting on behalf of a party to this proceeding. The Nondisclosure Certificate shall be delivered to counsel for the party claiming confidentiality at least seven (7) days before disclosure is made, unless the party claiming confidentiality waives this period. The party claiming Confidentiality shall provide legible copies of the Confidential Information to requesting parties by serving one copy upon counsel for the requesting party. The requesting party may copy the Confidential Information and make it available to its authorized representatives who have signed Nondisclosure Certificates. If a response to a discovery request requires the duplication of voluminous material or material not easily copied because of its binding or size, the furnishing party may require the voluminous material be reviewed on its own premises. If duplication of voluminous material can be accomplished without undue burden upon the party disclosing the information, duplication of voluminous material may be completed at the expense of the requesting party. Voluminous material shall include documents or materials comprised of two hundred pages or more.

H. All persons who are afforded access to Confidential Information under the terms of this Protective Order shall neither use nor disclose such information for purposes of business or competition or any other purpose other than the purpose of preparation for and litigation of this proceeding as solely contemplated herein. During the course of this proceeding, parties shall keep Confidential Information secure in accordance with the purposes and intent of this order.

I. Prefiled testimony and exhibits, whether filed or offered at the hearing, shall be prepared as follows:

- (i) An original plus seven (7) copies of prefiled testimony with the Confidential portions obliterated or removed shall be filed, as a public document.
- (ii) One (1) copy of those pages which contain Information which has been designated as Confidential shall be filed in a separate envelope marked as Confidential. The portions which are Confidential shall be indicated as described below.
- (iii) Seven (7) copies of the complete prefiled testimony shall be filed under seal. The Confidential pages shall be stamped "Confidential" and the Confidential Information shall be identified by an underline.
- (iv) Any deviations from this format must be approved by all parties or the Commission.
- (v) Exhibits shall be filed at the hearing with the information separated as described in (i), (ii) and (iii) above, with each copy of the Confidential portions placed into separate envelopes to be marked as a separate exhibit.

J. If no party challenges prefiled testimony designated as Confidential, or if the Commission rules that testimony was properly designated as Confidential, such testimony shall be received into evidence, subject to any other objections being made and ruled upon, and kept under seal. The parties retain the right to question, challenge, and object to the admissibility of Confidential Information on the grounds of materiality or relevancy.

K. Pleadings may make references to designated Confidential testimony, whether prefiled or live and transcribed, however, the pleading filed as a public document may make references by citation only and not by quotation. A pleading referencing Confidential Information by quotation must clearly designate the pleading as Confidential and such pleading shall be filed in a separate envelope under seal. Subject to the jurisdiction of any reviewing court, references to designated testimony in pleadings or oral arguments made to such reviewing court shall also be by citation only.

L. Confidential Information may be offered or be subject to cross examination at hearing; however, such testimony shall be discussed only after the hearing is closed to all persons except the Commission, its counsel, its hearing examiners, court reporters, attorneys of record and individuals to whom the designated information is available pursuant to the terms of this Protective Order. Parties shall make every effort, in live testimony, to ask and answer questions in such a way as to preserve the Confidentiality of the Information without the need to close the hearing. The transcript of live testimony or oral argument claimed to be Confidential shall be kept under seal and copies shall only be provided to the Commission, its counsel, its hearing examiners, and attorneys of record. Neither the parties nor their attorneys shall disclose or provide copies of the contents of such transcripts to anyone other than those who may have access to the designated information under the terms of this

Protective Order. Persons who have access to the designated information under the terms of this Protective Order shall treat the contents of such transcript as any other designated information under the terms of this Protective Order.

M. Subject to the jurisdiction of any reviewing court, Confidential Information contained in the Commission's official record shall be delivered to the reviewing court under seal upon service of the petition for judicial review or other appropriate notice of appeal.

N. The Commission reserves the right to modify this Protective Order, on its own motion or upon motion of a party upon reasonable notice to the parties and opportunity to be heard.

O. Within ninety (90) days after the conclusion of this proceeding, including judicial review, persons in possession of Confidential Information shall, at the option of the party claiming Confidentiality, return or destroy all such Confidential Information and all notes, tapes, other papers, and any other medium containing, summarizing, excerpting, or otherwise embodying any such Confidential Information. If the party claiming Confidentiality requests destruction, the person destroying the information shall certify its destruction. Counsel shall be entitled to retain memoranda or pleadings embodying information derived from Confidential Information to the extent reasonably necessary to preserve a file on this proceeding. The file shall not be disclosed to any other person.

P. The provisions of paragraphs G and O of this Protective Order do not apply to Staff. Staff is subject to the nondisclosure provisions of K.S.A. 66-1220a. Staff shall provide a list of the names of its employees who will have access to the designated information.

Q. Outside consultants or experts utilized by Staff, whether under contract or not, shall have access to Confidential Information and testimony on the same basis as Staff except the outside consultant or expert shall read this Protective Order and sign the Nondisclosure Certificate as contained in Appendix A.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(1) This Protective Order shall govern the treatment and handling of Confidential Information in this docket.

(2) A party may file a petition for reconsideration of this Order within fifteen (15) days of the date of this Order. If service is by mail, three (3) additional days may be added to the fifteen (15) day time limit to petition for reconsideration.

(3) The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

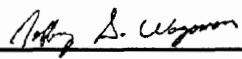
BY THE COMMISSION IT IS SO ORDERED.

Wine, Chr.; Claus; Comm.; Moline, Comm.

ORDER MAILED

Dated: **JAN 17 2002**

JAN 17 2002



Jeffrey S. Wagaman
Executive Director

APPENDIX A

STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

NONDISCLOSURE CERTIFICATE

I, _____, have been presented with a copy of the Protective Order issued in Docket No. 02-MDWG-517-GPR on the ____ day of _____, 2002.

I have requested review of Confidential Information produced in Docket No. 02-MDWG-517-GPR on behalf of _____.

I hereby certify that I have read the above-mentioned Protective Order and agree to abide by its terms and conditions.

Dated this ____ day of _____, 2002.

Signature and Title

Employer

Party

Address

Telephone