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Attorney for the Commission Staff

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) **COMMENTS OF THE**
§ 61-333(1).) **COMMISSION STAFF**
)

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. 29304 issued on July 28, 2003.

APPLICATION

On July 3, 2003, the City of Heyburn and Riverside Electric Company filed an Application for approval of their "Service Area Stabilization Agreement." Riverside is an electric non-profit corporation organized under the laws of Idaho. The Electric Supplier Stabilization Act (ESSA) requires that all contracts to allocate territories, consumers, and future consumers be submitted to the Commission for its review. The City and Riverside are defined as "electric supplier[s]" under the ESSA. *Idaho Code* § 61-332A(2-4).

The parties' Service Area Stabilization Agreement is dated May 14, 2003. The parties state in the Agreement that they had a pre-existing oral understanding relative to their respective service areas and have now agreed to reduce these understandings to writing. Agreement at ¶ 1.3. As more specifically described in Exhibit A to their Agreement, Riverside's service territory generally is located north and east of the City's service territory. Each party shall 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. *Id.* ¶ 3; Exhibit C. 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. These customers will not be charged any connection or disconnection fee and all cost of the work done to accomplish the change in service 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 consumer 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 service to consumers, eliminates duplication of services, and provides for the safety in their respective territories. Application at ¶ 3.

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] contractsbetween 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; 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.

Paragraph 3 of the Agreement and Exhibit “C” to the Agreement provide for the parties to exchange two customers currently being served who are physically located in the other utilities service territory. The City of Heyburn confirms that the exchange has taken place. Under these circumstances, 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).

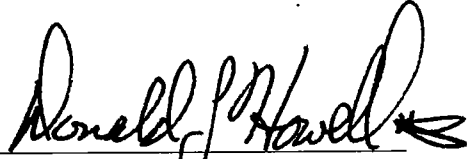
Finally, Staff notes that Paragraph 6 of the Agreement provides that the prevailing party in any action arising under the Agreement is entitled to recover reasonable attorney fees. Prior to the aforementioned modifications to the ESSA, *Idaho Code* § 61-334B provided that any supplier whose rights under 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 and granting an exception to the anti-pirating provision of *Idaho Code* § 61-332B.

Respectfully submitted this 18th day of August 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 18TH DAY OF AUGUST 2003, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. GNR-E-03-11, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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