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May 3, 2006

Sent Via email and U.S. Mail

Oregon Public Utility Commission
Attn: Filing Center
550 Capitol St. NE, #215
PO Box 2148
Salem, OR 97308-2148

Re: **DOCKET AR 499: Avista Corporation's Opening Comments on Straw Proposals**

Enclosed please find Avista Corporation's Opening Comments on Straw Proposals in the above-referenced docket.

Please direct any questions to Ron McKenzie at (509) 495-4320.

Sincerely,

A handwritten signature in cursive script that reads "Kelly Norwood".

Kelly Norwood
Vice President State and Federal Regulation

Enclosure

C: AR 499 Service List

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

In the Matter of the Adoption of Permanent)
Rules Implementing SB 408 Relating to)
Utility Taxes) AR 499

**AVISTA CORPORATION'S OPENING COMMENTS
ON STRAW PROPOSALS**

General Comments

The Attorney General's Opinion dated December 27, 2005 gives the Commission discretion to define and implement the term "properly attributed," subject to the general policy and specific limits expressed in chapter 845, Oregon Laws 2005, herein referred to as Senate Bill 408 (SB 408). Section 3 (12) of SB 408 requires that the "lesser of" the amount of taxes incurred as a result of income generated by Oregon regulated utility operations (Oregon stand-alone) or the total amount of taxes paid by the affiliated group is the amount properly attributed to Oregon regulated utility operations. The Attorney General's opinion made it clear that allocation of unregulated tax benefits to the utility is not required by SB 408 except when the consolidated group's tax liability is less than the utility's individual tax liability. Op Atty Gen at 17 (Dec 27, 2005).

Avista believes that Section 3 (12) (a) provides a solid foundation for the determination of "properly attributed" for Oregon utility operations when it identifies taxes paid for the utility as "taxes paid that is incurred as a result of income generated by the regulated operations of the utility." Section 3 (12) (b) then goes on to say that if the total taxes paid by the "affiliated group" is less than that determined for the Oregon operations, the taxes paid by customers is to be limited to the lesser amount. Avista believes that this language, as well as the balance of the

language in the Bill, specifies that the only time that Oregon utility customers would pay less taxes than the amount determined based on the "income generated by the regulated operations of the utility," is if the total taxes paid by the affiliated group is a lower number.

Avista agrees with PacifiCorp that in defining "properly attributed," the Commission should consider the key policies and principles of fairness and rationality, authenticity, consistency, practicality and sustainability. The Attorney General concluded that the term "properly attributed" was a delegative term because the word "properly" implicated concepts of fairness and reasonableness traditionally left up to an agency to define. Op Atty Gen at 7-9 (Dec 27, 2005). Moreover, the definition of properly attributed must produce rates that are fair, just and reasonable. Id. at 2. Nothing in SB 408 overrides that principle.

Avista's Compromise Proposal

Avista presented a compromise proposal in an effort to try to find some common ground among the parties in the implementation of SB 408. The essential elements are as follows:

- No attribution from non-Oregon regulated utility operations.
- Taxes associated with non-regulated affiliate operations are grouped together.
- Positive or negative tax liability of affiliate group determined.
 - If positive, no attribution to regulated utility operations is made.
 - If negative, adjustments made for deferred taxes.
- Adjusted amount of negative non-regulated, affiliate group tax liability then allocated to all regulated operations.
- Adjust for tax impact of net cost changes since last rate case and regulatory disallowances or apply earnings test.

In Avista's compromise proposal, the taxes attributed to Oregon regulated operations could be lower than the amount determined based on the "income generated by the regulated operations of the utility," and could also be lower than the total taxes paid by the affiliated group. In Avista's compromise proposal the tax liabilities of non-Oregon regulated utility operations are not used to offset a negative tax liability of the non-regulated affiliate group in determining the

“lesser of” provision of Section 3 (12). Oregon regulated utility operations, non-Oregon regulated utility operations, and non-regulated affiliate operations are each considered separately. In the compromise proposal an attribution is made only if the tax liability of the non-regulated affiliate group is negative. In that instance, the negative tax liability of the non-regulated affiliate group is allocated to Oregon regulated utility operations and non-Oregon regulated utility operations.

Proposals of ICNU/NWIGU and CUB

Avista generally concurs with PacifiCorp’s specific criticisms of the straw proposals of ICNU/NWIGU and CUB. Moreover, there is a complete lack of SB 408 legislative history supporting “proportional loss allocation” approaches to utility taxation or selective attribution of parent interest-related tax deductions. Any parent interest-related tax deductions should be decided in a general rate case when the cost of capital and debt-interest tax deduction related to utility operations is determined. Commission basis reports used in developing regulated Oregon “stand-alone” taxes should follow the method of assigning debt costs and the related tax impact in the same manner as approved in the general rate case.

ICNU/NWIGU’s subgroup proposal is complicated and would be extremely difficult to administer. Again, the method for determining debt interest deductions for the utility should be determined in a general rate case and that same methodology should be followed in determining the utility’s interest deduction going forward. Defining a relevant subgroup of affiliates is also subjective. If a sub-group of affiliates were to be determined using a “nexus” approach, only those affiliates that have direct business dealings with the utility should be considered. Jointly shared administrative-type services should not be deemed to create a nexus.

CUB’s straw proposal is also flawed on the interest issue. In addition, CUB’s proposal only considers affiliates with negative tax losses and allocates those tax losses to the utility and

other affiliates with positive tax liabilities. There is no basis for doing this type of separation of affiliates with negative tax liabilities from those affiliates with positive tax liabilities. The affiliates should be looked at as a group or “nexus” sub-group to determine if the group has a positive or negative tax liability. Only if the tax liability for the affiliate group is negative should there be an attribution to regulated utility operations.

DATED: this 3rd day of May 2006

Respectfully submitted,

A handwritten signature in cursive script that reads "Kelly Norwood".

Kelly Norwood
Vice President State and Federal Regulation

Certificate of Service

I HEREBY CERTIFY that I have this day served Avista Corporation's Opening Comments on Straw Proposal in Docket AR 499, upon the parties listed below by sending a copy via electronic mail and U.S. Mail.

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I declare under penalty of perjury that the foregoing is true and correct.
Dated at Spokane, Washington this 3rd day of May 2006.



Patty Olsness