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IDAHO PUBLIC  
UTILITIES COMMISSION

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Attorneys for City of Burley

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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In the Matter of the Application of	)	
United Electric Co-op, Inc. and	)	Case No. <u>GNR-E-03-03</u>
the City of Burley for an Order	)	
Approving a Service Territory	)	<b>APPLICATION</b>
Agreement between the Applicants.	)	

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Pursuant to Rule 51 of the IPUCRP, and Idaho Code § 61-333, United Electric Co-op, Inc. ("United") and City of Burley ("Burley") respectfully apply for Commission approval of a Service Territory Agreement between United and Burley on the grounds and for the following reasons:

1. On December 8, 2000, the Idaho Legislature, meeting in special session amended the Idaho Electric Supplier Stabilization Act, §§ 61-332 through 61-334B of the Idaho Code. Idaho Code § 61-333 provides that any electric supplier may contract in writing with another electric supplier for the purpose of allocating territories, consumers, and future consumers between electric suppliers and designating which territories and consumers are to be served by which contracting electric supplier. The statute further provides that the Commission shall, after notice and hearing review and approve or reject such contracts between electric suppliers. This joint Application is filed with the Commission for approval. Approval of the Commission of Service Territory Agreements is necessary to comply with the purposes of the Electric Supplier Stabilization Act.

2. The Petitioners have for some time had Territory Agreements between them, United as successor in interest to Unity Light and Power and Rural Electric. Such Agreements predated the amendment to Idaho Code § 61-333, and therefore United and Burley seek approval of the Commission of the existing Territory Agreements and Amendments thereto. Copies of the Agreements and Amendments are attached as Exhibits 1, 2 and 3.

3. The Agreements were negotiated between the parties in order to settle a service territory between the parties, provide for stability of service with consumers, to eliminate duplicating of services and to provide safety in the respective territories.

4. For the foregoing reasons and to fulfill the requirements of Idaho Code § 6-333 United and Burley request the Commission, after notice and hearing, approval of the Agreements pursuant to law.

DATED this 12 day of JUNE, 2003.

**PARSONS, SMITH & STONE, LLP**



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137 West 13<sup>th</sup> Street  
P. O. Box 910  
Burley, Idaho 83318

TERRITORY SERVICE AGREEMENT

AGREEMENT, made this 21<sup>st</sup> day of May, 1985,  
between THE CITY OF BURLEY, IDAHO, ("Burley"), and UNITY LIGHT AND  
POWER COMPANY, a corporation, ("Unity").

1. RECITALS: The parties recite and declare:

1.1. Unity and Burley each own and operate an electrical distribution system in Cassia County, Idaho. The utilities are generally contiguous and adjacent on the South, East and West boundaries of Burley except that there are certain existing customers of Unity located within the corporate limits of Burley ("Existing Customers").

1.2. Neither Burley nor Unity are regulated by the Idaho Public Utilities Commission nor are there any other regulatory agencies that regulate service territory of the respective utilities, however, Idaho Code 61-333 authorizes territorial agreements between utilities.

1.3. It is the opinion of Burley and Unity acting through the City Council and Board of Directors that the laws applicable to territory jurisdiction are unclear and ambiguous and as such Unity and Burley desire to enter into an agreement relative to service territory as the same is applicable to their common territorial boundaries, as authorized by Idaho Code 61-333.

1.4. Burley and Unity further believe that a territorial agreement is in the best interest of potential customers, future planning, efficiency, and economy of service.

NOW, THEREFORE, in consideration of the Recitals, the covenants, conditions, the agreements herein contained, the authorization of the law (Idaho Code 61-333), the benefits to be

**Exhibit 1**  
**to Application - United/City of Burley**  
**South Side**

derived by each of the utilities Unity and Burley agree:

2. TERRITORY MAP: Attached to this agreement as Exhibit 1 is a map outlining the territories in which each utility shall, with the exception of the Existing Customers, in the future serve. The territories are illustrated on the map as follows:

2.1. Burley Territory

Within heavy black lines on Exhibit 1.

2.2. Unity Territory.

Outside of heavy black lines on Exhibit 1.

3. MODIFICATION AND ENTIRE AGREEMENT: This agreement constitutes the entire understanding of Unity and Burley and all prior negotiations are deemed merged herein. This agreement may only be modified in writing executed by the duly authorized officials of Burley and the officers of Unity. Until any modification be executed, this agreement shall remain in full force and effect.

4. UNITY TERRITORY: Unity shall be entitled to serve all Customers and future Customers within the area illustrated on the map as the Unity Territory, and Existing Customers within Burley as provided in Paragraph 6.

5. BURLEY TERRITORY: With the exception of Existing Customers, Burley shall be entitled to serve all current and future customers within the territory designated as the Burley Territory on the map.

6. EXISTING CUSTOMERS: As illustrated on the Exhibit 2 & 2A attached to this agreement there are certain Existing Customers of Unity within Burley. Unity may maintain these Customers for so long as it desires and the same shall be considered exceptions to

this Territory Agreement. If the Customers and Unity terminate their relationship as the same now exists with electrical service by Unity to the Customer, then in such event the Customer shall become part of the Burley Territory and serve electrical energy accordingly.

7. AUTHORITY: This agreement has been executed by Burley and Unity pursuant to actions of the City Council and the Board of Directors at meetings duly held. The officers of Unity and the officials of Burley have been duly authorized to execute this agreement.

8. RECORDING: A copy of this agreement shall be recorded in the office of the County Recorder, County of Cassia, State of Idaho.

9. SERVICE OF EACH UTILITY: Notwithstanding the provisions of this agreement and any territories of each utility defined herein, the parties agree that should either or both of the utilities have buildings or other facilities requiring electric service in the territory of the other that nevertheless each utility shall be entitled to serve its own buildings and other facilities located within the territory of each other. This provision shall apply to not only the existing electrical service but to any future electrical service to any building or facility owned by that particular utility.

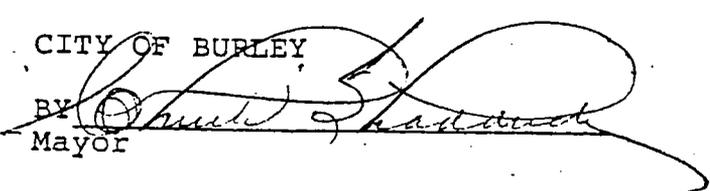
10. ANNEXATION: In the event that Burley should annex lands to its corporate limits that are in the Unity territory nevertheless the annexation shall be subject to the continued service by Unity of any existing or future customers within the annexed area to Burley.

11. TERRITORIAL LINE: The territorial lines on Exhibit 1 are absolute and that is, either Burley or Unity shall be entitled to any Customer, except Existing Customers and each of the facilities or buildings of each utility, on either side of the territorial line. Any footage limitations set forth in any existing or future statutes shall not be applicable to the respective territories and that is, each utility shall be able to serve up to the line separating the areas of the two utilities.

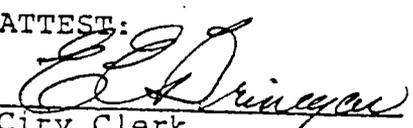
12. AREA MODIFICATION: No modification of the defined territories of Unity and Burley shall be effective until a modification of this agreement has been signed pursuant to paragraph 3 and a map illustrating the altered territory, if any, be recorded in the office of the County Recorder of the County of Cassia, State of Idaho. This paragraph shall not be construed as implying that there will be any subsequent alteration of the territory but in the event circumstances arise that there shall be an alteration of territories then this provision shall govern relative to how and in what manner the territory is modified.

IN WITNESS WHEREOF, this agreement has been executed the day and year first above written.

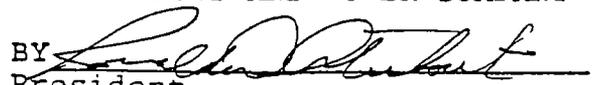
CITY OF BURLEY

BY   
Mayor

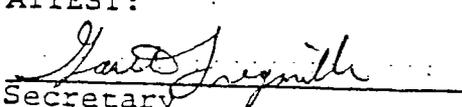
ATTEST:

  
City Clerk

UNITY LIGHT AND POWER COMPANY

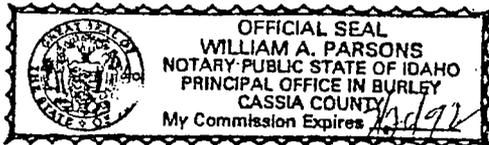
BY   
President

ATTEST:

  
Secretary

STATE OF IDAHO )  
 ) ss  
County of Cassia )

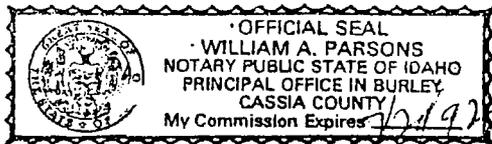
On this 21 day of May in the year of 1985 before me, the undersigned, a Notary Public in and for said State, personally appeared CHUCK SHADDUCK and E. E. BRINEGAR, known or identified to me to be the Mayor and City Clerk of CITY OF BURLEY, the Municipal corporation that executed the instrument or the person who executed the instrument on behalf of said City of Burley, and acknowledged to me that such City of Burley executed the same.



