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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
UNITED ELECTRIC CO-OP, INC. AND THE) CASE NO. GNR-E-03-4
EAST END MUTUAL ELECTRIC COMPANY,)
LTD FOR AN ORDER APPROVING A SERVICE) STAFF COMMENTS
TERRITORY AGREEMENT PURSUANT TO)
IDAHO CODE § 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. 29284 issued on July 8, 2003.

APPLICATION

On June 20, 2003, United Electric Co-op, Inc. and East End Municipal Electric Company filed an Application for approval of a Service Territory Agreement pursuant to the Idaho Electric Supplier Stabilization Act (ESSA). United is the successor entity following the consolidation of Rural Electric Company and Unity Light & Power. Both Co-operatives supply electric service to their respective consumers in adjacent and contiguous service territories.

On May 30, 2003, East End and United entered into their Stabilization Agreement. The Agreement establishes separate service territories for each party. Each party is responsible for serving all new customers in their defined service areas. Exhibit No. 1 at ¶ 2. To the extent that either party is currently providing services to consumers within the service area assigned to the

other party, the existing supplier shall continue to serve these pre-existing customers. *Id.* at ¶ 3; Exhibit No. 2.

The Agreement also recognizes that United has a substation located in the East End service territory. The parties agree that United is entitled to leave “the substation in the East End territory without being in violation of the Agreement, provided however, United shall not expand its customer base in the East End territory by virtue of having the substation so located.” *Id.* at ¶ 11.

The Agreement also states 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 [the] party whose distribution system is located in the service area of the other [supplier].... Such agreement shall be in writing, authorized by the respective governing board of each party, and when executed shall be appended to this agreement. The entering into such agreement is discretionary with either party and neither party shall have the right of action against the other for the exercise of such discretion.

Id. at ¶ 6.

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] contracts between 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.

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.

The Agreement also provides

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 parties shall continue to serve said customer.

Id. at ¶ 3; Exhibit No. 2.

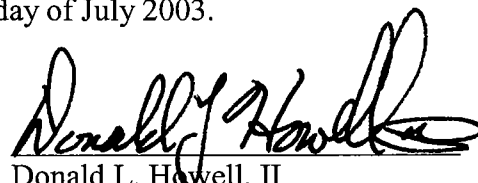
Finally, Staff notes that Paragraph 5 of the Agreement provides that the prevailing party in any action arising under the Agreement is entitled to recover reasonable attorney fees. Prior to the aforementioned modifications to the ESSA, *Idaho Code* § 61-334B provided that any supplier whose rights under 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 24th day of July 2003.


Donald L. Howell, II
Deputy Attorney General

Technical Staff: Keith Hessing

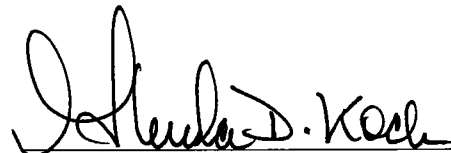
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 24TH DAY OF JULY 2003,
SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE
NO. GNR-E-03-4, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE
FOLLOWING:

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CERTIFICATE OF SERVICE