

## DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER  
COMMISSIONER SMITH  
COMMISSIONER HANSEN  
COMMISSION SECRETARY  
COMMISSION STAFF**

**FROM: DON HOWELL**

**DATE: SEPTEMBER 4, 2003**

**RE: APPLICATION FOR APPROVAL OF A SERVICE AREA STABILIZATION  
AGREEMENT FILED BY THE CITY OF HEYBURN AND RIVERSIDE  
ELECTRIC COMPANY, CASE NO. GNR-E-03-11**

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 "suppliers" under the Electric Supplier Stabilization Act (ESSA). 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.

### 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 of the work done 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 Electric Supplier Stabilization Act (ESSA) codified at *Idaho Code* § 61-332. More specifically, their Agreement provides for stability of services to consumers, eliminates duplication of services, and promotes public safety in their respective service territories. Application at ¶ 3.

#### STAFF COMMENTS

Staff recommended that the Commission approve the Agreement. Staff 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 noted that 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 addressed one other issue contained in ¶ 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 in its comments 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 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, 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.

In summary, the Staff recommends that the Commission grant an exception to the ESSA’s anti-pirating provision and allow the switch of the two customers pursuant to *Idaho Code* § 61-334B(1). The Staff also recommends that the Commission find that the Agreement to

allocate service territories meets the purposes and provisions of the ESSA set out at *Idaho Code* § 61-332(2). *See Idaho Code* § 61-333(1).

**COMMISSION DECISION**

Does the Commission find it reasonable to grant an exception from the ESSA's anti-pirating provision? Does the Commission find that the Agreement to allocate service territory between the City of Heyburn and Riverside Electric Company consistent with the provisions and purposes of the ESSA? Anything else?



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Don Howell

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