

ORDER NO. 19-450

ENTERED Dec 23 2019

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UG 388

In the Matter of

NORTHWEST NATURAL GAS
COMPANY, dba NW NATURAL,

Application for a General Rate Revision.

MODIFIED
PROTECTIVE
ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED

On December 17, 2019, Northwest Natural Gas Company, dba NW Natural filed a motion for a modified protective order, and requested expedited treatment. The motion seeks additional restrictions, beyond those provided by a general protective order, for the acquisition and use of information designated as highly confidential.

Indicating that the company will soon file an application for a general rate revision, NW Natural states that the application will include responses to the Commission's Standard Data Requests (SDRs), with some responses containing highly confidential information that contains trade secrets and other commercial information falling under the scope of ORCP 36(C)(7). NW Natural explains that the SDRs require the company to provide the company's five-year financial forecast and corporate dividend policy information, for example. As both documents are extremely sensitive, NW Natural asserts that their public disclosure would cause significant competitive harm to the company and its customers. Seeking additional protection for highly confidential information, NW Natural requests issuance of a modified protective order with terms that decrease the risk of disclosure of highly confidential information by limiting the number of people with access, requiring a showing of legitimate, non-competitive need from certain persons, and restricting the manner and means by which highly confidential information may be maintained, stored, and transmitted to reduce the risk of inadvertent disclosure.

I find that good cause exists to grant the motion on an expedited basis. I the modified protective order attached. This expedited action does not foreclose a party from seeking reconsideration of this order under OAR 860-001-0720.

ORDER

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

Made, entered, and effective on Dec 23, 2019.



A handwritten signature in blue ink that reads "Traci Kirkpatrick".

Traci Kirkpatrick
Administrative Law Judge

MODIFIED PROTECTIVE ORDER
DOCKET UG 388

Scope of this Order

1. This order supplements the General Protective Order in this docket and governs the acquisition and use of “Highly Confidential Information” produced or used by any party in Docket No. UG 388.

Designation of Highly Confidential Information

2. “Highly Confidential Information” is information that:
 - a. falls within the scope of ORCP 36(C)(1) and the Commission’s rules governing protective orders; and
 - b. is not publicly available; and
 - c. is not adequately protected by the general protective order.
3. 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 NO. 19-____

To the extent practicable, the party may designate as highly confidential only the portions of the material that satisfy the definition in Paragraph 2 of this order.

4. If any party objects to the Highly Confidential designation by letter or email 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 Highly Confidential. (Note that correspondence that reveals the substance of any information marked as Highly Confidential may not be transmitted electronically.) The burden resides with the designating party to show that the challenged information is covered by ORCP 36(C)(1) or exempt from disclosure under the Public Records Law. If the parties are unable to resolve a dispute about a highly confidential designation informally, the dispute provisions in Paragraph 18 apply.
5. A party may designate as 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 Paragraph 6. Parties in possession of newly designated Highly Confidential 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.
6. Highly Confidential Information that is (a) filed with or provided to the Commission or its Staff or to other persons qualified to access Highly Confidential Information; (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. Only the portions of a document that fall

within ORCP 36(C)(1) may be placed in the envelope/container. The envelope/container must bear the legend:

THIS ENVELOPE IS SEALED UNDER ORDER NO. 19-____ AND
CONTAINS HIGHLY CONFIDENTIAL INFORMATION. THE
INFORMATION MAY BE SHOWN ONLY TO QUALIFIED PERSONS AS
DEFINED IN THIS ORDER.

7. The Commission's Administrative Hearings Division, Commission Staff, and other parties must store the Highly Confidential Information in a locked room or cabinet dedicated to the storage of Highly Confidential Information.
8. Highly Confidential Information will be provided in hard copy only and may not be duplicated, uploaded to the Commission's Huddle website, or otherwise distributed electronically.

Access to Highly Confidential Information

9. Commissioners, Commission Staff, and Assistant Attorney Generals assigned to represent the Commission automatically are qualified to access Highly Confidential Information and are bound by this order.
10. Counsel for any other party and employees of the Oregon Citizens' Utility Board Regulatory Division may become qualified to access Highly Confidential Information by completing and signing Appendix A.
11. A party bound by the General Protective Order in this docket may seek to qualify persons other than those described in Paragraphs 9 and 10 to access specific Highly Confidential Information by having each such person complete and sign Appendix B and submitting the Appendix to the designating party and to the Commission. Within five business days of receiving a signed copy of Appendix B, the designating party either must provide access to the requested Highly Confidential Information to the person who signed Appendix B or must file an objection under Paragraph 13.
12. For each person qualified under Paragraphs 10 and 11, counsel for the party sponsoring the person must file a signed copy of Appendix A or Appendix B with the Commission and deliver a copy to the designating party and to all parties of record. Upon receipt of the signed Appendix, if there is no objection to the qualified person, made pursuant to Paragraph 13 then Highly Confidential Information must be delivered to the Qualified Person within five business days.
13. 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 Highly Confidential Information on an informal basis before requesting a review by the Administrative Law Judge. After receipt of the written notice of objection required by this paragraph, the specific Highly Confidential Information may not be disclosed to the Qualified Person until the issue is resolved.

Preservation of Confidentiality

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

Duration of Protection

16. The Commission will preserve the confidentiality of 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 party at least two weeks prior to the release of Highly Confidential Information.

Destruction after Proceeding

17. Counsel of record for any party may retain memoranda, pleadings, testimony, discovery, or other documents containing 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 Highly Confidential 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 Confidential Information and provide an affidavit to the designating party swearing that the Highly Confidential Information has been destroyed. This paragraph does not apply to the Commission or its Staff.

Appeal to Presiding Administrative Law Judge

18. Any party may request that the ALJ conduct a conference to help resolve disputes related to this modified protective order. A party challenging the designation of information as 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 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 highly confidential designation from the challenged information.

APPENDIX A

Signatory Page for Parties and Persons Qualified to Access Highly Confidential Information Under Paragraph 10

I. Consent to be Bound

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

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

Signature: _____

Printed: _____

Date: _____

II. Persons Qualified Pursuant to Paragraph 10.

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

I certify that:

- a. I will make hard copies only as needed for purposes of review and submission to the Commission and will not make or distribute electronic copies of Highly Confidential Information and will not transmit electronically documents that reveal the substance of Highly Confidential Information.
- b. I agree to keep the information in a secure manner as required by Paragraph 7 and to destroy it at the conclusion of this proceeding as required by Paragraph 17.
- 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 Confidential Information 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: _____

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 B

Signatory Page for Other Persons Seeking Qualification to Access Highly Confidential Information Under Paragraph 11

I. Persons Seeking Qualification Pursuant to Paragraph 11.

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

I certify that:

- a. I will make hard copies only as needed for purposes of review and submission to the Commission and will not make or distribute electronic copies.
- b. I agree to keep the information in a secure manner as required by Paragraph 7 and destroy it at the conclusion of this proceeding as required by Paragraph 17.
- 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 Confidential Information and not simply a general interest in the information.
- e. I require access to the following specific Highly Confidential Information (describe with particularity) for the following reason(s) (attach pages if necessary):

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

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