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

IN THE MATTER OF Establishing Minimum ) REGULATORY DIVISION  
Information Requirements for NorthWestern )  
Energy’s Study of the Costs and Benefits of ) DOCKET NO. D2017.6.49  
Customer Generators )

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**NorthWestern Energy’s Motion for Protective Order  
and Brief in Support**

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NorthWestern Corporation d/b/a NorthWestern Energy (“NorthWestern”) hereby submits to the Montana Public Service Commission (“Commission”) this *Motion for Protective Order and Brief in Support* (“Motion”). NorthWestern hereby moves the Commission, pursuant to Administrative Rules of Montana (“ARM”) 38.2.5001 through 38.2.5030, for a protective order to govern the use and disclosure of the information identified herein. In support of NorthWestern’s Motion, NorthWestern files the *Affidavit of Kittredge Williams* (“Williams Affidavit”), attached hereto as Attachment 1.

**I. BACKGROUND**

On March 30, 2018, as required by § 69-8-610, MCA, NorthWestern filed with the Commission the study conducted by Navigant Consulting, Inc. (“Navigant”) regarding the costs and benefits of customer-generators in NorthWestern’s Montana service territory. Sometime

after making that filing, the Commission Staff requested NorthWestern to file the underlying workpapers prepared by Navigant that support the study. The workpapers prepared by Navigant consists of one Excel spreadsheet that contains 34 tabs and is approximately 5 megabytes in size. As described more specifically herein, NorthWestern seeks a protective order from the Commission to keep confidential certain information contained on 5 tabs of the Excel spreadsheet. This information, which is similar to Critical Energy Infrastructure Information (“CEII”), if disclosed publicly, could result in damage to NorthWestern’s system and the electrical grid thereby impacting public safety. Therefore, NorthWestern requests the Commission grant protection of certain information contained in the Excel spreadsheet that is more specifically described below.

In order to provide the remainder of the Excel spreadsheet publicly, NorthWestern has modified the spreadsheet to remove any information covered by this Motion. This modified/redacted spreadsheet is simultaneously being provided to the Commission on a CD.<sup>1</sup> However, removing the data from the linked spreadsheet creates an error in many of the formulas. So that this error message will not appear in multiple cells on almost every tab of the spreadsheet, NorthWestern has converted all formulas to values. Once the Commission acts on this Motion and if a protective order is granted, the original, unmodified Excel spreadsheet will be filed under the protection based on the guidelines established by the Commission. That file will have all formulas intact.

## II. INTRODUCTION

Pursuant to ARM 38.2.5007(2), NorthWestern has determined that the information for which it seeks protection is confidential information that must be protected because it is

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<sup>1</sup> The printed version of this information would be more than 700 unformatted pages.

“otherwise legally protectable” pursuant to ARM 38.2.5007(5). As required by the Commission’s regulations, NorthWestern must demonstrate compliance with the legal standards for protection that are set forth in ARM 38.2.5007(3). *Id.* NorthWestern makes this demonstration below.

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. NorthWestern understands it has the burden of demonstrating that the identified information is confidential information and that it must, within this Motion, establish a *prima facie* showing of confidentiality, factually and legally, and make clear the basis for the claim of confidentiality.

NorthWestern fully appreciates the dilemma faced by the Commission in administering the state’s broad right to access public information. NorthWestern, in this Motion, respectfully represents that it has overcome the presumption that the public should have unrestricted access to the documents and information described herein. NorthWestern provides herein a *prima facie* showing of confidentiality, both factually and legally, and explains the basis for the claim of confidentiality.

### **III. CONTACT PERSONS**

The contact person regarding this Motion and regarding the information sought to be protected is:

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#### IV. IDENTIFICATION OF CONFIDENTIAL INFORMATION

A complete and specific non-confidential identification, item by item or by category of like items, for which protection is being sought includes information about NorthWestern's distribution transformers and is as follows:

1. Total amount of actual peak load by season at specific transformers;
2. Annual expected growth until 2045 of the peak load at specific transformers; and
3. Number of customers, by class, served by specific transformers.

(collectively referred to as "Detailed Transformer Information").

#### V. FACTUAL AND LEGAL BASES FOR PROTECTION

For the items listed above, 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 follows. An affidavit supporting the facts is attached as required by ARM 38.2.5007(3)(c). The affiant is a person qualified on the subject matter, and the affidavit supports the claim of confidentiality of the Detailed Transformer Information.

