

Service Date: March 28, 2003

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF YELLOWSTONE)	UTILITY DIVISION
VALLEY ELECTRIC COOPERATIVE,)	
INC., and NORTHWESTERN ENERGY,)	DOCKET NO. D2002.11.144
Application for Approval of an Exclusive)	
Service Agreement)	ORDER NO. 6487

FINAL ORDER

Introduction

1. On November 20, 2002, the electric facilities providers, Yellowstone Valley Electric Cooperative, Inc. (YVE), and NorthWestern Energy, LLC (NWE), filed an application before the Public Service Commission (PSC) requesting approval of an exclusive service agreement. The application is made pursuant to Montana's Territorial Integrity Act (Act), §§ 69-5-101 through 69-5-112, MCA. If approved, the exclusive service agreement will establish the rights of each provider to provide electric service to the exclusion of the other in certain areas in or near Billings, Montana, primarily the developing subdivisions known as the Rehberg Estates and Ironwood Estates. The agreement involves no transfer or exchange of either provider's existing customers.

2. Exclusive service agreements, as authorized by §§ 69-5-108, MCA (or 69-5-109, MCA, prior to May 1998), are a division of certain geographical areas that present a possibility of future need for electric service, but also have, within or nearby, more than one utility capable of providing the anticipated service. The agreements designate the utility that will have the exclusive right to serve in each of the areas, as divided into exclusive service territories by agreement. In each territory, exceptions pertaining to service to large customers may apply. PSC approval of agreements is required pursuant to § 69-5-112, MCA.

3. The YVE / NWE request for approval was publicly noticed by the PSC through a Notice of Opportunity for Public Hearing, dated January 27, 2003. The deadline designated for requests for hearing or comments was February 20, 2003. The PSC received no comments or requests for hearing. The PSC determines that the matter can be properly decided without further proceedings.

Findings of Fact

4. NWE, a party to the agreement now being considered, is a public utility providing electric service in or near the area which is the subject of the agreement. YVE, a party to the agreement now being considered, is an electric cooperative providing electric service in or near the area which are the subject of the agreement. The NWE / YVE agreement pertains to certain areas in or near Billings, Montana. The agreement presents the terms and conditions between the parties. The agreement identifies the geographical area involved and the division of that area into exclusive service territories, including as described by map and written description. The agreement does not include a transfer or exchange of existing customers. There is no reasonable likelihood that the agreement will cause a decrease in the reliability of electric service to the existing or future customers of the utilities involved. There is a reasonable likelihood that each of the agreements will eliminate existing or potential uneconomic duplication of electric service facilities. The exclusive service agreement, including the agreement's attachments and accompanying maps and written descriptions, as filed before the PSC and maintained in the records of the PSC, is by this reference adopted herein as an integral part of this final order. The referenced agreement, primarily because of the maps involved, are not readily suitable for attachment to this final order.

Conclusions of Law

5. The YVE / NWE application for approval of the exclusive service agreement, as described above, and the agreement itself, as referenced above, are proper in form and have been properly noticed and processed in accordance with all applicable provisions of the Act, as well as all applicable provisions of Title 69, MCA (Public Utilities), Title 2, Chapter 4, MCA (MAPA), and ARM Title 3, Chapter 2 (PSC Procedural Rules).

6. NWE, as a public utility providing electric services, and YVE, as an electric cooperative providing electric services, are "utilities" and "electric facilities providers" (for present purposes these are equivalent terms and will be referred to as "utilities") within the meanings of

those terms in the Act. §§ 69-5-102(3) and 69-5-102(8), MCA. As utilities, NWE and YVE are authorized by the Act to enter exclusive service agreements. §§ 69-5-108, MCA. The PSC has jurisdiction regarding review and approval of exclusive service agreements pursuant to § 69-5-112, MCA.

7. The agreement now being considered implements § 69-5-108, MCA, which allows for exclusive service agreements. The agreement has been submitted to the PSC for approval in accordance with § 69-5-112, MCA. The agreement identifies the geographical areas involved and the division of the areas to be served, including by map and written description, and presents the terms and conditions of the agreement in accordance with § 69-5-112(1)(a) and (b), MCA. The agreement does not contemplate a transfer of exchange of customers, so additional information required by § 69-5-112(2), MCA, is not required. In accordance with § 69-5-112(3)(a), MCA, the PSC has considered the likelihood that the agreement will cause a decrease in the reliability of electric service to existing or future customers of the utilities. The PSC determines that there is no such likelihood. In accordance with § 69-5-112(3)(b), MCA, the PSC has considered the likelihood that the agreement will eliminate existing or potential uneconomic duplication of electric service facilities. The PSC determines that there is such likelihood.

8. Exclusive service agreements do not apply to certain large customers. § 69-5-109, MCA. Electric service to large customers (400 kw or larger load), including in the agreed-to exclusive service areas, remains governed by § 69-5-106, MCA, which involves a determination, primarily by the competing utilities, as to which has the lowest cost of extending its facilities to serve the customer, no matter where the large customer is located in relation to their existing facilities.

9. The exclusive service agreement is in compliance with the Act. The agreement fulfills the purposes of the Act. The agreement is in the public interest as that interest is stated or implied by the Act. The agreement should be approved.

ORDER

IT IS HEREBY ORDERED the exclusive service agreement, as filed and incorporated herein by reference, is approved as filed. It is further ordered that the exclusive service agreement creates one or more exclusive service territories and no utility or electric services provider, except the one so designated to do so in the agreement, may offer, construct, or extend electric service facilities into any of the identified exclusive service territories, except as may otherwise be specifically allowed by law (*e.g.*, service to large customers) and in accordance with all procedures which may govern application of such exception. No modification, change, or correction of any agreement approved in this final order may be made without first obtaining PSC approval. § 69-5-112, MCA. Each utility or electric service provider that is party to an approved agreement shall make the exclusive service agreement to which it is a party readily accessible to the public in the area affected, by maintaining a copy of the agreement in the utility business office located nearest that exclusive service area.

Done and dated this 4th day of March, 2003, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman

THOMAS J. SCHNEIDER, Vice Chairman

MATT BRAINARD, Commissioner

GREG JERGESON, Commissioner

JAY STOVALL, Commissioner

ATTEST:

Rhonda J. Simmons
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.