

April 5, 2021

VIA E-MAIL AND FEDERAL EXPRESS

North Dakota Public Service Commission
Attention: Steven M. Kahl, Executive Secretary
600 East Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480

Re: Northern States Power Company
2021 Electric Rate Increase Application
Case No. PU-20-441
OAH File No. 20200422

Dear Mr. Kahl:

Enclosed for filing is Northern States Power Company's "First Supplemental Application for Trade Secret Protection and Motion for Special Processing" in the above-referenced case.

Please feel free to contact me with any questions or concerns.

Sincerely,

DORSEY & WHITNEY LLP



Zev Simpson

ZS/tjb

Enclosure

cc: (Via U.S. certified mail – return receipt requested)
Hope L. Hogan, Administrative Law Judge (w/encl.)
John M. Schuh, Advisory Counsel, Public Service Commission (w/encl.)
Mitchell D. Armstrong, Special Assistant Attorney General (w/encl.)
Jon C. Lengowski, Special Assistant Attorney General (w/encl.)
Brian Johnson, Special Assistant Attorney General (w/encl.)
John B. Coffman, Attorney for AARP (w/encl.)
David A. Tschider, Attorney for AARP (w/encl.)
Julie A. Clark, Attorney for Walmart, Inc. (w/encl.)

STATE OF NORTH DAKOTA
BEFORE THE
PUBLIC SERVICE COMMISSION

NORTHERN STATES POWER COMPANY)
2021 ELECTRIC RATE INCREASE)
APPLICATION)
)
)

Case No. PU-20-441
OAH File No. 20200422

**FIRST SUPPLEMENTAL APPLICATION FOR
TRADE SECRET PROTECTION AND
MOTION FOR SPECIAL PROCESSING**

Northern States Power Company (Xcel Energy or the Company) respectfully requests the North Dakota Public Service Commission (Commission) enter a second trade secret protective order in the above-referenced Case pursuant to Chapter 69-02-09 of the North Dakota Administrative Code. The requested supplemental protective order is needed to protect from public disclosure trade secret, proprietary, and commercial information that has been and will be provided by the Company in response to data requests in the above-referenced Case.

The purpose of the requested protective order is to protect from public disclosure, pursuant to N.D.C.C. § 44-04-18 *et seq.* or any other applicable disclosure laws, certain trade secret, commercial, financial, and proprietary information as defined by N.D.C.C. § 44-04-18.4 that may be provided to Commission staff or its consultants through discovery responses, examination at hearing, settlement discussions, or otherwise in the course of the above-referenced Case. On March 18, 2021, the Administrative Law Judge in this Case issued an Order on Protection of Information (Order) to protect from public disclosure certain levelized cost of energy (LCOE) information and power purchase agreement (PPA) pricing that was marked as “TRADE SECRET” in the Company’s pre-filed testimony and responses to data requests. In addition to the protected information covered by that Order, the Company has provided responses to data requests that contain other types of trade secret, commercial, financial, and proprietary information.

The Company notes that the information for which it requests protection herein has been or will be provided to Commission staff and/or consultants in response to data requests and is thus not on file with the Commission in this Case. Despite not being filed with the Commission, pursuant to N.D.C.C. § 44-04-18, the information may be considered a “public record” subject to public access. The Company therefore respectfully requests the Commission enter a second trade secret protective order in the

this Case pursuant to Chapter 69-02-09 of the North Dakota Administrative Code.

Because the trade secret and proprietary information for which protection is requested in this Application is not on file with the Commission, the Company is not providing a copy of the trade secret material with this application. Pursuant to N.D.A.C. § 69-02-01-11, the Company therefore moves the Commission to suspend: (1) the requirement that a redacted copy of the information be filed, pursuant to N.D.A.C. § 69-02-09-01(5); and (2) the requirement in N.D.A.C. § 69-02-09-02 that one copy of the trade secret material be filed with this Application. As noted above, Commission staff have already been provided with the trade secret information for which protection is requested in this Application, and the Company believes Commission staff will issue a recommendation in favor of protection of this information, pursuant to N.D.A.C. § 69-02-09-03. Should the Commission wish to review the information, the Company will make it available.

The Company notes that, pursuant to N.D.A.C. § 69-02-09-03, the Commission may make a determination on the Company's Application based on "the application, the recommendation [of Commission staff], and any response received from those served." Thus the Commission does not need to review the underlying information to make a determination on this Application. Furthermore, pursuant to N.D.A.C. § 69-02-01-10, the Commission should liberally construe its rules "to secure just, speedy, and inexpensive determination of the issues presented." With regard to this Application, the interests of efficiency and economy weigh in favor of the Commission granting the Company's motion.

1. A general description of the nature of the information sought to be protected.

The information for which the Company seeks protection in this Application includes all information marked "NOT PUBLIC," "NOT FOR PUBLIC DISCLOSURE," "TRADE SECRET," and/or "PROTECTED DATA" in its responses to Commission staff and their consultants' data requests. This information includes, to date:

- Pricing, forecasting, cost/benefit, and modeling information from which third parties could derive economic value, including information that has previously been found by the Commission to be Trade Secret in Case No. PU-19-220;
- The Company's Interim Rate Revenue Model and Revenue Model (Revenue Model), which is a proprietary model developed in-house at Xcel Energy and is used to allocate the overall revenue requirement to each rate code;
- Company work product relating to the Company's Class Cost of Service Study, vegetation management plan, settlement statement data for market purchases and sales of energy, asset retirement obligations, and tax return information;

- Sensitive compensation and salary information that has not been made public; and
- Sensitive generation dispatch data that is kept secret by the Company.

The Company states that the pricing, forecasting, cost/benefit, and modeling information described above is commercial information because it 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,” as provided in N.D.C.C. § 44-04-18.4(2)(a). The Company also states that the pricing, forecasting, cost/benefit, and modeling information described above is trade secret because 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 Company further states that the pricing, forecast, cost/benefit, and modeling information sought to be protected meets the definition of “trade secret” set forth in N.D.C.C. § 47-25.1-01(4).

The Company states that the Revenue Model, generation dispatch data, and other work product information described above is proprietary information because it is “[t]echnical, financial, or marketing records . . . 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).

Last, the Company states that the salary information described above is financial information pursuant to N.D.C.C. § 44-04-18.4(2)(b) because it is “information pertaining to monetary resources of a person that has not been previously publicly disclosed” and would cause competitive injury to the Company if disclosed.

2. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons.

The information described above, if disclosed, would have economic value to potential competitors, vendors, contractors, and suppliers who could use it to gain a competitive advantage on the Company in the future. For example, if pricing and forecasting information were publicly disclosed, potential competitors would have the ability to

undercut the Company for generation resources or large loads, and potential suppliers could use the information to create a floor below which they would not submit a contract or generation price to the Company. Such a result could be harmful for the Company's customers, now and in the future.

3. An explanation of why the information is not readily ascertainable by proper means by other persons.

The confidentiality of all of the information described above has been maintained by Xcel Energy. 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 agreements to maintain the confidentiality of the information. In this Case, the protected information that has been provided in response to data requests to date has only been provided under strict nondisclosure agreements.

The Company has requested that this information be treated as trade secret in all of its regulatory filings and other instances of sharing this information with governmental entities.

4. A general description of known competitors and competitors' goods and services that are pertinent to the tariff or rate filing.

Other entities from which the Company purchases power (or could purchase power and generation facilities in the future) and other utilities would obtain economic value from disclosure of this information. For example, the Revenue Model is Company-produced intellectual property that has value as a model for revenue requirement calculations. If it were made public, third parties and competitors would gain the benefit of this valuable tool at no cost. Additionally, other entities that compete with the Company for employees would gain a competitive advantage from disclosure of sensitive compensation data which has not previously been disclosed.

5. A specific description of known competitors and competitors' goods and services that are pertinent to the tariff or rate filing.

See response to No. 4 above.

6. A description of the efforts used to maintain the secrecy of the information.

See response to No. 3 above.

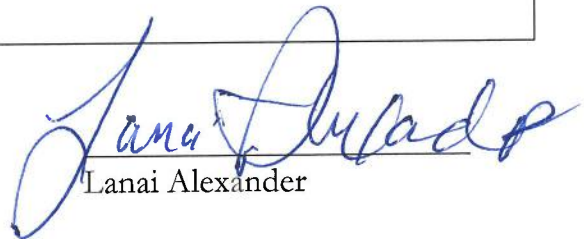
Respectfully submitted this 5th day of April, 2021.

Dorsey & Whitney, LLP

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Lanai Alexander

Subscribed and sworn before me this 5th day of April, 2021.




Notary Public
Hennepin County, Minnesota