



Avista Corp.

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August 5, 2021

Jan Noriyuki, Secretary
Idaho Public Utilities Commission
11331 W. Chinden Blvd. Bldg. 8, Ste. 201-A
Boise, Idaho 83714

RE: Case No. AVU-E-21-12

Dear Ms. Noriyuki:

Attached for filing with the Commission is Avista Corporation's, doing business as Avista Utilities', application requesting that the Commission approve the Amended and Restated Agreement for Administering Residential Developments between Avista and Kootenai Electric Cooperative, Inc.

Please direct any questions regarding this filing to Michael Andrea at 509-495-2564 (Michael.andrea@avistacorp.com) or me at 509.495.8620 (Patrick.ehrbar@avistacorp.com).

Sincerely,

/s/ Patrick Ehrbar

Patrick Ehrbar
Director of Regulatory Affairs

Enclosure

cc: Doug Elliott, General Manager/CEO – Kootenai Electric Cooperative, Inc.

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UTILITIES COMMISSION

FOR AVISTA CORPORATION
MICHAEL G. ANDREA (ISB NO. 8308)
SENIOR COUNSEL
AVISTA CORPORATION
1411 EAST MISSION, MSC-17
SPOKANE, WASHINGTON 99220
PHONE: (509) 495-2564

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF)
AVISTA CORPORATION FOR APPROVAL) **CASE NO. AVU-E-21-12**
OF AMENDED AND RESTATED)
AGREEMENT FOR ADMINISTERING) **APPLICATION OF AVISTA**
RESIDENTIAL DEVELOPMENTS)
BETWEEN AVISTA CORPORATION AND)
KOOTENAI ELECTRIC COOPERATIVE,)
INC.)

In accordance with Idaho Code §61-333, Avista Corporation (“Avista”) respectfully requests that the Idaho Public Utilities Commission (“Commission”) approve the Amended and Restated Agreement for Administering Residential Developments (“Amended Agreement”) between Avista and Kootenai Electric Cooperative, Inc. (“KEC”). The Amended Agreement is attached hereto as Exhibit 1. The Company requests that this filing be processed under the Commission’s Modified Procedure Rules through the use of written comments.

1. Names and Addresses of Petitioner

Avista Corporation
1411 East Mission Avenue
Spokane, WA 99220

2. Nature of Businesses

Avista is a corporation created and organized under the laws of the State of Washington with its principal office in Spokane, Washington. Avista is an investor-owned

utility engaged in, among other things, the business of generating, transmitting, and distributing electric power to wholesale and retail customers in Idaho and Washington. Avista also provides natural gas service to customers in Idaho, Washington, and Oregon. As such, Avista's rates, charges, services and practices are regulated, in part, by this Commission.

3. **Names of Representatives**

All communications, pleadings, and orders with respect to this proceeding should be directed to:

For Avista Corporation:

Patrick Ehrbar
Director of Regulatory Affairs
Avista Corporation
1411 E. Mission Avenue
Spokane, Washington 99220
Phone: 509-495-8620
patrick.ehrbar@avistacorp.com

Michael G. Andrea
Senior Counsel
Avista Corporation
1411 E. Mission Ave., MSC-17
Spokane, WA 99220
Phone: 509-495-2564
michael.andrea@avistacorp.com

4. **Background**

On March 21, 2001, the Commission issued Order No. 28681 approving a Service Territory Agreement between Avista and KEC ("Original Agreement"). In the Original Agreement, the Parties agreed on a methodology to determine which entity would provide electric service to residential developments and subsequent additions to such developments pursuant to the Idaho Electric Supplier Stabilization Act ("ESSA"), Idaho Code Section 61-332C. On January 11, 2021, Avista submitted a petition for approval of an amendment ("Amendment") to the Original Agreement to allow the Original Agreement to renew for successive 12-month terms. The purpose of the Amendment was to provide Avista and KEC to complete negotiations on a new service territory agreement to replace the Original

Agreement. On February 11, 2021, the Commission issued Order No. 34924 approving the Amendment.¹ The Amended Agreement attached as Exhibit 1 replaces the Original Agreement, as amended.

