

OCT - 9 1998

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Petition of)	
)	DOCKET NO. UE-981149
THE WASHINGTON WATER POWER)	
COMPANY)	ORDER APPROVING
)	SERVICE TERRITORY
For an Order Approving a Service)	AGREEMENT
Territory Agreement Between the)	
Washington Water Power Company and)	
Inland Power and Light Company.)	
_____)	

SUMMARY

On August 31, 1998, The Washington Water Power Company ("WWP") filed a petition requesting that the Commission issue an order approving a proposed service territory agreement ("Agreement") between the Company and Inland Power and Light Company ("Inland"). WWP is an investor-owned utility serving customers in eastern Washington, in and around Spokane. Inland is an electric cooperative serving approximately 30,000 customers in various suburban and rural areas of Eastern Washington, including areas around the city of Spokane. The Agreement states that each company's existing customers will continue to be served by their current utility and that any expansion of an existing customer's operation will be served by the utility serving the customer's original load. The Agreement also provides that the utility with electric facilities closest to a new customer will serve that customer in most cases. New customers with loads greater than or equal to 3000 kva, however, will be able to choose their service provider. The Agreement is for a term of fifteen years; however, either party can terminate the Agreement after ten years by providing 180 days prior notice.

BACKGROUND

Existing Service Territory Agreement: The Commission approved the existing service territory agreement between WWP and Inland on November 21, 1973, with a primary term of twenty-five (25) years. The original agreement designated the serving utility for certain territory in and around the city of Spokane. The existing agreement also contains twenty-five addenda which designate the serving utility for certain areas not addressed in the original agreement. Growth in and around the Spokane area has spread beyond the areas assigned under the 1973 agreement thereby creating the impetus for the new Agreement.

Terms of the Proposed Service Territory Agreement: The proposed service territory Agreement is attached to this Order as Appendix A and is incorporated by this reference. The essence of the Agreement is as follows:

The proposed Agreement consists of a series of components built to form a comprehensive plan of service in areas in Eastern Washington where both utilities have facilities. The first element of the Agreement "grandfathers" all previously designated geographic areas from the 1973 agreement, which includes all addenda to that agreement. Existing customers of each utility, therefore, will continue to receive service from their present electric company for the duration of the Agreement.

Second, the Agreement provides for the division of new areas where only one utility could reasonably serve. These areas are depicted on two maps provided by WWP in its petition and represent the Spokane Valley and the west Plains areas. Together, with the areas grandfathered from the 1973 agreement, these geographically defined districts make up what the Agreement identifies as "designated areas" and cover the majority of the customers currently taking service. The Agreement also provides for additional territory to be considered as designated areas, and that such future additions will be reflected in further addenda to the Agreement.

Third, the Agreement identifies areas of future development where neither WWP nor Inland could agree that either utility should be given the exclusive right to serve new customers. In many cases, both utilities have installed distribution facilities in anticipation of serving these areas. In these "unassigned areas," or "non-designated areas," the Agreement lays out specific rules to determine the serving utility. These rules of service establish an orderly way for Inland and the Company to determine the serving utility as growth occurs in the non-designated areas.

Fourth, the Agreement specifies two small areas that will be fully open to competition. These two areas west of Spokane are the Fairchild Air Force Base, and a small area known as Westbow where both utilities want to serve new accounts and both have adequate facilities to serve.

Fifth, the new Agreement explicitly recognizes the very largest customers (load calculated to exceed 3 MW) are unique. The parties agree to allow any new customers in this load class a choice of service providers irrespective of agreed-upon boundaries.

Finally, the Agreement preserves the right of each utility to honor outstanding offers for service to customers. The parties agree to honor these offers irrespective of the location of the customers.

The Agreement also contains provisions for dispute resolution during the term of the Agreement. If the parties cannot successfully resolve a dispute within the context of the Agreement, either may petition the Commission for the appointment of a mediator/arbitrator to resolve the dispute. The Agreement also provides that any customer impacted by the mediation or arbitration may file a petition with the Commission to seek a proper application of the Agreement. Accordingly, the Agreement envisions active and continuous supervision by the Commission.

PROCESS

The Commission entered on September 22, 1998, a Notice of Hearing, soliciting written comments from parties summarizing their positions regarding the Petition. Written comments were received from Inland, Commission Staff, Public Counsel, and the Industrial Customers of Northwest Utilities ("ICNU"). These comments either supported or did not oppose the Agreement, obviating the need for any adversarial hearing process. In Open Meeting proceedings conducted on October 7, 1998, the Commission heard comments in favor of approval of the petition from representatives of the WWP, Inland, and former Commissioner Aldo J. Benedetti, who assisted in mediating the parties' negotiations. Mr Robert Manifold, Assistant Attorney General, stated that Public Counsel did not oppose the Petition. No other members of the public offered comments at the open meeting. The Commission invited comments from any persons present in response to its September 22, 1998, Notice of Hearing; no one came forward to participate.

The Commission approved the service territory Agreement as filed, finding the Agreement in the public interest and consistent with the State's declaration of public policy in RCW 54.48.020 favoring such agreements as a way to provide for the orderly extension of service and avoid needless duplication of services. The Commission clarified that approval of the Petition in no way implies preapproval of any special contract consideration for any customers, including customers WWP acquires by competitive means in the future.

COMMISSION DISCUSSION AND DECISION

The Commission thanks both WWP and Inland for their commitment during the months of negotiation required to produce the service area agreement. The Commission believes the Agreement is in the long-term public interest as it will minimize duplication of facilities between the two utilities in the future and will provide for the orderly extension of service in adjoining and overlapping service areas. The Agreement builds upon the prior 1973 agreement between the two companies. Service to existing customers is protected, additional geographic areas are designated for each utility to serve new customers, specific rules are set forth to determine the serving utility in most geographic areas not designated for exclusive service by either company, alternative dispute resolution is provided in the event future disputes arise, and competition is allowed for large load (i.e., greater than 3 MW) customers.

The Agreement is filed pursuant to RCW 54.48.020 and 54.48.030. Those statutes state as follows:

RCW 54.48.020:

The legislature hereby declares that the duplication of the electric lines and service of public utilities and cooperatives is uneconomical, may create unnecessary hazards to the public safety, discourages investment in permanent underground facilities, and is unattractive, and thus is contrary to the public interest and further declares that it is in the public interest for public utilities and cooperatives to enter into agreements for the purpose of avoiding or eliminating such duplication.

RCW 54.030:

In aid of the foregoing declaration of policy, any public utility and any cooperative is hereby authorized to enter into agreements . . . for the designation of the boundaries of adjoining service areas for which each such public utility or each such cooperative shall observe, for the establishment of procedures for orderly extension of service in adjoining areas not currently served by any such public utility or any such cooperative. . . .

The latter statute also authorizes the Commission to approve the participation of a regulated electric utility in a service territory agreement with a cooperative.

According to Staff's analysis, the Agreement furthers the policy objectives established by the legislature in RCW 54.48.020. First, for the majority of the area in Eastern Washington where both utilities have electric distribution facilities, the Agreement provides a defined service territory. Then, for areas where both utilities have facilities and could reasonably serve customers, the utilities have established rules for determining the serving utility. While not a clear boundary, the rules are fairly explicit and will result in an orderly extension of service consistent with the policy objectives of the statute. Finally, the Agreement recognizes the unique nature of large customers and the circumstances in today's environment that require utilities to consider the specific characteristics of these customers.

The Commission agrees with Staff's analysis that WWP and Inland have crafted an agreement that relies upon an orderly set of rules which meet the policy objectives of the statute and which recognize the parties prior business practices that have evolved in the absence of certificated areas. The Agreement provides for a specified service provider in most areas, it precludes the "pirating" of existing customers, it provides for an orderly extension of service through rules where both utilities could reasonably serve new load, and it recognizes the underlying economics of new large loads in Eastern Washington.

