

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM-___

1 In the Matter of the Application of Hydro)
2 One Limited (acting through its acquisition)
3 Subsidiary Olympus Holding Corp.) for an)
4 Order Authorizing Hydro One Limited To)
5 Exercise Substantial Influence Over the)
6 Policies and Actions of Avista Corporation)

JOINT MOTION FOR MODIFIED
PROTECTIVE ORDER

7 Pursuant to OAR 860-001-0080(3), Hydro One (hereafter "Applicant") and Avista
8 Corporation (hereafter "Avista") (collectively referred to as the "Movants") move the
9 Public Utility Commission of Oregon ("Commission") for the entry of a Modified Protective Order
10 in this proceeding. For the reasons outlined below, good cause exists to issue a Modified Protective
11 Order to protect commercially sensitive and highly confidential business information related to
12 the Movants' confidential strategic planning and activities. The Movants therefore request that the
13 Commission issue the proposed Modified Protective Order that is attached hereto as Attachment A.

14 1. BACKGROUND

15 On September 14, 2017, Movants filed a Motion for a General Protective Order. The
16 Movants anticipate that requested information might also seek disclosure of Movant's highly
17 confidential strategic business plans and activities. Movants' strategic planning and activities,
18 including strategies for corporate growth, are extremely sensitive, and the public disclosure of this
19 information likely would cause significant competitive harm to the Movants and their customers.
20 For this reason, Movants are requesting that the Commission issue an order containing additional
21 protections for such information beyond those contained in the Commission's General Protective
22 Order.

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APPLICANT AND AVISTA MOTION FOR MODIFIED PROTECTIVE ORDER

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1 highly confidential information before gaining access. Those with only a general interest in the
2 information will not be permitted to access it. The Modified Protective Order also requires that
3 highly confidential information remain distinct from information that is not confidential or that is
4 protected only under the General Protective Order by requiring that highly confidential
5 information be printed on paper of a different color and stored in a locked room or cabinet.
6 Finally, the Modified Protective Order prohibits electronic copying or distribution of highly
7 confidential information.

8 D. Specific Reasons Requested Relief is Necessary.

9 The Modified Protective Order is necessary to prevent competitors and other market
10 participants from gaining access to highly confidential information describing the Movants'
11 strategies for corporate growth as well as their activities. This information could implicate
12 sensitive business strategies, which could be compromised by the release of the requested
13 information, causing significant financial harm to the Movants and their customers. The terms of
14 the Modified Protective Order, described above, decrease the risk of disclosure by limiting the
15 number of people that may access highly confidential information and requiring a showing of
16 legitimate, non-competitive need from those who are not Commissioners, Staff, CUB, or attorneys.
17 The Modified Protective Order also restricts the manner and means by which highly
18 confidential information may be maintained, stored, and transmitted, thus minimizing the risk of
19 inadvertent disclosure.

20 E. Intermediate Measures Explored and Why These are Insufficient.

21 Disclosure of confidential information under a General Protective Order is rare, however it
22 does occur from time to time. Typically, the disclosure is inadvertent, although intentional
23 disclosures have occurred. Given such disclosures, additional protections, such as those contained

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

3
4 For the foregoing reasons, Movants request expedited entry of the Commission's Modified
5 Protective Order in this docket.

6 3. CONSENTS OF PARTIES

7 Counsel for Avista has contacted counsel for Staff, CUB, and NWIGU, all of the intervenors
8 in Avista's previous general rate case, and none oppose this motion.

9
10 RESPECTFULLY SUBMITTED this 14th day of September, 2017.

11 K&L GATES LLP on Behalf of Hydro
One Limited and Olympus Equity LLC

AVISTA CORPORATION

BY: 

Teresa A. Hill, OSB No. 146114
One SW Columbia St., Suite 1900
Portland OR 97258
Elizabeth Thomas, Partner (pro hac vice
application pending)
Kari Vander Stoep, Partner (pro hac vice
application pending)
925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158
Teresa.hill@klgates.com
Liz.thomas@klgates.com
kari.vanderstoep@klgates.com

By: 

David J. Meyer, OSB No. 086383
Chief Counsel for Regulatory and Governmental
Affairs
Avista Corporation
1411 E. Mission Ave., MSC-27
Spokane, WA 99220-3727
David.meyer@avistacorp.com

ATTACHMENT A

MODIFIED PROTECTIVE ORDER
DOCKET UM _____

1. This order supplements General Protective Order No. _____ and governs the acquisition and use of “Highly Confidential Information” produced or used by any party in Docket No. UM _____.

