

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER RAPER
COMMISSIONER ANDERSON
COMMISSION SECRETARY
COMMISSION STAFF

FROM: DAPHNE HUANG
DEPUTY ATTORNEY GENERAL

DATE: DECEMBER 28, 2016

SUBJECT: ROCKY MOUNTAIN POWER'S APPLICATION TO APPROVE ASSET
PURCHASE AGREEMENT WITH IDAHO FALLS, CASE NO. PAC-E-16-
16

On December 21, 2016, Rocky Mountain Power ("Company") filed an Application requesting authority to sell/transfer certain electric facilities to the city of Idaho Falls, Idaho ("City"), to supply electric service to 6786 South 5th West, in the City's boundaries. The Application falls under the Electric Supplier Stabilization Act (ESSA), *Idaho Code* §§ 61-332 *et seq.* Rocky Mountain asks the Commission to process the Application by Modified Procedure.

THE ESSA

The ESSA was passed to: (1) discourage duplication of facilities; (2) prohibit "pirating" of consumers; (3) stabilize electric suppliers' service territories and consumers; and (4) promote harmony between electric suppliers. *Idaho Code* § 61-332(2). As such, the ESSA prohibits an electric supplier from furnishing electric service to a consumer that is or has been "lawfully connected for electric service to facilities of another electric supplier except as provided in this act." *Idaho Code* § 61-332B. However, the ESSA provides an exemption to this prohibition: that electric suppliers may contract to allocate "territories, consumers, and future consumers . . . and designat[e] which territories and consumers are to be served by which contracting electric supplier." *Idaho Code* § 61-333(1). These service allocation contracts, also called service area exemption agreements, must be approved by the Commission "upon finding that the allocation is in conformance with the purposes of the ESSA." *Id.*; Order No. 32646. In this case, the Company and the City are electric suppliers under the ESSA. *Idaho Code* § 61-

332A (4) (“‘Electric supplier’ means any public utility . . . or municipality supplying or intending to supply electric service to a consumer.”).

BACKGROUND

In August 2005, the Company and the City entered into an allocation agreement (“2005 Agreement”) “to reduce duplication of service and promote stability of their respective service areas.” Application at 2; Exhibit 1. Although the Company and the City terminated the 2005 Agreement in 2015, they “have agreed to utilize the terms of [the 2005 Agreement] to govern this asset exchange.” Application at 2. Among other terms, the 2005 Agreement allowed for the transfer of a customer’s electric service from the Company to the City upon the customer’s written request for such transfer, and upon the City’s agreement to pay the Company “just compensation for lost revenues and [for] the facilities utilized to serve that customer.” *Id.* at 3. Under the 2005 Agreement, “just compensation for lost revenues” meant “an amount equal to 167 percent of the total of the respective customer’s electric bills from the prior twelve month period.” *Id.* In the event of such transfer, the 2005 Agreement provided that the City “would purchase the poles, wires, cross arms, insulators, guys and other facilities no longer needed or required by [the Company] to service that customer.” *Id.*

APPLICATION

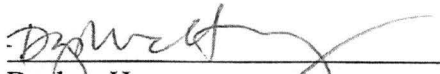
The Company and City have entered into an Asset Purchase Agreement that comports with their 2005 Agreement. *Id.* Consistent with terms of the 2005 Agreement, the owner and developer of the property at 6786 South 5th West in Idaho Falls (i.e., the customer) made a written request to transfer electric service from the Company to the City. *Id.* In the Asset Purchase Agreement, the Company and City have agreed to transfer service, and the City has agreed to pay 167% of the previous customer’s electric bills for the prior 12-month period, and to purchase “one transformer, three poles and approximately 1,850 feet of conductor from the Company.” *Id.* Further, the City agrees to pay the Company for legal and transaction costs. *Id.* The agreed purchase price is \$4,850.67. Exhibit D. In the Application, the Company and City jointly request the Commission’s approval of their service area exemption and Asset Purchase Agreement. Application at 3.

STAFF RECOMMENDATION

Staff recommends that the Application be processed by Modified Procedure with a comment deadline of 21 days from the service date of the Commission Order.

COMMISSION DECISION

Does the Commission wish to issue Notice of the Application and Notice of Modified Procedure with a 21-day comment period?



Daphne Huang
Deputy Attorney General

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