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**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

UM 1045

In the Matter of the Application of NORTHWEST	)	
NATURAL HOLDCO and NORTHWEST	)	
NATURAL GAS COMPANY for an Order	)	
Authorizing NORTHWEST NATURAL HOLDCO	)	ORDER
to Exercise Substantial Influence Over the Policies	)	
and Actions of PORTLAND GENERAL	)	
ELECTRIC COMPANY and NORTHWEST	)	
NATURAL GAS COMPANY.	)	

**DISPOSITION: MOTION FOR APPROVAL OF MODIFIED PROTECTIVE ORDER GRANTED**

On November 28, 2001, Northwest Natural Holdco and Northwest Natural Gas Company (jointly referred to as Applicants) filed a Motion for Approval of Modified Protective Order (MPO). Applicants' state that the MPO, which is similar to the one approved by the Commission in docket UE 115, is designed to reduce disputes regarding the distribution of confidential information in this docket.<sup>1</sup>

In their motion, Applicants highlight several provisions of the MPO. For purposes of this order, the two relevant provisions are found in paragraphs 7 and 9. Paragraph 7 restricts confidential information from being distributed "laterally" between qualified persons associated with different parties. The Applicants explain this provision helps assure the party desiring confidentiality that the information will only be disclosed to the intended parties. Paragraph 9 allows a party desiring confidentiality to object to the disclosure of confidential information to particular witnesses or consultants, even if those experts are otherwise "qualified" to review confidential information. Under the proposed process, the party desiring to restrict the qualified person must notify the opposing party and attempt to resolve the dispute informally. If the parties are unable to resolve the dispute informally, either party may file a motion for resolution by the Administrative Law Judge.

The Industrial Customers of Northwest Utilities (ICNU), the Northwest Industrial Gas Users (NWIGU), and the Commission Regulatory Staff (Staff) generally support the approval

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<sup>1</sup>On December 14, 2000, an Administrative Law Judge (ALJ) issued a Standard Protective Order to govern the exchange of confidential information pending a ruling on this motion.

of the MPO. They agree that certain provisions will help facilitate discovery in this docket. They object, however, to Paragraphs 7 and 9. They contend that both provisions will delay the parties' access to information. ICNU, NWIGU, and Staff fear that Paragraphs 7 and 9 might impede a party's ability to develop its case in a timely manner. They note that, in this proceeding, Applicants' have insisted on an expedited schedule.

### COMMISSION RULING

ICNU, NWIGU, and Staff contend that Paragraphs 7 and 9 in Applicants' proposed MPO will delay discovery and be burdensome on the parties. The objecting parties, however, fail to recognize that these and other provisions in the proposed MPO are designed to eliminate more burdensome restrictions set forth in the Standard Protective Order (SPO).

For example, Paragraph 8 in the SPO requires that every time a party wants to disclose confidential information to an unaffiliated expert, that party must notify the party desiring confidentially, in writing, at least three business days prior to the intended disclosure. Applicants' proposed MPO eliminates this requirement. The challenged Paragraph 9 allows all qualified persons—including unaffiliated experts—to have access to confidential information without the need for written notice.

Similarly, Paragraph 10 in the SPO prohibits parties from copying confidential information without the written consent of party desiring confidentiality. Paragraph 10 in the proposed MPO has no such restriction; it expressly allows qualified persons to reproduce confidential information to the extent necessary for the preparation and conduct of the proceeding. Moreover, the proposed MPO contains mandatory dispute resolution procedures designed to expedite discovery conflicts. Applicants' expect that most or all objections to disclosure will be resolved through these informal procedures, without resorting to more formal requirements set forth in Paragraph 16 of the SPO.

With this context, we do not believe that the restrictions set forth in Paragraphs 7 and 9 in the proposed MPO will present an undue burden or delay in the disclosure of confidential information. Rather, these provisions help balance the more relaxed restrictions on the disclosure and reproduction of confidential materials. As a whole, the proposed MPO will make confidential information more secure while reducing the need and delay associated with the restrictions currently found in the SPO.

Accordingly, we conclude that Applicants' motion for approval of the MPO should be granted. This MPO, attached as Appendix A, shall supersede the SPO issued on December 14, 2001, and shall govern the disclosure of confidential information in this case. Parties desiring receipt of confidential information shall sign the Consent to be Bound Form set forth on page 6 of Appendix A.

