

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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|--|---|-------------------------------|
| IN THE MATTER OF UNITED ELECTRIC |) | CASE NO. C15-E-23-01 |
| CO-OP INC.'S FORMAL COMPLAINT FOR |) | |
| VIOLATION OF CONTRACT ENTERED |) | NOTICE OF PETITION FOR |
| INTO PURSUANT TO THE IDAHO |) | DECLARATORY JUDGEMENT |
| ELECTRIC STABILIZATION ACT |) | |
| |) | NOTICE OF EVIDENTIARY |
| |) | HEARING |
| |) | |
| |) | ORDER NO. 35855 |

On February 22, 2023, United Electric Co-op, Inc. ("United") filed a formal complaint ("Complaint") with the Idaho Public Utilities Commission ("Commission"). United alleges that the City of Burley, Idaho ("Burley" or "City"), violated a series of service agreements ("Agreements") related to the allocation of the respective electric service territory and customers by and between the City and United, which were entered into pursuant to the Idaho Electric Stabilization Act ("ESSA"), and that have been approved by order of the Commission. Specifically, United's Complaint concerns the construction of a milk processing facility ("Facility") that is being built by Suntado, LLC ("Suntado"). United states that the Facility is wholly within United's service territory.

United requests that the Commission issue an order: (1) prohibiting the City from engaging in further acts in violation of the Agreements; (2) prohibiting the City from providing electric service to the Facility; and (3) requiring the City to remove all electrical connections, facilities and/or equipment installed to serve the Facility.

On March 23, 2023, the Commission issued a Summons to Burley directing the City to file a written answer to the Complaint within twenty-one (21) days of the service date of the Summons.

On March 29, 2023, Burley filed an answer ("Answer") to the Complaint, and a petition for declaratory order ("Petition"). Burley specifically denies some of United's Background and Factual Allegations concerning the location of the Facility with respect to United and Burley's service territories:

[United]: 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.

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

[United]: The location of the Suntado proposed processing plant on the site in question may be generally described as being bounded by 16th 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 16th Street and west of the railroad right-of-way in the City of Burley

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

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

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

Burley generally denies all of United's remaining Factual Allegations and all three of United's Counts in the Complaint.

Burley requests that the Commission dismiss the Complaint in full and award it: (1) Entry of an order dismissing United Electric Co-op's Complaint; (2) Entry of an order awarding Burley its attorney fees and costs; and (3) Any further relief to which the City of Burley, Idaho may be entitled.

NOTICE OF PETITION FOR DECLARATORY JUDGMENT

YOU ARE HEREBY NOTIFIED that Burley has petitioned for a declaratory ruling from the Commission finding that the previous territory service agreement between Burley and United may be terminated by either party at any time. Burley represents that the provisions of *Idaho Code* § 61-333B would then govern the re-negotiation of a territory service agreement between the parties. Petition at 7-8.

YOU ARE FURTHER NOTIFIED that Burley represents that the territory service agreement should be terminated because 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. *Id.* at 8.

YOU ARE FURTHER NOTIFIED that Burley represents that the territory service agreement should be terminated because no clause exists in any of the service agreements that prevents either party from terminating the agreements to renegotiate another agreement. *Id.* at 8-9.

YOU ARE FURTHER NOTIFIED that Burley represents that the territory service agreement should be terminated because, despite waiving conflict, there was a flagrant conflict of interest from representation throughout the proceedings between Burley and United. *Id.* at 9.

YOU ARE FURTHER NOTIFIED that Burley represents that the territory service agreement should be terminated because 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. *Id.* at 10.

YOU ARE FURTHER NOTIFIED that Burley requests that the Commission enter a Declaratory Order: (1) stating that Burley and United both are entitled to terminate the 2003 Territory Service Agreement with reasonable notice to the other party; (2) stating that the provisions of *Idaho Code* § 61-333B are now meant to govern the negotiations between the parties; (3) awarding Burley attorney's fees and costs; and (4) any other relief the Commission sees fit.

YOU ARE FURTHER NOTIFIED that the Petition and submitted documentation is available for public inspection during regular business hours at the Commission's office. All documents are also available on the Commission's website at <http://www.puc.idaho.gov/>. Click on the "ELECTRIC" icon, select "Open Cases," and click on the case number as shown on the front of this document.

YOU ARE FURTHER NOTIFIED that all proceedings in this case will be held pursuant to the Commission's jurisdiction under Title 61 of the Idaho Code, and that all proceedings in this matter will be conducted pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

YOU ARE FURTHER NOTIFIED that, pursuant to Rule 102, the Commission finds it appropriate to serve copies of this Notice on all affected utilities. IDAPA 31.01.01.102. Utilities shall have **twenty-one (21) days** from the filing of this order to submit written comments in support of, or opposition to, the petition.

NOTICE OF EVIDENTIARY HEARING

YOU ARE HEREBY NOTIFIED that the Commission shall conduct an evidentiary hearing in this matter on **MONDAY, AUGUST 14, 2023, starting at 11:00 a.m. (local time).** The evidentiary hearing will be held at the **Idaho Public Utilities Commission, 11331 W. Chinden Boulevard, Building 8, Suite 201-A, Boise, ID 83714**. 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 the purposes of the evidentiary hearing the Commission shall consider the Agreements between the parties valid and enforceable.

YOU ARE FURTHER NOTIFIED that the Parties shall file hearing briefs with supporting affidavits and exhibits by **July 31, 2023**. 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.

YOU ARE FURTHER NOTIFIED that the evidentiary hearing shall be conducted in accordance with the general rules outlined in the Commission's Rules of Procedure. As the complainant, United shall present its evidence first in the form of oral argument, submission of evidence and exhibits, and if applicable, witness testimony. Respondent Burley shall then present its evidence in similar fashion. United may then be given a chance to rebut. At the conclusion of the hearing, the Commission may request that the parties submit closing briefs before the Commission issues its decision.

YOU ARE FURTHER NOTIFIED that all testimony and exhibits in this matter must comport with the requirements of Commission Rules of Procedure 231 and 267. IDAPA 31.01.01.231 and .267.

YOU ARE FURTHER NOTIFIED that all hearings and prehearing conferences in this matter will be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act ("ADA"). Persons needing the help of a sign language interpreter or other assistance in order to participate in or to understand testimony and argument at a public hearing may ask the Commission to provide a sign language interpreter or other assistance at the hearing. The request for assistance must be received at least five working days before the hearing by contacting the Commission Secretary at:

IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
Telephone: (208) 334-0338
Facsimile: (208) 334-3762
Email: secretary@puc.idaho.gov

YOU ARE FURTHER NOTIFIED that all proceedings in this matter will be conducted pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000, *et seq.*

NOTICE OF PETITION FOR DECLARATORY JUDGEMENT
NOTICE OF EVIDENTIARY HEARING
ORDER NO. 35855

INVITATION TO SETTLE

Pursuant to Rule 273, the Commission invites the parties to settle this matter in full. The Commission believes that the current agreements between the parties and the provisions of Idaho Code provide a path toward settlement that does not require Commission adjudication of a Formal Complaint.

ORDER

IT IS HEREBY ORDERED that copies of this Notice shall be served on all affected utilities.

IT IS FURTHER ORDERED that those utilities shall have twenty-one (21) days from the filing of this order to submit written comments in support of, or opposition to, the petition.

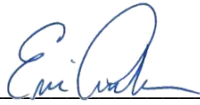
IT IS FURTHER ORDERED that the Commission shall conduct an evidentiary hearing in this matter on MONDAY, AUGUST 14, 2023, starting at 11:00 a.m. (local time). The evidentiary hearing will be held at the Idaho Public Utilities Commission, 11331 W. Chinden Boulevard, Building 8, Suite 201-A, Boise, ID 83714.

IT IS FURTHER ORDERED that the Parties shall file hearing briefs and exhibits with the Commission by July 31, 2023.

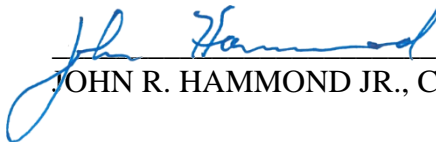
IT IS FURTHER ORDERED that parties comply with Order No. 35375, issued April 21, 2022. Generally, all pleadings should be filed with the Commission electronically and will be deemed timely filed when received by the Commission Secretary. *See* Rule 14.02. Service between parties should continue to be accomplished electronically when possible. However, voluminous discovery-related documents may be filed and served on CD-ROM or a USB flash drive.

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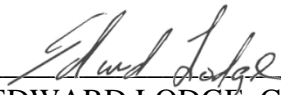
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 21st day of July 2023.



ERIC ANDERSON, PRESIDENT

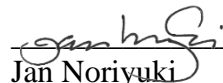


JOHN R. HAMMOND JR., COMMISSIONER



EDWARD LODGE, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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