



ALISHA TILL  
Direct (503) 290-3628  
alisha@mrg-law.com

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**VIA ELECTRONIC FILING**

Public Utility Commission of Oregon  
Filing Center  
P.O. Box 1088  
201 High Street SE, Suite 100  
Salem, Oregon 97308-1088

**Re: Docket UM 2192 - Northwest Natural Gas Company's Application for Approval of Deferred Accounting for TSA Security Directive 2 Compliance Expenses.**

Attention Filing Center:

Attached for filing in the above-referenced docket is Northwest Natural Gas Company's Motion for Modified Protective Order, expedited consideration requested.

Please contact this office with any questions.

Sincerely,

Alisha Till  
Paralegal

Attachments

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 2192**

In the Matter of

NORTHWEST NATURAL GAS COMPANY,  
dba NW Natural

Application for Approval of Deferred Accounting  
for TSA Security Directive 2 Compliance  
Expenses.

**MOTION FOR MODIFIED PROTECTIVE  
ORDER**

*Expedited Consideration Requested*

1 Pursuant to ORS 192.355(8), ORS 192.355(33)(a)(B), ORCP 36(C)(1), OAR 860-001-  
2 0080(3), and OAR 860-001-0420, Northwest Natural Gas Company, dba NW Natural (“NW  
3 Natural” or the “Company”), hereby moves the Public Utility Commission of Oregon  
4 (“Commission”) for the entry of a Modified Protective Order in this proceeding. Concurrent  
5 with this filing, the Company is also filing a Motion for entry of the Commission’s General  
6 Protective Order. For the reasons outlined below, good cause exists to issue a Modified  
7 Protective Order, in addition to the Commission’s General Protective Order, to protect  
8 Sensitive Security Information (“SSI”), as designated by the Department of Homeland  
9 Security’s Transportation Security Administration (“TSA”) in accordance with 49 CFR 1520.5,  
10 related to TSA Security Directive Pipeline-2021-02 (“Security Directive 2”) and the Company’s  
11 compliance therewith. NW Natural therefore requests that the Commission issue the  
12 proposed Modified Protective Order that is attached to this Motion as Appendix A.

13 **I. BACKGROUND AND SUMMARY OF REQUEST**

14 On September 2, 2021, NW Natural filed an Application for Approval of Deferred  
15 Accounting for TSA Security Directive 2 Compliance Expenses (“Application”). The Company filed  
16 the Application seeking Commission authorization to use deferred accounting, pursuant to ORS  
17 757.259 and OAR 860-027-0300, for the 12-month period beginning September 2, 2021, for  
18 amounts spent by NW Natural to comply with Security Directive 2. Security Directive 2 requires

1 covered owners and operators of critical natural gas pipelines and liquified natural gas (“LNG”)  
2 facilities to implement mitigation measures and take other actions to reduce the risks of  
3 cyberattacks. The Company filed the Application because complying with Security Directive 2,  
4 which is mandated by a federal agency and imperative to ensuring pipeline and LNG facility  
5 security, will cause NW Natural to incur significant costs that are not currently accounted for in the  
6 Company’s rates, and because deferred accounting will match the costs borne by ratepayers to  
7 the benefits received by ratepayers.

8 The TSA initially designated all of Security Directive 2 as Sensitive Security Information  
9 (“SSI”) pursuant to 49 CFR 1520.5 because of the highly sensitive nature of the subject matter,  
10 the disclosure of which the TSA determined would be detrimental to the security of transportation.  
11 Subsequently, however, the TSA released a significant portion of Security Directive 2 to the public  
12 in response to a Freedom of Information Act request by the Washington Post.<sup>1</sup> Now, the portions  
13 of Security Directive 2 that remain designated as SSI include a single section of the document as  
14 well as most of the Security Directive 2 compliance deadlines. Additionally, NW Natural’s plans  
15 for complying with the SSI portions of Security Directive 2, including its planned timelines for  
16 meeting SSI-designated compliance deadlines, remain SSI and must be treated as such.<sup>2</sup>  
17 Accordingly, NW Natural’s ability to share the SSI-designated portions of Security Directive 2 and  
18 the Company’s related compliance activities is severely limited by 49 CFR 1520.9 and the  
19 Company may only do so with persons with a “need to know” as defined by 49 CFR 1520.11 or  
20 with those whom the TSA or another federal agency has granted written authorization pursuant to  
21 49 CFR 1520.9(a)(2). Furthermore, NW Natural’s plans for complying with the non-SSI portions  
22 of Security Directive 2 remain highly sensitive and preventing public disclosure thereof is therefore

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<sup>1</sup> Aaron Scheffer and Ellen Nakashima, *New emergency cyber regulations lay out ‘urgently needed’ rules for pipelines but draw mixed reviews*, The Washington Post (Oct. 3, 2021, 2:34 PM), [https://www.washingtonpost.com/national-security/cybersecurity-energy-pipelines-ransomware/2021/10/03/6df9cab2-2157-11ec-8200-5e3fd4c49f5e\\_story.html](https://www.washingtonpost.com/national-security/cybersecurity-energy-pipelines-ransomware/2021/10/03/6df9cab2-2157-11ec-8200-5e3fd4c49f5e_story.html) (last visited Nov. 19, 2021).

