

January 16, 2018

Mr. Daniel Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

Re: ***Formal Complaint and Petition for Relief by Minnesota Energy Resources Corporation
Against Northern States Power Company d/b/a Xcel Energy***

Docket No. G-011, G-002/C-17-802

Dear Mr. Wolf:

Pursuant to Minn. R. 7829.0410, Minnesota Energy Resources Corporation (MERC) respectfully files the attached Motion for Protective Order and Proposed Protective Order with the Minnesota Public Utilities Commission (Commission). The purpose of the Proposed Protective Order is to facilitate the disclosure of documents and information during the course of the above-referenced proceedings, and to protect against the unauthorized disclosure of Trade Secret Information or Nonpublic Data. Consistent with Minn. R. 7829.0410, MERC notifies interested parties that any opposition to this motion must be filed and served within 14 days of service of this filing.

MERC appreciates the Commission's review of this Motion and Proposed Protective Order. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

Stinson Leonard Street LLP

/s/ Thomas Burman

Thomas C. Burman

**STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION**

<i>Formal Complaint and Petition for</i>)	MPUC Docket No. G-011, G-002/C-17-802
<i>Relief by Minnesota Energy Resources</i>)	
<i>Corporation Against Northern States</i>)	MOTION TO ADOPT
<i>Power Company d/b/a Xcel Energy</i>)	PROTECTIVE ORDER
)	

Pursuant to Minn. R. 7829.0410, Minnesota Energy Resources Corporation (MERC) hereby respectfully moves the Minnesota Public Utilities Commission (Commission) to issue a Protective Order in this matter to facilitate the disclosure of documents and information during the course of these proceedings and to protect against the unauthorized disclosure of Trade Secret Information or Nonpublic Data. MERC and Northern States Power Company d/b/a Xcel Energy (Xcel) have responded to information requests in this matter from the Department of Commerce, Division of Energy Resources (Department) and from the Office of the Attorney General, Residential Utilities and Antitrust Division (OAG). MERC and Xcel provided Trade Secret Information and Nonpublic Data to the Department and OAG in their responses, and have exchanged with each other the public responses to the agencies' requests.

The Trade Secret Information and Nonpublic Data provided by MERC and Xcel includes, in part, each utility's analyses with respect to projected costs and revenues for serving the United Properties development, and other information that will inform the Commission's decision to open an investigation and/or refer this matter to the Office of Administrative Hearings for a contested case hearing. This information will also be used by the Commission and others should an investigation be opened. Accordingly, MERC and Xcel should have the opportunity to review one another's Trade Secret Information and Nonpublic Data, and agency analyses incorporating Trade Secret Information and Nonpublic Data, subject to the terms of the

attached Proposed Protective Order.¹ MERC intends for the Proposed Protective Order to govern the disclosure of documents and information in this proceeding and any subsequent investigation or appeal. Should the Commission refer this matter to the Office of Administrative Hearings, MERC will move the Administrative Law Judge for a Protective Order in that proceeding pursuant to Minn. Stat. § 14.60, subd. 2.²

Dated: January 16, 2018

Respectfully Submitted,

**MINNESOTA ENERGY RESOURCES
CORPORATION**

/s/ Amber S. Lee

Amber S. Lee
Regulatory and Legislative Affairs Manager
Minnesota Energy Resources Corporation
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/s/ Brian Meloy

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*Attorneys for Complainant Minnesota Energy
Resources Corporation*

¹ The Proposed Protective Order is attached as Exhibit A to this Motion.

² On January 10, 2018, MERC contacted Xcel, OAG, and the Department to seek the parties' consent regarding this Motion and Proposed Protective Order. Xcel objects, but OAG does not. The Department did not provide a response.

**STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION**

<i>Formal Complaint and Petition for</i>)	MPUC Docket No. G-011, G-002/C-17-802
<i>Relief by Minnesota Energy Resources</i>)	
<i>Corporation Against Northern States</i>)	MOTION TO ADOPT
<i>Power Company d/b/a Xcel Energy</i>)	PROTECTIVE ORDER
)	

Exhibit A

[Proposed] Protective Order

**STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION**

<i>Formal Complaint and Petition for Relief by Minnesota Energy Resources Corporation Against Northern States Power Company d/b/a Xcel Energy</i>))))))))))	ISSUE DATE: MPUC Docket No. G-011, G-002/C-17-802 [PROPOSED] PROTECTIVE ORDER
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This matter came before the Minnesota Public Utilities Commission (Commission) upon the motion by Minnesota Energy Resources Corporation (MERC) for a Protective Order.

Amber S. Lee, Regulatory and Legislative Affairs Manager, MERC, and Brian M. Meloy and Thomas C. Burman, Attorneys, Stinson Leonard Street LLP, appeared on behalf of MERC.

Amanda J. Rome, Attorney, Northern States Power Company d/b/a Xcel Energy, Inc. (Xcel) appeared on behalf of Xcel.

Joseph C. Meyer, Assistant Attorney General, appeared on behalf of the Office of the Attorney General, Residential Utilities and Antitrust Division (OAG).

John Kundert, Financial Analyst, Department of Commerce, appeared on behalf of the Department of Commerce, Division of Energy Resources (Department).

BACKGROUND

The purpose of this Protective Order (Order) is to facilitate the disclosure of documents and information during the course of these proceedings and to protect against the unauthorized disclosure of Trade Secret Information or Nonpublic Data.

For purposes of this Order, “government agency” or “government agencies” has the same meaning as “state agency” under Minn. Stat. § 13.02, subd. 17. Access to and use of Trade Secret Information and Nonpublic Data in this proceeding by Parties other than government agencies shall be strictly controlled by the terms of this Order. The Parties other than governmental agencies are hereafter referred to in this Protective Order as Parties, Persons, Recipients, or Entities.

The government agencies with access to Trade Secret Information or Nonpublic Data include the Commission, OAG, and the Department. Government agencies are subject to various laws and rules regulating access to and retention of data, including the Minnesota Government Data Practices Act (MGDPA), the records retention requirements of Minn. Stat. §§ 138.163-.226, as well as agency specific rules and procedures, including the Commission’s September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data (Commission Procedures).

During this proceeding, the Parties may request, access, use, and file Trade Secret Information or Nonpublic Data, which is limited to (i) “trade secret information” as defined in Minn. Stat. § 13.37, subd. 1(b); (ii) “nonpublic data” as defined at Minn. Stat. § 13.02, subd. 9; and (iii) “private data on individuals” as defined at Minn. Stat. § 13.02, subd. 12.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

Trade Secret Information and Nonpublic Data

1. All Trade Secret Information or Nonpublic Data furnished in this proceeding shall be:
 - a. Deemed furnished pursuant to all terms of this Order;
 - b. Treated by all Persons accorded access thereto pursuant to this Order as constituting confidential business information;
 - c. In accordance with the Commission’s Procedures, and for all documentary material claimed to be Trade Secret Information or Nonpublic Data, shall be marked substantially as follows by stamping each individual page with the designation **“NONPUBLIC DOCUMENT—CONTAINS TRADE SECRET INFORMATION [OR NONPUBLIC DATA]”**;
 - d. Used solely in accordance with this Order; and
 - e. Used solely for the purposes of this proceeding, and not used or disclosed for any other purpose or in any other manner, without an Order from the Commission.

2. For purposes of this proceeding, notes made pertaining to, or prepared as the result of, a review of Trade Secret Information or Nonpublic Data shall be subject to the terms of this Protective Order. Any Trade Secret Information or Nonpublic Data received in photographic, digital or electronic formats shall be identified as protected by the producing Party by means appropriate to the medium and shall be handled by the Recipient in a manner suitable to protect its confidentiality.

Use of Trade Secret Information or Nonpublic Data and Persons Entitled to Review

3. All Trade Secret Information or Nonpublic Data made available pursuant to this Order shall be given solely to counsel for the requesting Party or other authorized Persons who are designated by counsel as being the Party’s experts or witnesses in this proceeding and who execute Exhibit A in a timely manner prior to their receipt of the Trade Secret Information or Nonpublic Data. Trade Secret Information or Nonpublic Data shall not be used or disclosed except for purposes of this proceeding and as needed for all investigations and appeals of the final order in this proceeding. The Trade Secret Information or Nonpublic Data may not be used or referenced in other proceedings in Minnesota or in other jurisdictions. If the Commission refers this matter to the Office of Administrative Hearings for a contested case hearing, the

parties will request a new protective order from the Administrative Law Judge pursuant to Minn. Stat. § 14.60, subd. 2. Unless otherwise provided in this Protective Order, all Trade Secret Information or Nonpublic Data will be safeguarded and handled in accordance with the Commission's Procedures.

Nondisclosure Agreement

4. Prior to giving access to Trade Secret Information or Nonpublic Data as contemplated in paragraphs 1–3 above, to any expert or witness, whether or not such expert or witness is a Person designated to testify in any such proceeding, counsel for the Party seeking review of the Trade Secret Information or Nonpublic Data shall deliver a copy of this Order to such Person; and prior to disclosure such Person shall agree in writing to comply with and be bound by this Order.

5. Trade Secret Information or Nonpublic Data shall not be disclosed to any Person who has not signed a Nondisclosure Agreement in the form which is attached hereto and incorporated herein as Exhibit A. The Exhibit A Nondisclosure Agreement shall require the Person to whom disclosure is to be made to read a copy of this Order and to certify in writing that he or she has reviewed the same and has consented to be bound by its terms. The Nondisclosure Agreement shall contain the signatory's full name, permanent address and employer, and the name of the Party with whom the signatory is associated.

Government Agencies

6. Government agencies are not subject to the terms of this Order; provided, however, while this matter is pending before the Commission and as to matters within the jurisdiction of the Commission, government agencies are subject to the terms of this Paragraph.

- a. *Definition of Trade Secret Information or Nonpublic Data.* “Trade Secret Information and Nonpublic Data” shall be limited to (i) “trade secret information” as defined in Minn. Stat. § 13.37, subd. 1(b); (ii) “nonpublic data” as defined at Minn. Stat. § 13.02, subd. 9; and (iii) “private data on individuals” as defined at Minn. Stat. § 13.02, subd. 12. This definition applies to both government agencies and Parties.
- b. *Conflicts.* To the extent this Order conflicts with or omits a matter otherwise required by either MGDPA or Commission Procedures, the requirements of the MGDPA or Commission Procedures shall control. Any provision of the Order not consistent with this paragraph shall be of no effect with respect to the government agencies.
- c. *Challenge to Trade Secret Designation.* The Commission, upon a request by or to any Party or government agency, and upon ten (10) days prior notice or such period as determined by the Commission, may review confidential materials *in camera* and remove a designation of Trade Secret Information or Nonpublic Data.

- d. *Verbal Disclosure.* Trade Secret Information or Nonpublic Data may be verbally disclosed by government agencies during hearings in this matter upon prior notice to, and agreement of the disclosing Party or authorization by the Commission.
- e. *Transcripts.* Each disclosing Party or government agency may identify portions of hearing transcripts that disclose Trade Secret Information or Nonpublic Data for up to three business days after the transcript is made available to them, and the court reporter shall mark those portions of the transcript “**TRADE SECRET INFORMATION—NONPUBLIC DATA,**” consistent with the Commission’s Procedures.

Challenges to Trade Secret or Nonpublic Designation or Other Special Requests

7. This Order establishes a procedure for the expeditious handling of Trade Secret Information or Nonpublic Data. It shall not be construed as an agreement or ruling on the discoverability, confidentiality, or validity of a Trade Secret Information or Nonpublic Data designation of any such information or document. While this matter is pending before the Commission, any Party at any time upon ten (10) days prior notice may seek by appropriate pleading to have documents or other matters that have been designated as Trade Secret Information or Nonpublic Data removed from the protective requirements of this Order or to have them handled in a manner differently than described in this Order (either for greater or lesser confidentiality protections). If the trade secret or nonpublic nature of this information is challenged, resolution of the issue shall be made by the Commission after proceedings *in camera* which shall be conducted under circumstances such that only those Persons duly authorized hereunder to have access to such trade secret or nonpublic matter shall be present. The record of such *in camera* hearings shall be marked “**TRADE SECRET INFORMATION—NONPUBLIC DATA,**” unless the Commission determines that the proceeding should not be classified as involving Trade Secret Information or Nonpublic Data.

Use of Trade Secret Information or Nonpublic Data in Comments or Pleadings

8. Where reference to Trade Secret Information or Nonpublic Data is required in pleadings, cross-examinations, briefs, argument or motions, it shall be by citation of title or exhibit number or by some other non-confidential description. Any further use of or substantive references to Trade Secret Information or Nonpublic Data shall be placed in a separate “Nonpublic” copy of the pleading or brief and submitted to the Commission pursuant to the terms of the Commission’s Procedures. This “Nonpublic” copy shall be served only on counsel of record (one copy each) and those persons who have signed a Nondisclosure Agreement. All the protections afforded in this Order apply to materials prepared and distributed under this paragraph.

Use of Trade Secret Information or Nonpublic Data in Hearings or Commission Meetings

- 9. The receiving Party shall not use Trade Secret or Nonpublic Data in a hearing

without first: (a) providing prior notice to the disclosing Party regarding the information to be used; and (b) conferring with the disclosing Party regarding limitations or procedures that can be used to avoid disclosing the confidential aspects of the information at issue to Persons not otherwise entitled to receive such information. If the Parties cannot reach agreement regarding the use of such information, then the dispute shall be submitted to the Commission before the information is used or publicly disclosed. Without limiting the foregoing, no Party shall refer to Trade Secret or Nonpublic Data on oral testimony, cross-examination or argument except in accordance with this paragraph.

Public Summaries

10. To the extent required by the Commission's Procedures, the providing Party shall prepare a written summary of the Trade Secret Information or Nonpublic data referred to in this Order to be placed in the public record.

Return of Materials

11. Unless otherwise ordered, all Trade Secret or Nonpublic Data, including transcripts of any hearings to which a claim of "trade secret" or "nonpublic" status is made, shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall be destroyed or returned to counsel for the disclosing Party within 30 days after final settlement or conclusion of the applicable matter including administrative or judicial review thereof, unless otherwise agreed by the disclosing Party. If the Trade Secret or Nonpublic Data is destroyed, the receiving Party shall send a written communication to the disclosing Party verifying destruction of the Trade Secret or Nonpublic Data.

Preservation of Confidentiality

12. No Person who receives, or is afforded access to, any Trade Secret or Nonpublic Data by reason of this Order, shall use or disclose the Trade Secret Information or Nonpublic Data for purposes of business or competition, or any other purpose other than preparing for, or conducting, these proceedings. When using or accessing such data, an authorized holder of this data shall take reasonable precautions to keep the Trade Secret Information or Nonpublic Data secure and in accordance with the purposes and intent of this Protective Order.

Reservation of Rights

13. The Parties to this proceeding affected by the terms of this Order retain the right to question, challenge and object to the admissibility of any and all data, information, studies, and other matters furnished under the terms of this Order on the grounds of relevancy or materiality. This right applies to data produced or received in response to interrogatories, requests for information or documents, or cross examination.

Inadvertent Disclosure

14. No Party shall have waived its right to designate any documents, data,

information, studies, or other materials as Trade Secret Information or Nonpublic Data by inadvertent disclosure, provided that the disclosing Party thereafter gives written notice to the Recipient(s) of such information that it should have been designated as Trade Secret Information or Nonpublic Data. From and after receipt of such notice, the previously disclosed information subsequently identified as Trade Secret Information or Nonpublic Data shall be treated as Trade Secret Information or Nonpublic Data for purposes of this Order.

Disclosure of Trade Secret/Nonpublic Data to Unauthorized Person

15. If material designated as Trade Secret Information or Nonpublic Data is disclosed by a Party to any Person other than those entitled to disclosure in the manner authorized by this Protective Order, the Party responsible for the disclosure shall: (a) immediately upon learning of such disclosure, inform the designating Party in writing and by telephone call of all pertinent facts relating to such disclosure and (b) shall make every effort to prevent further disclosure by or to any unauthorized Person(s). If requested by the designating Party, the disclosing Party shall use its best efforts to retrieve the documents or tangible things from the unauthorized Recipients. The Parties thereafter shall attempt to resolve the matter promptly. If the Parties are unable to resolve the issue, a Party may file a motion with the Administrative Law Judge for relief with notice to the Parties of record. This Protective Order shall not abrogate or diminish any contractual, statutory, or other legal obligation or right of any Party with respect to the improper release of Trade Secret Information or Nonpublic Data.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary

**STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION**

<i>Formal Complaint and Petition for</i>)	
<i>Relief by Minnesota Energy Resources</i>)	MPUC Docket No. G-011, G-002/C-17-802
<i>Corporation Against Northern States</i>)	
<i>Power Company d/b/a Xcel Energy</i>)	EXHIBIT A TO PROTECTIVE ORDER
)	NONDISCLOSURE AGREEMENT

I, the undersigned, hereby acknowledge that I have read the attached Protective Order dated _____, in Minnesota Public Utilities Commission Docket No. G-011, G-002/C-17-802, and understand the terms thereof and agree to be bound by all such terms. Without limiting the generality of the foregoing, I agree not to disclose to any person or entity not authorized to receive materials designated **“TRADE SECRET INFORMATION—NONPUBLIC DATA”** under the terms of said Protective Order, or any copies or extracts of information derived therefrom, which have been disclosed to me. I further agree to use any such materials disclosed to me solely for the purpose of this proceeding and for no other purpose.

I hereby submit myself to the jurisdiction of the Minnesota Public Utilities Commission for the purpose of enforcing said Protective Agreement and Order.

Dated: _____

Signature

Type or Print Name

Address

Name of Employer

Name of Party

**STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

*In the Matter of the Formal Complaint and
Petition for Relief by Minnesota Energy
Resources Corporation Against Northern
States Power Company d/b/a Xcel Energy*

MPUC Docket No. G-011, G-002/C-17-802

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of **Minnesota Energy Resources Corporation's Motion for Protective Order and Proposed Protective Order** have been served on this day by e-filing/e-serving to the following:

NAME	EMAIL	SERVICE
Generic/Commerce Attorneys	Commerce.attorneys@ag.state.mn.us	Electronic
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Daniel P. Wolf	dan.wolf@state.mn.us	Electronic

Dated this 16th day of January, 2018

/s/ Dylan M. Stanek
Dylan M. Stanek