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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

UNITED ELECTRIC CO-OP, INC.,)	Case No. C15-E-23-01
)	
COMPLAINANT,)	ANSWER TO UNITED ELECTRIC
)	CO-OP INC.'s FORMAL
vs.)	COMPLAINT FOR VIOLATION OF
)	CONTRACT ENTERED INTO
THE CITY OF BURLEY, IDAHO,)	PURSUANT TO THE IDAHO
)	ELECTRIC STABILIZATION ACT &
RESPONDENT.)	CITY OF BURLEY'S PETITION FOR
)	DECLARATORY ORDER

COMES NOW, the City of Burley, Idaho, by and through its attorney, Jaxon C. Munns of the firm Murray, Ziel, & Johnston, PLLC, and pursuant to Rule 54 of the Idaho Public Utilities Commission's Rules of Procedure, and answers the Complainant's formal Complaint. The City of Burley denies the allegations of United Electric's Complaint, unless specifically admitted hereafter. Communications regarding the formal Complaint should be sent to:

THE CITY OF BURLEY, IDAHO
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Copies of all pleadings, production requests, production responses, Commission orders and other documents should also be provided to:

THE CITY OF BURLEY, IDAHO
c/o Brent Wallin

City of Burley Utility Department
1401 Overland Avenue
Burley, ID 83318
(208) 878-2224
bwallin@burleyidaho.org

I.
FACTUAL ALLEGATIONS

A. Background – The Service Territory Agreements

1. The Respondents lack requisite knowledge to affirmatively answer the allegations of Paragraph 1. To the extent an answer is required, the Respondents aver the Complainant is entitled to relief, and deny the allegations of Paragraph 1 thereof.
2. The Respondents admit the allegations of Paragraph 2
3. The Respondents admit the allegations of Paragraph 3.
4. In response to Paragraph 4, the Respondents state that the 1985 Territory Service Agreement speaks for itself. To the extent that an answer is required for Paragraph 4, the Respondents aver the Complainant is entitled to relief, and deny the allegations of Paragraph 4 thereof.
5. In response to Paragraph 5, the Respondents state that the 1996 Service Area Stabilization Agreement speaks for itself. To the extent that an answer is required for Paragraph 5, the Respondents aver the Complainant is entitled to relief, and deny the allegations of Paragraph 5 thereof.
6. The Respondents admit the allegations of Paragraph 6.
7. The Respondents admit the allegations of Paragraph 7.

8. The Respondents admit the allegations of Paragraph 8.

9. The Respondents admit the allegations of Paragraph 9.

10. The Respondents admit the allegations of Paragraph 10.

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

11. The statements of Paragraph 11 are not within the knowledge base of Respondents, however, Respondents admit the Suntado facility is currently in United Electric's currently existing service territory.

12. In response to Paragraph 12, the Respondents state that Exhibit No. 6 speaks for itself. To the extent that an answer is required for Paragraph 12, the Respondents aver the Complainant is entitled to relief, and deny the allegations of Paragraph 12 thereof.

13. The Respondents deny the allegations of Paragraph 13.

14. In response to Paragraph 14, the Respondents state that the maps speak for themselves. To the extent that an answer is required for Paragraph 14, the Respondents aver the Complainant is entitled to relief, and deny the allegations of Paragraph 14 thereof.

15. The Respondents admit the allegations of Paragraph 15.

16. The Respondents admit the allegations of Paragraph 16.

17. The Respondents deny the allegations of Paragraph 17.

18. The Respondents deny the allegations of Paragraph 18.

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

19. The Respondents deny the allegations of Paragraph 19.

20. The Respondents deny the allegations of Paragraph 20.

21. The Respondents deny the allegations of Paragraph 21.

22. The Respondents deny the allegations of Paragraph 22.

23. The Respondents deny the allegations of Paragraph 23.

24. The Respondents deny the allegations of Paragraph 24.

25. The Respondents deny the allegations of Paragraph 25.

26. The Respondents deny the allegations of Paragraph 26.

D. United's Efforts to Resolve the Service Territory Encroachment By the City Have Been Rebuffed

27. The Respondents deny the allegations of Paragraph 27.

28. The Respondents deny the allegations of Paragraph 28.

29. The Respondents deny the allegations of Paragraph 29.

30. The Respondents deny the allegations of Paragraph 30.

31. The Respondents deny the allegations of Paragraph 31.

32. The Respondents deny the allegations of Paragraph 32.

33. In response to Paragraph 33, the Respondents state that Exhibit 12 speaks for themselves. To the extent that an answer is required for Paragraph 33, the Respondents aver the Complainant is entitled to relief, and deny the allegations of Paragraph 33 thereof.

II **JURISDICTION**

34. The Respondents admit the allegations of Paragraph 34.

35. The Respondents admit the allegations of Paragraph 35.

36. In response to Paragraph 36, the Respondents state that Order No. 29355 speaks for itself. To the extent that an answer is required for Paragraph 36, the Respondents aver the Complainant is entitled to relief, and deny the allegations of Paragraph 36 thereof.

