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IDAHO PUBLIC
UTILITIES COMMISSION

June 20, 2005

Ms. Jean Jewell
Commission Secretary
Idaho Public Utilities Commission
P O Box 83720
Boise ID 83720-0074

RE: Case No. GNR-E-05-02

Dear Ms. Jewell:

Enclosed please find an original and seven (7) copies of the **JOINT APPLICATION BY IDAHO FALLS POWER AND PACIFICORP FOR APPROVAL OF AN ELECTRIC CONSUMER EXCHANGE AGREEMENT** in the above case.

I have also enclosed an extra copy to be service-dated and returned to us for our files. Thank you.

Sincerely,

Nina Curtis
Administrative Assistant

encl.

**THIS CASE NUMBER
WAS CHANGED FROM
GNR-E-05-02
TO
PAC-E-05-07
ON JULY 7, 2005**

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IDAHO PUBLIC
UTILITIES COMMISSION

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BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
IDAHO FALLS POWER, FOR AN ORDER)
APPROVING AN ELECTRIC CONSUMER)
EXCHANGE AGREEMENT BETWEEN IT)
AND PACIFICORP DBA UTAH POWER &)
LIGHT)

CASE NO. GNR-E-05-62
JOINT APPLICATION BY IDAHO
FALLS POWER AND PACIFICORP
FOR APPROVAL OF AN ELECTRIC
CONSUMER EXCHANGE
AGREEMENT

COMES NOW, Idaho Falls Power ("Idaho Falls" or the "City") by and through its attorney of record, Peter Richardson, and PacifiCorp by and through its attorney of record, Lisa Nordstrom, and hereby lodges this Application for approval of an electric consumer allocation agreement between Idaho Falls and PacifiCorp, dba Utah Power & Light ("UP&L.") This Application is filed pursuant to Rule 52 of the Rules of Procedure of the Idaho Public Utilities Commission and *Idaho Code* § 61-333. In support thereof, Idaho Falls says as follows:

I. BACKGROUND

Idaho Falls Power is the electric department of the City of Idaho Falls, Idaho. Idaho Falls, Idaho is a municipal corporation duly organized under the laws of the State of Idaho. Idaho Falls serves over 22,000 electric consumers, primarily within the City. UP&L, whose principal office is in Salt Lake City, Utah, is an operating division of PacifiCorp, which is an Oregon Corporation with its principal office in Portland, Oregon. PacifiCorp is qualified to do business in the State of Idaho. UP&L provides electric service to over 50,000 consumers in Eastern Idaho, including the immediate environs surrounding the City of Idaho Falls, Idaho.

II. PURPOSE OF APPLICATION

Applicants, Idaho Falls and UP&L, petition this Commission for approval of an electric consumer allocation agreement (“the Agreement”) entered into by Idaho Falls and UP&L. The Agreement is attached as Exhibit “A” and is more fully described below:

1. Exhibit A

Exhibit A consists of a four-page agreement dated May 27, 2005. Exhibit A recites:

PacifiCorp and the City desire to enter into an agreement, in accordance with Idaho Code § 61-333, to reduce duplication of service and promote stability in their respective service areas.

Exhibit A at p. 1.

This general statement of purpose is implemented pursuant to the terms of the Agreement by specifying under what circumstances a consumer of either Idaho Falls or UP&L may change suppliers. The statement of purpose is further implemented through a detailed methodology by which the costs and facilities of such exchanges are fairly allocated between the two electric suppliers.

III. LEGAL STANDARD

The Idaho Legislature recently amended portions of the Idaho Electric Supplier Stabilization Act (ESSA), *Idaho Code* §§ 61-332 – 334C, to require all agreements allocating territory or consumers between electric suppliers to be filed with the Idaho Public Utilities Commission (“the Commission”). *Idaho Code Section* 61-332 instructs that the ESSA is designed

to promote harmony among and between electric suppliers furnishing electricity within the state of Idaho, prohibit the ‘pirating’ of consumers of another supplier, discourage duplication of electric facilities, actively supervise certain conduct of electric suppliers as it relates to this act, and stabilize the territories and consumers served with electricity by such electric suppliers.

The code defines electric supplier very broadly to include “any public utility, cooperative or municipality supplying or intending to supply electric service to a consumer.” *Idaho Code* § 61-332A(4). The Idaho Legislature directed that, after notice and opportunity for hearing, the Commission shall review and approve or reject contracts between municipalities and public utilities. Further, the Legislature instructed that “(t)he 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 Section* 61-333 (1).

The Commission’s jurisdiction is, therefore, limited to approving or rejecting the attached Agreement. The ESSA provides that the Commission shall not have jurisdiction over municipalities by providing:

The commission shall, after notice and opportunity for hearing, review and approve or reject contracts between municipalities and cooperatives as well as between municipalities and public utilities, provided however, the commission shall have jurisdiction only over cooperatives and public utilities in such approvals.

Idaho Code § 61-333(1)

Although acting with limited jurisdiction, the Commission must still apply the standard set forth above and make its finding relative to whether the Agreement is in “conformance” with the ESSA. As will be shown below, the Agreement that is attached hereto is in conformance with the ESSA and should therefore be approved by this Commission.

IV. CONFORMITY OF THE AGREEMENT

The Agreement that is the subject of this Application conforms to all of the provisions and purposes of the ESSA. First, it “promotes harmony” inasmuch as it reflects a mutually acceptable and agreeable methodology by which consumers are allocated between UP&L and Idaho Falls. Second, the Agreement is designed to prevent “pirating” of consumers by allowing UP&L consumers who are located in the City to take City service while allowing City consumers located outside the City to take service from UP&L. Third, the Agreement is designed to discourage duplication of electric facilities by clearly delineating the respective service responsibilities of the two electric suppliers. Furthermore, the Agreement specifically requires the transfer (along with the consumer) of consumer-related “poles, wires, cross arms, insulators, guys and other facilities,” thereby efficiently eliminating duplicative facilities. *See Exhibit A at p. 2.* Finally, the Agreement serves to stabilize the service territory between Idaho Falls and Utah Power & Light through the use of a clear and articulate standard for the exchange of consumers. The Agreement accomplishes all of the goals of the ESSA while at the same time providing the State of Idaho, through this Commission’s review, with the “active supervision” that is mandated by the ESSA.

IV. PRAYER FOR RELIEF

Based on the foregoing, the Applicants respectfully request this Commission to process this

Application under Modified Procedure and enter its order pursuant to *Idaho Code Section 61-333(1)* approving the Agreement attached hereto as Exhibit "A."

DATED this 2nd day of ~~May~~ ^{June}, 2005.
PR

Richardson & O'Leary P.L.L.C.

By 
Peter Richardson
Attorneys for Idaho
Falls Power

PacifiCorp

By 
Lisa Nordstrom
Attorney for PacifiCorp

IDAHO FALLS ALLOCATION AGREEMENT

THIS AGREEMENT is made and entered into this 21th day of May, 2005, by and between PacifiCorp, doing business as Utah Power & Light Company ("PacifiCorp") and the City of Idaho Falls ("City"). In this Agreement, PacifiCorp and City may be referred to individually as a "Party" and collectively as "Parties."

RECITALS

1. City owns and operates an electric power system, and in addition to providing electric service to customers within the boundaries of the City, it presently provides electric service to a number of customers outside the municipal boundaries of the City.
2. PacifiCorp operates as an electric corporation and public utility in the state of Idaho, and in addition to serving customers in the area surrounding Idaho Falls, it presently provides electric service to one or more customers located within the boundaries of the City.
3. PacifiCorp and the City desire to enter into an agreement, in accordance with Idaho Code § 61-333, to reduce duplication of service and promote stability in their respective service areas.

AGREEMENT

1. Definitions. As used in this Agreement, the following terms shall have the respective meanings set forth in this section.
 - 1.1 "Existing Customer" shall mean a consumer that, as of the date of this Agreement, has a service entrance through which it receives Electric Service from PacifiCorp or the City as the case may be.
 - 1.2 "Service Entrance," "Consumer," "Electric Service," and "New Service Entrance" shall have the meanings set forth in Idaho Code § 61-332A.
2. The Existing Customer(s) of the City located outside the municipal boundaries of the City will continue to be served by the City, subject to Section 5.
3. The Existing Customer(s) of PacifiCorp located within the municipal boundaries of the City will continue to be served by PacifiCorp, subject to Section 5.

