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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 )	
UNITED ELECTRIC CO-OP, INC. AND )	CASE NO. GNR-E-03-8
RIVERSIDE 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 Riverside 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 Cooperatives supply electric service to their respective consumers in adjacent and contiguous service territories.

On April 21, 2003, United and Riverside 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.

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 ¶ 7.

The parties also agreed that Riverside may construct an “express feeder” within United’s territory. The parties agreed that construction of the express feeder “shall not be construed as to allow Riverside to hook up new customers in that area, but is limited to the construction, operation and maintenance of an express feeder.... The construction, maintenance and operation of any express feeder shall be subject to United’s specifications for clearance and other construction.” Exhibit No. 1 at ¶ 4. Finally, Exhibit No. 2 and 3 to the Agreement contain the names of Riverside and United consumers that are located in the territory of the other party or are in close proximity to the territory of the other party. As recited in Paragraph 11, the parties “will use good faith efforts to exchange the customers so that the named customers are in the defined territory of each party. Absent an exchange the parties agree that the members may exist in the territory of the other until such time as events allow for the trade [of such customers].”

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. Applications at ¶ 3. Because the oral agreement predates the 2000 amendments to the ESSA, the parties now request that the Commission approve their Service Area Stabilization 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 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 Nos. 2 and 3.

However, Paragraph 11 of the Agreement says that Exhibit 2 contains the names of customers, which the two utilities agree to try to exchange. The service area agreement is only three months old and the exchange of the three customers identified has not yet taken place. United indicated to Staff that it normally obtains the consent of the customer before switching suppliers. Staff believes that customer consent should be obtained as a condition before authorizing a switch in suppliers. With this condition, 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).

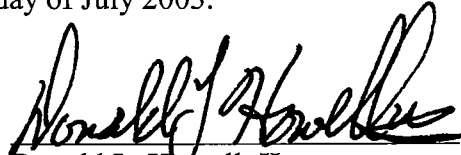
Finally, Staff notes that Paragraph 6 of the Agreement provides that the prevailing party in any action arising under the Agreement is entitled to recover reasonable attorney fees. Prior to the aforementioned modifications to the ESSA, *Idaho Code* § 61-334B provided that any supplier whose rights under 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 24<sup>th</sup> day of July 2003.

  
Donald L. Howell, II  
Deputy Attorney General

Technical Staff: Keith Hessing

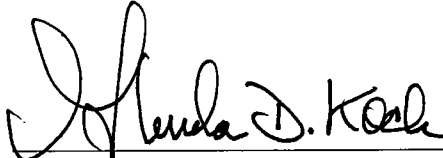
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 24<sup>TH</sup> DAY OF JULY 2003,  
SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE  
NO. GNR-E-03-8, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE  
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SECRETARY

CERTIFICATE OF SERVICE