

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,)	Application No. NG-0095/
on its own motion, seeking to)	PI-213
investigate the effect of the)	
Tax Cut and Jobs Act of 2017)	
upon rates set by Nebraska's)	PROTECTIVE ORDER
natural gas public utilities.)	
)	
)	
NorthWestern Corporation d/b/a)	Docket No. NG-0095.1
NorthWestern Energy)	
-----)	
)	
Black Hills/Nebraska Gas Utility)	Docket No. NG-0095.2
Company, LLC d/b/a Black Hills)	
Energy)	
-----)	
)	
Black Hills Gas Distribution,)	Docket No. NG-0095.3
LLC d/b/a Black Hills Energy)	
)	
)	
)	Entered: April 26, 2018.

BY THE HEARING OFFICER:

On March 20, 2018, the Nebraska Public Service Commission (Commission) opened a docket seeking to investigate the effects of the federal Tax Cuts and Jobs Act of 2017 (TCJA), Public Law No. 115-97, upon all natural gas public utilities subject to the Commission's jurisdiction under the State Natural Gas Regulation Act, Neb. Rev. Stat. §§ 66-1801 - 66-1868.

On April 20, 2018, Black Hills Energy, a natural gas public utility and a party to this docket, requested that the Commission issue a Protective Order to protect any confidential information that may be sought by the Commission or another party in this proceeding. The Hearing Officer finds that this request is appropriate and hereby issues the following protective order, pursuant to 291 Neb. Admin. Code § 9-006:

ORDER

1. This Protective Order shall govern the use of all confidential information and documents produced by, or on behalf of, any participant within Commission Docket No. NG-0095/PI-213 and all sub-dockets created within this proceeding. Notwithstanding any order terminating this

proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Commission.

2. In accordance with the procedures set forth in Rule 006 (Confidential Information) under 291 Neb. Admin. Code, Chapter 9, a Participant may designate as protected those materials which customarily are treated by that Participant as sensitive and proprietary, which are not available to the public, and which, if disclosed freely, would subject that Participant or its customers to risk of competitive disadvantage or other business injury.

3. Definitions. For purposes of this Protective Order:

(a) The term "Participant" shall mean Black Hills/Nebraska Gas Utility Company LLC d/b/a Black Hills Energy, Black Hills Gas Distribution, LLC d/b/a Black Hills Energy, NorthWestern Corporation d/b/a NorthWestern Energy, collectively referred to hereafter as "the Utilities," the City of Grand Island, the City of Kearney, collectively referred to hereafter as "the Cities," and any other necessary or permitted party in this Docket. Participant does not include Commission staff.

(b) The term "Confidential Material" or "Confidential Information" shall mean all documents, data, information, studies and other matter (including confidential information contained in computer storage media or devices of every type and description) including: (1) materials (including depositions) provided by a Participant in these proceedings, work papers, contracts, formulas, rate models, responses to discovery requests and other materials designated by such Participant as protected; (2) any information contained in or obtained from such designated materials; (3) any other materials which are made subject to this Protective Order by the Commission, or its Staff, by any Court or other body having appropriate authority, or by agreement of the Participant; and (4) notes of Confidential Materials.

(c) The term "Public Information" shall include any information that (1) is now or later becomes publicly available without breach of this Protective Order; (2) can be shown by documentation to have been in the possession or known by the receiving party at the time of its receipt from the producing party; (3) is rightfully received from a third-party who did not acquire or disclose such information by a wrongful or tortuous act; (4) can be

shown by documentation to have been independently developed by the receiving party without reference to any Confidential Information; or (5) is authorized in writing by the disclosing Participant to be released or is designated in writing by the providing Participant as no longer being Confidential Information.

(d) The term "Notes of Confidential Materials" means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraph 3(b). Notes of Confidential Materials are subject to the same restrictions provided in this Protective Order for Confidential Materials except as otherwise specifically provided in this Protective Order.

(e) The term "Non-Disclosure Agreement" shall mean the certificate annexed hereto and incorporated herein as "Exhibit A". The Non-Disclosure Agreement (Exhibit A) shall require the person to whom disclosure is to be made to certify in writing that he or she has read this Order and agrees to be bound by its terms and conditions. The Non-Disclosure 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 Non-Disclosure Agreement shall be filed with the Commission and served on all parties to this proceeding.

(f) The term "Reviewing Representative" shall mean a person who has signed a Non-Disclosure Agreement and who is:

- 1) The Public Advocate;
- 2) An attorney who has made an appearance in this proceeding on behalf of a Participant;
- 3) Attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in (2);
- 4) A consultant or expert, or an employee of a consultant or expert, retained by a Participant, the Commission, or the Public Advocate for the purpose of advising, preparing for, or testifying in this proceeding;

- 5) A person designated as a Reviewing Representative by order of a Presiding Judge or the Commission; or
 - 6) Employees or other representatives of Participants appearing in this proceeding or the Public Advocate with significant responsibility for this docket.
 - 7) Such Reviewing Representative shall not be an individual involved in (i) consulting, marketing, purchase, or sales of energy or the supervision of consulting, marketing, purchasing, or sales of energy if the information at issue is confidential and specific to another vendor or customer of the Utilities, or (ii) negotiating gas supply, transportation or sale arrangements with the Utilities if the information at issue is confidential and involves other Utility customers, suppliers, interstate transporters, shipping, or potential shippers' negotiations with the Utilities regarding capacity arrangements, or (iii) negotiating with customers (current or potential) for service on behalf of entities competing with the Utilities if the information at issue is confidential and concerns potential expansion or extension of the Utilities' existing facilities or the renewal or renegotiation of existing service agreements of the Utilities or the negotiation of new service agreements of the Utilities.
4. Availability: Confidential Materials shall be made available under the terms of this Protective Order only to Participants and only through their Reviewing Representatives as provided in Paragraph 8, 9, and 10. Confidential Information shall be accessible to the Commission, Commission counsel, and Commission staff members and shall not be used or disclosed except for the purpose of conducting, issuing orders in, and otherwise participating in, this proceeding.
 5. Continuation of Protection: Unless otherwise ordered, Confidential Information shall remain under seal and shall continue to be subject to the protective requirements of this Order after final settlement or conclusion of this matter, including administrative or judicial relief thereof. Confidential Materials shall remain available to Participants until the later of the date that an order

terminating this proceedings becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Confidential Material is concluded and is no longer subject to judicial review.

6. Return of Documents: If requested to do so in writing after that date, the Participants shall, within fifteen (15) days of such request, return the Confidential Materials (excluding Notes of Confidential Materials) to the Participant that produced them, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Confidential Materials, and Notes of Confidential Materials may be retained, if they are maintained in accordance with Paragraph 7 below. Within such time period each Participant, if requested to do so, shall also submit to the producing Participant an affidavit stating that, to the best of its knowledge, all Confidential Materials and Notes of Confidential Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 7. To the extent Confidential Materials are not returned or destroyed, they shall remain subject to the Protective Order until further order of the Hearing Officer or Commission.

7. Segregation of Files: The materials containing the Confidential Information and proceedings and orders of the Commission with regard thereto will be sealed and marked as provided in this Order, segregated in the files of the Commission and withheld from inspection by any person except under the conditions established in this Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the Participants or, after notice to the parties and hearing, pursuant to the order of the Hearing Officer, Commission and/or final order of a court having jurisdiction. By segregating such documents, the Commission is not making a determination of any claim of privilege. The Commission retains the right to make determinations regarding any claim of privilege and the discretion to release information necessary to carry out its jurisdictional responsibilities. Disclosure of Confidential Materials shall be governed by Neb. Rev. Stat. § 66-1829.

8. Preservation of Confidentiality: No Participants or Reviewing Representatives who are afforded access to any Confidential Information by reason of this Order shall use or disclose the Confidential Information for purposes of business or competition, or any other purpose other than

the purpose of preparation of and conduct of this proceeding, or for preparation of and conduct of any appeals or subsequent regulatory filings arising directly from this proceeding. Persons afforded access to Confidential Information shall use such information solely as contemplated herein, and shall take all reasonable precautions to keep the Confidential Information secure as trade secret, confidential or proprietary information and in accordance with the purposes and intent of this Order.

9. If a Reviewing Representative's scope of employment includes the marketing, purchasing, or sale of energy, the direct supervision of any employee or employees whose duties include the marketing, purchasing, or sale of energy, the provision of consulting services to any person whose duties include the marketing, purchasing, or sale of energy, or the direct supervision of any employee or employees whose duties include the marketing, purchasing, or sale of energy, such Reviewing Representative may be prohibited from reviewing Confidential Materials of any Participant. If any Participant consents to the review of that Participant's confidential material, then the Reviewing Representative may not use information contained by any Confidential Materials obtained through this proceeding to give any Participant or any competitor of any Participant a commercial advantage.

