

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

NORTHWEST NATURAL GAS
COMPANY,

Respondent.

DOCKET UG-250610

ORDER 02

PROTECTIVE ORDER WITH
PROVISIONS GOVERNING
HIGHLY CONFIDENTIAL
INFORMATION

BACKGROUND

- 1 The Washington Utilities and Transportation Commission (Commission) finds that the parties reasonably anticipate that discovery or evidentiary filings will require information designated as confidential pursuant to Washington Administrative Code (WAC) 480-07-160 to be disclosed to parties that, in the absence of a protective order, would not be authorized to access that information. The Commission further finds that a protective order governing disclosure of information designated as confidential is necessary to protect the provider of that information while promoting the free exchange of information and development of the evidentiary record. The Commission also finds that it is necessary to create a separate designation and a higher degree of protection for certain information that one or more parties' assert is highly confidential or sensitive security information (SSI).
- 2 Accordingly, the Commission enters this protective order (Order) pursuant to Revised Code of Washington (RCW) 34.05.446 and WAC 480-07-420 to govern the discovery and use of information designated as confidential or highly confidential in this proceeding.

ORDER

A. General Provisions

- 3 **Confidential Information.** All access, review, use, and disclosure of any material designated by a party to this proceeding as confidential pursuant to WAC 480-07-160

(referred to in this Order as “Confidential Information”) is governed by this Order and by WAC 480-07-160. Only information that meets the definition of “confidential information” in WAC 480-07-160(2)(b) may be designated as Confidential Information.

- 4 **Highly Confidential Information.** All access, review, use, and disclosure of any material designated by a party to this proceeding as highly confidential pursuant to WAC 480-07-160 (referred to in this Order as “Highly Confidential Information”) is governed by this Order and by WAC 480-07-160. Highly Confidential Information is Confidential Information, the disclosure of which poses a highly significant risk of heightened competitive harm to the disclosing party or third parties. Only information that meets this standard and the definition of “highly confidential information” in WAC 480-07-160(2)(d) may be designated as Highly Confidential Information.
- 5 **Sensitive Security Information.** All access, review, use, and disclosure of any material designated by a party to this proceeding as sensitive security information (referred to in this Order as SSI) as designated by the Department of Homeland Security’s Transportation Security Administration, related to TSA Security Directive Pipeline-2021-02 or otherwise qualifying under federal regulations, is governed by this Order and by WAC 480-07-160. SSI is any information reasonably believed to be considered as such in accordance with 49 C.F.R. 1520.5. Only information that meets this standard may be designated as SSI.

B. Designations

- 6 **Designating Confidential Information and Highly Confidential Information.** Parties must designate Confidential Information and Highly Confidential Information as required in WAC 480-07-160. The Commission may reject any filing that fails to properly designate or mark Confidential Information or Highly Confidential Information or that designates public information as confidential or highly confidential.
- 7 **Designating Sensitive Security Information.** Any party may designate as SSI any information the party reasonably determines constitutes SSI as defined by federal regulation 49 CFR 1520.5. Parties must designate SSI as required in 49 CFR 1520.13. The Commission may reject any filing that fails to properly designate or mark SSI or that designates clearly public information as SSI.¹

¹ The TSA published "Security Sensitive Information: Best Practices Guide for Non-OHS Employees and Contractors", https://www.tsa.gov/sites/default/files/ssi_best_practices_guide_for_non-dhs_employees.pdf, (last visited Aug. 14, 2025).

8 SSI may be shared only in hard copy format or viewed in a Safe Room as described in Paragraph 23 herein. No electronic distribution of SSI is permitted under this Order. Accordingly, SSI may not be posted to a shared data site 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.

9 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. 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.

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.

10 Additionally, each page of a document containing SSI that is provided to SSI Qualified Persons under this Order (as defined in Paragraph 21) 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 [] AND CONTAINS SENSITIVE SECURITY INFORMATION. THE INFORMATION MAY BE SHOWN ONLY TO SSI QUALIFIED PERSONS AS DEFINED IN ORDER [].

