

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2030

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Investigation Into the Use of Northwest
Natural's Renewable Natural Gas
Evaluation Methodology.

MODIFIED
PROTECTIVE ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED

On May 18, 2020, Northwest Natural Gas Company, dba NW Natural, filed a motion for a Modified Protective Order to provide additional protections for information that NW Natural considers to be highly confidential and extremely commercially sensitive. NW Natural will soon file information in this docket for which NW Natural states that additional protections are necessary. This includes a model that calculates the incremental cost of renewable natural gas (RNG) and the purchase price of an actual RNG project. This information includes a range of pricing within which NW Natural would consider purchases of RNG.

NW Natural's motion includes the elements required by OAR 860-001-0080(3)(a)(A)-(E). NW Natural states that additional protections are necessary due to highly confidential information that will be presented as a part of this case, and additional, highly confidential information that may be requested and reviewed by other parties. According to NW Natural, this information includes the highly confidential commercial RNG price range information protected by ORCP 36(C)(1). The company notes that disclosure of such information would harm NW Natural's competitive position because sellers and purchasers of RNG would understand NW Natural's maximum potential price point for RNG.

The terms of the proposed Modified Protective Order require individuals that are not Commissioners, Staff, CUB regulatory staff or attorneys for a party to demonstrate a legitimate, non-competitive need for any item deemed highly confidential. The information protected by the proposed restrictions is limited to NW Natural's highly commercially sensitive business information utilized within the specific confines of this docket. The company notes that this additional protection will be executed through the use of encrypted, password protected files, but may be governed by the established

procedures for such additional protection once the temporary waiver of rules referenced in Order No 20-088 resulting from the COVID-19 emergency is rescinded.

I conclude that NW Natural has established a legal basis for additional protection under OAR 860-001-0080(3)(a). I grant the motion for Modified Protective Order to govern access to highly confidential information that requires additional protection, as well as standard protection for confidential information as governed by the protective order issued in this case.

As provided in OAR 860-110-0080(1), I have adopted the Modified Protective Order, as provided in the attachment, as requested by NW Natural, in order to assist potential discovery in this proceeding. Any party may seek reconsideration of this decision by following the process outlined in OAR 860-001-0080(1) and OAR 860-001-0720.

Made, entered, and effective on May 22, 2020.



Christopher J. Allwein
Administrative Law Judge



MODIFIED PROTECTIVE ORDER
DOCKET UM 2030

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. UM 2030.

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.20-____

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. 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 17 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 as 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. For a temporary period, all Highly Confidential Information in OPUC Docket UM 2030 will be filed with the OPUC Filing Center (puc.filingcenter@state.or.us) with a password protected and encrypted electronic ZIP file and distributed to parties electronically who have signed the appropriate protective order, consistent with the Commission’s COVID-19 response, as reflected in Order No. 20-088 and the Chief Administrative Law Judge’s letter dated March 26, 2020.

When the temporary waiver of rules referenced in Order No 20-088 is rescinded, the Highly Confidential Information will be processed as follows:

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. 20-____ AND
CONTAINS HIGHLY CONFIDENTIAL INFORMATION. THE
INFORMATION MAY BE SHOWN ONLY TO QUALIFIED PERSONS AS
DEFINED IN THIS ORDER.

7. Highly Confidential Information may not be duplicated.

Access to Highly Confidential Information

8. 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.
9. 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.
10. A party bound by the General Protective Order in this docket may seek to qualify persons other than those described in Paragraphs 8 and 9 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 12.
11. For each person qualified under Paragraphs 9 and 10, 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 12 then Highly Confidential Information must be delivered to the Qualified Person within five business days.
12. 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

13. 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.
14. 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

15. 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

16. 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

17. 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 9

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 9.

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

I certify that:

- a. I agree to keep the information in a secure manner as required by Paragraphs 7 and 13, and to destroy it at the conclusion of this proceeding as required by Paragraph 16.
- b. 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.
- c. 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 10

I. Persons Seeking Qualification Pursuant to Paragraph 10.

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

I certify that:

- a. I agree to keep the information in a secure manner as required by Paragraphs 7 and 13, and destroy it at the conclusion of this proceeding as required by Paragraph 16.
- b. 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.
- c. 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.
- d. 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: