

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>MR. AND MRS. GREGORY SWECKER,</p> <p style="padding-left: 100px;">Complainants,</p> <p style="padding-left: 100px;">vs.</p> <p>MIDLAND POWER COOPERATIVE,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:center">DOCKET NO. FCU-99-3 (C-99-76)</p>
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ORDER REGARDING DISCOVERY

(Issued July 26, 1999)

Mr. and Mrs. Swecker submitted four data requests to Midland Power Cooperative (Midland), and the Office of Consumer Advocate (OCA) also submitted data requests to Midland. On July 9, 1999, Midland filed a Response and Objection to the Sweckers' first two data requests. On July 15, 1999, Mr. Swecker filed a Motion to Compel. On July 16, 1999, Midland filed a Response and Objection to the data requests of the Office of Consumer Advocate. On July 19, 1999, Midland filed a Response and Objection to the Sweckers' third and fourth data requests.

A telephone conference call was held on July 22, 1999, to discuss the data requests, the motion to compel, and the objections to the data requests.

Mr. Swecker was unrepresented by counsel and participated on the Sweckers'

behalf. Midland Power Cooperative (Midland) was represented by Mr. John Gerken and Mr. Thomas Polking. Mr. Donald Severson, general manager of Midland Power Cooperative, was also present on the call. Ms. Jennifer Easler represented the OCA. Mr. John Pearce, utility specialist with the Iowa Utilities Board, also sat in on the call. The call was recorded by a certified court reporter.

After hearing the oral argument of the parties, and after discussion with the parties, certain agreements were reached with respect to the discovery requests.

Midland and the OCA have been able to agree on responses to all of the OCA data requests except data request number 8. Therefore, the only issues to be resolved regarding the OCA data requests relate to number 8.

The parties agreed that if Ms. Easler obtains authority from her office to enter into a written agreement, the parties would enter into either one or two written confidentiality agreement(s). There may be one agreement between all the parties, or there may be an agreement between Midland and the OCA, and a separate agreement between Midland and the Sweckers. Midland will write the first draft of the confidentiality agreement. The parties agreed to execute and abide by a confidentiality agreement for responses provided for the following data requests: Swecker data requests 1, 2, and 4, and OCA data request number 8.

Midland objected to Swecker data request number 1 as being over broad, burdensome, and vague. It also objected on the ground that if it is decided the Utilities Board does not have jurisdiction of this case, the material would be irrelevant

and immaterial. It also objected on the ground a subpoena should be sought to obtain the information. It requested that if the information were to be supplied, a confidentiality order with a penalty clause be issued, and that the Sweckers be required to pay for copying. Midland had similar objections and made similar requests with respect to OCA data request number 8. The Sweckers and the OCA responded that they are entitled to the information, and cannot evaluate the case or proceed without it.

In an order dated June 28, 1999, Midland was ordered to submit prepared testimony and exhibits which provide cost-based justification for the different treatment of customers under tariffs 26.16 and 26.11, evidence that the tariffs are based upon the same cost-of-service methodology that Midland uses in establishing its other rates, and evidence that the tariffs are applied in a nondiscriminatory manner to similarly situated customers.

Mr. Swecker and Ms. Easler agreed that Swecker data request number 1, OCA data request number 8, and the June 28th order were asking for essentially the same information. Midland was unclear as to what Swecker data request 1 asked for, and did not believe the June 28th order asked for the same information as OCA data request number 8.

In order to clarify exactly what is intended by Swecker data request number 1 and the June 28th order, those documents will be considered to have asked for the identical information requested in OCA data request number 8. The June 28th order

is not amended, because it was originally intended to order the submission of data asked for in OCA data request number 8. Of course, in Midland's submission of prepared testimony and exhibits, it should supply any evidence, in addition to that requested in OCA data request 8, it believes shows the tariffs are nondiscriminatory.

We do not consider provision of the information requested in Swecker data requests 1 through 4 and OCA data request 8 to be burdensome. Therefore, the request that the Sweckers and the OCA reimburse Midland for copying costs is denied.