The Agreement is in furtherance of the public policy set forth in RCW 54.48.020, as it will minimize the potential duplication of facilities between the two utilities to serve new customers, thus providing the most economic service to all

customers in the long-run, encouraging the installation of permanent facilities, and reducing possible hazards to the public safety. Further, the proposed Agreement will minimize the potential stranding of electric service facilities presently in place to serve existing customers.

The Commission accepts the dispute resolution procedure outlined in the Agreement as an appropriate means of addressing disputes regarding the Agreement's interpretation or application, either by WWP or Inland, or by a customer affected by application of the Agreement. The Commission will invoke a process to appoint a mediator upon formal request by WWP, as outlined in the Agreement, in an attempt to settle the matter in the event a dispute cannot be resolved through the initial procedure of dispute resolution.

The Commission's approval of the Agreement should in no way be construed as preapproval of any special contract that may emerge as a result of the Agreement or otherwise.

In addition, the Commission's approval of the service territory Agreement contemplates that WWP will withdraw its pending filings in Docket Nos. UE-971422 and UE-980291.

FINDINGS OF FACT

Having considered the matter fully, including comments from interested participants in open public meeting, the Commission now makes the following findings of fact. Portions of the preceding discussion are incorporated by this reference and adopted as findings of fact.

1. The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate rates, rules, regulations, and practices of public service companies that operate in the state of Washington, including electric companies.

2. The Washington Water Power Company is a public service company subject to regulation by the Washington Utilities and Transportation Commission.

3. On August 31, 1998, WWP filed a petition requesting the Commission to enter an order approving a proposed service territory Agreement between WWP and Inland. The Service territory Agreement is attached as Appendix A to this Order and is incorporated by reference herein.

4. The Service territory Agreement will minimize the potential uneconomic duplication of facilities, will avoid creating unnecessary hazards to public safety, and will otherwise promote the orderly extension of service, thereby promoting the public interest.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding.

2. The Commission has reviewed the terms of the proposed Service territory Agreement. Those terms are consistent with the public interest and the public policy set forth in RCW Ch. 54.48 encouraging the use of service territory agreements. The Agreement should be approved and adopted in its entirety.

ORDER

THE COMMISSION ORDERS That the proposed service territory Agreement submitted by the Company is approved and adopted in its entirety.

THE COMMISSION FURTHER ORDERS That the approval authorized herein shall become effective upon the Commission's receipt and approval of notice from the Company that it elects to withdraw proposed tariff revisions in Docket Nos. UE-971422 and UE-980291.

The Commission retains jurisdiction as necessary to effectuate the provisions of this Order.

DATED at Olympia, Washington, and effective this 9th day of October 1998.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



RICHARD HEMSTAD, Commissioner



WILLIAM R. GILLIS, Commissioner

APPENDIX A

SERVICE TERRITORY AGREEMENT

Between

THE WASHINGTON WATER POWER COMPANY

and

INLAND POWER AND LIGHT CO.

THIS AGREEMENT is made and entered into this 28th day of August, 1998 by and between THE WASHINGTON WATER POWER COMPANY, a Washington corporation ("WWP"), and INLAND POWER AND LIGHT CO., a Washington cooperative corporation ("Inland").

RECITALS

A. The legislature of the State of Washington in 1969, enacted RCW 54.48 et. seq. declaring certain legislative policy and providing a mechanism for agreement between public utilities and cooperatives.

B. The aforementioned legislation provides, inter alia, that it is in the public interest for public utilities such as WWP and cooperatives such as Inland to enter into agreements for the purpose of avoiding or eliminating duplication of service, and for other purposes stated in RCW 54.48 et. seq.

C. RCW 54.48.030 provides that any such agreement in order to be effective shall be presented to and approved by the State of Washington Utilities and Transportation Commission ("WUTC").

D. The parties entered into an Agreement dated June 12, 1973, which was presented to the WUTC which approved the same by Order dated November 21, 1973.

E. The parties desire to enter into a succeeding State of Washington service territory

agreement under the declarations and mechanism provided for in RCW 54.48, while continuing in full force and effect the addenda accumulated under said prior agreement.

F. The parties declare that the undersigned are authorized to enter into this Agreement as of the date above first written.

NOW, THEREFORE, the parties hereby agree as follows:

1. **AGREEMENT AS TO REGULATORY JURISDICTION**: The parties agree that Inland is governed by its Trustees and otherwise is not subject to the jurisdiction of the WUTC, and nothing herein shall be construed to be an agreement or declaration conferring WUTC jurisdiction upon Inland.
2. **WUTC APPROVAL REQUIRED**: The parties acknowledge that this Agreement must be approved by the WUTC in accordance with RCW 54.48 et. seq., and a true copy of any order so approving this Agreement, or any subsequent revision thereof, shall be attached as an appendix to this Agreement.
3. **TERM**: Subject to the provisions for termination and revisions set out at paragraph 5 below, the term of this Agreement shall commence on the first business day following the effective date of an order of the WUTC approving this Agreement, and shall continue in effect for a period of fifteen (15) years, and may continue thereafter unless terminated by either party as provided below.
4. **DEFINITIONS**: The following terms shall have the following meanings:
 - a. **"Assigned Area"**: In addition to the 1973 Agreement Addenda which will be made part of this Agreement at the outset, Assigned Areas are those additional areas agreed to by the parties reflected in New Addenda.
 - b. **"1973 Agreement Addenda"**: Agreed areas of service or specific customer service reflected in accumulated addenda to the 1973 Agreement as of the effective date of this superseding agreement.

c. "New Addenda": Are of two general categories: (1) those addenda reflective of agreed Assigned Areas, in addition to 1973 Agreement Addenda, arrived at or in place as of the effective date of this Agreement; (2) areas assigned by agreement of the parties in the future. These addenda shall be attached to this Agreement as they are agreed to.

d. "Use Classification": A use classification is one of the following categories: (1) Signs; (2) Routine Load (less than 50kW); (3) Large Load (50kW to 3,000 KVA); (4) Industrial Load (3,000 KVA or greater).

5. **INCORPORATION OF 1973 AGREEMENT ADDENDA:** Exhibit A to this Agreement will be the 1973 Agreement "Addenda", as defined above, and will reflect those newly assigned areas as of the date of this Agreement. The areas delineated therein shall become Assigned Areas for purposes of this Agreement.

6. **RULES REGARDING SERVICES:**

a. **Services to Existing Customers:** Neither party will extend its electric service facilities to or solicit electric service from a customer at a particular location that is currently being served by the other party. Neither party will extend its electric service facilities to provide service to a location where the service is not currently connected but which was served within the previous two (2) years by the other party, unless there has been a change in Use Classification at the location. A lighted sign or security lights are not considered an existing service for purposes of this Agreement.

b. **Services to Expansions of Existing Customers:** The party providing service to a customer at a particular location will provide service to any expansion at that location for a contiguous facility or on contiguous property in an Unassigned Area and not crossing any roads. Expansions of customers' own facilities at noncontiguous locations or in assigned areas will be governed by other provisions of this Agreement.

The party providing service to a residential development will serve

expansions to the development if the expansion is part of the developer's plan at the time the development started, provided the expansion does not encroach into an assigned area.

c. **Services Within Assigned Areas:** Areas assigned to the parties are, or may by addition, be specified in additional addenda to this Agreement. Addenda shall be signed by authorized representatives of each party. With the exception of customers with Industrial Loads, which customers can choose the serving party, neither party will extend its facilities to serve a customer within the other party's assigned area.

d. **Services to New Customers in Unassigned Areas:**

(1) In the event one or both parties have distribution plant located within one-quarter (1/4) mile of the metering point of a new customer, the party having distribution plant located closest to that metering point shall serve.

