

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1818

COLUMBIA BASIN ELECTRIC
COOPERATIVE, INC.,

Complainant,

vs.

UMATILLA ELECTRIC COOPERATIVE,

Defendant.

RULING

DISPOSITION: MOTION TO BIFURCATE GRANTED

This proceeding involves a complaint filed by Columbia Basin Electric Cooperative (Columbia Basin) alleging that Umatilla Electric Cooperative (UEC) is offering and providing electric utility service within Columbia Basin's exclusive service territory, in violation of the Territorial Allocation Law.¹ Columbia Basin asserts that UEC is violating the Territory Allocation Law in two respects. First, that UEC is providing service to irrigation circles of Willow Creek Dairy (also referred to as Lost Creek Dairy and Greg te Velde), which are within Columbia Basin's territory. Second, that UEC has arranged for the development of electric transmission facilities for Wheatridge Wind project that extend into and terminate in Columbia Basin's territory.

UEC answers that the Willow Creek Dairy irrigation circles within Columbia Basin's territory are part of a unified load, the majority of which is located in UEC's service territory. In response to the planned service to and from Wheatridge Wind, UEC states that this Commission lacks subject matter jurisdiction over the UEC transmission line. UEC states that the transmission line would take power intended for sale in interstate commerce from Wheatridge Wind and deliver it to a Bonneville Power Administration (BPA) substation. UEC allows that Columbia Basin may provide station service power to Wheatridge Wind's retail load in Columbia Basin's service territory.

¹ ORS 758.450(2) ("no other person shall offer, construct, or extend utility service in or into an allocated territory").

Background

For context, below is a summary of the basic facts as provided by the parties. To the extent any of these facts are disputed, parties may raise their concerns in subsequent filings.

Willow Creek Dairy had existing facilities in UEC's service territory. In 2016 Willow Creek Dairy expanded its operations and developed several new irrigation circles in the north part of Columbia Basin's territory. Some of the irrigation circles straddle the boundary between UEC and Columbia Basin's territories, and some are located wholly within Columbia Basin's territory. Willow Creek Dairy plans to continue its expansion and develop additional irrigation circles. UEC is serving the new irrigation circles and pumps and plans to serve the additional circles.

Wheatridge Wind project is a 500 MW project in the planning stages. Its turbines and facilities will extend across the service territories of Columbia Basin and UEC. Wheatridge Wind and UEC have planned for UEC to design, construct, and build a 23-mile transmission line that would run from a collector substation in Columbia Basin's service territory across UEC's service territory to terminate at BPA's Morrow Flats Substation in UEC's service territory. Wheatridge Wind has not specified how it will receive station service power. The transmission line is the subject of a proceeding at the Federal Energy Regulatory Commission (FERC), docketed as TX17-1.

Motion to Bifurcate

UEC seeks to bifurcate Columbia Basin's complaint into separate proceedings. UEC states that the two claims for relief involve different facts, different laws, and different parties. UEC states that the Willow Creek Dairy claim is a simple question of applying the Territory Allocation Law to a customer that straddles the boundary of two service territories. The Wheatridge Wind claim, UEC contends, involves questions of FERC jurisdiction, resolution of the FERC proceeding, and the station service question that may be resolved under the Territory Allocation Law. UEC points out that the two claims involve two unrelated customers, Willow Creek Dairy and Wheatridge Wind, and suggests that it is unnecessarily complex to intertwine their separate issues.² UEC concludes that the issues in each claim for relief are not dependent on each other and Columbia Basin will not be prejudiced if its claims are processed separately.

² Wheatridge Wind stated during the telephone prehearing conference that it supports the motion to bifurcate.

Columbia Basin opposes the motion to bifurcate. At the outset, Columbia Basin believes that a bifurcation would require it to retract its current complaint and file two new complaints. Columbia Basin asserts that bifurcation would cause inefficiency and additional cost by requiring it to participate in two separate proceedings and would delay resolution of the issues. Columbia Basin maintains that it will be prejudiced if it is not allowed to show that the two violations are related and that UEC's proposed transmission line will erode the integrity of Columbia Basin's exclusive service territory. Columbia Basin states that the complaint is against one party and involves one statute, and that it is common for different claims to involve different facts. Columbia Basin maintains that a decision to bifurcate is extraordinary.

Ruling

I grant the motion to bifurcate. It is rare for the Commission to review a contested motion to bifurcate. However, to the extent the Commission has provided a standard, bifurcation is done for efficiency when it does not cause prejudice.³ Efficiency is the general standard used in the orders and cases cited by the parties.

Here, efficiency, along with administrative ease and lack of prejudice all support bifurcating this proceeding. As noted by the parties, the Wheatridge Wind claim overlaps with the FERC proceeding. Wheatridge Wind is asking both FERC and this Commission to act quickly, and the Wheatridge Wind portion of the complaint involves more complicated legal, policy, and factual questions. In contrast, the Willow Creek Dairy portion of the complaint involves retail service to irrigation pumps. Although both claims address territory allocation issues, they relate to differing facilities and present separate legal and policy issues.

In reaching this decision, I reaffirm my comments made during the February 28, 2017 prehearing conference that, now that this matter has been bifurcated, Columbia Basin does not need to refile its complaint. A new docket number will be assigned to the Wheatridge Wind claim and all filings made to date will be made part of the administrative record in the new docket. There will be no duplication of the work the parties have already done. Going forward, we can reduce the number of appearances from counsel by scheduling events (conferences and hearings) back-to-back, if Columbia Basin and UEC wish. If there are facts or arguments applicable to one claim that

³ *In the Matter of OAR 860-016-0051, a Temporary Rule to Implement Ch. 1093, OR Laws 1999 (SB 622), Section 38, Relating to Complaints Against Telecommunications Utilities*, Docket No. AR 381, Order No. 00-066 (Feb 8, 2000) (stating the ALJ may bifurcate issues in a complaint for more efficient consideration of the issues); *In re PacifiCorp*, Docket No. UE 94, Order No. 96-175 (Jul 10, 1996) (bifurcating because it would be more confusing to consider the issues together and it would not cause prejudice).

Columbia Basin would like to reference for its other claim, it may include the materials as exhibits to its testimony.

Thus, for good cause, efficiency, and a lack of prejudice, this complaint is bifurcated. AHD will schedule another prehearing conference for purposes of establishing procedural schedules for each docket.

Dated this 20th day of March, 2017, at Salem, Oregon.



Sarah Rowe
Administrative Law Judge