

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

In the Matter of the Petition of Northern States Power Company for Approval of a Public Charging Network, and Electric School Bus Pilot, and Program Modifications

FIRST PREHEARING ORDER

This matter came on for a prehearing conference before Administrative Law Judge Jessica A. Palmer-Denig held by telephone on November 16, 2022.

Patrick T. Zomer and Katherine J. Marshall, Moss & Barnett, and Ian Dobson, Xcel Energy, appear on behalf of Northern States Power Company d/b/a Xcel Energy (Xcel Energy);

Katherine Hinderlie and Steven Melchionne, Assistant Attorneys General, appear on behalf of the Minnesota Department of Commerce, Division of Energy Resources (Department);

Peter G. Scholtz and Travis Murray, Assistant Attorneys General, appear on behalf of the Minnesota Office of Attorney General - Residential Utilities Division (OAG RUD);

Leigh Currie, Minnesota Center for Environmental Advocacy (MCEA), appears on behalf of the Clean Energy Groups (Fresh Energy, MCEA, Plug in America, Sierra Club, Union of Concerned Scientists);

Andrew P. Moratzka and Riley A. Conlin, Stoel Rives LLP, appear on behalf of Americans for Affordable Clean Energy;

Kevin Pranis, Marketing Manager, appears on behalf of the Laborers' International Union of America;

Scott Dunbar, Keyes & Fox LLP, appears on behalf of ChargePoint, Inc.;

Jacob Schlesinger, Keyes & Fox LLP, appears on behalf of EVgo Services, LLC;

David A. Fitzgerald and Brent L. Coleman, Davison Van Cleve, PC, Jason G. Harp, Bina Joshi, and Ryan C. Granholm, ArentFox Schiff LLP, appear on behalf of Electrify America, LLC;

Bill Ehrlich, Francesca Wahl, and Kevin Auerbacher, Tesla Inc. (Tesla) appear on behalf of Tesla;

Erick Karlen, Shell Recharge Solutions, appears on behalf of Shell Recharge Solutions; and

Hanna Terwilliger is participating on behalf of the Minnesota Public Utilities Commission (Commission) Staff.

Based upon the record and the parties' agreement during the prehearing conference,

IT IS HEREBY ORDERED:

I. Governing Rules

1. Hearings in this matter will be conducted in accordance with the Minnesota Administrative Procedure Act, Minn. Stat. §§ 14.57–14.62 (2022); the rules of the Office of Administrative Hearings, Minn. R. 1400.5100–1400.8400 (2021); and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. R. 7829.0100–7829.4000 (2021).

2. The contested case proceedings will be conducted in accordance with the Minnesota Rules of Professional Conduct, and the Professionalism Aspirations approved and endorsed by the Minnesota Supreme Court.

II. Parties, Intervention, and Public Participation

3. The Commission's Notice of and Order for Hearing (Order for Hearing) issued in this matter identified the parties as Xcel Energy, the Department, and the OAG RUD.

4. It is not necessary to be an intervenor or party to participate in these proceedings. Under Minn. R. 7829.0900, members of the public may submit written comments during any comment period established by the Commission, and participants may be granted an opportunity for oral presentations. Under Minn. R. 1400.6200, subp. 5, a person may be permitted to note their appearance, provide testimony and exhibits, and question witnesses, but no person shall become, or be deemed to have become, a party by reason of such participation. Such persons offering testimony or exhibits may be questioned by parties to the proceeding. Oral or written testimony provided without benefit of oath or affirmation, and which is not subject to

cross-examination, shall be given such weight as the Administrative Law Judge deems appropriate.

5. All persons may be represented by legal counsel, but such representation is not required.

6. The Order for Hearing directed that persons wishing to become formal parties should promptly file Petitions to Intervene pursuant to Minn. R. 1400.6200. As of the date of the prehearing conference, six such petitions had been submitted in this matter. If a person wishes to intervene as a party in this proceeding, such a person must file a Petition to Intervene with the Administrative Law Judge not later than **November 30, 2022**. Such Petition to Intervene must comply with Minn. R. 1400.6200. A Notice of Appearance shall be filed with the Petition. Petitioners shall also provide an email address on the Petition or Notice of Appearance. Any objection to a petition shall be filed within seven (7) days of the filing of the Petition. The Petition shall be served upon all existing parties and the Commission.

