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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  
MOTIONS TO; (1) STRIKE THE CITY OF  
BURLEY'S EVIDENTIARY HEARING  
BRIEF, (2) ADMIT THE PREFILED  
TESTIMONY OF MICHAEL T.  
DARRINGTON, (3) VACATE HEARING,  
AND (4) AFFIRM EXISTING SERVICE  
TERRITORY BOUNDARIES

**COMES NOW**, the Complainant, United Electric Co-op, Inc.<sup>1</sup> and moves the  
Idaho Public Utilities Commission ("Commission") to issue its order; (1) striking, in its entirety,  
the "Evidentiary Hearing Brief" ("Brief") filed<sup>2</sup> on behalf of the City of Burley,<sup>3</sup> (2) admitting  
the pre-filed testimony of United's General Manager, Michael T. Darrington into the record in  
this matter,<sup>4</sup> (3) vacating the evidentiary hearing schedule for August 14, 2023, and (4) affirming

<sup>1</sup> Herein "United Electric" or "United."

<sup>2</sup> Although the City filed its Brief with the Commission, it failed to serve the same on any of the parties to this docket causing needless delay and confusion as to whether or not the City intended to make any filing whatsoever.

<sup>3</sup> Herein sometimes referred to as the "City."

<sup>4</sup> Mr. Darrington's affidavit in support of his testimony is attached hereto as Exhibit A.

UNITED ELECTRIC CO-OP, INC.'S MOTIONS TO; (1) STRIKE THE CITY OF BURLEY'S EVIDENTIARY  
HEARING BRIEF, (2) ADMIT THE PREFILED TESTIMONY OF MICHAEL T. DARRINGTON, (3) VACATE  
HEARING, AND (4) AFFIRM EXISTING SERVICE TERRITORY BOUNDARIES - 1

1 the extent and existence of the electric service territory boundaries approved by the Commission  
2 in Order No. 29355 that are referenced and relied upon by United Electric in its Complaint. In  
3 support thereof United Electric Co-op says as follows:  
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5 MOTION TO STRIKE THE CITY'S EVIDENTIARY HEARING BRIEF

6 The Commission was explicit, in Order No. 35855 establishing the opportunity for the  
7 parties to lodge pre-hearing evidentiary briefs, that said pre-hearing evidentiary brief and the  
8 hearing itself:

9 [S]hall be on the singular factual dispute concerning the physical location of the  
10 Facility as it relates to Burley and United's respective service territories as  
11 defined by the current agreements and amendments. For the purposes of the  
12 evidentiary hearing the Commission shall consider the Agreements between the  
parties valid and enforceable.<sup>5</sup>

13 The sole stated reason the Commission established the evidentiary hearing was to resolve the  
14 question of fact related to the exact location of Burley and United's Electric's service territory  
15 boundaries as they relate to the new Suntado processing plant ("Facility"). According to the  
16 Commission:  
17

18 Burley specifically denies some of United's Background and Factual Allegations  
19 concerning the location of the Facility with respect to United and Burley's service  
20 territories:

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

27 <sup>5</sup> Order No. 35855 at pp. 3 – 4. Emphasis provided.

1 [Burley]: 13. The Respondents deny the allegations of Paragraph 13.

2  
3 [United]: The location of the Suntado proposed processing plant on the site in  
4 question may be generally described as being bounded by 16th Street on the  
5 south, the railroad on the east and roughly by Washington Street on the west. The  
6 northern and eastern boundaries of the lot are conterminous with the existing  
7 boundary separating United's service territory from the City's service territory. It  
8 is located at approximately the 1200 through 1600 blocks on the north side of  
9 16th Street and west of the railroad right-of-way in the City of Burley

10 [Burley]: 17. The Respondents deny the allegations of Paragraph 17

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

13 [Burley]: 18. The Respondents deny the allegations of Paragraph 18.<sup>6</sup>

14 In short, the Commission is faced with incompatible assertions of fact; to wit: United Electric's  
15 assertion of fact that the Suntado Facility is located within its existing electric service territory  
16 boundaries and Burley's repeated denials of United's assertions. United's factual assertions as  
17 to the boundaries and claim that the Facility is located within its boundaries are supported by the  
18 narrative descriptions and accompanying maps contained in Exhibits 6 and 12 to its Complaint.  
19 Burley's denials were not supported by any offer of proof or exhibits.

20 Thus, the Commission in Order No. 35855 offered Burley the opportunity to make a  
21 factual showing as to how, and on what basis, it believes that United's factual assertions are false  
22 and to identify its purported electric service territory boundaries in relation to the Suntado  
23 Facility. Specifically, the Commission directed that,

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27 <sup>6</sup> Order No. 35855 at pp. 1 – 2.

1 The hearing briefs shall contain a statement of the issue, a recitation of the party's  
2 position, and any factual support for that position. Each party shall also file  
3 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.

4 Order No. 35855 also provides that:

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

8 Finally, Order No. 35855 provides that:

9 For the purposes of the evidentiary hearing the Commission shall consider the  
10 Agreements between the parties valid and enforceable.<sup>7</sup>

11 Burley's pleading affirmatively disregards Order No. 35885's explicit ground rules, to  
12 wit: for purposes of the evidentiary hearing, the current service territory agreements be deemed  
13 valid and that the evidentiary briefs only address the "singular factual dispute" concerning the  
14 location of the Facility in relation to the parties' service territory boundaries. In complete  
15 disdain for the Commission's directive, Burley's evidentiary brief fails to even mention the  
16 question of where the Facility is located in relation to the Parties' respective service territory  
17 boundaries – which is the sole purpose the Commission ordered the parties to make the instant  
18 filings in the first place.

19  
20 Instead of addressing the issue at hand, Burley's Evidentiary Brief is nothing more than a  
21 reproduction of the arguments it made in its initial filing. Indeed, except for precisely seven  
22 additional sentences, the City's Evidentiary Hearing Brief is copied, wholesale and verbatim,  
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27 <sup>7</sup> *Id* at pp. 3 - 4.

1 from its Petition for Declaratory Order. The City complains it is being held “hostage” to the  
2 current agreements and that the current agreements go “against the nature of democracy,” and  
3 that enforcement of the current agreements is “shocking” and that the City was duped into the  
4 current agreements by unscrupulous lawyers whose “conflict” of interest “calls into question the  
5 validity of [their] legal advice” and that its citizens are being “forced” to use one service provider  
6 and that the current agreements thwart the citizens of Burley’s “sacred right to vote.”<sup>8</sup> But, what  
7 the City’s Brief does not do, is identify where Suntado’s Facility is in relation to the boundaries  
8 established by the current agreements.  
9

10  
11 Because there is nothing – not even one sentence - in the City’s Evidentiary Brief that  
12 addresses the single issue demanded of it by the Commission, the City’s Brief is superfluous to  
13 the Commission’s decision making process, it is irrelevant, and its pejorative posturing is  
14 nothing more than an inappropriate hinderance (a.k.a. smoke screen) to resolving “the singular  
15 factual dispute” at hand which is, “where is the Suntado plant?” In fact, the City’s repeated  
16 irrelevant arguments could even be considered an attempt to mislead the Commission with  
17 assertions that are simply not true. For example, the City claims that, “Upon information and  
18 belief, none of the individuals who exercised their responsibilities on behalf of United Electric  
19 remain in those positions to date.” In actuality, United Electric currently has one member of its  
20 Board of Directors and, as late as last year, had three members of the United Electric Board of  
21 Directors that were in place at the time the Service Territory Agreement with the City was  
22 negotiated, executed, and approved by the Commission. Therefore, for all the reasons stated  
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27 <sup>8</sup> Burley’s Evidentiary Brief, passim.

1 above, the Commission is respectfully requested to strike, in its entirety, the City's Evidentiary  
2 Brief.

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4 **MOTION TO ADMIT THE PREFILED  
TESTIMONY OF MICHAEL T. DARRINGTON**

5 Attached hereto as Exhibit A is the affidavit of Mr. Michael T. Darrington affirming,  
6 under penalty of perjury, the truth of the matters asserted in his prefiled testimony. Mr.  
7 Darrington's testimony directly addresses the singular factual dispute at issue by providing a  
8 solid evidentiary foundation for the admission of and reliance on Exhibits 6 and 12 from  
9 United's Complaint. Exhibits 6 and 12 provide graphics (maps) as well as narrative descriptions  
10 of the location of the Suntado Facility in relation to the existing electric service territory  
11 boundaries between United Electric and the City of Burley – as requested by the Commission in  
12 Order No. 35855. Mr. Darrington's testimony is the only offer of proof on the singular question  
13 at issue in this phase of this proceeding.  
14  
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16 Mr.Darrington will make himself available on August 14, 2023, at the scheduled hearing  
17 in this matter. However, should the Commission grant United's Motion (addressed below) to  
18 vacate the hearing, then the Commission is respectfully requested to admit his testimony,  
19 pursuant to this motion, into the record as proof of the matters asserted therein – to wit, the  
20 location of the Suntado Facility in relation to the electric service territory boundaries between the  
21 City and United Electric, and that said Facility is located wholly and unequivocally within  
22 United Electric's service territory.  
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28 UNITED ELECTRIC CO-OP, INC.'S MOTIONS TO; (1) STRIKE THE CITY OF BURLEY'S EVIDENTIARY  
HEARING BRIEF, (2) ADMIT THE PREFILED TESTIMONY OF MICHAEL T. DARRINGTON, (3) VACATE  
HEARING, AND (4) AFFIRM EXISTING SERVICE TERRITORY BOUNDARIES - 6

1                   **MOTION TO VACATE THE HEARING SCHEDULED FOR AUGUST 14, 2023**

2                   The City's "Evidentiary Brief" offers no evidence. It simply ignores the "singular issue  
3 in dispute" which is the location of the Suntado Facility in relation to the service territory  
4 boundaries of the City and United Electric.  
5

6                   The City's Evidentiary Brief's does reference the "anticipated testimony" of a Mr. Brent  
7 Wallin and observes that:

8                   [I]t is anticipated Mr. Wallin will testify as to the City of Burley's understanding of its  
9 action in relation to the Suntado Project.

10 It is not at all clear what is meant by the phrase the "City of Burley's understanding of its action  
11 in relation to the Suntado Project." But what is clear, is that whatever it is that Mr. Wallin is  
12 prepared to testify about, it is not what the Commission has asked the parties to address, which is  
13 just the single issue of the location of the Suntado Facility in relation to the electric service  
14 boundaries between the City and United Electric. In addition, the parties were required by Order  
15 No. 35855 to prefile their testimony if they chose to provide testimony at all. Here, again, the  
16 City ignores the Commission's directive and instead of prefiling its testimony (as United has  
17 done) it merely provides a vague and noncommittal reference to a possible witness' possible  
18 testimony about an unknown subject. The City obviously has no intention of adhering to the  
19 rules established by the Commission for the conduct of the evidentiary hearing in this matter that  
20 was duly noticed by Commission order to resolve a discrete and singular factual dispute.  
21

22                   The City's has failed to make any offer of proof on the sole question at hand. It has also  
23 ignored this Commission's directive to only address that single question in its hearing brief and  
24 failed to prefile its witness' testimony, and indeed it has failed to even proffer a relevant topic for  
25 its potential witness to address.  
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27 UNITED ELECTRIC CO-OP, INC.'S MOTIONS TO; (1) STRIKE THE CITY OF BURLEY'S EVIDENTIARY  
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1           There is no need to further waste this Commission's or United Electric's time and  
2 resources chasing down the City of Burley's rabbit-hole. There is, frankly, no factual dispute as  
3 to the location of the Suntado Facility in relation to United Electric's service territory – the  
4 Facility is located entirely in United's Electric's service territory as is unequivocally identified in  
5 United's Complaint and as identified in Mr. Darrington's prefiled direct testimony that is verified  
6 by his affidavit attached hereto. When asked by the Commission to demonstrate otherwise – the  
7 City tried to change the subject by complaining about how its citizens are being "held hostage"  
8 and complaining about the City's prior unscrupulous lawyers who had conflicts of interest, and  
9 that the "shocking" service territory agreements "go against democracy" and violate its citizens'  
10 "sacred" right to vote. It seems the City has very strong opinions on a wide variety of topics, but  
11 none of those topics are remotely relevant to the issue at hand.

14           United Electric respectfully submits an evidentiary hearing is unnecessary in light of the  
15 City's failure to address the sole issue identified in Order No. 35855 and in light of the City's  
16 failure to even attempt to proffer a scintilla of evidence countering United's showing that the  
17 Suntado Facility is, indeed, wholly located within its exclusive service territory. That said,  
18 United has already lodged the prefiled testimony of Mr. Darrington and has cleared the decks  
19 for his appearance in Boise on August 14, 2023. Should the Commission so desire, Mr.  
20 Darrington is prepared to appear in person and is willing to sponsor his testimony, stand for cross  
21 examination and respond to any questions the Commission may have for the benefit of the  
22 record. Should the Commission decide to proceed with an evidentiary hearing however, United  
23 will renew its relevant Motions herein and will also move to deny Mr. Wallin's offer to provide  
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1 live testimony in light of the City's violation of this Commission's requirement that he first  
2 prefile said testimony pursuant to the schedule established in Order No. 35855.

3         Wherefore, United Electric Co-op, Inc. respectfully requests the Commission admit Mr.  
4 Darrington's testimony on the record in this matter and vacate the hearing scheduled for August  
5 14, 2023.  
6

7         **THE COMMISSION IS RESPECTFULLY REQUESTED TO MAKE ITS FINDING OF**  
8         **FACT THAT THE SUNTADO FACILITY IS LOCATED WHOLLY AND**  
9         **EXCLUSIVELY IN UNITED ELECTRIC'S SERVICE TERRITORY**

10         The City of Burley has declined the Commission's invitation that it explain its denials in  
11 its Answer to United Electric Co-op's Complaint that the Suntado Facility is, in fact, located  
12 wholly in United Electric's service territory.<sup>9</sup> Instead of a reasoned explanation of said denials,  
13 the City's "Evidentiary Brief" goes off on wild tangents<sup>10</sup> totally unrelated to the question at  
14 hand. Because it contains nothing but irrelevancies and is entirely unresponsive to the  
15 Commission's mandate in Order No. 35855 the City's "Evidentiary Brief" deserves to be  
16 accorded no weight whatsoever in the Commission's deliberations. The City's offer of the  
17 "Anticipated Testimony" of Mr. Wallin is also fatally flawed. Its proffer of proof is, like its  
18 Brief, unrelated to the question at hand. Furthermore, the City's Anticipated Testimony fails to  
19 even attempt to comply with the Commission's requirement that all testimony be prefiled.  
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25 <sup>9</sup> Whether the City has complied with its ethical legal obligation to conduct a thorough investigation and document of  
26 the truth of its factual assertions (or denials) in pleadings before this tribunal is a legitimate question the  
Commission may want to consider in light the City's response to Order No. 35855.

27 <sup>10</sup> E.g., its citizens' "sacred right to vote". Burley's Brief at p. 5.  
28 UNITED ELECTRIC CO-OP, INC.'S MOTIONS TO; (1) STRIKE THE CITY OF BURLEY'S EVIDENTIARY  
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1 United's factual assertions in its Complaint have proven to be accurate and truthful,  
2 especially in light of the City's complete failure to even try to explain the factual basis for its  
3 denials contained in its Answer. Furthermore, United's witness' testimony is supported by his  
4 affidavit and his testimony directly and succinctly resolves the issue at hand - which is where is  
5 the Suntado Facility in relation to the respective service territories of the City and United  
6 Electric. In light of all of the foregoing, it is apparent that Mr. Darrington's testimony and his  
7 conclusions in that testimony are unassailable and provide conclusive evidence that the Suntado  
8 Facility is located in United Electric's exclusive service territory and that said territory is being  
9 violated by an illegal incursion by the City of Burley as it continues to construct facilities to  
10 provide electric service to this new enterprise - the Commission is therefore respectfully  
11 requested to issue its order so finding.

12 **WHEREFORE**, United Electric Co-op, Inc. respectfully requests that the Commission issue its  
13 order granting the foregoing Motions, to wit:

- 14 1. Strike the City of Burley's Evidentiary Hearing Brief in its entirety, with  
15 prejudice,
- 16 2. Admit on the record Mr. Michael T. Darrington's prefiled testimony that is  
17 verified by affidavit,
- 18 3. Vacate the hearing schedule in this docket for August 14, 2023,
- 19 4. Issue its order finding that the Suntado Facility is being constructed on property  
20 that is wholly located within the exclusive service territory of United Electric Co-op, Inc., and  
21
- 22 5. Such other relief as the Commission deems just and fair in light of the lack of due  
23 diligence on the City's part by its lodging of a pleading (Answer) with this Commission  
24

25 UNITED ELECTRIC CO-OP, INC.'S MOTIONS TO; (1) STRIKE THE CITY OF BURLEY'S EVIDENTIARY  
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1 containing unsupported and unsupportable denials of United's factual assertions as to its service  
2 territory boundaries.

3  
4 PROCEDURE

5 United Electric is not requesting oral argument. However, due to the short time period  
6 pending before the hearing is scheduled in this matter (August 14, 2023), United is requesting  
7 the Commission issue its order granting the above enumerated motions on less than fourteen  
8 days' notice. United' attorney has complied with Rule 256 of the Commission's Rules of  
9 Procedure by personally informing Mr. Burdin, Deputy Attorney General (PUC Staff) and Mr.  
10 Munns' secretary/assistant (counsel for the City) of the pendency of these Motions and of  
11 United's request for substantive and procedural relief on less than fourteen days' notice.  
12 Counsel for United will continue to attempt to make personal direct contact with Mr. Munns,  
13 however his secretary/assistant has provide assurances that he has been informed of the  
14 attempted direct contact.  
15

16 Dated this 31<sup>st</sup> day of August 2023.

17 

18 Peter J. Richardson, ISB # 3195

CERTIFICATE OF SERVICE

I hereby certify that on this 3<sup>rd</sup> day of August 2023, I caused to be delivered via electronic mail only the foregoing Motions to; (1) Strike the City of Burley's Evidentiary Hearing Brief, (2) Admit the Prefiled Testimony of Michael T. Darrington, (3) Vacate Hearing, and (4) Affirm Existing Service Territory Boundaries of United Electric Co-op, Inc. in IPUC Docket No. C15-E-23-01 on the following Parties:

//

//

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By   
Peter J. Richardson, ISB # 3195

UNITED ELECTRIC CO-OP, INC.'S MOTIONS TO; (1) STRIKE THE CITY OF BURLEY'S EVIDENTIARY HEARING BRIEF, (2) ADMIT THE PREFILED TESTIMONY OF MICHAEL T. DARRINGTON, (3) VACATE HEARING, AND (4) AFFIRM EXISTING SERVICE TERRITORY BOUNDARIES - 12

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19 DARRINGTON, (3) VACATE HEARING,  
20 AND (4) AFFIRM EXISTING SERVICE  
21 TERRITORY BOUNDARIES

22 Exhibit A

23 Affidavit of Michael T. Darrington

24 EXHIBIT A

25 UNITED ELECTRIC CO-OP, INC.'S MOTIONS TO; (1) STRIKE THE CITY OF BURLEY'S EVIDENTIARY  
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28