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Attorney for the Commission Staff

## **BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE JOINT</b>	)	
<b>APPLICATION OF IDAHO FALLS POWER</b>	)	<b>CASE NO. PAC-E-05-7</b>
<b>AND PACIFICORP FOR APPROVAL OF AN</b>	)	
<b>ELECTRIC CONSUMER ALLOCATION</b>	)	
<b>AGREEMENT.</b>	)	<b>COMMENTS OF THE</b>
	)	<b>COMMISSION STAFF</b>
	)	

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The Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Donovan E. Walker, Deputy Attorney General, in response to Order No. 29869, the Notice of Amended Application and Second Notice of Modified Procedure issued on September 15, 2005, respectfully submits the following comments.

### **BACKGROUND**

On June 20, 2005, Idaho Falls Power and PacifiCorp dba Utah Power & Light Company (PacifiCorp) filed a Joint Application seeking the Commission's approval of an electric consumer allocation agreement between the parties (Agreement) dated May 27, 2005. The Agreement was submitted for the Commission's review pursuant to the provisions of the Electric Supplier Stabilization Act (ESSA). *Idaho Code* § 61-332 *et seq.* During its review Staff determined that the Agreement could lead to duplication of facilities which is contrary to the

purposes of the ESSA. Staff discussed its concerns with Idaho Falls Power and PacifiCorp and both parties agreed to further discuss changes to the Agreement to alleviate Staff's concerns.

On July 29, 2005 Staff filed a motion to extend the comment period for an additional 14 days to facilitate these additional discussions. The Commission granted Staff's motion at its August 1, 2005 decision meeting. Staff hoped that the discussions would lead to an amended or new agreement. At the end of the extended comment period, no additional filing had been made by Idaho Falls Power or PacifiCorp. Therefore, on August 19, 2005, Staff filed comments with the Commission that did not support approval of the Agreement as originally submitted.

On September 6, 2005, Idaho Falls Power and PacifiCorp filed an Amended Joint Application seeking the Commission's approval of a revised electric consumer allocation agreement between the parties (Revised Agreement) dated August 26, 2005. The Amended Joint Application incorporates all of the representations and assertions made in the original Joint Application filed on June 20, 2005, and noticed for public comment on July 15, 2005. *See* Order No. 29822.

On September 15, 2005, the Commission issued Order No. 29869 Notice of Amended Application and Second Notice of Modified Procedure, which commenced an additional 21 day comment period. These comments are filed in response to that Notice.

## **THE REVISED AGREEMENT**

Idaho Falls Power is the electric department of the City of Idaho Falls (City), a municipal corporation duly organized under the laws of the State of Idaho. Idaho Falls Power serves over 22,000 electric consumers, primarily within the municipal boundaries of the City. However, Idaho Falls Power also provides electric service to some consumers outside the municipal boundaries of the City. PacifiCorp is a public utility providing electric service to over 50,000 consumers in eastern Idaho, including the area immediately surrounding Idaho Falls. However, PacifiCorp provides electric service to some consumers within the municipal boundaries of the City.

To divide and identify service responsibility, Idaho Falls Power and PacifiCorp propose to define their service areas and provide for circumstances under which an existing customer may seek to change suppliers. Under the Revised Agreement, Idaho Falls Power will continue to serve existing customers outside the City and PacifiCorp will continue to serve existing customers within the City. However, PacifiCorp will not provide electric service to a

new service entrance within the municipal boundaries of the City, and the Idaho Falls Power will not provide electric service to a new service entrance outside the City's municipal boundaries.

The Revised Agreement also addresses potential requests from existing customers desiring to change electric service providers. Specifically, in the event that a PacifiCorp customer living within the City's boundaries desires Idaho Falls Power service, Idaho Falls Power may provide electric service to such a customer provided that the customer makes a written request to the City for electric service, and the City pays PacifiCorp just compensation as determined under the Revised Agreement. Similarly, an Idaho Falls Power customer living outside the City limits may change to PacifiCorp service by making application to PacifiCorp and upon PacifiCorp paying the City just compensation. Pursuant to the Agreement, in order to provide just compensation, the acquiring utility shall: (1) pay the other utility an amount equal to 167% of the exchanging customer's total electric bills from the previous 12 months; and (2) purchase all poles, wires, cross arms, insulators, guys, and other facilities no longer needed by the other utility. *See Idaho Code* § 61-333B. If this standard for just compensation cannot be reasonably applied, the parties agree to negotiate in good faith to determine other just compensation.

## **STAFF REVIEW**

The ESSA allows electric suppliers to contract with one another for the purpose of allocating territories, consumers, and future consumers; however, all such contracts must be filed with the Commission for approval. *Idaho Code* § 61-333. The Commission shall approve such contracts only upon finding that the allocation or transfer is consistent with the purposes of the ESSA. The purposes of the ESSA are: (1) promote harmony among and between electric suppliers; (2) prohibit the "pirating" of consumers; (3) discourage the duplication of electric facilities; (4) actively supervise the conduct of electric suppliers; and (5) stabilize the territories and consumers served with electricity by such electric suppliers. *Idaho Code* § 61-332(2)

The ESSA also provides for the extension of a municipality's electric services to annexed areas that are served by a public utility. *Idaho Code* § 61-333B. The municipality may extend such service upon payment of just compensation to the public utility. *Id. Idaho Code* § 61-333B states, "In the event the annexing municipality has been furnishing electric service to its residents at the time of such annexation ... nothing in this chapter shall prevent such municipality from extending its service to the annexed or incorporated area, upon the payment of

just compensation ... to such public utility...” Just compensation is to be paid for “any property, real or personal, including damages to the remainder of the system, if any, of such ... public utility, used in distribution, transmission or supply of electrical energy to such area prior to annexation.” *Id.*

At Staff’s request, Section 6 of the original Agreement was changed. The original Agreement required PacifiCorp customers annexed into the city to petition the city if they wanted to receive service from Idaho Falls Power. Staff was concerned that this process increased the probability of duplicate electric distribution facilities. Some customers may have petitioned the City for the change in service while others may not have. Section 6 in the Revised Agreement requires Idaho Falls Power to hook up all customers in an annexed area if it hooks up any PacifiCorp customer in the annexed area. Staff believes that this requirement reduces the likelihood of duplicate distribution facilities.

Staff believes that the Revised Agreement promotes harmony between the City and PacifiCorp and prohibits the “pirating” of consumers. Staff also believes that the Commission’s review of this contract demonstrates active supervision. The Revised Agreement also minimizes the duplication of facilities while allowing the City of Idaho Falls to grow and provide electric service to city residents. The Revised Agreement also defines service territories and stabilizes them to the extent possible around a growing city that may under § 61-333B of the ESSA, extend electric service to its residents upon payment of just compensation to the serving public utility. Staff believes that the Amended agreement conforms to § 61-333B.

Staff has reviewed the just compensation provisions of the Revised Agreement and believes them to be adequate to cover any PacifiCorp stranded investment or other damages or costs that may foreseeably be associated with the loss of PacifiCorp customers to Idaho Falls Power.

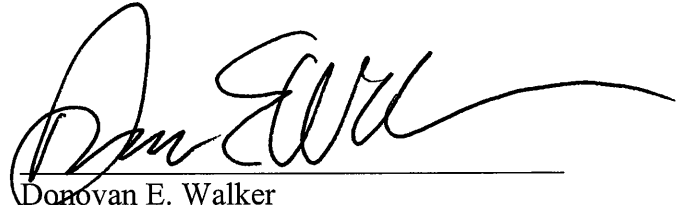
Pursuant to the ESSA, the Commission has authority to approve or reject a contract between a municipality and a public utility. *Idaho Code* § 61-333. However, the Commission has jurisdiction only over the public utility in such a proceeding. *Id.*

## **STAFF RECOMMENDATION**

Staff believes that the Revised Agreement is consistent with the purposes of the ESSA. The agreement incorporates the compromises that are necessary and foreseen by the ESSA at the boundary between a public utility and a growing city supplying electric service to its residents.

The agreement promotes order, fairness and harmony in the growth area near the boundaries of the City and conforms to *Idaho Code* § 61-333B. Staff recommends that the Commission approve the Revised Agreement.

Respectfully submitted this 6th day of October 2005.

  
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Donovan E. Walker  
Deputy Attorney General

Technical Staff: Keith Hessing

i:umisc/comments/pace05.7dwkh

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 6<sup>TH</sup> DAY OF OCTOBER 2005, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. PAC-E-05-07, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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CERTIFICATE OF SERVICE