

CASE NO. C15-E-23-01



**RICHARDSON ADAMS, PLLC**  
ATTORNEYS AT LAW

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February 23, 2023

Jan Noriyuki  
Secretary, Idaho Public Utilities Commission  
Via: email only [jan.noriyuki@puc.idaho.gov](mailto:jan.noriyuki@puc.idaho.gov)

Re: United Electric Co-op vs. the City of Burley – Formal Complaint

Dear Ms. Noriyuki:

Enclosed, via electronic mail only, you will find a formal complaint by United Electric Co-op, Inc. against the City of Burley, Idaho. Please feel free to give me a call if have any questions. The Burley City's attorney's office has been notified of the pendency of this complaint and a copy has been emailed to Mr. Paul Zeil, the City's counsel on matters relating to United Electric at [sandra@murrayzeil.com](mailto:sandra@murrayzeil.com).

Sincerely yours;  
/ss/

Peter J. Richardson  
Id. Bar #3195  
Or. Bar # 06668

Enc: Complaint, United Electric Co-op, Inc. v. City of Burley

BEFORE THE  
IDAHO PUBLIC UTILITIES  
COMMISSION

UNITED ELECTRIC CO-OP INC.'s  
FORMAL COMPLAINT FOR VIOLATION  
OF CONTRACT ENTERED INTO  
PURSUANT TO THE IDAHO ELECTRIC  
STABILIZATION ACT

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allocation of the respective electric service territory as well as customers by and between the City and United that were entered into pursuant to the Idaho Electric Stabilization Act<sup>4</sup> and that have been approved by order of the Commission.<sup>5</sup>

Communications regarding this Formal Complaint should be sent to:

UNITED ELECTRIC CO-OP, INC.  
c/o Peter J. Richardson  
Richardson Adams, PLLC  
515 N. 27<sup>th</sup> St.  
Boise, Idaho 83702  
(208) 938-7901 (direct dial)  
(208) 938-7904 (fax)  
[peter@richardsonadams.com](mailto:peter@richardsonadams.com)

Copies of all pleadings, production requests, production responses, Commission orders and other documents should also be provided to:

UNITED ELECTRIC CO-OP, INC  
c/o Michael Darrington, Manager  
1330 21<sup>st</sup> Street  
Heyburn, Idaho 83336  
(208) 679-2222  
(208) 679-3333 (fax)  
[mdarrington@uec.coop](mailto:mdarrington@uec.coop)

## I FACTUAL ALLEGATIONS

### A. **Background – The Service Territory Agreements**

1. United Electric Co-op, Inc. is a nonprofit cooperative corporation duly formed and in good standing under the laws of the State of Idaho.

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<sup>4</sup> Idaho Code §§ 61-332 through 334C. Referred to herein as the “ESSA.”

<sup>5</sup> The cited agreements are described in more detail, infra, and are collectively referred to herein as the “Service Territory Agreements.”

UNITED ELECTRIC CO-OP INC.’s FORMAL COMPLAINT FOR VIOLATION OF  
CONTRACT ENTERED INTO PURSUANT TO THE IDAHO ELECTRIC STABILIZATION  
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2. The City of Burley is a municipal corporation duly formed and in good standing under the laws of the State of Idaho.

3. On May 21, 1985,<sup>6</sup> the City of Burley and United's predecessor entity, Unity Light and Power<sup>7</sup>, entered into a "Territory Service Agreement" delineating their respective electric service territories (referred to herein as the "1985 Territory Service Agreement").<sup>8</sup>

4. In the 1985 Territory Service Agreement, United and the City agreed that a "territorial agreement is in the best interest of potential customers, future planning, efficiency and economy of service."<sup>9</sup>

5. On November 19, 1996, the City of Burley and United's predecessor entity, Rural Electric Company, entered into a Service Area Stabilization Agreement to "define their respective rights and responsibilities with respect to service of customers in the north Burley area." A copy of the November 19, 1996, agreement is attached hereto as Exhibit No. 2.

6. In February 2001, the Idaho Legislature amended Section 61-333 of Electric Supplier Stabilization Act ("ESSA") to require, for the first time, all contracts "allocating territories, consumers, and future consumers...and [all contracts] designating which territories and consumers are to be served by which contracting electric supplier" to be "filed with the commission ...[which] shall ... review and approve or reject contracts between municipalities and cooperatives." A copy of Chapter 29, 2001(H.B. 142) of the Idaho Session Laws is attached

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<sup>6</sup> Prior to 2001, the ESSA did not require service territory agreements among electric suppliers to be approved by the Commission. In 2001, the legislature amended the ESSA to require all service territory agreements among electric suppliers to be approved by the Commission. See Id. Sess. Laws C. 29, 2001.

<sup>7</sup> Unity Power and Light is predecessor in interest to United Electric Co-op.

<sup>8</sup> The 1985 Territory Service Agreement is attached hereto as Exhibit No. 1.

<sup>9</sup> *Id.* at ¶1.4.

for the Commission's convenience, as Exhibit No. 3.

7. On May 6, 2003, the City of Burley and United Electric Co-op, Inc. (the successor in interest to both Rural Electric Company and Unity Light and Power) amended the May 21, 1985, Service Territory Agreement between the City of Burley and Unity Power and Light by further delineating their respective service territories and further specifically identifying existing 'grandfathered' customers of United that are within the City's otherwise exclusive service territory. A copy of the May 6, Service Territory Agreement amendment is attached hereto as Exhibit No. 4.

8. On June 20, 2003, United Electric Co-op, Inc. and the City of Burley filed a joint Application with this Commission seeking "approval of the Commission of the existing Territory Agreements and Amendments thereto." A copy of the June 20, 2003, Application is attached hereto as Exhibit No. 5. The Commission assigned the Application Docket No. GNR-E-03-03.

9. On October 15, 2003, the Commission issued Order No. 29355 in Docket No. GNR-E-03-3 in which it ordered:

that the Application filed by United Electric Co-op and the City of Burley to approve their "Territory Service Agreement" dated May 21, 1985, and two subsequent "amendments" dated November 19, 1996, and May 6, 2003, respectively, are approved as conditioned above."<sup>10</sup>

The "condition above" referenced by the Commission in its ordering paragraph is explained in the body of the order as follows:

Staff also made one other comment that merits discussion. The Staff observed that paragraph 13 of the 1996 amendment provides that the prevailing party in any legal action is entitled to recover reasonable legal fees. As Staff noted, the 2000 and 2001

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<sup>10</sup> Order No. 29355 at p. 5.

amendments to the ESSA remove resolution of ESSA disputes from the district courts and authorize the Commission to resolve these disputes. *See Idaho Code* § 61-334A. Without reforming the contract, we note that the Commission does not have authority to award attorney fees other than as provided by *Idaho Code* § 61-617A.<sup>11</sup>

10. The three service territory agreements that were entered into between the City of Burley and United and that were approved by the Commission in Order No. 29355 have been previously provided herein at Exhibit Nos. 1, 2 and 4, respectively. They are collectively referred to herein as the “Service Territory Agreements.”

**B. Suntado Proposes a New Facility Located in *United’s Service Territory* but Within the formal limits of the City of Burley**

11. In the Fall of last year, (2022), United learned that Suntado, LLC, is in the process of developing a large milk processing facility on a tract of land that is wholly in United’s service territory.

12. The proposed Suntado facility would occupy a tract that is identified by the circle on the attached map labeled as Exhibit No. 6.

13. Exhibit 6, in addition to showing the location of the proposed new Suntado facility, also shows the boundary between the City of Burley’s service territory and United Electric’s service territory. As is apparent from Exhibit 6, although the Suntado site abuts on two sides the boundary dividing the City and United’s respective service territories, it is entirely within the boundaries of United’s exclusive service territory.

14. There is also a house, the address of which is 1210 W. 16<sup>th</sup> Ave, Burley, located

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<sup>11</sup> Order No. 29355 at p. 4. The referenced Idaho Code section (61-617A) deals with intervenor funding involving commission proceedings with regulated utilities – which is not applicable to either United or the City. United is not seeking an award of attorney’s fees from the Commission in this Complaint case.

on the southeast corner of the tract.

15. The house at 1210 W. 16<sup>th</sup> Ave., Burley, is currently being served by United Electric.

16. The house at 1210 W. 16<sup>th</sup> Ave, Burley, Idaho is being used as the physical business address of Suntado. See Exhibit No. 7 for a copy of Suntado's annual report to the Idaho Secretary of State indicating that Suntado's physical address is 1210 W. 16<sup>th</sup> Ave, Burley, Idaho.

17. The location of the Suntado proposed processing plant on the site in question may be generally described as being bounded by 16<sup>th</sup> Street on the south, the railroad on the east and roughly by Washington Street on the west. The northern and eastern boundaries of the lot are conterminous with the existing boundary separating United's service territory from the City's service territory. It is located at approximately the 1200 through 1600 blocks on the north side of 16<sup>th</sup> Street and west of the railroad right-of-way in the City of Burley.

18. The site in question is wholly located within the Commission approved service territory of United Electric Co-op, Inc.

**C. United Has Used Its Best Efforts to Resolve Burley's Threatened Encroachment Into its Service Territory**

19. In the autumn of 2022 United learned that the City had begun the process of physically extending facilities on the site for the purpose of providing electric service to Suntado's proposed new facility.

20. In that same timeframe, United informed Burley and Suntando that Commission Order No. 29355 requires that the parties enter into an agreement that would allow Burley to

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provide electric service to Suntado, which is located in United's service territory.

21. Order No. 29355 and the ESSA require that a customer allocation agreement must be submitted to the Commission for its review and approval or rejection.

22. On November 2, 2022, United tendered to the City the November 2022, Proposed Agreement to the Burley/United Service Territory Agreements that would have allowed Burley to serve this new customer (that is located in United's service territory). The November 2022, Proposed Agreement explicitly provided that it did not set precedent for future encroachments by the City into United's service territory. A copy of the November 2022, Proposed Agreement that was tendered by United to the City is attached hereto as Exhibit No. 8. The November 2022, Proposed Agreement, by its own terms and by operation of the ESSA, would only have become effective upon the Commission's approval.

23. The November 2, 2022, letter transmitting the November 2022, Proposed Agreement provided that once the November 2022, Proposed Agreement to the Burley/United Service Territory Agreements was executed, that United would file the same with the Idaho PUC for its approval. See Exhibit No. 9.

24. By early December 2022, the City had not responded to United's November 2, 2022, letter and offer to enter into the November 2022 Proposed Agreement.

25. By early December 2022, it had become apparent to United that the City was in the process of making physical extensions of its electric distribution system for the purpose of providing electric service to the Suntado site.

26. In response to the City's line extension activities, in a December 5, 2022, letter



United reiterated its offer to allow the City to serve this new customer, conditioned only upon the City's execution of the November 2022, Proposed Agreement (Exhibit 8) that was tendered by the November 2, 2022, letter (Exhibit 9). A copy of the December 5, 2022, letter reiterating United's offer is attached hereto to as Exhibit No. 10.

**D. United's Efforts To Resolve The Service Territory Encroachment By The City Have Been Rebuffed**

27. Although, the City has not directly responded to United's letters or tender offer of the November 2022, Proposed Agreement (Exhibit 8) Burley City Council minutes and live-stream videos indicate that the City has affirmatively decided to reject United's offers.

28. Attached hereto as Exhibit No. 11 are the minutes from the January 17, 2023, Regular Burley City Council Meeting that took place at the Burley City Hall.<sup>12</sup>

29. Under "Action Item No. 5" on the City's January 17, 2023, agenda is the heading "Letter to the Idaho PUC."

30. The Burley City Council minutes from January 17, 2023, (on page 4 of Exhibit No. 11) provide:

It was explained that the Electric Department is trying to fix an agreement with United Electric to expand services to the citizens in a safe manner. It was explained that the city is working with a legal firm from Idaho Falls to work on this project. The attorneys have come up with a letter to send to the Idaho PUC. The letter will be given to City Council so that they can review it before it goes to the Public Utilities Commission. The hope is that the Public Utilities Commission will cancel the agreement that is in place now from 1986 so that the city can renegotiate the agreement to help the city grow. [Emphasis provided.]

