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August 7, 2009

**VIA ELECTRONIC FILING  
& FIRST CLASS MAIL**

Oregon Public Utility Commission  
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P.O. Box 2148  
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Re: In the Matter of the Avista's SB 408 2007 Tax Report  
OPUC Docket No. UG-171(1) Phase II

Dear Filing Center:

Enclosed please find the original and one copy of the **Joint Motion of the Staff of the Public Utility Commission of Oregon, the Citizens' Utility Board of Oregon and the Northwest Industrial Gas Users to Consolidate with Docket UG 186** filed electronically today in the above-referenced OPUC docket.

Should you have any questions regarding this filing, please call.

Very truly yours,



Chad M. Stokes

CMS:tb  
Enclosures  
cc: UG-171 Service List

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UG 171(1)  
PHASE II

In the Matter of  
Avista's SB 408 2007 Tax Report

**JOINT MOTION OF THE STAFF OF  
THE PUBLIC UTILITY COMMISSION  
OF OREGON, THE CITIZENS' UTILITY  
BOARD OF OREGON AND THE  
NORTHWEST INDUSTRIAL GAS USERS  
TO CONSOLIDATE WITH DOCKET  
UG 186**

Pursuant to OAR 860-014-0025 and for the reasons set forth below, Staff of the Public Utility Commission of Oregon ("Staff"), the Citizens' Utility Board of Oregon ("CUB") and the Northwest Industrial Gas Users ("NWIGU") (collectively "Joint Parties") respectfully request that the Administrative Law Judge ("ALJ") or Oregon Public Utility Commission ("Commission") issue a ruling consolidating this docket with Avista's recently filed general rate case, Docket UG 186.

UG 171 involves SB 408 and Avista's 2007 tax report which showed that Avista paid \$1.98 million less in taxes than it collected from ratepayers. Avista claims in UG 171 that any refund under SB 408 would violate ORS 756.040, and that such a refund would be confiscatory and violate the "fair and reasonable" standard provided under Commission rules.

On April 14, 2009, the Commission adopted a temporary rule in Docket AR 536 addressing the timing of the earnings analysis required to assess a utility's confiscatory claim under SB 408. See Order No. 09-135. Order No. 09-135 fundamentally changed the analysis in UG 171 by changing the time period used for the earnings review to evaluate the fair and reasonable standard from the applicable historical tax year to the future period during which the automatic adjustment clause would be in effect. In other words, to evaluate Avista's claim that

the refund of \$1.98 million in customer monies would violate ORS 756.040 and result in confiscatory rates, the Commission must now conduct a prospective earnings review of the Company.

Under the Commission's new rule, the Commission must review on a forward-looking basis Avista's earnings to determine whether a refund would violate the just and reasonable standard. In Avista's case, the most significant issues impacting its prospective earnings are the outcome and the timing of the outcome of its new UG 186 rate case.

Avista's \$14.2 million general rate case was very recently filed to address its forward-looking earnings. Its schedule, attached as Exhibit A, provides for a Commission decision by April 22, 2010. Providing for resolution of the UG 171 issues in the UG 186 docket, makes, in the minds of the Joint Parties, the most efficient use of the resources of both the Commission and the parties. With a general rate proceeding already filed, UG 171 is no longer functional as a distinct and separate forum to address and analyze whether a refund of \$1.98 million would violate ORS 756.040 on a forward looking basis. If UG 171 is not consolidated with UG 186, any decision in UG 171 will necessarily include assumptions about the outcome and timing of the UG 186 rate case. To the extent such assumptions turn out to be inaccurate, the Joint Parties would likely request modification of the UG 171 Order or the Commission itself might reopen UG 171. It is, therefore, administratively efficient to consolidate the two dockets.

If UG 171 is not consolidated with UG 186, the Commission will need to determine whether a refund is required under SB 408 in isolation – without the benefit of the general rate case proceeding to vet and meaningfully review Avista's earnings – premised only upon speculative assumptions about the UG 186 general rate case since its timing overlaps with the prospective UG 171 refund period (i.e. June 1, 2009 to May 31, 2010). While all assumptions in

a forward looking review of an earnings period contain some speculation, the results and timing of effective rates in UG 186 could vary enormously. As stated in Staff/200, Garcia/5, depending on the timing and magnitude of the rate change, even if all other revenues and costs occur as projected, Avista's ROE before the SB 408 refund could easily range from 3.47 percent to 8.45 percent. Thus it seems to the Joint Parties that the most efficient process to review Avista's earnings on a forward looking basis, in the context of a pending general rate case proceeding, is to consolidate the two dockets.

If these dockets are not consolidated, the Commission and Joint Parties will, as previously noted, be forced to make speculative assumptions about the outcome of the rate case.

Consolidating these proceedings is an appropriate and just exercise of the Commission's discretion under OAR 860-014-0025.

For the reasons set forth above, the Joint Parties respectfully request that UG 171 be consolidated with Docket UG 186. The Joint Parties also respectfully request that the procedural schedules in UG 171 and UG 186 be suspended pending a decision on this motion for consolidation and that the Commission schedule a prehearing conference to coordinate the schedule for the consolidated dockets going forward. Finally, the Joint Parties request that intervenors in UG 171 be deemed intervenors in UG-186, to the extent that they have not already intervened.

DATED this 7<sup>th</sup> day of August 2009.

Respectfully submitted,

Northwest Industrial Gas Users



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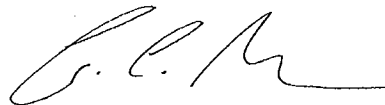
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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UG 186

In the Matter of

AVISTA CORPORATION, dba  
AVISTA UTILITIES,

Request for a General Rate Revision.

**CORRECTED<sup>1</sup>  
PREHEARING CONFERENCE  
REPORT**

**DISPOSITION: SCHEDULE SET**

On July 22, 2009, a prehearing conference was held in the above-captioned docket. The purpose of the conference was to identify the parties and interested persons and set a procedural schedule.

Appearances were entered by David Meyer for Avista Corporation, dba Avista Utilities (Avista); Jason Jones for Staff of the Public Utility Commission of Oregon (Commission); G. Catriona McCracken on behalf of the Citizens' Utility Board of Oregon (CUB); and Chad Stokes for the Northwest Industrial Gas Users (NWIGU).

The parties proposed the schedule during the prehearing conference:

<b>Event</b>	<b>Date</b>
Petitions to Intervene due	<b>August 5, 2009</b>
Staff/Intervenors file proposed information requests for Avista's Supplemental Opening Testimony	August 11, 2009
Intervenor Funding Requests due	August 19, 2009
Avista files Supplemental Opening Testimony	September 1, 2009
Staff and Intervenors publish Testimony	September 30, 2009
Opening Oral Argument Before the Commission	October 14, 2009
Avista's Rebuttal Testimony due	October 30, 2009
Staff/Intervenors' Surrebuttal Testimony due	<b>November 25, 2009</b>
Avista files Sursurrebuttal	December 22, 2009
All parties submit Cross Examination Statements	<b>January 5, 2009</b>
Hearing begins (tentative)	<b>January 11, 2010</b>
Simultaneous Opening Briefs	<b>February 11, 2010</b>
Simultaneous Reply Briefs	<b>March 4, 2010</b>
Closing Oral Argument Before the Commission	<b>March 11, 2010</b>
<b>Target Date Commission Decision</b>	<b>April 22, 2010</b>
<b>End of Suspension</b>	<b>April 27, 2010</b>

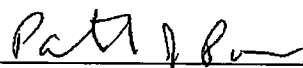
<sup>1</sup> This report is being issued to reflect the correct dates in bold above.

The schedule is reasonable and is adopted.

On July 6, 2009, CUB filed its Notice of Intervention pursuant to ORS 774.180. NWIGU filed a Petition to Intervene on July 15, 2009. I find that NWIGU has sufficient interest in the proceeding and that its appearance and participation will not unreasonably broaden the issues, burden the record, or unreasonably delay the proceeding. NWIGU's petition is conditionally granted pending the expiration of the protest period.

At the hearing counsel for Avista requested a protective order. No party opposed the motion. That motion will be granted by separate order.

Dated at Salem, Oregon, this 22<sup>nd</sup> day of July, 2009.



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Patrick Power  
Administrative Law Judge

## CERTIFICATE OF SERVICE

I CERTIFY that I have on this day served the foregoing document upon all parties of record in this proceeding via electronic mail and/or by mailing a copy properly addressed with first class postage prepaid.

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