

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	)	REGULATORY DIVISION
Operate PPL Montana's Hydroelectric	)	
Facilities, for Approval of Inclusion of	)	DOCKET NO. D2013.12.85
Generation Asset and Cost 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 of Confidential Capital  
Expenditure Information and Brief in Support**

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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 Charles S. Baker ("Baker Aff.").

**I. Introduction**

On December 20, 2013, NorthWestern filed its Application in the above-captioned docket requesting various approvals necessary to effectuate the purchase and operation of PPL Montana, LLC's ("PPLM") hydroelectric facilities. Thereafter, NorthWestern received several data requests from Commission staff. NorthWestern is providing certain documents designated as by Bates Numbers MCC\_006\_00000001-MCC\_006\_00000422 in partial response to one or more of

the data requests. These documents contain limited references to specific, future capital expenditures of PPLM that were provided by PPLM to NorthWestern during the course of negotiations of the proposed transaction on the basis that NorthWestern would protect the confidentiality of the information ("Confidential Cap-Ex Information"). Therefore, NorthWestern hereby files a motion for protective order and brief in support to protect certain information contained in the Confidential Cap-Ex Information.

Pursuant to ARM 38.2.5007, 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 that it has the burden of demonstrating that the identified information is confidential information and that it must, with this motion, establish a *prima facie* showing of confidentiality, factually and legally, and make clear the basis for the claim of confidentiality. As explained and demonstrated herein, NorthWestern has overcome the presumption that the public should have unrestricted access to the identified information and has established a *prima facie* showing of confidentiality, both factually and legally.

## **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**

The following is a complete and specific non-confidential identification, item by item or category of like items, of the Confidential Cap-Ex Information for which protection is being sought:

- References to specific capital expenditures for pond liners and bag houses at fossil units at Bates Numbers MCC\_006\_00000048 and MCC\_006\_00000070;
- References to Colstrip Unit 1 & 2 generator rewind and drag chain capital expenditures on Bates Number MCC\_006\_00000095; and
- References to Colstrip Unit 3 & 4 generator rewind issues on Bates Numbers MCC\_006\_00000095 and MCC\_006\_00000096.

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

In support of this motion for protection of the Confidential Cap-Ex Information 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. The Baker Aff. supporting the facts is attached as required by ARM 38.2.5007(3)(c). Charles S. Baker is

qualified on the subject matter, and the Baker Aff. supports the claims of confidentiality of the identified information.

**A. The identified material is information.**

“Information” is defined to include “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 Confidential Cap-Ex Information constitutes material observations, data, and facts in the nature of operations and maintenance descriptions and budgetary amounts formulated by PPLM staff for its generation facilities. Baker Aff. ¶ 5.

**B. The identified information is 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, MCA (2013) defines a trade secret as:

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 Confidential Cap-Ex Information is in fact secret. It is not available anywhere publicly and is considered extremely sensitive. Baker Aff. ¶ 6. The Confidential Cap-Ex Information is required to be kept secure, both physically and electronically, under the Information Security policies of PPL Corporation and PPLM. *Id.* ¶ 7. The Confidential Cap-Ex Information was provided to NorthWestern by PPLM only after NorthWestern entered into a confidentiality agreement whereby it agreed not to disclose any confidential information obtained from PPLM, including the Confidential Cap-Ex Information. *Id.* As such, NorthWestern is obligated to protect the Confidential Cap-Ex Information from public disclosure.

There is independent economic value derived from the Confidential Cap-Ex Information being kept secret. As discussed in more detail in Section IV.E below, the Confidential Cap-Ex Information contains competitively sensitive and proprietary information that if released to the public could be used to the economic detriment of PPLM by competitors and vendors. See Baker Aff. ¶¶ 9-11. Disclosure of the Confidential Cap-Ex Information could also harm consumers by increasing costs to PPLM. *Id.* ¶ 10.

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

Pursuant to the Information Security policies of PPL Corporation and PPLM, PPL employees are required to keep the type of information contained in the Confidential Cap-Ex Information secure. Baker Aff. ¶ 7. The Confidential Cap-Ex Information is accessible only to designated employees on a need-to-know basis. *Id.* PPLM revealed the Confidential Cap-Ex Information to NorthWestern on the

basis that NorthWestern enter into a confidentiality agreement and agree not to disclose the Confidential Cap-Ex Information. *Id.*

After issuance of a protective order from this Commission, PPLM will maintain the secrecy of the Confidential Cap-Ex Information pursuant to their internal controls and policies governing protection of confidential information. *Id.* NorthWestern is obligated to maintain the secrecy of the Confidential Cap-Ex Information pursuant to its confidentiality agreement. *Id.* Because the secrecy of the Confidential Cap-Ex Information will continue to be maintained, the Confidential Cap-Ex Information keeps its status as trade secret. See § 30-14-402(4), MCA.

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

The Confidential Cap-Ex Information for which NorthWestern requests protected treatment is not within the public domain, and is not readily ascertainable by any other person or entity. Baker Aff. ¶ 8. No public documents exist which could reveal the information to be protected by any means whatsoever. *Id.* No one could reasonably ascertain this information through a public source. *Id.*

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

ARM 38.2.5007(4)(b)(vi) states that the secret information must derive independent economic value or competitive advantage from its secrecy. As described by Mr. Baker, competitors could obtain economic advantage by disclosure of the Confidential Cap-Ex Information to the detriment of PPLM. The

Confidential Cap-Ex Information provides significant insights regarding, *inter alia*, the timing of repairs, replacements, upgrades, and/or maintenance at individual generation facilities and budgetary estimates for such work. Baker Aff. ¶ 9. The Confidential Cap-Ex Information also includes capital expenditure information on fossil units that NorthWestern will not be acquiring as part of NorthWestern's agreement to purchase the hydroelectric facilities of PPLM. *Id.* ¶ 5. This information if released would give competitors and potential competitors the ability to discern the timing and length of planned outages and determine the amount of supply PPLM has available for sale. *Id.* at ¶ 9. Competitors could then take advantage of this information to capitalize on PPLM's need to purchase electricity from the market to cover its electricity commitments while its own generation assets are offline. *Id.*

The public release of the information in the Confidential Cap-Ex Information would also affect PPLM's ability to solicit competitive bids from vendors for capital expenditures. *Id.* ¶ 10. If released, potential vendors would be able to see amounts the PPLM has budgeted for a particular project and escalate their bids based on PPLM's valuation of the project. *Id.* If PPLM is unable to solicit competitive bids from vendors, consumers may be harmed and competition lessened by increasing operation and maintenance costs to PPLM. *Id.*

The release of the Confidential Cap-Ex Information would thus produce significant financial harm to PPLM by displacing PPLM's market position during crucial times, increasing bids from vendors for capital expenditure projects, and harming the ability of PPLM to negotiate favorably with potential counterparties in

future periods. *Id.* at ¶ 11. PPLM would also generally be placed at a competitive disadvantage by not having the access to similar information from its competitors. *Id.* Thus, the information in the Confidential Cap-Ex Information has substantial independent economic value to PPLM, which value would be adversely impacted by the public release of such information.

#### **V. Conclusion**

The Commission has previously protected as trade secrets forward-looking valuations and information that would allow competitors to gain an economic advantage if publicly disclosed. *See e.g., In re NorthWestern Energy*, Docket No. D2009.9.129, Order No. 7046c (Mar. 9, 2010); *In re Westech Energy Corporation*, Docket No. D2006.7.108, Order No. 6774d (Aug. 24, 2009). 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 Confidential Cap-Ex Information.

RESPECTFULLY SUBMITTED this 24th day of January 2014

NORTHWESTERN ENERGY

By: 

Al Brogan  
Sarah Norcott  
NorthWestern Energy  
Attorneys for NorthWestern Energy

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
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AFFIDAVIT OF CHARLES S. BAKER

STATE OF MONTANA )  
 ) SS.  
COUNTY OF YELLOWSTONE )

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Before me, the undersigned notary public, personally appeared Charles S. Baker, 303 North Broadway, Suite 400, Billings, MT 59101, to me known or proven, who being duly sworn according to law, doth depose and say:

1. I am Controller for PPL Montana, LLC ("PPL Montana") and am responsible for strategy and oversight of PPL Montana's budgeting, financial planning, and financial reporting. I am familiar with, and have personal knowledge of, the matters set forth in this affidavit.

2. On December 20, 2013, NorthWestern Corporation, d/b/a NorthWestern Energy ("NorthWestern") filed its Application in the above-captioned docket to acquire certain generation facilities of PPL Montana. Numerous Data Requests were served on NorthWestern thereafter. NorthWestern is providing certain documents designated as by Bates Numbers MCC\_006\_00000001-MCC\_006\_00000422 in partial response to one or more of the Data Requests. These documents provide contain a limited references to specific, future capital expenditures of PPL Montana. Specifically, they

include references to specific capital expenditures for pond liners and bag houses at fossil units at Bates Numbers MCC\_006\_00000048 and MCC\_006\_00000070, references to Colstrip Unit 1 & 2 generator rewind and drag chain capital expenditures on Bates Number MCC\_006\_00000095, and references to Colstrip Unit 3 & 4 generator rewind issues on Bates Numbers MCC\_006\_00000095 and MCC\_006\_00000096.

3. During the negotiation of the proposed transaction, PPL Montana provided to NorthWestern an itemized list of capital expenditures for PPL Montana's generation facilities and other information on capital expenditures on the basis that NorthWestern had entered into a confidentiality agreement with PPL Corporation promising to protect the confidentiality of the information.

