

DECISION MEMORANDUM

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

FROM: DONOVAN E. WALKER

DATE: OCTOBER 27, 2006

SUBJECT: AVISTA'S APPLICATION TO APPROVE A TERRITORY
ALLOCATION AGREEMENT WITH NORTHERN LIGHTS, INC., CASE
NO. AVU-E-06-7

On September 11, 2006, Avista filed an Application to approve an agreement allocating service territory with Northern Lights, Inc. pursuant to the Electric Supplier Stabilization Act (ESSA), *Idaho Code* §§ 61-332 *et seq.* The parties' "Agreement Allocating Territory" is dated July 24, 2006. The Agreement was executed pursuant to the provisions of the Electric Supplier Stabilization Act (ESSA) and specifically *Idaho Code* § 61-333(1).

On October 2, 2006, the Commission issued Order No. 30134 requesting that interested persons file comments regarding the ESSA Agreement no later than October 23, 2006. Only the Commission Staff filed comments and it recommended that the Commission approve the ESSA Agreement.

THE APPLICATION

According to the Application the parties have entered into an agreement pursuant to the ESSA in order to allocate territory, avoid disputes between utilities, and to provide consumers with the best possible service. Both utilities have existing service lines near a new development (Development) in Sandpoint, Idaho, and both utilities are able and willing to supply electric service to consumers who may establish service entrances in the Development. The utilities have agreed to an allocation of service territory to each utility as set forth in their Agreement.

The Agreement Allocating Territory as well as a map of the designated service areas (Exhibit B) and a legal description of the boundaries (Exhibit A) was filed with the Application. According to the Agreement Avista and Northern Lights will each be entitled to extend their electric facilities, to the exclusion of the other, within the territory allocated to each as outlined on Exhibit B, and to provide service to customers who locate new electric service entrances within such territory. The Agreement states that, within the territory allocated, each utility shall provide line extensions and electric service pursuant to the provisions of their respective line extension policies, rate schedules, and/or tariffs in force at the time such extensions or services are requested. The Agreement further provides that a line extension installed within the boundaries of the Development to serve an electric service located within the territory allocated by the Agreement shall not be considered an “existing service line” and may not be used as a future measuring point for the purpose of determining which utility is entitled to provide electric service under the ESSA to new service entrances located in territory not allocated pursuant to the Agreement. Additionally, the Agreement states that the utilities current electric service lines as shown on Exhibit B, as well as any line extensions external to the boundaries defined in the Agreement and outlined on Exhibit B which are required to reach existing infrastructures within the Development and which are installed in accordance with the ESSA, may be used to determine future electric service rights to new service entrances located in territory not allocated pursuant to the Agreement. Lastly, the Agreement states that the boundaries set forth by the Agreement and shown on Exhibit B will not be effected by any subsequent changes in lot lines, roadways, or other boundaries within the Development that occur after the date of 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 Northern Lights 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 COMMENTS

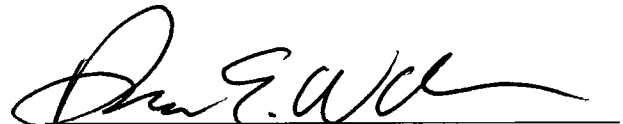
After reviewing the Application and the accompanying Agreement, Staff recommends that the Commission approve the Agreement. Staff recommends that the Agreement is in conformance with the provisions and purposes of the ESSA, specifically those found in *Idaho Code* § 61-332(2).

Staff also recommends that the Commission actively support a broader expansion agreement plan for the North Idaho Region between Avista, Northern Lights, and Kootenai Electric in order to ensure that electric infrastructure and expansion is developed in an economically efficient manner.

COMMISSION DECISION

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

Does the Commission wish to direct Avista to pursue a broader expansion agreement plan with the other electric utilities for the North Idaho Region?



Donovan E. Walker

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