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January 20, 2009

Public Utility Commission of Oregon
Attn: Vikie Bailey-Goggins
Administrative Regulatory Operations
550 Capitol St. N.E. Suite 215
Salem, OR 97308-2551

RE: UG171 – Stipulation and Joint Testimony

Avista Corporation d/b/a/ Avista Utilities, hereby submits for electronic filing the Stipulation and accompanying Joint Testimony. The original and five copies will be provided via overnight mail.

Sincerely,

A handwritten signature in black ink, appearing to read "David Meyer", with a horizontal line extending to the right.

David Meyer
Vice President and Chief Counsel
Avista Corporation
509-495-4316
David.Meyer@avistacorp.com

Enclosures
cc: Service List

LINDA K WILLIAMS (C) (HC)
ATTORNEY AT LAW

10266 SW LANCASTER RD
PORTLAND OR 97219-6305
linda@lindawilliams.net

W

**NORTHWEST INDUSTRIAL GAS
USERS**

PAULA E PYRON (C)
EXECUTIVE DIRECTOR

4113 WOLF BERRY CT
LAKE OSWEGO OR 97035-1827
ppyron@nwigu.org

Dated at Spokane, Washington this 20th day of January 2009.



Patty Olsness
Rates Coordinator

**PUBLIC UTILITY COMMISSION
OF
OREGON**

UG 171

STAFF/AVISTA/NWIGU/CUB EXHIBIT 200

**Joint Testimony in Support of Stipulation
In the Matter of Avista's
SB 408 2007 Tax Report**

January 20, 2009

1 **Q. PLEASE STATE YOUR NAME, OCCUPATION, BUSINESS ADDRESS**
2 **AND QUALIFICATIONS.**

3 A. My name is Carla Owings. I am a Senior Revenue Requirements
4 Analyst employed by the Public Utility Commission of Oregon. My business
5 address is 550 Capitol Street NE Suite 215, Salem, Oregon 97301-2551. I
6 am a graduate of Trend College of Business with a Professional Accounting
7 Degree. I have been employed by the Public Utility Commission of Oregon
8 since April of 2001. My current responsibilities include leading research and
9 providing technical support on a wide range of policy issues for electric and
10 gas utilities. From September 1994 to April 2001, I worked for the Oregon
11 Department of Revenue as a Senior Industrial/Utility Appraiser. I was
12 responsible for the valuation of large industrial properties as well as
13 companies throughout the State of Oregon.

14 My name is Dustin Ball. I am a Senior Financial Analyst employed by
15 the Public Utility Commission of Oregon. My business address is 550
16 Capitol Street NE Suite 215, Salem, Oregon 97301-2551. I am a graduate of
17 Western Oregon University with a Bachelor of Science in Business, focusing
18 in Accounting. I have been employed with the Oregon Public Utility
19 Commission since August 2007. Prior to that, I was employed by the
20 Oregon Real Estate Agency as a Financial Investigator in the Regulations
21 Division from January 2006 to August 2007, and by the Oregon Department
22 of Revenue as an Income Tax Auditor, in the Personal Tax and Compliance

1 Section from January 2004 to January 2006. I am also a licensed Tax
2 Consultant in the State of Oregon.

3 My name is Deborah Garcia. I am a Senior Revenue Requirement
4 Analyst employed by the Public Utility Commission of Oregon. My business
5 address is 550 Capitol Street NE Suite 215, Salem, Oregon 97301-2551. I
6 have been employed by the PUC since 1989. Over the past 16 years, I have
7 held a variety of positions related to utility regulation as follows. From
8 January 2000, I have held various positions in the Utility Program (Electric
9 and Natural Gas Department) with responsibilities in the following areas:
10 revenue requirement, policy analysis, general rate case and other
11 ratemaking, rulemaking, tariff review, consumer issues, utility territory
12 allocation, and research projects. Previously, I was employed from October
13 1992 to January 2000 in the Consumer Services Program as a Compliance
14 Specialist where my primary duties were to analyze and resolve consumer
15 complaints, and act as a liaison between the public, regulated utilities, and
16 various Commission Staff.

17 My name is Kelly O. Norwood. I am the Vice President for State and
18 Federal Regulation employed by Avista Corporation. My business address
19 is 1411 E. Mission Avenue, Spokane, WA 99220. I am a graduate of
20 Eastern Washington University with a Bachelor of Arts Degree in Business
21 Administration, majoring in Accounting. I joined the Company in June of
22 1981. Over the past 27 years, I have spent approximately 16 years in the
23 Rates Department with involvement in cost of service, rate design, revenue

1 requirements and other aspects of ratemaking. I spent approximately 11
2 years in the Energy Resources Department (power supply and natural gas
3 supply) in a variety of roles, with involvement in resource planning, system
4 operations, resource analysis, negotiation of power contracts, and risk
5 management. I was appointed Vice-President of State & Federal Regulation
6 in March 2002.

7 My name is Paula E. Pyron. I am an experienced energy law attorney
8 serving the last eight years as the Executive Director of the Northwest
9 Industrial Gas Users (“NWIGU”). In addition to my 26 years of energy law
10 experience, I have a Bachelor of Science in Economics from the University of
11 Texas at Dallas. My business address is 4113 Wolf Berry Court, Lake
12 Oswego, OR 97035. NWIGU is a non-profit trade association of 38 industrial-
13 sized natural gas end users who have facilities in the states of Oregon,
14 Washington and Idaho. NWIGU provides information to its members on
15 natural gas issues that impact their facilities and represents its members’
16 interests in proceedings before the Federal Energy Regulatory Commission
17 and the Pacific Northwest state utility commissions, including the PUC of
18 Oregon. As Executive Director, my responsibilities include the review of all
19 filings made by LDCs in Oregon as well as the representation of the industrial
20 customers’ issues in connection with this Docket.

21 My name is Bob Jenks. I am the Executive Director of the Citizens’
22 Utility Board (“CUB”). My business address is 610 SW Broadway, Suite 308,
23 Portland, OR 97205. I am a graduate of Willamette University with a

1 Bachelor of Science Degree in Economics. I have provided testimony and
2 comments in a variety of PUC dockets. Between 1982 and 1991, I worked for
3 the Oregon State Public Interest Research Group, the Massachusetts Public
4 Interest Group and the Fund for Public Interest Research on a variety of
5 public policy issues. As Executive Director, my responsibilities include the
6 review of all filings in Oregon and to represent the customers' concerns that
7 have arisen from this Docket.

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 A. Staff, Avista, NWIGU and CUB provide this testimony in support of the Joint
10 Stipulation filed in Docket No. UG 171, regarding Avista's 2007 tax filing as it
11 relates to Senate Bill 408 ("SB 408"), codified in ORS 757.267, 757.268 and
12 OAR 860-022-0041. Pursuant to ORS 757.268 and OAR 860-022-0041, on
13 October 15, 2008, Avista filed its 2007 tax report under the terms of SB 408
14 (2007 Tax Report). As filed, Avista's 2007 Tax Report would have resulted in
15 a refund to customers of \$1.98 million, plus approximately \$400,000 of
16 interest. As part of its filing, Avista filed a claimed violation of ORS 756.040
17 pursuant to OAR 860-022-0041(10). On November 4, 2008, Administrative
18 Law Judge Michael Grant entered a procedural schedule for the docket.
19 Pursuant to the procedural schedule (as amended), on December 23, 2008,
20 Staff and other Parties filed their initial Issues List with respect to the 2007
21 Tax Report. On December 10, 2008, and January 7, 2009, the Parties held
22 settlement conferences that were duly noticed.

1 The Parties have agreed to the terms of the Stipulation and submit the
2 Stipulation, along with this Joint Testimony in support of the Stipulation, to the
3 Commission. The Parties request that the Commission issue an order
4 approving the Stipulation and implementing its terms. A copy of the
5 Stipulation is included in Exhibit 201.

6 **Q. HAS AVISTA RAISED ANY ISSUES WITHIN THIS DOCKET?**

7 A. Yes. Avista has filed a claim, pursuant to OAR 860-022-0041(10), that any
8 refund under SB 408 would violate ORS 756.040. Specifically, Avista claims
9 that its actual 2007 return on equity, if it were to make a refund based upon its
10 Tax Report, would be slightly negative (based on the \$1.98 million plus
11 interest), and would result in confiscatory rates by violating the “fair and
12 reasonable” rate provisions of ORS 756.040. Although, Parties do not agree
13 on the exact amount of Avista’s claim of return on equity, the Parties do agree
14 that a full refund of the \$1.98 million plus interest could result in confiscatory
15 rates by violating the “fair and reasonable” rate provision of ORS 756.040.

16 **Q. PLEASE SUMMARIZE THE COMPANY’S FILING FOR THE 2007 TAX**
17 **PERIOD?**

18 A. In its October 15, 2008 filing, Avista determined that for 2007 the amount of
19 federal and state income tax paid to be \$1,982,000 less than the amount of
20 taxes authorized to be collected in rates. Under SB 408, this difference plus
21 approximately \$400,000 of interest would be refunded through an automatic
22 adjustment clause (AAC).

1 In its October 15, 2008 filing, Avista claimed that a rate adjustment in
2 connection with its tax report for 2007 will violate ORS 756.040.
3 Consideration of such a claim is expressly allowed by OAR 860-022-
4 0041(10). Accordingly, Avista proposed no refund in connection with its tax
5 report for the 2007 tax period.

6 OAR 860-022-0041(10) - Annual Tax Reports and Automatic Adjustment
7 Clauses Relating to Utility Taxes, provides for relief where there has been a
8 demonstration that the AAC would violate the “fair and reasonable” rate
9 provisions of ORS 756.040:

10 At any time, a utility may file a claim that a rate adjustment
11 under the automatic adjustment clause violates ORS 756.040
12 or other applicable law. In making a determination regarding a
13 potential violation of ORS 756.040, the Commission will
14 perform an earnings review using the utility’s results of
15 operations report for the applicable year.

16
17 Avista contends that its position finds support in the Attorney General’s
18 Opinion of December 27, 2005, addressing several questions concerning the
19 implementation of SB 408. In its Opinion, at page 16, the Office of Attorney
20 General opined that “[r]egardless of the approach finally adopted by the
21 Commission, the rate ultimately allowed must be ‘fair and reasonable’ under
22 ORS 756.040(1).” The Opinion noted that ORS 756.040 “essentially codifies”
23 the constitutional standard established by the United States Supreme Court
24 for avoiding confiscatory utility rates. See *Federal Power Commission v.*
25 *Hope Natural Gas Pipeline* (“Hope”), 320 US 591, 64 SCt 281, 88 LEd 333
26 (1944). It went on to observe, at page 16, that:

1 ORS 756.040 thus limits utilities' exposure to rate reductions,
2 regardless of how the Commission exercises its discretion in
3 the application of the expression "properly attributed." In other
4 words, chapter 845 addresses the tax component of rates.
5 ORS 756.040 deals more broadly with the Commission's
6 obligation to set rates at or above the constitutional floor.

7
8 Specifically, ORS 756.040 provides, in part, that rates are fair and reasonable
9 if the rates provide a return to the equity holder that is "commensurate with
10 the return on investments in other enterprises having corresponding risks."

11 ORS 756.040 General powers. (1)... In respect thereof the
12 commission shall make use of the jurisdiction and powers of
13 the office to protect such customers, and the public generally,
14 from unjust and unreasonable exactions and practices and to
15 obtain for them adequate service at fair and reasonable rates.
16 The commission shall balance the interests of the utility
17 investor and the consumer in establishing fair and reasonable
18 rates. Rates are fair and reasonable for the purposes of this
19 subsection if the rates provide adequate revenue both for
20 operating expenses of the public utility or telecommunications
21 utility and for capital costs of the utility, with a return to the
22 equity holder that is:

- 23 (a) Commensurate with the return on investments in other
24 enterprises having corresponding risks; and
25 (b) Sufficient to ensure confidence in the financial integrity
26 of the utility, allowing the utility to maintain its credit and attract
27 capital.
28 (2) – (3) [omitted]

29
30 **Q. IS IT AVISTA'S POSITION THAT A REFUND UNDER THESE**
31 **CIRCUMSTANCES WOULD VIOLATE ORS 756.040?**

32 A. Yes, it is the position of Avista that the imposition of a \$2.38 million dollar
33 refund (\$1.98 million plus interest) would clearly violate ORS 756.040, based
34 on an earnings review for Avista using its results of operations report for the
35 twelve-month period ending December 31, 2007.

1 **Q. WOULD YOU PLEASE SUMMARIZE THE ESSENTIAL TERMS OF THE**
2 **STIPULATION?**

3 A. Yes. For purposes of resolving this case, the Parties have agreed to the
4 calculation of a refund amount of \$1.98 million to represent the 2007 Tax
5 Report Period, excluding interest. The agreement of the Parties to the
6 manner in which this amount was calculated is for purposes of this
7 proceeding only (for the 2007 Tax Report Period) and shall not serve as
8 precedent for future computations in succeeding years.

9 The Parties acknowledge concerns over whether the imposition of a refund
10 obligation of \$1.98 million for the 2007 Tax Report Period would result in
11 confiscatory rates by violating the “fair and reasonable” rate provisions of
12 ORS 756.040, as well as concerns raised by some Parties over the relevant
13 parameters for that analysis as well as appropriate remedies. (See OAR 860-
14 022-0041(10))

15 In lieu of the refund obligation of Avista for the 2007 Tax Report Period, the
16 Parties have agreed that for the five (5) year period beginning with the 2008
17 Tax Report Period and extending through the 2012 Tax Report Period, Avista
18 will absorb (i.e., not pass onto Oregon ratepayers) up to the first \$500,000 of
19 any surcharge in any particular year in which it is entitled to a surcharge
20 under SB 408. In no such event, however, will Avista absorb, on a
21 cumulative basis, more than \$2.0 million of surcharges over the entire five
22 year period.

1 Avista will account for this by reversing the current SB 408 refund accrual for
2 the 2007 Tax Report Period. In each subsequent year for the five year
3 period, in the event that Avista's Tax Report calculations indicate a
4 surcharge, Avista will file its SB 408 Tax Report with accompanying work
5 papers demonstrating a reduction not to exceed \$500,000 for any given tax
6 period (until Avista has absorbed, on a cumulative basis, \$2.0 million of
7 surcharges over this five year period).

8 The Parties understand and agree that this Stipulation does not address and
9 govern the treatment of any possible refund owing in future tax periods or the
10 application of any earnings test thereto.

11 **Q. DO YOU HAVE ANYTHING FURTHER ON THESE ISSUES OR ANY**
12 **OTHER ISSUES?**

13 A. No.

14 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

15 A. Yes.

BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON

EXHIBIT 201 –STIPULATION

**In Support of
Filing of Tariffs Establishing
Automatic Adjustment
Clauses Under the Terms of SB 408**

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 UG 171

4 In the Matter of

5 Avista Corporation, dba AVISTA
6 UTILITIES

7 Filing of tariffs establishing automatic
8 Adjustment clauses under the terms of SB 408

STIPULATION

9
10 This Stipulation is entered into for the purpose of resolving all issues within this docket.
11 Specifically, this Stipulation concludes that Avista will not be subject to a refund in connection
12 with the Avista Corporation's 2007 Tax Report in this docket, but in lieu of refunding in the
13 current period, will absorb a portion of any future surcharges for a period of time, all as set forth
14 immediately below.

15 **PARTIES**

16 The parties to this Stipulation are Avista Corporation (Avista), the Citizens' Utility Board
17 (CUB), the Northwest Industrial Gas Users (NWIGU), and the Public Utility Commission of
18 Oregon Staff (Staff) (collectively, the "Parties").

19 **1. INTRODUCTION**

20 Pursuant to ORS 757.268 and OAR 860-022-0041, on October 15, 2008, Avista filed its
21 tax report under the terms of SB 408 (2007 Tax Report). As filed, Avista's 2007 Tax Report
22 would have resulted in a refund to customers of \$1.98 million, plus approximately \$400,000 in
23 interest. As part of its filing, Avista filed a claimed violation of ORS 756.040 pursuant to OAR
24 860-022-0041(10). On November 4, 2008, Administrative Law Judge Michael Grant entered a
25 procedural schedule for the docket. Pursuant to the procedural schedule (as amended), on
26 December 23, 2008, Staff and other Parties filed their initial Issues List with respect to the 2007

1 Tax Report. On December 10, 2008, and January 7, 2009, the Parties held duly noticed
2 settlement conferences.

3 As a complete settlement of issues in this proceeding, the Parties have agreed to the terms
4 of this Stipulation and to submit the Stipulation to the Commission. The Parties request that the
5 Commission issue an order approving the Stipulation and implementing its terms.

6 II. SPECIFIC TERMS

7 A. For purposes of resolving this case, the Parties have agreed to the calculation of a
8 refund amount of \$1.98 million for the 2007 Tax Report Period, excluding interest. The
9 agreement of the Parties to the manner in which this amount was calculated is for purposes of
10 this proceeding only (for the 2007 Tax Report Period) and shall not serve as precedent for future
11 computations in succeeding years.

12 B. The Parties acknowledge concerns over whether the imposition of a refund obligation
13 of \$1.98 million for the 2007 Tax Report Period would result in confiscatory rates by violating
14 the “fair and reasonable” rate provisions of ORS 756.040. (See OAR 860-022-0041(10))

15 C. In lieu of the refund obligation of Avista for the 2007 Tax Report Period, the Parties
16 have agreed that for the five (5) year period beginning with the 2008 Tax Report Period and
17 extending through the 2012 Tax Report Period, Avista will absorb (i.e., not pass onto Oregon
18 ratepayers) up to the first \$500,000 of any surcharge in any particular year in which Avista is
19 entitled to a surcharge under SB 408. In no such event, however, will Avista absorb, on a
20 cumulative basis, more than \$2.0 million of surcharges over the entire five year period.

