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BEFORE THE IDAHO
PUBLIC UTILITIES COMMISSION

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

Case No.: C15-E-23-01

UNITED ELECTRIC CO-OP, INC.'S
HEARING BRIEF

COMES NOW, the Complainant, United Electric Co-op, Inc.¹ by and through its attorney, Peter J. Richardson of the firm Richardson Adams, PLLC, and pursuant to Order No. 35855 issued by the Idaho Public Utilities Commission ("Commission") on July 21, 2023, and hereby lodges its Hearing Brief in anticipation of the public hearing scheduled in this matter for August 14, 2023. In Order No. 35855 the Commission directed that,

The hearing briefs shall contain a statement of the issue, a recitation of the party's position, and any factual support for that position. Each party shall also file copies of any exhibits it expects to produce and discuss at the hearing. If the parties intend to call witnesses, the parties shall also file prepared testimony.²

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¹ Herein "United Electric" or "United."

² Order No. 35855 at p. 4.

Order No. 35855 also provides that:

The evidentiary hearing shall be on the singular factual dispute concerning the physical location of the facility at it relates to Burley and United's respective service territories as defined by the current agreements and amendments.³

Finally, Order No. 35855 provides that:

For the purposes of the evidentiary hearing the Commission shall consider the Agreements between the parties valid and enforceable.⁴

STATEMENT OF THE ISSUE

In Order No. 35855, the Commission asked the Parties to include a “statement of the issue” in their hearing briefs. However, the Commission’s order itself provides a comprehensive statement of the issue:

The evidentiary hearing shall be on the singular factual dispute concerning the physical location of the Facility as it relates to Burley and United's respective service territories as defined by the current agreements and amendments. For purposes of the evidentiary hearing the Commission shall consider the Agreements between the parties valid and enforceable.

Of course, the Commission's assumption that the current agreements and amendments thereto are valid and enforceable is a good assumption. United's complaint rests on that foundational assumption. In addition, the City of Burley⁵ has admitted that the Agreements and amendments have not been amended, altered or revised in response to a United Request for Admission submitted to the City as follows:

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³ *Id.* at pp. 3 – 4.

⁴ *Id.* at p. 4.

⁵ Sometimes referred to herein as the “City.”

1 REQUEST FOR ADMISSION NO 3:

2 Please admit that the referenced Territory Agreements and Amendments that were
3 the subject of the City's and United's joint application (dated June 12, 2003) in
4 Idaho PUC docket No. GNR-E-03-03 have not been amended, altered, or revised
5 since the time of filing of the joint application in GNR-E-03-03.

6 RESPONSE TO REQUEST FOR ADMISSION NO. 3:

7 The City admits this Request for Admission.

8 Michael Darrington, United's General Manager, provides testimony that includes
9 Exhibits 6 and 12 from United's complaint that initiated this proceeding. Those exhibits are
10 comprised of maps delineating the respective service territories of the two utilities. Those
11 exhibits also show the location of the new Suntado facility. The conclusion from Mr.
12 Darrington's testimony and from Exhibits 6 and 12 is that the Suntado facility is squarely within
13 the boundaries of United Electric Co-op, Inc. As testified to by Mr. Darrington, the City has
14 even admitted that Exhibit 12 'speaks for itself.' Of course, when Exhibit 12 "speaks" for itself
15 it is clearly stating (and graphically illustrating) United's position that the Suntado facility is
16 located in its service territory.

17 THE CITY OF BURLEY HAS TAKEN INCONSISTENT AND
18 INCOMPATIBLE POSITIONS ON WHETHER OR NOT THE SUNTADO
19 FACILITY IS – OR IS NOT - IN UNITED'S SERVICE TERRITORY

20 Paragraph 11 of United's Complaint asserts:

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

24 In its Answer the City of Burley clearly, unequivocally and without reservation declared that
25 United's assertion is correct, the Suntado facility is located wholly in United's service territory.
26 The City's answer in total provided:

27 11. The statements of Paragraph 11 are not within the knowledge base of
28 Respondents, however, *Respondents [Burley] admit the Suntado facility is*

1 *currently in United Electric's currently existing service territory.* [emphasis
2 added]

3 In addition, Burley admits that United Electric Co-op is currently serving a home on the Suntado
4 site. Burley admitted to United's allegations in Paragraphs 15 and 16 that the house on the
5 Suntado site that is currently listed as the business address for Suntado is being served by United
6 Electric:

7
8 15. The house at 1210 W. 16th Ave., Burley, is currently being service by
9 United Electric.

10 15. The Respondents [Burley] admit the allegations of Paragraph 15.

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

15 16. The Respondents [Burley] admit the allegations of Paragraph 15.

16 Despite specifically admitting "the Suntado facility is currently in United Electric's currently
17 existing service territory" [Paragraph 11 of Burley's Answer]; and despite admitting that United
18 is currently serving the home on the Suntado site that is being used as the business address for
19 Suntado [Paragraphs 15 and 16 of Burley's Answer]; Burley then, inexplicably, denies that the
20 Suntado site is in United's service territory. According to Burley's response to Paragraph 18 of
21 United's Complaint:

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

24 18. The Respondents [Burley] deny the allegations of Paragraph 18.

25 United has in good faith, and using its best efforts, attempted to understand and provide Burley
26 ample opportunities to disclose the foundation of its denials regarding whose service territory the
27 Suntado facility is located within. For example, United Electric has served discovery questions to
28 the City that have specifically asked Burley to provide correspondence, maps, and agreements

1 that support Burley's denials. The City's responses have been vague, disorganized, and
2 unresponsive as to these foundational questions. Burley has not provided evidence that it has
3 any authority to provide electric service to the Suntado site. Either Burley is playing 'hide-the-
4 ball' and has some mysterious and unknown theory as to how the facility can be both in United
5 Electric's service territory and at the same time is not in United Electric's service territory – or
6 its Answer is so inconsistent, contradictory and unreliable such that it should be disregarded in
7 its entirety by the Commission in its deliberations. If it be the former, it is incumbent upon the
8 City to stop wasting the Commission's and United's time and resources and make a forthright
9 statement of its theory of the case or if it be the latter, then Burley should withdraw opposition to
10 United's complaint and facilitate the uneventful transfer of the Suntado electric connections to
11 United.
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14 United Electric reserves its right, as provided for in the Commission's
15 Order No. 35855 to file rebuttal testimony/pleadings as such may be warranted in response to the
16 City's anticipated filings herein.
17

18 Dated this 31st day of July 2023.

19 
20 Peter J. Richardson
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22 CERTIFICATE OF SERVICE

23 I hereby certify that on this 31st day of July 2023, I caused to be delivered via electronic
24 mail only the foregoing Hearing Brief of United Electric Co-op, Inc. in IPUC Docket No. C15-E-
25 23-01 on the following Parties:
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UNITED ELECTRIC CO-OP, INC.'S HEARING BRIEF - 5

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By 
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