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January 20, 2021

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Attn: Filing Center
201 High Street SE, Suite 100
Post Office Box 1088
Salem, Oregon 97308-1088

Re: UM 2145 – Application to Defer Cost of Service Associated with Tyson RNG Project – Motion for a Modified Protective Order

Northwest Natural Gas Company, dba NW Natural, encloses for filing a motion for a modified protective order in the above-mentioned proceeding.

Please address correspondence on this matter to me with copies to the following:

eFiling
Rates & Regulatory Affairs
NW Natural
250 SW Taylor Street
Portland, Oregon 97204
Phone: (503) 610-7330
Fax: (503) 220-2579
eFiling@nwnatural.com

If you have any questions, please contact me.

Sincerely,

/s/ Ryan Sigurdson

Ryan Sigurdson
Regulatory Attorney
Northwest Natural Gas Company

Enclosures

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2145

In the Matter of

NORTHWEST NATURAL GAS
COMPANY, dba NW NATURAL

Application to Defer Cost of Service
Associated with Tyson RNG
Project

**MOTION FOR MODIFIED
PROTECTIVE ORDER**

**Expedited Consideration
Requested**

1 Pursuant to ORCP 36(C)(1), OAR 860-001-0080(3), and OAR 860-001-
2 0420, Northwest Natural Gas Company, dba NW Natural (“NW Natural” or
3 “Company”), moves the Public Utility Commission of Oregon (“Commission”) for
4 the entry of a Modified Protective Order in this proceeding. For the reasons
5 outlined below, good cause exists to issue a Modified Protective Order, in
6 addition to the Commission’s General Protective Order, which the Company has
7 requested in a concurrent filing, to provide additional protection to highly
8 confidential, extremely commercially sensitive information related to the
9 Company’s Tyson renewable natural gas (“RNG”) project. The Company
10 therefore requests that the Commission issue the proposed Modified Protective
11 Order that is attached hereto as Attachment A.

I. BACKGROUND

12
13 On December 31, 2020, NW Natural filed an application to defer the cost
14 of service associated with the Tyson Fresh Meats RNG project in Lexington,
15 Nebraska. On January 15, 2021, Commission Staff (“Staff”) requested all
16 contracts and agreements executed by NW Natural that is related to this project.

1 These contracts contain information that NW Natural considers to be highly
2 confidential, including price information and other terms and conditions that, if
3 disclosed publicly, would place NW Natural at a material disadvantage in
4 acquiring RNG in the future.

5 For these reasons, the Company seeks additional protections for such
6 information, beyond those contained in the Commission's General Protective
7 Order. The goal of the proposed protections is to ensure that the parties
8 receiving the Highly Confidential Information treat it with the utmost care, and to
9 limit the forms of duplication and transmission of such information, to ensure that
10 it does not fall into the possession of market competitors or the general public.
11 This approach will give the parties to this proceeding the opportunity to review
12 the Highly Confidential Information, but will also ensure that the Highly
13 Confidential Information remains protected and does not become inadvertently
14 disclosed to market competitors or the public.

15 In accordance with OAR 860-001-0420, on January 19, 2021, NW Natural
16 informed the parties to this docket of the need for this motion for modified
17 protective and that it would be filed shortly thereafter. Those parties did not raise
18 any objections to the Modified Protective Order.

19 **II. REQUEST FOR ADDITIONAL PROTECTION**

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

22 ///

23 ///

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

2 Staff and the Oregon Citizens Utility Board (“CUB”) are the parties in this
3 proceeding. The Highly Confidential Information is certain contracts associated
4 with the RNG project. Such information requires additional protection beyond
5 that included in the General Protective Order because disclosure would place
6 NW Natural at a commercial disadvantage when negotiating future RNG
7 acquisitions. Specifically, if this information was disclosed, RNG market
8 participants would understand how much NW Natural is willing to pay for RNG,
9 and what commercial terms and conditions it is willing to accept.

10 Additionally, further Highly Confidential Information may be requested by
11 parties in discovery during the course of this proceeding.

12 **B. Legal Basis for the Claim that the Information is Protected under**
13 **ORCP 36(C)(1).**

14 ORCP 36(C)(1) limits the disclosure of “trade secret[s] or other
15 confidential research, development, or commercial information.” The Highly
16 Confidential Information to be produced include non-public, commercially
17 sensitive information within the scope of ORCP 36(C)(1). Public disclosure of the
18 information would harm the Company’s competitive position because sellers and
19 purchasers of RNG would gain an understanding of how much the Company is
20 willing to pay for RNG, and what commercial terms and conditions it was willing
21 to accept. This harm would ultimately flow through to customers in the form of
22 higher costs and less advantageous terms and conditions of future RNG
23 contracts.