First, the Detailed Transformer Information is entitled to legal protection on the grounds of public safety. The Detailed Transformer Information is utilized by NorthWestern's distribution planning department to ensure that existing and potential customers continue to have reliable and safe electric service. *Id.*, ¶ 5. NorthWestern does not provide this information to the general public. *Id.*, ¶ 6. Nor is this level of detailed information provided for in any public filing made by NorthWestern. *Id.* As such, the Commission may protect confidential information that is "otherwise legally protectable." ARM 38.2.5007(2). Section 69-3-105(2), MCA, provides in part that "[t]he commission may issue a protective order when necessary to preserve . . . other information that must be protected under law, as required to carry out its regulatory functions." Pursuant to § 2-2-103, MCA, the Commission has a responsibility to carry out its public duties

for the benefit of Montana citizens; it is in a position of public trust. Thus, any Commission action or decision should not put Montana citizens in harm's way. Additionally, this Commission has a legal right to withhold certain information if such information will affect public safety. *See* § 2-6-1003(2), MCA (“a public officer may withhold from public scrutiny information relating to ... public safety.”)

Furthermore, the Detailed Transformer Information is similar to information that would qualify for protection as CEII if it concerned a transmission asset. CEII is exempt from Freedom of Information Act requests under 5 U.S.C. § 552(b)(3) and “shall not be made available by any Federal, State, political subdivision or tribal authority pursuant to any Federal, State, political subdivision or tribal law requiring public disclosure of information or records.” 16 U.S.C. § 824o-1(d)(1)(B). Consistent with this law, the Federal Energy Regulatory Commission (“FERC”) promulgated regulations that define CEII. These regulations provide that CEII is

specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: **(i) Relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) Could be useful to a person in planning an attack on critical infrastructure;** (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and (iv) Does not simply give the general location of the critical infrastructure.

18 C.F.R. § 388.113(c)(1) (emphasis added)<sup>2</sup>. Critical electric infrastructure is “a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters.” 16 U.S.C. § 824o-1(a)(2). FERC regulations provide that CEII

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<sup>2</sup> After the events of September 11, 2001, FERC determined that certain information that previously had been public would no longer be available to the general public. *See* 68 Fed. Reg. 9857-01 (March 3, 2003). Due to the terrorist events that occurred as well as the threat of future terrorist acts, FERC was “convinced that the responsible course is for it to protect CEII.” *Id.*, at 9859. With that conviction in mind, FERC later adopted regulations that provided the appropriate procedure for requests to treat information as privileged CEII as well as rules that govern access to such information. 18 C.F.R. §§ 388.112 and .113.

shall not be readily accessible by the public. 18 C.F.R. § 388.113(d). FERC protects transmission maps and diagrams as CEII. For example, an annual transmission planning document, FERC Form 715, Part 3, requires the transmission provider to submit one-line diagrams. FERC guidelines for this filing state that “Part 3 provides detailed one-line diagrams and geographic location and identification of all system components” and this information is CEII. *See* Guidelines for Filing Critical Energy/Electric Infrastructure Information (CEII), p. 5, attached hereto as Attachment 2.

In at least two prior cases, the Commission has recognized public safety concerns and granted protection of information. First, in 2006, the Commission granted a motion for protective order filed by Qwest Corporation (“Qwest”) in Docket No. D2005.6.105. *See* Order No. 6670a, p. 3. Qwest sought protection for eight categories of information on the grounds of trade secret. *Id.*, p. 2. The Commission found that Qwest successfully demonstrated that all eight categories of information were protectable trade secret information. *Id.* The Commission further found that the first category, a list of unattended wire centers in Montana, “certainly appears to require protection in the interests of public safety as confidential critical infrastructure-security information and [is] protectible [sic] pursuant to § 69-3-105, MCA, as ‘other information’ that must be protected by law.” *Id.*

The second instance involved NorthWestern’s acquisition of the hydroelectric assets. In Docket No. D2013.12.85, NorthWestern sought protection of information related to dam safety procedures and emergency action plans on the grounds that it is CEII and trade secret information. The Commission granted NorthWestern’s request for protection finding that it had previously protected similar information and the law requires protection of such information. *See* Order No. 7323, ¶¶ 9 and 10.



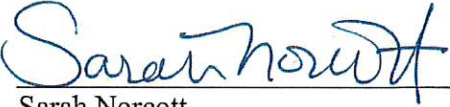
Given the law protecting similar information, the Commission's duty to protect the public, and its prior protection of similar information, it should likewise protect the interest of the public by granting NorthWestern's request for a protective order for the Detailed Transformer Information. For example, someone who intends to attack NorthWestern's system and desires to maximize the impacts of such attack would likely benefit from knowing the total actual peak load by season for a specific transformer, the expected growth in that peak load, and the type (residential, commercial, industry, etc.) and number of customers served by that transformer. As noted in the Williams Affidavit, many of the substations include both transmission and distribution facilities. Williams Affidavit, ¶ 8. An attack of a substation could cause system issues. *Id.* Therefore, the Commission should grant NorthWestern's request to protect the Detailed Transformer Information pursuant to § 69-3-105(2), MCA, in order to avoid such a situation and because, as described above, the information is otherwise legally protectable.

## **VI. SUMMARY AND REQUEST FOR RELIEF**

Accordingly, the Detailed Transformer Information is legally protectable confidential information within the meaning of ARM 38.2.5007. Protection of this information is required in order to protect public safety where there are those who seek to attack such infrastructure. As a result, the Commission is well supported in a decision to preserve the confidentiality of such information identified above through the issuance of a protective order. Consistent with the Montana Supreme Court's pronouncements in *Great Falls Tribune v. Montana Public Service Commission*, 2003 MT 359, 319 Mont. 38, 82 P.3d 876, and the Commission's authority under § 69-3-105(2), MCA, NorthWestern therefore respectfully requests a protective order covering the Detailed Transformer Information.

Respectfully submitted this 7<sup>th</sup> day of September 2018.

NORTHWESTERN ENERGY

By:  \_\_\_\_\_  
Sarah Norcott  
Attorney for North Western Energy



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**Affidavit of Kittredge Williams**

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STATE OF MONTANA )  
 ) : ss.  
County of Butte/Silver Bow )

I, Kittredge Williams, being first duly sworn upon oath, depose and state as follows:

1. I am an Engineer in Distribution Operations for NorthWestern Corporation d/b/a NorthWestern Energy (“NorthWestern”). My responsibilities in my current position include evaluating the electric distribution system through engineering analysis, system modeling, and load forecasting to plan for and maintain the capacity and reliability of NorthWestern’s electric distribution system.

2. This affidavit is provided to explain and support why the information discussed in the Motion for Protective Order filed concurrently herewith is information protectable under the law as “otherwise legally protectable” information and as trade secret information within the meaning of ARM 38.2.5007.

3. NorthWestern was required to conduct a cost/benefit study related to net-metering customer-generators. As part of that study, I was asked to provide Navigant Consulting, Inc. (“Navigant”), a consultant hired by NorthWestern to conduct the study, detailed information concerning distribution substations on NorthWestern’s system. The information I provided to

Navigant included the following: (1) the capacity size of distribution transformers, (2) the total amount of actual peak load for 2017 by season of distribution transformers, (3) annual expected growth rate of specific distribution transformers, and (4) the number of customers, by class, served by specific distribution transformers. The last three categories of information is information that I will collectively refer to as Detailed Transformer Information.

4. I am familiar with the Detailed Transformer Information and have personal knowledge of the facts stated herein. Opinions expressed herein are based upon my experience, as well as my knowledge of the treatment of this type of information generally.

5. My department uses the Detailed Transformer Information to plan for and maintain the capacity and reliability of NorthWestern's electric distribution system and service to existing customers as well as any potential customers.

6. To my knowledge, NorthWestern does not provide the Detailed Transformer Information to the public. Additionally, this level of detail about distribution transformers is not provided in any public filing made by NorthWestern. The Detailed Transformer Information in this case has only been provided to or viewed by those individuals at NorthWestern with a "need to know" basis. This information is subject to efforts reasonable under the circumstances to maintain its secrecy and the documents are not readily ascertainable by proper means. I believe that the Detailed Transformer Information is in fact secret.


7. NorthWestern does not freely disclose this information because it prevents certain information from being available and accessible by terrorists or other individuals that might attempt to attack NorthWestern's system.

8. An attack of a substation could cause system issues.
9. After issuance of a protective order by this Commission, NorthWestern will continue to maintain the secrecy of the Detailed Transformer Information. For docket purposes, the information will be placed on yellow paper or on a CD with a yellow label, pursuant to Commission rules, and maintained in a secure location with access limited to those NorthWestern employees, attorneys and consultants with a "need to know" basis, which is consistent with NorthWestern's internal controls.

DATED this 7<sup>th</sup> day of September 2018.

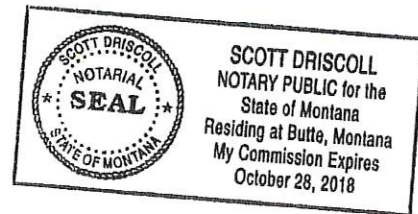
  
\_\_\_\_\_  
Kittredge Williams

SUBSCRIBED AND SWORN TO BEFORE me this 7<sup>th</sup> day of September 2018.

