

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UG 344

In the Matter of

NORTHWEST NATURAL GAS  
COMPANY, dba NW NATURAL,Request for a General Rate Revision.MODIFIED  
PROTECTIVE  
ORDER

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

On January 3, 2018, Northwest Natural Gas Company, dba NW Natural, filed a revised motion for a modified protective order. The modified protective order encompasses the terms of the general protective order, but contains additional restrictions for information designated as highly protected information. NW Natural states that no party to this proceeding objects to the modified protected order.

NW Natural states that a protective order is needed to protect certain trade secret information that falls within the scope of ORCP 36(C)(7). NW Natural describes this information as confidential testimony and responses to the Commission's Standard Data Requests with commercially sensitive load projections, confidential market analyses and business projections, confidential employee data, confidential information regarding contracts for the purchase or sale of natural gas, and commercially sensitive vendor contracts.

NW Natural's motion also includes the information required by OAR 860-001-0080(3)(a)(A)-(E) for a modified protective order. NW Natural describes certain information contained in its filing or to be produced in this proceeding as highly confidential, including its five-year financial forecast and its corporate dividend policy. NW Natural states that the public release of highly confidential information would cause serious harm to the Company's financial interests, its customers, and could necessitate a public filing in the event that such material is disclosed, even inadvertently.

NW Natural seeks additional protections for information designated as highly protected by requiring that individuals who are not Commissioners, Commission Staff, CUB regulatory staff, NWIGU, or attorneys for a party demonstrate a legitimate, non-competitive need for a specific item of highly protected information before gaining access. Those with only a general interest in the information will not be permitted to access it. Highly protected information must also be maintained in a manner distinct from non-confidential information and from protected information,

with protected information printed on yellow paper and highly confidential information be printed on green paper, or for electronic spreadsheets or models, will be provided on a read-only compact disk. Like protected information, highly protected information must be stored in a locked room or cabinet, and highly protected information may not be used or disclosed for any purpose other than participation in this proceeding. Finally, the modified protective order prohibits electronic copying or distribution of highly protected information, as it will be provided in hard copy or read-only compact disk.

I find that good cause exists to issue a general protective order, which is attached. A party may appeal this order to the Commission under OAR 860-001-0110.

**ORDER**

IT IS ORDERED that the modified protective order, attached, is adopted.

Made, entered, and effective on JAN 04 2018.



*S. Rowe*

\_\_\_\_\_  
Sarah Rowe  
Administrative Law Judge

**MODIFIED PROTECTIVE ORDER**  
DOCKET NO. UG 344

**Scope of this Order**

1. This order governs the acquisition and use of "Protected Information" and "Highly Protected Information" produced or used by any party to these proceedings.

**Designation of Protected Information and Highly Protected Information**

2. Any party may designate as Protected Information any information the party reasonably determines:
  - (a) Falls within the scope of ORCP 36(C)(7) (a trade secret or other confidential research, development, or commercial information); and
  - (b) Is not publicly available.
3. Any party may designate as Highly Protected Information any information the party reasonably determines:
  - (a) Falls within the scope of ORCP 36(C)(7) (a trade secret or other confidential research, development, or commercial information);
  - (b) Is not publicly available; and
  - (c) Is extremely commercially sensitive information that cannot be disclosed even under the Commission's normal protections for Protected Information.
4. To designate information as Protected Information or Highly Protected Information, a party must place the following legend on the material:

[HIGHLY PROTECTED/PROTECTED] INFORMATION  
SUBJECT TO MODIFIED PROTECTIVE ORDER

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

5. Each page of a document containing Protected Information filed with the Commission or provided to Qualified Persons under this order (as defined in Paragraph 14) must be printed on yellow paper and placed in a sealed envelope or other appropriate container. Each page of a document containing Highly Protected Information filed with the Commission or provided to HC Qualified Persons under this order (as defined in Paragraph 18) must be printed on green paper, or for electronic spreadsheets or models, will be provided on a read-only compact disc, and placed in a sealed envelope or other appropriate container. *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. \_\_\_\_\_  
AND CONTAINS [PROTECTED/HIGHLY PROTECTED]  
INFORMATION. THE INFORMATION MAY BE SHOWN  
ONLY TO [HC] QUALIFIED PERSONS AS DEFINED IN THE  
ORDER ELIGIBLE TO RECEIVE [PROTECTED/HIGHLY  
PROTECTED] INFORMATION.

6. The Commission's Administrative Hearings Division, Commission Staff, and other parties must store Highly Protected Information in a locked room or cabinet dedicated to the storage of Highly Protected Information.
7. Protected Information disclosed by a designating party to a Qualified Person through informal discovery or by means of the Commission's Huddle website will be marked "Protected Information" and uploaded to a file folder designated "confidential" in Huddle, if applicable. Highly Protected Information will be provided in hard copy only, or for electronic spreadsheets or models, will be provided on a read-only compact disc, and may not be duplicated, uploaded to the Commission's Huddle website, or otherwise distributed electronically. Highly Protected Information provided on a compact disc may be accessed from that disc only, and may not be saved to any computer, server, or uploaded to any website. Any discs containing Highly Protected Information must be stored as described in Paragraph 6.
8. A party may designate as Protected Information or Highly Protected Information any information previously provided by giving written notice to the Commission and other parties. Parties in possession of newly designated Protected Information or Highly Protected Information must make reasonable efforts to ensure that all copies of the material containing the information bear the above legend if requested by the designating party.
9. A designating party must make reasonable efforts to ensure that information designated as Protected Information or Highly Protected Information continues to warrant protection under this order. If designated information becomes publically available or no longer falls within the scope of ORCP 36(C)(7), the designating party should make reasonable efforts to remove the designation and provide written notice to the Commission and other parties.

#### **Challenge to Designation of Protected Information or Highly Protected Information**

10. A party may informally challenge any designation of Protected Information or 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 the applicable definition in this Order. Any party may request that the Administrative Law Judge (ALJ) hold a conference to help resolve disputes about proper designation.
11. 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.
12. Within five business days of service of the objection, the designating party must either remove the 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 the Oregon Public Records Act, ORS 192.410 *et seq*, 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 designation from the challenged information.

13. 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 Protected Information**

14. Only persons qualified to receive Protected Information in accordance with Paragraphs 15-17 below ("Qualified Persons") may access Protected Information designated by another party under this Modified Protective Order.
15. Persons automatically bound by this Modified Protective Order and qualified to access Protected Information are:
  - (a) Commission employees; and
  - (b) Assistant Attorneys General assigned to represent the Commission.
16. Persons qualified to access Protected Information upon signing the Consent to be Bound section of Appendix B are:
  - (a) Counsel for a party;
  - (b) Any person employed directly by counsel of record; and
  - (c) An employee of the Regulatory Division at the Oregon Citizens' Utility Board.

A party must identify all these persons in section 2 of Appendix B when consenting to be bound by the order, and must update this list throughout the proceeding to ensure it accurately identifies Qualified Persons.

17. A party bound by the Modified Protective Order may seek to qualify other persons to access Protected Information by having those persons complete and sign Appendix C, and submitting that information to the Commission and all parties. Within five business days of receiving a copy of Appendix C, the designating party must either provide the requested access to Protected Information or file an objection under Paragraph 24 and 25.

#### **Access to Highly Protected Information**

18. Only persons qualified to receive Highly Protected Information in accordance with Paragraphs 19-21 below ("HC Qualified Persons") may access Highly Protected Information designated by another party under this Modified Protective Order.
19. Persons automatically bound by this Modified Protective Order and qualified to access Highly Protected Information are:
  - (a) Commission employees; and
  - (b) Assistant Attorneys General assigned to represent the Commission.

20. Persons qualified to access Highly Protected Information upon signing the Consent to be Bound section of Appendix D are:

- (a) Counsel for a party;
- (b) Any person employed directly by counsel of record; and
- (c) An employee of the Regulatory Division at the Oregon Citizens' Utility Board.

A party must identify all these persons in section 2 of Appendix D when consenting to be bound by the order, and must update this list throughout the proceeding to ensure it accurately identifies HC Qualified Persons.

21. An HC Qualified Person bound by the Modified Protective Order may seek to qualify other persons to access Highly Protected Information by having those persons complete and sign Appendix E, and submitting that information to the Commission and all parties. Within five business days of receiving a copy of Appendix E, the designating party must either provide the requested access to Protected Information or file an objection under Paragraphs 23 and 24.
22. For each person bound under Paragraphs 20 and 21, counsel for the party sponsoring the person must file a signed copy of Appendix D or Appendix E with the Commission and deliver a copy to the designating party and all parties of record. Upon receipt of the signed Appendix, if there is no objection to the person to be qualified thereunder made under Paragraph 23, then Highly Protected Information must be delivered to the person within five business days.

### **Objection to Access to Protected or Highly Protected Information**

23. All Qualified Persons have access to Protected Information and all HC Qualified Persons 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 or HC Qualified Person, the designating party must provide the Qualified Person or HC Qualified Person and his or her counsel written notice stating the basis for the objection. The parties must promptly confer and attempt to resolve the dispute on an informal basis before requesting review by an ALJ. After receipt of the written notice of objection required by this paragraph, the specific Protected Information or Highly Protected Information may not be disclosed to the Qualified Person or HC Qualified Person until the issue is resolved.
24. 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 five 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 Protected Information or Highly Protected Information may not be disclosed to the person subject to the objection.

### **Preservation of Confidentiality**

25. All Qualified Persons or HC Qualified Persons must take reasonable precautions to keep Protected Information and Highly Protected Information secure. A Qualified Person or HC Qualified Person may reproduce Protected Information and Highly Protected Information to the extent necessary to participate in these proceedings. Electronic duplication and transmittal of Highly Protected Information is strictly prohibited. A

Qualified Person or HC Qualified Person may discuss Protected Information or Highly Protected Information obtained under this order only with other Qualified Persons or HC Qualified Persons who have obtained the same information. Disclosure of Protected Information or Highly Protected Information for purposes of business competition is strictly prohibited.

26. Without the written permission of the designating party, any person given access to Protected Information and Highly Protected Information under this order may not use or disclose such information for any purpose other than participation in this proceeding.
27. 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.

#### **Destruction after Proceeding**

28. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Protected Information or 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. The information retained may not be disclosed to any person. Any other person retaining Protected 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 Protected Information. Any other person retaining Highly Protected 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 Protected Information and provide an affidavit to the designating party swearing that the Highly Protected Information has been destroyed. This paragraph does not apply to the Commission or its Staff.

#### **Duration of Protection**

29. The Commission will preserve the designation of information as Protected Information or 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 Protected Information or Highly Protected Information.



**APPENDIX C**  
**QUALIFICATION OF OTHER PERSONS TO RECEIVE PROTECTED INFORMATION**  
**DOCKET NO. UG 344**

**I. Persons Seeking Qualification to receive Protected Information under Paragraph 17:**

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

<b>Signature:</b>		<b>Date:</b>	
<b>Printed Name:</b>			
<b>Physical Address:</b>			
<b>Email Address:</b>			
<b>Employer:</b>			
<b>Associated Party:</b>			
<b>Job Title:</b>			
<b>If not employee of party, description of practice and clients:</b>			

APPENDIX D  
CONSENT TO BE BOUND  
DOCKET NO. UG 344

**I. Consent to be Bound:**

This Modified Protective Order and Appendix D governs the use of Protected Information in these proceedings.

\_\_\_\_\_ ("Party") agrees to be bound by the terms of the Modified Protective Order and certifies that it has an interest in this proceedings that is not adequately represented by other parties to the proceedings.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

**II. Persons Qualified under Paragraph 20:**

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

I certify that:

- a. I will make hard copies of Highly Protected Information only as needed for purposes of review and submission to the Commission. I will not make or distribute electronic copies of Highly Protected Information and will not transmit electronically documents that reveal the substance of Highly Protected Information.
- b. I agree to keep the information in a secure manner as required by Paragraphs 5, 6, 7, and 8 and destroy it at the conclusion of this proceeding as required by Paragraph 28.
- 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 with which I am associated has a legitimate and non-competitive need for the Highly Protected Information and not simply a general interest in the information.

18 002

ORDER NO.

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 E**  
**Signatory Page for Other Persons Seeking Qualification to Access Information Under Paragraph 21**  
DOCKET NO. UG 344

I. Persons Seeking Qualification Pursuant to Paragraph 21.

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

I certify that:

- a. I will make hard copies of Highly Protected Information only as needed for purposes of review and submission to the Commission. I will not make or distribute electronic copies of Highly Protected Information and will not transmit electronically documents that reveal the substance of Highly Protected Information.
- b. I agree to keep the information in a secure manner as required by Paragraphs 5, 6, 7, and 8 and destroy it at the conclusion of this proceeding as required by Paragraph 28.
- 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 with which I am associated has a legitimate and non-competitive need for the Highly Protected Information and not simply a general interest in the information.

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

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