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

2 The Company requests that the Commission enter the attached Modified
3 Protective Order. Under the proposed Modified Protective Order, Highly
4 Confidential Information is accorded additional protections by requiring that
5 individuals who are not Commissioners, Commission Staff, CUB regulatory staff,
6 or attorneys for a party, to demonstrate a legitimate, non-competitive need for a
7 specific item of Highly Confidential Information before gaining access.¹ Those
8 with only a general interest in the information will not be permitted to access it.
9 The Commission has entered modified protective orders with similar restrictions
10 in the past.²

11 The terms of the Modified Protective Order provide additional protections
12 to Highly Confidential Information that are narrowly tailored and are intended to
13 apply only to the Company's highly commercially sensitive business information.
14 Consistent with the Commission's COVID-19 response, the Modified Protective
15 Order requires all Highly Confidential Information in docket UM 2030 to be filed
16 with the OPUC Filing Center with a password protected and encrypted electronic
17 ZIP file and distributed to parties electronically who have signed the appropriate
18 protective order until the temporary waiver of rules referenced in Order No. 20-

¹ Although the Company understands that CUB and Staff are currently the only parties in this proceeding, it is probable that additional parties will intervene.

² *In the Matter of NW Natural Gas Co. Application for Approval of Corporate Reorganization to Create a Holding Company*, Docket No. UM 1804, Order No. 17-135 (Apr. 7, 2017); see also *In the Matter of NW Natural Gas Co. Request for a Gen. Rate Revision*, Docket No. UG 221, Order No. 12-058 (Feb. 24, 2012).

1 088 is rescinded. The Commission has entered modified protective orders with
2 similar restrictions due to COVID-19.³

3 After the temporary waiver of rules referenced in Order No 20-088 is
4 rescinded, the Modified Protective Order requires that Highly Confidential
5 Information be maintained in a manner distinct from non-confidential information,
6 by requiring that Highly Confidential Information be printed on a different color of
7 paper. Highly Confidential Information may not be used or disclosed for any
8 purpose other than participation in this proceeding. Finally, the Modified
9 Protective Order prohibits duplicating Highly Confidential Information.

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

11 The Modified Protective Order is necessary to prevent RNG market
12 participants and the general public from gaining access to Highly Confidential
13 Information describing the commercial terms and conditions of its RNG contracts,
14 which would provide competitors with a significant advantage to NW Natural's
15 financial detriment.

16 Granting the requested additional protection also will significantly limit the
17 risk of an inadvertent breach of confidentiality, which could adversely affect NW
18 Natural and its customers. The terms of the Modified Protective Order, described
19 above, decrease the risk of disclosure by restricting the manner and means by
20 which Highly Confidential Information may be maintained, stored, and
21 transmitted, thus reducing the risk of inadvertent disclosure.

³ *In the Matter of Portland General Electric Co., 2019 Integrated Resource Plan*, Docket No. LC-73, Order 20-123, (Apr. 10, 2020).

1 **E. Intermediate Measures Explored and Why these are Insufficient.**

2 As explained above, it is necessary to limit access to highly confidential
3 commercially sensitive information regarding NW Natural's acquisition of RNG
4 because of the serious risk of harm associated with disclosure of the Highly
5 Confidential Information. Furthermore, disclosure of confidential information
6 under a General Protective Order is rare, however it does occur from time to
7 time. Given such disclosures, additional protections, such as those contained in
8 the proposed Modified Protective Order, are appropriate when the consequences
9 of disclosure would be particularly grave. Intermediate measures are not
10 available because parties want to review the Company's RNG contracts, which
11 necessitates the disclosure of Highly Confidential Information.

12 **III. CONCLUSION**

13 For the foregoing reasons, NW Natural respectfully requests entry of the
14 Modified Protective Order attached as Attachment A on an expedited basis so
15 that it can promptly respond to Staff's data request.

16 Respectfully submitted this 20th day of January, 2021.

17 **NW NATURAL**

18 /s/ Ryan Sigurdson
19 Ryan Sigurdson
20 OSB# 201722
21 Regulatory Attorney
22 Northwest Natural Gas Company
23 250 SW Taylor Street
24 Portland, Oregon 97204
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MODIFIED PROTECTIVE ORDER
DOCKET UM 2145

Scope of this Order

1. This order supplements the General Protective Order in this docket and governs the acquisition and use of “Highly Confidential Information” produced or used by any party in Docket No. UM 2145.

Designation of Highly Confidential Information

2. “Highly Confidential Information” is information that:
 - a. falls within the scope of ORCP 36(C)(1) and the Commission’s rules governing protective orders; and
 - b. is not publicly available; and
 - c. is not adequately protected by the general protective order.
3. 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 NO.21-_____

To the extent practicable, the party may designate as highly confidential only the portions of the material that satisfy the definition in Paragraph 2 of this order.

4. If any party objects to the 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 Highly Confidential. The burden resides with the designating party to show that the challenged information is covered by ORCP 36(C)(1) or exempt from disclosure under the Public Records Law. If the parties are unable to resolve a dispute about a highly confidential designation informally, the dispute provisions in Paragraph 17 apply.
5. A party may designate as 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 as required by Paragraph 6. Parties in possession of newly designated Highly Confidential Information must, when feasible, ensure that all copies of the previously undesignated information are destroyed or, if requested by the designating party, are annotated to bear the above legend and are accessible only to persons qualified under this order.
6. For a temporary period, all Highly Confidential Information in OPUC Docket UM 2145 will be filed with the OPUC Filing Center (puc.filingcenter@state.or.us) with a password protected and encrypted electronic ZIP file and distributed to parties electronically who have signed the appropriate protective order, consistent with the Commission’s COVID-19 response, as reflected in Order No. 20-088 and the Chief Administrative Law Judge’s letter dated March 26, 2020.

