

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Northern States Power Company
Advance Determination of Prudence – Manitoba Hydro
Application**

Case No. PU-12-70

**STAFF RESPONSE TO THE REQUEST OF NORTHERN STATES POWER
COMPANY FOR TRADE SECRET PROTECTION**

On February 8, 2012 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). Applicants provided the following to support its application:

1. General Description of the Nature of the Information Sought to be Protected.

The information for which NSP seeks protection includes cost information, contract terms and internal modeling results regarding three purchase agreements (“PPAs”) with Manitoba Hydro-Electric Board (“Manitoba Hydro”).

2. An Explanation of Why the Information Derives Independent Economic Value, Actual or Potential, From not Being Generally Known to Other Persons.

NSP stated that the information indicated in paragraph one above could have economic value to potential vendors, contractors and suppliers who may desire to bid for PPAs or other generation resources to the Company in the future. Specifically, NSP indicated that potential suppliers could utilize the price information as a floor, thereby

potentially driving up costs for the rate payers. Additionally, the same information could be exploited by other Companies wishing to do business with Manitoba Hydro.

3. An Explanation of Why the Information is Not Readily Ascertainable by Proper Means by Other Persons.

NSP indicated that the confidentiality of the information indicated above is being maintained internally by them. NSP also indicates that it requests that all of the information affected by the application to be treated as trade secret information in all of its regulatory filings with governmental entities.

4. A General Description of the Persons or Entities that would Obtain Economic Value from Disclosure or Use of the Information.

Please see explanation in paragraph 2 above.

5. A Specific Description of Known Competitors and Competitor's Goods and Services that are Pertinent to the Tariff or Rate Filing.

In response to this inquiry, NSP indicates in their application that "[o]ther entities from which [NSP] purchases power and other utilities would obtain economic value from disclosure of this information".

6. A Description of the Efforts Used to Maintain the Secrecy of Information.

NSP indicates that they, and Manitoba Hydro, have both contractually agreed to maintain the confidentiality of certain provisions of the PPA. See also paragraph 3 above.

Staff has reviewed Applicants' request for trade secret protection of the information. N.D.C.C. § 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.”

N.D. Admin Code 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 because it is germane to the PPA. Applicants indicate that the information was prepared pursuant to agreements that require its continued confidentiality, or otherwise could materially alter future negotiations with contractors. The information, therefore, is not readily ascertainable by proper means by other persons.

Staff believes that the application satisfies the requirements of the law which 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 the

Applicants' request for trade secret protection.

Dated this 14th day of March, 2012.



Mark Gruman
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