

STEPHEN M. AYERS  
ATTORNEY AT LAW  
1424 SHERMAN AVENUE, SUITE 100  
COEUR D'ALENE, IDAHO 83814-4045  
PHONE: 208-667-9574  
FACSIMILE: 208-667-9576

RECEIVED  
FILED  
2005 JUN 24 AM 7:59  
IDAHO PUBLIC  
UTILITIES COMMISSION

ISB #1641

ATTORNEY FOR THE APPLICANT

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE APPLICATION )  
OF KOOTENAI ELECTRIC COOPERATIVE, ) CASE NO. 07-E-05-01  
INC. TO APPROVE AGREEMENT TO ) APPLICATION OF  
RELEASE CUSTOMER TO THE CITY ) KOOTENAI ELECTRIC  
OF PLUMMER ) COOPERATIVE, INC.

**I. INTRODUCTION**

Kootenai Electric Cooperative, Inc. (referred to herein as "KEC"), PO Box 278, Hayden, Idaho 83835, is an Idaho nonprofit corporation which furnishes electric service in the state of Idaho to its consumer-members. KEC is a "cooperative" as defined in the Idaho Electric Supplier Stabilization Act (IESSA), Idaho Code §§ 61-332 *et seq.* Pursuant to § 61-333 of IESSA, KEC seeks the approval of the Commission to allocate a consumer as set forth in the Assignment, Assumption and Release of Customer (referred to herein as the "Agreement"), a copy of which is attached and marked Appendix A, attached hereto, and incorporated herein by reference. The Agreement is between KEC and the City of Plummer (referred to herein as "Plummer"). Plummer is an Idaho municipal corporation which owns and operates an electric distribution system and furnishes electric service to its consumers. Plummer is a "municipality" as that term is defined in IESSA. Both KEC and Plummer are "electric suppliers" for the purposes of IESSA. If the Agreement is approved by the Commission, Plummer will provide three phase electric service to Kurt R. Morris

(hereinafter referred to as "Morris"), PO Box 374, Plummer, Idaho 83851-0374, who occupies real property in Section 17, Township 46 North, Range 4 West, Boise Meridian, Benewah County, Idaho. Morris is a "consumer" as that term is defined by IESSA.

KEC requests that this filing be processed under the Commission's modified procedure rules. Communications in reference to this application should be addressed to:

Stephen M. Ayers  
Attorney at Law  
1424 Sherman Avenue, Suite 100  
Coeur d'Alene, Idaho 83814  
(208) 667-9574  
(208) 667-9576 (facsimile)

Larry Bryant  
Marketing Manager  
Kootenai Electric Cooperative, Inc.  
PO Box 278  
Hayden, Idaho 83835  
(208) 765-1200, ext. 1210  
(208) 209-0410 (facsimile)

Donna Spier, City Clerk  
City of Plummer  
PO Box B  
Plummer, Idaho 83851  
(208) 686-1641  
(208) 686-5019 (facsimile)

## **II. PURPOSE FOR REQUEST**

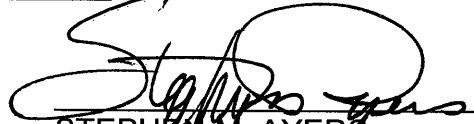
KEC currently provides single phase electric service to Mr. Morris at his real property in Benewah County. Mr. Morris applied to KEC for three phase electric service to his property. In order for KEC to provide three phase service at this location, KEC would be required to extend its facilities approximately three (3) miles at a substantial cost to Mr. Morris. Plummer could provide three phase service to Mr. Morris by making a line extension of approximately one-quarter (1/4) mile. The cost to Mr. Morris for a line

extension by Plummer would be far less than if KEC were to extend its three phase facilities. The City of Plummer is willing to extend its three phase service to Mr. Morris. KEC will continue to provide single phase service to Mr. Morris at this location. KEC and Plummer have entered into the Agreement which becomes effective upon approval by the Commission. This Agreement advances the purposes of IESSA by promoting harmony between electric suppliers and by avoiding the duplication of electric facilities. In addition it will provide Mr. Morris with three phase service at a substantial savings. Mr. Morris desires that Plummer provide three phase service to him and he has reviewed and approved the content of the Agreement.

### III. REQUEST FOR APPROVAL

KEC requests that the Commission approve the allocation of a consumer as set forth in the attached Assignment, Assumption and Release of Customer so that Plummer may extend its facilities to provide three phase electric service to Mr. Morris.

DATED this 22<sup>nd</sup> day of June, 2005.

  
STEPHEN M. AYERS  
Attorney for Kootenai Electric  
Cooperative, Inc.

ASSIGNMENT, ASSUMPTION AND RELEASE OF CUSTOMER

THIS AGREEMENT, dated as of April 6, 2005, is made and entered into by and between The City of Plummer, (hereinafter referred to as the "City"), and Kootenai Electric Cooperative, Inc. (hereinafter referred to as "KEC"), hereinafter sometimes referred to, individually as a "Party, and collectively, as the "Parties".

WITNESSETH:

WHEREAS, City is a municipal corporation of the State of Idaho, owning an electrical distribution system furnishing electricity to the citizens of Plummer and surrounding area;

WHEREAS, KEC is a cooperative electrical system, owning an electrical distribution system furnishing electricity in the area surrounding Plummer;

WHEREAS, Kurt Morris is currently an electrical customer of KEC and has requested three phase power to a location on his property in Section 17, Township 46 N, Range 4 W, B.M., Benewah County, Idaho, which is not available to be supplied by KEC in the close vicinity;

WHEREAS, the parties desire to enter into an agreement pursuant to the provisions of the Idaho Electric Supplier Stabilization Act (Idaho Code §§ 62-332 et seq.) in order to allocate a consumer for the supply of three phase electric service to avoid unnecessary duplication of facilities;

WHEREAS, City has three phase power close to this location and is willing to provide three phase electric service;

WHEREAS, the customer, Kurt Morris, has made application to the City for three phase power in the anticipation of this release; and

WHEREAS, the Parties hereto desire to enter into an Agreement whereby KEC agrees to release Kurt Morris as a customer for the proposed three phase service as an electric customer to City, as set forth herein;

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, it is agreed as follows:

1. PUC Approval. Though the Commission has no jurisdiction over the City, pursuant to the provisions of Idaho Code § 61-331(1) the Idaho Public Utilities Commission does have jurisdiction over KEC with respect to the allocation of electric service territory and consumers. This Agreement shall be filed with the Commission for approval and this Agreement shall become effective upon approval by the Commission. If the Commission rejects this

Agreement, then this Agreement shall be void ab initio. KEC shall prepare and submit the application for approval to the Commission and the City shall join in, and otherwise cooperate, in the application, provided, however, that by such joinder or cooperation the City is not submitting itself to the jurisdiction of the Public Utilities Commission. Upon approval by the Commission, this Agreement shall be binding upon the parties, their successors and assigns.

2. Release of Kurt Morris. KEC agrees to release its right, entitlement and interest in providing three phase electric service to Kurt Morris to a location on his property in Section 17, Township 46 N, Range 4 W, B.M., Benewah County, Idaho.
3. Continuation of Service. City agrees that this release is only for a three phase service and that KEC will continue to serve all current and future single phase electric service to Kurt Morris.
4. Assumption of Obligations. City agrees to accept Kurt Morris as a customer and to provide three phase electric service, under the rates, fees, rules and regulations of the City of Plummer.
5. Effect of Line Constructed. The three phase line extension constructed by the City in accordance with the terms of this Agreement to serve Kurt Morris, his successors and assigns, shall not be considered in determining the right of the parties to serve new service entrances under section 61-332C of the Idaho Code. The line to be constructed is depicted in appendix "A," attached hereto, and incorporated herein by reference.
6. Indemnification and Hold Harmless Protection.
  - 6.1 City specifically and expressly agrees to release, indemnify, defend, and hold harmless KEC, its directors, officers, employees, and agents from any and all claims, demands, suits, losses, costs, and damages of every kind and description, including attorneys' fees, brought or made against or incurred by KEC resulting from, arising out of, or in any way connected with any act, omission, fault, or negligence of City, its employees, agents, representative, or subcontractors of any tier, their employees, agents, or representatives in connection with KEC's performance or nonperformance of its obligations under this Agreement or in any way related to this Agreement.
  - 6.2 KEC specifically and expressly agrees to release, indemnify, defend, and hold harmless City, its directors, officers, employees, and agents from any and all claims, demands, suits, losses, costs, and damages of every kind and description, including attorneys' fees, brought or made against or incurred by City resulting from, arising out of, or in any way connected with any act, omission,

