

## DECISION MEMORANDUM

**TO:** COMMISSIONER KJELLANDER  
COMMISSIONER SMITH  
COMMISSIONER REDFORD  
COMMISSION SECRETARY  
COMMISSION STAFF

**FROM:** DON HOWELL

**DATE:** AUGUST 1, 2007

**SUBJECT:** APPLICATION FOR APPROVAL OF A SERVICE TERRITORY AGREEMENT FILED BY AVISTA UTILITIES AND NORTHERN LIGHTS, CASE NO. AVU-E-07-05

On June 20, 2007, Avista Corporation dba Avista Utilities filed an Application seeking the Commission's approval of a contract between Avista and Northern Lights to allocate service territories and future consumers. Northern Lights is an electric cooperative operating in northern Idaho. The parties' "Customer Allocation Agreement" is last dated May 23, 2007. The Agreement was executed pursuant to the provisions of the Electric Supplier Stabilization Act (ESSA) and specifically *Idaho Code* § 61-333(1). On July 10, 2007, the Commission issued a Notice of Application and Modified Procedure requesting comments on the Application. The only party to respond was the Commission Staff.

### THE APPLICATION

Avista and Northern Lights proposed to allocate service territory in a 15-lot residential subdivision known as Spring Haven in Sandpoint, Idaho. The subdivision is being developed by Jerry VanOoyen and Mike Dougherty. Both electric suppliers have existing facilities that can serve the initial 15 lots. The parties have agreed that Northern Lights will serve the initial 15 lots because its facilities are closer to the majority of lots. Agreement at ¶ 1. A plat of the subdivision is attached to the Agreement.

The parties asserted that the allocation of service territory will avoid duplication of facilities, avoid dispute between the parties, and provide consumers with the best possible service. The Agreement recognizes that Avista does not give up "its rights to serve future phases of the Development or adjoining plats thereto, and [the Agreement] may not be used to" determine which supplier may serve other new customers. *Id.* at ¶ 3.

The Agreement is also endorsed by Jerry VanOoyen, the owner-developer of the property. The developers agreed to comply and be bound by the Agreement. Given the agreement of the parties, they recommended that the Application be processed under Modified Procedure. The parties also acknowledged that the Agreement is subject to the Commission's approval. *Id.* at ¶ 4.

### THE ESSA

*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 purposes of the ESSA are to: discourage duplication of facilities; prohibit "pirating" of consumers; stabilize service territories and consumers; and promote harmony between electric suppliers.

### STAFF COMMENTS

Staff recommended that the Commission approve the Agreement. Staff commented that Northern Lights facilities are closer to the majority of lots in the subdivision. After reviewing the Application, Staff determined that the Agreement meets the purposes of the ESSA by discouraging duplication, stabilizing service territories, and promoting harmony between electric suppliers.

### COMMISSION DECISION

Does the Commission approve the Customer Allocation Agreement between Avista and Northern Lights? Does the Commission find the Agreement comports with the goals of the ESSA?



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Don Howell

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