

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

PPL Montana, LLC	Docket Nos. ER99-3491-007
PPL Colstrip I, LLC	ER00-2184-005
PPL Colstrip II, LLC	ER00-2185-005
	EL05-124-002

ORDER DENYING MOTION FOR PROTECTIVE ORDER
AND ESTABLISHING COMMENT PERIOD

(Issued December 2, 2005)

1. On November 14, 2005, PPL Montana, LLC, PPL Colstrip I, LLC, and PPL Colstrip II, LLC (collectively, PPL Parties) filed a motion for the adoption of a protective order and, on November 21, 2005, NorthWestern Corporation (NorthWestern) filed an alternative motion seeking both a protective order and an extension of time to answer. In this order, we find that we need not issue and hence will deny both motions for the adoption of a protective order and instead allow the parties to adopt a protective agreement among themselves. We also establish a comment period covering the materials that will be the subject of the protective agreement.

Background

2. On September 1, 2005, the Commission issued an order on PPL Parties' updated market analysis, instituting a proceeding under section 206 of the Federal Power Act¹ to determine whether PPL Parties may continue to charge market-based rates, and establishing a refund effective date.² The September 1 Order also directed PPL Parties to submit a compliance filing within 60 days, which PPL Parties submitted on October 31,

¹ 16 U.S.C. § 824e (2000)

² *PPL Montana, LLC*, 112 FERC ¶ 61,237 (2005) (September 1 Order).

2005. A corrected version of that filing was subsequently submitted on November 14, 2005 (compliance filing). PPL Parties assert that certain materials included in its compliance filing are confidential and request that a protective order be issued governing the dissemination of any such material to any party to this proceeding.

3. On November 21, 2005, NorthWestern also submitted a request that the Commission issue a protective order governing the use of confidential information in this case.³ NorthWestern also asks that the Commission grant an extension of time governing the submission of responsive pleadings. NorthWestern proposes, as a comment date, January 13, 2006, or 60 days from the date that the PPL Parties provide NorthWestern with the material issued under the protective order. On November 21, 2005, the Montana Consumer Council submitted an answer in support of NorthWestern's requests.

4. On November 22, 2005, PPL Parties submitted an answer in opposition to NorthWestern's motion to extend the time for commenting in this proceeding, asserting that a comment period, in this case, should not extend beyond December 5, 2005. PPL Parties state that they do not object to that portion of NorthWestern's motion requesting the issuance of a protective order.

Discussion

5. Consistent with prior orders,⁴ there is no need to issue and hence we will deny both motions for the adoption of a protective order. There is no reason why in this instance a protective agreement entered into by the parties would provide less protection than a Commission-issued protective order. In this regard, PPL Parties have given no reasoning why a protective order issued by the Commission is necessary in light of the parties' willingness and ability to sign onto a protective agreement among themselves. Accordingly, the parties should enter into a protective agreement with PPL Parties if they wish to gain access to the information at issue.

6. In addition, we will establish a comment date for this proceeding extending to 30 days after PPL Parties, NorthWestern, and the Montana Consumer Counsel have entered into the proposed protective agreement and interested parties to the proceeding have

³ An earlier request was made by NorthWestern, on November 14, 2005, in response to PPL Parties' October 31 submittal.

⁴ *Southern Company Energy Marketing, Inc.*, 111 FERC ¶ 61,011 (2005); *Cranberry Pipeline Corp.*, 107 FERC ¶ 61,147 (2004); *PG&E Texas Pipeline, L.P.*, 92 FERC ¶ 61,111 (2000); *Trunkline Gas Co.*, 53 FERC ¶ 61,065 (1990).

obtained the necessary material provided by PPL Parties under seal. Under the circumstances presented here, this time allowance should provide an adequate opportunity to the parties to comment on the protected materials at issue. PPL Parties are directed to make an informational filing informing the Commission of the date the necessary material has been provided to the interested parties within five days of the date the material is delivered.

The Commission orders:

(A) PPL Parties' motion for issuance of a protective order is denied for the reasons discussed in the body of this order.

(B) The comment date for this proceeding is extended to 30 days after PPL Parties, Northwestern and the Montana Consumer Counsel have entered into the proposed protective agreement and interested parties to the proceeding have obtained the necessary material provided by PPL Parties under seal.

(C) PPL Parties are directed to submit an informational filing, as discussed in this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.