

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Otter Tail Corporation  
Advance Determination of Prudence  
Application**

**Case No. PU-06-481**

**Montana-Dakota Utilities Co., a Division  
of MDU Resources Group, Inc.  
Advance Determination of Prudence  
Application**

**Case No. PU-06-482**

**STAFF RESPONSE TO MOTION BY MARK TRECHOCK AND DAKOTA RESOURCE  
COUNCIL FOR AN ORDER TO PROTECT CONFIDENTIAL TESTIMONY**

On June 5, 2007, Mark Trechock and Dakota Resource Council ("Intervenors") filed a Motion for an Order to protect the confidential portions of testimony filed by David Schlissel.

The Intervenors state that the Public Service Commission ("Commission") has granted a request for protection of certain material as protected trade secret information under Chapter 69-02-04 of the North Dakota Administrative Code as requested by Otter Tail Corporation ("Otter Tail") and Montana-Dakota Utilities Co. ("MDU").

The Intervenors request in their Motion that the Commission order the information designate as confidential information in the testimony of David Schlissel be protected as trade secret information under Chapter 69-02-04 of the North Dakota Administrative Code.

Section 69-02-09-01 of the North Dakota Administrative Code provides that an application requesting trade secret protection must include at least the following:

1. A general description of the nature of the information sought to be protected;
2. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons;

3. An explanation of why the information is not readily ascertainable by proper means by other persons;
4. A general description of the persons or entities that would obtain economic value from the disclosure or use of the information;
5. A specific description of known competitors and competitors' goods and services that are pertinent to the tariff or rate filing; and
6. A description of the efforts used to maintain the secrecy of the information.

Staff has reviewed the Intervenors' request for trade secret protection of information. N.D.C.C. § 47-25.1-01 defines the term "trade secret" as follows:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- a. 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; and
- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

N.D. Admin. Code § 69-02-09-04 requires that the "commission staff examine the information and application and make a prima facie recommendation of whether the information is relevant and a trade secret under the definition of trade secret in North Dakota Century Code section 47-25.1-01."

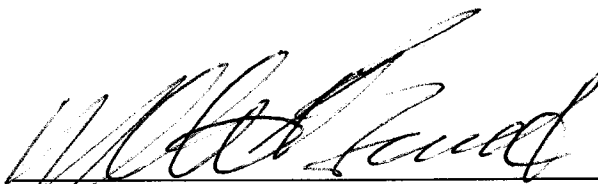
The trade secret request filed by OTP and MDU for which trade secret protection was granted by the Commission on February 23, 2007 contains confidential information related to specific costs for specific items or categories of costs which was included as exhibits to prefiled direct testimony.

The information for which the Intervenors request trade secret protection is information apparently received in responses interrogatories or data requests and which

is included in testimony which Intervenors contend is confidential, but for which Intervenors provide none of the information required under Section 69-02-09-01 to support granting of trade secret protection by the Commission. Furthermore, staff is unable to determine from the information provided by the Intervenors whether or not the Intervenors contend that the information the Intervenors seek to protect is all contained in information for which trade secret protection was granted to OTP and MDU on February 23, 2007. Clearly the narrative testimony is not included in the February 23, 2007 Order.

Staff recommends that the Intervenors' request for trade secret protection be denied. Staff recommends that Intervenors be advised that their application for trade secret protection must comply with the requirements of Section 69-02-09-01, and that protection of cost projections does not include narrative testimony unless such testimony is shown to be eligible for trade secret protection.

Dated June 11, 2007.

A handwritten signature in black ink, appearing to read "William W. Binek", written over a horizontal line.

William W. Binek  
Chief Counsel