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Attorney for the Commission Staff

## BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

<b>IN THE MATTER OF AVISTA</b>	)	
<b>CORPORATION'S APPLICATION FOR AN</b>	)	<b>CASE NO. AVU-E-21-02</b>
<b>ORDER APPROVING THE EXTENSION OF A</b>	)	
<b>SERVICE TERRITORY AGREEMENT</b>	)	
<b>BETWEEN AVISTA AND KOOTENAI</b>	)	<b>COMMENTS OF THE</b>
<b>ELECTRIC COOPERATIVE</b>	)	<b>COMMISSION STAFF</b>
_____	)	

The Staff of the Idaho Public Utilities Commission comments as follows on Avista Corporation's Application.

### BACKGROUND

On January 11, 2021, Avista Corporation ("Avista" or "Company") filed an Application requesting the Commission approve an amendment to the Service Territory Agreement ("Agreement") between Avista and Kootenai Electric Cooperative, Inc. ("KEC").

On March 21, 2001, the Commission issued Order No. 28681 approving the Agreement between Avista and KEC. In the Agreement, the parties stipulated that electric service to an entire residential development and subsequent additions to such development shall be determined by which electric supplier serves at least one of the lots in the subdivision pursuant to the provisions of the Idaho Electric Supplier Stabilization Act ("ESSA"), *Idaho Code* §§ 61-332 – 61-334C. The Agreement also provides that it shall initially run for a period of 10 years but shall be automatically extended "for successive periods of ten (10) years upon the same terms

and conditions as set forth in this Agreement unless one of the parties" elects to terminate the Agreement.

Either party may terminate the Agreement by notifying the other "not less than sixty (60) days before the end of the initial, or renewal term of (its) intent not to renew the agreement." As approved by the Commission in Order No. 28681, the Agreement, unless terminated, was set to renew on February 15, 2011.

On January 31, 2011, Avista filed a letter advising the Commission that neither Avista nor KEC notified each other regarding their intent to terminate the Agreement. Consequently, the letter stated that the Agreement would be extended for another ten-year term, or until February 15, 2021. For purposes of updating the administrative record in Case No. AVU-E-01-02, the Commission issued a Minute Order on February 24, 2011.

The current Agreement would automatically renew on February 15, 2021. Because the parties are in negotiations, the Company provided notice to KEC of its intent not to renew on December 15, 2020, in order to avoid being locked into a new 10-year term.

## **STAFF REVIEW**

The current term of the Agreement is set to expire on February 15, 2021. Avista and KEC have been negotiating a new Service Territory Agreement to replace the current Agreement. To date, the Parties have not been able to reach agreement on all of the terms of a new Service Territory Agreement. To provide additional time to complete the negotiations on a new Service Territory Agreement without committing to another 10-year term, the Parties have agreed to amend the Agreement to renew for successive 12-month terms rather than 10-year renewal terms. Amendment No. 2, Application at 6-7.

If the Company's Application and the proposed Amendment are approved, the Agreement will remain in effect for a new 12-month term to expire on February 15, 2022. The Company stated that a new 12-month term "should provide the Parties time to complete their negotiations and finalize a new Service Territory Agreement to replace the Agreement." Application at 3.

The standard of review to be employed by the Commission for Service Territory Agreements is set out in the ESSA. The ESSA 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." *Idaho Code* § 61-333(1)(emphasis added).

The purposes of the ESSA are listed in *Idaho Code* § 61-332 and include the following five points:

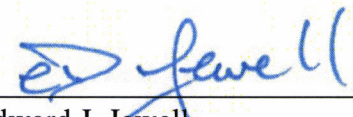
- a. promote harmony among and between electric suppliers furnishing electricity within the state of Idaho;
- b. prohibit the "pirating" of customers of another electric supplier;
- c. discourage duplication of electric facilities;
- d. actively supervise certain conduct of electric suppliers as it relates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

Staff believes the Company's Application supports the intent of the ESSA, in part, to permit agreements that can aid in minimizing and resolving disputes. As such, Staff believes an amendment to the Agreement in support of ongoing negotiations between the Company and KEC is reasonable. However, Staff is somewhat concerned that Avista and KEC may not reach agreement and complete a new Service Territory Agreement before the next 12-month automatic renewal if the Amendment is approved. Staff encourages the Company to provide updates to the Commission on the progress of negotiations and the development of a new Service Territory Agreement. If the new Service Territory Agreement includes material changes, Staff recommends Avista file it for approval no later than November 1, 2021, to allow time for review and a final Commission Order prior to the current term expiring.

#### **STAFF RECOMMENDATIONS**

Staff recommends that Amendment No. 2 to the Agreement between Avista and KEC be approved. Staff recommends that the Company provide updates on a quarterly basis to the Commission on the progress of negotiations and the development of a new Service Territory Agreement and to notify the Commission no later than October 1, 2021 if a new Service Territory Agreement will be filed with the Commission by November 1, 2021.

Respectfully submitted this 3<sup>rd</sup> day of February 2021.



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Edward J. Jewell  
Deputy Attorney General

Technical Staff: Kevin Keyt  
Kathy Stockton

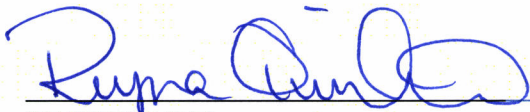
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 3<sup>rd</sup> DAY OF FEBRUARY 2021, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. AVU-E-21-02, BY E-MAILING A COPY THEREOF TO THE FOLLOWING:

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