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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
AVISTA CORPORATION TO APPROVE AN) **CASE NO. AVU-E-06-7**
AGREEMENT ALLOCATING TERRITORY)
WITH NORTHERN LIGHTS, INC.) **COMMENTS OF THE**
) **COMMISSION STAFF**
)

The Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Donovan E. Walker, Deputy Attorney General, respectfully submits the following comments in response to the Notice of Application and Notice of Modified Procedure in Order No. 30134, issued on October 2, 2006.

BACKGROUND

On September 11, 2006, Avista Corporation dba Avista Utilities filed an Application to approve an agreement allocating service territory with Northern Lights, Inc. pursuant to the Electric Supplier Stabilization Act (ESSA), *Idaho Code* §§ 61-332 *et seq.*

According to the Application the parties have entered into an agreement pursuant to the ESSA in order to allocate territory, avoid disputes between utilities, and to provide consumers with the best possible service. Both utilities have existing service lines near a new development (Development) in Sandpoint, Idaho, and both utilities are able and willing to supply electric

service to consumers who may establish service entrances in the Development. The utilities have agreed to an allocation of service territory to each utility as set forth in their Agreement.

The Agreement Allocating Territory, as well as a map of the designated service areas (Exhibit B) and a legal description of the boundaries (Exhibit A), was filed with the Application. According to the Agreement Avista and Northern Lights will each be entitled to extend their electric facilities, to the exclusion of the other, within the territory allocated to each as outlined on Exhibit B, and to provide service to customers who locate new electric service entrances within such territory. The Agreement states that, within the territory allocated, each utility shall provide line extensions and electric service pursuant to the provisions of their respective line extension policies, rate schedules, and/or tariffs in force at the time such extensions or services are requested. The Agreement further provides that a line extension installed within the boundaries of the Development to serve an electric service located within the territory allocated by the Agreement shall not be considered an “existing service line” and may not be used as a future measuring point for the purpose of determining which utility is entitled to provide electric service under the ESSA to new service entrances located in territory not allocated pursuant to the Agreement. Additionally, the Agreement states that the utilities current electric service lines as shown on Exhibit B, as well as any line extensions external to the boundaries defined in the Agreement and outlined on Exhibit B which are required to reach existing infrastructures within the Development and which are installed in accordance with the ESSA, may be used to determine future electric service rights to new service entrances located in territory not allocated pursuant to the Agreement. Lastly, the Agreement states that the boundaries set forth by the Agreement and shown on Exhibit B will not be affected by any subsequent changes in lot lines, roadways, or other boundaries within the Development that occur after the date of 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 Northern Lights 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). As set out in *Idaho Code* § 61-332(2), the purpose of the ESSA is to: discourage duplication of facilities; prohibit

“pirating” of consumers; stabilize service territories and consumers; and promote harmony between electric suppliers.

ANALYSIS

Staff has reviewed the territory allocation agreement entered into by Avista Utilities (Avista) and Northern Lights, Inc. (Northern Lights) to ensure conformance with the ESSA. The Application addresses two nonadjacent territories located in Sandpoint, Idaho, which traditionally have been served by multiple electric service providers. The parties entered into an agreement on July 24, 2006 to extend service into the two areas at the exclusion of each other based on the location of existing facilities. One such area that Avista will serve is the Spring Creek Development, which Avista has entered into a customer allocation agreement with Northern Lights and submitted to the Commission for approval in Case No. AVU-E-06-06. This property is located to the east of Boyer Avenue, a main thoroughfare in Sandpoint, and a logical delineating feature for the two utilities service territories. As stated in the referenced case, Avista will be the closest utility to the Development once existing Northern Lights facilities are removed at the request of the developer. The removal of Northern Lights facilities in the proposed Development is necessary to build an access road for construction within the Development. See Case No. AVU-E-06-06.

The second area addressed in the territory allocation agreement is located west of the Development, situated between the Sandpoint Airport and the Great Northern Railway, and is commonly referred to as Lot No. 5. The allocation agreement states that Avista will serve all future customers located within Lot No. 5 along with the adjacent area to the south and east. Northern Lights will provide electric service to customers located to the north of Lot No. 5, which encompasses an area where Northern Lights already has existing service facilities. Avista’s existing facilities enter from the south and west of Lot No. 5, as shown in Exhibit B accompanying the Application. The proposed boundary coincides well with the existing service area of the two utilities, as Northern Lights has existing service immediately to the west and north of its proposed territory and Avista to the south. The general service territory descriptions for the two areas accompany the Application as Exhibit A.

Staff has addressed the service territory allocation associated with the Development in its comments to Case No. AVU-E-06-06, and recommends that the territory and subsequent customer allocation agreement is in conformance with the provisions of the ESSA. Both utilities

mutually agree that Avista will be the closest utility to the Development once Northern Lights removes its existing structures to facilitate construction. Staff has no opposition to the customer allocation agreement as filed in Case No. AVU-E-06-06, nor the accompanying territory agreement proposed in this case. Both utilities, by means of the July 24, 2006 agreement, acknowledge the provisions of the ESSA, specifically *Idaho Code* § 61-332(2). Staff finds that the territory allocation addresses permanent territory boundaries within the proposed area that will not be subject to alteration should lot lines, roadways or other boundaries within the Development change in the future.

The area encompassing and north of Lot No. 5 also serves as a logical boundary for the respective service territories for the two utilities. The agreement takes advantage of the location of existing facilities and sets forth definitive boundaries for service of new customers within this zone. Northern Lights maintains service generally within the north and west areas of Sandpoint, while Avista serves mainly to the south and east of Northern Lights, as shown in the map labeled Exhibit B accompanying the Application.

With that said, Staff does note that the Application is lacking in documentation supporting the efficiency of the service territory allocation. Without documentation of the impact in acquiring the territories or the criteria that Avista uses in deeming that the ESSA provisions are satisfied, Staff must assume that the proximity of existing service facilities equates to cost effective and efficient expansion. The fact that service *within* the allocated territories will be served with exclusivity does not assure that duplication of facilities or inefficient expansion agreements will be avoided in the future as Sandpoint and the surrounding area continues to grow. Staff would strongly urge Avista to be more explicit with the plans and criteria it intends to use when allocating customers and service territories among itself, Northern Lights, and Kootenai Electric.

Starting with the sale of the Northern Idaho service territory from Pacific Power & Light Company to Avista, then known as Washington Water Power Company, Case Nos. PPL-E-94-1/WWP-E-1, the Commission has sought a guiding plan for future service by Avista and Northern Lights, as well as Kootenai Electric. Order No. 25753. The resulting map demonstrated the patchwork distribution of service territories in Northern Idaho, which has and continues to grow since 1994. The scale of the map included as Exhibit B of this filing does not provide any reasonable assurance that efficient service territory expansion is occurring within the city limits of Sandpoint, much less the greater area. When asked by Staff whether a larger map

representing the greater Sandpoint area exists and what sort of guiding plan it has toward service expansion, Avista responded that efforts to draw up an overall expansion agreement have not been successful with Northern Lights. Staff believes that until the utilities agree upon such a plan, ratepayers may be at risk for inefficient investments in infrastructure, whether intended or unintended.

STAFF RECOMMENDATION

Staff recommends the Commission approve the service territory allocation agreement as filed by Avista. Avista and Northern Lights have demonstrated that the agreement is in conformance with the provisions and intent of the ESSA, specifically those found in *Idaho Code* § 61-332(2). While more documentation would be preferred demonstrating the cost efficiency of the agreement, the map supplied as Exhibit B demonstrates that it is in the public interest that the respective utilities service the respective territories outlined in this filing given the location of existing facilities. Furthermore, Staff would recommend the Commission actively support an expansion agreement plan between Avista, Northern Lights, and Kootenai Electric for Northern Idaho. Such agreement would provide that the electric infrastructure is developed in an economically efficient manner, expedite future cases involving new service territory allocation, and assure that the provisions of the ESSA are upheld without collateral impact on existing customers.

Respectfully submitted this 23rd day of October 2006.



Donovan E. Walker
Deputy Attorney General

Technical Staff: Dave Schunke
Bryan Lanspery

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 23RD DAY OF OCTOBER 2006, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. AVU-E-06-07, BY E-MAILING A COPY THEREOF AND BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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