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IDAHO PUBLIC
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-03-10
UNITED ELECTRIC CO-OP, INC. AND SOUTH)
SIDE ELECTRIC, INC. 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. 29288 issued on July 9, 2003.

APPLICATION

On June 20, 2003, United Electric Co-op, Inc. and South Side Electric, Inc. filed an Application for approval of their 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. United and South Side are both electric non-profit corporations organized under the laws of Idaho. United and South Side are defined as “electric supplier[s]” under the ESSA. *Idaho Code* § 61-332A(2,4).

United and South Side 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 30, 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 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 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 No. 2.

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.

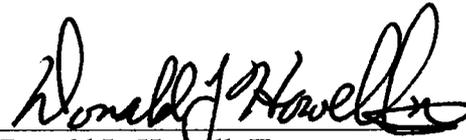
Finally, Staff notes that Paragraph 5 of the Agreement provides that the prevailing party in any action arising under the Agreement is entitled to recover reasonable attorney fees. Prior to the aforementioned modifications to the ESSA, *Idaho Code* § 61-334B provided that any supplier whose rights under 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 25th day of July 2003.



Donald L. Howell, II
Deputy Attorney General

Technical Staff: Keith Hessing

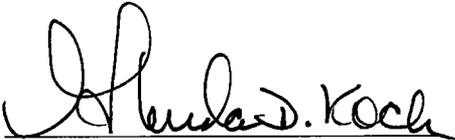
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 25TH DAY OF JULY 2003, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. GNR-E-03-10, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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CERTIFICATE OF SERVICE