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August 17, 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 – Answer of Avista to Motion to Consolidate

Avista Corporation d/b/a/ Avista Utilities, hereby submits for electronic filing the Answer of Avista to Motion to Consolidate. The original will be provided via overnight mail.

Sincerely,


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Enclosures
cc: Service List

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UG 171(1)
PHASE II

In the Matter of

AVISTA CORPORATION, d/b/a AVISTA
UTILITIES,

SB 408 Tax Report for Calendar Year 2007

ANSWER OF AVISTA TO MOTION
TO CONSOLIDATE

Avista Corporation (hereinafter “Avista” or “the Company”), by and through its undersigned attorney, respectfully submits this Answer to the Joint Motion to Consolidate filed by the Staff, CUB and NWIGU (“Movants”) on August 7, 2009, in the above-captioned proceeding. For the reasons set forth below, the Motion should be denied.

I. INTRODUCTION

In their Motion, Movants contend that Avista’s SB 408 Refund Proceeding (UG 171) should be consolidated with its pending general rate case (UG 186). In essence, Movants contend that the Commission should await the outcome of Avista’s general rate case (GRC), before a determination is reached as to whether or not an SB 408 Refund would be appropriate, in light of Avista’s claim of confiscation. What Movants ignore is the fact that, under any possible range of outcomes from the rate case, the imposition of a refund will still result in confiscatory rates for the “refund period” of June 1, 2009 through May 31, 2010.

As discussed below, sufficient, undisputed facts are now known that enable the Commission to decide the issue at this time, without otherwise consolidating the two dockets and further delaying the resolution of Avista’s claim of confiscation. Indeed, Staff’s own pre-filed testimony concludes that, if the Commission were to make its decision based on information known at this time, the Commission should not require Avista to provide an

SB 408 refund in light of Avista's projected earnings during the refund period. (See Staff Exhibit 300 at p.3-4 (Storm)).

II. NO PARTY TAKES ISSUE WITH AVISTA'S 2008 ADJUSTED RESULTS OF OPERATIONS REPORT FOR PURPOSES OF ARRIVING AT A PROJECTED TEST PERIOD RESULTS OF OPERATIONS REPORT

In her pre-filed testimony, Staff Witness Garcia acknowledges that Avista filed "comprehensive workpapers" projecting its earnings for the refund period of June 1, 2009, through May 31, 2010. (Exhibit 200, p.2, ll. 9-17) For its part, Staff performed what it characterized as a "thorough review of the Test Period ROO [Results of Operations] filing," which review included "multiple telephone conferences between Staff and Avista to answer Staff questions regarding Avista's methodology and calculations." (*Id.*) As a result, Staff agrees with Avista's representation of its estimated earnings for the refund period of June 1, 2009, through May 31, 2010, and found that ". . . Avista's use of its 2008 ROO with known and measurable adjustments to reflect normal ongoing operations is a reasonable approach for forecasting Test Period [refund period] earnings." (*Id.* at p.3, ll. 15-18) Moreover, Staff noted that Avista's own analysis even assumed that Avista's entire request of \$14.2 million in its pending GRC was approved, with a requested ROE of 11%; even doing so, Staff acknowledged that reflecting an additional three months of such revenues from the GRC still only resulted in a 5.94% Return on Equity (ROE) prior to any refund, and a 3.78% ROE after any refund. (*Id.* at p.4)¹ As discussed below, Avista performed further analysis which varied the assumptions surrounding both the timing and the amount of general rate relief awarded in UG 186, and under every set of assumptions, a refund would result in confiscatory rates.

¹ It should be noted that the Temporary Rule does not call for speculation concerning the possible impact of future rate relief.

III. UNDER ANY RANGE OF POSSIBLE OUTCOMES OF AVISTA'S PENDING GRC, THE IMPOSITION OF A REFUND REQUIREMENT WILL RESULT IN CONFISCATORY RATES

Movants, however, nevertheless contend that the resulting earnings, both with and without a refund, will be affected by both the magnitude and timing of any rate relief awarded Avista in UG 186. They suggest that it is possible, for example, for rate relief to be awarded prior to the end of the suspension period. To that end, Staff had requested Avista to calculate the impact of various levels of rate relief occurring as early as January 1, 2010 – nearly four (4) months prior to the end of the suspension period.² Staff Witness Garcia, in her pre-filed testimony, accepted the Company's calculations in that regard, which demonstrated that even with 100% of Avista's requested rate relief of \$14.2 million (assuming a 10% ROE) with rates effective January 1, 2010, Avista would only realize a 6.27% ROE after giving effect to the refund. (Staff Exhibit 200, at p.5, ll. 1-8) And, that was on the high end. In the alternative, if only 50% of rate relief were awarded effective at the end of the suspension period, this would result in an ROE, after refund, of only 1.32%. As will be discussed below, this range of results of 1.32% to 6.27% is still well below what Staff Witness Storm implies to be a threshold level for confiscatory rates.

In his analysis, Mr. Storm assumes 100% of Avista's rate relief is made effective on April 25, 2010, resulting in a forecasted ROE of 3.86% without a refund, and 1.69% with a refund. (Staff Exhibit 300, at p.2) He then appropriately attempts to place such returns into the broader perspective of what constitutes fair and reasonable returns, concluding that “. . . it

² In its June 25, 2009 memo to the Commission recommending suspension of Avista's general rate filing in Docket No. UG 186, Staff argued that it needed the full nine-month suspension period (i.e. until April 27, 2010) “due to the size of the increase and the complexity of the case.”

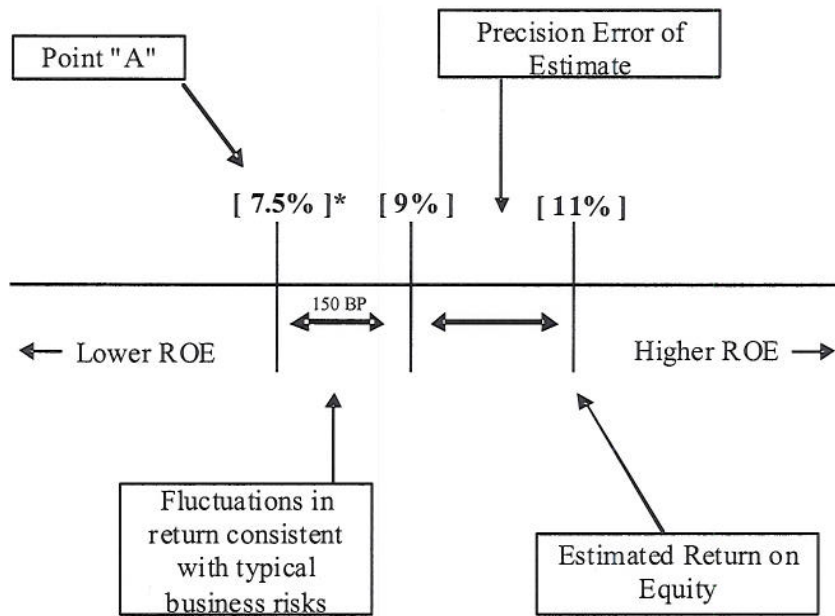
is likely that Avista's current cost of equity is well above 3.86%.” (Id. at p.4, ll. 15-17) In his pre-filed testimony, Mr. Storm states:

From my review of past general rate case proceedings, recommended ranges of returns on equity typically span between 100 and 200 basis points. While an analyst might recommend a 10% return on equity, for example, the range of estimates may be from 9% to 11%. The “true” return investors require to hold Avista stock may be as low as 9% or as high as 11%.

(Id. at p.4, l. 22 - p.5, l. 4) To put this into further perspective, Staff Witness Storm noted that current returns on 10 and 30-year Treasuries which, in his words are “relatively riskless,” have yields exceeding 3.86%; as of July 23, 2009, yields on 10 and 30-year Treasuries were 3.72% and 4.58%, respectively. (Id. at p.5, ll. 14-18)

Staff Witness Storm then further expanded his reasonable range of ROEs (9-11%) in order to encompass other business risk factors, analogous to the use of deadbands in power cost adjustments, where such deadbands have ranged from 100 to 150 basis points. (Id. at p.6, ll. 15-17) In his words, “. . . for purposes of establishing the threshold return on equity below which confiscatory rates begin, I think it is reasonable to expand the range somewhat beyond that which might encompass an estimated return on equity required by investors.” (Id. at p.6, ll. 20-23) To that end, he sponsored the following chart appearing at page 7 of his testimony, to which has been added the figures discussed immediately above:

**Excerpt from Staff Testimony
Describing ROE Ranges**



Source: Storm Exhibit 300, Page 7

* Percentages added based on information provided in Staff Witness Storm's testimony (Exh. 300, Pages 5-7)

Accordingly, if one were to adjust Staff Witness Storm's 9-11% range of ROEs to account for "other factors" such as weather or changes in load based on economic activity, and widen it by an additional 100-150 basis points, this results in a range of ROEs from 7.5% to 12.5%, below which presumably confiscation would occur, at least according to Mr. Storm's own logic. Under no scenario involving the possible resolution of Avista's GRC, either in terms of magnitude or timing, does Avista's ROE, with a refund, fall within the non-confiscatory zone implied by Staff Witness Storm. Even with 100% of Avista's rate relief occurring as early as January 1, it would only produce a return of 6.27%. (Staff Exhibit 200, at p.5, ll. 1-3) If, on the other hand, the Commission were to award only 75% of Avista's requested rate relief at the end of the suspension period, its ROE would drop to 3.06%, after the refund.

By way of further perspective, it should be noted that Avista's current cost of debt is 6.92%. (Avista Exhibit 300, p.9, ll. 21-22) Company Witness Avera, in his pre-filed testimony observed:

I have been involved in hundreds of rate cases and other regulatory proceedings since 1975. I cannot recall any witness (whether Company, Staff or Intervener) in any case involving an investor-owned utility recommending a fair ROE even as low as 6%, and certainly not at levels produced by the income tax refund in this case. Indeed, investors are requiring just under 5% to invest in 30-year U.S. Treasury Bonds, backed by the full faith and credit of the National Government with its power to tax and print money. Similarly, the average yield on utility bonds rated Baa bonds (the same rating as Avista) averaged 7.76% in May 2009.

(Exhibit 400, p.12, l. 19 - p.13, l. 8) Finally, as noted by Company Witness Avera in his pre-filed testimony, it is well to remember that recently reported authorized ROEs for gas utilities in 2008 averaged 10.37% and 10.24% for the first quarter of 2009. (*Id.* at p.13, ll. 12-16)

Attached as Appendix A is a matrix showing rates of return resulting from a refund under every one of the eighteen (18) scenarios presented by the parties. Also page 2 of this Appendix graphically illustrates that, under every scenario, Avista's returns would be at or below even its cost of debt, with a refund, and well below Mr. Storm's presumptive threshold for confiscation.

In sum, Staff acknowledges that, based upon the evidence presented, Avista's rates are confiscatory with the SB 408 refund. It is impermissible under ORS 756.040 to adopt procedures that thwart a utility's right to relief in such a case.

IV. CONCLUSION

No useful purpose would be served by consolidating the refund docket (UG 171) with Avista's pending rate case (UG 186). No party disputes the "modeling" of various rate case scenarios and their impact on Avista's earnings – in each and every case, the resulting earnings, with a refund, are confiscatory. Even with all of Avista's requested general rate relief, it will still experience confiscatory rates, were this Commission to order a refund, and there is no reason to await the outcome of that proceeding.

RESPECTFULLY SUBMITTED this 17th day of August, 2009.

AVISTA CORPORATION

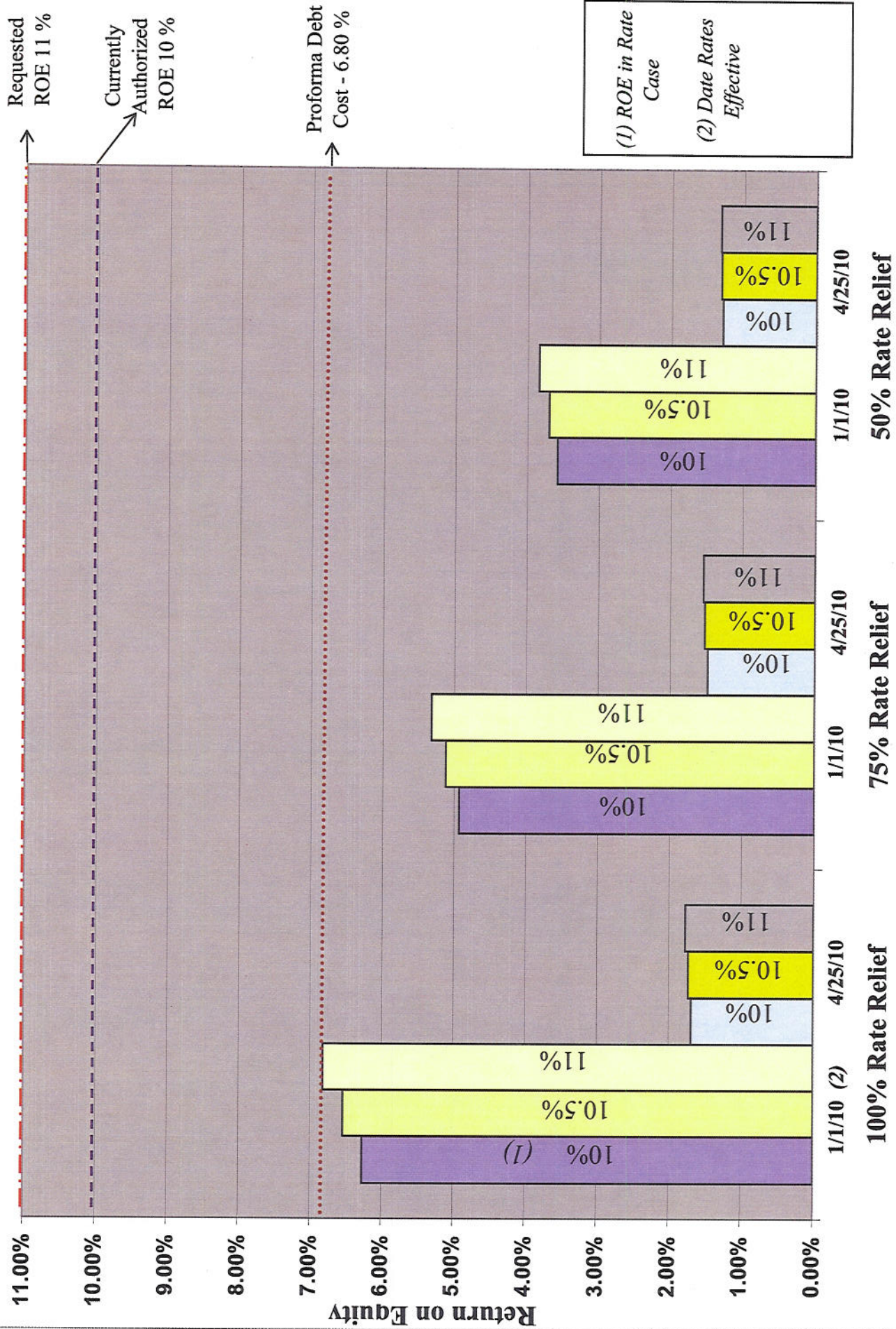
By: _____


David J. Meyer
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Return on Equity with SB 408 Refund
with Various Outcomes of the General Rate Case

	<u>ROE in</u> <u>GRC</u>	<u>Effective Date of</u> <u>New Rates</u>	<u>Rate Relief Awarded</u>		
			<u>100%</u>	<u>75%</u>	<u>50%</u>
Currently Authorized	10.0%	January 1, 2010	6.27%	4.93%	3.58%
		April 25, 2010	1.69%	1.48%	1.29%
Requested by Staff	10.5%	January 1, 2010	6.54%	5.12%	3.70%
		April 25, 2010	1.73%	1.52%	1.31%
Filed in GRC	11.0%	January 1, 2010	6.82%	5.32%	3.84%
		April 25, 2010	1.77%	1.54%	1.32%

Avista Utilities Return on Equity (w/ Refund)



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have served the Answer of Avista to Motion to Consolidate in Docket UG 171, for Avista's 2007 Tax Report filing, by electronic mail, and by mailing a copy thereof where paper service has not been waived, to the following:

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Dated at Spokane, Washington this 17th day of August 2009.



Patty Olsness
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