ORDER NO. 10-127
ENTERED 04/06/10

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UG 171(3)

In the Matter of AVISTA CORPORATION, dba AVISTA UTILITIES, SB 408 Tax Report for Calendar Year 2008.	ORDER

DISPOSITION: STIPULATION ADOPTED

I. INTRODUCTION

In this order, the Public Utility Commission of Oregon (Commission) approves a stipulation that resolves all issues related to the tax report for calendar year 2008 (2008 Tax Report) filed by Avista Corporation, dba Avista Utilities (Avista), in compliance with Senate Bill 408 (SB 408). The stipulation authorizes Avista to refund $850,000 for state and federal taxes to customers, plus an estimated $154,000 in interest, beginning June 1, 2010, and amortized on an equal margin basis over one year.

SB 408, primarily codified at ORS 757.268, requires utilities to true-up any differences between income taxes authorized to be collected in rates from customers and income taxes actually paid to units of government that are "properly attributed" to utilities' regulated operations.[1] Utilities must make annual tax filings reporting these amounts on October 15 of each year. If amounts collected and amounts paid differ by $100,000 or more, then the Commission must order the utility to establish an automatic adjustment clause to account for the difference, with a rate adjustment effective June 1 of each year.[2]

[1] ORS 757.268(4).
[2] *See* ORS 757.268(4), (6)(a); OAR 860-022-0041(8).

II. PROCEDURAL HISTORY

On October 15, 2009, Avista filed its 2008 Tax Report as required by ORS 757.268.[3] On November 5, 2009, the Commission held a prehearing conference and adopted a procedural schedule. Commission Staff (Staff) held a workshop on November 10, 2009, and a settlement conference on November 23, 2009. Staff, NW Natural, the Citizens' Utility Board of Oregon (CUB), and the Northwest Industrial Gas Users (NWIGU) participated in settlement negotiations.

Avista, Staff, CUB, and NWIGU (collectively the "Stipulating Parties") submitted a Stipulation and Joint Testimony in Support of Stipulation (Joint Testimony) on January 25, 2010. The Stipulation and Joint Testimony are admitted into evidence under OAR 860-014-0085. The Stipulation is attached as Appendix A.

III. DISCUSSION

The Stipulation resolves all issues related to Avista's 2008 Tax Report. In the 2008 Tax Report, Avista states that it paid approximately $850,000 less in state and federal taxes than it was authorized to collect in rates. Staff raised two primary issues related to the 2008 Tax Report. First, Staff questioned Avista's method for deriving the capital structure and cost of debt used to calculate interest expense for the stand-alone method of determining taxes paid under SB 408. Second, Staff questioned whether Avista included the appropriate amount of business energy tax credits generated from projects funded by Oregon customers in its 2008 Tax Report.

The Stipulating Parties did not resolve the issues raised by Staff. The Stipulating Parties agreed, however, that Staff's proposed changes to Avista's 2008 Tax Report did not affect the amount of the refund. The Stipulating Parties therefore agreed to accept Avista's 2008 Tax Report as filed. The 2008 Tax Report results in an $850,000 refund to Avista's Oregon customers, plus interest. The Stipulating Parties state that this refund is consistent with applicable Commission rules, and that rates reflecting this refund are fair, just, and reasonable. No party objected to the Stipulation.

IV. CONCLUSION

The Commission encourages parties to a proceeding to voluntarily resolve issues to the extent that settlement is in the public interest. The active parties to this docket entered into a Stipulation that resolves all outstanding issues.

The Commission has examined the Stipulation and the Joint Testimony. We conclude that rates reflecting the refund authorized by the Stipulation are fair, just, and reasonable. We therefore adopt the Stipulation in its entirety.

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[3] The following documents are admitted into evidence and made part of the record in this docket: Avista's 2008 Tax Report (Oct 15, 2009); Staff's Issues List (Dec 18, 2009); NWIGU's Issues List (Dec 18, 2009); and Avista's Response to Staff's Issues List (Dec 28, 2009).

V. ORDER

IT IS ORDERED that:

1. The Stipulation attached as Appendix A is adopted.

2. Avista Corporation, dba Avista Utilities, must file compliance tariff sheets with a June 1, 2010 effective date as set forth in the Stipulation.

Made, entered, and effective APR 06 2010.

Ray Baum
Chairman

John Savage
Commissioner

Susan K. Ackerman
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UG 171(3)

In the Matter of Avista Corporation, dba AVISTA UTILITIES Filing of tariffs establishing automatic adjustment clauses under the terms of SB 408	STIPULATION

This Stipulation resolves all issues among the Parties to this Stipulation related to Avista's 2008 Tax Report, filed in UG 171(3) pursuant to Senate Bill 408 ("SB 408"). SB 408 is codified in ORS 757.267, 757.268 and 757.210. Those statutes are implemented through OAR 860-022-0041.

PARTIES

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

BACKGROUND

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

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

1. INTRODUCTION

As required by SB 408, on October 15, 2009, Avista filed its tax report for calendar year 2008 (the "Tax Report"). On November 6, 2009, Administrative Law Judge Michael Grant entered a procedural schedule for the docket. On November 10, 2009, Staff convened a workshop, and a settlement conference was held on November 23, 2009. Both meetings were noticed to all parties to the docket; however only the Parties to the Stipulation attended. On December 18, 2009, Staff and NWIGU each filed issues lists with respect to the Tax Report and on December 28, 2009, the Company filed responsive comments.[1]

As described in more detail below and in Staff's issues list, two primary issues surfaced during the Parties' audit of the Tax Report: the calculation of interest expense, and the application of BETC Credits. While the Stipulating Parties have not agreed on the appropriate method of handling either the interest calculation or the application of BETC Credits, the Parties do agree that whether or not these adjustments are made, there would be no impact to Avista's originally filed tax report.

Staff and the Company have not agreed on the appropriate method for calculating interest expense pursuant to OAR 860-022-0041(2)(p). Staff has proposed the use of the annual average capital structure and annual average cost of debt to calculate the weighted cost of debt for purposes of calculating interest expense.[2] Avista, however, used the capital structure authorized by the Commission in its most recent rate case and the cost of debt on December 31, 2008 to derive the weighted cost of debt. Staff has proposed a rulemaking docketed as AR 541 to address this issue. However, as identified by Avista in its response to Staff's issues list (*see*

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[1] Copies of Staff's issues list, NWIGU's issues list, and Avista's responsive comments are attached to this Stipulation as Exhibit B.

[2] See Exhibit B, Staff issues list, pages 1 through 7 for Staff's discussion.

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Exhibit B), Staff's proposed revision of $78,495 does not increase the refund amount, since the taxes paid amount is not impacted.

II. SPECIFIC TERMS

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

B. As filed, Avista's 2008 Tax Report results in a refund to customers of $850,000, plus approximately $154,000[3] in interest, to be implemented on June 1, 2010, and amortized on an equal margin basis over a 12-month period. The resulting rate impact will be an overall decrease to net revenues of 0.95 percent. The Parties agree that the amount of the refund as contained in the 2008 Tax Report is consistent with applicable Commission rules. The Parties further agree that rates reflecting this refund are fair, just, and reasonable.

III. GENERAL TERMS

A. The Parties agree that this Stipulation represents a compromise in the positions of the Parties. As such, conduct, statements and documents disclosed in the negotiation of the Stipulation shall not be admissible as evidence in this or any other proceeding.

B. This Stipulation will be offered into the record of this proceeding as evidence pursuant to OAR 860-14-0085. The Parties agree to support this Stipulation throughout this proceeding and any appeal, provide witnesses, if necessary, to sponsor this Stipulation at the hearing and recommend that the Commission issue an order adopting settlements contained herein.

C. The Parties have negotiated this Stipulation as an integrated document. If the Commission rejects all or any material portion of this Stipulation, or imposes additional material conditions in approving this Stipulation, any Party disadvantaged by such action shall have the

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[3] This total consists of approximately $144,000 accruing from July 1, 2008 through May 31, 2010, and approximately $10,000 which will accrue during amortization. See Exhibit A to this Stipulation for a summary of the proposed amortization amount.