11 The designating party shall apply exhibit labeling or numbering to documents designated as containing SSI so that SSI Qualified Persons, as defined in Paragraph 21, may

reference any page they may want to use as an exhibit to testimony or for other purposes in this case.

- 12 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 this Section. Parties in possession of newly designated SSI must ensure that all copies of the previously undesignated information are destroyed in accordance with Paragraph 31 or, if requested by the designating party or required for compliance with the Washington Public Records Act, are annotated to bear the appropriate legend (above) and are accessible only to persons qualified under this Order.
- 13 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.
- 14 **Limitation on Use.** A party or a party's counsel or expert may review, use, or disclose information designated as Confidential Information or Highly Confidential Information by another party only for purposes of this proceeding.

C. Disclosure of Confidential Information

- 15 **Persons Permitted Access to Confidential Information.** No person bound by this Order may disclose information designated as Confidential Information by another party to anyone other than the Commissioners, Commission Staff, the presiding officer(s), and, subject to the requirements in paragraph 21 below, counsel for each of the parties to this proceeding, each such counsel's administrative staff, and persons designated by the parties as their experts in this proceeding. No expert who requests access to Confidential Information other than members of Commission Staff or Public Counsel may be an officer, director, direct employee, major shareholder, or principal of any party or any competitor of any party unless the provider of the Confidential Information waives this restriction. Any dispute concerning persons entitled to access Confidential Information must be brought before the presiding officer for resolution.
- 16 **Confidential Non-disclosure Agreement.** Before being allowed access to any Confidential Information disclosed in this docket, each counsel or expert must agree to comply with and be bound by this Order by executing, filing, and serving Exhibit A (counsel) or Exhibit B (expert) attached to this Order (collectively, Confidential Non-disclosure Agreement). A counsel's administrative staff need not execute a Confidential

Non-disclosure Agreement if counsel agrees to be responsible for any violation of this Order that results from his or her staff's conduct. If the provider of the Confidential Information objects to allowing any expert to have access to such information, that party must complete the applicable portion of the Confidential Non-disclosure Agreement for that expert, timely file it with the Commission, and serve all parties. A party waives objection to allowing access to Confidential Information to an expert who has executed a Confidential Non-disclosure Agreement if the party fails to comply with this requirement.

- 17 **Access to Confidential Information.** Parties must comply with the requirements in WAC 480-07-160 and WAC 480-07-420 when providing documents containing Confidential Information to the Commission or persons who have executed a Confidential Non-disclosure Agreement. Persons who have executed a Confidential Non-disclosure Agreement agree that they will exercise all reasonable diligence to protect Confidential Information from disclosure to unauthorized persons.

D. Disclosure of Highly Confidential Information

- 18 **Persons Permitted Access to Highly Confidential Information.** No person bound by this Order may disclose information designated as Highly Confidential Information by another party to anyone other than the Commissioners, Commission Staff, the presiding officer(s), and, subject to the requirements in paragraph 19 below, counsel for each of the parties to this proceeding, each such counsel's administrative staff, and persons designated by the parties as their experts in this proceeding. Any dispute concerning persons entitled to access Highly Confidential Information must be brought before the presiding officer for resolution.

- 19 **Highly Confidential Non-Disclosure Agreement.** Before being allowed access to any Highly Confidential Information disclosed in this docket, each counsel or expert must agree to comply with and be bound by this Order by executing, filing, and serving Exhibit C attached to this Order (Highly Confidential Non-Disclosure Agreement). A counsel's administrative staff need not execute a Highly Confidential Non-Disclosure Agreement if counsel agrees to be responsible for any violation of this Order that results from his or her staff's conduct. If the provider of the Highly Confidential Information objects to allowing any expert to have access to such information, that party must complete the applicable portion of the Highly Confidential Non-Disclosure Agreement for that expert, timely file it with the Commission, and serve all parties. A party waives objection to allowing access to Highly Confidential Information to an expert who has executed a Highly Confidential Non-Disclosure Agreement if the party fails to comply with this requirement.

20 **Access to Highly Confidential Information.** Parties must comply with the requirements in WAC 480-07-160 and WAC 480-07-420 when providing documents containing Highly Confidential Information to the Commission or persons who have executed a Highly Confidential Non-Disclosure Agreement. Persons who have executed a Highly Confidential Non-Disclosure Agreement agree that they will exercise all reasonable diligence to protect Highly Confidential Information from disclosure to unauthorized persons.

E. Disclosure of Sensitive Security Information

21 **Persons Permitted Access to Sensitive Security Information.** Access to SSI is restricted by the applicable provisions of 49 CFR 1520. In accordance with 49 CFR 1520.11(b)(1), Commission staff, employees, and Public Counsel attorneys and staff have a “need to know.” Commission staff and Public Counsel attorneys and staff are automatically bound by this Protective Order and are qualified to access the SSI. Other parties to this proceeding may become qualified to access SSI if at least one of the following provisions applies:

- (a) The party is a person with “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).

22 Counsel for such parties that sign the consent to be bound, Exhibit D, may access the SSI and may designate one representative for the party that may access the SSI consistent with Exhibit D. A signed copy of Exhibit D must be filed with the Commission and served on all parties of record.

23 **Access to Sensitive Security Information.** Upon receipt of a signed copy of Exhibit D, and if there is no objection to the person as qualifying to access SSI, the designating party must make the SSI available within five (5) business days. SSI may be shared only in hard copy format or viewed in a Safe Room at the office of NW Natural’s counsel, Perkins Coie, LLP in Bellevue WA. Parties agree that they will exercise all reasonable diligence to protect Sensitive Security Information from disclosure to unauthorized persons. To the extent that a party may need to file SSI with the Commission, such filing shall be accomplished consistent with the Commission's hard copy filing procedures for Exempt Information.

F. Use of Confidential Information, Highly Confidential Information, and SSI

24 **Reference to Confidential Information or Highly Confidential Information, or Sensitive Security Information.** Any public reference to Confidential Information or

Highly Confidential Information or SSI during any part of this proceeding including, but not limited to, in motions, briefs, arguments, direct testimony, cross-examination, rebuttal, and proposed offers of proof, must not disclose the content or substance of that information, directly or indirectly. To the extent not addressed in this Order or WAC 480-07-160, the parties must negotiate how best to prevent unauthorized disclosure of Confidential Information, Highly Confidential Information or SSI with the goal of protecting each party's rights with respect to that information while allowing all parties the latitude to present the evidence necessary to support their respective cases and to maximize the information available to the public. If the parties cannot reach agreement about how to use or refer to Confidential Information, Highly Confidential Information or SSI without disclosing it in violation of this Order, they must notify the presiding officer, who will determine the arrangements to protect the Confidential Information, Highly Confidential Information or SSI to ensure that all parties are afforded their full due process rights, including the right to cross-examine witnesses.

- 25 Counsel or other representative of any party that intends to disclose Confidential Information, Highly Confidential Information, or SSI during oral testimony, cross-examination, or argument must give such prior notice as is feasible to the provider of that information and the presiding officer. That notice, at a minimum, must permit the presiding officer an opportunity to clear the hearing room of persons not bound by the applicable Non-disclosure Agreement or to take other action as is appropriate in the circumstances.
- 26 **Right to Challenge Admissibility.** Nothing in this Order may be construed to restrict any party's right to challenge the admissibility or use of any Confidential Information, Highly Confidential Information, or SSI on any ground other than confidentiality, including but not limited to competence, relevance, or privilege.
- 27 **Right to Challenge Confidential Designation.** Any party by motion or the Commission on its own initiative may challenge a party's designation of information as Confidential, Highly Confidential, or as Sensitive Security Information under WAC 480-07-160 of this Order. The presiding officer will conduct an *in camera* hearing to determine the propriety of the designation. The burden of proof to show that such information is properly designated as confidential or highly confidential is on the party that made that designation. Pending a Commission determination, the challenged Confidential Information or Highly Confidential Information shall be treated in all respects as protected under the terms of this Order. The presiding officer will make his or her determination orally on the record or in a written order.
- 28 If a presiding officer other than the Commissioners determines that challenged information designated as highly confidential is entitled only to protection as Confidential Information, the information will continue to be protected as Highly

Confidential Information under this Order for ten days from the date of the presiding officer's determination. If a party seeks administrative review of that determination within that time, the Commission will stay the determination pending an order from the Commission. If the Commission upholds the determination on review, in whole or in part, or if the Commissioners are the presiding officers, the Commission will require the challenged information to be refiled as Confidential Information.