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<sup>12</sup> The entire meeting is available to live stream on line at: <https://burleyidaho.org/AgendaCenter/City-Council-2>

31. The City of Burley did not address, and has not responded to, United's offer to enter into the November 2022, Proposed Agreement. The City is, however, in the process of drafting a letter (petition?) asking the Commission to "cancel the agreement that is now in place from 1986."<sup>13</sup>

32. Attached as Exhibit No. 12 is a map of the proposed Suntado facility site indicating the location of the City's newly constructed line extension onto the Suntado site that is within the boundaries of United Electric Coop's exclusive service territory.

33. Also on Exhibit 12 is a photograph of the City's newly constructed line extension onto the Suntado Site.

## **II** **JURISDICTION**

34. The Commission has jurisdiction over this matter. The Electric Supplier Stabilization Act provides the Commission with continuing jurisdiction over enforcement of not only the specific provisions of the ESSA but also of those individual Service Territory Agreements entered into pursuant to the ESSA.

Idaho Code Section 61-334A (as amended in 2001)<sup>14</sup> provides:

(1) Any electric supplier or consumer whose rights under this act shall be violated or threatened with violation may file a complaint with the commission against an electric supplier and any other person responsible for the violation.

(2) After notice an opportunity for hearing, the commission shall make findings of fact and conclusions of law determining whether this act or any orders issued under this act have been violated or threatened to be violated and shall determine whether there is actual or threatened irreparable injuries to the electric supplier or consumer whose rights

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<sup>13</sup> *Id.* See Exhibit No. 11 at page 4, under the paragraph heading, "Letter to Idaho PUC."

<sup>14</sup> The 2001 amendments to the ESSA removed the district courts from having jurisdiction over violations of the ESSA and instead, vested that jurisdiction with the Commission.

are violated or threatened with violation as a basis for granting relief.

(3) The relief to be granted under this section for violation of this act shall forbid further acts in violation of such orders, shall order the removal of any electric connections, facilities or equipment that constitute the violation, or a combination thereof necessary to enforce compliance with this act.

Furthermore, Idaho Code § 61-333 provides that electric suppliers may, by contract, allocate service territories and customers among themselves and that such contracts are binding and legally enforceable pursuant to the terms of the ESSA:

(1) Any electric supplier may contract in writing with any other electric supplier for the purpose of allocating territories, consumers, and future consumers between the electric suppliers and designating which territories and consumers are to be served by which contracting electric supplier. ... All such contracts shall be filed with the commission. ... The commission shall, after notice and opportunity for hearing, review and approve or reject contracts between municipalities and cooperatives...

(2) Any electric supplier may also contract in writing with any other electric supplier for the sale, exchange, transfer, or lease of equipment or facilities located within territory which is the subject of any allocation contracted for under subsection (1) of this section and any contract validly entered into and approved by the commission after notice and opportunity for hearing shall be binding and shall be legally enforceable pursuant to this act, or by any other remedy provided by law.

35. The service territory agreements at issue in this matter were approved by the Commission on October 15, 2003, by Order No. 29355 in Docket No. GNR-E-03-3.

36. On page 5 of Order No. 29355 the Commission noted that should the parties choose to substitute one supplier for another pursuant to the provision of the agreements providing for such an eventuality, that such amendment "shall be submitted to the Commission for its review."

37. The City's actions in extending service to the Suntado site violate the Service Territory Agreements, violate the ESSA and violate Order No. 29355.

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**III**  
**COUNT ONE**

38. United Electric realleges and hereby incorporates by reference all of the foregoing as if fully stated herein.

39. The City of Burley has breached the Service Territory Agreements by having commenced to bring electric service to the Suntado facility located within the exclusive service territory belonging to United Electric Co-op, Inc.

**COUNT TWO**

40. United Electric realleges and hereby incorporates by reference all of the foregoing as if fully stated herein.

41. The City of Burley has violated the Electric Supplier Stabilization Act by having commenced to bring electric service to the Suntado facility located within the exclusive service territory belonging to United Electric Co-op, Inc.

**COUNT THREE**

42. United Electric realleges and hereby incorporates by reference all of the foregoing as if fully stated herein.

43. The City of Burley has violated Commission Order No. 29355 by failing to honor the Service Territory Agreements approved by the Commission in that Order.

**WHEREFORE**, United Electric Co-op, Inc. respectfully requests that the Commission award the following relief:

1. Entry of an order forbidding the City from engaging in further acts in violation of

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the Service Territory Agreements that have been approved by order of the Commission.

2. Entry of an order prohibiting the City from providing electric service to the Suntado site.

3. Entry of an order requiring the City to remove all electrical connections, facilities and/or equipment installed to serve the Suntado site.

3. Any further relief to which United Electric may be entitled.

DATED this 23<sup>rd</sup> day of February 2023.

RICHARSON ADAMS, PLLC



Peter J. Richardson, ISB # 3195

BEFORE THE  
IDAHO PUBLIC UTILITIES  
COMMISSION

UNITED ELECTRIC CO-OP, INC.,	)	
Complainant,	)	Docket No. _____
v.	)	
	)	UNITED ELECTRIC CO-OP INC.'s
THE CITY OF BURLEY, IDAHO,	)	FORMAL COMPLAINT FOR VIOLATION
Respondent.	)	OF CONTRACT ENTERED INTO
	)	PURSUANT TO THE IDAHO ELECTRIC
	)	STABILIZATION ACT
_____	)	

UNITED ELECTRIC CO-OP'S  
EXHIBIT NO. 1

May 21, 1985, Territory Service Agreement between the City of Burley and Unity Light and Power Company.

TERRITORY SERVICE AGREEMENT

AGREEMENT, made this 21<sup>st</sup> day of May, 1985,  
between THE CITY OF BURLEY, IDAHO, ("Burley"), and UNITY LIGHT AND  
POWER COMPANY, a corporation, ("Unity").

1. RECITALS: The parties recite and declare:

1.1. Unity and Burley each own and operate an electrical distribution system in Cassia County, Idaho. The utilities are generally contiguous and adjacent on the South, East and West boundaries of Burley except that there are certain existing customers of Unity located within the corporate limits of Burley ("Existing Customers").

1.2. Neither Burley nor Unity are regulated by the Idaho Public Utilities Commission nor are there any other regulatory agencies that regulate service territory of the respective utilities, however, Idaho Code 61-333 authorizes territorial agreements between utilities.

1.3. It is the opinion of Burley and Unity acting through the City Council and Board of Directors that the laws applicable to territory jurisdiction are unclear and ambiguous and as such Unity and Burley desire to enter into an agreement relative to service territory as the same is applicable to their common territorial boundaries, as authorized by Idaho Code 61-333.

1.4. Burley and Unity further believe that a territorial agreement is in the best interest of potential customers, future planning, efficiency, and economy of service.

NOW, THEREFORE, in consideration of the Recitals, the covenants, conditions, the agreements herein contained, the authorization of the law (Idaho Code 61-333), the benefits to be

derived by each of the utilities Unity and Burley agree:

2. TERRITORY MAP: Attached to this agreement as Exhibit 1 is a map outlining the territories in which each utility shall, with the exception of the Existing Customers, in the future serve. The territories are illustrated on the map as follows:

2.1. Burley Territory

Within heavy black lines on Exhibit 1.

2.2. Unity Territory.

Outside of heavy black lines on Exhibit 1.

3. MODIFICATION AND ENTIRE AGREEMENT: This agreement constitutes the entire understanding of Unity and Burley and all prior negotiations are deemed merged herein. This agreement may only be modified in writing executed by the duly authorized officials of Burley and the officers of Unity. Until any modification be executed, this agreement shall remain in full force and effect.

4. UNITY TERRITORY: Unity shall be entitled to serve all Customers and future Customers within the area illustrated on the map as the Unity Territory, and Existing Customers within Burley as provided in Paragraph 6.

5. BURLEY TERRITORY: With the exception of Existing Customers, Burley shall be entitled to serve all current and future customers within the territory designated as the Burley Territory on the map.

6. EXISTING CUSTOMERS: As illustrated on the Exhibit 2 & 2A attached to this agreement there are certain Existing Customers of Unity within Burley. Unity may maintain these Customers for so long as it desires and the same shall be considered exceptions to



this Territory / Agreement. If the Customers and Unity terminate their relationship as the same now exists with electrical service by Unity to the Customer, then in such event the Customer shall become part of the Burley Territory and serve electrical energy accordingly.

7. AUTHORITY: This agreement has been executed by Burley and Unity pursuant to actions of the City Council and the Board of Directors at meetings duly held. The officers of Unity and the officials of Burley have been duly authorized to execute this agreement.

8. RECORDING: A copy of this agreement shall be recorded in the office of the County Recorder, County of Cassia, State of Idaho.

9. SERVICE OF EACH UTILITY: Notwithstanding the provisions of this agreement and any territories of each utility defined herein, the parties agree that should either or both of the utilities have buildings or other facilities requiring electric service in the territory of the other that nevertheless each utility shall be entitled to serve its own buildings and other facilities located within the territory of each other. This provision shall apply to not only the existing electrical service but to any future electrical service to any building or facility owned by that particular utility.

10. ANNEXATION: In the event that Burley should annex lands to its corporate limits that are in the Unity territory nevertheless the annexation shall be subject to the continued service by Unity of any existing or future customers within the annexed area to Burley.

11. TERRITORIAL LINE: The territorial lines on Exhibit 1 are absolute and that is, either Burley or Unity shall be entitled to any Customer, except Existing Customers and each of the facilities or buildings of each utility, on either side of the territorial line. Any footage limitations set forth in any existing or future statutes shall not be applicable to the respective territories and that is, each utility shall be able to serve up to the line separating the areas of the two utilities.

12. AREA MODIFICATION: No modification of the defined territories of Unity and Burley shall be effective until a modification of this agreement has been signed pursuant to paragraph 3 and a map illustrating the altered territory, if any, be recorded in the office of the County Recorder of the County of Cassia, State of Idaho. This paragraph shall not be construed as implying that there will be any subsequent alteration of the territory but in the event circumstances arise that there shall be an alteration of territories then this provision shall govern relative to how and in what manner the territory is modified.

IN WITNESS WHEREOF, this agreement has been executed the day and year first above written.

CITY OF BURLEY

BY   
Mayor


ATTEST:

  
City Clerk

UNITY LIGHT AND POWER COMPANY

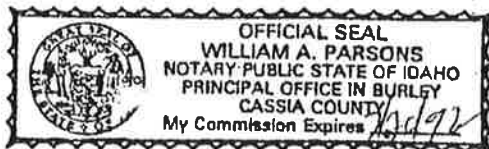
BY   
President

ATTEST:

  
Secretary

STATE OF IDAHO )  
 ) ss  
County of Cassia )

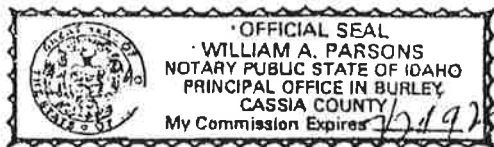
On this 21 day of May in the year of 1985 before me, the undersigned, a Notary Public in and for said State, personally appeared CHUCK SHADDUCK and E. E. BRINEGAR, known or identified to me to be the Mayor and City Clerk of CITY OF BURLEY, the Municipal corporation that executed the instrument or the person who executed the instrument on behalf of said City of Burley, and acknowledged to me that such City of Burley executed the same.



William A. Parsons  
Notary Public for Idaho  
Residing at \_\_\_\_\_

STATE OF IDAHO )  
 ) ss  
County of Cassia )

On this 21 day of May in the year of 1985, before me, the undersigned, a Notary Public in and for said State, personally appeared RONALD OSTERHOUT and GARTH FREYMILLER, known or identified to me to be the President and Secretary of UNITY LIGHT AND POWERS COMPANY, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.



