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Attorneys for NorthWestern Energy

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

IN THE MATTER OF NorthWestern Energy's	)	
Application for Approval to Purchase and Operate	)	REGULATORY DIVISION
PPL Montana's Hydroelectric Facilities, for	)	
Approval of Inclusion of Generation Asset Cost	)	DOCKET NO. D2013.12.85
of Service in Electricity Supply Rates, for	)	
Approval of Issuance of Securities to Complete the	)	
Purchase, and for Related Relief	)	

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**NorthWestern Energy's Motion for Protective Order and  
Brief in Support of Personal Information**

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NorthWestern Corporation d/b/a NorthWestern Energy ("NorthWestern") hereby submits to the Montana Public Service Commission ("Commission") this *Motion for Protective Order and Brief in Support* ("Motion"). NorthWestern hereby moves the Commission, pursuant to Administrative Rule of Montana ("ARM") 38.2.5001 through 38.2.5030, for a protective order to govern the use and disclosure of the information identified herein. In support of NorthWestern's

Motion, NorthWestern files the *Affidavit of Brian B. Bird* (“Bird Affidavit”), attached hereto as Attachment 1.

## I. INTRODUCTION

On December 20, 2013, NorthWestern is filing an application in this docket for Commission approval of the purchase of PPL Montana, LLC’s (“PPLM”) 11 hydroelectric generating facilities and related assets in Montana (“Hydros”) and for related relief (“Application”). As identified in the Application, an exhibit attached to the Application as Exhibit \_\_ (APP-2) includes information that NorthWestern believes is protectable personal information under Montana’s Right to Privacy. NorthWestern redacted this information from the public filing.

As described more specifically herein, NorthWestern seeks a protective order from the Commission to keep this information confidential. Therefore, NorthWestern, as the provider, respectfully requests the Commission grant protection of the personal information included in Exhibit \_\_ (APP-2) attached to the Application.

NorthWestern 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. NorthWestern understands it has the burden of demonstrating that the identified information is confidential information and that it must, within this Motion, establish a *prima facie* showing of confidentiality, factually and legally, and make clear the basis for the claim of confidentiality.

NorthWestern fully appreciates the dilemma faced by the Commission in administering the state’s broad right to access public information. NorthWestern, in this Motion, respectfully represents that it has overcome the presumption that the public should have unrestricted access to the documents and information described herein. NorthWestern provides herein a *prima facie*

showing of confidentiality, both factually and legally, and explains the basis for the claim of confidentiality.

## **II. CONTACT PERSONS**

The contact persons regarding this Motion and regarding the documents to be protected are:

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## **III. IDENTIFICATION OF CONFIDENTIAL INFORMATION**

A complete and specific non-confidential identification, item by item or by category of like items, for which protection is being sought, includes personal information contained on Schedule 3.12(a) (“Schedule”) of the Purchase and Sale Agreement (“PSA”) entered into on September 26, 2013 between NorthWestern and PPLM, which is attached to the Application as Exhibit \_\_ (APP-2). More specifically, the Schedule contains the names of PPLM employees that work on the Hydros, their job titles and the location of their jobs.

## **IV. FACTUAL AND LEGAL BASES FOR PROTECTION**

For the items listed above, a complete and specific factual basis, including thorough identification and explanation of specific facts, and a complete and specific legal basis and application of the law to facts follows. An affidavit supporting the facts is attached as required

by ARM 38.2.5007(3)(c). The affiant is a person qualified on the subject matter, and the affidavit supports the claim of confidentiality of the personal information contained in the Schedule.

**A. Individual Right to Privacy.**

Section 69-3-105(2), MCA, provides in part that “[t]he commission may issue a protective order when necessary to preserve . . . other information that must be protected under law, as required to carry out its regulatory functions.” Pursuant to Article 2, Section 10 of the Montana Constitution, “[t]he right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.” The Montana Supreme Court has held that the redaction of third-parties’ names is appropriate in order to protect an individual’s right to privacy. *Yellowstone County v. Billings Gazette*, 2006 MT 218, ¶¶ 24-25, 333 Mont. 390, 143 P.3d 135 (“determined that redacting individuals’ names from public records sufficiently protects their privacy.”). Additionally, other identifying information of employees, such as job title and department, has been held to be protectable and subject to redaction from public disclosure by the Supreme Court. *See Billings Gazette v. City of Billings*, 2013 MT 334, ¶ 17, 313 P.3d 129 (upholding the District Court’s decision that employees had an expectation of privacy in specific employee identifying information.).

