

1 **BEFORE THE**

2 **PUBLIC UTILITY COMMISSION OF OREGON**

3	COLUMBIA BASIN ELECTRIC)	Docket No. UM 1670
4	COOPERATIVE, INC. an Oregon)	
	cooperative corporation)	COLUMBIA BASIN ELECTRIC
5	Complainant,)	COOPERATIVE, INC'S RESPONSE TO
	vs.)	CAITHNESS DEFENDANT'S PETITION
6	PACIFICORP, dba Pacific Power, an)	FOR RECONSIDERATION
	Oregon business corporation,)	
7	Defendant,)	
)	
8	NORTH HURLBURT WIND, LLC, a)	
	foreign limited liability company,)	
9	Defendant,)	
)	
10	SOUTH HURLBURT WIND, LLC, a)	
	foreign limited liability company,)	
11	Defendant,)	
)	
12)	
	HORSESHOE BEND WIND, LLC, a)	
13	foreign limited liability company,)	
	Defendant,)	
14	and)	
	CAITHNESS SHEPHERDS FLAT, LLC, a)	
15	foreign limited liability company,)	
16	Defendant)	
17)	

18 **I. INTRODUCTION**

19 The Complainant Columbia Basin Electric Cooperative, Inc. (the "Cooperative") in this
20 matter responds to the Petition for Reconsideration submitted by Defendants North Hurlburt
21 Wind, LLC, South Hurlburt Wind, LLC, Horseshoe Bend Wind, LLC and Caithness Shepherds
22 Flat, LLC. (the "Caithness Defendants").

23 The Cooperative does not oppose a clarification of the Commission's Order No. 15-110
24 in UM 1670 to reflect the Commission's dismissal of the Cooperative's Territory Allocation
25 claims against the Caithness Defendants. The Cooperative believes the Order is clear as to that
26 determination and no revision is necessary. If the Commission does revise the Order, however,

1 such revision should be limited to a narrow statement that the Commission dismissed
2 Cooperative's Territory Allocation claims against the Caithness Defendants.

3 The Cooperative objects to any revision to the Order that provides the Commission
4 granted the Caithness Defendant's Motion for Summary Judgment. Such a broad statement
5 would create confusion regarding the Commission's findings and determinations regarding the
6 Caithness Defendant's claims and defenses set forth in their Motion for Summary Judgment.

7 8 **II. BACKGROUND**

9 In their Motion for Summary Judgment, Response and Reply, the Caithness Defendants
10 argued many claims and defenses regarding the interpretation of the Territory Allocation Law.
11 Several of those arguments addressed issues of first impression, such as (i) whether the Caithness
12 Defendants were subject to the Commission's jurisdiction, (ii) whether the Territory Allocation
13 Law applied to the Caithness Defendants under ORS 758.450 as wind generators; and (iii)
14 whether differences in voltage of transmission facilities permit a person to ignore the boundaries
15 of an exclusive service territory. The Commission dismissed all of these arguments of the
16 Caithness Defendants.

17 The Commission also made determinations dismissing the Caithness Defendants' claims
18 and defenses specific to the Cooperative, including whether the Cooperative's claims were
19 barred by laches, whether the Cooperative's claims were an impermissible collateral attack on
20 EFSC jurisdiction, and whether the Cooperative could physically serve the Shepherds Flat South
21 Project.

22 The Commission found that the Caithness Defendants did not violate the Territory
23 Allocation Law because they did not provide utility service in the Cooperative's Territory.
24 Order at 10. The Commission determined, however, that PacifiCorp did violate the Territory
25 Allocation Laws by extending utility service into the Cooperative's exclusive service territory.
26 The Cooperative has not objected to the Commission's findings or conclusions of law.

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III. ARGUMENT

A. The Commission Does Not Need to Revise the Order

The Caithness Defendants have petitioned the Commission for reconsideration of Order 15-110 to revise Part V of the Order to reflect the Commission dismissed the Cooperative's Territory Allocation claims against the Caithness Defendants. The Caithness Defendants filed their petition basically to clarify the Order. They are uncertain any revision is necessary, but filed their petition out of caution. The Caithness Defendants claim that any clarification, or necessary revision to the Order, "should have no effect on the outcome of this matter." Petition at 3.

The Cooperative believes no revision to the Order is necessary. The Cooperative agrees the Order provides, "[The Commission] dismiss[es] the Territory Allocation claims against the Caithness defendants" as "the Caithness defendants have committed no violation" of the Territory Allocation Law.

The Cooperative does not challenge that conclusion.

B. If the Commission does Revise the Order, any Revision to the Order should be Limited to Only the Dismissal the Territorial Allocation Claims Against the Caithness Defendants

To the extent the Commission does revise the Order to clarify its determination that Caithness Defendants did not violate the Territory Allocation Law, the Cooperative would not object, provided that any such revision is narrowly drafted and does not have any effect on the balance of the Order.

The Commission made several important determinations in the Order that help clarify the meaning of the Territory Allocation Law and resolved contested issues between the parties. The Cooperative does not want any revision that would substantively change the Commission's findings and conclusions as to several of the Caithness Defendants' claims and defenses, which the Commission did dismiss.

1 The Cooperative would object to any revision that would directly or indirectly effect the
2 Commission's determinations as to PacifiCorp's violation of the Territory Allocation Law.

3
4 **IV. CONCLUSION**

5 For the above reasons, the Cooperative believes the Commission does not need to revise
6 the Order to reflect that the Commission dismissed the Cooperative's Territory Allocation claims
7 against the Caithness Defendants. If the Commission does intend to revise the Order, the
8 Cooperative would like the opportunity to review and submit comments on such revisions to
9 ensure the substance of the Order would not change.

10
11 DATED this 24th day of June 2015.

12 **KINDLEY LAW PC**

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of June 2015, I served the foregoing document upon the persons named on the service list by electronic mail only as all parties have waived paper service.

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DATED: June 24, 2015

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