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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-03-5
UNITED ELECTRIC CO-OP, INC. AND THE)
CITY OF HEYBURN 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. 29280 issued on July 7, 2003.

APPLICATION

On June 20, 2003, United Electric Co-op, Inc. and the City of Heyburn filed an Application for approval of a service territory contract 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 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 five customers and United agreed to transfer distribution facilities serving the exchanged customers. Exhibit No. 1, ¶¶ 1-2, 4. One customer moves from United to the City and four customers will move from United to the City when the City annexes the underlying properties. *Id.* at ¶1(C) and (E). 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 amendments to the ESSA, the parties now request that the Commission approve the Agreement.

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 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; (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 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.

With regard to the transfer of customers discussed in the agreement, United Electric Coop has provided the following updated information. The single customer who was to be transferred from Rural (i.e., United) to the City of Heyburn (Paragraph 1.C) was never transferred because the house was removed. The single customer who was to be "temporarily" transferred from United to the City (Paragraph 1.D) was not transferred, even on a temporary basis, because it was decided to not extend the "neutral" line, which would have caused the unsafe clearance condition. Finally, the four customers in the City's service territory that were being served by United (Paragraph 1.E) are still being served by United because that area has not yet been annexed by the City, which is a provision in the Agreement. Under these latter circumstances, an exception to the anti-pirating provision of the ESSA appears reasonable if the transfer were to occur when considering the purposes of the ESSA. *Idaho Code* § 61-334 B(1).

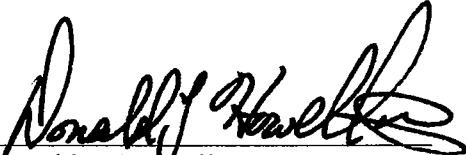
Finally, Staff notes that Paragraph 18 of the Agreement provides that the prevailing party to the Agreement may recover reasonable attorney fees if that party commences an action to enforce the Agreement. At the time this Agreement was executed in 1996, *Idaho Code* § 61-334B provided that any supplier 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, 639P.2d 442 (1981).

STAFF RECOMMENDATION

Staff recommends approval of the Agreement.

Respectively submitted this ^{23rd} day of July 2003.



Donald L. Howell, II
Deputy Attorney General

Technical Staff: Keith Hessing

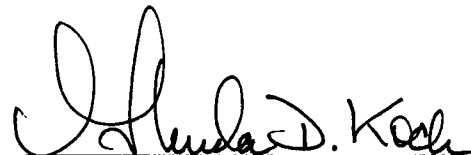
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 23RD DAY OF JULY 2003,
SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE
NO. GNR-E-03-05, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE
FOLLOWING:

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