

Service Date: January 24, 2014

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

IN THE MATTER OF the Application of ) REGULATORY DIVISION  
NorthWestern Energy for Hydro Assets ) DOCKET NO. D2013.12.85  
Purchase ) ORDER NO. 7323d

**PROTECTIVE ORDER**

**PROCEDURAL HISTORY**

1. On December 20, 2013, NorthWestern Corporation doing business as NorthWestern Energy (NorthWestern) filed its *Application for Hydro Assets Purchase* (Application) with the Montana Public Service Commission (Commission). The Commission issued a *Notice of Application and Intervention Deadline and Initial Procedural Schedule* on December 23, 2013.

2. On December 27, 2013, the Commission issued Data Request PSC-001, which asked NorthWestern to provide the Confidential Information Memorandum (CIM) of PPL Montana, LLC (PPLM) referred to in testimony attached to the Application.

3. On January 10, 2014, NorthWestern filed a *Motion for Protective Order of Confidential Information and Brief in Support* (Motion), as well as the *Affidavit of Ron Norman*. Based on a description of the information provided by NorthWestern, the Commission published notice of the Motion in its weekly agenda on January 9, 2014.

**FINDINGS OF FACT**

4. In 2012, PPLM engaged PA Consulting Group, Inc. (PA Consulting) to assist with the potential sale of PPLM and its generation facilities. Aff. Ron Norman ¶ 5 (Jan. 10, 2014). PA Consulting provided certain confidential and proprietary information to PPLM that was incorporated into the CIM now requested by the Commission. *Id.*

5. In its Motion, NorthWestern seeks to protect the following four categories of information (PA Info): (1) Outputs from PA Consulting's analysis and modelling; (2) inputs for

PA Consulting's analysis and modelling; (3) market projections and expert statements and conclusions made by PA Consulting's energy market experts; and (4) information PA Consulting has licensed from third parties and agreed under license terms to not publish. Mot. p. 3 (Jan. 10, 2014). The PA Info consists of "observations, data, facts, projections, analysis, and opinions" provided to PPLM by PA Consulting. *Id.* at p. 4.

6. 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. *Id.* at p. 2.

7. According to Ron Norman, a member of PA Consulting's Management Group and the Practice Head of its global energy and utilities practice, the PA Info

is held strictly confidential by PA [Consulting] and housed on a server which may be accessed only by the PA consultants working in the energy capital markets group of [its] global energy and utilities practice. All of these employees have signed a written confidentiality agreement with PA [Consulting, which]. . . . shares this information with clients only under a consulting agreement that includes terms of confidentiality, allowing the client to use the information only for limited purposes in specifically defined transactions. To the extent the client is allowed to share the information with third parties such as prospective purchasers, PA [Consulting] requires that such third parties likewise be required to maintain the confidentiality of the information.

*Id.* at ¶ 7. Furthermore, collecting the PA Info "would require considerable effort, expertise and the expenditure of money," as it is "not available in published sources." *Id.* at ¶¶ 8-9.

8. NorthWestern and PA Consulting assert that the secrecy of the PA Info is the basis upon which PA [Consulting] sells its consulting services to companies like PPL Corporation. Publication of this information would damage [its] ability to sell its consulting services, provide a source of information to [its] competitors who also keep similar information confidential, and result in substantial financial loss for PA [Consulting].

*Id.* at ¶ 10; Mot. at pp. 5, 7. Both companies assert that publication of the information that PA Consulting has licensed from third parties and agreed not to publish "would put PA [Consulting] in breach of its license agreements and potentially remove a source of valuable information from [its] global energy and utilities practice." Aff. Norman at ¶ 11; Mot. at p. 7.

### CONCLUSIONS OF LAW

9. The Montana Constitution imposes “an ‘affirmative’ duty on government officials to make all of their records and proceedings available to public scrutiny.” *Great Falls Tribune v. Mont. Pub. Serv. Commn.*, 2003 MT 359, ¶ 54, 319 Mont. 38. However, “a trade secret is one form of information in which there is a statutorily defined property right.” *Id.* at ¶ 59. As a result, the Commission “may issue a protective order when necessary to preserve trade secrets . . . as required to carry out its regulatory functions.” Mont. Code Ann. § 69-3-105(2) (2013).

10. An entity seeking a protective order “must support its claim of confidentiality by filing a supporting affidavit making a *prima facie* showing that the materials constitute property rights which are protected under constitutional due process requirements.” *Great Falls Tribune*, ¶ 56. “The claimant’s showing must be more than conclusory” and “must make clear . . . the basis for the request.” *Id.*; Admin. R. Mont. 38.5.5007(3) (2014).

11. In order to claim a trade secret as the basis for a protective order, a claimant must demonstrate that: (1) It has considered the Commission is a public agency and that there is a Constitutional presumption of access to documents and information in the Commission’s possession; (2) the claimed trade secret material is information; (3) the information is secret; (4) the secret information is subject to efforts reasonable under the circumstances to maintain its secrecy; (5) the secret information is not readily ascertainable by proper means; and (6) the information derives independent economic value from its secrecy, or that competitive advantage is derived from its secrecy. Admin. R. Mont. 38.2.5007(4)(b); *see also* 38.2.5001(3) (defining “information” as “knowledge, observations, opinions, data, facts, and the like.”).

12. The Commission has previously protected trade secrets in a consultant’s report. *See* Or. 6774d, Dkt. D2006.7.108 (Aug. 18, 2009) (protecting those portions of the report “which contain summaries or totals of [gas] reserves that include information on non-Montana wells”).

13. NorthWestern has demonstrated the PA Info is secret information that is not readily ascertainable by proper means, is subject to reasonable efforts to maintain its secrecy, and derives independent economic value from its secrecy. *Supra* ¶¶ 7-8. NorthWestern has therefore made a *prima facie* showing that the PA Info consists of trade secrets entitled to protection under constitutional due process requirements.

**ORDER**

IT IS HEREBY ORDERED THAT:

14. NorthWestern's *Motion for Protective Order* is GRANTED;
15. Information submitted in accordance with this Order be treated as confidential pursuant to Title 38, Subchapter 50 of the Administrative Rules of Montana; and
16. NorthWestern file the PA Info in accordance with this Order by January 27, 2014.

DONE AND DATED this 23rd day of January, 2014 by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

---

W. A. GALLAGHER, Chairman

---

BOB LAKE, Vice Chairman

---

KIRK BUSHMAN, Commissioner

---

TRAVIS KAVULLA, Commissioner

---

ROGER KOOPMAN, Commissioner

ATTEST:

Aleisha Solem  
Commission Secretary

(SEAL)

Protective Orders and Protection of Confidential Information

**Nondisclosure Agreement**

(7-26-00)

ARM 38.2.5012

Docket No. D2013.12.85, Order No. 7323d

Order Action Date: January 23, 2014

I understand that in my capacity as counsel or expert witness for a party to this proceeding before the commission, or as a person otherwise lawfully so entitled, I may be called upon to access, review, and analyze information which is protected as confidential information. I have reviewed ARM 38.2.5001 through 38.2.5030 (commission rules applicable to protection of confidential information) and protective orders governing the protected information that I am entitled to receive. I fully understand, and agree to comply with and be bound by, the terms and conditions thereof. I will neither use nor disclose confidential information except for lawful purposes in accordance with the governing protective order and ARM 38.2.5001 through 38.2.5030 so long as such information remains protected.

I understand that this nondisclosure agreement may be copied and distributed to any person having an interest in it and that it may be retained at the offices of the provider, commission, consumer counsel, any party and may be further and freely distributed.

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date of Signature

Business Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Party Represented