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December 14, 2021

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Filing Center
P.O. Box 1088
201 High Street SE, Suite 100
Salem, Oregon 97308-1088

Re: Docket UG 435 - Northwest Natural Gas Company's Application for a General Rate Revision.

Attention Filing Center:

Attached for filing in the above-referenced docket is Northwest Natural Gas Company's Motion for Modified Protective Order, expedited consideration is requested.

Please contact this office with any questions.

Sincerely,

Alisha Till
Paralegal

Attachment

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UG 435

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 ORS 192.355(8), ORS 192.355(33)(a)(B), ORCP 36(C)(1), OAR 860-001-
2 0080(3), and OAR 860-001-0420, Northwest Natural Gas Company, dba NW Natural (“NW
3 Natural” or the “Company”), hereby moves the Public Utility Commission of Oregon
4 (“Commission”) for the entry of a Modified Protective Order in this proceeding. Concurrent
5 with this filing, the Company is also filing a Motion for entry of the Commission’s General
6 Protective Order. For the reasons outlined below, good cause exists to issue a Modified
7 Protective Order, in addition to the Commission’s General Protective Order, to provide
8 additional protection to two categories of information that will be provided in the Company’s
9 forthcoming application for general rate revision: (1) Sensitive Security Information (“SSI”)—
10 as designated by the Department of Homeland Security’s Transportation Security
11 Administration (“TSA”)—related to TSA Security Directive Pipeline-2021-02 (“Security
12 Directive 2”), and (2) highly confidential information, which includes certain non-SSI Security
13 Directive 2 compliance information, as well as extremely commercially sensitive information
14 related to the Company’s forthcoming application for general rate revision. NW Natural
15 therefore requests that the Commission issue the proposed Modified Protective Order that is
16 attached to this Motion as Appendix A.¹

¹ NW Natural also requested that the Commission enter a modified protective order in its recent deferral proceeding, which the Commission approved in Order No. 21-433. *In re Nw. Natural Gas Co. dba NW Natural, Application for Approval of Deferred Accounting for TSA Security Directive 2 Compliance Expenses*, Docket UM 2192, Order No. 21-433 (Nov. 23, 2021). The proposed Modified Protective Order in Appendix A is modeled after the Modified Protective Order approved in Order No. 21-433.

1 **I. BACKGROUND AND SUMMARY OF REQUEST**

2 NW Natural will soon file an application for general rate revision (“Application”). The
3 Application will include, pursuant to OAR 860-022-0019(2)(a), responses to the Commission’s
4 Standard Data Requests (“SDRs”), some of which may contain highly confidential, extremely
5 commercially sensitive information. For example, the SDRs require NW Natural to provide its five-
6 year financial forecast and its corporate dividend policy information, both of which are extremely
7 sensitive, and the public disclosure of this information likely would cause significant competitive
8 harm to the Company and its customers.

9 The Application will also include testimony related to and containing portions of the TSA’s
10 Security Directive 2, which requires the Company to implement certain mitigation measures and
11 take other actions to reduce the risks of cyberattacks. While the TSA initially designated Security
12 Directive 2 as SSI, the TSA released a significant portion of Security Directive 2 publicly, and now
13 the SSI-designated portion includes a single section of the directive requiring the Company to
14 implement certain mitigation measures to comply with the current versions of the National Institute
15 of Standards and Technology Digital Identity Guidelines, as well as most of the Security Directive
16 2 compliance deadlines.² Relatedly, NW Natural’s plans for complying with the SSI portions of
17 Security Directive 2, including its planned timelines for meeting SSI-designated compliance
18 deadlines, are also SSI and must be treated as such.³ Accordingly, NW Natural’s ability to share
19 the SSI-designated portions of Security Directive 2 and the Company’s related compliance
20 activities is severely limited by 49 CFR 1520.9 and the Company may only do so with persons with

² The TSA initially designated all of Security Directive 2 as SSI pursuant to 49 CFR 1520.5 because of the highly sensitive nature of the subject matter, the disclosure of which the TSA determined would be detrimental to the security of transportation. Subsequently, however, the TSA released a significant portion of Security Directive 2 to the public in response to a Freedom of Information Act request by the Washington Post. Aaron Scheffer and Ellen Nakashima, *New emergency cyber regulations lay out ‘urgently needed’ rules for pipelines but draw mixed reviews*, The Washington Post (Oct. 3, 2021, 2:34 PM), https://www.washingtonpost.com/national-security/cybersecurity-energy-pipelines-ransomware/2021/10/03/6df9cab2-2157-11ec-8200-5e3fd4c49f5e_story.html (last visited Dec. 8, 2021).

