

Jaxon C. Munns, ISB# 11092
MURRAY ZIEL & JOHNSTON, PLLC
770 South Woodruff Avenue
Idaho Falls, Idaho 83401
Telephone: (208) 528-4188
Facsimile: (208) 524-2051
Email: jaxon@murrayziel.com

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

UNITED ELECTRIC CO-OP, INC.,)	Case No. C15-E-23-01
)	
COMPLAINANT,)	Evidentiary Hearing Brief
)	
vs.)	
)	
THE CITY OF BURLEY, IDAHO,)	
)	
RESPONDENT.)	
)	

COMES NOW, the City of Burley, Idaho, by and through its attorney, Jaxon C. Munns of the firm Murray, Ziel, & Johnston, PLLC, and in compliance with the Commission's Notice of Petition for Declaratory Judgment and Notice of Evidentiary Hearing Order No. 35855 submit the following Evidentiary Hearing Brief as follows:

RECITATION OF FACTS

In 1985, the City of Burley and the United Electric Co-op, Inc, through its predecessor entity, entered into a territory service agreement ("TSA") for the allocation of electrical service provision for residents in Minidoka County. Since 1985, amendments have been made to the TSA, eventually resulting in the most recent iteration of the TSA. 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 their 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 issue. 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 been and is impracticable given the very nature of the parties themselves entering into this kind of agreement. Further, the very fact that there are at least 3 different iterations of the TSA shows that change in the parties position is inevitable. Without a clause explicitly prohibiting termination and renegotiation, the presumption should be that the parties are free to do so. Burley is proposing that

moving forward, there are set renewal periods for the TSA, and at each renewal period there be a clause contemplated to reimburse either party should investments have been made in anticipation of renewal, that do not come to fruition as a result of the other party terminating.

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. Both these attorneys worked at the same law firm, as is clearly stated in the application caption itself. See Exhibit “A”. 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.

ANTICIPATED TESTIMONY

- Brent Wallin, City of Burley. Mr. Wallin oversees the electrical department for the City of Burley, and it is anticipated Mr. Wallin will testify as to the City of Burley's understanding of its action in relation to the Suntado Project.

EXHIBITS

- Exhibit A

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 31st day of July 2023.

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

RECEIVED
FILED



2003 JUN 20 AM 9:02

IDAHO PUBLIC
UTILITIES COMMISSION

William A. Parsons
PARSONS, SMITH & STONE, LLP
137 West 13th 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 13th 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)	APPLICATION
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

WILLIAM A. PARSONS
RICHARD K. SMITH

PARSONS & SMITH
ATTORNEYS AND COUNSELLORS AT LAW
137 WEST 13TH STREET
BURLEY, IDAHO 83318

P. O. BOX 910

AREA CODE 208
678-8382

June 15, 1976

Mayor Chuck Shadduck
City of Burley
Burley, Idaho 83318

Dear Mayor Shadduck:

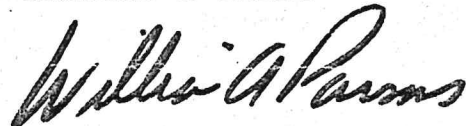
In accordance with the enclosed Territory Exchange Agreement there are certain responsibilities on behalf of the City:

- A. To finalize the price and
- B. To enter into some negotiations.

John Christian is being apprised by a copy of this letter so that he can do what he needs to do in his department.

Very truly yours,

PARSONS & SMITH



William A. Parsons

WAP:rt

WILLIAM T. GOODMAN
LARRY R. DUFF
DONALD J. CHISHOLM
DONALD ROBERT WORKMAN

Goodman, Duff and Chisholm
ATTORNEYS AT LAW
717 7TH STREET
BOX 61
RUPERT, IDAHO 83350

AREA CODE 208
TELEPHONE NO.
436-4774

March 5, 1976



William A. Parsons, Esquire
Parsons and Smith
Attorneys at Law
P.O. Box 910
Burley, Idaho 83318

RE: Service Area Agreement

Dear Bill:

Enclosed please find a photocopy of the Agreement which Rural and the City had worked out in 1967. The exhibit attached showed the territories. Basically the Agreement provided that the City took all of what is the McClintock Addition, the Ramada and the service stations, etc., which included everything that was annexed or would be annexed in the future lying West of Overland and East of the canal and between the Snake River and the Interstate, except for the 80 acre farm that lies West of the drain ditch and North of the Alfresco Road.

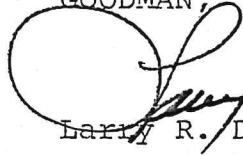
We propose that Burley take everything lying East of Overland and West of the Harris property and is bounded on the North by the Interstate and on the South by the Alfresco Road. This would include the Ponderosa and all the connections in that area and the proposed new shopping center area. Rural Electric would take that portion which lies between the Snake River on the South, the Alfresco Road on the North, Overland on the West and basically the City Limits of Heyburn on the East. It was our intent that the City of Burley serve all of North Burley except the section reserved to Rural Electric. It is also my understanding this proposal ties in well with the existing feeder lines of both the City and Rural and that by doing this we can avoid many of the possible problem areas of one line crossing the other.

