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500 East Capitol Avenue  
Pierre, South Dakota 57501

RECEIVED  
OCT 03 2006  
SOUTH CAROLINA PUBLIC  
UTILITY COMMISSION

RE: **NORTHWESTERN/BBI TRANSACTION**  
Docket GE06-001  
Our file: 0230

Dear Patty:

Enclosed are original and 10 copies of NorthWestern's Confidentiality Agreement, which please file. Also accompanying the agreement are Nondisclosure Agreements signed by Darla Pollman Rogers, William Taylor, Jennifer L. Wollman and James E. Moore.

With a copy of this letter I am sending copies of the enclosure to the service list.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosures

cc/enc: Service List

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

RECEIVED  
OCT 13 2006  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE MERGER ) GE06-001  
BETWEEN NORTHWESTERN CORPORATION )  
AND BBI GLACIER CORP., A )  
SUBSIDIARY OF BABCOCK & BROWN ) **NORTHWESTERN'S**  
INFRASTRUCTURE LIMITED ) **CONFIDENTIALITY**  
 ) **AGREEMENT**

This Confidentiality Agreement is made as of the last date signed by the last signatory at the foot of the agreement, among NorthWestern Corporation ("NorthWestern"), Intervenors Missouri River Energy Services ("MRES"), South Dakota Power Company ("SDPC"), Heartland Consumers Power District ("Heartland"), East River Electric Cooperative, Inc., ("East River") and Basin Electric Power Cooperative, Inc., ("Basin Electric") (collectively, "Intervenors") and the Staff of the Public Utilities Commission of the State of South Dakota ("Commission Staff").

RECITAL

1. NorthWestern hereby states that it will, under the terms of the following Confidentiality Agreement, allow inspection and review of certain data and information claimed by NorthWestern to be of a confidential nature to the signators of this Agreement. The information covered by this Confidentiality Agreement is any information sought to be reviewed and required to be disclosed pursuant to agreement, rule or order in the referenced proceeding.

2. In connection with this case Intervenors and Commission Staff desire to have access to and to review certain documents of NorthWestern mentioned in paragraph 1 of the Recital.

3. NorthWestern submits that many, if not all, of the documents Intervenors and Commission Staff wish to review contain confidential information, trade secrets, proprietary information and/or other information which, if disclosed to competitors of NorthWestern or others, could result in irreparable damage and injury to NorthWestern.

4. The parties desire to provide a means by which the documents described in Recital number 1 can be provided to Intervenors and Commission Staff for review without resulting in irreparable damage or injury to NorthWestern.

THEREFORE, Intervenors and Commission Staff and NorthWestern agree as follows:

1. For purposes of this Agreement, the following terms shall be defined in the following manner:

- (a) "Documents" shall mean and include all documents, data, information, studies, computer programs, and other matters both written and electronic furnished in response to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery that are claimed to be confidential as the term is defined in this Agreement, together with any subsequent compilation, summary, quotation, or reproduction thereof prepared at any subsequent time in any subsequent form or proceeding, in whole or in part.

To the extent there may be information which NorthWestern believes requires extraordinary protection beyond that provided for in this Agreement, NorthWestern shall file the information with the Commission, only, under seal together with a motion seeking such extraordinary protection. The motion shall state the grounds for seeking the relief and advise all other parties of the request together with a description of the subject matter of the material at issue, including the identity and date of authorship.

- (b) "Confidential Information" shall mean and include any documents and all contents thereof which are marked "CONFIDENTIAL," "PROPRIETARY" or so identified in some similar manner by NorthWestern, and which meet the definition of "Confidential Information" contained in South Dakota Administrative Rule 20:10:01:39.
- (c) "Use of Confidential Information and Persons Entitled to Review." All confidential information made available pursuant to this Agreement may be disclosed to the Commission and its staff from time to time as part of this proceeding; provided, however, that access to any specific confidential information also may be authorized by counsel for Intervenors and Commission Staff, solely for the purpose of this proceeding, to Intervenors and Commission Staff employees, experts or advisors with a need to know in order to participate in the above captioned matter. For purposes of this Agreement, disclosure shall be strictly limited to persons employed or retained by Intervenors and Commission Staff who are directly involved in this case as an employee, attorney, advisor, expert, or witness for Intervenors and Commission Staff. Such persons shall be hereinafter referred to as "Authorized Persons."
- (d) "Disclose," "make disclosure of" or "disclosure" shall mean and include the dissemination to any person, firm, corporation or other entity of the contents of a document, whether that dissemination is by means of the transmittal or transfer of

the original or a copy of that document or any verbal or other dissemination of the contents of said document. No access to confidential information shall be authorized under the terms of paragraph 1(c) of this Agreement until the Authorized Person signs a Nondisclosure Agreement in the form that is attached and incorporated as Exhibit A. The Nondisclosure Agreement shall require the persons to whom disclosure is to be made to certify in writing that they have read this Agreement and agree 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. This Nondisclosure Agreement shall be delivered to counsel for the providing party and the Commission at the time of review of the documents, or as soon thereafter as is practicable, provided that any Nondisclosure Agreement involving an expert governed by SDRCP 26(b)(4)(B) shall be filed as confidential material under the Commission's rules and made available to any party, including Commission Staff, only upon a showing of exceptional circumstances within the meaning of SDRCP 26(b)(4)(B).