7. Any attorney wishing to appear on behalf of a party in this proceeding who is not a member of the Minnesota bar must file an application to be admitted pro hac vice. Such application shall be supported by a declaration indicating that the attorney agrees to comply with the Minnesota Rules of Professional Conduct, submits to the jurisdiction of Minnesota's courts with respect to their conduct in this proceeding, and understands that the proceeding will be conducted pursuant to the Minnesota Supreme Court's Professionalism Aspirations. Affiliation with local counsel is not required.

III. Service List

8. A copy of this First Prehearing Order shall be served according to the service list maintained by the Commission. Thereafter, the service list shall be established by the Administrative Law Judge and the Office of Administrative Hearings (OAH List). The OAH List shall include the parties, Commission staff, and the court reporter, and any persons who are granted intervenor status. All documents filed in this contested case proceeding shall be served in accordance with the OAH List.

9. Members of the public may receive notices of all filings and access to all public documents filed in the case by subscribing to these dockets on the Commission's eDockets system: <https://www.edockets.state.mn.us/EFiling/security/login.do?method=showLogin>. To subscribe, enter the docket number for this action, which is found on the first page of this First Prehearing Order. Upon subscribing to a docket, you will be provided with electronic notice of all filings, as well as access to the public documents filed in the case.

IV. Schedule

10. The procedural schedule in this matter shall be as follows:

Event	Date
Xcel Direct Testimony	December 19, 2022
Intervenor Direct Testimony	February 7, 2023
Rebuttal Testimony	March 7, 2023
Surrebuttal Testimony	March 28, 2023
All Parties File and Exchange Prehearing Filings (See Section VI below)	March 31, 2023
Evidentiary Hearing	April 4-5, 2023
Post-Hearing Briefs by All Parties, Proposed Findings of Fact, Responses to Public Comments	April 28, 2023
Post-Hearing Reply Briefs and Revised Findings Submitted by All Parties (All Parties to Submit Redlines of Proposed Findings as to Contested Issues)	May 12, 2023
ALJ Report Issued	July 3, 2023

11. Public hearings concerning this matter will be held at locations and times to be negotiated by the parties and Commission Staff. It is anticipated that the public hearings will be held in March 2023, and the public hearing schedule shall be approved by the Administrative Law Judge. The deadline for submission of public comments shall be **April 5, 2023**.

V. Discovery

12. The deadline for the parties to exchange discovery shall be **March 30, 2023**. Discovery should be completed by that date. Information requests and responses shall **not** be eFiled into the official record or served on the Administrative Law Judge or court reporter unless they are the subject of a formal discovery dispute.

13. A party may serve requests for information on any other party. All requests for information shall be made in writing by email, and the requesting party shall also email a copy of the request to all other parties. To the extent that a request includes

material designated as Trade Secret or Not Public under the Minnesota Government Data Practices Act, Minn. Stat. ch. 13 (2020), an email request is required only between the requesting and responding party. Requests shall be sent to the person(s) designated to receive data requests by the party from whom the information is sought. Any request received by email after 4:30 p.m. on a business day, on a weekend day, or on a Minnesota state holiday is considered received on the next business day. The parties may use a shared site to manage the submission of information requests, so long as the site meets all other requirements of this order.

14. The party responding to the request shall provide the requested information to the requesting party within eight (8) days of receipt of the information request. In accordance with Minn. R. 1400.6100, subp. 1, the day that the information request is received is not counted in the eight-day period.

15. Responses to information requests shall be submitted by email. The Department may use the eService function of the eFiling software system to facilitate email service of public information request responses on any other party. To the extent that a response includes material designated as trade secret or not public, an email response is required only between the requesting party and the responding party. Any response received before 4:30 p.m. is considered to be received on the same day. Any response that is received after 4:30 p.m. is considered to be received the following business day.

16. In the event that the responding party is unable to send the response by email due to the volume or nature of information included in a response, the responding party shall send the response by facsimile, regular U.S. mail, or other delivery service so that the requesting party receives the entire response by the date due, including any material designated as trade secret or not public. The responding party will notify the requesting party by email that the remainder of the response follows by a separate delivery method and describe the method it was sent. There shall be a continuing obligation to update and supplement information responses with any responsive material that may subsequently be discovered or acquired by the responding party. The responsive information need not be supplied to other parties unless specifically requested by a party.

17. In the event the information cannot be supplied within eight (8) days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and shall attempt to work out a schedule of compliance with the requesting party.

18. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Hearings on such motions may be conducted by telephone conference call.

VI. Prehearing Filings

19. By **4:30 p.m.** on **March 29, 2023**, the parties shall submit by email to the Administrative Law Judge at Jessica.Palmer-Denig@state.mn.us, and the court reporter at jshaddix@janetshaddix.com, a draft Witness List and draft Proposed Exhibit List identifying all documents (including pre-filed testimony) that the parties intend to offer into the hearing record. The court reporter will e-mail a Microsoft Word template to all parties to use in preparing this document.

20. By **4:30 p.m.** on **March 31, 2023**, parties shall file a Witness List and Proposed Exhibit List identifying all documents that the party intends to offer into the hearing record. The eDocket unique identifier, taken from the eDocket list when the document is electronically filed, shall be inserted into the Exhibit List as a hyperlink. A courtesy copy of the finalized exhibit list shall be provided to the Administrative Law Judge and court reporter by email.

21. Each party shall provide one paper copy of its testimony and exhibits to the Administrative Law Judge. Copies should be double-sided, three-hole punched, and in binders. The parties are encouraged to submit paper copies of testimony at the time it is filed, rather than waiting until the hearing date.

22. Each party shall mark its pre-filed testimony and offer it for admission into the record at the opening of the hearing. The front page of each exhibit shall be pre-marked, as follows:

- (a) An exhibit number displayed in the lower right-hand corner of the first page of the exhibit. Exhibit numbers are assigned as follows:
 - (1) Xcel beginning at 100;
 - (2) The Department beginning at 200;
 - (3) The OAG RUD beginning at 300;
 - (4) Commission Staff, if needed, beginning at 400; and
 - (5) Any other parties shall be assigned numbering ranges in a subsequent order.
- (b) The eDocket unique identifier, taken from the eDocket list when the document is electronically filed. The eDocket unique identifier shall be displayed in the upper right-hand corner of the first page of the exhibit.

23. Except for good cause shown, all revisions or corrections to any pre-filed testimony shall be in writing and served upon the Administrative Law Judge and the parties no later than three (3) days prior to the commencement of the public hearing. Corrections to any pre-filed testimony shall be identified and marked on the copy of the exhibit which is entered into the hearing record.

24. Pre-filed testimony that is not offered into the record, or stricken portions of pre-filed testimony that is offered, shall be considered withdrawn and no witness shall be cross-examined concerning the withdrawn testimony. Any new affirmative matter that is not offered in reply to another party's direct case will not be allowed in rebuttal testimony and exhibits. Any new affirmative matter that is not offered in reply to another party's rebuttal testimony and exhibits will not be allowed in surrebuttal testimony and exhibits.

25. Except for good cause shown, objections by any party related to the qualifications of a witness or to that witness' direct, rebuttal, or surrebuttal testimony shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judge, and serves a copy of such objections on the parties, no later than **March 31, 2023**.

VII. Order of Testimony

26. The tentative order of testimony in the evidentiary hearing shall be: Xcel, the Department, and the OAG RUD. Questioning of the witnesses shall proceed in the same order, followed by Commission Staff and the Administrative Law Judge. This provision is subject to change by agreement of the parties or further order of the Administrative Law Judge. Each party shall advise other parties and the Administrative Law Judge of the order in which it will call witnesses for cross examination by **March 31, 2023**.

27. If a sponsoring party needs a date certain to offer the testimony of a witness, the sponsoring party should submit a request to the Administrative Law Judge and other parties.

28. The parties are encouraged to stipulate to any facts not in dispute and to admission of the testimony of any witness or receipt of any exhibit related to uncontested facts and issues.

VIII. Subpoenas

29. Requests for subpoenas to compel the attendance of a witness or for the production of documents shall be made in writing to the Administrative Law Judge pursuant to Minn. R. 1400.7000. The subpoena request shall contain a brief statement demonstrating the potential relevance of the testimony or evidence sought and shall identify any documents sought with specificity. The request shall also include the full name and home or business address of each person to be subpoenaed and, to the extent known, the date, time, and place for responding to the subpoena. A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at <https://mn.gov/oah/forms-and-filing/forms/>.

IX. Hearing

30. The evidentiary hearing in this matter shall be held on **April 4 and 5, 2023**, in the Commission's Large Hearing Room, Minnesota Public Utilities Commission, 121 7th Place East, St. Paul, Minnesota 55101, subject to availability. Upon request, certain parties or witnesses may be allowed to appear remotely.

31. At the evidentiary hearing, parties shall examine and cross-examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through one representative chosen by the party.

32. The Administrative Law Judge may hold a prehearing conference shortly before the evidentiary hearing to address logistics and final details for the hearing. If the parties believe that a prehearing conference at that stage would be helpful, the parties may request that a prehearing be scheduled.

33. Note that some or all of the evidentiary may be conducted remotely, with alternative procedures appropriate to a remote public hearing, depending on the circumstances at that time.

X. Filing of Documents (Excluding Information Requests and Responses)

34. Documents shall be filed using the Commission's eDockets e-Filing system where feasible, in accordance with Minn. Stat. § 216.17, subd. 3 (2022), and the Commission's standards, but may also be filed by personal delivery or U.S. Mail. Electronic filing is strongly encouraged.

35. Pre-filed testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

36. An oversized exhibit may be received into the hearing record, with approval of the Administrative Law Judge, provided that a duplicate original of the exhibit conforming to the standards of Minn. R. 1400.5275, is submitted into the record and e-Filed.

37. The effective date of filing shall be the date the document is e-Filed or delivered to the Administrative Law Judge. Parties using the e-Filing system should retain the unique document identifier as proof of filing through that system. Proof of service to the service list in this proceeding shall be filed with each document or within three (3) business days thereafter.

38. The parties agree that e-Filing through the eDockets system shall constitute service in this matter. Any document that cannot be e-Filed shall be served by U.S. mail or delivered to the persons indicated on the official service list by the date the document is required to be served. The service list will be revised as necessary by the Office of Administrative Hearings.

39. A courtesy copy of all post-hearing briefs and proposed findings shall be sent to the Administrative Law Judge and court reporter by electronic mail. Proposed findings and post-hearing briefs should be sent in a Microsoft Word format that permits revision.

40. A Protective Order will be issued in this proceeding and that Order will govern access to information designated Trade Secret or Nonpublic Data. Material designated Trade Secret or Nonpublic Data shall be prepared and marked in accordance with the Protective Order.

XI. Court Reporter

41. The Commission will arrange to have a court reporter present at the hearing. Parties must make arrangements with the court reporter to obtain a copy of the transcripts.

42. The court reporter shall provide the Administrative Law Judge with an electronic copy of all transcripts.

XII. Request for Accommodation

43. No person has requested accommodation for a disability or appointment of an interpreter. The Office of Administrative Hearings shall be notified promptly if either an accommodation or interpreter is needed.

XIII. Contacting the Administrative Law Judge

44. The Administrative Law Judge may be contacted by email sent to her Legal Assistant, Michelle Severson, michelle.severson@state.mn.us, or Staff Attorney Kelly Anderson, kelly.m.anderson@state.mn.us. For purely procedural or scheduling matters, the parties may contact the Administrative Law Judge directly by email, so long as all other parties are included in the communication.

Dated: November 22, 2022


JESSICA A. PALMER-DENIG
Administrative Law Judge

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

In the Matter of the Petition of Northern States Power Company for Approval of a Public Charging Network, and Electric School Bus Pilot, and Program Modifications

PROTECTIVE ORDER

This matter is pending before Administrative Law Judge Jessica A. Palmer-Denig upon a request for issuance of a protective order.

Patrick T. Zomer and Katherine J. Marshall, Moss & Barnett, and Ian Dobson, Xcel Energy, appear on behalf of Northern States Power Company d/b/a Xcel Energy (Xcel Energy);

Katherine Hinderlie and Steven Melchionne, Assistant Attorneys General, appear on behalf of the Minnesota Department of Commerce, Division of Energy Resources (Department);

Peter G. Scholtz and Travis Murray, Assistant Attorneys General, appear on behalf of the Minnesota Office of Attorney General - Residential Utilities Division (OAG RUD);

Leigh Currie, Minnesota Center for Environmental Advocacy (MCEA), appears on behalf of the Clean Energy Groups (Fresh Energy, MCEA, Plug in America, Sierra Club, Union of Concerned Scientists);

Andrew P. Moratzka and Riley A. Conlin, Stoel Rives LLP, appear on behalf of Americans for Affordable Clean Energy;

Kevin Pranis, Marketing Manager, appears on behalf of the Laborers' International Union of America;

Scott Dunbar, Keyes & Fox LLP, appears on behalf of ChargePoint, Inc.;

Jacob Schlesinger, Keyes & Fox LLP, appears on behalf of EVgo Services, LLC;

David A. Fitzgerald and Brent L. Coleman, Davison Van Cleve, PC, Jason G. Harp, Bina Joshi, and Ryan C. Granholm, ArentFox Schiff LLP, appear on behalf of Electrify America, LLC;

Bill Ehrlich, Francesca Wahl, and Kevin Auerbacher, Tesla Inc. (Tesla) appear on behalf of Tesla;

Erick Karlen, Shell Recharge Solutions, appears on behalf of Shell Recharge Solutions; and

Hanna Terwilliger is participating on behalf of the Minnesota Public Utilities Commission (Commission) Staff.

Background

1. This matter was referred to the Office of Administrative Hearings by the Commission for a contested case hearing in its Notice and Order for Hearing dated October 26, 2022. The Order was issued in MPUC Docket No. E-002/M-22-432.

2. The purpose of this Protective Order is to facilitate the disclosure of documents and information during the course of this proceeding and to protect against the unauthorized disclosure of not public data pursuant to Minn. Stat. §§ 13.02, subd. 8a, 13.37, subds. 1–2 (2022), Minn. R. 1400.6700, subp. 4 (2021).

3. Minn. Stat. § 14.60, subd. 2 (2022), authorizes the Administrative Law Judge to conduct a closed hearing to discuss not public data, issue necessary protective orders, and seal all or part of the hearing record.

4. The Administrative Law Judge finds that there is good cause to enter this Protective Order.

Based upon the stipulation of the parties and upon the hearing record, the Administrative Law Judge enters the following:

ORDER

Designation of Data as Not Public

1. The term “Not Public data,” as used in this Order, has the same meaning as is set forth in Minn. Stat § 13.02, subd. 8a, and includes “security information” and “trade secret information” within the meaning of Minn. Stat. § 13.37, subd. 1(a), (b). Subject to a party’s right to challenge the designation of data, all data that the disclosing party has designated as Not Public data in the manner described in this Order shall be:

- (a) Deemed furnished pursuant to all terms of this Order;

- (b) 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 Administrative Law Judge.

6. “Party” shall mean persons designated a “party” by the Commission pursuant to Minn. R. 7829.0800 (2021), by the Administrative Law Judge pursuant to Minn. R. 1400.6200 (2021), or through operation of Minn. Stat. § 216A.07, subd. 3, or Minn. Stat. § 8.33, subd. 3 (2022).

7. A party disclosing data in this proceeding may designate the data as Not Public to the extent the data meets the definition of Not Public data.

8. With respect to Not Public data contained in a document:

- (a) In accordance with the Commission’s Procedures, data designated as Not Public shall be accompanied by a non-conclusory statement explaining why the data is Not Public under Minn. Stat. ch. 13 (2022) consistent with Minn. R. 7829.0500, subp. 5 (2021), and each page shall be conspicuously marked with the designation “**NOT PUBLIC DOCUMENT – NOT FOR PUBLIC DISCLOSURE**” or words of similar import;
- (b) When a document contains some data that is Not Public and some data that is public, the document must be accompanied by one copy of the document with the Not Public data redacted, with the first page or cover page of the document from which the data has been redacted clearly captioned in bold print “**PUBLIC DOCUMENT – NOT PUBLIC DATA HAS BEEN EXCISED.**”

9. If, in the course of a deposition, counsel for any party concludes that testimony or exhibits will disclose Not Public data, counsel may request that the court reporter record such testimony in a confidential transcript that is marked “**NOT PUBLIC DOCUMENT — NOT FOR PUBLIC DISCLOSURE,**” or words of similar import. All exhibits that have been marked as containing Not Public data shall be attached to the confidential transcript and marked consistent with Minn. R. 7829.0500 (2021) and the Commission’s Procedures.

10. Each party has the right to designate all or a portion of the deposition transcript and any exhibits as Not Public for up to three business days after the deposition transcript is made available to them. Upon such designation, the court reporter shall mark those portions of the transcript “**NOT PUBLIC DOCUMENT — NOT FOR PUBLIC DISCLOSURE,**” or words of similar import, consistent with the Commission’s Procedures and Minn. R. 7829.0500.

11. Any Not Public 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.

12. For purposes of this proceeding, notes made pertaining to, or prepared as the result of, a review of Not Public data shall be treated as Not Public data pursuant to the terms of this Order.

13. A party does not, by inadvertent disclosure, waive its right to designate any documents, data, information, studies, or other materials as Not Public, provided that the disclosing party thereafter gives written notice to the recipient(s) of such information and that it should have been designated as Not Public. Such notice shall be provided within a reasonable amount of time following the inadvertent disclosure. From and after receipt of such notice, the previously disclosed information subsequently identified as containing Not Public data shall be treated as such for purposes of this Order.

Application to Government Agencies

14. For purposes of this Order, “government agency” or “government agencies” has the same meaning as “state agency” under Minn. Stat. § 13.02, subd. 17, as well as any employee of a state agency acting within the scope of his or her job duties.

15. Government agencies are subject to various laws and rules regulating access to and retention of data, including the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. ch. 13, the records retention requirements of Minn. Stat. §§ 138.163-.226 (2022), 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). To the extent that any obligation of a government agency under any of the statutes, rules, or procedures identified in this paragraph are inconsistent with the terms of this Order, the obligations of the statute, rule, or procedure shall control.

16. Pursuant to Minn. Stat. § 13.03, subd. 6, the Administrative Law Judge finds that data that are classified as Not Public are discoverable in this regulatory action and that the benefit to the requesting party generally outweighs any harm to the confidentiality interests of the party or government agency in maintaining the data, or of any person who has provided the data or who is the subject of the data, or to the privacy interest of an individual identified in the data.

Challenging the Designation of Data as Not Public

17. This Protective Order shall not be construed as a ruling on the discoverability, confidentiality, or validity of a designation as Not Public data of any information or document.

18. During the contested case proceedings before the Office of Administrative Hearings, any party may request a disclosing party to meet and confer concerning the redesignation of any materials designated as Not Public data. If the parties do not resolve the issue in five (5) business days after the request to meet and confer, the party seeking redesignation may request *in camera* review by the Administrative Law Judge, in the manner described below.

19. A party requesting redesignation of information designated as Not Public may seek *in camera* review for purposes of challenging the designation by submitting the data for which redesignation is sought, along with a brief letter explaining the party's position. The party opposing redesignation may, within three (3) business days after the request for *in camera* review, submit a brief letter to the Administrative Law Judge explaining that party's position and, thereafter, the Administrative Law Judge will rule.

20. In a proceeding challenging the designation of information as Not Public, the burden shall be on the party asserting the designation to show that the information meets the definition of Not Public data.

21. If the Not Public nature of any 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 Not Public data shall be present. The record of such *in camera* hearings shall be marked "**NOT PUBLIC DOCUMENT — NOT FOR PUBLIC DISCLOSURE,**" or words of similar import, consistent with the Commission's Procedures and Minn. R. 7829.0500 unless the Administrative Law Judge determines that the proceeding should not be classified as involving Not Public data.

