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October 13, 2017

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 Reply
Testimony of Thomas Wolff**

Dear Filing Center:

Attached for filing in the above-captioned docket is Columbia Basin Electric Cooperative Inc.’s Reply Testimony of Thomas Wolff.

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

COLUMBIA BASIN ELECTRIC
COOPERATIVE, INC.,

against

UMATILLA ELECTRIC
COOPERATIVE,

Pursuant to ORS 756.500.

REPLY TESTIMONY OF THOMAS WOLFF
COLUMBIA BASIN ELECTRIC COOPERATIVE

October 13, 2017

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I. INTRODUCTION

Q. Please state your name, business address, and position at Columbia Basin Electric Cooperative (“Columbia Basin”).

A. My name is Thomas Wolff. My business address is 171 Linden Way, P.O. Box 398, Heppner, OR 97836. My current position at Columbia Basin is General Manager.

Q. Have you previously provided testimony in this Docket?

A. Yes.

Q. Have you read the testimony filed by the other parties?

A. Yes.

Q. What is the purpose of your reply testimony?

A. My testimony is presented to provide the Public Utility Commission of Oregon (“OPUC”) with information and Columbia Basin’s perspective concerning the testimony filed by Umatilla Electric Cooperative (“Umatilla”), Willow Creek Dairy (“WCD”), and the Commission Staff (“Staff”).

II. UMATILLA IS PROVIDING SERVICE IN COLUMBIA BASIN’S

EXCLUSIVE SERVICE TERRITORY

Q. Do you agree with Staff’s apparent position that Umatilla must physically construct electrical equipment in Columbia Basin’s service territory to violate the Oregon territory allocation law, ORS 758.450?

A. No. Although I agree with Staff that the legal standard for this case is contained in ORS 758.450(2), which provides that “...no other person [other than the person with an exclusive service territory] shall offer, construct or extend utility service

1 in or into an allocated territory,” I disagree with Staff’s reasoning and conclusion
2 that Umatilla has not violated ORS 758.450(2) because it has not constructed
3 equipment in Columbia Basin’s service territory.

4 **Q. On what is your knowledge of ORS 758.450(2) based?**

5 A. Although I am not a lawyer, I was General Manager of Columbia Basin when
6 Columbia Basin challenged PacifiCorp’s provision of electric utility service to the
7 Horseshoe Bend Wind, LLC, wind project (aka “Shepherds Flat South”). I have
8 personal knowledge of the facts of the case, and I believe I understand the OPUC
9 decision in that matter (UM 1670), which Staff’s testimony addresses.

10 **Q. Were PacifiCorp’s actions in serving Shepherds Flat South similar to**
11 **Umatilla’s actions in providing utility service to WCD?**

12 A. Yes. In UM 1670, the wind generation facilities of Shepherds Flat South were
13 located in Columbia Basin’s exclusive service territory. Shepherds Flat South—
14 in conjunction with two other wind projects and the wind projects’ parent
15 company, Caithness Energy—constructed and maintained a transmission system
16 from each project to a substation located in PacifiCorp’s service territory. It is my
17 understanding that the OPUC concluded that PacifiCorp was illegally providing
18 utility service to Shepherds Flat South, even though PacifiCorp’s electric facilities
19 interconnected with Shepherds Flat South’s electric facilities at a substation
20 located entirely in PacifiCorp’s territory and PacifiCorp had no electrical facilities
21 located in Columbia Basin’s exclusive service territory.

1 In this case, Umatilla likewise interconnects with electric facilities owned
2 by WCD in Umatilla's exclusive territory, but the load to which Umatilla
3 provides utility service is located in Columbia Basin's exclusive service territory.

4 **Q. In UM 1670, did PacifiCorp argue it was not violating ORS 758.450(2)**
5 **because it was providing utility service at a point of service located in**
6 **PacifiCorp's exclusive service territory?**

7 A. Yes, it is my understanding that the OPUC rejected PacifiCorp's argument. In
8 Order No. 15-110, the OPUC determined that the geographic location of the
9 Shepherds Flat South load—not the point of service or point of delivery—was the
10 determining factor in its analysis of whether Columbia Basin had the right to
11 serve the Shepherds Flat South load.

12 **Q. Do you agree with Staff's testimony that Columbia Basin failed to allege that**
13 **Umatilla offered or provided utility service in violation of ORS 758.450(2)?**

14 A. No. Columbia Basin alleged in its complaint and I stated in my opening testimony
15 that Umatilla is offering and providing utility service into Columbia Basin's
16 exclusive service territory. I believe Umatilla's actions should be viewed by the
17 OPUC in the same manner as PacifiCorp's provision of utility service into
18 Columbia Basin's service territory in Order No. 15-110.

19 **Q. Please elaborate.**

20 A. When Umatilla was building out the facilities for service to WCD, Umatilla
21 knowingly stopped its development activities on its side of the service territory
22 boundary. I believe Umatilla knew from the parties' earlier discussions that
23 Columbia Basin would have concerns about the invasion of its service territory.

1 property is located in Umatilla's service territory.³ However, both Staff and
2 Umatilla seem to ignore the fact that the majority of those irrigation clusters
3 currently provide water to the Boardman Tree Farm operations (WCD's testimony
4 confirmed that the trees grown by the Boardman Tree Farm are not part of the
5 dairy operation⁴), and that WCD's varied operations on the property are not
6 unified with each other.

7 **Q. Leaving aside the Tree Farm operations, is the entire WCD load itself**
8 **unified?**

9 No. I do not consider the WCD load, viewed alone, to be a unified load. WCD's
10 electric requirements are comprised of separate and independent loads arising
11 from dairy operations, residential service, water pumping loads, and the electric
12 service to the irrigation circles. In addition to these various operations on the
13 property, the WCD property electric service is delivered by Umatilla to
14 approximately 30 different service points at 10 different power rates.

