

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
THE CITY OF HEYBURN AND RIVERSIDE)	CASE NO. GNR-E-03-11
ELECTRIC COMPANY FOR AN ORDER)	
APPROVING A SERVICE TERRITORY)	
AGREEMENT PURSUANT TO IDAHO CODE)	
§ 61-333(1).)	ORDER NO. 29336
_____)	

On July 3, 2003, the City of Heyburn and Riverside Electric Company filed an Application for approval of their “Service Area Stabilization Agreement.” Both parties are classified as electric “suppliers” under the Electric Supplier Stabilization Act (ESSA), *Idaho Code* §§ 61-332, *et seq.* In Order No. 29304 the Commission issued a Notice of Modified Procedure soliciting public comment on the Parties’ Agreement. The Commission Staff submitted the only comment and it recommended approval. After reviewing the Agreement and the Staff comments, we approve the Application.

THE APPLICATION

The Parties executed their ESSA Agreement on May 14, 2003. The Parties state in their Agreement that they had a pre-existing oral understanding relative to their respective service areas and now wish to reduce these understandings to writing. Agreement at ¶ 1.3. As more specifically described in Exhibit A to the Agreement, Riverside’s service territory generally is located north and east of the City’s service territory. The Agreement calls for each party to serve all new customers in their respective service territories. *Id.* at ¶ 2.

The Agreement also provides that the Parties will exchange two customers – one from Riverside to the City and the other from the City to Riverside. The Agreement states that these two customers have been contacted regarding the proposed transfer and the “customers have expressed no objection to the change of electric provider. . . .” *Id.* at ¶ 3; Exhibit C. These customers will not be charged any connection or disconnection fees and all costs to accomplish the change in service provider shall be borne by the Parties. *Id.*

The Agreement also notes that Riverside has acquired a 12.5 KV distribution line owned by the City. *Id.* at ¶ 4. The Parties further agree that this line shall not be considered a

“service line” for purposes of determining which electric supplier may serve a new customer pursuant to *Idaho Code* § 61-332C.

The Parties assert that their Agreement comports with the purposes of the ESSA. More specifically, their Agreement provides for stability of services to consumers, eliminates duplication of facilities, and promotes the public safety in their respective service territories. Application at ¶ 3.

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.

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. 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.*; 61-334B.

In proposing to exchange the two existing customers, the parties in essence request an “exception” to the anti-pirating provision of the ESSA. *See Idaho Code* §§ 61-332B and 61-334B(1). Pursuant to *Idaho Code* § 61-334B(1) the Commission may only grant an exemption to the anti-pirating provision “upon finding that granting the request is consistent with the purposes of [the ESSA].”

STAFF COMMENTS

Staff recommended that the Commission approve the Agreement. Staff noted the Agreement appears to provide the least cost service option for customers and complies with the ESSA by creating boundaries that partition each supplier’s service territory. Staff also reported that the exchange of the two customers has already taken place. Given that the exchange has

already occurred, the Staff noted that granting an “exception” to the anti-pirating provision of the ESSA appears reasonable. *Idaho Code* § 61-334B(1).

Staff also addressed one other issue contained in paragraph 6 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. More specifically, we find the Agreement is consistent with the purposes of the ESSA. In particular, 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.

We further find that the exchange of the two customers is consistent with the purposes of the ESSA. Given that the customers did not object, that all costs associated with the connection and reconnection of service were borne by the Parties, and that the transfer has already taken place, it is appropriate to grant an exception. Consequently, we find that it is reasonable to grant an exception to the anti-pirating provision of *Idaho Code* § 61-332B. *See Idaho Code* §§ 61-334B(1); 62-333(1).

Staff also made one other comment that merits discussion. The Staff observed that paragraph 6 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 authorized the Commission to resolve ESSA 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 to approve a “Service Area Stabilization Agreement” executed by the City of Heyburn and Riverside Electric Company is approved.

IT IS FURTHER ORDERED that the Commission grants the Parties an exception to the anti-pirating provision of the ESSA pursuant to *Idaho Code* § 61-334B.

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-03-11 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-03-11. 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).

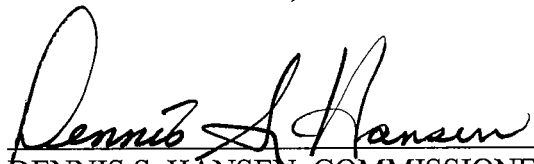
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 25th
day of September 2003.



PAUL KJELLANDER, PRESIDENT

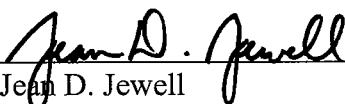


MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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