William A. Parsons  
Notary Public for Idaho  
Residing at \_\_\_\_\_

BEFORE THE  
IDAHO PUBLIC UTILITIES  
COMMISSION

UNITED ELECTRIC CO-OP, INC.,	)	
Complainant,	)	Docket No. _____
v.	)	
	)	
THE CITY OF BURLEY, IDAHO,	)	UNITED ELECTRIC CO-OP INC.'s
Respondent.	)	FORMAL COMPLAINT FOR VIOLATION
	)	OF CONTRACT ENTERED INTO
	)	PURSUANT TO THE IDAHO ELECTRIC
	)	STABILIZATION ACT
_____	)	

UNITED ELECTRIC CO-OP'S  
EXHIBIT NO. 2

November 19, 1996, Service Area Stabilization Agreement between the City of Burley and Rural Electric Company.

SERVICE AREA STABILIZATION AGREEMENT

THIS AGREEMENT entered the 19th day of November, 1996, by and between THE CITY OF BURLEY, a municipal corporation of the State of Idaho, hereinafter referred to as "City", and RURAL ELECTRIC COMPANY, a non-profit cooperative corporation of the State of Idaho, hereinafter known as "Rural",

W I T N E S S E T H:

WHEREAS, each party owns and operates an electrical distribution system which serves customers in and around the portion of the incorporated area of the City of Burley which is located north of the Snake River in Minidoka County, Idaho, and

WHEREAS, the parties previously entered a Service Area Agreement on the 6th day of June, 1988, to resolve certain service territory issues pursuant to the Idaho Electric Supplier Stabilization Act, and

WHEREAS, the 1988 agreement did not fully and finally resolve all of the issues between the parties regarding allocation of customers and service area in the north Burley area, and

WHEREAS, it is in the best interests of the parties and the public that the parties further define their respective rights and responsibilities with respect to service of customers in the north Burley area to avoid disputes between the parties regarding extension of service to new customers and to reduce potential safety hazards and costly duplication of lines and facilities,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. Exhibit A, which is attached hereto and incorporated herein by reference, is adopted by the parties to graphically illustrate the allocation of service areas between the parties to this agreement. The City shall serve all new customers in the areas identified as Parcels 1, 2 and 3. Rural will serve all new customers in the areas identified as Parcels 4, 5 and 6 and all of the area north of the south right of way of the Interstate Highway. For purposes of this agreement a "new customer" is one who requests electric service for a facility which has not previously received

service. A customer who replaces another customer who was previously receiving electric service at the same location shall be served by the utility which served the prior customer at that location. From and after the date of execution of this agreement, neither party shall extend its lines or offer service to any customer who requests electrical energy service in the territory allocated to the other party without written consent of the other party.

2. The parcels to be served by the City of Burley are more particularly described as follows:

Parcel 1: Beginning at the Snake River and the City of Heyburn's western city limits; thence north to East 5th Street North; thence west 300 feet to the existing Burley city limits; thence south 250 feet to the south property (solid cinder block fence) line of the unplatted lots fronting East 5th Street North; thence west 1,016 feet to the east property line of J & L Electric; thence north 250 feet to East 5th Street North; thence west 912 feet to the east side of North Albion Avenue; thence south along the east side of North Albion Avenue to the north boundary of Volco, Inc., and continuing south to the Snake River, which is the south boundary of Parcel 1; thence east along the river to the Point of Beginning.

Parcel 2: Beginning on East 5th Street North at the southwest corner of Century Cinema parking lot, which is 923 feet west of the existing Heyburn City limits; thence north along the west side of the parking lot for 315 feet to an irrigation ditch which parallels the north side of the parking lot; thence east along the irrigation ditch for 182 feet; thence north along the irrigation ditch approximately 603 feet to the south property line of the Lavon Hansen property; thence west along the Hansen property line and Rural pole line easement for 192 feet to Minidoka Avenue; thence northeasterly along Minidoka Avenue to Interstate Highway 84 (I-84); thence west along the south side of I-84 to Minidoka Irrigation District (MID) Drain D14; thence south 767 feet along the east side of the D-14 Drain; thence west 90 feet across the D14 Drain to the east side of the B-4 Canal; thence southwesterly along the east side of the B-4 Canal to West 5th Street North; thence east along West 5th Street North across Highway 27 (Overland



Avenue) along the north side of East 5th Street North to the southwest corner of Century Cinema parking lot, which is the Point of Beginning.

Parcel 3: Beginning at the Snake River on the east side of MID Drain D14; thence northeasterly along the east side of MID Drain D14 to the north side of West 2nd Street North; thence west to North Miller Avenue; thence north along the east side of North Miller Avenue to the south side of West 5th Street North; thence east to State Highway 27; thence south along the west side of Highway 27 to the Snake River; thence southwesterly along the river to the Point of Beginning.

The City shall not serve customers north of the south right of way of the Interstate Highway.

The parcels to be served by Rural Electric Company are described as follows:

Parcel 4: Beginning at the intersection of West 5th North and North Miller Avenue; thence south along the west side of North Miller Avenue to West 2nd Street North; thence east along the south side of 2nd Street North to the east boundary of MID Drain D14; thence southwesterly along the east side of MID Drain D14 to the Snake River; thence westerly along the Snake River to approximately 1000 West road where Rural adjoins Idaho Power Company; thence north along the section line (1000 West) to I-84; thence east to MID Drain D14 (City limits); thence south along the west side of the MID D-14 drain for 767 feet; thence west 90 feet to the west side of the B-4 Canal; thence southwesterly along the B-4 Canal to West 5th Street North; thence east along the south side of West 5th Street North to the Point of Beginning.

Parcel 5: Beginning at East 5th Street North where it intersects with North Albion Avenue; thence south along the west side of North Albion Avenue to the north boundary of Volco, Inc.; thence south to the north boundary of Volco, Inc. and continuing south to the Snake River; thence southwesterly along the Snake River to Overland Avenue; thence north along the east side of Overland Avenue (State Highway 27) to East 5th Street North; thence east along the south side of East 5th Street North to the Point of Beginning.

Parcel 6: Beginning at East 5th Street North and the northwest corner of the Harry Isaak property which is 300 feet west of the Heyburn City limits; thence south 250 feet to the south property line (solid cinder block fence) of the unplatted lots fronting East 5th Street North; thence west 1,016 feet to the east property line of J & L Electric; thence north 250 feet to East 5th Street North; thence east along the south side of East 5th Street North to the southwest corner of Century Cinema parking lot, which is 622 feet west of the Point of Beginning; thence north on the west side of the parking lot for 315 feet to an irrigation ditch which parallels the north side of the parking lot; thence east along the irrigation ditch for 182 feet; thence north along the irrigation ditch approximately 603 feet to the south property line of the Lavon Hansen property; thence west 192 feet along the Hansen property line and Rural pole line easement to Minidoka Avenue; thence northeasterly along Minidoka Avenue to Interstate Highway 84 (I-84); thence east to the City of Heyburn's service area; thence south along Heyburn's west service area boundary to 400 South (Alfresco Road); thence west to the Point of Beginning.

Rural shall serve all customers north of the south right of way of the Interstate Highway.

3. To the extent any conflict exists between the illustration on the map attached as Exhibit A and the descriptions referred to above, the descriptions shall prevail over the illustration on the map.

4. To the extent that either party is currently providing service to customers within the service area assigned to the other party by this agreement, said party shall be entitled to continue to serve said customers. Neither party shall be required to withdraw from the service area allocated to the other, but the right to continue to serve existing customers within the service area of the other shall not be construed to authorize extension of service to new customers within the service area allocated to the other party by this agreement.

5. Nothing contained herein shall prohibit the parties from entering a written agreement to permit the service of a new customer by a party whose distribution system is located in the service area of the other, if the new customer can be served more efficiently and safely from the



existing service lines of the other party or by extension of the existing service lines of the other party, but any such agreement shall be in writing and signed by the appropriate officers after authorization is given by the respective governing boards, and said memorandum shall be appended to this agreement.

6. Each party reserves rights of way and easements for existing distribution lines which will be necessary to continue service to customer it retains pursuant to this agreement.

7. The parties shall exercise their best efforts to exchange the service to Norco adjacent to Kunau Park which is currently served by Rural for Ag-West, which is currently served by City, to improve the safety and reliability of service to both customers.

8.(a) Notwithstanding, the City's agreement to allow Rural to be the exclusive provider of service within the territory granted or reserved to Rural, the City shall have the right to install its own street lights, pumps and other facilities which it hereafter operates within Rural's service area and Rural agrees to deliver electrical energy and power to the City's facilities within Rural's service area on the terms and conditions set forth herein. Distribution service hereunder shall be provided in amounts necessary for the City to maintain culinary water delivery, waste water disposal service, street lights, and other City services to its customers.

(b) Rural shall furnish all transformers and meters (except as otherwise noted hereinafter), at the point of delivery to the City. The service provided by Rural shall include facilities or equipment necessary or used in the delivery to the point of use by the City, and shall include transforming, switching, fusing and lightning arresters at the point of use by the City and with respect to interconnection of Rural's system, at the point of delivery to the City, Rural, at its own expense shall furnish such equipment and devices as are required, provided, however, the City shall install capacitors on the load side of the pump panel contactor, adequate to maintain a 95% power factor at all of its pump motors.

(c) Electric power and energy distributed hereunder will be delivered to the City at the nominal delivery voltages necessary and will be measured by metering at each individual point of delivery by Rural. Rural will read all meters monthly on approximately the same date each month. The City shall have

the right to be present at and participate in all meter readings and testing. The City may take meter readings each month or at the beginning and end of each year jointly with Rural to confirm the energy used.

(d) The City shall reimburse Rural for energy (kwh) and demand (kW) at the current Rural retail commercial rate (minus the monthly customer charge), which is subject to adjustment from time to time, and which may be modified under separate agreement between the City and Rural. In the event that the City desires to negotiate a separate agreement for a time of day metering rate, the City shall pay to Rural the cost of the specialized meter and installation in order to account for the time of day usage (both diurnal and nocturnal periods), seasonal periods, light load hours, heavy load hours, coincidental, and non-coincidental demand peaks, and any other data acquisition required to put the separate agreement into effect.

(e) Rural shall submit bills to the City on or before the first working day of each month for service furnished during the preceding month, and payments shall be due and payable by the City on the tenth day of the month immediately succeeding the date each bill is submitted.

(f) The City shall not be required to purchase a membership in Rural to receive electrical services, and it shall not receive a share of patronage savings because it will not be a member and because it will enjoy a preferential rate which approximates a wheeling charge.

9. In the event the City elects to impose a franchise fee for service of customers of Rural which are located within the City, including territories which may be annexed to the City in the future, Rural agrees to collect said franchise fees from its customers within the annexed area and transmit payment to the City not less than quarterly pursuant to the terms of the applicable franchise ordinance of the City. Rural reserves the right to contest the validity of any franchise fee which would have a detrimental economic impact on Rural or its customers who would be subject to a franchise fee.

10. In operating and supplying electrical services within its service area within areas next to the City, Rural shall comply with and conform to all safety regulations promulgated by the American National Standards Institute and entitled "National Electrical Safety Code", together with all state and federal laws regulating Rural's operations in any reasonable operations imposed by the City; provided, however,

that such City regulations shall not be more burdensome nor restrictive than those imposed by the City upon its own electric department. Rural also agrees to notify customers within the City limits of the need to acquire a City electrical permit for new wiring or rewiring of buildings.

11. This agreement shall remain in full force and effect as long as each of the parties shall continue to operate as electrical suppliers under their present form of ownership. In the event the City should terminate operations as an electrical supplier, the boundary lines establishing the respective service areas shall remain in effect as to Rural and the successor to the City's service area. In the event that Rural should cease to operate as an electrical cooperative within its service area, whether by sale of part or all of the service area or by change in the form of ownership of Rural to a stock company or proprietorship other than a cooperative, the service area established by this agreement shall remain the same.

