BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. AVISTA CORPORATION d/b/a AVISTA UTILITIES, Respondent	)	DOCKET NO. UE-080416

BRIEF OF

THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

NOVEMBER 24, 2008

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I. INTRODUCTION

1 The Industrial Customers of Northwest Utilities ("ICNU") submits this Brief requesting that the Washington Utilities and Transportation Commission ("WUTC" or the "Commission") either reject or condition the settlement ("Settlement") between Avista Corporation ("Avista" or the "Company"), Staff, the Energy Project and the Northwest Industrial Gas Users ("Settling Parties"). ICNU opposes the $32.5 million overall electric rate increase recommendation included in the Settlement because it fails to include additional reasonable and necessary rate reductions.[1/] In addition, the Settlement is flawed because it requests an unwarranted early effective date for electric rates over the opposition of ratepayers. ICNU recommends that the Commission accept the revenue requirement and rate spread/rate design adjustments in the Settlement, but condition approval of the Settlement upon an additional $4.7 million in electric rate reductions and an effective date of February 4, 2009.

2 ICNU specifically recommends that the Commission condition the Settlement by:

- Adopting the revenue requirement adjustments contained in the Settlement, which reduce Avista's overall electric rate increase to $32.5 million;
- Further reducing Avista's electric rate increase by $4.7 million to reflect revenue requirement reductions associated with consolidated income tax savings, depreciation, executive compensation, advertising, dues and

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[1/] ICNU's Brief presents ICNU's position regarding the overall reasonableness of the Settlement, and ICNU's arguments regarding the consolidated income tax adjustment. ICNU joins and supports the revenue requirement adjustments included in the Public Counsel Brief, Sections II, IV.A, V, and VI.

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membership fees, charitable contributions, directors' compensation and shareholder services, and directors and officers' insurance;

- Eliminating a portion of the costs of Avista's Confidential Litigation; and
- Maintaining the statutory effective date of February 4, 2009, for new electric rates, instead of January 1, 2009.

II. BACKGROUND

3 Avista filed its request for a general rate increase on March 4, 2008. Avista originally requested a $36.6 million rate increase for electric operations, which would have been an annual increase in base rates of 10.3%.[2/] On July 28, 2008, Avista filed a motion to submit supplemental testimony, along with testimony that raised its alleged revenue requirement deficiency to $47.4 million.[3/] Avista stated that even though it could allegedly justify a higher increase, it was limiting its requested increase to the original $36.6 million.[4/]

4 On September 16, 2008, the Settling Parties filed their Settlement recommending a $32.5 million overall rate increase, a January 1, 2009 effective date, revisions to Avista's rate spread and rate design, and other changes to Avista's filing. ICNU supported certain provisions of the Settlement, but reserved its right to contest or support other aspects of the Settlement.[5/] ICNU specifically opposed the early effective

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2/ WUTC v. Avista, Docket No. UE-080416 and UG-080417, Order No. 1 ¶ 1 (March 6, 2008).

3/ WUTC v. Avista, Docket No. UE-080416 and UG-080417, Order No. 4 ¶ 1 (Aug. 8, 2008).

4/ Id.

5/ Exh. No. 5 at 3 ¶ 4 (Settlement).

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date of the Settlement.[6/] Joint testimony in support of the Settlement was filed on September 23, 2008.

5 The Settlement was negotiated and filed before Staff and intervenors submitted direct testimony, and the Settlement was entered into without the benefit of having reviewed intervenor responsive testimony. There are certain costs that are included in the Settlement that Avista may have removed from rates if the Company had been able to review Public Counsel and ICNU's testimony prior to finalizing the Settlement.[7/]

6 Public Counsel and ICNU filed joint testimony responding to Avista's direct filing on September 19, 2008, and testimony responding to the Settlement on October 10, 2008. Avista and Staff filed rebuttal testimony on October 22, 2008, and an evidentiary hearing was held on November 6, 2008.

III. ARGUMENT

1. The Settlement Should Be Rejected or Conditioned Upon Additional Revenue Requirement Reductions

7 ICNU recommends that the Commission reject or conditionally accept the proposed Settlement, based on reasonable modifications to incorporate additional revenue requirement adjustments and to require a full, statutory effective date. The Settlement does not produce fair, just or reasonable rates because it fails to incorporate approximately $4.7 million in revenue requirement adjustments proposed by Public Counsel and ICNU.

6/ Id. at 14 ¶ 14 (Settlement).

7/ Andrews, TR. 233: 21 – 234: 7.

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8 ICNU supports the revenue requirement adjustments contained in the Settlement that reduce Avista's rate increase from $36.6 million to $32.5 million. ICNU specifically supported the power supply adjustments, cost of capital, rate spread/rate design, low income bill assistance funding, demand side management expenditures, and the prudency of energy efficiency expenditures.[8/] ICNU reserved its position regarding, and now supports, the revenue requirement impact of the other adjustment contained in the Settlement, including those related to relicensing/litigation, capital additions, customer deposits, Federal/deferred income tax expense, incentives, officers' salaries, union and non-executive salaries, Colstrip generation operations and maintenance expense, administrative and general expenses, production property, and restated debt interest.[9/] Overall, these adjustments reduce Avista's rates by only $4.1 million, and result in an approximately $32.5 million electric rate increase.

9 The Settlement, however, fails to make other necessary and reasonable revenue requirement reductions. For example, as is demonstrated by the Brief of Public Counsel, the Settlement's revenue requirement recommendation fails to remove excessive executive compensation costs, and illegal or inappropriate advertising costs.[10/] Avista agrees that some of these costs may have been removed from its revenue requirement request if the Company had seen Public Counsel and ICNU's testimony before it entered into the Settlement.[11] There are other costs that should be removed

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[8/] Exh. No. 5 at 3 ¶ 5 (Settlement).
[9/] See Exh. No. 5 at 4 (Settlement) (identifying additional adjustments).
[10/] Public Counsel Brief, Section II.
[11/] Andrews, TR. 233: 21 – 234: 7.

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from rates, including charitable contributions that cannot be recovered from ratepayers as a matter of law.[12/]

10 The Commission should remedy these deficiencies in the Settlement by conditionally approving it, based on the acceptance by the Settling Parties of the $4.7 million in additional electric revenue requirement adjustments jointly proposed by ICNU and Public Counsel. The table below includes ICNU's estimate of the additional necessary revenue requirement adjustments. ICNU has calculated these adjustments by accepting the adjustments contained in the Settlement, and identifying the non-duplicative adjustments sponsored by Public Counsel and ICNU's witnesses. These additional adjustments total about $4.7 million and should reduce Avista's electric rate increase to about $27.8 million.

ICNU Proposed Electric Revenue Requirement Adjustments (in thousands)	
Depreciation	$2,687
Consolidated Income Tax	$758
Executive Compensation	$249
Advertising	$29
Dues & Membership Fees	$159
Charitable Contributions	$16
Directors Comp and Shareholder Services	$396
D&O Insurance	$406
Total ICNU Proposed Adjustments	**$4,700**

11 ICNU also supports the exclusion of the Confidential Litigation costs from rates in this proceeding. The Settlement removes all the Confidential Litigation costs

[12/] Jewell v. WUTC, 90 Wn.2d 775, 777 (1978); Andrews, TR. 232: 25 – 234: 7.

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from rates, but requests a finding that they were prudently incurred and should be recovered in a separate filing.[13/] As explained in the Brief of Public Counsel, recovery of a portion of these costs would constitute retroactive ratemaking.[14/] In addition, the costs are imprudent and should not be recovered from ratepayers.[15/] Thus, ICNU agrees that these costs should be removed from rates in this case, but Avista should only be allowed to recover a portion of these costs in a separate filing.

2. Ratepayers Should Not Be Required to Pay Taxes that Avista Will Not Pay to the Taxing Authorities

12 The Commission should adopt Public Counsel and ICNU's consolidated tax adjustment, which would reduce the Settlement's electric revenue requirement by an additional $758,000 and the gas revenue requirement by an additional $685,000. The consolidated tax adjustment is necessary to ensure that ratepayers do not pay for tax expenses which are never paid to the federal taxing authorities. The full amount of tax expenses ratepayers pay in rates are never paid to the taxing authorities because Avista files a consolidated tax return. This allows Avista to reduce the amount of federal tax expense below what is assumed in rates by offsetting utility income with affiliate losses, and results in ratepayers cross subsidizing Avista shareholders.

13 Public Counsel and ICNU have proposed a narrow and limited adjustment which allows Avista to continue to file a consolidate tax return and reduce its overall taxes, but requires Avista to share a portion of those savings with ratepayers. The Public

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13/ Exh. No. 5 at 11 ¶ 5(n)(ii) (Settlement).
14/ Public Counsel Brief, Section V.
15/ Id.

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Counsel and ICNU consolidated tax adjustment is acceptable to the IRS because it was designed to specifically avoid any conflict with the IRS normalization rules. It is reasonable to require Avista to share the tax savings with ratepayers because Avista's affiliate losses would have no value without the income from its regulated operations.

A. Public Counsel and ICNU Have Proposed a Reasonable Consolidated Tax Adjustment

14 Public Counsel and ICNU witness Michael Majoros proposed a consolidated tax adjustment to reduce "Avista's federal income tax expense to reflect Avista's effective corporate tax rate."[16/] Avista has several subsidiary companies that have incurred losses and reduced Avista's effective statutory income tax rate when Avista files a consolidated income tax return.[17/] The end "result is that Avista's ratepayers pay taxes to Avista Corporation at a higher rate than Avista Corporation pays to the federal government."[18/]

15 Mr. Majoros' consolidated income tax adjustment reduces the amount of income tax Avista collects from ratepayers, thus eliminating a portion of the ratepayers' subsidy to Avista's non-regulated operations.[19/] Mr. Majoros also adjusts Avista's federal statutory rate from 35% to the 34% average "effective tax rate" Avista actually incurred in 2005 and 2006.[20/] The IRS has explained that this adjustment works when:

16/ Revised Exh. No. MJM-1TC at 12: 1-2 (Majoros Direct).
17/ Id. at 12: 11-14.
18/ Id. at 12: 15-17.
19/ Id. at 12: 18-20.
20/ Id. at 12: 6-9; Revised Exh. No. MJM-9C (Schedule 3); Exh. No. DMF-1T at 5: 8-12 (Falkner Direct).

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> The ratemaker computes an 'effective tax rate' by dividing the tax liability of the group by the sum of the taxable incomes of all members with positive taxable incomes. The ratemaker then applies this 'effective tax rate' to the utility's taxable income to compute its current tax expense.[21/]

16 Mr. Majoros calculated his consolidated tax adjustment consistent with the IRS description of an "effective tax rate" adjustment. Mr. Majoros obtained the consolidated group's gross taxable income before losses by adding the losses back to the group's net taxable income.[22/] Mr. Majoros reduced the impact of his adjustment by: 1) reducing Avista's income by the benefit from accelerated depreciation; and 2) removing Avista Energy from the group's consolidated gross taxable income, because Avista Energy was effectively sold in 2007.[23/] Next, Mr. Majoros determined Avista's pro-rata share of the remaining gross taxable income and applied the adjusted Avista percentage to the tax effects of the consolidated group's net operating losses to determine the portion applicable to Avista.[24/] He made this calculation for both 2005 and 2006, and then calculated the simple average of the losses and allocated the average losses to Washington using Avista's allocation factor.[25/] Finally, Mr. Majoros distributed the net losses between the electric and gas divisions in proportion to Avista's calculated income tax.[26/]

[21/] Exh. No. DMF-3 at 2-3 (IRS Ruling).
[22/] Revised Exh. No. MJM-1CT at 12: 11-20.
[23/] Id. at 13: 1-19.
[24/] Correction of Tax Calc. (Michael Majoros Workpaper).
[25/] Id.
[26/] Id.

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B. Washington Ratepayers Should Not Pay Tax Expenses Which Are Not Actually Paid by Avista

17 Basic ratemaking principles require that Avista should only be permitted to charge ratepayers for costs that are actually owed and paid to the taxing authorities. It is contrary to Washington law and sound public policy to include in Avista's rates tax expenses that are not actually paid to the taxing authorities.

18 The Commission has the statutory authority to set rates that are fair, just, reasonable and sufficient.[27/] The Commission can only allow utilities to recover prudently incurred operating expenses.[28/] Washington courts have recognized that the Commission does not have the authority to allow utilities to recover certain costs unrelated to provision of utility service.[29/] In addition, there is a "basic rate-making maxim that only expenses which, in fact, are actually paid or payable by the utility may be included for the purpose of rate-making."[30/]

19 Utility tax expenses which are paid to the taxing authorities are valid expenses which can be recovered from ratepayers. The courts, however, have generally recognized that utility commissions can adopt consolidated tax adjustments to "disallow hypothetical tax expense and hold that rates based on such an unreal cost of service would not be just and reasonable."[31/] As explained by the Pennsylvania Supreme Court:

27/ RCW § 80.28.010.

28/ See People's Org. for Wash. Energy Resources v. WUTC, 104 Wn.2d 798, 810-11 (1985); Re Puget Sound Power & Light Co., Docket Nos. UE-920433, UE-920499, and UE-921262, Eleventh Suppl. Order at 23 (Sept. 21, 1993).

29/ Jewell, 90 Wn.2d at 777.

30/ Barasch v. Penn. Public Utility Comm'n, 507 Pa. 561, 567 (1985).

31/ Federal Power Comm'n v. United Gas Pipeline Co., 386 U.S. 237, 244 (1967).

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> Our courts have consistently held it to be improper to include, for rate-making purposes, tax expenses which, because of the filing of a consolidated return, are not actually payable. All tax savings arising out of participation in a consolidated return must be recognized in rate-making, otherwise we would be condoning the inclusion of fictitious expenses in the rates charged to ratepayers.[32/]

20 Avista argues that the Commission, however, should reject the consolidated tax adjustment because the Federal Energy Regulatory Commission no longer uses a consolidated tax adjustment and some state utility commissions have rejected the adjustment.[33/] Although ICNU has not performed a comprehensive review of state utility tax decisions, there appears to be a trend among jurisdictions toward removing phantom income taxes or making a consolidated income tax adjustment. Some of the states that have used consolidated tax adjustments include Oregon,[34/] Pennsylvania,[35/] West Virginia,[36/] New Jersey,[37/] Texas,[38/] Ohio,[39/] Kansas,[40/] Indiana, New York, Massachusetts, Arkansas, Vermont, Tennessee, Iowa, Kentucky, Michigan, Minnesota and Connecticut.[41/] The West Virginia utility commission recently explained that the regulated utility's rates must account for the tax losses of subsidiaries to develop

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32/ Barasch, 507 Pa. at 568.
33/ Exh. No. DMF-1T at 15-16 (Falkner Direct).
34/ Re PacifiCorp, Docket No. UE 170, Order No. 05-1050 at 13 (Sept. 28, 2005).
35/ Barasch, 507 Pa. at 568.
36/ Allegheny Power Co., Case Nos. 06-0960-E-42T and 06-1426-E-D at 30-31 (May 23, 2007) (relying on evidence presented by Mike Majoros).
37/ Re Rockland Electric Co., New Jersey Board of Public Utilities Docket Nos. ER02080614 and ER02100724 at 63-64 (July 16, 2003).
38/ Texas Utilities Code, TX. STAT. tit. 2B, § 36.060 (1997).
39/ Ohio Utilities Co. v. Public Utilities Comm'n, 389 N.E.2d 483, 490 (Ohio 1979).
40/ Greeley Gas Co. v. State Corp. Comm'n, 807 P.2d 167, 169-70 (Kansas App. 1991).
41/ City of Muncie v. Indiana Public Serv. Comm'n, 378 N.E.2d 896, 899 (Indiana 1978) (citing at least thirteen jurisdictions as using consolidated tax adjustments: New York, Pennsylvania, New Jersey, Massachusetts, Arkansas, Vermont, Tennessee, Iowa, Kentucky, Michigan, Minnesota, West Virginia and Connecticut).

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a realistic, effective tax rate to ensure "that ratepayers should not be required to pay taxes that are not reasonably expected to be paid to a taxing authority."[42/]

21 Avista cites Washington as a state that has rejected consolidated tax adjustments.[43/] The Commission has rejected two tax adjustments for PacifiCorp; however, the factual concerns in those cases are inapplicable. In 2006, the Commission rejected PacifiCorp's entire rate increase but issued rulings on specific revenue requirement proposals.[44/] The Commission agreed that rates should be cost-based, but found the factual basis for ICNU's tax adjustment (i.e., PacifiCorp ownership by ScottishPower) was mooted.[45/] In addition, in a subsequent proceeding the Commission declined to adopt a tax adjustment for PacifiCorp because the adjustment did not consider all of the Berkshire Hathaway corporate family, the adjustment was inconsistent with the Mid-American Energy Holdings Company ring fencing provisions, and the adjustment could result in a single issue tax true-up.[46/]

22 The concerns the Commission identified for PacifiCorp are not present in this proceeding. Mr. Majoros' consolidated tax adjustment includes all the impacted affiliates, and he even normalized the adjustment to eliminate Avista Energy because the

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[42/] Allegheny Power Co., West Virginia Public Service Comm'n Case Nos. 06-0960-E-42T and 06-1426-E-D at 32 (May 22, 2007).

[43/] DMF-1T at 15-16 (Falkner Direct).

[44/] WUTC v. PacifiCorp, Docket Nos. UE-050684 and UE-050412, Order Nos. 4 and 3, ¶ 160 (April 17, 2006).

[45/] Id.

[46/] WUTC v. PacifiCorp, Docket Nos. UE-061546 and UE-060817, Order No. 8 ¶¶ 150-53 (June 21, 2007).

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subsidiary was sold in 2007.[47/] In addition, Mr. Majoros' adjustment is not inconsistent with any ring-fencing provisions because it is based on the actual tax savings that Avista is expected to obtain during the test year as a result of filing a consolidated tax return.[48/] The consolidated tax adjustment also does not require any true-up, and instead makes a known and measurable change to reduce Avista's rates to reflect the estimated amount of taxes will be paid during the test period.

C. Ratepayers Contribute to Avista's Tax Savings and Are Entitled to a Portion of the Savings

23 Avista argues that adopting a consolidated tax adjustment violates "cost causation" principles and that ratepayers should not enjoy lowered tax expense when a non-regulated subsidiary reports a tax loss.[49/] Avista's basic opposition to the consolidated tax adjustment is that Avista's ratepayers do not cause the losses experienced by Avista's subsidiaries and ratepayers should not be entitled to any of the savings that result from the filing of consolidated tax return.[50/] Avista's arguments have a certain amount of superficial appeal; however, they fail to recognize the factual reality that Avista could not achieve the tax savings associated with filing a consolidated tax return without the positive income contributed by ratepayers.

24 Cost causation principles support a Commission conclusion that any tax savings should be shared with ratepayers because ratepayers generate the income that

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47/ Revised Exh. No. MJM-1TC at 12-13 (Majoros Direct).
48/ See id. (details of ICNU and Public Counsel consolidated tax adjustment) (Majoros Direct).
49/ Exh. No. DMF-1T at 9-11 (Falkner Direct).
50/ Id.

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allows the utility to achieve the tax benefits.[51/] Avista's regulated and non-regulated income and losses are comingled to produce a consolidated tax filing which results in lower tax liability than if separate tax filings were made. The reality is that Avista is only able to achieve the tax savings associated with a consolidated income tax filing because the tax expense collected from ratepayers is offset by the losses from other subsidiaries. If a consolidated tax adjustment is not made, then ratepayers will contribute tax expense that is never used to pay taxes, but is instead increases Avista's bottom line consolidated net income. Ratepayers should obtain some of the benefits associated with these savings because ratepayers make the tax savings possible.

D. The Consolidated Tax Adjustment Will Not Violate the IRS Normalization Rules

25 Avista suggests that the adoption of a consolidated tax adjustment could violate the IRS' normalization rules.[52/] This is a red herring because there is no realistic danger of Avista violating the normalization rules in the Internal Revenue Code ("Code"). Consolidated tax adjustments are routinely adopted by utility commissions without violating the IRS normalization rules, and Avista has not identified any specific problems with Public Counsel and ICNU's consolidated tax adjustment that could result in a normalization violation. In fact, Mr. Majoros made specific adjustments to the consolidated tax adjustment to ensure it complies with the IRS normalization rules.

51/ Re Rockland Electric Co., New Jersey Board of Public Utilities Docket Nos. ER02080614 and ER02100724 at 63-64 (July 16, 2003).

52/ Exh. No. DMF-1T at 12-14 (Falkner Direct).

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26 The IRS has firmly stated that consolidated tax adjustments "can be made without violating the normalization requirements of the Code."[53/] Avista witness Don Falkner agreed with the IRS "that consolidated tax adjustments, as a general rule, are not inconsistent with the normalization requirements of the Code."[54/] Avista also could not explain why regulators in other jurisdictions have adopted consolidated tax adjustments without violating the IRS normalization rules, and Avista has not identified any consolidated tax adjustments resulting in a negative IRS normalization ruling.[55/] In addition, although Avista made vague and generalized assertions that a consolidated tax adjustments may violate the Code, Avista failed to identify any specific aspects of Mr. Majoros' calculation that is inconsistent with the normalization rules.

27 Mr. Majoros' consolidated tax adjustment was carefully calculated to ensure that it is consistent with the IRS normalization rules. Utilities and state utility commissions have been concerned that consolidated tax adjustments could result in a utility losing its accelerated depreciation tax benefits.[56/] In making the consolidated tax adjustment, Mr. Majoros eliminated the effects of accelerated tax depreciation to conform to the Private Letter Ruling Avista obtained from the IRS regarding its Oregon tax

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[53/] Exh. No. DMF-3 at 2, 6 (IRS Ruling).

[54/] Falkner, TR. 207: 16-22.

[55/] See Exh. No. DMF-8 (Avista Response to Public Counsel DR No. 302); Falkner, TR. at 206: 9-14.

[56/] Revised Exh. No. MJM-1CT at 13: 6-9 (Majoros Direct); Allegheny Power Co., West Virginia Public Service Comm'n Case Nos. 06-0960-E-42T and 06-1426-E-D at 32-33 (May 22, 2007) (modifying a consolidated tax adjustment to account for accelerated depreciation).

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adjustment.[57/] Mr. Majoros made this accelerated depreciation adjustment to ensure that there could be no legitimate claim that the adjustment would place Avista's accelerated tax benefits in jeopardy.[58/] This adjustment was favorable to Avista because it reduces the revenue requirement impact of the consolidated tax adjustment.[59/]

28 There is no reason that the Commission cannot immediately adopt a consolidated tax adjustment. If it chooses, Avista can subsequently obtain a private letter ruling from the IRS. In Oregon, the legislature passed Senate Bill ("SB") 408, which was designed "to ensure that the taxes collected from ratepayers by utilities in the State were more closely aligned with the taxes paid to governmental entities by the collecting utilities."[60/] The Oregon Public Utility Commission quickly adopted a tax adjustment for PacifiCorp.[61/] PacifiCorp and other Oregon utilities, including Avista, subsequently obtained private letter rulings from the IRS which concluded the rules under SB 408 did not violate the Code.[62/] Other state commissions have ordered tax adjustments without waiting for the regulated utility to obtain a Private Letter Ruling.

57/ Revised Exh. No. MJM-1CT at 13: 16-19 (Majoros Direct); Exh. No. MJM-5 (Response to Public Counsel DR No. 74—IRS Private Letter Ruling).

58/ Revised Exh. No. MJM-1CT at 13: 6-19 (Majoros Direct).

59/ Correction of Tax Calc. (Michael Majoros Workpaper, line 9a (Oregon Adjustment)).

60/ Exh. No. MJM-5 at 3 (Response to Public Counsel DR No. 74—IRS Private Letter Ruling).

61/ Re PacifiCorp, Docket No. UE 170, Order No. 05-1050 (Sept. 28, 2005).

62/ See, e.g. Exh. No. MJM-5 at 3 (SB 408 tax adjustments will not cause Avista to violate the Code).

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3. The Commission Should Not Shorten the Effective Date for New Rates

29 The Settling Parties request that new rates be implemented January 1, 2009, instead of the statutory effective date of February 4, 2009.[63/] Although they claim it is an "integral part of the settlement," the Settling Parties do not provide an explanation as to why an early effective date is necessary or even warranted in this case.[64/] There is no explanation as to why the Company needs the money early or why customers should pay for an early rate increase during the middle of the home heating season. As a matter of sound public policy, the Commission should refuse to accelerate an effective date for new rates unless there is a compelling reason or the unanimous consent of those who are required to pay the new rates.

IV. CONCLUSION

30 The Commission should condition any acceptance of the Settlement because it proposes an early and unreasonable overall rate increase. The Settlement fails to remove approximately $4.7 million in imprudent, unreasonable and excessive costs related to taxes never paid to the taxing authorities, charitable contributions, advertising expenses, depreciation, executive compensation, dues, and insurance. The Settlement also inappropriately recommends that Avista be permitted to recover the full costs of Avista's Confidential Litigation. Finally, the Settling Parties have failed to provide any reasonable justification as to why rates should be increased before the statutory effective date.

63/ Exh. No. 5 at 14 ¶ 14 (Settlement).

64/ Id.

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Dated in Portland, Oregon, this 24th day of November, 2008.

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