

CABLE HUSTON BENEDICT HAAGENSEN & LLOYD LLP

ATTORNEYS AT LAW

SUITE 2000

1001 SW FIFTH AVENUE

PORTLAND, OREGON 97204-1136

TELEPHONE (503) 224-3092

FACSIMILE (503) 224-3176

CHAD M. STOKES

estokes@chbh.com
www.cablehuston.com

December 28, 2005

VIA ELECTRONIC FILING

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 Automatic Adjustment Clause Filing Under SB 408
Docket Nos.: UG 170, UG 171, UE 177, UE 178

Dear Filing Center:

Enclosed please find an original and one (1) copy of the **Response of the Northwest Industrial Gas Users in Opposition to Joint Motion for Protective Order** in the above-referenced Dockets.

This was filed electronically with the OPUC on this date, and will be served both electronically and by U.S. Mail on those parties listed on the OPUC's current Service List.

Thank you for your assistance.

Respectfully submitted,



Chad M. Stokes

CMS/nh
cc: Current Service List

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

**UG 170
UG 171
UE 177
UE 178**

In the Matter of the Automatic Adjustment)
 Clause Filing Under SB 408)
)
)
)
)

Pursuant to OAR 860-013-0050 and the schedule adopted in Administrative Law Judge Grant’s Prehearing Conference Memorandum, the Northwest Industrial Gas Users (“NWIGU”) hereby submit this Response in opposition to the Joint Motion of Avista Corporation (“Avista”), Northwest Natural Gas Company (“NW Natural”), PacifiCorp and Portland General Electric Company (“PGE”) (collectively the “Utilities”) for a modified protective order in the above referenced proceedings. In the Motion, the Utilities request a safe room discovery mechanism that, if adopted, would render discovery meaningless in these dockets. NWIGU requests that the Oregon Public Utility Commission (“Commission”) deny the Utilities’ Motion for a modified protective order to establish a safe room for review of certain tax data. In support of this Response, NWIGU states as follows:

1. Public policy and Commission rules favor broad discovery. The Utilities, however, seek to limit access to critical tax and financial documents by proposing a “safe room” concept to hold the Utilities’ SB 408 Tax Reports and supporting documents containing tax data and analyses. Under this concept, critical documents may not be copied and only “limited notes” may be taken “for reference purposes only.” Motion ¶ 7. The Utilities argue that the intentional disclosure of information in Docket No. UM 1121 justifies the restrictive safe room concept and that the Commission’s standard protective order is insufficient. Motion ¶ 4.

2. The Utilities' safe room concept is overly restrictive and should be rejected. Under Commission rules, a protective order, or a modified protective order such as that proposed by the Utilities, should be issued upon a showing of "good cause." Accordingly, the Utilities have the burden to demonstrate that "good cause" exists to justify the safe room concept. Citing one isolated event when documents subject to a protective order were disclosed in Docket No. UM 1121 is not sufficient to justify a fundamental change in discovery for confidential information. While it is unfortunate that someone chose to violate the protective order in Docket No. UM 1121, this isolated event does not justify changing the rules of discovery and limiting the ability of Staff and Intervenors to use confidential tax information in these proceedings. The Utilities have failed to show "good cause" for the safe room concept.

3. The Commission's standard protective order has sufficient protection for the Utilities. Any party intentionally violating a protective order does so at its own peril, and should be punished. Indeed, as the Utilities recognize, the Attorney General is investigating the disclosure in Docket UM 1121. The Utilities seek to fundamentally change the way discovery is conducted and set dangerous precedent for future Commission proceedings. It is against public policy and overly restrictive to propose discovery rules that only allow Intervenors and Staff to take limited notes of complex tax and financial data in a safe room, without the ability to copy the data. Reviewing documents of this nature without the ability to take notes and copy relevant pages is of limited value.

4. In defense of the safe room concept, the Utilities state that universe of documents for which they seek an alternative means of discovery is very limited—generally classified as the Utilities' SB 408 Tax Reports and supporting documents containing tax data and analyses. This argument is disingenuous. These proceedings are established to specifically address the complex issue of taxation as it intersects with regulatory rate making. Accordingly, the SB 408 Tax Reports and supporting documents are pertinent to these proceedings. If the Utilities' safe room proposal is adopted, many of the documents relevant to these proceedings will be contained in

the safe room. Without access to SB 408 Tax Reports and related information, and the ability to copy relevant documents for review outside the safe room, it will be impossible to participate meaningfully in these complex proceedings. Accordingly, Staff and Intervenors should be allowed to copy and review critical tax documents, spreadsheets, and analyses outside the safe room.

5. Principles of fundamental fairness and due process require that Intervenors and Staff have the ability to review, copy and use relevant tax information in these proceedings. Notably absent from the safe room concept is any mention of the ability to use confidential tax information in the proposed safe room. In essence, Parties will be allowed to look at the documents in the safe room, take limited notes for reference purposes only—with no ability to use the tax information in any pleading filed with the Commission. Even if a Party could file pleadings under seal, it would be difficult, if not impossible, to take notes sufficient under the proposal to have substantive value. The safe room concept is untenable. The Commission should permit the broadest discovery available consistent with the need to protect the Utilities’ confidential information. The safe room concept, however, goes too far.

6. The Commission should issue a standard protective order that covers these dockets and Docket No. AR 499. The safe room concept, however, has not been justified and is overly restrictive. The safe room concept would, if adopted, effectively cut off review of certain documents due to the complex nature of tax data.

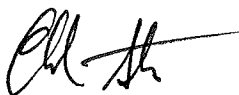
7. As an alternative to the Utilities’ inappropriate safe room concept, NWIGU supports the proposal sponsored by the Industrial Customers of Northwest Utilities (“ICNU”) and attached as Exhibit A to ICNU’s Response in Opposition to the Motion for a Protective Order filed in these dockets. ICNU’s proposal is a reasonable alternative that balances the interests of Staff and Intervenors with the need to protect the Utilities’ confidential information.

CONCLUSION

The Utilities have not demonstrated good cause for adoption of their safe room concept to review certain documents. The Utilities' only support for the safe room concept is the unfortunate disclosure of confidential information in Docket UM 1121 to the *Willamette Week*. This event, however, was isolated. Moreover, the matter is not closed and is still under investigation by the Attorney General's office. In order for the Intervenors and Staff to meaningfully participate in these proceedings, the Commission should adopt its standard protective order, and the Utilities' overreaching safe room proposal should be rejected. As an alternative, the Commission should adopt the proposal sponsored by ICNU that balances the Parties' right to conduct discovery with the need to protect confidential information.

DATED: December 28, 2005.

Respectfully submitted,



Edward A. Finklea, OSB # 84216
Chad M. Stokes, OSB # 00400
Cable Huston Benedict Haagensen & Lloyd LLP
1001 SW Fifth Ave., Suite 2000
Portland, OR 97204-1136
Telephone: (503) 224-3092
Facsimile: (503) 224-3176
E-Mail: efinklea@chbh.com
cstokes@chbh.com

Of Attorneys for the
Northwest Industrial Gas Users

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 28, 2005 I caused to be served the foregoing RESPONSE OF THE NORTHWEST INDUSTRIAL GAS USERS IN OPPOSITION TO JOINT MOTION FOR PROTECTIVE ORDER upon all parties of record on the attached Service Lists obtained on this date from the Oregon Public Utility Commission's Website as follows:

- [XX] by **MAILING** a full, true and correct copy thereof in a sealed, postage-paid envelope, addressed as shown on the attached Service Lists, and deposited with the U.S. Postal Service at Portland, Oregon, on the date set forth below;

- [XX] **and** by **electronic mail** ("e-mail") to those parties on the Oregon Public Utility Commission's Website Service Lists who listed an e-mail address.

UG-170

SERVICE LIST (Parties)

LOWREY R BROWN CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY - STE 308 PORTLAND OR 97205 lowrey@oregoncub.org	JASON EISDORFER CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY STE 308 PORTLAND OR 97205 jason@oregoncub.org
DAVID HATTON DEPARTMENT OF JUSTICE REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 david.hatton@state.or.us	MARCUS A WOOD STOEL RIVES LLP 900 SW FIFTH AVE - STE 2600 PORTLAND OR 97204 mwood@stoel.com

UG-171

SERVICE LIST (Parties)

LOWREY R BROWN CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY - STE 308 PORTLAND OR 97205 lowrey@oregoncub.org	JASON EISDORFER CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY STE 308 PORTLAND OR 97205 jason@oregoncub.org
JASON W JONES DEPARTMENT OF JUSTICE REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 jason.w.jones@state.or.us	RON MCKENZIE AVISTA UTILITIES PO BOX 3727 SPOKANE WA 99220-3727 ron.mckenzie@avistacorp.com

UE-177

SERVICE LIST (Parties)

SARAH J ADAMS LIEN STOEL RIVES LLP 900 SW FIFTH AVE - STE 2600 PORTLAND OR 97204-1268 sjadamslien@stoel.com	LOWREY R BROWN CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY - STE 308 PORTLAND OR 97205 lowrey@oregoncub.org
MELINDA J DAVISON DAVISON VAN CLEVE PC 333 SW TAYLOR - STE 400 PORTLAND OR 97204 mail@dvclaw.com	JASON EISDORFER CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY STE 308 PORTLAND OR 97205 jason@oregoncub.org
MATTHEW W PERKINS DAVISON VAN CLEVE PC 333 SW TAYLOR - STE 400 PORTLAND OR 97204 mwp@dvclaw.com	

SERVICE LIST (Parties)

LOWREY R BROWN CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY - STE 308 PORTLAND OR 97205 lowrey@oregoncub.org	MELINDA J DAVISON DAVISON VAN CLEVE PC 333 SW TAYLOR - STE 400 PORTLAND OR 97204 mail@dvclaw.com
JASON EISDORFER CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY STE 308 PORTLAND OR 97205 jason@oregoncub.org	MATTHEW W PERKINS DAVISON VAN CLEVE PC 333 SW TAYLOR - STE 400 PORTLAND OR 97204 mwp@dvclaw.com
PGE-OPUC FILINGS RATES & REGULATORY AFFAIRS PORTLAND GENERAL ELECTRIC COMPANY 121 SW SALMON ST 1WTC0702 PORTLAND OR 97204 pge.opuc.filings@pgn.com	DOUGLAS C TINGEY PORTLAND GENERAL ELECTRIC 121 SW SALMON 1WTC13 PORTLAND OR 97204 doug.tingey@pgn.com

DATED: This 28th day of December, 2005.



Edward A. Finklea OSB # 84216

Chad M. Stokes OSB #00400

Cable Huston Benedict Haagensen & Lloyd LLP

1001 SW Fifth Ave., Suite 2000

Portland, OR 97204-1136

Telephone: (503) 224-3092

Facsimile: (503) 224-3176

E-Mail: efinklea@chbh.com

cstokes@chbh.com

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 Northwest Industrial Gas Users