

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION)
OF AVISTA CORPORATION TO APPROVE) CASE NO. AVU-E-12-02
AN AGREEMENT ALLOCATING)
TERRITORY WITH CLEARWATER)
POWER COMPANY) ORDER NO. 32490
)**

On February 6, 2012, Avista Corporation dba Avista Utilities applied to the Commission for an Order approving Avista’s January 6, 2011 “Electric Service Letter of Agreement” with Clearwater Power Company. If approved, the Agreement would enable Avista to provide electric service to Clearwater customer Steven A. Henderson under the Electric Supplier Stabilization Act (ESSA), *Idaho Code* §§ 61-332 *et seq.*

On February 15, 2012, the Commission issued a Notice of Application and Modified Procedure that set a March 7, 2012 public comment deadline. *See* Order No. 32455. Staff filed the only comments in the case. Staff recommended the Commission approve the Agreement.

With this Order, the Commission approves Avista’s Agreement with Clearwater.

THE APPLICATION

According to Avista’s Application, Clearwater’s customer currently receives single-phase electric service to a residential dwelling from Clearwater. Application at 1. However, the customer will require three-phase electric service for the shop under construction on his property. Under the ESSA, Clearwater is entitled to provide this three-phase electric service, but Avista can provide the service for substantially less cost due to the proximity of Avista’s overhead distribution lines. *Id.* at 2.

The Application says the parties agree that Avista should provide the three-phase service and that Clearwater shall release the customer to Avista so Avista can also provide the single-phase service. Clearwater will remove its facilities and Avista will extend its existing electrical facilities to provide electric service to the customer’s entire premises. *Id.*

According to the Application, the parties further agree that the electric service line being installed by Avista will not be used as a measuring point to determine Avista’s electric service right under the ESSA. Rather, the location of the poles being removed by Clearwater

will be used as a measuring point to determine Clearwater electric service rights to other customers. *Id.* at 3.

THE ESSA

The ESSA generally prohibits an electric supplier from serving another electric supplier's existing or former customers. *Idaho Code* § 61-332B. As an exception to this general rule, the ESSA will allow 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. *Id.* 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. *See Idaho Code* §§ 61-333(1) and 61-334B(1). As set out in *Idaho Code* § 61-332(2), the purposes of the ESSA are to:(1) promote harmony between electric supplier; (2) prohibit the "pirating" of consumers; (3) discourage duplication of electric facilities; (4) actively supervise the conduct of electric suppliers; and (5) stabilize service territories and consumers.

STAFF COMMENTS

Staff reviewed the parties' allocation agreement to ensure it conforms with the ESSA. Staff notes that the exchange of the customer requires the parties to seek an "exception" to the ESSA's anti-pirating provision. Staff supports the exception request and notes that the exchange of the single customer furthers the purposes of the ESSA by avoiding duplication of facilities and promoting harmony between the two adjacent suppliers. Consequently, Staff recommended that the Commission: find that exchanging the single customer conforms with the purposes of the ESSA, grant an exception to the ESSA's anti-pirating provision, and approve the Agreement.

FINDINGS

Idaho Code § 61-333(1) requires the Commission to review agreements that allocate territories and consumers between electric suppliers, such as Avista and Clearwater.¹ Pursuant to this statute, we must determine whether the allocation of the territory or customer conforms with the purposes of the ESSA. After reviewing the Agreement and Staff's comments, we grant the Application and approve the Agreement in this case. In particular, we find that the Agreement

¹ *See Idaho Code* § 61-332A(4) ("Electric supplier" means any public utility, cooperative, or municipality supplying or intending to supply electric service to a consumer).

avoids the installation of expensive distribution facilities to serve a single customer and promotes harmony between Idaho Power and Clearwater. We further note that there was no public opposition to the Agreement. Based upon these findings, we conclude that the Agreement conforms with the purposes of the ESSA.

ORDER

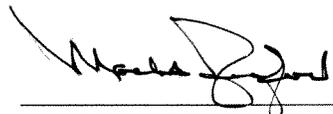
IT IS HEREBY ORDERED that the January 6, 2011 “Electric Service Letter of Agreement” between Avista and Clearwater is approved.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. 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 20th day of March 2012.



PAUL KJELLANDER, PRESIDENT

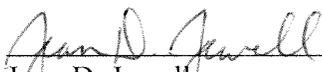


MACK A. REDFORD, COMMISSIONER



MARSHA H. SMITH, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

O:AVU-E-12-02_kk2