



RFI guidelines, specifically the process of collecting additional information and working toward executing a term sheet.

5. In June 2010, after Invenergy was named as a finalist, Invenergy and NWE executed an NDA to protect confidential materials submitted after that date. The NDA ensured the continuity of protective measures for the submission of Confidential Information by the parties.

6. None of the materials that Invenergy submitted after the NDA was executed followed the guidelines in the original RFI that called for stamping pages as "confidential." Many of the materials supplied by Invenergy following execution of the NDA constitute trade secrets under Montana law and should be protected.

7. The type of information requested by NWE throughout NWE's evaluation of the Big Otter project and the protections in place changed substantively at the point that the information sought by NWE went from RFI-level information to submittals in which the majority of the information provided constituted trade secrets.

8. Invenergy does not share confidential information with the public and its employees and agents treat confidential information as trade secret and do not disclose the information outside of the organization.

9. Invenergy's business development process is a proprietary one, which utilizes proprietary financial models and develops relationships with third parties for preferential financing terms, turbine pricing, and other contractor pricing. Invenergy's development process takes an investment of considerable time (multiple years) and generates significant amounts of information. Recognizing the confidential and proprietary nature of this information, Invenergy always maintains the secrecy of this information, typically through non-disclosure agreements with its partners.

10. The information derived from Invenergy's development process generates significant economic value. Development expenditures in the industry can be a significant portion of project installation costs, and Invenergy views the minimizing of those costs as a primary competitive advantage in the market.

11. Invenergy and NWE recognized that increasingly detailed and commercially sensitive materials would be submitted after Invenergy became a finalist and that a different mechanism would be needed to protect confidential information other than that provided in the RFI. As a result, Invenergy executed an NDA with NWE in June 2010. Following execution of the agreement, Invenergy did not stamp any additional pages as "confidential" although the information submitted included a much more substantive filing, most of which constitutes confidential trade secrets pursuant to Montana law.

12. Following the execution of the NDA, requests from NWE required Invenergy to submit hundreds of pages of detailed and proprietary information. The NDA was executed to protect these materials. The NDA also allowed for submission of extensive, detailed information without stamping each page as "confidential," which allowed NWE to fully understand and evaluate the Invenergy proposals.

13. Invenergy recognizes that not all of the materials in the subsequent proposals should be protected from public disclosure. Invenergy seeks to protect the following general categories of information: 1) all cost estimates, price information and liquidated damages arrangements; 2) pro forma financial models; 3) legal and environmental risk analysis that names neighbors, land owners, and potential lawsuits; 4) wind data and energy estimates; 5) capacity factor information; 6) detailed equipment specification information; 7) information regarding conditions precedent to be satisfied prior to final contract execution; 8) financing and or security arrangements or requirements; 9) third party submittals, such as price proposals

from turbine manufacturers and balance of plant contractors, as well as cost of capital; and 10) landowner lease, easement, and study agreements..

14. Invenergy has considered that the Commission is a public agency and that there is a presumption of access to documents and information in the Commission's possession. However, based on my own personal knowledge of the information at issue in the above-captioned proceeding, I can state that the information sought has value, is secret, cannot and should not be ascertained or received by proper means by others who would obtain economic value from its disclosure, and is subject to efforts to maintain its secrecy.

15. Public disclosure of the confidential and trade secret information would undermine Invenergy's future ability to negotiate and develop energy projects by allowing its competitors to bypass such time and investment and would allow unfair advantage in the competitive negotiation process.

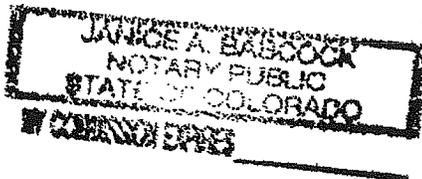
16. Invenergy supports the use of its confidential information by the Commission in making informed decisions in the NWE case.

17. Accordingly, Invenergy urges the Commission to issue an appropriate Protective Order so that trade secret information is not disclosed.

DATED this 14 day of October, 2011.

Michael Baird  
Michael Baird

SIGNED AND SWORN TO before me this 14<sup>th</sup> day of October 2011, by  
MICHAEL BAIRD



Janice A. Babcock  
(type or print name) JANICE A. BABCOCK  
NOTARY PUBLIC FOR THE STATE OF Colorado  
Residing at 2616 W. ALAMO, LITTLETON, CO 80120  
My Commission Expires: 9/15/2012

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing INVENERGY'S MOTION FOR PROTECTIVE ORDER was served upon the following by mailing a true and correct copy thereof on **October 14<sup>th</sup>** addressed as follows:

AL BROGAN  
NORTHWESTERN ENERGY  
208 N. MONTANA AVE, SUITE 205  
HELENA, MT 59601

CHARLES MAGRAW  
501 8<sup>TH</sup> AVENUE  
HELENA, MT 59601

DAVE FINE  
NORTHWESTERN ENERGY  
40 E. BROADWAY ST.  
BUTTE, MT 59701-9394

JOE SCHWARTZENBERGER  
NORTHWESTERN ENERGY  
40 E. BROADWAY ST.  
BUTTE, MT 59701-9394

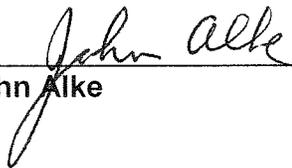
PATRICK R. CORCORAN  
NORTHWESTERN ENERGY  
40 E. BROADWAY ST.  
BUTTE, MT 59701-9394

TRACY KILLOY  
NORTHWESTERN ENERGY  
40 E. BROADWAY ST.  
BUTTE, MT 59701-9394

KATE WHITNEY  
PUBLIC SERVICE COMMISSION  
1701 PROSPECT AVENUE  
P.O. BOX 202601  
HELENA, MT 59620-2601

ROBERT A. NELSON  
MONTANA CONSUMER COUNSEL  
111 NORTH LAST CHANCE GULCH, SUITE 1B  
P.O. BOX 201703  
HELENA, MT 59620-1703

JEFF FOX  
RENEWABLE NORTHWEST PROJECT  
615 S. BLACK AVENUE  
BOZEMAN, MT 59715

  
\_\_\_\_\_  
John Alke