37. The Respondents deny the allegations of Paragraph 37.

III **COUNT ONE**

38. No answer is required in relation to the statements of Paragraph 38. To the extent an answer is deemed required, the Respondents aver the Petitioner is entitled to relief and deny the allegations of Paragraph 38 thereof.

39. The Respondents deny the allegations of Paragraph 39.

COUNT TWO

40. No answer is required in relation to the statements of Paragraph 40. To the extent

an answer is deemed required, the Respondents aver the Petitioner is entitled to relief and deny the allegations of Paragraph 40 thereof.

41. The Respondents deny the allegations of Paragraph 40.

COUNT THREE

42. No answer is required in relation to the statements of Paragraph 42. To the extent an answer is deemed required, the Respondents aver the Petitioner is entitled to relief and deny the allegations of Paragraph 42 thereof.

43. The Respondents deny the allegations of Paragraph 43.

Wherefore, the City of Burley, Idaho respectfully requests that the Commission dismiss the Complainant's Complaint in full and award the City of Burley, Idaho the following:

1. Entry of an order dismissing United Electric Co-op's Complaint.
2. Entry of an order awarding the City of Burley, Idaho its attorney fees and costs incurred in defending the Complaint.
3. Any further relief to which the City of Burley, Idaho may be entitled.

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PETITION FOR DECLARATORY ORDER

COMES NOW, the City of Burley, herein referred to as “Burley”, and pursuant to Rule 101 of the Rules of Procedure of the Idaho Public Utility Commission (IDAPA 31.01.01.101), hereby respectfully submits its Petition for Declaratory Order regarding Order 29281. As grounds, Burley states as follows:

PETITIONER INFORMATION

The Petitioner in this matter is the City of Burley. Burley has provided electrical service to its residents for a period of at least 37 years, and was one of the parties in Case No. GNR-E-03-09, a matter previously handled by this Idaho Public Utilities Commission.

PROCEDURAL HISTORY

The City of Burley and United Electric Co-Op, Inc. (“United”) through its predecessor, Rural Electric, agreed to establish, in 1985, separate service territories for each party in Minidoka County. The parties made an amendment to this agreement on or about May 6, 2003. Subsequently, the parties filed an Application, on or about June 20, 2003 with the Idaho Public Utilities Commission (“Commission”) seeking to have this Agreement approved by the Commission. The Commission subsequently entered its order stating that “this Application be processed under Modified Procedure.”

On or about July 3, 2003. To the best of Petitioner’s knowledge, no additional filings have been submitted to the Commission since the entry of its 2003 Order, with exception of the March 2023 Complaint filed by United Electric.

DECLARATORY RULING PETITIONER SEEKS

Petitioner seeks a declaratory ruling from the Commission regarding the 2003 Order entered by the Commission. Specifically, Burley respectfully asks the Commission to enter an Order that

the previous territory service agreement of the parties can be terminated by either party, at which point the provisions of Idaho Code §61-333B would govern the re-negotiation of a territory service agreement between the parties.

**FACTUAL AND LEGAL BASIS FOR PETITION FOR
DECLARATORY ORDER**

Since the entry of the 2003 Order, disputes have arisen between the parties regarding the continued growth the City of Burley is experiencing. As basis for this Petition, Burley raises the following concerns:

- i. The members who negotiated and entered the 1985 Territory Service Agreement, and the 2003 amendment are no longer members of the bodies who have the authority to negotiate and enter these Agreements.*

The 1985 Territory Service Agreement (“TSA”) and the 2003 Amendment to the 1985 TSA were negotiated and approved by members of the Burley City Council, as well as the Board of Directors for United Electric Co-Op. The City of Burley City Council Members in 2003 consisted of: Curt Mendenhall, Gordon Hansen, Brent Kerbs, Dennis Curtis, Dave Ringle, and Adria Masoner. Not a single member of the 2003 Burley City Council is the same, with the following members now comprising the City Council: Casey Andersen, John Craner, Janet Hansen, Bryce Morgan, Jim Powell, and Kimberli Seely. Upon information and belief, none of the individuals who exercised their responsibilities on behalf of United Electric remain in those positions to date. To hold both parties to the 1985 TSA and 2003 amendment in perpetuity goes against the very nature of democracy, namely, that as new City Council Members are elected to office, they have the ability to make changes to these significant items as they were elected to do by the citizens of Burley.

- ii. No clause exists in any of the TSAs which prevents either party from terminating the TSAs to renegotiate another.*

The TSAs in 1985, 1996, and 2003 are all replete with extensive language regarding the rights and responsibilities of the parties. There are no clauses in any of these agreements which explicitly prohibit the parties from being able to exercise a termination for any reason at all. Even more shocking, the TSAs do not schedule regular and anticipated renewal periods wherein the parties are able to revisit any issues. Even if the intent in 1985, 1996 and 2003 was to bind the City of Burley and United or its predecessors to the TSA in perpetuity, such intent would have and is impracticable given the very nature of the parties themselves entering into this kind of agreement.

iii. Despite waiving conflict, there was a flagrant conflict of interest from representation throughout the proceedings between the City of Burley and United Electric Co-Op.

In the June 20, 2003 application filed with the Idaho Public Utilities Commission Case No. GNR-E-03-03 the City of Burley was represented by R.C. Stone, Esq. United Electric Co-Op, on the other hand was represented by William A. Parsons, Esq. See Exhibit “A”. Both these attorneys worked at the same law firm, as is clearly stated in the application caption itself. Namely, both attorneys state working at Parsons, Smith & Stone, LLP in Burley, Idaho. This fact alone creates significant red flags as to whether or not either party was receiving sound legal advice, however the issue is further worsened by looking at past filings and agreements in this matter. Specifically, in a letter dated June 15, 1976 the same William A Parsons can clearly be seen representing the City of Burley in these negotiations. See Exhibit “B” Again later, Mr. Parsons in a letter dated June 10, 1996 can clearly be seen representing the city of Burley in the negotiations which are now being litigated in front of this Commission. See Exhibit “C”. As such, after representing the City of Burley on these matters for presumably over 20 years, Mr. Parsons then hands off representation of the City to R.C. Stone, and claims United Electric Co-Op as a client for himself, while possessing knowledge of over 20 years of representing Burley on this matter.. Even if the

parties waived such conflict, this calls into question the validity of the legal advice relied upon by both United Electric as well as the City of Burley. Thankfully, the Idaho legislature has provided mechanism for parties to not be held hostage to the incorrect decisions of past law makers.

iv. Pursuant to Idaho Code 61-333B, statutory methods are available for citizens to not be forced into using one service provider over another based on an agreement entered into 37 years ago.

The Idaho legislature has contemplated an issue of two service providers not being able to reach terms for an amended service agreement. Namely, the legislature provided, "In the event that such voluntary agreement cannot be made within ninety (90) days of the date of incorporation or annexation of such territory served by such cooperative association, then the municipal corporation may, if so determined by unanimous vote of its governing body, submit to the qualified electors of such municipality upon a special ballot to be voted upon at the next regular election of such municipality, the question "Shall portions of the of, Idaho which have heretofore been served electrical energy by become a part of the electrical system of the of, Idaho. Said areas are generally known and described as follows: (Insert description)." Idaho Code 61-333B.

Once this process is undertaken, the parties must then work to come to an agreement on terms of "just compensation" for whatever business would be lost by the party who loses business. Mechanisms are clearly in place here to handle such a situation, as is the situation the parties now find themselves. The City of Burley stands prepared to negotiate this just compensation to United Electric.

JURISDICTION AND PROCEDURAL BASIS FOR PETITION FOR DECLARATORY ORDER

An entity may petition the Commission to enter a declaratory order, and the Commission has authority to grant the same. See *Idaho Code §61-334B(3), IDAPA 31.01.01.101*. The Commission has broad authority and jurisdiction “to supervise and regulate every public utility in the state and to do all things necessary to carry out the spirit and intent of the provisions of this act.” Idaho Code § 61-501. Pursuant to Idaho Code 61-333B, mechanism exist if parties are unable to come to voluntary agreements regarding the provisions of public utilities to growing cities.

CONCLUSION

In sum, the City of Burley respectfully requests that the Idaho Public Utilities Commission consider the change in circumstances that have occurred since the entry of the 2003 Order, and to enter an order consistent with the aims and purposes of the Commission. Namely, the fact that all parties now acting in decision making capacities are different than the individuals who made these decisions in 2003. The Citizens of the City of Burley exercise their sacred right to vote in different City Council members, in an effort to make changes to what has been done in the past. To hold not just the City of Burley, but additionally, the citizens both current and present, hostage to the decisions of a City Council 30 years ago flies in the face of the nature of democracy. Further, the change in population in Burley since 2003 has been vast and extreme. The Idaho legislature has provided a clear means and mechanism for which these kinds of disputes can be handled. Respectfully, the City of Burley requests the Idaho Public Utilities Commission rescind its previous order and allow the process of Idaho Code 61-333B to govern between the parties.

PRAYER

WHEREFORE, The City of Burley, Idaho respectfully requests the following from this Honorable Body:

1. A Declaratory Order, stating that the City of Burley and United Electric both are entitled to terminate the 2003 Territory Service Agreement with reasonable notice to the other party.
2. A Declaratory Order, stating that the provisions of Idaho Code 61-333B are now meant to govern the negotiations between the parties.
3. An Order for Attorney's Fees and Costs for the City of Burley, awarding them the fees and costs incurred in bringing this Petition for Declaratory Order.
4. Any other relief the Commission sees fit to award the City of Burley.

DATED this 29th day of March 2023.

/s/ Jaxon C. Munns
Jaxon C. Munns
Attorney for the City of Burley