(2) If neither party has existing distribution plant located within one-quarter (1/4) mile of the metering point, the customer can choose the serving party.

(3) If both parties have existing distribution plant located within one-quarter (1/4) mile of the metering point, and the difference between the measured such distance from each party is twenty (20) feet or less, the customer may choose the serving party.

(4) If a new customer's load is in an unassigned area and is a Large Load, the party having existing distribution plant located closest to the metering point of the customer will serve.

(5) As an exception to paragraph (4), above, if neither party has facilities within one-half (1/2) mile of the metering point or if both parties have facilities within five hundred (500) feet of the metering point, the customer may choose the serving party.

(6) If a new customer's load in an unassigned area is an Industrial Load, the customer may choose the serving party.

e. **Rules Regarding Distance Measurement for Customers in Unassigned**

Areas:

(1) Distance measurements will be made from the takeoff point of existing distribution plant along the actual proposed route of construction to the permanent metering point of delivery to the first customer.

(2) With regard to tie-lines constructed for purpose of system efficiency or reliability, prebuilt lines not requested in writing by a customer or dedicated lines to serve either party's own office or warehouse facilities built after the effective date of this Agreement, may not for a period of seven (7) years after such construction be used as the starting point for distance measurements.

(3) Regardless of when constructed, lines built to serve insignificant loads such as security lights or lighted signs may not be used as a starting point for measurement.

f. Load Size For Purposes of Above Service Rules: Load size will be estimated by using fifty percent (50%) of the total connected load. In the alternative, a method based on reasonable and objective standards may be used, and approval of such method shall not unreasonably be withheld by either party.

7. **TERMINATION AND REVISION:**

a. Termination:

(1) Upon Mutual Agreement: This Agreement may be terminated or revised (subject to rules below) at any time upon mutual agreement of both parties set out in writing.

(2) Following Ten (10) Years: Although the term of this Agreement is fifteen (15) years (per paragraph 2., above) any time after ten (10) years from the effective date hereof, the Agreement may be terminated by either party by giving the other party notice

in writing one hundred eighty (180) days in advance of the desired termination date.

(3) Attempted Acquisition: Upon receipt of notice in writing from one party to the highest ranking officer of the other party, which notice states that the board of directors, trustees or other properly delegated persons have authorized an offer to purchase the assets of the other party, or upon proof of general solicitation by one party of the other's members or shareholders to approve or authorize such acquisition, the party to whom such notice is directed or whose members or shareholders have been so solicited, shall have 180 days from the date of receipt of the written notice or notice of such solicitation within which to terminate this Agreement in all respects.

(4) Revision Approval: Parties recognize and acknowledge that any revision of this Agreement other than additional addenda, requires approval of the WUTC, and any proposed revision shall be presented in accordance with WUTC procedures and requirements by WWP in a timely fashion following parties' agreement to the revision.

(5) Consistency With Applicable Law: If at any time it is determined that any portion of this Agreement is in conflict with applicable law, or a substantial change in law creating such conflict has occurred, the parties agree that they will engage in good faith negotiations on a timely basis for the purpose of eliminating the conflict and otherwise making the agreement consistent with such applicable law.

8. RULES VARIANCE: Any variance from the service rules set out in this Agreement may be made only upon mutual agreement of both parties, as well as any person/user making electric service decisions directly effected by such variance, and any such variance shall be described in writing and attached as an addenda or appendix to this Agreement and be subject to the required supervisory processes.

9. IMPACT ON PRIOR AGREEMENTS: Other than as provided for inclusion of 1973 Agreement Addenda, this Agreement supersedes any previous agreements between the

parties entered into the authority of RCW 54.48.

10. **EXCLUDED AREAS AND CUSTOMERS:**

a. This Agreement shall not apply to facilities owned and operated by Fairchild Air Force Base as shown on the map in Exhibit A; to the "Westbow area", likewise shown in Exhibit A, or to offices or warehouses owned by either party to this Agreement.

b. It is understood that the designation indicating "offer", "O" or "offer to serve" indicates that the indicated customer/load is subject to customer choice. Those status designations disclosed by one company to the other on or before July 3, 1998, regarding a party and future user of electricity who will become a customer of one of the parties, shall be listed on the attached "DISCLOSURE ADDENDA" and, upon approval of this Agreement by WUTC the eventual agreement for service flowing from that status designation shall be honored even if such service appears to be inconsistent with provisions of this Agreement.

11. **DISPUTE RESOLUTION:**

a. Initial Procedure: If a dispute arises between the parties regarding the interpretation or application of this Agreement, or if a customer feels aggrieved regarding interpretation of the Agreement relative to its service, the parties agree to forthwith convene their representatives, and a representative of the customer if applicable, in an attempt to resolve the dispute in a manner which is believed to be within the wording and authority of this Agreement. Such resolution is subject to approval by the Inland Board of Trustees.

b. Mediation: If the dispute cannot be resolved as set out in subparagraph a. above, within thirty (30) days following the initial notice by one party to the other of such dispute, the parties will meet and seek to agree on a mediator, or, failing such agreement, WWP shall formally request the WUTC to invoke a process whereby a mediator is appointed, which mediator can either be an employee of the State of the Washington or an independent contractor so nominated by the WUTC for purposes of convening appropriate proceedings in an attempt

to settle the matter; provided that this mediator appointment procedure is also specifically provided in the WUTC order approving this Agreement; and, further provided that the parties or any one of them determine that an additional thirty (30) day period of negotiation between the parties will not resolve the dispute.

c. Binding Arbitration: In the event the procedures set out in subparagraphs a. and b. above do not result in resolution of the dispute within ninety (90) days, or any mutually-agreed extension, following initial notice of the dispute by one party to the other, then WWP shall apply to the WUTC to invoke a procedure for appointment of an arbitrator to establish procedures for and to conduct prompt arbitration of the matter; provided that the costs and fees in connection with such arbitration shall be equally divided between the parties, including any customer who may be a participant in the arbitration, unless ordered otherwise affirmatively by such arbitrator.

d. Customer Grievance Consistent with State Supervision: Consistent with any current or future imposed supervisory requirement or procedure, if a dispute with a customer cannot be resolved by the parties, a customer of either party can be directed to make application to WUTC if the alleged ground for the grievance is that the parties have not agreed to serve the customer in a manner consistent with the provisions of this Agreement. The parties then further agree that, upon any such application, the WUTC may establish a procedure for dealing with the grievance including the assignment of an arbitrator or mediator who will seek to resolve the issue. Nothing in this provision shall be interpreted to subject Inland to the jurisdiction of WUTC, but both parties hereto agree to abide by the decision of any arbitrator appointed to deal with the customer's grievance.

12. 1973 AGREEMENT - NON-IMPLICATION: Inclusion or noninclusion of any provision the same or similar to any prior service territory agreement between the parties shall not result in any implication for interpretation of this Agreement.

13. THIRD PARTY BENEFICIARY RIGHTS NOT INTENDED: Parties do not intend to create third party beneficiary rights in any person by or through this Agreement.

14. ASSIGNMENT: This Agreement or any part, right or obligation thereunder may not be assigned absent written approval of the nonassigning party, which approval shall not unreasonably be withheld.

15. STATE OF WASHINGTON LAW: This Agreement shall be interpreted in accordance with the laws of the State of Washington.

16. VENUE: In the event either party commences an action against the other and the action includes allegations relating to or arising out of this Agreement, such action shall be commenced in Spokane County Superior Court.

17. BINDING NATURE OF AGREEMENT: This Agreement shall be binding upon the parties hereto, their successors and assigns.

INLAND POWER AND LIGHT CO.

By Richard Hutton
Its General Manager

THE WASHINGTON WATER POWER COMPANY

By R. D. Fukai
Its VICE PRESIDENT