

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1565

In the Matter of

PUBLIC UTILITY COMMISSION OF  
OREGON

Investigation of Fuel Switching and Cross  
Fuel Energy Efficiency Issues.

NORTHWEST NATURAL’S MOTION FOR  
PREHEARING CONFERENCE,  
PROCEDURAL SCHEDULE, AND  
PROTECTIVE ORDER

**MOTIONS**

Pursuant to OAR 860-001-0590, Northwest Natural Gas Company (“NW Natural”) moves the Administrative Law Judge to schedule a prehearing conference to establish a procedural schedule, and to enter a protective order generally, and specifically with respect to outstanding data requests that have been served on NW Natural and on its expert, Forefront Economics.

Before filing this motion, NW Natural made a good faith effort to confer with PGE to seek agreement about the subjects of the motion. NW Natural conferred with PGE’s lawyer at the workshop on March 22 and then again by telephone on March 26. PGE does not object to the ALJ’s holding a prehearing conference. PGE does not object to the ALJ’s entering the standard protective order. PGE does not see a need for a two-tier protective order at this time, but it does not object to one. PGE does object to NW Natural and Forefront Economics not answering its data requests. OAR 860-001-0420(3).

**I. INTRODUCTION**

Not every Commission investigation, of course, has to immediately proceed to prepared

testimony, followed by an evidentiary hearing, followed by briefing, followed by a Commission order. Over the last 10 years or so, depending on the needs of each proceeding, the Commission has used what amounts to alternative forms of dispute resolution, including workshops and collaboratives.

At the time of the prehearing conference on January 11, and through the workshops held on February 1 and March 6, NW Natural had fairly understood that the parties to this investigation were attempting to develop an understanding of the issues and were perhaps seeking resolution through less formal means—through workshops, discussion, give-and-take, and informal reciprocal exchanges of explanatory information. NW Natural had fairly understood that only following that process would the investigation move, potentially, to a more formal stage, complete with data requests, prepared testimony, evidentiary hearing, post-hearing briefing, and a Commission order.

After the February 1 workshop, NW Natural was asked by several parties to present its views of the issues that should be considered by the Commission at the March 6 workshop. NW Natural did so in an effort to help the dialogue develop and to further what it considered, again, an informal reciprocal exchange of information, ideas, and views.

On March 12, PGE served NW Natural with data requests. Although the idea of serving data requests on NW Natural was proposed by several parties at the March 6 workshop, NW Natural had anticipated the “data requests” would be directed toward clarifying its statements made at the workshop, and NW Natural indicated at the time that it would try to be responsive. When PGE served its data requests, however, it was readily apparent from the content of the data requests that PGE no longer shares NW Natural’s understanding of the direction this investigation is going. It was apparent that PGE is preparing for an evidentiary hearing and is

attempting to assemble information not only to build its own case, but also to construct a rebuttal to what it perceives NW Natural's case will be. It is inappropriate for a party to use an informal information exchange period as an opportunity to build its formal case, or to treat such period as a time to obtain formal discovery ahead of other parties, particularly where no procedural schedule is in place. It is inappropriate (and objectionable) for PGE to expect NW Natural to respond to its formal data requests at this point in this proceeding. It also became clear from PGE's data requests that it is seeking, and may seek in the future, information from NW Natural that is competitively sensitive and is inappropriate to provide to a competitor without an appropriate protective order in place. A copy of PGE's data requests are attached.

(Other data requests were served on NW Natural's expert, Forefront Economics. Other parties have also served data requests asking NW Natural and Forefront to serve them with whatever NW Natural produces to PGE. In addition, CUB requested a copy of a survey that NW Natural referred to in a presentation at a workshop, along with associated workpapers. Because this information is "trade secret or other confidential, research, development, or commercial information (ORCP 36 C(7)), it will be produced when the ALJ enters an appropriate protective order. See below. This motion applies to all of these requests.)

PGE is, of course, free to develop a different conception of where this investigation is going, and given the central position it holds in this investigation, it is apparent to NW Natural that this investigation is headed to a formal evidentiary hearing, complete with discovery, prepared testimony, cross-examination, and the like. During that process, PGE is also free, of course, to seek appropriate discovery, to test NW Natural's assumptions, and to make assertions contrary to NW Natural's views. NW Natural maintains, however, that an orderly process with a

defined scope and schedule, and appropriate protections for discovery should be in place before parties are required to respond to data requests that normally attend a contested proceeding.

## **II. REQUEST FOR PREHEARING CONFERENCE TO ESTABLISH SCHEDULE**

Accordingly, NW Natural requests that the Administrative Law Judge give notice of a prehearing conference to establish a procedural schedule that includes dates for formal data requests and other discovery, filing prepared testimony and exhibits, an evidentiary hearing, and for post-hearing briefing. (At the workshop on March 22, the parties were able to make good progress on an issues list, but there was not enough time to discuss a procedural schedule.)

## **III. MOTION FOR PROTECTIVE ORDER**

NW Natural seeks two separate protective orders, one that delays outstanding discovery so that everyone will be proceeding on the same basis, and one that deals with confidential commercial information.

### **A. GIVEN THE CHANGE OF PLAYING FIELD, DISCOVERY SHOULD NOT PROCEED IN THIS INVESTIGATION UNTIL THE ALJ ESTABLISHES A PROCEDURAL SCHEDULE, INCLUDING “DATES FOR DISCOVERY”**

NW Natural asks the Administrative Law Judge to enter a protective order that NW Natural not be required to respond to PGE’s data requests until a procedural schedule for data requests is established. This will ensure that everyone is proceeding in a regular manner on the same schedule, that everyone is operating on a level playing field, and no one is unduly disadvantaged or advantaged by a pre-emptive strike approach. OAR 860-001-0590(2)(a), OAR 860-001-0080 (protective orders), and ORCP 36 C(7) all give ALJs that authority. Specifically, OAR 860-001-0590(2)(a) provides that ALJs may establish procedural schedules, including “dates for discovery,” and ORCP 36 C(2) specifies that a protective order may provide that

“discovery may be had only on specified terms and conditions, including a designation of time or place.”

## **B. PROTECTIVE ORDER**

Before discovery goes forward, it will be important in this proceeding for the Administrative Law Judge to enter an appropriate protective order—one that goes beyond the General Protective Order.<sup>1</sup> This investigation, of course, deals with fuel switching by customers and cross fuel energy efficiency issues and necessarily involves competition between natural gas and electricity. Not surprisingly, NW Natural has and may have sensitive commercial information that it does not want to share with other utilities except on a limited basis, such as an

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<sup>1</sup> OAR 860-001-0080(4) provides:

A party may request that the ALJ issue a protective order that provides additional protection under ORCP 36(C).

(a) A motion for additional protection must include:

(A) The parties involved;

(B) The exact nature of the information involved;

(C) The legal basis for the claim that the information is protected under the ORCP 36(C)(7) or the Public Records Law;

(D) The exact nature of the relief requested;

(E) The specific reasons the requested relief is necessary; and

(F) A detailed description of the intermediate measures, including selected redaction, explored by the parties and why these measures are insufficient.

(b) To receive access to confidential information that has been given additional protection, a party may be required to certify that they intend to fully participate in the proceedings by filing testimony; participating in settlement negotiations, workshops, conferences, and hearings; and filing other pleadings as required.

“attorney’s eyes only/outside expert” basis, and it will not be surprising if PGE considers itself to be in the same position.

This is, incidentally, the same situation that presented itself in *Portland General Electric Customer Choice Plan*, UE 102, Order No. 98-163. There, PGE was proposing to sell its supply asset portfolio in an auction. PGE filed a motion to limit certain of its data request responses to Staff only because the responses would reveal strategic decisions that PGE had made with respect to the assets and that intervenors in the case included counter-parties to PGE’s wholesale contracts or had adverse interests in PGE’s assets, and that PGE’s competitive position would be compromised if those parties had access to that information and could use it in the future to the detriment of PGE. Accordingly, the Commission entered a protective order modifying the standard order and limiting disclosure to PUC Staff only.

In this investigation, thus far, PGE has asked about a survey regarding “customer perceptions of unequal incentives” between high-efficiency natural gas furnaces and high-efficiency heat pumps, including “survey design,” identification of customers to be sampled, and all formulae used (Request No. 1 and 2). While NW Natural voluntarily shared excerpts from its customer research in the context of collaborative workshops, the information PGE requests goes beyond the information NW Natural shared and contains competitive intelligence that could be used to disadvantage the company.

In Request No. 3, PGE asks for other types of information that NW Natural has with respect to heat pump shipments in the Northern Willamette Valley in 2009 through 2011. Given the fact that NW Natural does not sell or serve heat pumps, any information that NW Natural has in this regard would be in the nature of commercial competitive “intelligence.”

In Request No. 5, PGE asks NW Natural to explain “who or what is persuading customers” to convert to heat pumps for air conditioning. Again, given the fact that NW Natural does not sell or serve heat pumps, any information that NW Natural has in this regard would be in the nature of commercially sensitive information that would be inappropriate to share with competitors.

In Request No. 6, PGE asks for information about heat pumps and conversion in NW Natural’s Vancouver market, including reports, studies, and analyses. Again, questions like these get into competitive issues, much like the data requests in *Portland General Electric Customer Choice Plan*.

This competitive information could be valuable to other utility parties because it could be used by them to sell products and services, and in particular to the detriment of NW Natural and its customers. This type of competitive information could give utility parties insights into NW Natural’s efforts to understand its marketplace that could be used to competitively benefit the utility party and harm NW Natural.

To be clear, NW Natural is not contending that no one can make these requests and it is not contending that under no circumstances will it produce the information. It is simply a matter of when the information is provided and to whom it is available. NW Natural contends that:

- utility parties to this proceeding should only receive confidential trade secret/commercial information on an attorney’s eyes/outside expert basis. Restricting this information this way is consistent with, but much less restrictive than the protective order the Commission entered in *Portland General Electric Customer Choice Plan*.
- Any person who is given access to highly confidential information should agree that in addition to keeping the information confidential, he or she will only use the information

for the purposes of this investigation, and that they will not use the information for any business or competitive purposes.

Restricting access to confidential trade secret commercial information to a competitor's lawyers and independent experts is a standard form of protective order in cases where these kinds of concerns are at issue. *Nutrastech, Inc. v. Syntech (SSPF) Intern., Inc.*, 242 FRD 552 (CD Cal 2007) ("Courts commonly issue protective orders limiting access to sensitive information to counsel and their experts"); *Safe Flight Instrument Corp. v. Sundstrand Data Control, Inc.*, 682 F Supp 20, 22 (D Del 1988) (listing cases). The United States District Court for the District of Oregon recently adopted a two-tier form of protective order that provides for the additional protection NW Natural seeks here. (A copy of the court's form of order is attached.) Obviously using discovery in administrative proceedings to obtain a commercial or competitive advantage would be a misuse of those procedures and it is appropriate for the Commission to impose restrictions that prevent that from happening. Having a protective order in place before discovery begins in this proceeding will assist parties in responding to data requests in a manner that does not lead to inappropriate disclosure of competitively harmful information.

These restrictions will not unduly limit the ability of PUC Staff, CUB, and other non-utility parties to obtain and use the information.

In addition, Data Request Nos. 3, 4, and 5 seek information regarding NWN's PowerPoint presentation made at one of the informal workshop sessions. The PowerPoint itself will not be a part of the evidence that NWN will offer in this proceeding, and the PowerPoint itself is not one of the issues the parties have identified in this proceeding. To the extent that Data Request Nos. 3, 4, and 5 seek information about the PowerPoint itself, NWN objects because PGE is seeking irrelevant information. NW Natural is not contending that the



information presented in the PowerPoint is necessarily irrelevant, but it does not make sense to answer data requests about the PowerPoint itself. *Re MidAmerican Energy Holdings Co.*, Order No. 05-1249, at 3 (“We will not compel production of data which will serve no role in the proceeding.”).

#### **IV. CONCLUSION**

For the foregoing reasons, the motions should be allowed.

DATED this 26th day of March, 2012.

ESLER, STEPHENS & BUCKLEY

By: /s/ John W. Stephens  
John W. Stephens, OSB No. 773583  
Of Attorneys for Northwest Natural Gas  
Company

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March 12, 2012

TO: Mark Thompson  
NW Natural  
220 NW 2<sup>nd</sup> Ave  
Portland, OR 97209  
mark.thompson@nwnatural.com

FROM: Karla Wenzel *KW*  
Manager, Regulatory Analysis & Administration

**PORTLAND GENERAL ELECTRIC  
UM 1565  
PGE's First Set of Data Requests to NW Natural  
Response Due By: March 26, 2012  
Data Request Nos. 001-006**

**Request:**

- 1. NWN's survey regarding customer perceptions of unequal incentives: Please send all work papers related to this survey, including the survey design and the identification of customers to be sampled for this survey and provide any related documents in their original electronic or hard copy format with all formulas intact.**
- 2. With regard to the survey referenced in question 1, why did the survey focus on perceptions related to a halo effect?**
- 3. With regard to the graph on page 21 of the PowerPoint presentation: the graph shows an increase in heat pump shipments into the Northern Willamette Valley since 2006, ending in 2009 (the last year Energy Trust provided incentives to gas furnaces). Please explain the relevance of this data to NWN's case? What does the data show following 2009 through 2011? Please provide any studies, work papers and relevant documents that relates to the subsequent years after 2009 regarding heat pump shipments to the Northern Willamette Valley in their original electronic or hard copy format with all formulas intact.**
- 4. The table on page 22 of the PowerPoint presentation is unclear. Please define what "NWN customer losses" means and explain why it is relevant. Please explain the relevance of using US heat pump market data in relation to the Pacific Northwest market?**

- 5. On page 18 of the PowerPoint Presentation, NWN asserts that customers are being persuaded to convert to heat pumps for air conditioning. Please explain who or what is persuading customers to make this choice? What other considerations were taken into account other than the halo effect? Please explain. What reports, documents, studies, analyses informed NWN's consideration of other explanations and conclusion? Please provide copies of the reports, documents, studies, and analyses in their original electronic or hard copy format with all formulas intact.**
- 6. NWN contracts with Energy Trust to serve its Vancouver customers. Does NWN have similar concerns about its Vancouver market? Please explain why or why not? Please provide copies of any reports, studies, and analyses, documents in their original electronic or hard copy format with all formulas intact.**

**DIRECT QUESTIONS TO:** Karla Wenzel, Manager  
Regulatory Analysis & Administration  
Rates & Regulatory Affairs  
Portland General Electric Company  
Telephone No: (503) 464-8718

**MAIL RESPONSES TO:** Rates & Regulatory Affairs  
Portland General Electric Company  
121 SW Salmon St., 1WTC0702  
Portland, OR 97204

**EMAIL RESPONSES TO:** PGE.OPUC.Filings@pgn.com

March 12, 2012

TO: Mark Thompson, President  
Forefront Economics  
3800 SW Cedar Hills Blvd. Ste. 285  
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mark@forecon.com

FROM: Karla Wenzel  
Manager, Regulatory Analysis & Administration

**PORTLAND GENERAL ELECTRIC  
UM 1565  
PGE Data Request Nos. 001-007  
Responses Due by: March 26, 2012**

**Request:**

- 1. Is the “Economic Impacts of Space Heating: Comparison of High Efficiency Gas Furnaces and Heat Pumps” report dated September 6, 2011 and noted as “Draft / Confidential”, the final report? If not the final report, please provide a final copy in its original electronic or hard copy format with all formulas intact.**
- 2. Please provide a set of all work papers used to complete the study and provide them in their original electronic or hard copy format with all formulas intact.**
- 3. Are you aware of any similar reports that were completed for other companies and / or submitted to a regulatory body? If so, to whom and to where were these reports provided? Please provide copies of these reports in their original electronic or hard copy format with all formulas intact.**
- 4. The report assumed that the actual performance of High Efficiency (HE) heat pumps would only be 75% of the rated Coefficient of Performance (COP). What is the basis of the assumption? Please provide copies of all studies, work papers, analyses and any other documents in their original electronic or hard copy format with all formulas intact that informed the assumption.**

5. **What assessment was made of the actual performance of new high efficiency gas furnaces? If no assessment was performed, please explain why? Please provide copies of all studies, work papers, analyses, and any other documents regarding the performance of high efficiency furnaces in their original electronic or hard copy format with all formulas intact.**
  
6. **What were the costs to consumers for heat pumps and gas furnaces used in the study? If a range of prices was found, how was a point price chosen? What is the sensitivity in the analysis to the range of prices? Please provide copies of all documents used to provide the cost information in their original electronic or hard copy format with all formulas intact.**
  
7. **What is the discount rate used in the Net Present Value (NPV) calculations? What is the sensitivity in the analysis to a change in discount rates?**

**DIRECT QUESTIONS TO:**

Karla Wenzel, Manager,  
Regulatory Analysis & Administration  
Rates & Regulatory Affairs  
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Telephone No: (503) 464-8718

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[Attorney Information]

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

\_\_\_\_\_

Plaintiff,

v.

\_\_\_\_\_

Defendant.

Case No. \_\_\_\_\_

**STIPULATED PROTECTIVE  
ORDER**

One or more of the parties has requested the production of documents or information that at least one party considers to be or to contain confidential information, and that are subject to protection under Federal Rule of Civil Procedure 26(c). The type of information that is considered confidential is described with more particularity in paragraph 3 below.

The parties agree that good cause exists to protect the confidential nature of the information contained in documents, interrogatory responses, responses to requests for admission, or deposition testimony. This action concerns *[insert detailed statement explaining why the parties, claims or facts at issue create a need for a protective order]*. The parties expect to exchange documents and information relating to *[insert detailed statement describing the confidential or proprietary nature of the documents/information]*. The parties agree that the entry of this Stipulated Protective Order ("Protective Order") is warranted to protect against disclosure of such documents and information.

Based upon the above stipulation of the parties, and the Court being duly advised,

IT IS HEREBY ORDERED as follows:

1. All documents, testimony, and other materials produced by the parties in this case and labeled "Confidential" or "Attorneys' Eyes Only" shall be used only in this proceeding.

2. Use of any information or documents labeled "Confidential" or "Attorneys' Eyes Only" and subject to this Protective Order, including all information derived therefrom, shall be restricted solely to the litigation of this case and shall not be used by any party for any business, commercial, or competitive purpose. This Protective Order, however, does not restrict the disclosure or use of any information or documents lawfully obtained by the receiving party through means or sources outside of this litigation. Should a dispute arise as to any specific information or document, the burden shall be on the party claiming that such information or document was lawfully obtained through means and sources outside of this litigation.

3. The parties, and third parties subpoenaed by one of the parties, may designate as "Confidential" or "Attorneys' Eyes Only" documents, testimony, written responses, or other materials produced in this case if they contain information that the producing party has a good faith basis for asserting is confidential under the applicable legal standards. The party shall designate each page of the document with a stamp identifying it as "Confidential" or "Attorneys' Eyes Only," if practical to do so.

4. If portions of documents or other materials deemed "Confidential" or "Attorneys' Eyes Only" or any papers containing or making reference to such materials are filed with the Court, they shall be filed under seal and marked as follows or in substantially similar form:

CONFIDENTIAL

IN ACCORDANCE WITH A PROTECTIVE ORDER, THE ENCLOSURE(S) SHALL BE TREATED AS CONFIDENTIAL AND SHALL NOT BE SHOWN TO ANY PERSON OTHER THAN THOSE PERSONS DESIGNATED IN PARAGRAPH 7 OF THE PROTECTIVE ORDER.

*or*

ATTORNEYS' EYES ONLY

IN ACCORDANCE WITH A PROTECTIVE ORDER, THE ENCLOSURE(S) SHALL BE TREATED AS FOR ATTORNEYS' EYES ONLY AND SHALL NOT BE SHOWN TO ANY PERSON OTHER THAN THOSE PERSONS DESIGNATED IN PARAGRAPH 8 OF THE PROTECTIVE ORDER.

If a party is filing a document that it has itself designated as "Confidential" or "Attorneys' Eyes Only," that party shall reference this Stipulated Protective Order in submitting the documents it proposes to maintain under seal. If a non-designating party is filing a document that another party has designated as "Confidential" or "Attorneys' Eyes Only," then the non-designating party shall file the document under seal. If the the non-designating party makes a request in writing to have the document unsealed and designating party does not file, within ten calendar days, a motion that shows good cause to maintain the document under seal, then the Court shall unseal the document. Before seeking to maintain the protection of documents filed with the Court, a party must assess whether redaction is a viable alternative to complete nondisclosure.

5. Within thirty (30) days after receipt of the final transcript of the deposition of any party or witness in this case, a party or the witness may designate as "Confidential" or "Attorneys' Eyes Only" any portion of the transcript that the party or witness contends discloses confidential information. If a transcript containing any such material is filed with the Court, it shall be filed under seal and marked in the manner described in paragraph 4. Unless otherwise agreed, all deposition transcripts shall be treated as "Confidential" until the expiration of the thirty-day period.



6. "Confidential" or "Attorneys' Eyes Only" information and documents subject to this Protective Order shall not be filed with the Court or included in whole or in part in pleadings, motions, briefs, etc., filed in this case, except when any portion(s) of such pleadings, motions, briefs, etc. have been filed under seal by counsel and marked in the same manner as described in paragraph 4 above. Such sealed portion(s) of pleadings, motions, briefs, documents, etc., shall be opened only by the Court or by personnel authorized to do so by the Court.

7. Use of any information, documents, or portions of documents marked "Confidential," including all information derived therefrom, shall be restricted solely to the following persons, who agree to be bound by the terms of this Protective Order, unless additional persons are stipulated by counsel or authorized by the Court:

- a. Outside counsel of record for the parties, and the administrative staff of outside counsel's firms.
- b. In-house counsel for the parties, and the administrative staff for each in-house counsel.
- c. Any party to this action who is an individual, and every employee, director, officer, or manager of any party to this action who is not an individual, but only to the extent necessary to further the interest of the parties in this litigation.
- d. Independent consultants or expert witnesses (including partners, associates and employees of the firm which employs such consultant or expert) retained by a party or its attorneys for purposes of this litigation, but only to the extent necessary to further the interest of the parties in this litigation.
- e. The Court and its personnel, including, but not limited to, stenographic reporters regularly employed by the Court and stenographic reporters not regularly employed by the Court who are engaged by the Court or the parties during the litigation of this action,
- f. The authors and the original recipients of the documents.
- g. Any court reporter or videographer reporting a deposition.

h. Employees of copy services, microfilming or database services, trial support firms and/or translators who are engaged by the parties during the litigation of this action.

8. Use of any information, documents, or portions of documents marked "Attorneys' Eyes Only," including all information derived therefrom, shall be restricted solely to the persons listed in paragraphs 7(a), 7(b), 7(d), 7(e), 7(g) and 7(h), unless additional persons are stipulated by counsel or authorized by the Court.

9. Prior to being shown any documents produced by another party marked "Confidential" or "Attorneys' Eyes Only," any person listed under paragraph 7(c) or 7(d) shall agree to be bound by the terms of this Order by signing the agreement attached as Exhibit A.

10. Whenever information designated as "Confidential" or "Attorneys' Eyes Only" pursuant to this Protective Order is to be discussed by a party or disclosed in a deposition, hearing, or pre-trial proceeding, the designating party may exclude from the room any person, other than persons designated in paragraphs 7 and 8, as appropriate, for that portion of the deposition, hearing or pre-trial proceeding.

11. Each party reserves the right to dispute the confidential status claimed by any other party or subpoenaed party in accordance with this Protective Order. If a party believes that any documents or materials have been inappropriately designated by another party or subpoenaed party, that party shall confer with counsel for the designating party. As part of that conferral, the designating party must assess whether redaction is a viable alternative to complete non-disclosure. If the parties are unable to resolve the matter informally, the party objecting to the confidential status of a document may file an appropriate motion before the Court. In response to a motion brought pursuant to this paragraph, the designating party must show good cause to maintain the Protective Order as to the document in dispute. A party who disagrees with another party's designation must nevertheless abide by that designation until the matter is resolved by agreement of the parties or by order of the Court.

12. The inadvertent failure to designate a document, testimony, or other material as "Confidential" or "Attorneys' Eyes Only" prior to disclosure shall not operate as a waiver of the party's right to later designate the document, testimony, or other material as "Confidential" or "Attorneys' Eyes Only." The receiving party or its counsel shall not be held liable, however, for disclosure of such documents or materials if that party or counsel did not know or should not reasonably have known that a claim of confidentiality would be made by the producing party. Promptly after receiving notice from the producing party of a claim of confidentiality, the receiving party or its counsel shall inform the producing party of all pertinent facts relating to the prior disclosure of the newly-designated documents or materials, and shall make reasonable efforts to retrieve such documents and materials and to prevent further disclosure.

13. Designation by either party of information or documents as "Confidential" or "Attorneys' Eyes Only," or failure to so designate, will not be constitute an admission that information or documents are or are not confidential or trade secrets. Neither party may introduce into evidence in any proceeding between the parties the fact that the other party designated or failed to designate information or documents as "Confidential" or "Attorneys' Eyes Only."

14. Upon the request of the producing party or third party, within 30 days after the entry of a final judgment no longer subject to appeal on the merits of this case, or the execution of any agreement between the parties to resolve amicably and settle this case, the parties and any person authorized by this Protective Order to receive confidential information shall return to the producing party or third party, or destroy, all information and documents subject to this Protective Order. Returned materials shall be delivered in sealed envelopes marked "Confidential" to respective counsel. The party requesting the return of materials shall pay the reasonable costs of responding to its request. Notwithstanding the foregoing, counsel for a party may retain archival copies of confidential documents.

15. This Protective Order shall not constitute a waiver of any party's or non-party's right to oppose any discovery request or object to the admissibility of any document, testimony or other information.

16. Nothing in this Protective Order shall prejudice any party from seeking amendments to expand or restrict the rights of access to and use of confidential information, or other modifications, subject to order by the Court.

17. The restrictions on disclosure and use of confidential information shall survive the conclusion of this action and this Court shall retain jurisdiction of this action after its conclusion for the purpose of enforcing the terms of this Protective Order.

So stipulated:

\_\_\_\_\_

[Counsel for Plaintiff]

\_\_\_\_\_

[Counsel for Defendant]

The Court has reviewed the reasons offered in support of entry of this Stipulated Protective Order and finds that there is good cause to protect the confidential nature of certain information. Accordingly, the Court adopts the above Stipulated Protective Order in this action.

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
[Judge's signature]

EXHIBIT A

I, \_\_\_\_\_, have been advised by counsel of record for  
\_\_\_\_\_ in \_\_\_\_\_  
of the protective order governing the delivery, publication, and disclosure of confidential  
documents and information produced in this litigation. I have read a copy of the protective order  
and agree to abide by its terms.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

## CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **NORTHWEST NATURAL'S MOTION FOR PREHEARING CONFERENCE, PROCEDURAL SCHEDULE, AND PROTECTIVE ORDER** on the following persons on March 26, 2012:

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Bellingham, Washington 98229

- by hand-delivery
- by facsimile
- by first class mail
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DATED this 26<sup>th</sup> day of March, 2012.

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