5. Description of Agreement

The Amended Agreement replaces the Original Agreement in its entirety effective on July 26, 2021, or such other date set by the Commission (“Effective Date”). The Amended Agreement will have an initial term of five years from the Effective Date and will renew for successive five-year terms, unless either Avista or KEC provides the other written notification of its intent not to renew at least 60 days prior to the expiration of the then-current five-year term.

The Amended Agreement clarifies which utility (Avista or KEC) shall have the right to serve defined residential developments (referred to as “Developments”) by providing that:

It is the intent of the Parties that the determination of which Party will provide electric service to a Development shall be consistent with the provisions of the Stabilization Act. Therefore, after one of the Parties, as a supplier of electric service, undertakes to serve one or more lots within an established Service Entrance (such Party is the “Serving Utility”), the Parties agree that the remainder of that particular Development shall be served solely by that Serving Utility.²

The Amended Agreement further clarifies that certain facilities cannot be used as measuring points, changes the term to successive five-year periods, and sets out the process and remedies for any breach of the Amended Agreement.³

¹ In Order No. 34924, the Idaho Public Utilities Commission approved Amendment No. 2 to the Service Territory Agreement between Avista and Kootenai Electric Cooperative, Inc (KEC). As a part of that Order, the Commission stated: “To ensure that the parties diligently pursue a new service territory agreement, we direct the Company to provide the Commission with quarterly updates on progress and notify the Commission by October 1, 2021 if a new service territory agreement will be finalized.” Avista filed such updates on March 25, 2021 and June 25, 2021 in Case No. AVU-E-21-02.

² Amended Agreement at Section V.A.

³ *Id.* at Sections II, V.B., VI.

Pursuant to the ESSA, electric suppliers may contract with other electric suppliers to allocate territories and consumers. Idaho Code § 61-333(1); see also Order No. 34924 at 2. The Commission has the authority to review such contracts between cooperatives and public utilities. *Id.* The purpose of the ESSA is to “promote harmony among and between electric suppliers furnishing electricity within the state of Idaho, prohibit the ‘pirating’ of consumers of another electric supplier, discourage duplication of electric facilities, actively supervise certain conduct of electric suppliers as it relates to this act, and stabilize the territories and consumers served with electricity by such electric suppliers.” *Id.* § 61-332. The Commission approves such contracts only upon a finding that the allocation of territories or consumers conforms with the provisions and purposes of the ESSA. *Id.*

6. Request for Approval

The Amended Agreement conforms with the provisions and purposes of the ESSA. Accordingly, Avista respectfully requests approval of the Amended Agreement with an Effective Date of July 26, 2021, or such other date set by the Commission. The Company requests that this filing be processed under the Commission’s Modified Procedure Rules through the use of written comments.

Respectfully submitted this 5th day of August, 2021.

AVISTA CORPORATION

/s/ Michael Andrea

Michael G. Andrea
Senior Counsel

**AMENDED AND RESTATED AGREEMENT FOR
ADMINISTERING RESIDENTIAL DEVELOPMENTS**

This Amended and Restated Agreement (Amended Agreement”) for Administering Residential Developments is made and entered into on this 26th day of July, 2021, by and between Avista Corporation, a Washington Corporation, (“Avista”) and Kootenai Electric Cooperative, Inc., an Idaho Cooperative Corporation (“KEC”). Avista and KEC are each referred to herein as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, Avista and KEC are parties to the Agreement for Administering Residential Developments dated February 15, 1991, as amended by Amendment 1 dated December 26, 2002 (“Original Agreement”);

WHEREAS, the Parties continue to desire to promote operational effectiveness and to enhance the reliability of their electric service to their respective customers and/or members;

WHEREAS, to promote such operational effectiveness and to enhance the reliability of their electric service to their respective customers and/or members, the Parties desire to update the Original Agreement by amending and restating the Original Agreement to, in accordance with the Idaho Electric Supplier Stabilization Act, Idaho Code § 61-332, et seq., (“Stabilization Act”) reduce duplication of electric service, reduce capital expenditures, reduce burdens of administrative time, hold down the cost of electric service, and to provide for proper engineering of subdivision of projects;

WHEREAS, the Parties further intend this Amended Agreement to reduce the possibility of disputes arising between the Parties and to assist residential developers in their planning processes;

WHEREAS, the Parties intend this Amended Agreement to apply to residential and multifamily developments; and

WHEREAS, the Parties intend this Amended Agreement to completely replace and supersede the Original Agreement.

