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January 23, 2013

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 1635 – Northwest Natural Gas Company's Motion for Modified Protective Order

Attention Filing Center:

Enclosed for filing in the above-captioned docket are an original and one copy of NW Natural'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 1635**

4 In the Matter of

5 NORTHWEST NATURAL GAS COMPANY

6 Mechanism for Recovery of Environmental
7 Remediation Costs.

**MOTION FOR MODIFIED
PROTECTIVE ORDER**

8 Pursuant to OAR 860-001-0080(4), Northwest Natural Gas Company ("NW Natural" or
9 "Company") moves the Public Utility Commission of Oregon ("Commission") for the entry of a
10 Modified Protective Order in this proceeding. For the reasons outlined below, good cause
11 exists to issue a Modified Protective Order to protect commercially sensitive and confidential
12 business information related to the Company's environmental remediation costs and
13 insurance claims. The Company therefore requests that the Commission issue the same
14 Modified Protective Order that was adopted in the Company's most recent general rate case,
15 Docket UG 221. The Modified Protective Order adopted in that case is attached hereto as
16 Attachment A.

17 NW Natural contacted the parties to this docket—Staff, the Citizens' Utility Board of
18 Oregon (CUB), the Northwest Industrial Gas Users (NWIGU), and Portland General Electric
19 Company (PGE)—regarding the Company's proposed motion on January 22, 2012 and
20 informed them that the Company planned to file the motion on January 23, 2013. No party
21 informed the Company of their position on the motion by the time of filing.

22 **I. BACKGROUND**

23 This proceeding is a continuation of the Commission's evaluation of the Company's
24 environmental remediation costs that began in Docket UG 221, the Company's most recent
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1 general rate case.¹ In that case, the Company asked that the Commission implement a
2 Modified Protective Order to protect highly sensitive information, including information related
3 to the Company's environmental insurance claims. In support of the request for a Modified
4 Protective Order, the Company stated that:

5 the Company anticipates that parties may request discovery related to litigation
6 of environmental remediation insurance claims. The disclosure of this
7 information poses a highly significant risk of affecting NW Natural's litigation,
8 and could result in harm to the Company and its customers. Heightened
9 protection of such information, should it be sought in discovery, is appropriate.²

10 In response to the Company's request, Staff, CUB, and NWIGU stated that they agree
11 to use of the Company's proposed Modified Protective Order, but reserved the right to pursue
12 certain issues related to the proposed order in the future.³ Administrative Law Judge (ALJ)
13 Lisa Hardie found that good cause existed to issue the proposed Modified Protective Order
14 and also adopted the responding parties' reservation of rights.⁴ The parties did not further
15 litigate the Modified Protective Order in that docket.

16 In this docket, the parties and the Commission will be evaluating the Company's
17 environmental remediation costs in further detail. Specifically, the Issues List adopted by ALJ
18 Hardie states that the Commission will be evaluating:

- 19 1. The prudence of NW Natural's environmental remediation costs;
- 20 2. The appropriate deadband to be applied to recovery of environmental
21 remediation costs;

22 ¹ See *NW Natural Gas Co. Request for a General Rate Revision*, Docket UG 221, Order No. 12-
23 437 at 31 (Nov. 16, 2012).

24 ² *Re NW Natural Gas Co. Request for a General Rate Revision*, Docket UG 221, Motion for
25 Modified Protective Order at 3 (Feb. 14, 2012).

26 ³ *Re NW Natural Gas Co. Request for a General Rate Revision*, Docket UG 221, Letter (Feb. 16,
2012).

⁴ *Re NW Natural Gas Co. Request for a General Rate Revision*, Docket UG 221, Order No. 12-
058 (Feb. 24, 2012).

1 3. The appropriate application of the earnings test ordered in Docket UG 221; and

2 4. The appropriate rate spread to apply to recoverable costs.⁵

3 Information provided in this docket may relate to litigation of environmental remediation
4 insurance claims, and the processes related to any settlement of such claims. As discussed
5 below, the public disclosure of this highly confidential information would cause significant
6 harm to the Company and its customers. For this reason, the Company is requesting the
7 issuance of an order containing additional protections beyond those contained in the
8 Commission's General Protective Order for such information. Given that the proposed
9 Modified Protective Order was adopted by the Commission to protect the same type of
10 information in a recent docket, and was used without parties raising concerns with respect to
11 the Modified Protective Order, it is reasonable to adopt the same order here.

12 II. REQUEST FOR HIGHLY CONFIDENTIAL DESIGNATION

13 In order to provide adequate protections to highly confidential environmental
14 remediation information while facilitating the discovery process in this case, the Company
15 proposes additional protections to the Commission's standard protective order provisions.

16 As required by OAR 860-001-0080(4)(a)(A) to (F), NW Natural provides the following
17 information:

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

20 **B. Exact Nature of the Information Involved:** The information for which the
21 Company seeks additional protection includes, but is not limited to, information related to
22 litigation of environmental remediation insurance claims. The disclosure of this information
23 poses a highly significant risk of affecting NW Natural's litigation, and could result in harm to
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25 ⁵ *Re NW Natural Gas Co. Mechanism for Recovery of Environmental Remediation Costs*, Docket
26 UM 1635, Prehearing Conference Memorandum (Dec. 24, 2012).

1 the Company and its customers. Heightened protection of such information, should it be
2 sought in discovery, is appropriate.

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

5 **D. Exact Nature of the Relief Requested:** The Company requests that the
6 Commission enter the attached Modified Protective Order.

7 **E. Reasons the Relief Requested is Necessary:** Entry of the Modified Protective
8 Order is necessary to protect from disclosure Highly Confidential information, the disclosure of
9 which poses a highly significant risk of competitive harm to NW Natural.

10 **F. Measures Taken by the Parties:** NW Natural, Staff, CUB, and NWIGU worked
11 cooperatively to develop the Modified Protective Order in Docket UG 221 that was effective in
12 protecting highly confidential material in that docket.

13

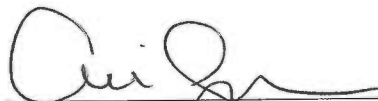
14 For the foregoing reasons, NW Natural requests entry of the Modified Protective Order
15 attached as Attachment A in this docket, which is the same Modified Protective Order that was
16 adopted in Docket UG 221.

17 DATED: January 23, 2013.

MCDOWELL RACKNER & GIBSON PC

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Lisa F. Rackner
Amie Jamieson

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NORTHWEST NATURAL GAS COMPANY

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

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Attorneys for NW Natural

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Docket UM 1635

Attachment A

to

**Northwest Natural Gas Company's
Motion for Modified Protective Order**

MODIFIED PROTECTIVE ORDER
DOCKET NO. UG 221

Scope of this Order

1. This order governs the acquisition and use of “Confidential Information” and “Highly Confidential Information” in docket UG 221. 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 person qualified pursuant to paragraph 17. This includes all other parties, their employees, counsel of record for a party, and a person employed directly by counsel of record.

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 B. 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 C. 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 C 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;
 - 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 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 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 B

**Signatory Page for Confidential Information
DOCKET NO. UG 221**

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 C

Signatory Page for Highly Confidential Information
DOCKET NO. UG 221

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

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I hereby certify that I served a true and correct copy of the foregoing document in Docket UM 1635 on the following named person(s) on the date indicated below by U.S.First Class and/or email addressed to said person(s) at his or her last-known address(es) indicated below.

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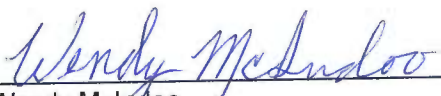
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DATED: January 23, 2013



Wendy McIndoo
Office Manager