

Instructions for Completion of
Affidavit and Questionnaire Verifying Confidential Information
(Energy Utilities)

The Freedom of Information Act (1976 PA 442) provides that a public body may exempt trade secrets or commercial or financial information voluntarily provided to an agency from disclosure if:

- (1) The information is submitted upon a promise of confidentiality by the public body.
- (2) The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.
- (3) A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This subdivision shall not apply to information submitted as required by law or as a condition of receiving a governmental contract, license or other benefit.

The attached questionnaire is designed to allow applicants the opportunity to identify the documents that they consider confidential and to receive a promise of confidentiality prior to providing the information to the Commission. The criteria are:

The document must be "trade secrets or commercial or financial information." Further, the document:

- (a) Must not have been publicly disseminated;
- (b) Must not be available from other sources;
- (c) Must be of a character such that its release might cause the applicant significant competitive harm.

"Document" refers to a record or portion of a record, material, memoranda, data, or other information, or a grouping or combination of records, memoranda and/or other information submitted to the Commission.

Applicants who believe that documents they plan to submit to the Commission are confidential should fill out the attached questionnaire, according to the instructions below, and receive approval prior to submitting the information. A signed and notarized questionnaire should be submitted each time a document is to be provided to the Commission which you consider confidential unless the document is being submitted pursuant to a previously submitted questionnaire. Each time a questionnaire is submitted, the Commission will acknowledge confidentiality in writing or will return it asking for clarification.

Any information, documents, records, etc. submitted as required by law or as a condition of receiving a governmental benefit will not be acknowledged by the Commission as confidential.

Instructions:

Question 1 asks for identifying information regarding the applicant, including the name of the company and position of the person executing the affidavit.

Question 3 asks that you identify which documents proposed to be submitted to the Commission are considered confidential. Use a separate page if necessary to create an alpha listing of the documents and provide a brief description of the material for which confidentiality is being requested.

Question 4, Sections a, b, and c, asks that you explain the reasons why you consider each document to be confidential based on the requirements regarding trade secrets or commercial or financial information described above. **Sections d and e** pertain to certain types of documents which must be submitted to the Commission on a regular basis or which may be repeatedly submitted to the Commission and may be acknowledged as confidential when the type of document is first submitted. **Sections d and e** ask that you identify which types of documents listed under Question 3 you expect to repeatedly submit to the Commission and that you explain why your request for confidentiality extends to these materials as well.

If a type of document is being submitted which has been identified on a previously submitted Affidavit and Questionnaire, please identify by cover letter accompanying the document or program form, as appropriate, when the Affidavit and Questionnaire was originally submitted for which confidentiality was acknowledged.

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**Affidavit and Questionnaire
Verifying Confidential Information
(Energy Utilities)**

STATE OF MICHIGAN)
)ss
COUNTY OF _____)

_____, being duly sworn, deposes and states as follows:

1. I am the _____ of the _____
(Officer) (Company)

(Street Address)

(City, State, Zip)

(Telephone)

2. I am authorized by my company to make these statements on behalf of the company.

3. I have reviewed and am familiar with the content of the documents proposed to be submitted to the Michigan Public Service Commission. The documents submitted, as described below, contain trade secrets or commercial or financial information considered to be confidential, and are submitted to the Commission on a voluntary basis for purposes of developing governmental policy and not because the information is required to be submitted by law or as a condition of receiving a governmental contract, license, or other benefit:

<u>Document</u>	<u>Description of Confidential Material</u>
a.	
b.	
c.	
d.	
e.	

4. The answers to the following questions are true:

- a. Have any of the documents listed in paragraph 3 been released, filed for record, or otherwise disseminated to the public? Yes_____ No_____

If yes, indicate below the body to which the document has been disseminated by listing the document referenced in Question 3 next to the appropriate body and indicate whether or not it was submitted on a confidential basis.

<u>Document Reference</u>		<u>Confidentiality</u>	
		<u>Yes</u>	<u>No</u>
_____	Federal Energy Regulatory Commission	_____	_____
_____	Federal Communications Commission	_____	_____
_____	Securities & Exchange Commission	_____	_____
_____	Michigan Department of Treasury Division_____	_____	_____
_____	Michigan Department of Consumer and Industry Services' Corporations & Securities and Land Development Bureau	_____	_____
_____	Other Bureau_____	_____	_____
_____	Credit Reporting Agency Name_____	_____	_____
_____	Other Specify_____	_____	_____

- b. Are the documents described in Question 3 available from another source? Yes_____ No_____

<u>Document Reference</u>	<u>Source</u>
_____	_____
_____	_____
_____	_____

- c. Might the release of the documents described in Question 3 cause you significant competitive harm? Yes___ No___

If yes, identify the anticipated competitive harm and describe the basis on which

the claim of harm is predicated.

d. Do you expect to submit any of the types of documents described in Question 3 repeatedly? Yes___ No___

If so, specify the documents referenced in Question 3 to which this applies:

Document Reference: _____

e. To the extent you consider the types of documents listed in Question 4d above to be confidential, explain the basis for this request for continuing confidentiality in the space below:

Signed_____

Subscribed and sworn to before me on

this ___ day of _____
20_____.

(Notary Public)

_____ County, Michigan.

My commission expires _____.

**Agreement Governing Nondisclosure
of Confidential Information**
(Energy Utilities)

This Agreement is made this _____ day of _____, 20____, between _____ and the MICHIGAN PUBLIC SERVICE COMMISSION (Commission) to govern the provision and handling of certain described information believed to be exempt from disclosure under Michigan's Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231 et seq.; MSA 4.1801 et seq.

WHEREAS, the Commission has requested that _____ voluntarily provide certain information and documents to the Commission for use by the Commission in developing governmental policy; and

WHEREAS, _____ claims that certain of the requested information constitutes trade secrets or commercial or financial information, the disclosure of which would cause competitive harm; and

WHEREAS, _____ is willing to voluntarily provide the requested information to the Commission under a promise of confidentiality and not pursuant to any legal requirement or in order to receive a governmental contract, license, or other benefit.

THEREFORE, the parties agree as follows:

1. The information submitted by _____ to the Commission is described in the attached affidavit submitted by _____ of _____, dated _____. The same affidavit establishes the basis for the treatment of the submitted information as confidential.

2. As verified by the attached affidavit, _____ certifies among other matters that: (a) the subject information is provided voluntarily by _____ to the Commission for use in developing governmental policy and not pursuant to any legal requirement or in order to receive a governmental contract, license, or other benefit; and (b) the subject information constitutes trade secrets or commercial or financial information the release of which would cause competitive harm to _____.

3. _____ submits this information upon a promise of confidentiality from the Commission, as authorized by the Chairman of the Commission, John G. Strand, whose signature appears below. By signing this Agreement, the Commission agrees to keep the subject information confidential and to not disclose the information to any person or organization other than the Commission, its agents, servants and employees under the FOIA or otherwise, except as required by court order. The Commission will adopt

reasonable precautions and procedures to assure the continued confidentiality of the information provided under this Agreement.

4. Nothing contained herein shall preclude the Commission from seeking to obtain any information from _____ without promise of confidentiality, nor shall anything contained herein preclude the Commission or other party from challenging in a court of competent jurisdiction whether any documents provided hereunder constitute trade secrets or confidential or proprietary information.

5. _____ understands that this Agreement does not prevent any of the information submitted from being considered by the Commission if it becomes relevant to the establishment of rates or to make determinations concerning a governmental contract, license, or other benefit. In such circumstances, however, the information will be received and considered pursuant to protections deemed adequate by the presiding hearing officer or Commission, following notice and hearing and subject to court review, to ensure compliance with this Agreement and with the FOIA.

6. _____ understands that this information may be disclosed by agreement of the Chairperson of the Commission and a duly-authorized representative of _____ or by the Commission order following notice and hearing and subject to court review, if changing circumstances establish that this information no longer constitutes a trade secret or confidential or proprietary information, or if the information no longer qualifies for nondisclosure under an exemption under the FOIA. _____ also understands that this information may be disclosed by the Commission if so ordered by court order.

7. _____ understands that in accordance with the FOIA a description of this information will be kept by the Commission in a central place at the Commission and that the subject description will be made available to a person upon request.

MICHIGAN PUBLIC SERVICE COMMISSION

by _____
Chairman, MPSC

(Company)

by _____
(Name)