

DONALD L. HOWELL, II
DEPUTY ATTORNEY GENERAL
IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0312
IDAHO BAR NO. 3366

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Street Address for Express Mail:
472 W. WASHINGTON
BOISE, IDAHO 83702-5983

Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF) CASE NO. GNR-E-03-9
UNITED ELECTRIC CO-OP, INC. AND THE)
CITY OF RUPERT 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. 29281 issued on July 7, 2003.

APPLICATION

On June 20, 2003, United Electric Co-op, Inc. and the City of Rupert 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 Agreement" and its amendment dated April 2, 1985 and May 6, 2003, respectively. In the 1985 Agreement, United's predecessor Rural Electric and the City agreed to establish a separate service territory for each

party in Minidoka County. The Agreement also addressed the exchange of customers and facilities resulting from the allocation of the two service territories. Exhibit No. 1 at ¶2. The Agreement provided that if the City annexes land that lies within United's service area, then United shall be allowed to continue to serve "existing future consumers in said service territory. [T]he City agrees that it will not exercise the power of commendation ... as to any of [United's] service area as established under this Agreement ..." *Id.* at ¶3. The agreement also provides that United will deliver power to City facilities in any annexed area served by United.

In the 2003 amendment, the parties modified the initial Agreement by changing the boundary line dividing the parties' service territories. Exhibit No. 2. The amendment also identified two customers "who are in close proximity to the service area of the City of Rupert and [they] may continue to be served by United, if in fact they are in the Rupert service area." Amendment at 2. All other terms and conditions of the initial Agreement remain in full force and effect.

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 initial Agreement predated the 2000 amendments to the ESSA, the parties now request that the Commission approve the Service Area 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 a boundary that identifies each utilities service territory. The agreement provides for the orderly exchange of customers who were initially in the other party's service area. It is not known whether this exchange is complete at this point in time. Staff believes that the Agreement contained in this Application fulfills the purposes and provisions of the ESSA that have been previously stated.

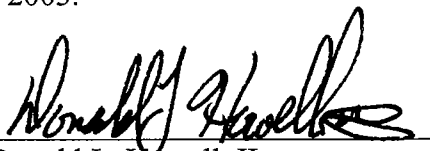
Finally, Staff notes that Paragraph 17 of the Agreement provides that the prevailing party to the Agreement may recover reasonable attorney fees if the party commences an action to enforce the Agreement. At the time this Agreement was executed in 1996, *Idaho Code* § 61-334B provided that any supplier 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.

Respectfully submitted this 23^d day of July 2003.


Donald L. Howell, II
Deputy Attorney General

Technical Staff: Keith Hessing

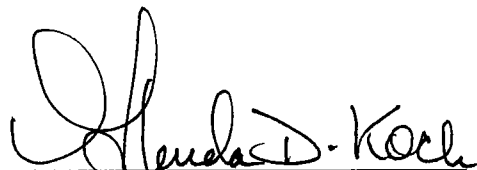
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CERTIFICATE OF SERVICE

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-03-9, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE
FOLLOWING:

WILLIAM A PARSONS
PARSONS SMITH & STONE LLP
PO BOX 910
BURLEY ID 83318

GOODMAN & BOLLAR
PO BOX D
RUPERT ID 83350


SECRETARY

CERTIFICATE OF SERVICE