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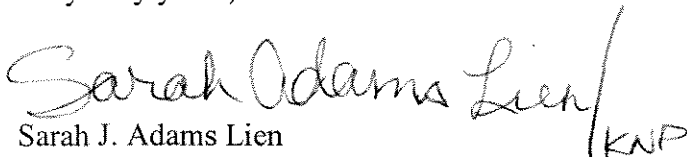
VIA ELECTRONIC FILING

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

Re: Joint Reply Brief
Dockets UE 177, UE 178, UG 170, UG 171

Enclosed for filing please find an original and 5 copies of Joint Reply Brief in the above-referenced proceedings. A copy of this filing has been served on all parties to these proceedings as indicated in the attached certificated of service.

Very truly yours,


Sarah J. Adams Lien

SJL:knp
Enclosures
cc: Service List

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

3 **UE 177, UE 178, UG 170 & UG 171**

4 **In the Matter of the Automatic**
5 **Adjustment Clause Filing Under SB 408**

JOINT REPLY
BRIEF

6 Pursuant to OAR 860-13-0050, Avista Corporation (“Avista”), Northwest Natural
7 Gas Company (“Northwest Natural”), PacifiCorp, and Portland General Electric Company
8 (“PGE”) (collectively “Movants”) submit this Reply in response to the Industrial Customers
9 of Northwest Utilities’ (“ICNU”) and Northwest Industrial Gas Users’ (“NWIGU”)
10 (collectively “Intervenors”) opposition to Movants’ Joint Motion for Protective Order
11 (“Proposed Protective Order”) in Docket Nos. UE 177, UE 178, UG 170, UG 171
12 (collectively the “AAC Dockets”) and AR 499.

13 **ARGUMENT**

14 **1. Additional Protection is Necessary and Justified.**

15 Movants agree that the Commission should balance the potential harm of disclosure
16 against the benefit of information being disclosed. ICNU Response at 6. Here, the risk of
17 disclosure is substantial and without the requested protections uncontrollable by the
18 Commission, the harm from disclosure is severe and the inconvenience imposed is modest.
19 Therefore, the Commission is justified in granting Movants’ request for additional protection.

20 Highly politicized and publicized proceedings, such as these, bring a heightened risk
21 of broad public disclosure of highly-confidential materials. This result was demonstrated in
22 Commission Docket UM 1211, where the standard protective order failed to protect sensitive
23 information. The disclosing party in that docket has not yet been identified. That party may
24 already be a party in the AAC Dockets or AR 499, and, in any event, could intervene. At the
25 very least, additional protections are necessary until the Commission identifies the disclosing
26 party.

1 Serious harm would result from the disclosure of Movants’ highly confidential
2 SB 408 Tax Report information. The tax information of utilities and their unregulated
3 affiliates is highly sensitive, as the Commission and legislature have recognized. All of the
4 information contained in the tax reports that Movants have filed pursuant to Senate Bill 408
5 (“SB 408 Tax Reports”) that has been designated as confidential by Movants is protected
6 from disclosure under Oregon Law. Letter Opinion at 1 (OPUC Nov. 18, 2005) (denying
7 public records requests for disclosure of SB 408 Tax Reports). The public disclosure of such
8 competitively sensitive information would create a risk of serious harm to the party
9 producing such information, as well as to unregulated affiliates of that party. *See id.* at 4;
10 SB 408 § 2(g) (“public disclosure of tax information could provide a commercial advantage
11 to other businesses”); *see also id.* §§ 3(3) (limiting disclosure and use of SB 408 Tax
12 Reports); OAR 860-022-0039 (requiring inclusion of commercially sensitive financial
13 information of unregulated affiliates in 2005 tax reports).

14 The inconvenience imposed by the Proposed Protective Order is modest in light of
15 the potential for harm. Movants do not seek to prevent access to information that is
16 important to these proceedings. They request only that additional, reasonable measures be
17 taken in order to ensure that access to highly confidential information remains restricted.

18 Given that the risk of disclosure is great and the harm from disclosure is severe, the
19 Commission is justified in granting Movants’ request for additional protection. Without the
20 requested safe room protection, the Commission cannot provide reasonable assurance that the
21 confidential information will be protected.

22 **2. The Proposed Safe Room Procedures Are Not Unduly Burdensome.**

23 Movants are committed to facilitating access to the safe rooms during all regular
24 business hours and upon only one business day’s notice. Moreover, although the Proposed
25 Protective Order gives Movants 24 hours to provide access to the safe rooms, Movants will
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1 facilitate access on even shorter notice when safe room monitors can be made available more
2 quickly. In addition, Intervenors may provide notice through mail, email or facsimile.

3 Although multiple safe rooms may present a minor inconvenience, intervenors may
4 easily visit one or all of the utilities' safe rooms in a single day, as each Movant is providing
5 a Portland safe room and all Portland safe rooms will be located within a couple of miles of
6 one another.

7 Nothing in the Proposed Protective Order prevents intervenors from taking notes on
8 the SB 408 Tax Reports and supporting documents or unreasonably hinders participation in
9 the AAC Dockets or AR 499.

10 In addition, nothing in the Proposed Protective Order prevents participation in these
11 proceedings by out-of-state consultants. ICNU Response at 9-10. Intervenors often hire out-
12 of-state consultants to testify at Commission hearings in Salem and access to the safe rooms
13 presents no greater inconvenience than traveling to Salem to testify. Intervenors also have
14 the option of hiring local consultants if more expeditious participation is desired.

15 **3. The Proposed Protective Order Will Provide Adequate Means to Submit**
16 **Information to the Commission.**

17 ICNU raises a concern that the Proposed Protective Order will prevent the parties
18 from communicating with the Commission about highly confidential information. ICNU
19 Response at 8. To ameliorate this concern, Movants propose to Bates number their
20 documents so that intervenors may easily reference any pages they want to use as exhibits.
21 Movants will then file, under seal, copies of the designated pages with the Commission. This
22 proposal will allow parties to use any highly confidential information, including the SB 408
23 Tax Reports and supporting data, for the purposes of testimony or pleadings and allow
24 qualified persons to reference designated information during proceedings.

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1 **4. The Proposed Protective Order Does Not Violate Attorney-Client Privilege or**
2 **Work Product Protected Communications.**

3 The Proposed Protective Order does not grant Movants authority to monitor attorney-
4 client communications. ICNU Response at 10. Movants propose the use of monitors only
5 for supervising and facilitating access to the safe rooms. Movants do not propose that the
6 monitors have access to attorney-client privileged or work product protected
7 communications. Protection of attorney-client communications requires only that the
8 reviewing party representatives step outside of the document room to discuss privileged legal
9 matters. Movants will provide an on-premises private room for such discussions if
10 requested.

11 **5. The Proposed Protective Order Designates as Highly Confidential the SB 408**
12 **Tax Reports and Supporting Documents Containing Tax Data and Analyses**
13 **That Have Been Designated as Confidential by the Utilities.**

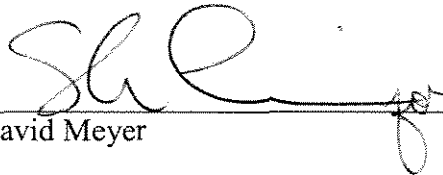
14 Movants do not seek broad discretion to designate as highly confidential any
15 documents or information requested in discovery. ICNU Response at 11. Rather, the
16 proposed protective order reserves the “highly confidential” designation only for “documents
17 and information the dissemination of which imposes significant risk of competitive harm to
18 the disclosing party.” Joint Motion ¶ 7. The documents for which Movants seek an
19 alternative means of discovery are very limited and can generally be classified as Movants’
20 SB 408 Tax Reports and supporting documents containing tax data and analyses that have
21 been designated as confidential by Movants. Joint Motion ¶ 5. The Commission and
22 legislature have already recognized the highly sensitive nature of this information.
23 Moreover, if an intervenor thinks that any specific material in the safe room is not entitled to
24 be treated as highly confidential, it can make an appropriate motion after reviewing the
25 material.

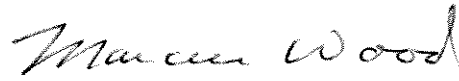
1 **CONCLUSION**

2 For the foregoing reasons, Avista, Northwest Natural, PacifiCorp and PGE request
3 entry in Docket Nos. UE 177, UE 178, UG 170 & UG 171 of the Proposed Protective Order.

4 DATED: January 9, 2006.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served the foregoing document on the following named
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4 his or her last-known address(es) indicated below.

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