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IDAHO PUBLIC
UTILITIES COMMISSION

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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its attorney of record, Donald L. Howell, II, Deputy Attorney General, and submits the following comments in response to Order No. 29289 issued on July 9, 2003.

APPLICATION

On June 20, 2003, United Electric Co-op, Inc. and the City of Burley filed an Application for approval of a Service Territory Agreement pursuant to the Idaho Electric Suppliers Stabilization Act (ESSA). United is the successor 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. *Idaho Code* § 61-332A(4).

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. The Agreement and the amendments also recognize that the parties serve customers located in the other party's service area. The Application states that the initial Agreement and the two 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.

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 No. 2, ¶ 8. United also agrees to deliver electrical service to the City's facilities within United's service area.

STAFF COMMENTS

In December 2000 and February 2001, the Idaho Legislature amended portions of the ESSA. In particular, *Idaho Code* § 61-333 was amended to provide that all service agreements that allocate territory or customers between electric suppliers be filed with the Commission. *Idaho Code* § 61-333(1) now provides in pertinent part that

the commission shall after notice and opportunity for hearing, review and approve or reject [such] contractsbetween 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 this act.

Idaho Code § 61-333(1) (2001). As set out more fully in *Idaho Code* § 61-332, the purposes of the ESSA are to: (1) promote harmony among and between electric suppliers; (2) prohibit the "pirating" of consumers served by another supplier; (3) discourage duplication of electric facilities; (4) stabilize the territory and consumers served by the suppliers; and, (5) actively supervise certain conduct of the suppliers.

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.

The Agreement appears to provide the least cost service option for customers and complies with the ESSA by drawing boundaries that partially identify each supplier's service territory. Staff believes that the Agreement contained in this Application fulfills the purposes and provisions of the ESSA that have been previously stated.

Paragraph 7 of the 1996 Agreement provides for the parties to the exchange United's customer Norco with the City's customer Ag-West. United has advised the Staff that the exchange was completed in the summer of 2002. Under these circumstances, granting an "exception" to the anti-pirating provision of the ESSA appears reasonable when considering the purposes of the ESSA. *Idaho Code* § 61-334B(1).

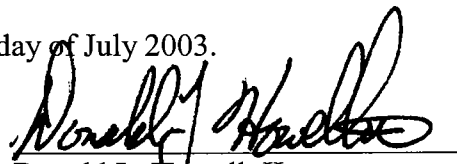
Finally, Staff notes that Paragraph 13 of the 1996 Agreement provides that the prevailing party in any action arising under the Agreement is entitled to recover reasonable attorney fees. Prior to the aforementioned modifications to the ESSA, *Idaho Code* § 61-334B provided that any supplier whose rights under the ESSA are in jeopardy, may bring suit in district court. This section was repealed and amended in December 2000 and February 2001.

Idaho Code § 61-334A now provides that 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, resolution of disputes was removed from the court's jurisdiction and was to be submitted to the Commission. Under the Public Utilities Law, the Commission does not have authority to award attorney fees other than intervenor funds pursuant to *Idaho Code* § 61-617A. See *Idaho Power Company v. Idaho PUC*, 102 Idaho 744, 639 P.2d 442 (1981).

STAFF RECOMMENDATION

Staff recommends approval of the Agreement.

Respectfully submitted this 25th day of July 2003.


Donald L. Howell, II
Deputy Attorney General

Technical Staff: Keith Hessing

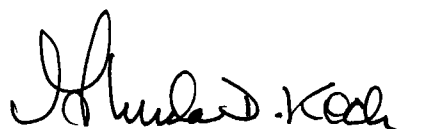
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 25TH DAY OF JULY 2003, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. GNR-E-03-3, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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