

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
UNITED ELECTRIC CO-OP, INC. AND THE)	CASE NO. GNR-E-03-3
CITY OF BURLEY FOR AN ORDER)	
APPROVING A SERVICE TERRITORY)	
AGREEMENT PURSUANT TO IDAHO CODE)	ORDER NO. 29355
§ 61-333(1).)	

On June 20, 2003, the United Electric Co-op and the City of Burley filed an Application for approval of their Territory Service Agreement pursuant to the Idaho Electric Supplier Stabilization Act (ESSA), codified at *Idaho Code* §§ 61-332 *et seq.* United is the successor co-op entity following the consolidation of Rural Electric Company and Unity Light & Power. Both United and the City supply electric service to their respective consumers in adjacent and contiguous service territories.

In Order No. 29289 the Commission issued a Notice of Modified Procedure soliciting public comment on the parties' Agreement. The Commission Staff submitted the only comment and recommended the Commission approve the Application. After reviewing the Application, Agreement and the Staff comments, we approve the Application.

THE ESSA

The purpose of the ESSA is to promote harmony among and between electric suppliers furnishing electricity within Idaho. More specifically, the ESSA: (1) prohibits the "pirating" of consumers already served by another supplier; (2) discourages duplication of electric facilities; (3) actively supervises certain conduct of electric suppliers; and (4) stabilizes the territories and consumers served by such electric suppliers. *Idaho Code* § 61-332. Under the ESSA, an "electric supplier" is any public utility, cooperative, or municipality supplying or intending to supply electric service to a consumer. *Idaho Code* § 61-332A(5).

Idaho Code § 61-333(1) provides that any electric supplier may contract with any other electric supplier 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, all agreements or contracts for the allocation of service territories or consumers shall be filed with the Commission. *Idaho Code* § 61-333(1). This

section further provides that the Commission may, after notice and opportunity for hearing, “approve or reject contracts . . . between municipalities and cooperatives.” The Commission “shall approve such contracts only upon finding that the allocation of territories or consumers is in conformance with the provisions and purposes of” the ESSA. *Id.*; *Idaho Code* § 61-334B.

Idaho Code § 61-334B(1) also allows the Commission to grant an exception to the anti-pirating provision of the ESSA found at *Idaho Code* § 61-332B. Before granting such an exception, the Commission must find that granting such a request is consistent with the purposes of the ESSA.

THE APPLICATION

The parties asked the Commission to approve their “Territory Service Agreement” dated May 21, 1985, and two subsequent “amendments” dated November 19, 1996¹ and May 6, 2003, respectively. The 1985 Agreement and its subsequent amendments establish service territories for each party and each party shall serve all new customers in their respective service areas. Agreement at ¶¶ 4 and 5. The Agreement and the amendments also recognize that the parties serve customers located in the other party’s service area and service to these customer shall continue. *Id.* at ¶ 6, Exhibit 2, ¶ 4.

The 1996 amendment provides that the City shall have the right to install its own streetlights, pumps and other facilities for the delivery of city services located within United’s service territory. Exhibit 2, ¶ 8. United also agrees to deliver electrical service to the City’s facilities within United’s service area. Paragraph 7 of the 1998 amendment states that the parties shall use their best efforts to exchange two customers: Norco (then served by United) and Ag-West (then served by the City). *Id.* at ¶ 7.

The 1996 amendment also recognizes that there may be instances where it is more efficient for a new customer located in one service territory to be served by the other electric supplier. In such cases, the parties may enter into 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 [supplier], if the new customer can be served more efficiently and safely” by the other party. *Id.*

¹ The first amendment (identified as Exhibit No. 2) is actually a “Service Area Agreement” entered into between Rural Electric Company and the City of Burley. As previously mentioned, United is the successor to Rural Electric. This Agreement superseded a Service Area Agreement between Burley and Rural Electric dated June 6, 1988.

at ¶ 5. If the parties enter into such an agreement, it shall be appended to the Agreement and its amendments. *Id.*

The parties assert that their Agreement comports with the purposes of the ESSA. The Application states that the Agreement and the amendments were negotiated to settle and establish service territories between the parties, to provide stability and safety in service to consumers, and to eliminate duplication of services. Application at ¶ 3. Because the agreements predate the 2000 and 2001 amendments to the ESSA, the parties now request that the Commission approve the Agreement. Exhibit 3, ¶ 3

STAFF COMMENTS

The Staff recommended approval of the 1985 Agreement and the subsequent amendments. Staff commented that the agreements between the parties appear to provide the least-cost service option for customers. In addition, the agreements comply with the ESSA by drawing boundaries that partially identify each supplier's service territory. Staff believes that the Agreement and the amendments comply with the purposes and provisions of the ESSA.

