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December 20, 2024

VIA E-MAIL TO

Public Utility Commission of Oregon
Filing Center
201 High Street SE, Suite 100
Salem, Oregon 97301-3398

Re: Docket No. UG 520 – In the Matter of Northwest Natural Gas Company, dba, NW Natural, Request for a General Rate Revision.

Attention Filing Center:

Attached for filing in the above-mentioned docket, please find Northwest Natural Gas Company's Motion for Modified Protective Order.

Please contact this office with any questions.

Sincerely,

Michael Highfill
Paralegal
McDowell Rackner Gibson PC

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UG 520

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*

Pursuant to ORS 192.355(8), ORS 192.355(33)(a)(B), ORCP 36(C)(1), OAR 860-001-0080(3), and OAR 860-001-0420, Northwest Natural Gas Company, dba NW Natural ("NW Natural" or the "Company"), hereby moves the Public Utility Commission of Oregon ("Commission") for the entry of a Modified Protective Order in this proceeding. Concurrent with this filing, the Company is also filing a Notice of Use of General Protective Order. For the reasons outlined below, good cause exists to issue a Modified Protective Order, in addition to the Commission's General Protective Order, to provide additional protection to two categories of information that will be provided in the Company's forthcoming application for general rate revision: (1) Sensitive Security Information ("SSI")—as designated by the Department of Homeland Security's Transportation Security Administration ("TSA")—related to TSA Security Directive Pipeline-2021-02 ("Security Directive 2"), and (2) highly confidential information, which includes extremely sensitive commercial and business information related to the Company's forthcoming application for general rate revision. NW Natural therefore requests that the Commission issue the proposed Modified Protective Order that is attached to this Motion as Appendix A.[1]

I. BACKGROUND AND SUMMARY OF REQUEST

NW Natural will soon file an application for general rate revision ("Application"). The Application will include, pursuant to OAR 860-022-0019(2)(a), responses to the Commission's

[1] NW Natural's proposed Modified Protective Order in Appendix A is modeled after the Modified Protective Order approved in the Company's last general rate case, UG 490 in Order No. 23-480.

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Standard Data Requests ("SDRs"), some of which may contain highly confidential, extremely commercially sensitive information. For example, the SDRs require NW Natural to provide its five-year financial forecast and its corporate dividend policy information, both of which are extremely sensitive, and the public disclosure of this information likely would cause significant competitive harm to the Company and its customers.

The Application will also include testimony related to the Company's implementation of the TSA's Security Directive 2, which requires the Company to implement certain mitigation measures and take other actions to reduce the risks of cyberattacks. While the TSA initially designated Security Directive 2 as SSI, the TSA released a significant portion of Security Directive 2 publicly,[2] and now the SSI-designated portion includes a single section of the directive requiring the Company to implement certain mitigation measures to comply with the current versions of the National Institute of Standards and Technology Digital Identity Guidelines.[3] Relatedly, NW Natural's plans for complying with Security Directive 2 are also SSI and must be treated as such.[4] Accordingly, NW Natural's ability to share the SSI-designated portions of Security Directive 2 and the Company's compliance activities is severely limited by 49 CFR 1520.9 and the Company may only do so with persons with a "need to know" as defined by 49 CFR 1520.11 or with those whom the TSA or another authorized federal agency has granted written authorization pursuant to 49 CFR 1520.9(a)(2). Therefore, the Company is filing this Motion so it can share SSI—including

[2] TSA's Security Directives 2C, 2D, and 2E were not designated SSI, though "information submitted by the Owner/Operator to TSA as a result of these requirements is protected as SSI per 49 CFR parts 15 and 1520." *See* Security Directive 2C, Cover Memorandum at 1. As a result, NW Natural's responsive plans may be made available only to persons with a "need to know" as defined by 49 CFR § 1520.11.
[3] 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. 4, 2024).
[4] 49 CFR 1520.5(b)(1).

