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April 10, 2014

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Public Utility Commission of Oregon
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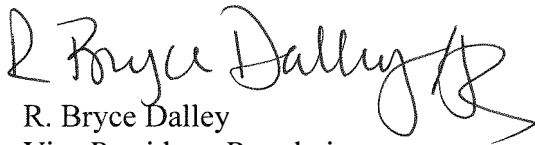
Attn: Filing Center

**RE: UM 1670 – Columbia Basin Electric Cooperative Inc. vs Pacific Power & North
Hurlburt Wind LLC**

PacifiCorp d/b/a Pacific Power encloses for filing the company's opposition to complainant's motion to amend complaint in the above-referenced proceeding.

If you have questions about this filing, please contact Gary Tawwater, Manager, Regulatory Affairs, at (503) 813-6805.

Sincerely,



R. Bryce Dalley
Vice President, Regulation

Enclosure

cc: Service List – UM 1670

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1670

In the Matter of

COLUMBIA BASIN ELECTRIC
COOPERATIVE, INC.,

Complainant;

v.

PACIFICORP d/b/a PACIFIC POWER

and

NORTH HURLBURT WIND, LLC.,

Defendants.

PACIFICORP’S OPPOSITION TO
COMPLAINANT’S MOTION TO AMEND
COMPLAINT

Defendant PacifiCorp d/b/a Pacific Power (PacifiCorp) respectfully asks the Public Utility Commission of Oregon (Commission) to deny the motion of Columbia Basin Electric Cooperative (CBEC) to amend its complaint. CBEC seeks to add an additional remedy against PacifiCorp—namely, treble damages and attorney fees under ORS 756.185(1). But the circuit court, not the Commission, has exclusive jurisdiction over claims for damages and fees under ORS 756.185(1).¹ The Commission should therefore deny CBEC’s motion because it lacks jurisdiction to grant the new relief sought in the amended complaint.

I. BACKGROUND

CBEC filed its original complaint on August 28, 2013, alleging that PacifiCorp and North Hulbert Wind, LLC (North Hulbert) are violating ORS 758.450(2) and Commission Order 38089² by providing utility service into, and in, CBEC’s exclusive service territory.

¹ See, e.g., *Perla Dev. Co., Inc. v. PacifiCorp*, 82 Or. App. 50, 53-54 (1986) (Claims for treble damages under ORS 756.185 “are within the jurisdiction of the circuit court”); *Belozer Poultry Farms, Inc. v. Portland Gen. Elec. Co.*, Docket No. UC 201, Order No. 92-825 (June 8, 1992) (“The Commission lacks jurisdiction to award damages plus attorney fees pursuant to ORS 756.185(1)”).

² Docket No. UF 2308 (Nov. 1, 1961).

On March 26, 2014, CBEC filed a motion seeking leave to amend its complaint. Specifically, CBEC seeks to add an additional remedy against PacifiCorp—treble damages and attorney fees under ORS 756.185(1). CBEC filed its motion for leave to amend the complaint six months after PacifiCorp filed its answer to the original complaint on September 19, 2013.

II. ANALYSIS

After an answer has been served, a party may not amend its complaint and add new remedies without leave of the Commission.³ While the Commission has discretion to allow parties to amend their complaints “when justice so requires,”⁴ it may not do so when the proposed amendment is “clearly against reason and evidence.”⁵

Here, CBEC’s proposed amendment is clearly against reason. In its proposed amendment, CBEC seeks treble damages and attorney fees under ORS 756.185(1). But the statutory architecture, this Commission’s orders, and Oregon case law unequivocally demonstrate that the Commission has no authority to grant relief under that provision. CBEC’s proposed amendment is unjustified, and CBEC should not be permitted to amend its complaint.

The statutory architecture makes clear that ORS 756.185(1) is a judicial remedy over which the circuit court (not the Commission) has exclusive jurisdiction. ORS 756.185(1) is included in the “Enforcement and Remedies” subchapter of Chapter 176 ORS, which outlines the process for judicial enforcement of Oregon utility laws and regulations. That subchapter first authorizes the Commission to investigate and enforce alleged violations of utility laws and regulations.⁶ It next provides that the Commission may initiate a judicial proceeding in the circuit court for enforcement of alleged violations.⁷ And ORS 756.185(1), under which CBEC seeks relief,

³ ORS 756.500(4); ORCP 23A.