<sup>2</sup> 49 CFR 1520.5(b)(1).

1 critical to ensuring that the intent of Security Directive 2 is realized. The Company is filing this  
2 Motion so it can share the entirety of Security Directive 2 and its compliance plans directly with the  
3 Commission and qualified parties to the proceeding in an appropriate manner that complies with  
4 the federal requirements governing SSI and that appropriately safeguards NW Natural’s highly  
5 sensitive compliance plans.<sup>3</sup>

6 NW Natural conferred with the parties to this docket—Commission staff (“Staff”), the  
7 Oregon Citizens’ Utility Board (“CUB”), and the Alliance of Western Energy Consumers  
8 (“AWEC”)—and informed the parties of the Company’s need for this Motion. The parties did not  
9 object.

10 **II. REQUEST FOR ADDITIONAL PROTECTION**

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

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

13 At the time of this Motion, the parties to this case are Staff, CUB, and AWEC. Other  
14 interested parties may also intervene in the proceeding.

15 The Company seeks to protect two categories of information with this Motion: (1) federally  
16 protected SSI, which includes both (a) the TSA-designated SSI portions of Security Directive 2  
17 and (b) the Company’s plans and actions to comply therewith, and (2) the Company’s plans and  
18 actions for complying with the publicly available portions of Security Directive 2.

19 The first category—the federally protected SSI—includes certain portions of the rules and  
20 related compliance deadlines issued by the TSA to owners and operators of TSA-designated  
21 critical pipeline systems meant to protect the nation’s pipeline infrastructure from ransomware

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<sup>3</sup> The Company may not disclose the SSI that it seeks to protect with the proposed Modified Protective Order except to persons with a need to know as defined by 49 CFR 1520.11; this includes the Commission and Commission employees per 49 CFR 1520.11(b)(1). This provision does not allow the Company to share the SSI with potential intervenors to this proceeding unless authorized in writing to do so by the TSA or other federal agencies pursuant to 49 CFR 1520.9(a)(2).

1 attacks and other related cyber threats.<sup>4</sup> The federally protected SSI in the first category also  
2 includes the Company’s compliance plans and implementation timelines related to the underlying  
3 SSI. Both the TSA-designated SSI, and the Company’s compliance activities and timelines  
4 related thereto, constitute SSI per 49 CFR 1520.5<sup>5</sup> and must be protected as such to prevent  
5 exploitation thereof, and could have a devastating and self-defeating effect if intentionally or  
6 inadvertently disclosed to the public.

7 The second category—the Company’s compliance plans and actions related to the  
8 publicly available portions of Security Directive 2—must also be protected because disclosure of  
9 the Company’s means and methods for protecting itself from the occurrence and impact of  
10 cyberattacks would make those measures more easily exploitable. In other words, the protective  
11 measures must remain confidential to be effective. This second category—referred to as Highly  
12 Confidential Information—includes the actions the Company will undertake and the products and  
13 services it will procure to comply with the bulk of the measures required by Security Directive 2.

14 In sum, the highly sensitive information that the Company seeks to protect via its proposed  
15 Modified Protective Order includes (1) TSA-designated SSI—including portions of Security  
16 Directive 2 and the Company’s related compliance activities and implementation timelines—and  
17 (2) the Company’s plans for complying with the publicly available portions of Security Directive 2,  
18 which the Company considers Highly Confidential Information.

19 **B. Legal Basis for Claim that the Information is Protected under ORCP 36(C)(1)**  
20 **or the Public Records Law.**

21 The SSI at issue in this proceeding is prohibited from disclosure by federal regulations

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<sup>4</sup> At a high level, Security Directive 2 requires covered entities to (1) implement specific mitigation measures to protect against ransomware attacks and other related threats, (2) develop and implement a cybersecurity contingency and response plan, and (3) conduct a cybersecurity architecture design review. See Department of Homeland Security, “DHS Announces New Cybersecurity Requirements for Critical Pipeline Owners and Operators,” (July 20, 2021), DHS.gov, <https://www.dhs.gov/news/2021/07/20/dhs-announces-new-cybersecurity-requirements-critical-pipeline-owners-and-operators> (last visited Nov. 19, 2021).

<sup>5</sup> A portion of Security Directive 2 was designated SSI by the TSA pursuant to 49 CFR 1520.5(a) while the Company’s Security Plan is considered SSI per 49 CFR 1520.5(b)(1).