Designation of Highly Confidential Information

2. “Highly Confidential Information” is information that:
 - a. falls within the scope of ORCP 36(C)(7) and the Commission’s rules governing protective orders; and
 - b. is not publicly available; and
 - c. is not adequately protected by the general protective order.
3. A party providing Highly Confidential Information must inform other parties that the material has been designated Highly Confidential by placing the following legend on the information:

HIGHLY CONFIDENTIAL
SUBJECT TO MODIFIED PROTECTIVE ORDER NO. 17-_____

To the extent practicable, the party may designate as highly confidential only the portions of the material that satisfy the definition in Paragraph 2 of this order.

4. If any party objects to the Highly Confidential designation by letter or email within three business days, the designating party must provide a written response to the party that describes in detail why the designated information is appropriately designated as Highly Confidential. (Note that correspondence that reveals the substance of any information marked as Highly Confidential may not be transmitted electronically.) The burden resides with the designating party to show that the challenged information is covered by ORCP 36(C)(7) or exempt from disclosure under the Public Records Law. If the parties are unable to resolve a dispute about a highly confidential designation informally, the dispute provisions in Paragraph 18 apply.
5. A party may designate as highly confidential any information that was previously not so designated and was previously provided to the other parties by giving written notice to the other parties of the new designation and providing the other parties with copies of the newly designated information using the applicable color paper required by Paragraph 6. Parties in possession of newly designated Highly Confidential Information must, when feasible, ensure that all copies of the previously undesignated information are destroyed or, if requested by the designating party, are annotated to bear the above legend and are accessible only to persons qualified under this order.
6. Highly Confidential Information that is (a) filed with or provided to the Commission or its Staff or to other persons qualified to access Highly Confidential Information; (b) made an exhibit; (c) incorporated into a transcript; or (d) incorporated into a pleading, brief, or other document, must be printed on GREEN paper, separately bound, and placed in a sealed envelope or other appropriate container. Only the portions of a document that fall

within ORCP 36(C)(7) may be placed in the envelope/container. The envelope/container must bear the legend:

THIS ENVELOPE IS SEALED UNDER ORDER NO. 17-___ AND CONTAINS HIGHLY CONFIDENTIAL INFORMATION. THE INFORMATION MAY BE SHOWN ONLY TO QUALIFIED PERSONS AS DEFINED IN THIS ORDER.

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

Access to Highly Confidential Information

9. Commissioners, Commission Staff, and Assistant Attorney Generals assigned to represent the Commission automatically are qualified to access Highly Confidential Information and are bound by this order.
10. Counsel for any other party and employees of the Citizens' Utility Board Regulatory Division may become qualified to access Highly Confidential Information by completing and signing Appendix A.
11. A party bound by the General Protective Order No. 17-052 may seek to qualify persons other than those described in Paragraphs 9 and 10 to access specific Highly Confidential Information by having each such person complete and sign Appendix B and submitting the Appendix to the designating party and to the Commission. Within five business days of receiving a signed copy of Appendix B, the designating party either must provide access to the requested Highly Confidential Information to the person who signed Appendix B or must file an objection under Paragraph 13.
12. For each person qualified under Paragraphs 10 and 11, counsel for the party sponsoring the person must file a signed copy of Appendix A or Appendix B with the Commission and deliver a copy to the designating party and to all parties of record. Upon receipt of the signed Appendix, if there is no objection to the qualified person, made pursuant to Paragraph 13 then Highly Confidential Information must be delivered to the Qualified Person within five business days.
13. All persons qualified to receive Highly Confidential Information may have access to Highly Confidential Information unless the designating party objects as provided in this paragraph. The designating party must provide written notice to the Qualified Person, and counsel for the party sponsoring the Qualified Person, as soon as the designating party becomes aware of the reasons to restrict access. The parties must promptly confer and attempt to resolve any dispute over access to Highly Confidential Information on an informal basis before requesting a review by the Administrative Law Judge. After receipt of the written notice of objection required by this paragraph, the specific Highly Confidential Information may not be disclosed to the Qualified Person until the issue is resolved.

