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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 Non-public Projections**

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NorthWestern Corporation d/b/a NorthWestern Energy ("NorthWestern"), submits to the Montana Public Service Commission ("Commission") this Motion for Protective Order and Brief in Support. NorthWestern moves the Commission, pursuant to 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 its motion, NorthWestern files the Affidavit of Brian Bird ("Bird Aff.").

I. Introduction

On December 20, 2013, NorthWestern is filing its Application in this docket.

Accompanying the Application are the Prefiled Direct Testimony of Ahmad Masud, including AM Exhibit 1, (“Masud Direct Testimony”) and the Prefiled Direct Testimony of Allen Otto, including Exhibit \_\_ (AO-01) and Exhibit \_\_ (AO-02), (“Otto Direct Testimony”). AM Exhibit 1 and Exhibit \_\_ (AO-2) contain non-public forecasted financial information, which NorthWestern redacted from the public filing. NorthWestern, the provider, seeks a protective order from the Commission to keep confidential this forecasted financial information.

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 items 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 is:

NorthWestern's non-public projections for company-wide earnings before interest, taxes, depreciation, and amortization, net income, earnings per share, rate base, and credit and financial metrics ("Non-public Projections").

## **IV. Factual and Legal Basis for Protection**

For the item 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 identified information.

A. The confidential material is information.

“Information includes knowledge, observations, opinions, data, facts, and the like, whether recorded or communicated in writing, orally, electronically, or otherwise, and whether provided through pleadings, reports, exhibits, testimony, work papers, or similar items or attachments to such items, or in response to discovery, subpoena, order, audit, investigation, or other request.” ARM 38.2.5001(3).

The Non-public Projections constitute material data in the nature of projections formulated by NorthWestern staff as to NorthWestern's financial results and condition in future years. (Bird Aff., ¶ 4.)

B. The information is in fact secret.

Section 69-3-105(2), MCA (2013), provides, "The commission may issue a protective order when necessary to preserve trade secrets, as defined in 30-14-402, or other information that must be protected under law, as required to carry out its regulatory functions." Section 30-14-402(4), MCA (2013), provides, in pertinent part:

"Trade secret" means information or computer software, including a formula, pattern, compilation, program, device, method, technique, or process, that:  
(a) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and  
(b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The Non-public Projections are in fact secret, and NorthWestern protects such information by whatever means available. (Bird Aff., ¶ 7.) Because of the secret nature of the Non-public Projections, their disclosure triggers a number of reporting requirements under the Securities and Exchange Commission Regulation FD. (Bird Aff., ¶ 5.) Further, NorthWestern does not want to publicly disclose the Non-public Projections, as doing so would put NorthWestern at risk of defending itself in litigation either for not making a general disclosure in an 8-K or for providing too much speculative information to the public in its 8-K disclosures. *Id.* In addition, public disclosure would lead to either an ongoing obligation to update the information on a regular and periodic basis or to routinely receive inquiries from shareholders and potential investors. Thus, not only are the Non-public Projections trade secret information for NorthWestern that are in fact secret, but also NorthWestern derives independent economic value by keeping the Non-public Projections secret. *Id.; see also infra.*

**C. The information is subject to efforts reasonable under the circumstances to maintain its secrecy.**

Acting under normal industry standard protocol, NorthWestern protects the Non-public Projections by whatever means available to it. (Bird Aff., ¶ 7.) Only persons with a “need to know” have access to the Non-public Projections, and it is treated as confidential information by NorthWestern employees and board members. *Id.* NorthWestern revealed this information to its outside advisors only after the advisors obligated themselves to keep the Non-public Projections secret. *Id.*

After issuance of a protective order from this Commission, NorthWestern will maintain the secrecy of the information to be protected. *Id.* For docket purposes, the protected information will be placed on yellow paper and maintained in a secure location with access limited to those NorthWestern employees who have a “need to know” based upon NorthWestern’s internal controls. *Id.* The information to be protected is destroyed if it becomes dated or otherwise irrelevant. *Id.* This information is currently held only by NorthWestern. Because NorthWestern continues to maintain the Non-public Projections’ secrecy, the Non-public Projections keep their status as NorthWestern trade secrets. *See* § 30-14- 402(4), MCA.

**D. The confidential information is not readily ascertainable by proper means.**

Since the information to be protected is not within the public domain, it is not readily ascertainable by any other person or entity. No public documents exist which could reveal the information to be protected by any means whatsoever. No one could reasonably ascertain this information through a public source. (Bird Aff., ¶ 7.)

**E. The confidential information derives independent economic value from its secrecy or a competitive advantage is derived from its secrecy.**

ARM 38.2.5007(4)(b)(vi) specifies that the secret information must derive independent economic value or competitive advantage from its secrecy. As described in the Bird Aff., other parties, including investors and counterparties to supply agreements, could obtain economic advantage by disclosure of the Non-public Projections. (Bird Aff., ¶¶ 5 and 6.)

Public disclosure of the Non-public Projections could give other parties, including venture capitalists and institutional investors, sufficient material information to project NorthWestern's financial results and condition in future years, thereby enabling them to make strategic stock purchases or gain economic advantages by anticipating NorthWestern's future business decisions, potentially to the detriment of the company and its customers. (Bird Aff., ¶ 6.)

In addition, NorthWestern does not want to publicly disclose the Non-public Projections, as doing so would put NorthWestern at risk of defending itself in litigation either for not making a general disclosure in an 8-K or for providing too much speculative information to the public in its 8-K disclosures. (Bird Aff., ¶ 5.) If NorthWestern were to have to defend its disclosure or non-disclosure of the Non-public Projections, it would be required to expend substantial resources and effort. *Id.* Moreover, public disclosure would lead to either an ongoing obligation to update the information on a regular and periodic basis or to routinely receive inquiries from shareholders and potential investors. *Id.* If NorthWestern were required to update information that it does not otherwise update or respond to inquiries that would not otherwise have been made, it would be required to expend resources and effort. *Id.* Thus, NorthWestern derives independent economic value as well as a competitive advantage by keeping the Non-public Projections secret.

V. Conclusion

The Commission has previously protected forward-looking financial projections as trade secret based on Regulation FD. *See In re NorthWestern Energy*, Docket No. D2009.9.129, Order No. 7046c (March 9, 2010); *In re NorthWestern Energy*, Docket No. D2007.7.82, Order No. 6852c (April 10, 2008). For all the reasons stated herein, NorthWestern respectfully requests the Commission grant this Motion for a Protective Order to govern the use and disclosure of the Non-public Projections.

RESPECTFULLY SUBMITTED this 20th day of December 2013.

NORTHWESTERN ENERGY

By: 

Al Brogan  
Sarah Norcott  
NorthWestern Energy  
Attorneys for NorthWestern Energy

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

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

AFFIDAVIT OF BRIAN B. BIRD

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 and Chief Financial Officer 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 is filing its Application in this docket. Accompanying the Application are the Prefiled Direct Testimony of Ahmad Masud, including AM Exhibit 1, ("Masud Direct Testimony") and the Prefiled Direct Testimony of Allen Otto, including Exhibit \_\_ (AO-01) and Exhibit \_\_ (AO-02), ("Otto Direct Testimony") AM Exhibit 1 and Exhibit \_\_ (AO-2) contain non-public projections for NorthWestern's company-wide earnings before interest, taxes, depreciation, and amortization, net income, earnings per share,

rate base, and credit and financial metrics ("Non-public Projections"). On behalf of NorthWestern, I maintain responsibility for the forecasted financial information that was used in these documents.

3. I have personal knowledge of the facts stated herein. Any opinions expressed herein are based upon my experience, as well as my knowledge of the treatment of forecasted financial information generally.

4. The Non-public Projections constitute material data formulated by NorthWestern staff as to NorthWestern's financial results and condition in future years.

5. The Securities and Exchange Commission specifically prohibits selective disclosure of the Non-public Projections under Regulation FD, which would require NorthWestern to publicly disclose the Non-public Projections if they were disclosed to certain types of brokers and investors. NorthWestern does not want to publicly disclose the Non-public Projections as doing so would put NorthWestern at risk of defending itself in litigation either for not making a general disclosure in an 8-K or for providing too much speculative information to the public in its 8-K disclosures. If NorthWestern were to have to defend its disclosure or non-disclosure of the Non-public Projections, it would be required to expend substantial resources and effort. In addition, public disclosure would lead to an ongoing obligation to update the information on a regular and periodic basis, or to routinely receive inquiries from shareholders and potential investors, which also would require it to expend resources and effort. Moreover, public disclosure of the Non-public Projections could adversely impact our ability to strategically execute certain future business activities or establish expectations in the marketplace which NorthWestern, at this time, does not wish to establish. Thus, NorthWestern

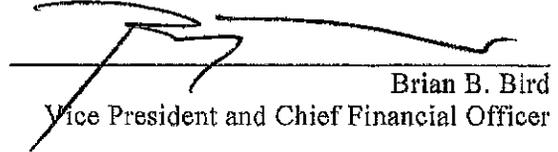
derives independent economic value from keeping the Non-public Projections protected.

6. Public disclosure of the Material Business Information would give other parties, including venture capitalists and institutional investors, sufficient information to project NorthWestern's financial performance and condition, thereby enabling them to make strategic stock purchases or gain economic advantages by anticipating NorthWestern's future business decisions, potentially to the detriment of the company and our customers.

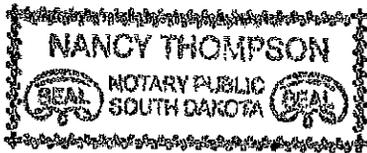
7. The Non-public Projections are in fact secret. NorthWestern protects the Non-public Projections by whatever means available. At NorthWestern, this information is kept in a specific secure location, accessible only by designated individuals on a need-to-know basis. NorthWestern revealed this information to its outside advisors only after the advisors obligated themselves to keep the Non-public Projections secret. NorthWestern redacted the Non-public Projections from the versions of AM Exhibit 1 and Exhibit \_\_ (AO-02) that are attached to the Application. After issuance of a protective order by this Commission, NorthWestern will continue to maintain the secrecy of the Non-public Projections. For docket purposes, the Non-public Projections will be placed on yellow paper, pursuant to Commission rules, and maintained in a secure location with access limited to those employees with a "need to know" consistent with NorthWestern's internal controls. Further, the Non-public Projections are destroyed if they become dated or otherwise irrelevant. The Non-public Projections are not within the public domain, nor are they readily ascertainable by any other person or entity. No public documents exist which could reveal the Non-public Projections by any means whatsoever. No one could reasonably ascertain the Non-public Projections by accessing any publicly available information.

FURTHER AFFIANT SAYETH NOT.

Executed this 20 day of December, 2013

  
Brian B. Bird  
Vice President and Chief Financial Officer

SUBSCRIBED AND SWORN TO before me this 20th day of December 2013.



Nancy Thompson  
Notary Public for the State of ~~Montana~~ SD  
Residing at Sioux Falls, SD  
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 Non-public Projections 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



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