

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OF OREGON**

3 UG 171(4)

4 In the Matter of

5 Avista Corporation, dba AVISTA
6 UTILITIES

7 Annual Tax Filing Under ORS 757.268

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STIPULATION

9 This Stipulation resolves all issues among the Parties to this Stipulation related to
10 Avista's 2009 Tax Report filed in UG 171(4), pursuant to Senate Bill 408 ("SB 408"). SB 408 is
11 codified in ORS 757.267, 757.268 and 757.210. Those statutes are implemented through OAR
12 860-022-0041.

13 **PARTIES**

14 The parties to this Stipulation are Avista Corporation (Avista), the Citizens' Utility Board
15 ("CUB"), the Northwest Industrial Gas Users ("NWIGU"), and the Staff of the Public Utility
16 Commission of Oregon ("Staff") (collectively, the "Parties").

17 **BACKGROUND**

18 SB 408 requires most Oregon public utilities to file an annual tax report with the Public
19 Utility Commission of Oregon ("Commission") that provides information on: (1) the amount of
20 taxes paid by the utility to units of government or that was paid by affiliated groups and that is
21 properly attributed to the utility's regulated operations; and (2) the amount of taxes authorized to
22 be collected in rates. ORS 757.268(1). The law requires the Commission to review the tax
23 report to determine whether the amount of taxes paid differs from the amount of taxes included
24 in rates by more than \$100,000. ORS 757.268(4). If so, the Commission must require the public
25 utility to establish an automatic adjustment clause to account for the difference. Id. The
26 Commission must complete its review of the tax report and order an automatic adjustment clause

1 ("AAC") if necessary within 180 days after the tax report is filed. ORS 757.268(4); OAR 860-
2 022-0041(7).

3 I. INTRODUCTION

4 As required by SB 408, on October 14, 2010, Avista filed its tax report for calendar year
5 2009 (the "Tax Report"). Amendments to the filing were made on October 26 and 29, 2010. On
6 November 4, 2010, Administrative Law Judge Sarah K. Wallace entered a procedural schedule
7 for the docket. On November 22, 2010, Staff convened a workshop. On December 23, 2010,
8 Staff and NWIGU each filed issue lists (attached to Joint Testimony filed herewith) with respect
9 to the Tax Report. On January 11, 2011, Staff and CUB filed testimony in this matter. On
10 January 19, 2011, a settlement conference was held, which was a continuation of an earlier
11 conference held on November 22, 2010.

12 For the 2009 tax period, Avista proposed to surcharge approximately \$1.5 million, which
13 includes interest of approximately \$230,000 that would accrue during the deferral period.
14 Avista's original filing concluded that the amount representing taxes paid for 2009 was based
15 upon the balance of deferred taxes during the tax period (the (4)(d) limitation). This amount was
16 compared to the calculation of taxes collected to determine a variance of approximately \$1.3
17 million *more* of taxes paid than taxes collected. Because the current rule language in OAR 860-
18 022-0041(4)(d) seems to require that the comparison of the (4)(d) limitation apply to all three
19 methods, Avista relied upon this balance for taxes paid. Staff, CUB and NWIGU believe the
20 language adopted in Commission Order 07-401 contradicts the intent of SB408. Thus, Staff
21 CUB and NWIGU believe Avista should rely upon the outcome of the stand-alone method for
22 taxes paid. Using the stand-alone method for taxes paid without application of the (4)(d)
23 limitation results in a *refund* of approximately \$1.0 million, before interest (or \$1,209,551 with
24 interest). Avista, therefore, agrees to submit a revised 2009 Tax Report, contemporaneous with
25 the filing of this Stipulation and Joint Testimony, compliant with the terms of the protective
26 order.

1 The Parties agree that Avista will withdraw its claim that implementation of the refund results in
2 confiscatory rates and violates ORS 756.040. In return, the Parties agree to support Avista's
3 request for early rate implementation in Docket No. UG 201.

4 II. SPECIFIC TERMS

5 A. The Parties have agreed to the terms of this Stipulation and to submit the
6 Stipulation to the Commission. The Parties request that the Commission issue an order
7 approving the Stipulation and implementation of its terms.

8 B. For reasons explained in the accompanying Joint Testimony, the Parties agree to
9 implement a refund of \$1,209,551 on June 1, 2011, and amortized on an equal margin basis over
10 a 12-month period.

11 **Table 1**
12 **Amortization Summary**
13 **AVISTA 2009 Tax Report**

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

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

20 This includes interest of \$173,485 that has accrued beginning July 1, 2009 through May 31,
21 2011. Approximately \$12,066 of additional interest will accrue during the amortization phase
22 beginning June 1, 2011 through May 31, 2012. The resulting net rate impact of eliminating the
23 existing refund and implementing the new refund will be an overall *decrease* to current rates of
24 approximately 0.20 percent¹. The Parties further agree that rates reflecting this refund are fair,
25 just, and reasonable.

26 C. Avista has accumulated deferred state income tax (ADSIT) on its books related to
its Oregon gas operations amounting to \$911,709. Oregon rates reflect the flow-through method
for state income taxes. The Parties agree that Avista will make a book entry to the ADSIT

¹ See Exhibit A to this Stipulation for a summary of the proposed amortization amount.

1 balance, reducing it to a zero balance on the balance sheet. The resulting entry will have a
2 positive impact on Avista's balance sheet but will have no impact on customers' retail rates.
3 This is appropriate because the balance related to the residual deferred taxes has already been
4 flowed through to ratepayers. It is, therefore, appropriate to remove the residual balance of
5 deferred taxes without a ratepayer impact.

6 III. GENERAL TERMS

7 A. The Parties agree that this Stipulation represents a compromise in the positions of
8 the Parties. Without the written consent of all Parties, evidence of conduct or statements,
9 including but not limited to term sheets or other documents created solely for use in settlement
10 conferences in this docket, are confidential and are not admissible in the instant or any
11 subsequent proceeding unless independently discoverable or offered for other purposes allowed
12 under ORS 40.190. Nothing in this paragraph precludes a Party from stating as a factual matter
13 what the Parties agreed to in this Stipulation.

14 B. This Stipulation will be offered into the record of this proceeding as evidence
15 pursuant to OAR 860-001-0350(7). The Parties agree to support this Stipulation throughout this
16 proceeding and in any appeal, provide witnesses, if necessary, to sponsor this Stipulation at the
17 hearing and recommend that the Commission issue an order adopting settlements contained
18 herein.

19 C. The Parties have negotiated this Stipulation as an integrated document. If the
20 Commission rejects all or any material portion of this Stipulation, or imposes additional material
21 conditions in approving this Stipulation, any Party disadvantaged by such action shall have the
22 rights provided in OAR 860-001-0350(9) and shall be entitled to seek reconsideration or appeal
23 of the Commission's Order.

24 D. By entering into this Stipulation, no Party shall be deemed to have approved,
25 admitted, or consented to the facts, principles, methods, or theories employed by any other Party
26 in arriving at the terms of this Stipulation. Except as provided in this Stipulation, no Party shall

1 be deemed to have agreed that any provision of this Stipulation is appropriate for resolving
2 issues in any other proceeding.

3 E. The Stipulation may be executed in counterparts and each signed counterpart shall
4 constitute an original document.

5 This Stipulation is entered into by each Party on the date entered below such Party's
6 signature.

7 AVISTA CORPORATION

NORTHWEST INDUSTRIAL GAS USERS

8 Dated: 1-31-11

Dated: _____

9 By: David Meyer
10 Print name

By: _____
Print name

11 Signed: David Meyer
12 by
13 MM Woodward

Signed: _____

14
15
16 PUBLIC UTILITY COMMISSION STAFF

CITIZENS' UTILITY BOARD

17 Dated: _____

Dated: _____

18 By: _____
19 Print name

By: _____
Print name

20 Signed: _____

Signed: _____

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7 AVISTA CORPORATION
8 Dated: _____
9 By: _____
10 Print name
11 Signed: _____
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NORTHWEST INDUSTRIAL GAS USERS
Dated: 11/31/2011
By: Paula E. Ryan
Print name
Signed: Paula E. Ryan

15 PUBLIC UTILITY COMMISSION STAFF
16 Dated: _____
17 By: _____
18 Print name
19 Signed: _____
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CITIZENS' UTILITY BOARD
Dated: _____
By: _____
Print name
Signed: _____

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NORTHWEST INDUSTRIAL GAS USERS

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Dated: _____

9 By: _____

By: _____

10 Print name

Print name

11 Signed: _____

Signed: _____

15 PUBLIC UTILITY COMMISSION STAFF

CITIZENS' UTILITY BOARD

16 Dated: 1/31/11

Dated: _____

17 By: Mike Weitch

By: _____

18 Print name

Print name

19 Signed: Mike Weitch

Signed: _____

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7 AVISTA CORPORATION NORTHWEST INDUSTRIAL GAS USERS

8 Dated: _____ Dated: _____

9 By: _____ By: _____
10 Print name Print name

11 Signed: _____ Signed: _____

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PUBLIC UTILITY COMMISSION STAFF CITIZENS' UTILITY BOARD

Dated: _____ Dated: 1-31-11

By: _____ By: G. C. McCracken
Print name Print name

Signed: _____ Signed: [Signature]

AVISTA UTILITIES

2009 Tax Period Refund, Interest & Amortization Summary (estimated as of January 2011)

Line		Interest Period	
1	Actual 2009 refund (tax report)		(\$1,024,000)
2	Interest at Cost of Capital (ROR) - 8.21%	July 1, 2009 - October 31, 2009	(28,313)
3	Interest at Cost of Capital (ROR) - 8.19%	November 1, 2009 - May 31, 2011	(145,172)
4	Total 2009 refund		(\$1,197,485)
5	Beginning balance (Amortization) June 2011 - May 2012		(\$1,197,485)
6	Projected interest at 2011 Blended Treasury Rate 2.01%	June 1, 2011 - May 31, 2012	(12,066)
7	Total projected 2009 tax period refund amortization, including interest		(\$1,209,551)
	Or:		
8	Total 2009 refund (tax report)		(\$1,024,000)
9	Add: Total interest		(185,551)
10	Total refund		(\$1,209,551)
	Estimated Rate Impacts		
11	New total refund effective June 1, 2011		(\$1,209,551)
12	Old refund expiring May 31, 2011		(1,004,402)
13	Net revenue change		(\$205,149)
14	Estimated base revenue		\$101,400,748
15	Estimated rate percentage impact		-0.20%