

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER RAPER
COMMISSIONER ANDERSON
COMMISSION SECRETARY
COMMISSION STAFF

FROM: BRANDON KARPEN
DEPUTY ATTORNEY GENERAL

DATE: DECEMBER 31, 2015

SUBJECT: ROCKY MOUNTAIN POWER'S APPLICATION TO APPROVE A PROPOSED ASSET PURCHASE AGREEMENT BETWEEN ROCKY MOUNTAIN POWER AND THE CITY OF IDAHO FALLS, IDAHO; CASE NO. PAC-E-15-15

On December 8, 2015, Rocky Mountain Power filed an Application requesting authority to sell/transfer to the city of Idaho Falls, Idaho service territory and associated electric facilities currently owned and utilized by the Company to supply the subject service territory—the Fielding cemetery, a City owned facility. In the Application, Rocky Mountain and Idaho Falls (“the Parties”) request that the Commission approve a proposed “Asset Allocation Agreement” that the Parties shall subsequently execute. The Application falls under the Electric Supplier Stabilization Act (ESSA), *Idaho Code* §§ 61-332 *et seq.* Rocky Mountain asks the Commission to process the Application by Modified Procedure.

BACKGROUND

By way of background, in August 2005, the Company and the City entered in to an agreement entitled as “Idaho Falls Allocation Agreement” (the “2005 Agreement”). The 2005 Agreement was entered into with the intent “to reduce duplication of service and promote stability of their respective service areas.” Application at 2; Exhibit 1. 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 also allows for the transfer of customer services between the two parties so long as the customer being served provides a written request to transfer service, the power suppliers agree to the transfer, and the new electric supplier agrees to pay for lost

revenues and any facilities utilized by the other party to serve that customer. The Commission approved the 2005 Agreement pursuant to the provisions of the ESSA. Order No. 29895.

Generally, the ESSA prohibits an electric supplier (e.g., a utility, municipality, or co-op) 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(1). Such contracts must be submitted to the Commission for approval. *Id.* In sum, contracts reviewed under the ESSA will be approved if, after notice and opportunity for hearing, the Commission finds that the agreement conforms with the purposes of the ESSA. *See Idaho Code* § 61-333(1) and 61-334B(1). Section 61-332(2) states 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 APPLICATION

Rocky Mountain and Idaho Falls 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 no longer needed or required by the other utility to service that customer) from the Company to the City. The parties seek Commission approval of that agreement ("Asset Purchase Agreement"). Exhibit 2. The Application states that Fielding cemetery has provided a written request to transfer its electric service from Rocky Mountain to Idaho Falls. The parties state further that the Company and the City have agreed to the transfer of service and of certain assets, and to the terms of the purchase/transfer.

In sum, in exchange for the service area and certain assets, Idaho Falls has agreed to pay Rocky Mountain 167 percent of the customer's previous twelve months electric bills (for lost revenue), the cost of the transferred assets, adjusted for age and serviceability, and associated legal and transaction costs. The agreed-upon total Purchase Price is \$49,321.61. *See* Exhibit D.

STAFF RECOMMENDATION

Staff recommends that the Application be processed by Modified Procedure with a comment deadline 21 days from the service date of the Commission Order.

COMMISSION DECISION

Does the Commission preliminarily find that the public interest may not require a hearing to consider the issues, and that this case should be processed by Modified Procedure with 21-day comment period?

Brandon Karpen
Deputy Attorney General