4. Notwithstanding the provisions of Idaho Code § 61-332C, PacifiCorp will not provide Electric Service to a New Service Entrance within the municipal boundaries of the City, and the City will not provide Electric Service to a New Service Entrance outside its municipal boundaries.
5. Transfers of Customers
 - 5.1 The City may provide Electric Service to an Existing Customer of PacifiCorp having a Service Entrance within the boundaries of the City if the customer requests in writing that the City provide such service and the City pays PacifiCorp in accordance with Section 7.
 - 5.2 PacifiCorp may provide Electric Service to an Existing Customer of the City having a Service Entrance outside the boundaries of the City if the customer requests in writing that PacifiCorp provide such service and PacifiCorp pays the City in accordance with Section 7.
 - 5.3 Except as otherwise provided in this Agreement, the City and PacifiCorp may provide Electric Service to a Consumer previously or then receiving Electric Service from the other only upon written request or consent of the Consumer, and approval by the Idaho Public Utilities Commission pursuant to Idaho Code § 61-334B.
 - 5.4 Nothing in this Agreement shall be construed to affect the rights of any Consumer to petition the commission for relief under the Idaho Electric Supplier Stabilization Act (the "Act").
 - 5.5 The Parties shall work together in good faith to accomplish any Consumer transfer(s) pursuant to this Agreement.
6. Transfers of New Customers. Upon annexation into the City of property owned by a customer of PacifiCorp who has established a New Service Entrance upon such property after the effective date of this Agreement, the City may provide Electric Service to such customer upon the following conditions: (i) the customer makes a written request to the City for Electric Service and (ii) the City pays PacifiCorp just compensation in accordance with Section 7 hereof.
7. Payments Upon Transfer. If Electric Service to a Consumer is transferred from the City or PacifiCorp to the other (the "Acquiring Utility") pursuant to this Agreement, the Acquiring Utility shall pay the other Party just compensation for

the distribution facilities. The Parties agree that such just compensation shall be determined in accordance with the following.

- (a) The Acquiring Utility will pay the other utility an amount equal to 167% of the total of the respective Consumer's electric bills from the prior twelve months.
- (b) The Acquiring Utility will purchase, if no longer needed by the other utility and required for new service, poles, wires, cross arms, insulators, guys and other facilities. The purchase price for such items will be based on the current price levels, adjusted for age and service ability.

Provided, however, that if circumstances exist such that the foregoing cannot reasonably be applied to provide just compensation, the Parties will negotiate in good faith to arrive at a determination of such just compensation.

8. Term. This Agreement is subject to, and shall become effective only upon approval by the Commission. The duration of this Agreement shall be for Ten (10) years; provided, however, that this Agreement shall be extended automatically for successive periods of Ten (10) years upon the same terms and conditions set forth in this Agreement, unless one of the Parties notifies the other, not less than Sixty (60) days prior to the end of the initial, or renewal term of the intent not to renew the Agreement.
9. Breach; Non-Waiver. If either Party breaches any provision of this Agreement, the other Party shall have the right to terminate the Agreement, at its sole option, and/or pursue its remedies at law or equity. No waiver of any breach of this Agreement shall constitute a waiver of any other or subsequent breach. If any action is brought to enforce this Agreement or any provision thereof, to rescind the same, to collect damages for an alleged breach or for declaratory judgment thereunder, the prevailing Party in such action shall be entitled to reasonable attorney's fees.
10. Integration. This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof.

11. Notice. Notice allowed or required to be given under this Agreement shall be considered given by depositing such notice in the United States mail with postage prepaid and properly addressed to the Party. Notice shall be addressed to the following addresses until notice is given by the respective Party of a different address:

Idaho Falls Power
140 S. Capital
Box 50220
Idaho Falls, Idaho 83405

PacifiCorp
dba Utah Power & Light
Office of General Counsel
825 NE Multnomah, Suite 2000
Portland, Oregon 97232

12. In consideration of the premises and the terms and conditions of this Agreement, PacifiCorp agrees not to challenge the City's legal authority to provide Electric Service to the Existing Customers outside the municipal boundaries of the City. However, nothing in this Agreement shall be construed as a recognition or acknowledgement by PacifiCorp of the City's or any other municipality's authority to provide Electric Service to customers located beyond municipal boundaries.



CITY OF IDAHO FALLS

By: Linda Nilaw

Its: Roamarie Anderson

PACIFICORP

By: M. R. [Signature]

Its: Executive Vice President