

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF RIVERSIDE ELECTRIC COMPANY,)
LIMITED AND EAST END MUTUAL)
ELECTRIC FOR AN ORDER APPROVING A)
SERVICE TERRITORY AGREEMENT)
BETWEEN THE APPLICANTS)
_____)

CASE NO. C12-E-24-03

ORDER NO. 36214

On February 2, 2024, Riverside Electric Company, Limited (“Riverside”) and East End Mutual Electric (“East End”) (collectively “Parties”) filed an application with the Idaho Public Utilities Commission (“Commission”) for approval of a Service Territory Agreement (“Agreement”) between Riverside and East End.

BACKGROUND

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. Section 61-332(2) provides that 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 enables electric utilities to allocate territories and customers if certain conditions are satisfied. 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.* The Commission will approve contracts reviewed under the ESSA 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).

THE APPLICATION

The Parties represented that for some time they have had a territory agreement between them. Application at 2. The Parties stated that such agreement predates the amendment to *Idaho Code* § 61-333 that requires Commission approval of territory agreements; therefore, the Parties

sought Commission approval of a written memorialization of the existing territory agreement. *Id.* The Parties included a copy of the Agreement attached as Exhibit 1 to the Application. *Id.*

The Parties represented that the Agreement was negotiated between the Parties in order to settle a service territory between the Parties, provide for stability of service with consumers, to eliminate duplicating of services, and to provide safety in the respective territories. *Id.* The Parties stated that they believed the Agreement was in the best interest of both entities and the customers of both entities. *Id.*

STAFF COMMENTS

Commission Staff (“Staff”) reviewed the Agreement and recommended that the Commission approve it and order the Parties to submit a compliance filing with an executed Agreement.

Staff believed the Agreement was in conformance with the provisions and intent of the ESSA. Staff explained that the Agreement included several terms and conditions that Staff believed are consistent with the purpose of ESSA including: (1) the defined boundaries between the two service territories that each Party will use to serve new customers; (2) the assignment of existing customers in the defined territories; (3) a process for entering into a written agreement to serve a new customer that can be more efficiently served by the other Party; and (4) the exceptions of customers in the defined territories.

Staff noted that Paragraph 5 of the Agreement provided that the prevailing party in any action under the Agreement shall be entitled to reasonable attorney fees. However, Staff believed that under Public Utilities Law, the Commission does not have authority to award attorney fees other than intervenor funds pursuant to *Idaho Code* § 61-617A. *See Idaho Power Company v. Idaho PUC*, 102 Idaho 744, 639 P.2d 442 (1981).

Further, Staff noted that the Agreement provided with the Application was not executed. Staff believed an executed Agreement should be provided to the Commission for the Commission’s records. Staff recommended that the Commission order the Parties to submit a compliance filing with a copy of the executed Agreement.

COMMISSION FINDINGS AND DECISION

The ESSA generally prohibits an “electric supplier” from serving another electric supplier’s existing or former customers. *Idaho Code* § 61-332B. An “electric supplier” is any public utility, cooperative, or municipality supplying or intending to supply electric service to a

consumer. *Idaho Code* § 61-332A(4). The purposes of the ESSA's 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(2).

As an exception to the general rule barring electric suppliers from serving each other's customers, 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). However, the contracts are subject to Commission approval. *Id.* Specifically, the Commission must approve the contract if, after notice and opportunity for hearing, the Commission finds that the allocation conforms with the purposes of the ESSA. *Idaho Code* §§ 61-333(1) and 61-334B(1).

The Commission finds that the Parties are "electric suppliers" as defined in the ESSA. Having reviewed the Application, the Agreement, the record, and all submitted materials, the Commission finds that the Agreement conforms with the purposes of the ESSA because it will avoid the duplication of facilities and will promote harmony between the Parties.

ORDER

IT IS HEREBY ORDERED that the Agreement is approved.

IT IS FURTHER ORDERED that the Parties submit an executed Agreement to the Commission within 30 days of this order.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date upon this Order regarding 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. *Idaho Code* §§ 61-626 and 62-619.


DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho, this 6th day of June 2024.


ERIC ANDERSON, PRESIDENT


JOHN R. HAMMOND JR., COMMISSIONER


EDWARD LODGE, COMMISSIONER

ATTEST:


Monica Barrios-Sanchez
Commission Secretary

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