

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF NorthWestern Energy's)
2011-2012 Electricity Supply Tracker)

REGULATORY DIVISION
DOCKET NO. D2012.5.49

**PRATT & WHITNEY POWER SYSTEM INC.'S
SECOND SUPPLEMENTAL MOTION FOR PROTECTIVE ORDER**

1.

Pratt & Whitney Power Systems, Inc. ("PWPS") makes this second supplemental Motion for a Protective Order pursuant to ARM 38.2.5001 - 5030, for protection of confidential trade secrets contained within documents which are within the scope of Data Requests Nos. PSC-006(c) and (d) and PSC-008(a), (b), and (c), made by the Public Service Commission ("PSC") to Northwestern Energy ("NWE") in this docket. This motion is supported by the attached affidavit of Tanya Tymchenko, Counsel, PWPS, who is qualified to provide testimony on this matter.

2.

PWPS' interest is in protecting confidential trade secret information contained in documents possessed by NWE, including correspondence and attachments to such correspondence, as follows:

NWE Documents Responsive to PSC-006(c)

The following documents which have been marshaled by NWE as responsive to PSC-006(c) contain trade secret information which should be protected:

- Email chain 5 pages January 12, 2012 to January 17, 2012, principally between Mike Voeller of NWE and Michael Patrizzi, PWPS, regarding incident with Unit 2B preventing operation and initial observations of turbine.

- Email chain 3 pages, May 17, 2011, Mike Terry, NWE to Mike Patrizzi, PWPS re loss of primary channel on GG2B TE007, change-out of EGT and warranty replacement of EGT by PWPS.
- Email chain 4 pages July 8, 2011 through July 19, 2011, Mike Terry, NWE and John Gero, Powell Industries re generator breaker event.
- Email chain 5 pages January 18, 2012 to January 22, 2012, Mike Patrizzi, NWE and Bill “Dusty” Rhoads, NWE. Particularly the following emails: Email of January 22, 2012 from Mike Patrizzi to William W. Thompson, NWE re sending a PWPS field rep to NWE under warranty to borescope PT 2A and other PTs; Email of January 22, 2012 from Bill Rhoads to John Hines and Michael Cashell re PWPS coming out to NWE under warranty to borescope PT units.
- Email chain 6 pages, January 20, 2012 to January 24, 2012. Particularly the following emails: Email of January 22, 2012 from Mike Patrizzi to William W. Thompson, NWE re sending a PWPS field rep under warranty to borescope PT 2A and other PTs.
- Email chain 6 pages January 18, 2012 to January 22, 2012. Particularly the following emails: Email of January 22, 2012 from Mike Patrizzi to William W. Thompson, NWE re sending a PWPS field rep to NWE under warranty to borescope PT 2A and other PTs; Email of January 22, 2012 from Bill Rhoads to John Hines and Michael Cashell re PWPS coming out to NWE under warranty to borescope PT units.
- Email chain 6 pages January 18, 2012 to January 24, 2012. Particularly the following emails: Email of January 22, 2012 from Mike Patrizzi to William W. Thompson, NWE re sending a PWPS field rep under warranty to borescope PT 2A and other PT.
- Email chain 3 pages January 12, 2012 to January 26, 2012 between Mike Voeller, NWE and Mike Patrizzi, re incident with unit 2B preventing operation and description of visual inspection and re turbine 2B being received by PWPS stating PWPS is in process of dismantling and diagnosing root cause.
- Email chain 3 pages January 12, 2012 to January 1, 2012 between Mike Voeller, NWE and Mike Patrizzi re incident with unit 2B preventing operation and description of visual inspection, and follow up.
- Email of January 19, 2012 from James Williams to Mike Patrizzi asking for address for repair facility for the power turbine, confirming Mike Voeller will also show and confirm he has an NDA with NWE and NWE has an NDA with PWPS.
- Email chain 3 pages, January 19, 2012 and January 20, 2012, same as above but additional notes discussing possible need for additional NDAs for personnel.

