

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1720

In the Matter of

NORTHWEST NATURAL GAS
COMPANY, dba, NW NATURAL

Investigation into Long-Term Hedging
Policy.

**MOTION FOR MODIFIED
PROTECTIVE ORDER**

1 Pursuant to OAR 860-001-0080(3) and 860-001-0420, Northwest Natural Gas
2 Company (“NW Natural” or “Company”) moves the Public Utility Commission or Oregon
3 (“Commission”) for the entry of a Modified Protective Order in this proceeding. For reasons
4 outlined below, NW Natural requests the Modified Protective Order to protect commercially
5 sensitive and confidential business information related to the Company’s gas purchasing
6 policies and practices at issue in this docket. The Company therefore requests that the
7 Commission issue the proposed Modified Protective Order that is attached hereto as
8 Attachment A.

9 NW Natural contacted the parties to this docket – Staff, the Citizens’ Utility Board of
10 Oregon (“CUB”), Northwest Industrial Gas Users (“NWIGU”), Avista Corporation (“Avista”),
11 Cascade Natural Gas Corporation (“Cascade”), and Portland General Electric (“PGE”) –
12 regarding the Company’s proposed modified protective order. All parties indicated their
13 support of the modified protective order.

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I. BACKGROUND

On March 5, 2015, the Commission ordered that this docket be opened to investigate NW Natural's long-term hedging policy.¹ Following the prehearing conference in this docket, the Administrative Law Judge clarified in the Prehearing Conference Memorandum that the Commission "will broadly examine the local distribution companies' overall hedging policies (long-term, and also short-term and medium-term hedges),"² and that the Commission "aims to set guidelines that will allow the utilities to establish flexible policies that can be adjusted to meet changing conditions."³ On October 19, 2015, the Commission held an "introduction to hedging" workshop⁴ where NW Natural, Avista, and Cascade (together, the "LDCs") presented a high-level review of their hedging policies and strategies. Staff also presented at the workshop.

On November 4, 2015, the Commission held a second prehearing conference where it was agreed upon by the parties to participate in additional workshops.⁵ Specifically, NW Natural will lead workshops on "hedging analysis and calculations," followed by workshops on "hedging policy and development of guidelines."⁶

Throughout the docket, the LDCs will be disclosing extremely sensitive business information related to their gas purchasing policies and practices. In order to facilitate the upcoming workshops and the transmission of discovery in this docket, NW Natural requests

¹ In the Matter of Northwest Natural Gas Co. 2014 Integrated Resource Plan, Docket LC 60, Order No. 15-064 at 1, Docket LC 60 (Mar. 5, 2015).

² UM 1720, Prehearing Conference Memorandum (Apr. 14, 2015).

³ *Id.*

⁴ UM 1720, Ruling and Notice of Commission Workshop (Sept. 22, 2015).

⁵ UM 1720, Prehearing Conference Memorandum (Nov. 17, 2015).

⁶ *Id.*

1 the issuance of an order containing additional protections beyond those contained in the
2 Commission's General Protective Order.

3 **II. REQUEST FOR HIGHLY CONFIDENTIAL DESIGNATION**

4 As part of the NW Natural's data request responses and workshop presentations, the
5 Company will be providing information that it considers to be Protected Information and
6 Highly Protected Information. In order to provide adequate protections to that information
7 while facilitating the transmission of relevant information in this docket, the Company
8 proposes additional protections to the Commission's standard protective order provisions.
9 In support of this motion, NW Natural provides the following information as required by OAR
10 860-001-0080(3)(a)(A)-(E):

11 **A. The parties and the exact nature of the information involved.**

12 The parties to the docket include Staff, CUB, NWIGU, Cascade, Avista, and PGE.
13 The information for which the Company seeks protection includes, but is not limited to,
14 descriptions of the Company's gas purchasing and hedging practices, including current
15 market activity and information related to recent and ongoing transactions. Furthermore, the
16 Company will be providing information related to the Company's hedging strategies,
17 historically and into the future. NW Natural's market activity and internal policies constitute
18 extremely sensitive commercial information. The public disclosure of this highly confidential
19 information would cause significant harm to the Company and its customers by
20 compromising the Company's ability to continue to engage in similar transactions.

21 Additionally, given that there are parties to this docket that could gain from the
22 confidential competitive information distributed by NW Natural, the information requires
23 additional protection beyond the prohibition of public disclosure afforded in the General
24 Protective Order. The Modified Protective Order will govern the disclosure of protected

1 information between the parties to the docket. Information designated Highly Protected
2 Information will have additional protection as it will only be distributed to Staff, CUB, and the
3 attorneys for the other parties.

4 **B. The legal basis for the claim that the information is protected under**
5 **ORCP 36(C)(7) or the Public Records Law.**

6 The information constitutes “trade secret” information protected under ORCP
7 36(C)(7) and Oregon’s Public Records Laws. ORCP 36(C)(7) allows a party to seek a
8 protective order over “trade secret[s] or other confidential research, development, or
9 commercial information.” Oregon’s Uniform Trade Secrets Act, ORS 646.461 to 646.475,
10 defines a “trade secret” as “information, including a drawing, cost data, customer list,
11 formula, pattern, compilation, program, device, method, technique or process that: (a)
12 Derives independent economic value, actual or potential, from not being generally known to
13 the public or to other persons who can obtain economic value from its disclosure or use; and
14 (b) Is the subject of efforts that are reasonable under the circumstances to maintain its
15 secrecy.

16 The Oregon Public Records Law, ORS 192.410 to 192.505, exempts from disclosure
17 public records that are “trade secrets,” which “may include but are not limited to, any
18 formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or
19 compilation of information which is not patented, which is known only to certain individuals
20 within an organization and which is used in a business it conducts, having actual or potential
21 commercial value, and which gives its user an opportunity to obtain a business advantage
22 over competitors who do not know or use it.” ORS 192.501(2).

23 The Company submits that the information for which the Company seeks protective
24 treatment over constitutes “trade secrets” as defined by the Oregon Uniform Trade Secrets
25 Act and Oregon Public Records Law. In accordance with Paragraph 13 of the proposed

1 Modified Protective Order, if a party challenges the Company's designation of information as
2 "Protected Information" or "Highly Protected Information," the Company will identify the
3 factual and legal basis of how the challenged information is protected under the Oregon
4 Public Records Act, ORS 192.410 et seq, or the Uniform Trade Secrets Act, ORS
5 646.461(4)."

6 **C. The exact nature of the relief requested.**

7 The Company requests that the Commission enter the attached Modified Protective
8 Order. The terms of the Modified Protective Order are narrowly tailored and intended to
9 apply to only the Company's most sensitive information.

10 **D. The specific reasons the requested relief is necessary.**

11 The Modified Protective Order is necessary to prevent certain highly protected
12 information from being transmitted between the LDCs and other parties that may have a
13 business interest in the LDCs' gas purchasing and hedging practices and strategies. For
14 example, to gain access to the Highly Protected Information under the Modified Protective
15 Order, a person must certify that the person has a legitimate and non-competitive need for
16 the Highly Protected Information and not simply a general interest in the information. This
17 certification is not required under the terms of the General Protective Order. Also, with the
18 exception of Staff and CUB, the Modified Protective Order allows only attorneys to access
19 Highly Protected Information, which provides further protections against disclosure of highly
20 sensitive competitive information.

21 **E. A detailed description of the intermediate measures, including selected**
22 **redaction, explored by the parties and why these measures are**
23 **insufficient.**
24

25 A modified protective order is appropriate in this docket to allow the transmission of
26 Highly Protected Information to all of the parties that sign on to the Modified Protective

1 Order. The modified protective order recognizes that there is certain Highly Protected
2 Information that the LDCs will only share with the attorneys of the parties, with the exception
3 of non-attorneys at Staff and CUB. By identifying specific individuals that are qualified to
4 access Highly Protected Information, the parties to the modified protective order will have
5 certainty regarding the permissible disclosure of Highly Protected Information.

6 For the foregoing reasons, NW Natural requests entry of the Modified Protective
7 Order attached as Attachment A in this docket.

8 Respectfully submitted this 12th day of February, 2016.

9 **NW NATURAL**

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/s/ Zachary D. Kravitz
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ORDER NO.

MODIFIED PROTECTIVE ORDER
DOCKET NO. UM 1720

Scope of this Order:

1. This order governs the acquisition and use of “Protected Information” and “Highly Protected Information” produced or used by any party to these proceedings.

Designation of Protected Information and “Highly Protected Information”:

2. Any party may designate as Protected Information any information the party reasonably determines:

(a) Falls within the scope of ORCP 36(C)(7) (a trade secret or other confidential research, development, or commercial information); and

(b) Is not publically available.

3. Any party may designate as Highly Protected Information any information that the party reasonably determines:

(a) Satisfies paragraph 2; and

(b) Is not adequately protected by the general protective order.

4. To designate information as Protected Information, a party must place the following legend on the material:

PROTECTED INFORMATION
SUBJECT TO GENERAL PROTECTIVE ORDER

The party should make reasonable efforts to designate as Protected Information only the portions of the information covered by ORCP 36(C)(7).

5. To designate information as Highly Protected Information, a party must place the following legend on the material:

HIGHLY PROTECTED
SUBJECT TO MODIFIED PROTECTIVE ORDER

The party should make reasonable efforts to designate Highly Protected Information only the portions of the information that satisfies paragraph 3 of this Modified Protective Order.

5. Each page of a document containing Protected Information filed with the Commission and served on Qualified Persons under this order must be printed on yellow paper and placed in a sealed envelope or other appropriate container. *Only the portions of a document that fall within ORCP 36(C)(7) may be placed in the envelope/container.* The envelope/container must bear the legend:

THIS ENVELOPE IS SEALED UNDER ORDER NO. __ AND CONTAINS PROTECTED INFORMATION. THE INFORMATION MAY BE SHOWN ONLY TO QUALIFIED PERSONS AS DEFINED IN THE ORDER.

6. Protected Information disclosed by a designating party to a Qualified Person through informal discovery or by means of the Commission's Huddle website will be marked "Protected Information" and uploaded to a file folder designated "protected" in Huddle, if applicable.

7. Each page of a document containing Highly Protected Information filed with the Commission and served on persons qualified to access Highly Protected Information under this order must be printed on green paper and placed in a sealed envelope or other appropriate container. *Only the portions of a document that fall within ORCP 36(C)(7) may be placed in the envelope/container.* The envelope/container must bear the legend:

THIS ENVELOPE IS SEALED UNDER ORDER NO. __ AND CONTAINS HIGHLY PROTECTED INFORMATION. THE INFORMATION MAY BE SHOWN ONLY TO PERSONS QUALIFIED TO ACCESS HIGHLY PROTECTED INFORMATION AS DEFINED IN THE ORDER.

8. Highly Protected Information disclosed by a designating party to a person qualified to access Highly Protected information through informal discovery or by means of the Commission's Huddle website will be marked "Highly Protected Information" and uploaded to a file folder designated "highly protected" in Huddle, if applicable.

9. A party may designate as Protected Information or Highly Protected Information any information previously provided by giving written notice to the Commission and other parties. Parties in possession of newly designated Protected Information or Highly Protected Information must make reasonable efforts to ensure that all copies of the material containing the information bear the above legend if requested by the designating party.

10. A designating party must make reasonable efforts to ensure that information designated as Protected Information or Highly Protected Information continues to warrant protection under this order. If designated information becomes publically available or no longer falls within the scope of ORCP 36(C)(7), the designating party should make reasonable efforts to remove the protected designation and provide written notice to the Commission and other parties.

Challenge to Designation of Information as Protected or Highly Protected:

11. A party may informally challenge any designation of Protected Information or Highly Protected Information by notifying the designating party. Once notified, the designating party bears the burden of showing that the challenged information is covered by ORCP 36(C)(7). If a party challenges the "Highly Protected Information" designation, the designating party bears the burden of showing that the "Highly

Protected Information” designation is necessary. Any party may request that the ALJ hold a conference to help resolve disputes about proper designation.

12. If the dispute cannot be resolved informally, the challenging party may file a written objection with the ALJ. The objection need only identify the information in dispute and certify that reasonable efforts to achieve informal resolution have failed.

13. Within five business days of service of the objection, the designating party must either remove the challenged protected designation or file a written response. A written response must identify the factual and legal basis of how the challenged information is protected under the Oregon Public Records Act, ORS 192.410 et seq, or the Uniform Trade Secrets Act, ORS 646.461(4). Broad allegations unsubstantiated by specific facts are not sufficient. If the designating party does not timely respond to the objection, the Commission will remove the protected designation from the challenged information.

14. The challenging party may file a written reply to any response within five business days of service of an objection. The designating party may file a sur-reply within three business days of service of a response. The ALJ will make all reasonable efforts to resolve the matter within 10 business days of service of the last filing.

Access to Protected Information and Highly Protected Information:

15. Only Qualified Persons may access Protected Information designated by another party under this Modified Protective Order. Persons automatically bound by this protective order and qualified to access Protected Information are:

- a. Commission employees; and
- b. Assistant Attorneys General assigned to represent the Commission.

16. Persons qualified upon a party signing the Consent to be Bound section of Appendix A are:

- a. Counsel for the party;
- b. Any person employed directly by counsel of record; and
- c. An employee of the Regulatory Division at the Citizens’ Utility Board of Oregon.

A party must identify all these persons in section 2 of Appendix A when consenting to be bound by the order, and must update this list throughout the proceeding to ensure it accurately identifies Qualified Persons

17. A party bound by the protective order may seek to qualify other persons to access Protected Information by having those persons complete and sign Appendix B, and submitting that information to the Commission and all parties. Within five business days of receiving a copy of Appendix C, the designating party must either provide the requested access to Protected Information or file an objection under Paragraph 16.

18. Only Qualified Persons, as defined in paragraph 15, are automatically bound by this Modified Protective Order and qualified to access Highly Protected Information

19. Persons qualified to access Highly Protected Information upon signing the Signatory Page for Highly Protected Information, Appendix C, are:

- a. An employee or counsel of the Regulatory Division at the Citizens' Utility Board; and
- b. Counsel for a party.

Objection to Access to Protected Information:

20. All Qualified Persons have access to Protected Information unless the designating party objects as provided in this paragraph. All persons qualified to have access to Highly Protected Information will have access to Highly Protected Information unless the designating party objects as provided in this paragraph. As soon as the designating party becomes aware of reasons to restrict access to a Qualified Person, the designating party must provide the Qualified Person and his or her counsel notice stating the basis for the objection. The parties must promptly confer and attempt to resolve the dispute on an informal basis.

21. If the parties are unable to resolve the matter informally, the designating party must file a written objection with the ALJ. The requesting party may file a response to the motion within 5 business days of service of an objection. The ALJ will make all reasonable efforts to resolve the matter within 10 business days of the last filing. Pending the ALJ's decision, the specific Protected Information or Highly Protected Information may not be disclosed to the person subject to the objection.

Use of Protected Information:

22. All Qualified Persons must take reasonable precautions to keep Protected Information and, if applicable, Highly Protected Information, secure. Qualified Persons may reproduce Protected Information or Highly Protected Information only to the extent necessary to participate in these proceedings. A Qualified Person may discuss Protected Information or Highly Protected Information obtained under this order only with other Qualified Persons who have obtained the same information.

23. Without the written permission of the designating party, any person given access to Protected Information or Highly Protected Information under this order may not disclose Protected Information for any purpose other than participating in these proceedings.

24. Nothing in this protective order precludes any party from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this protective order.

25. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Protected Information and Highly Protected Information to the extent reasonably necessary to maintain a file of these proceedings or to comply with requirements imposed by another governmental agency or court order. Any other person retaining Protected Information must destroy or return it to the designating party within 90 days after final resolution of these proceedings unless the designating party consents in writing to retention of the Protected Information. This paragraph does not apply to the Commission or its Staff.

Duration of Protection:

26. The Commission will preserve the designation of information as Protected Information or Highly Protected Information for a period of five years from the date of the final order in these proceedings, unless extended by the Commission at the request of the designating party. The Commission will notify the designating party at least two weeks prior to the release of Protected Information or Highly Protected Information.

Appendix B

QUALIFICATION OF OTHER PERSONS

DOCKET NO. UM 1720

III. Persons Seeking Qualification under Paragraph 17:

I have read the modified protective order, agree to be bound by the terms of the order, and provide the following information.

Signature:		Date:
Printed Name:		
Physical Address:		
Email Address:		
Employer:		
Associated Party:		
Job Title:		
If Not employee of party, description of practice and clients:		

APPENDIX C

Signatory Page for Highly Protected Information
DOCKET NO. UM 1720

I. Consent to be Bound

This Modified Protective Order governs the use of "Protected Information" and "Highly Confidential Information" in this proceeding.

_____ (Party) agrees to be bound by its terms of this Modified Protective Order.

Signature: _____

Printed: _____

Date: _____

II. Persons Qualified pursuant to Paragraph 19: Highly Protected Information:

I have read the Modified Protective Order and agree to be bound by the terms of the order.

I certify that:

I understand that ORS 756.990(2) allows the Commission to impose monetary sanctions if a party subject to the jurisdiction of the Commission violates an order of the Commission.

The party I am associated with has a legitimate and non-competitive need for the Highly Confidential Information for this proceeding and not simply a general interest in the information.

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____