

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE APPLICATION OF |) | |
| AVISTA CORPORATION, DBA AVISTA |) | CASE NO. AVU-E-01-2 |
| UTILITIES, FOR AN ORDER APPROVING A |) | |
| SERVICE TERRITORY AGREEMENT |) | |
| BETWEEN AVISTA UTILITIES AND |) | |
| KOOTENAI ELECTRIC COOPERATIVE, INC. |) | ORDER NO. 28681 |
| _____ |) | |

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. The Service Territory Agreement adopts a methodology to determine which of the two electric suppliers will provide service to residential development containing six or more parcels. On February 6, 2001, Avista supplemented its Application by a submitting an “Addendum” to Service Territory Agreement.

On February 16, 2001, the Commission issued a Notice of Application and a Notice of Modified Procedure in this matter. The Commission requested that interested persons submit written comments no later than March 9, 2001. The Commission Staff submitted the only written comments and recommended that the Commission approve the Agreement. Based upon our review of the Service Territory Agreement, its Addendum and the lack of any opposition, we find that it is appropriate to approve the Agreement.

BACKGROUND

In its Application, Avista requested that the Commission review and approve the Service Territory Agreement and its Addendum pursuant to the Idaho Electric Supplier Stabilization Act (ESSA), *Idaho Code* § 61-333(1) (2001). In December 2000 and again last month, the Idaho Legislature amended portions of the ESSA. In particular, *Idaho Code* § 61-333 was amended to provide that all service agreements which allocate territory or customers between electric suppliers (such as Avista and Kootenai Electric) be filed with the Commission. *Idaho Code* § 61-333(1) now 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.

House Bill 142 (2001) to be codified at *Idaho Code* § 61-333(1) (2001). As set out more fully in *Idaho Code* § 61-332, the purposes of the ESSA are to: (1) promote harmony among and between electric suppliers; (2) prohibit the “pirating” of consumers served by another supplier; (3) discourage duplication of electric facilities; (4) stabilize the territory and consumers served by the suppliers; (5) actively supervise certain conduct of the suppliers.

THE SERVICE TERRITORY AGREEMENT

The Service Territory Agreement and its Addendum are described in detail in our prior Order No. 28643 issued February 16, 2001. Briefly, the Service Territory Agreement and its Addendum were executed on February 15, 1991 and August 7, 1991, respectively. The Agreement provides that electric service to residential developments consisting of “six or more residential lots or partials, connected by a common-street or road system, and platted on a common plat(s)” shall be considered a residential development. The parties agree that electrical service to an entire residential development and subsequent additions shall be determined by which supplier serves at least one of the lots in the subdivision pursuant to the provisions contained in the ESSA’s Section 61-332C.¹

The parties’ Agreement provides that the term of the contract shall be for ten years. However, the contract also provides that it may be automatically extended “for successive periods of ten (10) years upon the same terms and conditions set forth in this Agreement unless one of the parties” elects to terminate the Agreement. Consequently, the Service Territory Agreement and its incorporated Addendum have been automatically extended for another term, or until February 15, 2011.

THE STAFF COMMENTS

The Commission Staff was the only person to file comment regarding the Service Territory Agreement. The Staff recommended that the Commission approve the Agreement. In particular, Staff noted that “the Agreement, combined with the ESSA, has provided a clear set of guidelines that can be easily followed in the majority of cases involving residential

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

subdivisions.” Staff Comments at 6. Staff also concluded that the Agreement is in compliance with the intent of the ESSA.

DISCUSSION

After reviewing the Application, the Service Territory Agreement and its Addendum, and the pertinent provisions of the ESSA, we find that the Service Territory Agreement should be approved. We note that there were no opposing comments and the only comment submitted supported approval of the Agreement. Avista and the Staff assert that the Agreement reduces the possibility of disputes arising between Avista and Kootenai Electric concerning the provision of electrical service to residential subdivisions. We agree and find that the Service Territory Agreement promotes “harmony among and between electrical supplier furnishing electricity within the state of Idaho.” *Idaho Code* § 61-332(2) (2001). We also find that the Agreement discourages duplication of electrical facilities by allocation of residential customers. *Id.* at 1. Consequently, we conclude that the Service Territory Agreement is in conformance with the purposes of the ESSA.

ORDER

IT IS THEREFORE ORDERED that Avista Corporation’s Application for approval of a Service Territory Agreement between Avista Utilities and Kootenai Electric Cooperative, is approved. More specifically, the Commission approves the Service Territory Agreement dated February 15, 1991 and its Addendum executed on or about August 7, 1991.

IT IS FURTHER ORDERED that pursuant to the terms of the Service Territory Agreement, the Agreement shall continue in force until February 15, 2011.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. AVU-E-01-2 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this order or in interlocutory Orders previously issued in this Case No. AVU-E-01-2. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

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

DENNIS S. HANSEN, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

PAUL KJELLANDER, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

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