- Email chain 4 pages, January 19, 2012 and January 20, 2012, same as above and additional notes re logistics of visit.
- Email chain 5 pages January 19, 2012 and January 20, 2012, duplicative of previous chains regarding logistics of visit to repair facility.
- Email chain 7 pages January 19, 2012 and January 20, 2012, duplicative of previous chains regarding logistics of visit to repair facility and with further discussion of NDAs.
- Email chain 8 pages January 19, 2012 and January 20, 2012, duplicative of previous chains regarding logistics of visit to repair facility and with further discussion of NDAs.
- Email chain 7 pages January 19, 2012 and January 20, 2012, duplicative of previous chains regarding logistics of visit to repair facility and with further discussion of NDAs.
- Email chain 4 pages January 18, 2012 to January 23, 2012. Particularly including the email of January 22, 2012 from Mike Patrizzi to William W. Thompson, NWE re sending a PWPS field rep to NWE under warranty to borescope PT 2A and other PTs.
- Email chain 3 pages January 23, 2012, Mike Voeller, Jim Williams, Mike Patrizzi, re logistics of visit.
- Email chain 4 pages, January 18, 2012 to January 23, 2012, Mike Patrizzi, Bill Thompson, Mike Voeller re blanking plate. Particularly including the following emails: Email of January 22, 2012 from Mike Patrizzi to William W. Thompson, NWE re sending a PWPS field rep to NWE under warranty to borescope PT 2A and other PTs. January 23 email from Mike Voeller to Jim Fitzpatrick, NAES, regarding possible cause.
- Email chain, 5 pages, same as foregoing item but with additional notes re setting time to talk.
- Email chain 4 pages, January 23, 2012, Mike Voeller, Mike Patrizzi, Jim Williams, Jim Fitzpatrick, duplicative of above items but with additional notes re NDAs.
- Email chain 2 pages, January 23, 2012, Mike Patrizzi, Jim Williams, duplicative, re visit logistics and NDA for NAES.
- Email chain 3 pages, January 23, 2012, Mike Patrizzi, Jim Fitzpatrick, Mike Voeller, re visit logistics and NDA need.
- January 23, 2012 email, Mike Voeller to Mike Patrizzi asking status on PTTB actuator with Position Feedback and U2B EGT Harness.
- Email chain 3 pages, January 23, 2012, Mike Patrizzi and Jim Williams, re visit and need for NDA.

- Email chain 4 pages, January 23, 2012, Mike Patrizzi, Jim Williams, Mike Voeller, re visit logistics and NDA need. Duplicative of some of foregoing items.
- Email chain 7 pages, January 18, 2012 to January 24, 2012, Mike Patrizzi, Mike Voeller, Bill Thompson. Particularly email of January 22, 2012 from Mike Patrizzi to William W. Thompson, NWE re sending a PWPS field rep to NWE under warranty to borescope PT 2A and other PTs.
- Email chain 6 pages, January 18, 2012 to January 24, 2012, Mike Patrizzi, Mike Voeller, Bill Thompson. Particularly Email of January 22, 2012 from Mike Patrizzi to William W. Thompson, NWE re sending a PWPS field rep to NWE under warranty to borescope PT 2A and other PTs.
- Email chain 8 pages, duplicate of foregoing item but with additional note from Mike Patrizzi to Mike Voeller and Bill Thompson re Engineering having completed retrofit kit for PT004 sense line freeze up.
- Email chain 3 pages, January 12, 2012 to January 26 2012, duplicative of some of foregoing but with additional note of January 26 from Mike Voeller to Mike Patrizzi and others re status re 2B turbine receipt, dismantling and diagnosing of root cause by PWPS, and re status of boroscope inspection, duct blank engineering review and blanking plate installation.
- Email chain 7 pages, January 18, 2012 to January 25, 2012, Mike Patrizzi, Mike Voeller, Patrick Powers, Casey Johnston. Particularly Email of January 22, 2012 from Mike Patrizzi to William W. Thompson, NWE re sending a PWPS field rep to NWE under warranty to borescope PT 2A and other PTs, plus items on boroscope test timing.
- Email chain 4 pages, January 12, 2012 to January 17, 2012, Mike Voeller and Mike Patrizzi, duplicative of some of foregoing items re report of 2B incident, and visual inspection thereof.
- Email chain 18 pages, February 23, 2011, Mike Terry, Dusty Rhoads, Mike Patrizzi, Brett Gish, and others, re Northwestern Energy MCGS U2 rotor earth fault.
- Email chain 3 pages, March 16, 2011 to March 22, 2011, Mike Terry and Mike Patrizzi re 1A Right TT5 Harness has broken lead, including inquiry and confirmation of coverage by warranty.
- Email chain 6 pages, April 2, 2011 to April 5, 2011, Justin Mason, Brett Gish, Mike Patrizzi, Mike Terry, re U2A Lube Oil Pump 601 (pump performance issue, replacement, warranty).
- Email April 14, 2011, Mike Terry to George Kochel, Mike Patrizzi and others re notice of rotor earth Fault alarm, unit 3 generator.

- Email chain 6 pages, April 14, 2011 to April 18, 2011, Mike Terry, Bob Schuyler, Mike Patrizzi, Jim Fitzpatrick, re U3 Generator Event, including April 18, 2011 email from Mike Terry to Mike Patrizzi and others re plan of action including PWPS actions.
- Email chain 6 pages, April 14, 2011 to April 18, 2011 re U3 Generator Event, Mike Patrizzi, Mike Terry, including April 14, email from Mike Patrizzi re PWPS findings from file 041311U3.OSC.
- Email chain 2 pages April 19, 2011, Mike Patrizzi and John Charnitske re U2 trip on DC lube oil pump issue.
- Email chain April 14, 2011 to April 20, 2011, Mike Patrizzi, Mike Terry, Bob Schuyler, re U3 Generator Event. Duplicative of some of foregoing, including April 14, email from Mike Patrizzi re PWPS findings from file 041311U3.OSC.
- Email chain 7 pages, April 14, 2011 to April 20, 2011, Mike Terry, Mike Patrizzi, Bob Schuyler, re U3 Generator Event, duplicative of foregoing.
- Email chain 9 pages, May 4, 2011 to May 11, 2011, Terry Trezakis, Jaxon Boeckel, re Unit 3 Nox Control issues.
- Email chain 6 pages, May 1, 2011 to May 4, 2011, Mike Terry, Mike Patrizzi, re U2 Generator 916794.010 27TN Relay Event.
- Email chain 2 pages, May 12, 2011, Mike Terry and Mike Patrizzi, re GG1A MOP-601 Cascon Oil sump seized up.
- Email chain 2 pages, May 12, 2011, Mike Terry and Mike Patrizzi, duplicative of foregoing item with one additional note.
- Email chain 2 pages, May 17, 2011, Mike Terry and Mike Patrizzi, re EGT Failure on GG2B TE-007 (request for and confirmation of warranty replacement).
- Email chain 4 pages, July 18, 2011, Mike Terry and Mike Patrizzi, re 2B MOP601 PN: CT116911 issue, including discussion of pump misalignment as possible root cause.
- Email chain 7 pages July 11, 2011 to July 21, 2011, Mike Terry, Mike Patrizzi, John Gero, Lyle Ferguson, re Unite 3 52G breaker failure to open, and regarding possible root cause.
- Email chain 3 pages, August 2, August 3, 2011, Mike Patrizzi, John Charnitski, Blaine Stone, re S flange spike.
- Email chain 4 pages, August 9, 2011, August 10, 2011, Mike Patrizzi, John Charnitski, re U3 breaker did not open.

- Email chain 2 pages, September 5, 2011, September 6, 2011, Lyle Ferguson and Mike Patrizzi, re issues with, and replacement of, SOVs.
- Email chain 4 pages, September 7, 2011, September 8, 2011, John Charnitski and Mike Patrizzi, re signal failure alarm for TE101, U1.
- Email chain 5 pages, same persons and subject as foregoing item.
- Email chain 5 pages, same persons and subject as foregoing item.
- Email chain 2 pages, September 9, 2011, September 13, 2011, Lyle Ferguson and Mike Patrizzi, same subject as foregoing item.
- Email chain 3 pages, September 13, 2011, September 14, 2011, John Charnitski and Mike Patrizzi, same subject as foregoing item.
- Email chain 2 pages, September 9, 2011, Sept. 12, 2011, Lyle Ferguson and Mike Patrizzi, same subject as foregoing item, with analysis and advice by Mike Patrizzi.
- Email chain 5 pages, September 13, 2011, Sept. 14, 2011, John Charnitski, Mike Patrizzi and Mike Voeller, same subject as foregoing item.
- Email chain 2 pages, September 16, 2011, John Charnitski and Mike Patrizzi, re TTEC DB, advice by Mike Patrizzi.

NWE Documents Responsive to PSC-006(d)

The following documents which have been marshaled by NWE as responsive to

PSC-006(d) contain trade secret information which should be protected:

- Email chain, 1 page, February 24, 2012, William Thompson and William Rhoads re PWPS recommended ramp rate per min/per unit.
- Email chain 4 pages, January 31, 2012 to February 14, 2012, James Williams, NWE and Mike Patrizzi regarding recommendations for taking SwiftPac Units 1, 2 and 3 out of operation due to findings from Unit 1 and 2 inspections, and related warranty discussions.
- 15 pages, PWPS Engineering "Power Turbine Inlet Distress Investigation & Power Restoration Update Montana Northwestern Energy Feb. 8, 2012", photos, description and narrative.
- 17 pages, PWPS Engineering "Power Turbine Inlet distress Investigation & Instrumentation Test Update Montana Northwestern Energy June 18, 2012".

- 7 pages, January 16, 2012 “80403 Northwest Energy Montana - Vibs, #7 Support Cracked” Description of problem.
- 13 pages PWPS Engineering “Power Turbine Inlet Distress Investigation & Power Restoration Update Montana Northwestern Energy April 16, 2012.”
- 17 pages PWPS Engineering “Power Turbine Inlet Distress Investigation & Power Restoration Update Montana Northwestern Energy June 18, 2012.”
- 7 pages, Aril 22, 2012, borescope photos.
- February 9, 2012 email from Mike Patrizzi to Jim Williams concerning warranty coverage for the PTs, including discussion of extent of coverage under the Contract.
- Email July 23, 2012, Todd Emery to Dusty Rhoads re on-site testing (schedule update).

NWE Documents Responsive to PSC-008(a), (b) and (c)

The following documents which have been marshaled by NWE as responsive to PSC-008(a), (b) and (c) contain trade secret information which should be protected:

- Email January 31, 2012, James Williams to Mike Patrizzi and reply of February 9, 2012 re coverage of turbine warranty.
- Email chain 2 pages, December 15, 2012 to December 15, 2012, Gary Wiseman, Shaw Group and Bill Rhoads, re fuel oil samples and possible effect of contamination on warranty.
- Email chain 6 pages, November 18, 2010 to December 14, 2010, Gary Wiseman, Lee Polley (PWPS), “Dusty” Rhoads (NWE), includes discussion of additional charge to extend warranty.
- Email December 14, 2010, Lee Polley to Gary Wiseman re Performance Letter of Credit and related terms.
- Emails July 26, 2011, between Mike Patrizzi and Jim Williams re: service evaluation and keeping the request for hosting service evaluation confidential; reply of July 26, 2011 from Jim Williams asking about warranty coverage of same; reply of Mike Patrizzi concerning same.
- Email exchange January 17, 2012 and April 23, 2012, Mike Patrizzi, Bill Thompson and Henry Seal, re warranty coverage vis a vis installation of blanking plate.

- Email March 18, 2010, Dusty Rhoads to Lee Polley, including discussion of need to modify contract later to implement the extended warranty.
- Email December 10, 2010, Lee Polley to Gary Wiseman, including discussion of price for Extended Warranty.
- Email October 13, 2010, Matthew Fischer (NWE) to Lee Polley including discussion of Contract Lifecycle Management Agreement and option to extend warranty for all equipment for which PWPS accepts responsibility, re Mill Creek Station.
- Email September 23, 2010, Matthew Fischer to Philip Vecchiarelli, re NWE wishing to exercise extended warranty option on all PWPS supplied equipment.
- Email exchange, May 3, 2010 to May 24, 2010, Dusty Rhoads, Brett Gish, Jim Williams, Gene Scott, re reimbursement of NWE by PWPS for work repairing welds on SCR # 1 and SCR #2.
- Email December 13, 2010, Gary Wiseman to Dusty Rhoads, includes price of extended warranty.
- Modification #3 to P.O. #301264 Agreement for extended warranty, includes warranty pricing and terms.
- Email December 21, 2010, Stefan Zavatore (PWPS) to Dusty Rhoads re PWPS agreement to extend warranty for specific Brush generator.
- Email exchange February 24, 2012, Bill Thompson and Dusty Rhoads re ramp rate, operation of units 1, 2 and 3.
- 3 pages, PWPS Draft Service Evaluation description, July 25, 2011.
- 14 pages, PWPS Project Status Report for NWE, November 30, 2010.
- 2 pages, Modification No. 2 to the Agreement between NWE and PWPS, discusses exercise of agreement to extend warranty.
- 1 page letter, October 6, 2010, Lee Polley of PWPS to Dusty Rhoads, re offer to supply On-Site Remote Monitor systems, includes discussion of warranty for equipment (per existing contract terms).
- 5-page Memo, by Heather Grahame, General Counsel, NWE, regarding April 19, 2012 meeting between NWE and PWPS in Connecticut, distributed to NWE Board, including PWPS initial impressions re root cause and response by PWPS to date.

- Email June 4, 2012, Peter Christman to Robert Rowe, re extension of warranty period and related contract term discussion, proposed Lon Term Service Agreement.

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 January 14, 2013 Tanya Tymchenko Affidavit, ¶ 3.

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 January 14, 2013 Tanya Tymchenko 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. Tanya Tymchenko January 14, 2013 Affidavit ¶4.

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). Tanya Tymchenko January 14, 2013 Affidavit ¶3.

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 and takes measures to protect their sensitive / proprietary / trade secret nature. Tanya Tymchenko January 14, 2013 Affidavit, ¶3.

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. Tanya Tymchenko January 14, 2013 Affidavit, ¶3.

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. Tanya Tymchenko January 14, 2013 Affidavit, ¶3.

12.

The Information derives independent economic value or a competitive advantage is derived from its secrecy.

The products PWPS sold to NWE are high technology, aero-derivative gas turbines. There are only three aeroderivative gas turbine manufacturers in the world. Information the other two manufacturers glean from PWPS' interaction with its customers, including obtaining such vital information such as technical drawings, specifications, performance guarantees, management of any potential or actual product performance or durability issues, and pricing, confers a competitive advantage to those manufacturers and risks giving the competitors a significant and unfair advantage in the industry, and could put PWPS out of business. This would be detrimental to NWE and other aeroderivative gas turbine customers because it would

then leave only two manufacturers from whom they may purchase these types of turbines and certain related services. Tanya Tymchenko January 14, 2013 Affidavit, ¶3.

Allowing other customers to have access to PWPS proprietary / trade secret data allows those customers to have information they can use to leverage pricing to amounts that are barely profitable, or not profitable at all, for PWPS, and again putting PWPS at risk of losing its place as one of only three aeroderivative gas turbine manufacturers in the world. This does not benefit consumers in the short or long term. Tanya Tymchenko January 14, 2013 Affidavit, ¶3.

Additionally, to the extent access to the described documents allow competitors to understand how PWPS handles customer complaints, product issues and warranty claims, it allows a competitor to adjust its response to customer complaints accordingly, potentially undercutting PWPS in the marketplace. Tanya Tymchenko January 14, 2013 Affidavit, ¶3.

Further, if another customer understood how PWPS was handling this specific warranty complaint, the customer could use this information to demand similar recourse from PWPS even where such recourse would not be appropriate for that customer's particular product performance issue, thus eroding PWPS' position with that customer and potentially requiring PWPS to offer unnecessary and costly product improvements to that customer, again eroding PWPS profitability. Tanya Tymchenko January 14, 2013 Affidavit, ¶3.

13.

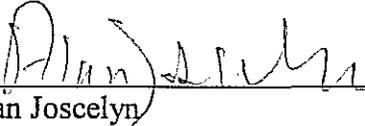
For the reasons discussed in this Motion and the Affidavit of Tanya Tymchenko, PWPS respectfully asks the PSC to issue a Protective Order covering the Information described above.

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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 January 15, 2013.



Alan Joscelyn

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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has, this 15th day of January, 2013, been served by first class mail, postage prepaid, upon the following:

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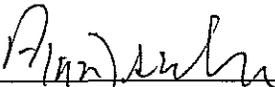
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