

of the DGGs outage, either before or after the outage.”

NWE possesses correspondence (some of which contains attachments or other embedded information) and/or other documents between NWE employees and employees of PWPS related to operational problems involving PWPS turbines at DGGs and which are therefore potentially responsive to the data requests outlined in (a) and (b) above. These documents include, but are not limited to:

- i. Investigations concerning the involvement of PWPS turbines in the outage, and attempts to determine the root cause(s) of any potential problems with the PWPS turbines involved in the outages, including an update sent to NWE by PWPS via email on or about June 18, 2012;
- ii. Results of turbine instrumentation testing related to the outage, including an update sent to NWE by PWPS via email on or about June 18, 2012;
- iii. Software test plan documents provided by PWPS to NWE, discussing plans for testing of software associated with PWPS turbines involved in the outage, including documents sent to NWE by PWPS via email on or about May 15, 2012;
- iv. “Ramp rate change” documents provided by PWPS to NWE discussing ramp rate adjustments related to NWE use of the PWPS turbines involved in the outage, including documents sent by PWPS to NWE via email on or about May 15, 2012 and June 16, 2012;
- v. “Recovery Plan” documents sent by PWPS to NWE via email on or about February 28, 2012, discussing, among other things, an offer to supply lease turbines to cover the time period when the PWPS turbines were out of service and undergoing root cause analysis and inspection; and
- vi. A proposed long term service contract supplied NWE by Peter Christman, PWPS President, and Todd Emery, PWPS Director of the FT8 Turbine Program, in response to the DGGs outage, as well as related emails between NWE and PWPS related to same.

c. PSC-008(a), (b) and (c) request “. . . the Pratt & Whitney warranty, including any amendments, supplements, or extensions, that applies to DGGs”; “. . . any other insurance or warranty product purchased by, offered to, or sought out by NWE that provides or could have provided coverage to DGGs”; and “. . . any documentation NWE possesses, correspondence between NWE employees, or correspondence between NWE employees and others related to warranty and insurance coverage of DGGs.”

NWE possesses correspondence (including attachments) and related documents from PWPS employees relating to insurance or warranty coverage offered by PWPS other than the PWPS turbine warranty which has become a public document in earlier PSC proceedings involving NWE. These documents to NWE originates from multiple PWPS employees, including but not limited to the PWPS President, the PWPS Director of the FT8 Turbine Program, as well as non-executive PWPS employees and/or PWPS contractors. All of the documents described as being potentially responsive to PSC requests PSC-006(c) & (d), as well as PSC-008(a), (b) and (c) , are the subject matter of this pending motion for protective order and which PWPS seeks to protect from public disclosure.

In addition, PWPS would note that, given the short time which has elapsed between PWPS learning of the potential for its trade secrets to be disclosed by NWE in response to the PSC data requests (NWE notified PWPS of the potential disclosure on August 9, 2012, *see* David M. Jones September 5, 2012 Affidavit, ¶7), both NWE and PWPS are still reviewing voluminous correspondence between the two companies to specifically identify all documents responsive to the data requests and which are confidential and constitute trade secrets to PWPS. As more are specifically identified, PWPS will be able to provide this information in an additional supplemental filing.

If a Protective Order is not issued, the result will be disclosure of trade secret Information that Montana law and MPSC rules and practice require to be protected.

3.

PWPS has a direct and substantial interest in the disclosure of the Information described

above. Public disclosure of PWPS's confidential and trade secret information would cause PWPS economic injury, as explained in the September 5, 2012 David M. Jones Affidavit, ¶¶ 5, 6.

4.

The following discussion establishes a complete and specific legal and factual basis for issuing the requested Protective Order. The discussion is supported by the September 5, 2012 David M. Jones Affidavit.

5.

The legal basis for this motion is that the Information is trade secret. Montana adopted and employs the Uniform Trade Secret Act (hereafter the "Act"). See MCA §§ 30-14-401, et seq.

6.

The Administrative Rules enacted by the PSC to implement the Act identifies six elements for establishing *prima facie* that Information may be protected as trade secret. ARM § 38.2.5007(4)(b).

(i) prior to requesting a protective order, the provider has considered that the commission is a public agency and that there is a constitutional presumption of access to documents and information in the commission's possession;

(ii) the claimed trade secret material is information;

(iii) the information is secret;

(iv) the secret information is subject to efforts reasonable under the circumstances to maintain its secrecy;

(v) the secret information is not readily ascertainable by proper means; and

(vi) the information derives independent economic value from its secrecy, or that competitive advantage is derived from its secrecy.

7.

PWPS understands and has fully considered the constitutional presumption in favor of public access to Information filed in PSC proceedings. David M. Jones September 5, 2012 Affidavit ¶8.

8.

The material is Information. The material for which protection is sought is comprised of knowledge, data and facts communicated in writing, and as such is Information as that term is defined by law. ARM 38.2.5001(3). David M. Jones September 5, 2012 Affidavit ¶¶3, 4.

9.

The Information is Secret. The Information reflects confidential PWPS technical and financial information, as well as confidential contract terms, including Information which discloses how PWPS responds to its customers who encounter potential problems with PWPS products, PWPS testing protocols, PWPS software development and changes to same, PWPS technical recommendations, and PWPS insurance and warranty offerings. PWPS does not share the Information for which protection is sought. David M. Jones September 5, 2012 Affidavit, ¶6.

10.

Reasonable efforts are used to maintain secrecy. PWPS protects the secrecy of the Information by entering into Confidentiality Agreements with its each of its customers including NWE. Only PWPS employees and representatives with a direct need to know are authorized to

access the Information and hard copies of the Information are marked as confidential and destroyed when no longer needed. David M. Jones September 5, 2012 Affidavit ¶6.

11.

The data is not readily ascertainable by proper means. The Information for which protection is sought is treated as confidential as between PWPS and NWE, and is not shared. David M. Jones September 5, 2012 Affidavit ¶6.

12.

The Information derives independent economic value or a competitive advantage is derived from its secrecy. If the Information is not protected, PWPS' business competitors and its other and prospective future customers would gain knowledge about PWPS' financial positions that would provide its competitors and its prospective customers with a competitive advantage or negotiating advantage. Because knowledge of the Information imparts a competitive or negotiating advantage, PWPS has historically protected, and continues to protect, the confidentiality of this type of confidential information. David M. Jones September 5, 2012 Affidavit ¶¶5, 6.

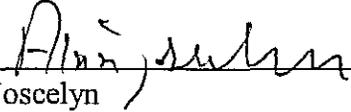
13.

For the reasons discussed in the Motion and the accompanying Affidavit of David M. Jones, PWPS respectfully asks the PSC to issue a Protective Order covering the Information described above.

14.

PWPS representatives are available to speak with PSC staff concerning any of the specific materials referred to in this Motion if staff has questions regarding the material or the basis for the assertion of trade secret status.

Dated September 5, 2012.



Alan Joscelyn
GOUGH, SHANAHAN, JOHNSON & WATERMAN, PLLP.
Attorneys For Pratt & Whitney Power Systems, Inc.

Attachments: September 5, 2012 Affidavit of David M. Jones

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has, this 5th day of September, 2012, been served by first class mail, postage prepaid, upon the following:

Charles Magraw
501 8th Ave.
Helena MT 59601

Dr. Thomas M. Power
920 Evans Ave.
Missoula MT 59801

AI Brogan
NorthWestern Energy
208 N. Montana Ave Ste 205
Helena MT 59601

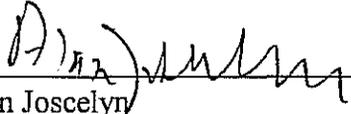
Robert Nelson
Montana Consumer Counsel
111 N. Last Chance Gulch
Suite 1B
Helena MT 59620-1703

Joe Schwartzenberger
NorthWestern Energy
40 E. Broadway
Butte MT 59701

Nedra Chase
NorthWestern Energy
40 E. Broadway
Butte MT 59701

Sarah Norcott
NorthWestern Energy
208 N. Montana Ave Ste 205
Helena MT 59601

Kate Whitney
Public Service Commission
1701 Prospect Ave.
POBox 202601
Helena MT 59620-2601