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rights provided in OAR 860-14-0085 and shall be entitled to seek reconsideration or appeal of the Commission's Order.

D. By entering into this Stipulation, no Party shall be deemed to have approved, admitted, or consented to the facts, principles, methods, or theories employed by any other Party in arriving at the terms of this Stipulation including those set forth in the written testimony submitted in support of this Stipulation, other than those specifically identified in the body of this Stipulation. No Party shall be deemed to have agreed that any provision of this Stipulation is appropriate for resolving issues in any other proceeding.

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

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

AVISTA CORPORATION

Dated: 1/22/10

By: David Meyer
Print name

Signed: [signature]

NORTHWEST INDUSTRIAL GAS USERS

Dated: ______________________

By: ______________________
Print name

Signed: ______________________

PUBLIC UTILITY COMMISSION STAFF

Dated: ______________________

By: ______________________
Print name

Signed: ______________________

CITIZENS' UTILITY BOARD

Dated: ______________________

By: ______________________
Print name

Signed: ______________________

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AVISTA CORPORATION

Dated: ______________________

By: ______________________
Print name

Signed: ______________________

NORTHWEST INDUSTRIAL GAS USERS

Dated: 1/22/2010

By: Chad Stokes
Print name

Signed: ______________________

PUBLIC UTILITY COMMISSION STAFF

Dated: ______________________

By: ______________________
Print name

Signed: ______________________

CITIZENS' UTILITY BOARD

Dated: ______________________

By: ______________________
Print name

Signed: ______________________

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AVISTA CORPORATION

Dated: ____________________

By: ____________________
Print name

Signed: ____________________

NORTHWEST INDUSTRIAL GAS USERS

Dated: ____________________

By: ____________________
Print name

Signed: ____________________

PUBLIC UTILITY COMMISSION STAFF

Dated: 1/25/10

By: Jason Jones
Print name

Signed: ____________________

CITIZENS' UTILITY BOARD

Dated: ____________________

By: ____________________
Print name

Signed: ____________________

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AVISTA CORPORATION

Dated: ______________________

By: ______________________
Print name

Signed: ______________________

NORTHWEST INDUSTRIAL GAS USERS

Dated: ______________________

By: ______________________
Print name

Signed: ______________________

PUBLIC UTILITY COMMISSION STAFF

Dated: ______________________

By: ______________________
Print name

Signed: ______________________

CITIZENS' UTILITY BOARD

Dated: 1-22-10

By: G. C. McCracken
Print name

Signed: [signature]

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AVISTA UTILITIES

2008 Tax Period Refund Interest & Amortization Summary (estimated as of December 2009)

Line		Interest Period	
1	Actual 2008 refund (tax report)		$ (850,000)
2	Interest at Cost of Capital (ROR) - 8.21%	July 1, 2008 - October 31, 2009	(97,984)
3	Interest at Cost of Capital (ROR) - 8.19%	November 1, 2009 - May 31, 2010	(46,227)
4	Total 2008 refund		$ (994,211)
5	**Beginning balance (Amortization) June 2010 - May 2011**		$ (994,211)
6	Projected Interest at **estimated** Blended Treasury Rate 2.05%*	June 1, 2010 - May 31, 2011	(10,191)
7	Total projected 2008 tax period refund amortization, including interest		$ (1,004,402)
	Or:		
8	Total 2008 refund (tax report)		$ (850,000)
9	Add: Total interest		(154,402)
10	Total refund		$ (1,004,402)

Estimated Rate Impacts

Line			
11	Price Change		(0.00904)
12	Revenue Change	$	(1,004,402)
13	Est. Current Revenues	$	104,509,393
14	Rate Impact		-0.95%

*The 2009 Blended Treasury rate was used as the estimated rate for 2010.

PUBLIC UTILITY COMMISSION OF OREGON

UG 171(3)

STAFF ISSUES LIST

Carla Owings
Dustin Ball
Deborah Garcia

In the Matter of AVISTA's Senate Bill 408 Tax Filing for 2008 Tax Period

December 18, 2009

SENATE BILL 408, TAX FILINGS
STAFF'S INITIAL FINDINGS
FOR AVISTA CORPORATION – UG 171(3)

TO: LEE SPARLING, ED BUSCH, JUDY JOHNSON AND JASON JONES

RE: **AVISTA CORPORATION – UG 171(3)**
SB 408 TAX FILINGS
2008 TAX PERIOD

FROM: CARLA OWINGS, SENIOR UTILITY ANALYST,
DUSTIN BALL, SENIOR UTILITY ANALYST AND
DEBORAH GARCIA, SENIOR UTILITY ANALYST
PUBLIC UTILITY COMMISSION

DATE: DECEMBER 18, 2009

CC: ALL PARTIES

On October 15, 2009, Avista Corporation (Avista) filed UG 171(3), its tax report covering the 2008 calendar year pursuant to Senate Bill 408 (SB 408) (codified at ORS 757.267, 757.268 and OAR 860-022-0041).

Much of the information contained in these tax reports represents highly confidential and sensitive information. Staff has structured its initial findings in this report in a generic manner in order to avoid the possibility of disclosing confidential, or sensitive, information.

Staff has thoroughly reviewed each calculation and all documentation provided by the Company.

SUMMARY OF 2008 SB 408 IMPACT:

Avista reports the following for its Oregon Regulated Results of Operations for the 2008 Tax period:

Table 1-Original Filing

Federal and State Taxes Paid to units of Government	Taxes Collected	Surcharge or (Refund)	Interest[1] (7/1/08 through 6/1/2011)	Total Refund
$3.047 million	**$3.897 million**	**($850,000)**	**($154,000)**	**($1.004 million)**

Avista relied upon the Stand-Alone Method for the outcome of its 2008 SB 408 filing.

Avista does not pay local taxes in the State of Oregon; therefore, there is no true-up of local taxes for Avista's SB 408 filing.

For the 2007 tax period, Avista refunded approximately $1.5 million. This refund was implemented in November of 2009, upon the conclusion of Avista's most recent general rate proceeding, UG 186. Any variances attributable to the refund (under- or over-amortizing) for the 2007 tax period will be reviewed during the Spring 2010 compliance filing, and included in the June 2010 rate implementation for the 2008 SB 408 impact.

Table 2 below shows the summary of changes proposed by Staff.

Table 2- Staff Recommendation

Federal and State Taxes Paid to units of Government	Taxes Collected	Surcharge or (Refund)	Interest[2] (7/1/08 through 6/1/2011)	Total Refund
$2.84 million	**$3.897 million**	**($1.057 million)**	**($194,000)**	**($1.251 million)**

The impact of a $1.25 million refund represents a decrease to Avista's retail revenues of approximately 0.96 percent.

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[1] This is an estimate of all interest that will apply until amortization is complete.

[2] See footnote above.

Avista has not yet provided a revised filing of its tax report that includes the Staff's recommended revisions. Staff will file updated accrued and estimated interest amounts concurrent with the filing of a stipulation, or in testimony, if the Parties are not able to reach agreement.

STAFF REVIEW:

Staff conducted face to face interviews on November 10, 2009 and November 23, 2009. Citizens' Utility Board (CUB) and Northwest Industrial Gas Users (NWIGU) were present at both meetings along with Staff and the Company. In addition, Staff sent seven Data Requests and conducted informal phone discussions.

Below is a detailed summary of Staff's review:

Staff requested the Company provide further clarification related to the following items:

- the calculation of the effective tax rate and net-to-gross revenues ratios;
- the use of tax credits and whether certain tax credits were generated through rates or in some other manner;
- the interest synchronization calculation along with the capital structure and cost of debt used in the calculation;
- a reconciliation between the Oregon tax depreciation and the tax depreciation related to Schedule M's;
- the calculation of gross revenues, effective tax rate, net-to-gross ratio and the effect of temporary rate increments;
- explain whether BETC's were generated through projects funded by Oregon ratepayers; and
- reconcile the apportionment factors as they relate to the Results of Operations.