When the temporary waiver of rules referenced in Order No 20-088 is rescinded, the Confidential Information will be processed as follows:

Highly Confidential Information that is (a) filed with or provided to the Commission or its Staff or to other persons qualified to access Highly Confidential Information; (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. Only the portions of a document that fall within ORCP 36(C)(1) may be placed in the envelope/container. The envelope/container must bear the legend:

THIS ENVELOPE IS SEALED UNDER ORDER NO. 21- ___ AND
CONTAINS HIGHLY CONFIDENTIAL INFORMATION. THE
INFORMATION MAY BE SHOWN ONLY TO QUALIFIED PERSONS AS
DEFINED IN THIS ORDER.

7. Highly Confidential Information may not be duplicated.

Access to Highly Confidential Information

8. Commissioners, Commission Staff, and Assistant Attorney Generals assigned to represent the Commission automatically are qualified to access Highly Confidential Information and are bound by this order.
9. Counsel for any other party and employees of the Oregon Citizens' Utility Board Regulatory Division may become qualified to access Highly Confidential Information by completing and signing Appendix A.
10. A party bound by the General Protective Order in this docket may seek to qualify persons other than those described in Paragraphs 8 and 9 to access specific Highly Confidential Information by having each such person complete and sign Appendix B and submitting the Appendix to the designating party and to the Commission. Within five business days of receiving a signed copy of Appendix B, the designating party either must provide access to the requested Highly Confidential Information to the person who signed Appendix B or must file an objection under Paragraph 12.
11. For each person qualified under Paragraphs 9 and 10, counsel for the party sponsoring the person must file a signed copy of Appendix A or Appendix B with the Commission and deliver a copy to the designating party and to all parties of record. Upon receipt of the signed Appendix, if there is no objection to the qualified person, made pursuant to Paragraph 12 then Highly Confidential Information must be delivered to the Qualified Person within five business days.
12. 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 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 Highly Confidential Information may not be disclosed to the Qualified Person until the issue is resolved.

Preservation of Confidentiality

13. Without the written permission of the designating party, any person given access to Highly Confidential Information under this order may not use or disclose Highly Confidential Information for any purpose other than participation in this proceeding. All Qualified Persons must take reasonable precautions to keep Highly Confidential Information secure. Disclosure of Highly Confidential Information for purposes of business competition is strictly prohibited.
14. A Party wishing to utilize knowledge of Highly Confidential Information obtained in this docket for purposes of a subsequent proceeding must submit new 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 Highly Confidential Information.

Duration of Protection

15. The Commission will preserve the confidentiality of 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 party at least two weeks prior to the release of Highly Confidential Information.

Destruction after Proceeding

16. Counsel of record for any party may retain memoranda, pleadings, testimony, discovery, or other documents containing 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 Highly Confidential Information at the conclusion of this proceeding must return it to the designating party within 90 days after final resolution of these proceedings or must destroy the Highly Confidential Information and provide an affidavit to the designating party swearing that the Highly Confidential Information has been destroyed. This paragraph does not apply to the Commission or its Staff.

Appeal to Presiding Administrative Law Judge

17. Any party may request that the ALJ conduct a conference to help resolve disputes related to this modified protective order. A party challenging the designation of information as 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 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 highly confidential designation from the challenged information.

APPENDIX A

Signatory Page for Parties and Persons Qualified to Access Highly Confidential Information Under Paragraph 9

I. Consent to be Bound

This Modified Protective Order governs the use of "Highly Confidential Information" in this proceeding.

_____ (Party) agrees to be bound by the terms of this Modified Protective Order.

Signature: _____

Printed: _____

Date: _____

II. Persons Qualified Pursuant to Paragraph 9.

I have read the Modified Protective Order and agree to be bound by its terms.

I certify that:

- a. I agree to keep the information in a secure manner as required by Paragraphs 7 and 13, and to destroy it at the conclusion of this proceeding as required by Paragraph 16.
- b. 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.
- c. The party with which I am associated 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: _____

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

APPENDIX B

Signatory Page for Other Persons Seeking Qualification to Access Highly Confidential Information Under Paragraph 10

I. Persons Seeking Qualification Pursuant to Paragraph 10.

I have read the Modified Protective Order and agree to be bound by its terms.

I certify that:

- a. I agree to keep the information in a secure manner as required by Paragraphs 7 and 13, and destroy it at the conclusion of this proceeding as required by Paragraph 16.
- b. 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.
- c. The party with which I am associated has a legitimate and non-competitive need for the Highly Confidential Information and not simply a general interest in the information.
- d. I require access to the following specific Highly Confidential Information (describe with particularity) for the following reason(s) (attach pages if necessary):

By: Signature: _____ Date: _____
 Printed Name: _____
 Address: _____
 Employer: _____
 Associated Party: _____
 Job Title: _____

If not an employee of a party, describe practice and clients: