



WENDY MCINDOO
Direct (503) 290-3627
wendy@mrg-law.com

December 19, 2018

VIA ELECTRONIC FILING

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

**Re: Docket No. UP 384: NW Natural Water of Oregon, LLC and Sunriver Water, LLC's
Motion for Protective Order.**

Attention Filing Center:

Attached for filing is an electronic copy of NW Natural Water of Oregon, LLC and Sunriver Water, LLC's Motion for Modified Protective Order and Proposed Modified Protective Order. Expedited consideration of this motion is requested. Please contact this office with any questions.

Sincerely,

Wendy McIndoo
Office Manager

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UP 384

In the Matter of the Joint Application for an Order Approving the Sale of Sunriver Water, LLC to NW Natural Water of Oregon, LLC pursuant to ORS 757.480 and OAR 860-036-2120.

**MOTION FOR MODIFIED
PROTECTIVE ORDER**

Expedited Consideration Requested

1 Pursuant to ORCP 36(C)(1)¹ and OAR 860-001-0080(3) and OAR 860-001-0420, NW
2 Natural Water of Oregon, LLC (“Oregon Water”) and Sunriver Water, LLC (“SRW”) (collectively,
3 “Joint Applicants”) move the Public Utility Commission of Oregon (“Commission”) for the entry of
4 a Modified Protective Order in this proceeding. Good cause exists to issue a Modified Protective
5 Order to protect commercially and competitively sensitive and confidential business information
6 related to the Joint Application for an Order Approving the Sale of Sunriver Water, LLC (“Joint
7 Application”), as well as commercially sensitive and highly confidential business information
8 related to Oregon Water’s confidential strategic planning and activities. The Joint Applicants
9 therefore request that the Commission issue the proposed Modified Protective Order that is
10 attached hereto as Appendix A.

I. BACKGROUND

11
12 On November 19, 2018, the Sunriver Owners Association (“SROA”) filed a petition to
13 intervene in this proceeding (“Petition”), indicating that its interest in the proceeding includes “a
14 right of first refusal or a first offer right in SROA of the ownership interests in [SRW].”² To date,
15 no party—including SROA, SRW, and SRW’s owner, Sunriver Resorts, LP (“Sunriver Resorts”)—
16 has identified an executed right of first refusal (“ROFR”), and SRW and Sunriver Resorts do not

¹ Former ORCP 36(C)(7) has been renumbered to ORCP 36(C)(1).

² SROA Petition to Intervene at ¶4.

1 information about the MIPA. Such information is highly commercially sensitive, and the Joint
2 Applicants seek to designate such information as Highly Protected Information consistent with the
3 proposed Modified Protective Order included as Appendix A.

4 In addition, Commission Staff has served data requests asking for information regarding
5 Oregon Water's due diligence regarding SRW and confidential strategic business planning
6 information regarding the acquisition of SRW. The information for which the Oregon Water seeks
7 additional protection includes, but is not limited to due diligence analysis and presentations to
8 Board of Directors, which would disclose strategic plans and activities. Disclosure of Oregon
9 Water's highly confidential business strategies likely would cause significant harm to Oregon
10 Water by compromising Oregon Water's negotiating power and ability to engage in business
11 transactions competitively. Additionally, disclosure of due diligence information to a potential
12 competitor may result in competitive harm to Oregon Water and SRW.

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

14 ORCP 36(C)(1) provides for limitations on the disclosure of "trade secret[s] or other
15 confidential research, development, or commercial information." The information for which
16 additional protection is sought is non-public, commercially sensitive information within the scope
17 of ORCP 36(C)(1). Disclosure of this information to competitors or to the public could hamper the
18 Joint Applicants' ability to compete in future business transactions, thereby harming the financial
19 interests of the Joint Applicants.

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

21 The Joint Applicants request that the Commission enter the attached Modified Protective
22 Order. The terms of the Modified Protective Order are narrowly tailored and intended to apply
23 only to prevent competitors from accessing highly commercially sensitive business information
24 for which disclosure could result in competitive harm to Oregon Water and/or SRW, which
25 includes but is not limited to the terms of the MIPA and related documents, Oregon Water's
26 confidential strategic business planning, and due diligence regarding SRW. The Modified

1 Protective Order goes beyond the General Protective Order by prohibiting parties that have a
2 competitive interest in acquiring SRW or other water utilities from accessing Highly Protected
3 Information, and limiting access to Highly Protected Information to the Commissioners,
4 Commission Staff and counsel for Staff, Oregon Citizens' Utility Board regulatory staff and
5 counsel, counsel for Oregon Water, counsel for SRW, or counsel for a party to this proceeding.
6 The Modified Protective Order also requires that highly confidential information remain distinct
7 from information that is not confidential or that is protected only under the General Protective
8 Order by requiring that highly confidential information be printed on paper of a different color and
9 stored in a locked room or cabinet. Additionally, Highly Protected Information may be provided in
10 hard copy only, and may not be shared electronically or uploaded to Huddle.

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

12 The Modified Protective Order is necessary to prevent competitors from gaining access to
13 highly confidential information describing the terms of the MIPA, due diligence regarding SRW,
14 and Oregon Water's strategies for growth. This information could implicate sensitive business
15 strategies, which could be compromised by the release of the requested information, causing
16 significant financial harm to Oregon Water and SRW by impairing their ability to negotiate in the
17 future. The terms of the Modified Protective Order, described above, decrease the risk of
18 disclosure by limiting the number of people that may access highly confidential information and
19 prohibiting competitors from accessing such information. The Modified Protective Order also
20 restricts the manner and means by which highly confidential information may be maintained and
21 stored, thus minimizing the risk of inadvertent disclosure.

22 **E. Intermediate Measures Explored and Why These are Insufficient.**

23 While the Commission's General Protective Order limits a party's ability to use Protected
24 Information for purposes outside the docket, it may not be practical or possible to enforce this
25 limitation in this particular case. Once a competitor learns of the deal terms and strategies that
26 would give them a competitive advantage, they cannot "unlearn" that information and it would be

1 extremely difficult for that competitor to ensure the information is not used for competitive
2 purposes, and even more difficult to enforce.

3 Additionally, disclosure of confidential information under a General Protective Order is
4 rare, however it does occur from time to time. Typically, the disclosure is inadvertent, although
5 intentional disclosures have occurred. Given the competitively sensitive nature of the information,
6 the difficulty in preventing a party from using that information for other purposes, and the potential
7 risk of disclosure, additional protections, such as those contained in the proposed Modified
8 Protective Order, are appropriate when the consequences of disclosure would be particularly
9 grave. All parties agree that such circumstances exist in this case.

10 III. CONCLUSION

11 For the foregoing reasons, the Joint Applicants respectfully request entry of the Modified
12 Protective Order attached as Appendix A in this docket.

Respectfully submitted this 19th day of December, 2018.

MCDOWELL RACKNER GIBSON PC



Lisa F. Rackner, OSB 873844
Jocelyn C. Pease, OSB 102065
McDowell Rackner Gibson PC
419 SW 11th Ave, Suite 400
Portland, OR 97205
503-595-3925
dockets@mrg-law.com

Attorneys for NW Natural Water of Oregon, LLC

Lawrence Reichman, OSB 860836
Perkins Coie LLP
1120 NW Couch St., 10th Fl.
Portland, OR 97209
LReichman@perkinscoie.com
(503) 727-2019
Attorneys for Sunriver Water, LLC

MODIFIED PROTECTIVE ORDER

UP 384

Scope of this Order:

1. This order governs the acquisition and use of "Highly Protected Information" produced or used by any party to these proceedings. General Protective Order No. 18-410 governs the acquisition and use of "Protected Information."

Designation of "Highly Protected Information":

2. Any party may designate as Highly Protected Information any information the party reasonably determines: (a) Falls within the scope of ORCP 36(C)(1) (a trade secret or other confidential research, development, or commercial information); and (b) Is not publicly available; and (c) Is extremely commercially or competitively sensitive and requires additional restrictions on who may access the information than that provided under the Commission's general protective order.
3. To designate information as Highly Protected Information, a party must place the following legend on the material:

HIGHLY PROTECTED INFORMATION SUBJECT TO MODIFIED
PROTECTIVE ORDER NO. 18 – ____.

The party should make reasonable efforts to designate as Highly Protected Information only the portions of the information covered by the above definitions.

4. Each page of a document containing Highly Protected Information filed with the Commission or provided to Qualified Persons under this order must be printed on green paper and stored in a locked room or cabinet. Only the portions of a document that fall within the above definitions may be placed in the envelope/container. The envelope/container must bear the legend:

THIS ENVELOPE IS SEALED UNDER ORDER NO. 18-____ AND
CONTAINS HIGHLY PROTECTED INFORMATION. THE
INFORMATION MAY BE SHOWN ONLY TO PERSONS
QUALIFIED TO ACCESS HIGHLY PROTECTED INFORMATION
AS DEFINED IN THE ORDER.

5. Highly Protected Information will be provided in hard copy only and may not be duplicated, uploaded to the Commission's Huddle website, or otherwise distributed electronically.
6. A party may designate as Highly Protected Information any information previously provided by giving written notice to the Commission and other parties of the new designation and providing the other parties with copies of the newly designated information printed on green paper. Parties in possession of newly designated Highly Protected 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.

7. A designating party must make reasonable efforts to ensure that information designated as Highly Protected Information continues to warrant protection under this order. If designated information becomes publicly available or no longer falls within the scope of ORCP 36(C)(1), the designating party should make reasonable efforts to remove the protected designation and provide written notice to the Commission and other parties.

Challenge to Designation of Information as Highly Protected:

8. A party may informally challenge any designation of Highly Protected Information by notifying the designating party. Once notified, the designating party bears the burden of showing that the challenged information is covered by ORCP 36(C)(1) and bears the burden of showing that the “Highly Protected Information” designation is necessary.
9. If the dispute cannot be resolved informally, the challenging party may file a written objection with the ALJ. The objection need only identify the information in dispute and certify that reasonable efforts to achieve informal resolution have failed.
10. Within five business days of service of the objection, the designating party must either remove the challenged protected designation or file a written response. A written response must identify the factual and legal basis of how the challenged information is protected under ORCP 36(C)(1), the Oregon Public Records Act, ORS 192.410 *et seq.*, and/or the Uniform Trade Secrets Act, ORS 646.461(4). Broad allegations unsubstantiated by specific facts are not sufficient. If the designating party does not timely respond to the objection, the Commission will remove the protected designation from the challenged information.
11. 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. The ALJ will make all reasonable efforts to resolve the matter within 10 business days of service of the last filing.

Access to Highly Protected Information:

12. Only Qualified Persons may access Highly Protected Information designated by another party under this Modified Protective Order. Persons automatically bound by this protective order and qualified to access Highly Protected Information are:
 - (a) Commissioners and Commission employees; and
 - (b) Assistant Attorneys General assigned to represent the Commission.
13. Persons qualified to access Highly Protected Information upon signing the Signatory Page for Highly Protected Information, Appendix B, are:
 - (a) An employee or counsel of the Regulatory Division at the Oregon Citizens' Utility Board;

- (b) Counsel of Northwest Natural Water of Oregon, LLC;
- (c) Counsel of Sunriver Water, LLC; and
- (d) Counsel for a party to this proceeding.

14. Any person or party that has demonstrated or implied a competitive interest in the acquisition of Sunriver Water, LLC or other water companies may not access Highly Protected Information.

Objection to Access to Highly Protected Information:

15. All persons qualified to have access to Highly Protected Information will have access to Highly Protected 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 Qualified Person, the designating party must provide the Qualified Person and his or her counsel notice stating the basis for the objection. The parties must promptly confer and attempt to resolve the dispute on an informal basis.
16. 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 Highly Protected Information may not be disclosed to the person subject to the objection.

Use of Highly Protected Information:

17. All Qualified Persons must take reasonable precautions to keep Highly Protected Information secure. Qualified Persons may reproduce Highly Protected Information only to the extent necessary to participate in these proceedings. A Qualified Person may discuss Highly Protected Information obtained under this order only with other Qualified Persons who have obtained the same information, and may do so only for the purpose of participating in these proceedings.
18. Nothing in this protective order precludes any party from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this protective order.
19. Counsel of record for Qualified Persons may retain memoranda, pleadings, testimony, discovery, or other documents containing Highly Protected 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.

Duration of Protection:

20. The Commission will preserve the designation of information as Highly Protected Information for a period of five years from the date of the final order in these proceedings, 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 Protected Information.

UP 384

Persons Qualified Pursuant to Paragraph 13: Highly Protected Information

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

I certify that: 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.

The party I am associated with has a legitimate and non-competitive need for the Highly Protected Information for this proceeding 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: _____