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April 13, 2009

**VIA ELECTRONIC FILING  
& FIRST CLASS MAIL**

Oregon Public Utilities Commission  
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550 Capitol Street NE, Ste 215  
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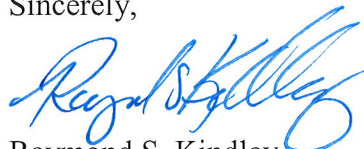
Re: UA 143 - Service Territory Application of Wasco Electric Cooperative, Inc.

Dear Filing Center:

Enclosed for filing are an original and one copy of Wasco Electric Cooperative, Inc.'s, ("WEC") Reply to Motion to Dismiss and Request for Hearing by Pacific Power in the above-referenced proceeding.

If you have any questions regarding this filing, please contact the undersigned.

Sincerely,



Raymond S. Kindley  
Attorney for Wasco Electric Cooperative, Inc.

RSK/tb  
Enclosures  
cc: Jeff Davis, General Manager, Wasco Electric Cooperative, Inc.

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UA 143**

In the matter of WASCO ELECTRIC	)	
COOPERATIVE, INC., Application	)	Reply to Motion to Dismiss
for Allocation of Exclusive Service	)	and Request for Hearing by
Territory	)	Pacific Power

Pursuant to OAR 860-013-0035 and 860-013-0050(3)(d), Wasco Electric Cooperative, Inc., (“Wasco”) files this Reply to PacifiCorp’s, d.b.a. Pacific Power, (“Pacific Power”) Motion to Dismiss and Request for Hearing concerning Wasco’s Application for Exclusive Service Territory in this proceeding.

Wasco does not oppose Pacific Power’s petition to intervene in this proceeding. Wasco, however, does oppose Pacific Power’s Motion to Dismiss and Request for Hearing.

**I. FACTS**

**A. Procedural History**

Wasco filed an Application for Allocation of Exclusive Service Territory (“Application”) with the Oregon Public Utility Commission (“Commission”) on February 4, 2009. The Application included a legal description and map of the area that Wasco applied for exclusive service territory. On February 9, 2009 Wasco filed a Supplemental Application that corrected the initial legal description submitted with the February 4, 2009 Application. Wasco filed another correction to the legal description to further correct the area for which Wasco seeks exclusive service territory on April 7, 2009.

On January 16, 2009, Pacific Power filed an Application for Allocation of Exclusive Service Territory for a specific area in the Hay Canyon region of Sherman County, Oregon. The

Commission assigned docket number UA 141 to that Application proceeding. In its application, Pacific Power incorrectly represented to the Commission that no other utility provided similar electric service in the area for which the Application applied. The legal description of the area that Pacific Power wanted as exclusive service territory, however, included several electric utility customers and members of Wasco.

On February 2, 2009, Pacific Power filed a letter with the Commission that Pacific Power was withdrawing its application and, thus, the applicable Commission docket, UA 141, should be closed. Unaware of Pacific Power's filing on February 2, Wasco filed an objection with the Commission noting Pacific Power's error on February 3, 2009. On February 4, 2009, Pacific Power notified Wasco's counsel via email that Pacific Power had filed a letter to withdraw its Application in UA 141. In response to that notice, Wasco filed its Application for territory in the Hay Canyon area that had a different legal description than Pacific Power's application.

On February 9, 2009, the Commission issued an order in UA 141 that recognized Pacific Power's request to withdraw its application and ordered the docket closed.

On March 30, 2009, Pacific Power filed with the Commission a Petition to Intervene in this proceeding, along with a Motion to Dismiss and a Request for Hearing. In its Motion, Pacific Power incorrectly alleges that its application for service territory is identical to the area in Wasco's Application. It also incorrectly claims that Pacific Power serves four residential or agricultural customers in the area for which Wasco has filed its Application.

Wasco's Application with amendments, however, excludes Pacific Power's customers. The boundaries of the area in Wasco's Application are different than the boundaries of the area

that Pacific Power has requested. Pacific Power's motion fails to correctly address the area that Wasco has applied for.

**B. History Prior to Filings**

Pacific Power alleges that it voluntarily withdrew its application to start a dialogue with Wasco regarding service to the Iberdrola wind farm located in the Hay Canyon area.

Prior to January 16, 2009, when Pacific Power filed its Application with the Commission, Wasco had initiated and attempted to discuss with Pacific Power an arrangement for service to the Hay Canyon area and, specifically, service to the Iberdrola wind farm. Wasco was under the mistaken belief at that time that the Hay Canyon area was Pacific Power exclusive service territory. Since sixty percent of Iberdrola wind generators are located in Wasco's exclusive service territory and forty percent in the Hay Canyon area outside Wasco's territory, Wasco thought it needed an agreement with Pacific Power for Iberdrola to get station service power for its generators.

Wasco initially contacted Pacific Power in mid-2008 to discuss how it and Pacific Power would serve the Iberdrola wind farm. After preliminary contacts by Wasco's manager with Pacific Power's local representative, Pacific Power did not take any action to discuss with Wasco about jointly serving the Hay Canyon area or to serve the turbines in this area.

In November, 2008, Wasco's management learned that Pacific Power did not have exclusive service territory rights in the Hay Canyon area. Wasco management then understood why its attempts to open discussions with Pacific Power failed. Pacific Power had no statutory or contract rights to serve the Hay Canyon area, including the Iberdrola load in that area. Wasco then discussed with the Bonneville Power Administration ("Bonneville") on how to serve the Iberdrola wind farm.

The interconnection point between Wasco, Bonneville and Iberdrola's wind farm and the majority of the wind farm's retail load resides in Wasco's exclusive service territory. Only through the Bonneville, Wasco and Iberdrola interconnection facilities could Iberdrola receive the three phase power for station service to its generation facilities. Bonneville notified Wasco that Iberdrola's commercial operation date was December 18, 2008. Wasco agreed to serve all of Iberdrola's station service loads pursuant to Wasco's wholesale power purchase agreement with Bonneville.

Therefore, Wasco has been serving all Iberdrola's generator loads since December 18, 2008 within the Hay Canyon area and within Wasco's exclusive service territory.<sup>1</sup> Iberdrola is a member of Wasco and Wasco has contract obligations and rights to serve all of Iberdrola's load within Wasco's exclusive service territory and in the Hay Canyon area included in Wasco's Application.

## **II. ARGUMENT**

### **A. Wasco's Amended Application Excludes Other Utilities' Customers**

Wasco's Application, as amended by its Supplemental Application on February 9 and filings on April 8, 2009, sets forth boundaries that exclude or avoid customers of other electric utilities. Wasco's submission of its application pursuant to ORS 758.435 and OAR 860-025-0020 is appropriate.

Pacific Power argues in its motion that it provides service to four customers in the area that Wasco has applied for. It also argues that Wasco only serves two. That is incorrect. The area of Wasco Application includes two residential or commercial customers and the retail load

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<sup>1</sup> Pacific Power provides single phase, two hundred amp service to the Iberdrola's Hay Canyon substation for lighting.

of the Iberdrola's wind generation facilities in the unallocated area. Contrary to Pacific Power's claims, Wasco's amended Application does not include any Pacific Power customers.

Pacific Power's motion also states that "both entities are prepared to provide service to Iberdrola's wind farm in the area." Pacific Power's desire to serve Iberdrola's generation turbines appears to be the primary incentive behind Pacific Power's motion to dismiss Wasco's Application. Pacific Power, however, overlooks that fact that Iberdrola is a member of Wasco and Wasco is currently serving Iberdrola's wind generators with station service in the area that Wasco has applied for. Wasco is obligated under its Bonneville contract to take and receive power for service to the Iberdrola load at the wind generators. Pacific Power cannot provide service to Iberdrola without interfering with Wasco's contract and service relationship with Iberdrola and, indirectly, interfering with Wasco's contract relationship with Bonneville.

Furthermore, as discussed in more detail below, Pacific Power must obtain transmission service from Bonneville to deliver power to the Iberdrola wind generators and it must enter into a three party agreement between Bonneville, Wasco and Pacific Power regarding the allocation of power delivered to the Wasco, Bonneville and Iberdrola interconnection. Absent those agreements, Pacific Power is not ready to provide service to Iberdrola's wind generators. Pacific Power has not contacted Wasco about any such agreement and, thus, it is not able to provide service.

Wasco's initial Application did inadvertently include one retail power customer of Pacific Power located in the Northeastern part of the area in Wasco's Application. Wasco's staff had conducted a survey of the area prior to Wasco filing its Application and had inadvertently established the Eastern boundary incorrectly, which included one of Pacific Power's customers.

Wasco's amendment to the legal description of the area in the Application filed on April 8, 2009 excludes that one Pacific Power customer.

Contrary to Pacific Power's assertions, it is not prepared to offer service for station service to Iberdrola's generation units and cannot without interfering with Wasco's contract rights with Iberdrola and Bonneville. Additionally, Wasco is neither requesting to interfere with Pacific Power's existing customers nor asking for exclusive service territory that includes any of Pacific Power customers. Pacific Power's motion to dismiss, however, is driven by Pacific Power's desire to serve Iberdrola's wind turbine load, which is already serve by Wasco. Wasco respectfully requests the Commission to not aid Pacific Power in its effort to interfere with Wasco's existing customers and, thus, not grant Pacific Power's motion.

**B. Pacific Power Service to Iberdrola's Wind Generators Will Violate Wasco's Exclusive Service Territory**

For Pacific Power to serve Iberdrola's three phase load at the wind generators, Pacific Power needs to transmit power across Bonneville's transmission lines to the Wasco, Bonneville and Iberdrola interconnection which is located in Wasco's exclusive service territory. Pacific Power's distribution line located in Hay Canyon is inadequate to provide the three phase power necessary to serve Iberdrola's retail power needs for the wind generators. The only transmission line adequate to serve those loads is the Bonneville line that terminates in Wasco's service territory.

Pursuant to ORS 758.450 (2) no person shall offer, extend or construct utility service into an allocated service territory. ORS 758.400(3) defines the term "utility service" to include any person using equipment, plant or facilities for the transmission of power that terminates in an area allocated to another person. In this case, Pacific Power would need to deliver and sell retail power to Iberdrola at point located in Wasco's exclusive service territory to serve Iberdrola's

wind generators. Pacific Power cannot purchase transmission service to deliver power to the unallocated territory; it can only obtain transmission service to the point of delivery in Wasco's territory. Pacific Power's allegations that it has the ability and potential rights to service Iberdrola's load at the wind generators in the unallocated Hay Canyon area are unsubstantiated and ignore Wasco's statutory rights under Oregon's territory allocation laws.

**C. A Hearing is Unnecessary**

Pacific Power requests a hearing in this proceeding to "preserve its interests in obtaining the service territory at issue." Pacific Power further argues that it has filed a motion to re-open UA 141, which was its application for exclusive territory, for the Hay Canyon area.

Pacific Power withdrew its application for exclusive territory in UA 141. Based on Pacific Power's request, the Commission has issued an Order that closed that proceeding. Pacific Power, therefore, voluntarily terminated any interest it had in obtaining exclusive service in the area in Wasco's Application.

Additionally, Wasco's Application does not affect Pacific Power's service to its current customers in the Hay Canyon area. Wasco has expressly excluded the areas in which those customers reside. Therefore, no hearing is necessary to preserve Pacific Power's interests in serving its current customers.

Pacific Power apparently is pursuing exclusive service territory in the Hay Canyon area so that it can serve the retail load of the Iberdrola wind generators. As discussed above, Pacific Power has no right to interfere with Wasco's existing service to that retail load. Pacific Power has no interest in serving that load.

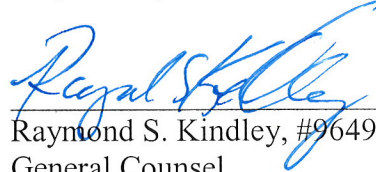


Therefore, no hearing is necessary to preserve Pacific Power's interest in serving its existing customers or in serving the Iberdrola load. The Commission should deny Pacific Power's request for hearing.

WHEREFORE, Wasco respectfully requests the Commission to deny Pacific Power's Motion to Dismiss and Request for Hearing.

DATED: April 13, 2009.

Respectfully submitted,



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Raymond S. Kindley, #964910

General Counsel

Wasco Electric Cooperative, Inc.

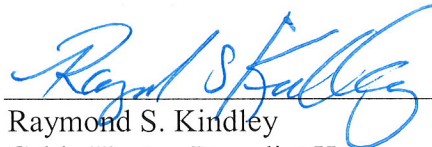
**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **WASCO'S REPLY TO MOTION TO DISMISS AND REQUEST FOR HEARING BY PACIFIC POWER** via electronic mail and/or First Class Mail on the Service List below:

PACIFIC POWER OREGON DOCKETS 825 NE MULTNOMAH ST., STE. 2000 PORTLAND, OR 97232 <a href="mailto:oregondockets@pacificorp.com">oregondockets@pacificorp.com</a>	MICHELLE R MISHOE LEGAL COUNSEL 825 NE MULTNOMAH ST., STE. 2000 PORTLAND, OR 97232 <a href="mailto:Michelle.mishoe@pacificorp.com">Michelle.mishoe@pacificorp.com</a>
JEFF DAVIS WASCO ELECTRIC COOPERATIVE PO BOX 1700 THE DALLES OR 97058 <a href="mailto:jeffd@wascoelectric.com">jeffd@wascoelectric.com</a>	

DATED this 13th day of April, 2009.

CABLE HUSTON BENEDICT  
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