

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Northern States Power Company
Advance Determination of Prudence – Bay Front
Application**

Case No. PU-09-659

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

On September 24, 2009, Northern States Power Company (NSP) filed an application 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).

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.”

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 information is relevant to 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 6 day of October, 2009.


Annette Bendish
Legal Counsel