

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)

**NorthWestern Energy's Motion for Protective Order of Confidential
Information in Responses to Data Requests PSC-130 and MCC-202
and Brief in Support**

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 ("Motion"). 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. NorthWestern received data requests from the Commission and the Montana Consumer Counsel ("MCC"), among other interested parties. In Data Requests PSC-130 and MCC-202, the Commission and the MCC requested documents that

had been provided by PPLM to NorthWestern in an online data room during the course of negotiations of the proposed transaction. The data room contains a series of documents which include limited references to specific, future capital expenditures and operation and maintenance costs of PPLM (“Confidential Information”). This information was 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. Therefore, NorthWestern hereby files this Motion to protect certain Confidential 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 information for which protection is being sought:

- references to capital expenditure projects, including descriptions of the projects, budgeted costs, and projected, future costs in Document No. 3.2.2 (PPLM Draft Projected Capital Spending 2013-2017) at pages 26 and 27 and Document No. 3.2.10 (PPLM Capital Detail 11-1-12 Budget) at pages 27 and 28.
- references to specific operations and maintenance projects, including descriptions of the projects, budgeted costs, and projected, future costs in Document No. 3.2.3 (PPLM Draft Projected O&M Detail 2013-2017) at pages 7 and 8; Document No. 16.3.31 (Hydro O&M Detail 2013-2017) at pages 1 and 2; and Document No. 16.3.35 (Capital 2014-2018) at pages 1 and 2.

Documents 3.2.2, 3.2.3, and 3.2.10 are responsive to both PSC-130 and MCC-202. Documents 16.3.31 and 16.3.35 are responsive to PSC-130 only.

IV. Factual and Legal Basis for Protection

In support of this Motion for protection of the Confidential 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. supports the facts and is attached as required by ARM 38.2.5007(3)(c). Charles Baker is a person qualified on the subject matter, and his affidavit 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 Information constitutes material observations, data, and facts in the nature of capital expenditure, operations and maintenance descriptions and projected, budgeted 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 Information is in fact secret. It is not available anywhere publicly and is considered extremely sensitive. Baker Aff. ¶ 6. The Confidential 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 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 Information. *Id.* As such, NorthWestern is obligated to protect the Confidential Information from public disclosure.

There is independent economic value derived from the Confidential Information being kept secret. As discussed in more detail in Section IV.E below, the Confidential Information contains competitively sensitive and proprietary information that if released to the public could be used to the economic detriment of PPLM by competitors. See Baker Aff. ¶¶ 9-11. Disclosure of the Confidential 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 Information secure. Baker Aff. ¶ 7. The Confidential Information is accessible only to designated employees on a need-to-know basis. *Id.* PPLM revealed the Confidential Information to NorthWestern on the basis that NorthWestern enter into a confidentiality agreement and agree not to disclose the Confidential Information. *Id.*

After issuance of a protective order from this Commission, PPLM will maintain the secrecy of the Confidential Information pursuant to its internal controls and policies governing protection of confidential information. *Id.* NorthWestern is obligated to maintain the secrecy of the Confidential Information pursuant to its confidentiality agreement. *Id.* Because the secrecy of the Confidential Information will continue to be maintained, the Confidential Information will keep its status as trade secrets. See § 30-14-402(4), MCA (2013).

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

The Confidential 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 Information to the detriment of PPLM. The Confidential Information provides significant insights regarding, *inter alia*, the timing of repairs, replacements, upgrades, and/or maintenance at individual generation facilities and the contracted or budgeted amounts for such work. Baker Aff. ¶ 9. 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.* 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 Confidential 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 that PPLM has budgeted and contracted for for particular projects and escalate their bids based on PPLM's valuation of the projects. *Id.* If PPLM is unable to solicit competitive bids from vendors, consumers may be harmed and competition lessened by increasing the costs to PPLM for capital expenditures and operation and maintenance. *Id.*

The release of the Confidential 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.* ¶ 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 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 Information.

RESPECTFULLY SUBMITTED this 6th day of March 2014

NORTHWESTERN ENERGY

By: 

Al Brogan
Sarah Norcott
Heather Grahame
NorthWestern Energy
Attorneys for NorthWestern Energy

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AFFIDAVIT OF CHARLES S. BAKER

STATE OF MONTANA)
) SS.
COUNTY OF YELLOWSTONE)

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. As part of its response to Data Requests PSC-130 and MCC-202, NorthWestern is providing documents that contain limited references to specific, future capital expenditures and operation and maintenance costs of PPL Montana.

3. The references to specific future capital expenditures and operation and maintenance costs appear in the following documents: Document No. 3.2.2 (PPLM Draft Projected Capital Spending 2013-2017) at pages 26 and 27; Document No. 3.2.3 (PPLM Draft Projected O&M Detail 2013-2017) at pages 7 and 8; Document No. 3.2.10 (PPLM Capital Detail 11-1-12 Budget) at pages 27 and 28; Document No. 16.3.31 (Hydro O&M Detail 2013-2017) at pages 1 and 2; and Document No. 16.3.35 (Capital 2014-2018) at pages 1 and 2. It is PPL Montana's understanding that the responses to the data requests are public.

4. During the negotiation of the proposed transaction, PPL Montana provided to NorthWestern this capital expenditure and operation and maintenance costs information for PPL Montana's generation facilities on the basis that NorthWestern had entered into a confidentiality agreement with PPL Corporation promising to protect the confidentiality of the information.

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.

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 information for which protection is sought about planned capital expenditures and operations and maintenance was released publicly, it 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 a project. Any effect on PPL Montana's ability to solicit competitive bids from vendors could potentially harm consumers by increasing the costs to PPL Montana for capital expenditures and operation and maintenance.

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 6th day of March 2014



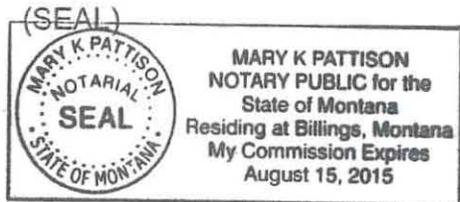
Charles S. Baker
Controller
PPL Montana, LLC

STATE OF MONTANA)
) SS.
COUNTY OF YELLOWSTONE)

This instrument was acknowledged before me on the ___ day of March 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.

Signature: Mary K Pattison
Printed Name: MARY K PATTISON
Notary Public for the State of Montana
Residing at: Billings
My Commission Expires: 8/15/2015



month/day/four digit year

CERTIFICATE OF SERVICE

I hereby certify that a copy of NorthWestern Energy's Motion for Protective Order of Confidential Information in Response to Data Requests PSC-130 and MCC-202 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: March 6, 2014

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

Nedra Chase
Administrative Assistant
Regulatory Affairs

Docket No D2013.12.85
Hydro Assets Purchase
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