

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UG 171(4)

In the Matter of

AVISTA CORPORATION, dba AVISTA  
UTILITIES,

Annual Tax Filing under ORS 757.268.

ORDER

**DISPOSITION: STIPULATION ADOPTED**

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 2009 (2009 Tax Report) filed by Avista Corporation, dba Avista Utilities, in compliance with Senate Bill (SB) 408. The stipulation authorizes Avista to refund to customers \$1,024,000 for state and federal taxes, plus an estimated \$185,551 in interest accrued through the amortization period. The refund must be amortized on an equal margin basis over one year beginning June 1, 2011.

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.<sup>1</sup> 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 implement an automatic adjustment clause to account for the difference, with a rate adjustment effective June 1 of each year.<sup>2</sup>

**II. PROCEDURAL HISTORY**

On October 14, 2010, Avista filed its 2009 Tax Report as required by ORS 757.268.<sup>3</sup> Avista filed amendments to the report on October 26 and October 29, 2010,

<sup>1</sup> ORS 757.268(4).

<sup>2</sup> See ORS 757.268(4), (6)(a); OAR 860-022-0041(8).

<sup>3</sup> The following documents are admitted into the record in this docket: Avista’s 2009 Tax Report (Oct 15, 2010); Avista’s First Amended 2009 Tax Report (Oct 26, 2010); Avista’s Second Amended 2009 Tax Report (Oct 29, 2010); NWIGU’s Issues List (Dec 23, 2010); Staff’s Direct Testimony (Jan 11, 2011); CUB’s Opening Testimony (Jan 11, 2011); Avista’s Third Amended 2009 Tax Report (Jan 31, 2011).

and January 31, 2011. Commission Staff held a workshop with the parties on November 22, 2010.

Staff and the Northwest Industrial Gas Users (NWIGU) each filed an issues list on December 23, 2010. Staff and the Citizens' Utility Board of Oregon (CUB) filed opening testimony on January 11, 2011.

Avista, Staff, CUB, and NWIGU (collectively the Stipulating Parties) reached a settlement of all issues during a settlement conference on January 19, 2011. The Stipulating Parties submitted a stipulation and joint testimony in support of the stipulation on January 31, 2011. The stipulation and joint testimony are admitted into evidence under OAR 860-001-0350.

### III. DISCUSSION

The stipulation resolves all issues related to Avista's 2009 Tax Report. In its initial report, Avista stated that it paid approximately \$1.3 million more in state and federal taxes than it collected in customer rates and proposed a surcharge to collect this difference. Staff, CUB, and NWIGU initially supported Avista's proposed surcharge. But Staff, CUB, and NWIGU then discovered an inconsistency between SB 408 and OAR 860-022-0041, which is the Commission rule implementing SB 408, and withdrew their support for the surcharge. Staff initiated a temporary rulemaking to remedy this inconsistency, and the temporary rule was adopted on February 22, 2011.<sup>4</sup>

The change in the rule implementing SB 408 significantly changed the outcome of Avista's 2009 Tax Report. Under the amended rule, Avista paid \$1,024,000 *less* in state and federal taxes than it collected in rates. Staff and CUB therefore proposed a refund of that amount, plus interest, in opening testimony. Avista initially objected to the refund, claiming that it would result in confiscatory rates. In the stipulation, however, Avista agreed to the refund and also agreed to withdraw its confiscatory rate claim. In return, Staff, CUB, and NWIGU agreed to support Avista's request for early rate implementation in docket UG 201 (Avista's request for a general rate revision).

The Stipulating Parties also agreed that Avista could eliminate a liability in the amount of \$911,709 for deferred state income taxes from its books. This balance accumulated as a result of Avista's use of the normalization method for recording state income taxes in Oregon. Because the flow-through method of accounting was used in setting customer rates, customers did not contribute to the accumulation of this balance. Thus, removing this balance improves Avista's earnings, but does not affect customer rates.

The Stipulating Parties state that a refund of \$1,024,000, plus interest, is consistent with applicable Commission rules, and that rates implementing this refund are fair, just, and reasonable. The Stipulating Parties further state that the other provisions of the

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<sup>4</sup> Order No. 11-064, Docket No. AR 547 (Feb 22, 2011).

stipulation, which do not affect customer rates, are 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 implementing the refund authorized by the stipulation are fair, just, and reasonable. We therefore adopt the stipulation in its entirety.


**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, 2011 effective date as set forth in the stipulation.

Made, entered, and effective APR 11 2011.

  
 \_\_\_\_\_  
**John Savage**  
 Commissioner

  
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**Susan K. Ackerman**  
 Commissioner



A party may request rehearing or reconsideration of this order under 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 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.



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In the Matter of

Avista Corporation, dba AVISTA  
UTILITIES

Annual Tax Filing Under ORS 757.268

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.

**PARTIES**

13  
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").

**BACKGROUND**

17  
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**  
**Amortization Summary**  
**AVISTA 2009 Tax Report**

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

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

17 This includes interest of \$173,485 that has accrued beginning July 1, 2009 through May 31,  
 18 2011. Approximately \$12,066 of additional interest will accrue during the amortization phase  
 19 beginning June 1, 2011 through May 31, 2012. The resulting net rate impact of eliminating the  
 20 existing refund and implementing the new refund will be an overall *decrease* to current rates of  
 21 approximately 0.20 percent<sup>1</sup>. The Parties further agree that rates reflecting this refund are fair,  
 22 just, and reasonable.

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

26 <sup>1</sup> 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: \_\_\_\_\_  
Print name

By: \_\_\_\_\_  
Print name

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20 Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

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7 AVISTA CORPORATION

NORTHWEST INDUSTRIAL GAS USERS

8 Dated: \_\_\_\_\_

Dated: 11/31/2011

9 By: \_\_\_\_\_  
10 Print name

By: Paula E. Pyron  
Print name

11 Signed: \_\_\_\_\_

Signed: Paula E. Pyron

15 PUBLIC UTILITY COMMISSION STAFF

CITIZENS' UTILITY BOARD

16 Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

17 By: \_\_\_\_\_  
18 Print name

By: \_\_\_\_\_  
Print name

19 Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

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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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NORTHWEST INDUSTRIAL GAS USERS

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Print name

11 Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

15 PUBLIC UTILITY COMMISSION STAFF

CITIZENS' UTILITY BOARD

16 Dated: \_\_\_\_\_

Dated: 1-31-11

17 By: \_\_\_\_\_  
18 Print name

By: G.C. McCracken  
Print name

19 Signed: \_\_\_\_\_

Signed: G.C. McCracken

## AVISTA UTILITIES

## 2009 Tax Period Refund, Interest &amp; 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%