

ORDER NO. 12 170

ENTERED MAY 10 2012

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1565

In the Matter of the

PUBLIC UTILITY COMMISSION OF
OREGON

Investigation of Fuel Switching and
Cross Fuel Energy Efficiency Issues.

MODIFIED
PROTECTIVE
ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER
GRANTED

On April 27, 2012, Northwest Natural Gas Company (NW Natural) filed a motion for a modified protective order in this docket.¹ NW Natural seeks a modified protective order to facilitate discovery of highly confidential information in this docket, including highly confidential information requested by other utilities. NW Natural states that disclosure of this information could pose significant risk of competitive harm to the company and its customers.

On May 2, 2012, the Citizens' Utility Board of Oregon (CUB) filed objections to NW Natural's proposed protective order and submitted an alternative order. CUB indicated that Staff, Portland General Electric Company, and the NW Energy Coalition supported CUB's proposed order, which is modeled closely after the modified protective order issued in docket UG 221. NW Natural indicated support for CUB's proposed order and withdrew its own version. No party objected to CUB's proposed form of protective order.

Given that no party objects to the use of CUB's proposed protective order in this docket, I find that good cause exists to issue the modified protective order attached as Appendix A. Under the circumstances of this docket, the order permits the broadest possible discovery consistent with the need to protect confidential and highly confidential information. It shields no specific documents and makes no judgment

¹ General Protective Order No. 12-140 was entered in these proceedings on April 23, 2012.

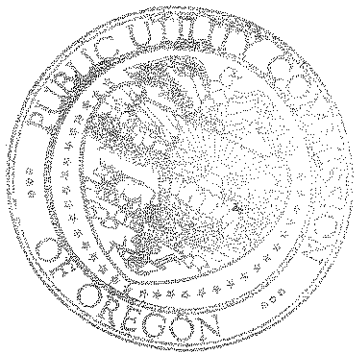
about whether any particular document contains a trade secret or commercially sensitive information. Rather, the order adopts a process for resolving discovery disputes that include sensitive information.

Any person given access to confidential information or highly confidential information must ensure compliance with the modified protective order and must take reasonable precautions to keep confidential information secure. Without the written permission of the designating party, no person may use or disclose the information for any purpose other than participating in these proceedings. Questions regarding whether a particular person is a "qualified person" under the modified protective order may be directed to the Administrative Hearings Division at (503) 378-6678 or e-mail puc.hearings@state.or.us.

ORDER

IT IS ORDERED that the Modified Protective Order, attached as Appendix A, governs the disclosure of confidential and highly confidential information in these proceedings.

Made, entered, and effective on MAY 10 2012.



Lisa D. Hardie

Lisa D. Hardie
Administrative Law Judge

A party may appeal this order to the Commission under OAR 860-001-0420.

MODIFIED PROTECTIVE ORDER
DOCKET NO. UM 1565

Scope of this Order

1. This order governs the acquisition and use of “Confidential Information” and “Highly Confidential Information” in these proceedings. This order supersedes the prior order issued in this docket relating to the protection of Confidential Information and shall remain in effect unless further modified by the Commission.

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”) and the Commission’s rules governing protective orders.
3. “Highly Confidential Information” is confidential information that is trade secret or other competitively-sensitive commercial information that is not adequately protected by the general protective order and that falls within the scope of ORCP 36(C)(7) and the Commission’s rules governing protective orders.
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, Administrative Law Judge (ALJ), or Commission Staff;
 - c. An employee of the Citizens’ Utility Board of Oregon (CUB);
 - d. Counsel of record for a party;
 - e. A person employed directly by counsel of record; or
 - f. A person qualified pursuant to paragraph 17. This includes all other 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 Highly Confidential Information;
 - b. A Commissioner, ALJ, or Staff;
 - c. An employee or counsel of CUB;
 - d. A person qualified pursuant to paragraph 17. This includes all other parties, their employees, counsel of record for a party, and a person employed directly by counsel of record. Utility employees, other than in-house counsel of record and persons employed directly by in-house counsel of record, are not eligible to qualify under this provision.

Designation of Confidential Information or Highly Confidential Information

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

CONFIDENTIAL
SUBJECT TO MODIFIED PROTECTIVE ORDER

To the extent practicable, the party may designate as confidential only the portions of the material covered by ORCP 36(C)(7) and the Commission's rules governing protective orders.

7. 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

To the extent practicable, the party may designate as highly confidential only the portions of the material covered by ORCP 36(C)(7) and the Commission's rules governing protective orders that will not be adequately protected by the general protective order.

8. If any party objects to the Confidential and Highly Confidential designation by letter or e-mail 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 Confidential and Highly Confidential. The burden resides with the designating party to show that the challenged information is covered by ORCP 36(C)(7) or exempt from disclosure under the Public Records Law. If the parties are unable to resolve a dispute about a confidential or highly confidential designation informally, the dispute provisions in paragraph 22 apply.
9. A party may designate as Confidential or 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 using the applicable color paper required by paragraphs 10 and 11. Parties in possession of newly designated Confidential Information or Highly Confidential Information must, when feasible, ensure that all copies of the previously undesignated information are destroyed or are annotated to bear the above legend if requested by the designating party.

Information Given to the Commission

10. Confidential Information that is (a) filed with or provided to the Commission or its Staff; (b) made an exhibit; (c) incorporated into a transcript; or (d) incorporated into a pleading, brief, or other document, must 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 must be provided to the Commission. Only the portions of a document that fall within ORCP 36(C)(7) may be placed in the envelope/container. The envelope/container must bear the legend:

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

11. Highly Confidential Information that is (a) filed with or provided to the Commission or its Staff; (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. An original and five copies, each separately sealed, must be provided to the Commission. Only the portions of a document that fall within ORCP 36(C)(7) may be placed in the envelope/container. The envelope/container must bear the legend:

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

12. The Commission's Administrative Hearings Division, Staff and other parties must store the Confidential Information and Highly Confidential Information in a locked room or cabinet dedicated to the storage of Confidential Information and Highly Confidential Information.

Disclosure of Confidential Information

13. To receive Confidential Information, all Qualified Persons except Commission Staff must sign the Consent to be Bound Form attached as Appendix B. When it is not impracticable, Confidential Information must be delivered Qualified Persons on the service.

Disclosure of Highly Confidential Information

14. To receive Highly Confidential Information, all Qualified Persons except Commission Staff must sign the Consent to be Bound Form attached as Appendix C. When it is not impracticable, Highly Confidential Information must be delivered to Qualified Persons on the service list.

15. A person signing a Consent to be Bound Form attached as Appendices B and C certifies that:
- a. The person receiving Confidential Information or Highly Confidential Information agrees that they will make copies only as needed for purposes of review and submission to the Commission.
 - b. The person receiving Confidential Information or Highly Confidential Information agrees to keep the information in a secure manner as required by paragraph 12.
 - c. The person receiving Confidential Information or 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.
 - d. The party the person is associated with has a legitimate and non-competitive need for the Highly Confidential Information and not simply a general interest in the information.
16. A Qualified Person may disclose Confidential Information to any other Qualified Person, unless the party desiring confidentiality protests as provided in paragraph 18. A Qualified Person may disclose Highly Confidential Information to any other person qualified to receive Highly Confidential Information, unless the party desiring confidentiality protests as provided in paragraph 18.
17. To become a Qualified Person under 4(c), 4(f), 5(c) or 5(d), 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.

Utility employees, other than in-house counsel of record and persons employed directly by in-house counsel of record, are not eligible to qualify under section 5(d).

Counsel must file a copy of the signed statement including the information in (d) and (e) with the Commission and deliver the statement to the designating party and to all parties of record. Upon receipt of the designation if there is no objection to the qualified person, made pursuant to paragraph 18, then Confidential Information or Highly Confidential Information must be delivered to the qualified person within five business days.

18. All persons qualified to receive Confidential Information may have access to Confidential Information unless the designating party objects as provided in this paragraph. 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 Confidential Information or Highly Confidential Information on an informal basis before requesting a review by the ALJ. After receipt of the written notice of objection required by this paragraph, the specific Confidential Information or Highly Confidential Information may not be disclosed to the Qualified Person until the issue is resolved.

Preservation of Confidentiality

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

Duration of Protection

21. The Commission will 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 proceeding, unless extended by the Commission at the request of the designating party. The Commission will notify the designating at least two weeks prior to the release of Confidential Information or Highly Confidential Information.

Destruction after Proceeding

22. Counsel of record for any party 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 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 Confidential or Highly Confidential Information must destroy or return it to the designating party within 90 days after final resolution of these proceedings unless the designating party consents in writing to retention of the Confidential or Highly Confidential Information. This paragraph does not apply to the Commission or its Staff.

Appeal to Presiding Administrative Law Judge

23. Any party may request that the ALJ conduct a conference to help resolve disputes related to this protective order.

A party challenging the designation of information as Confidential or 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 Confidential or 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 confidential or highly confidential information designation from the challenged information.

Additional Protection

24. If a designating party seeks additional protection, the party may move for any of the remedies set forth in ORCP 36(C). The motion must state:
- a. The parties and person involved;
 - b. The exact nature of the information involved;
 - c. The legal basis for the claim that the information is protected under ORCP 36(C)(7) or the Public Records Law;
 - d. The exact nature of the relief requested;
 - e. The specific reasons the requested relief is necessary; and
 - f. A detailed description of the intermediate measures, including selected redaction, explored by the parties and why those measures are insufficient.

Pending the Commission's ruling on a motion for additional protection, the information need not be released.

APPENDIX B
Signatory Page for Confidential Information
DOCKET NO. UM 1565

I. Consent to be Bound

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

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

By: Signature: _____
Printed Name: _____
Date: _____

II. Persons Qualified pursuant to Paragraphs 4(a), (b), (d), and (e): Confidential Information

_____ (Party) identifies the following person(s) automatically qualified under paragraph 4(a), (b), (d), and (e).

PRINTED NAME	DATE

III. Persons Qualified pursuant to Paragraph (4)(c) and (f) and Paragraph 17:
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 17(e).

By: Signature: _____ Date: _____
 Printed Name: _____
 Address: _____
 Employer: _____
 Job Title: _____
 Paragraph 17(e) information also provided.

By: Signature: _____ Date: _____
 Printed Name: _____
 Address: _____
 Employer: _____
 Job Title: _____
 Paragraph 17(e) information also provided.

By: Signature: _____ Date: _____
 Printed Name: _____
 Address: _____
 Employer: _____
 Job Title: _____
 Paragraph 17(e) information also provided.

By: Signature: _____ Date: _____
 Printed Name: _____
 Address: _____
 Employer: _____
 Job Title: _____
 Paragraph 17(e) information also provided.

By: Signature: _____ Date: _____
 Printed Name: _____
 Address: _____
 Employer: _____
 Job Title: _____
 Paragraph 17(e) information also provided.

By: Signature: _____ Date: _____
 Printed Name: _____
 Address: _____
 Employer: _____
 Job Title: _____
 Paragraph 17(e) information also provided.

APPENDIX C
Signatory Page for Highly Confidential Information
DOCKET NO. UM 1565

I. Consent to be Bound

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

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

Signature: _____

Printed: _____

Date: _____

II. Persons Qualified pursuant to Paragraph 5 and Paragraph 17: 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 17.

I certify that:

- a. I will make copies only as needed for purposes of review and submission to the Commission.
b. I agree to keep the information in a secure manner as required by paragraph 12.
c. 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.
d. The party I am associated with 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: _____

Paraphrase 17(e) information also provided.

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____
 Paragraph 17(e) information also provided.

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____
 Paragraph 17(e) information also provided.

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____
 Paragraph 17(e) information also provided.

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____
 Paragraph 17(e) information also provided.

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____
 Paragraph 17(e) information also provided.

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____
 Paragraph 17(e) information also provided.