

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2145

In the Matter of

NORTHWEST NATURAL GAS
COMPANY, dba NW NATURAL,

Application to Defer Cost of Service
Associated with the Tyson RNG Project.

MODIFIED
PROTECTIVE
ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED

On January 20, 2021, Northwest Natural Gas Company, dba NW Natural, filed a motion for a modified protective order to provide additional protection to highly confidential, extremely commercially sensitive information related to the company's Tyson renewable natural gas (RNG) project. Commission Staff requested all contracts and agreements executed by NW Natural related to this project. NW Natural states that these contracts contain information the company considers to be highly confidential, including price information and other terms and conditions that if publicly disclosed would place NW Natural at a material disadvantage in acquiring RNG in the future.

NW Natural's motion includes the elements required by OAR 860-001-0080(3)(a)(A)-(E) and provides a draft of the requested protective order as required by OAR 860-001-0080(3)(a)(G). NW Natural identifies the specific information it intends to designate as highly protected are contracts associated with the RNG project. NW Natural asserts that if this information was disclosed, RNG market participants would understand how much the company is willing to pay for RNG, and what commercial terms and conditions it is willing to protect. Additionally, NW Natural anticipates additional highly confidential information may be subsequently requested by parties in discovery during the course of this proceeding.

NW Natural describes how it seeks to limit access to highly protected information. Under the terms of the modified protective order, additional protections to highly confidential information are narrowly tailored and are intended to apply only to the company's highly commercially sensitive business information. The modified protective order requires all highly confidential information to be filed with the Oregon Public Utility Commission's filing center with a password and encrypted electronic zip file and only be distributed to parties who have signed the appropriate protective order. This process is consistent with Commission's COVID-19 response and its waiver of the rules

in Order No. 20-088.¹ If, in the course of this proceeding, Order No. 20-088 is rescinded, the modified protective order requires that highly confidential information be maintained by being printed on a green paper. NW Natural requests that highly confidential information may not be used or disclosed for any purpose other than for participation in this proceeding and that the highly confidential information not be duplicated.

NW Natural stated it informed the parties of the need for the modified protective order and no objections were raised.

I conclude that NW Natural has established a legal basis for additional protection under OAR 860-001-0080(3) and the issue of the attached modified protective order to govern the access to information that requires additional protection beyond that of a general protective order.

ORDER

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

Made, entered, and effective on Jan 22, 2021.



Christopher J. Allwein
Administrative Law Judge



¹ *In the Matter of Public Utility Commission of Oregon, Waiver of Rules to Accommodate Temporary Changes in Business Practices*, Docket No. UM 2061, Order No. 20-088 (Mar 18, 2020).

MODIFIED PROTECTIVE ORDER
DOCKET UM 2145

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 2145.

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.21-____

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 2145 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 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. 21-_____
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: