Service Date: November 18, 2005

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

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IN THE MATTER OF NORTHWESTERN ENERGY, Application for Approval of 2003 Avoided Cost Compliance Filing -- Schedules QFLT-1 and STPP-1	))))	UTILITY DIVISION DOCKET NO. D2003.7.86 ORDER NO. 6501e
IN THE MATTER OF NORTHWESTERN ENERGY, Application for Approval of 2004 Avoided Cost Compliance Filing -- Schedules QFLT-1 and STPP-1	))))	UTILITY DIVISION DOCKET NO. D2004.6.96 ORDER NO. 6501e
IN THE MATTER OF NORTHWESTERN ENERGY, Application for Approval of 2005 Avoided Cost Compliance Filing -- Schedules QFLT-1 and STPP-1	))))	UTILITY DIVISION DOCKET NO. D2005.6.103 ORDER NO. 6501e

PROTECTIVE ORDER

On October 3, 2005, NorthWestern Energy (NWE) filed before the Public Service Commission (PSC) a motion for protective order to govern certain information expected to be filed in one of the above-entitled consolidated dockets, Docket No. D2005.6.103. NWE's motion is proper in form and includes the elements required in a motion for protective order before the PSC.

NWE states that it has done a thorough legal and factual examination and has determined the specific items or categories of like items identified are trade secrets or otherwise legally protectible. *ARM 38.2.5007(2)*. NWE states that it has considered that the PSC is a public agency and that there is a presumption of access to documents and information in the PSC's possession. *ARM 38.2.5007(4)(b)(i)*. NWE states that it understands it has the burden of demonstrating that the identified items are confidential information and that it must, within its motion, establish a prima facie showing of confidentiality, factually and legally, and make clear the basis for the claim of confidentiality. *ARM 38.2.5007(3)*. NWE names a contact person regarding the motion and regarding the items to be protected. *ARM 38.2.5007(3)(a)*. NWE has

included a complete and specific non-confidential identification of the items or categories of items for which it seeks protection. *ARM 38.2.5007(3)(b)*. For each item or category of like items NWE has supplied what it believes is 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. *ARM 38.2.5007(3)(c)*. NWE has included an affidavit that NWE suggests supports the facts, is by a person qualified on the subject matter, and supports the claim of confidentiality of the identified information. *ARM 38.2.5007(3)(c)*. NWE states it has explained, in detail, for each item or category of like items, including thorough facts and legal analysis as it relates in general and in specific, proper application of the element of trade secret. *ARM 38.2.5007(3)(d)*. NWE's motion has been noticed in accordance with ARM 38.2.5007(8).

NWE identifies one category of protectible information in this motion -- monthly coal cost information and supporting invoices for the time period April 2004 to March 2005, including commodity cost, transportation, royalty, adjustments, and tonnage. NWE states that this type of information has already been protected in one of the above-entitled consolidated dockets, Docket No. D2004.6.96, Order No. 6604, October 13, 2004.

The PSC determines that NWE has shown good and sufficient cause in fact and law that the information for which protection is requested is entitled to protection from uncontrolled disclosure, pursuant to § 69-3-105, MCA (PSC authority to issue protective orders), as trade secret. In accordance with § 30-14-402, MCA (statutory definition of trade secret), PSC rule ARM 38.2.5007(4)(b) identifies the elements of trade secret as: (a) the items or categories identified are information; (b) the information is in fact secret; (c) the information is subject to efforts reasonable under the circumstances to maintain its secrecy; (d) the information is not readily ascertainable by proper means; and (e) the information derives independent economic value from its secrecy or a competitive advantage is derived from its secrecy. NWE has made the required demonstration that these elements exist for the information for which NWE requests protection. The PSC grants NWE's request for protection of the identified information as trade secret and hereby orders that information submitted in accordance with this order be treated as

"confidential information" under the terms of this order and PSC protective order rules, ARM 38.2.5001 through 38.2.5030.

NWE also argues the information should be protected as "confidential business information." NWE argues that there are two distinct bases for withholding information from public disclosure -- trade secret and confidential business information. NWE argues this distinction is recognized in *Great Falls Tribune v. Montana Public Service Commission*, 319 Mont. 38, 50 (2003), which provides that nothing in Article II, Section 9 (right to know), requires disclosure of trade secrets and other confidential proprietary information where protected elsewhere by constitution or statute. It appears that NWE is making this argument because the confidential business information basis for protection may expand the sphere of protectible information, may be more easily administered in protection of information owned by others, and is accompanied by case law that, at least arguably, supports more restrictive protective orders. NWE has made a *prima facie* case for trade secret protection of the categories of information identified by NWE. The PSC does not see a compelling need to consider additional protection of the information as confidential business information.

Done and dated this 31st day of October, 2005, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GREG JERGESON, Chairman

BRAD MOLNAR, Vice-Chairman

DOUG MOOD, Commissioner

ROBERT H. RANEY, Commissioner

THOMAS J. SCHNEIDER, Commissioner

ATTEST:
Connie Jones
Commission Secretary

(SEAL)

NOTE: There is no reconsideration of the granting of a protective order. There is a procedure to challenge the provider's claim of confidentiality. See ARM 38.2.5008.