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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION TO)
APPROVE AN AGREEMENT ALLOCATING) CASE NO. AVU-E-05-2
SERVICE TERRITORY BETWEEN AVISTA)
CORPORATION DBA AVISTA UTILITIES AND)
KOOTENAI ELECTRIC COOPERATIVE, INC.) COMMENTS OF THE
PURSUANT TO THE IDAHO ELECTRIC) COMMISSION STAFF
SUPPLIER STABILIZATION ACT.)
_____)

COMES NOW the Staff of the Idaho Public Utilities Commission by and through its Attorney of Record, Donald L. Howell II, Deputy Attorney General, and submits the following comments in response to Order No. 29707, issued on February 14, 2005. Staff recommends that the Commission approve the ESSA Agreement between Avista and Kootenai Electric Cooperative, Inc.

BACKGROUND

On January 27, 2005, Avista Corporation dba Avista Utilities filed an Application seeking the Commission's approval of a contract between Avista and Kootenai Electric Cooperative, Inc. to allocate service territories and future consumers. The parties' "Agreement Allocating Territory" is dated November 28, 2004. The Agreement was executed pursuant to the

provisions of the Electric Supplier Stabilization Act (ESSA) and specifically *Idaho Code* § 61-333(1). The parties request that their Application be processed under Modified Procedure.

Avista and Kootenai propose to allocate service territory in the Stateline Business Park located in Post Falls, Idaho. Generally, the boundaries for the business park are: Seltice Way on the north side; the Idaho-Washington border (the “Stateline”) on the west; Interstate 90 on the south; and the eastern boundary runs between Interstate 90 on the south side and Jacklin Road on the north side. The Business Park is roughly divided in half by Baugh Way-Road B. The parties have agreed that Avista and Kootenai will serve the western and eastern portions of the Business Park, respectively. Exhibit C to the Agreement illustrates the exact boundaries in greater detail.

Both parties have existing facilities within the Business Park. Avista and Kootenai are willing and able to supply electric service to consumers within their respective allocated territories. The parties assert that the allocation of service territory will avoid duplication of facilities, avoid disputes between the parties, and provide consumers with the best possible service. The Agreement is also endorsed by the two developers of the Business Park: Greenstone Corporation and Stateline Business Park, LLC. The developers agreed to comply and be bound by the Agreement.

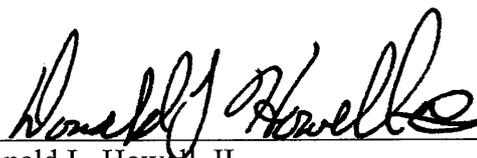
Idaho Code § 61-333(1) provides that electric suppliers may contract for the purpose of “allocating territories, consumers, and future consumers...and designating which territories and consumers are to be served by which contracting electric supplier.” Under the ESSA, both Avista and Kootenai are defined as electric suppliers. *Idaho Code* § 61-332A(4). After notice and opportunity for hearing, the Commission may approve agreements allocating service territories and customers between electric suppliers only upon finding that the allocation is in conformance with the purposes of the ESSA. *Idaho Code* § 61-333A(1). The purposes of the ESSA are to: discourage duplication of facilities; prohibit the “pirating” of consumers; stabilize service territories and consumers; and promote harmony between electric suppliers. *Idaho Code* § 61-332(2).

Idaho Code § 61-333(1) requires the Commission to review territory allocation agreements between public utilities and electric cooperatives. Pursuant to this statute, the Commission must determine whether the allocation of service territory and future consumers is in conformance with the provisions and the purposes of the ESSA.

STAFF RECOMMENDATION

Staff believes the November 28, 2004 Agreement, between Avista and Kootenai Electric Cooperative Inc. to allocate service territories and future consumers, is in conformance with the provisions and purposes of the ESSA. More specifically, the Agreement will allow the parties to avoid duplication of services, stabilize service territories and customers, and promote harmony by avoiding interconnection disputes. *Idaho Code* § 61-332(2). Staff recommends that the Agreement be approved.

Respectfully submitted this 2nd day of March 2005.



Donald L. Howell, II
Deputy Attorney General

Technical Staff: Dave Schunke

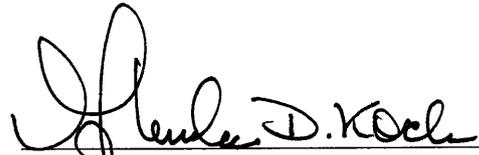
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 2ND DAY OF MARCH 2005, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. AVU-E-05-2, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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