³ 49 CFR 1520.5(b)(1).

1 a “need to know” as defined by 49 CFR 1520.11 or with those whom the TSA or another authorized
2 federal agency has granted written authorization pursuant to 49 CFR 1520.9(a)(2). Therefore, the
3 Company is filing this Motion so it can share SSI—including the entirety of Security Directive 2 and
4 its compliance plans related to the SSI-designated portions of Security Directive 2—directly with
5 the Commission and qualified parties to the proceeding in an appropriate manner that complies
6 with the federal requirements governing SSI.⁴ Furthermore, NW Natural’s plans for complying with
7 the non-SSI portions of Security Directive 2 remain highly sensitive and preventing public
8 disclosure thereof is critical to ensure that the intent of Security Directive 2 is realized.

9 Finally, testimony supporting the Application will also contain highly confidential
10 transactional documents and other commercially sensitive information related to NW Natural’s
11 investment in the Lexington renewable natural gas (“RNG”) facility. Disclosure of this information
12 could result in significant competitive harm to NW Natural and other parties.

13 For these reasons, the Company seeks additional protections beyond those provided by
14 the General Protective Order. The Modified Protective Order is designed to protect: (1) SSI; and
15 (2) the non-SSI information related to compliance with Security Directive 2, and the extremely
16 commercially sensitive information provided in the rate case filing (the information in the second
17 category is collectively, the “Highly Confidential Information”). The goal of the proposed
18 protections is to ensure that the parties receiving the SSI and/or Highly Confidential Information
19 treat it with the utmost care, and to limit the forms of duplication and transmission of such
20 information. This approach will allow the Commission and the anticipated parties to this case—
21 Commission Staff (“Staff”), the Oregon Citizen’s Utility Board (“CUB”), and the Alliance of Western
22 Energy Consumers (“AWEC”)—the opportunity to review the SSI and/or Highly Confidential

⁴ The Company may not disclose the SSI that it seeks to protect with its proposed Modified Protective Order except to persons with a need to know as defined by 49 CFR 1520.11; this includes the Commission and Commission employees per 49 CFR 1520.11(b)(1). This provision does not allow the Company to share the SSI with potential intervenors to this proceeding unless authorized in writing to do so by the TSA or other federal agencies pursuant to 49 CFR 1520.9(a)(2).

1 Information while also ensuring that such information remains protected and is not inadvertently
2 disclosed to the public or market competitors.

3 NW Natural conferred with the anticipated parties to this docket—Staff, CUB, and AWEC—
4 and informed them of the Company’s need for this Motion. The anticipated parties did not object.

5 **II. REQUEST FOR ADDITIONAL PROTECTION**

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

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

8 NW Natural will soon file its application for general rate revision in this proceeding. At the
9 time of this Motion, NW Natural expects that, at a minimum, Staff, CUB, and AWEC will participate
10 in this general rate case filing. Other interested parties may also intervene in the proceeding.

11 The Company seeks to protect two categories of information with this Motion: (1) federally
12 protected SSI, which includes both (a) the TSA-designated SSI portions of Security Directive 2
13 and (b) the Company’s plans and actions to comply therewith, and (2) Highly Confidential
14 Information, which includes both (a) the Company’s plans and actions for complying with the
15 publicly available portions of Security Directive 2 and (b) extremely sensitive commercial
16 information that the Company anticipates providing in this proceeding, including in its SDR
17 responses and as related to its investment in the Lexington RNG facility.

18 The first category—the federally protected SSI—includes certain portions of the rules and
19 related compliance deadlines issued by the TSA to owners and operators of TSA-designated
20 critical pipeline systems meant to protect the nation’s pipeline infrastructure from ransomware
21 attacks and other related cyber threats.⁵ The federally protected SSI in this first category also

⁵ At a high level, Security Directive 2 requires covered entities to (1) implement specific mitigation measures to protect against ransomware attacks and other related threats, (2) develop and implement a cybersecurity contingency and response plan, and (3) conduct a cybersecurity architecture design review. See Department of Homeland Security, “DHS Announces New Cybersecurity Requirements for Critical Pipeline Owners and Operators,” (July 20, 2021), DHS.gov, <https://www.dhs.gov/news/2021/07/20/dhs-announces-new-cybersecurity-requirements-critical-pipeline-owners-and-operators> (last visited Dec. 8, 2021).

1 includes the Company's compliance plans and implementation timelines related to the underlying
2 SSI. Both the TSA-designated SSI, and the Company's compliance activities and timelines
3 related thereto, constitute SSI per 49 CFR 1520.5⁶ and must be protected as such to prevent
4 exploitation thereof, and could have a devastating and self-defeating effect if intentionally or
5 inadvertently disclosed to the public.

6 The second category—the Highly Confidential Information—includes the actions the
7 Company will undertake and the products and services it will procure to comply with the publicly
8 available portions of Security Directive 2. These plans and activities warrant additional
9 protections because disclosure of the Company's means and methods for protecting itself from
10 the occurrence and impact of cyberattacks would make those measures more easily exploitable.
11 In other words, the protective measures must remain confidential to be effective. This second
12 category also includes the extremely commercially sensitive information that NW Natural
13 anticipates producing in this proceeding, including responses to the Commission's SDRs, which
14 will include extremely sensitive five-year financial forecast materials, corporate dividend policies,
15 and other highly sensitive information. Such information requires additional protection beyond
16 that which is included in the General Protective Order because disclosure would cause significant
17 harm to its customers, even if done so inadvertently. Additionally, such information constitutes
18 material non-public information of the Company and its affiliates as defined under federal and
19 state securities laws and disclosure thereof could require the Company to make public filings with
20 the Securities and Exchange Commission, thereby disclosing the entirety of the information.
21 Furthermore, recipients of such information may be regarded as insiders and could be subject to
22 state and federal securities laws prohibiting the person from trading in the Company's securities
23 or from providing such information to others. The fact that disclosure of such information is
24 restricted under federal and state securities laws and receipt of the information gives rise to

⁶ A portion of Security Directive 2 was designated SSI by the TSA pursuant to 49 CFR 1520.5(a), while the Company's plan for complying therewith is considered SSI per 49 CFR 1520.5(b)(1).

1 potential liability under these laws requires heightened protection of earnings forecast information.
2 The corporate dividend policy information is also extremely sensitive, and the disclosure of the
3 dividend policy would likely result in significant competitive damage. Other highly sensitive
4 information may also be provided in response to the SDRs and as related to the Company's
5 investment in the Lexington RNG facility. Additionally, parties may request Highly Confidential
6 Information through discovery in this proceeding.

7 In sum, the highly sensitive information that the Company seeks to protect via its proposed
8 Modified Protective Order includes (1) TSA-designated SSI, including portions of Security
9 Directive 2 and the Company's related compliance activities and implementation timelines and
10 (2) Highly Confidential Information consisting of the Company's plans for complying with the
11 publicly available portions of Security Directive 2 and extremely commercially sensitive
12 information the Company anticipates sharing in this proceeding.

13 **B. Legal Basis for Claim that the Information is Protected under ORCP 36(C)(1)**
14 **or the Public Records Law.**

15 The SSI at issue in this proceeding is prohibited from disclosure by federal regulations
16 and is therefore exempted from disclosure under Oregon's Public Records Law.⁷ As previously
17 discussed, portions of Security Directive 2 and NW Natural's compliance activities related thereto
18 are considered SSI per 49 CFR 1520.5 and may not be disclosed except to persons with a "need
19 to know" as defined by 49 CFR 1520.11 or to those whom the TSA or another federal agency has
20 granted written authorization pursuant to 49 CFR 1520.9(a)(2).⁸ The applicable provision allowing
21 for government employees to receive information necessary for them to perform their official
22 duties applies to the Commission and Staff but does not apply to potential intervenors.⁹
23 Therefore, as required by applicable federal regulations protecting SSI, the proposed Modified

⁷ ORS 192.355(8).

⁸ 49 CFR 1520.9(a)(2).

⁹ 49 CFR 1520.11(b)(1).

1 Protective Order only grants access to the SSI to the Commission and Staff.¹⁰

2 ORCP 36(C)(1) provides for limitations on the disclosure of “trade secret[s] or other
3 confidential research, development, or commercial information.” The Highly Confidential
4 Information that NW Natural will produce in response to the Commission’s SDRs and that NW
5 Natural may produce in response to discovery requests includes non-public, commercially
6 sensitive information within the scope of ORCP 36(c)(1). Public disclosure of this information
7 would likely cause significant harm to the Company’s and its customers’ financial interests.
8 Additionally, the Company’s compliance plans related to the publicly available portions of Security
9 Directive 2 are also exempted from disclosure under Oregon’s Public Records Law as information
10 about review or approval of programs relating to the security of storage or conveyance of gas in
11 liquified or gaseous form.¹¹ Therefore, the proposed Modified Protective Order grants access to
12 this Highly Confidential Information only to parties who consent to be bound by the terms of the
13 Modified Protective Order and treat the information accordingly.

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

15 The Company requests that the Commission enter the attached Modified Protective Order
16 to prevent the unlawful distribution or disclosure of federally protected SSI and to protect the
17 Company’s plans for complying with the non-SSI portions of Security Directive 2 and its extremely
18 commercially sensitive information.

19 Under the proposed Modified Protective Order, parties may designate as SSI any
20 information the party reasonably determines constitutes SSI per 49 CFR 1520.5. Information that
21 constitutes SSI must be marked in accordance with the Modified Protective Order and with
22 applicable federal regulations, which also instruct recipients on the handling and disposal of SSI.
23 For example, the SSI must be provided in hard copy only and marked with specific language in

¹⁰ Intervenor may access the SSI if they qualify as a party with a need to know under 49 CFR 1520.11 or receive written authorization to do so from the TSA or another approved federal agency per 49 CFR 1520.9(a)(2) and consent to be bound by the proposed Modified Protective Order.

¹¹ ORS 192.355(33)(a)(B).

1 accordance with 49 CFR 1520.13(a-c) and holders of the SSI must take reasonable steps to
2 safeguard the SSI in their possession.¹² Additionally, each page of a document containing SSI
3 that is provided to qualified persons under the proposed order must be printed on orange paper,
4 separately bound, and placed in a sealed envelope or other appropriate container, which must
5 bear a legend indicating the envelope contains “Sensitive Security Information.” The SSI must
6 be provided via hand delivery or U.S. First Class mail using an opaque envelope or wrapping.
7 Furthermore, the designating party must Bates number the SSI so it can be referenced and cited
8 to in testimony and data requests—as necessary for purposes of this proceeding—without being
9 reproduced in its entirety. To the extent that a person qualified to view the SSI prefers to avoid
10 possessing such information, NW Natural is proposing a “safe room” approach whereby it would
11 make the SSI available to qualified parties at Company headquarters (“Portland Safe Room”), by
12 appointment only, Monday through Friday, between the hours of 9 a.m. and 5 p.m., excluding
13 Company holidays with 48 hours’ notice.¹³ Access to the Portland Safe Room is subject to any
14 applicable state, local, or Commission- or Company-specific COVID-19 protocols.

15 The terms of the Modified Protective Order providing additional protections to the Highly
16 Confidential Information are similar to the protections afforded SSI, with some notable differences.
17 First, a party may designate as Highly Confidential Information any information that the party
18 reasonably determines falls within the scope of ORS 192.355(33)(a)(b) (e.g., the Company’s
19 plans for complying with the non-SSI portions of Security Directive 2) or ORCP 36(C)(1) (e.g., the
20 Company’s extremely sensitive commercial information), and which is not publicly available and

¹² 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 Dec. 8, 2021).

¹³ The Commission authorized this same approach—specific to NW Natural’s SSI—in the Modified Protective Order issued in the Company’s Security Directive 2 deferral application. See Docket UM 2192, Order No. 21-433. The Commission also authorized a similar safe room approach for PacifiCorp in the Senate Bill 408 proceeding. See *In re Pacific Power & Light dba PacifiCorp, Filing of Tariffs Establishing Automatic Adjustment Clauses Under the Terms of SB 408*, Docket UE 177 et al., Order No. 06-033 (Jan. 25, 2006) (protecting PacifiCorp’s highly confidential tax information).

1 not adequately protected by the General Protective Order. Second, the marking requirements for
2 Highly Confidential Information vary from those for SSI for purposes of distinguishing between
3 the two types of protected information (e.g., Highly Confidential Information must be printed on
4 green paper). Third, unlike SSI—access to which is limited to persons with a “need to know” per
5 49 CFR 1520.11 and parties that have received written authorization from the federal
6 government—access to Highly Confidential Information is also available to counsel for parties,
7 persons employed directly by counsel of record, and employees of the Regulatory Division at
8 CUB, if those persons consent to be bound by the Order. Fourth, NW Natural will make its Highly
9 Confidential Information available for viewing via a read-only database on the Commission’s
10 Huddle website and will make encrypted working versions of models in Excel available via
11 password protected USB drive. Additionally, persons qualified to access Highly Confidential
12 Information may seek to qualify other persons if those persons consent to be bound by the Order.
13 Under the proposed Modified Protective Order, individuals who are not Commission employees
14 or Assistant Attorneys General assigned to represent the Commission must demonstrate a
15 legitimate, non-competitive need for a specific piece of Highly Confidential Information before
16 gaining access thereto; individuals with only a general interest in the information will not be
17 permitted to access it. The Commission has entered modified protective orders with similar
18 restrictions in the past, including in NW Natural’s most recent general rate revision request (UG
19 388).¹⁴

20 The terms of the proposed Modified Protective Order providing additional protections to
21 Highly Confidential Information are narrowly tailored and apply only to the Company’s extremely
22 commercially sensitive business information and plans for complying with the non-SSI portions of
23 Security Directive 2. Similarly, the terms of the proposed Modified Protective Order providing
24 additional protections to SSI are narrowly tailored and apply only to the federally protected SSI at

¹⁴ *In re NW Natural Gas Co., Request for a Gen. Rate Revision*, Docket No. UG 388, Order No. 19-450 (Dec. 23, 2019).

1 issue in this proceeding.

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

3 The proposed Modified Protective Order is necessary because NW Natural is seeking
4 through its Application to recover costs it incurred to comply with a highly sensitive security
5 directive, some of which is SSI, which the Company cannot legally disclose to the public. The
6 proposed Modified Protective Order would enable the Commission to review the SSI as necessary
7 to perform its legal obligations as NW Natural's regulator while ensuring that only those persons
8 with a "need to know" or as otherwise approved in writing by the TSA or other federal agencies
9 per 49 CFR 1520.9(a)(2) gain access to federally protected SSI. The Modified Protective Order
10 is also necessary to protect the Company's highly confidential plans for complying with the
11 publicly available portions of Security Directive 2 because disclosure of the Company's
12 cybersecurity risk mitigation efforts could undermine those efforts and result in the exact type of
13 attack against which Security Directive 2 is meant to protect.

14 Additionally, the proposed Modified Protective Order is necessary to prevent market
15 competitors and the public from gaining access to Highly Confidential Information describing NW
16 Natural's sensitive financial forecast materials, corporate dividend policy, and other highly
17 sensitive information, including highly sensitive transactional documents and other commercially
18 sensitive information related to the Company's investment in the Lexington RNG facility. First,
19 the extremely commercially sensitive information could implicate sensitive business strategies,
20 which could be compromised by the release of such information, causing significant financial harm
21 to the Company and its customers. Thus, disclosure of this Highly Confidential Information could
22 provide competitors with a significant advantage to NW Natural's financial detriment. Second,
23 the extremely commercially sensitive information constitutes material non-public information as
24 those terms are defined under federal and state securities laws, such that its inadvertent
25 disclosure could trigger a filing with the United States Securities and Exchange Commission—
26 ultimately resulting in the *full* disclosure to the public and potentially causing significant financial

1 harm to the Company and its customers.

2 The proposed Modified Protective order, described above, will decrease the risk of
3 disclosure of SSI and Highly Confidential Information by limiting in scope and number the people
4 that may access the protected information. The Modified Protective Order also reduces the risk
5 of inadvertent disclosure by restricting the manner and means by which SSI and Highly
6 Confidential Information may be maintained, stored, and transmitted.

7 **E. Intermediate Measures Explored and why these are Insufficient.**

8 As explained above, it is necessary to limit access to the SSI that includes the non-public
9 portions of Security Directive 2 and the Company's related compliance activities and schedule
10 because federal law restricts the disclosure of such information, because of the attendant serious
11 risk of harm associated with such disclosure, as evidenced by the TSA's SSI designation, and
12 because the Company could face penalties and other consequences if it does not follow federal
13 law and prevent such disclosure. It is also necessary to limit access to the Company's highly
14 confidential plans for complying with the publicly available portions of Security Directive 2—plans
15 that are exempt from disclosure pursuant to Oregon's Public Records Law—because disclosure
16 of the plans could reduce the effectiveness of the Company's mitigation efforts and expose the
17 Company to greater risk of a cybersecurity attack. Additionally, it is necessary to limit access to
18 highly confidential extremely commercially sensitive information regarding NW Natural's forecast
19 materials, corporate dividend policy, and other highly sensitive information because of the serious
20 risk of commercial harm associated with disclosure of such information. Furthermore, although
21 disclosure of confidential information under a General Protective Order is rare, it has occurred
22 from time to time. Typically, such disclosure is inadvertent, although intentional disclosures have
23 occurred.¹⁵ Given such disclosures, additional protections, such as those contained in the

¹⁵ *In re Oregon Elec. Util. Co., LLC, et al., Application for Authorization to Acquire Portland Gen. Elec. Co.*, Docket No. UM 1121, Order No. 05-114 at 9-10 (Mar. 10, 2005) (noting that "one or more parties decided to provide material identified as 'confidential' to *Willamette Week*, a weekly newspaper in

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

3 **F. Certification that NW Natural Conferred with the Other Parties Regarding the**
4 **Requested Modified Protective Order.**

5 NW Natural conferred with Staff, CUB, and AWEC on its requested Modified Protective
6 Order and those parties did not object.

7 **G. Draft of the Requested Modified Protective Order.**

8 A draft of the requested Modified Protective Order is attached as Appendix A to this
9 Motion.

10 **III. CONCLUSION**

11 For the foregoing reasons, NW Natural respectfully requests entry of the Modified
12 Protective Order attached as Appendix A in this docket.

Respectfully submitted this 14th day of December 2021.

By: **MCDOWELL RACKNER GIBSON PC**



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Portland, Oregon, which was then broadcast by television and radio stations and disclosed in other print media”).

Appendix A

to

Motion for Modified Protective Order

in Docket UG 435

MODIFIED PROTECTIVE ORDER
DOCKET UG 435

Scope of this Order

1. This order supplements the General Protective Order in this docket and governs the acquisition and use of “Sensitive Security Information” and “Highly Confidential Information” produced or used by any party in Docket UG 435.

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 only in hard copy format 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 a party may need to file SSI 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

¹ OAR 860-001-0080(3) 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 (“TSA”), 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(3).

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 Dec. 7, 2021).

other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR parts 15 and 1520.

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 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 and providing the other parties and the Commission with copies of the newly designated SSI. The newly designated SSI must comply with Paragraph 4. 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 proceeding 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 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, the designating party must make the SSI available to the person within five business days.
12. All SSI Qualified Persons—or any other persons in possession of SSI—must protect and not disclose that SSI and 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.

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 Dec. 7, 2021).

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 proceeding. 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 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) (e.g., trade secrets or other confidential research, development, or commercial information);
 - 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 Paragraphs 30 and 31, 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 Paragraphs 30 and 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 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.
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 the Highly Confidential 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. 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 35. 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.
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 on Huddle. The information will be marked "Highly Confidential Information" and uploaded to a file folder designated "highly confidential" in Huddle.
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 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 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 either under 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 B
CONSENT TO BE BOUND - SSI
DOCKET UG 435**

I. Consent to be Bound - SSI:

The Modified Protective Order and this Appendix B govern the use of SSI in UG 435.

_____ (Party) agrees to be bound by the terms of the Modified Protective Order, certifies that it has an interest in UG 435 that is not adequately represented by other parties to the proceeding, and that the persons listed below are SSI Qualified Persons under Paragraph 10.

Signature: _____

Printed Name: _____

Date: _____

II. Persons Qualified under Paragraph 10:

_____ (Party) identifies the following person(s) qualified under Paragraph 10.

PRINTED NAME	DATE

APPENDIX C
CONSENT TO BE BOUND – HIGHLY CONFIDENTIAL INFORMATION
DOCKET UG 435

I. Consent to be Bound – Highly Confidential Information:

The Modified Protective Order and this Appendix C govern the use of Highly Confidential Information in UG 435.

_____ (Party) agrees to be bound by the terms of the Modified Protective Order and certifies that it has an interest in UG 435 that is not adequately represented by other parties to the proceeding.

Signature: _____

Printed Name: _____

Date: _____

II. Persons Qualified under Paragraph 27:

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 32 and to destroy it at the conclusion of this proceeding as required by Paragraph 35.
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: _____

APPENDIX D
QUALIFICATION OF OTHER PERSONS TO RECEIVE HIGHLY CONFIDENTIAL
INFORMATION

DOCKET NO. UG 435

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

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 32 and to destroy it at the conclusion of this proceeding as required by Paragraph 35.
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: