

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

IN THE MATTER OF NorthWestern Energy's 2012-2013 Electricity Supply Tracker))))))	REGULATORY DIVISION DOCKET NO. D2013.5.33
IN THE MATTER OF NorthWestern Energy's 2013-2014 Electricity Supply Tracker)))	DOCKET NO. D2014.5.46

PPL MONTANA, LLC's MOTION FOR PROTECTIVE ORDER

PPL Montana, LLC ("PPLM") is a wholly-owned, indirect subsidiary of PPL Corporation, which is incorporated in Delaware. PPLM's principal place of business is Billings, Montana. It generates electricity at its coal-fired power plants in Montana, including the Colstrip Steam Electric Station ("Colstrip"). Data requests made by the Montana Environmental Information Center ("MEIC") to Northwestern Energy ("NWE") seek confidential information in NWE's possession. The public availability of data regarding the planned, unplanned, and forced outage rates for Colstrip would provide to PPLM's competitors otherwise confidential information about operations at the Colstrip plant. Counsel for MEIC has stated that her client will not take a position on this motion. NWE supports PPLM's motion.

If the information is not protected from unconditional release by the PSC as requested herein, PPLM will likely suffer irreparable injury and substantial competitive harm. Its competitors will be able to effectively use the aggregated information about the planned, unplanned, and forced outage rates for Colstrip over a lengthy period, even though it is historic data, to make strategic decisions about pricing and market penetration to PPLM's detriment. Should the requested injunctive relief not be granted, PPLM will be unable to maintain or

reassert the confidentiality of its information at some later point or avoid the resulting competitive harms. PPLM would also be unable to withdraw the information from the public domain. Therefore, PPLM would suffer irreparable harm without the requested relief.

PPLM moves for a Protective Order pursuant to ARM §§ 38.2.5001 – 5031, for protection of confidential trade secrets contained within documents which are within the scope of Data Requests Nos. MEIC 26 and MEIC 28 made by MEIC to NWE in this docket. This motion is supported by the attached affidavit of Charles S. Baker, Controller for PPLM, who is qualified to provide testimony on this matter.

1. PPLM’s interest is in protecting confidential trade secret information contained in documents possessed by NWE, including correspondence and attachments to such correspondence, relating to business dealings between NWE and PPLM. MEIC served data request numbers MEIC-026 and MEIC-028 on NWE in the above-captioned docket. The information which PPLM seeks to protect may be described and identified non-confidentially as documents in the possession of NWE containing information regarding outages at Colstrip. MEIC-026 requests the following data for each planned and unplanned outage that occurred after the date on which NWE acquired Colstrip: (a) the unit at which the outage occurred; (b) whether the outage was planned or unplanned; (c) the duration, in days, of the outage; and (d) the cost of the outage. MEIC-028 seeks the forced outage rate for Colstrip Unit 4 from 2004 to 2014.

2. The legal basis for this motion is that the responses to the data requests, which is information as contemplated by the aforementioned provisions of the Administrative Rules of Montana, are trade secrets. Although Montana’s Constitution and statutes (*see, e.g.*, Art. II, Sec. 9, Mont. Const.; § 2-6-102, M.C.A.) advance open government principles, the Montana Supreme Court has held that “nothing in Article II, Sec. 9 requires disclosure of trade secrets and other

confidential proprietary information where the data is protected from disclosure elsewhere in the federal or state constitutions or by statute.” *Great Falls Tribune v. Montana Public Service Comm’n*, 2003 MT 359, ¶¶ 39, 319 Mont. 38, 82 P.3d 876, 883 (2003).

Montana has adopted the Uniform Trade Secrets Act (UTSA). Mont. Code Ann. § 30-14-401, *et seq.* Trade secrets are defined by the UTSA 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.

Mont. Code Ann. § 30-14-402(4).

In *Great Falls Tribune*, the Montana Supreme Court adopted Justice Nelson’s concurring opinion in *Associated Press, Inc. v. Dep’t of Rev.*, 2000 MT 160, 300 Mont. 233, 4 P.3d 5. *Great Falls Tribune*, ¶ 39. The *Great Falls Tribune* court specifically cited the UTSA and prohibitions against the taking of private property interests as examples of laws which may prohibit the disclosure of a corporation’s confidential information to the public. *Id.* The Court provided clarity for corporations on the showing necessary to seek protection of confidential business information. PPLM meets that burden in this case.

3. First, it is the corporation’s burden to make “a prima facie showing that the materials constitute property rights which are protected under constitutional due process requirements.” *Id.*, ¶ 56. This showing cannot be conclusory and must be specific enough for the agency, “any objecting parties, and reviewing authorities to clearly understand the nature and basis of the [corporation’s] claims to the right of confidentiality.” *Id.* Second, if the corporation

seeks protection of its materials as trade secrets, and the government agency determines that the materials are, in fact, trade secrets warranting due process protections, the agency can protect the materials by any of the means described in Mont. Code Ann. § 30-14-406. *Id.*, ¶ 62.

4. The Administrative Rules enacted by the PSC to implement the Act identifies six elements for a moving party to establishing a prima facie case that Information may be protected as trade secret. ARM § 38.2.5007(4)(b).

(i) prior to requesting a protective order, the provider has considered that the commission is a public agency and that there is a constitutional presumption of access to documents and information in the commission's possession;

(ii) the claimed trade secret material is information;

(iii) the information is secret;

(iv) the secret information is subject to efforts reasonable under the circumstances to maintain its secrecy;

(v) the secret information is not readily ascertainable by proper means; and

(vi) the information derives independent economic value from its secrecy, or that competitive advantage is derived from its secrecy.

5. PPLM understands and has fully considered the constitutional presumption in favor of public access to Information filed in PSC proceedings, as outlined in section 2, *supra*.

6. **The material is Information.** The material for which protection is sought is comprised of knowledge, data and facts communicated in writing, and as such is Information as that term is defined by law. ARM § 38.2.5001(3). Charles S. Baker Affidavit ¶ 4.

7. **The Information is Secret.** The Information reflects the outage history at Colstrip, and PPLM does not share the Information for which protection is sought. Charles S. Baker Affidavit ¶ 4-10.

8. **Reasonable efforts are used to maintain secrecy.** PPLM protects the secrecy of the Information. Only (1) PPLM employees and representatives and (2) the employees and representatives of the other co-owners of Colstrip with a direct need to know are authorized to access the Information and hard copies of the Information are marked as confidential and destroyed when no longer needed. Charles S. Baker Affidavit ¶ 8-9.

9. **The data is not readily ascertainable by proper means.** The Information for which protection is sought is treated as confidential as between co-owners of Colstrip and is not shared with others. Charles S. Baker Affidavit ¶ 10.

10. **The Information derives independent economic value or a competitive advantage is derived from its secrecy.** If the Information is not protected, PPLM's business competitors and its other and prospective future customers would gain knowledge about PPLM's outages that would provide its competitors and its prospective customers with a competitive advantage or negotiating advantage, respectively. Charles S. Baker Affidavit ¶ 5-6. Because knowledge of the Information imparts a competitive or negotiating advantage, PPLM has historically protected the confidentiality of this type of confidential information.

For the reasons discussed in the Motion and the accompanying Affidavit of Charles S. Baker Affidavit, PPLM respectfully asks the PSC to issue a Protective Order covering the Information described above. The requested relief is in the public interest because it will assure compliance with the UTSA and protect PPLM's property rights.

DATED this 6th day of January, 2015.

for 
William W. Mercer
Holland & Hart LLP
401 North 31st Street
Suite 1500
P.O. Box 639
Billings, Montana 59103-0639

ATTORNEY FOR PPL MONTANA, LLC

CERTIFICATE OF SERVICE

This is to certify that the foregoing was mailed to the following persons by first class U.S. Mail on the date herein.

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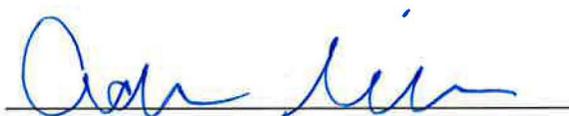
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Dated this 6th day of January, 2015.



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

IN THE MATTER OF NorthWestern Energy's)	
2013 and 2014 Applications for (1) Approval of)	REGULATORY DIVISION
Deferred Cost Account Balances for Electricity)	
Supply, CU4 Variable Costs/Credits, DGGS)	DOCKET NO. D2013.5.33
Variable Costs/Credits, Spion Variable)	
Costs; and (2) Projected Electricity Supply Cost)	DOCKET NO. D2014.5.46
Rates, CU4 Variable Rates, DGGS Variable)	
Rates, and Spion Variable Rates)	

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, Montana 59101, to me known or proven, who being duly sworn according to law, deposes and says:

1. I am Controller for PPL Montana, LLC (PPLM), an indirect subsidiary of PPL Corporation, and am responsible for strategy and oversight of PPLM's budgeting, financial planning, and financial reporting. PPL EnergyPlus, LLC (EPlus) is the energy marketing and trading subsidiary of PPL Corporation (PPL). EPlus is responsible for selling PPLM's entire share of generation from the Colstrip Steam Electric Station. This affidavit sets forth my understanding of PPLM's financial position, and provides the basis for my conclusion that the release of documents containing sensitive business information could be used to cause PPL substantial competitive harm. I am familiar with, and have personal knowledge of, the matters set forth in this affidavit.

2. Montana Environmental Information Center served data request numbers MEIC-026 and MEIC-028 on NorthWestern Energy (NorthWestern) in the above-captioned docket. MEIC-026 requests the following data for each planned and unplanned outage that occurred after the date on which NorthWestern acquired Colstrip: (a) the unit at which the outage occurred; (b) whether the outage was planned or unplanned; (c) the duration, in days, of the outage; and (d) the cost of the outage. MEIC-028 seeks the forced outage rate for Colstrip Unit 4 from 2004 to 2014.

3. NorthWestern gave PPLM notice that it intends to provide the outage history and forced outage rate documents in response to Data Requests MEIC-026 and MEIC-028. It is PPLM's understanding that the responses to the data requests are public.

4. The material requested in MEIC-026 includes every outage at Colstrip Units 3 and 4, whether planned or unplanned from 2002 through the present. The accounting of those outages specifically identifies the type of event, the event's start and end times, and the estimated cost of the outage. The material requested in MEIC-028 requests a calculated forced outage rate annually for a consecutive decade.

5. Release of this data would likely cause substantial competitive harm to PPL because it could be used by competitors to give competitors and potential competitors insight into the historical performance of the individual Colstrip Units with performance, planned outage, and forced outage information they could not obtain elsewhere.

6. The fact that the outage history data requested in MEIC-026 is compiled into a single document that includes unit outages and the specific economic impacts of those outages is especially problematic, because this cumulative information would allow a competitor to assess outage patterns at the units. Specifically, a competitor could use the outage information to determine the standard outage schedule for the units, the likely timing of the next major planned overhauls, the patterns of unit availability, and the individual unit capacities over a long period of time. Competitors or potential competitors could use this information to position their own generation assets or purchased power to capitalize on PPLM's need to purchase electricity on the market to cover its electricity commitments while its own generation assets are offline.

7. Similarly, the forced outage rate that would be responsive to MEIC-028 is a calculation that takes into account all generation and generation-interrupting events. As with the outage history, a competitor could use this type of accumulated information to determine how often the Colstrip units are available on an annual basis, something that PPLM does not ever release publicly.

8. PPLM carefully maintains the confidentiality of both the outage history data and the forced outage rate. This data is not available publicly, either in financial disclosure documents, regulatory filings or elsewhere, and is treated as extremely sensitive and confidential by PPL Montana and its affiliates.

9. Under PPLM's and PPL's Information Security policies 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.

10. Thus, the information contained the responses to MEIC-026 and MEIC-028 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.

FURTHER AFFIANT SAYETH NOT.

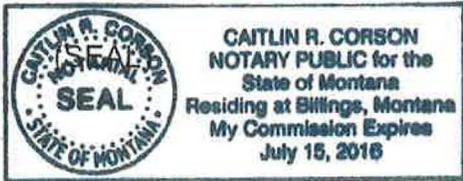
Executed this 23rd day of December, 20 14



Charles S. Baker
Controller
PPL Montana, LLC

STATE OF MONTANA)
 : ss.
COUNTY OF YELLOWSTONE)

Subscribed and sworn to before me on this 23rd day of December, 20 14.



Signature: Caitlin R. Corson
Printed Name: Caitlin R. Corson
Notary Public for the State of Montana
Residing at: Billings, MT
My Commission Expires: July 15, 2016
month/day/four digit year