- 29 If the presiding officer determines the challenged information is not entitled to any protection under this Order and WAC 480-07-160, the information will continue to be protected under this Order for ten days from the date of the presiding officer's determination. If a party seeks administrative review of a determination by a presiding officer other than the Commissioners within that time, the Commission will stay the determination pending an order from the Commission. If the Commission upholds the determination on review, in whole or in part, the information will continue to be protected under this Order for ten days from the date of the Commission order. If no party seeks administrative or judicial review of the presiding officer's determination within 10 days, or if no reviewing court enters an order protecting the challenged information from disclosure within ten days of a final Commission determination, the Commission will require the challenged information to be refiled without the confidential or highly confidential designation or otherwise treated as public information.

- 30 **Admission of Confidential Information or Highly Confidential Information Under Seal.** The portions of the record of this proceeding containing Confidential Information, Highly Confidential Information, or SSI will be sealed for all purposes, including administrative and judicial review, unless such Confidential Information, Highly Confidential Information, or SSI is released from the restrictions of this Order, either through the agreement of the parties or pursuant to a lawful order of the Commission or of a court having jurisdiction to do so.

- 31 **Return of Confidential Information and Highly Confidential Information.** Within thirty days following the conclusion of this proceeding, including any administrative or judicial review, every person who has executed a Confidential, Highly Confidential, or SSI Non-disclosure Agreement and possesses or controls any Confidential Information, Highly Confidential Information disclosed by another party (including personal notes that make substantive reference to that Confidential Information or Highly Confidential Information), either must return all such Confidential Information or Highly Confidential Information to the party that provided it or must certify in writing that all copies and substantive references to that information in notes have been destroyed; PROVIDED, that counsel may retain exhibits that contain Confidential Information or Highly Confidential Information as counsel records subject to the terms and conditions of this Order. 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).

- 32 **Freedom of Information Laws.** Until the Commission or any court having jurisdiction finds that any particular Confidential Information or Highly Confidential Information is not properly designated as confidential pursuant to WAC 480-07-160, the Commission expects any federal agency that has access to or receives copies of the Confidential Information, Highly Confidential Information, or SSI to treat that information as within the exemption from disclosure provided in the Freedom of Information Act at 5 U.S.C. § 552 (b)(4); the Commission also expects any Washington state agency that has access to or receives copies of the Confidential Information or Highly Confidential Information to treat that information as being within the exemption from disclosure provided in RCW 42.56.210.
- 33 **Notice of Compelled Production in Other Jurisdictions.** If a person who has executed a Confidential or Highly Confidential Non-disclosure Agreement or SSI Agreement is compelled to produce documents containing Confidential Information, Highly Confidential Information, or SSI in any regulatory or judicial proceeding by the body conducting the proceeding, the person must provide notice to the party that provided the Confidential Information or Highly Confidential Information. Such information must not be produced for at least five business days following such notice to permit the party that provided the information an opportunity to defend the protected status of the material before the regulatory or judicial body that would otherwise compel production. Disclosure after that date, in compliance with an order compelling production, is not a violation of this Order.
- 34 **Modification.** The Commission may modify this Order on motion of a party or on its own motion upon reasonable prior notice to the parties and an opportunity for hearing.
- 35 **Violation of this Order.** Violation of this Order by any party to this proceeding or by any other person bound by this Order by unauthorized use or unauthorized disclosure of Confidential Information, Highly Confidential Information, or Sensitive Security Information may subject such party or person to liability for damages and shall subject such party to penalties as generally provided by law.

DATED at Lacey, Washington, and effective October 22, 2025.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ Amy Bonfrisco

AMY BONFRISCO

Administrative Law Judge

EXHIBIT A (ATTORNEY AGREEMENT)
AGREEMENT CONCERNING HIGHLY CONFIDENTIAL INFORMATION
IN DOCKET UG-250610
BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, _____, as attorney in this proceeding for _____ (party to this proceeding) agree to comply with and be bound by the Protective Order entered by the Washington Utilities and Transportation Commission in Docket UG-250610, and acknowledge that I have reviewed the Protective Order and fully understand its terms and conditions. I further agree to be responsible for any violations of the Protective Order that result from the conduct of administrative staff I allow to have access to Confidential Information.

Signature

Date

Address

EXHIBIT B (EXPERT AGREEMENT)

AGREEMENT CONCERNING HIGHLY CONFIDENTIAL INFORMATION
IN DOCKET UG-250610
BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, _____, as expert witness in this proceeding for _____ (a party to this proceeding) hereby agree to comply with and be bound by the Protective Order entered by the Washington Utilities and Transportation Commission in Docket UG-250610 and acknowledge that I have reviewed the Protective Order and fully understand its terms and conditions.

Signature

Date

Employer

Address

Position and Responsibilities

* * *

The following portion is to be completed by the responding party and filed with the Commission within 10 days of receipt; failure to do so will constitute a waiver and the above-named person will be deemed an expert having access to Confidential Information under the terms and conditions of the protective order.

_____ No objection.

_____ Objection. The responding party objects to the above-named expert having access to Confidential Information. The objecting party shall file a motion setting forth the basis for objection and asking for exclusion of the expert from access to Confidential Information.

Signature

Date

EXHIBIT C (HIGHLY CONFIDENTIAL INFORMATION AGREEMENT)

AGREEMENT CONCERNING HIGHLY CONFIDENTIAL INFORMATION
IN DOCKET UG-250610
BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

I, _____, as

In-house counsel

In-house expert

Outside counsel

Outside expert

in this proceeding for _____ (a party to this proceeding) hereby declare under penalty of perjury under the laws of the State of Washington that the following are true and correct:

- a. I have read and understand, and agree to be bound by, the terms of the Protective Order in this proceeding, including this Exhibit C of the Protective Order; and
- b. If I am in-house or outside counsel, I further agree to be responsible for any violations of the Protective Order that result from the conduct of administrative staff I allow to have access to Highly Confidential Information.

Signature

Date

City/State where this Agreement was signed

Employer

Position and Responsibilities

Permanent Address

* * *

The following portion is to be completed by the responding party and filed with the Commission within 10 days of receipt. Failure to do so will constitute a waiver and the above-named person will be deemed a person having access to Highly Confidential Information under the terms and conditions of the protective order.

_____ No objection.

_____ Objection. The responding party objects to the above-named person having access to Highly Confidential Information. The objecting party shall file a motion with the Commission, supported by affidavit, setting forth the basis for objection and asking for exclusion of the person from access to Highly Confidential Information.

Signature

Date

EXHIBIT D (SENSITIVE SECURITY INFORMATION AGREEMENT)

AGREEMENT CONCERNING SENSITIVE SECURITY INFORMATION
IN DOCKET UG-250610
BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

I, _____, as

In-house counsel

In-house expert

Outside counsel

Outside expert

in this proceeding for _____ (a party to this proceeding) hereby declare under penalty of perjury under the laws of the State of Washington that the following are true and correct:

I certify that I am an SSI Qualified Person under Paragraph 16 of the Protective Order;

I have read and understand, and agree to be bound by, the terms of the Protective Order in this proceeding, including this Exhibit D of the Protective Order; and

If I am in-house or outside counsel, I further agree to be responsible for any violations of the Protective Order that result from any individuals that I allow to have access to Sensitive Security Information. Those persons qualified as SSI Qualified persons are:

Name: _____ Date Qualified: _____

Signature

Date

City/State where this Agreement was signed

Employer

Position and Responsibilities

Permanent Address