

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Keith and Deanna Kessler
v Minnesota Power, a division of ALLETE, Inc.
Complaint

Case No. PU-20-194
OAH File No. 20200211

ORDER GRANTING TRADE SECRET PROTECTION

1. Minnesota Power, a division of ALLETE, Inc., (“MP” or the “Company”), applied for trade secret protection on March 23, 2021, pursuant to N.D. Admin. Code § 69-02-09-01, and requested a protective order in accordance with the provisions of the N.D. Admin. Code.

2. The trade secret information has been identified as information pertaining to lost revenue.

3. Commission staff, as required by N.D. Admin. Code § 69-02-09-03, has made a prima facie recommendation that the information is relevant for the hearing of this case and is a trade secret as defined by N.D.C.C. § 47-25.1-01(4).

4. The information for which trade secret protection is sought is “cost information pertaining to buying and selling of goods and services which has been kept confidential and has not been previously publicly disclosed” as provided in N.D.C.C. § 44-04-18.4(2)(a), and could be of unfair advantage to competitors if not protected or could have economic value to potential suppliers, vendors, or other competitors. In addition, it is information that “(1)[d]erives 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)[i]s the subject of efforts that are reasonable under the circumstances to

maintain the secrecy of the information,” as provided in N.D.C.C. § 44-04-18.4(2)(d). The information is not readily ascertainable by other proper means to such competitors, vendors, suppliers, or other persons.

5. The information has not been disclosed by MP to the public. If competitors, vendors or other suppliers had access to such confidential information, it could adversely affect prices for future material or services and drive up costs to the ultimate disadvantage of consumers and rate payers. N.D.C.C. § 44-04-18.4. In particular, the lost revenue information includes revenue and market-sensitive price information, specific to MP.

6. In addition, this information is commercial information under N.D.C.C. § 44-04-18.4(2)(a) because the information pertains “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 impair the public entity's future ability to obtain necessary information or would cause substantial competitive injury to the person from which the information was obtained. Once received by the Commission the information is proprietary information because it is “technical, financial, or marketing records that are received by a public entity, which are owned or controlled by the submitting person, are intended to be and are treated by the submitting person as private, and the disclosure of which would cause harm to the submitting person’s business” as provided in N.D.C.C. § 44-04-18.4(2)(c)(5).

7. This Hearing Officer has fully reviewed and considered the application of MP and the recommendations of Commission staff, and determines that the information is relevant for the hearing of this case, that the information is not a public record under N.D.C.C. § 44-04-18 because the information is a trade secret as defined by N.D.C.C. § 47-25.1-01(4), and that the information is

entitled to protection pursuant to and in accordance with the provisions of N.D.C.C. ch. 47-25.1 and N.D. Admin. Code ch. 69-02-09, all as set forth above;

IT IS, THEREFORE, ORDERED that MP is hereby granted trade secret protection pursuant to and in accordance with the provisions of N.D.C.C. ch. 47-25.1 and N.D. Admin. Code ch. 69-02-09 for the information identified in this Order; and it is further

ORDERED that the requirement under N.D.A.C. §69-02-09-01(5) to file a redacted public version is waived as the entire contents would be redacted, and it is further

ORDERED that the protected information is available solely to the Counsel for the Keith and Deanna Kessler, the Commission, Commission Advisory Staff, and the undersigned ALJ, and it is further

ORDERED that this order shall not constitute precedent for a determination of entitlement to trade secret protection for any information submitted upon any subsequent application.

Dated in Bismarck, North Dakota, this 24th day of March 2021.

State of North Dakota
Public Service Commission



By: _____

Timothy J. Dawson
Administrative Law Judge
Office of Administrative Hearings
2911 North 14th Street – Suite 303
Bismarck, North Dakota 58503
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CERTIFICATION OF SERVICE

The undersigned certifies that the original of the **ORDER GRANTING TRADE SECRET PROTECTION** was mailed, inside mail, at the State Capitol, on the 24 day of March 2021, to:

John Hamre
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

and that true and correct copies of the above document was sent by electronic mail and mailed, regular mail, on the 24 day of March 2021, to:

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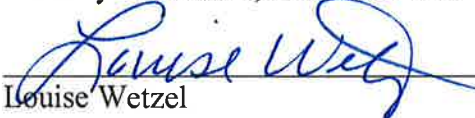
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and that a true correct copy of the above document was sent by electronic mail and mailed, inside mail, at the State Capitol on the 24 day of March 2021, to:

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OFFICE OF ADMINISTRATIVE HEARINGS
Timothy J. Dawson, Administrative Law Judge


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