12. Neither party shall be permitted to extend its service into the service area granted to the other party by this agreement by acquiring the service area of any electrical supplier which is not a party to this agreement.

13. In the event either party shall be required to commence legal action to enforce any term or condition of this agreement, said party shall be entitled to recover reasonable costs and attorney fees in addition to any other relief said party may obtain.

14. A copy of this agreement shall be recorded in the office of the County Recorder of Minidoka County, Idaho.

15. This agreement may only be modified by an instrument in writing signed by the authorized representatives of Rural and the City. Upon execution of any modification, said agreement shall be recorded in the office of the County Recorder of Minidoka County, Idaho. No oral modifications of this agreement shall be enforceable.

16. This agreement has been executed by the undersigned pursuant to a resolution of the City Council of the City of Burley and a resolution of the Board of Directors of Rural Electric Company at meetings held in conformance with the statutes and bylaws applicable to the respective entities.

17. This agreement supersedes the Service Area Agreement between the parties dated June 6, 1988.



IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

CITY OF BURLEY

by

Frank Bauman  
Mayor

ATTEST:

E.E. Drinegar  
City Clerk

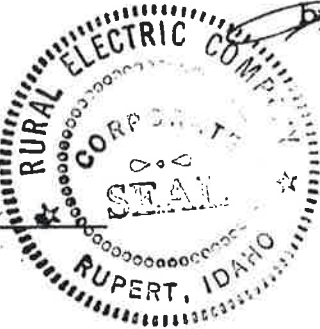
RURAL ELECTRIC COMPANY

by

[Signature]  
President

ATTEST:

John D. Moller  
Secretary



STATE OF IDAHO )

) ss.

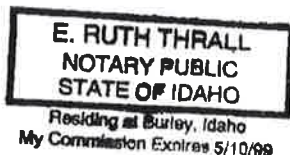
County of Cassia )

On this 19th day of November, 1996, before me the undersigned notary public in and for said state, personally appeared Mayor Frank Bauman, and City Clerk E.E. Drinegar, known or identified to me to be the persons whose names are subscribed to the within instrument as Mayor and City Clerk and acknowledged to me that they executed the same as such Mayor and City Clerk for the City of Burley.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

E. Ruth Thrall  
Notary Public  
Residing at \_\_\_\_\_  
My Commission expires \_\_\_\_\_



STATE OF IDAHO           )  
                                  ) ss.  
County of Cassia        )

On this 25<sup>th</sup> day of November, 1996, before me the undersigned notary public in and for said state, personally appeared George H. Jones, as president, and Walter D. Smith, as secretary, known to me to be the president and secretary of the corporation that executed the instrument or the persons who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

Daniel J. Chisholm  
Notary Public  
Residing at Haystack  
My Commission expires 2-14-2001

BEFORE THE  
IDAHO PUBLIC UTILITIES  
COMMISSION

UNITED ELECTRIC CO-OP, INC.,  
Complainant,  
v.

THE CITY OF BURLEY, IDAHO,  
Respondent.

Docket No. \_\_\_\_\_

UNITED ELECTRIC CO-OP INC.'s  
FORMAL COMPLAINT FOR VIOLATION  
OF CONTRACT ENTERED INTO  
PURSUANT TO THE IDAHO ELECTRIC  
STABILIZATION ACT

UNITED ELECTRIC CO-OP'S  
EXHIBIT NO. 3

Chapter 29, 2001(H.B. 142) of the Idaho Session Laws.

2-203, Idaho Code);

(4) "Voter registration lists" means the most current official records, maintained by the county clerk, of persons registered to vote in any national, state, county, or municipal election;

(5) "Jury wheel" means any physical device or electronic system for the storage of the names or identifying numbers of prospective jurors;

(6) "Master jury wheel" means the jury wheel in which are placed names or identifying numbers of prospective jurors taken from the master list (section 2-207, Idaho Code);

(7) "Qualified jury wheel" means the jury wheel in which are placed the names or identifying numbers of prospective jurors whose names are drawn at random from the master jury wheel (section 2-208, Idaho Code) and who are not disqualified (section 2-209, Idaho Code).

Approved February 27, 2001.

CHAPTER 29  
(H.B. No. 142)

AN ACT

RELATING TO THE ELECTRIC SUPPLIER STABILIZATION ACT; REPEALING CHAPTER 1, LAWS OF THE FIRST EXTRAORDINARY SESSION OF 2000; TO PROVIDE A STATEMENT OF INTENT; AMENDING SECTION 61-332, IDAHO CODE, TO CLARIFY THE PURPOSES OF THE ELECTRIC SUPPLIER STABILIZATION ACT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 61-332A, IDAHO CODE, TO REVISE DEFINITIONS, TO DELETE A REFERENCE TO OBSOLETE MATERIAL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 61-332B, IDAHO CODE, TO REQUIRE APPROVAL OF THE PUBLIC UTILITIES COMMISSION FOR TRANSFERRING CONSUMERS; AMENDING SECTION 61-332C, IDAHO CODE, TO PROVIDE PROVISIONS FOR SELECTING AN ELECTRIC SUPPLIER FOR NEW ELECTRIC SERVICE ENTRANCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 3, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-332D, IDAHO CODE, TO SUPERVISE WHEELING SERVICES; AMENDING SECTION 61-333, IDAHO CODE, TO REQUIRE ELECTRIC SERVICE TERRITORY CONTRACTS TO BE FILED WITH AND APPROVED BY THE PUBLIC UTILITIES COMMISSION, TO PROVIDE FOR NOTICE AND HEARING REGARDING CONTRACT APPROVAL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 61-334, IDAHO CODE, TO PROVIDE THAT THE PUBLIC UTILITIES COMMISSION HAS CERTAIN AUTHORITY OVER ELECTRIC SUPPLIERS, TO PROVIDE FOR APPLICATION OF PUBLIC UTILITIES LAW AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 61-334A, IDAHO CODE; AMENDING SECTION 61-334B, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE FOR FILING A COMPLAINT WITH THE PUBLIC UTILITIES COMMISSION, TO PROVIDE FOR NOTICE AND HEARINGS, TO PROVIDE REMEDIES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 3, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-334B, IDAHO CODE, TO PROVIDE COMMISSION SUPERVISION AND AUTHORITY; AMENDING CHAPTER 3, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-334C, IDAHO CODE, TO PROVIDE ELECTRIC SUPPLIER IMMUNITY; AMENDING SECTION 30-3-14, IDAHO CODE, TO PROVIDE THAT ANY MEMBER OF A COOPERATIVE ASSOCIATION THAT PROVIDES ELECTRIC SERVICE MAY APPLY TO THE DISTRICT COURT OF THE COUNTY WHERE THE MEMBER'S SERVICE ENTRANCE IS LOCATED FOR A DETERMINATION THAT THE COOPERATIVE

ASSOCIATION'S CHARGES FOR ELECTRIC SERVICE TO THAT MEMBER ARE FAIR, JUST AND REASONABLE AND ARE NOT DISCRIMINATORY OR PREFERENTIAL AND TO PROVIDE CIRCUMSTANCES WHEN THE COURT WILL REMAND THE MATTER TO THE COOPERATIVE ASSOCIATION; AMENDING SECTION 50-325, IDAHO CODE, TO PROVIDE THAT ANY CONSUMER OF A MUNICIPAL ELECTRIC SYSTEM MAY APPLY TO THE DISTRICT COURT OF THE COUNTY WHERE THE CONSUMER'S SERVICE ENTRANCE IS LOCATED FOR A DETERMINATION THAT THE MUNICIPALITY'S CHARGES FOR ELECTRIC SERVICE TO THAT CONSUMER ARE FAIR, JUST AND REASONABLE AND NOT DISCRIMINATORY OR PREFERENTIAL, TO PROVIDE CIRCUMSTANCES WHEN THE COURT WILL REMAND THE MATTER TO THE MUNICIPALITY AND TO MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 1, Laws of the First Extraordinary Session of 2000, be, and the same is hereby repealed.

SECTION 2. LEGISLATIVE INTENT. The provision of a safe and reliable supply of electricity in a manner that prohibits the "pirating" of consumers and discourages duplication of facilities is essential to the well-being of Idaho's citizens and its economy. It was for these and other reasons that the legislature passed the Electric Supplier Stabilization Act in 1970. The legislature has been advised of federal antitrust litigation alleging that conformance with the provisions of this act does not confer federal antitrust immunity upon parties in compliance with the act. The legislature finds that a negative judicial ruling would have the effect of repealing applicable provisions of the act, undercutting the purposes for which this act was enacted.

It is and has been the intention of the legislature to confer antitrust immunity upon parties acting in compliance with the act under what is known as the state action doctrine. While the legislature believes that compliance with the existing provisions of this act confers such immunity, it has determined to amend the act to more fully address this issue. The legislature therefore finds that it is in the public interest to enact the following amendments.

It is the intent of the legislature in enacting Sections 14 and 15 of this act that relevant court precedent in existence on the effective date of this act be applicable in the interpretation of Sections 30-3-14 and 50-325, Idaho Code. Such court precedent shall include, but not be limited to, Kiefer v. City of Idaho Falls, 49 Idaho 458 (1930).

SECTION 3. That Section 61-332, Idaho Code, be, and the same is hereby amended to read as follows:

61-332. PURPOSE OF ELECTRIC SUPPLIER STABILIZATION ACT. A-(1) This act includes sections 61-332, ~~61-332A, 61-332B, 61-332C, 61-333, 61-334, 61-334A, and through 61-334BC, Idaho Code, as herein enacted, section 61-333A, Idaho Code, as herein amended, and sections 61-333B and 61-333C, Idaho Code, as already enacted,~~ and shall be referred to herein as "this act" and may be cited and referred to as the "Electric Supplier Stabilization Act."

B-(2) This act ~~is~~ and its amendments are designed to promote harmony among and between electric suppliers furnishing electricity within the state of Idaho, prohibit the "pirating" of ~~customers~~ consumers of



another electric supplier, discourage duplication of electric facilities, actively supervise certain conduct of electric suppliers as it relates to this act, and stabilize the territories and customers consumers served with electricity by such electric suppliers.

SECTION 4. That Section 61-332A, Idaho Code, be, and the same is hereby amended to read as follows:

61-332A. DEFINITIONS FOR ELECTRIC SUPPLIER STABILIZATION ACT. As used in this act, unless the context requires otherwise:

(1-) "Public utility" means an electric utility regulated by the Idaho public utilities commission.

(2-) "Cooperative" means a cooperative corporation furnishing electric service in the state of Idaho to its consumer-members who own and operate the cooperative.

(3-) "Municipality" means any municipal corporation or quasi-municipal corporation furnishing electric service to its-citizens the consumers of the municipality in the state of Idaho.

(4-) "Electric sSupplier" means any public utility, cooperative, or municipality supplying or intending to supply electric service to a consumer.

(5-) "Electric service" means electricity furnished to an ultimate consumer by an electric supplier.

(6-) "Consumer" is any person, firm, corporation, or other entity receiving or intending to receive electric service at a specific service entrance.

(7-) "~~Service entrance~~" means ~~the entrance of electric service from facilities of the supplier to the service equipment or utilization equipment of the consumer, in determining "service entrance" reference shall be made to the definition of "entrance of the service to the service equipment or utilization equipment" as defined in the national electrical code of 1965~~ location on the consumer's property where the consumer's main disconnect switch, fuses or other disconnect equipment exists, and which are intended to provide the means of cutoff of the supply.

(8-) "New service entrance" means a service entrance not previously served with electricity. A change, improvement, replacement, enlargement, or change in location of a service entrance shall not be deemed a "new service entrance" if utilized to serve any service or utilization equipment previously served with electricity from the former service entrance, but for the rules provisions of this act shall be deemed the former "service entrance." A change in consumer shall not be construed to make an existing service entrance a "new service entrance." A change, enlargement, or other modification of service or utilization equipment served from an existing service entrance shall not be construed to make it a "new service entrance."

