

**PUBLIC UTILITY COMMISSION
OF
OREGON**

UG 171(4)

STAFF/AVISTA/NWIGU/CUB EXHIBIT 200

**Joint Testimony in Support of Stipulation
In the Matter of Avista's
SB 408 2009 Tax Report**

January 31, 2011

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

3 A. My name is Carla Bird. I am employed by the Public Utility
4 Commission of Oregon ("PUC") as a Senior Revenue Requirement Analyst in
5 the Electric and Natural Gas Section. My business address is 550 Capitol
6 Street NE Suite 215, Salem, Oregon 97301-2551. I have been employed by
7 the PUC since April 2001 and have provided testimony as a Senior Analyst in
8 several PUC dockets. Prior to that, I was employed by the Oregon
9 Department of Revenue for seven years as a Senior Appraiser for the
10 Property Tax division. In that capacity I performed appraisals for several
11 investor-owned utilities throughout the State of Oregon.

12 My name is Deborah Garcia. I am employed by the PUC as a Senior
13 Revenue Requirement Analyst in the Electric and Natural Gas Section. My
14 business address is 550 Capitol Street NE Suite 215, Salem, Oregon 97301-
15 2551. I joined the PUC in 1989 and I have provided testimony and
16 comments on policy and financial issues in a variety of PUC dockets.

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

1 2006 to August 2007, and by the Oregon Department of Revenue as an
2 Income Tax Auditor, in the Personal Tax and Compliance Section from
3 January 2004 to January 2006. I am also a licensed Tax Consultant in the
4 State of Oregon.

5 My name is Kelly O. Norwood. I am the Vice President for State and
6 Federal Regulation employed by Avista Utilities. My business address is
7 1411 E. Mission Avenue, Spokane, WA 99220. I am a graduate of Eastern
8 Washington University with a Bachelor of Arts Degree in Business
9 Administration, majoring in Accounting. I joined the Company in June of
10 1981. Over the past 29 years, I have spent approximately 18 years in the
11 Rates Department with involvement in cost of service, rate design, revenue
12 requirements and other aspects of ratemaking. I spent approximately 11
13 years in the Energy Resources Department (power supply and natural gas
14 supply) in a variety of roles, with involvement in resource planning, system
15 operations, resource analysis, negotiation of power contracts, and risk
16 management. I was appointed Vice-President of State & Federal Regulation
17 in March 2002.

18 My name is Paula E. Pyron. I am an experienced energy law attorney
19 serving the last ten years as the Executive Director of the Northwest Industrial
20 Gas Users ("NWIGU"). In addition to my 28 years of energy law experience, I
21 have a Bachelor of Science in Economics from the University of Texas at
22 Dallas. My business address is 4113 Wolf Berry Court, Lake Oswego, OR
23 97035. NWIGU is a non-profit trade association of 38 industrial-sized natural

1 gas end users who have facilities in the states of Oregon, Washington and
2 Idaho. NWIGU provides information to its members on natural gas issues
3 that impact their facilities and represents its members' interests in
4 proceedings before the Federal Energy Regulatory Commission and the
5 Pacific Northwest state utility commissions, including the PUC of Oregon. As
6 Executive Director, my responsibilities include the review of all filings made by
7 LDCs in Oregon as well as the representation of the industrial customers in
8 connection with this Docket.

9 My name is Bob Jenks. I am the Executive Director of the Citizens'
10 Utility Board ("CUB"). My business address is 610 SW Broadway, Suite400,
11 Portland, OR 97205. I am a graduate of Willamette University with a
12 Bachelor of Science Degree in Economics. I have provided testimony and
13 comments in a variety of PUC dockets. Between 1982 and 1991, I worked for
14 the Oregon State Public Interest Research Group, the Massachusetts Public
15 Interest Group and the Fund for Public Interest Research on a variety of
16 public policy issues. As Executive Director, my responsibilities include the
17 review of all utility and telecom filings in Oregon and in this particular docket
18 the representation of customers concerns that have arisen from this Docket.

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

20 A. Staff, Avista, NWIGU and CUB (collectively, the "Stipulating Parties"), provide
21 this testimony in support of the Joint Stipulation filed in Docket No. UG
22 171(4), regarding Avista's tax filing as it relates to Senate Bill 408 ("SB 408"),
23 covering calendar year 2009.

1 **Q. HOW IS SB 408 CODIFIED AND IMPLEMENTED BY THE OPUC?**

2 A. SB 408 is codified as ORS 757.267 and 757.268. The Commission issued
3 OAR 860-022-0041 to implement SB 408. Pursuant to this rule, Avista filed
4 its tax report for calendar years 2007, 2008, and 2009.

5 **Q. PLEASE DESCRIBE THE ACTIVITY THAT HAS OCCURRED IN THIS**
6 **PROCEEDING.**

7 A. As required by SB 408, on October 14, 2010, Avista filed its tax report for
8 calendar year 2009 (the "Tax Report"). Amendments to the filing were made
9 on October 26 and 29, 2010. On November 4, 2010, Administrative Law
10 Judge Sarah K. Wallace entered a procedural schedule for the docket. On
11 November 22, 2010, Staff convened a workshop. On December 23, 2010,
12 Staff and NWIGU each filed issue lists (attached to Joint Testimony filed
13 herewith as exhibits 202 and 203, respectively) with respect to the Tax
14 Report. On January 11, 2011, Staff and CUB filed testimony in this matter.
15 On January 19, 2011, a settlement conference was held, which was a
16 continuation of an earlier conference held on November 22, 2010.

17 The Parties have agreed to the terms of the Stipulation and submit the
18 Stipulation, along with this Joint Testimony in support of the Stipulation, to the
19 Commission. The Parties request that the Commission issue an order
20 approving the Stipulation and implementing its terms. A copy of the
21 Stipulation is included in Exhibit 201.

1 **Q. PLEASE DESCRIBE THE NATURE OF THE REVIEW OF THE**
2 **COMPANY'S 2009 TAX REPORT FILING UNDERTAKEN BY STAFF AND**
3 **OTHER PARTIES.**

4 A. All of the Parties had full opportunity to review the filing. Staff issued data
5 requests to which the Company responded, and held additional conference
6 calls for the purpose of clarifying issues. In addition, a workshop was held on
7 November 22, 2010, for purpose of discussing the issues.

8 **Q. WHAT AMOUNT DID AVISTA PROPOSE AS THE 2009 TRUE-UP FOR**
9 **TAXES PAID AND TAXES COLLECTED IN THIS FILING?**

10 A. Avista proposed a *surcharge* of approximately \$1.3 million (without
11 consideration of interest accruals). In Staff's issues list that was published on
12 December 23, 2010, Staff, CUB and NWIGU initially supported Avista's
13 proposed surcharge of approximately \$1.3 million, but in testimony filed on
14 January 11, 2011, Staff and CUB (supported by NWIGU) recommended a
15 refund of \$1,209,551 on June 1, 2011, which includes interest of \$173,485
16 that would be accrued beginning July 1, 2009 through May 31, 2011.
17 Approximately \$12,066 of additional interest will accrue during the
18 amortization phase beginning June 1, 2011 through May 31, 2012.

19 **Q. WHAT WAS THE STATED REASON FOR THE CHANGE IN STAFF, CUB**
20 **AND NWIGU'S RECOMMENDATION?**

21 A. On page 3 of the Staff Issues List appended hereto as Exhibit 202, Staff
22 provided an explanation of what it views as an inconsistency between SB 408
23 and OAR 860-022-0041 that relates to the manner for determining the

1 existence of a normalization violation under (4)(d) of the Commission's rule.
2 Staff was investigating that issue at the time of the publication of the Staff's
3 Issues list. Staff stated that if this inconsistency existed, it "would likely result
4 in a significant change to Avista's 2009 SB 408 filing." Staff, CUB and
5 NWIGU each, determined that there was an inconsistency between SB 408
6 and OAR 860-022-0041 and withdrew support of Avista's original filing.

7 Staff, CUB and NWIGU believe that OAR 860-022-0041 (4)(d) is
8 intended to provide a protection against a normalization violation by requiring
9 that there be a comparison between the balance attributable to the deferred
10 tax floor ((4)(d) limitation) and the calculation of taxes paid in methods that
11 could potentially be impacted by accelerated depreciation. However, Staff,
12 CUB and NWIGU agree that the current rule language could be read to
13 require Staff to compare the (4)(d) limitation to all three methods (Stand-
14 alone, Consolidated and Apportionment) employed to calculate taxes paid,
15 not just the method where the potential for the benefit of accelerated
16 depreciation could exist. Because the intent is to protect from a normalization
17 violation, Staff, CUB and NWIGU believe the (4)(d) limitation should be limited
18 to only the method where the potential for the benefit of an accelerated
19 depreciation could exist.

20 **Q. HOW DOES STAFF, CUB AND NWIGU'S RECOMMENDATION COMPLY**
21 **WITH OAR 860-022-0041(4)(D)?**

22 A. Because of the potential ambiguity in the current rule language, Staff has
23 begun a temporary rule-making proceeding to clarify and change this section

1 of the Commission's administrative rules and make it consistent with the
2 intent of SB 408.

3 **Q. PLEASE EXPLAIN WHY LIMITING THE COMPARISON OF THE (4)(d)**
4 **LIMITATION TO ONLY THE APPORTIONMENT METHOD CREATES**
5 **SUCH A DIFFERENCE IN THE OUTCOME OF AVISTA'S 2009 SB 408**
6 **FILING?**

7 A. Avista's original filing concluded that the amount representing taxes paid for
8 2009 was based upon the balance of deferred taxes during the tax period (the
9 (4)(d) limitation). This amount was compared to the calculation of taxes
10 collected to determine a variance of approximately \$1.3 million *more* of taxes
11 paid than taxes collected. Because the current rule language in OAR 860-
12 022-0041(4)(d) could be read to require that the comparison of the (4)(d)
13 limitation apply to all three methods, Avista relied upon this balance for taxes
14 paid. Staff, CUB and NWIGU believe the final rule language (which
15 incorporates the comparison into all three methods) was unintended and the
16 current interpretation conflicts with the intent of SB 408, which is to rely upon
17 the lowest of the three methods without creating a normalization violation. In
18 Avista's case, Stand-alone is the lowest of the three methods. Using the
19 stand-alone method for taxes paid without application of the (4)(d) limitation
20 results in a refund of approximately \$1.0 million, before interest (or
21 \$1,209,551 with interest).

22 **Q. DOES AVISTA BELIEVE THAT IT HAS COMPLIED WITH THE RULES AS**
23 **THEY CURRENTLY EXIST?**

1 A. Yes, Avista believes that it has complied with the language in the current
2 rules. Staff, CUB and NWIGU do not disagree that Avista followed the
3 mechanics of the current rules. However, Staff, CUB and NWIGU do not
4 support the implementation of a surcharge that is based upon an outcome
5 that does not follow what Staff, CUB and NWIGU believe is the intent of the
6 SB 408 legislation. To that end, Staff will propose a temporary rule to clarify
7 these requirements.

8 **Q. PLEASE PROVIDE A BREAKOUT DEMONSTRATING THE**
9 **CALCULATION OF INTEREST RELATED TO THE DEFERRAL PERIOD**
10 **AND AMORTIZATION PERIOD THAT RESULTS IN THE OUTCOME OF**
11 **\$1,209,551.**

Table 1
Amortization Summary
AVISTA 2009 Tax Report

	<u>State / Federal</u>
Surcharge (Refund)	(\$ 1,024,000)
Estimated interest through May 2011	(\$ 173,485)
Estimated interest June 2011 – May 2012 *	(\$ 12,066)
Estimated amount to amortize	<u>(\$ 1,209,551)</u>

* Blended treasury rate of 2.01% calculated by AVISTA per the methodology prescribed by Order No. 08-263 in Docket UM 1147.

12 **Q. WERE THERE ANY OTHER AGREEMENTS RELATED TO THE SB 408**
13 **REFUND?**

14 A. Yes. The Parties agreed to support Avista's request for early rate
15 implementation in Docket UG 201. In return, Avista agreed to withdraw its
16 claim that implementation of SB 408 would violate ORS 756.040 and result in
17 confiscatory rates. The Parties agree that this should not establish precedent
18 for future SB 408 filings.

1 **Q. DO THE PARTIES AGREE THAT THE STIPULATION IS REASONABLE?**

2 A. Yes. The Parties agree to a SB 408 refund to customers in the amount of
3 \$1,024,000, plus interest through the deferral period of July 1, 2009 through
4 May 31, 2011 of \$175,485, and an estimate of interest through the refund
5 period of June 1, 2011 through May 31, 2012 of approximately \$12,066. The
6 Parties also agree that the DSIT balance will be reduced to zero, with no
7 impact on customers' rates. The Parties agree that the Stipulation provides a
8 reasonable resolution of all issues in the docket.

9 **Q. PLEASE EXPLAIN THE REVERSAL OF THE DEFERRED STATE INCOME**
10 **TAX (DSIT).**

11 A. Avista has recorded on its books a liability amounting to \$911,709 of DSIT
12 that will be reduced to zero, with no impact on customers' rates. It is not
13 money that was previously furnished by ratepayers, because such taxes were
14 never collected through rates.

15 **Q. PLEASE EXPLAIN WHY THESE DEFERRED TAXES WERE NOT**
16 **COLLECTED THROUGH RATES.**

17 A. In the late 1990's, Avista used the normalization method for recording state
18 income taxes for Oregon. For ratemaking the flow-through method was
19 utilized, as more fully described below. The Company's Oregon accumulated
20 DSIT balance is \$911,709.

21 The Company included DSIT expense in its original filing for its 2003
22 General Rate Case (UG 153); however, the DSIT expense was removed from
23 the final settlement agreement in that docket. In the subsequent two rate

1 cases (2008 UG 181 and 2009 UG 186), the DSIT expense was removed
2 from the Company's filing. In December 2009, the Company discontinued
3 recording DSIT, since the flow-through method had been used for rate-
4 making purposes. Since no deferred state income tax expense has been
5 reflected in rates, Oregon customers have not paid for the DSIT that has
6 accumulated. Therefore, although removing the balance of DSIT from
7 Avista's balance sheet will have the effect of improving Avista's earnings, the
8 Parties agree that this is appropriate since customers did not contribute to the
9 balance that is reflected for DSIT.

10 **Q. DO THE PARTIES AGREE THAT THE STIPULATION IS REASONABLE?**

11 A. Yes. The Parties agree to a SB 408 refund to customers in the amount of
12 \$1,024,000, plus interest through the deferral period of July 1, 2009 through
13 May 31, 2011 of \$175,485, and an estimate of interest through the refund
14 period of June 1, 2011 through May 31, 2012 of approximately \$12,066. The
15 Parties also agree that the DSIT balance will be reduced to zero, with no
16 impact on customers' rates. The Parties agree that the Stipulation provides a
17 reasonable resolution of all issues in the docket.

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

19 A. Yes.

**PUBLIC UTILITY COMMISSION
OF
OREGON**

UG 171(4)

STAFF/AVISTA/NWIGU/CUB EXHIBIT 202

**Public Utility Commission's Staff Issues List
In the Matter of Avista's
SB 408 2009 Tax Report**

January 31, 2011



Oregon

Theodore R. Kulongoski, Governor

Public Utility Commission

550 Capitol St NE, Suite 215

Mailing Address: PO Box 2148

Salem, OR 97308-2148

Consumer Services

1-800-522-2404

Local: (503) 378-6600

Administrative Services

(503) 373-7394

December 23, 2010

Via Electronic Filing and U.S. Mail

OREGON PUBLIC UTILITY COMMISSION
ATTENTION: FILING CENTER
PO BOX 2148
SALEM OR 97308-2148

RE: Docket No. UG 171 (4) – In the Matter of AVISTA's, Senate Bill 408 Tax Filing for 2009 Tax Period.

Enclosed for electronic filing in the above-captioned docket is the Public Utility Commission's Staff Issues List.

/s/ Kay Barnes

Kay Barnes

Regulatory Operations Division

Filing on Behalf of Public Utility Commission Staff

(503) 378-5763

Email: kay.barnes@state.or.us

c: UG 171 Service List (parties)

**PUBLIC UTILITY COMMISSION
OF OREGON**

UG 171 (4)

STAFF ISSUES LIST

**Carla Owings
Dustin Ball
Deborah Garcia**

**In the Matter of
AVISTA's
Senate Bill 408 Tax Filing
for 2009 Tax Period**

December 23, 2010

**SENATE BILL 408, TAX FILINGS
STAFF'S INITIAL FINDINGS
FOR AVISTA CORPORATION – UG 171(4)**

TO: LEE SPARLING, MAURY GALBRAITH, JUDY JOHNSON AND
JASON JONES

**RE: AVISTA CORPORATION – UG 171(4)
SB 408 TAX FILINGS
2009 TAX PERIOD**

FROM: CARLA BIRD, SENIOR UTILITY ANALYST,
DUSTIN BALL, SENIOR UTILITY ANALYST AND
DEBORAH GARCIA, SENIOR UTILITY ANALYST
PUBLIC UTILITY COMMISSION

DATE: DECEMBER 23, 2010

CC: ALL PARTIES

On October 15, 2010, Avista Corporation (Avista) filed UG 171(4), its tax report covering the 2009 calendar year pursuant to Senate Bill 408 (SB 408) (codified at ORS 757.267, 757.268 and OAR 860-022-0041).

Much of the information contained in these tax reports represents highly confidential and sensitive information. Staff has structured its initial findings in this report in a generic manner in order to avoid the possibility of disclosing confidential, or sensitive, information.

Staff has thoroughly reviewed each calculation and all documentation provided by the Company.

SUMMARY OF 2009 SB 408 IMPACT:

Avista reports the following for its Oregon Regulated Results of Operations for the 2009 Tax period:

Table 1-Original Filing

Federal and State Taxes Paid to units of Government	Taxes Collected	Surcharge or (Refund)	Interest¹ (7/1/09 through 6/1/2010)	Total Surcharge
\$4.6 million	\$3.7 million	\$0.9 million	\$160,000	\$1.0 million

Avista does not pay local taxes in the State of Oregon; therefore, there is no true-up of local taxes for Avista's SB 408 filing.

Table 2-Staff's Recommendation - AMENDED FILING 10/29/10

Federal and State Taxes Paid to units of Government	Taxes Collected	Surcharge or (Refund)	Interest² (7/1/09 through 6/1/2010)	Total Surcharge
\$5.0 million	\$3.7 million	\$1.3 million	\$230,000	\$1.5 million

The Staff recommended surcharge for the 2009 period is larger than the original request filed by Avista due to amendments that are explained below in the Staff Review. The final amendment filed by Avista is based upon the application of a refund the Company included in its original filing. Upon further review, the Company deemed the refund was not applicable to the Oregon jurisdiction and removed it in the amended filing. The result was an increase to the surcharge.

For the 2009 tax period, Avista proposes to surcharge approximately \$1.5 million. Interest of approximately \$230,000 will accrue during the deferral period. Avista estimates an additional amount of approximately \$17,000 will accrue during the amortization phase. The total impact including interest accruals is still approximately \$1.5 million.

¹ This is an estimate of all interest through deferral period.

² This is an estimate of all interest through deferral period.

The impact of a \$1.5 million surcharge on its own would represent an increase to Avista's retail revenues of approximately 1.5 percent without consideration of the 2008 SB 408 rate implementation currently in effect. Avista relied upon the 4(d) tax limitation for the outcome of its filing.

For the 2008 tax period, Avista refunded approximately \$1.0 million (including interest). This refund was implemented in June 1, 2010.

Prior to rate implementation June 1, 2011, Staff will review the balance remaining of the 12-month amortization for the prior year's SB 408 implementation related to 2008 tax period. Any estimates of over or under collections of previous years' surcharges will be updated and included in the compliance filing implemented June 1, 2011.

At the conclusion of Staff's review and after some of the Parties³ had reached an agreement in principle for settlement Staff discovered a potential inconsistency between SB 408 and OAR 860-022-0041. The inconsistency involves the manner for determining the existence of a normalization violation⁴ under (4)(d) of the commission rule and under Staff's template. The impact of improperly applying the normalization violation test (on Page 8 of Staff's template) would likely result in a significant change to Avista's 2009 SB408 filing, as currently proposed.

Upon discovering this issue, Staff immediately consulted with the Assistant Attorney General's (AAG or Staff's Counsel) office and our upper management team. As a result of those discussions, Staff requested a delay of six days from December 17, 2010 to December 23, 2010 to publish this issues list. In addition, Staff and its Counsel held phone discussions with each of Utility companies as well as the Parties represented at the Settlement conference⁵ to notify them of the potential impacts of this issue. Staff also informed the Parties that we could not go forward with the initial agreements made at the Settlement Conferences.

The basis of the Staff recommendation in this report outlines the foundation of Staff's findings and agreements made in Settlement discussions. Most importantly, these recommendations are based upon rule implementation prior to Staff's discovery of the issue described above.

Staff is in the process of investigating the validity of the assumption that the rules and Staff's template conflict with the original intent of the test for a Normalization Violation. If Staff concludes there is a conflict in the rules and Staff's template from the intent of SB408, then the findings in the report below would change significantly. Staff's Testimony is scheduled to be published on

³ The Parties to the Stipulated Agreements are defined in the section "Summary of Review" section on Page 4 below.

⁴ Discussed in section "Staff Review" on page 5 below.

⁵ Id.

January 11, 2011 which would incorporate the findings of Staff's investigation into this matter. If Staff's investigation concludes that there is no conflict between the current rules and Normalization Violations, Staff will likely propose settlement based upon the original agreements described below.

STAFF REVIEW:

Staff conducted face to face interviews on November 15, 2010 and November 22, 2010. Citizens' Utility Board (CUB) and Northwest Industrial Gas Users (NWIGU) (hereafter referred to collectively as the Parties) were present at both face-to-face meetings along with Staff and the Company. In addition, Staff sent Data Requests and conducted several informal phone discussions.

The Parties had agreed that Avista's Amended filing represented a just and reasonable outcome for the 2009 SB 408 filing. However, due to the magnitude of the potential adjustment related to Staff's investigation of normalization violations, Staff withdrew from the initial agreements discussed at the settlement conferences described above.

In general, SB408 defines taxes paid as the "lesser of" three alternative calculations: (1) the utility's stand alone tax liability; (2) the total consolidated tax liability of the affiliated group; and (3) the total consolidated tax liability of the affiliated group "properly attributed" to the regulated operations of the utility.

Commission Order 07-401 adopted specific rules to preclude "taxes paid" from falling below the utility's deferred tax balance related to the depreciation of its public utility property. Such a scenario would create a normalization violation by allowing ratepayers to share in the benefits received from accelerated depreciation. Specifically, OAR 860-022-0041(4)(d) requires that we rely upon the lowest of the three "taxes paid" methods except that the lowest method cannot produce a result that is *less* than the deferred taxes related to public utility property for regulated operations of the utility, reduced by any tax refunds recognized in the reporting period, and allocated to the regulated operations of the utility.

Page 8, of Staff's template, provides for this alternative calculation. Here the reporting utility must enter the amount of deferred taxes related to depreciation of public utility property (hereafter referred to as the "4(d) tax limitation") for the regulated operations in Oregon. This amount is then reduced by the amount of refund recognized in the reporting period that is allocable to the regulated operations.

For the 2009 tax period, Avista falls under the 4(d) tax limitation. The outcome of the three "taxes paid" calculations (described above) results in taxes

paid that are lower than the deferred tax balance related to the depreciation of public utility property. Choosing the any of the “taxes paid” methods would result in a normalization violation. Therefore, Staff supports Avista’s use of the 4(d) tax limitation.

One of the driving forces for this result is the high level of accelerated depreciation associated with new assets placed in service during the tax period. As a result of our review, Staff discussed many issues related to Avista’s original filing, but for this memo Staff focuses on the issues identified as item (2) below.

Below is a summary of some of the topics reviewed by Staff in this filing:

(1) Amended Filing

(2) Taxes Collected – Net to Gross and Effective Tax Ratios.

(1) Amended Filing – On October 29, 2010, Avista amended its original filing to correct what it deemed was an error in the methodology employed to derive the balance for the 4(d) tax limitation. On page 8 of Staff’s template, Avista had reduced the balance of the amounts attributable to the tax benefit of deferred taxes related to public utility property by a refund Avista had received during the 2009 tax period. After further review, Avista had determined that no portion of the tax refund was properly allocable to the Oregon jurisdiction.

During the review process Staff requested further documentation of the refund and agrees that the refund is not allocable to the Oregon jurisdiction. Therefore, Staff supports Avista’s amendment to its original filing.

Avista amended its original filing by removing a refund that draws down the balance that relates to the 4(d) tax limitation. The result is an increase to Avista’s surcharge of approximately \$500,000.

(2) Taxes Collected – Net to Gross and Effective Tax Ratios- OAR 860-022-0041(2)(A)(i)-(ii) states that the revenue reported in a utility’s results of operations shall be multiplied by the ratio of *net revenues to gross revenues* using the pretax income and revenue the Commission authorized in establishing rates and revenue requirement; and, the effective tax rate used by the Commission in establishing rates for the time period covered by the tax report as set forth in the most recent general rate order or *other order that establishes an effective tax rate*, calculated as the ratio of the total income tax expense in the revenue requirement to pre-tax income.

Further, OAR 860-022-0041(2)(n) describes “revenue” as being the utility’s Oregon retail revenues, excluding supplemental schedules or other revenues not included in the utility’s revenue requirement and adjusted for any *rate adjustment* imposed under this rule.

Staff believes that to determine the accurate net to gross and effective tax ratios, Staff must rely upon the most recent general rate proceeding modified for any rate revisions that take place during the tax period. Any schedule that includes a revenue requirement and thus includes a tax component for the collection of taxes in rates should be included in the calculation of these ratios.

In Avista's original filing, the Company had used the ratios set in its most recent rate proceeding, modified by the Purchased Gas Cost Mechanisms (PGA) that had been implemented that impact the tax period. To reflect the PGA modification, the Company had calculated the actual impact on revenues during the tax period, rather than to apply the proposed amounts of revenue to calculate the ratios. The Company would then apply those ratios (net to gross revenues and effective tax rates) to the gross revenues during the tax period.

Staff originally objected to this method believing that Avista was mixing the use of actual revenues with proposed revenues.

Avista pointed out that the PGA mechanisms [should] have a zero impact on taxable income (if done properly). This is true because every revenue of dollar associated with a strictly "gas cost" related mechanism is sheltered by the gas expense. Meaning, there is no margin or profit that should affect the taxable income. Using proposed levels of revenue rather than actual could create a tax impact due to the over- or under-collection of what actually occurs to what is forecast.

Staff agrees in principal that due to the true-up that takes place each year in Avista's PGA mechanism, the effects of over- or under-collection of gas costs are addressed and reconciled on an annual basis. Whatever slight differences that may exist during the tax period, would likely be related to the differences between a cash basis calculation for taxes and the accrual basis calculation for ratemaking. In principal, Staff agrees that the true-up will address some of these variances. However, Staff recommends that during the off-season; prior to the next SB 408 filing, Staff and Avista come to an agreement about the most consistent method to apply in order to accommodate the SB 408 true-up.

Staff and Avista agree to work together during the off-season to develop the most consistent method to accommodate the Annual PGA mechanism into the calculation of taxes collected for the SB 408 filing.

UG 171
Service List (Parties)

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<p>DAVISON VAN CLEVE PC</p> <p>MELINDA J DAVISON (C)</p>	<p>333 SW TAYLOR - STE 400 PORTLAND OR 97204 mail@dvclaw.com</p>
<p>DEPARTMENT OF JUSTICE</p> <p>JASON W JONES (C) (HC) ASSISTANT ATTORNEY GENERAL</p>	<p>BUSINESS ACTIVITIES SECTION 1162 COURT ST NE SALEM OR 97301-4096 jason.w.jones@state.or.us</p>

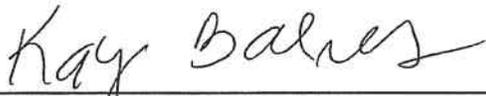
ENERGY ACTION NORTHWEST EDWARD A FINKLEA (C) (W)	PO BOX 8308 PORTLAND OR 97207 efinklea@energyactionnw.org
KAFOURY & MCDUGAL LINDA K WILLIAMS (C) (HC) ATTORNEY AT LAW	10266 SW LANCASTER RD PORTLAND OR 97219-6305 linda@lindawilliams.net
MCDOWELL RACKNER & GIBSON PC PORTLAND SAFE ROOM	419 SW 11TH AVE STE 400 PORTLAND OR 97205 lisa@mcd-law.com
NORTHWEST INDUSTRIAL GAS USERS PAULA E PYRON (C) (W)	4113 WOLF BERRY CT LAKE OSWEGO OR 97035-1827 ppyron@nwigu.org
OREGON PUBLIC UTILITY COMMISSION CARLA BIRD (C) (HC)	PO BOX 2148 SALEM OR 97308-2148 carla.bird@state.or.us
PORTLAND GENERAL ELECTRIC RANDALL DAHLGREN (W)	121 SW SALMON ST - 1WTC0702 PORTLAND OR 97204 pge.opuc.filings@pgn.com
DOUGLAS C TINGEY (W)	121 SW SALMON 1WTC13 PORTLAND OR 97204 doug.tingey@pgn.com
PUBLIC UTILITY COMMISSION OF OREGON DEBORAH GARCIA (C) (HC)	PO BOX 2148 SALEM OR 97308-2148 deborah.garcia@state.or.us
TONKON TORP LLP DAVID F WHITE (W)	888 SW FIFTH AVE #1600 PORTLAND OR 97204 davidw@tonkon.com

CERTIFICATE OF SERVICE

UG 171

I certify that I have this day served the foregoing document upon all parties of record in this proceeding by delivering a copy in person or by mailing a copy properly addressed with first class postage prepaid, or by electronic mail pursuant to OAR 860-001-0180, to the following parties or attorneys of parties.

Dated this 23rd day of December 2010, at Salem, Oregon.



Kay Barnes
Public Utility Commission
Regulatory Operations
550 Capitol St NE Ste 215
Salem, Oregon 97301-2551
Telephone: (503) 378-5763

**PUBLIC UTILITY COMMISSION
OF
OREGON**

UG 171(4)

STAFF/AVISTA/NWIGU/CUB EXHIBIT 203

**Issues List for the Northwest Industrial Gas Users
In the Matter of Avista's
SB 408 2009 Tax Report**

January 31, 2011

TOMMY A. BROOKS
ADMITTED IN OREGON AND WASHINGTON

tbrooks@cablehuston.com
www.cablehuston.com

December 23, 2010

**VIA ELECTRONIC FILING
& FIRST CLASS MAIL**

Oregon Public Utility Commission
Attn: Filing Center
550 Capitol Street, N.E., #215
P.O. Box 2148
Salem, Oregon 97308-2148

Re: In the Matter of the OREGON PUBLIC UTILITY STAFF Requesting the Commission direct AVISTA UTILITIES to file tariffs establishing automatic adjustment clauses under the terms of SB 408 (**Docket No. UG-171(4)**)

Issues List for the Northwest Industrial Gas Users

Dear Filing Center:

Intervenor Northwest Industrial Gas Users identifies the following issue in this proceeding:

Does application of OAR 860-022-0041 to Avista's SB 408 filing successfully implement the legal requirements imposed by SB 408? In order to protect customers from being overcharged by utilities for taxes, the legislature passed SB 408 which requires utilities to true-up any differences between income taxes authorized to be collected through rates from customers and the income taxes actually paid to units of the government that are properly attributed to the utilities' regulated functions. As identified by Staff, there is a potential inconsistency between SB 408 and OAR 860-022-0041 with respect to the determination of the existence of a normalization violation. The potential inconsistency could result in an outcome whereby Avista is allowed to collect more for taxes than it actually pays, in contravention of SB 408.

CABLE HUSTON

December 23, 2010

Page 2

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

Very truly yours,

/s/ Tommy A. Brooks
Tommy A. Brooks

cc: UG-171 Service List

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 or by mailing a copy to those parties not waiving paper service in a properly addressed envelope with first class postage prepaid.

CITIZENS' UTILITY BOARD OF OREGON (W) Gordon Feighner Energy Analyst 610 SW Broadway, Ste 400 Portland, OR 97205 gordon@oregoncub.org	KAFOURY & MCDOUGAL Linda K Williams Attorney at Law 10266 SW Lancaster Rd Portland, OR 97219-6305 linda@lindawilliams.net
CITIZENS' UTILITY BOARD OF OREGON (W) Robert Jenks Executive Director 610 SW Broadway, Ste 400 Portland, OR 97205 bob@oregoncub.org	MCDOWELL RACKNER & GIBSON PC Portland Safe Room 419 SW 11th Ave, Ste 400 Portland, OR 97205 lisa@mcd-law.com
CITIZENS' UTILITY BOARD OF OREGON (W) G. Catriona McCracken Legal Counsel/Staff Atty 610 SW Broadway, Ste 400 Portland, OR 97205 catriona@oregoncub.org	AVISTA CORPORATION David J Meyer Vice President & Chief Counsel PO Box 3727 Spokane, WA 99220-3727 david.meyer@avistacorp.com
DEPARTMENT OF JUSTICE Jason W Jones Assistant Attorney General Business Activities Section 1162 Court St NE Salem, OR 97301-4096 jason.w.jones@state.or.us	AVISTA UTILITIES Ron McKenzie Manager - Regulatory Accounting PO Box 3727 Spokane, WA 99220-3727 ron.mckenzie@avistacorp.com
PUBLIC UTILITY COMMISSION OF OREGON Deborah Garcia PO Box 2148 Salem, OR 97308-2148 deborah.garcia@state.or.us	OREGON PUBLIC UTILITY COMMISSION Carla Bird PO Box 2148 Salem, OR 97308-2148 carla.bird@state.or.us

<p>DANIEL W MEEK ATTORNEY AT LAW Daniel W Meek Attorney at Law 10949 SW 4th Ave Portland, OR 97219 dan@meek.net</p>	<p>TONKON TORP LLP (W) David F White 888 SW Fifth Ave #1600 Portland, OR 97204 davidw@tonkon.com</p>
<p>PORTLAND GENERAL ELECTRIC (W) Douglas C Tingey 121 SW Salmon 1WTC13 Portland, OR 97204 doug.tingey@pgn.com</p>	<p>PORTLAND GENERAL ELECTRIC (W) Randall Dahlgren 121 SW Salmon St – 1WTC0702 Portland, OR 97204 pge.opuc.filings@pgn.com</p>
<p>DAVISON VAN CLEVE PC Melinda J. Davison 333 SW Taylor - Ste 400 Portland, OR 97204 mail@dvclaw.com</p>	<p>DAVISON VAN CLEVE Irion A Sanger Associate Attorney 333 SW Taylor - Ste 400 Portland, OR 97204 ias@dvclaw.com</p>
<p>ENERGY ACTION NORTHWEST (W) Edward A Finklea PO Box 8308 Portland, OR 97207 efinklea@energyactionnw.org</p>	

Dated in Portland, Oregon, this 23rd day of December, 2010.

/s/ Tommy A. Brooks
Tommy A. Brooks, OSB No. 076071
Chad M. Stokes, OSB No. 004007
Of Attorneys for the Northwest Industrial Gas Users

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UG-171(4)

In the Matter of)
)
AVISTA CORPORATION, dba AVISTA)
UTILITIES)
)
Annual Tax Filing Under ORS 757.268)
_____)

AFFIDAVIT OF KELLY O. NORWOOD

STATE OF WASHINGTON)
) as
County of Spokane)

I, Kelly O. Norwood, being first duly sworn on oath, depose and say:

1. I am the Vice President for State and Federal Regulation of the Avista Utilities ('AVISTA').
2. On behalf of AVISTA, I sponsored the pre-filed testimony submitted in this docket entitled Joint Testimony/Bird, et.al.(Exh(s) 200-203).
3. My statements in the pre-filed testimony are true and accurate based on my information and belief and my responses would be the same if I were to answer those same questions today.

SIGNED this 31st day of January, 2011.

Kelly O. Norwood
Kelly O. Norwood

SUBSCRIBED AND SWORN to before me this 31st day of January, 2011.

Patty L. Hanson
Notary Public for State of Washington
My Commission Expires: November 23, 2013



BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UG-171(4)

In the Matter of)
)
AVISTA CORPORATION, dba AVISTA)
UTILITIES)
)
Annual Tax Filing Under ORS 757.268)
_____)

AFFIDAVIT OF PAULA E. PYRON

STATE OF OREGON)
) as
County of Multnomah)

I, Paula E. Pyron, being first duly sworn on oath, depose and say:

1. I am the Executive Director of the Northwest Industrial Gas Users ("NWIGU").
2. On behalf of NWIGU, I sponsored the pre-filed testimony submitted in this docket entitled Joint Testimony/Bird, et.al.(Exh(s) 200 – 203).
3. My statements in the pre-filed testimony are true and accurate based on my information and belief and my responses would be the same if I were to answer those same questions today.

SIGNED this 31st day of January, 2011.

Paula E. Pyron
Paula E. Pyron

SUBSCRIBED AND SWORN to before me this 31st day of January, 2011.

Shannon Marie Kimmel
Notary Public for OREGON
My Commission Expires: 6/25/13



OF OREGON

UG-171(4)

In the Matter of)
)
AVISTA CORPORATION, dba AVISTA)
UTILITIES)
)
Annual Tax Filing Under ORS 757.268)
_____)

AFFIDAVIT OF DUSTIN BALL

STATE OF OREGON)
) as
County of Multnomah)

I, Dustin Ball, being first duly sworn on oath, depose and say:

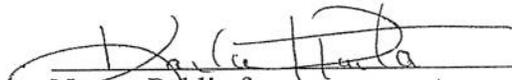
1. I am the Senior Financial Analyst of the Public Utility Commission of Oregon ("PUC").
2. On behalf of PUC, I sponsored the pre-filed testimony submitted in this docket entitled Direct Testimony/Bird-Ball and Joint Testimony/Bird, et.al.(Exh(s) 100-102, 200 – 203).
3. My statements in the pre-filed testimony are true and accurate based on my information and belief and my responses would be the same if I were to answer those same questions today.

SIGNED this 31 day of January, 2011.


Dustin Ball

SUBSCRIBED AND SWORN to before me this 31st day of January, 2011.




Notary Public for marion
My Commission Expires: OCT 10, 2011

BEFORE THE PUBLIC UTILITY COMMISSION

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UG-171(4)

In the Matter of)
)
AVISTA CORPORATION, dba AVISTA)
UTILITIES)
)
Annual Tax Filing Under ORS 757.268)
_____)

AFFIDAVIT OF CARLA BIRD

STATE OF OREGON)
) as
County of Multnomah)

I, Carla Bird, being first duly sworn on oath, depose and say:

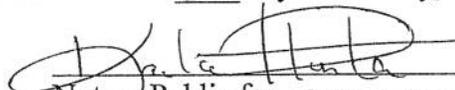
1. I am the Senior Revenue Requirement Analyst of the Public Utility Commission of Oregon ("PUC").
2. On behalf of PUC, I sponsored the pre-filed testimony submitted in this docket entitled Direct Testimony/Bird-Ball and Joint Testimony/Bird, et.al.(Exh(s) 100-102, 200 – 203).
3. My statements in the pre-filed testimony are true and accurate based on my information and belief and my responses would be the same if I were to answer those same questions today.

SIGNED this 31st day of January, 2011.



Carla Bird

SUBSCRIBED AND SWORN to before me this 31st day of January, 2011.



Notary Public for marion
My Commission Expires: Oct 11, 2011



BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UG-171(4)

In the Matter of)
)
AVISTA CORPORATION, dba AVISTA)
UTILITIES)
)
Annual Tax Filing Under ORS 757.268)
_____)

AFFIDAVIT OF DEBORAH GARCIA

STATE OF OREGON)
) as
County of Multnomah)

I, Deborah Garcia, being first duly sworn on oath, depose and say:

1. I am the Senior Revenue Requirement Analyst of the Public Utility Commission of Oregon ("PUC").
2. On behalf of PUC, I sponsored the pre-filed testimony submitted in this docket entitled Joint Testimony/Bird, et.al.(Exh(s) 200 – 203).
3. My statements in the pre-filed testimony are true and accurate based on my information and belief and my responses would be the same if I were to answer those same questions today.

SIGNED this 31 day of January, 2011.

Deborah A Garcia

Deborah Garcia

SUBSCRIBED AND SWORN to before me this 31st day of January, 2011.

[Signature]
Notary Public for Marion
My Commission Expires: Oct 10, 2011



BEFORE THE PUBLIC UTILITY COMMISSION

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UG-171(4)

In the Matter of)
)
AVISTA CORPORATION, dba AVISTA)
UTILITIES) AFFIDAVIT OF BOB JENKS
)
Annual Tax Filing Under ORS 757.268)
_____)

STATE OF OREGON)
) as
County of Multnomah)

I, Bob Jenks, being first duly sworn on oath, depose and say:

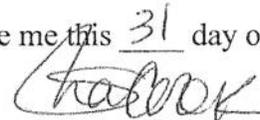
1. I am the Executive Director of the Citizens' Utility Board ("CUB").
2. On behalf of CUB, I sponsored the pre-filed testimony submitted in this docket entitled Joint Testimony/Bird, et.al.(Exh(s) 200 – 203).
3. My statements in the pre-filed testimony are true and accurate based on my information and belief and my responses would be the same if I were to answer those same questions today.

SIGNED this 31 day of January, 2011.



Bob Jenks

SUBSCRIBED AND SWORN to before me this 31 day of January, 2011.



Notary Public for Multnomah County, Oregon
My Commission Expires: Aug. 10th 2014

