

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1818**

COLUMBIA BASIN ELECTRIC  
COOPERATIVE, INC. an Oregon  
cooperative corporation

Complainant,

v.

UMATILLA ELECTRIC  
COOPERATIVE, INC., an Oregon  
cooperative corporation

Defendant.

UMATILLA ELECTRIC  
COOPERATIVE'S ANSWER TO  
COLUMBIA BASIN ELECTRIC  
COOPERATIVE'S COMPLAINT

In its Answer to Plaintiff Columbia Basin Electric Cooperative, Inc.'s ("CBEC") Complaint ("Complaint"), Defendant Umatilla Electric Cooperative, Inc. ("UEC") answers, denies and alleges as follows:

1.

UEC admits that CBEC was and is an Oregon electric cooperative corporation, that its corporate offices are located at 171 W. Linden Way, Heppner Oregon, that its website is [www.cbec.cc](http://www.cbec.cc), that its telephone number is (541) 676-9146, that its manager is Thomas Wolff and that it owns and operates a retail electric power distribution system. UEC is without knowledge or information sufficient to admit or deny, and therefore denies, the remaining allegations in Paragraph 1 of the Complaint.

2.

UEC admits the allegations in Paragraph 2 of the Complaint.

3.

Paragraph 3 of the Complaint contains a legal conclusion to which no response is required. UEC denies the allegation that the Commission has jurisdiction over all of the claims presented in the Complaint.

4.

Paragraph 4 of the Complaint states a legal conclusion to which no response is required. UEC denies that each of the statutes cited in Paragraph 4 are involved in or relevant to this proceeding.

5.

Commission Order No. 38089 speaks for itself. Paragraph 5 of the Complaint contains a legal conclusion to which no response is required. Defendant UEC is without sufficient knowledge or information to admit, and therefore denies, the remaining allegations in Paragraph 5.

6.

Commission Order No. 38089 speaks for itself. Paragraph 6 of the Complaint contains a legal conclusion to which no response is required. Defendant UEC is without sufficient knowledge or information to admit, and therefore denies, the allegations in Paragraph 6.

7.

Upon information and belief, UEC admits that CBEC has offered retail electric utility service in its service territory. Defendant UEC is without sufficient knowledge or information to admit, and therefore denies, the remaining allegations in Paragraph 7 of the Complaint.

8.

The statutes set forth in ORS §§ 757.400 *et seq.* speak for themselves. Paragraph 8 of the Complaint states a legal conclusion to which no response is required.

Service to Willow Creek Dairy

9.

UEC is without knowledge to admit or deny, and therefore denies, each and every allegation in Paragraph 9 of the Complaint.

10.

UEC is without knowledge to admit or deny, and therefore denies, each and every allegation in Paragraph 10 of the Complaint.

11.

UEC is without knowledge to admit or deny, and therefore denies, each and every allegation in Paragraph 11 of the Complaint.

12.

The letter referenced in Paragraph 12 of the Complaint speaks for itself. UEC is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 and therefore denies each of those allegations.

13.

The letter referenced in Paragraph 13 of the Complaint speaks for itself. UEC is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and therefore denies each of those allegations.

14.

UEC admits that it provides retail electric service to the Willow Creek Dairy. UEC is without knowledge or information sufficient to admit or deny, and therefore denies, the remaining allegations in Paragraph 14 of the Complaint.

15.

UEC admits that it provides retail electric service to the Willow Creek Dairy. UEC denies each of the remaining allegations in Paragraph 15 of the Complaint.

16.

UEC is without knowledge to admit or deny, and therefore denies, each and every allegation in Paragraph 16 of the Complaint.

17.

Paragraph 17 of the Complaint contains in part a legal conclusion to which no response is required. To the extent an answer is required, UEC admits that CBEC has alleged service to Willow Creek Dairy violates its exclusive service territory, and admits that UEC is unwilling to terminate service to Willow Creek Dairy without adequate and lawful replacement service. Except as otherwise admitted, UEC denies each allegation in Paragraph 17.