1 and is therefore exempted from disclosure under Oregon’s Public Records Law.<sup>6</sup> As previously  
2 discussed, portions of Security Directive 2 and NW Natural’s compliance activities related thereto  
3 are considered SSI per 49 CFR 1520.5 and may not be disclosed except to persons with a “need  
4 to know” as defined by 49 CFR 1520.11 or to those whom the TSA or another federal agency has  
5 granted written authorization pursuant to 49 CFR 1520.9(a)(2).<sup>7</sup> The applicable provision allowing  
6 for government employees to receive information necessary for them to perform their official  
7 duties applies to the Commission and Staff but does not apply to potential intervenors.<sup>8</sup>  
8 Therefore, as required by applicable federal regulations protecting SSI, the proposed Modified  
9 Protective Order only grants access to the SSI to the Commission and Staff.<sup>9</sup>

10 Additionally, the Highly Confidential Information at issue in this proceeding—which  
11 includes the Company’s compliance plans related to the publicly available portions of Security  
12 Directive 2—is also exempted from disclosure under Oregon’s Public Records Law as information  
13 about review or approval of programs relating to the security of storage or conveyance of gas in  
14 liquified or gaseous form.<sup>10</sup> Therefore, the proposed Modified Protective Order only grants access  
15 to this Highly Confidential Information to parties who consent to be bound by the terms of the  
16 Modified Protective Order and treat the information accordingly.

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

18 The Company requests that the Commission enter the attached Modified Protective Order  
19 to prevent the unlawful distribution or disclosure of federally protected SSI and to protect the  
20 Company’s highly sensitive plans for complying with the non-SSI portions of Security Directive 2.

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<sup>6</sup> ORS 192.355(8).

<sup>7</sup> 49 CFR 1520.9(a)(2).

<sup>8</sup> 49 CFR 1520.11(b)(1).

<sup>9</sup> Intervenors may access the SSI if they qualify as a party with a need to know under 49 CFR 1520.11 or receive written authorization to do so from the TSA or another approved federal agency per 49 CFR 1520.9(a)(2) and consent to be bound by the proposed Modified Protective Order. On September 16, 2021, NW Natural requested that TSA authorize CUB and AWEC to receive SSI materials that NW Natural will submit to the Commission in this proceeding. TSA has not yet issued a decision on NW Natural’s request.

<sup>10</sup> ORS 192.355(33)(a)(B).

1 Under the proposed Modified Protective Order, parties may designate as SSI any information the  
2 party reasonably determines constitutes SSI per 49 CFR 1520.5. Information that constitutes SSI  
3 must be marked in accordance with the Modified Protective Order and with applicable federal  
4 regulations, which also instruct recipients on the handling and disposal of SSI. For example, the  
5 SSI must be provided in hard copy only and marked with specific language in accordance with 49  
6 CFR 1520.13(a-c) and holders of the SSI must take reasonable steps to safeguard the SSI in  
7 their possession.<sup>11</sup> Additionally, each page of a document containing SSI that is provided to  
8 qualified persons under the order must be printed on orange paper, separately bound, and placed  
9 in a sealed envelope or other appropriate container which must bear a legend indicating the  
10 envelope contains “Sensitive Security Information.” The SSI is to be provided via hand delivery  
11 or U.S. First Class mail using an opaque envelope or wrapping. Furthermore, the designating  
12 party will Bates number the SSI so it can be referenced and cited to in testimony and data requests  
13 without being reproduced in its entirety.

14 To the extent that a person qualified to view the SSI prefers to avoid possessing such  
15 information, NW Natural is proposing a “safe room” approach whereby it would make the SSI  
16 available to qualified parties at Company headquarters (“Portland Safe Room”), by appointment  
17 only, Monday through Friday, between the hours of 9 a.m. and 5 p.m., excluding Company  
18 holidays, with 48 hours’ notice.<sup>12</sup> Access to the Portland Safe Room is subject to any applicable  
19 state, local, or Commission- or Company-specific COVID-19 protocols.

20 The terms of the Modified Protective Order providing additional protections to the Highly  
21 Confidential Information are similar to the protections afforded SSI, with some notable differences.

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<sup>11</sup> The TSA published “Security Sensitive Information: Best Practices Guide for Non-DHS Employees and Contractors”, TSA.gov, [https://www.tsa.gov/sites/default/files/ssi\\_best\\_practices\\_guide\\_for\\_non-dhs\\_employees.pdf](https://www.tsa.gov/sites/default/files/ssi_best_practices_guide_for_non-dhs_employees.pdf) (last visited Nov. 19, 2021).

<sup>12</sup> The Commission authorized a similar safe room approach for PacifiCorp via *In re Pacific Power & Light, dba PacifiCorp, Filing of Tariffs Establishing Automatic Adjustment Clauses Under the Terms of SB 408*, Docket UE 177 et al., Order No. 06-033 (Jan. 25, 2006) (protecting PacifiCorp’s highly confidential tax information).

1 First, a party may designate as Highly Protected Information any information that the party  
2 reasonably determines falls within the scope of ORS 192.355(33)(a)(B) or ORCP 36(C)(1) and  
3 which is not publicly available and not adequately protected by the General Protective Order.  
4 Second, the marking requirements for Highly Confidential Information vary from those for SSI for  
5 purposes of distinguishing between the two types of information. Third, the only persons qualified  
6 to receive SSI are those with a “need to know” per 49 CFR 1520.11 and parties for whom the TSA  
7 or other enumerated federal government agency has authorized in writing to receive the SSI per  
8 49 CFR 1520.9(a)(2) Whereas the requirements for accessing Highly Confidential Information  
9 differ in that the persons who may access this information upon consenting to be bound to the  
10 terms of the Modified Protective Order include counsel for a party, persons employed directly by  
11 counsel of record, and employees of CUB’s Regulatory Division. Additionally, parties bound by  
12 the Modified Protective Order may seek to qualify other persons to access the Highly Confidential  
13 Information, a process that is not available for the SSI.

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

15 The Modified Protective Order is necessary because NW Natural is seeking through the  
16 Application to defer costs related to highly sensitive subject matter, including information it cannot  
17 legally disclose to the public. The proposed Modified Protective Order would enable the  
18 Commission to review the SSI as necessary to perform its legal obligations as NW Natural’s  
19 regulator while ensuring that only those persons with a “need to know” or as otherwise approved  
20 in writing by the TSA or other federal agencies per 49 CFR 1520.9(a)(2) gain access to federally  
21 protected SSI. The Modified Protective Order is also necessary to protect the Company’s plans  
22 for complying with the publicly available portions of Security Directive 2 because disclosure of the  
23 Company’s cybersecurity risk mitigation efforts could undermine those efforts and result in the  
24 exact type of attack against which Security Directive 2 is meant to protect. In sum, the requested  
25 relief is necessary to allow NW Natural to comply with applicable federal regulations governing  
26 the disclosure of the SSI in its possession and to prevent the disclosure of highly sensitive risk



1 mitigation efforts while enabling the Commission to perform its legal obligations in reviewing the  
2 Application.

3 **E. Intermediate Measures Explored and why these are Insufficient.**

4 As explained above, it is necessary to limit access to the non-public portions of Security  
5 Directive 2 and the Company's related compliance activities and schedule because federal law  
6 restricts disclosure of such information, because of the attendant serious risk of harm associated  
7 with such disclosure, as evidenced by the TSA's SSI designation, and because the Company  
8 could face penalties and other consequences if it does not follow federal law and prevent such  
9 disclosure. It is also necessary to limit access to the Company's plans for complying with the  
10 publicly available portions of Security Directive 2—plans that are exempt from disclosure pursuant  
11 to Oregon's Public Records Law—because disclosure of the plans could reduce the effectiveness  
12 of the Company's mitigation efforts and expose the Company to greater risk of a cybersecurity  
13 attack. Furthermore, although disclosure of confidential information under a General Protective  
14 Order is rare, it has occurred from time to time. Typically, such disclosure is inadvertent, although  
15 intentional disclosures have occurred.<sup>13</sup> Given such disclosures, additional protections, such as  
16 those contained in the proposed Modified Protective Order, are appropriate when the  
17 consequences of disclosure would be particularly grave. Critically, NW Natural is legally  
18 prohibited from disclosing the SSI other than to persons with a "need to know" or as otherwise  
19 approved in writing by the TSA or other federal agencies per 49 CFR 1520.9(a)(2).

20 **F. Certification that NW Natural Conferred with the Other Parties Regarding the**  
21 **Requested Modified Protective Order.**

22 NW Natural conferred with Staff, CUB, and AWEC on its requested Modified Protective

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<sup>13</sup> *In re Oregon Elec. Util. Co., LLC, et al., Application for Authorization to Acquire Portland Gen. Elec. Co.*, Docket No. UM 1121, Order No. 05-114 at 9-10 (Mar. 10, 2005) (noting that "one of more parties decided to provide material identified as 'confidential' to *Willamette Week*, a weekly newspaper in Portland, Oregon, which was then broadcast by television and radio stations and disclosed in other print media").

1 Order and those parties did not object.

2 **G. Draft of the Requested Modified Protective Order.**

3 A draft of the requested Modified Protective Order is attached as Appendix A to this  
4 Motion.

5 **III. CONCLUSION**

6 For the foregoing reasons, NW Natural respectfully requests entry of the Modified  
7 Protective Order attached as Appendix A in this docket.

Respectfully submitted this 19th day of November 2021.

By: **MCDOWELL RACKNER GIBSON PC**



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Jocelyn Pease  
McDowell Rackner Gibson PC  
419 SW 11th Avenue, Suite 400  
Portland, OR 97205  
Telephone: (503) 595-3925  
Email: [jocelyn@mrq-law.com](mailto:jocelyn@mrq-law.com)

**NORTHWEST NATURAL GAS COMPANY**

Eric Nelsen  
Senior Regulatory Attorney  
250 SW Taylor Street  
Portland, Oregon 97204  
Phone: (503) 610-7617  
Email: [Eric.Nelsen@nwnatural.com](mailto:Eric.Nelsen@nwnatural.com)

Attorneys for Northwest Natural Gas Company

**Appendix A**

to

Motion for Modified Protective Order

in Docket UM 2192

**MODIFIED PROTECTIVE ORDER**  
DOCKET UM 2192

**Scope of this Order**

1. This order governs the acquisition and use of “Sensitive Security Information” and “Highly Confidential Information” produced or used by any party in Docket UM 2192.