(9-) "Transmission line," for the purposes of this act, means any electric line of an electric supplier for carrying a voltage of sixty-nine (69) KV or more.

(10-) "Service line," for the purposes of this act, means any single or multi-phase electric line of an electric supplier used for carrying less than sixty-nine (69) KV and used or capable of use to provide electric service for a consumer.

(11-) "Existing service line" means any electric service line in

existence at the time of the event in question and constructed to supply a consumer that could be lawfully served by that electric supplier under this act. It shall not mean any service line constructed to obtain an advantage under this act, or to evade its purpose or terms.

(12) "Commission" means the Idaho public utilities commission.

SECTION 5. That Section 61-332B, Idaho Code, be, and the same is hereby amended to read as follows:

61-332B. ELECTRIC SUPPLIER PROHIBITED FROM SERVING CONSUMERS OR FORMER CONSUMERS OF ANOTHER ELECTRIC SUPPLIER. No electric supplier shall ~~construct or extend facilities; nor make any electric connections; nor permit any connections to be made to any of its facilities for the purpose of supplying electric service nor shall it~~ supply or furnish electric service to any electric service entrance that is then or had at any time previously been lawfully connected for electric service to facilities of another electric supplier, ~~without the written consent of such other electric supplier; provided, however, (a) such other electric supplier is then, or was previously the last supplier, lawfully connected to said electric service entrance; and (b) such other electric supplier is willing and able to provide adequate electric service~~ except as provided in this act.

SECTION 6. That Section 61-332C, Idaho Code, be, and the same is hereby amended to read as follows:

61-332C. RULES PROVISIONS FOR SELECTING ELECTRIC SUPPLIER FOR NEW ELECTRIC SERVICE ENTRANCES. (1) ~~In the event more than one electric supplier is willing and able to provide adequate electric service to a consumer at any new electric service entrance, the following rules shall determine which electric supplier will provide electric service for a new service entrance, the following provisions will govern:~~

1-(a) If no electric supplier has an existing service line within one thousand three hundred and twenty (1,320) feet ~~(1,320 ft.)~~ of the a new service entrance the consumer shall have the right of choice of electric supplier.

2-(b) If only one (1) electric supplier has an existing service line within one thousand three hundred and twenty (1,320) feet ~~(1,320 ft.)~~ of the new service entrance that electric supplier shall have the right to serve the consumer at the new service entrance.

3-(c) If more than one (1) electric supplier has an existing service line within one thousand three hundred and twenty (1,320) feet ~~(1,320 ft.)~~ of the new service entrance the electric supplier whose existing service line is nearest the new service entrance shall have the right to serve the consumer at the new service entrance.

4-(d) If more than one (1) electric supplier has an existing service line within one thousand three hundred and twenty (1,320) feet ~~(1,320 ft.)~~ of the new service entrance ~~and the existing service lines are equidistant from the service entrance; or~~ and it cannot be determined by proof which service line is nearest the new service entrance, then the consumer ~~shall have the right of choice of supplier~~ or an electric supplier shall petition the commission for an order determining which electric supplier is nearest the new service entrance.

(e) For purposes of this act distances shall mean the exact distance measured using standard land surveying practices as established by the board of professional engineers and land surveyors of the state of Idaho.

(2) No electric supplier shall construct or extend facilities, nor make any electric connections, nor permit any connection to be made from any of its facilities to any new service entrance nor shall it supply electric service to any new service entrance in violation of the rules herein, without the written consent of any electric supplier with a prior right under the rules to serve the consumer at the new service locations provisions of this section, except as ordered by the commission pursuant to this act.

SECTION 7. That Chapter 3, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-332D, Idaho Code, and to read as follows:

61-332D. WHEELING SERVICES. (1) An electric supplier shall not be required to provide wheeling service over its system if such service results in retail wheeling and/or a sham wholesale transaction.

(2) An electric supplier declining to furnish wheeling service pursuant to this section shall petition the commission for review of the electric supplier's action in respect to a request for such service. The commission shall, upon notice and opportunity for hearing, review the electric supplier's action for consistency with the purposes and provisions of this act, and issue an order in accordance with its finding, ordering either that the wheeling service shall, or shall not, be required.

SECTION 8. That Section 61-333, Idaho Code, be, and the same is hereby amended to read as follows:

61-333. AUTHORIZING CONTRACTS AMONG ELECTRIC SUPPLIERS TO RESOLVE TERRITORIES, CONSUMERS AND TO TRANSFER FACILITIES. ~~A~~(1) Any electric supplier may contract in writing with any other electric supplier for the purpose of allocating territories, consumers, and future consumers between the electric suppliers and designating which territories and consumers are to be served by which contracting electric supplier. The territories and consumers so allocated and designated may include all or any portion of the territories and consumers which are being served by any or all of the contracting electric suppliers at the time the contract is entered into, or which could be economically served by the then existing facilities of any contracting electric supplier, or by reasonable and economic extensions thereto. All such contracts shall be filed with the commission. The commission shall, after notice and opportunity for hearing, review and approve or reject contracts between cooperatives, between cooperatives and public utilities and between public utilities. The commission shall, after notice and opportunity for hearing, review and approve or reject contracts between municipalities and cooperatives, as well as between municipalities and public utilities, provided however, the commission shall have jurisdiction only over cooperatives and public utilities in such approvals. 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

this act.

~~B-(2)~~ Any electric supplier may also contract in writing with any other electric supplier for the sale, exchange, transfer, or lease of equipment or facilities located within territory which is the subject of any allocation contracted for under subsection ~~A-hereof; or~~ Any (1) of this section and any contract validly entered pursuant to ~~this section~~ into and approved by the commission after notice and opportunity for hearing shall be binding and shall be legally enforceable pursuant to this act, or by any other remedy provided by law.

SECTION 9. That Section 61-334, Idaho Code, be, and the same is hereby amended to read as follows:

61-334. SPECIAL RULES OF INTERPRETATION. Nothing contained in this act shall be construed to:

(1-) Grant ~~Idaho public utilities~~ the commission jurisdiction over cooperatives or municipalities except as authorized in this act.

(2-) Apply to controversies between two (2) or more public utilities.

(3-) Preclude any electric supplier from extending electric service to its own property or facilities or to another electric supplier for resale, provided any line extension made under this clause shall not be considered in determining the right of electric suppliers to serve new service entrances under section 61-332C, Idaho Code.

(4) Abrogate or limit the authority of any municipality under any other statute or law with respect to the municipality providing electricity to the municipality or the consumers of the municipality within the boundaries of the municipality.

SECTION 10. That Section 61-334A, Idaho Code, be, and the same is hereby repealed.

SECTION 11. That Section 61-334B, Idaho Code, be, and the same is hereby amended to read as follows:

61-334BA. LEGAL REMEDIES FOR VIOLATION OF THIS ACT. ~~A-(1)~~ Any electric supplier or consumer whose rights under this act shall be violated or threatened with violation, ~~shall be entitled to injunctive relief against said violation upon proper~~ may file a complaint and proof in accordance with Idaho rules of civil procedure in district court, against the other with the commission against an electric supplier and any other person responsible for the violation.

~~B-(2)~~ In any suit for injunctive relief After notice and opportunity for hearing, the commission shall make findings of fact and conclusions by the court that any rules under of law determining whether this act or any orders issued under this act have been violated or threatened to be violated and shall require findings and conclusions by the court of determine whether there is actual or threatened irreparable injury as to the electric supplier or consumer whose rights are violated or threatened with violation as a basis for equitable relief hereunder granting relief.

~~B-(3)~~ The injunctive relief to be granted under this section for violation of this act shall be negative in form; enjoining forbid further acts in violation of such rules orders, shall be affirmative in

form-in-requiring order the removal of any electric connections, facilities or equipment that constitute the violation, and shall be or a combination thereof necessary to enforce compliance with this act.

~~By--Any aggrieved party may also pursue any other remedy provided by law.~~

SECTION 12. That Chapter 3, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-334B, Idaho Code, and to read as follows:

61-334B. COMMISSION SUPERVISION AND AUTHORITY. (1) Upon a petition by an electric supplier or consumer for an exception to the provisions of section 61-332B or 61-332C(1)(a), (b) or (c), Idaho Code, the commission shall issue an order granting such request only upon finding that granting the request is consistent with the purposes of this act as set forth in section 61-332, Idaho Code.

(2) The commission shall have power to issue authorizations and orders requested under this act, or to refuse to issue the same, and may attach to any authorization and order as a condition of approval such terms and conditions as it determines are consistent with the purposes and provisions of this act.

(3) In all matters arising under this act, which are submitted to the commission for decision, order or review, the procedure shall be governed by chapters 6 and 7, title 61, Idaho Code, and the commission's rules of procedure. Reconsideration of, appeal from, enforcement of, and stay of orders issued pursuant to this act shall be governed by law as for other orders of the commission in other matters.

SECTION 13. That Chapter 3, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-334C, Idaho Code, and to read as follows:

61-334C. ELECTRIC SUPPLIER IMMUNITY. No action under the Idaho competition act, chapter 1, title 48, Idaho Code, or any other provision or doctrine of law of the state of Idaho shall lie against an electric supplier for action or inaction that is in compliance with the provisions of this act or any commission order issued pursuant to this act.

SECTION 14. That Section 30-3-14, Idaho Code, be, and the same is hereby amended to read as follows:

30-3-14. JUDICIAL RELIEF. (1) If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws or this act, then upon petition of a director, officer, delegate, or member, the district court may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances.

(2) The court shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws and this act, whether or not the method



results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section the court may determine who the members or directors are.

(3) The order issued pursuant to this section may dispense with any requirements relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws or this act.

(4) Whenever practical, any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section; provided however, that an order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger or sale of assets.

(5) Any meeting or other method of obtaining the vote of members, delegates or directors conducted pursuant to an order issued under this section, and that complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by the articles, bylaws and this act.

(6) Any member of a cooperative association that provides electric service may apply to the district court of the county where the member's service entrance is located for a determination that the cooperative association's charges for electric service to that member are fair, just and reasonable and are not discriminatory or preferential. In the event that the court determines that the rate is not fair, just and reasonable or is discriminatory or preferential, the court shall remand the matter to the cooperative association to alter or amend the rate in conformance with the standards set forth herein.

SECTION 15. That Section 50-325, Idaho Code, be, and the same is hereby amended to read as follows:

50-325. POWER PLANTS -- POWER DISTRIBUTION. (1) Cities shall have authority: to acquire, own, maintain and operate electric power plants, purchase electric power, and provide for distribution to the residents of the city, and to sell excess power subject to the provisions of section 50-327, Idaho Code.

(2) Any consumer of a municipal electric system may apply to the district court of the county where the consumer's service entrance is located for a determination that the municipality's charges for electric service to that consumer are fair, just and reasonable and are not discriminatory or preferential. In the event that the court determines that the rate is not fair, just and reasonable or is discriminatory or preferential, the court shall remand the matter to the municipality to alter or amend such rate in conformance with the determination of the court.

SECTION 16. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 28, 2001.

UNITED ELECTRIC CO-OP, INC., )  
Complainant, )  
v. ) Docket No. \_\_\_\_\_  
THE CITY OF BURLEY, IDAHO, )  
Respondent. ) UNITED ELECTRIC CO-OP INC.'s  
 ) FORMAL COMPLAINT FOR VIOLATION  
 ) OF CONTRACT ENTERED INTO  
 ) PURSUANT TO THE IDAHO ELECTRIC  
 ) STABILIZATION ACT  
 )

May 6, 2003, Amendment to Territory Service Agreement.



**AMENDMENT TO TERRITORY SERVICE AGREEMENT**

**AGREEMENT** made this 16<sup>th</sup> day of May, 2003, between **CITY OF BURLEY, IDAHO, ("BURLEY")** and **UNITED ELECTRIC CO-OP, INC. ("UNITED")**.

**1. RECITALS:** The parties recite and declare:

**1.1** On May 21, 1985 Burley and Unity Light and Power Company entered into a Service Territory Agreement for electric service customers.

**1.2** United is the successor in interest of Unity Light and Power by consolidation on January 1, 1998.

**1.3** The parties desire to amend the Service Territory Agreement in the following particulars.

**2. EXHIBIT A:** Exhibit 1 to the Service Territory Agreement is amended to be Exhibit A (2002-Amendment), a copy is attached hereto, being the map of the territories.

**3. IPUC APPROVAL:** The statute requires by the Idaho Public Utilities Commission and the parties shall file appropriate petitions with the Commission to seek its approval now and in the future if required.

**4. EXISTING CUSTOMERS:** Paragraph (6) is amended by providing that existing customers are illustrated on Exhibit A (2002-Amendment) and a listing of the current customers and the meter numbers are attached as Exhibit B.

**5. MEMORANDUM OF NOTICE:** The parties shall record in the office of the County Recorder, Cassia County Idaho a notice of Territory Agreement because the territory map is larger than the Recorder can film and record.

IN WITNESS WHEREOF the parties have executed this Agreement.



Clerk

CITY OF BURLEY

BY

Mayor

UNITED ELECTRIC CO-OP, INC.

By

Ron Osterhout, President

STATE OF IDAHO

County of Cassia

)  
) ss  
)

On this 13<sup>th</sup> day of May, in the year 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared **JON ANDERSON**, known or identified to me to be the **MAYOR OF THE CITY OF BURLEY** whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.



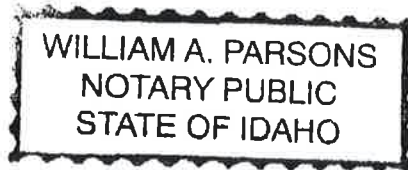
Notary Public for Idaho

Residing at Paul, Idaho

My Commission Expires: 1/20/2004

STATE OF IDAHO                    )  
  ) ss  
County of Cassia                 )

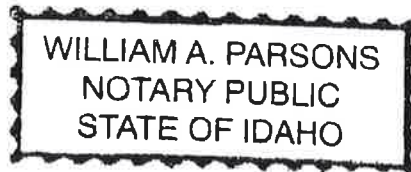
On this 13 day of MAY, in the year 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared **MELANIE HAYNES**, known or identified to me to be the **CLERK OF THE CITY OF BURLEY** whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.



William A. Parsons  
Notary Public for Idaho  
Residing at Burley  
My Commission Expires: 7/20/04

STATE OF IDAHO                    )  
  ) ss  
County of CASSIA               )

On this 13 day of MAY, in the year 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared **RON OSTERHOUT**, known or identified to me to be the **President of United Electric Co-op, Inc.**, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.



William A. Parsons  
Notary Public for Idaho  
Residing at Burley  
My Commission Expires: 7/20/04

(UNITED\BurleyAmendment.wpd)

BEFORE THE  
IDAHO PUBLIC UTILITIES  
COMMISSION

UNITED ELECTRIC CO-OP, INC.,	)	
Complainant,	)	Docket No. _____
v.	)	
	)	
THE CITY OF BURLEY, IDAHO,	)	UNITED ELECTRIC CO-OP INC.'s
Respondent.	)	FORMAL COMPLAINT FOR VIOLATION
	)	OF CONTRACT ENTERED INTO
	)	PURSUANT TO THE IDAHO ELECTRIC
	)	STABILIZATION ACT
_____	)	

UNITED ELECTRIC CO-OP'S  
EXHIBIT NO. 5

June 29, 2003, Joint Application for an Order Approving Service Territory Agreement between  
United Electric Co-op, Inc. and the City of Burley. IPUC Docket No. GNR-E-03-03.

RECEIVED  
FILED



2003 JUN 20 AM 9:02

IDAHO PUBLIC  
UTILITIES COMMISSION

William A. Parsons  
**PARSONS, SMITH & STONE, LLP**  
137 West 13<sup>th</sup> Street  
P. O. Box 910  
Burley, Id 83318  
Telephone: (208) 878-8383  
Fax: (208) 878-0146  
Attorneys for United Electric Co-op, Inc.  
(UNITED\ApplicationBurleyNorth.wpd)

R. C. Stone  
**PARSONS, SMITH & STONE, LLP**  
137 West 13<sup>th</sup> Street  
P. O. Box 910  
Burley, Id 83318  
Telephone: (208) 878-8383  
Fax: (208) 878-0146  
Attorneys for City of Burley

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

-----

In the Matter of the Application of	)	
United Electric Co-op, Inc. and	)	Case No. <u>GNR-E-03-03</u>
the City of Burley for an Order	)	
Approving a Service Territory	)	<b>APPLICATION</b>
Agreement between the Applicants.	)	

-----

Pursuant to Rule 51 of the IPUCRP, and Idaho Code § 61-333, United Electric Co-op, Inc. ("United") and City of Burley ("Burley") respectfully apply for Commission approval of a Service Territory Agreement between United and Burley on the grounds and for the following reasons:

**APPLICATION - 1**

1. On December 8, 2000, the Idaho Legislature, meeting in special session amended the Idaho Electric Supplier Stabilization Act, §§ 61-332 through 61-334B of the Idaho Code. Idaho Code § 61-333 provides that any electric supplier may contract in writing with another electric supplier for the purpose of allocating territories, consumers, and future consumers between electric suppliers and designating which territories and consumers are to be served by which contracting electric supplier. The statute further provides that the Commission shall, after notice and hearing review and approve or reject such contracts between electric suppliers. This joint Application is filed with the Commission for approval. Approval of the Commission of Service Territory Agreements is necessary to comply with the purposes of the Electric Supplier Stabilization Act.

2. The Petitioners have for some time had Territory Agreements between them, United as successor in interest to Unity Light and Power and Rural Electric. Such Agreements predated the amendment to Idaho Code § 61-333, and therefore United and Burley seek approval of the Commission of the existing Territory Agreements and Amendments thereto. Copies of the Agreements and Amendments are attached as Exhibits 1, 2 and 3.

3. The Agreements were 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.

4. For the foregoing reasons and to fulfill the requirements of Idaho Code § 6-333 United and Burley request the Commission, after notice and hearing, approval of the Agreements pursuant to law.

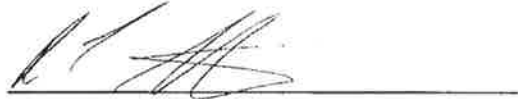
DATED this 12 day of JUNE, 2003.

**PARSONS, SMITH & STONE, LLP**

A handwritten signature in cursive script, appearing to read "William A. Parsons", written over a horizontal line.

William A. Parsons  
Attorneys for United  
137 West 13<sup>th</sup> Street  
P. O. Box 910  
Burley, Idaho 83318

**PARSONS, SMITH & STONE, LLP**

A handwritten signature in cursive script, appearing to read "R. C. Stone", written over a horizontal line.

R. C. Stone  
Attorneys for City of Burley  
137 West 13<sup>th</sup> Street  
P. O. Box 910  
Burley, Idaho 83318

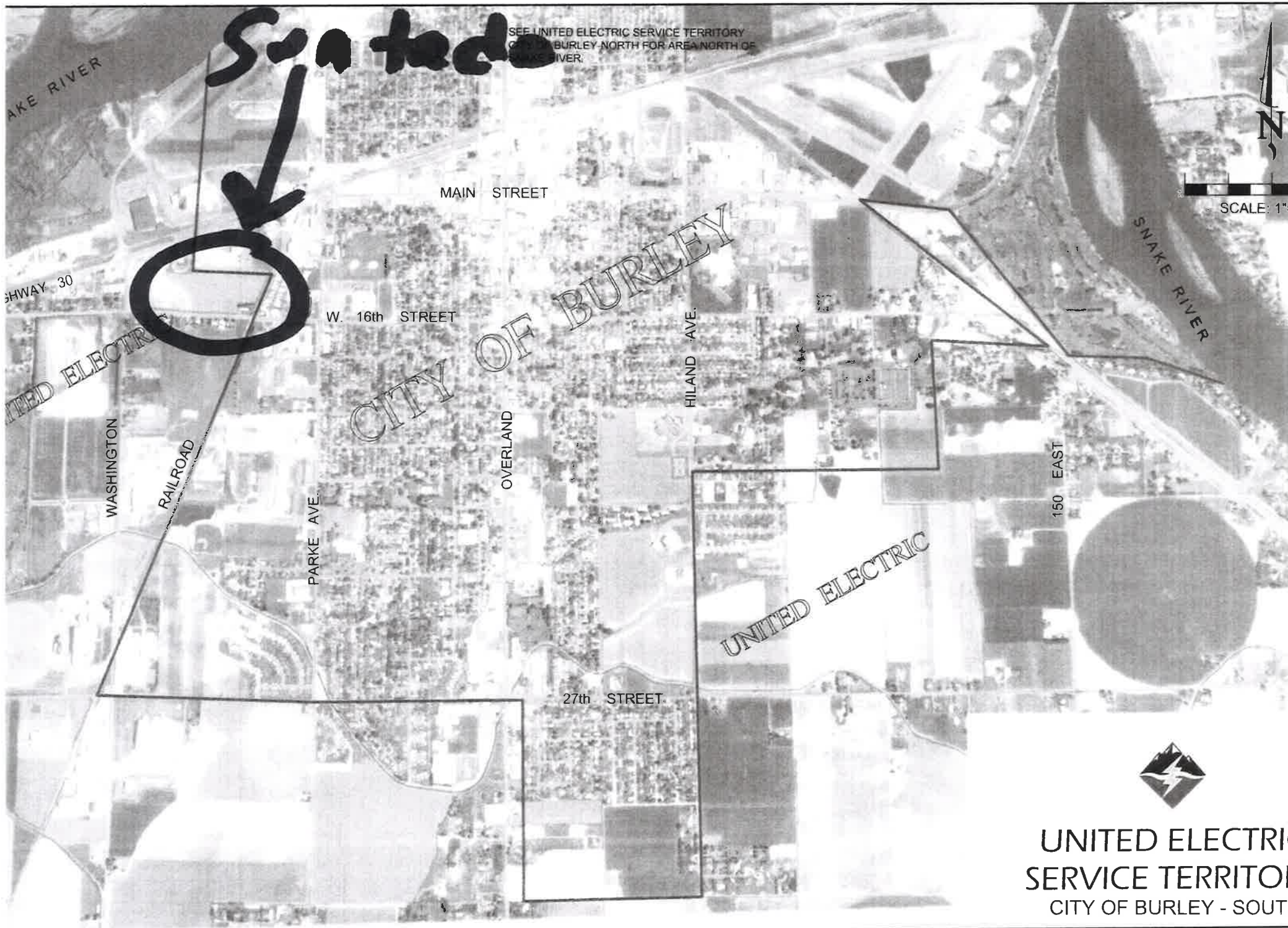


BEFORE THE  
IDAHO PUBLIC UTILITIES  
COMMISSION

UNITED ELECTRIC CO-OP, INC.,	)	
Complainant,	)	Docket No. _____
v.	)	
	)	
THE CITY OF BURLEY, IDAHO,	)	UNITED ELECTRIC CO-OP INC.'s
Respondent.	)	FORMAL COMPLAINT FOR VIOLATION
	)	OF CONTRACT ENTERED INTO
	)	PURSUANT TO THE IDAHO ELECTRIC
	)	STABILIZATION ACT
_____	)	

UNITED ELECTRIC CO-OP'S  
EXHIBIT NO. 6

Map of the City of Burley with the proposed Suntado site circled. The line marking the boundary between the City's service area and United's service area is the dark line generally encompassing the City's area in the center of the map.



SEE UNITED ELECTRIC SERVICE TERRITORY  
OF BURLEY NORTH FOR AREA NORTH OF  
SNAKE RIVER.

MAIN STREET

W. 16th STREET

CITY OF BURLEY

HILAND AVE.

OVERLAND

27th STREET

UNITED ELECTRIC

150 EAST



UNITED ELECTRIC  
SERVICE TERRITORY  
CITY OF BURLEY - SOUTH

SCALE: 1" = 1/4"

BEFORE THE  
IDAHO PUBLIC UTILITIES  
COMMISSION

UNITED ELECTRIC CO-OP, INC.,	)	
Complainant,	)	Docket No. _____
v.	)	
	)	
THE CITY OF BURLEY, IDAHO,	)	UNITED ELECTRIC CO-OP INC.'s
Respondent.	)	FORMAL COMPLAINT FOR VIOLATION
	)	OF CONTRACT ENTERED INTO
	)	PURSUANT TO THE IDAHO ELECTRIC
	)	STABILIZATION ACT
_____	)	

UNITED ELECTRIC CO-OP'S  
EXHIBIT NO. 7

Suntado's annual report to the Idaho Secretary of State indicating that the physical address of the business is 1210 W. 16<sup>th</sup> Ave, Burley, Idaho.



0004847453

**STATE OF IDAHO***Office of the secretary of state, Lawrence Denney***ANNUAL REPORT**

Idaho Secretary of State

PO Box 83720

Boise, ID 83720-0080

(208) 334-2301

Filing Fee: \$0.00

For Office Use Only

**-FILED-**

File #: 0004847453

Date Filed: 8/4/2022 5:48:15 PM

## Entity Name and Mailing Address:

Entity Name: Suntado LLC  
The file number of this entity on the records of the Idaho Secretary of State is: 0004430356  
Address: JEFFRY WILLIAMS  
PO BOX 6325  
SUN VALLEY, ID 83354-6325

## Entity Details:

Entity Status: Active-Existing  
This entity is organized under the laws of: IDAHO  
If applicable, the old file number of this entity on the records of the Idaho Secretary of State was:

## The registered agent on record is:

Registered Agent: Jeffry Williams  
Registered Agent  
Physical Address  
1210 W 16TH STREET  
BURLEY, ID 83318  
Mailing Address  
PO BOX 6325  
SUN VALLEY, ID 83354-6325

## Limited Liability Company Managers and Members

Name	Title	Business Address
Jeffry Williams	Manager	P.O. BOX 6325 SUN VALLEY, ID 83354

The annual report must be signed by an authorized signer of the entity.

Job Title: Manager

*Jeffry Williams**08/04/2022*

Sign Here

Date

Docket No. \_\_\_\_\_

November 2022, proposed Customer Allocation Agreement.

## **Customer Allocation Agreement**

This Customer Allocation Agreement ("Agreement") to supply new electric service is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and among, United Electric Co-op, Inc., an Idaho cooperative corporation (hereinafter "UEC"), the city of Burley, Idaho, an Idaho municipality (hereinafter the "City"), and Suntado LLC, an Idaho limited liability company, with facilities located in Cassia County, Idaho (hereinafter "Customer"), (individually a "Party" and collectively the "Parties").

WHEREAS, UEC and the City each own and operate electrical power systems that provide electric service to customers in southern Idaho, and;

WHEREAS, UEC and the City have specific service territories designated in accordance with the terms and conditions of Idaho Code 61-332, et seq., the Idaho Electric Supplier Stabilization Act ("the Act") and pursuant to Idaho Public Utilities Commission ("IPUC") Order No. 29355 in Case No. GNR-E-03-03, and;

WHEREAS, Customer owns property and facilities that are being developed as a beverage processing plant located within the service territory of UEC yet has requested electrical service be provided by the City through a service entrance connection with the City's electrical system adjacent to the property, and;

WHEREAS, UEC agrees to allow the City to provide electric service to Customer and the City agrees to provide electric service to Customer;

NOW, THEREFORE, in consideration of the foregoing, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. Customer hereby confirms that it desires the City provide it with its electric service needs at the following location, to wit: Township **XX** South, Range **XX** East of the Boise Meridian, Cassia County, Idaho and more particularly described on the attached Exhibit "A".
2. Notwithstanding UEC's right to be the sole provider of electric service to Customer pursuant to Section 61-332C of the Act and the Order, by this Agreement, UEC hereby agrees to allow the City to provide electric service to the Customer.
3. Notwithstanding the location of Customer's facilities within UEC's service territory, the Parties agree that UEC shall bear no responsibility for costs of connecting the Customer to the City's electric system, or for any other cost of operations and maintenance, supply, transmission, distribution and/or metering of power applicable to the Customer.
4. For purposes of this Agreement, the electric service to be provided to Customer by the City shall be deemed a "new service entrance" pursuant to the Act.
5. The Parties agree the Customer's service entrance must be connected to the City's electrical system adjacent to the Customer's property and shall not otherwise crossover



or be placed on or through UEC's service territory. Electric Service pursuant to this Agreement shall only be provided to the Customer's facilities located on Customer's property specified in Exhibit A.

6. The Parties agree that all electric facilities located on or through Customer's property specified in Exhibit A shall be owned by the Customer, and not by any other Party. The Parties further agree that no service lines or feeder ties owned by the City shall be constructed or installed within UEC's service territory to provide electric service to the Customer.
7. This Agreement to provide electric service to Customer shall not be modified unless mutually agreed upon by and between UEC and the City (or their successors in interest) or unless modified by statute.
8. Except for the allowance of electric service providers to this particular Customer and described within this Agreement; no modification to UEC and the City's present service territories is made, implied or intended by this Agreement.
9. This Agreement is subject to review and approval or rejection of the IPUC. In the event the IPUC does not approve the customer allocation and associated electric service rights described herein, this Agreement shall have no force or effect.
10. Each Party represents and warrants that it is validly existing and in good standing in the state in which it is organized, and it has the requisite authority to execute this Agreement.
11. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date above written.

Customer

City of Burley, Idaho

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

United Electric Co-op, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



UNITED ELECTRIC CO-OP, INC., )  
Complainant, ) Docket No. \_\_\_\_\_  
v. )  
THE CITY OF BURLEY, IDAHO, ) UNITED ELECTRIC CO-OP INC.'s  
Respondent. ) FORMAL COMPLAINT FOR VIOLATION  
OF CONTRACT ENTERED INTO  
PURSUANT TO THE IDAHO ELECTRIC  
STABILIZATION ACT

Letter dated November 2, 2002, in which United tendered its offer to enter into the proposed Customer Allocation Agreement.



November 2, 2022

City of Burley  
Attention: Brent Wallin  
Electric Department Director  
2020 Parke Avenue  
Burley, ID 83318

SUBJECT: Customer Allocation Agreement - United Electric Co-op, Inc., City of Burley, Idaho, and Suntado LLC

SENT VIA: Email – [bwallin@burleyidaho.org](mailto:bwallin@burleyidaho.org), [mmitton@burleyidaho.org](mailto:mmitton@burleyidaho.org),  
[jking@suntado.com](mailto:jking@suntado.com), [tparke@uec.coop](mailto:tparke@uec.coop), [cseibold@uec.coop](mailto:cseibold@uec.coop)

Dear Mr. Wallin,

United Electric Co-op, Inc. (UEC) has observed that initial work has commenced at the site of Suntado LLC's (Customer) proposed beverage processing plant. As we have discussed, the Customer's project location is within the service territory of UEC. However, it is UEC's understanding that the Customer has elected to receive electric service provided by the city of Burley, Idaho (City). Notwithstanding UEC's right to be the sole provider of electric service to customers within its service territory, UEC will not oppose electric service to the Customer's project be provided by the City under current circumstances.

In accordance with Idaho Public Utilities Commission Order No. 29355 that approved the Territory Service Agreement, as amended, between UEC and the City, a customer allocation agreement must be executed. Order No. 29355 specifically states,

The parties also contemplate that there may be instances where it is more efficient for a new customer located in one service territory to be served by the other electric supplier. In such instances, the parties will execute a written agreement and append it to their Territory Agreement and the amendments...When the parties enter into such an agreement, the agreement shall be submitted to the Commission for its review and approval.

Pursuant to Order No. 29355, please find attached a Customer Allocation Agreement applicable to UEC, the City, and the Customer. Please review and provide a legal description of the Customer's property and facility location to be used as Exhibit A to the agreement.

This agreement must be in place prior to the City providing electric service to the Customer.

Please print and sign two copies of the agreement and return the two original signed copies to UEC. Once signed by the City and the Customer, UEC will execute the Customer Allocation Agreement and submit an original copy to the IPUC requesting its review and approval or rejection of the agreement.

Feel free to reach out anytime with questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Darrington", with a long horizontal flourish extending to the right.

Michael Darrington  
General Manager  
United Electric Co-op, Inc.  
(208) 679-1010  
[mdarrington@uec.coop](mailto:mdarrington@uec.coop)

Cc: Mark Mitton (City of Burley)  
Jeff King (Suntado LLC)  
Chris Seibold (United Electric)  
Trevor Parke (United Electric)

BEFORE THE  
IDAHO PUBLIC UTILITIES  
COMMISSION

UNITED ELECTRIC CO-OP, INC.,	)	
Complainant,	)	Docket No. _____
v.	)	
	)	
THE CITY OF BURLEY, IDAHO,	)	UNITED ELECTRIC CO-OP INC.'s
Respondent.	)	FORMAL COMPLAINT FOR VIOLATION
	)	OF CONTRACT ENTERED INTO
	)	PURSUANT TO THE IDAHO ELECTRIC
	)	STABILIZATION ACT
_____	)	

UNITED ELECTRIC CO-OP'S  
EXHIBIT NO. 10

December 5, 2022, letter to the City of Burley reiterating United's offer to amend the Service Territory Agreements.



December 5, 2022

City of Burley  
Attention: Brent Wallin  
Electric Department Director  
2020 Parke Avenue  
Burley, Idaho 83318

Subject: Commencement of Electric Service to Suntado LLC -- Customer Allocation Agreement with United Electric Co-op, Inc. ("United Electric")

Dear Mr. Wallin:

This letter is to express United Electric's concern to have not had a response to my letter dated November 2, 2022, in which I informed you that the City of Burley's ("City") Electric Department cannot commence service to the new Suntado plant absent its execution of a mutual Customer Allocation Agreement. That Agreement is necessary in order to allow the City to serve Suntado's new plant - which is in United Electric's exclusive electric service territory. That Agreement is also necessary in order for United Electric to prevent otherwise illegal encroachments into its exclusive service territory.

It is United Electric's long-standing policy to strictly enforce terms of its general service territory agreements, including the current general agreement between it and the City of Burley. Unfortunately, it is apparent that the City has now installed electric service lines and has commenced, or is about to commence, service to the Suntado site in United Electric's service territory. Absent our proposed Customer Allocation Agreement, such actions are in violation of our general service territory agreement. In my November 2, 2022, letter, United Electric offered to allow the City to provide such service under the very specific terms of the tendered Customer Allocation Agreement. Unfortunately, the City has ignored United Electric's offer and continues to construct and maintain its illegal encroachment into United Electric's service territory.

By this letter we reiterate our November 2, 2022, offer. However, we expect the City to return the executed Customer Allocation Agreement (or to demonstrate to our satisfaction that the City is in the process of executing the same) within ten days of receipt of this letter. If the City does not agree to the proposed Customer Allocation Agreement that was tendered on November 2, United Electric will be forced to proceed to the Idaho Public Utilities Commission to obtain an enforcement order requiring the City's compliance with our general service territory agreement. Violations of the service territory agreement are subject to the Commission's exclusive jurisdiction and result in a non-discretionary order requiring "the removal of any electric connections, facilities or equipment that constitute the violation." (Idaho Code § 61-334A)

We look forward to the City's continued compliance with our general service territory agreement. And, as noted above we are willing allow the City to serve this new large load – but only pursuant to the very specific terms of the proposed Customer Allocation Agreement tendered to you on November 2nd.

I am available at your convenience if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Darrington", with a long horizontal flourish extending to the right.