Midland agreed that if a confidentiality agreement were executed, it would not require a subpoena to provide the information to the Sweckers and the OCA.

Midland requested that a confidentiality order with a penalty clause for noncompliance be issued. The parties have agreed to execute a confidentiality agreement. They have agreed to abide by the agreement. Therefore, there is no need for an order to issue until such time as information is submitted to the Board, and there is no need for a penalty clause either in an order or in the confidentiality agreement.

At some point in the future, Midland or an intervening party (if any are allowed to intervene) may appeal the jurisdictional issue. However, at this point, the issue has not been appealed. Therefore, there is no ground to deny a discovery request on this basis, and the case will proceed.

Swecker data request number 2 refers to a number of sections of the Code of Federal Regulations when it asks for information. 18 C.F.R. 292.302(b)(1) does not apply to Midland, because Midland is below the threshold of total sales exceeding 500 million kilowatt-hours during any one calendar year contained in the regulation. In addition, 18 C.F.R. 292.302(c)(1)(i) does not apply to Midland, because Midland does not generate electricity. Therefore, Swecker data request 2 will be considered to be requesting only that information contained in 18 C.F.R. 292.302(c)(1)(ii).

Swecker data request number 3 asks for copies of the minutes of the board of Midland Power Cooperative from January 1, 1998 to the present June 30, 1999. The parties agreed that Midland will supply the Sweckers with an index of the minutes by topic, and will give the Sweckers excerpts Midland believes are relevant to this case. After reviewing this information, the Sweckers may request additional portions of minutes, and Midland will supply them. [In the alternative, after reviewing the information supplied, the Sweckers may go to the offices of Midland, and inspect and copy any additional portions of the minutes.]

With respect to Swecker data request number 4, the parties agreed that Midland will supply the requested information, but may block out names and other identifying data of members which have no relevance to this case. The term identifying data does not include pricing or usage information, which must be provided.

Discovery procedures applicable in civil actions are available to parties in contested cases. Iowa Code §17A.13(1)(1999). Iowa Rule of Civil Procedure 122 provides for a very broad scope of discovery, and the discovery rules are to be liberally construed and enforced to provide the parties with access to all relevant facts. Iowa R.Civ.P. 121. The information requested in Swecker data requests number 1 (as clarified), 2 (as amended), 3 (as modified by agreement), and 4 (as modified by agreement), and OCA data request number 8, is relevant to the issues in this case, and therefore must be provided, subject to the confidentiality agreement.

Midland asserted that it is entitled to confidential treatment of responses to Swecker data requests 1, 2, and 4, and OCA data request 8, because the information is proprietary and a trade secret. When similar information is submitted to the Board in prepared testimony and exhibits, Midland will request confidential treatment pursuant to Iowa Code §§22.7(3) and (6), and Board rules 199 Iowa Admin. Code §§1.9(5) and (6). It is appropriate that the information submitted to the Sweckers in response to data requests 1, 2, and 4, and to the OCA in response to data request number 8, be held confidential. Midland agreed to supply the information if a confidentiality agreement were signed and implemented.

The parties did not request an extension of time to file prepared testimony. Rather, the Sweckers and the OCA will file testimony using Midland's responses as a part of their rebuttal testimony.

IT IS THEREFORE ORDERED:

1. Midland will draft a confidentiality agreement which covers responses to Swecker data requests 1, 2, and 4, and OCA data request 8. If Ms. Easler obtains authority from her office, the parties will execute either one or two written confidentiality agreements as detailed above, and will abide by the agreement(s). Once the agreement is signed, the parties will notify the Board.

2. Once the confidentiality agreement is signed, Midland will provide responses to the data requests as modified above.

3. In the future, if Midland wishes the Board to issue a confidentiality order with respect to its prepared testimony, it will submit a request pursuant to Board rules 199 Iowa Admin. Code §§ 1.9(5) and (6).

IOWA UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary, Deputy

Dated at Des Moines, Iowa this 26th day of July, 1999.