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September 13, 2005

VIA EMAIL

Commission Chair Lee Beyer
Commissioner Ray Baum
Commissioner John Savage
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

Re: AR 498 – In the Matter of the Adoption of Temporary Rules to Implement SB 408
Avista's Comments to Staff's Proposed Temporary Rule OAR 860-022-0039

Dear Commissioners:

Avista Corporation (Avista) appreciates the opportunity to comment on Staff's proposed temporary rule OAR 860-022-0039. Staff's proposed temporary rule should not be adopted as presently drafted. Avista has three main areas of concern with the Staff's proposed rule and a fourth concern about the timetable for establishing permanent rules. The concerns are listed below:

1) Temporary rules need not address an automatic adjustment clause. An automatic rate adjustment clause can only apply to taxes paid on and after January 1, 2006. (See Section (4)(2) of Senate Bill 408.) The temporary rules apply to the report due October 15, 2005. Hence, the temporary rules need not and should not address the automatic adjustment clause issue. The Staff solicited answers to 24 questions that it posed in a letter dated August 12, 2005. Acknowledging the limited scope of temporary rulemaking proceedings, the Staff later indicated that questions regarding the automatic adjustment clause issue need not be responded to at this time. Avista proposes that Sections 4, 6, 7, and 8 of Staff's proposed temporary rule be deleted. The automatic rate adjustment issue can be addressed in the final rulemaking.

2) The taxable income or taxable loss from affiliates is to be considered in the aggregate. Avista indicated in its responses to Questions 9 and 11 posed by the Staff that the "lesser of" taxes paid amounts required to be calculated under Section 3(12)(a) and 3(12)(b) of Senate Bill 408 would only have to be made in the instance that the combined taxable incomes of all affiliates resulted in a net, affiliate-related, tax loss. Staff has chosen to draft their proposed rule in such a fashion that each affiliate is viewed separately and that any individual affiliate with a tax loss has the benefit of that tax loss allocated to the utility and to affiliates with taxable incomes. The Staff's interpretation of how taxable income or loss from affiliates is to be handled is incorrect and is a departure from the Legislature's intent. The "lesser of" taxes paid amount to be determined under Section 3(12)(a) and 3(12)(b) of Senate Bill 408 looks only at taxes attributed to the utility and to

taxes of the affiliated group, including the utility. Income or loss from affiliates should be considered in the aggregate. The method proposed by Staff should be rejected. Part 2(d) of the Staff proposed rule should be replaced with the wording from Section 3(12)(a) and 3(12)(b) of Senate Bill 408.

3) Revenues that don't affect net income should be excluded from the calculation of taxes authorized to be collected in rates. Avista indicated in its response to Question 5 posed by the Staff that revenues are periodically increased or decreased to reflect changes in the cost of gas. Such purchased gas cost revenue changes do not result in different amounts of income taxes being collected in rates. The same would also apply to the recovery of electric power costs. Hence, revenues that are offset by costs and don't affect income, such as purchased gas costs, should be excluded from the calculation of taxes authorized to be collected in rates. Part 2(g) of the Staff proposed rule should include language that provides for the exclusion of revenues that don't affect net income.

4) The timetable for establishing permanent rules should be extended. An aggressive timetable has been set to establish permanent rules with a workshop set to begin on September 28, 2005 with a final rule being adopted on January 10, 2006. The first reports under the temporary rule are due to the Commission on October 15, 2005. Issues and problems are likely to arise in the preparation and review of those reports. Avista believes that the October 15, 2005 reports should first be reviewed and issues addressed before the final rules are drafted. Avista believes that the timetable for establishing permanent rules should be extended. Avista believes a schedule that provides for an adoption of a final rule by June 30, 2006 should be considered.

Very truly yours,

Ronald L. McKenzie
Manager, Regulatory Accounting