As a result of our review, Staff identified the following issues related to Avista's original filing:

(1) How the capital structure and cost of debt used to calculate the interest deduction for purposes of the stand-alone method was derived;

As stated in OAR 860-022-0041(2)(p) the interest expense used to calculate the stand-alone method should be calculated "in a manner similar to that used by the Commission in establishing rates." In its 2006, 2007 and now in its 2008 filing, Avista uses the capital structure ratios for debt and preferred trust securities from its most recent rate case.

Staff disagrees with this method and believes the appropriate method – reflecting the "manner similar to that used by the Commission in establishing (Avista's) rates" is to use the *average* actual capital structure, the *average* actual cost of debt for the year and multiply those by the *average* 2008 rate base from the Results of Operations report to derive the interest expense (referred to as interest synchronization). In addition, Staff believes the use of annual average capital structure and annual average cost of debt most closely match with how rate base is stated in the Company's Results of Operations report (it is stated as "annual average").

Avista objects to Staff's method because the Company believes that requiring the use of the average *actual* capital structure and the average *actual* cost of debt for the tax period (as opposed to the specific amounts assigned in the most recent rate case) unwinds the agreements that were made in the prior rate proceeding. However, Staff believes that the intent of SB408 is to measure what actually took place during the tax period. Using proxy ratios, such as those assigned in the rate proceeding, does not give an accurate measure of the changes that are representative of the resulting tax liability.

Staff has recommended in both prior years that Avista be required to use the annual average as this method has been adopted by the other utilities filing SB408 filings and because it most closely matches the rate base balance.

Staff recommends that interest expense used for the purposes of stand-alone tax liability be revised to reflect the average actual weighted cost of debt multiplied by the average rate base for the tax period. This revision increases Avista's refund for state and federal portion by approximately $78,495.

(2) The calculation of revenues collected when the Commission has authorized a rate change during the tax period;

OAR 860-022-0041(2)(s)(B) states: "When the Commission has authorized rate changes during the tax year for gross revenues, net revenues or effective tax rate, the amount of taxes authorized to be collected in rates will be calculated *using a weighted average of months* in effect."

Staff believes that when a utility experiences a rate change, the timing of the rate change can have a huge impact in the actual revenues that are collected due to the seasonality of energy use. In other words, if the utility experiences a rate change in early spring, although the first three months of the year may represent 25 percent of the twelve-month tax period, in fact, nearly 40 percent of revenues may be collected during that same three-month period due to higher use during colder seasons.

When there is an authorized rate change during a tax year, the effective tax rate is also changed, and in Avista's case this rate decreased. Using Avista's example, if the utility were to calculate revenues collected weighted solely on the number of months in effect, then ratepayers would receive credit for paying less taxes than they actually paid during the year. This is because they paid 40 percent of their annual usage under a higher effective tax rate but are only receiving credit as if they paid only 25 percent of their usage at the higher rate and thereby understating the amount of taxes collected.

Staff recognizes that the current rule language requires that the effective tax rate, net to gross revenues ratio and revenues collected are to be calculated considering only the number of months in effect rather than the number of therms or kWh collected during the period of months that those rates were in effect. For this reason, Staff recommends that the Commission allow the utility to keep its current calculation related to taxes authorized to be collected for SB408 purposes.

However, Staff recommends that the Commission consider Staff's issue related to the seasonality of revenues collected and the issue that these collections should be weighted by the amount of revenues collected during the period of months that rates are in effect rather than simply weighting the number of months rates are in effect.

Staff recommends that the Commission open a rule-making proceeding to address the weighting method used to determine effective tax rate, net to gross revenue ratio and revenues collected.

(3) BETC's generated from projects funded by Oregon ratepayers;

In response to Staff's Data Request No. 42, Avista provided documentation of the BETCs and what funds were used that related to projects that derive a BETC tax credit. Avista indicated that one BETC of $128,992 relates to Avista's AMR plant; however, Avista states that the AMR plant was not in rates for the entire year and therefore a portion of the credit should be retained by the Company by adding back the tax benefit on page 6 of the Staff report.

Staff believes that because the entire project will be recovered through rates; therefore, ratepayers should retain the entire benefit of the BETC. This would require Avista to remove the add-back, associated with the AMR plant BETC, on page 6 of the Staff report.

In addition, for 2008 Avista's state tax liability was not large enough to consume the entire BETC generated from the project; therefore, Staff believes it is appropriate for the Company to carry-forward the BETC. Staff will need to review Avista's individual tax credits to determine which credits should be carried forward.

Staff recommends Avista remove the add-back on page 6, line12 of the Staff report. This will result in an increase of $128,992 to Avista's refund.

Summary: *Total revisions recommended by Staff and applied to Avista's original filing would result in an increased refund to Avista's customers of approximately $207,487 plus associated interest. The refund amount indicated by Avista's 2008 tax report filing is subject to resolution of the Company's claim under OAR 860-022-0041(10).*

CABLE HUSTON

CABLE HUSTON BENEDICT HAAGENSEN & LLOYD LLP • ATTORNEYS

CHAD M. STOKES
ADMITTED IN OREGON AND WASHINGTON

cstokes@cablehuston.com
www.cablehuston.com

December 18, 2009

VIA ELECTRONIC FILING
& FIRST CLASS MAIL

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 OREGON PUBLIC UTILITY STAFF Requesting the Commission direct AVISTA UTILITIES to file tariffs establishing automatic adjustment clauses under the terms of SB 408 **(Docket No. UG-171(3))**

Issues List for the Northwest Industrial Gas Users

Dear Filing Center:

Intervenor Northwest Industrial Gas Users identifies the following issues in this proceeding:

1. Has Avista demonstrated that a rate adjustment under ORS 757.268(4) in connection with its tax report for 2008 would violate the "fair and reasonable" rate provisions of ORS 756.040?

2. In resolving Avista's potential claim that ORS 757.268 is unconstitutional as applied to Avista for the 2008 tax year, should the Commission examine Avista's earnings during the 2008 tax year, or should the Commission examine Avista's earnings on a forward looking basis during the time that the rate refund required by ORS 757.268(4) would be in effect?

3. If the Commission should examine Avista's earnings during the 2008 tax year, should the Commission examine Avista's actual results of operations for 2008, or should the Commission examine the rates authorized by the Commission for 2008?

4. In making a determination regarding Avista's potential claim that a rate adjustment under ORS 757.268(4) would violate ORS 756.040 in connection with its tax report for 2008, are Avista's rates in total for the applicable period so low as to be confiscatory?

5. In making a determination regarding Avista's potential claim that a rate adjustment under ORS 757.268(4) would violate ORS 756.040 in connection with its tax report for 2008, what level of return on equity would be deemed confiscatory pursuant to *Federal Power Commission v. Hope Natural Gas Pipeline*, 320 US 591, 64 SCt. 281, 88 Led 333 (1944)?

6 In making a determination regarding Avista's potential claim that an automatic adjustment under ORS 757.268(4) would violate ORS 756.040 in connection with its tax report for 2008, what is the appropriate remedy that should be considered by the Oregon Public Utility Commission in protecting the interests of the consumers on Avista's system?

Should you have any questions regarding this filing, please call.

Very truly yours,

/s/ Chad M. Stokes

Chad M. Stokes

CMS:ca
Enclosures
cc: UG-171(3) Service List

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Avista Corporation's Response to Staff's Issues List
UG 171(3) 2008 Tax Report
December 28, 2009

Issue 1. How the capital structure and cost of debt used to calculate the interest deduction for purposes of the stand-alone method was derived.

Staff recommendation:
Staff recommends that interest expense used for the purposes of stand-alone tax liability be revised to reflect the average actual weighted cost of debt multiplied by the average rate base for the tax period. This revision increases Avista's refund for state and federal portion by approximately $78,495.

Avista's response:
Staff's version of OAR 860-022-0041(2)(p) is different than the rule as shown on the Oregon rules website. Staff claims the referenced OAR provides that the interest expense used to calculate the stand-alone method should be calculated "<u>in a manner similar to that used</u> by the Commission in establishing rates." (Emphasis added) The **actual** rule is: "...and calculating interest expense <u>in the manner used</u> by the Commission in establishing rates." (Emphasis added)

Staff asserts "that Avista be required to use the annual average <u>as this method has been adopted by the other utilities filing SB 408 filings</u>..." (Emphasis added) Avista takes issue with this claim and requests that Staff provide the methods used by the other utilities in each of their SB 408 filings for all three tax reporting periods.

Staff correctly observes that, "In its 2006, 2007, and now in its 2008 filing, Avista uses the capital structure ratios for debt and preferred trust securities from its most recent rate case." Avista has continually used this method since the method is consistent with the manner used by the Commission in establishing rates. Avista does not believe that an average capital structure, average cost of debt, and average weighted cost of debt, as proposed by staff, is the manner used by the Commission in establishing rates.

Avista disagrees with Staff's proposed revision to the refund amount. But, even if Staff's proposed revision were to be adopted, it would <u>not</u> increase Avista's refund by $78,495. In Avista's 2008 tax report the federal and state taxes paid amount is the "floor" amount of deferred taxes related to depreciation of public utility property for Oregon regulated operations. Staff's proposed revision does not reduce the floor amount. Hence, Staff's proposed revision would not increase the refund amount.

Issue 2. The calculation of revenues collected when the Commission has authorized a rate change during the tax period.

Staff recommendation:

Staff recommends that the Commission allow the utility to keep its current calculation related to taxes authorized to be collected for SB408 purposes. However, Staff recommends that the Commission consider Staff's issue related to the seasonality of revenues collected and the issue that these collections should be weighted by the amount of revenues collected during the period of months that rates are in effect rather than simply weighting the number of months rates are in effect. Staff recommends that the Commission open a rule-making proceeding to address the weighting method used to determine effective tax rate, net to gross revenue ratio and revenues collected.

Avista's response:

Staff's quotation of OAR 860-022-0041(2)(s)(B) is slightly different than what the rule states as shown on the Oregon rules website. Staff correctly recognizes "that the current rule language requires that the effective tax rate, net to gross revenues ratio and revenues collected are to be calculated considering only the number of months in effect rather than the number of therms or kWh collected during the period of months that those rates were in effect." Avista objects to Staff's recommendation that a rule-making proceeding be opened to decide this issue. The issue has already been decided. Both the Company and Staff agree to the interpretation of the existing rule, i.e. that it requires a weighting on the number of months in effect.

Issue 3. BETC's generated from projects funded by Oregon ratepayers.
Staff recommendation:
Staff recommends Avista remove the add-back on page 6, line12 of the Staff report. According to Staff this will result in an increase of $128,992 to Avista's refund.

Avista's response:
The BETC in dispute relates to the Year 4 credit for Automated Meter Reading (AMR) equipment. AMR equipment was placed in service on 1/1/2005. Rates were not set to recover costs associated with AMR equipment until April 1, 2008. Staff's assertion, "that because the entire project will be recovered through rates; therefore, ratepayers should retain the entire benefit of the BETC" is unfounded. The entire project will not be recovered through rates. The Company did not begin to recover the project through rates until April 1, 2008.

Avista disagrees with Staff's proposed revision to the refund amount. But, even if Staff's proposed revision were to be adopted, it would not increase Avista's refund by $128,992. In Avista's 2008 tax report the federal and state taxes paid amount is the "floor" amount of deferred taxes related to depreciation of public utility property for Oregon regulated operations. Staff's proposed revision does not reduce the floor amount. Hence, Staff's proposed revision would not increase the refund amount.