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VIA ELECTRONIC FILING

April 5, 2017

PUC Filing Center
Public Utility Commission of Oregon
P.O. Box 1088
Salem, OR 97308-1088

**Re: UM 1804: In the Matter of NORTHWEST NATURAL GAS COMPANY dba NW
NATURAL, Application for Approval of Corporate Reorganization to Create a
Holding Company**

Attention Filing Center:

Attached for filing in docket UM 1804 is an electronic copy of Northwest Natural Gas Company's Motion for Modified Protective Order.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Wendy McIndoo
Office Manager

Attachments

1
2 **BEFORE THE PUBLIC UTILITY COMMISSION**
3 **OF OREGON**

4 **UM 1804**

5 In the Matter of

6 NORTHWEST NATURAL GAS COMPANY,

7 Application for Approval of Corporate
8 Reorganization to Create a Holding
Company.

**MOTION FOR MODIFIED
PROTECTIVE ORDER**

9 Pursuant to OAR 860-001-0080(3) and OAR 860-001-0420, Northwest Natural Gas
10 Company (“NW Natural” or “Company”) moves the Public Utility Commission of Oregon
11 (“Commission”) for the entry of a Modified Protective Order in this proceeding. For the reasons
12 outlined below, good cause exists to issue a Modified Protective Order to protect commercially
13 sensitive and highly confidential business information related to the Company’s confidential
14 strategic planning and activities. The Company therefore requests that the Commission issue
15 the proposed Modified Protective Order that is attached hereto as Attachment A.

16 **I. BACKGROUND**

17 On March 9, 2017, Commission Staff served data requests on NW Natural, requesting
18 information that would disclose NW Natural’s strategic business plans and activities. NW
19 Natural’s strategic planning and activities, including strategies for corporate growth, are
20 extremely sensitive, and the public disclosure of this information likely would cause significant
21 competitive harm to the Company and its customers. For this reason, the Company is
22 requesting that the Commission issue an order containing additional protections for such
23 information beyond those contained in the Commission’s General Protective Order.

24 NW Natural has conferred with parties to this docket, as required by OAR 860-001-0420,
25 and they do not object to this request.

26

1 **II. REQUEST FOR ADDITIONAL PROTECTION**

2 As required by OAR 860-001-0080(3)(a), NW Natural provides the following information:

3 **A. Parties and Exact Nature of the Information Involved.**

4 Commission Staff has served in this docket a data request asking for information
5 regarding the Company's confidential strategic business planning, including strategies for
6 corporate growth. The information for which the Company seeks additional protection includes,
7 but is not limited to presentations to NW Natural's executive team, Board of Directors, and
8 financial advisors, and other documents that would disclose strategic plans and activities.
9 Disclosure of NW Natural's confidential business strategies likely would cause significant harm
10 to the Company's and its customers' financial interests by compromising the Company's
11 negotiating power and ability to engage in business transactions competitively.

12 **B. Legal Basis for the Claim that the Information is Protected under ORCP 36(C)(7).**

13 ORCP 36(C)(7) provides for limitations on the disclosure of "trade secret[s] or other
14 confidential research, development, or commercial information." The information sought is non-
15 public, commercially sensitive information within the scope of ORCP 36(C)(7). Public disclosure
16 of this information could hamper the Company's ability to compete in future business
17 transactions, thereby harming the financial interests of the Company and its customers.

18 **C. Exact Nature of the Relief Requested.**

19 The Company requests that the Commission enter the attached Modified Protective
20 Order. The terms of the Modified Protective Order are narrowly tailored and intended to apply
21 only to the Company's highly commercially sensitive business information regarding its
22 confidential strategic business planning. The Modified Protective Order goes beyond the
23 General Protective Order by requiring that individuals who are not Commissioners, Commission
24 Staff, CUB regulatory staff, or attorneys for a party demonstrate a legitimate, non-competitive
25 need for a specific piece of highly confidential information before gaining access. Those with
26 only a general interest in the information will not be permitted to access it. The Modified

1 Protective Order also requires that highly confidential information remain distinct from
2 information that is not confidential or that is protected only under the General Protective Order
3 by requiring that highly confidential information be printed on paper of a different color and
4 stored in a locked room or cabinet. Finally, the Modified Protective Order prohibits electronic
5 copying or distribution of highly confidential information.

6 **D. Specific Reasons Requested Relief is Necessary.**

7 The Modified Protective Order is necessary to prevent competitors and other market
8 participants from gaining access to highly confidential information describing NW Natural's
9 strategies for corporate growth as well as its activities. This information could implicate sensitive
10 business strategies, which could be compromised by the release of the requested information,
11 causing significant financial harm to the Company and its customers. The terms of the Modified
12 Protective Order, described above, decrease the risk of disclosure by limiting the number of
13 people that may access highly confidential information and requiring a showing of legitimate,
14 non-competitive need from those who are not Commissioners, Staff, CUB, or attorneys. The
15 Modified Protective Order also restricts the manner and means by which highly confidential
16 information may be maintained, stored, and transmitted, thus minimizing the risk of inadvertent
17 disclosure.

18 **E. Intermediate Measures Explored and Why These are Insufficient.**

19 Disclosure of confidential information under a General Protective Order is rare, however
20 it does occur from time to time. Typically, the disclosure is inadvertent, although intentional
21 disclosures have occurred. Given such disclosures, additional protections, such as those
22 contained in the proposed Modified Protective Order, are appropriate when the consequences
23 of disclosure would be particularly grave. All parties agree that such circumstances exist in this
24 case.

25

26

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

3
4 DATED: April 5, 2017.

MCDOWELL RACKNER GIBSON PC

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6 
Lisa F. Rackner

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8 **NORTHWEST NATURAL GAS COMPANY**

9 Zachary Kravitz
10 Associate Counsel
220 NW Second Avenue
Portland, OR 97209

11 Attorneys for NW Natural

Attachment A

to

Motion for Modified Protective Order

in Docket UM 1804

MODIFIED PROTECTIVE ORDER
DOCKET UM 1804

Scope of this Order

1. This order supplements General Protective Order No. 17-052 and governs the acquisition and use of “Highly Confidential Information” produced or used by any party in Docket No. UM 1804.

Designation of Highly Confidential Information

2. “Highly Confidential Information” is information that:
 - a. falls within the scope of ORCP 36(C)(7) and the Commission’s rules governing protective orders; and
 - b. is not publicly available; and
 - c. is not adequately protected by the general protective order.
3. A party providing Highly Confidential Information must inform other parties that the material has been designated Highly Confidential by placing the following legend on the information:

HIGHLY CONFIDENTIAL
SUBJECT TO MODIFIED PROTECTIVE ORDER NO. 17-___

To the extent practicable, the party may designate as highly confidential only the portions of the material that satisfy the definition in Paragraph 2 of this order.

4. If any party objects to the Highly Confidential designation by letter or email within three business days, the designating party must provide a written response to the party that describes in detail why the designated information is appropriately designated as Highly Confidential. (Note that correspondence that reveals the substance of any information marked as Highly Confidential may not be transmitted electronically.) The burden resides with the designating party to show that the challenged information is covered by ORCP 36(C)(7) or exempt from disclosure under the Public Records Law. If the parties are unable to resolve a dispute about a highly confidential designation informally, the dispute provisions in Paragraph 18 apply.
5. A party may designate as highly confidential any information that was previously not so designated and was previously provided to the other parties by giving written notice to the other parties of the new designation and providing the other parties with copies of the newly designated information using the applicable color paper required by Paragraph 6. Parties in possession of newly designated Highly Confidential Information must, when feasible, ensure that all copies of the previously undesignated information are destroyed or, if requested by the designating party, are annotated to bear the above legend and are accessible only to persons qualified under this order.
6. Highly Confidential Information that is (a) filed with or provided to the Commission or its Staff or to other persons qualified to access Highly Confidential Information; (b) made an exhibit; (c) incorporated into a transcript; or (d) incorporated into a pleading, brief, or other document, must be printed on GREEN paper, separately bound, 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. 17-___ AND CONTAINS HIGHLY CONFIDENTIAL INFORMATION. THE INFORMATION MAY BE SHOWN ONLY TO QUALIFIED PERSONS AS DEFINED IN THIS ORDER.

7. The Commission's Administrative Hearings Division, Commission Staff, and other parties must store the Highly Confidential Information in a locked room or cabinet dedicated to the storage of Highly Confidential Information.
8. Highly Confidential Information will be provided in hard copy only and may not be duplicated, uploaded to the Commission's Huddle website, or otherwise distributed electronically.

Access to Highly Confidential Information

9. Commissioners, Commission Staff, and Assistant Attorney Generals assigned to represent the Commission automatically are qualified to access Highly Confidential Information and are bound by this order.
10. Counsel for any other party and employees of the Citizens' Utility Board Regulatory Division may become qualified to access Highly Confidential Information by completing and signing Appendix A.
11. A party bound by the General Protective Order No. 17-052 may seek to qualify persons other than those described in Paragraphs 9 and 10 to access specific Highly Confidential Information by having each such person complete and sign Appendix B and submitting the Appendix to the designating party and to the Commission. Within five business days of receiving a signed copy of Appendix B, the designating party either must provide access to the requested Highly Confidential Information to the person who signed Appendix B or must file an objection under Paragraph 13.
12. For each person qualified under Paragraphs 10 and 11, counsel for the party sponsoring the person must file a signed copy of Appendix A or Appendix B with the Commission and deliver a copy to the designating party and to all parties of record. Upon receipt of the signed Appendix, if there is no objection to the qualified person, made pursuant to Paragraph 13 then Highly Confidential Information must be delivered to the Qualified Person within five business days.
13. All persons qualified to receive Highly Confidential Information may have access to Highly Confidential Information unless the designating party objects as provided in this paragraph. The designating party must provide written notice to the Qualified Person, and counsel for the party sponsoring the Qualified Person, as soon as the designating party becomes aware of the reasons to restrict access. The parties must promptly confer and attempt to resolve any dispute over access to Highly Confidential Information on an informal basis before requesting a review by the Administrative Law Judge. After receipt of the written notice of objection required by this paragraph, the specific Highly Confidential Information may not be disclosed to the Qualified Person until the issue is resolved.

Preservation of Confidentiality

14. Without the written permission of the designating party, any person given access to Highly Confidential Information under this order may not use or disclose Highly Confidential Information for any purpose other than participation in this proceeding. All Qualified Persons must take reasonable precautions to keep Highly Confidential Information secure. Disclosure of Highly Confidential Information for purposes of business competition is strictly prohibited.
15. A Party wishing to utilize knowledge of Highly Confidential Information obtained in this docket for purposes of a subsequent proceeding must submit new Highly Confidential Information Data Requests for the same information to the utility in the subsequent proceeding, under protective orders applicable to the subsequent proceeding and subject to the discovery rules then applicable for disclosure of Highly Confidential Information.

Duration of Protection

16. The Commission will preserve the confidentiality of Highly Confidential Information for a period of five years from the date of the final order in this proceeding, 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 Highly Confidential Information.

Destruction after Proceeding

17. Counsel of record for any party may retain memoranda, pleadings, testimony, discovery, or other documents containing Highly Confidential 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. The information retained may not be disclosed to any person. Any other person retaining Highly Confidential Information at the conclusion of this proceeding must return it to the designating party within 90 days after final resolution of these proceedings or must destroy the Highly Confidential Information and provide an affidavit to the designating party swearing that the Highly Confidential Information has been destroyed. This paragraph does not apply to the Commission or its Staff.

Appeal to Presiding Administrative Law Judge

18. Any party may request that the ALJ conduct a conference to help resolve disputes related to this modified protective order. A party challenging the designation of information as highly confidential may file an objection with the ALJ that identifies the information in dispute and includes a certification that reasonable efforts to achieve an informal resolution have been unsuccessful. Within seven days of the objection, unless otherwise ordered by the ALJ, the designating party must either remove the highly confidential designation or file a written response identifying the legal basis for the claim of confidentiality. The challenging party may file a written reply to any response within seven days. If the designating party does not timely respond to the motion, the Commission will remove the highly confidential designation from the challenged information.

APPENDIX A

Signatory Page for Parties and Persons Qualified to Access Highly Confidential Information Under Paragraph 10

I. Consent to be Bound

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

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

Signature: _____

Printed: _____

Date: _____

II. Persons Qualified Pursuant to Paragraph 10.

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

I certify that:

- a. I will make hard copies only as needed for purposes of review and submission to the Commission and will not make or distribute electronic copies of Highly Confidential Information and will not transmit electronically documents that reveal the substance of Highly Confidential Information.
- b. I agree to keep the information in a secure manner as required by Paragraph 7 and to destroy it at the conclusion of this proceeding as required by Paragraph 17.
- c. 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.
- d. The party with which I am associated has a legitimate and non-competitive need for the Highly Confidential Information 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: _____

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: _____

APPENDIX B

Signatory Page for Other Persons Seeking Qualification to Access Highly Confidential Information Under Paragraph 11

I. Persons Seeking Qualification Pursuant to Paragraph 11.

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

I certify that:

- a. I will make hard copies only as needed for purposes of review and submission to the Commission and will not make or distribute electronic copies.
- b. I agree to keep the information in a secure manner as required by Paragraph 7 and destroy it at the conclusion of this proceeding as required by Paragraph 17.
- c. 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.
- d. The party with which I am associated has a legitimate and non-competitive need for the Highly Confidential Information and not simply a general interest in the information.
- e. I require access to the following specific Highly Confidential Information (describe with particularity) for the following reason(s) (attach pages if necessary):

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

If not an employee of a party, describe practice and clients: