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December 17, 2019

**VIA ELECTRONIC FILING**

Public Utility Commission of Oregon  
Attn: Filing Center  
201 High Street SE Suite 100  
Post Office Box 1088  
Salem, Oregon 97308-1088

**Re: UG 388: Application of NW Natural for a General Rate Revision  
Motion for Modified Protective Order – Expedited Consideration Requested**

Attached for filing in docket UG 388 is Northwest Natural Gas Company's, dba NW Natural ("NW Natural" or "Company"), motion for a modified protective order. Please address correspondence on this matter to me with copies to the following:

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Please call me if you have questions.

Sincerely,

NW NATURAL

*/s/ Eric W. Nelsen*

Eric W. Nelsen (OSB# 192566)  
Senior Regulatory Attorney

Enclosures

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UG 388**

In the Matter of  
NORTHWEST NATURAL GAS  
COMPANY, dba NW NATURAL  
Application for a General Rate Revision

**MOTION FOR MODIFIED  
PROTECTIVE ORDER**  
**Expedited Consideration Requested**

1 Pursuant to ORCP 36(C)(1), OAR 860-001-0080(3), and OAR 860-001-0420,  
2 Northwest Natural Gas Company dba NW Natural (“NW Natural” or “Company”)  
3 moves the Public Utility Commission of Oregon (“Commission”) for the entry of a  
4 Modified Protective Order in this proceeding. For the reasons outlined below, good  
5 cause exists to issue a Modified Protective Order, in addition to the Commission’s  
6 General Protective Order, which the Company has requested in a concurrent filing, to  
7 provide additional protection to highly confidential, extremely commercially sensitive  
8 information related to the Company’s forthcoming general rate revision. The  
9 Company therefore requests that the Commission issue the proposed Modified  
10 Protective Order that is attached hereto as Attachment A.

11 **I. BACKGROUND**

12 NW Natural will soon file an application for a general rate revision. The  
13 Company’s filing will include, pursuant to OAR 860-022-0019(2)(a), responses to the  
14 Commission’s Standard Data Requests (“SDRs”), some of which may contain highly  
15 confidential information.

1           The Commission’s SDRs require NW Natural to provide certain information that  
2 the Company regards as “Highly Confidential Information”—for example, the SDRs  
3 require NW Natural to provide its five-year financial forecast and its corporate dividend  
4 policy information, both of which are extremely sensitive, and the public disclosure of  
5 this information likely would cause significant competitive harm to the Company and its  
6 customers. For these reasons, the Company seeks additional protections for such  
7 information, beyond those contained in the Commission’s General Protective Order.  
8 The goal of the proposed protections is to ensure that the parties receiving the Highly  
9 Confidential Information treat it with the utmost care, and to limit the forms of duplication  
10 and transmission of such information, to ensure that it does not fall into the possession  
11 of market competitors or the general public. This approach will allow the Commission  
12 and the parties anticipated to participate in the case—Commission Staff (“Staff”),  
13 Oregon Citizens’ Utility Board (“CUB”), and the Alliance of Western Energy Consumers  
14 (“AWEC”)—the opportunity to review the Highly Confidential Information, but will also  
15 ensure that the Highly Confidential Information remains protected and does not become  
16 inadvertently disclosed to market competitors or the public.

17           In accordance with OAR 860-001-0420, on December 16, 2019, NW Natural  
18 informed the anticipated parties to this docket, Staff, CUB, and AWEC, of the need for  
19 this motion for modified protective and that it would be filed shortly thereafter. Those  
20 parties did not object.

1                                   **II.     REQUEST FOR ADDITIONAL PROTECTION**

2                   As required by OAR 860-001-0080(3)(a), NW Natural provides the following  
3 information:

4 **A.     Parties and Exact Nature of the Information Involved.**

5                   NW Natural will soon file its application for a general rate revision. NW Natural  
6 expects that, at a minimum, Staff, CUB, and AWEC will participate in its general rate  
7 case filing. Other interested parties may intervene in this proceeding.

8                   The Highly Confidential Information to be produced in this proceeding will include  
9 responses to the Commission’s Standard Data Requests, including extremely sensitive  
10 five-year financial forecast materials, corporate dividend policies, and other highly  
11 sensitive information. Such information requires additional protection beyond that  
12 included in the General Protective Order because disclosure would cause serious harm  
13 to the Company's financial interests, could cause significant harm to its customers, and  
14 could necessitate a public filing in the event that such material is disclosed, even  
15 inadvertently. In addition, such information constitutes material non-public information  
16 of the Company and its affiliates, as defined under federal and state securities laws. As  
17 a result, recipients of such information may be regarded as insiders and could be  
18 subject to state and federal securities laws prohibiting the person from trading in the  
19 Company's securities or from providing such information to others. The fact that  
20 disclosure of such information is prohibited under federal and state securities laws and  
21 receipt of the information gives rise to potential liability under these laws requires a  
22 heightened protection of earnings forecast information. The corporate dividend policy

1 information is also extremely sensitive, and the disclosure of the dividend policy would  
2 likely result in significant competitive damage. Other highly sensitive information may  
3 also be provided in response to the SDRs.

4         Additionally, Highly Confidential Information may be requested by parties in  
5 discovery during the course of this proceeding.

6 **B.     Legal Basis for the Claim that the Information is Protected under**  
7 **ORCP 36(C)(1).**

8         ORCP 36(C)(1) provides for limitations on the disclosure of “trade secret[s] or  
9 other confidential research, development, or commercial information.” The Highly  
10 Confidential Information to be produced include non-public, commercially sensitive  
11 information within the scope of ORCP 36(C)(1). Public disclosure of this information  
12 likely would cause significant harm to the Company’s and its customers’ financial  
13 interests.

14 **C.     Exact Nature of the Relief Requested.**

15         The Company requests that the Commission enter the attached Modified  
16 Protective Order. Under the proposed Modified Protective Order, Highly Confidential  
17 Information is accorded additional protections by requiring that individuals who are not  
18 Commissioners, Commission Staff, CUB regulatory staff, or attorneys for a party,  
19 demonstrate a legitimate, non-competitive need for a specific item of Highly Confidential  
20 Information before gaining access. Those with only a general interest in the information

1 will not be permitted to access it. The Commission has entered modified protective  
2 orders with similar restrictions in the past.<sup>1</sup>

3 The terms of the Modified Protective Order providing additional protections to  
4 Highly Confidential Information are narrowly tailored and intended to apply only to the  
5 Company's highly commercially sensitive business information. The Modified Protective  
6 Order also requires that Highly Confidential Information be maintained in a manner  
7 distinct from non-confidential information, by requiring that Highly Confidential  
8 Information be printed on a different color of paper. Like Confidential Information,  
9 Highly Confidential Information must be stored in a locked room or cabinet, and Highly  
10 Confidential Information may not be used or disclosed for any purpose other than  
11 participation in this proceeding. Finally, the Modified Protective Order prohibits  
12 electronic copying or distribution of Highly Confidential Information.

13 **D. Specific Reasons Requested Relief is Necessary.**

14 The Modified Protective Order is necessary to prevent market competitors and  
15 the general public from gaining access to Highly Confidential Information describing NW  
16 Natural's sensitive financial forecast materials, corporate dividend policy, and other  
17 highly sensitive information. First, the Highly Confidential Information could implicate  
18 sensitive business strategies, which could be compromised by the release of such  
19 information, causing significant financial harm to the Company and its customers. Thus,

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<sup>1</sup> *In the Matter of NW Natural Gas Co. Application for Approval of Corporate Reorganization to Create a Holding Company*, Docket No. UM 1804, Order No. 17-135 (Apr. 7, 2017); see also *In the Matter of NW Natural Gas Co. Request for a Gen. Rate Revision*, Docket No. UG 221, Order No. 12-058 (Feb. 24, 2012).

1 disclosure of the Highly Confidential Information could provide competitors with a  
2 significant advantage to NW Natural's financial detriment. And second, the Highly  
3 Confidential Information constitutes material non-public information as those terms are  
4 defined under federal and state securities laws, such that its inadvertent disclosure  
5 could trigger a filing with the United States Securities and Exchange Commission—  
6 ultimately resulting in *full* disclosure to the general public and potentially causing  
7 significant financial harm to the Company and its customers.

8         The terms of the Modified Protective Order, described above, decrease the risk  
9 of disclosure by limiting the number of people that may access Highly Confidential  
10 Information and requiring a showing of legitimate, non-competitive need from those who  
11 are not Commissioners, Staff, CUB, or counsel for a party. The Modified Protective  
12 Order also restricts the manner and means by which Highly Confidential Information  
13 may be maintained, stored, and transmitted, thus reducing the risk of inadvertent  
14 disclosure.

15 **E. Intermediate Measures Explored and Why these are Insufficient.**

16         As explained above, it is necessary to limit access to highly confidential  
17 commercially sensitive information regarding NW Natural's forecast materials, corporate  
18 dividend policy, and other highly sensitive information because of the serious risk of  
19 harm associated with disclosure of the Highly Confidential Information. Furthermore,  
20 disclosure of confidential information under a General Protective Order is rare, however  
21 it does occur from time to time. Given such disclosures, additional protections, such as

1 those contained in the proposed Modified Protective Order, are appropriate when the  
2 consequences of disclosure would be particularly grave.

3 **III. CONCLUSION**

4 For the foregoing reasons, NW Natural respectfully requests entry of the Modified  
5 Protective Order attached as Attachment A in this docket.

6 Respectfully submitted this 17<sup>th</sup> day of December, 2019.

7 **NW NATURAL**

8 /s/ Eric Nelsen  
9 Eric Nelsen  
10 OSB# 192566  
11 Senior Regulatory Attorney  
12 Northwest Natural Gas Company  
13 220 NW Second Ave.  
14 Portland, Oregon 97209  
15 Email: eric.nelsen@nwnatural.com  
16 Phone: (503) 721-2476

**MODIFIED PROTECTIVE ORDER**  
DOCKET UG 388

**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. UG 388.

**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. 19-\_\_\_

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. (Note that correspondence that reveals the substance of any information marked as Highly Confidential may not be transmitted electronically.) 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 18 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 using the applicable color paper 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. 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. 19-\_\_\_ AND  
CONTAINS HIGHLY CONFIDENTIAL INFORMATION. THE  
INFORMATION MAY BE SHOWN ONLY TO QUALIFIED PERSONS AS  
DEFINED IN THIS ORDER.

7. The Commission's Administrative Hearings Division, Commission Staff, and other parties must store the Highly Confidential Information in a locked room or cabinet dedicated to the storage of Highly Confidential Information.
8. Highly Confidential Information will be provided in hard copy only and may not be duplicated, uploaded to the Commission's Huddle website, or otherwise distributed electronically.

### **Access to Highly Confidential Information**

9. 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.
10. 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.
11. A party bound by the General Protective Order in this docket may seek to qualify persons other than those described in Paragraphs 9 and 10 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 13.
12. For each person qualified under Paragraphs 10 and 11, 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 13 then Highly Confidential Information must be delivered to the Qualified Person within five business days.
13. 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**

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 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.
15. 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**

16. 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**

17. 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**

18. 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 10**

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 10.

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

I certify that:

- a. 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.
- b. I agree to keep the information in a secure manner as required by Paragraph 7 and to destroy it at the conclusion of this proceeding as required by Paragraph 17.
- c. 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.
- d. 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 11**

I. Persons Seeking Qualification Pursuant to Paragraph 11.

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

I certify that:

- a. 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.
- b. I agree to keep the information in a secure manner as required by Paragraph 7 and destroy it at the conclusion of this proceeding as required by Paragraph 17.
- c. 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.
- d. 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.
- e. 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: