

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the)	Application No. NG-101/PI-224
Commission, on its own motion,)	
opening an investigatory docket)	
for the purpose of general)	PROTECTIVE ORDER
monitoring of issues regarding)	
the natural gas industry and)	
jurisdictional utilities in)	
Nebraska.)	Entered: June 4, 2019

BY THE HEARING OFFICER:

PROTECTIVE ORDER

This Protective Order shall govern the use of all confidential information (defined below) and documents produced by, or on behalf of, any party in this proceeding. The processes and terms of this Protective Order shall apply only to the parties to this proceeding, and will not extend to informal intervenors or to other non-parties to the proceeding. Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Nebraska Public Service Commission ("Commission").

1. Confidential Information.

a. For purposes of this Protective Order, the term "Confidential Information" shall mean information and materials, including digital media, which have been designated by a party to this proceeding as Confidential in accordance with the terms of this Protective Order, and which are:

- (1) Materials provided by any party in these proceedings, including depositions, work papers, contracts, formulas, rate models, responses to discovery requests, which include information of a proprietary or confidential nature, and/or relating to trade secrets, and which are specifically identified in the producing party's Register of Confidential Information;
- (2) Any information contained in, copied from, or otherwise obtained from such designated materials, including notes; and

- (3) Any other materials which are made subject to this Protective Order by the Commission, or its Staff, by any Court or other body having appropriate authority, or by agreement of the Participant.
 - b. All materials which a party wishes to designate as Confidential Information must be listed on a Register of Confidential Information ("Register"). Each party must complete a Register and submit it simultaneously with any listed Confidential Information. A blank Register form is attached to this order and will be available in digital format to the parties. Any information not included on the submitting party's Register will not be designated as Confidential Information. The Commission will compile a comprehensive Register relating to this docket which lists all Confidential Information submitted by the parties. The comprehensive Register will be part of the public record.
 - c. The party producing the Confidential Information shall physically mark each page containing Confidential Information with the label, in no smaller than 12 point font, "CONFIDENTIAL." If Confidential Information is produced in paper copy, it shall be printed on yellow paper and contained within a sealed envelope marked, in no smaller than 14 point font, "CONFIDENTIAL -- SUBJECT TO PROTECTIVE ORDER IN APPLICATION NO. NG-101/PI-224."
 - d. Confidential Information shall not include (1) any information or document contained in the files of the Commission, or any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court, or (2) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order.
2. Nondisclosure Agreement: No access to Confidential Information shall be authorized under the terms of this Order to any person until the person desiring access to such information signs a Nondisclosure Agreement in the form that is attached to this Order. The Nondisclosure Agreement shall require the person to whom disclosure is to be made to certify

in writing that he or she has read this Order and agrees to be bound by its terms and conditions. The Nondisclosure Agreement shall contain the signatory's printed full name, permanent address and employer, and the name of the party with whom the signatory is associated. Such Nondisclosure Agreement shall be filed with the Commission and served on all parties to this proceeding. Any party filing multiple Nondisclosure Agreements with the Commission shall compile and submit to the Commission a typed list of all persons signing a Nondisclosure Agreement on that party's behalf.

3. Availability to the Commission and Parties:

- a. Confidential Information shall be accessible to parties to this proceeding, and their representatives pursuant to paragraph 4 below, who have signed a Nondisclosure Agreement. Confidential Information shall not be accessible to persons who have not signed a Nondisclosure Agreement.
- b. Confidential Information shall be accessible to the Commission, Commission counsel, and Commission staff members and shall not be used or disclosed except for the purpose of conducting, issuing orders in, and otherwise participating in, this proceeding.
- c. Informal intervenors and other non-parties to the proceeding shall not be eligible to sign a Nondisclosure Agreement and have access to Confidential Information.

4. Disclosure. Confidential Information shall be disclosed to a party's counsel, witnesses, or experts only as follows:

- a. Except as set forth in paragraph 4(f), Confidential Information may not be disclosed to any individual who has direct responsibilities in the areas of marketing, pricing, or product development for any party to this proceeding, or who will have those responsibilities in the foreseeable future. Any such witness or expert may be an employee of a party provided that such employee's duties are related to regulatory activities on behalf of the party and his or her duties are not related directly to marketing, pricing, or product development for the party.

- b. Prior to receipt of Confidential Information, the party seeking disclosure shall provide to the disclosing party an executed Nondisclosure Agreement including: 1) his or her name, employer, title, job description and experience and area of expertise, and 2) a statement that he or she does not have direct responsibility for marketing, pricing, or product development for any party to the proceeding, nor does he or she anticipate having those responsibilities in the foreseeable future.
- c. If the disclosing party believes in good faith that disclosure should not be made to any person seeking Confidential Information pursuant to paragraph 6, the disclosing party may respond to the notice by filing a written objection. If the parties cannot resolve the dispute informally, the matter shall be submitted to the Hearing Officer by motion. No Confidential Information need be disclosed pending resolution by the Hearing Officer.
- d. While in the custody of the Commission, the original and all copies of material containing information claimed under this Order to be confidential shall be kept in a sealed envelope or box, which envelope or box is marked "CONFIDENTIAL -- SUBJECT TO PROTECTIVE ORDER IN APPLICATION NO. NG-101/PI-224."
- e. For purposes of this paragraph 4, an "individual who has direct responsibilities in the areas of marketing, pricing, or product development" shall not include an individual employed by any party to this proceeding who has oversight and management responsibilities for the overall operations of such party. Further, any counsel of record who has direct marketing, pricing or product development responsibilities for any party to this proceeding shall be entitled to review Confidential Information subject to signing the Nondisclosure Agreement and will be strictly limited to use of such information solely in this proceeding, or for preparation of and conduct of any appeals or subsequent regulatory filing arising directly from this proceeding.

5. Segregation of Files: The materials containing the Confidential Information and proceedings and orders of the Commission with regard thereto will be sealed and marked as provided in this Order of the Commission, segregated in the files of the Commission, and withheld from inspection by any person except under the conditions established in this Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties or, after notice to the parties and hearing, pursuant to the order of the Hearing Officer, Commission, and/or final order of a court having jurisdiction.
6. Preservation of Confidentiality: No persons who are afforded access to any Confidential Information by reason of this Order shall use or disclose the Confidential Information for purposes of business or competition, or any other purpose other than the purpose of preparation of and conduct of this proceeding, or for preparation of and conduct of any appeals or subsequent regulatory filing arising directly from this proceeding. Persons afforded access to Confidential Information shall use such information solely as contemplated herein, and shall take all reasonable precautions to keep the Confidential Information secure as trade secret, confidential, or proprietary information in accordance with the purposes and intent of this Order. No person may copy, scan, or otherwise reproduce the Confidential Information, except for purposes directly related to these proceedings, without the written consent of the party claiming protection except for his or her own use, or the use of persons permitted access to the information and who have signed a Nondisclosure Agreement.
7. Use of Confidential Material: In the event any party intends to use or uses information obtained pursuant to the Nondisclosure Agreement under this Protective Order in testimony, exhibits, discovery, discovery responses, cross-examination, briefs, or any other pleading or document to be filed or used at a public meeting or hearing in this proceeding, the following shall apply:
 - a. Testimony, briefs, or other pleadings containing Confidential Information shall be filed under seal with the Commission by the party preparing and using the same in sealed envelopes or other appropriate containers, which shall be prominently marked with the legend "CONFIDENTIAL -- SUBJECT TO PROTECTIVE ORDER IN

APPLICATION NO. NG-101/PI-224." A copy thereof shall be served on the parties to this docket who have signed Nondisclosure Agreements. The complete document containing the protected material shall not be filed in the public record.

- b. Each page of the documents referred to in paragraph 7(a) above which contains information claimed to be confidential shall be clearly marked in accordance with paragraph 1 above and all copies shall be printed on yellow paper.
- c. Any party to this docket who has not executed a Nondisclosure Agreement shall receive a copy of the documents referred to in paragraph 7(a) above from which information claimed to be protected has been omitted.
- d. Documents containing Confidential Information, including testimony, exhibits, and discovery responses, shall be filed under seal with the Commission by the party preparing and using said documents. These documents shall be filed in sealed envelopes or other appropriate containers, and shall be prominently marked with the legend "CONFIDENTIAL -- SUBJECT TO PROTECTIVE ORDER IN APPLICATION NO. NG-101/PI-224." Copies of these documents shall be served on the parties who have signed Nondisclosure Agreements. The complete document containing the protected material shall not be filed in the public record. Any party to this docket who has not executed a Nondisclosure Agreement shall receive copies of the documents from which all Confidential Information has been omitted.
- e. In the course of this proceeding, any hearings during which documents or information obtained pursuant to the terms of this Order are likely to be disclosed shall be conducted *in camera*, attended only by persons authorized to have access to such information under this Order, provided that there has been no prior Hearing Officer determination that the documents or information in question are not confidential. The transcript of such *in camera* proceedings shall be kept under seal.

8. Access to Record:

a. General: Access to sealed testimony, records, and information shall be limited to the Commission and persons associated with parties to the proceeding as set forth in Paragraphs 3 and 4 above who have signed the Nondisclosure Agreement set forth in Exhibit A, unless such information is released from the restrictions of this Order either through agreement of the parties, or, after notice to the parties and hearing, pursuant to the order of the Hearing Officer or the Commission or the final order of a court having final jurisdiction.

b. Appeal: Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction for purposes of an appeal, but shall be kept under seal as designated herein for the information and use of the court. If a portion of the record is forwarded to a court under seal for the purposes of an appeal, the providing party shall be notified which portion of the sealed record has been designated by the appealing party as necessary to the record on appeal.

c. Continuation of Protection: Unless otherwise ordered, Confidential Information shall remain under seal and shall continue to be subject to the protective requirements of this Order after final settlement or conclusion of this matter, including administrative or judicial relief thereof.

9. Challenge to Confidentiality: This Protective Order establishes a procedure for the expeditious handling of information that a party claims is confidential. This Order shall not be construed as an agreement or ruling on the confidentiality of any document. In the event that any person challenges a claim for protection under this Protective Order, the party objecting to the removal of the confidential designation bears the burden of demonstrating the harm that would result from public disclosure of the material for which protection is sought. Any party may challenge the designation of any material as Confidential Information in the following manner:

- a. A party challenging the confidentiality of any materials pursuant to this Order shall first contact counsel for the providing party and attempt to resolve any differences informally.
- b. If the parties cannot resolve the disagreement informally, the person challenging the claim for protection shall file a motion with the Commission which identifies with specificity the material challenged, and which requests a ruling as to whether the specified material should be designated as Confidential Information. The person challenging the designation shall simultaneously serve all other parties to the docket with a copy of this motion.
- c. Within three business days of service of a motion for determination of confidentiality, the party claiming confidentiality shall deliver under seal all of the relevant documents and information to the Hearing Officer for an *in camera* inspection by the Hearing Officer.
- d. A ruling on the challenge by a party to designation of materials as Confidential Information shall be made by the Hearing Officer after an *in camera* hearing. Only those persons duly authorized under the terms of this Order to have access to Confidential Information shall be present at the *in camera* hearing. Such hearing shall be held as expeditiously as is practicable following delivery of the relevant documents and information to the Hearing Officer.
- e. The record of an *in camera* hearing held pursuant to paragraph 9(d) shall be marked "CONFIDENTIAL -- SUBJECT TO PROTECTIVE ORDER IN APPLICATION NO. NG-101/PI-224." Court reporter notes of such hearing shall be separately bound, segregated, sealed and withheld from inspection by any person who has not executed a Nondisclosure Agreement in accordance with this Order.
- f. If the Hearing Officer rules that any challenged material or materials should not be designated as Confidential Information, no party shall disclose such material, or use it in the public record, for five business days, unless authorized by the providing party to do so. The provisions of this subparagraph are entered

to enable the party claiming protection to seek a stay or other relief from the Hearing Officer's order denying that party such protection.

10. Return of Confidential Information: Upon request by the disclosing party, Confidential Information provided pursuant to this Protective Order shall be returned to the disclosing party within 30 days of the conclusion of the proceeding, or if applicable, within 30 days of a final order issued in any appeal taken therefrom.
11. Responses to Subpoena or Order: If any person receiving Confidential Information receives a subpoena or order for production of Confidential Information produced under the terms of this Order, that person shall promptly notify the affected party's counsel after receiving the subpoena or order and before the documents are produced, identifying the date and location of the ordered or requested production.
12. Public Information: The provisions of this Order will not apply to any information that:
 - a. is or becomes publicly available without breach of this Protective Order;
 - b. can be shown by documentation to have been independently developed by the receiving party without reference to any Confidential Information; or
 - c. is authorized in writing by the disclosing party to be released or is designated in writing by the providing party as no longer being Confidential Information.
13. Inadvertent Disclosure: The inadvertent failure to identify material as Confidential Information shall not be deemed a waiver of the protections afforded by this Protective Order. In such event, the producing party shall, promptly upon discovery of its oversight, provide written notice of the error and substitute appropriately labeled Confidential Information to parties who have signed a Nondisclosure Agreement. Any party receiving improperly labeled Confidential Information shall retrieve such Confidential Information from persons not entitled to receive the information and shall return or destroy the improperly labeled Confidential Information.

14. Damages: Any person who violates this Protective Order by reason of unauthorized use of, disclosure of, or other failure to appropriately protect Confidential Information, may be liable for damages and penalties as provided by law. Any party accepting Confidential Information pursuant to this Protective Order acknowledges that monetary damages may not be sufficient and that injunctive relief is an appropriate remedy.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that this Protective Order shall be entered in the above-captioned proceeding.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 4th day of June, 2019.

NEBRASKA PUBLIC SERVICE COMMISSION

BY:

A handwritten signature in black ink, appearing to read "Rod Johnson", is written over a horizontal line.

Commissioner Rod Johnson
Hearing Officer

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the
Commission, on its own motion,
opening an investigatory docket
for the purpose of general
monitoring of issues regarding
the natural gas industry and
jurisdictional utilities in
Nebraska.

) Application No. NG-101/PI-224
)
)
)

NONDISCLOSURE AGREEMENT

I, _____, hereby certify my understanding that access to Confidential Information is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it.

I understand that the contents of the Confidential Information, any notes or other memoranda, or any other form of information that copies or discloses Confidential Information shall not be disclosed to anyone other than in accordance with the Protective Order.

I acknowledge that a violation of this certificate constitutes a violation of an order of the Commission.

By: _____

Title: _____

Representing: _____

Date: _____

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the) Application No. NG-101/PI-224
Commission, on its own motion,)
opening an investigatory docket)
for the purpose of general) **REGISTER OF CONFIDENTIAL**
monitoring of issues regarding) **INFORMATION**
the natural gas industry and)
jurisdictional utilities in)
Nebraska.) PARTY NAME: _____

[PARTY NAME], pursuant to the Protective Order issued in NPSC Application No. NG-101/PI-224, hereby asserts that the following documents and materials submitted in this matter are Confidential Information:

<u>DATE</u>	<u>DESCRIPTION/TITLE</u>	<u>REASON WITHHELD</u>

Respectfully submitted this _____ day of _____, 2019.

By: _____
[NAME]
[TITLE]
[CONTACT INFORMATION]