

I. INTRODUCTION

NorthWestern Corporation doing business as NorthWestern Energy (“NorthWestern”), the provider, following a thorough legal and factual examination, has determined that the specific items or categories of like items identified below are confidential information as defined in ARM 38.2.5001(1). NorthWestern moves the Montana Public Service Commission (“Commission”) to grant a protective order pursuant to ARM 38.2.5001 through 38.2.5030 (Commission rules governing protective orders and protection of confidential information) to govern the use and disclosure of the specific items or categories of like items identified below.

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 items are 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, in this motion, rebuts the presumption that the public should have unrestricted access to documents and information. NorthWestern provides, in this motion and the attached affidavits, a prima facie showing of confidentiality, both factually and legally, and explains the basis for each claim of confidentiality.

The information described below in paragraph III, is included in documents requested by data request MCC-070.

II. CONTACT PERSON

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:

Information that reveals the billing rate for services to NorthWestern. This information is in columns labeled "Billed Amount" when accompanied by a column labeled "Hours" and in columns labeled "Rate" contained in invoices, billing statements, and supporting documentation from CB&I Stone & Webster Inc. ("Pricing Information").

IV. FACTUAL AND LEGAL BASES FOR PROTECTION

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 the facts follows. Affidavits of Michael Manning and William Rhoads supporting the facts are attached. The affiants are persons qualified on the subject matter and the affidavits support the claim of confidentiality of the identified information. The Commission has stated that pricing "may be, but is not necessarily, trade secret." In determining whether the prices charged by third-party suppliers constitute trade secrets, the Commission examines (1) the extent to which the information is known outside of the third party's business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its

competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others." *In the Matter of NorthWestern Energy's Application for Approval of Electric Supply Deferred Cost Balance and Projected Electric Supply Cost*, Docket No. D2006.5.66, Order No. 6740, p. 2 (May 31, 2006). *See also, In the Matter of the Application of NorthWestern Energy for Approval to Purchase and Operate the Spion Kop Wind Project, for Certification of the Spion Kop Wind Project as an Eligible Renewable Resource, and for Related Relief*, Docket No. D2011.5.41, Order No. 7159j (Sept. 27, 2011)

1. 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 actual prices charged by CB&I Stone & Webster, Inc. and the extensions of the quantity times the price are data and facts and therefore information.

2. The Pricing Information is Trade Secret.

Section 69-3-05(2), MCA, provides "[t]he 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, 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.

Specific information regarding the Pricing Information for which NorthWestern seeks a Protective Order is information that derives actual and potential independent economic value or competitive advantage from not being generally known and represents legally protected property interests and trade secrets. These issues are explained in more detail below.

a. The Pricing Information is secret.

This information is in fact secret. CB&I Stone & Webster, Inc. does not publicly reveal its pricing information. *Affidavit of Michael Manning*, ¶ 8(ii) (“*Manning Aff.*”). NorthWestern’s contract with CB&I Stone & Webster, Inc. requires it to maintain the confidentiality of the information deemed to be confidential by CB&I Stone & Webster, Inc.. Representatives of CB&I Stone & Webster, Inc. have informed NorthWestern that it considers the Pricing Information to be confidential. *Affidavit of William Rhoads* (“*Rhoads Aff.*”), ¶ 3; *Manning Aff.*, ¶ 8(ii). CB&I Stone & Webster, Inc. expects confidentiality for items in columns labeled “Rate” and Billed Amount”. *Manning Aff.*, ¶¶ 7-8. Confidentiality of this type of information is standard industry practice. *Manning Aff.*, ¶ 8(ii). Moreover, the secrecy of this information is maintained and it is not disclosed in any public forum nor is it otherwise available in the regulatory arena.

b. The Pricing Information is subject to efforts reasonable under the circumstances to maintain its secrecy

Acting under normal industry standard protocol, CB&I Stone & Webster, Inc. and NorthWestern protect the Pricing Information by whatever means available to them. This includes the use of standard industry confidentiality clauses in contracts. This information is kept at NorthWestern in a specific secure location, and is accessible only by designated individuals. *Rhoads Aff.*, ¶ 4. CB&I Stone & Webster, Inc. restricts the access to the Pricing

Information to CB&I Stone & Webster, Inc. employees who need to know it to perform their job duties. *Manning Aff.*, ¶ 8(ii). CB&I Stone & Webster, Inc. maintains the secrecy of the information by keeping it in a specific secure location. *Manning Aff.*, ¶ 8(iii).

