

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

LC 79

In the Matter of

NORTHWEST NATURAL GAS
COMPANY, dba NW NATURAL

2022 Integrated Resource Plan.

MODIFIED
PROTECTIVE
ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED

On November 10, 2022, Northwest Natural Gas Company, dba NW Natural, filed a motion for a modified protective order to provide additional protections for highly confidential and commercially sensitive information related to the company's 2022 Integrated Resource Plan (IRP). Specifically, NW Natural states that Commission Staff has issued discovery requests seeking detailed information about the company's renewable natural gas (RNG) opportunities, including responses to requests for proposals, related contracts, key commercial pricing, and forecast analyses. NW Natural explains that its responses to these discovery requests will include information that the company considers highly confidential, including price information and terms and conditions that would place it at a material disadvantage in acquiring RNG in the future if that information were to be disclosed publicly. NW Natural requests expedited consideration of its motion for a modified protective order.

Qualified individuals will be able to access the highly confidential information via a read-only database on the Commission's Huddle website and encrypted working versions of models in Excel will be provided via password protected USB drive. Access to highly confidential information is restricted to Commission employees (including assigned DOJ attorneys), as well as employees or counsel of the Oregon Citizens' Utility Board (CUB) and counsel for other parties to the docket who sign the consent to be bound section of Attachment B. The modified protective order also establishes a process for parties bound by the proposed MPO to qualify additional persons to access highly confidential information on a case-by-case basis. Under the process proposed by NW Natural, a bound party may have those additional persons complete and sign Attachment C. The designating party must, within five business days of receiving a signed copy of Attachment C, either provide access to the

requested highly confidential information to the person who signed Attachment C or must file an objection.

NW Natural represents that it contacted Staff, CUB, and other prospective intervenors in this proceeding and that these intervenors and prospective intervenors did not object to its modified protective order.¹

Under OAR 860-001-0080(3), a party may file a motion for a modified protective order that provides additional protection beyond the protection provided by a general protective order. Any such motion must include: 1) the parties and the exact nature of the information involved, 2) the legal basis for the claim the information is protected under ORCP 36(C)(1) or the Public Records Law, 3) the exact nature of the relief requested, 4) the specific reasons the relief is necessary, 5) a detailed description of the intermediate measures explored by the parties and why these measures are insufficient, 6) a certification that the requesting party conferred with the parties and whether those parties support the motion, and 7) a draft of the requested modified protective order.

I find that good cause exists to issue the modified protective order, which is attached as Attachment A. I note that the modified protective order includes the use of the Commission's pre-COVID hard copy green paper procedure for highly confidential information. While I do not modify the terms of the modified protective order, I encourage the use of the electronic means of access established under the modified protective order (*i.e.*, via a read-only database on Huddle) for highly confidential information where possible. The modified protective order will function alongside the existing general protective order, Order No. 22-374. As requested, I issue this protective order on an expedited basis pursuant to OAR 860-001-0080(3)(c). This expedited action does not foreclose a party from seeking *de novo* review of this modified protective order under OAR 860-001-0080(3)(d)&(e).

¹ The prospective intervenors have filed petitions to intervene in this proceeding and include 1) the Alliance of Western Energy Consumers; and 2) the Green Energy Institute at Lewis & Clark Law School, Climate Solutions, Columbia Riverkeeper, Community Energy Project, Electrify Now, Metro Climate Action Team, Natural Resources Defense Council, and Sierra Club.

ORDER

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

Made, entered, and effective on Nov 10, 2022.

ss

Sarah Spruce
Administrative Law Judge



Attachment A

to

Motion for Modified Protective Order

in Docket LC 79

**MODIFIED PROTECTIVE ORDER
DOCKET LC 79**

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 LC 79 (“party”).

Designation of Highly Confidential Information

2. Any party may designate as Highly Confidential Information any information the party reasonably determines:
 - a. Falls within the scope of ORCP 36(C)(1) and the Commission’s rules governing protective orders;
 - b. Is not publicly available; and
 - c. Is not adequately protected by the General Protective Order.
3. 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. 22-__

The party should make reasonable efforts to designate as Highly Confidential Information only the portions of the information that satisfy Paragraph 2 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 7) 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 12, no electronic distribution of Highly Confidential Information is permitted under this Order. Accordingly, Highly Confidential Information may not be sent via email or any other electronic form, except as specifically allowed in Paragraph 12. 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.

4. The designating party shall ensure that each page of all documents designated as containing Highly Confidential Information are separately identifiable so that HC Qualified Persons, as defined in Paragraph 7, may reference any page they may want to use as an exhibit to testimony or for other purposes in this case.
5. A party may designate as Highly Confidential Information any information that was previously not so designated and was previously provided to the other parties by giving written notice to the Commission and other parties of the new designation. 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.
6. 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

7. Only persons qualified to receive Highly Confidential Information in accordance with Paragraphs 8-10 below (“HC Qualified Persons”) may access Highly Confidential Information designated as such by another party under this Modified Protective Order.
8. 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.
9. Persons qualified to access Highly Confidential Information upon signing the Consent to be Bound section of Attachment B 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 Attachment B when consenting to be bound by the Order and must update this list throughout the proceeding to ensure it accurately identifies HC Qualified Persons.

10. 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 Attachment C and submitting that information to the Commission and all parties. Within five business days of receiving a copy of Attachment C, the designating party must either provide the requested access to the Highly Confidential Information or file an objection under Paragraphs 17 and 18.

11. For each person bound under Paragraphs 9 and 10, counsel for the party sponsoring the person must file a signed copy of Attachment B or C, as applicable, with the Commission and deliver a copy to the designating party and all parties of record. Upon receipt of the signed Attachment, if there is no objection to the person to be qualified thereunder made under Paragraphs 17 and 18, then Highly Confidential Information must be made available to the person within five business days.

Access to Highly Confidential Information

12. 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 on Huddle (or its successor); in that case, the information will be marked "Highly Confidential" and uploaded to a file folder designated "highly confidential" in Huddle (or its successor). Alternatively, HC Qualified Persons may request to receive paper copies marked in accordance with Paragraph 3 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. For Highly Confidential Information that is a working version of a model in Excel format, the designating party will make an encrypted version of the Excel spreadsheet available to HC Qualified Persons on a password-protected USB drive. HC Qualified Persons in possession of the USB drive must only use the USB drive and access the encrypted files on a business computer. HC Qualified Persons will only save any modified versions of the Highly Confidential Information on the password-protected USB drive, and the HC Qualified Persons must save modified versions of the Highly Confidential Information in an encrypted format. HC Qualified Persons must destroy or return the Highly Confidential Information to the designating party within 90 days after final resolution of this proceeding in accordance with Paragraph 16. Furthermore, HC Qualified Persons must store the USB drive in a locked room or cabinet dedicated to the storage of Highly Confidential Information when not in use.
13. 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.
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 such information for any purpose other than participation in this proceeding and only then under the terms of this Order.
15. Each party shall ensure that each page of all documents designated as containing Highly Confidential Information are separately identifiable and HC Qualified Persons shall follow the procedures outlined in Paragraph 4 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 3, which shall be transmitted in a sealed envelope as further described in Paragraph 12.
16. 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 Highly Confidential Information

17. 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 HC Qualified Person, the designating party must provide the 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 Highly Confidential Information may not be disclosed to the HC Qualified Person until the issue is resolved.
18. 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 such written 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 Confidential Information may not be disclosed to the person subject to the objection.

Challenge to Designation of Highly Confidential Information

19. A party may informally challenge any designation of 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 Highly Confidential Information under this Order; PROVIDED THAT such detail will not include 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 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.
20. 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 and include a certification that reasonable efforts to achieve an informal resolution have been unsuccessful.
21. Within five days of the objection, unless otherwise ordered by the ALJ, the designating party must either remove the Highly Confidential Information or file a written response identifying the factual and legal basis of how the challenged information is protected from disclosure 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 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.

22. 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 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

23. 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.

**ATTACHMENT B
CONSENT TO BE BOUND – HIGHLY CONFIDENTIAL INFORMATION
DOCKET LC 79**

I. Consent to be Bound – Highly Confidential Information:

The Modified Protective Order and this Attachment B govern the use of Highly Confidential Information in LC 79.

_____ (Party) agrees to be bound by the terms of the Modified Protective Order and certifies that it has an interest in LC 79 that is not adequately represented by other parties to the proceeding.

Signature: _____

Printed Name: _____

Date: _____

II. Persons Qualified under Paragraph 9:

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

I certify that:

1. 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.
2. I agree to keep the information in a secure manner as required by Paragraph 13 and to destroy it at the conclusion of this proceeding as required by Paragraph 16.
3. 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.
4. 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: _____

ATTACHMENT C
QUALIFICATION OF OTHER PERSONS TO RECEIVE HIGHLY CONFIDENTIAL
INFORMATION
DOCKET NO. LC 79

I. Persons Seeking Qualification to receive Highly Confidential Information under Paragraph 10:

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

I certify that:

1. 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.
2. I agree to keep the information in a secure manner as required by Paragraph 13 and to destroy it at the conclusion of this proceeding as required by Paragraph 16.
3. 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.
4. 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.
5. 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: _____

Job Title: _____

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