

# McDowell Rackner & Gibson PC



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March 7, 2014

## VIA ELECTRONIC FILING AND FIRST CLASS MAIL

PUC Filing Center  
Public Utility Commission of Oregon  
PO Box 1088  
Salem, OR 97302-1088

Re: Docket UM 1654 – In the Matter of Northwest Natural Gas Company - Investigation  
of Interstate Storage and Optimization Sharing

Attention Filing Center:

Enclosed for filing in the above-referenced docket is an original and one copy of Northwest  
Natural Gas Company's Motion for Modified Protective Order.

A copy of this filing has been served on all parties to this proceeding as indicated on the  
enclosed Certificate of Service.

Please contact this office with any questions.

Very truly yours,

Wendy McIndoo  
Office Manager

Enclosure

cc: Service List

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

3 **UM 1654**

4 In the Matter of

5 PUBLIC UTILITY COMMISSION OF  
6 OREGON,

7 Investigation into Interstate Storage and  
8 Optimization Sharing.

**MOTION FOR MODIFIED  
PROTECTIVE ORDER**

**EXPEDITED CONSIDERATION**  
**REQUESTED**

9 Pursuant to OAR 860-001-0080(3) and paragraph 16 of the General Protective Order  
10 in this docket, Order No. 13-208, Northwest Natural Gas Company (“NW Natural” or  
11 “Company”) moves the Public Utility Commission of Oregon (“Commission”) for the entry of a  
12 Modified Protective Order in this proceeding. For the reasons outlined below, good cause  
13 exists to issue a Modified Protective Order to protect commercially sensitive and confidential  
14 business information related to the Company’s optimization activities at issue in this docket.  
15 The Company therefore requests that the Commission issue the proposed Modified Protective  
16 Order that is attached hereto as Attachment A.

17 NW Natural requests expedited consideration of this motion. Consistent with OAR  
18 860-001-0420(3) and (7) NW Natural has conferred with all of the parties to this case and  
19 provided this Motion and proposed Modified Protective Order to Staff, the Citizens’ Utility  
20 Board of Oregon (“CUB”), and the Northwest Industrial Gas Users (“NWIGU”). Staff does not  
21 object to this Motion and NWIGU does not support or object to this Motion. CUB states as  
22 follows: “CUB objects to the concept of there being a distinction between information which is  
23 “highly confidential” as opposed to simply “confidential”. If information is “confidential” then it  
24 is “confidential”. If the Administrative law Judge determines however, that Intervenor parties  
25 must sign the attached modified protective order in order to obtain information necessary to  
26 this docket, then CUB will sign the protective order. CUB appreciates NW Natural’s

1 recognition that CUB is not a competitor and that its Staff should not therefore be prohibited  
2 from reviewing the information to which this filing pertains.”

### 3 I. BACKGROUND

4 On February 21, 2014, Administrative Law Judge Shani Pines issued a Memorandum  
5 and Bench Request that required the Company to respond to Commission questions related  
6 to the Company's Mist storage services (“Storage Services”) and resource optimization  
7 activities (“Optimization Activities”) under the Company's Schedule 185 and Schedule 186.  
8 Question 1(b) requires NW Natural to describe the specific services that are provided by  
9 Tenaska Marketing Ventures related to Alberta natural gas liquids (“NGL”) extractions and  
10 sales. NW Natural's NGL market activity is extremely sensitive commercial information. As  
11 discussed below, the public disclosure of this highly confidential information would cause  
12 significant harm to the Company and its customers. For this reason, the Company is  
13 requesting that the issuance of an order containing additional protections beyond those  
14 contained in the Commission's General Protective Order for such information.

### 15 II. REQUEST FOR HIGHLY CONFIDENTIAL DESIGNATION

16 As part of the Company's responses to the Commission's bench request, the  
17 Company will be providing documents containing Highly Confidential Information. In order to  
18 provide adequate protections to that information while facilitating the discovery process in this  
19 case, the Company proposes additional protections to the Commission's standard protective  
20 order provisions.

