

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE APPLICATION OF</b>	)	
<b>AVISTA CORPORATION, DBA AVISTA</b>	)	<b>CASE NO. AVU-E-01-2</b>
<b>UTILITIES, FOR AN ORDER APPROVING A</b>	)	
<b>SERVICE TERRITORY AGREEMENT</b>	)	<b>NOTICE OF APPLICATION</b>
<b>BETWEEN AVISTA UTILITIES AND</b>	)	
<b>KOOTENAI ELECTRIC COOPERATIVE, INC.</b>	)	<b>NOTICE OF MODIFIED</b>
	)	<b>PROCEDURE</b>
	)	
	)	<b>ORDER NO. 28642</b>

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On January 30, 2001, Avista Corporation (dba Avista Utilities) filed an Application for approval of a Service Territory Agreement between itself and Kootenai Electric Cooperative, Inc. On February 6, 2001, Avista supplemented its Application by submitting an "Addendum" to the Service Territory Agreement. Avista requests that the Commission review and approve the Service Territory Agreement and its Addendum pursuant to *Idaho Code* § 61-333(1) (Amended 2000).

**BACKGROUND**

In its Application, Avista notes that the Idaho Legislature amended portions of the Idaho Electric Supplier Stabilization Act (ESSA) in special session on December 8, 2000. In its special session, the Legislature enacted House Bill No. 1 (HB 1) which provides that all service agreements which allocate territory or customers between electric suppliers be filed with the Commission. In particular, HB 1 amended *Idaho Code* § 61-333 and provides in pertinent part that

the commission, shall after notice and opportunity for hearing, review and approve or reject [such] contracts . . . between cooperatives and public utilities. . . . 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)(amended 2000). HB 1 was effective on December 8, 2000 and will sunset (unless extended) on March 1, 2001. See HB 1, § 22. Legislation (HB 142) has been introduced in the Idaho House of Representatives to remove the sunset provision.

## NOTICE OF APPLICATION

YOU ARE HEREBY NOTIFIED that Avista asserts that the Service Territory Agreement is in conformance with the purposes of the ESSA. In particular, Avista maintains that the agreement reduces the duplication of electric facilities and capital expenditures of the parties. In addition, the Application also notes that “this agreement should reduce the possibility of disputes arising between Avista and Kootenai. . . .” Application at 2. The Addendum, executed on or about August 7, 1991, further defines the term “development” and clarifies the “rules” for determining which party may serve new residential customers. The service territory contract and its Addendum are outlined in greater detail below.

### *A. The Initial Service Territory Contract*

YOU ARE FURTHER NOTIFIED that the service contract submitted for the Commission’s review was executed on February 15, 1991. In the contract, Avista and Kootenai agreed on a methodology to provide electrical service to residential developments consisting of “six or more residential lots or parcels, connected by a common street or road system, and platted on a common plat(s).” Agreement § 1.A. The contract provides that electric service to a residential development shall be determined by the provisions for serving a new customer contained in *Idaho Code* § 61-332C.<sup>1</sup> Agreement § 6. The parties agree that electric service to the entire residential development and subsequent additions to the original development shall be determined by which supplier serves at least one lot of the subdivision, where “one of the parties 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 service to first residential building to be constructed within the subdivision.” *Id.* § 4. After one of the parties undertakes to serve one or more lots within the development, then the parties agree “that the remainder of that particular development shall be served solely by that initial serving utility.” *Id.* § 6.

However, if the subsequent construction of a residential development intersects another supplier’s electric service line which was in existence at the time the development’s plat was first filed with the city or county, then

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<sup>1</sup> Generally, *Idaho Code* § 61-332(1) provides that the nearest electric supplier within a quarter-mile of a customer has “the right to serve” the customer. If there is no electric supplier within a quarter-mile of the customer, then the customer has the right to choose a supplier.

service to the development beyond the line of the competing company's service line, will not be determined by this agreement. Instead, the determination as to which utility will serve the area of a continuation of the development will be first decided by application of [the ESSA rules regarding service to new customers]. Upon determination as to which electric supplier will serve the first service entrance within the continuation of the subdivision, then the remainder of that continuation shall be served solely by that determined utility.

*Id.* § 7.

YOU ARE FURTHER NOTIFIED that the duration of the initial contract was for a period of 10 years from the effective date of February 15, 1991. The contract also provides that it "shall be extended automatically for successive periods of ten (10) years upon the same terms and conditions set forth in this agreement unless one of the parties notifies the other not less than sixty (60) days before the end of the initial, or renewal, term of the intent not to renew the agreement." *Id.* § 3. Kootenai has not provided notice to terminate the contract.

YOU ARE FURTHER NOTIFIED that the contract also contains other provisions that address: breach of the contract, severability, and other standard contract conditions.

***B. The Addendum***

YOU ARE FURTHER NOTIFIED that on February 6, 2001, Avista supplemented its Application by filing the Addendum to the service contract executed on or about August 7, 1991. The Addendum further clarifies a term and several conditions in the initial contract. In particular, the term "development" is construed to include existing residential subdivisions "so that a party already serving a subdivision shall, in accordance with the provisions of this Agreement, continue to serve such subdivision." Addendum at 1, § 1.A.

The Addendum also provides that if both parties were serving one or more residential customers in the same residential development,

then this Agreement shall not apply in determining which party is entitled to serve a new service entrance within the development, or any subsequent expansion or additions of the development, but rather the parties shall be governed solely by the provisions of the Idaho Electric Supplier Stabilization Act (Idaho Code 61-332 et seq.).

*Id.* at 2.

YOU ARE FURTHER NOTIFIED that the Addendum also contains a mechanism that would allow the “entitled electrical supplier” to offer the other party the opportunity “to serve a consumer(s), or section of a subdivision.” *Id.* at 2, § 6. If the entitled supplier believes it is in the best interest of either of itself or the consumer(s), the other party may

but is not obligated to, serve the consumer(s) so designated by the entitled party. It is specifically agreed that the party who is the recipient of such consent, shall not be entitled to any further rights or entitlement to serve any other consumer or section of such a development beyond the terms of the consent provided.

It is agreed by and between the parties hereto that all such consents to permit service to consumers or sections of a development, as indicated above, shall be in accordance with the terms of the Electric Supplier Stabilization Act.

*Id.*

#### **NOTICE OF MODIFIED PROCEDURE**

YOU ARE FURTHER NOTIFIED that *Idaho Code* § 61-333(1) requires the Commission to review Service Territory Agreements between public utilities and electric cooperatives. Pursuant to this statute, the Commission must determine whether the allocation of territories or consumers is in conformance with the provisions and purposes of the ESSA.

YOU ARE FURTHER NOTIFIED that the Commission has determined that the public interest may not require a formal hearing in this matter and will proceed under Modified Procedure pursuant to Rules 201 through 204 of the Idaho Public Utilities Commission’s Rules of Procedure, IDAPA 31.01.01.201 through -.204.

YOU ARE FURTHER NOTIFIED that any person desiring to state a position on this Application may file a written comment in support or opposition with the Commission within twenty-one (21) days from the date of this Notice. The comment must contain a statement of reasons supporting the comment. Persons desiring a hearing must specifically request a hearing in their written comments. Written comments concerning this application shall be mailed to the Commission and the Applicant at the addresses reflected below:

COMMISSION SECRETARY  
IDAHO PUBLIC UTILITIES COMMISSION  
PO BOX 83720  
BOISE, IDAHO 83720-0074  
Street Address for Express Mail:

DAVID MEYER, ESQ.  
SENIOR VP AND GENERAL COUNSEL  
TOM B. DUKICH  
DIRECTOR RATES AND CORPORATION  
AVISTA CORPORATION

NOTICE OF APPLICATION  
NOTICE OF MODIFIED PROCEDURE  
ORDER NO. 28642

472 W WASHINGTON ST  
BOISE, ID 83702-5983

1411 E MISSION AVENUE  
PO BOX 3727  
SPOKANE, WA 99220-3727

All comments should contain the case caption and case number shown on the first page of this document.

YOU ARE FURTHER NOTIFIED that if no written comments are received within the time limit set, the Commission will consider this matter on its merits and enter its Order without a formal hearing. If written comments are received within the time limit set, the Commission will consider them and, in its discretion, may set the same for formal hearing.

YOU ARE FURTHER NOTIFIED that the Application together with the Service Territory Agreement and its Addendum, have been filed with the Commission and are available for public inspection during regular business hours at the Commission offices.

YOU ARE FURTHER NOTIFIED that all proceedings in this case will be held pursuant to the Commission's jurisdiction under Title 61 of the Idaho Code and specifically *Idaho Code* §§ 61-332 and 61-333(1).

YOU ARE FURTHER NOTIFIED that all proceedings in this matter will be conducted pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

### **ORDER**

IT IS HEREBY ORDERED that this Application be processed under Modified Procedure. Persons interested in submitting written comments regarding this matter should do so within 21 days of the service date of this Order.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this  
day of February 2001.

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DENNIS S. HANSEN, PRESIDENT

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MARSHA H. SMITH, COMMISSIONER

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PAUL KJELLANDER, COMMISSIONER

ATTEST:

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Jean D. Jewell  
Commission Secretary

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