In reaching this decision, we acknowledge the objecting parties' concerns about delay. In this expedited proceeding, the parties must be able to rely on their expert witnesses'

ability to quickly review responses to data requests on an ongoing basis. Any unnecessary delay in the receipt and analysis of confidential information is unacceptable and impairs the parties' procedural rights.

While we believe the MPO will help expedite, rather than delay, discovery in this case, we will not hesitate to revisit our decision if there is any indication that Paragraphs 7 and 9 are presenting an unnecessary obstacle for parties in developing their cases. We anticipate that all parties will exercise their rights and obligations under the MPO in good faith, and will work cooperatively to resolve any dispute in an expeditious manner.

Finally, we reiterate that all parties should exercise extreme care in the handling of confidential information. As stated in the MPO, confidential information shall not be disclosed to any person other than a qualified person. If any questions exist as to the status of any person to receive confidential information, the parties may contact the Administrative Hearings Division at (503) 378-3885.

**ORDER**

IT IS ORDERED that:

- (1) The Motion for Approval of a Modified Protective Order, filed by Northwest Natural Holdco and Northwest Natural Gas Company, is granted.
- (2) The Modified Protective Order, attached as Appendix A, shall govern the disclosure of confidential information in this case.
- (3) Each party shall submit a list of "qualified persons" associated with that party at the time it files with the Commission a copy of the signatory page.

Made, entered, and effective\_\_\_\_\_.

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**Roy Hemmingway**  
Chairman

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**Lee Beyer**  
Commissioner

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**Joan H. Smith**  
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

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MODIFIED PROTECTIVE ORDER

**Scope of this Order-**

1. This order governs the acquisition and use of “confidential information” in this proceeding.

**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”).

3. A “qualified person” is an individual who is:

- a. The author(s), addressee(s), or originator(s) of the Confidential Information;
- b. The Commissioner(s) or the Commission Staff;
- c. Counsel of record for a party;
- d. A person employed directly by counsel of record; or
- e. Persons qualified pursuant to Paragraph 8.

**Designation of Confidential Information-**

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

CONFIDENTIAL  
SUBJECT TO PROTECTIVE ORDER

To the extent practicable, the party shall designate as confidential only those portions of the document that fall within ORCP 36(C)(7).

5. A party may designate as confidential any information previously provided by giving written notice to the other parties. Parties in possession of newly designated Confidential Information

shall, when feasible, ensure that all copies of the information bear the above legend to the extent requested by the party desiring confidentiality.

**Disclosure of Confidential Information-**

6. Parties desiring receipt of Confidential Information shall sign the Consent to be Bound Form attached to the end of this Appendix A. Confidential Information shall not be disclosed to any person other than a “qualified person,” as defined in paragraph 3. When feasible, Confidential Information shall be delivered to counsel. In the alternative, Confidential Information may be made available for inspection and review by qualified persons in a place and time agreeable to the parties or as directed by the presiding officer.

7. To preserve the ability to protect Confidential Information, no party shall share Confidential Information with qualified person(s) associated with another party or with Commission Staff except as expressly allowed by the party desiring confidentiality or by order of the presiding officer.

8. Before reviewing Confidential Information, a person qualified under paragraph 3(e) must:

- a. Read a copy of this Protective Order;
- b. Execute a statement acknowledging that the order has been read and agreeing, in return, for access to the information, to be bound by the terms of the order;
- c. Date the statement;
- d. Provide his or her 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 their current, past, and expected clients.

Counsel shall deliver a copy of the signed statement including the information in (d) and (e) above to the party desiring confidentiality and to all parties of record. A person qualified under paragraph 3(e) shall not have access to Confidential Information sooner than five (5) business days after receipt of a copy of the signed statement including the information in (d) and (e) above by the party desiring confidentiality.

