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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
AVISTA CORPORATION TO APPROVE AN) **CASE NO. AVU-E-07-5**
AGREEMENT ALLOCATING SERVICE)
TERRITORY WITH NORTHERN LIGHTS, INC.)
PURSUANT TO THE IDAHO ELECTRIC) **COMMENTS OF THE**
SUPPLIER STABILIZATION ACT) **COMMISSION STAFF**
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The Staff of the Idaho Public Utilities Commission, by and through its Attorney of Record, Donald L. Howell, II, Deputy Attorney General, submits the following comments in response to Order No. 30353 issued on July 10, 2007.

BACKGROUND

On June 20, 2007, Avista Corporation dba Avista Utilities filed an Application seeking the Commission's approval of a contract between Avista and Northern Lights, Inc. to allocate service territories and future consumers. Northern Lights is an electric cooperative operating in northern Idaho. The parties' "Customer Allocation Agreement" is last dated May 23, 2007. The Agreement was executed pursuant to the provisions of the Electric Supplier Stabilization Act (ESSA) and specifically *Idaho Code* § 61-333(1).

Avista and Northern Lights propose to allocate service territory in a 15-lot residential subdivision known as Spring Haven in Sandpoint, Idaho. The subdivision is being developed by Jerry VanOoyen and Mike Dougherty. Both electric suppliers have existing facilities that can serve the initial 15 lots. The parties have agreed that Northern Lights will serve the initial 15 lots because its facilities are closer to the majority of lots. Agreement at ¶ 1. A plat of the subdivision is attached to the Agreement.

The parties assert that the allocation of service territory will avoid duplication of facilities, avoid dispute between the parties, and provide consumers with the best possible service. The Agreement recognizes that Avista does not give up its rights to serve future phases of the Development or adjoining plats thereto, and the Agreement may not be used to determine which supplier may serve other new customers. *Id.* at ¶ 3.

The Agreement is also endorsed by Jerry VanOoyen, the owner-developer of the property. The developers agreed to comply and be bound by the Agreement. The parties also acknowledge that the Agreement is subject to the Commission's approval. *Id.* at ¶ 4.

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 purposes of the ESSA are to: discourage duplication of facilities; prohibit "pirating" of consumers; stabilize service territories and consumers; and promote harmony between electric suppliers.

STAFF ANALYSIS

Staff reviewed the Application to determine if the Customer Allocation Agreement with Northern Lights is consistent with the ESSA. The service territory agreement is necessary because Sandpoint and the surrounding area receive electric service from multiple vendors. Without these agreements there is a risk that duplication of facilities and destabilization of service territories and customers may occur. Because of the continuing growth in the Sandpoint

area, Staff continues to believe that it is important for Avista to have policies in place, along with efficient planning efforts, to guard against lost or stranded investment as electric suppliers attempt to serve new customers.

Staff asked the Company about its planning policies in Data Request No. 1. Avista's response was that there is no territorial allocation agreement with Northern Lights that provides one utility the assurance of serving all new customers within a development once backbone service is installed. It stated further that Avista has approached Northern Lights to establish such an agreement, but the current board at Northern Lights believes the existing case-by-case process is sufficient.

Avista went on to report that it assigned a Competitive Development Specialist to coordinate efforts whenever a competitive project arises. The Specialist has extensive training in ESSA customer choice rules and has established a good working relationship with Northern Lights.

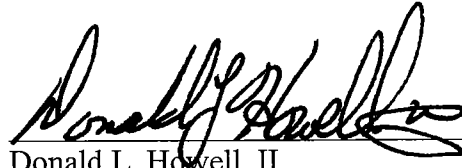
In this case, although both companies have facilities in place to adequately serve the new development, Northern Lights had existing infrastructure closer to the entrance and location of the first house in the development. Furthermore, both field and GIS measurements showed that Northern Lights was closer to the majority of the lots.

In this agreement, Avista has waived its rights to serve the new development, but will continue to provide service to one customer located to the southeast of the development. Staff is not aware of any opposition to this joint application. Staff recommends approval of the application.

STAFF RECOMMENDATION

Staff supports Avista and Northern Lights in their continuing efforts to evaluate new developments in the Sandpoint area for the most efficient way to supply service. Their efforts and this application support the intent of ESSA and help stabilize the area and ensure that customers receive the most efficient and cost-effective service possible. Avista and Northern Lights have demonstrated that the agreement conforms to the provisions of the ESSA found in *Idaho Code* § 61-332. Therefore, Staff recommends the Commission approve the Customer Allocation Agreement.

Respectfully submitted this 31st day of July 2007.

A handwritten signature in black ink, appearing to read "Donald L. Howell, II", written over a horizontal line.

Donald L. Howell, II
Deputy Attorney General

Technical Staff: Dan Graves

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 31ST DAY OF JULY 2007, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. AVU-E-07-05, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

LINDA GERVAIS
REGULATORY ANALYST
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SECRETARY