**Designation of Sensitive Security Information**

2. Any party may designate as Sensitive Security Information (“SSI”) any information the party reasonably determines constitutes SSI as defined by federal regulation 49 CFR 1520.5.<sup>1</sup>
3. SSI may be shared in hard copy format only or viewed in a Safe Room as described in Paragraph 14 herein. No electronic distribution of SSI is permitted under this order. Accordingly, SSI may not be posted to Huddle or sent via email or any other electronic form. To the extent that SSI may need to be filed with the Administrative Hearings Division, such filing shall be accomplished consistent with the Commission’s pre-COVID hard copy filing procedures.
4. To designate information as SSI, a party must mark the document by placing the Protective Marking, as defined immediately below, conspicuously on the top of, and the Distribution Limitation Statement, as defined immediately below, on the bottom of (1) the outside of any front and back cover including a binder cover or folder, if the document has a front and back cover; (2) any title page; and (3) each page of the document.<sup>2</sup> Every page of a document must be marked with the SSI Protective Marking and Distribution Limitation Statement even when only a small portion of that document contains SSI.<sup>3</sup>

Protective Marking (header): SENSITIVE SECURITY INFORMATION

Distribution Limitation Statement (footer): *WARNING:* This record contains Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520. No part of this record may be disclosed to persons without a “need to know”, as defined in 49 CFR parts 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR parts 15 and 1520.

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<sup>1</sup> OAR 860-001-0080 allows the Commission to issue a modified protective order for information protected under ORCP 36(C)(1) or the Public Records Law. ORS 192.355(8) exempts from public disclosure “Any public records or information the disclosure of which is prohibited by federal law or regulations.” 49 CFR 1520.9 prohibits the disclosure of SSI except on a “need-to-know” basis or as authorized in writing by the Transportation Security Administration, the Coast Guard, or the Secretary of the Department of Transportation. Therefore, SSI may be protected from disclosure as federally protected information under the Public Records Law in accordance with OAR 860-001-0080.

<sup>2</sup> 49 CFR 1520.13(a-c).

<sup>3</sup> The TSA published “Security Sensitive Information: Best Practices Guide for Non-DHS Employees and Contractors”, TSA.gov, [https://www.tsa.gov/sites/default/files/ssi\\_best\\_practices\\_guide\\_for\\_non-dhs\\_employees.pdf](https://www.tsa.gov/sites/default/files/ssi_best_practices_guide_for_non-dhs_employees.pdf), (last visited Nov. 19, 2021).

Additionally, each page of a document containing SSI that is provided to SSI Qualified Persons under this order (as defined in Paragraph 8) must be printed on ORANGE paper, separately bound, and placed in a sealed envelope or other appropriate container which must bear the legend:

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

5. The designating party shall Bates number all documents designated as containing SSI so that SSI Qualified Persons, as defined in Paragraph 8, may reference any page they may want to use as an exhibit to testimony or for other purposes in this case.
6. A party may designate as SSI any information previously provided by giving written notice to the Commission and other parties. Parties in possession of newly designated SSI must ensure that all copies of the previously undesignated information are destroyed in accordance with Paragraph 19 or, if requested by the designating party or required for compliance with Oregon public records law, are annotated to bear the appropriate legend (above) and are accessible only to persons qualified under this order.
7. A designating party must make reasonable efforts to ensure that information designated as SSI continues to warrant protection under this order. If designated information no longer constitutes SSI, the designating party should make reasonable efforts to remove the designation and provide written notice to the Commission and other parties.

### **SSI Qualified Persons**

8. Only persons qualified to receive SSI in accordance with Paragraphs 9-10 below ("SSI Qualified Persons") may access SSI designated by another party under this Modified Protective Order. Access to SSI is restricted by the applicable provisions of 49 CFR 1520.
9. In accordance with 49 CFR 1520.11(b)(1), Commission employees and Assistant Attorneys General assigned to represent the Commission have a "need to know." The Commission employees and Assistant Attorneys General assigned to represent the Commission are automatically bound by this Modified Protective Order and qualified to access the SSI.
10. Other parties to this case may become qualified to access SSI if one or both of the following provisions applies:
  - (a) The party is a person with a "need to know" per 49 CFR 1520.11, or
  - (b) The party is a person the TSA, Coast Guard, or the Secretary of the Department of Transportation ("DOT") has authorized in writing to receive SSI per 49 CFR 1520.9(a)(2).

