

ORDER NO. 18-487

ENTERED Dec 20 2018

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UP 384

In the Matter of the Joint Application for
Approval of the Sale of

SUNRIVER WATER, LLC,

to

NW NATURAL WATER OF OREGON,
LLC,

Pursuant to ORS 757.480 and OAR 860-036-
2120.

MODIFIED PROTECTIVE ORDER

DISPOSITION: MODIFIED PROTECTIVE ORDERED ISSUED

On December 19, 2018, NW Natural Water of Oregon, LLC (Oregon Water) and Sunriver Water, LLC filed a motion for a modified protective order. The modified protective order supplements the General Protective Order issued in Order No. 18-410, and contains additional restrictions for information designated as highly protected information. The joint applicants state that no party to this proceeding objects to the modified protective order.

The motion includes the information required by OAR 860-001-0080(3)(a)(A)-(E) for a modified protective order. In sum, Oregon Water and Sunriver Water state that Sunriver Owners Association (SROA) has intervened in this proceeding and has expressed a competitive interest in acquiring Sunriver Water. For that reason, the joint applicants seek a modified protective order to prevent SROA and other potential intervening competitors from accessing competitively sensitive information regarding the terms of the Membership Interest Purchase Agreement and related information regarding Oregon Water's strategic planning and due diligence regarding Sunriver Water.

I find that good cause exists to issue a modified protective order, which is attached as Appendix A. A party may appeal this order to the Commission under OAR 860-001-0720.

ORDER

IT IS ORDERED that the Modified Protective Order, attached as Appendix A, is adopted.

Made, entered, and effective on Dec 20, 2018.



Michael Grant
Chief Administrative Law Judge



MODIFIED PROTECTIVE ORDER

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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.

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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: _____