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the entirety of Security Directive 2 and its compliance plans—directly with the Commission and qualified parties to the proceeding in an appropriate manner that complies with the federal requirements governing SSI.[5]

For these reasons, the Company seeks additional protections beyond those provided by the General Protective Order. The Modified Protective Order is designed to protect: (1) SSI; and (2) extremely sensitive commercial and business information provided in the rate case filing (the information in the second category is the "Highly Confidential Information"). The goal of the proposed protections is to ensure that the parties receiving the SSI and/or Highly Confidential Information treat it with the utmost care, and to limit the forms of duplication and transmission of such information. This approach will allow the Commission and certain anticipated parties to this case the opportunity to review the SSI and/or Highly Confidential Information, as applicable and authorized, while also ensuring that such information remains protected and is not inadvertently disclosed to the public or market competitors.

NW Natural conferred with the anticipated parties to this docket—Commission Staff ("Staff"), the Oregon Citizen's Utility Board ("CUB"), the Alliance of Western Energy Consumers ("AWEC"), and the Coalition of Communities of Color, Climate Solutions, Verde, Columbia Riverkeeper, Oregon Environmental Council, Community Energy Project, and Sierra Club (collectively, "the Coalition")—and informed them of the Company's need for this Motion. The anticipated parties did not object.

II. REQUEST FOR ADDITIONAL PROTECTION

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

[5] 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).

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A. Parties and Exact Nature of the Information Involved.

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

The Company seeks to protect two categories of information with this Motion: (1) federally protected SSI, which includes both (a) the TSA-designated SSI portions of Security Directive 2 and (b) the Company's plans and actions to comply therewith, and (2) Highly Confidential Information, which includes extremely sensitive commercial and business information that the Company anticipates providing in this proceeding, including in its SDR responses and in response to discovery that parties may request.

The first category—the federally protected SSI—includes a description of the Company's implementation of Security Directive 2, which is intended to protect critical pipeline systems and pipeline infrastructure from ransomware attacks and other related cyber threats.[6] The Company's implementation of Security Directive 2 constitutes SSI per 49 CFR 1520.5[7] and must be protected as such to prevent exploitation thereof, and could have a devastating and self-defeating effect if intentionally or inadvertently disclosed to the public.

The second category—the Highly Confidential Information—includes the extremely commercially sensitive information that NW Natural anticipates producing in this proceeding, including responses to the Commission's SDRs, which will include extremely sensitive financial

[6] 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. 4, 2024).

[7] 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).

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forecast materials, corporate dividend policies, and other highly sensitive information. Such information requires additional protection beyond that which is included in the General Protective Order because disclosure would cause significant harm to its customers, even if done so inadvertently. Additionally, such information constitutes material non-public information of the Company and its affiliates as defined under federal and state securities laws and disclosure thereof could require the Company to make public filings with the Securities and Exchange Commission, thereby disclosing the entirety of the information. Furthermore, recipients of such information may be regarded as insiders and could be subject to state and federal securities laws prohibiting the person from trading in the Company's securities or from providing such information to others. The fact that disclosure of such information is restricted under federal and state securities laws and receipt of the information gives rise to potential liability under these laws requires heightened protection of earnings forecast information. The corporate dividend policy information is also extremely sensitive, and the disclosure of the dividend policy would likely result in significant competitive damage. Other highly sensitive information may also be provided in response to the SDRs or in response to parties' discovery requests.

In sum, the highly sensitive information that the Company seeks to protect via its proposed Modified Protective Order includes (1) TSA-designated SSI, including portions of Security Directive 2 and the Company's compliance activities and implementation timelines and (2) Highly Confidential Information consisting of extremely commercially sensitive information the Company anticipates sharing in this proceeding.

B. <u>Legal Basis for Claim that the Information is Protected under ORCP 36(C)(1) or the Public Records Law.</u>

The SSI at issue in this proceeding is prohibited from disclosure by federal regulations and is therefore exempted from disclosure under Oregon's Public Records Law.[8] As previously discussed, portions of Security Directive 2 and NW Natural's compliance activities are considered

[8] ORS 192.355(8).

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SSI per 49 CFR 1520.5 and may not be disclosed except to persons with a "need to know" as defined by 49 CFR 1520.11 or to those whom the TSA or another federal agency has granted written authorization pursuant to 49 CFR 1520.9(a)(2).[9] The applicable provision allowing for government employees to receive information necessary for them to perform their official duties applies to the Commission and Staff but does not apply to potential intervenors.[10] Therefore, as required by applicable federal regulations protecting SSI, the proposed Modified Protective Order only grants access to the SSI to the Commission and Staff.[11]

ORCP 36(C)(1) provides for limitations on the disclosure of "trade secret[s] or other confidential research, development, or commercial information." The Highly Confidential Information that NW Natural will produce in response to the Commission's SDRs and that NW Natural may produce in response to discovery requests includes non-public, commercially sensitive information within the scope of ORCP 36(c)(1). Public disclosure of this information would likely cause significant harm to the Company's and its customers' financial interests. Therefore, the proposed Modified Protective Order grants access to this Highly Confidential Information only to parties who consent to be bound by the terms of the Modified Protective Order and treat the information accordingly.

C. <u>Exact Nature of the Relief Requested.</u>

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

Under the proposed Modified Protective Order, parties may designate as SSI any

[9] 49 CFR 1520.9(a)(2).
[10] 49 CFR 1520.11(b)(1).
[11] Intervenors 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.

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information the party reasonably determines constitutes SSI per 49 CFR 1520.5. Information that constitutes SSI must be marked in accordance with the Modified Protective Order and with applicable federal regulations, which also instruct recipients on the handling and disposal of SSI. For example, the SSI must be provided in hard copy only and marked with specific language in accordance with 49 CFR 1520.13(a-c) and holders of the SSI must take reasonable steps to safeguard the SSI in their possession.[12] Additionally, each page of a document containing SSI that is provided to qualified persons under the proposed order must be printed on orange paper, separately bound, and placed in a sealed envelope or other appropriate container, which must bear a legend indicating the envelope contains "Sensitive Security Information." The SSI must be provided via hand delivery or U.S. First Class mail using an opaque envelope or wrapping. Furthermore, the designating party must number or label the SSI so it can be referenced and cited to in testimony and data requests—as necessary for purposes of this proceeding—without being reproduced in its entirety. To the extent that a person qualified to view the SSI prefers to avoid possessing such information, NW Natural is proposing a "safe room" approach whereby it would make the SSI available to qualified parties at Company headquarters ("Portland Safe Room"), by appointment only, Monday through Friday, between the hours of 9 a.m. and 5 p.m., excluding Company holidays with 48 hours' notice.[13]

The terms of the Modified Protective Order providing additional protections to the Highly Confidential Information are different from the protections afforded SSI. First, a party may

[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. 4, 2024).

[13] The Commission also authorized this same approach—specific to NW Natural's SSI—in the Modified Protective Orders issued in the Company's last two rate cases and in the Company's Security Directive 2 deferral application. *See* Docket UG 490, Order No. 23-480 (Dec. 19, 2023); Docket UG 435, Order No. 21-465 (Dec. 16, 2021); and Docket UM 2192, Order No. 21-433 (Nov. 23, 2021). 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).

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designate as Highly Confidential Information any information that the party reasonably determines falls within the scope of ORS 192.355(33)(a)(b) or ORCP 36(C)(1), and which is not publicly available and not adequately protected by the General Protective Order. Second, the marking requirements for Highly Confidential Information vary from those for SSI for purposes of distinguishing between the two types of protected information (e.g., Highly Confidential Information must be printed on green paper). Third, unlike SSI—access to which is limited to persons with a "need to know" per 49 CFR 1520.11 and parties that have received written authorization from the federal government—access to Highly Confidential Information is also available to counsel for parties, persons employed directly by counsel of record, and employees of the Regulatory Division at CUB, if those persons consent to be bound by the Order. Additionally, persons qualified to access Highly Confidential Information may seek to qualify other persons if those persons consent to be bound by the Order. Under the proposed Modified Protective Order, individuals who are not Commission employees or Assistant Attorneys General assigned to represent the Commission must demonstrate a legitimate, non-competitive need for a specific piece of Highly Confidential Information before gaining access thereto; individuals with only a general interest in the information will not be permitted to access it.

The proposed Modified Protective Order specifies that Highly Confidential Information will be made available to persons qualified to view Highly Confidential Information ("HC Qualified Person") through the following methods:

(a) **Encrypted email.** Email which must be encrypted using a Federal Information Processing Standards ("FIPS") 140-2 approved algorithm such as Advanced Encryption Standard ("AES") with AES-128, AES-192 or AES-256. Free tools such as 7zip, WinZip and PGP can provide such encryption. The password must be sent separately from the encrypted file. Alternatively, secure email gateways which secure the transmission of email through the use of password protected portals (e.g., Proofpoint's Email Encryption) can be used as long as those services are managed and licensed at an enterprise level (i.e., not a personal account);

(b) **File-sharing.** Cloud-based file sharing and collaborative solutions such as Box, DropBox, SharePoint Online, etc. may be used if the service is managed and licensed through an enterprise level license, meaning no personal accounts may be used. Unless first agreed to in writing by NW Natural, the service must be configured to

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require multifactor authentication and must store its data exclusively in the United States;

(c) **Removable media.** Any Highly Confidential Information transferred on removable media (USB Drive) must be encrypted using Microsoft Bitlocker and sent via hand delivery or U.S. First Class Mail or other traceable delivery service using an opaque envelope or wrapping;

(d) **Paper copy.** If paper copy filing is preferred, a party may file Highly Confidential Information with the Administrative Hearings Division, consistent with the Commission's hard copy filing procedures. Any paper copies shall be printed on GREEN paper consistent with the Modified Protective Order.

(e) **Read-only Huddle.** For discovery, Highly Confidential Information may be provided via a read-only database on Huddle, the Commission's discovery portal (no downloads). If an HC Qualified Person needs a working version of a document provided via Huddle, the HC Qualified Person may request it to be provided via electronic or hard copy methods described in this Modified Protective Order.

Additional details concerning the handling and storage of Highly Confidential Information are provided in Paragraphs 30-33 of the Modified Protective Order.

In light of the possibility of Highly Confidential Information being provided via electronic means, the Modified Protective Order also requires that HC Qualified Persons commit to abide by the following terms:

(a) The entity with which the HC Qualified Person is associated shall utilize industry-accepted firewalls, up-to-date anti-virus software, and non- end-of-life operating systems;

(b) The entity with which the HC Qualified Person is associated shall secure electronic access to the entity's information systems containing Highly Confidential Information;

(c) Unless first agreed to in writing by NW Natural, the entity with which the HC Qualified Person is associated shall store, process, and maintain any and all Highly Confidential Information on designated target servers that reside physically within the boundaries of the United States;

(d) The entity with which the HC Qualified Person is associated shall not transfer any Highly Confidential Information outside of its network via unencrypted means;

(e) The entity with which the HC Qualified Person is associated shall not process or transfer Highly Confidential Information to any unencrypted portable or laptop computing device, or any other unencrypted portable storage medium;

(f) The entity with which the HC Qualified Person is associated shall use two-factor authentication for remote access to systems that access or store Highly Confidential Information;

(g) The entity with which the HC Qualified Person is associated shall secure and prevent misuse of its own email resources;

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(h) The entity with which the HC Qualified Person is associated shall not store any Highly Confidential Information on any personal devices.

The Commission has entered modified protective orders with similar restrictions in the past, including in NW Natural's most recent general rate revision request (UG 490).[14]

The terms of the proposed Modified Protective Order providing additional protections to Highly Confidential Information are narrowly tailored and apply only to the Company's extremely sensitive commercial and business information. Similarly, the terms of the proposed Modified Protective Order providing additional protections to SSI are narrowly tailored and apply only to the federally protected SSI at issue in this proceeding.

D. <u>Specific Reasons Requested Relief is Necessary.</u>

The proposed Modified Protective Order is necessary because NW Natural is seeking through its Application to recover costs it incurred to comply with a highly sensitive security directive, which the Company cannot legally disclose to the public because it is SSI. The proposed Modified Protective Order would enable the Commission to review the SSI as necessary to perform its legal obligations as NW Natural's regulator while ensuring that only those persons with a "need to know" or as otherwise approved in writing by the TSA or other federal agencies per 49 CFR 1520.9(a)(2) gain access to federally protected SSI.

Additionally, the proposed Modified Protective Order is necessary to prevent market competitors and the public from gaining access to Highly Confidential Information describing NW Natural's sensitive financial forecast materials, corporate dividend policy, and other highly sensitive information. First, the extremely commercially sensitive information could implicate sensitive business strategies, which could be compromised by the release of such information, causing significant financial harm to the Company and its customers. Thus, disclosure of this Highly Confidential Information could provide competitors with a significant advantage to NW

[14] *In re NW Natural Gas Co., Request for a Gen. Rate Revision*, Docket UG 490, Order No. 23-480 (Dec. 19, 2023).

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Natural's financial detriment. Second, the extremely commercially sensitive information constitutes material non-public information as those terms are defined under federal and state securities laws, such that its inadvertent disclosure could trigger a filing with the United States Securities and Exchange Commission—ultimately resulting in the *full* disclosure to the public and potentially causing significant financial harm to the Company and its customers.

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

E. <u>Intermediate Measures Explored and why these are Insufficient.</u>

As explained above, it is necessary to limit access to the SSI that includes the non-public portions of Security Directive 2 and the Company's compliance activities and schedule because federal law restricts the disclosure of such information, because of the attendant serious risk of harm associated with such disclosure, as evidenced by the TSA's SSI designation, and because the Company could face penalties and other consequences if it does not follow federal law and prevent such disclosure. Additionally, it is necessary to limit access to highly confidential extremely commercially sensitive information regarding NW Natural's forecast materials, corporate dividend policy, and other highly sensitive information because of the serious risk of commercial harm associated with disclosure of such information. Furthermore, although disclosure of confidential information under a General Protective Order is rare, it has occurred from time to time. Typically, such disclosure is inadvertent, although intentional disclosures have

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occurred.[15] Given such disclosures, additional protections, such as those contained in the proposed Modified Protective Order, are appropriate when the consequences of disclosure would be particularly grave.

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

NW Natural conferred with Staff, CUB, AWEC, and the Coalition regarding its requested Modified Protective Order and these parties did not object to the entry of this Modified Protective Order.

G. Draft of the Requested Modified Protective Order.

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

III. CONCLUSION

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

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

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Respectfully submitted on this 20th day of December, 2024.

By: **MCDOWELL RACKNER GIBSON PC**

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MODIFIED PROTECTIVE ORDER
DOCKET NO. UG 520

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 520.

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 hard copy filing procedures.

4. To designate information as SSI, a party must mark the document by placing the Protective Marking, as defined immediately below, conspicuously on the top of, and the Distribution Limitation Statement, as defined immediately below, on the bottom of (1) the outside of any front and back cover, including a binder cover or folder, if the document has a front and back cover; (2) any title page; and (3) each page of the document.[2] Every page of a document must be marked with the SSI Protective Marking and Distribution Limitation Statement even when only a small portion of that document contains SSI.[3]

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

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[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. 4, 2024).

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 apply exhibit labeling or numbering to 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 34 and 35, 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.

15. SSI Qualified Persons reviewing SSI in the Portland Safe Room are not authorized to and shall not make copies of any document designated as containing SSI but may make limited notes regarding the documents for reference purposes only. Such notes shall not constitute a verbatim or substantive transcript of the documents and shall be considered SSI subject to the terms of this Modified Protective Order. Any such notes shall be marked in accordance with 49 CFR 1520.13(a)-(c), as required by federal law.

16. The Commission's Administrative Hearings Division, Commission Staff, and other SSI Qualified Persons must store SSI in a locked room or cabinet dedicated to the storage of SSI.

17. Without the written permission of the designating party, any person given access to SSI under this Order may not use or disclose such information for any purpose other than participation in this proceeding and only then under the terms of this Order.

18. Each party shall follow the procedures outlined in Paragraph 5 to reference the SSI for

[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. 4, 2024).

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;
    (c) Is not adequately protected by the General Protective Order; and
    (d) Includes extremely sensitive financial forecast materials, corporate dividend policies, and other competitively or commercially sensitive information requested in discovery that NW Natural and the requesting party agree is appropriately designated as highly confidential.

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. 24__

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, if using paper copies, 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. _____.