William A. Parsons  
Notary Public for Idaho  
Residing at \_\_\_\_\_

STATE OF IDAHO )  
 ) ss  
County of Cassia )

On this 21 day of May, in the year of 1985, before me, the undersigned, a Notary Public in and for said State, personally appeared RONALD OSTERHOUT and GARTH FREYMILLER, known or identified to me to be the President and Secretary of UNITY LIGHT AND POWERS COMPANY, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.



William A. Parsons  
Notary Public for Idaho  
Residing at \_\_\_\_\_

**MAP**

**CONFIDENTIAL**  
**NAMES & ADDRESSES**  
**OF CUSTOMERS**

SERVICE AREA STABILIZATION AGREEMENT

THIS AGREEMENT entered the 19<sup>th</sup> day of November, 1996, by and between THE CITY OF BURLEY, a municipal corporation of the State of Idaho, hereinafter referred to as "City", and RURAL ELECTRIC COMPANY, a non-profit cooperative corporation of the State of Idaho, hereinafter known as "Rural",

W I T N E S S E T H:

WHEREAS, each party owns and operates an electrical distribution system which serves customers in and around the portion of the incorporated area of the City of Burley which is located north of the Snake River in Minidoka County, Idaho, and

WHEREAS, the parties previously entered a Service Area Agreement on the 6th day of June, 1988, to resolve certain service territory issues pursuant to the Idaho Electric Supplier Stabilization Act, and

WHEREAS, the 1988 agreement did not fully and finally resolve all of the issues between the parties regarding allocation of customers and service area in the north Burley area, and

WHEREAS, it is in the best interests of the parties and the public that the parties further define their respective rights and responsibilities with respect to service of customers in the north Burley area to avoid disputes between the parties regarding extension of service to new customers and to reduce potential safety hazards and costly duplication of lines and facilities,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. Exhibit A, which is attached hereto and incorporated herein by reference, is adopted by the parties to graphically illustrate the allocation of service areas between the parties to this agreement. The City shall serve all new customers in the areas identified as Parcels 1, 2 and 3. Rural will serve all new customers in the areas identified as Parcels 4, 5 and 6 and all of the area north of the south right of way of the Interstate Highway. For purposes of this agreement a "new customer" is one who requests electric service for a facility which has not previously received

service area stabilization agreement  
PAGE 1  
rural\stab.agr\brb

EXHIBIT 2  
(To Application- United/City of Burley)  
North Side

service. A customer who replaces another customer who was previously receiving electric service at the same location shall be served by the utility which served the prior customer at that location. From and after the date of execution of this agreement, neither party shall extend its lines or offer service to any customer who requests electrical energy service in the territory allocated to the other party without written consent of the other party.

2. The parcels to be served by the City of Burley are more particularly described as follows:

Parcel 1: Beginning at the Snake River and the City of Heyburn's western city limits; thence north to East 5th Street North; thence west 300 feet to the existing Burley city limits; thence south 250 feet to the south property (solid cinder block fence) line of the unplatted lots fronting East 5th Street North; thence west 1,016 feet to the east property line of J & L Electric; thence north 250 feet to East 5th Street North; thence west 912 feet to the east side of North Albion Avenue; thence south along the east side of North Albion Avenue to the north boundary of Volco, Inc., and continuing south to the Snake River, which is the south boundary of Parcel 1; thence east along the river to the Point of Beginning.

Parcel 2: Beginning on East 5th Street North at the southwest corner of Century Cinema parking lot, which is 923 feet west of the existing Heyburn City limits; thence north along the west side of the parking lot for 315 feet to an irrigation ditch which parallels the north side of the parking lot; thence east along the irrigation ditch for 182 feet; thence north along the irrigation ditch approximately 603 feet to the south property line of the Lavon Hansen property; thence west along the Hansen property line and Rural pole line easement for 192 feet to Minidoka Avenue; thence northeasterly along Minidoka Avenue to Interstate Highway 84 (I-84); thence west along the south side of I-84 to Minidoka Irrigation District (MID) Drain D14; thence south 767 feet along the east side of the D-14 Drain; thence west 90 feet across the D14 Drain to the east side of the B-4 Canal; thence southwesterly along the east side of the B-4 Canal to West 5th Street North; thence east along West 5th Street North across Highway 27 (Overland

Avenue) along the north side of East 5th Street North to the southwest corner of Century Cinema parking lot, which is the Point of Beginning.

Parcel 3: Beginning at the Snake River on the east side of MID Drain D14; thence northeasterly along the east side of MID Drain D14 to the north side of West 2nd Street North; thence west to North Miller Avenue; thence north along the east side of North Miller Avenue to the south side of West 5th Street North; thence east to State Highway 27; thence south along the west side of Highway 27 to the Snake River; thence southwesterly along the river to the Point of Beginning.

The City shall not serve customers north of the south right of way of the Interstate Highway.

The parcels to be served by Rural Electric Company are described as follows:

Parcel 4: Beginning at the intersection of West 5th North and North Miller Avenue; thence south along the west side of North Miller Avenue to West 2nd Street North; thence east along the south side of 2nd Street North to the east boundary of MID Drain D14; thence southwesterly along the east side of MID Drain D14 to the Snake River; thence westerly along the Snake River to approximately 1000 West road where Rural adjoins Idaho Power Company; thence north along the section line (1000 West) to I-84; thence east to MID Drain D14 (City limits); thence south along the west side of the MID D-14 drain for 767 feet; thence west 90 feet to the west side of the B-4 Canal; thence southwesterly along the B-4 Canal to West 5th Street North; thence east along the south side of West 5th Street North to the Point of Beginning.

Parcel 5: Beginning at East 5th Street North where it intersects with North Albion Avenue; thence south along the west side of North Albion Avenue to the north boundary of Volco, Inc.; thence south to the north boundary of Volco, Inc. and continuing south to the Snake River; thence southwesterly along the Snake River to Overland Avenue; thence north along the east side of Overland Avenue (State Highway 27) to East 5th Street North; thence east along the south side of East 5th Street North to the Point of Beginning.

Parcel 6: Beginning at East 5th Street North and the northwest corner of the Harry Isaak property which is 300 feet west of the Heyburn City limits; thence south 250 feet to the south property line (solid cinder block fence) of the unplatted lots fronting East 5th Street North; thence west 1,016 feet to the east property line of J & L Electric; thence north 250 feet to East 5th Street North; thence east along the south side of East 5th Street North to the southwest corner of Century Cinema parking lot, which is 622 feet west of the Point of Beginning; thence north on the west side of the parking lot for 315 feet to an irrigation ditch which parallels the north side of the parking lot; thence east along the irrigation ditch for 182 feet; thence north along the irrigation ditch approximately 603 feet to the south property line of the Lavon Hansen property; thence west 192 feet along the Hansen property line and Rural pole line easement to Minidoka Avenue; thence northeasterly along Minidoka Avenue to Interstate Highway 84 (I-84); thence east to the City of Heyburn's service area; thence south along Heyburn's west service area boundary to 400 South (Alfresco Road); thence west to the Point of Beginning.

Rural shall serve all customers north of the south right of way of the Interstate Highway.

3. To the extent any conflict exists between the illustration on the map attached as Exhibit A and the descriptions referred to above, the descriptions shall prevail over the illustration on the map.

4. To the extent that either party is currently providing service to customers within the service area assigned to the other party by this agreement, said party shall be entitled to continue to serve said customers. Neither party shall be required to withdraw from the service area allocated to the other, but the right to continue to serve existing customers within the service area of the other shall not be construed to authorize extension of service to new customers within the service area allocated to the other party by this agreement.

5. Nothing contained herein shall prohibit the parties from entering a written agreement to permit the service of a new customer by a party whose distribution system is located in the service area of the other, if the new customer can be served more efficiently and safely from the

existing service lines of the other party or by extension of the existing service lines of the other party, but any such agreement shall be in writing and signed by the appropriate officers after authorization is given by the respective governing boards, and said memorandum shall be appended to this agreement.

6. Each party reserves rights of way and easements for existing distribution lines which will be necessary to continue service to customer it retains pursuant to this agreement.

7. The parties shall exercise their best efforts to exchange the service to Norco adjacent to Kunau Park which is currently served by Rural for Ag-West, which is currently served by City, to improve the safety and reliability of service to both customers.