Alan Joscelyn

- c. Software test plan documents provided by PWPS to NWE, discussing plans for testing of software associated with PWPS turbines involved in the outage, including documents sent to NWE by PWPS via email on or about May 15, 2012;
 - d. "Ramp rate change" documents provided by PWPS to NWE discussing ramp rate adjustments related to NWE use of the PWPS turbines involved in the outage, including documents sent by PWPS to NWE via email on or about May 15, 2012 and June 16, 2012;
 - e. "Recovery Plan" documents sent by PWPS to NWE via email on or about February 28, 2012, discussing, among other things, an offer to supply lease turbines to cover the time period when the PWPS turbines were out of service and undergoing root cause analysis and inspection; and
 - f. A proposed long term service contract sent to NWE by Peter Christman, PWPS President and Todd Emery, PWPS Director of the FT8 Turbine Program, in response to the DGGS outage, as well as related emails between NWE and PWPS related to same.
4. A second category of specific documents for which protection is sought is correspondence to NWE from PWPS employees relating to insurance or warranty coverage offered by PWPS (other than the PWPS turbine warranty which has become a public document in earlier PSC proceedings involving NWE). This correspondence to NWE originates from multiple PWPS employees, including but not limited to the PWPS President, the PWPS Director of the FT8 Turbine Program, as well as non-executive PWPS employees and/or PWPS contractors.
5. The documents described in paragraphs 3 and 4, which PWPS is seeking to protect, are trade secrets under ARM 38.2.5007(4)(b) for the following reasons:
- a. The electrical generating industry in Montana and elsewhere is highly competitive and product and service providers to this industry aggressively market their products and services.
 - b. Knowledge on the part of PWPS's competitors concerning the following topics (which are meant to be exemplars, and do not represent a complete list of topics):
 - i. the potential involvement of PWPS turbines in the DGGS outage, including PWPS' investigations into the outage;
 - ii. PWPS's instrumentation testing and software testing;
 - iii. PWPS ramp rate adjustment recommendations;
 - iv. PWPS recovery plan recommendations and offers;
 - v. PWPS long term service contract proposals; and
 - vi. insurance or warranty coverage offered by PWPS (other than the PWPS turbine warranty which has become a public document in earlier PSC proceedings involving NWE);

would, should it come into the possession of PWPS competitors, give those competitors a distinct competitive advantage by giving them secret information about the performance of PWPS' products, as well as secret information about how PWPS

relates to its customers with respect to its products, the performance of the products (including but not limited to cross sections and diagrams of the turbines, and other sensitive technical performance data and drawings), the manner in which PWPS reacts to performance issues relating to its products, the assistance it provides to its customers and the terms and contents of that assistance, and the terms under which PWPS provides insurance and warranty coverage for its products. The manner in which the competitive advantage would arise is that, in future dealings with consumers of products and services which PWPS provides, PWPS competitors would be able to fashion offers and bids based on an insider's knowledge of PWPS' technical and financial capabilities, whereas PWPS would not have the same advantage in that it does not have similar information of its competitors' turbines and related contracts, ancillary products, and ancillary services.

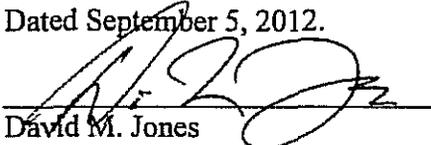
6. Having this information would allow PWPS' competitors a competitive advantage they do not now have, in future negotiations with prospective customers, including NWE. This advantage would be an unfair advantage because it would be based on Information which PWPS considers proprietary, trade secret, and/or otherwise confidential, and which it protects by entering into Confidentiality Agreements with its customers such as and including NWE. PWPS does not share or disclose this Information, and this information cannot be obtained by third persons such as PWPS' competitors, by proper means. Only PWPS employees and representatives with a direct need to know are authorized to access the Information and hard copies of the Information are marked as confidential and destroyed when no longer needed.
7. PWPS did not become aware of the potential disclosure of the Information until August 9, 2012, when it was notified by NWE of its intention to produce the Information in the above-captioned proceeding.

(affidavit continues on following page)

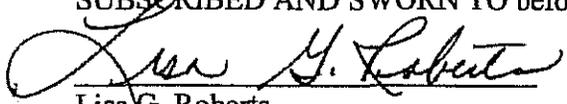
8. Prior to filing the Motion which this affidavit supports, PWPS considered the constitutional presumption in favor of disclosing materials provided to the PSC. Based on my experience and having fully considered the factual and legal bases required for protection of confidential Information, I have, with the assistance of qualified legal counsel, formed a good faith belief that the information described in paragraphs 3 and 4 above, and in the accompanying Motion for a Protective Order, are trade secrets that may be protected from public disclosure under the law, including ARM 38.2.5007.

END OF AFFIDAVIT

Dated September 5, 2012.


David M. Jones
Associate General Counsel
Pratt & Whitney Power Systems, Inc.

SUBSCRIBED AND SWORN TO before me this 5th day of September, 2012.


Lisa G. Roberts
Notary Public for the State of Connecticut
Having a business address of 400 Main Street, M/S 191-11, East Hartford, CT 06108
My commission expires December 31, 2015

LISA G. ROBERTS
NOTARY PUBLIC
MY COMMISSION EXPIRES DEC. 31, 2015