

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2192

In the Matter of

NORTHWEST NATURAL GAS
COMPANY, dba NW Natural,

Application for Approval of Deferred
Accounting for TSA Security Directive 2
Compliance Expenses.

MODIFIED
PROTECTIVE
ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED

On November 19, 2021, Northwest Natural Gas Company, dba NW Natural, filed a motion for a modified protective order to provide additional protections for Sensitive Security Information (SSI), as designated by the Department of Homeland Security's Transportation Security Administration (TSA) in accordance with 49 CFR 1520.5, related to TSA Security Directive Pipeline-2021-02 (Security Directive 2) and the company's compliance with it. NW Natural is filing this motion so it can share the entirety of Security Directive 2 and its compliance plans directly with the Commission and qualified parties to the proceeding in an appropriate manner that complies with the federal requirements governing SSI and that appropriately safeguards NW Natural's highly sensitive compliance plans. NW Natural states that it seeks to protect two categories of information: SSI and highly confidential information.

SSI Under the Modified Protective Order

Federally protected SSI includes TSA-designated portions of Security Directive 2 and NW Natural's compliance. NW Natural states this information "constitute[s] SSI per 49 CFR 1520.55 4 and must be protected as such to prevent exploitation thereof, and could have a devastating and self-defeating effect if intentionally or inadvertently disclosed to the public."¹ The modified protective order has specific provisions on the designation of SSI, which qualified persons may access SSI, and how SSI may be accessed.

¹ NW Natural Motion for Modified Protective Order at 4 (Nov 19, 2021).

Under the modified protective order requested by NW Natural, parties may designate as SSI any information the party reasonably determines constitutes SSI per 49 CFR 1520.5. Information that constitutes SSI must be marked in accordance with the modified protective order and with applicable federal regulations, which also instruct recipients on the handling and disposal of SSI. This information may be shared via hard copy only. If a person prefers to avoid possessing SSI, NW Natural proposes a “safe room” approach whereby NW Natural would make the SSI available to qualified parties at company headquarters (Portland Safe Room) by appointment during specified hours, subject to COVID-19 protocols.

The modified protective order lists two groups of persons qualified to receive SSI. First, Commission employees (including assigned DOJ attorneys) are automatically qualified to access the SSI. Second, parties that utilize Appendix B may become a qualified person by demonstrating a “need to know” per 49 CFR 1520.11, or with a showing that the party is a person the TSA or another listed federal government agency has authorized in writing to receive SSI. NW Natural states why these restrictions are necessary:

[B]ecause federal law restricts disclosure of such information, because of the attendant serious risk of harm associated with such disclosure, as evidenced by the TSA’s SSI designation, and because the Company could face penalties and other consequences if it does not follow federal law and prevent such disclosure. It is also necessary to limit access to the Company’s plans for complying with the publicly available portions of Security Directive 2—plans that are exempt from disclosure pursuant to Oregon’s Public Records Law—because disclosure of the plans could reduce the effectiveness of the Company’s mitigation efforts and expose the Company to greater risk of a cybersecurity attack.²

Finally, NW Natural states that the SSI at issue in this proceeding is prohibited from disclosure by federal regulations and is therefore exempted from disclosure under Oregon’s Public Records Law.

Highly Confidential Information Under the Modified Protective Order

NW Natural’s plans and actions for complying with the publicly available portions of Security Directive 2 may be designated as highly confidential information. NW Natural states this information “must also be protected because disclosure of

² *Id.* at 8.

NW Natural's means and methods for protecting itself from the occurrence and impact of cyberattacks would make those measures more easily exploitable."³

Information designated as highly confidential must be labeled, printed on green paper, and handled as specified in the modified protective order. Highly confidential information may not be posted to Huddle or sent via email. For a qualified person that prefers to avoid possessing highly confidential information, NW Natural will make the highly confidential information available for viewing via a read-only database.

The modified protective order describes persons that may be qualified to access highly confidential information. Commission employees (including assigned DOJ attorneys) are automatically qualified. Employees or counsel of the Oregon Citizens' Utility Board (CUB) as well as counsel and persons directly employed by counsel may become qualified by signing the consent to be bound section of Appendix C. Additional persons may seek to become qualified to access highly confidential information on a case-by-case basis by signing Appendix D.

NW Natural represents that it conferred with the parties who have intervened in this proceeding,⁴ and that as of the filing of its motion, no party has stated an objection.

I find that good cause exists to issue the modified protective order, which is attached as Appendix A. The modified protective order will function alongside the existing general protective order No. 21-431.

ORDER

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

Made, entered, and effective on Nov 23, 2021.



A handwritten signature in blue ink, appearing to read "C. J. Allwein".

Christopher J. Allwein
Administrative Law Judge

³ *Id.* at 4.

⁴ Parties to this proceeding currently consist of Staff, CUB and Alliance of Western Energy Consumers.

MODIFIED PROTECTIVE ORDER
DOCKET UM 2192**Scope of this Order**

1. This order governs the acquisition and use of “Sensitive Security Information” and “Highly Confidential Information” produced or used by any party in Docket UM 2192.

Designation of Sensitive Security Information

2. Any party may designate as Sensitive Security Information (“SSI”) any information the party reasonably determines constitutes SSI as defined by federal regulation 49 CFR 1520.5.¹
3. SSI may be shared in hard copy format only or viewed in a Safe Room as described in Paragraph 14 herein. No electronic distribution of SSI is permitted under this order. Accordingly, SSI may not be posted to Huddle or sent via email or any other electronic form. To the extent that SSI may need to be filed with the Administrative Hearings Division, such filing shall be accomplished consistent with the Commission’s pre-COVID hard copy filing procedures.
4. To designate information as SSI, a party must mark the document by placing the Protective Marking, as defined immediately below, conspicuously on the top of, and the Distribution Limitation Statement, as defined immediately below, on the bottom of (1) the outside of any front and back cover including a binder cover or folder, if the document has a front and back cover; (2) any title page; and (3) each page of the document.² Every page of a document must be marked with the SSI Protective Marking and Distribution Limitation Statement even when only a small portion of that document contains SSI.³

Protective Marking (header): SENSITIVE SECURITY INFORMATION

Distribution Limitation Statement (footer): *WARNING:* This record contains Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520. No part of this record may be disclosed to persons without a “need to know”, as defined in 49 CFR parts 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR parts 15 and 1520.

¹ OAR 860-001-0080 allows the Commission to issue a modified protective order for information protected under ORCP 36(C)(1) or the Public Records Law. ORS 192.355(8) exempts from public disclosure “Any public records or information the disclosure of which is prohibited by federal law or regulations.” 49 CFR 1520.9 prohibits the disclosure of SSI except on a “need-to-know” basis or as authorized in writing by the Transportation Security Administration, the Coast Guard, or the Secretary of the Department of Transportation. Therefore, SSI may be protected from disclosure as federally protected information under the Public Records Law in accordance with OAR 860-001-0080.

² 49 CFR 1520.13(a-c).

³ The TSA published “Security Sensitive Information: Best Practices Guide for Non-DHS Employees and Contractors”, TSA.gov, https://www.tsa.gov/sites/default/files/ssi_best_practices_guide_for_non-dhs_employees.pdf, (last visited Nov. 19, 2021).

Additionally, each page of a document containing SSI that is provided to SSI Qualified Persons under this order (as defined in Paragraph 8) must be printed on ORANGE paper, separately bound, and placed in a sealed envelope or other appropriate container which must bear the legend:

THIS ENVELOPE IS SEALED UNDER ORDER NO. _____ AND CONTAINS
SENSITIVE SECURITY INFORMATION. THE INFORMATION MAY BE SHOWN
ONLY TO SSI QUALIFIED PERSONS AS DEFINED IN ORDER NO. ____.

5. The designating party shall Bates number all documents designated as containing SSI so that SSI Qualified Persons, as defined in Paragraph 8, may reference any page they may want to use as an exhibit to testimony or for other purposes in this case.
6. A party may designate as SSI any information previously provided by giving written notice to the Commission and other parties. Parties in possession of newly designated SSI must ensure that all copies of the previously undesignated information are destroyed in accordance with Paragraph 19 or, if requested by the designating party or required for compliance with Oregon public records law, are annotated to bear the appropriate legend (above) and are accessible only to persons qualified under this order.
7. A designating party must make reasonable efforts to ensure that information designated as SSI continues to warrant protection under this order. If designated information no longer constitutes SSI, the designating party should make reasonable efforts to remove the designation and provide written notice to the Commission and other parties.

SSI Qualified Persons

8. Only persons qualified to receive SSI in accordance with Paragraphs 9-10 below (“SSI Qualified Persons”) may access SSI designated by another party under this Modified Protective Order. Access to SSI is restricted by the applicable provisions of 49 CFR 1520.
9. In accordance with 49 CFR 1520.11(b)(1), Commission employees and Assistant Attorneys General assigned to represent the Commission have a “need to know.” The Commission employees and Assistant Attorneys General assigned to represent the Commission are automatically bound by this Modified Protective Order and qualified to access the SSI.
10. Other parties to this case may become qualified to access SSI if one or both of the following provisions applies:
 - (a) The party is a person with a “need to know” per 49 CFR 1520.11, or
 - (b) The party is a person the TSA, Coast Guard, or the Secretary of the Department of Transportation (“DOT”) has authorized in writing to receive SSI per 49 CFR 1520.9(a)(2).

Counsel for such parties may sign the consent to be bound in Appendix B and may designate one representative for the party that may access the SSI. A party must identify such 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 SSI Qualified Persons.

11. For each person bound under Paragraph 10, counsel for the party sponsoring the person must file a signed copy of Appendix B with the Commission and deliver a copy to the designating party and all parties of record. Upon receipt of the signed Appendix B, if there is no objection to the person to be qualified thereunder made under Paragraphs 36 and 37, then SSI must be made available to the person within five business days.
12. All SSI Qualified Persons or any other persons in possession of SSI have duties to protect and not disclose that SSI and to report any unauthorized disclosures thereof pursuant to 49 CFR 1520.9.⁴

Access to SSI

13. SSI will be made available to SSI Qualified Persons only in paper copies marked in accordance with Paragraph 4 and may be provided to SSI Qualified Persons via hand delivery or U.S. First Class Mail or other traceable delivery service using an opaque envelope or wrapping.
14. For any SSI Qualified Persons that prefer to avoid possessing SSI, NW Natural will make available a designated location for viewing such information at NW Natural's headquarters in Portland ("Portland Safe Room"). Access to the Portland Safe Room is limited to SSI Qualified Persons by appointment only and requires 48-hour advance notice. NW Natural may require the presence of a NW Natural monitor while the SSI is being viewed. NW Natural will make the Portland Safe Room available for viewing the SSI Monday through Friday, between the hours of 9 a.m. and 5 p.m., excluding Company holidays and subject to any applicable state, local, or Company-specific COVID-19 protocols.
15. SSI Qualified Persons reviewing SSI in the Portland Safe Room are not authorized to, and shall not make, copies of any document designated as containing SSI but may make limited notes regarding the documents for reference purposes only. Such notes shall not constitute a verbatim or substantive transcript of the documents and shall be considered SSI subject to the terms of this Modified Protective Order. Any such notes shall be marked in accordance with 49 CFR 1520.13(a)-(c), as required by federal law.
16. The Commission's Administrative Hearings Division, Commission Staff, and other SSI Qualified Persons must store SSI in a locked room or cabinet dedicated to the storage of SSI.
17. Without the written permission of the designating party, any person given access to SSI under this order may not use or disclose such information for any purpose other than participation in this proceeding and only then under the terms of this order.
18. Each party shall Bates number all documents designated as containing SSI and SSI Qualified Persons shall follow the procedures outlined in Paragraph 5 to reference the SSI for use as an exhibit to testimony or for other purposes in this case. If the exhibit or testimony must be submitted to the Commission's Administrative Hearings Division, the designating party must also file a copy of the referenced document containing SSI with the Commission's Administrative Hearings Division, printed on ORANGE paper, and

⁴ "Security Sensitive Information: Best Practices Guide for Non-DHS Employees and Contractors", TSA.gov, https://www.tsa.gov/sites/default/files/ssi_best_practices_guide_for_non-dhs_employees.pdf, (last visited Nov. 19, 2021).

appropriately labeled in accordance with Paragraph 4, which shall be transmitted in a sealed envelope as further described in Paragraph 13.

19. Any SSI Qualified Person or other person retaining SSI at the conclusion of this proceeding must destroy the SSI completely using a cross-cut shredder or by cutting manually into less than one-half inch squares to preclude recognition or reconstruction of the SSI in accordance with 49 CFR 1520.19(b)(1). This paragraph does not apply to the Commission or its Staff to the extent that the Commission or its Staff must preserve the SSI under State law per 49 CFR 1520.19(b)(2).

Designation of Highly Confidential Information

20. Any party may designate as Highly Confidential Information any information the party reasonably determines:
 - a. Falls within the scope of ORS 192.355(33)(a)(B) (i.e., information about review or approval of programs relating to the security of the generation, storage, or conveyance of gas in liquefied or gaseous form) or ORCP 36(C)(1);
 - b. Is not publicly available; and
 - c. Is not adequately protected by the general protective order.
21. To designate information as Highly Confidential Information, a party must place the following legend on the material:

HIGHLY CONFIDENTIAL INFORMATION
SUBJECT TO MODIFIED PROTECTIVE ORDER NO. 21-__

The party should make reasonable efforts to designate as Highly Confidential Information only the portions of the information that satisfy Paragraph 20 of this Modified Protective Order.

Additionally, each page of a document containing Highly Confidential Information that is provided to HC Qualified Persons under this order (as defined in Paragraph 25) must be printed on GREEN paper, separately bound, and placed in a sealed envelope or other appropriate container which must bear the legend:

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

Except as provided in Paragraph 31, no electronic distribution of Highly Confidential Information is permitted under this order. Accordingly, Highly Confidential Information may not be posted to Huddle or sent via email or any other electronic form, except as specifically allowed in Paragraph 31. To the extent that Highly Confidential Information

may need to be filed with the Administrative Hearings Division, such filing shall be accomplished consistent with the Commission's pre-COVID hard copy filing procedures.

22. The designating party shall Bates number all documents designated as containing Highly Confidential Information so that HC Qualified Persons, as defined in Paragraph 25, may reference any page they may want to use as an exhibit to testimony or for other purposes in this case.
23. A party may designate as Highly Confidential Information any information previously provided by giving written notice to the Commission and other parties. Parties in possession of newly designated Highly Confidential Information must ensure that all copies of the previously undesignated information are annotated to bear the appropriate legend (above) and are accessible only to persons qualified under this order.
24. A designating party must make reasonable efforts to ensure that information designated as Highly Confidential Information continues to warrant protection under this order. If designated information no longer constitutes Highly Confidential Information, the designating party should make reasonable efforts to remove the designation and provide written notice to the Commission and other parties.

Highly Confidential Qualified Persons

25. Only persons qualified to receive Highly Confidential Information in accordance with Paragraphs 26-28 below ("HC Qualified Persons") may access Highly Confidential Information designated as such by another party under this Modified Protective Order.
26. Persons automatically bound by this Modified Protective Order and qualified to access Highly Confidential Information are:
 - a. Commission employees; and
 - b. Assistant Attorneys General assigned to represent the Commission.
27. Persons qualified to access Highly Confidential Information upon signing the Consent to be Bound section of Appendix C 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 Citizen's Utility Board.

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

28. A party bound by the Modified Protective Order may seek to qualify other persons to access Highly Confidential Information by having those persons complete and sign Appendix D and submitting that information to the Commission and all parties. Within five business days of receiving a copy of Appendix D, the designating party must either provide the requested access to Protected Information or file an objection under Paragraphs 36 and 37.

29. For each person bound under Paragraphs 27 and 28, counsel for the party sponsoring the person must file a signed copy of Appendix C or D, as applicable, 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 Paragraphs 36 and 37, then Highly Confidential Information must be made available to the person within five business days.

Access to Highly Confidential Information

30. Highly Confidential Information will be made available to HC Qualified Persons only in paper copies marked in accordance with Paragraph 21 and may be provided to HC Qualified Persons via hand delivery or U.S. First Class Mail or other traceable delivery service using an opaque envelope or wrapping.
31. For any HC Qualified Persons that prefer to avoid possessing Highly Confidential Information, NW Natural will make the Highly Confidential Information available for viewing via a read-only database.
32. The Commission's Administrative Hearings Division, Commission Staff, and other HC Qualified Persons must store Highly Confidential Information in a locked room or cabinet dedicated to the storage of Highly Confidential Information.
33. Without the written permission of the designating party, any person given access to Highly Confidential Information under this order may not use or disclose such information for any purpose other than participation in this proceeding and only then under the terms of this order.
34. Each party shall Bates number all documents designated as containing Highly Confidential Information and HC Qualified Persons shall follow the procedures outlined in Paragraph 22 to reference the Highly Confidential Information for use as an exhibit to testimony or for other purposes in this case. If the exhibit or testimony must be submitted to the Commission's Administrative Hearings Division, the designating party must also file a copy of the referenced document containing Highly Confidential Information with the Commission's Administrative Hearings Division, printed on GREEN paper, and appropriately labeled in accordance with Paragraph 21, which shall be transmitted in a sealed envelope as further described in Paragraph 30.
35. Any HC Qualified Person or other person retaining Highly Confidential Information at the conclusion of this proceeding must destroy or return the Highly Confidential Information to the designating party within 90 days after final resolution of this proceeding unless the designating party consents in writing to that party's retention of the Highly Confidential Information. This paragraph does not apply to the Commission or its Staff to the extent necessary to comply with the Oregon Public Records Law.

Objection to Access to SSI or Highly Confidential Information

36. All SSI Qualified Persons have access to SSI, and all HC Qualified Persons have access to Highly Confidential 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 SSI or HC Qualified Person, the designating party must provide the SSI 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 Administrative Law Judge (“ALJ”). After receipt of the written notice of objection required by this paragraph, the specific SSI or Highly Confidential Information may not be disclosed to the SSI or HC Qualified Person until the issue is resolved.

37. 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 SSI or Highly Confidential Information may not be disclosed to the person subject to the objection.

Challenge to Designation of SSI or Highly Confidential Information

38. A party may informally challenge any designation of SSI or Highly Confidential Information by notifying the designating party. If any party objects to such designation by letter or email, the designating party must provide a written response to the party within five business days that describes in detail why the information is appropriately designated as SSI or Highly Confidential Information under this order; PROVIDED THAT such detail will not include the disclosure of SSI to any individuals who are not SSI Qualified Persons, or the disclosure of Highly Confidential Information to any individuals who are not HC Qualified Persons. (Note that correspondence that reveals the substance of any information marked as SSI or Highly Confidential Information may not be transmitted electronically.) 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 ALJ hold a conference to help resolve disputes about proper designation, which shall include an in camera review of the challenged information.
39. If the dispute cannot be resolved informally, the challenging party may file a written objection with the ALJ. The objection filed with the ALJ must identify the information in dispute (by referencing the Bates number, if applicable) and include a certification that reasonable efforts to achieve an informal resolution have been unsuccessful.
40. Within five days of the objection, unless otherwise ordered by the ALJ, the designating party must either remove the Highly Confidential Information or SSI designation or file a written response identifying the factual and legal basis of how the challenged information is protected from disclosure under either federal regulations as SSI, under the Oregon Public Records Law, or under ORCP 36(C)(1). Broad allegations unsubstantiated by specific facts are not sufficient. To the extent that such written response contains information designated as SSI or Highly Confidential Information, review of such information shall be performed in camera by the ALJ, with a redacted copy of such response provided to the objecting party.
41. 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. To the extent that such written sur-reply contains information designated as SSI or Highly Confidential Information, review of such information shall be performed in camera by the ALJ, with a redacted copy of such sur-reply to the objecting party. The ALJ will make all reasonable efforts to resolve the matter within 10 business days of service of the last filing.

Duration of Protection

42. The Commission will preserve the designation of information protected as SSI indefinitely unless the SSI is no longer considered SSI pursuant to 49 CFR 1520.5. The Commission will notify the designating party at least two weeks prior to the release of information no longer considered SSI pursuant to 40 CFR 1520.5 and may extend the designation at the request of the designating party.
43. The Commission will preserve the designation of information protected as Highly Confidential Information indefinitely unless the Highly Confidential Information is no longer considered to be Highly Confidential Information. The Commission will notify the designating party at least two weeks prior to the release of Highly Confidential Information.

**APPENDIX D
 QUALIFICATION OF OTHER PERSONS TO RECEIVE PROTECTED INFORMATION
 DOCKET NO. UM 2192**

I. Persons Seeking Qualification to receive Highly Confidential Information under Paragraph 28:

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

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