

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UG 462

In the Matter of

NORTHWEST NATURAL GAS
COMPANY, DBA NW NATURAL,

Renewable Natural Gas Adjustment
Mechanism – Dakota City.

MODIFIED
PROTECTIVE
ORDER

DISPOSITION: MOTION FOR MODIFIED PROTECTIVE ORDER GRANTED

On March 6, 2023, Northwest Natural Gas Company, dba NW Natural, filed a motion for a modified protective order (MPO) to provide additional protections for highly confidential and commercially sensitive information related to the company's renewable natural gas adjustment mechanism filings. On February 28, 2023, NW Natural filed an application seeking to recover the costs of its Dakota City renewable natural gas project under Schedule 198, the renewable natural gas adjustment mechanism of its tariff. In the motion for an MPO, NW Natural requests expedited consideration.

NW Natural notes that its application and supporting testimony contain highly confidential documents and other commercially sensitive information related to its investment in this facility. The company states that disclosure of this information could result in "significant competitive harm" to NW Natural and other parties.¹ NW Natural requests the proposed protections to ensure that parties receiving the highly confidential information "treat it with the utmost care."² NW Natural notes that it informed CUB, Staff and AWEC of the need for the MPO. NW Natural states that no party raised any objections to this MPO. NW Natural provides assurances that it will work with any additional parties to these proceedings to ensure meaningful participation and access to the protected highly confidential information.

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

¹ NW Natural Motion for Modified Protective Order at 1 (Mar. 6, 2023).

² *Id.*

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. In its motion, NW Natural provided sufficient information to satisfy these specific rule requirements. Under the proposed MPO, highly confidential information is accorded additional protections by requiring that individuals who are not Commissioners, Staff, CUB regulatory staff, or attorneys for a party, to demonstrate a legitimate, non-competitive need for a specific item of highly confidential information before gaining access.

I find that good cause exists to issue the MPO, which is provided as Attachment A. The modified protective order will function alongside the existing general protective order, Order No. 23-063. 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).

ORDER

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

Made, entered, and effective on Mar 8, 2023.



Christopher J. Allwein
Administrative Law Judge



ORDER NO. 23-070

Attachment A

to

Motion for Modified Protective Order in Docket UG 462

MODIFIED PROTECTIVE ORDER
DOCKET UG 462

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 the Schedule 198, Renewable Natural Gas Adjustment Mechanism cost recovery proceeding involving the Dakota City RNG project (“Proceeding”).

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. 23-__

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.

Except as specified in this Paragraph 3, Highly Confidential Information that is provided in a response to a data request will only be distributed to persons qualified to receive Highly Confidential Information in accordance with Paragraphs 8-10 below (“HC Qualified Persons”) through the Commission’s discovery portal, Huddle, as further described in Paragraph 12.

Except as specified in this Paragraph 3, Highly Confidential Information that is provided as part of a party’s filing with the Commission will be distributed to HC Qualified Persons through a password protected and encrypted electronic ZIP file, as specified in the Commission’s COVID-19 filing procedures.

If Highly Confidential Information cannot be provided electronically as specified above due to technical limitations, such as the size of the file containing Highly Confidential Information exceeding what can be provided through Huddle, then the designating party will provide Highly Confidential to HC Qualified Persons through 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 or with appropriate security measures for highly confidential information stored at the Commission. 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.

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. 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. Highly Confidential Information that is provided in a response to a data request will be made available for viewing through 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). Such Highly Confidential Information will only be provided through a read-only database on Huddle, unless the HC Qualified Person needs to download that information in order to include it as an exhibit to testimony that will be filed through a password protected and encrypted electronic ZIP file, as specified in Paragraph 3 and the Commission's COVID-19 filing procedures. If a HC Qualified Person needs to download Highly Confidential Information from the read-only Huddle database, it will contact the party that designated the Highly Confidential Information to provide that information in a format that the HC Qualified Person can download to their work computer. In such a situation, HC Qualified Persons may only access and save the files on a business computer in an encrypted format or with appropriate security measures for highly confidential information stored at the Commission. Any exhibit to testimony that contains another party's Highly Confidential Information must be marked as such and only distributed to other HC Qualified Persons under the terms of this Modified Protective Order. HC Qualified Persons will also seek to limit the inclusion of other parties' Highly Confidential Information as exhibits to testimony to the extent practicable. 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.
13. The Commission's Administrative Hearings Division, Commission Staff, and other HC Qualified Persons must store any physical Highly Confidential Information, including a USB Drive as specified in Paragraph 3, 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 Paragraphs 4 and 12 to reference the Highly Confidential Information for use as an exhibit to testimony or for other purposes in this case.
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 UG 462

I. Consent to be Bound – Highly Confidential Information:

The Modified Protective Order and this Attachment B govern the use of Highly Confidential Information in the Proceeding as defined in Paragraph 1.

_____ (Party) agrees to be bound by the terms of the Modified Protective Order and certifies that it has an interest 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 access and store the Highly Confidential Information in accordance with the terms of this Modified Protective Order and may only make copies of such Highly Confidential Information as specifically provided in this Modified Protective Order.
2. I agree to keep the information in a secure manner as required by Paragraphs 12 and 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. UG 462

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 Paragraphs 12 and 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: