

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
AVISTA CORPORATION, DBA AVISTA)	CASE NO. AVU-E-01-3
UTILITIES, FOR AN ORDER APPROVING A)	
SERVICE TERRITORY AGREEMENT)	NOTICE OF APPLICATION
BETWEEN AVISTA UTILITIES AND)	
CLEARWATER POWER COMPANY.)	NOTICE OF MODIFIED
)	PROCEDURE
)	
)	ORDER NO. 28645

On February 1, 2001, Avista Corporation (dba Avista Utilities) filed an Application for approval of a Service Territory Agreement between itself and Clearwater Power Company. Avista requests that the Commission review and approve the Service Territory Agreement pursuant to *Idaho Code* § 61-333(1) (amended 2000).

BACKGROUND

In its Application, Avista notes that the Idaho Legislature amended portions of the Idaho Electric Supplier Stabilization Act (ESSA) in special session on December 8, 2000. In its special session, the Legislature enacted House Bill No. 1 (HB 1) which provides that all service agreements which allocate territory or customers between electric suppliers be filed with the Commission. In particular, HB 1 amended *Idaho Code* § 61-333 and provides in pertinent part that

the commission, shall after notice and opportunity for hearing, review and approve or reject [such] contracts . . . between cooperatives and public utilities. . . . The commission shall approve such contracts only upon finding that the allocation of territories or consumers is in conformance with the provisions and purposes of this act.

Idaho Code § 61-333(1)(amended 2000). HB 1 was effective on December 8, 2000 and will sunset (unless extended) on March 1, 2001. See HB 1, § 22. Legislation (HB 142) has been introduced in the Idaho House of Representatives to remove the sunset provision.

NOTICE OF APPLICATION

YOU ARE HEREBY NOTIFIED that Avista asserts that the Service Territory Agreement is in conformance with the purposes of the ESSA. In addition, the Application also notes that “this agreement was negotiated in order to avoid litigation and settle a service territory issue between the parties.” Application at 2. The Service Territory Settlement Agreement is outlined in greater detail below.

YOU ARE FURTHER NOTIFIED that the Service Territory Settlement Agreement submitted for the Commission’s review was executed on July 12, 1993. This Agreement was reached after Clearwater filed a complaint against Washington Water Power Company (now known as Avista) in the Second Judicial District and later in the United States District Court in 1992. Clearwater alleged that Washington Water Power had violated the Electric Suppliers Stabilization Act by providing electrical service to an area commonly known as the Vista Addition and Vista Addition Subdivision (“Vista”) in the city of Moscow. After Washington Water Power filed a counterclaim, the parties settled the dispute under *Idaho Code* § 61-333, which authorizes contracts among electric suppliers to resolve or allocate territories between electrical suppliers.

YOU ARE FURTHER NOTIFIED that the Settlement Agreement split the electrical service customers in the area in and around the city of Moscow. First, Washington Water Power would have the exclusive right to continue to serve the area known as Vista. Agreement § 1. Second, Washington Water Power would exclusively serve the areas numbered 3 and 14 on Latah County Assessor map 10A. *Id.* § 2. However, Clearwater retained the exclusive right to serve those lots fronting the north boundary of the Robinson Lake Road right-of-way not to exceed 300 feet north of the road. *Id.* § 2. Third, Clearwater would exclusively serve the area number 2 and that portion of number 15 north of Robinson Lake Road on the attached map. *Id.* § 3. Fourth, Clearwater agreed to remove within 90 days the existing distribution service line on the southern boundary of the Vista subdivision from the end point east to the last distribution service pole then in use. *Id.* § 4. Finally, Washington Water Power agreed not to provide new service or new connections to Syringa Trailer Park, except for any new accounts or upgrades of existing accounts. *Id.* § 5. In doing so, Washington Water Power agreed that it would not

provide new connections from the Syringa Trailer Park service line to the north of the common line between sections 10 and 15 of Range 5W, Township 39N. *Id.* § 5.

YOU ARE FURTHER NOTIFIED that although neither party admitted liability, they intended this Agreement to settle a disputed court case. *Id.* § 6.

YOU ARE FURTHER NOTIFIED that this Settlement Agreement does not contain provisions that address duration of the Agreement, breach of the contract or other standard contract conditions.

NOTICE OF MODIFIED PROCEDURE

YOU ARE FURTHER NOTIFIED that *Idaho Code* § 61-333(1) requires the Commission to review Service Territory Agreements between public utilities and electric cooperatives. Pursuant to this statute, the Commission must determine whether the allocation of territories or consumers is in conformance with the provisions and purposes of the ESSA.

YOU ARE FURTHER NOTIFIED that the Commission has determined that the public interest may not require a formal hearing in this matter and will proceed under Modified Procedure pursuant to Rules 201 through 204 of the Idaho Public Utilities Commission's Rules of Procedure, IDAPA 31.01.01.201 through -.204.

YOU ARE FURTHER NOTIFIED that any person desiring to state a position on this Application may file a written comment in support or opposition with the Commission within twenty-one (21) days from the date of this Notice. The comment must contain a statement of reasons supporting the comment. Persons desiring a hearing must specifically request a hearing in their written comments. Written comments concerning this application shall be mailed to the Commission and the Applicant at the addresses reflected below:

COMMISSION SECRETARY
IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
Street Address for Express Mail:
472 W WASHINGTON ST
BOISE, ID 83702-5983

DAVID MEYER, ESQ.
SENIOR VP AND GENERAL COUNSEL
TOM B. DUKICH
DIRECTOR RATES AND CORPORATION
AVISTA CORPORATION
1411 E MISSION AVENUE
PO BOX 3727
SPOKANE, WA 99220-3727

All comments should contain the case caption and case number shown on the first page of this document.

YOU ARE FURTHER NOTIFIED that if no written comments are received within the time limit set, the Commission will consider this matter on its merits and enter its Order without a formal hearing. If written comments are received within the time limit set, the Commission will consider them and, in its discretion, may set the same for formal hearing.

YOU ARE FURTHER NOTIFIED that the Application together with the Service Territory Settlement Agreement and its exhibits, have been filed with the Commission and are available for public inspection during regular business hours at the Commission offices.

YOU ARE FURTHER NOTIFIED that all proceedings in this case will be held pursuant to the Commission's jurisdiction under Title 61 of the Idaho Code and specifically *Idaho Code* §§ 61-332 and 61-333(1).

YOU ARE FURTHER NOTIFIED that all proceedings in this matter will be conducted pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

ORDER

IT IS HEREBY ORDERED that this Application be processed under Modified Procedure. Persons interested in submitting written comments regarding this matter should do so within 21 days of the service date of this Order.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this
day of February 2001.

DENNIS S. HANSEN, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

PAUL KJELLANDER, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

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