

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE AMENDED) CASE NO. PAC-E-18-06
APPLICATION FOR APPROVAL OF THE)
CUSTOMER TRANSFER AGREEMENT)
BETWEEN ROCKY MOUNTAIN POWER) ORDER NO. 34197
AND THE CITY OF IDAHO FALLS)

On July 23, 2018, Rocky Mountain Power (“Company”) filed an application seeking approval of a Customer Transfer Agreement (“Agreement”) with the City of Idaho Falls. The Agreement transfers the rights and obligations to serve two small telecommunications customers located on South Holmes Drive in Idaho Falls. On September 11, 2018, the Commission issued a Notice of Application, Notice of Modified Procedure, and Notice of Telephonic Hearing. Order No. 34142. On October 11, 2018, the Commission vacated the telephonic hearing. Order No. 34169. With this Order, the Commission approves the Customer Transfer Agreement between the Company and the City of Idaho Falls.

PRIOR HISTORY

In its original application, the Company cited both the Idaho Electric Supplier Stabilization Act (“ESSA”) *Idaho Code* § 61-332, et seq., and the electric utility asset transfer statute, *Idaho Code* § 61-328. Application at 1. The latter statute states the Commission “shall conduct a public hearing upon the application.” On September 11, 2018, the Commission issued a Notice of Application, Notice of Modified Procedure, and Notice of Telephonic Hearing. Order No. 34142. On October 3, 2018, the Company filed an amended application that clarified the Company’s reference to an Asset Purchase Agreement and citation to *Idaho Code* § 61-328 in the original application was in error. Amended Application at 1.

BACKGROUND

The purpose of the ESSA is 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 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 allocation contracts must be submitted to the Commission for approval. *Id.* The Commission approves the contracts if it finds that the agreement furthers the goals and purposes of the ESSA. *Id.*, *Idaho Code* § 61-334(B)(1).

THE APPLICATION

The Customer Transfer Agreement is the result of a dispute between the Company and the City regarding the relocation of the Company’s distribution facilities along South Holmes Drive in order to accommodate a road-widening project planned by the City. On May 23, 2018, the City served the Company with a Notice and Order to Vacate Construction Zone. The Company and the City continued negotiations until June 13, 2018, when the City filed a Verified Complaint in the Seventh District Court alleging Trespass. The Company agreed to relocate its facilities the next day. Subsequently, the Company’s facilities have been de-energized and removed. Amended Application at 2-3.

The Company seeks approval of the Agreement under the ESSA, *Idaho Code* §§ 61-332 through 61-334C. No assets will be transferred as a result of the Agreement. *Id.* at 3. The customers subject to the Agreement are two small telecommunications facilities located on or near the distribution assets that were de-energized and removed as part of the road-widening project on South Holmes Drive. One such facility is owned by CenturyLink, and the other is owned by Cable One. *Id.* The combined load of the communications facilities is approximately 3 kW. Agreement at 1. Because the load and revenue associated with the electric service to the customers are minimal, the Company and the City have agreed to transfer the customers at no cost to either party. Amended Application at 3.

STAFF’S COMMENTS

Staff filed the only comments in this matter, and recommended the Commission approve the amended application. Although Staff recommended approval of the application, Staff expressed reservations about the manner in which the Agreement was reached and is concerned that similar tactics could be used again in higher value situations, potentially leaving Company ratepayers with stranded costs. Staff recommended that the Company and the City work together to develop a framework to determine which party should bear the burden of costs in future rights of way disputes.

COMMISSION FINDINGS AND DECISION

The Commission has jurisdiction over 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 proposed Agreement, the original application, the amended application, and comments of Commission Staff. We find that the proposed Agreement meets the requirements of the ESSA. Accordingly, we approve the Agreement. Further, we concur with Staff that it would be beneficial for the City of Idaho Falls and the Company to have an agreement in place regarding allocation of costs due to right-of-way expansions before the next dispute arises. Therefore, we direct the parties to confer with each other and with Staff to reach such an agreement.

ORDER

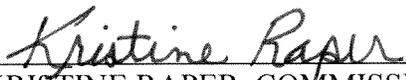
IT IS HEREBY ORDERED that the amended application for approval of the Customer Transfer Agreement between the Company and the City of Idaho Falls to serve the CenturyLink and Cable One telecommunications facilities located on South Holmes Drive in Idaho Falls is approved.

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 with regard to any matter decided in 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 30th
day of November 2018.



PAUL KJELLANDER, PRESIDENT



KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian
Commission Secretary

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