(a) In the event that a Participant wishes to designate as a Reviewing Representative a person not described in Paragraph 3(f) above, the Participant shall seek agreement from the Participant providing the Confidential Materials. If an agreement is reached, that person shall be a Reviewing Representative pursuant to Paragraph 3(f) above with respect to those materials. If no agreement is reached, the Participant shall submit the disputed designation to the Commission or any reviewing court for resolution.

(b) If the disclosing Participant believes in good faith that disclosure should not be made to any person seeking Confidential Information pursuant to paragraph 10, the disclosing Participant may respond to the notice by filing a written objection. If the parties cannot resolve the dispute informally, the matter shall be submitted to the Hearing Officer by motion. No Confidential Information need be disclosed pending resolution by the Hearing Officer.

(c) If any Participant believes that, due to the highly sensitive nature of any information to be disclosed in this proceeding, the provisions of this Protective Order do not provide sufficient protection, the disclosing Participant may apply to the Commission for extraordinary protection.

10. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to, Confidential Materials pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Agreement, provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Agreement shall be provided to counsel for the Participant asserting confidentiality prior to disclosure of any Confidential Materials to that Reviewing Representative.

(a) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

11. Any Reviewing Representative may disclose Confidential Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Agreement. In the event that any Reviewing Representative to whom the Confidential Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 3(f), access to Confidential Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Agreement shall continue to be bound by the provisions of this Protective Order and the Non-disclosure Agreement.

12. Disputes: Subject to Paragraph 21, the Commission or its designee shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Commission or its designee, the parties to the dispute shall use their best efforts to resolve it.

13. Filing Confidential Materials: All copies of all documents containing Confidential Information, including

the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Confidential Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order and in accordance with 291 Neb. Admin. Code § 9-006. Such documents shall be marked "CONFIDENTIAL", printed on yellow paper, and shall be filed under seal and served under seal upon the Commission and all Reviewing Representatives who are on the service list in accordance with Commission Rules and Regulations. For anything filed under seal, redacted versions, or where an entire document is protected, a letter indicating such will also be filed with the Commission and served on all parties on the service list.

(a) Counsel for the producing Participant shall provide to all Participants who request the same, a list of Reviewing Representatives who are entitled to receive Confidential Materials. Counsel shall take all reasonable precautions necessary to assure that Confidential Materials are not distributed to unauthorized persons.

14. Inadvertent Disclosure: The inadvertent failure to identify material as Confidential Information or to stamp a document as Confidential shall not be deemed a waiver of the protections afforded by this Protective Order. In such event, the producing Participant shall, promptly upon discovery of its oversight, provide written notice of the error and substitute appropriately-labeled Confidential Information. Any party receiving such improperly-labeled Confidential Information shall retrieve such Confidential Information from persons not entitled to receive the information and, upon receipt of the substitute Confidential Information, shall return or destroy the improperly-labeled Confidential Information.

15. Use of Confidential Material: In the event any party intends to use or uses information obtained pursuant to the Nondisclosure Agreement under this Protective Order in testimony, exhibits, discovery or discovery responses, cross-examination, briefs or any other pleading or document to be filed in this proceeding, the following shall apply:

(a) Testimony, briefs or other pleadings containing the information claimed to be confidential shall be filed with the Commission by the party preparing and using the same in accordance with this Protective Order and the

provisions of 291 Neb. Admin. Code § 9-006. Such documents shall be marked "CONFIDENTIAL", printed on yellow paper, and shall be filed under seal and served under seal upon the Commission and all Reviewing Representatives who are on the service list in accordance with Commission Rules and Regulations. The complete document containing the protected material shall not be filed in the public record.

(b) The pages of the documents referred to in paragraph 15(a) above which contain information claimed to be confidential shall be clearly marked.

(c) Any party who has not executed a Nondisclosure Agreement shall receive a copy of the documents referred to in paragraph 15(a) above from which information claimed to be protected has been omitted.

(d) In the course of this proceeding, any hearings during which documents or information obtained pursuant to the terms of this Order are likely to be disclosed shall be conducted in camera, attended only by persons authorized to have access to such information under this Order, provided that there has been no prior Hearing Officer determination that the documents or information in question are not confidential. The transcript of such in camera proceedings shall be kept under seal and marked "CONFIDENTIAL", segregated from the public portions of the transcript of the proceeding, separately bound, and withheld from inspection by any person who has not executed a Nondisclosure Agreement in accordance with this Order.

(e) If any Participant desires to include, utilize or refer to any Confidential Materials or information derived therefrom in testimony or exhibits during the hearing in these proceedings in such a manner that might require disclosure of such material to persons other than Reviewing Representatives, such Participant shall first notify both Counsel for the disclosing Participant and the Commission of such desire, identifying with particularity each of the Confidential Materials.

16. Nothing in this Protective Order shall be construed as precluding any Participant from objecting to the use of Confidential Materials on any legal grounds.
17. Appeal: Sealed portions of the record in this proceeding forwarded to a court of competent jurisdiction for

purposes of an appeal, shall be filed under seal as designated herein for the information and use of the court.

18. Challenge to Confidentiality: This Protective Order establishes a procedure for the expeditious handling of information that a Participant claims is confidential; it shall not be construed as an agreement or ruling on the confidentiality of any document. Nothing in this Protective Order shall preclude any Participant from requesting the Commission, or any other body having appropriate authority, to find that this Protective Order should not apply to all or any materials previously designated as Confidential Materials pursuant to this Protective Order. In the event that any Participant challenges a claim for protection under this Protective Order, the Participant objecting to the removal of the confidential designation bears the burden of demonstrating the harm that would result from public disclosure of the material for which protection is sought.

(a) A Participant challenging the confidentiality of any materials pursuant to this Order shall first contact counsel for the providing Participant and attempt to resolve any differences informally. The Commission may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

(b) If the parties cannot resolve the disagreement informally, the Participant challenging the claim for protection shall do so by filing a motion with the Hearing Officer which identifies with specificity the material challenged and requests a ruling whether a document or information is confidential.

(c) Within three business days of service of a motion for determination of confidentiality, the Participant claiming confidentiality shall deliver under seal all of the relevant documents and information to the Hearing Officer for an in camera inspection by the Hearing Officer.

(d) A ruling on the confidentiality of the challenged document or specific information shall be made by the Hearing Officer after an in camera hearing which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential materials shall be present. Such hearing shall be held as expeditiously as is practicable following

delivery of the relevant documents and information to the Hearing Officer.

(e) If the Hearing Officer rules that any document or specific information should be removed from the restrictions imposed by this Order pursuant to Neb. Rev. Stat. § 66-1829, no party shall disclose such document or specific information, or use it in the public record for five (5) business days unless authorized by the providing Participant to do so. The provisions of this subparagraph are entered to enable the Participant claiming protection to seek a stay or other relief from the Hearing Officer's order denying that party such protection and if the Participant seeking protection files an interlocutory appeal, for an additional seven (7) business days. None of the Participants waives its rights to seek additional administrative or judicial remedies after the Hearing Officer's decisions respecting Confidential Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof.

19. Each party governed by this Protective Order has the right to seek changes in it as appropriate from the Commission or Hearing Officer.
20. All Confidential Materials filed with the Commission or any other judicial or administrative body in support of or as a part of a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Confidential Materials subject to this Protective Order.
21. Nothing in this Protective Order shall be deemed to preclude any Participant from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Protective Order.
22. None of the Participants waive the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Confidential Materials.
23. Any violation of this Protective Order and any Non-Disclosure Certificate executed hereunder shall constitute a violation of any order of the Commission. Any person who violates this Protective Order by reason of unauthorized use, or disclosure or failure to keep the information

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confidential, may be liable for damages and penalties as provided by law.

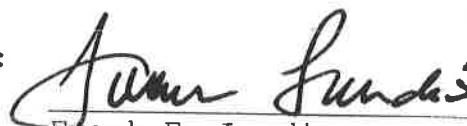
O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that this Protective Order shall be entered in the above-captioned proceeding.

MADE AND ENTERED at Lincoln, Nebraska this 26th day of April, 2018.

NEBRASKA PUBLIC SERVICE COMMISSION

BY:

A handwritten signature in dark ink, appearing to read "Frank E. Landis", is written over a horizontal line.

Frank E. Landis
Hearing Officer

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In the Matter of the Commission, on) Application No. NG-0095/
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EXHIBIT A
NON-DISCLOSURE AGREEMENT

I hereby certify my understanding that access to Confidential Material is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Confidential Materials, any notes or other memoranda, or any other form of information that copies or discloses Confidential Materials shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the Commission.

Name (Print or type)

Title

Representing

Business Name

Business Address

Date

Signature