

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

|                                      |   |                              |
|--------------------------------------|---|------------------------------|
| <b>IN THE MATTER OF:</b>             | ) | <b>ORDER GRANTING</b>        |
|                                      | ) | <b>TRADE SECRET</b>          |
|                                      | ) | <b>PROTECTION</b>            |
| <b>Northern States Power Company</b> | ) |                              |
| <b>PU-12-813</b>                     | ) | <b>OAH File No. 20130051</b> |

.....

On April 3, 2013, and April 9, 2013, Northern States Power Company (NSP) filed applications for a protective order under North Dakota Administrative Code section 69-02-09-01 for protecting against public disclosure certain trade secret or otherwise confidential or privileged information as defined by North Dakota Century Code Sections 44-04-18.4 and 47-25.1-01(4).

The information for which NSP seeks protection in its April 3, 2013, application includes cost information, contract terms and internal modeling results regarding NSP's power purchase agreement (PPA) with the Geronimo Wind Energy, LLC (Geronimo Wind) for the Prairie Rose Wind (PRW) project.

NSP states the information sought to be protected is "information pertaining to buying and selling of goods and services that has not been previously publicly disclosed and that if the information were to be disclosed . . . would cause substantial competitive injury to the person from which the information was obtained" and is therefore "commercial information" under North Dakota Century Code Section 44-04-18.4(2)(a) and consequently "is confidential if it is of a privileged nature and it has not been previously publicly disclosed" under North Dakota Century Code Section 44-04-18.4(1). NSP further states that the information sought to be protected is "information . . .

that: (1) derives independent economic value . . . 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; and (2) is the subject of efforts that are reasonable under the circumstances to maintain the secrecy of the information" and is therefore "trade secret" as provided in North Dakota Century Code Section 44-04-18.4(2)(d) and consequently "is confidential if it is of a privileged nature and it has not been previously disclosed" under North Dakota Century Code Section 44-04-18.4(1). NSP further states that the information sought to be protected meets the definition of "trade secret" in North Dakota Century Code Section 47-25.1-01(4).

The information could have economic value to potential vendors, contractors and suppliers who may desire to bid for PPAs or other generation resources to NSP in the future. In particular, potential suppliers would know what NSP has paid under this PPA and, consequently, the price could potentially serve as a floor, below which no bidder would submit a price. Such a result could be harmful for NSP's customers. Further, other utilities may use such information in negotiating with Geronimo Wind.

The information for which NSP seeks protection in its April 9, 2013, application includes:

- (a) Employee compensation and other employee information that is not publicly disclosed by NSP in other proceedings or forums;
- (b) Contract terms including prices paid for certain resources under power purchase agreements, natural gas contracts, coal contracts, nuclear fuel contracts, and other bi-lateral or multi-party transactions which the Company may have contractual obligations to keep confidential or which NSP does not normally disclose except under some form of protective order or other legal protection;
- (c) Pricing forecasts that may be considered proprietary information by the Company or that are proprietary information of third parties which is

purchased or otherwise obtained by NSP:

(d) Customer-specific load or sales information to the extent such information is required to be kept confidential under state privacy laws or that the Company does not normally disclose without some form of protective order;

(e) Sensitive internal data, including meeting minutes, audit reports, tax returns and associated working papers, and other internal, non-privileged correspondence which contains information related to NSP's management, decisions or available pricing. This information includes request for proposal (RFP) responses, available pricing and other competitive information which NSP uses to make decisions;

(f) Information received by third parties for which NSP has a contractual obligation to maintain its non-public nature;

(g) Information with respect to vendor or supplier services or costs, including legal services, or availability which may have an impact on markets for such vendor or supplier services;

(h) pricing information such as wholesale energy, capacity, and fuel;

(i) the availability of certain fuels in certain locations;

(j) resource needs that are contemplated but not yet public;

(k) capacity or transmission constraints; and

(l) in-service dates for certain projects to the extent such information is not publicly disclosed and could affect relevant markets.

Each involves a type of information that is either (i) competitive or confidential information that NSP uses to plan, develop, and construct resource additions as well as operate and maintain its system, or (ii) if made publicly available in this case, would (or could) need to be publicly disclosed in other forums under federal law or the laws of other states. Such information can also include information provided by third parties as confidential, or involves personal employee or customer information, for which NSP has an obligation to keep confidential.

NSP states the information sought to be protected is "information pertaining to buying and selling of goods and services that has not been previously publicly disclosed and that if the information were to be disclosed ... would cause substantial competitive injury to the person from which the information was obtained" and is therefore "commercial information" under North Dakota Century Code Section 44-04-18.4(2)(a) and consequently "is confidential" because "it is of a privileged nature and it has not been previously publicly disclosed" under North Dakota Century Code Section 44-04-18.4(1).

NSP further states that the information sought to be protected is "information that: (1) derives independent economic value ... 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; and (2) is the subject of efforts that are reasonable under the circumstances to maintain the secrecy of the information" and is therefore "trade secret" under North Dakota Century Code Section 44-04-18.4(2)(d) and consequently "is confidential" because "it is of a privileged nature and it has not been previously disclosed" under North Dakota Century Code Section 44-04-18.4(1). NSP further states that the information sought to be protected meets the definition of "trade secret" in North Dakota Century Code Section 47-25.1-01(4).

To the extent any such information is related to employee compensation, it is also "information pertaining to monetary resources of a person that has not been previously publicly disclosed and that if the information were to be disclosed . . . would cause substantial competitive injury to the person from which the information was obtained" and is therefore "financial information" under North Dakota Century Code

Section 44-04-18.4(2)(b) and consequently "is confidential" because "it is of a privileged nature and it has not been previously disclosed" under North Dakota Century Code Section 44-04-18.4(1).

The information could have economic value to potential vendors, contractors and suppliers who may desire to provide services to NSP in the future, as well as to other entities that may compete with NSP for available resources such as pipeline capacity, transmission capacity and generation resources. Potential suppliers would know what NSP has paid under certain agreements and bids received in requests for proposals and, consequently, the price could potentially serve as a floor, below which no bidder would submit a price.

Additionally, some information could relate to matters that are or are likely to be the subject of litigation, thereby providing advantages to NSP's counterparty in any such suit.

Further, knowledge of NSP's compensation for its employees (other than executive compensation information disclosed as required by federal or state regulations) or other information about employees could provide significant value to other utilities looking to hire away NSP employees.

Lastly, NSP maintains information that could be of significant value to third party participants in energy and transmission markets that, if disclosed in this case, NSP would be required to disclose publicly under applicable federal law. This information, merely by not being publicly known, is key to the orderly operation of energy markets and compliance with other federal laws.

North Dakota Administrative Code Section 69-02-09-04 requires that the

Commission staff examine the information and application and make a recommendation to the Commission. Staff has reviewed the requests of NSP for protection of information.

North Dakota Century Code Section 44-04-18.4(2) authorizes protection for commercial, financial, proprietary, and trade secret information if privileged and if the information has not been previously publically disclosed. North Dakota Century Code Section 44-04-18.4(1). Commercial and financial information can be protected from disclosure if the information has not been previously disclosed and disclosure would impair the Commission's ability to obtain similar information in the future or would cause competitive injury to the person providing the information. North Dakota Century Code Sections 44-04-18.4(2)(a) and 44-04-18.4(2)(b). Proprietary and trade secret information can be protected when the information derives independent economic value from not being generally known to or readily ascertainable by other persons, and is the subject of reasonable efforts to maintain its secrecy. North Dakota Century Code Sections 44-04-18.4(2)(c) and 44-04-18.4(2)(d).

Commission staff issued a response, holding the belief that NSP's applications satisfy the requirements of the North Dakota Century Code for protection of the information which is the subject of this request. The Commission's process provides a means for interested parties to review protected documents upon signing a nondisclosure agreement staff recommended the applications be approved.

The hearing officer has fully reviewed and considered the applications and recommendation of Commission staff, and determines that the information is relevant for the hearing of this case, and that the information is a trade secret as defined by North Dakota

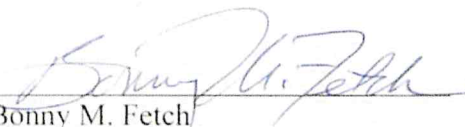
Century Code Section 47-25.1-01(4) and entitled to protection pursuant to and in accordance with the provisions of North Dakota Century Code Section 47-25.1 and North Dakota Administrative Code Chapter 69-02-09.

**IT IS HEREBY ORDERED** that the applications of Northern States Power Company to protect certain filed information identified for this case is **GRANTED**.

Dated at Bismarck, North Dakota, this 26th day of August, 2013.

State of North Dakota  
Public Service Commission

By:

  
Bonny M. Fetch  
Administrative Law Judge  
Procedural Hearing Officer  
Office of Administrative Hearings  
2911 North 14<sup>th</sup> Street – Suite 303  
Bismarck, North Dakota 58503  
Telephone: (701) 328-3200

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

IN THE MATTER OF: ) CERTIFICATE OF  
 ) SERVICE  
Northern States Power Company )  
PU-12-813 ) OAH File No. 20130051

.....

The undersigned certifies that true and correct copies of the **ORDER GRANTING TRADE SECRET PROTECTION** was mailed electronically, on the 26 day of August 2013,

to:

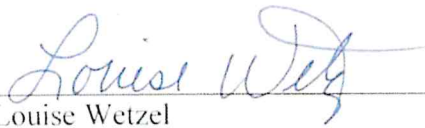
Kari Valley  
Xcel Energy  
[kari.l.valley@xcelenergy.com](mailto:kari.l.valley@xcelenergy.com)

Zeviel Simpser  
Briggs and Morgan, PA  
[zsimpser@briggs.com](mailto:zsimpser@briggs.com)

Illona Jeffcoat-Sacco  
General Counsel  
Public Service Commission  
[ijs@nd.gov](mailto:ijs@nd.gov)

Ryan Norrell  
Public Service Commission  
[rmnorrell@nd.gov](mailto:rmnorrell@nd.gov)

OFFICE OF ADMINISTRATIVE HEARINGS  
Bonny M. Fetch, Administrative Law Judge

  
\_\_\_\_\_  
Louise Wetzel