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Attorneys for NorthWestern Energy

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)	

**NORTHWESTERN ENERGY'S
MOTION FOR PROTECTIVE ORDER**

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.

To date, the information described below in paragraph III is included in documents requested by Data Request PSC-131. NorthWestern requests that any protective order extend to other data requests that seek information or documents that contain the information described in paragraph III.

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:

Information that reveals Ascend Analytics, LLC's ("Ascend") billing rates for services to NorthWestern ("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 Gary Dorris and David Fine 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)*.

Ascend’s billing rates and computations that reveal them 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. Ascend does not publicly reveal its pricing information. *Affidavit of Gary Dorris*, ¶ 4(ii) (“*Dorris Aff.*”). Representatives of Ascend have informed NorthWestern that it considers the Pricing Information to be confidential. *Affidavit of David Fine* (“*Fine Aff.*”), ¶ 3; *Dorris Aff.*, ¶ 4(ii). Ascend expects confidentiality for its Pricing Information. *Dorris Aff.*, ¶ 4. Confidentiality of this type of information is standard industry practice. *Dorris Aff.*, ¶ 4(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. *Dorris Aff.*, ¶ 4(ii).

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

Acting under normal industry standard protocol, Ascend 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. *Fine Aff.*, ¶ 4. Ascend restricts the access to the Pricing Information to its employees who need to know it to perform their job duties. *Dorris Aff.*, 4(ii). Ascend maintains the secrecy of the information by keeping it in a specific secure location. *Dorris Aff.*, ¶ 4(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. 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. *Fine Aff.*, ¶ 5; *Dorris Aff.*, ¶ 4(iv). The Pricing Information cannot be duplicated by others. *Dorris Aff.*, ¶ 4(iv).

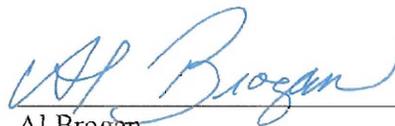
d. The Pricing Information derives independent economic value or competitive advantage from its secrecy.

Ascend derives competitive advantage and independent economic value from the secrecy of the Pricing Information because its competitors could gain bidding advantage by knowing Ascend's prices while Ascend would not know its competitors' prices. *Dorris Aff.*, ¶ 4(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 Gary Dorris and the Affidavit of David Fine included as Attachments A and B.

Respectfully submitted this 7th day of March 2014



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

AFFIDAVIT OF GARY DORRIS

I, Gary W. Dorris, of 976 Utica Circle, in the City of Boulder, Boulder County, State of Colorado, **SOLEMNLY AFFIRM AND SAY THAT:**

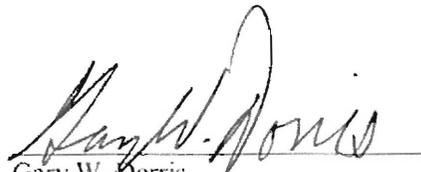
1. I am President of Ascend Analytics, LLC.
2. I have personal knowledge of Contract #CLM0002979 NW1: SPO #403418 executed the 10th day of October, 2013 ("Contract CLM0002979") by and between Ascend Analytics, LLC ("Ascend"), of 1877 Broadway, Suite 706, Boulder, CO, 80302, and NorthWestern Corporation, a Delaware corporation, d/b/a NorthWestern Energy, with offices at 40 East Broadway Street, Butte, Montana, 59701 ("NorthWestern").
3. Ascend's billing rates ("Pricing Information") are contained in various documents, including Ascend's contract with NorthWestern, modifications to the contract, and invoices.
4. Ascend's Pricing Information is a trade secret, that:
 - (i) is information;
 - (ii) is secret in the sense that Ascend does not publicly reveal its pricing information; Ascend has informed NorthWestern that it considers the Ascend Pricing Information to be confidential. Ascend expects confidentiality for items such as unit prices 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 Ascend's Pricing Information is known only to the Ascend employees who need to know it to perform their job duties;
 - (iii) Ascend's Pricing Information is subject to efforts reasonable under the circumstances to maintain its secrecy in the sense that acting under normal industry standard protocol, Ascend and NorthWestern protect Ascend's Pricing Information by whatever means available to them, this includes the use of standard industry confidentiality clauses in contracts; this information is kept at Ascend's offices in a specific secure location, and is accessible only by designated individuals;
 - (iv) Ascend's 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) Ascend derives competitive advantage from maintaining the secrecy of its Pricing Information because should Ascend'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 Ascend's prices. whereas, Ascend would not have the same opportunity since it has no knowledge of its competitors' pricing information.

5. I, on behalf of Ascend Analytics, LLC, therefore support NorthWestern's motion for a protective order covering the Ascend Analytics, LLC Pricing Information.

AFFIRMED BEFORE ME:
In the State of Colorado
Boulder County
This 7th day of March 2014


Notary Public


Gary W. Dorris

My Commission Expires
June 17, 2015



AFFIDAVIT OF DAVID FINE

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

David Fine, being first sworn upon oath, deposes and says:

1. I am employed by NorthWestern Energy (“NorthWestern”) as Director of Energy Supply Planning. In this role, I oversee electric resource planning and modeling activities directly related to the retail electric resource portfolio. I personally participated in the definition of scope and budget of NorthWestern’s Services Agreement with Ascend Analytics, LLC (“Ascend”). Ascend was initially hired both as a consultant and a software services provider to assist NorthWestern with its resource evaluation and planning work. During 2013 and 2014 the scope of Ascend’s services was expanded to include work in conjunction with NorthWestern’s acquisition of the Montana Hydroelectric Assets. I am engaged in continuing communication with representatives of Ascend regarding the Services Agreement.

3. Ascend’s invoices for work under the Services Agreement include various Pricing Information including unit prices and hourly billing rates for Ascend staff. Gary Dorris, President of Ascend, has advised me that Ascend considers the Ascend Pricing Information to be confidential.

4. NorthWestern maintains the secrecy of the Ascend 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 Ascend Pricing Information to any third-party. After issuance of a protective order covering the Ascend Pricing Information, NorthWestern will continue to maintain the secrecy of the information. It will be maintained in a secure location with limited access.

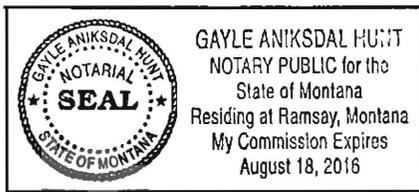
5. To my knowledge, the Ascend Pricing Information is not available from any public source.

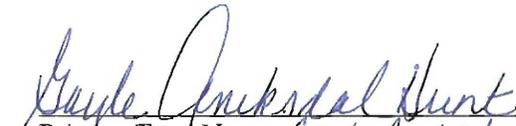
DATED this 7th day of March 2014.



David Fine

SUBSCRIBED AND SWORN TO BEFORE me this 7th day of March 2014.





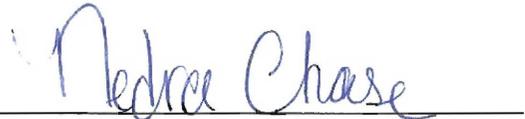
Print or Type Name: Gayle Aniksdal Hunt
Notary Public for the State of Montana
Residing at Ramsay, Montana

My Commission Expires: 08-18-16

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: March 7, 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
Service List**

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