

ISSUED: September 2, 2009

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UG 171(1)
Phase II

In the Matter of

AVISTA CORPORATION, dba AVISTA
UTILITIES,

SB 408 Tax Report for Calendar Year 2007.

**RULING AND
PREHEARING CONFERENCE
REPORT**

**DISPOSITION: PROCEDURAL SCHEDULE SUSPENDED;
BRIEFING SCHEDULE ESTABLISHED**

The Public Utility Commission of Oregon (Commission) held a prehearing conference in this docket on September 1, 2009. The purpose of the conference was to discuss two preliminary legal issues that must be briefed before proceeding further in this docket and to set a briefing schedule. Appearing at the conference were representatives from Commission Staff; Avista Corporation, dba Avista Utilities (Avista); the Citizens' Utility Board of Oregon; the Northwest Industrial Gas Users; and the Industrial Customers of Northwest Utilities.

The Commission rule addressing constitutional challenges to the application of Senate Bill (SB) 408 (OAR 860-022-0041(10)) was changed by a temporary rule amendment after Avista filed its 2007 tax report. In the original rule, the Commission would analyze a utility's confiscatory rate claim by looking at the utility's earnings during the applicable tax year. Under the temporary rule, the Commission would analyze a utility's confiscatory rate claim by looking at the utility's earnings during the time that a rate adjustment under an SB 408 automatic adjustment clause would be in effect. There is currently a separate rulemaking docket addressing permanent changes to OAR 860-022-0041(10) where further changes to the rule may be made.

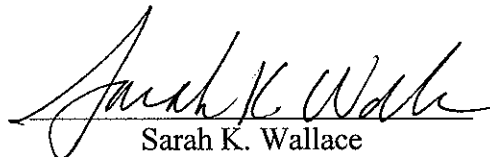
Given the overlap of proceedings and uncertainty about the outcome of the rulemaking, the Commission has decided not to apply OAR 860-022-0041(10) to Avista in this docket. Instead, the Commission has decided to separately determine the appropriate earnings period to examine in considering Avista's claim that SB 408 is unconstitutional as applied under the facts of this case. To assist the Commission with the resolution of this issue, the parties are asked to submit briefs addressing the following questions:

1. Avista Utilities claims that ORS 757.268 is unconstitutional as applied to Avista for the 2007 tax year. In resolving this claim, should the Commission examine Avista's earnings during the 2007 tax year, or should the Commission examine Avista's projected earnings during the time that the rate refund required by SB 408 would be in effect?
2. If the Commission should examine Avista's earnings during the 2007 tax year, should the Commission examine Avista's actual results of operations for 2007, or should the Commission examine the rates authorized by the Commission for 2007?

The parties' briefs should include significant legal research and citations to applicable federal and state precedent. For both questions, the parties should focus on what the United States Constitution requires when analyzing a confiscatory rate claim.

Simultaneous Opening Briefs addressing these questions are due November 13, 2009. Simultaneous Reply Briefs are due December 23, 2009. To allow time for adequate briefing, the original procedural schedule in this docket is suspended. A prehearing conference will be held after the Commission issues a decision on these questions to discuss whether additional evidence and testimony is required.¹

Dated this 2nd day of September, 2009, at Salem, Oregon.


Sarah K. Wallace
Administrative Law Judge

¹ This prehearing conference is tentatively scheduled for January 8, 2010.