

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**Northern States Power Company
Advance Prudence – 100 MW Aurora Solar, LLC
Application**

Case No. PU-15-95

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

On February 13, 2014, Northern States Power Company (Xcel or the Company), filed an application for trade secret protection pursuant to North Dakota Administrative Code Section 69-02-09-1 for protection from public disclosure as a “Trade secret” as defined by North Dakota Century Code Section 47-25.1-01(4).

The information for which the Company seeks protection includes cost information, contract terms, confidential bid information and internal modeling results, as well as information from which the foregoing may be derived, regarding the Company’s proposal to add 100 MW of solar resources to Company’s system, which has been marked as trade secret in the Company’s application for Advance Determination of Prudence in the above-referenced case.

The Company states the cost information is trade commercial information because it is “information pertaining to buying or 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,” as provided in North Dakota Century Code Section 44-04-18.4(2)(a).

The Company further states that the cost information is trade secret because it is information 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; and (2) is the subject of efforts that are reasonable under the circumstances to maintain the secrecy of the information,” as provided by North Dakota Century Code Section 44-04-18.4(2)(d). The Company also states that the information sought to be protected meets the definition of “trade secret” set forth 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 power purchase agreements (PPA)s or other generation resources to the Company in the future. Confidential bid information is also particularly proprietary and has independent economic value to those who provided it. Moreover, potential suppliers would know what the Company has paid under this PPA and bids received in the RFP 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 the Company's customers in North Dakota.

The confidentiality of this information has been maintained by the Company. The information is not disclosed to the public or to persons other than employees or authorized agents who need to know the information to fulfill their responsibilities in connection with the Company's proposal, or to third persons pursuant to nondisclosure agreement to maintain the confidentiality of the information.

The Company has requested that this information be treated as trade secret in all of its regulatory filings and other sharing of this information with governmental entities. Other entities from which the Company purchases power and generation facilities (or could purchase power and generation facilities in the future) and other utilities would

obtain economic value from disclosure of this information. Confidential bid information is also particularly proprietary and has independent economic value to those who provided it.

North Dakota Administrative Code Section 69-02-09-03 requires that the Commission staff examine the information and application and make a recommendation to the Commission. Staff has reviewed the request of the Company. Staff believes that the Company's application satisfies 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.

For reasons set forth above, Staff recommends that the Commission grant the applications of Northern States Power Company to protect certain filed information in the captioned cases.

Dated this 24th day of November, 2015.



John M. Schuh
Legal Counsel
North Dakota Public Service Commission