fault, or negligence of KEC, its employees, agents, representative, or subcontractors of any tier, their employees, agents, or representatives in connection with City's performance or nonperformance of its obligations under this Agreement or in any way related to this Agreement.

7. Amendment and Waiver. This Agreement contains all of the terms and conditions bearing upon the subject matter and shall not be modified or varied except by written agreement executed by each of the Parties hereto through authorized representative. If at any time the terms hereto are not strictly adhered to or enforced, such requirements shall not thereby be deemed waived or modified, but shall at all subsequent times and dates be deemed in full force and effect.
8. Assignment of Agreement. Neither Party may assign this Agreement without the prior written consent of the other Party, unless to a successor which acquires all or substantially all of the assets and liabilities of the assignor and assumes in writing the obligations of this Agreement.
9. Severability. If any provision of this Agreement is held invalid for any reason, the remaining provisions of this Agreement shall remain valid and enforceable, and the Parties shall substitute for the invalid provision a valid provision that most closely approximates the intent and economic effect of the invalid provision.
10. Notices. Unless otherwise specified, any notice required under this Agreement shall be given in writing, and shall be effective from the date received by the Party to whom it is provided at the location set forth below. A Party hereto may change the place or address for delivery of notices to it by giving notice to the other Party as thus described.

To KEC:  
Kootenai Electric Cooperative, Inc.  
P.O. Box 278  
Hayden, Idaho 83835-0278

To City:  
City of Plummer  
P.O. Box B  
Plummer, Idaho 83851

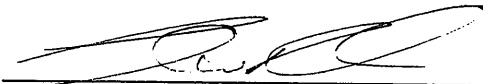
11. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Idaho, excluding any choice of law rules which may direct the application of laws of another jurisdiction.

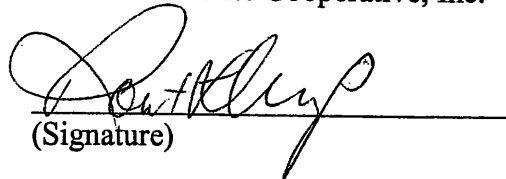
12. Suit or Action. If suit or action is required to interpret or enforce any provision of this Agreement, the prevailing party shall be entitled to cost of action, including attorney fees to the extent deemed reasonable by the court.
13. Headings. The section headings in this Agreement are for convenience only and shall not be considered part of, or used in, the interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate by the respective officers hereto, duly authorized as of the date first above written.

AGREED TO BY:  
The City of Plummer

ACCEPTED BY:  
Kootenai Electric Cooperative, Inc.

  
\_\_\_\_\_  
(Signature)

  
\_\_\_\_\_  
(Signature)

Carl W. Pichel  
\_\_\_\_\_  
(Printed Name)

Robert L. Crump  
\_\_\_\_\_  
(Printed Name)

Mayor  
\_\_\_\_\_  
(Title)

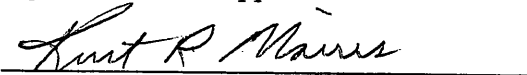
General Manager  
\_\_\_\_\_  
(Title)

3/24/05  
\_\_\_\_\_  
(Date)

3/21/05  
\_\_\_\_\_  
(Date)

CUSTOMER APPROVAL

I am the consumer requesting three phase electric power. I have reviewed the foregoing Agreement and I approve its content.

  
\_\_\_\_\_  
Kurt Morris

4/6/05  
\_\_\_\_\_  
(Date)