Michael Darrington  
General Manager  
United Electric Co-op, Inc.  
(208) 679-1010  
[mdarrington@uec.coop](mailto:mdarrington@uec.coop)

Cc: Mark Mitton (City of Burley)  
Chris Seibold (United Electric)  
Trevor Parke (United Electric)

BEFORE THE  
IDAHO PUBLIC UTILITIES  
COMMISSION

UNITED ELECTRIC CO-OP, INC.,	)	
Complainant,	)	Docket No. _____
v.	)	
	)	
THE CITY OF BURLEY, IDAHO,	)	UNITED ELECTRIC CO-OP INC.'s
Respondent.	)	FORMAL COMPLAINT FOR VIOLATION
	)	OF CONTRACT ENTERED INTO
	)	PURSUANT TO THE IDAHO ELECTRIC
	)	STABILIZATION ACT
_____	)	

UNITED ELECTRIC CO-OP'S  
EXHIBIT NO. 11

Regular City Council Meeting, agenda and minutes. City of Burley January 17, 2023.



**REGULAR BURLEY CITY COUNCIL MEETING**  
**CITY HALL**  
**1401 Overland Avenue**  
**Burley, Idaho**  
**January 17, 2023**

**SPECIAL MEETING**

**6:30 p.m.**

**ACTION ITEM**

**Idaho Code 74-206 (1) (a)** To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. This paragraph does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general.

**REGULAR AGENDA**

**REGULAR SESSION AT 7:00 P.M.**

**CONSENT CALENDAR**

1. **ACTION ITEM 1.a through c.** Items on the Consent Calendar are considered to be routine and enacted by one motion. Any item may be removed for discussion and made a part of the regular agenda at the request of a member of the Council. Any request shall be made after the Consent Calendar is read and before action is taken.
  - a. **APPROVAL OF MINUTES FROM REGULAR AND SPECIAL MEETINGS**
  - b. **BILLS PAYABLE \$460,457.95.**
  - c. **PAYROLL ENDING ON 12/2/22 FOR \$236402.40**
2. **ACTION ITEM** ETS Annual Report Curtis Bennett
3. **ACTION ITEM** Knife River Rental Agreement Mark Mitton
4. **ACTION ITEM** Bids on New Pickup for Fire Chief Chief Tolman
5. **ACTION ITEM** Letter to Idaho PUC Brent Wallin
6. **ACTION ITEM** Bucket Truck Bid Brent Wallin
7. **ACTION ITEM** Enterprise Fleet Leasing Rick Garner
8. Report and Discussion of Recent City Events

**Information Items**

**BUILDING PERMITS:**

Alto Magic Valley	2600 Washington	Addition	\$1,000,000.00
Miranda Gibson	49-50 Wauna Vista	Multi-Family	\$516,000
Brennen Jones	47-48 Wauna Vista	Multi-Family	\$630,000

City Hall is accessible to persons with disabilities. Any person with disabilities desiring accommodation for the City Council meetings, please contact City Hall at 878-2224 at least 48 hours prior to the meeting.

**SPECIAL AND REGULAR BURLEY CITY COUNCIL MEETING**  
**CITY HALL**  
**January 17, 2023**

**COMMENCE MEETING**

Council met in special session at 6:30 p.m. with Mayor Ormond presiding. Council members present were Casey Andersen, John Craner, Janet Hansen, Kimberli Seely, and Jim Powell.

**EXECUTIVE SESSION**

A motion was made by Council member Casey Andersen and seconded by Council member Janet Hansen to go into executive session on a personnel matter, pursuant to Idaho Code Section 74-206 (1) (a)

Roll Call Votes:

The results of the votes were as follows:

Casey Andersen	Aye	John Craner	Aye
Janet Hansen	Aye	Kimberli Seely	Aye
Jim Powell	Aye		

Motion carried.

A discussion was held on this matter.

Executive session adjourned 6:58 p.m.

Council reconvened at 7:00 p.m.

Council met in regular session at 7:00 p.m. with Mayor Ormond presiding. Council members present were Casey Andersen, John Craner, Janet Hansen, Kimberli Seely, and Jim Powell.

City Staff present were as follows: City Administrator Mark Mitton, Attorney Dave Shirley, Sexton Dave Allred, Waste Water Treatment Director Dustin Raney, Economic Development Specialist Doug Manning (excused), Golf Pro Scott Draper, Engineer Dave Waldron, Building Inspector Gary Pawson, Engineer Bryan Reiter, Fire Chief Shannon Tolman, Electrical Supervisor Brent Wallin, Parks Supervisor Brent Winn, (excused), Librarian Tayce Robinson, Sanitation Supervisor Eric Pufahl, Street Supervisor Korky Blackner, Shop Supervisor Rick Garner, Deputy Chief Casey Harman, Deputy Jared Thompson, and Human Resource Carol Anderson.

**INVOCATION**

The Invocation was offered by Council member Seely followed by the Pledge to the Flag.

**CONSENT CALENDAR**

1. Items on the Consent Calendar are considered to be routine and enacted by one motion. Any item may be removed for discussion and made a part of the regular agenda at the request of a member of the Council. Any request shall be made after the Consent Calendar is read and before action is taken.

**a. APPROVAL OF MINUTES FROM REGULAR AND SPECIAL MEETINGS**

**b. BILLS PAYABLE \$460,457.95.**

**c. PAYROLL ENDING 12/2/22 FOR \$236,402.40**

**Information Items**

**BUILDING PERMITS:**

Alto Magic Valley	2600 Washington	Addition	\$1,000,000.00
Miranda Gibson	49-50 Wauna Vista	Multi-Family	\$516,000
Brennen Jones	47-48 Wauna Vista	Multi-Family	\$630,000

A motion was made by Council member Hansen and seconded by Council member Seely to accept the Consent Calendar as written and pay the bills.

**Roll Call Vote.**

The results of the votes were as follows:

Jim Powell	Aye	John Craner	Aye
Kimberli Seely	Aye	Casey Andersen	Aye
Janet Hansen	Aye		

Motion carried.

**ETS ANNUAL REPORT**

Jacob Johnson gave a report to show that they are following the lease agreement. ETS stated that they are on schedule with the lease agreement. Jacob went on to explain how the program has been expanded and how many people they are able to serve.

Fiber was also discussed and speed levels. ETS stated how they are going to charge for their services for the area. Affordable Connectivity was discussed and how to get more people to participate in affordable connectivity.

**KNIFE RIVER RENTAL AGREEMENT**

The city owns some property out on 300 West and were approached by Knife River company to lease the property to store crushed rock for sealing roads for this coming spring and summer. The company will be leasing the property for \$500.00 a month for four months, April 1<sup>st</sup> to July 31<sup>st</sup>.

Questions were asked about how it would affect the environment. It was stated that there was no environmental issues with what the company is planning to do.

A motion was made by Council member Andersen and seconded by Council member Craner to approve the Knife River Rental Agreement.

**Roll Call Vote**

The results of the votes were as follows:

John Craner	Aye	Kimberli Seely	Aye
Casey Andersen	Aye	Janet Hansen	Aye
Jim Powell	Aye		

Motion carried.

**BIDS ON NEW PICKUP FOR FIRE CHIEF**

Chief Tolman stated that every five years there is a plan to replace the Chief rig. Deputy Chief Harmon has been using a 2001 Ford Explorer that had other uses before. The Ford Explorer is starting to have some issues so there is a need to replace the vehicle.

The Fire department had obtained three bids, the lowest bid was the GMC \$51,847.70. Not only was it the lowest bid but the vehicle is available to purchase now. The other bids were discussed briefly.

The Dodge that the Chief has been using will be passed down to the Deputy Chief. There was a discussion about how much it will cost to put all the gear, lights and stripping for the Fire Chief to run the truck. This will be paid for by some money that the Fire Department got from covering wild fires along with some allocation funds.

A motion was made by Council member Craner and seconded by Council member Seely to approve the purchase the new pickup for Fire Chief, staying within the budget, and allow the mayor to sign it.

#### **Roll Call Vote**

The results of the votes were as follows:

Janet Hansen	Aye	Kimberli Seely	Aye
Jim Powell	Aye	John Craner	Aye
Casey Andersen	Aye		

#### **LETTER TO IDAHO PUC**

It was explained that the Electric Department is trying to fix an agreement with United Electric to expand services to the citizens in a safe manner. It was explained that the city is working with a legal firm from Idaho Falls to work on this project. The attorneys have come up with a letter to send to Idaho PUC. The letter will be given to City Council so that they can review it before it goes to the Public Utilities Commission. The hope is that the Public Utilities Commission will cancel the agreement that is in place now from 1986 so that city can renegotiate the agreement to help the city grow.

A zoom meeting to talk to the attorney from Idaho Falls will be presented at the next city council meeting, along with the letter to be approved by city council.

#### **BUCKET TRUCK BID**

This item will be tabled for the next meeting at the breakdown of the pricing is not available.

#### **ENTERPRISE FLEET LEASING**

This has been a long process several leasing options have been looked at. It was explained that a quote with terms would be sent over to the city before the vehicle is leased. It is a Sourcewell Contract that the city has worked with before. The lease terms are annual and renewal. It was explained that only trucks will be leased through this program. At the end of the lease if there is equity in the vehicle, we get the equity if not then would have to pay. It is hoped that this will be a short-term plan as the city is unable to get government discount vehicles at this time. The city will start small with this program to see how it goes, five or six trucks. Crew cab trucks to start.

The maintenance of the vehicles would be taken care of by the staff.

A motion was made by Council member Craner and seconded by Council member Andersen to approve the Master Equity Lease Agreement with Enterprise together with its two proposed amendments and authorize the mayor to sign it.

## Roll Call Vote

The results of the votes were as follows:

Janet Hansen	Aye	Jim Powell	Aye
Kimberli Seely	Aye	Casey Andersen	Aye
John Craner	Aye		

## REPORT AND DISCUSSION OF RECENT CITY EVENTS

It was reported by Council member Craner that the Spudman is full. There were 350 slots available for sprint. Registration opened at noon, on January 1, 2023, and all spots were filled in 17 minutes. 2000 spots for Olympic level racing were filled by 3:44 PM the same day. It is a race that is in high demand, however it is felt that the Lion's club can not push the limits higher on these slots for the race for safety reasons.

Jacob added that ETS could add some connectivity and equipment to extend wireless coverage for the race. ETS will donate about \$11,000 to help with this problem. The hope is that the city will help with the project. This will be on the agenda in the future.

Council member Andersen talked about a new fire facility in Utah that he visited and would like to share with the Fire Department.

A motion was made by council member Andersen and seconded by Council member Seely to adjourn the meeting at 8:25 P.M.

All "Aye"  
Motion carried.

City of Burley

  
\_\_\_\_\_  
Mayor Ormond

ATTEST:

  
\_\_\_\_\_  
City Clerk

BEFORE THE  
IDAHO PUBLIC UTILITIES  
COMMISSION

UNITED ELECTRIC CO-OP, INC.,	)	
Complainant,	)	Docket No. _____
v.	)	
	)	
THE CITY OF BURLEY, IDAHO,	)	UNITED ELECTRIC CO-OP INC.'s
Respondent.	)	FORMAL COMPLAINT FOR VIOLATION
	)	OF CONTRACT ENTERED INTO
	)	PURSUANT TO THE IDAHO ELECTRIC
	)	STABILIZATION ACT
_____	)	

UNITED ELECTRIC CO-OP'S  
EXHIBIT NO. 12

Exhibit 12 consists of the following three pages.

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EXHIBIT 12, page 2 of 4.

United's service territory is to the left (west) of the Burley/United boundary line that runs along the railroad tracks and then jogs to the west along the northern border of the site. The red line ("City of Burley Service Line") is the new service line recently constructed by the City of Burley from its existing line on 16<sup>th</sup> street. United serves all of the homes on 16<sup>th</sup> street shown on this map, including the home in the southeast corner of the Customer Property/Plant Site. The City serves all of the mobile homes shown on the map that are on the east side of the railroad tracks. The large highway shown on the northwest corner of the map is old U.S. 30.



New City of Burley service pole in United Service Territory on Suntado site.