4. On January 23, 2014, NorthWestern gave PPL Montana notice that it intends to provide information referred to above in response to Data Requests. It is PPL Montana's understanding that the responses to the data requests are public.

5. The information for which protection is sought contains information about PPL Montana's budget for its generation facilities and/or estimates of capital expenditures for its generation facilities outside of the budget, including details about the planned maintenance and/or upgrades at generation facilities and the cost of such maintenance and/or upgrades, for future periods of time. The information also includes capital expenditure information on fossil units that NorthWestern will not be acquiring as part of NorthWestern's agreement to purchase the hydroelectric facilities of PPL Montana.

6. Information about future operations and maintenance data, including capital expenditures, is secret, not available anywhere publicly, either in financial disclosure documents, regulatory filings or elsewhere, and is treated as extremely sensitive and confidential by PPL Montana and its affiliates.

7. PPL Montana engages in extensive efforts to protect the confidentiality of the type of information for which protection is sought. Under the Information Security policies of PPL Corporation and PPL Montana, PPL employees are required to keep this information secure, both physically and electronically, and accessible only to employees with the appropriate need to know such information. PPL Montana revealed this type of information to NorthWestern on the condition that NorthWestern had entered into a confidentiality agreement whereby they had agreed not to disclose this type of information. Even after the issuance of a protective order from this Commission, PPL Montana will continue to maintain the secrecy of the type of information for which protection is sought pursuant to its applicable Information Security controls and policies.

8. Thus, the information for which protection is sought is not within the public domain, nor is it readily ascertainable by any other person or entity. No public documents exist which could reveal this information by any means. Further, no one could reasonably ascertain this information by accessing any publicly available information.

9. If the budget amounts listed in the information for which protection is sought about planned capital expenditures were released publicly, they could be used to the economic detriment of PPL Montana. Disclosure of the information would give competitors and potential competitors insight into the timing of repairs, replacements, upgrades, and/or maintenance at individual generation facilities, which would give competitors and potential competitors the ability to discern the timing and length of planned outages and determine the amount of supply PPL Montana has available for sale. Competitors could then take advantage of this information to position their own generation, assets, or purchased power to capitalize on PPL Montana's need to purchase electricity from the market to cover its electricity commitments while its own generation assets are offline. The information would also provide insight to competitors and potential competitors on the operating condition of specific generation facilities, which is proprietary information. Such harms will be magnified if the transaction contemplated in this proceeding does not close, and competitors are given access to substantial information about PPL Montana's operation, maintenance, and budgeting for its generation facilities.

10. The public release of the information for which protection is sought would also affect PPL Montana's ability to solicit competitive bids from vendors for capital expenditures. If released, vendors that submit bids for PPL Montana's capital expenditure projects would be able to see amounts the PPL Montana has budgeted for and anticipates spending on a particular project. The vendors may then escalate their bids to provide services to PPL Montana based on their knowledge of PPL Montana's valuation of the project. Any effect on PPL Montana's ability to solicit competitive bids from vendors could potentially harm consumers by increasing operation and maintenance costs to PPL Montana.

11. These significant insights that would be provided to PPL Montana's competitors and vendors by the public release of the information for which protection is sought would produce significant financial harm to PPL Montana by: displacing PPL Montana's market position during crucial times, increasing bids from vendors for capital expenditure projects, and harming the ability of PPL Montana to negotiate favorably with potential counterparties in future periods. PPL Montana would also generally be placed at an information disadvantage to the competitors, vendors, and customers it does

business with and competes with every day. Thus, the information has substantial independent economic value to PPL Montana, which value would be adversely impacted by the public release of such information.

FURTHER AFFIANT SAYETH NOT.

Executed this 24<sup>th</sup> day of January 2014

Charles S. Baker  
Controller  
PPL Montana, LLC

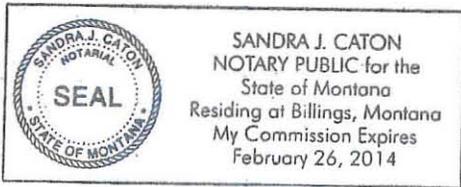
STATE OF MONTANA     )  
  : SS.  
COUNTY OF Yellowstone    )

This instrument was acknowledged before me on the 24<sup>th</sup> day of January, 2014, by CHARLES S. BAKER, known by me to be the Controller of PPL Montana, LLC, and the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

Signature: Sandra J. Caton  
Printed Name: Sandra J. Caton  
Notary Public for the State of Montana  
Residing at: Billings, MT  
My Commission Expires: 02/26/2014  
month/day/four digit year



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of NorthWestern Energy's Motion for Protective Order of Confidential Capital Expenditure Information and Brief in Support 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. It will be mailed to the most recent service list in this Docket by first class mail. It will also be emailed to the counsel of record.

Date: January 24, 2014



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**Docket No D2013.12.85  
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