

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Otter Tail Power Company
2010 Renewable Resource Cost Recover Adj. Factor
Tariff

Case No. PU-10-18

STAFF RESPONSE TO OTTER TAIL POWER COMPANY'S
APPLICATIONS FOR TRADE SECRET PROTECTION

On December 21, 2009 and January 18, 2010, Otter Tail Power Company (Otter Tail) 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).

Staff has reviewed Otter Tail'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:

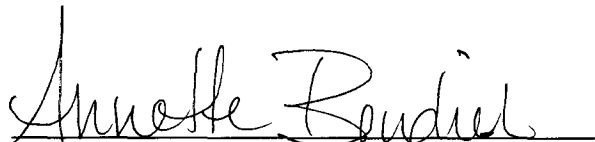
1. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that can obtain economic value from its disclosure or use; and
2. Is the subject of efforts that are reasonable under the circumstances 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 Otter Tail’s applications satisfy 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 Otter Tail’s Application Requesting Trade Secret Protection in this case.

Dated this 8 day of February, 2010.


Annette Bendish
Legal Counsel