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IDAHO PUBLIC  
UTILITIES COMMISSION

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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In the Matter of the Application of	)	
United Electric Co-op, Inc. and	)	Case No. <u>CNR-E-03-09</u>
the City of Rupert for an Order	)	
Approving a Service Territory	)	<b>APPLICATION</b>
Agreement between the Applicants.	)	

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Pursuant to Rule 51 of the IPUCRP, and Idaho Code § 61-333, United Electric Co-op, Inc. ("United") and City of Rupert ("Rupert") respectfully apply for Commission approval of a Service Territory Agreement between United and Rupert on the grounds

and for the following reasons:

1. On December 8, 2000, the Idaho Legislature, meeting in special session amended the Idaho Electric Supplier Stabilization Act, §§ 61-332 through 61-334B of the Idaho Code. Idaho Code § 61-333 provides that any electric supplier may contract in writing with another electric supplier for the purpose of allocating territories, consumers, and future consumers between electric suppliers and designating which territories and consumers are to be served by which contracting electric supplier. The statute further provides that the Commission shall, after notice and hearing review and approve or reject such contracts between electric suppliers. This joint Application is filed with the Commission for approval. Approval of the Commission of Service Territory Agreements is necessary to comply with the purposes of the Electric Supplier Stabilization Act.

2. The Petitioners have for some time had a Territory Agreement between them. Such Agreement predated the amendment to Idaho Code § 61-333, and therefore United and Rupert seek approval of the Commission of the existing Territory Agreement. A copy of that Agreement is attached as Exhibit 1. A copy of the Amendment to Service Area Agreement is attached as Exhibit 2.

3. The Agreement was negotiated between the parties in order to settle a service territory between the parties, provide for stability of service with consumers, to eliminate duplicating of services and to provide safety in the respective territories.

4. For the foregoing reasons and to fulfill the requirements of Idaho Code § 6-333 United and Rupert request the Commission, after notice and hearing, approval of the Agreement pursuant to law.

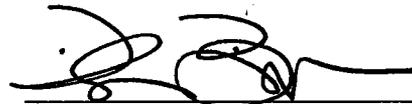
DATED this 6 day of May, 2003.

**PARSONS, SMITH & STONE, LLP**



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SERVICE AREA AGREEMENT

THIS AGREEMENT entered the 2 day of April, 1985, by and between the CITY OF RUPERT, a Municipal Corporation of the State of Idaho, hereinafter known as "CITY", and RURAL ELECTRIC COMPANY, a Cooperative Corporation of the State of Idaho, hereinafter known as "RURAL",

WITNESSETH:

WHEREAS, the parties hereto each own and operate electric systems which supply electrical energy to customers in areas which are contiguous to one another, and

WHEREAS, it is in the mutual interest of the parties hereto and the present and future customers of each that service areas be established so that each utility may plan for orderly and economical growth within its defined service area and avoid conflicts with the other, and

WHEREAS, the Idaho Electric Supplier Stabilization Act authorizes electric suppliers to contract in writing with one another for the purpose of allocating territories, consumers and future consumers between the suppliers and designating which territories and consumers are to be served by which supplier,

NOW THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. The parties hereby establish a boundary line for the purpose of allocating territories, consumers and future consumers of their electric services, which commences on 100 West Road at Minidoka Irrigation District Lateral #64 which is approximately 800 feet south of the intersection of Highway 24 and 100 West Road and runs in a northerly direction along the centerline of 100 West Road to 200 North Road and then runs easterly along the centerline of 200 North Road for approximately one-fourth mile (East End Mutual Service Area). Along 100 West Road Rupert's service area shall be east of said boundary and Rural's service area shall be west of said boundary. Along 200

SERVICE AREA AGREEMENT

North Road to 175 West, Rupert's service area shall be south of 200 North and Rural's area shall be north of 200 North Road. The boundary line established by this agreement is shown on a map bearing the signatures of the parties hereto and the date of execution of this agreement which is attached hereto and incorporated herein by reference as Exhibit "A". Said map designates the respective service areas of the City and Rural as established by this agreement. Each party shall have the right to attach its conductors to poles of the other along the common boundary; provided such attachments may be made with reasonable safety. The parties specifically agree to share use of the poles situated on the west side of 100 West Road which are owned jointly by said utilities for serving their respective service areas and to share the cost of maintaining and replacing said poles.

2. From and after the date of execution of this agreement, neither party shall extend service to any customer within the service area designated on the attached map as the service area of the other, and each party shall commence the orderly withdrawal from any territory which is established by this agreement to be the service area of the other. In territories relinquished under this agreement the withdrawing party shall disconnect its service from each consumer in the relinquished territory when the party acquiring the territory is prepared to connect said consumer to its system. The parties shall cooperate with one another in making such change of service to avoid inconvenience to the affected consumers. The supplier discontinuing service to a consumer shall be entitled to remove its meter and all other equipment owned by it at the time of change of service unless ownership of said equipment is transferred to the party undertaking to serve said consumer by a Bill of Sale delivered before or at the time of change of service. Neither party shall disconnect service to a consumer presently served by the other party, but if either party to this

SERVICE AREA AGREEMENT

...agreement fails or refuses to disconnect a consumer in the service area of the other for 10 days after a written demand to disconnect said consumer has been made by the party entitled to serve said consumer under the terms of this agreement, the party who fails or refuses to disconnect said consumer to allow the other to commence service shall forfeit and pay to party entitled to serve said consumer the sum of \$50.00 each day such failure or refusal continues beyond the expiration of the notice period. The demand shall be effective when delivered to the business office of the offending party. The notice shall specify the name and location of the consumer, and it may include more than one consumer. In the event of multiple violations, the penalty shall be applied for each consumer day the violation continues. The penalty provided herein shall not preclude any other legal or equitable remedy.

3. In the event of annexation by the City of land which lies within Rural's service area as the same has been established under this agreement Rural shall pay to the City a Franchise fee in the amount and under the terms set forth herein, and Rural shall be allowed to continue to serve existing and future consumers in said service area. In consideration of the establishment of service areas for the parties and establishment of a franchise fee agreement with Rural, the City agrees that it will not exercise the power of condemnation, whether now existing or hereafter created, as to any of Rural's service area as established under this agreement while Rural shall continue to exist and operate as a rural electric cooperative.

4. Each party relinquishes and agrees to transfer to the other by appropriate instrument of conveyance all easements and rights of way for service lines within territories relinquished under this agreement, provided, however, that each party reserves necessary rights of way and easements for existing distribution lines which will be necessary to continue service to

SERVICE AREA AGREEMENT

consumers within its service area as determined under this agreement.

5. Each party shall be entitled to require of consumers in territory acquired under this agreement not presently served by the party acquiring said territory that said new consumers pay the membership fee or meter deposit required of its other consumers within the service area as a condition precedent to connection. If the consumer being served by a withdrawing party refuses to pay the appropriate meter deposit or membership of the party acquiring the territory in which the consumer is located prior to the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the withdrawing party shall be required to terminate service to said consumer not later than the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, whether said consumer has made arrangements to acquire electrical service from the other party or not. It shall be the responsibility of the party withdrawing from a territory to give adequate notice of proposed cancellation of service to the consumer whose service will be terminated.

6. The withdrawing party shall be responsible for collection and settlement of its accounts within the territory relinquished according to its own rules and procedures, and neither party shall be responsible for assumption of payment of account obligations of the other within the affected territories.

7. The franchise fee to be paid by Rural is an amount equal to 5% of the gross periodic billing for electrical energy to each consumer within the portions of Rural's service area which become annexed to the City of Rupert. The franchise fee shall not apply to interest, service charges, equipment sales or rental or sales and excise taxes of any nature, but shall apply exclusively to electrical energy charges. The franchise fee shall not be reduced by uncollected billings. The rate charged

by Rural for electrical energy within the annexed area to which the franchise applies shall be the rate applicable to the same classes of consumers within its service area not annexed by the City.

8. Prior to annexation of any of Rural's service area, the City shall adopt an ordinance granting Rural a franchise to serve patrons inside the corporate limits of the City of Rupert in the service area of Rural which has been determined by this agreement. The City agrees that it shall not modify any substantive right of Rural under said franchise ordinance without the written consent of Rural, except as provided in part 13 of this agreement.

9. At such times as the City shall annex portions of Rural's service area Rural shall be required to wheel power to any facility of the City located within said annexed area without charge, other than an adjustment for line loss, provided that the City supplies and installs the necessary poles, conduit, transformers and related equipment for delivery of the electrical energy to the City facility from Rural's nearest existing point of delivery. At such time as Rural shall utilize equipment supplied by the City in service of other consumers, Rural shall reimburse the City the fair value for such equipment. In the event it is more convenient for the parties that the City purchase power from Rural to energize the City's facilities within the annexed areas, the rate charged by Rural to the City shall be not greater than the wholesale cost of said power, plus adjustment for line loss in the amount of 7%.

10. The franchise fee to be paid by Rural under this agreement shall be computed and paid quarterly to the City on the basis of billings by Rural within the quarter. The quarters shall correspond to the four quarters of the calendar year. The amount of the franchise fee for the respective quarters shall be determined not later than the 15th day of the calendar month following the close of a quarter, and payment of the franchise

SERVICE AREA AGREEMENT

fee shall be delivered to the City not later than the last day of the month following the close of a calendar quarter. In the event said fees are not paid over when due they shall bear interest at 10% per annum from the due date until paid.

11. In operating and supplying electrical services within its service area within areas annexed to the City of Rupert, Rural shall comply with and conform to all safety regulations promulgated by N.E.S.C., N.E.C., A.N.S.I., C-2 together with all State and Federal laws regulating its operations and any reasonable regulations of the City, provided, however, that such City regulations shall not be more burdensome or restrictive than those imposed upon itself by the City.

12. The books and records of Rural covering consumers served by Rural within the City limits of the City of Rupert shall be open to audit by the City for sixty (60) days after the close of each calendar year so that the City may determine that franchise revenues required under this agreement and the attached ordinance are being properly accounted for and remitted by Rural.

13. This agreement shall remain in full force and effect as long as each of the parties shall continue to operate as electrical suppliers under their present form of ownership. In the event the City should terminate operations as an electrical supplier, the boundary line establishing the respective service areas shall remain in effect as to Rural and the successor to the City's service area, but the franchise provisions except for the rate of franchise fee may be unilaterally modified by the City provided that it applies the same provisions to any other electrical supplier operating within the City and provided further that Rural will not be obligated to maintain a uniform rate between customers of the same class in annexed and unannexed territories. In the event that Rural should cease to operate as an electrical cooperative within its service area, whether by sale of part or all of the service area or by change in the form of ownership of Rural to a stock company

SERVICE AREA AGREEMENT

or proprietorship other than a cooperative, the service areas established by this agreement shall remain the same, but the City shall have the power to change the terms of its franchise ordinance as it relates to Rural's successor, and the City shall no longer be prohibited from exercising its right of condemnation.

14. Neither party shall be permitted to extend its service into the service area granted to the other by this agreement by acquiring the service area of any electrical supplier which is not a party to this agreement.

15. The City shall assume the obligations of Rural to wheel power to the Minidoka Irrigation District office and shop within the service area acquired by the City.

16. Rural shall be obligated to allow the City's community television antenna franchisee to attach to Rural's poles in areas annexed into the City on the same basis that the franchisee attaches to the City's poles in the City's service area, but Rural, not the City, shall receive the pole attachment fee in Rural's service area.

17. In the event either party shall commence an action to enforce the provisions of this agreement, the prevailing party shall be entitled to recover reasonable attorney fees as part of its costs pursuant to the Idaho Rules of Civil Procedure.

IN WITNESS WHEREOF, the parties have hereto have caused their names to be subscribed the day and year first above written.

CITY OF RUPERT

By W. F. "Bill" Whitton  
W.F. "Bill" Whitton  
Rupert City Mayor

ATTEST:

Loretta Klingenberg  
Loretta Klingenberg  
City Clerk

SERVICE AREA AGREEMENT

RURAL ELECTRIC COMPANY

By Frank Thomas  
PRESIDENT

ATTEST:

Marl Peterson  
SECRETARY

SERVICE AREA AGREEMENT

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**AMENDMENT TO SERVICE AREA AGREEMENT**

**AGREEMENT** made this 6 day of May, 2003, by and between the **CITY OF RUPERT**, a municipal corporation, ("**CITY**") and **UNITED ELECTRIC CO-OP, INC.** , ("**UNITED**").

**1. RECITALS:** The parties recite:

**1.1** Rupert and Rural Electric entered into a Service Area Agreement dated April 2, 1985.

**1.2** United is the successor in interest to Rural Electric by consolidation with United Light and Power.

**1.3** A Territory Agreement was entered into between Rupert and Rural and the parties desire to amend said Agreement in part and to amend Exhibit "A" illustrating the territory.

**IN CONSIDERATION OF THE RECITALS** and the benefits to the parties it is agreed:

**1. Paragraph 1 of the Service Area Agreement is amended to read as follows:**

**1. The parties hereby establish a boundary line for the purpose of allocating territories, consumers and future consumers of their electric services. The boundary line established by this agreement is shown on a map initialed by the parties hereto which is attached hereto and incorporated hereby by reference as Exhibit "A". Said map designates the respective service areas of the City and Rural as established by this agreement. Each party shall have the right to attach its conductors to poles of the other along the common boundary; provided such attachments may be made with reasonable safety. The parties specifically agree to share use of the poles situated on the west side of 100 West Road which are owned jointly by said utilities for serving their respective service areas and to share the cost of maintaining**

and replacing said poles. On Exhibit "B" there are two customers who are in close proximity to the service area of the City of Rupert and such parties may continue to be served by United, if in fact they are in the Rupert service area.

2. Except as herein amend all other terms all other terms and conditions of the Service Area Agreement remain in full force and effect, provided, however, that the Territory map identified as Exhibit "A" has been altered and initialed by representatives of the respective parties.

IN WITNESS WHEREOF this Agreement has been executed effective the day and year first above written.

UNITED ELECTRIC CO-OP, INC.

BY *Lon Stewart*  
President

ATTEST:

\_\_\_\_\_  
Secretary

CITY OF RUPERT

BY *Audrey B. Newirth*  
Mayor

ATTEST:

*Carma J. Mayes*  
City Clerk (Deputy)

(UNITED\RupertAmendment.wpd)

**MAP**

**CONFIDENTIAL**

**NAMES & ADDRESSES**

**OF CUSTOMERS**