Preservation of Confidentiality

14. Without the written permission of the designating party, any person given access to Highly Confidential Information under this order may not use or disclose Highly Confidential Information for any purpose other than participation in this proceeding. All Qualified Persons must take reasonable precautions to keep Highly Confidential Information secure. Disclosure of Highly Confidential Information for purposes of business competition is strictly prohibited.
15. A Party wishing to utilize knowledge of Highly Confidential Information obtained in this docket for purposes of a subsequent proceeding must submit new Highly Confidential Information Data Requests for the same information to the utility in the subsequent proceeding, under protective orders applicable to the subsequent proceeding and subject to the discovery rules then applicable for disclosure of Highly Confidential Information.

Duration of Protection

16. The Commission will preserve the confidentiality of Highly Confidential Information for a period of five years from the date of the final order in this proceeding, unless extended by the Commission at the request of the designating party. The Commission will notify the designating party at least two weeks prior to the release of Highly Confidential Information.

Destruction after Proceeding

17. Counsel of record for any party may retain memoranda, pleadings, testimony, discovery, or other documents containing Highly Confidential Information to the extent reasonably necessary to maintain a file of these proceedings or to comply with requirements imposed by another governmental agency or court order. The information retained may not be disclosed to any person. Any other person retaining Highly Confidential Information at the conclusion of this proceeding must return it to the designating party within 90 days after final resolution of these proceedings or must destroy the Highly Confidential Information and provide an affidavit to the designating party swearing that the Highly Confidential Information has been destroyed. This paragraph does not apply to the Commission or its Staff.

Appeal to Presiding Administrative Law Judge

18. Any party may request that the ALJ conduct a conference to help resolve disputes related to this modified protective order. A party challenging the designation of information as highly confidential may file an objection with the ALJ that identifies the information in dispute and includes a certification that reasonable efforts to achieve an informal resolution have been unsuccessful. Within seven days of the objection, unless otherwise ordered by the ALJ, the designating party must either remove the highly confidential designation or file a written response identifying the legal basis for the claim of confidentiality. The challenging party may file a written reply to any response within seven days. If the designating party does not timely respond to the motion, the Commission will remove the highly confidential designation from the challenged information.

APPENDIX A

Signatory Page for Parties and Persons Qualified to Access Highly Confidential Information Under Paragraph 10

I. Consent to be Bound

This Modified Protective Order governs the use of "Highly Confidential Information" in this proceeding.

_____ (Party) agrees to be bound by the terms of this Modified Protective Order.

Signature: _____

Printed: _____

Date: _____

II. Persons Qualified Pursuant to Paragraph 10.

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

I certify that:

- a. I will make hard copies only as needed for purposes of review and submission to the Commission and will not make or distribute electronic copies of Highly Confidential Information and will not transmit electronically documents that reveal the substance of Highly Confidential Information.
- b. I agree to keep the information in a secure manner as required by Paragraph 7 and to destroy it at the conclusion of this proceeding as required by Paragraph 17.
- c. I understand that ORS 756.990(2) allows the Commission to impose monetary sanctions if a party subject to the jurisdiction of the Commission violates an order of the Commission.
- d. The party with which I am associated has a legitimate and non-competitive need for the Highly Confidential Information and not simply a general interest in the information.

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Job Title: _____

APPENDIX B

Signatory Page for Other Persons Seeking Qualification to Access Highly Confidential Information Under Paragraph 11

I. Persons Seeking Qualification Pursuant to Paragraph 11.

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

I certify that:

- a. I will make hard copies only as needed for purposes of review and submission to the Commission and will not make or distribute electronic copies.
- b. I agree to keep the information in a secure manner as required by Paragraph 7 and destroy it at the conclusion of this proceeding as required by Paragraph 17.
- c. I understand that ORS 756.990(2) allows the Commission to impose monetary sanctions if a party subject to the jurisdiction of the Commission violates an order of the Commission.
- d. The party with which I am associated has a legitimate and non-competitive need for the Highly Confidential Information and not simply a general interest in the information.
- e. I require access to the following specific Highly Confidential Information (describe with particularity) for the following reason(s) (attach pages if necessary):

By: Signature: _____ Date: _____
Printed Name: _____
Address: _____
Employer: _____
Associated Party: _____
Job Title: _____

If not an employee of a party, describe practice and clients: