

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION**

In the Matter of the Application of Northern States Power Company, a Minnesota Corporation, for a Certificate of Need for the Prairie Island Nuclear Generating Plant for an Extended Power Uprate

In the Matter of the Application of Northern States Power Company, a Minnesota Corporation, for a Certificate of Need for the Prairie Island Nuclear Generating Plant for Additional Dry Cask Storage

In the Matter of the Application of Northern States Power Company, a Minnesota Corporation, for an LEPGP Site Permit for the Prairie Island Nuclear Generating Plant (PINGP) Extended Power Uprate Project

PROTECTIVE ORDER

INTRODUCTION:

1. 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 trade secret information, security information, and nonpublic data (“Trade Secret Information, Security Information, and Nonpublic Data”).

Access to and use of Trade Secret Information, Security 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 government agencies are herein referred to as parties, persons or entities. Nothing in this Order requires any party to disclose to any other party documents, data, information, studies or other materials, including any documents, data, information, studies or other materials required by federal law to be protected from disclosure.

The government agencies with access to Trade Secret Information, Security Information, and Nonpublic Data, which include the Minnesota Public Utilities Commission (“Commission”), the Office of Administrative Hearings (“OAH”), the Office of the Attorney General (“OAG”), the Minnesota Department of Commerce, including the Minnesota Office of Energy Security (“Department” or “OES”), the Office of the Attorney General-Residential and Small Business Utilities Division (“OAG-RUD”), the Minnesota Department of Administration (“Administration”), the Minnesota Department of Administration, Office of Enterprise Technology (“OET”) and the Minnesota State Historical Society, are subject to various laws and rules, including the Minnesota Government Data Practices Act (“MGDPA”), the records retention requirements of Minn. Stat. §§ 138.163-138.226, 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’s Procedures”).

2.Xcel Energy filed its Certificate of Need (“CON”) Applications for the Extended Power Uprate and the Additional Dry Cask Storage at the Prairie Island Plant on May 16, 2008 and filed supplements to the CON Applications on July 15, 2008 and March 20, 2009.

3.In an Order dated July 22, 2008, the Commission accepted the CON Applications as substantially complete pending supplemental filing. Xcel Energy made the required supplemental filing on July 15, 2008. In a separate Order dated July 22, 2008, the Commission referred the CON Applications for a contested case proceeding and public hearing.

4.Xcel Energy filed its Site Permit Application for the Extended Power Uprate on August 1, 2008.

5.On August 15, 2008, the Commission issued an Order accepting the Site Permit Application as complete, authorizing the OES Energy Facilities Permitting Staff to initiate the full review process under Minnesota Rules Chapter 7849, and referring the matter to the OAH for a contested case proceeding.

6.Administrative Law Judge Richard C. Luis issued his First Prehearing Order on October 3, 2008. The Administrative Law Judge ordered that the contested case proceedings for the CON and Site Permit Applications be consolidated for the purpose of hearing all contested issues in Docket Nos. E-002/CN-08-509, E-002/CN-08-510, and E-002/GS-08-690 and established the schedule for the consolidated proceeding. The Administrative Law Judge granted the Petition to Intervene in Docket Nos. E-002/CN-08-509 and E-002/CN-08-510 filed by Gerdau Ameristeel US Inc. and Marathon Ashland Petroleum LLC (the “Xcel Industrial Intervenors”). The Administrative Law Judge also granted the Petition to Intervene in Docket No. E-002/CN-08-509 filed by the Prairie Island Indian Community (“Community”). Nothing in this Protective Order alters or expands the Community’s scope of intervention, and the Community’s intervention remains limited to Docket No. E-002/CN-08-509.

7. The Administrative Law Judge issued his Second Prehearing Order on April 7, 2009. The Administrative Law Judge granted the City of Red Wing's Petition to Intervene in Docket Nos. E-002/CN-08-509, E-002/CN-08-510, and E-002/GS-08-690, and granted the City of Red Wing an extension to file Direct Testimony in these proceedings.

8. In paragraph 28 of the First Prehearing Order, Judge Luis stated:

Parties asked to provide information they deem confidential or nonpublic may require the requesting party to comply with the terms of a protective agreement or the Minnesota Government Data Practices Act. A protective order may be obtained on application to the Administrative Law Judge.

9. During the proceeding in this matter, parties may file, request and use Trade Secret Information, Security Information, or Nonpublic Data, as defined by Minnesota Statutes Chapter 13.01 et seq.

10. Minnesota Statutes § 14.60, subdivision 2, allows the Administrative Law Judge in a contested case to conduct a closed hearing to discuss Trade Secret, Security, or Nonpublic data, issue necessary Protective Orders, and seal all or part of the hearing record.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. (a) Trade Secret Information, Security Information, and Nonpublic Data. All Trade Secret Information, Security Information, and/or Nonpublic Data that is furnished pursuant to the terms of this Protective Order shall be treated by all persons accorded access thereto pursuant to this Protective Order as constituting confidential, competitive, trade secret, and business information, and shall be used solely for the purpose of this proceeding and solely in accordance with this Protective Order, and shall not be used or disclosed for any other purpose or in any other manner. In accordance with the Commission's Procedures, all documentary material claimed to be Trade Secret Information, Security Information, or Nonpublic Data shall be marked substantially as follows by stamping each individual page with the designation "TRADE SECRET [SECURITY] INFORMATION—NONPUBLIC DATA." For purposes hereof, notes made pertaining to or prepared as the result of a review of Trade Secret Information, Security Information, or Nonpublic Data shall be subject to the terms of this Protective Order. Any Trade Secret Information, Security 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.

(b) Use of Trade Secret Information, Security Information, or Nonpublic Data and Persons Entitled to Review. All Trade Secret Information, Security Information, or Nonpublic Data made available pursuant to this Protective Order shall be given solely to counsel for the requesting party, the requesting party or other authorized persons who are designated by counsel as being the party's experts or witnesses in this proceeding.

Provided, however, the requesting party, the designated expert, and/or witness shall each be obligated to execute Exhibit A in a timely manner prior to their receipt of the Trade Secret Information, Security Information, and/or Nonpublic Data and abide by the terms of this Protective Order. In the event that a requesting party is an entity, then each individual within that requesting party that is proposed to be granted access to the Trade Secret Information, Security Information, and/or Nonpublic Data shall execute Exhibit A and be individually subject to the disclosing party's right to object set forth in paragraph 1(c) below. Trade Secret Information, Security Information, and/or Nonpublic Data shall not be used or disclosed except for purposes of this proceeding and as needed for all subsequent appeals of the final order in this proceeding. The Trade Secret Information, Security Information, and/or Nonpublic Data may not be used or referenced in other proceedings in Minnesota or in other jurisdictions. Unless otherwise provided in this Protective Order, all Trade Secret Information, Security Information, and Nonpublic Data will be safeguarded and handled in accordance with the Commission's Procedures.

(c) Nondisclosure Agreement. Prior to giving access to Trade Secret Information, Security Information, and/or Nonpublic Data as contemplated in paragraphs (a)-(b) 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, Security Information, and/or Nonpublic Data shall deliver a copy of this Protective Order to such person; and prior to disclosure such person shall agree in writing to comply with and be bound by this Protective Order. In connection therewith, Trade Secret Information, Security Information, and/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 and until the 48-hour notice required by this paragraph has been given. The Exhibit A Nondisclosure Agreement shall require the person to whom disclosure is to be made to read a copy of this Protective 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. Such Nondisclosure Agreement shall be delivered to counsel for the providing party at least 48 hours, excluding weekends and holidays, prior to the expert or witness gaining access to the Trade Secret Information, Security Information, and/or Nonpublic Data. If counsel for the providing party notifies the Administrative Law Judge of an objection within the 48 hours, no Trade Secret Information, Security Information, and/or Nonpublic Data shall be provided to the expert or witness until so ordered by the Administrative Law Judge.

2. Government Agencies. The government agencies are not subject to the terms of this Protective Order except, while this matter is pending before the OAH and as to matters within the jurisdiction of the OAH, government agencies are subject to this paragraph 2.

(a) Definition of Trade Secret Information, Security Information, and Nonpublic Data. "Trade Secret Information, Security Information, and Nonpublic Data" shall be limited to "trade secret information" as defined at Minn. Stat. § 13.37, subd.

1(b), “security information” as defined at Minn. Stat. § 13.37, subd. 1(a), “nonpublic data” as defined at Minn. Stat. § 13.02,

subd. 9, and “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 Protective Order conflicts with or omits a matter otherwise required by either the MGDPA or Commission Procedures, the requirements of the MGDPA or Commission Procedures shall control. Any provision of this Protective Order not consistent with this paragraph 2 shall be of no effect with respect to the government agencies.

(c) Experts. A government agency may not provide Trade Secret Information, Security Information, or Nonpublic Data to outside experts providing assistance on this matter until the outside experts have signed Exhibit A. Said experts shall comply with the terms of this Protective Order except where contrary to the requirements of the MGDPA or Commission Procedures.

(d) Challenge to Trade Secret, Security or Nonpublic Designation. The Administrative Law Judge, upon a request by or to any party or government agency, and ten (10) days prior notice or such period as is determined by the Administrative Law Judge, may hold a hearing *in camera* and remove a designation of Trade Secret Information, Security Information, or Nonpublic Data upon a showing that the data is appropriately classified as public data.

(e) Verbal Disclosure. Trade Secret Information, Security Information, and/or Nonpublic Data may be verbally disclosed by government agencies during depositions or hearings in this matter upon prior notice to and agreement of the disclosing party or authorization by the Administrative Law Judge. Any such disclosure does not change the classification of the data and it remains subject to the limitations imposed by the MGDPA.

(f) Transcripts. Each disclosing party or government agency, during a deposition or hearing, may request that portions of depositions or hearing transcripts be treated as Trade Secret Information, Security Information, and/or Nonpublic Data for up to three business days after the transcript is made available to the disclosing party and, unless otherwise ordered by an Administrative Law Judge, the parties shall treat the data, and the court reporter shall mark those portions of transcript, as “TRADE SECRET [SECURITY] INFORMATION—NONPUBLIC DATA” consistent with the Commission’s Procedures. After the three business day period, the marked transcripts shall become public data unless the disclosing party identifies portions as Trade Secret Information, Security Information, and/or Nonpublic Data.

3. Challenge to Nonpublic, Trade Secret or Security Designation or Other Special Requests. This Protective Order shall not be construed as a ruling on the discoverability, confidentiality or trade secret or security designation of any information or document. While this matter is pending before the OAH, 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, Security Information, or Nonpublic Data removed from the protective requirements of this Protective Order or to have them handled in a manner differently than described in this Protective Order (either for greater or lesser confidentiality protections). If the trade secret, security, or nonpublic nature of this information is challenged, resolution of the issue shall be made by the Administrative Law Judge 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, security, or nonpublic matter shall be present. The record of such *in camera* hearings shall be marked "TRADE SECRET INFORMATION—NONPUBLIC DATA," unless the ALJ determines that the proceeding should not be classified as involving Trade Secret Information, Security Information, or Nonpublic Data.

4. Use of Trade Secret Information, Security Information, and/or Nonpublic Data in Comments or Pleadings. Where reference to Trade Secret Information, Security Information, and/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 nonconfidential description. Any further use of or substantive references to Trade Secret Information, Security Information, and/or Nonpublic Data shall be placed in a separate "Nonpublic" copy of the pleading or brief and submitted to the Commission or OAH pursuant to the terms of the Commission's Procedures. This "Nonpublic" copy shall be served only on counsel of record (one copy each) who have signed a Nondisclosure Agreement. All the protections afforded in this Protective Order apply to materials prepared and distributed under this paragraph.

5. Use of Trade Secret Information, Security Information, and/or Nonpublic Data in Depositions. If, in the course of depositions, counsel for any party concludes that testimony or exhibits will involve Trade Secret Information, Security Information, and/or Nonpublic Data, counsel shall request that the court reporter record such testimony in a confidential transcript that is marked "TRADE SECRET INFORMATION—NONPUBLIC DATA." All Exhibits which have been marked as involving Trade Secret Information, Security Information and/or Nonpublic Data shall be attached to the confidential transcript and marked consistent with the Commission's Procedures. Unless otherwise ordered by the Administrative Law Judge, the marked portions of the depositions transcripts and exhibits shall be treated as Trade Secret Information, Security Information, and/or Nonpublic Data for up to three business days after the transcript is made available to the disclosing party. After the three business day period, the marked transcripts and exhibits shall become public data unless the disclosing party identifies portions as Trade Secret Information, Security Information, and/or Nonpublic Data.

6. Use of Trade Secret Information, Security Information, or Nonpublic Data in Hearings. The Receiving Party shall not use Trade Secret Information, Security Information, and/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 Administrative Law Judge or the Commission before the information is used or publicly disclosed. Without limiting the foregoing, no party shall refer to Trade Secret Information, Security Information, and/or Nonpublic Data in oral testimony, cross-examination or argument except in accordance with this paragraph.

7. Public Summaries. To the extent required by the Commission's Procedures, the providing party shall prepare a written summary of the Trade Secret Information, Security Information, or Nonpublic Data referred to in this Order to be placed on the public record.

8. Return. Unless otherwise ordered, all Trade Secret Information, Security Information, and/or Nonpublic Data, including transcripts of any depositions to which a claim of "trade secret," "security," or "nonpublic" status is made, shall remain under seal, shall continue to be subject to the protective requirements of this Protective Order, and, except as provided in Paragraph 10, shall be returned to counsel for the disclosing party within 30 days after final conclusion of the applicable matter including administrative or judicial review thereof, unless otherwise agreed by the disclosing party.

9. Preservation of Nonpublic, Trade Secret and/or Security Designation. All persons who may be entitled to receive, or who are afforded access to any Trade Secret Information, Security Information, and/or Nonpublic Data by reason of this Protective Order shall neither use nor disclose the Trade Secret Information, Security Information, and/or Nonpublic Data for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of these proceedings, and then solely as contemplated herein, and shall take reasonable precautions to keep the Trade Secret Information, Security Information, and/or Nonpublic Data secure and in accordance with the purposes and intent of this Protective Order.

10. Reservation of Rights. The parties hereto affected by the terms of this Protective Order further 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 Protective Order in response to interrogatories, requests for information or documents or cross-examination on the grounds of relevancy or materiality.

11. Inadvertent Disclosure. No party shall have waived its right to designate any documents, data, information, studies, or other materials as Trade Secret Information, Security Information, or Nonpublic Data by inadvertent disclosure, provided the disclosing party thereafter gives written notice to the recipient(s) of such information that it should have been designated as Trade Secret Information, Security Information, or Nonpublic Data. From and after receipt of such notice, the previously disclosed information subsequently identified as Trade Secret Information, Security Information, or Nonpublic Data shall be treated as Trade Secret Information, Security Information, or Nonpublic Data for purposes of this Protective Order.

Dated: April 28, 2009

/s/ Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

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**EXHIBIT A
NONDISCLOSURE AGREEMENT**

I, the undersigned, hereby acknowledge that I have read the attached Protective Order dated _____, 2009 in Office of Administrative Hearings Docket No. 7-2500-19797-2 and Minnesota Public Utilities Commission Docket Nos. E-002/CN-08-509, E-002/CN-08-510, and E-002/GS-08-690, 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 [SECURITY] 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 Office of Administrative Hearings in Minnesota and the Minnesota Public Utilities Commission for the purpose of enforcing said Protective Order.

Date: _____

Signature

Type or Print Name

Address

Name of Employer

Name of Party