

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

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

REGULATORY DIVISION
DOCKET NO. D2012.5.49

PUBLIC SERVICE
COMMISSION

PRATT & WHITNEY POWER SYSTEM INC'S MOTION FOR PROTECTIVE ORDER

1.

Pratt & Whitney Power Systems, Inc. (PWPS) moves 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 to Northwestern Energy (NWE) in this docket. This motion is supported by the attached affidavit of David M. Jones, Associate General Counsel, PWPS, who is qualified to provide testimony on this matter.

2.

PWPS's interest is in protecting confidential trade secret information contained in documents possessed by NWE, including correspondence and attachments to such correspondence, relating to business dealings between NWE and PWPS. The information which PWPS seeks to protect may be described and identified nonconfidentially as documents in the possession of NWE, including correspondence between PWPS and NWE and attachments to such correspondence, concerning "the cause of the DGGS shortage" or the "operational problems of DGGS", (PSC-006(c) and (d)), and any documents relating to warranties and insurance (PSC-008 (a), (b) and (c)). 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 David M. Jones Affidavit.

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 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 Affidavit ¶7.

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 Affidavit ¶3.

9.

The Information is Secret. The Information reflects how PWPS negotiates with its customers concerning its products and its warranties on its products, and PWPS does not share the Information for which protection is sought. David M. Jones Affidavit, ¶4.

10.

Reasonable efforts are used to maintain secrecy. PWPS protects the secrecy of the Information by entering into Confidentiality Agreements with its customers such as and

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 Affidavit ¶5.

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.

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, respectively. Because knowledge of the Information imparts a competitive or negotiating advantage, PWPS has historically protected the confidentiality of this type of confidential information.

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 August 23, 2012.



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

Attachments: Affidavit of David M. Jones

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has, this 23 day of August, 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

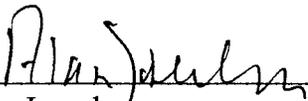
Robert Nelson
Montana Consumer Counsel
111 N. Last Chance Gulch
Suite 1B
Helena MT 59620-1703

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

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IN THE MATTER OF NorthWestern Energy's)
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REGULATORY DIVISION
DOCKET NO. D2012.5.49

**AFFIDAVIT OF DAVID M. JONES IN SUPPORT OF PRATT & WHITNEY POWER
SYSTEMS INC.'S MOTION FOR PROTECTIVE ORDER**

STATE OF CONNECTICUT)
) ss: East Hartford
County of Hartford)

David M. Jones, being first duly sworn, states:

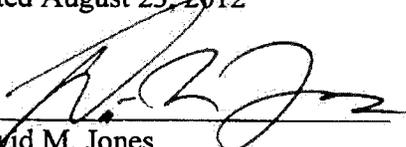
1. I am employed by Pratt & Whitney Power Systems, Inc. (hereafter "PWPS") as Associate General Counsel, with day-to-day responsibility for managing legal matters, including assurance of protection of confidentiality for company documents, data and information constituting confidential information. In that role, I have personal knowledge about procedures for protection of confidential information included in correspondence and business transactions between PWPS and Northwestern Energy ("NWE"), which information is 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 to NWE in this docket.
2. NWE is a utility company engaged in the generation of electricity in Montana and regulated by the Montana Public Service Commission ("PSC"). NWE is a company with which PWPS has conducted business in the past and will likely continue to conduct business with in the future.
3. The specific documents for which protection is sought may be categorically and nonconfidentially described as documents in the possession of NWE, including correspondence between PWPS and NWE and attachments to such correspondence, including but not limited to reports, concerning "the cause of the DGGS shortage" or the "operational problems of DGGS", (PSC-006(c) and (d)), and any documents relating to "other" warranties and insurance (PSC-008 (a), (b) and (c)).
4. 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. Possession of the information for which protection is sought would give PWPS's competitors distinct competitive advantage based on knowledge of PWPS's

negotiations and business dealings with NWE, as well as PWPS' sensitive technical data relating to its products and services. Possession of the Information for which protection is sought would give other present and future potential customers of PWPS distinct competitive advantage with respect to negotiations with PWPS based on knowledge of PWPS's negotiations and business dealings with NWE. PWPS does not share or disclose this Information.

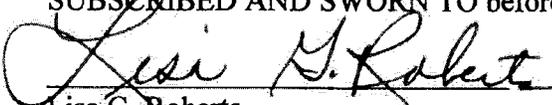
5. PWPS protects the secrecy of the Information by entering into Non-Disclosure and/or Confidentiality Agreements with its customers such as, and including, NWE. Only PWPS employees and representatives with a direct need to know are authorized to access the Information and hard copies of the Information are marked as confidential and destroyed when no longer needed.
6. The type of Information for which protection is sought has been accorded protection in other jurisdictions where analogous data requests have been made.
7. Prior to filing the Motion that 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 paragraph 3 above, and in the accompanying Motion for a Protective Order are trade secrets that may be protected from public disclosure under the law.

END OF AFFIDAVIT

Dated August 23, 2012


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

SUBSCRIBED AND SWORN TO before me this 23rd day of August, 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 12/31/2015