After issuance of a protective order, NorthWestern continues to maintain the secrecy of the information to be protected. For docket purposes, this information is then placed on yellow paper and maintained in a secure location with access limited to those NorthWestern employees who have a “need to know” based on NorthWestern’s internal controls. The information to be protected is destroyed if it becomes dated or otherwise irrelevant. This information is currently held only by CB&I Stone & Webster, Inc. and NorthWestern. *Manning Aff.*, ¶ 8(iii); *Rhoads Aff.*, ¶ 4. As NorthWestern also continues to maintain its secrecy, the information to be protected keeps its status as trade secret. *See* Section 30-14-402(4), MCA.

c. The Pricing 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 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. *Rhoads Aff.*, ¶ 5; *Manning Aff.*, ¶ 8(iv). The Pricing Information cannot be duplicated by others. *Manning Aff.*, ¶ 8(iv).

d. The Pricing Information derives independent economic value or competitive advantage from its secrecy.

NorthWestern derives independent economic value from keeping the Pricing Information secret. NorthWestern has a contractual obligation to protect the Pricing Information. *Rhoads Aff.*, ¶ 2. If NorthWestern were to disclose the Pricing Information in the absence of a regulatory or judicial order, it would expose itself to potential damages for breach of contract.

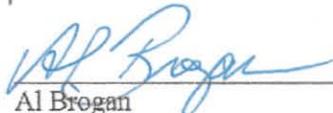
CB&I Stone & Webster, Inc. derives competitive advantage and independent economic

value from the secrecy of the Pricing Information because CB&I Stone & Webster, Inc.'s competitors could gain bidding advantage by knowing CB&I Stone & Webster, Inc.'s prices while CB&I Stone & Webster, Inc. would not know its competitors prices. *Manning Aff.*, ¶ 8(v).

V. SUMMARY AND REQUEST FOR RELIEF

NorthWestern therefore respectfully requests a protective order covering the Pricing Information. In support of this Motion are the Affidavit of William Rhoads and Affidavit of Michael Manning, included as Attachments A and B.

Respectfully submitted this 31st day of January 2014



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

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

AFFIDAVIT OF WILLIAM RHOADS

STATE OF MONTANA)
: ss.
County of Silver Bow)

William Rhoads, being first sworn upon oath, deposes and says:

1. I am employed by NorthWestern Energy (NorthWestern) as General Manager, Generation. In this role, I also am involved in the operational due diligence of the acquisition of PPL Montana's Hydroelectric Facilities. I personally participated in the definition of scope and budget of NorthWestern's Services Agreements with CB&I Stone & Webster, Inc. (CB&I). Specific tasks under the Service Agreements are for due diligence efforts by CB&I for NorthWestern's Mustang project (acquisition of PPL Montana's Hydroelectric Facilities). I am engaged in continuing communication with representatives of CB&I regarding the Services Agreements.

2. I am familiar with the terms of the Services Agreements. Paragraph 9a of the Services Agreements imposed an obligation on NorthWestern to not disclose any information deemed confidential by CB&I. NorthWestern is allowed to disclose confidential information to judicial, regulatory, or governmental entities after it takes all reasonable steps to protect the information through protective orders or their equivalent. Confidentiality provisions such as paragraph 9a of the Services Agreements are standard in the industry.

3. CB&I's invoices for work under the Services Agreements include various Pricing Information including unit prices, total costs for tasks, and hourly billing rates for categories of workers. On January 31, 2014, Michael Manning, Vice President of CB&I, advised me by signed affidavit that CB&I considers the CB&I Pricing Information to be confidential. In a phone conversation, representatives of CB&I stated that information on the invoices other than pricing information or data that would reveal pricing information could be publicly disclosed.

4. NorthWestern maintains the secrecy of the CB&I Pricing Information. It is currently kept in a secure location. Only employees who need the information to perform their job duties and who have an obligation to keep it secret have access to it. NorthWestern has not revealed the CB&I Pricing Information to any third-party, such as consultants, other than those who agreed to keep it confidential. After issuance of a protective order covering the CB&I Pricing Information, NorthWestern will continue to maintain the secrecy of the information. It will be maintained in a secure location with limited access.

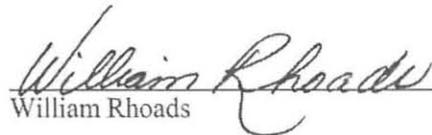
5. To my knowledge, the CB&I Pricing Information is not available from any public source.

6. NorthWestern derives independent economic value from keeping the CB&I Pricing

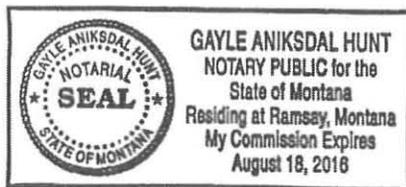
Information secret because it avoids the potential liability for damages for any breach of contract claim.

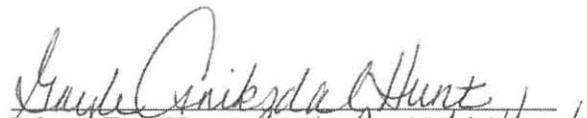
As stated earlier, NorthWestern has a contractual obligation to maintain the confidentiality of the information.

DATED this 31st day of January 2014.


William Rhoads

SUBSCRIBED AND SWORN TO BEFORE me this 31st day of January 2014.