Under ARM 38.2.5007(4)(a), a protective order that is sought based on individual privacy must show the following:

1. the provider has made a reasonable effort to contact the individual to ascertain whether the individual waives the right to privacy or the information at issue;
2. the individuals with potential privacy interests have actual, subjective expectations of privacy in the information at issue;
3. society recognizes such expectations of privacy as reasonable; and

4. the demand of individual privacy clearly exceeds the merits of public disclosure.

Each of these requirements is addressed below.

**1. Contact with individual to ascertain whether said individual will waive the right to privacy for the information at issue.**

As described in the attached Affidavit, NorthWestern was unable to ascertain whether the individuals named on the Schedule would waive their right to privacy because these individuals are not employees of NorthWestern and thus, NorthWestern did not have an ability to discuss such matters with them. Bird Affidavit, ¶ 5. It would be inappropriate and unreasonable to expect NorthWestern to contact these individuals to ascertain whether or not they waive their right to privacy.

**2. Actual and subjective right to privacy in such information.**

As discussed above, in Montana, individuals have an actual and subjective right to privacy of their identifying information. Accordingly, NorthWestern protects its employees' information from disclosure in public proceedings. Bird Affidavit, ¶ 6. As such, NorthWestern redacts similar information from documents it files with the Commission. *Id.*

**3. Society recognizes such expectations of privacy as reasonable.**

Whether society recognizes an expectation of privacy as reasonable is a fact specific determination. *Billings Gazette*, 2013 MT at ¶ 21. The facts of this case support society recognizing an expectation of privacy of these individuals' personal information. In unregulated mergers and acquisitions, personal information contained in the contract between the parties is confidential information and not generally released to the public. Since NorthWestern is a fully regulated entity and the Hydros' transaction is subject to Commission approval, the PSA must be filed with the Commission and thus will be available to the public. These individuals are not

parties to the docket or parties to the PSA negotiations. Bird Affidavit, ¶ 7. As such, they did not have an opportunity to decide whether their personal information should be included in the Schedule. Also, given the fact that the Hydros' transaction is still dependant on Commission approval, these individual's information should remain private. Because the PSA must be made public in this docket and the individuals named in the Schedule were not parties to the negotiation of the PSA and are not parties to the docket, society should recognize the individuals' right to privacy.

#### **4. Demand of individual privacy clearly exceeds the merits of public disclosure.**

In this case, for the reasons already discussed, an individual's privacy clearly outweighs the public's right to know. The information for which a protective order is sought is not information that will benefit the public. The public's right to know outweighs an individual's right to privacy in cases where the individual holds a position of public trust. *Great Falls Tribune v. Sheriff*, 238 Mont. 103, 107, 775 P.2d 1267, 1269 (1989). The individuals in this case are not public employees. Bird Affidavit, ¶ 7.

### **V. SUMMARY AND REQUEST FOR RELIEF**

Accordingly, personal information contained in Schedule 3.12(a) in Exhibit \_\_ (APP-2) attached to the Application is otherwise legally protectable confidential information within the meaning of ARM 38.2.5007. Protection of this information is required in order to protect the named individuals' right to privacy. As a result, the Commission is well supported in a decision to preserve the confidentiality of such information identified above through the issuance of a protective order. Consistent with the Montana Supreme Court's pronouncements in *Great Falls Tribune v. Montana Public Service Commission*, 2003 MT 359, 319 Mont. 38, 82 P.3d 876, and the Commission's authority under § 69-3-105(2), MCA, NorthWestern therefore respectfully

requests a protective order covering the personal information contained in Schedule 3.12(a) of the PSA. In support of this Motion, NorthWestern has attached the *Affidavit of Brian B. Bird*.

Respectfully submitted this 20<sup>th</sup> day of December, 2013.

NORTHWESTERN ENERGY

By:  \_\_\_\_\_  
Al Brogan  
Sarah Norcott  
Attorneys for NorthWestern Energy

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
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IN THE MATTER OF NorthWestern Energy's )  
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**Affidavit of Brian B. Bird**

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STATE OF SOUTH DAKOTA )  
 ) : ss.  
County of Minnehaha )

I, Brian B. Bird, being first duly sworn upon oath, depose and state as follows:

1. I am Vice President, Chief Financial Officer, and Treasurer for NorthWestern Corporation d/b/a NorthWestern Energy ("NorthWestern"). My responsibilities include accounting, treasury, tax, financial planning, investor relations, internal audit, and information technology.

2. On December 20, 2013, NorthWestern filed an application seeking approval to purchase 11 hydroelectric generating facilities and related assets in Montana and for related relief ("Application"). This affidavit is provided to explain and support why the personally identifiable information contained in Schedule 3.12(a) of the Purchase and Sale Agreement ("PSA") entered into on September 26, 2013 between NorthWestern and PPL Montana, LLC ("PPLM"), which is attached to the Application as Exhibit \_\_ (APP-2), is protectable under the law as "otherwise legally protectable" information.

3. NorthWestern has entered an agreement to acquire 11 hydroelectric generating facilities and other related assets (the "Hydros") from PPLM and requests that the personal information of the individuals listed on the above-referenced Schedule be protected from public disclosure pursuant to an individual's right to privacy as provided for under the Montana Constitution.

4. I am familiar with the Schedule that contains the individual's information and have personal knowledge of the facts stated herein. Opinions expressed herein are based upon my experience and knowledge of the treatment of such information by NorthWestern.

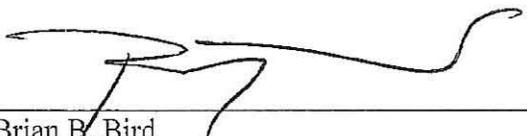
5. The names of the individuals listed on the Schedule are employees of PPLM, not NorthWestern. Given that fact, NorthWestern did not have an ability to talk to these individuals prior to filing a motion for protective order.

6. In public proceedings, NorthWestern protects its employees' information from public disclosure. In prior Commission proceedings, NorthWestern would redact this information from documents filed with the Commission.

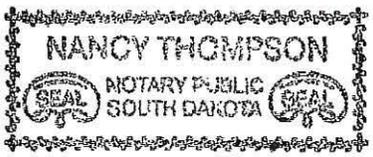
7. The individual's named in the Schedule are not parties to the contract or the docket NorthWestern filed with the Commission on December 20, 2013. These employees were not asked nor notified about their information being contained in the Schedule. Additionally, these employees work for a private company and are not public employees that hold a position of public trust.

[Remainder of page left intentionally blank]

DATED this 20 day of December 2013.

  
\_\_\_\_\_  
Brian B. Bird

SUBSCRIBED AND SWORN TO BEFORE me this \_\_\_ day of December 2013.



Nancy Thompson  
Print or Type Name: nancy Thompson  
Notary Public for the State of South Dakota

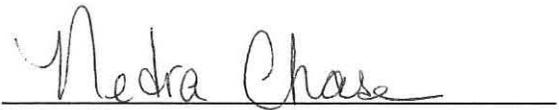
Residing at Sioux Falls, South Dakota

My Commission Expires: 3/20/18

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of NorthWestern Energy's Motion for Protective Order and Brief in Support of Personal Information in Docket No. D2013.12.85 has been hand delivered to The Montana Public Service Commission and The Montana Consumer Counsel. A copy has been e-filed on the MPSC website.

Date: December 20, 2013

A handwritten signature in cursive script that reads "Nedra Chase". The signature is written in black ink and is positioned above a horizontal line.

Nedra Chase  
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