22. The designating party shall label or 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 34 and 35.

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 using one of the following methods:

(a) **Electronic transmission, storage and filing:**

- **For transmission to or among HC Qualified Persons or filing Highly Confidential Information at the Commission:** Any Highly Confidential Information sent via email must be encrypted using a Federal Information Processing Standards ("FIPS") 140-2 approved algorithm such as Advanced Encryption Standard ("AES") with AES-128, AES-192 or AES-256. Free tools such as 7zip, WinZip and PGP can provide such encryption. The password must be sent separately from the encrypted file. Alternatively, secure email gateways which secure the transmission of email through the use of password protected portals (e.g., Proofpoint's Email Encryption) can be used as long as those services are managed and licensed at an enterprise level (not a personal account). Highly Confidential Information transmitted through these secure email gateways does not require additional FIPS encryption.
- **For storge of Highly Confidential Information or transmission among HC Qualified Persons:** Cloud-based file sharing and collaborative solutions such as Box, DropBox, SharePoint Online, etc. may be used if the service is managed and licensed through an enterprise level license, meaning no personal accounts may be used. Unless first agreed to in writing by NW Natural, the service must be configured to require multifactor authentication and must store its data exclusively in the United States.

(b) **Paper or USB Drive:**

- **Removable Media** – Any Highly Confidential Information transferred on removable media (USB Drive) must be encrypted using Microsoft Bitlocker and sent via hand delivery or U.S. First Class Mail or other traceable delivery service using an opaque envelope or wrapping. The password must not be sent with the encrypted media.

- **Paper Copy** – If paper copy filing is preferred, a party may file Highly Confidential Information with the Administrative Hearings Division, consistent with the Commission's hard copy filing procedures. Any paper copies shall be printed on GREEN paper consistent with Paragraph 21.
- HC Qualified Persons must store the paper copy and/or USB drive in a locked room or cabinet dedicated to the storage of Highly Confidential Information when not in use

(c) **Discovery:** For discovery, a read-only database on Huddle, the Commission's discovery portal may be used (no downloads). If an HC Qualified Person needs a working version of a document provided via Huddle, the HC Qualified Person may request it to be provided via electronic or hard copy methods described in this Modified Protective Order.

31. All HC Qualified Persons must take reasonable precautions to keep Highly Confidential Information secure. HC Qualified Persons may reproduce Highly Confidential Information to the extent necessary to participate in these proceedings. An HC Qualified Person may discuss Highly Confidential Information obtained under this order only with other HC Qualified Persons who have obtained the same information under this order, and only in relation to this proceeding. HC Qualified Persons commit to abide by the following terms:

(a) The entity with which the HC Qualified Person is associated shall utilize industry-accepted firewalls, up-to-date anti-virus software, and non-end-of-life operating systems;
(b) The entity with which the HC Qualified Person is associated shall secure electronic access to the entity's information systems containing Highly Confidential Information;
(c) Unless first agreed to in writing by NW Natural, the entity with which the HC Qualified Person is associated shall store, process, and maintain any and all Highly Confidential Information on designated target servers that reside physically within the boundaries of the United States;
(d) The entity with which the HC Qualified Person is associated shall not transfer any Highly Confidential Information outside of its network via unencrypted means;
(e) The entity with which the HC Qualified Person is associated shall not process or transfer Highly Confidential Information to any unencrypted portable or laptop computing device, or any other unencrypted portable storage medium;
(f) The entity with which the HC Qualified Person is associated shall use two-factor authentication for remote access to systems that access or store Highly Confidential Information;
(g) The entity with which the HC Qualified Person is associated shall secure and prevent misuse of its own email resources;
(h) The entity with which the HC Qualified Person is associated shall not store any Highly Confidential Information on any personal devices.

32. 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.

33. 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

34. 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.

35. 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

36. 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.

37. 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.

38. 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.

39. 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

40. 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.

41. 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 NO. UG 520

I. Consent to be Bound - SSI:
The Modified Protective Order and this Appendix B govern the use of SSI in UG 520.

_____ (Party) agrees to be bound by the terms of the Modified Protective Order, certifies that it has an interest in UG 520 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 NO. UG 520

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 520.

_____ (Party) agrees to be bound by the terms of the Modified Protective Order and certifies that it has an interest in UG 520 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 agree to keep the information in a secure manner as required by Paragraph 30-32 and to destroy it at the conclusion of this proceeding as required by Paragraph 33.
2. 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.
3. 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 520

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 agree to keep the information in a secure manner as required by Paragraph 30-32 and to destroy it at the conclusion of this proceeding as required by Paragraph 33.

2. 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.

3. 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.

4. 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: