

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF**

FROM: DON HOWELL

DATE: FEBRUARY 1, 2005

**RE: APPLICATION FOR APPROVAL OF A SERVICE TERRITORY
AGREEMENT FILED BY AVISTA UTILITIES AND KOOTENAI
ELECTRIC COOPERATIVE, CASE NO. AVU-E-05-2**

On January 27, 2005, Avista Corporation dba Avista Utilities filed an Application seeking the Commission's approval of a contract between Avista and Kootenai Electric Cooperative, Inc. to allocate service territories and future consumers. The parties' "Agreement Allocating Territory" is dated November 28, 2004. The Agreement was executed pursuant to the provisions of the Electric Supplier Stabilization Act (ESSA) and specifically *Idaho Code* § 61-333(1).

THE APPLICATION

As explained in greater detail in their Agreement, Avista and Kootenai propose to allocate service territory in the Stateline Business Park in Post Falls, Idaho. Generally, the boundaries for the business park are: Seltice Way on the north side; the Idaho-Washington boundary (the "Stateline") on the west; Interstate 90 on the south; and the eastern boundary runs between Interstate 90 on the south side and Jacklin Road on the north. The Business Park is roughly divided in half by Baugh Way-Road B. The parties have agreed Avista and Kootenai will serve the western and eastern portions of the Business Park, respectively. Exhibit C to the Agreement illustrates the exact boundaries in greater detail.

Both parties have existing facilities within the boundaries of the Business Park. Avista and Kootenai are willing and able to supply electric service to consumers within their respective allocated territories. The parties assert that the allocation of service territory will avoid duplication of facilities, avoid disputes between the parties, and provide consumers with

the best possible service. The Agreement is also endorsed by the two developers of the Business Park: Greenstone Corporation and Stateline Business Park, LLC. The developers agreed to comply and be bound by the Agreement.

Given the Agreement of the parties, they recommend that the Application be processed under Modified Procedure.

THE ESSA

Idaho Code § 61-333(1) provides that electric suppliers may contract for the purpose of “allocating territories, consumers, and future consumers...and designating which territories and consumers are to be served by which contracting electric supplier.” Under the ESSA, both Avista and Kootenai are defined as electric suppliers. *Idaho Code* § 61-332A(4). After notice and opportunity for hearing, the Commission may approve agreements allocating service territories and customers between electric suppliers only upon finding that the allocation is in conformance with the purposes of the ESSA. *Idaho Code* § 61-333A(1). As set out in *Idaho Code* § 61-332(2), the purpose of the ESSA is to: discourage duplication of facilities; prohibit “pirating” of consumers; stabilize service territories and consumers; and promote harmony between electric suppliers.

STAFF RECOMMENDATION

Given the Agreement of the parties and the consent of the two developers, Staff recommends that this Application be processed under Modified Procedure.

COMMISSION DECISION

Does the Commission concur that this matter should be processed under Modified Procedure?



Don Howell

Vld/M:AVUE0502_dh