⁴ ORCP 23A.

⁵ *Quillen v. Roseburg Forest Products, Inc.*, 159 Or. App. 6, 10 (1999) (citing *Far West Landscaping, Inc., v. Modern Merchandising, Inc.*, 287 Or. 653, 664 (1979)).

⁶ ORS 756.160.

⁷ ORS 756.180.

provides that treble damages and attorney fees are available. ORS 756.185(1) explicitly provides that “the *court* may award reasonable attorney fees to the prevailing party in an *action under this section*.” The statutory language authorizes the circuit court, not the Commission, to award attorney fees. The same holds true for treble damages, since an award of attorney fees is available only in “an action under this section”—meaning a judicial action for treble damages under ORS 756.185(1).⁸

The Commission’s orders have consistently concluded that it lacks jurisdiction to award damages or other relief under ORS 756.185(1). While the Commission has broad authority to exercise its regulatory functions, its powers are limited to those “conferred by statute.”⁹ The Commission has ruled that “[t]here is no statute authorizing ... the collection of damages.”¹⁰ And in its most unambiguous refutation of the relief CBEC is seeking, the Commission has ruled that it “lacks jurisdiction to award damages plus attorney fees pursuant to ORS 756.185(1),” and that “a court, not an agency, [may] award fees *if the court awards damages* against the utility.”¹¹

The Commission’s interpretation that it lacks jurisdiction to award damages and attorney fees is consistent with opinions of the Oregon Attorney General, which has concluded that actions for damages and fees under ORS 756.185(1) must “be brought in law court, and not before the commission.”¹²

Oregon courts have reached similar conclusions. As a threshold matter, courts “will not award attorney fees to a party absent authorization by statute or contract.”¹³ And in *Perla Development Company, Inc. v. PacifiCorp*, the Oregon Court of Appeals affirmed that claims for

⁸ Had the legislature intended to authorize the Commission to award damages and fees, it would have drafted ORS 756.185(1) accordingly. *Liberty Nw. Ins. Corp. v. Golden*, 116 Or. App. 64, 71 (1992).

⁹ *Gilstrap v. NW Natural Gas Co.*, Docket No. UC 197, Order No. 92-352 (Mar. 9, 1992).

¹⁰ *Id.*

¹¹ *Belozer Poultry Farm*, Docket No. UC 201, Order No. 92-825 (June 8, 1992) (emphasis added).

¹² 38 Or. Op. Att’y Gen. 739 (1977).

¹³ *Deras v. Myers*, 272 Or. 47, 65–66 (1975).

damages and attorney fees under ORS 756.185(1) “are within the jurisdiction of the circuit court.”¹⁴

These decisions make clear that the Commission is not authorized to award CBEC damages and fees under ORS 756.185(1). Therefore, justice would not be served by allowing CBEC to amend its complaint to seek a new remedy against PacifiCorp under that statute. Indeed, granting CBEC’s motion would be “clearly against reason,”¹⁵ and would clutter this docket by requiring unnecessary motions to dismiss. Furthermore, CBEC will not be prejudiced if its motion to amend is denied because it is simply not entitled in this forum to the new relief it seeks.¹⁶

III. CONCLUSION

For the reasons set forth above, PacifiCorp respectfully requests that the Commission deny CBEC’s motion for leave to amend its complaint.

Respectfully submitted this 10th day of April, 2014.

By:



Dustin Till
Senior Counsel
PacifiCorp d/b/a Pacific Power

¹⁴ 82 Or. App. 50, 53-54 (1986).

¹⁵ *Quillen*, 159 Or. App. at 10.

¹⁶ Setting aside the difficulty it will face in proving that it has been injured, CBEC may, of course, file a complaint for damages and fees in the circuit court. *See In re Portland Gen. Elec. Co.*, Docket Nos. UM 989/UE 88/DR 10, Order No. 08-487 (Sept. 30, 2008) (“Generally speaking, [a] customer is permitted to seek damages [under ORS 756.185(1)] directly in circuit court, without first filing a complaint with the Commission”).

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of PacifiCorp's opposition on the parties listed below via electronic mail and/or US mail in compliance with OAR 860-001-0180.

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Dated this 10th of April 2014.



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