Counsel for such parties may sign the consent to be bound in Appendix B and may designate one representative for the party that may access the SSI. A party must identify such persons in section 2 of Appendix B when consenting to be bound by the order and must update this list throughout the proceeding to ensure it accurately identifies SSI Qualified Persons.

11. For each person bound under Paragraph 10, counsel for the party sponsoring the person must file a signed copy of Appendix B with the Commission and deliver a copy to the designating party and all parties of record. Upon receipt of the signed Appendix B, if there is no objection to the person to be qualified thereunder made under Paragraphs 36 and 37, then SSI must be made available to the person within five business days.
12. All SSI Qualified Persons or any other persons in possession of SSI have duties to protect and not disclose that SSI and to report any unauthorized disclosures thereof pursuant to 49 CFR 1520.9.<sup>4</sup>

### **Access to SSI**

13. SSI will be made available to SSI Qualified Persons only in paper copies marked in accordance with Paragraph 4 and may be provided to SSI Qualified Persons via hand delivery or U.S. First Class Mail or other traceable delivery service using an opaque envelope or wrapping.
14. For any SSI Qualified Persons that prefer to avoid possessing SSI, NW Natural will make available a designated location for viewing such information at NW Natural's headquarters in Portland ("Portland Safe Room"). Access to the Portland Safe Room is limited to SSI Qualified Persons by appointment only and requires 48-hour advance notice. NW Natural may require the presence of a NW Natural monitor while the SSI is being viewed. NW Natural will make the Portland Safe Room available for viewing the SSI Monday through Friday, between the hours of 9 a.m. and 5 p.m., excluding Company holidays and subject to any applicable state, local, or Company-specific COVID-19 protocols.
15. SSI Qualified Persons reviewing SSI in the Portland Safe Room are not authorized to, and shall not make, copies of any document designated as containing SSI but may make limited notes regarding the documents for reference purposes only. Such notes shall not constitute a verbatim or substantive transcript of the documents and shall be considered SSI subject to the terms of this Modified Protective Order. Any such notes shall be marked in accordance with 49 CFR 1520.13(a)-(c), as required by federal law.
16. The Commission's Administrative Hearings Division, Commission Staff, and other SSI Qualified Persons must store SSI in a locked room or cabinet dedicated to the storage of SSI.
17. Without the written permission of the designating party, any person given access to SSI under this order may not use or disclose such information for any purpose other than participation in this proceeding and only then under the terms of this order.
18. Each party shall Bates number all documents designated as containing SSI and SSI Qualified Persons shall follow the procedures outlined in Paragraph 5 to reference the SSI for use as an exhibit to testimony or for other purposes in this case. If the exhibit or testimony must be submitted to the Commission's Administrative Hearings Division, the designating party must also file a copy of the referenced document containing SSI with the Commission's Administrative Hearings Division, printed on ORANGE paper, and

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<sup>4</sup> "Security Sensitive Information: Best Practices Guide for Non-DHS Employees and Contractors", TSA.gov, [https://www.tsa.gov/sites/default/files/ssi\\_best\\_practices\\_guide\\_for\\_non-dhs\\_employees.pdf](https://www.tsa.gov/sites/default/files/ssi_best_practices_guide_for_non-dhs_employees.pdf), (last visited Nov. 19, 2021).

appropriately labeled in accordance with Paragraph 4, which shall be transmitted in a sealed envelope as further described in Paragraph 13.

19. Any SSI Qualified Person or other person retaining SSI at the conclusion of this proceeding must destroy the SSI completely using a cross-cut shredder or by cutting manually into less than one-half inch squares to preclude recognition or reconstruction of the SSI in accordance with 49 CFR 1520.19(b)(1). This paragraph does not apply to the Commission or its Staff to the extent that the Commission or its Staff must preserve the SSI under State law per 49 CFR 1520.19(b)(2).

### **Designation of Highly Confidential Information**

20. Any party may designate as Highly Confidential Information any information the party reasonably determines:
  - a. Falls within the scope of ORS 192.355(33)(a)(B) (i.e., information about review or approval of programs relating to the security of the generation, storage, or conveyance of gas in liquefied or gaseous form) or ORCP 36(C)(1);
  - b. Is not publicly available; and
  - c. Is not adequately protected by the general protective order.
21. To designate information as Highly Confidential Information, a party must place the following legend on the material:

HIGHLY CONFIDENTIAL INFORMATION  
SUBJECT TO MODIFIED PROTECTIVE ORDER NO. 21-\_\_

The party should make reasonable efforts to designate as Highly Confidential Information only the portions of the information that satisfy Paragraph 20 of this Modified Protective Order.

Additionally, each page of a document containing Highly Confidential Information that is provided to HC Qualified Persons under this order (as defined in Paragraph 25) must be printed on GREEN paper, separately bound, and placed in a sealed envelope or other appropriate container which must bear the legend:

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

Except as provided in Paragraph 31, no electronic distribution of Highly Confidential Information is permitted under this order. Accordingly, Highly Confidential Information may not be posted to Huddle or sent via email or any other electronic form, except as specifically allowed in Paragraph 31. To the extent that SSI may need to be filed with the

Administrative Hearings Division, such filing shall be accomplished consistent with the Commission's pre-COVID hard copy filing procedures.

22. The designating party shall Bates number all documents designated as containing Highly Confidential Information so that HC Qualified Persons, as defined in Paragraph 25, may reference any page they may want to use as an exhibit to testimony or for other purposes in this case.
23. A party may designate as Highly Confidential Information any information previously provided by giving written notice to the Commission and other parties. Parties in possession of newly designated Highly Confidential Information must ensure that all copies of the previously undesignated information are annotated to bear the appropriate legend (above) and are accessible only to persons qualified under this order.
24. A designating party must make reasonable efforts to ensure that information designated as Highly Confidential Information continues to warrant protection under this order. If designated information no longer constitutes Highly Confidential Information, the designating party should make reasonable efforts to remove the designation and provide written notice to the Commission and other parties.

#### **Highly Confidential Qualified Persons**

25. Only persons qualified to receive Highly Confidential Information in accordance with Paragraphs 26-28 below ("HC Qualified Persons") may access Highly Confidential Information designated as such by another party under this Modified Protective Order.
26. Persons automatically bound by this Modified Protective Order and qualified to access Highly Confidential Information are:
  - a. Commission employees; and
  - b. Assistant Attorneys General assigned to represent the Commission.
27. Persons qualified to access Highly Confidential Information upon signing the Consent to be Bound section of Appendix C are:
  - a. Counsel for a party;
  - b. Any person employed directly by counsel of record; and
  - c. An employee of the Regulatory Division at the Oregon Citizen's Utility Board.

A party must identify all these persons in section 2 of Appendix C when consenting to be bound by the order and must update this list throughout the proceeding to ensure it accurately identifies HC Qualified Persons.
28. A party bound by the Modified Protective Order may seek to qualify other persons to access Highly Confidential Information by having those persons complete and sign Appendix C and submitting that information to the Commission and all parties. Within five business days of receiving a copy of Appendix D, the designating party must either provide the requested access to Protected Information or file an objection under Paragraphs 36 and 37.



29. For each person bound under Paragraphs 27 and 28, counsel for the party sponsoring the person must file a signed copy of Appendix C or D, as applicable, with the Commission and deliver a copy to the designating party and all parties of record. Upon receipt of the signed Appendix, if there is no objection to the person to be qualified thereunder made under Paragraphs 36 and 37, then Highly Confidential Information must be made available to the person within five business days.

### **Access to Highly Confidential Information**

30. Highly Confidential Information will be made available to HC Qualified Persons only in paper copies marked in accordance with Paragraph 21 and may be provided to HC Qualified Persons via hand delivery or U.S. First Class Mail or other traceable delivery service using an opaque envelope or wrapping.
31. For any HC Qualified Persons that prefer to avoid possessing Highly Confidential Information, NW Natural will make the Highly Confidential Information available for viewing via a read-only database.
32. The Commission's Administrative Hearings Division, Commission Staff, and other HC Qualified Persons must store Highly Confidential Information in a locked room or cabinet dedicated to the storage of Highly Confidential Information.
33. Without the written permission of the designating party, any person given access to Highly Confidential Information under this order may not use or disclose such information for any purpose other than participation in this proceeding and only then under the terms of this order.
34. Each party shall Bates number all documents designated as containing Highly Confidential Information and HC Qualified Persons shall follow the procedures outlined in Paragraph 22 to reference the Highly Confidential Information for use as an exhibit to testimony or for other purposes in this case. If the exhibit or testimony must be submitted to the Commission's Administrative Hearings Division, the designating party must also file a copy of the referenced document containing Highly Confidential Information with the Commission's Administrative Hearings Division, printed on GREEN paper, and appropriately labeled in accordance with Paragraph 21, which shall be transmitted in a sealed envelope as further described in Paragraph 30.
35. Any HC Qualified Person or other person retaining Highly Confidential Information at the conclusion of this proceeding must destroy or return the Highly Confidential Information to the designating party within 90 days after final resolution of this proceeding unless the designating party consents in writing to that party's retention of the Highly Confidential Information. This paragraph does not apply to the Commission or its Staff to the extent necessary to comply with the Oregon Public Records Law.

### **Objection to Access to SSI or Highly Confidential Information**

36. All SSI Qualified Persons have access to SSI, and all HC Qualified Persons have access to Highly Confidential Information, unless the designating party objects as provided in this paragraph. As soon as the designating party becomes aware of reasons to restrict access to a SSI or HC Qualified Person, the designating party must provide the SSI or HC Qualified Person and his or her counsel written notice stating the basis for the objection. The parties must promptly confer and attempt to resolve the dispute on an

informal basis before requesting review by an Administrative Law Judge (“ALJ”). After receipt of the written notice of objection required by this paragraph, the specific SSI or Highly Confidential Information may not be disclosed to the SSI or HC Qualified Person until the issue is resolved.

