

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF PACIFICORP DBA)	
ROCKY MOUNTAIN POWER'S)	CASE NO. PAC-E-15-15
APPLICATION TO APPROVE ASSET)	
PURCHASE AGREEMENT BETWEEN)	
ROCKY MOUNTAIN POWER AND THE)	ORDER NO. 33487
CITY OF IDAHO FALLS.)	

On December 8, 2015, PacifiCorp dba Rocky Mountain Power filed an Application requesting approval of an agreement to transfer to the City of Idaho Falls one customer, the accompanying service territory and associated electric facilities. With the proposed agreement, Rocky Mountain and Idaho Falls (“the Parties”) propose to transfer the Fielding cemetery, a city-owned property, and the associated electric facilities from Rocky Mountain to the City. The Application falls under the Electric Supplier Stabilization Act (ESSA), *Idaho Code* §§ 61-332 *et seq.* The Parties assert that the terms of the proposed Agreement conform with the terms of a 2005 Agreement between the Parties relating to ESSA transactions, which was previously approved by the Commission. Both Rocky Mountain and Idaho Falls are “electric suppliers” under the ESSA. *Idaho Code* § 61-332A (“Electric supplier means any public utility, cooperative, or municipality supplying or intending to supply electric service to a consumer.”).

On January 8, 2016, the Commission issued a Notice of Application and Notice of Modified Procedure setting a January 29, 2016, deadline for interested persons to file comments, and an February 5, 2016, reply deadline. *See* Order No. 33446. The only public commenter supported the Application. Commission Staff also recommended that the Commission approve the proposed agreement.

As set out below, we find that the proposed Agreement is consistent with the provisions of the ESSA, and we approve the proposed agreement to transfer the customer, territory, and electric facilities.

BACKGROUND

A. *The ESSA*

Generally, the purposes of the ESSA are to: (1) promote harmony between electric suppliers; (2) prohibit the “pirating” of consumers; (3) discourage duplication of electric

facilities; (4) actively supervise the conduct of electric suppliers; and (5) stabilize service territories and consumers. *Idaho Code* § 61-332.

The ESSA generally prohibits an electric supplier from serving another electric supplier's existing or former customers. *Idaho Code* § 61-332B. As an exception to this general rule, the ESSA allows electric suppliers to contract 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." *Idaho Code* § 61-333. Electric suppliers may also contract for the sale or exchange of "equipment or facilities." *Id.* Such contracts are, however, subject to Commission review and approval. *Id.* Specifically, the Commission must approve the contract if, after notice and opportunity for hearing, the Commission finds that the allocation or transfer conforms to the purposes of the ESSA. *See Idaho Code* §§ 61-333(1) and 61-334B(1).¹

B. The Parties' 2005 Agreement

Prior to this Application, in August 2005, the Parties entered into an agreement entitled as "Idaho Falls Allocation Agreement" ("the 2005 Agreement"). The 2005 Agreement's stated purpose was "to reduce duplication of service and promote stability of their respective service areas." Application at 2, Exh. 1. The Commission approved the 2005 Agreement pursuant to the provisions of the ESSA. Order No. 29895. It specifies, among other things, "that the Company would not provide electric service to any new customers within the City's boundaries and the City would not provide electric service to any new customers outside of its municipal boundaries." *Id.*

The 2005 Agreement prescribes the procedure for the transfer of customer services between the Parties. The customer being served must provide a written request to transfer service, the existing electric suppliers must agree to the transfer, and the new electric supplier must agree to pay for lost revenues (just compensation) and any facilities utilized by the other party to serve that customer.² Application, 2005 Agreement at § 5. The 2005 Agreement further

¹ The ESSA further addresses: the allocation of territories, consumers and future consumers, and equipment and facilities within the subject territories (Section 61-333); service areas subsequently annexed by a municipality (Sections 61-333A-333B); and prohibitions on a utility from serving customers within the boundaries of a municipality where the municipality is an electric supplier (Section 61-333C).

² The 2005 Agreement provides that if the City elects to serve any customer within [an] annexed area [previously served by Rocky Mountain], the City shall provide electric service to all customers within the annexed area, and

quantifies just compensation as 167% of the prior past 12 months of the customer's billing. *Id.* at § 7(a).

THE PROPOSED AGREEMENT

In its Application, Rocky Mountain explains that the Parties have agreed to the transfer of the service area of one customer (Fielding cemetery) and certain assets (poles, wires, cross arms, insulators, guys and other facilities) from the Company to the City. The Parties' proposed Agreement is included in the Application as Exhibit 2. The Parties assert that the proposed Agreement comports with the terms of the 2005 Agreement and by implication, the provisions and purposes of the ESSA.³

The proposed Agreement states that, in exchange for the service area and certain assets, Idaho Falls has agreed to pay Rocky Mountain 167% of the customer's previous 12 months electric bills (for lost revenue), the cost of the transferred assets (adjusted for age and serviceability) and associated legal and transaction costs. *Id.* The agreed-upon total purchase price is \$49,321.61. Exh. D.

COMMENTS

One brief public comment was filed in this case supporting the proposed transaction. Commission Staff filed the only other comment in this case. Staff's comments describe that it reviewed the proposed transaction for compliance with the (now terminated) 2005 Agreement, and for conformance to the requirements of the ESSA. Staff reported that it reviewed the Application and spoke with representatives from Rocky Mountain and the City of Idaho Falls.

Staff observed that the sole customer and entire territory at issue is the City itself. Staff opined that the Agreement furthers the ESSA's purpose by enabling Idaho Falls to serve its own territory, avoids potential territorial disputes, and avoids needless duplication of facilities and service, and potential stranded investment. Staff further observed that the Application conforms to the 2005 Agreement that the Commission previously approved, including a previously-approved compensation formula. Accordingly, Staff recommended the Commission: (1) find that the Agreement conforms to the ESSA's purposes; and (2) grant the Application and approve the Agreement.

shall prior to [providing] such service, make payment to [Rocky Mountain] of just compensation in accordance with Section 7 [of the 2005 Agreement]." Application, Exh. 1 at § 6.

³ The Parties acknowledged that the 2005 Agreement was terminated by the City in 2015. *See* Staff Comment, n.2.

DISCUSSION AND FINDINGS

The Idaho Public Utilities Commission has jurisdiction in this matter to “review and approve or reject contracts between . . . municipalities and public utilities. . . .” *Idaho Code* § 61-333(1). 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.* As set out in *Idaho Code* § 61-332(2), the purposes of the ESSA are to: (1) promote harmony between electric suppliers; (2) prohibit the “pirating” of consumers; (3) discourage duplication of electric facilities; (4) actively supervise the conduct of electric suppliers; and (5) stabilize service territories and consumers. The ESSA further contains a requirement of “just compensation” in such transactions. *Idaho Code* § 61-333B.

The Commission has reviewed the record in this case, including the Application, the proposed Agreement, and the defunct 2005 Agreement. The anti-pirating provision of the ESSA (*Idaho Code* § 61-332B) prohibits the City from supplying electricity to a customer previously served by Rocky Mountain “except as provided in [the ESSA].” *Id.* However, Section 61-333 allows the Parties to exchange customers, territory, and equipment, subject to Commission supervision and approval of such transactions. We find that the proposed Agreement conforms to the terms of the 2005 Agreement, which the Commission has previously approved as meeting the requirements of the ESSA. Order No. 29895. Additionally, because the City of Idaho Falls is the customer making the request in order to serve its own cemetery, the sale of assets is consistent with the public interest. We further find that the agreed upon purchase price is just and reasonable compensation and in compliance with *Idaho Code* § 61-333B. Thus, we find that the proposed Agreement is in conformance with the provisions of the ESSA. Accordingly, we approve the proposed Agreement.

ORDER

IT IS HEREBY ORDERED that Rocky Mountain Power’s Application to approve the proposed purchase Agreement to transfer from Rocky Mountain to the City of Idaho Falls, one customer (Fielding cemetery), the accompanying service territory, and associated electric facilities, in exchange for \$49,321.61 is approved.

IT IS FURTHER ORDERED that the exchange shall be effective upon execution by both parties.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code § 61-626.*

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 24th day of March 2016.



PAUL KJELLANDER, PRESIDENT

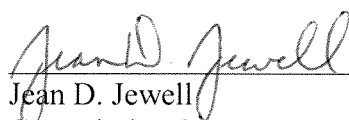


KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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