

DECISION MEMORANDUM

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

**FROM: KARL KLEIN
DEPUTY ATTORNEY GENERAL**

DATE: FEBRUARY 10, 2012

**SUBJECT: AVISTA'S APPLICATION TO APPROVE A TERRITORY
ALLOCATION AGREEMENT WITH CLEARWATER POWER
COMPANY, CASE NO. AVU-E-12-02**

On February 6, 2012, Avista Corporation dba Avista Utilities applied to the Commission for an Order approving Avista's Electric Service Letter of Agreement with Clearwater Power Company. 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.*

Avista asks the Commission to process the Application by Modified Procedure. Staff agrees that Modified Procedure should be used.

THE APPLICATION

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

THE ESSA

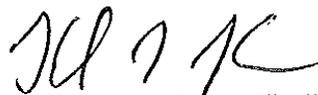
Idaho Code § 61-333(1) provides that electric suppliers may contract for the purpose of “allocating territories, consumers, and future consumers ... and designating which territories and consumers are to be served by which contracting electric supplier.” Under the ESSA, both Avista and Clearwater are 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.

STAFF RECOMMENDATION

Staff recommends that the Company's Application be processed by Modified Procedure with a 21-day comment period.

COMMISSION DECISION

Does the Commission preliminarily find that the public interest may not require a hearing to consider the issues presented in this case, and that this case is appropriate for Modified Procedure under Commission Rules of Procedure 201 through 204?



Karl Klein
Deputy Attorney General

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