

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION OF)
UNITED ELECTRIC CO-OP, INC. AND THE)
RAFT RIVER RURAL ELECTRIC COOPERA-)
TIVE, INC. FOR AN ORDER APPROVING A)
SERVICE TERRITORY AGREEMENT)
PURSUANT TO *IDAHO CODE* § 61-333(1).)**

CASE NO. GNR-E-03-6

ORDER NO. 29346

On June 20, 2003, United Electric Co-op and the Raft River Electric Rural Cooperative 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. United and Raft River are both electric non-profit corporations organized under the laws of Idaho. Both United and Raft River are defined as “electric suppliers” under the ESSA. *Idaho Code* § 61-332A(2,4).

In Order No. 29287 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.

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.

THE APPLICATION

United and Raft River supply electric service to their respective consumers in adjacent and contiguous service territories. Prior to the 2000 amendments of the ESSA, the parties had “an oral understanding relative to the respective service areas” of each electric supplier. Exhibit No. 1, ¶ 1.3. On May 28, 2003, they entered into a “Service Area Stabilization Agreement” thereby reducing their respective understandings to writing. The Agreement establishes separate service territories for each party. Each party is responsible for serving all new customers in their defined service areas. *Id.* at ¶ 2. To the extent that either party is currently providing service 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 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 execute

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], if the new customer can be served more efficiently and safely from the existing service lines of the non-service area party or by the extension of existing service lines of the non-service party. 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 its exercise of such discretion.

Id. at ¶ 6.

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 their oral agreements predate

the 2000 and 2001 amendments to the ESSA, the parties now request that the Commission approve their Service Area Stabilization Agreement.

STAFF COMMENTS

Staff recommended approval of the Agreement. Staff stated that it appears that the Agreement provides the least-cost service option for customers and complies with the ESSA by drawing boundaries that partially identify each supplier's service territory.

Staff also addressed one other issue contained in paragraph 5 of the Agreement. This paragraph provides that the prevailing party in any legal action arising under the Agreement be entitled to recover reasonable attorney's 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 Agreement" and the Staff's supporting 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.

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 Stabilization Agreement. Agreement at ¶ 6. We find this provision is appropriate and reasonable because it promotes efficiencies and harmony among suppliers. If the parties decide to substitute a different electric supplier, we believe it is also appropriate that the affected new customer be apprised of the proposed substitute. When the parties enter into such agreement, we believe it is

appropriate for such an agreement to be submitted to the Commission for its review and approval.

Staff also made one other comment that merits discussion. The Staff observed that paragraph 5 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 Raft River Electric Rural Cooperative to approve a “Service Area Stabilization Agreement” dated May 28, 2003 is approved.

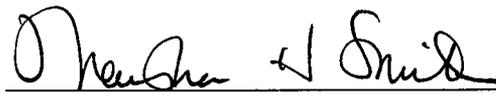
IT IS FURTHER ORDERED that if the parties enter into a written agreement to substitute one supplier for the other pursuant to paragraph 6, that such an agreement shall be submitted to the Commission for its review.

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-03-6 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-03-6. 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 8th
day of October 2003.



PAUL KJELLANDER, PRESIDENT

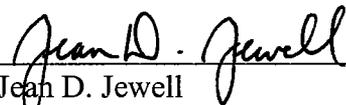


MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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