

DECISION MEMORANDUM

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

FROM: DON HOWELL

DATE: MARCH 10, 2005

**RE: SERVICE TERRITORY AGREEMENT BETWEEN AVISTA 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).

On February 14, 2005, the Commission issued Order No. 29707 requesting that interested persons file comments regarding the ESSA Agreement no later than March 7, 2005. Only the Commission Staff filed comments and it recommended that the Commission approve the ESSA Agreement.

THE APPLICATION

Avista and Kootenai propose to allocate service territory in the Stateline Business Park located in Post Falls, Idaho. Generally, the boundaries for the business park are: Seltice Way on the north side; the Idaho-Washington border (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 side. The Business Park is roughly divided in half by Baugh Way-Road B. The parties have agreed that 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 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.

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). The purposes of the ESSA are to: discourage duplication of facilities; prohibit the “pirating” of consumers; stabilize service territories and consumers; and promote harmony between electric suppliers. *Idaho Code* § 61-332(2).

STAFF COMMENTS

After reviewing the Application and the accompanying Agreement, Staff recommends that the Commission approve the Agreement. Staff noted that the Agreement will allow Avista and Kootenai to avoid duplication of services, stabilize their respective service territories and customers, and promote harmony by avoiding territory disputes. *Idaho Code* § 61-332(2).

COMMISSION DECISION

Does the Commission wish to approve the territory and customer allocation Agreement between Avista and Kootenai Electric? Does the Commission find that the Agreement comports with the purposes of the ESSA?



Don Howell

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