Staff also confirmed that the customer exchange involving Norco and Ag-West was completed in the summer of 2002. Under these circumstances, Staff stated that granting an "exception" to the anti-pirating provision of the ESSA appears reasonable. *See Idaho Code* § 62-334B(1).

Staff also addressed one other issue contained in paragraph 13 of the 1996 amendment. This paragraph provides that the prevailing party in any legal action arising under the parties' agreements be entitled to recover reasonable attorney fees. Staff explained that prior to the amendments to the ESSA enacted in December 2000 and February 2001, *Idaho Code* § 61-334B provided that any supplier whose rights under the ESSA are in jeopardy, may bring suit in district court. *Idaho Code* § 61-334A now provides an aggrieved customer or supplier "may file a complaint with the commission" and the Commission shall resolve the matter. *See Idaho Code* §§ 61-334A(2-3); 61-334B(3). In other words, the resolution of disputes was removed from the jurisdiction of the Courts and is to be submitted to the Commission. Under the Public Utilities Law, the Commission does not have authority to award attorney's fees other than intervenor funding pursuant to *Idaho Code* § 61-617A.

FINDINGS

Having reviewed the parties' "Territory Service Agreement," its two amendments and the Staff's supporting comments, we find it is reasonable to approve the Application and the agreements. We find the 1985 Agreement and the amendments are consistent with the purposes of the ESSA. More specifically, we find that they promote harmony between the electric suppliers, discourage duplication of facilities, and in particular, stabilize the territories and consumers served by these two electric suppliers. There were no opposing comments.

We further find that the exchange of the two customers is consistent with the purposes of the ESSA. Given the facts that the customers did not object, all costs associated with the exchange were borne by the parties, and the transfer has already taken place, it is appropriate to grant an exception. Consequently, we find that it is reasonable to grant an exception to the anti-pirating provision of *Idaho Code* § 61-332B. *See Idaho Code* §§ 61-334B(1); 62-333(1).

The parties also contemplate that there may be instances where it is more efficient for a new customer located in one service territory to be served by the other electric supplier. In such instances, the parties will execute a written agreement and append it to their Territory Agreement and the amendments. Exhibit 2 at ¶ 5. We find this provision is appropriate and reasonable because it promotes efficiencies and harmonies between suppliers. We further find it appropriate that the affected new customer be apprised of the proposed substitution of supplier. When the parties enter into such an agreement, the agreement shall be submitted to the Commission for its review and approval.

Staff also made one other comment that merits discussion. The Staff observed that paragraph 13 of the 1996 amendment provides that the prevailing party in any legal action is entitled to recover reasonable attorney fees. As Staff noted, the 2000 and 2001 amendments to the ESSA remove resolution of ESSA disputes from the district courts and authorize the Commission to resolve these disputes. *See Idaho Code* § 61-334A. Without reforming the contract, we note that the Commission does not have authority to award attorney fees other than as provided by *Idaho Code* § 61-617A.

ORDER

IT IS HEREBY ORDERED that the Application filed by United Electric Co-op and the City of Burley to approve their "Territory Service Agreement" dated May 21, 1985, and two


subsequent “amendments” dated November 19, 1996 and May 6, 2003, respectively, are approved as conditioned above.

IT IS FURTHER ORDERED that the Commission grants the parties an exception to the anti-pirating provision of the ESSA pursuant to *Idaho Code* § 61-334B for the exchange of the two customers.

IT IS FURTHER ORDERED that if the parties enter into a written agreement to substitute one supplier for the other pursuant to paragraph 5 of the 1996 amendment, that such an agreement shall be submitted to the Commission for its review. The agreement shall disclose that the affected customer has consented to the substitution of the supplier.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. GNR-E-03-3 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. GNR-E-03-3. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* §§ 61-626, 61-334B(3).

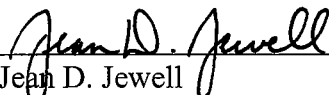
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 14th
day of October 2003.


PAUL KJELLANDER, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


DENNIS S. HANSEN, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

bls/O:GNRE0303_dh2