37. If the parties are unable to resolve the matter informally, the designating party must file a written objection with the ALJ. The requesting party may file a response to the motion within 5 business days of service of an objection. The ALJ will make all reasonable efforts to resolve the matter within 10 business days of the last filing. Pending the ALJ’s decision, the specific SSI or Highly Confidential Information may not be disclosed to the person subject to the objection.

### **Challenge to Designation of SSI or Highly Confidential Information**

38. A party may informally challenge any designation of SSI or Highly Confidential Information by notifying the designating party. If any party objects to such designation by letter or email, the designating party must provide a written response to the party within five business days that describes in detail why the information is appropriately designated as SSI or Highly Confidential Information under this order; PROVIDED THAT such detail will not include the disclosure of SSI to any individuals who are not SSI Qualified Persons, or the disclosure of Highly Confidential Information to any individuals who are not HC Qualified Persons. (Note that correspondence that reveals the substance of any information marked as SSI or Highly Confidential Information may not be transmitted electronically.) Once notified, the designating party bears the burden of showing that the challenged information is covered by the applicable definition in this order. Any party may request that the ALJ hold a conference to help resolve disputes about proper designation, which shall include an in camera review of the challenged information.
39. If the dispute cannot be resolved informally, the challenging party may file a written objection with the ALJ. The objection filed with the ALJ must identify the information in dispute (by referencing the Bates number, if applicable) and include a certification that reasonable efforts to achieve an informal resolution have been unsuccessful.
40. Within five days of the objection, unless otherwise ordered by the ALJ, the designating party must either remove the Highly Confidential Information or SSI designation or file a written response identifying the factual and legal basis of how the challenged information is protected from disclosure under either federal regulations as SSI, under the Oregon Public Records Law, or under ORCP 36(C)(1). Broad allegations unsubstantiated by specific facts are not sufficient. To the extent that such written response contains information designated as SSI or Highly Confidential Information, review of such information shall be performed in camera by the ALJ, with a redacted copy of such response provided to the objecting party.
41. The challenging party may file a written reply to any response within five business days of service of an objection. The designating party may file a sur-reply within three business days of service of a response. To the extent that such written sur-reply contains information designated as SSI or Highly Confidential Information, review of such information shall be performed in camera by the ALJ, with a redacted copy of such sur-reply to the objecting party. The ALJ will make all reasonable efforts to resolve the matter within 10 business days of service of the last filing.

## **Duration of Protection**

42. The Commission will preserve the designation of information protected as SSI indefinitely unless the SSI is no longer considered SSI pursuant to 49 CFR 1520.5. The Commission will notify the designating party at least two weeks prior to the release of information no longer considered SSI pursuant to 40 CFR 1520.5 and may extend the designation at the request of the designating party.
43. The Commission will preserve the designation of information protected as Highly Confidential Information indefinitely unless the Highly Confidential Information is no longer considered to be Highly Confidential Information. The Commission will notify the designating party at least two weeks prior to the release of Highly Confidential Information.

**APPENDIX B  
CONSENT TO BE BOUND  
DOCKET UM 2192**

**I. Consent to be Bound:**

The Modified Protective Order and this Appendix B govern the use of SSI in UM 2192.

\_\_\_\_\_ (Party) agrees to be bound by the terms of the Modified Protective Order, certifies that it has an interest in UM 2192 that is not adequately represented by other parties to the proceeding, and that the persons listed below are SSI Qualified Persons under Paragraph 10.

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

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

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

**II. Persons Qualified under Paragraph 10:**

\_\_\_\_\_ (Party) identifies the following person(s) qualified under Paragraph 10.

PRINTED NAME	DATE

**APPENDIX C**  
**CONSENT TO BE BOUND**  
DOCKET UM 2192

**I. Consent to be Bound:**

The Modified Protective Order and this Appendix C govern the use of Highly Confidential Information in UM 2192.

\_\_\_\_\_ (Party) agrees to be bound by the terms of the Modified Protective Order and certifies that it has an interest in UM 2192 that is not adequately represented by other parties to the proceeding.

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

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

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

**II. Persons Qualified under Paragraph 27:**

\_\_\_\_\_ (Party) identifies the following person(s) qualified under Paragraph 27.

PRINTED NAME	DATE

**APPENDIX D**  
**QUALIFICATION OF OTHER PERSONS TO RECEIVE PROTECTED INFORMATION**  
DOCKET NO. UM 2192

**I. Persons Seeking Qualification to receive Highly Confidential Information under Paragraph 28:**

I have read the Modified Protective Order, agree to be bound by the terms of the order, and provide the following information.

<b>Signature:</b>		<b>Date:</b>
<b>Printed Name:</b>		
<b>Physical Address:</b>		
<b>Email Address:</b>		
<b>Employer:</b>		
<b>Associated Party:</b>		
<b>Job Title:</b>		
<b>If not employee of party, description of practice and clients:</b>		