8.(a) Notwithstanding, the City's agreement to allow Rural to be the exclusive provider of service within the territory granted or reserved to Rural, the City shall have the right to install its own street lights, pumps and other facilities which it hereafter operates within Rural's service area and Rural agrees to deliver electrical energy and power to the City's facilities within Rural's service area on the terms and conditions set forth herein. Distribution service hereunder shall be provided in amounts necessary for the City to maintain culinary water delivery, waste water disposal service, street lights, and other City services to its customers.

(b) Rural shall furnish all transformers and meters (except as otherwise noted hereinafter), at the point of delivery to the City. The service provided by Rural shall include facilities or equipment necessary or used in the delivery to the point of use by the City, and shall include transforming, switching, fusing and lightning arresters at the point of use by the City and with respect to interconnection of Rural's system, at the point of delivery to the City, Rural, at its own expense shall furnish such equipment and devices as are required, provided, however, the City shall install capacitors on the load side of the pump panel contactor, adequate to maintain a 95% power factor at all of its pump motors.

(c) Electric power and energy distributed hereunder will be delivered to the City at the nominal delivery voltages necessary and will be measured by metering at each individual point of delivery by Rural. Rural will read all meters monthly on approximately the same date each month. The City shall have

the right to be present at and participate in all meter readings and testing. The City may take meter readings each month or at the beginning and end of each year jointly with Rural to confirm the energy used.

(d) The City shall reimburse Rural for energy (kwh) and demand (kW) at the current Rural retail commercial rate (minus the monthly customer charge), which is subject to adjustment from time to time, and which may be modified under separate agreement between the City and Rural. In the event that the City desires to negotiate a separate agreement for a time of day metering rate, the City shall pay to Rural the cost of the specialized meter and installation in order to account for the time of day usage (both diurnal and nocturnal periods), seasonal periods, light load hours, heavy load hours, coincidental, and non-coincidental demand peaks, and any other data acquisition required to put the separate agreement into effect.

(e) Rural shall submit bills to the City on or before the first working day of each month for service furnished during the preceding month, and payments shall be due and payable by the City on the tenth day of the month immediately succeeding the date each bill is submitted.

(f) The City shall not be required to purchase a membership in Rural to receive electrical services, and it shall not receive a share of patronage savings because it will not be a member and because it will enjoy a preferential rate which approximates a wheeling charge.

9. In the event the City elects to impose a franchise fee for service of customers of Rural which are located within the City, including territories which may be annexed to the City in the future, Rural agrees to collect said franchise fees from its customers within the annexed area and transmit payment to the City not less than quarterly pursuant to the terms of the applicable franchise ordinance of the City. Rural reserves the right to contest the validity of any franchise fee which would have a detrimental economic impact on Rural or its customers who would be subject to a franchise fee.

10. In operating and supplying electrical services within its service area within areas next to the City, Rural shall comply with and conform to all safety regulations promulgated by the American National Standards Institute and entitled "National Electrical Safety Code", together with all state and federal laws regulating Rural's operations in any reasonable operations imposed by the City; provided, however,

that such City regulations shall not be more burdensome nor restrictive than those imposed by the City upon its own electric department. Rural also agrees to notify customers within the City limits of the need to acquire a City electrical permit for new wiring or rewiring of buildings.

11. This agreement shall remain in full force and effect as long as each of the parties shall continue to operate as electrical suppliers under their present form of ownership. In the event the City should terminate operations as an electrical supplier, the boundary lines establishing the respective service areas shall remain in effect as to Rural and the successor to the City's service area. In the event that Rural should cease to operate as an electrical cooperative within its service area, whether by sale of part or all of the service area or by change in the form of ownership of Rural to a stock company or proprietorship other than a cooperative, the service area established by this agreement shall remain the same.

12. Neither party shall be permitted to extend its service into the service area granted to the other party by this agreement by acquiring the service area of any electrical supplier which is not a party to this agreement.

13. In the event either party shall be required to commence legal action to enforce any term or condition of this agreement, said party shall be entitled to recover reasonable costs and attorney fees in addition to any other relief said party may obtain.

14. A copy of this agreement shall be recorded in the office of the County Recorder of Minidoka County, Idaho.

15. This agreement may only be modified by an instrument in writing signed by the authorized representatives of Rural and the City. Upon execution of any modification, said agreement shall be recorded in the office of the County Recorder of Minidoka County, Idaho. No oral modifications of this agreement shall be enforceable.

16. This agreement has been executed by the undersigned pursuant to a resolution of the City Council of the City of Burley and a resolution of the Board of Directors of Rural Electric Company at meetings held in conformance with the statutes and bylaws applicable to the respective entities.

17. This agreement supersedes the Service Area Agreement between the parties dated June 6, 1988.



STATE OF IDAHO            )  
                                  ) ss.  
County of Cassia         )

On this 25<sup>th</sup> day of November, 1996, before me the undersigned notary public in and for said state, personally appeared George H. Jones, as president, and Wade D. Smith, as secretary, known to me to be the president and secretary of the corporation that executed the instrument or the persons who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

Daniel J. Chisholm  
Notary Public  
Residing at Harper  
My Commission expires 7-14-2000

**MAP**

**AMENDMENT TO TERRITORY SERVICE AGREEMENT**

AGREEMENT made this 16<sup>th</sup> day of May, 2003, between CITY OF BURLEY, IDAHO, ("BURLEY") and UNITED ELECTRIC CO-OP, INC. ("UNITED").

1. **RECITALS**: The parties recite and declare:

1.1 On May 21, 1985 Burley and Unity Light and Power Company entered into a Service Territory Agreement for electric service customers.

1.2 United is the successor in interest of Unity Light and Power by consolidation on January 1, 1998.

1.3 The parties desire to amend the Service Territory Agreement in the following particulars.

2. **EXHIBIT A**: Exhibit 1 to the Service Territory Agreement is amended to be Exhibit A (2002-Amendment), a copy is attached hereto, being the map of the territories.

3. **IPUC APPROVAL**: The statute requires by the Idaho Public Utilities Commission and the parties shall file appropriate petitions with the Commission to seek its approval now and in the future if required.

4. **EXISTING CUSTOMERS**: Paragraph (6) is amended by providing that existing customers are illustrated on Exhibit A (2002-Amendment) and a listing of the current customers and the meter numbers are attached as Exhibit B.

5. **MEMORANDUM OF NOTICE**: The parties shall record in the office of the County Recorder, Cassia County Idaho a notice of Territory Agreement because the territory map is larger than the Recorder can film and record.

IN WITNESS WHEREOF the parties have executed this Agreement.



CITY OF BURLEY

BY [Signature]  
Mayor

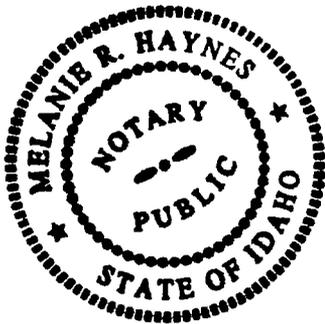
[Signature]  
Clerk

UNITED ELECTRIC CO-OP, INC.

By [Signature]  
Ron Osterhout, President

STATE OF IDAHO            )  
  ) ss  
County of Cassia         )

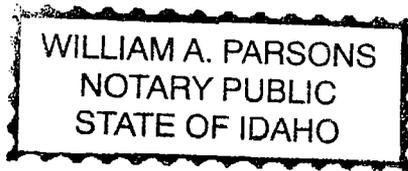
On this 13<sup>th</sup> day of May, in the year 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared **JON ANDERSON**, known or identified to me to be the **MAYOR OF THE CITY OF BURLEY** whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.



[Signature]  
Notary Public for Idaho  
Residing at Paul, Idaho  
My Commission Expires: 1/20/2004

STATE OF IDAHO )  
 ) ss  
County of Cassia )

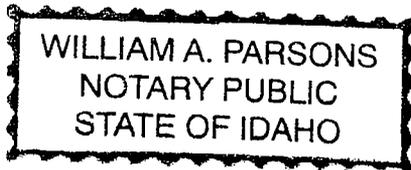
On this 13 day of MAY, in the year 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared **MELANIE HAYNES**, known or identified to me to be the **CLERK OF THE CITY OF BURLEY** whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.



William A. Parsons  
Notary Public for Idaho  
Residing at Burley  
My Commission Expires: 7/20/04

STATE OF IDAHO )  
 ) ss  
County of CASSIA )

On this 13 day of MAY, in the year 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared **RON OSTERHOUT**, known or identified to me to be the **President of United Electric Co-op, Inc.**, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.



William A. Parsons  
Notary Public for Idaho  
Residing at Burley  
My Commission Expires: 7/20/04

(UNITED\BurleyAmendment.wpd)

**CONFIDENTIAL**  
**NAMES & ADDRESSES**  
**OF CUSTOMERS**