

DECISION MEMORANDUM

**TO: COMMISSIONER ANDERSON
COMMISSIONER HAMMOND
COMMISSIONER LODGE
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL**

**FROM: CHRIS BURDIN
DEPUTY ATTORNEY GENERAL**

DATE: MAY 23, 2023

**SUBJECT: 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.**

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.

BURLEY'S ANSWER

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 locational Factual Allegations:

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.

13. The Respondents deny the allegations of Paragraph 13.

17. 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

17. The Respondents deny the allegations of Paragraph 17

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

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.

BURLEY'S PETITION

Burley filed its Petition pursuant to Commission Rule of Procedure 101. Burley's states that its Petition is based on Commission "Order 29281."¹

¹ It appears that Burley's reference to Order No. 29281 is an error. Staff believes that the correct order is Order No. 29355.

Burley requests a declaratory ruling from the Commission finding that the previous territory service agreement between the parties may be terminated by either party at any time. Burley argues that the provisions of *Idaho Code* § 61-333B would then govern the re-negotiation of a territory service agreement between the parties. Burley presents four arguments in its Petition:

1. 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.
2. No clause exists in any of the TSAs which prevents either party from terminating the TSAs to renegotiate another.
3. 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.
4. 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.

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.

STAFF COMMENTS

Staff has reviewed the Complaint, Answer, and Petition.

1. Dispute of Fact

Based upon Staff's review of the pleadings, there appears to be a dispute of fact between the parties as to the location of the proposed Suntado facility and whether the facility will be contained entirely within United's service territory.

Staff recommends that the Commission order an evidentiary hearing to determine the location of the Suntado facility with respect to each party's service territory.

2. Commission Rule of Procedure 102

Pursuant to Commission Rule of Procedure 102, "[n]otice of [a] petition for declaratory ruling will be issued to all affected utilities. Orders disposing of the petition will be served on all affected utilities." In this case Burley is asking the Commission to make determinations that could impact the Commission's interpretation and construction of all current and future service territory agreements.

Staff recommends that the Commission issue a Notice of Petition for Declaratory Order establishing a 21-day comment period for any affected utilities to file written comments in support of or opposition to the petition.

3. Settlement

Based upon its review of the record, Staff believes that the issues present in the Complaint and Answer are ripe for negotiation and settlement under the existing service territory agreement between the parties. Staff recommends that, pursuant to Commission Rule 273, the Commission invite the parties to work with Staff to settle the issues in this case.

STAFF RECOMMENDATION

Staff recommends the Commission:

1. Set an evidentiary hearing to determine the location of the Suntado facility with respect to each party's service territory.
2. Issue a Notice of Petition for Declaratory Order establishing a 21-day comment period for affected utilities to file written comments in support of or opposition to the petition.
3. Invite the parties to work with Staff to settle the issues in this case.

COMMISSION DECISION

Does the Commission wish to:

1. Set an evidentiary hearing to determine the location of the Suntado facility with respect to each party's service territory?
2. Issue a Notice of Petition for Declaratory Order establishing a 21-day comment period for affected utilities to file written comments in support of or opposition to the petition?
3. Invite the parties to work with Staff to settle the issues in this case?



Chris Burdin
Deputy Attorney General

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