Print of Type Name: Gayle Aniksdal Hunt
Notary Public for the State of Montana
Residing at Ramsay, Montana

My Commission Expires: August 18, 2016

AFFIDAVIT OF MICHAEL MANNING

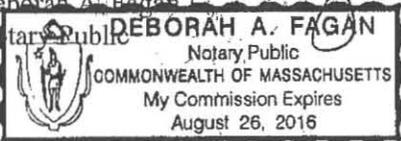
I, Michael Manning, professional engineer, of 150 Royall Street, in the City of Canton, Norfolk County, Commonwealth of Massachusetts, **SOLEMLY AFFIRM AND SAY THAT:**

1. I am Vice President of CB&I Stone & Webster, Inc.
2. I have personal knowledge of Contract #CLM0001843 NWE SPO #77898 executed the 20th day of October, 2008 ("Contract CLM0001843") by and between then Stone & Webster, Inc., a Shaw Group company, of 9201 E. Dry Creek Road, Centennial, Colorado, 80112, now CB&I Stone & Webster, Inc. ("CB&I"), of the same address and NorthWestern Corporation, a Delaware corporation, d/b/a NorthWestern Energy, with offices at 40 East Broadway Street, Butte, Montana, 59701 ("NorthWestern").
3. I have personal knowledge of MODIFICATION NO. 6 to Contract CLM0001843 between NorthWestern and CB&I for Task 9 for due diligence efforts by CB&I for NWE's Mustang project.
4. I have personal knowledge of the contract #CLM0002830 executed the 15th day of April, 2013 by and between CB&I and NorthWestern ("Contract CLM0002830").
5. I have personal knowledge of Service Release Purchase Order (SRPO) #120052 released pursuant to Contract CLM0002830 between NorthWestern and CB&I for Task 3 for further due diligence efforts by CB&I for NWE's Mustang II project.
6. I understand that NorthWestern is required to submit CB&I's invoices for the Mustang work under Contracts #CLM0001843 and #CLM0002830 to the Montana Public Service Commission.
7. Pricing information is contained in the details and supporting information of each said invoice in columns labeled "Billed Amount" and "Rate" ("Pricing Information").
8. Stone & Webster, Inc. Pricing Information is a trade secret, that:
 - (i) is information;
 - (ii) is secret in the sense that Stone & Webster, Inc. does not publicly reveal its pricing information; NorthWestern's contract with Stone & Webster, Inc. requires it to maintain the confidentiality of the information deemed to be confidential by Stone & Webster, Inc.; Stone & Webster, Inc. has informed NorthWestern that it considers the Stone & Webster, Inc. Pricing Information to be confidential; Stone & Webster, Inc. expects confidentiality for items such as unit prices, total costs for tasks, and hourly billing rates for categories of workers; confidentiality of this type of information is standard industry practice; moreover, the secrecy of this information is maintained and it is not disclosed in any public forum nor is it otherwise available in the regulatory arena; and Stone & Webster, Inc.'s Pricing Information is known only to the Stone & Webster, Inc. employees who need to know it to perform their job duties;

- (iii) Stone & Webster, Inc. Pricing Information is subject to efforts reasonable under the circumstances to maintain its secrecy in the sense that acting under normal industry standard protocol, Stone & Webster, Inc. and NorthWestern protect the Stone & Webster, Inc. Pricing Information by whatever means available to them, this includes the use of standard industry confidentiality clauses in contracts; this information is kept at Stone & Webster, Inc. offices in a specific secure location, and is accessible only by designated individuals;
- (iv) Stone & Webster, Inc. Pricing Information is not readily ascertainable by proper means since the information is not within the public domain; it is not readily ascertainable by any other entity; no public documents exist which could reveal the information by any means whatsoever; and no one could reasonably ascertain this information through a public source; and
- (v) Stone & Webster, Inc. derives competitive advantage from maintaining the secrecy of the Stone & Webster, Inc. Pricing Information because should Stone & Webster, Inc.'s pricing structure enter the public domain, our competitors could obtain the information and thereby gain a competitive advantage in bidding for prospective work by targeting their prices to be more competitive than Stone & Webster, Inc.'s prices, whereas, Stone & Webster, Inc. would not have the same opportunity since it has no knowledge of its competitor's pricing information.

9. I, on behalf of Stone & Webster, Inc., therefore support NorthWestern's motion for a protective order covering the Stone & Webster, Inc. Pricing Information.

AFFIRMED BEFORE ME,
In the Commonwealth of MA
Norfolk County
This 31st day of January 2014

Deborah A. Fagan
Deborah A. Fagan
Notary Public


Michael Manning
Michael Manning



CERTIFICATE OF SERVICE

I hereby certify that a copy of NorthWestern Energy's Motion for Protective Order 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 31, 2014



Nedra Chase
Administrative Assistant
Regulatory Affairs

**Docket No D2013.12.85
Hydro Assets Purchase
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