

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE APPLICATION OF</b>	)	
<b>UNITED ELECTRIC CO-OP, INC. AND THE</b>	)	<b>CASE NO. GNR-E-03-5</b>
<b>CITY OF HEYBURN FOR AN ORDER</b>	)	
<b>APPROVING A SERVICE TERRITORY</b>	)	
<b>AGREEMENT PURSUANT TO <i>IDAHO CODE</i></b>	)	
<b>§ 61-333(1).</b>	)	<b>ORDER NO. 29343</b>
	)	

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On June 20, 2003, United Electric Co-op, Inc. and the City of Heyburn filed an Application for approval of their service territory 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. 29280 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, the Agreement and the Staff comments, we approve the Application as set out in greater detail below.

**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 a request is consistent with the purposes of” the ESSA.

### **THE APPLICATION**

The parties ask that the Commission approve their “Service Area Stabilization and Wheeling Agreement” dated February 14, 1996. In the Agreement, United’s predecessor Rural Electric and the City agreed to establish separate service territories for each party in Minidoka County. The Agreement also addressed the exchange of customers and United agreed to transfer distribution facilities serving the exchanged customers. Exhibit No. 1, ¶¶ 1-2, 4. The Agreement provided 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. *Id.* at ¶ 5. United also agreed to deliver electric service to the City’s facilities within United’s service area.

The Application states that the Agreement was 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 Agreement predated the 2000 and 2001 amendments to the ESSA, the parties now request that the Commission approve the Agreement.

The Parties assert that their Agreement comports with the purposes of the ESSA. More specifically, their Agreement provides for stability of services to consumers, eliminates duplication of facilities, and promotes the public safety in their respective service territories. Application at ¶ 3.

### **STAFF COMMENTS**

The Staff recommended approval of the Agreement. The Staff noted that the Agreement appears to provide the least cost service option for customers and complies with the

ESSA by drawing boundaries that identify each supplier's service territory. The Staff asserts that the Agreement fulfills the purposes and provisions of the ESSA.

Staff also reported on the transfer or exchange of customers addressed in the 1996 Agreement. The single residential customer who was to be transferred from United to the City of Heyburn (§ 1.C) was never transferred because the residence was removed. Another customer who was to be "temporarily" transferred from United to the City (§ 1.D) was not transferred because the parties decided not to extend the "neutral" line to serve this customer. Extension of the neutral would have caused an unsafe clearance condition. Finally, the four customers in the City's service territory that were being served by United (§ 1.E) are still being served by United because this area has not yet been annexed by the City. If the annexation does occur, Staff recommended that the parties obtain the consent of the customers to be transferred from one supplier to the other.

Staff also addressed one other issue contained in paragraph 18 of the Agreement. This paragraph provides that the prevailing party in any legal action arising under the Agreement 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' "Service Area Stabilization and Wheeling Agreement" and the Staff comments, we find it is reasonable to approve the Application and Agreement. We find the Agreement is consistent with the purposes of the ESSA. More specifically, we find that it promotes harmony among the electric suppliers, discourages duplication of facilities, and in particular, stabilizes the territories and consumers served by these two electric suppliers. There were no opposing comments.

Because no customer transfer or exchange has taken place, granting an exception from the anti-pirating provisions of the ESSA is premature. If and when a transfer of customers between the parties is contemplated, we find that it is appropriate for the affected customers to be notified and for the application to state whether they consent to the proposed transfer from one supplier to another. We believe that informing customers is an appropriate condition prior to formally considering whether an exception from the anti-pirating provision is warranted. See *Idaho Code* § 61-334B(1), (2).

Staff also made one other comment that merits discussion. The Staff observed that paragraph 18 of the Agreement 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 authorizes 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 City of Heyburn to approve a “Service Area Stabilization and Wheeling Agreement” dated February 14, 1996 is approved as conditioned above.

IT IS FURTHER ORDERED that before filing an application to transfer customers and for an exception to the anti-pirating provision of the ESSA, affected customers shall be notified of the suppliers’ desire to exchange suppliers. An exception application shall disclose whether the affected customers consent to the transfer.

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-03-5 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-03-5. 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).

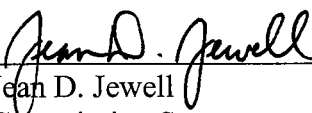
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 8<sup>th</sup>  
day of October 2003.

  
PAUL KJELLANDER, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

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