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IDAHO PUBLIC  
UTILITIES COMMISSION

Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION OF )  
AVISTA CORPORATION TO APPROVE AN ) CASE NO. AVU-E-12-2  
AGREEMENT ALLOCATING TERRITORY )  
WITH CLEARWATER POWER COMPANY. ) COMMENTS OF THE  
 ) COMMISSION STAFF  
 )  
\_\_\_\_\_ )**

The Staff of the Idaho Public Utilities Commission comments as follows on Avista Corporation's Electric Service Letter of Agreement with Clearwater Power Company.

**BACKGROUND**

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.*

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 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.<sup>1</sup> 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 suppliers; (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 REVIEW AND RECOMMENDATION**

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 provisions. Staff supports the exception request and notes that the exchange of the single customer furthers the purposes of the ESSA by avoiding duplication of

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<sup>1</sup> Avista and Clearwater are "electric suppliers" as defined in the ESSA. *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).

facilities and promoting harmony between the two adjacent suppliers. Consequently, Staff recommends 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 provisions, and approve the Application and Agreement.

Respectfully submitted this 7<sup>th</sup> day of March 2012.



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Karl Klein  
Deputy Attorney General

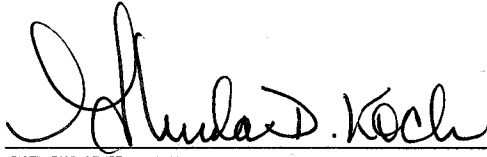
Technical Staff: Cathleen McHugh

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 7TH DAY OF MARCH 2012, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. AVU-E-12-02, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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SECRETARY

CERTIFICATE OF SERVICE