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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF ROCKY MOUNTAIN)
POWER'S APPLICATION TO APPROVE) CASE NO. PAC-E-15-15
ASSET PURCHASE AGREEMENT)
BETWEEN ROCKY MOUNTAIN POWER) COMMENTS OF THE
AND THE CITY OF IDAHO FALLS.) COMMISSION STAFF
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COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Brandon Karpen, Deputy Attorney General, and in response to the Notice of Application and Notice of Modified Procedure issued on January 8, 2016, submits the following comments.

BACKGROUND

On December 8, 2015, Pacificorp dba Rocky Mountain Power filed an Application requesting authority to sell/transfer to the city of Idaho Falls certain service territory and associated electric facilities currently owned and utilized by the Company to provide electric service to the Fielding cemetery, a City owned facility. In the Application, Rocky Mountain and

Idaho Falls (“the Parties”) request that the Commission approve the proposed Asset Purchase Agreement which the Parties shall subsequently execute.

This Application falls under the Electric Supplier Stabilization Act (ESSA), *Idaho Code* §§ 61-332 *et seq.* 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. To fulfill these goals, the ESSA restricted competition for existing utility customers. Furthermore, the ESSA requires that the transfer of service area be accomplished only “upon the payment of just compensation, as defined in [Idaho Code §] 7-711.” *Idaho Code* § 61-333B.¹

By way of background, in conformance with the provisions of the ESSA, in August 2005, the Company and the City entered in to the Idaho Falls Allocation Agreement (the “2005 Agreement”). This 2005 Agreement was intended “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 Commission approved the 2005 Agreement in Order No. 29895 pursuant to the provisions of (ESSA).

The 2005 Agreement prescribes the procedure for the transfer of customer services between the Parties so long as the customer being served provides written request to transfer of 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 2005 Agreement further quantifies just compensation as 167 percent of the prior past twelve months customer billing. The terms of the proposed Asset Purchase Agreement now before the Commission appear to conform to the 2005 Agreement.²

Now before the Commission is a proposal to transfer service area and a single customer between the Parties. More specifically, the Parties have agreed to a transfer of the cemetery service area and the certain related assets (poles, wires, cross arms, insulators, guys and other facilities used to serve the area) from the Company to the City. The Fielding cemetery

¹ *Idaho Code* 7-711 is part of Idaho’s eminent domain code. The Supreme Court of Idaho has held that “just compensation is based on fair market value.” *Rocky Mountain Power v. Jensen*, 154 Idaho 549 (Idaho 2011).

² Staff is aware that the 2005 Agreement was terminated by the City in 2015.

has provided written a request to this transfer of electric service from Rocky Mountain to Idaho Falls, and the Parties have agreed to the transfer.

The Application contains the Parties' Asset Purchase Agreement, which the Parties claim conform to the provisions of the earlier 2005 Agreement. The purchase price of the assets in the Asset Purchase Agreement is specified as the current replacement cost less any accumulated depreciation, as previously set in the 2005 Agreement. In addition, the Parties agree that compensation based on 167 percent of the prior past twelve months customer billing will be paid to Rocky Mountain Power. Finally, the sale price will include specified funds to be paid to the Company for any legal or transaction costs. The agreed-upon total purchase price is \$49,321.61. Exhibit D.

STAFF ANALYSIS

Pursuant to the ESSA, the Commission is authorized to approve, conditionally approve, or deny the sale or transfer of any public utility property. The Commission is charged with reviewing such transactions to determine consistency with purposes of the ESSA. *Idaho Code* § 61-334B. As previously stated, 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.

In the Staff's view, the proposed transaction and calculation of just compensation conforms to the terms of the 2005 Agreement, which the Commission has previously approved as conforming to the requirements of the ESSA. Order No. 29895 (finding that the "[2005] Agreement avoids duplication of services, stabilizes service territories and customers, and promotes harmony between PacifiCorp and Idaho Falls Power," and "... comports with the purposes of the ESSA and Idaho Code sec 61-333B."). Further, because the City of Idaho Falls is the customer making the request in order to serve their own cemetery, the sale of assets is consistent with the public interest.

Moreover, even when viewing the transaction outside the scope of the 2005 Agreement, the proposal continues to comply with the purposes of the ESSA: promoting harmony between the two power suppliers, discouraging pirating, eliminating potential duplicative services, and

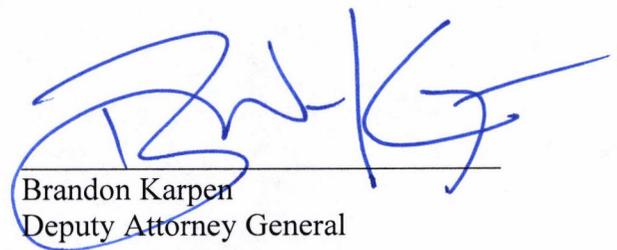
stabilizing territory with proper Commission oversight. Finally, the purchase price of the assets appears just and within fair market value, and will prevent any increase in rates for remaining Rocky Mountain Power customers.

STAFF RECOMMENDATION

Staff reviewed the Application to determine if the proposed transaction is consistent with the ESSA. Staff believes that the Asset Purchase Agreement promotes harmony between the City and Rocky Mountain and does not create “pirating” of consumers. Staff has reviewed the proposed compensation, finds the calculation identical to methodology previously approved by the Commission and believes it to be adequate to cover any Rocky Mountain stranded investment and any other damages or costs that may be associated with the loss of the Rocky Mountain customer to Idaho Falls Power. Staff has determined that the compensation is reasonable and in conformance with Idaho Code §§ 61-333, 61-333B, and 61-334B. Staff also believes that the Commission’s review of this contract demonstrates active supervision. At the time these comments were prepared, the Commission had only received one public comment in support of the Application.

In sum, the parties have demonstrated that the agreement conforms to the provisions of the ESSA. Existing Rocky Mountain customers are not harmed by this transaction. Therefore, Staff recommends the Commission approve the Customer Allocation Agreement.

Respectfully submitted this 29th day of January 2016.



Brandon Karpen
Deputy Attorney General

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 29TH DAY OF JANUARY 2016, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. PAC-E-15-15, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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