William A. Parsons, Esquire
Page Two
March 5, 1976

In regard to paragraph 5 of the Agreement, this was an item requested by the City at the time we were negotiating. I don't really know any reason to have it in the Agreement, unless the City wishes to have it contained in the Agreement. Rural, of course, would pay to the City of Burley a franchise tax of 5% of the gross annual revenues collected on those customers within the City of Burley.

Very truly yours,

GOODMAN, DUFF & CHISHOLM

A handwritten signature in dark ink, appearing to read "Larry R. Duff", is written over the typed name. The signature is stylized with a large, circular initial "L".

Larry R. Duff

LRD:sd
Encl:

PARSONS, SMITH, STONE & FLETCHER

WILLIAM A. PARSONS
RICHARD K. SMITH
RANDOLPH C. STONE
WM. KENT FLETCHER

ATTORNEYS AT LAW
137 WEST 13TH STREET
P. O. BOX 910
BURLEY, IDAHO 83318

TELEPHONE
(208) 678-8382
FAX NO.
(208) 678-0146

June 10, 1996

Mayor Frank Bauman
Brent Kerbs
Curtis Mendenhall
Wendell McMurray
Bill Schafer
Al Thaxton
City Hall
Burley, Idaho 83318

Dear Mayor and City Council:

With this letter is a draft of the proposed Agreement between Rural Electric and the City of Burley.

Sherm Vaughn and I believe this accomplishes what we need to do.

Please read it and perhaps we can address the issue at the 6:00 o'clock meeting on June 17.

If any of you have individual questions please feel free to contact me.

I would suggest at this point that we maintain the confidentiality of the agreement until the agreement is finally negotiated with Rural.

There may be a couple of issues on exact legal descriptions but that part can be handled readily after the major issues are resolved.

Very truly yours,



William A. Parsons

WAP:rt
Enc.

cc: E. E. Brinegar
Sherm Vaughn (letter only)

Donald J. Chisholm

Attorney at Law
223 East Main Street
P.O. Box 1118
Burley, Idaho 83318
Telephone (208) 678-9181
Fax: (208) 678-4998

May 30, 1996

William A. Parsons
Parsons, Smith, Stone & Fletcher
P.O. Box 910
Burley, Idaho 83318

Re: Rural Electric - City of Burley Service Area Agreement

Dear Bill:

I am enclosing a revised draft of the service area agreement between Rural Electric and the City of Burley. I deleted the provisions regarding trading of customers. Each party will retain the customers it currently serves in territories assigned to the other party. The parties will always be free to make exchanges on a case by case basis if they wish to do so. I did include language which indicates the parties will exercise their best efforts to exchange Norco and Ag-West, but there are no deadlines and no consequences if the parties fail to exchange those two customers.

On the map we were previously using, Rural Electric was going to serve a parcel identified as Parcel #5 along the south side of Alfresco Road from the west side of J&L Electric to River View Drive. At our last meeting we had agreed that the parcel should be included as part of the City of Burley's Parcel #1. That change appears on the map and in the description for Parcel #1.

When I started reviewing the descriptions of the parcels, I discovered that the parcel which includes D.L. Evans Bank, the Animal Hospital, Volco and Deseret Industries was included in the description of Parcel #4. Since it is not contiguous to Parcel #4, I assigned #5 to it in the new agreement. The narrative description of the new Parcel #5 includes all of the Volco property. All of the George K's property is now in the City of Burley's Parcel #1. The map will have to be modified slightly to accommodate those provisions. Some of the calls in the legal descriptions refer to monuments and ownership of certain parcels. I think it would be preferable to have surveyed legal descriptions.

Parsons
May 30, 1996
Page 2

The provisions of paragraph 8 are the same as provisions Rural Electric has in its territorial agreement with the City of Heyburn. I had included those in a February draft of the City of Burley agreement, but I am not sure I had given you a copy of that draft. Those provisions are not intended to introduce a new issue into the negotiations. If the City has a problem with any of those provisions, we will be happy to make appropriate changes. From the perspective of Rural, uniformity of treatment of the City of Heyburn and the City of Burley enhances administrative efficiency, but we don't want those provisions to stand in the way of getting the other issues resolved.

After you have had a chance to review the agreement with Sherm Vaughn and the City Council, please let me know if it is acceptable or what changes would be required to make it acceptable.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Donald J. Chisholm", written in a cursive style.

Donald J. Chisholm

brb
Enclosure
cc: Larry Burbank - Rural Electric w/enclosure