NOW THEREFORE, the Parties agree to amended and restate the Original Agreement as follows:

AGREEMENT

I. Definitions

The definitions set forth in this Amended Agreement, whether separately set out as definition or incorporated within any specific contractual provision, are only for the purpose of this Amended Agreement. No definition contained within this Amended Agreement shall be binding upon the Parties except in furtherance of the construction of this specific Amended Agreement and its terms.

Any term defined in the Stabilization Act, and not otherwise defined herein, shall have the meaning provided in the Stabilization Act.

A. “Development” is defined as a group of six or more lots, parcels, single-family homes, or multi-family residential units (each such single family home or multi-family residential unit is a residential dwelling), connected by a common street or road system, and platted (or to be platted) on a final common plat(s) approved by the applicable county or municipal authority. The term “Development” also encompasses subsequent additions to the original Development that are substantially in accordance with the plan of the original developer at the time of the original Development or, otherwise, is a natural expansion of the original Development considering geography, street extension and various utility (sewer, water, etc.) extensions.

For purposes of this Amended Agreement, it will be assumed, unless clearly shown otherwise, that the Development name will define the geographic scope of the Development (e.g., Pine Villa 1, Pine Villa 2, etc.). For purposes of this Amended Agreement, the mere change in the name of a Development will not constitute a change in the status of development.

For purposes of this Amended Agreement, the definition of “Development” shall not be dependent on the identity of the developer, since the Parties recognize and acknowledge that developers may change during the course of an identified Development.

B. “Effective Date” shall be the later of the date stated in the introductory paragraph of this Amended Agreement or such other date set by the Idaho Public Utilities Commission (“Commission”). For the avoidance of doubt, in the event that this Amended Agreement is rejected by the Commission this Amended Agreement shall terminate on the date of the Commission order rejecting this Amended Agreement. If the Commission accepts this Amended Agreement subject to changes or conditions unacceptable to either Party, such Party may terminate this Amended Agreement by providing written notice of termination to the other Party. Any written notice of termination provided pursuant to this Section I.B. shall specifically identify the term or condition imposed by the Commission that is the basis for such termination.

C. “Service Entrance” is defined as a metering point for the delivery of electric service to a residential dwelling; provided, however, that the metering point must be located within the boundaries of the lot or parcel upon which the residential dwelling is located or to be built.

D. “Lighting Circuit” includes any secondary infrastructure with the sole primary purpose to provide service to street or area light infrastructure.

II. Term

A. Duration of Term; Original Agreement Terminated and Replaced. The term of this Amended Agreement shall be for five (5) years from the Effective Date subject to renewal as set forth in Section II.B of this Amended Agreement. Upon the Effective Date of this Amended Agreement, the Original Agreement is terminated, and this Amended Agreement shall supersede and replace the Original Agreement in its entirety.

B. Renewal of Term. The term of this Amended Agreement shall be extended automatically for successive periods of five (5) years, unless one of the Parties notifies the other Part in writing, not less than sixty (60) days before the end of the then-current five-year term, of its intent not to renew this Amended Agreement.

III. Termination

A. Termination; Effect of Termination or Expiration. It is agreed by and between the Parties that, except as provided in Section I.B, Section II.B and Section VI of this Amended Agreement, this Amended Agreement cannot be terminated during the term, including any renewal term, except by mutual agreement in writing signed by both Parties. In the event of termination or expiration of this Amended Agreement, this Amended Agreement shall remain in full force and effect as to any Development in existence as of the termination or expiration date.

B. Development in Existence on the Date of Termination or Expiration. For purposes of Section III of this Amended Agreement, the phrase “Development in existence” shall mean a Development in which at least one (1) lot is served by a Party; or, for which a Party has entered into a signed contract for the provision of electric service to the subdivision and within three (3) years of the date of such contract, that Party provides electric service to the first residential dwelling to be constructed within the subdivision.

IV. Geographic Scope of Amended Agreement

The geographic area covered by this Amended Agreement shall be the service areas of the Parties in the State of Idaho.

V. Service to Development

A. First Party to Serve. It is the intent of the Parties that the determination of which Party will provide electric service to a Development shall be consistent with the provisions of the Stabilization Act. Therefore, after one of the Parties, as a supplier of electric service, undertakes to serve one or more lots within an established Service Entrance (such Party is the “Serving Utility”), the Parties agree that the remainder of that particular Development shall be served solely by that Serving Utility.

B. Measuring Points. In no event shall Lighting Circuits or facilities installed in breach of this Amended Agreement or the Stabilization Act be used as measuring points or otherwise to establish either Party’s right to provide electric service to any customer.

VI. Breach of Amended Agreement

If either Party breaches any provision of this Amended Agreement, the non-breaching Party shall have the right to terminate this Amended Agreement, at its sole option, and/or pursue its remedies at law or equity for all damages proximately resulting from such breach or to seek equitable relief. No waiver of any breach of this Amended Agreement shall be held to be a waiver of any other or subsequent breach. In the event that either Party installs any facilities in breach of this Amended Agreement or the Stabilization Act, the Party installing such facilities will, upon request of the non-breaching Party, promptly remove or abandon any such facilities at the breaching Party’s sole cost. All remedies afforded in this Amended Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided by law or equity. If any action is brought to enforce this Amended Agreement or any provision thereof, to rescind the same, to collect damages for an alleged breach thereof, or for an injunction or declaratory judgment to enforce the terms of this Amended Agreement, the prevailing Party in such action shall be entitled to its reasonable attorney fees and costs incurred.

In the event of a breach of this Amended Agreement, the non-breaching Party shall give written notice of the breach and of the cure demanded. The breaching Party shall have fifteen (15) days from the date of such written notice to provide the non-breaching Party written notice of its agreement to cure the breach. Any breach of this Amended Agreement shall thereafter be cured in a timely fashion with consideration of weather, the nature of the breach, and avoidance of, or minimization of, disruption of electric service to any customer. In the event that the breaching Party fails to provide written notice of its agreement to cure the breach or fails to timely cure the breach, the non-breaching Party may, at its election, pursue its remedies provided herein, including but not limited to termination of this Amended Agreement.

VII. Miscellaneous

A. Validity. It is understood and agreed by the Parties that if any part, term, or provision of this Amended Agreement is held by the courts or any regulatory agency of competent jurisdiction to be illegal or in conflict with any law of the State of Idaho, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Amended Agreement did not contain the particular part, term, or provision held to be illegal or in conflict with any law of the State of Idaho, so long as the intent of the Amended Agreement, and the benefits arising therefrom will continue substantially the same.

B. This Amended Agreement supersedes and replaces the Original Agreement in its entirety. All other agreements between the Parties regarding the provision of electric service to any customer shall remain in full force and effect.

C. Binding Effect. This Amended Agreement shall be binding upon the Parties hereto and their successors and permitted assigns. Neither Party may assign or transfer this Amended Agreement without the express prior written consent of the other Party; provided, however, that either Party may assign this Amended Agreement to an affiliate or a successor who acquires all or substantially all of the assigning Party's assets without the other Party's written consent.

D. Headings. Section headings are for the purpose of convenience and reference only and shall not be deemed to define, limit, or extend the scope or intent of the sections to which they pertain.

E. Notice. Unless specifically stated to the contrary, notice required by this Amended Agreement shall be considered given on the date deposited in the United States Mail with postage prepaid and properly addressed to the proper Party or sent via electronic mail to an electronic email address provided by the receiving Party. Notices shall be addressed to the following:

For Kootenai Electric Cooperative, Inc.:

Doug Elliott
Kootenai Electric Cooperative, Inc.
2451 W. Dakota Ave.
Hayden, ID 83835
(208) 765-1200
delliott@kec.com

For Avista Corporation:

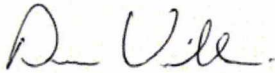
Jamie Howard
Regional Account Executive
Avista Corporation
1735 N. 15th St., MSC-R3

Coeur d'Alene, ID 83814
(208) 769-1871
jamie.howard@avistacorp.com

Either Party may change its contact information for notices at any time by providing the other Party written notice of such change.

WHEREFORE, each Party represents that this Amended Agreement is executed by a duly authorized representative of such Party on the date first written above.

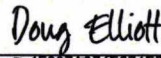
AVISTA CORPORATION



By: Dennis Vermillion
Title: President and CEO

**KOOTENAI ELECTRIC COOPERATIVE,
INC.**

DocuSigned by:



By: Doug Elliott
Title: General Manager / CEO