9. Subject to paragraphs 7 and 8, all qualified person(s) shall have access to Confidential Information, unless the party desiring confidentiality protests as provided in this paragraph. The party desiring to restrict qualified person(s) from accessing specific Confidential Information must provide written notice to the qualified person(s) and counsel for the party associated with the qualified person(s) as soon as the party becomes aware of reasons to restrict access. The parties must promptly meet and attempt to resolve any dispute over access to Confidential Information on an informal basis before filing a motion with the presiding officer. If the dispute cannot be resolved informally, either party may file a motion with the presiding officer for resolution. Any such motion must describe in detail the intermediate measures, including selected redaction, explored by the parties and explain why such measures do not resolve the dispute. After receipt of the written notice as required in this paragraph, the specific Confidential Information shall not be disclosed to the qualified person(s) pending informal resolution between the parties or the presiding officer's or Commission's ruling on a motion.

**Preservation of Confidentiality-**

10. All persons who are given access to any Confidential Information by reason of this order shall not use or disclose the Confidential Information for purposes of business competition, or for any purpose other than the purposes of preparation for and conduct of this proceeding, and shall take all reasonable precautions to keep the Confidential Information secure.

Qualified persons may copy, microfilm, microfiche, or otherwise reproduce Confidential Information to the extent necessary for the preparation and conduct of this proceeding. Qualified persons may not disclose Confidential Information to anyone who is not a qualified person.

**Information Given to the Commission-**

11. Confidential Information that is: a) filed with the Commission or its staff, b) made an exhibit, c) incorporated into a transcript, or d) incorporated into a pleading, brief, or other document, shall be separately bound and placed in a sealed envelope or other appropriate container. To the extent practicable, only the portions of a document that fall within ORCP 36(C)(7) shall be placed in the envelope/container. The envelope/container shall bear the legend:

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

12. The Commission's Administrative Hearings Division shall store the Confidential Information in a locked cabinet dedicated to the storage of Confidential Information.

**Duration of Protection-**

13. The confidentiality of Confidential Information shall be preserved until the Commission, by order, terminates the protection conferred by this order.

**Destruction After Proceeding-**

14. Counsel of record may retain memoranda or pleadings containing Confidential Information to the extent reasonably necessary to maintain a file of this proceeding. The information retained may not be disclosed to any person. Any other person retaining Confidential Information or documents containing such Confidential Information must destroy or return it to the party desiring confidentiality within 90 days after final resolution of this proceeding unless the party desiring confidentiality consents, in writing, to retention of the Confidential Information or documents containing such Confidential Information. This paragraph does not apply to the Commission or its staff.

**Appeal to the Presiding Officer-**

15. If a party disagrees with the designation of information as confidential, the party shall contact the designating party and attempt to resolve the dispute on an informal basis. If the parties are unable to resolve the dispute, the party desiring to use the information may move for exclusion of the information from the protection conferred by this order. The motion shall:

- a. Specifically identify the contested information, and
- b. Assert that the information does not fall within ORCP 36(C)(7) and state the reasons therefore.

The party resisting disclosure has the burden of showing that the challenged information falls within ORCP 36(C)(7). If the party resisting disclosure does not respond to the motion within ten (10) calendar days, the challenged information shall be removed from the protection of this order.

The information shall not be disclosed pending a ruling by the Commission or the presiding officer on the motion.



**Additional Protection-**

16. The party desiring additional protection may move for any of the remedies set forth in ORCP 36(C). The motion shall state:

- a. The parties and persons involved;
- b. The exact nature of the information involved;
- c. The exact nature of the relief requested;
- d. The specific reasons the requested relief is necessary; and
- e. A detailed description of the intermediate measures, including selected redaction, explored by the parties any why such measures do not resolve the dispute.

The information need not be released and, if released, shall not be disclosed pending the Commission's ruling on the motion.

SIGNATORY PAGE  
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**Consent to be Bound-**

This governs the use of "Confidential Information" in this proceeding.

\_\_\_\_\_ (Party) agrees to be bound by its terms of this Protective Order.

By:		
	Signature & Printed	Date

\_\_\_\_\_ (Party) authorizes the following persons to review Confidential Information on its behalf. Qualified person(s) under paragraph 3(a) through (d) do not need to sign this Protective Order. Each person signing and dating this document below acknowledges that he or she has read a copy of the Protective Order and agrees to be bound by its terms.

By:		
	Signature & Printed	Date

By:		
	Signature & Printed	Date

By:		
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	Signature & Printed	Date