

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UG 187

In the Matter of

NORTHWEST NATURAL GAS COMPANY

Annual Purchased Gas Cost and Technical Rate
Adjustments.

ORDER

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

On August 31, 2009, Northwest Natural Gas Company dba NW Natural (NW Natural or Company) filed a Motion for a Modified Protective Order (MPO) with the Public Utility Commission of Oregon (Commission). NW Natural states that good cause exists for the issuance of a MPO to provide additional protective measures for highly competitively sensitive information relating to the Company's natural gas acquisition contracts and strategies. NW Natural also requests expedited consideration of its motion in order to allow parties that execute the protective order to obtain prompt access to the confidential and highly confidential material filed in this proceeding. NW Natural adds that the Commission Staff, the Citizens' Utility Board, and the Northwest Industrial Gas Users do not object to the motion based on the understanding that the request is necessitated by the unique nature of the information required in this docket and is not intended to be applied in the Company's proceedings generally.

In support of its motion, NW Natural states that good cause exists to issue a MPO to protect commercially sensitive and confidential business information related to the Company's proposed purchased gas adjustment (PGA) and gas supply portfolio. NW Natural explains that the Commission's recently adopted PGA Filing Guidelines require the Company to provide information regarding its gas acquisition strategy, much of which is highly sensitive and would expose the Company to competitive harm if potential counterparties and market competitors obtained the information. Therefore, NW Natural requests that a MPO be issued that would provide heightened protection for this highly confidential information. Specifically, NW Natural proposes that the MPO restrict access to information designated as highly confidential except upon a showing of a legitimate need for the information that outweighs the potential for competitive harm to the Company resulting from disclosure. The proposed MPO would also require certification that qualified persons do not advise decision makers or become involved in decision making by natural gas competitors relevant to the highly confidential information and that the person understands that sanctions may apply for violations of Commission orders. The proposed MPO would also preclude qualified persons from sharing highly confidential information with other qualified persons except for those representing the same party without NW Natural's consent to avoid inadvertent disclosures of Highly Confidential Information.

Pursuant to OAR 860-012-0035(1)(k), I find that good cause exists to issue the MPO, attached as Appendix A. NW Natural's motion for a MPO is granted.

ORDER

IT IS ORDERED that the Modified Protective Order, attached as Appendix A, shall govern the disclosure of confidential information in this docket.

Made, entered, and effective on SEP 01 2009.



A handwritten signature in black ink, appearing to read "Michael Grant", is written over a horizontal line.

Michael Grant
Chief Administrative Law Judge

A party may appeal this order to the Commission pursuant to OAR 860-014-0091.

MODIFIED PROTECTIVE ORDER
DOCKET NO. UG 187

Scope of this Order-

1. This order governs the acquisition and use of “Confidential Information” and “Highly 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. “Highly Confidential Information” is commercially sensitive information relating to NW Natural Gas Company’s (NW Natural or Company) natural gas acquisition contracts and strategy that has been designated as such by NW Natural because its disclosure imposes a highly significant risk of competitive harm to the Company.

4. With respect to Confidential Information, a “qualified person” is an individual who is:

- a. An author(s), addressee(s), or originator(s) of the Confidential Information;
- b. A Commissioner or Commission staff;
- c. Counsel of record for a party;
- d. A person employed directly by counsel of record; or
- e. A person qualified pursuant to paragraph 14. This includes parties and their employees.

5. With respect to Highly Confidential Information, a “qualified person” is an individual who is:

- a. An author(s), addressee(s), or originator(s) of the Confidential Information;
- b. A Commissioner or Commission staff;
- c. A person qualified pursuant to paragraph 12. This includes parties, their employees, counsel of record for a party, and a person employed directly by counsel of record.

Designation of Confidential or Highly Confidential Information-

6. 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 MODIFIED 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).

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

HIGHLY CONFIDENTIAL
SUBJECT TO MODIFIED PROTECTIVE ORDER

To the extent practicable, the party shall designate as highly confidential only those portions of the document that relate to the Company's natural gas acquisition contracts and strategy.

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

Information Given to the Commission-

8. 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 printed on YELLOW paper, separately bound and placed in a sealed envelope or other appropriate container. An original and five copies, each separately sealed, shall be provided to the Commission. 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.

9. Highly 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 printed on GREEN paper, separately bound and placed in a sealed envelope or other appropriate container. An original and five copies, each separately sealed, shall be provided to the Commission. 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 HIGHLY CONFIDENTIAL INFORMATION. THE
INFORMATION MAY BE SHOWN ONLY TO QUALIFIED
PERSONS AS DEFINED IN THE ORDER.

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

Disclosure of Confidential Information or Highly Confidential Information-

11. Confidential Information. Parties desiring receipt of Confidential Information shall sign the Consent to be Bound Form attached as Appendix B. This requirement does not apply to the Commission staff. Confidential Information shall not be disclosed to any person other than a "qualified person," as defined in paragraph 4. 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 Administrative Law Judge.

12. Highly Confidential Information. Parties desiring receipt of Highly Confidential Information shall file a motion with the Commission requesting access to Highly Confidential Information. The party filing such a motion must show that (a) the party has a legitimate and non-competitive need for the Highly Confidential Information (*i.e.*, customers may suffer potential harm if the party does not receive access to the Highly Confidential Information) and not simply a general interest in the information, and (b) the legitimate need identified by the party outweighs the potential for competitive harm to the Company resulting from disclosure of the Highly Confidential Information. If the Commission grants such a motion, the party shall sign the Consent to be Bound Form attached as Appendix C certifying that:

- a. The person requesting access for the party to Highly Confidential Information is not now involved, and will not for a period of two years involve themselves in, decision making with respect to which the Highly Confidential Information may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with NW Natural with respect to the acquisition of natural gas;
- b. The person requesting access to Highly Confidential Information does not, and will not for a period of two years provide to any decision makers described in paragraph 12(a) information with respect to which the Highly Confidential Information may be relevant; and
- c. The person requesting access to Highly Confidential Information understands that ORS 756.990(2) allows the Commission to

impose monetary sanctions if a party subject to the jurisdiction of the Commission violates an order of the Commission.

