



WENDY MCINDOO  
Direct (503) 290-3627  
wendy@mrg-law.com

March 15, 2019

**VIA ELECTRONIC FILING**

Attention: Filing Center  
Public Utility Commission of Oregon  
201 High Street SE, Suite 100  
Salem, Oregon 97301-3398

**Re: Docket UM 1818 – Columbia Basin Electric Cooperative Inc.’s  
Request for Certification of Ruling and Official Notice**

Dear Filing Center:

Attached for filing in the above-captioned docket is Columbia Basin Electric Cooperative, Inc.’s Request for Certification of Ruling and Official Notice.

Please contact this office with any questions.

Very truly yours,

Wendy McIndoo  
Office Manager

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1818**

In the Matter of the Complaint of	)	
	)	
	)	REQUEST FOR
COLUMBIA BASIN ELECTRIC	)	CERTIFICATION OF RULING
COOPERATIVE, INC.	)	AND OFFICIAL NOTICE
	)	
v.	)	
	)	
<u>UMATILLA ELECTRIC COOPERATIVE, INC.</u>	)	

1 Columbia Basin Electric Cooperative, Inc. (CBEC) respectfully requests Administrative Law  
2 Judge Moser (ALJ Moser) to certify the Ruling dated February 28, 2019, holding Docket UM  
3 1818 in abeyance for the consideration of the Public Utility Commission of Oregon  
4 (Commission) and, as discussed herein, take Official Notice of the te Velde bankruptcy matter.

**I. PROCEDURAL BACKGROUND**

5 The CBEC Complaint that initiated this docket was filed January 13, 2017. In the  
6 Complaint, CBEC alleged that Umatilla Electric Cooperative, Inc. (UEC) was providing service in  
7 CBEC's exclusive service territory.<sup>1</sup> Sarah Rowe was assigned as the ALJ. The case has been  
8 fully submitted for a Commission decision since December 22, 2017.

9 On January 15, 2019, ALJ Moser issued a Memorandum discussing potentially changed  
10 circumstances because of bankruptcy proceedings involving the operations of the customer  
11 (Willow Creek Dairy owned by Mr. te Velde) at the heart of the issue between two utility  
12 providers. ALJ Moser invited CBEC, as complainant, to file a Status Report in the docket.

13 On February 15, 2019, CBEC filed a Status Report. CBEC requested the opportunity to  
14 supplement the record to incorporate relevant facts that have occurred after the conclusion of

---

<sup>1</sup> CBEC's Complaint at 1 (Jan. 13, 2017).

1 the briefing in UM 1818 because of recent developments in the te Velde bankruptcy. CBEC  
2 requested additional time within which to supplement the record to collect and review  
3 information regarding the bankruptcy of Mr. te Velde. Specifically, CBEC noted that the closing  
4 of the sale of the Assets of the dairy was to occur no later than March 31, 2019, adding that the  
5 terms of the sale and the future ownership of Willow Creek Dairy may have some bearing on  
6 CBEC's claims that UEC is providing utility service in CBEC exclusive service territory. CBEC  
7 was required to contact UEC's attorneys regarding the proposed schedule to supplement the  
8 record. UEC attorneys objected to any more process at this point and indicated that UEC will  
9 respond formally to any procedural motion and/or request CBEC files.

10 On February 28, 2019, ALJ Moser issued a Ruling holding the proceeding in abeyance  
11 indefinitely, pending future information as to whether a justiciable controversy exists for the  
12 Commission. The parties were also directed to report any contact from the new owner about the  
13 provision of electric service. UEC filed a notice dated March 7, 2019, indicating that the  
14 purchaser of the Assets in the te Velde bankruptcy contacted UEC and requested that UEC  
15 transfer all accounts serving the purchased property to Easterday Farms, including the account  
16 and meter that serves the crop circles located in CBEC's service territory. UEC noted that it had  
17 no knowledge of any plans for the dairy and requested forty-five (45) days to provide a complete  
18 update.

## II. CONTROVERSY IS RIPE FOR DECISION

19 In the Ruling, ALJ Moser incorrectly found that the future and operation of Willow Creek  
20 Dairy has a direct impact on CBEC's claims that UEC is providing utility service in CBEC's  
21 exclusive service territory. The Ruling provides that until more information is known about the  
22 future operations, if any, of Willow Creek dairy, the Commission will be unable to determine  
23 whether a justiciable controversy exists for resolution.

1           The issues in CBEC’s complaint were ripe for a decision in December 2017 and the  
2 issues in this docket remain ripe for a decision today. At the conclusion of briefing in this docket  
3 nearly fifteen (15) months ago, three (3) primary issues were argued by CBEC and are before  
4 this Commission for a decision:

- 5           1. Whether the Commission has the statutory authority to apply the geographic load  
6           center test;
- 7           2. Whether a customer can build its own transmission or distribution facilities to  
8           circumvent established service territories and receive service from an electric service  
9           provider in a service territory other than where the load exists; and,
- 10          3. Whether the actions of Willow Creek Dairy and UEC have caused duplication of  
11          facilities and caused CBEC to have stranded assets.

12          The outcome of the te Velde bankruptcy will not affect these primary issues. Each of the above-  
13 listed primary issues has been ripe for a decision since the case was submitted for decision.<sup>2</sup>  
14          These primary issues arise from facts concerning UEC’s past service to the Dairy. The future  
15 operation of the Dairy does not erase these primary issues or CBEC’s claims.

16          The parties briefed a secondary issue that could occur should the Commission make the  
17 determination that the Commission has the requisite statutory authority to apply the geographic  
18 load center test and that the Commission condones a customer building facilities across service  
19 territory boundaries to connect separate loads so service can be provided by a utility in a  
20 neighboring service territory. The secondary issue is:

21                 Whether the various electric demands for the dairy, tree farm, commercial  
22                 and agricultural operations on the Dairy property should be deemed a  
23                 unified load given the speculative status of the Dairy’s future.

24          If the Commission seeks to resolve this secondary issue, the Commission’s determination would  
25 benefit from Official Notice of certain facts in the te Velde bankruptcy. In its prior briefing, CBEC

---

<sup>2</sup> For convenience, these three (3) issues will hereinafter be referred to as the “primary issues” in this pleading.

1 argued that the plans for development of the Dairy property were too speculative in 2017 for the  
2 Commission to deem the various electric uses on the property as a single unified load. UEC  
3 and Staff, however, argued that the development plans would not change. As the ALJ Ruling  
4 noted, the development plans have significantly changed since 2017 due to te Velde's  
5 bankruptcy. The development of, and the electric service on, the Dairy property are arguably  
6 even more speculative today than in December 2017. These recent developments support  
7 CBEC's view that the Dairy is not a unified load.

### III. STANDARD FOR CERTIFICATION

8 A party may request that the ALJ certify an ALJ's written ruling for the Commission's  
9 consideration.<sup>3</sup> The ALJ must certify the ruling to the Commission under OAR 860-001-0090 if  
10 the ALJ finds that: (a) The ruling may result in substantial detriment to the public interest or  
11 undue prejudice to a party; (b) the ruling denies or terminates a person's participation; or (c)  
12 good cause exists for certification.<sup>4</sup>

### IV. RATIONALE FOR CERTIFICATION

13 A. Both CBEC and the customer will be prejudiced by holding the case in abeyance and  
14 further delaying a decision.

15 Roughly twenty-six (26) months have elapsed since the Complaint was filed in UM  
16 1818.<sup>5</sup> Since that time, two (2) crop-growing seasons have transpired. It is reasonable to  
17 assume that the crop circles utilize electric service for approximately seven (7) months during  
18 each growing season. Therefore, CBEC members have been harmed by the loss of revenues  
19 from serving the electric needs of equipment irrigating the crop circles located in CBEC's  
20 exclusive service territory during the past two (2) growing seasons. CBEC has no way of  
21 recovering those revenues and will be unduly prejudiced if the Commission does not decide this  
22 matter soon.

---

<sup>3</sup> OAR 860-001-0110(1).

<sup>4</sup> OAR 860-001-0110(2).

<sup>5</sup> CBEC filed its Reply Brief in UM 1818 on December 22, 2017.

1 In roughly forty-five (45) to sixty (60) days, the next growing season will be starting and  
2 farmers, including the purchasers of the assets from the te Velde bankruptcy, will be planting  
3 crops. If the Commission decides in favor of CBEC, this interim period will be needed for the  
4 farm (i.e., crop circles) to reconfigure its electric facilities within CBEC's service territory to  
5 connect with the CBEC facilities that served that agriculture area in years past and now sit  
6 stranded.<sup>6</sup> It is in the customer's best interest for the Commission to provide a prompt decision.

7 B. The public interest requires service territory disputes to be resolved promptly so that the  
8 Commission's interpretation of its service territory statutes and precedent are clear.

9 It is in the public interest for a decision to be made promptly by the Commission when  
10 service territory disputes arise. All regulated utilities deserve to know the Commission's position  
11 on the principal issues involved in this dispute. Indeed, it would behoove other loads located  
12 near the border of service territories that may be expanding (and the utilities serving such loads)  
13 to understand what the State of Oregon's service territory law is concerning customers that want  
14 to build facilities from one exclusive service territory across the border to be served by a utility  
15 provider located in another exclusive service territory.

16 C. The Commission does not need to await final information about the dairy's future  
17 operation to resolve this case.

18 The Ruling inappropriately concluded that future ownership and operation of Willow  
19 Creek Dairy has a direct impact on CBEC's claims that UEC is providing service in CBEC's  
20 exclusive territory.<sup>7</sup> In CBEC's opinion, that conclusion presupposes the Commission's  
21 determination of the primary issues (enumerated above). The primary issues were ripe for  
22 determination when the case was submitted for decision in December 2017, and the primary  
23 issues in this matter remain ripe for a Commission decision.

---

<sup>6</sup> Unlike CBEC's facilities that are within ten (10) yards of the crop circles at issue which will be stranded should the Commission allow this customer to choose which service territory it wants to receive service from, the UEC's facilities now serving the circles in CBEC's territory also serve other functions on the property in UEC's service territory.

<sup>7</sup> ALJ's Ruling, Proceeding Held in Abeyance ("the Ruling") at 2 (Feb. 28, 2019).

1           The Ruling also finds that the Commission will not be able to determine whether a  
2 justiciable controversy exists for resolution until more is known about future operations of the  
3 dairy farm.<sup>8</sup> However, a justiciable controversy exists right now, as set forth in the delineation of  
4 the primary issues above. Those issues are based on past events that will not disappear  
5 because of the bankruptcy and should be ruled upon by the Commission.

6           The ALJ's finding that more needs to be known about future operations of the dairy farm  
7 proves CBEC's point that even if the Commission determines that it has the statutory authority  
8 to apply the geographic load center test, there can be no unified load given the uncertainty  
9 surrounding the plans for the property. The Ruling has clearly indicated that there is a need for  
10 clarity with respect to the plans for the dairy farm operations. UEC wanted the Commission to  
11 look past the customer's building of facilities into UEC's service territory to receive service from  
12 UEC and consider an undeterminable future to find a unified load. Most important, the  
13 bankruptcy itself is further evidence that CBEC's contentions regarding the uncertainty of the  
14 ownership and operation of the farm properties were correct in December 2017, and remain  
15 valid in March 2019, fifteen (15) months later.

16           If the Commission determines it has the statutory authority to apply the geographic load  
17 test, CBEC requests the Commission take Official Notice of the te Velde bankruptcy records  
18 and the required environmental cleanup. At this time, it is estimated that the cleanup should be  
19 completed sometime in the Fall of 2019.<sup>9</sup> There are no guarantees of any date for completion  
20 because the Department of Environmental Quality must agree that the site has been cleaned.  
21 As a result, any and all proposed plans of the purchaser of the assets from the te Velde  
22 bankruptcy are speculative and cannot reasonably be relied upon to make a finding that there is  
23 a unified load or will be in the immediate future based on current plans; consequently, there can  
24 be no unified load.

---

<sup>8</sup> The Ruling at 2.

<sup>9</sup> See *In re Velde, No. 18-11651-A-11*, Order and Mutual Agreement (Lost Valley Farm) at 15-16, Exhibit 1, Exhibits to Declaration of Randy Sugarman in Support of Motion for Order Authorizing Compromise of Controversy with Oregon Department of Agriculture, Doc. ID 1477 (Bankr ED Cal, January 22, 2019) (explaining that various clean-up tasks must be complete by September or October 2019).

## V. OFFICIAL NOTICE OF BANKRUPTCY

1 ALJ Moser referenced a newspaper article concerning the te Velde bankruptcy proceedings  
2 for the purposes of the Ruling.<sup>10</sup> In its Status Report to the Commission, CBEC requested  
3 additional time within which to review and supplement the record because it had just become  
4 aware of the status of the te Velde bankruptcy and had insufficient time to review the records in  
5 that proceeding. CBEC's preliminary review indicates that the Willow Creek Dairy's future is still  
6 speculative, i.e., nothing is assured with the property until the environmental cleanup of the  
7 property is completed by the bankruptcy trustee; now estimated to be in the Fall of 2019.<sup>11</sup> The  
8 best source of any facts and information regarding the te Velde bankruptcy is the bankruptcy  
9 record itself. Therefore, pursuant to OAR 860-001-0460(1), if the Commission applies the  
10 geographic load test, CBEC respectfully requests the Commission take Official Notice of the te  
11 Velde bankruptcy record so the Commission can be apprised of (i) relevant information from the  
12 best source for such information and (ii) the facts that have occurred over the past fifteen (15)  
13 months.

## VI. CONCLUSION

14 The Commission can decide the primary issues in this matter now. It is in the public  
15 interest for the Commission to rule on the primary issues as soon as practicable. Utilities need  
16 to understand the law in the State of Oregon concerning serving loads in other exclusive service  
17 territories. The question of whether this Commission condones a customer choosing its electric  
18 service provider by building facilities across a service territory border to be served by a utility  
19 provider in another service territory must be addressed. There are fundamental service territory  
20 issues in this matter that are justiciable now.

21 /

---

<sup>10</sup> ALJ Moser stated that the contents of the "...article and the facts alleged within are not noticed at this time and are not in evidence in this proceeding; instead they are referenced for purposes of this ruling."

<sup>11</sup> See Order and Mutual Agreement (Lost Valley Farm) at 15-16 (full citation *infra* in footnote 8).



1           WHEREFORE, CBEC respectfully requests ALJ Moser to certify the Ruling to the  
2 Commission for consideration, take Official Notice of the bankruptcy documents, and provide  
3 any further relief deemed appropriate under the circumstances.

4

5           Respectfully Submitted this 15<sup>th</sup> day of March 2019.

By /s/ Raymond S. Kindley

RAYMOND S. KINDLEY, OSB 964910

KINDLEY LAW, PC

Email: [kindleylaw@comcast.net](mailto:kindleylaw@comcast.net)

Tel: (503) 206-1010

Of Attorneys for Columbia Basin Electric  
Cooperative, Inc.