

KARL KLEIN  
DEPUTY ATTORNEY GENERAL  
IDAHO PUBLIC UTILITIES COMMISSION  
472 W. WASHINGTON STREET (83702)  
PO BOX 83720  
BOISE, IDAHO 83720-0074  
Tel: (208) 334-0320  
Fax: (208) 334-3762  
Idaho Bar No. 5156

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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-13-01  
AGREEMENT ALLOCATING TERRITORY )  
WITH KOOTENAI ELECTRIC COOPERATIVE ) COMMENTS OF THE  
 ) COMMISSION STAFF  
 )  
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On January 7, 2013, Avista Corporation dba Avista Utilities applied to the Commission for an Order approving Avista's Developer Release Agreement with Kootenai Electric Cooperative (the "Agreement"). In summary, the Agreement provides that Kootenai Electric releases its rights to provide electric service to certain structures within Copper Basin Construction's development in Coeur d'Alene, and Avista assumes electric service rights to the entire development.

On January 15, 2013, the Commission issued a Notice of Application and Notice of Modified Procedure setting a February 5, 2013 comment deadline. *See* Order No. 32714. The Commission's Staff submits these comments pursuant to that Order, and recommends that the Commission approve the Agreement under the Electric Supplier Stabilization Act (ESSA), *Idaho Code* §§ 61-332 *et seq.*

## BACKGROUND

### 1. 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 allows 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 supplier; (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.

### 2. The Application.

Avista's Application says that Copper Basin Construction is developing a commercial/multi-family property at Seltice Way and Grand Mill Avenue in Coeur d'Alene. Avista has electric service rights on the development's north and east sides and at the service point on the development's south and southwest side. Application at 1. Copper Basin wants to enter into an electric extension agreement that allows Avista to install electric distribution facilities and provide electric service throughout the development. *Id.* at 1-2. Kootenai Electric has thus agreed to release its rights to provide electric service to those structures within Copper Basin's development that are near Kootenai Electric's service points, and Avista has agreed to install the facilities and provide electric service within the development. *Id.* at 3.

Avista says approving the Agreement so Avista can install the facilities and provide electric service throughout Copper Basin's development offers several benefits. First, it creates cost efficiencies by avoiding duplicate services and allowing the developer to coordinate work with one utility. Second, it enhances worker safety by allowing one utility to coordinate the

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<sup>1</sup> Avista and Kootenai Electric 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).

work. Third, it creates electric service continuity in the development and enhances customer satisfaction. Fourth, the developer will be eligible for Avista's demand-side management program and will install more energy efficient equipment. *Id.* at 2.

### STAFF REVIEW AND RECOMMENDATION

Staff reviewed the Agreement to ensure it conforms with the ESSA. Staff notes that allocating service for the development requires the parties to seek an "exception" to the ESSA's anti-pirating provisions. Staff supports the exception request and notes that the planned allocation furthers the ESSA's purposes by avoiding duplication of facilities and promoting harmony between the suppliers. Consequently, Staff recommends that the Commission find that the Agreement 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 5<sup>th</sup> day of February 2013.



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Karl Klein  
Deputy Attorney General


Umisc/avue13.1kk comments

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 5<sup>TH</sup> DAY OF FEBRUARY 2013, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. AVU-E-13-01 BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

PATRICK EHRBAR  
MGR RATES AND TARIFFS  
AVISTA CORPORATION  
PO BOX 3727  
SPOKANE WA 99220-3727  
EMAIL: [pat.ehrbar@avistacorp.com](mailto:pat.ehrbar@avistacorp.com)

LINDA GERVAIS  
MGR REGULATORY POLICY  
AVISTA CORPORATION  
PO BOX 3727  
SPOKANE WA 99220-3727  
E-MAIL: [linda.gervais@avistacorp.com](mailto:linda.gervais@avistacorp.com)

  
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SECRETARY