18.

The letter referenced in Paragraph 18 of the Complaint speaks for itself. UEC is without knowledge or information sufficient to admit or deny, and therefore denies, the allegations in Paragraph 18.

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Service To Wheatridge Wind Energy, LLC

19.

UEC admits that Wheatridge Wind Energy, LLC is planning to develop a wind turbine generation project (“Wheatridge Project”), and admits that one of the collector substations related to the Wheatridge Project is located in CBEC’s service territory. On information and belief, UEC admits that another collector substation for the Wheatridge Project is located in UEC’s service territory. The map referenced in Paragraph 19 of the Complaint speaks for itself. UEC denies each of the remaining allegations in Paragraph 19.

20.

UEC admits that the Wheatridge Project submitted permitting and siting documents to the Oregon Energy Facility Siting Council, but those permitting and siting documents speak for themselves. UEC further admits that the project description did not include the transmission facilities necessary to provide transmission service from the Wheatridge Project generation facilities to the BPA substation—an interstate transmission service—unbundled from any retail sales. Except as otherwise admitted, UEC is without knowledge or information sufficient to admit or deny, and therefore denies, the remaining allegations in Paragraph 20 of the Complaint.

21.

The Wheatridge Project documents referenced in Paragraph 21 of the Complaint speak for themselves. UEC is without knowledge or information sufficient to admit or deny, and therefore denies, the allegations in Paragraph 21.

22.

UEC admits that on or about July 29, 2010 it received an Open Access Transmission Tariff Request for Point-to-Point (PTP) Transmission Service from 2Morrow Energy,

LLC. UEC admits that 2Morrow Energy, LLC requested 1,012 MW of PTP transmission service from UEC. On information and belief, UEC admits that 2Morrow Energy, LLC assigned all of its rights, title and interest in UEC transmission queue request rights to Wheatridge Wind Energy, LLC. UEC admits that Wheatridge Wind Energy, LLC subsequently submitted a request to UEC for 238 MW of Firm PTP Transmission Service. Except as otherwise admitted, UEC denies each of the remaining allegations in Paragraph 22 of the Complaint.

23.

UEC admits that there is an agreement between UEC and the Wheatridge Project to construct an approximately 23 mile transmission line (the “UEC Transmission Line”) to provide transmission services from the Wheatridge Project to the BPA substation, unbundled from any retail sales. Except as otherwise admitted, UEC denies each of the remaining allegations in Paragraph 23 of the Complaint.

24.

UEC admits that CBEC informed UEC that it would build a transmission line in its own service territory to export power generated at the Wheatridge Project. UEC is without knowledge or information sufficient to admit or deny, and therefore denies, the remaining allegations in Paragraph 24 of the Complaint.

25.

UEC admits that it entered into a Facilities Agreement with the Wheatridge Project dated January 11, 2016. The Facilities Agreement referenced in Paragraph 25 of the Complaint speaks for itself. Except as otherwise admitted, UEC denies each of the allegations in Paragraph 25.

26.

The Application for Order attached as Exhibit 5 of the Complaint speaks for itself. UEC admits that under the Facilities Agreement the UEC Transmission Line would be used exclusively to export wholesale power generated at the Wheatridge Project in interstate commerce. Except as otherwise admitted, UEC denies each and every allegation in Paragraph 26 of the Complaint.

27.

UEC is without knowledge or information sufficient to admit or deny, and therefore denies, the allegations in Paragraph 27 of the Complaint.

Service to Mariah Wind Project

28.

UEC is without knowledge or information sufficient to admit or deny, and therefore denies, the allegations in Paragraph 28 of the Complaint.

29.

UEC is without knowledge or information sufficient to admit or deny, and therefore denies, the allegations in Paragraph 29 of the Complaint.

**LEGAL CLAIMS**

**Complainant's First Claim for Relief**

30.

In its answer to Paragraph 30 of the Complaint, UEC re-alleges and incorporates its answers to Paragraphs 1-29 set forth above.

31.

ORS 758.450(2) speaks for itself and no response is required.

32.

Paragraph 32 of the Complaint states a legal conclusion to which no response is required.

33.

ORS 758.400(3) speaks for itself and no response is required.

34.

Paragraph 34 of the Complaint states a legal conclusion to which no response is required.

To the extent a response is required, UEC denies the allegations in Paragraph 34.

35.

Paragraph 35 of the Complaint states a legal conclusion to which no response is required.

To the extent a response is required, UEC denies the allegations in Paragraph 35.

### **Complainant's Second Claim for Relief**

36.

In its answer to Paragraph 36 of the Complaint, UEC re-alleges and incorporates its answers to Paragraphs 1-35 set forth above.

37.

ORS 758.400(3) speaks for itself and no response is required. Paragraph 37 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, UEC denies the allegations in Paragraph 37.

38.

Paragraph 38 of the Complaint states a legal conclusion to which no response is required. UEC admits that under the Facilities Agreement the UEC Transmission Line would be used exclusively to export wholesale power generated at the Wheatridge Project to a BPA substation in interstate commerce. Except as otherwise admitted, UEC denies each and every allegation in Paragraph 38.



39.

Paragraph 39 of the Complaint states a legal conclusion to which no response is required. To the extent a response is required, UEC denies the allegations in Paragraph 39.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

**(Failure to State a Claim)**

40.

CBEC has failed to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

**(Lack of Subject Matter Jurisdiction)**

41.

The Oregon Public Utility Commission (“Commission”) lacks subject matter jurisdiction over the UEC Transmission Line. The Federal Power Act, 16 USC 824(b), grants the Federal Energy Regulatory Commission (“FERC”) exclusive jurisdiction and authority to regulate (1) the rates, terms and conditions of sales for resale in interstate commerce, and (2) the rates, terms and conditions of transmission in interstate commerce. The UEC Transmission Line would be constructed, owned and operated by UEC, and would provide transmission services from the Wheatridge Project to the BPA substation—an interstate transmission service—unbundled from any retail sales. Unbundled interstate transmission is exclusively subject to FERC’s Federal Power Act jurisdiction.

42.

Oregon’s exclusive service territory law is not applicable to the UEC Transmission Line, which would take power intended for sale in interstate commerce from the Wheatridge Project and deliver it to the BPA substation. All auxiliary station power to the Wheatridge Project’s retail load in CBEC’s service territory would be provided by CBEC.

43.

CBEC alleges certain facts with respect to the speculative development of the Mariah Wind Project but identifies no claim for relief related to that project. CBEC's inclusion of that project in the prayer for relief is therefore not ripe and the Commission has no jurisdiction over that portion of the Complaint.

**THIRD AFFIRMATIVE DEFENSE**  
**(Unified Load in UEC Service Territory)**

44.

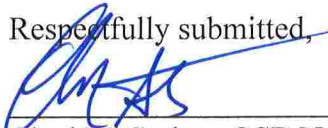
Contrary to CBEC's allegations in the Complaint relating to Willow Creek Dairy, the irrigation circles located in CBEC's service territory are part of a unified load, the majority of which is located in UEC's service territory. UEC is therefore authorized to serve that entire load without violating CBEC's rights.

WHEREFORE, having fully responded to the Complaint, UEC prays for judgment:

1. Dismissing CBEC's Complaint with prejudice; and
2. Awarding UEC such other relief the Commission deems just and proper.

Dated this 2<sup>nd</sup> day of February 2017.

Respectfully submitted,



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Of Attorneys for  
Umatilla Electric Cooperative, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing document upon all parties of record (listed below) in this proceeding by electronic mail and by mailing a copy properly addressed with first class postage prepaid.

Raymond S. Kindley  
Kindley Law PC  
P.O. Box 569  
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Columbia Basin Electric Cooperative  
171 W Linden Way  
Heppner, OR 97836

Dated in Portland, Oregon this 2<sup>nd</sup> day of February, 2017



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