The requirements in this paragraph 12 do not apply to the Commission staff. Highly Confidential Information shall not be disclosed to any person other than a "qualified person," as defined in paragraph 5. When feasible, Highly Confidential Information shall be delivered to counsel. In the alternative, Highly 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 Administrative Law Judge.

13. Qualified persons may disclose Confidential Information to any other qualified person, unless the party desiring confidentiality protests as provided in paragraph 15. Qualified persons may not disclose Highly Confidential Information to any other qualified person, except for other qualified persons for the same party, without the permission of NW Natural.

14. To become a qualified person under paragraph 4(e) or 5, a person must:

- a. Read a copy of this Modified Protective Order;
- b. Execute the Consent to be Bound Form relevant to Confidential Information or Highly Confidential Information, as applicable;
- c. Date the statement;
- d. Provide a name, address, employer, and job title; and
- e. If the person is a consultant or advisor for a party, provide a description of the nature of the person's consulting or advising practice, including the identity of his/her current, past, and expected clients.

Counsel 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. Such notification may be made via e-mail or facsimile. A person qualified under paragraph 4(e) shall not have access to Confidential Information and a person qualified under paragraph 5 shall not have access to Highly 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.

15. All qualified persons shall have access to Confidential Information, unless the party desiring confidentiality protests as provided in this paragraph. The qualified persons who have signed the Consent to be Bound relevant to Highly Confidential Information shall have access to Highly Confidential Information, unless the party desiring confidentiality protests as provided in this paragraph. The party desiring to restrict the qualified person(s) from accessing specific Confidential Information or Highly 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 confer and attempt to resolve any dispute over access to Confidential Information or Highly Confidential Information on an informal basis before filing a motion with the Administrative Law Judge. If the dispute cannot be resolved informally, either party may file a motion with the

Administrative Law Judge for resolution. Either party may also file a motion if the other party does not respond within five days to a request to resolve the dispute. A 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 or Highly Confidential Information shall not be disclosed to the qualified person(s) until the issue is resolved.

Preservation of Confidentiality-

16. All persons who are given access to Confidential Information or Highly Confidential Information by reason of this order shall not use or disclose the Confidential Information or Highly Confidential Information 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 or Highly Confidential Information secure. Disclosure of Confidential Information or Highly Confidential Information for purposes of business competition is strictly prohibited.

Qualified persons may copy, microfilm, microfiche, or otherwise reproduce Confidential Information or Highly Confidential Information to the extent necessary for the preparation and conduct of this proceeding. Qualified persons may disclose Confidential Information or Highly Confidential Information only to other qualified persons associated with the same party.

Duration of Protection-

17. The Commission shall preserve the confidentiality of Confidential Information or Highly Confidential Information for a period of five years from the date of the final order in this docket, unless extended by the Commission at the request of the party desiring confidentiality. The Commission shall notify the party desiring confidentiality at least two weeks prior to the release of Confidential Information or Highly Confidential Information.

Destruction after Proceeding-

18. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Confidential Information or Highly Confidential Information to the extent reasonably necessary to maintain a file of this proceeding or to comply with requirements imposed by another governmental agency or court order. The information retained may not be disclosed to any person. Any other person retaining Confidential Information or Highly Confidential Information or documents containing such Confidential Information or Highly 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 Highly Confidential Information or documents containing such Confidential Information or Highly Confidential Information. This paragraph does not apply to the Commission or its Staff.

Appeal to the Presiding Officer-

19. If a party disagrees with the designation of information as confidential or highly 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 Administrative Law Judge on the motion.

Additional Protection-

20. 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 and 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.

CONFIDENTIAL INFORMATION

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I. Consent to be Bound

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

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

By: _____
Signature & Printed Date

II. Persons Qualified pursuant to Paragraphs 4(a) through 4(d): Confidential Information

_____ (Party) identifies the following person(s) automatically qualified under paragraph 4(a) through (d).

Printed Date

Printed Date

Printed Date

Printed Date

III. Persons Qualified pursuant to Paragraph 4(e) and Paragraph 14: Confidential Information

I have read the Modified Protective Order, agree to be bound by the terms of the order, and will provide the information identified in paragraph 14.

By: _____
Signature & Printed Date

By: _____
Signature & Printed Date

By: _____
Signature & Printed Date

By: _____
Signature & Printed Date

HIGHLY CONFIDENTIAL INFORMATION

UG 187

I. Consent to be Bound

This Modified Protective Order governs the use of “Confidential Information” and “Highly Confidential Information” in this proceeding.

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

By: _____
Signature & Printed Date

II. Persons Qualified pursuant to Paragraph 5 and Paragraph 14: Highly Confidential Information

I have read the Modified Protective Order, agree to be bound by the terms of the order, and will provide the information identified in paragraph 14.

I certify that:

(1) I am not now involved, and will not for a period of two years involve myself in, decision making with respect to which the Highly Confidential Information may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with NW Natural with respect to the acquisition of natural gas;

(2) I do not, and will not for a period of two years provide to any decision makers described in paragraph 12(a) information with respect to which the Highly Confidential Information may be relevant;

(3) 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.

By: _____
Signature & Printed Date

By: _____
Signature & Printed Date

By: _____
Signature & Printed Date

By: _____