Persons Entitled to Receive Not Public data

22. All Not Public data made available pursuant to this Order shall only be made available to (a) counsel for a party and any non-attorney staff assisting counsel who execute Exhibit A prior to their receipt of the Not Public data; (b) employees of a government agency who are acting within the scope of their employment; (c) the court reporter(s); or (d) other persons who: (i) are designated by counsel as being the party's experts or witnesses in this proceeding (whether or not such expert or witness is expected to testify in the proceeding); and (ii) execute Exhibit A prior to their receipt of the Not Public data.

23. Except for employees of government agencies and court reporters, persons authorized to view Not Public data by this order must sign a Nondisclosure Agreement in a form attached as Exhibit A, the terms of which are incorporated as part of this Order, before receiving access to not public data. The signed Nondisclosure Agreement shall be delivered to counsel for the disclosing party at least 48 hours prior to receiving access to the Not Public data, excluding weekends and holidays.

24. If counsel for the disclosing party notifies the requesting party and the Administrative Law Judge of an objection within the 48 hours, no Not Public data may be provided to the expert or witness until so ordered by the Administrative Law Judge.

Disclosure to a Person Not Entitled to Receive Not Public data

25. If material designated as Not Public data is disclosed by a party to any person other than those entitled to disclosure in the manner authorized by this 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) prevent further disclosure by or to any unauthorized person(s).

26. 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.

27. This 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 Not Public data.

Use of Not Public Data

28. No person who receives, or is afforded access to, any Not Public data by reason of this Order, shall use or disclose the Not Public data for purposes of business or competition, or any other purpose other than preparing for, or conducting, these proceedings, except, however, that a government agency may use Not Public Data in any proceeding in which the designating party is a party to the proceeding. Each person with access to such data shall take reasonable precautions to keep the Not Public data secure from unauthorized disclosure.

29. Where reference to Not Public data is made in pleadings, cross-examinations, briefs, arguments, or motions, it shall be by citation of title or exhibit number or by some other non-confidential description, to the extent possible.

30. Parties shall not use Not Public 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 before the information is used or publicly disclosed.

31. Use of or substantive references to Not Public data in this proceeding shall be placed in a separate Not Public copy that is filed and marked in a manner consistent with Minn. R. 7829.0500 and the Commission's Procedures. This Not Public copy shall be served only on counsel of record (one copy each). All the protections afforded in this Order apply to materials prepared and distributed under this paragraph.

32. To the extent required by the Commission's Procedures or Minn. R. 7829.0500, the providing party shall prepare a written summary of the Not Public data referred to in this Order to be placed on the public record.

Handling of Not Public Data at the Close of the Proceeding

33. Unless otherwise ordered, all Not Public data: (a) in the possession of any government agency, shall be retained and designated in accordance with the government agencies' retention schedules and Minn. Stat. ch. 13; and (b) in the possession of any party that is not a government agency, 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 Not Public data is destroyed by a party that is not a government agency under (b) above, the receiving party shall send a written communication to the disclosing party verifying destruction of the Not Public data.

Amendment of the Protective Order

34. This Protective Order may be amended:
- (a) By signed stipulation of the parties approved by Order of the Administrative Law Judge;
 - (b) On the motion of one of the parties granted for good cause shown.

Dated: November 22, 2022


JESSICA A. PALMER-DENIG
Administrative Law Judge

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

In the Matter of the Petition of Northern States Power Company for Approval of a Public Charging Network, and Electric School Bus Pilot, and Program Modifications

EXHIBIT A
NONDISCLOSURE AGREEMENT

I, the undersigned, acknowledge that I have read the attached Order dated _____, in Minnesota Public Utilities Commission Docket No. E-002/M-22-432 and Office of Administrative Hearings Docket No. 71-2500-38758.

I agree not to disclose materials designated "**NOT PUBLIC DATA**" under the terms of the Order, or any copies or extracts of information derived from those items, to any person or entity not authorized to receive. I further agree to use any materials disclosed to me solely for the purpose of this proceeding and for no other purpose.

I submit myself to the jurisdiction of the Office of Administrative Hearings in Minnesota and the Minnesota Public Utilities Commission for the purpose of enforcing the Order.

Date: _____

Signature

Type or Print Name

Address

Name of Employer

Name of Party