

LISA D. NORDSTROM
DEPUTY ATTORNEY GENERAL
IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0314
IDAHO BAR NO. 5733

Street Address for Express Mail:
472 W. WASHINGTON
BOISE, IDAHO 83702-5983

Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
AVISTA CORPORATION, DBA AVISTA) **CASE NO. AVU-E-01-03**
UTILITIES, FOR AN ORDER APPROVING A)
SERVICE TERRITORY AGREEMENT) **COMMENTS OF THE**
BETWEEN AVISTA UTILITIES AND) **COMMISSION STAFF**
CLEARWATER POWER COMPANY.)
)

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Lisa D. Nordstrom, Deputy Attorney General, and submits the following comments in response to the Notice of Application/ Notice of Modified Procedure.

On February 1, 2001, Avista filed an Application for approval of a service territory agreement between the Company and Clearwater Power Company. The Application notes that the Idaho Legislature amended portions of the Idaho Electric Supplier Stabilization Act (ESSA) in special session on December 8, 2000. The amendments to the ESSA provide that all service agreements that allocate territory or customers be filed with the Commission. In particular, *Idaho Code* § 61-333 was amended to provide 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 was scheduled to sunset on March 1, 2001. Last month HB 142 was enacted by the Legislature and signed by the Governor on February 28, 2001. HB 142 removed the sunset provision from the ESSA and became effective on February 28, 2001.

In its Application, 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 SETTLEMENT AGREEMENT

The 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.

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 ANALYSIS

The standard of review to be employed by the Commission for service territory agreements is set out in the amended section 61-333(1) of the ESSA. This section states that 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." (Emphasis added). The purposes of the ESSA are contained in §61-332 and include the following five points:

- promote harmony among and between electric suppliers furnishing electricity within the state of Idaho,
- prohibit the "pirating" of customers consumers of another electric supplier,
- discourage duplication of electric facilities,
- actively supervise certain conduct of electric suppliers as it relates to this act, and
- stabilize the territories and customers consumers served with electricity by such electric suppliers.

Thus, the traditional "public interest" standard usually employed by the Commission is not applicable.

The agreement for which Avista seeks approval was negotiated for the purpose of settling a dispute over contested service territory in a relatively small area near the city of Moscow. The agreement has been in effect for nearly eight years. 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. Although the agreement is not a comprehensive one that encompasses the entire service territories of both utilities, it has served to resolve the only known conflict between the utilities. Staff believes the agreement has served a valuable purpose and has clearly met the purposes of the ESSA as amended.

A much broader agreement would not have served any real purpose except in the vicinity where the past dispute has occurred. Similarly, requiring that a broader agreement be negotiated to address future potential conflicts could be counterproductive until more customer growth occurs

and more is known about the specific circumstances where electric systems are adjacent to each other. The ESSA already includes general provisions for selecting electric suppliers for new customers. Staff believes these general provisions have provided and will continue to provide adequate guidance in most cases.

STAFF RECOMMENDATION

Staff recommends that the July 12, 1993 settlement agreement between the Washington Water Power Company (now known as Avista) and Clearwater Power Company be approved. Staff believes the agreement is in conformance with the provisions and purposes of the ESSA.

Respectfully submitted this day of March 2001.

Lisa D. Nordstrom
Deputy Attorney General

Technical Staff: Rick Sterling

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