  
\_\_\_\_\_  
Print or Type Name: Scott Driscoll  
Notary Public for the State of Montana

Residing at Butte, Montana

My Commission Expires: October 28<sup>th</sup> 2018







## **Guidelines for Filing Critical Energy/Electric Infrastructure Information (CEII)**

The Critical Energy/Electric Infrastructure Information (CEII) process is not intended as a mechanism for companies to withhold from public access information that does not pose a risk of attack on the energy infrastructure. Therefore, in an effort to achieve proper designation while avoiding misuse of the CEII designation, the Commission requires submitters to segregate public information from CEII and to file as CEII only information that truly warrants being kept from ready public access. To this end, the Commission emphasizes that 18 CFR § 388.113(d)(1)(i) requires that submitters provide justifications for CEII treatment. The way to properly justify CEII treatment is by describing the information for which CEII treatment is requested and explaining the legal justification for such treatment.

The Commission has continuing concern for CEII filing abuses and will take action against applicants or parties who knowingly misfile information as CEII, including rejection of applications in which information is mislabeled as CEII. The Commission offers the following guidance for how various types of documents should be filed. We note that this guidance is for prospective filings. All documents currently filed at the Commission will retain their current status. Below are clarifying guidelines regarding CEII.

Further, we want to re-iterate that the labeling and treatment of non-public material discussed here pertains only to how the Commission handles such material. Materials provided voluntarily to or requested by persons outside the Commission's process are not necessarily subject to the same requirements or protections. Filers should contact those entities directly to inquire about the treatment of non-public material.

### ***Guidelines for filing CEII in Resource Reports 1, 11 and 13***

These guidelines provide instructions on how to file Resource Reports 1, 11 and 13. In the Commission's experience, Resource Reports 1, 11 and 13 contain public information, CEII, and privileged information. It is imperative that the information submitted be filed with the proper designation. Pursuant to 388.113(d)(1)(i-ii) of the Commission's regulations, each designation must be clearly labeled and filed as a separate volume. The Commission emphasizes that submitters must file public information, CEII, and privileged information as three separate volumes. Further, submitters must file as CEII or privileged only information that truly warrants exemption from ready public access.



## Guidelines for Filing Critical Energy/Electric Infrastructure Information (CEII)

- **Public** - The filing of Resource Reports 1, 11 and 13 should include a public volume for posting on eLibrary. In general, narratives such as descriptions of facilities and processes are public. However, if there are specific engineering details or design details of a critical infrastructure in narrative form, the information may be CEII or privileged. Except as described in the CEII section below, all of Resource Report 1 should be public. Examples of public aspects of Resource Report 11 include information demonstrating compliance with the siting requirements of Title 49 CFR, Part 193. Examples of public aspects of Resource Report 13 include design, engineering, and operating philosophies, as well as general descriptions of hazard detection and control.
- **CEII** - CEII is limited and includes specific engineering and detailed design information about liquefied natural gas facilities, components, tanks, and systems. Examples of CEII include: for pipelines, diagrams of valve and piping details at compressor stations, meter stations, and pipeline interconnections; and for LNG facilities, detailed piping and instrumentation diagrams, equipment and tank detail drawings, detailed hazard detection and control location specifics, and some sections of Emergency Response Plans.
- **Privileged** - In general, manufacturers' proprietary or business confidential design information, and cultural resource reports are examples of privileged documents. Privileged documents are generally exempt from release pursuant to an act of Congress. For example, cultural resources may be exempt from release pursuant to the National Historic Preservation Act and should be filed as privileged. Also, material that a submitter can justify as exempt from public release pursuant to Freedom of Information Act (FOIA) Exemption 4 should be filed under this criterion. To qualify for Exemption 4 protection, the information must be (1) commercial or financial, (2) obtained from a person, and (3) privileged or confidential. Generally, to be "confidential" for purposes of Exemption 4, disclosure of the information must either impair the government's ability to obtain similar information in the future, or cause substantial harm to the competitive position of the submitter of the information. See National Parks & Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974).

### ***Guidelines for filing natural gas pipeline flow diagrams and associated information***





## Guidelines for Filing Critical Energy/Electric Infrastructure Information (CEII)

These guidelines provide instructions on how to file natural gas pipeline flow diagrams and associated information including the diagrams filed in Exhibits G, G-1, and G-II of pipeline certificate applications, Exhibit V of abandonment applications, FERC Form 567, and other flow diagrams submitted for the analyses of gas pipeline applications. In general, natural gas pipeline flow diagrams are considered CEII. However, supporting information submitted with these flow diagrams often contain information that should be public. In the Commission's experience, information filed with the flow diagrams contains public information, CEII, and privileged information. Again, it is crucial that the information submitted be filed in its proper designation and in separate, clearly labeled volumes. See 18 CFR § 388.112(b) and § 388.113(d)(1)(i-ii).