2. All Confidential Information and the disclosure thereof shall be subject to the following restrictions:

- (a) Intervenors and Commission Staff shall not disclose any Confidential Information to anyone other than an Authorized Person(s) for the sole purpose of his or her review, analysis, participation and decision making in the above-captioned matter.
- (b) The foregoing notwithstanding, Intervenors and Commission Staff may not disclose Confidential Information to an Authorized Person(s) unless, prior to the disclosure of such Confidential Information, said Authorized Person(s) has signed a Nondisclosure Agreement as set forth in Article 1(d) above.

3. Confidential Information will be marked as such and delivered to counsel. Any information sent unmarked and later determined by the sender to be confidential shall thereafter be treated as confidential information by the recipient, upon notice in writing.

4. In the event Intervenors and Commission Staff object to NorthWestern's designation of a document or its contents as Confidential Information, the materials shall be treated as Confidential Information until a contrary ruling by the Commission, or if appropriate, a Court of competent jurisdiction. Prior to the time any objection to a designation of Confidential Information is brought before the Commission or a court of competent jurisdiction for resolution, Intervenors and Commission Staff and NorthWestern

shall attempt to resolve the objection by agreement. If NorthWestern and Intervenors and Commission Staff are unable to reach an agreement, then either of them may bring the objection before the Commission or court of competent jurisdiction in accordance with the applicable rules of that forum. The party requesting confidentiality before the Commission or court of competent jurisdiction has the burden of proving to the Commission or court that the information qualifies as confidential information, all as provided in ARSD 20:10:01:42.

5. In the event Intervenors and Commission Staff desire to disclose Confidential Information to a person, firm, corporation or entity other than an Authorized Person, Intervenors and Commission Staff shall designate the Confidential Information it wishes to disclose, identify the persons or entities to whom it wishes to make disclosure and advise NorthWestern in writing of its desire to make such disclosure. If, after NorthWestern's receipt of such communication from Intervenors and Commission Staff, NorthWestern and Intervenors and Commission Staff are unable to agree on the terms and conditions of such disclosure, such disclosure may be made only on such terms and conditions as the Commission or, if appropriate, a Court of competent jurisdiction may order.

6. Nothing in this Agreement shall preclude NorthWestern from using or disclosing any of NorthWestern's Confidential Information for any purpose or to any person.

7. Nothing in this Agreement shall preclude NorthWestern from refusing to make any disclosure of any Confidential Information to Intervenors and Commission Staff even if Intervenors and Commission Staff agree that such disclosure shall be in accordance with the terms of this Confidentiality Agreement. If Confidential Information is withheld by NorthWestern pursuant to this Article 7, NorthWestern shall provide Intervenors and Commission Staff with a written statement regarding the basis for withholding the Confidential Information together with a description of the subject matter of the material at issue, including the identity and date of authorship.

8. All persons who are afforded access to any confidential information by reason of this Agreement shall neither use nor disclose the confidential information for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of this proceeding, and then solely as contemplated here, and shall take all reasonable precautions to keep the confidential information secure and in accordance with the purposes and intent of this Agreement.

9. Any disclosure of confidential information by NorthWestern pursuant to this Agreement shall not act as a waiver of NorthWestern's 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 Agreement or a Commission issued Protective Order on the grounds of relevancy or materiality.

10. This Agreement shall in no way constitute a waiver of the rights of any party or person to contest any assertion or finding of trade secret, confidentiality, or privilege, or to appeal any determination of the Commission or assertion by a party.

11. The provisions of this Agreement are specifically intended to apply to information supplied by NorthWestern to Intervenors and Commission Staff pursuant to this proceeding, and to any nonparty in possession or control of information belonging to NorthWestern that supplies documents, testimony, or other information pursuant to process issued by the Commission.

12. Within ten (10) days after the final disposition of the case, including any and all appeals therefrom, all hard copy, other originals and any reproductions of all documents containing Confidential Information subject to this Confidentiality Agreement shall either be returned to NorthWestern or destroyed, with the exception, however, of documents introduced and accepted into the Commission's record. Such documents shall remain a permanent part of the record with all protections afforded by ARSD 20:10:01:40.

13. The provisions of this Confidentiality Agreement, insofar as they restrict the disclosure and use of Confidential Information governed by this Confidentiality Agreement, shall, without the written permission of NorthWestern or further order of the Commission or, if appropriate, a court of competent jurisdiction, continue to be binding after the conclusion of the case.

14. The obligations of this agreement do not apply to any Confidential Information which:

- (a) at the time of disclosure to the recipient or thereafter has become part of public knowledge or literature without breach of the recipient's obligations hereunder;
- (b) the recipient can show was in its possession at the time of disclosure, as evidenced by written records in existence at that time, and was not acquired by it under an obligation of confidence; or
- (c) the recipient can show was received by it after the time of disclosure hereunder from a third party (other than one disclosing on behalf of NorthWestern, Intervenors and Commission Staff or their affiliates) who could lawfully do so and who did not derive the Confidential Information from NorthWestern, Intervenors and Commission Staff or any of their affiliates; provided, however, that

- (d) the foregoing exceptions (a) through (c), inclusive, do not apply to (i) specific information merely because it is embraced by or included with other information which falls within any one or more of such exceptions; or (ii) any combination of information merely because specific information (but not the combination itself) falls within any one or more of such exceptions.

15. In the event that Intervenors and Commission Staff or any Authorized Person acting for Intervenors and Commission Staff are required or requested by any court, legislative or administrative body to disclose any Confidential Information, then the recipient, party or Authorized Person will promptly and prior to disclosure notify Intervenors and Commission Staff and NorthWestern and shall provide full documentation concerning the disclosure sought, so that an appropriate protective order can be sought and/or other action can be taken if possible. In the event that a protective order is not, or cannot be, obtained, then

- (a) Intervenors and Commission Staff or any Authorized Person acting for Intervenors and Commission Staff may disclose to the appropriate body that portion of the Confidential Information which it is advised by written outside legal advice it is legally required to disclose and shall use reasonable efforts to obtain assurances that confidential treatment will be accorded the Confidential Information; and
- (b) Intervenors and Commission Staff or any Authorized Person acting for Intervenors and Commission Staff shall not be liable for such disclosure unless the disclosure was caused by or resulted from a previous disclosure by the recipient or its representatives that was not permitted by this Agreement.

16. The attorneys for the parties to this Confidentiality Agreement have authority to sign the Agreement and to bind the companies and their employees to the terms herein. This agreement may be signed in separate counterparts.

WHEREFORE, the undersigned have set their hands and seals as of the date set forth by their signature.

NORTHWESTERN:

MAY, ADAM, GERDES & THOMPSON

Date: 9/27/06

BY: 

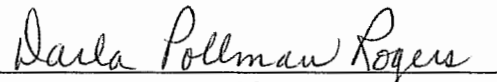
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INTERVENORS:

RITER, ROGERS, WATTIER & BROWN, LLP

Date: 9-27-06

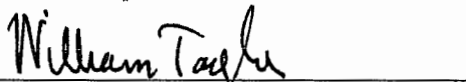
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WOODS, FULLER, SHULTZ & SMITH P.C.

Date: 9.25.06

BY: 

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Attorneys for Heartland and SD Power  
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BY: \_\_\_\_\_

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VAN NESS FELDMAN, P.C.

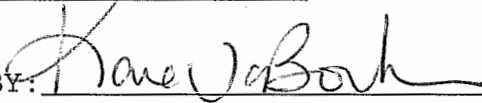
Date: \_\_\_\_\_

BY: \_\_\_\_\_

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COMMISSION STAFF:

Date: 10/3/06

BY: 

Kara VAN BOCKERN  
Staff Attorney  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501  
Telephone: (605)773-3201  
Telefax: (605)773-3809

**EXHIBIT A**

NONDISCLOSURE AGREEMENT

The undersigned executes this Nondisclosure Agreement for all purposes contemplated by Intervenor and Commission Staff and NorthWestern in their Confidentiality Agreement dated the 27<sup>th</sup> day of September, 2006, as follows:

1. I certify in writing that I have read the aforesaid Confidentiality Agreement between the parties.

2. I agree to be bound by the terms of that Confidentiality Agreement.

Dated this 27<sup>th</sup> day of September, 2006.

Darla Pollman Rogers

Printed Name: Darla Pollman Rogers

Permanent Address: 319 S. Coteau Street  
Pierre, SD 57501

Employer: Riter, Rogers, Wattier & Brown

Name of the Party with whom  
associated: East River and Basin Electric

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1. I certify in writing that I have read the aforesaid Confidentiality Agreement between the parties.

2. I agree to be bound by the terms of that Confidentiality Agreement.

Dated this 26 day of Sept, 2006.

William Taylor

Printed Name: W<sup>m</sup> TAYLOR

Permanent Address: 300 S. Phillips

Sidney Falls, SD

Employer: Woods, Fuller

Name of the Party with whom associated: Heiland, South Dakota PC

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2. I agree to be bound by the terms of that Confidentiality Agreement.

Dated this 26<sup>th</sup> day of September, 2006.

Jennifer L. Wollman

Printed Name: Jennifer L. Wollman

Permanent Address: 300 S. Phillips Ave. #300  
Sioux Falls, SD 57104

Employer: Woods, Fuller, Shultz & Smith,  
P.C.

Name of the Party with whom  
associated: Heartland and SDPPC

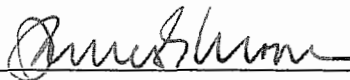
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2. I agree to be bound by the terms of that Confidentiality Agreement.

Dated this 26<sup>th</sup> day of September, 2006.



Printed Name: James E. Moore

Permanent Address: 300 S. Phillips Ave. Suite 300  
Sioux Falls, SD 57117

Employer: Woods Fuller

Name of the Party with whom associated: Heartland & SD Power