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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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

STAFF OF the Idaho Public Utilities Commission, by and through its attorney of record, Erick Shaner, Deputy Attorney General, submits the following comments:

BACKGROUND

On August 5, 2021, Avista Corporation (“Avista” or “Company”) filed a Petition requesting the Commission approve an Amended and Restated Agreement for Administering Residential Developments (“Amended Agreement”) between Avista and Kootenai Electric Cooperative, Inc. (“KEC”).

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* § 61-332C.

On February 11, 2021, the Commission issued Order No. 34924 approving an amendment to renew the Original Agreement for successive twelve-month terms to provide Avista and KEC time to complete negotiations on a new service territory agreement to replace the Original Agreement. In that Order, the Commission also directed the Company to provide the Commission with quarterly updates on its progress, as well as notify the Commission by October 1, 2021, if a new service territory agreement will be finalized. The Company complied with this order and filed updates on March 25, 2021, and June 25, 2021, in Case No. AVU-E-21-02.

Avista and KEC have entered into the Amended Agreement to replace the Original Agreement in its entirety effective July 26, 2021, or such other date set by the Commission.

STAFF ANALYSIS

The ESSA

The ESSA generally prohibits an electric supplier from serving another electric supplier's existing or former customers. *Idaho Code* § 61-332B¹. As an exception to this general rule, the ESSA allows electric suppliers to 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." *Idaho Code* § 61-333(1). However, such contracts are subject to Commission approval. Specifically, the Commission must approve the contract if, after notice and opportunity for hearing, the Commission finds that the allocation conforms with the purposes of the ESSA. *Idaho Code* § 61-333(1) and 61-334B(1). As set out in *Idaho Code* § 61-332, the purposes of the ESSA are to: (1) promote harmony between electric suppliers; (2) prohibit "pirating" of consumers; (3) discourage duplication of electric facilities; (4) actively supervise the conduct of electric suppliers; and (5) stabilize service territories and consumers served.

The Application

The Amended Agreement replaces the Original Agreement in its entirety effective on July 26, 2021, or other date set by the Commission. The Amended Agreement will have an

¹ Avista and Kootenai Electric are "electric suppliers" as defined in the ESSA. *Idaho Code* § 61-332A(4) ("Electric supplier" means any public utility, cooperative, or municipality supplying or intending to supply electric service to a consumer).

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 party written notification of its intent not to renew at least sixty days prior to the expiration of the then-current five-year term.

The Amended Agreement clarifies whether Avista or KEC will have the right to serve defined residential developments by providing that:

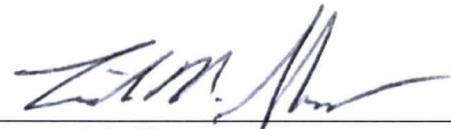
It is the intent of the Parties that the determination of which Party will provide electric service to a Development shall be consistent with the provisions of the Stabilization Act. Therefore, after one of the Parties, as a supplier of electric service, undertakes to serve one or more lots within an 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 also 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 Agreement³.

STAFF RECOMMENDATION

Staff has reviewed the Amended Agreement and believes that it conforms with the provisions and purposes of the ESSA, and therefore recommends approval.

Respectfully submitted this ~~14th~~ day of October 2021.



Erick Shaner
Deputy Attorney General

Technical Staff: Kathy Stockton
Kevin Keyt
Rick Keller

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² Amended Agreement at Section V.A.

³ *Id.* Sections II, V.B., VI.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 14th DAY OF OCTOBER 2021, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. AVU-E-21-12, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

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