

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Northern States Power Company
Advanced Determination of Prudence –
201 MW Nobles Wind Project
Application**

Case No. PU-08-907

**Northern States Power Company
Advanced Determination of Prudence –
150 MW Merricourt Wind Project
Application**

Case No. PU-08-908

**STAFF RESPONSE TO NORTHERN STATES POWER COMPANY'S
APPLICATION FOR TRADE SECRET PROTECTION**

On December 3, 2008 and January 30, 2009, Northern States Power Company, (NSP) filed applications for a trade secret protective order under North Dakota Administrative Code section 69-02-09-01 for protecting against public disclosure trade secret information as defined by North Dakota Century Code section 47-25.1-01(4). NSP provided the following to support its application:

1. General description of the nature of the information sought to be protected.

The information NSP seeks to protect is cost information, contract terms, and internal modeling results regarding the Nobles Wind Project and the Merricourt Wind Project. NSP also seeks to protect information relating to costs for purchased energy.

2. Explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons.

NSP states that the information could have economic value to potential vendors, contractors, and suppliers who may desire to bid projects to the Company in the future. NSP's competitors may use the information against the interests of NSP in the future.

3. An Explanation of why the information is not readily ascertainable by proper means by other persons.

NSP states that the confidentiality of the information has been maintained by the company. The information is not disclosed to the public or to persons other than employees or authorized agents of NSP who need to know the information to fulfill their responsibilities in connection with the respective projects or to third persons under an agreement to maintain the confidentiality of the information.

4. A general description of the persons or entities that would obtain economic value from disclosure or use of the information.

NSP states that wind developers, entities from which they purchase power, and other utilities would obtain economic value from disclosure of this information.

5. A specific description of known competitors and competitors' goods and services that is pertinent to the tariff or rate filing.

NSP refers to its responses to number 4.

6. A description of the efforts used to maintain the secrecy of the information.

NSP refers to its responses to number 3.

Staff Review

Staff has reviewed NSP's request for trade secret protection. North Dakota Century Code section 47-25.1-01(4) 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."

The definition of "trade secret" under North Dakota Century Code section 44-04-18.4(2)(d), which is almost identical to North Dakota Century Code section 47-25.1-01(4), reads:

"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).

North Dakota Administrative Code section 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."

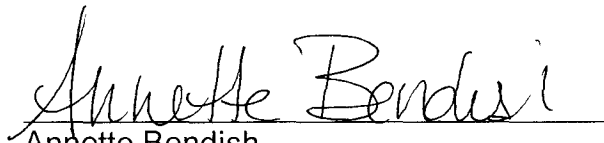
The information is relevant to the application because the information is used to calculate the revenue requirements for NSP. The information for which trade secret

protection is requested could be used against NSP by vendors, contractors and suppliers in the course of submitting proposals for similar projects.

Staff believes that NSP's application satisfies the requirements of North Dakota Century Code section 47-25.1-01 that allows the Commission to grant trade secret protection in this proceeding. The Commission's process provides a means for interested parties to review trade secret documents upon signing a nondisclosure agreement.

For reasons set forth above, staff recommends that the Commission grant NSP's Application Requesting Trade Secret Protection in this case.

Dated this 11 day of February, 2009.


Annette Bendish
Staff Counsel