

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION TO)
APPROVE THE SERVICE TERRITORY) **CASE NO. AVU-E-01-3**
AGREEMENT BETWEEN AVISTA AND)
CLEARWATER POWER COMPANY)
)
) **ORDER NO. 28677**
)

On February 1, 2001, Avista filed an Application for approval of a Service Territory Agreement between itself and Clearwater Power Company. Submission of the Application was prompted by amendments to the Electric Supplier Stabilization Act (ESSA) enacted in December 2000.¹ In an Order dated February 16, 2001, the Commission issued a Notice of Application and a Notice of Modified Procedure. Only the Commission Staff submitted comments, which supported adoption of the Service Territory Agreement. In this Order the Commission approves the Service Territory Agreement as set out in greater detail below.

THE SETTLEMENT AGREEMENT

The Service Territory Agreement submitted for the Commission’s review was a settlement agreement 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

¹ Following submission of the Application, the Idaho Legislature approved and the governor signed into law HB 142. HB 142 removed the sunset provision from the ESSA legislation enacted in December 2000. In particular, *Idaho Code* § 61-333 was amended to read in pertinent part:

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

Idaho Code § 61-333(1)(amended 2001).

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.

In the settlement agreement, Washington Water Power and Clearwater 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.

Although neither party admitted liability, they intended this Agreement to settle a disputed court case. *Id.* § 6. This settlement agreement does not contain provisions that address breach of the contract or other standard contract conditions.

STAFF COMMENTS

After reviewing provisions of the Service Territory Agreement according to the provisions of *Idaho Code* § 61-333(1), Staff recommended that the Commission approve the Agreement. Staff noted that in the eight years this agreement has been in effect, “no further service territory disputes have occurred to Staff’s knowledge, either in this particular area or in any other area where the two utilities’ service territories are adjacent.” Staff Comments at 3. Although the Agreement only covers a small portion of the utilities’ service areas near Moscow, Staff believes “these general provisions have provided and will continue to provide adequate guidance in most cases.” Staff Comments at 4. Because this Agreement resolved the only known conflict between Avista and Clearwater, Staff finds “the Agreement has served a valuable purpose and has clearly met the purposes of the ESSA as amended.” Staff Comments at 3.

DISCUSSION

After reviewing the Application, the Service Territory Agreement and the pertinent provisions of the ESSA, we find that the Service Territory Agreement should be approved. We note that there were no opposing comments and the only comments submitted supported approval of the Agreement. Avista and Staff agree that the Agreement reduces the possibility of disputes arising between Avista and Clearwater Power concerning the provision of electrical service to residential subdivisions. We agree and find that the Service Territory Agreement promotes “harmony among and between electrical suppliers furnishing electricity within the state of Idaho.” *Idaho Code* § 61-332(2) (2001). We also find that the Agreement discourages “duplication of electrical facilities” by allocating residential customers. *Id.* Consequently, we conclude that the Service Territory Agreement is in conformance with the purposes of the ESSA.

ORDER

IT IS HEREBY ORDERED that Avista Corporation’s Application for approval of a Service Territory Agreement formed on July 12, 1993, between Avista Utility and Clearwater Power Company is approved.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. AVU-E-01-3 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this order or in interlocutory Orders previously issued in this Case No. AVU-E01-3. For purposes of filing a petition for reconsideration, this order shall become effective as of the service date. *Idaho Code* § 61-626. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

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

DENNIS S. HANSEN, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

PAUL KJELLANDER, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

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