- **Public** - In general, narratives such as descriptions of facilities and processes are public. However, if there are specific engineering details and design details of a critical infrastructure in narrative form, the information may be CEII or privileged. Examples of public information include design assumptions, engineering and operating philosophies, most design specifications of equipment and pipelines, and narrative descriptions of pipeline operations.
- **CEII** - CEII is limited and includes specific engineering and detailed design information about pipeline facilities, components, and equipment. Examples of CEII include detailed natural gas flow diagrams filed in Exhibits G, G-1, and G-II of pipeline certificate applications, Exhibit V of abandonment applications, and FERC Form No. 567. Also, pipeline computer simulation models may be considered CEII unless they contain proprietary or business confidential information, in which case they should be filed as privileged.
- **Privileged** - In general, documents containing manufacturers' proprietary or business confidential design information are examples of privileged documents. Material that a submitter can justify as exempt from public release pursuant to FOIA Exemption 4 should be filed under this criterion.

### *Guidelines for filing documents pertaining to the Commission's Division of Dam Safety and Inspections*

These guidelines provide further instructions on how to file documents relating to





## Guidelines for Filing Critical Energy/Electric Infrastructure Information (CEII)

hydropower projects. Some documents pertaining to the Commission's Division of Dam Safety (D2SI) contain only public information and some only CEII. In general, D2SI documents are not filed with a claim of privilege. A list of D2SI-specific documents and their usual CEII designation is available at: <http://www.ferc.gov/legal/ceii-foia/ceii/designation.asp>.

- **Public** - In general, narratives such as general descriptions of facilities and processes are public. However, if there are specific engineering, design or operational details of a critical infrastructure in narrative form, the information may be CEII or privileged.
- **CEII** - CEII is limited and includes engineering, security, and detailed design information about proposed or existing critical infrastructure. Examples of CEII include detailed drawings and specifications, dam safety and technical reports, emergency action plans, hazard classification, construction design reports, public safety plans, and extreme event reports.

### ***Guidelines for filing documents pertaining to the Commission's Division of Hydropower Licensing***

These guidelines provide further instructions on how to file documents relating to applications to license hydropower projects with the Commission's Division of Hydropower Licensing (DHL). In hydropower licensing, only Exhibit F is CEII material. Exhibit F consists of design drawings of critical energy infrastructure information and a Supporting Design Report. Exhibit F is contained in applications for hydropower licenses. All other DHL documents contain only public information. In general, DHL documents are not filed with a claim of privilege.

### ***Guidelines for filing FERC Form 715 Annual Transmission Planning and Evaluation Report***

- **Public** - In general, narratives such as descriptions of facilities and processes are public. The information found in Part 1 contains the filer's identification and contact information. This information should be filed publicly. Similarly, Parts 4 and 5 contain generic criteria used in



## Guidelines for Filing Critical Energy/Electric Infrastructure Information (CEII)

evaluating and testing the filer's system. This generic information does not qualify as CEII and should be filed publicly.

- **CEII** - CEII is limited and includes engineering, security, and detailed design information about proposed or existing infrastructure. Information in Part 2 provides an electrical model and analysis of the filer's actual transmission system. Part 3 provides detailed one-line diagrams and geographic location and identification of all system components. Part 6 provides details of potential weaknesses of the filer's transmission system including possible solutions. These three parts contain CEII and should be filed as such.

CERTIFICATE OF SERVICE

I hereby certify that a copy of NorthWestern Energy's Motion for Protective Order and Brief in Support in Docket No. D2017.6.49, the establishment of minimum information requirements for NorthWestern Energy's study of the costs and benefits of customer-generators, has been hand delivered to the Montana Public Service Commission and to the Montana Consumer Counsel this date. It has been also e-filed with the Montana Public Service Commission and served upon remainder of the service list by postage prepaid via first class mail as follows:

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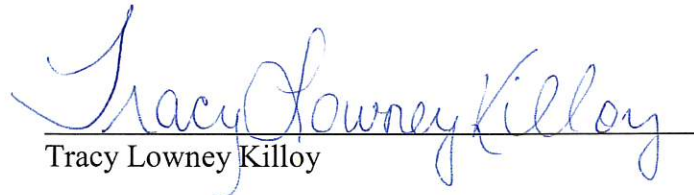
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DATED this 7th day of September 2018.

  
Tracy Lowney Killoy