21 D. Avista will account for this by reversing the current SB 408 refund accrual for the
22 2007 Tax Report Period. In each subsequent year for the five year period, in the event that
23 Avista’s Tax Report calculations indicate a surcharge, Avista will file its SB 408 Tax Report
24 with accompanying work papers demonstrating a reduction not to exceed \$500,000 for any given
25 tax period (until Avista has absorbed, on a cumulative basis, \$2.0 million of surcharges over this
26 five year period).

1 E. The Parties understand and agree that this Stipulation does not address and govern the
2 treatment of any possible refund owing in future tax periods or the application of any earnings
3 test thereto.

4 III. GENERAL TERMS

5 A. The Parties agree that this Stipulation represents a compromise in the positions of the
6 Parties. As such, conduct, statements and documents disclosed in the negotiation of the
7 Stipulation shall not be admissible as evidence in this or any other proceeding.

8 B. This Stipulation will be offered into the record of this proceeding as evidence
9 pursuant to OAR 860-14-0085. The Parties agree to support this Stipulation throughout this
10 proceeding and any appeal, provide witnesses, if necessary, to sponsor this Stipulation at the
11 hearing and recommend that the Commission issue an order adopting the settlement contained
12 herein.

13 C. The Parties have negotiated this Stipulation as an integrated document. If the
14 Commission rejects all or any material portion of this Stipulation, or imposes additional material
15 conditions in approving this Stipulation, any party disadvantaged by such action shall have the
16 rights provided in OAR 860-14-0085 and shall be entitled to seek reconsideration or appeal of
17 the Commission's Order.

18 D. By entering into this Stipulation, no party shall be deemed to have approved,
19 admitted, or consented to the facts, principles, methods, or theories employed by any other party
20 in arriving at the terms of this Stipulation including those set forth in the written testimony
21 submitted in support of this Stipulation, other than those specifically identified in the body of this
22 Stipulation. No party shall be deemed to have agreed that any provision of this Stipulation is
23 appropriate for resolving issues in any other proceeding.

24 E. The Stipulation may be executed in counterparts and each signed counterpart shall
25 constitute an original document.

26

1 This Stipulation is entered into by each party on the date entered below such party's
2 signature.

3 AVISTA CORPORATION


NORTHWEST INDUSTRIAL GAS USERS

4 Dated: Jan. 20, 2009

Dated: _____

5 By: David J. Meyer
6 Print name

By: _____
Print name

7 Signed:  _____

Signed: _____

9 PUBLIC UTILITY COMMISSION STAFF

CITIZENS' UTILITY BOARD

10 Dated: _____

Dated: _____

11 By: _____
12 Print name

By: _____
Print name

13 Signed: _____

Signed: _____

1 This Stipulation is entered into by each party on the date entered below such party's
2 signature.

3 AVISTA CORPORATION

NORTHWEST INDUSTRIAL GAS USERS

4 Dated: _____

Dated: _____

5 By: _____
6 Print name

By: _____
Print name

7 Signed: _____

Signed: _____

9 PUBLIC UTILITY COMMISSION STAFF

CITIZENS' UTILITY BOARD

10 Dated: 1/20/09

Dated: _____

11 By: Jason Jones
12 Print name

By: _____
Print name

13 Signed: Jason Jones,
14 *as per*
15 *E-mail*
16 *authorization,*
JJM

Signed: _____

1 This Stipulation is entered into by each party on the date entered below such party's
2 signature.

3 AVISTA CORPORATION

NORTHWEST INDUSTRIAL GAS USERS

4 Dated: _____

Dated: January 20, 2009

5 By: _____
6 Print name

By: Paula E. Pyron
Print name

7 Signed: _____

Signed: Paula E. Pyron

9 PUBLIC UTILITY COMMISSION STAFF

CITIZENS' UTILITY BOARD

10 Dated: _____

Dated: _____

11 By: _____
12 Print name

By: _____
Print name

13 Signed: _____

Signed: _____

1 This Stipulation is entered into by each party on the date entered below such party's
2 signature.

3	AVISTA CORPORATION	NORTHWEST INDUSTRIAL GAS USERS
4	Dated: _____	Dated: _____
5	By: _____	By: _____
6	Print name	Print name
7	Signed: _____	Signed: _____

9	PUBLIC UTILITY COMMISSION STAFF	CITIZENS' UTILITY BOARD
10	Dated: _____	Dated: <u>1-20-09</u>
11	By: _____	By: <u>Robert Jentes</u>
12	Print name	Print name
13	Signed: _____	Signed: <u>[Signature]</u>