21 As required by OAR 860-001-0080(3)(a)(A) to (F) and paragraph 16 of Order No. 13-  
22 208, NW Natural provides the following information:

23 **A. Parties Involved:** The Company has provided the proposed Modified Protective  
24 Order to Staff, CUB, and NWIGU.

25 **B. Detailed Description of the Information Involved:** The information for which  
26 the Company seeks additional protection includes, but is not limited to, descriptions of NW

1 Natural's NGL market activities, including descriptions of recent transactions entered into by  
2 Tenaska Marketing Ventures on NW Natural's behalf. Disclosure of NW Natural's market  
3 activity would cause significant harm to the Company's and customers' financial interests by  
4 compromising the Company's ability to continue to engage in similar transactions. Therefore,  
5 this information requires additional protection beyond that included in the General Protective  
6 Order.

7 **C. Legal Basis for the Claim of Confidentiality:** The information is commercially  
8 sensitive information within the scope of ORCP 36(C)(7).

9 **D. Reasons General Protective Order is Inadequate:** The Modified Protective  
10 Order is necessary to prevent potential NGL market participants from gaining access to Highly  
11 Confidential Information describing NW Natural's NGL market activity. For example, to gain  
12 access to Highly Confidential Information under the Modified Protective Order, a person must  
13 certify that the person has a legitimate and non-competitive need for the Highly Confidential  
14 Information and not simply a general interest in the information. This certification is not  
15 required under the terms of the General Protective Order. Also, with the exception of Staff  
16 and CUB, the Modified Protective Order allows only attorneys to access Highly Confidential  
17 Information, which provides further protections against disclosure of highly sensitive  
18 competitive information to actual or potential market participants.

19 **E. Exact Nature of the Relief Requested:** The Company requests that the  
20 Commission enter the attached Modified Protective Order. The Modified Protective Order is  
21 generally consistent with the Modified Protective Order that was issued by the Commission in  
22 NW Natural's last general rate case, docket UG 221. The terms of the Modified Protective  
23 Order are narrowly tailored and intended to apply to only the most sensitive NGL market  
24 activities engaged in by NW Natural.

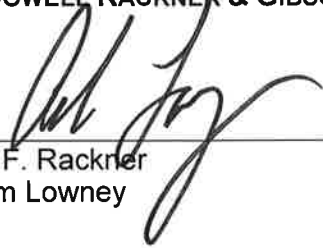
25 **F. Measures Taken by the Parties:** As discussed above, NW Natural provided  
26 this Motion and proposed Modified Protective Order to Staff, CUB, and NWIGU. These

1 parties reviewed the proposed Modified Protective Order and their positions are set forth  
2 above.

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

5 DATED: March 7, 2014.

6 **MCDOWELL RACKNER & GIBSON PC**

7   
8 \_\_\_\_\_  
9 Lisa F. Rackner  
Adam Lowney

10 **NORTHWEST NATURAL GAS COMPANY**

11 Mark Thompson  
12 Manager, Rates and Regulatory  
13 220 NW Second Ave  
Portland, OR 97209

14 Attorneys for NW Natural  
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# **ATTACHMENT A**

**MODIFIED PROTECTIVE ORDER**  
DOCKET UM 1654

**Scope of this Order**

1. This order governs the acquisition and use of “Confidential Information” and “Highly Confidential Information” in Docket UM 1654. This Order supersedes the prior order issued in this docket relating to the protection of Confidential Information and shall remain in effect unless further modified by the Commission.

**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”) and the Commission’s rules governing protective orders.
3. “Highly Confidential Information” is information that is not adequately protected by the general protective order and that falls within the scope of ORCP 36(C)(7) and the Commission’s rules governing protective orders.
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, Administrative Law Judge, or Commission Staff;
  - c. An employee of the Citizens’ Utility Board;
  - d. Counsel of record for a party;
  - e. A person employed directly by counsel of record; or
  - f. A person qualified pursuant to paragraph 17. This includes all other 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 Highly Confidential Information;
  - b. A Commissioner, Administrative Law Judge, or Commission Staff;
  - c. An employee or counsel of the Citizens’ Utility Board;
  - d. A counsel of record for a party who otherwise qualifies under paragraph 17.

**Designation of Confidential Information or Highly Confidential Information**

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

CONFIDENTIAL  
SUBJECT TO MODIFIED PROTECTIVE ORDER

To the extent practicable, the party may designate as confidential only the portions of the material covered by ORCP 36(C)(7) and the Commission's rules governing protective orders.

7. 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

To the extent practicable, the party may designate as highly confidential only the portions of the material covered by ORCP 36(C)(7) and the Commission's rules governing protective orders that will not be adequately protected by the general protective order.

8. If any party objects to the Confidential and 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 Confidential and Highly Confidential. 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 confidential or highly confidential designation informally, the dispute provisions in Paragraph 22 apply.
9. A party may designate as confidential or 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 10 and Paragraph 11. Parties in possession of newly designated Confidential Information or Highly Confidential Information must, when feasible, ensure that all copies of the previously undesignated information are destroyed or are annotated to bear the above legend if requested by the designating party.

**Information Given to the Commission**

10. Confidential Information that is (a) filed with or provided to the Commission or its Staff; (b) made an exhibit; (c) incorporated into a transcript; or (d) incorporated into a pleading, brief or other document, must 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 must be provided to the Commission. Only the portions of a document that fall within ORCP 36(C)(7) may be placed in the envelope/container. The envelope/container must bear the legend:



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

11. Highly Confidential Information that is (a) filed with or provided to the Commission or its Staff; (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. An original and five copies, each separately sealed, must be provided to the Commission. Only the portions of a document that fall within ORCP 36(C)(7) may be placed in the envelope/container. The envelope/container must bear the legend:

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

12. The Commission's Administrative Hearings Division, Commission Staff, and other parties must store the Confidential Information and Highly Confidential Information in a locked room or cabinet dedicated to the storage of Confidential Information and Highly Confidential Information.

#### **Disclosure of Confidential Information**

13. To receive Confidential Information, all parties except Commission Staff must sign the Consent to be Bound Form attached as Appendix A. When it is not impracticable, Confidential Information must be delivered to Qualified Persons on the service list.

#### **Disclosure of Highly Confidential Information**

14. To receive Highly Confidential Information, all parties except Commission Staff must sign the Consent to be Bound Form attached as Appendix B. When it is not impracticable, Highly Confidential Information must be delivered to Qualified Persons on the service list.
15. A person signing the Consent to be Bound Form attached as Appendix B certifies that:
  - a. The person receiving Confidential Information or Highly Confidential Information agrees that they will make copies only as needed for purposes of review and submission to the Commission.
  - b. The person receiving Confidential Information or Highly Confidential Information agrees to keep the information in a secure manner as required by Paragraph 12.
  - c. The person receiving Confidential Information or 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.

- d. The party the person is associated with has a legitimate and non-competitive need for the Highly Confidential Information and not simply a general interest in the information.
16. A Qualified Person may disclose Confidential Information to any other Qualified Person, unless the party desiring confidentiality protests as provided in paragraph 18. A Qualified Person may disclose Highly Confidential Information to any other person qualified to receive Highly Confidential Information, unless the party desiring confidentiality protests as provided in paragraph 18.
  17. To become a qualified person under 4(c), 4(f), 5(c) or 5(d), 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; and
    - d. Provide a name, address, employer, and job title.

Counsel must file a copy of the signed statement including the information in (d) and (e) with the Commission and deliver the statement to the designating party and to all parties of record. Upon receipt of the designation if there is no objection to the qualified person, made pursuant to paragraph 18, then Confidential Information or Highly Confidential Information must be delivered to the qualified person within five business days.

18. All persons qualified to receive Confidential Information may have access to Confidential Information unless the designating party objects as provided in this paragraph. 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 Confidential Information or 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 Confidential Information or Highly Confidential Information may not be disclosed to the Qualified Person until the issue is resolved.

### **Preservation of Confidentiality**

19. Without the written permission of the designating party, any person given access to Confidential Information or Highly Confidential Information under this order may not use or disclose Confidential Information or Highly Confidential Information for any purpose other than participating in this proceeding. All Qualified Persons must take

reasonable precautions to keep Confidential Information and Highly Confidential Information secure. Disclosure of Confidential Information or Highly Confidential Information for purposes of business competition is strictly prohibited.

20. A Party wishing to utilize knowledge of Confidential Information or Highly Confidential Information obtained in this docket for purposes of a subsequent proceeding must submit new Confidential Information or 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 Confidential Information and Highly Confidential Information.

#### **Duration of Protection**

21. The Commission will 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 proceeding, unless extended by the Commission at the request of the designating party. The Commission will notify the designating at least two weeks prior to the release of Confidential Information or Highly Confidential Information.

#### **Destruction after Proceeding**

22. Counsel of record for any party 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 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 Confidential or Highly Confidential Information must destroy or return it to the designating party within 90 days after final resolution of these proceedings unless the designating party consents in writing to retention of the Confidential or Highly Confidential Information. This paragraph does not apply to and the Commission or its Staff.

#### **Appeal to Presiding Administrative Law Judge**

23. Any party may request that the ALJ conduct a conference to help resolve disputes related to this protective order.

A party challenging the designation of information as confidential or 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 confidential or 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 confidential or highly confidential designation from the challenged information.

### **Additional Protection**

24. If a designating party seeks additional protection, the party may move for any of the remedies set forth in ORCP 36(C). The motion must state:
  - a. The parties and person involved;
  - b. The exact nature of the information involved;
  - c. The legal basis for the claim that the information is protected under 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 those measures are insufficient.

Pending the Commission's ruling on a motion for additional protection, the information need not be released.

**APPENDIX A**

**Signatory Page for 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 Name: \_\_\_\_\_  
Date: \_\_\_\_\_

II. Persons Qualified pursuant to Paragraphs 4(a), (b), (d), and (e): Confidential Information

\_\_\_\_\_ (Party) identifies the following person(s) automatically qualified under paragraph 4(a), (b), (d), and (e).

PRINTED NAME	DATE

III. Persons Qualified pursuant to Paragraph (4)(c) and (f) and Paragraph 17: 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 17(e).

By: Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_

Paragraph 17(e) information also provided.

By: Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

Address: \_\_\_\_\_

Employer: \_\_\_\_\_

Job Title: \_\_\_\_\_

Paragraph 17(e) information also provided.

By: Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

Address: \_\_\_\_\_

Employer: \_\_\_\_\_

Job Title: \_\_\_\_\_

Paragraph 17(e) information also provided.

By: Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

Address: \_\_\_\_\_

Employer: \_\_\_\_\_

Job Title: \_\_\_\_\_

Paragraph 17(e) information also provided.

By: Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

Address: \_\_\_\_\_

Employer: \_\_\_\_\_

Job Title: \_\_\_\_\_

Paragraph 17(e) information also provided.

By: Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

Address: \_\_\_\_\_

Employer: \_\_\_\_\_

Job Title: \_\_\_\_\_

Paragraph 17(e) information also provided.

**APPENDIX B**

**Signatory Page for 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.

Signature: \_\_\_\_\_

Printed: \_\_\_\_\_

Date: \_\_\_\_\_

**II. Persons Qualified pursuant to Paragraph 5 and Paragraph 17: 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 17.

I certify that:

- a. I will make copies only as needed for purposes of review and submission to the Commission.
- b. I agree to keep the information in a secure manner as required by Paragraph 12.
- 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 I am associated with 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: \_\_\_\_\_

Paragraph 17(e) information also provided.

By: Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
 Paragraph 17(e) information also provided.

By: Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
 Paragraph 17(e) information also provided.

By: Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
 Paragraph 17(e) information also provided.

By: Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
 Paragraph 17(e) information also provided.

By: Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
 Paragraph 17(e) information also provided.



CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in UM 1654 on the following named person(s) on the date indicated below by email addressed to said person(s) at his or her last-known address(es) indicated below.

Tommy A. Brooks  
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Dated: March 7, 2014

  
\_\_\_\_\_  
Wendy McIndoo  
Office Manager