

STATE OF MINNESOTA
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
David C. Boyd
Nancy Lange
Dan Lipschultz
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of Northern States
Power Company d/b/a Xcel Energy for
Approval of Competitive Resource
Acquisition Proposal

Docket No. E-002/CN-12-1240

**GERONIMO ENERGY'S MOTION TO ENFORCE PROTECTIVE ORDER AND FOR
RELIEF**

On September 3, 2014, Xcel Energy filed a Status Update in docket number E-002/M-14-162 which misused and disclosed trade secret pricing information of Geronimo Wind Energy, LLC d/b/a Geronimo Energy, LLC ("Geronimo"). Xcel Energy received this information from Geronimo during this proceeding subject to the terms and conditions of the First Pre-Hearing Order (Protective Order) (hereinafter, the "Protective Order"). Xcel Energy's use and disclosure of this information in another docket violates the plain terms of the Protective Order which is still in full force and effect in this docket. As of the filing of this Motion, Xcel Energy has not, despite Geronimo's request, removed information pertaining to Geronimo's trade secret data. Accordingly, Geronimo respectfully requests that the Minnesota Public Utilities Commission (the "Commission"): (1) remove the offending public trade secret versions of Xcel Energy's Status Update from eDockets; and, (2) decline to consider or rely upon any information or comments the Commission receives in this or other proceeding as a result of Xcel Energy's violation of the protective order.

I. The ALJ Issued a Protective Order in this Proceeding.

The parties to this proceeding recognized that sensitive, trade secret, confidential, and/or proprietary information would be exchanged in the course of this proceeding, and the parties wished to protect such information from distribution and disclosure. Accordingly, on July 17, 2013, the Administrative Law Judge (“ALJ”) issued the Protective Order. The purpose of the Protective Order is to:

(1) facilitate the disclosure of documents and information during the course of the Proceedings; (2) protect Trade Secret Information and Highly Sensitive Trade Secret Information¹ of the Bidding Parties; and (3) provide other terms and conditions with respect to Trade Secret Information and Highly Sensitive Trade Section Information that will be exchanged by the Bidding Parties in the Proceedings.

The Protective Order further provides that access to and review of Trade Secret Information and Highly Sensitive Trade Secret Information (hereinafter, collectively “Protected Information”) “shall be strictly controlled by the terms of [the Protective Order].”² The Protective Order remains in effect until twenty-four months after these proceedings have closed.³

¹ “Trade Secret Information” is defined to include “all documents, testimony, transcripts . . . and all other materials furnished pursuant to any requests for information, subpoenas or other modes of discovery . . . that are designated proprietary or confidential . . . by the producing Bidding Party.” Protective Order ¶ 2(b). Parties are required to mark such information with “NON-PUBLIC DOCUMENT – CONTAINS TRADE SECRET DATA.” *Id.*

“Highly Sensitive Trade Secret Information” is defined to include “all documents, testimony, transcripts . . . and all other materials furnished pursuant to any requests for information, subpoenas or other modes of discovery . . . that are particularly competitively sensitive. This includes: detailed estimates or underlying cost information supporting any proposal of any Bidding Party” Protective Order ¶ 2(c). Parties are required to mark such information as “NON-PUBLIC DOCUMENT – HIGHLY SENSITIVE TRADE SECRET INFORMATION – USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. E-002/CN/12-1240.” Protective Order ¶ 4(b).

² Protective Order, at p. 2.

³ Protective Order ¶ 14.

The Protective Order prohibits the parties, including Xcel Energy, from unauthorized use or disclosure of Protected Information. Specifically, the Protective Order provides:

All persons who may be entitled to review, or who are afforded access to any Trade Secret Information by reason of this Order, shall neither use nor disclose the Trade Secret Information for purposes of business competition, or any purpose other than the purpose of preparation for and conduct of the Proceedings.⁴

Disclosure of Protected Information is limited to individuals who execute Exhibit A to the Protective Order.⁵ Exhibit A requires “the person(s) to whom disclosure is made to read a copy of this Protective Order and to certify in writing that they have reviewed the same and have consented to be bound by its terms.”⁶ Numerous individuals associated with Xcel Energy, executed Exhibit A, thereby certifying that they had read the Protective Order and agreed to be bound by its terms.

II. Geronimo Provided other Parties with Protected Information Pursuant to the Terms of the Protective Order.

During the course of this proceeding, Geronimo provided substantial amounts of Protected Information in accordance with the terms of the Protective Order. For instance, Geronimo provided the parties, including Xcel Energy, with its pricing information. Throughout the proceeding, Geronimo took steps to protect its Protected Information, including marking such information in accordance with the requirements set forth in the Protective Order. There is, and can be, no dispute that Geronimo’s pricing information is entitled to protection under the Protective Order.

⁴ Protective Order ¶ 3(a).

⁵ Protective Order ¶ 3(d) and Exhibit A.

⁶ Protective Order ¶ 3(d).

III. Xcel Energy Used and Disclosed Geronimo's Protected Information in another Proceeding.

On September 3, 2014, Xcel Energy filed a Status Update in Docket No. E-002/M-14-162.⁷ The Status Update both uses and discloses Geronimo's Protected Information. Specifically, on page two of the Status Update, Xcel Energy states that "eleven companies have proposed 15 projects . . . each at a levelized energy cost of \$85/MWh or less." [TRADE SECRET DATA HAS BEEN EXCISED]. These statements, taken together, publicly state that [TRADE SECRET DATA HAS BEEN EXCISED]. The Status Update was widely distributed to persons on the 14-162 docket's service list. In addition, the Status Update is publicly available on the eDockets website.

IV. Xcel Energy's Status Update in Docket No. 14-162 Violated the Protective Order.

As described above, Xcel Energy's Status Update violates the plain terms of the Protective Order in this proceeding. The Protective Order prohibits using or disclosing Geronimo's Protected Information outside of this proceeding and to unauthorized individuals. Xcel Energy clearly used Geronimo's Protected Information for its own business and competitive purposes; without using this information, Xcel Energy could not have drafted the third paragraph on page two of the Status Update. Further, these statements, which have been widely disseminated outside of the 12-1240 docket, advertise to the public [TRADE SECRET DATA HAS BEEN EXCISED]. This is the very information the Protective Order was put in place to protect. Xcel Energy's use and disclosure of Geronimo's protected pricing information violates both the language and the spirit of the Protective Order.

⁷ Geronimo is not a party to the 14-162 proceeding. In addition, there are numerous persons involved in the 14-162 proceeding which were not parties in the 12-1240 proceeding.

On September 5, 2014, Geronimo notified Xcel Energy that the Status Update violated the Protective Order. As of the filing of this Motion, Xcel Energy has neither responded to our letter nor removed the Protected Information from the Status Update.

V. Geronimo is Entitled to Relief Arising from Xcel Energy's Violation of the Protective Order.

Geronimo is entitled to appropriate relief as a result of Xcel Energy's misuse and broad distribution of its Protected Information in violation of the Protective Order. Geronimo made every effort to protect its information in the context of these proceedings, and it would not have provided such information had it known that Xcel Energy would use the information publicly and for its own business and competitive purposes.

As an initial matter, in order to comply with the Protective Order, Geronimo's Protected Information should be removed from Xcel Energy's Status Update in Docket No. 14-162.⁸ The document should then be refiled and re-served.

However, given that Geronimo's protected pricing information has already been broadly distributed to the public, refileing the Status Update alone is an insufficient remedy for Geronimo. Accordingly, Geronimo respectfully requests that, in recognition of Xcel Energy's misuse and disclosure of Geronimo's Protected Information, the Commission neither consider nor rely upon any comments or other information it receives as a result of Xcel Energy's violation of the Protective Order. Because Xcel Energy has already widely disseminated Geronimo's Protected

⁸ In order to comply with the Protective Order, it is necessary to completely remove the Protected Information from the Status Update, rather than merely re-classifying it as trade secret because the Protective Order prohibits any use or disclosure of such information in another proceeding. The parties and individuals that may have or gain access to Protected Information in the 14-162 docket are not subject to this Protective Order, have not executed Exhibit A in this proceeding, and Geronimo never agreed to disclose such information to the parties to that proceeding.

Information, this is the only meaningful and equitable way to remedy the harm done to Geronimo.

Dated: September 5, 2014

Respectfully submitted,

/s/ Christina K. Brusven

Christina K. Brusven (# 388226)

Lindsey A. Hemly (# 0390347)

FREDRIKSON & BYRON, P.A.

200 South Sixth Street, Suite 4000

Minneapolis, MN 55402

Phone: (612) 492-7000

Fax: (612) 492-7077

Attorneys for Geronimo Energy

51217681_1.docx