

# McDowell Rackner & Gibson PC



AMIE JAMIESON  
Direct (503) 595-3927  
amie@mcd-law.com

August 18, 2010

## VIA ELECTRONIC FILING AND FIRST CLASS MAIL

PUC Filing Center  
Public Utility Commission of Oregon  
PO Box 2148  
Salem, OR 97308-2148

**Re: Docket UM 1286**

Enclosed for are the original and one copy of Motion for Modified Protective Order to Apply in All Purchased Gas Adjustment Proceedings filed on behalf of Northwest Natural Gas Company, Avista Corporation d/b/a Avista Utilities, and Cascade Natural Gas Corporation.

To facilitate the utilities' filing of Confidential and Highly Confidential material in their upcoming Purchased Gas Adjustment Mechanism filings on August 31, 2010, the utilities respectfully request expedited consideration of this Motion.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Amie Jamieson', with a long, sweeping underline.

Amie Jamieson

Enclosure  
Cc: Service List

**CERTIFICATE OF SERVICE**

I certify that I have this day served the foregoing document in OPUC Docket No. UM 1286 by electronic mail and first class mail to the following parties or attorneys of parties:

David J Meyer  
Vice President & Chief Counsel  
Avista Corporation  
PO Box 3727  
Spokane WA 99220-3727  
david.meyer@avistacorp.com

David Hatton  
Assistant Attorney General  
Department Of Justice  
1162 Court St NE  
Salem OR 97301-4096  
david.hatton@state.or.us

Ken Zimmerman  
Public Utility Commission Of Oregon  
550 Capitol St NE, Ste 215  
Salem OR 97301  
ken.zimmerman@state.or.us

Lawrence Reichman  
Perkins Coie LLP  
1120 NW Couch St, 10th Floor  
Portland OR 97209-4128  
lreichman@perkinscoie.com

Tommy Brooks  
Cable Huston Benedict  
Haagensen & Lloyd LLP  
efinklea@chbh.com

Chad M Stokes  
Cable Huston Benedict  
Haagensen & Lloyd LLP  
cstokes@chbh.com

Katherine Barnard  
Director - Regulatory Affairs  
Cascade Natural Gas  
kathie.barnard@cngc.com

Jon T Stoltz  
Sr Vice Pres.—Regulatory & Gas  
Cascade Natural Gas  
jstoltz@cngc.com

CUB – OPUC Dockets  
Citizens' Utility Board Of Oregon  
Dockets@oregoncub.org

Paula E Pyron  
Executive Director  
Northwest Industrial Gas Users  
ppyron@nwigu.org

Robert Jenks  
Citizens' Utility Board Of Oregon  
bob@oregoncub.org

Dated August 18, 2010

MCDOWELL RACKNER & GIBSON PC

  
Amie Jamieson

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1286**

**In the Matter of THE PUBLIC UTILITY  
COMMISSION OF OREGON Investigation  
into the Purchased Gas Adjustment  
(PGA) Mechanism Used by Oregon's  
Three Local Distribution Companies**

**MOTION FOR MODIFIED  
PROTECTIVE ORDER  
TO APPLY IN ALL PURCHASED GAS  
ADJUSTMENT PROCEEDINGS**

**Expedited Consideration Requested**

**INTRODUCTION**

Pursuant to ORCP 36(C)(7) and OAR 860-012-0035(1)(k), the Local Distribution Companies in Oregon—Northwest Natural Gas Company d/b/a NW Natural, Avista Corporation d/b/a Avista Utilities, and Cascade Natural Gas Corporation (collectively “LDCs”)—move for the expedited entry of a modified protective order (“Modified Protective Order”) in this proceeding. The LDCs request that the Public Utility Commission of Oregon (“Commission”) modify its standard protective order to provide additional protective measures for highly competitively sensitive information relating to LDCs’ natural gas acquisition contracts and strategies. The LDCs also request that the modified protective order apply in this docket and in all future Purchased Gas Adjustment (“PGA”) proceedings filed by the LDCs. Finally, the LDCs request expedited consideration of this Motion so that a protective order will be in place when the LDCs file their annual PGA filings by August 31, 2010.

Commission Staff, the Citizens’ Utility Board, and the Northwest Industrial Gas Users do not object to implementing the proposed Modified Protective Order in PGA dockets on an ongoing basis.

1 **DISCUSSION**

2 **A. The Heightened Protection Requested by the LDCs is Appropriate.**

3 In Order No. 09-248 in Docket UM 1286, the Commission adopted PGA Filing  
4 Guidelines (“Guidelines”).<sup>1</sup> The Guidelines require that as part of an LDC’s annual PGA  
5 filing, the LDC should provide specific information relating to its natural gas supply portfolio  
6 and related transportation.<sup>2</sup> This information includes, for example, an overview of the  
7 LDC’s portfolio planning process, sales system demand forecasting, and natural gas price  
8 forecasts (“Confidential Information”). These types of information are of significant  
9 commercial value to the LDCs and could expose the Company to competitive injury if  
10 publicly disclosed, but can be protected under the Commission’s standard protective order  
11 provisions for confidential information.

12 In addition to Confidential Information that can be effectively protected under  
13 standard procedures, Order No. 09-248 also requires NW Natural to provide with its PGA  
14 filing competitively sensitive information that could jeopardize the Company’s competitive  
15 position in the natural gas market if disclosed to counterparties or market competitors  
16 (“Highly Confidential Information”). Such information includes the terms of the Company’s  
17 natural gas acquisition agreements and information on competitive bidding processes.

18 The Commission previously issued a modified protective order containing  
19 provisions relevant to such Highly Confidential Information in NW Natural’s PGA docket,  
20 Docket UG 187.<sup>3</sup> The Modified Protective Order proposed by the LDCs in this Motion

21 \_\_\_\_\_  
22 <sup>1</sup> *Re Public Utility Commission of Oregon Investigation into the Purchased Gas Adjustment*  
23 *Mechanism Used by Oregon’s Three Local Distribution Companies*, Docket UM 1286, Order No. 09-  
24 248 (June 23, 2009).

25 <sup>2</sup> *Id.* Appendix A at 10.

26 <sup>3</sup> *Re NW Natural Gas Co. Annual Purchased Gas Cost and Technical Rate Adjustments*, Docket UG  
187, Order No. 09-3414 (Sept. 1, 2009). With respect to Highly Confidential Information, the  
Modified Protective Order in Order No. 09-341: (1) restricted access to Highly Confidential  
Information except upon a showing of a legitimate need for the information that outweighs the  
potential for competitive harm to the Company resulting from disclosure; (2) required a certification

1 contains virtually the same provisions for Highly Confidential Information found to be  
2 appropriate in NW Natural's recent PGA proceeding. The Modified Protective Order  
3 proposed in this proceeding contains two changes from the order adopted by the  
4 Commission in Docket UG 187. The proposed Modified Protective Order does not apply  
5 the motion and certification requirements relevant to Highly Confidential Information to  
6 CUB<sup>4</sup> and clarifies delivery of Confidential and Highly Confidential Information.<sup>5</sup>

7 The Commission's rules authorize utilities to seek reasonable restrictions on  
8 discovery of trade secrets and other confidential business information.<sup>6</sup> The proposed  
9 Modified Protective Order strikes an appropriate balance between protecting Highly  
10 Confidential Information from disclosure and facilitating the parties' review of the LDCs'  
11 PGA filings as appropriate. Therefore, the LDCs request that the Commission issue a  
12 Modified Protective Order that would provide the Commission's standard protection for  
13 Confidential Information and heightened protection for Highly Confidential Information.  
14 The proposed Modified Protective Order is set forth in Attachment A and contains the  
15 same provisions for access to Highly Confidential Information that the Commission  
16 implemented in NW Natural's PGA proceeding Docket UG 187, modified as discussed  
17

---

18 that qualified persons seeking to view Highly Confidential Information are not involved in decision-  
19 making by natural gas competitors and do not provide information to decision-makers relevant to the  
20 Highly Confidential Information, and that the person understands that sanctions may apply for  
21 violations of Commission orders; and (3) precluded qualified persons from sharing Highly  
22 Confidential Information with other qualified persons except for those representing the same party  
23 without NW Natural's consent to avoid inadvertent disclosures of Highly Confidential Information.  
24 The Modified Protective Order in this case also includes these provisions.

22 <sup>4</sup> See Paragraphs 5(c) and 12.

23 <sup>5</sup> Compare Paragraph 8 of the Standard Protective Order with Paragraphs 11 and 12 in the Modified  
24 Protective Order.

24 <sup>6</sup> See OAR 860-11-000(3) (adopting Oregon Rules of Civil Procedure ("ORCP"); ORCP 36(C)(7)  
25 (providing protection against unrestricted discovery of "trade secrets or other confidential research,  
26 development, or commercial information"). See also *In re Investigation into the Cost of Providing  
Telecommunication Service*, Docket UM 351, Order No. 91-500 (1991) (recognizing that protective  
orders are a reasonable means to protect "the rights of a party to trade secrets and other confidential  
commercial information" and "to facilitate the communication of information between litigants").

1 above. To facilitate review of the proposed Modified Protective Order, the LDCs provide  
2 redlined document showing changes from the modified protective order adopted by the  
3 Commission in Docket UG 187 and the proposed Modified Protective Order as  
4 Attachment B.

5 **B. Issuing an Ongoing PGA Protective Order Will Facilitate Discovery and**  
6 **Further Administrative Efficiency.**

7 The LDCs request that the Commission that the Modified Protective Order be  
8 effective in all future PGA proceedings. The Commission recently issued an ongoing  
9 protective order in the case of PacifiCorp's annual Transition Adjustment Mechanism  
10 proceedings.<sup>7</sup> Similarly, an ongoing protective order is appropriate in this case. Issuing  
11 the proposed Modified Protective Order as an ongoing order will facilitate discovery by  
12 allowing the LDCs to provide Confidential and Highly Confidential material to parties on a  
13 more expedited basis. In addition, the LDCs' proposal will further administrative efficiency  
14 because the Commission will not need to evaluate and issue three different PGA  
15 protective orders each year. The LDCs' proposal serves to streamline the PGA procedure  
16 for the parties and the Commission, and should therefore be adopted.

17 **III. EXPEDITED CONSIDERATION**

18 The LDCs request expedited consideration of this Motion to allow parties who  
19 execute the Modified Protective Order to obtain prompt access to the Confidential and  
20 Highly Confidential Information in support of the LDCs' August 31, 2010 PGA filings and to  
21 expedite any discovery in those proceedings.

22 *////*

23 *////*

24 *////*

25 \_\_\_\_\_

26 <sup>7</sup> *Re PacifiCorp 2011 Transition Adjustment Mechanism*, Docket UE 216, Order No. 10-069 (Feb. 25, 2010).

1 For the foregoing reasons, the LDCs request expedited entry of a Modified  
2 Protective Order to be effective in this docket and in all future PGA proceedings.

3

4 DATED: August 18, 2010

Respectfully submitted,

5

**MCDOWELL RACKNER & GIBSON PC**

6

7



8

Amie Jamieson

9

Of Attorneys for NW Natural

10

On behalf of NW Natural, Avista Utilities, and  
Cascade Natural Gas Corporation

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

**ATTACHMENT A**

**Modified Protective Order  
Clean Version**



## MODIFIED PROTECTIVE ORDER

### Scope of this Order-

1. This order governs the acquisition and use of “Confidential Information” and “Highly Confidential Information” in this proceeding and all future proceedings to review the annual Purchased Gas Adjustment mechanisms filed by each of the three Local Distribution Companies (LDCs) in Oregon—Avista Corporation d/b/a Avista Utilities, Cascade Natural Gas Corporation, and Northwest Natural Gas Company.

### Definitions-

2. “Confidential Information” is information that falls within the scope of ORCP 36(C)(7) (“a trade secret or other confidential research, development, or commercial information”).

3. “Highly Confidential Information” is commercially sensitive information relating to an LDC’s natural gas acquisition contracts and strategy that has been designated as such by the LDC because its disclosure imposes a highly significant risk of competitive harm to the LDC.

4. With respect to Confidential Information, a “qualified person” is an individual who is:

- a. An author(s), addressee(s), or originator(s) of the Confidential Information;
- b. A Commissioner or Commission staff;
- c. Counsel of record for a party;
- d. A person employed directly by counsel of record; or
- e. A person qualified pursuant to paragraph 14. This includes parties and their employees.

5. With respect to Highly Confidential Information, a “qualified person” is an individual who is:

- a. An author(s), addressee(s), or originator(s) of the Confidential Information;
- b. A Commissioner or Commission staff;
- c. An employee of, or counsel for, the Citizens’ Utility Board of Oregon;
- d. A person qualified pursuant to paragraph 12. This includes parties, their employees, counsel of record for a party, and a person employed directly by counsel of record.

### Designation of Confidential or Highly Confidential Information-

6. A party providing Confidential Information shall inform other parties that the material has been designated confidential by placing the following legend on the information:

CONFIDENTIAL  
SUBJECT TO MODIFIED PROTECTIVE ORDER

To the extent practicable, the party shall designate as confidential only those portions of the document that fall within ORCP 36(C)(7).

A party providing Highly Confidential Information shall 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

To the extent practicable, the party shall designate as highly confidential only those portions of the document that relate to the LDC's natural gas acquisition contracts and strategy.

7. A party may designate as confidential or highly confidential any information previously provided by giving written notice to the other parties. Parties in possession of newly designated Confidential Information or Highly Confidential Information shall, when feasible, ensure that all copies of the information bear the above legend to the extent requested by the party desiring confidentiality.

**Information Given to the Commission-**

8. Confidential Information that is: (a) filed with the Commission or its staff; (b) made an exhibit; (c) incorporated into a transcript; or (d) incorporated into a pleading, brief, or other document, shall be printed on YELLOW paper, separately bound and placed in a sealed envelope or other appropriate container. An original and five copies, each separately sealed, shall be provided to the Commission. Only the portions of a document that fall within ORCP 36(C)(7) shall be placed in the envelope/container. The envelope/container shall bear the legend:

THIS ENVELOPE IS SEALED PURSUANT TO ORDER NO. \_\_\_\_\_  
AND CONTAINS CONFIDENTIAL INFORMATION. THE  
INFORMATION MAY BE SHOWN ONLY TO QUALIFIED  
PERSONS AS DEFINED IN THE ORDER.

9. Highly Confidential Information that is: (a) filed with the Commission or its staff; (b) made an exhibit; (c) incorporated into a transcript; or (d) incorporated into a pleading, brief, or other document, shall be printed on GREEN paper, separately bound and placed in a sealed envelope or other appropriate container. An original and five copies, each separately sealed, shall be provided to the Commission. Only the portions of a document that fall within ORCP 36(C)(7) shall be placed in the envelope/container. The envelope/container shall bear the legend:

THIS ENVELOPE IS SEALED PURSUANT TO ORDER NO. \_\_\_\_\_  
AND CONTAINS HIGHLY CONFIDENTIAL INFORMATION. THE  
INFORMATION MAY BE SHOWN ONLY TO QUALIFIED  
PERSONS AS DEFINED IN THE ORDER.

10. The Commission's Administrative Hearings Division shall store the Confidential Information and Highly Confidential Information in a locked cabinet dedicated to the storage of Confidential Information and Highly Confidential Information.

**Disclosure of Confidential Information or Highly Confidential Information-**

11. Confidential Information. Parties desiring receipt of Confidential Information shall sign the Consent to be Bound Form attached as Appendix B. This requirement does not apply to the Commission staff. Confidential Information shall not be disclosed to any person other than a "qualified person," as defined in paragraph 4. Confidential Information shall be delivered to qualified persons who are on the service list. If the Confidential Information is voluminous it may, in the alternative, be made available to qualified persons at a place and time agreeable to the parties or as directed by the Administrative Law Judge.

12. Highly Confidential Information. Parties desiring receipt of Highly Confidential Information shall file a motion with the Commission requesting access to Highly Confidential Information. The party filing such a motion must show that (a) the party has a legitimate and non-competitive need for the Highly Confidential Information (*i.e.* customers may suffer potential harm if the party does not receive access to the Highly Confidential Information) and not simply a general interest in the information and (b) the legitimate need identified by the party outweighs the potential for competitive harm to the LDC resulting from disclosure of the Highly Confidential Information. If the Commission grants such a motion, the party shall sign the Consent to be Bound Form attached as Appendix C certifying that:

- a. the person requesting access for the party to Highly Confidential Information is not now involved, and will not for a period of two years involve themselves in, decisionmaking with respect to which the Highly Confidential Information may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with the relevant LDC with respect to the acquisition of natural gas;
- b. the person requesting access to Highly Confidential Information does not, and will not for a period of two years provide to any decisionmakers described in paragraph 12(a) information with respect to which the Highly Confidential Information may be relevant;
- c. the person requesting access to Highly Confidential Information understands 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 requirements in this paragraph 12 do not apply to the Commission staff or to employees and counsel of the Citizens' Utility Board of Oregon. Highly Confidential Information shall not be disclosed to any person other than a "qualified person," as defined in paragraph 5. When feasible, Highly Confidential Information shall be delivered to qualified persons who are on the service list. In the alternative, Highly Confidential Information may be

made available for inspection and review by qualified persons in a place and time agreeable to the parties or as directed by the Administrative Law Judge.

13. Qualified persons may disclose Confidential Information to any other qualified person, unless the party desiring confidentiality protests as provided in paragraph 15. Qualified persons may not disclose Highly Confidential Information to any other qualified person, except for other qualified persons for the same party, without the permission of the relevant LDC.

14. To become a qualified person under paragraph 4(e) or 5, a person must:

- a. Read a copy of this Modified Protective Order;
- b. Execute the Consent to be Bound Form relevant to Confidential Information or Highly Confidential Information, as applicable;
- c. Date the statement;
- d. Provide a name, address, employer, and job title; and
- e. If the person is a consultant or advisor for a party, provide a description of the nature of the person's consulting or advising practice, including the identity of his/her current, past, and expected clients.

Counsel shall deliver a copy of the signed statement including the information in (d) and (e) above to the party desiring confidentiality and to all parties of record. Such notification may be made via e-mail or facsimile. A person qualified under paragraph 4(e) shall not have access to Confidential Information and a person qualified under paragraph 5 shall not have access to Highly Confidential Information sooner than five (5) business days after receipt of a copy of the signed statement including the information in (d) and (e) above by the party desiring confidentiality.

15. All qualified persons shall have access to Confidential Information, unless the party desiring confidentiality protests as provided in this paragraph. The qualified persons who have signed the Consent to be Bound relevant to Highly Confidential Information shall have access to Highly Confidential Information, unless the party desiring confidentiality protests as provided in this paragraph. The party desiring to restrict the qualified person(s) from accessing specific Confidential Information or Highly Confidential Information must provide written notice to the qualified person(s) and counsel for the party associated with the qualified person(s) as soon as the party becomes aware of reasons to restrict access. The parties must promptly confer and attempt to resolve any dispute over access to Confidential Information or Highly Confidential Information on an informal basis before filing a motion with the Administrative Law Judge. If the dispute cannot be resolved informally, either party may file a motion with the Administrative Law Judge for resolution. Either party may also file a motion if the other party does not respond within five days to a request to resolve the dispute. A motion must describe in detail the intermediate measures, including selected redaction, explored by the parties and explain why such measures do not resolve the dispute. After receipt of the written notice as required in this paragraph, the specific Confidential Information or Highly Confidential Information shall not be disclosed to the qualified person(s) until the issue is resolved.

#### **Preservation of Confidentiality-**

16. All persons who are given access to Confidential Information or Highly Confidential Information by reason of this order shall not use or disclose the Confidential Information or Highly Confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding, and shall take all reasonable precautions to keep the Confidential Information or Highly Confidential Information secure. Disclosure of Confidential Information or Highly Confidential Information for purposes of business competition is strictly prohibited.

Qualified persons may copy, microfilm, microfiche, or otherwise reproduce Confidential Information or Highly Confidential Information to the extent necessary for the preparation and conduct of this proceeding. Qualified persons may disclose Confidential Information to other qualified persons. Qualified persons may disclose Highly Confidential Information only to other qualified persons associated with the same party.

#### **Duration of Protection-**

17. The Commission shall preserve the confidentiality of Confidential Information or Highly Confidential Information for a period of five years from the date of the final order in this docket, unless extended by the Commission at the request of the party desiring confidentiality. The Commission shall notify the party desiring confidentiality at least two weeks prior to the release of Confidential Information or Highly Confidential Information.

#### **Destruction After Proceeding-**

18. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Confidential Information or Highly Confidential Information to the extent reasonably necessary to maintain a file of this proceeding 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 Confidential Information or Highly Confidential Information or documents containing such Confidential Information or Highly Confidential Information must destroy or return it to the party desiring confidentiality within 90 days after final resolution of this proceeding unless the party desiring confidentiality consents, in writing, to retention of the Confidential Information or Highly Confidential Information or documents containing such Confidential Information or Highly Confidential Information. This paragraph does not apply to the Commission or its Staff.

#### **Appeal to the Presiding Officer-**

19. If a party disagrees with the designation of information as confidential or highly confidential, the party shall contact the designating party and attempt to resolve the dispute on an informal basis. If the parties are unable to resolve the dispute, the party desiring to use the information may move for exclusion of the information from the protection conferred by this order. The motion shall:

- a. Specifically identify the contested information; and
- b. Assert that the information does not fall within ORCP 36(C)(7) and state the reasons therefore.

The party resisting disclosure has the burden of showing that the challenged information falls within ORCP 36(C)(7). If the party resisting disclosure does not respond to the motion within ten (10) calendar days, the challenged information shall be removed from the protection of this order.

The information shall not be disclosed pending a ruling by the Administrative Law Judge on the motion.

**Additional Protection-**

20. The party desiring additional protection may move for any of the remedies set forth in ORCP 36(C). The motion shall state:

- a. The parties and persons involved;
- b. The exact nature of the information involved;
- c. The exact nature of the relief requested;
- d. The specific reasons the requested relief is necessary;  
and
- e. A detailed description of the intermediate measures, including selected redaction, explored by the parties and why such measures do not resolve the dispute.

The information need not be released and, if released, shall not be disclosed pending the Commission's ruling on the motion.

**CONFIDENTIAL INFORMATION**

**I. Consent to be Bound-**

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

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

By: \_\_\_\_\_  
Signature & Printed Date

**II. Persons Qualified pursuant to Paragraphs 4(a) through 4(d): Confidential Information**

\_\_\_\_\_ (Party) identifies the following person(s) automatically qualified under paragraph 4(a) through (d).

\_\_\_\_\_  
Printed Date

\_\_\_\_\_  
Printed Date

\_\_\_\_\_  
Printed Date

\_\_\_\_\_  
Printed Date

\_\_\_\_\_  
Printed Date

\_\_\_\_\_  
Printed Date

**III. Persons Qualified pursuant to Paragraph 4(e) and Paragraph 14: Confidential Information**

I have read the Modified Protective Order, agree to be bound by the terms of the order, and will provide the information identified in paragraph 14.

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_  
By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_  
By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_  
By: \_\_\_\_\_  
Signature & Printed Date



**HIGHLY CONFIDENTIAL INFORMATION**

**I. Consent to be Bound-**

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

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

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_

**III. Persons Qualified pursuant to Paragraph 5 and Paragraph 14: Highly Confidential Information**

I have read the Modified Protective Order, agree to be bound by the terms of the order, and will provide the information identified in paragraph 14.

I certify that:

(1) I am not now involved, and will not for a period of two years involve myself in, decisionmaking with respect to which the Highly Confidential Information may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with the Local Distribution Company with respect to the acquisition of natural gas;

(2) I do not, and will not for a period of two years provide to any decisionmakers described in paragraph 11(a) information with respect to which the Highly Confidential Information may be relevant;

(3) 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.

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_

**ATTACHMENT B**

**Modified Protective Order  
Redlined Version**

## MODIFIED PROTECTIVE ORDER

### Scope of this Order-

1. This order governs the acquisition and use of “Confidential Information” and “Highly Confidential Information” in this proceeding and all future proceedings to review the annual Purchased Gas Adjustment mechanisms filed by each of the three Local Distribution Companies (LDCs) in Oregon—Avista Corporation d/b/a Avista Utilities, Cascade Natural Gas Corporation, and Northwest Natural Gas Company.

### Definitions-

2. “Confidential Information” is information that falls within the scope of ORCP 36(C)(7) (“a trade secret or other confidential research, development, or commercial information”).

3. “Highly Confidential Information” is commercially sensitive information relating to NW Natural Gas Company’s (“NW Natural” or the “Company”) an LDC’s natural gas acquisition contracts and strategy that has been designated as such by NW Natural the LDC because its disclosure imposes a highly significant risk of competitive harm to the Company LDC.

4. With respect to Confidential Information, a “qualified person” is an individual who is:

- a. An author(s), addressee(s), or originator(s) of the Confidential Information;
- b. A Commissioner or Commission staff;
- c. Counsel of record for a party;
- d. A person employed directly by counsel of record; or
- e. A person qualified pursuant to paragraph 14. This includes parties and their employees.

5. With respect to Highly Confidential Information, a “qualified person” is an individual who is:

- a. An author(s), addressee(s), or originator(s) of the Confidential Information;
- b. A Commissioner or Commission staff;
- c. An employee of, or counsel for, the Citizens’ Utility Board of Oregon;
- d. A person qualified pursuant to paragraph 12. This includes parties, their employees, counsel of record for a party, and a person employed directly by counsel of record.

### Designation of Confidential or Highly Confidential Information-

6. A party providing Confidential Information shall inform other parties that the material has been designated confidential by placing the following legend on the information:

CONFIDENTIAL  
SUBJECT TO MODIFIED PROTECTIVE ORDER

To the extent practicable, the party shall designate as confidential only those portions of the document that fall within ORCP 36(C)(7).

A party providing Highly Confidential Information shall 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

To the extent practicable, the party shall designate as highly confidential only those portions of the document that relate to the Company's LDC's natural gas acquisition contracts and strategy.

7. A party may designate as confidential or highly confidential any information previously provided by giving written notice to the other parties. Parties in possession of newly designated Confidential Information or Highly Confidential Information shall, when feasible, ensure that all copies of the information bear the above legend to the extent requested by the party desiring confidentiality.

**Information Given to the Commission-**

8. Confidential Information that is: (a) filed with the Commission or its staff; (b) made an exhibit; (c) incorporated into a transcript; or (d) incorporated into a pleading, brief, or other document, shall be printed on YELLOW paper, separately bound and placed in a sealed envelope or other appropriate container. An original and five copies, each separately sealed, shall be provided to the Commission. Only the portions of a document that fall within ORCP 36(C)(7) shall be placed in the envelope/container. The envelope/container shall bear the legend:

THIS ENVELOPE IS SEALED PURSUANT TO ORDER NO. \_\_\_\_\_  
AND CONTAINS CONFIDENTIAL INFORMATION. THE  
INFORMATION MAY BE SHOWN ONLY TO QUALIFIED  
PERSONS AS DEFINED IN THE ORDER.

9. Highly Confidential Information that is: (a) filed with the Commission or its staff; (b) made an exhibit; (c) incorporated into a transcript; or (d) incorporated into a pleading, brief, or other document, shall be printed on GREEN paper, separately bound and placed in a sealed envelope or other appropriate container. An original and five copies, each separately sealed, shall be provided to the Commission. Only the portions of a document that fall within ORCP 36(C)(7) shall be placed in the envelope/container. The envelope/container shall bear the legend:

THIS ENVELOPE IS SEALED PURSUANT TO ORDER NO. \_\_\_\_\_  
AND CONTAINS HIGHLY CONFIDENTIAL INFORMATION. THE  
INFORMATION MAY BE SHOWN ONLY TO QUALIFIED  
PERSONS AS DEFINED IN THE ORDER.

10. The Commission's Administrative Hearings Division shall store the Confidential Information and Highly Confidential Information in a locked cabinet dedicated to the storage of Confidential Information and Highly Confidential Information.

**Disclosure of Confidential Information or Highly Confidential Information-**

11. Confidential Information. Parties desiring receipt of Confidential Information shall sign the Consent to be Bound Form attached as Appendix B. This requirement does not apply to the Commission staff. Confidential Information shall not be disclosed to any person other than a "qualified person," as defined in paragraph 4. ~~When feasible, Confidential Information shall be delivered to counsel. In the alternative, Confidential Information may be made available for inspection and review by qualified persons who are on the service list. If the Confidential Information is voluminous it may, in the alternative, be made available to qualified persons at a place and time agreeable to the parties or as directed by the Administrative Law Judge.~~

12. Highly Confidential Information. Parties desiring receipt of Highly Confidential Information shall file a motion with the Commission requesting access to Highly Confidential Information. The party filing such a motion must show that (a) the party has a legitimate and non-competitive need for the Highly Confidential Information (*i.e.* customers may suffer potential harm if the party does not receive access to the Highly Confidential Information) and not simply a general interest in the information and (b) the legitimate need identified by the party outweighs the potential for competitive harm to the ~~Company~~LDC resulting from disclosure of the Highly Confidential Information. If the Commission grants such a motion, the party shall sign the Consent to be Bound Form attached as Appendix C certifying that:

- a. the person requesting access for the party to Highly Confidential Information is not now involved, and will not for a period of two years involve themselves in, decisionmaking with respect to which the Highly Confidential Information may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with ~~NW Natural~~the relevant LDC with respect to the acquisition of natural gas;
- b. the person requesting access to Highly Confidential Information does not, and will not for a period of two years provide to any decisionmakers described in paragraph 12(~~1a~~) information with respect to which the Highly Confidential Information may be relevant;
- c. the person requesting access to Highly Confidential Information understands 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 requirements in this paragraph 12 do not apply to the Commission staff or to employees and counsel of the Citizens' Utility Board of Oregon. Highly Confidential Information shall not be disclosed to any person other than a "qualified person," as defined in paragraph 5. When feasible, Highly Confidential Information shall be delivered to counsel-qualified persons who are on the service list. In the alternative, Highly Confidential Information may be made available for inspection and review by qualified persons in a place and time agreeable to the parties or as directed by the Administrative Law Judge.

13. Qualified persons may disclose Confidential Information to any other qualified person, unless the party desiring confidentiality protests as provided in paragraph 15. Qualified persons may not disclose Highly Confidential Information to any other qualified person, except for other qualified persons for the same party, without the permission of ~~NW Natural~~ the relevant LDC.

14. To become a qualified person under paragraph 4(e) or 5, a person must:
- a. Read a copy of this Modified Protective Order;
  - b. Execute the Consent to be Bound Form relevant to Confidential Information or Highly Confidential Information, as applicable;
  - c. Date the statement;
  - d. Provide a name, address, employer, and job title; and
  - e. If the person is a consultant or advisor for a party, provide a description of the nature of the person's consulting or advising practice, including the identity of his/her current, past, and expected clients.

Counsel shall deliver a copy of the signed statement including the information in (d) and (e) above to the party desiring confidentiality and to all parties of record. Such notification may be made via e-mail or facsimile. A person qualified under paragraph 4(e) shall not have access to Confidential Information and a person qualified under paragraph 5 shall not have access to Highly Confidential Information sooner than five (5) business days after receipt of a copy of the signed statement including the information in (d) and (e) above by the party desiring confidentiality.

15. All qualified persons shall have access to Confidential Information, unless the party desiring confidentiality protests as provided in this paragraph. The qualified persons who have signed the Consent to be Bound relevant to Highly Confidential Information shall have access to Highly Confidential Information, unless the party desiring confidentiality protests as provided in this paragraph. The party desiring to restrict the qualified person(s) from accessing specific Confidential Information or Highly Confidential Information must provide written notice to the qualified person(s) and counsel for the party associated with the qualified person(s) as soon as the party becomes aware of reasons to restrict access. The parties must promptly confer and attempt to resolve any dispute over access to Confidential Information or Highly Confidential Information on an informal basis before filing a motion with the Administrative Law Judge. If the dispute cannot be resolved informally, either party may file a motion with the Administrative Law Judge for resolution. Either party may also file a motion if the other party does not respond within five days to a request to resolve the dispute. A motion must describe in detail the intermediate measures, including selected redaction, explored by the parties and

explain why such measures do not resolve the dispute. After receipt of the written notice as required in this paragraph, the specific Confidential Information or Highly Confidential Information shall not be disclosed to the qualified person(s) until the issue is resolved.

#### **Preservation of Confidentiality-**

16. All persons who are given access to Confidential Information or Highly Confidential Information by reason of this order shall not use or disclose the Confidential Information or Highly Confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding, and shall take all reasonable precautions to keep the Confidential Information or Highly Confidential Information secure. Disclosure of Confidential Information or Highly Confidential Information for purposes of business competition is strictly prohibited.

Qualified persons may copy, microfilm, microfiche, or otherwise reproduce Confidential Information or Highly Confidential Information to the extent necessary for the preparation and conduct of this proceeding. Qualified persons may disclose Confidential Information erto other qualified persons. Qualified persons may disclose Highly Confidential Information only to other qualified persons associated with the same party.

#### **Duration of Protection-**

17. The Commission shall preserve the confidentiality of Confidential Information or Highly Confidential Information for a period of five years from the date of the final order in this docket, unless extended by the Commission at the request of the party desiring confidentiality. The Commission shall notify the party desiring confidentiality at least two weeks prior to the release of Confidential Information or Highly Confidential Information.

#### **Destruction After Proceeding-**

18. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Confidential Information or Highly Confidential Information to the extent reasonably necessary to maintain a file of this proceeding 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 Confidential Information or Highly Confidential Information or documents containing such Confidential Information or Highly Confidential Information must destroy or return it to the party desiring confidentiality within 90 days after final resolution of this proceeding unless the party desiring confidentiality consents, in writing, to retention of the Confidential Information or Highly Confidential Information or documents containing such Confidential Information or Highly Confidential Information. This paragraph does not apply to the Commission or its Staff.

#### **Appeal to the Presiding Officer-**

19. If a party disagrees with the designation of information as confidential or highly confidential, the party shall contact the designating party and attempt to resolve the dispute on an informal basis. If the parties are unable to resolve the dispute, the party desiring to use the



information may move for exclusion of the information from the protection conferred by this order. The motion shall:

- a. Specifically identify the contested information; and
- b. Assert that the information does not fall within ORCP 36(C)(7) and state the reasons therefore.

The party resisting disclosure has the burden of showing that the challenged information falls within ORCP 36(C)(7). If the party resisting disclosure does not respond to the motion within ten (10) calendar days, the challenged information shall be removed from the protection of this order.

The information shall not be disclosed pending a ruling by the Administrative Law Judge on the motion.

#### **Additional Protection-**

20. The party desiring additional protection may move for any of the remedies set forth in ORCP 36(C). The motion shall state:

- a. The parties and persons involved;
- b. The exact nature of the information involved;
- c. The exact nature of the relief requested;
- d. The specific reasons the requested relief is necessary;  
and
- e. A detailed description of the intermediate measures, including selected redaction, explored by the parties and why such measures do not resolve the dispute.

The information need not be released and, if released, shall not be disclosed pending the Commission's ruling on the motion.

**CONFIDENTIAL INFORMATION**

**I. Consent to be Bound-**

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

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

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_

**II. Persons Qualified pursuant to Paragraphs 4(a) through 4(d): Confidential Information**

\_\_\_\_\_ (Party) identifies the following person(s) automatically qualified under paragraph 4(a) through (d).

_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date
_____	_____
Printed	Date

**III. Persons Qualified pursuant to Paragraph 4(e) and Paragraph 14: Confidential Information**

I have read the Modified Protective Order, agree to be bound by the terms of the order, and will provide the information identified in paragraph 14.

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_

**HIGHLY CONFIDENTIAL INFORMATION**

**I. Consent to be Bound-**

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

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

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_

**III. Persons Qualified pursuant to Paragraph 5 and Paragraph 14: Highly Confidential Information**

I have read the Modified Protective Order, agree to be bound by the terms of the order, and will provide the information identified in paragraph 14.

I certify that:

(1) I am not now involved, and will not for a period of two years involve myself in, decisionmaking with respect to which the Highly Confidential Information may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with ~~NW Natural~~ the Local Distribution Company with respect to the acquisition of natural gas;

(2) I do not, and will not for a period of two years provide to any decisionmakers described in paragraph 11(a) information with respect to which the Highly Confidential Information may be relevant;

(3) 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.

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_

By: \_\_\_\_\_  
Signature & Printed Date

\_\_\_\_\_

By: \_\_\_\_\_