

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Otter Tail Corporation
Renewable Resource Cost Recovery Rider
2009
Tariff

Case No. PU-08-742

ORDER GRANTING TRADE SECRET PROTECTION

December 17, 2008

On September 2, 2008, Otter Tail Corporation (Otter Tail) filed an application for a trade secret protective order under North Dakota Administrative Code Chapter 69-02-09-01 for protection against public disclosure of trade secret information as defined by North Dakota Century Code (NDCC) Section 47-25.1-01(4). Otter Tail provided the following general description of the nature of the information sought to be protected:

Cost information contained in the calculation of revenue requirements on Otter Tail's shares of the Langdon Wind Energy Center facility and the Ashtabula Wind Energy Center facility, contained in Attachment 3 of Otter Tail's application for approval of the annual Renewable Resource Cost Recovery Rider and the approval of the 2009 Cost Recovery Factor.

Otter Tail states that the confidentiality of the information sought to be protected has been maintained by Otter Tail. Otter Tail states that the information is not disclosed to the public or to persons other than employees or authorized agents of Otter Tail who need to know the information to fulfill their responsibilities in connection with the project, or to third persons pursuant to agreement to maintain the confidentiality of the information.

Otter Tail states that in a competitive electric utility and transmission marketplace, public disclosure of this information could have economic value to potential equipment and material vendors, contractors, and suppliers who may desire to supply components of similar projects in which Otter Tail may be involved in the future; they could use such information against Otter Tail's interests in the course of submitting proposals.

Under North Dakota Century Code (NDCC) Section 47-25.1-01(4) :

"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.

Under NDCC Section 44-04-18.4(2)(d), which is almost identical to NDCC Section 47-25.1-01(4):

“Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, *technical know-how*, or process that:

1. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that can obtain economic value from its disclosure or use; and
2. Is the subject of efforts that are reasonable under the circumstances to maintain *the secrecy of the information*. (Differences italicized.)

Commission staff (Staff) filed a response to Otter Tail’s request for trade secret protection. Staff believes that Otter Tail’s application satisfies the requirements of NDCC Chapter 47-25.1-01, which allows the Commission to grant trade secret protection in this proceeding, and that the information Otter Tail seeks to protect qualifies as “trade secret” as that term is defined in NDCC Section 47-25.1-04 and NDCC Section 44-04-18.4(2)(d).

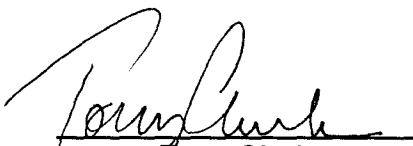
The Commission’s process provides a means for interested parties to review trade secret documents upon signing a nondisclosure agreement.

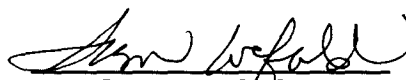
Order

The Commission Orders:

1. Otter Tail’s application for trade secret protection is GRANTED.
2. This Order does not constitute precedent for subsequent trade secret decisions by the Commission.

PUBLIC SERVICE COMMISSION


Tony Clark
Commissioner


Susan E. Wefald
President


Kevin Cramer
Commissioner