15 WCD testifies that it uses 30 different service points because its operations
16 developed around existing facilities, and that the rate schedule for a particular
17 meter does not dictate the type of associated operations. However, utilities base
18 their rate schedules on distinctions between categories of loads with similar load
19 characteristics. The fact that Umatilla serves the load on WCD property with 10
20 different power rates demonstrates there are at least 10 different loads served on
21 that property. Each rate is based on different load service characteristics. In

³ UEC/100, Lankford/3-4.

⁴ WCD/100, Aylett/2.

1 comparison, the Shepherds Flat load in UM 1670 was served by PacifiCorp using
2 one meter point and one rate.

3 Moreover, the service to the six irrigation circles in Columbia Basin's
4 service territory has its own meter and transformer and is located on a separate
5 radial line. Umatilla applies only one power rate for the load to the six irrigation
6 circles.

7 Finally, WCD testifies that the dairy represents a complex and integrated
8 operation.⁵ While I agree that it is a complex arrangement, I disagree that WCD
9 represents a single, integrated operation. WCD's testimony highlights many
10 differences in the business operations and the multiple uses of the WCD property
11 and facilities.

12 In determining whether the load is unified, the OPUC should look at
13 factors that show whether the disputed load is similar to the other loads on the
14 property. Clearly, the load for the six irrigation circles in Columbia Basin's
15 service territory is not unified with the load that serves the Boardman Tree Farm
16 leased land. The load for the six irrigation circles in Columbia Basin's service
17 territory is not unified with the load of the facilities for WCD's cattle operations.
18 The load for the six irrigation circles in Columbia Basin's service territory is not
19 unified with the other irrigation circle clusters that are located hundreds of acres
20 away. The load for the six irrigation circles in Columbia Basin's service territory
21 is not unified with the booster pump loads, which have their own meters,
22 transformers, and power rates. In short, the OPUC only needs to look at the

⁵ WCD/100, Aylett/1-2.

1 photos in my prior testimony to see the load of the six irrigation circles is
2 geographically and operationally a distinct and independent load.

3 **Q. Next, let's address the Boardman Tree Farm. Can you please summarize the**
4 **Boardman Tree Farm's operations on the WCD property?**

5 As I testified previously, of the 5,700 acres that comprise the WCD property,
6 WCD has leased 3,000 acres to Boardman Tree Farm, which uses that leased land
7 for growing trees for pulp production—an entirely separate operation from
8 WCD's cattle raising and irrigation operations. The leased acreage is a majority of
9 the WCD property. The Boardman Tree Farm is a separate legal entity from WCD
10 and its operations are separate and distinct from WCD. As WCD testified, the
11 Boardman Tree Farm controls when the trees will be harvested and the property
12 cleared for WCD operations, and the Tree Farm has not adhered to the harvest
13 dates in the lease.⁶

14 **Q. Do you agree with Staff's testimony that WCD's lease to the Boardman Tree**
15 **Farm is not relevant to the unified load analysis?**

16 A. No. The fact that there are two separate legal entities on the WCD property
17 conducting independent operations is material to any analysis. In Order No. 15-
18 110, the fact that each of the three Shepherds Flat Wind projects were
19 independently owned and operated by separate companies led to the OPUC's
20 conclusion that the three projects were not one unified load.

21 Here, there is a lease agreement between two separate legal entities. The
22 terms of the lease demonstrate the electric load on the WCD property is not a load

⁶ WCD/100, Aylett/3.

1 from one single customer, i.e., one entity that owns and operates one business.
2 Instead, the existence of the lease between two separate legal entities is concrete
3 evidence that two businesses operate on the WCD property.

4 The lease agreement is material to the unified load analysis because it
5 demonstrates that the Boardman Tree Farm operations and the use of the leased
6 WCD property are independent from the WCD operations and business. The
7 terms of the agreement provide the Boardman Tree Farm with legal rights to
8 exclusively use the leased land for its own independent operations. Additionally,
9 the lease agreement provides that the Boardman Tree Farm must reimburse WCD
10 for the power, along with other operating costs for goods and services that WCD
11 purchases from Umatilla and others for Boardman Tree Farm operations.
12 Therefore, the load on the WCD property is used by two separate businesses for
13 two separate operations, and does not represent a single, unified load—even under
14 Staff’s definition of a “unified load.”

15 **Q. Do you agree with Staff’s position that the Boardman Tree Farm operations**
16 **are only “temporary” and, therefore, “questionable”⁷ for the unified load**
17 **analysis?**

18 A. No. Staff acknowledged that the analysis must consider “the location of the
19 permanent electric loads which have been or which will be installed within a
20 reasonable time as part of existing plans.”⁸

21 The lease agreement contains the only “existing plans” regarding the
22 Boardman Tree Farm’s use of the WCD property. The lease agreement provides

⁷ Staff/100, Gibbens-Rossow/8.

⁸ Staff/100, Gibbens-Rossow/7.

1 that the Boardman Tree Farm has legal rights to use the land for up to ten years,
2 with certain rights to extend the lease. Although the 3,000 acres that are currently
3 under lease will decrease each year as certain lots of trees are harvested over the
4 term of the lease, the Boardman Tree Farm will still have rights to use portions of
5 the WCD property for at least ten years.

6 I don't believe the analysis in this case should be based on the currently
7 planned status of the property 10 years down the road, because a host of
8 conditions can change within a 10-year period that would prevent the load on the
9 WCD property from becoming unified. (Indeed, less than 10 years ago, the
10 property at issue only had a tree farm operation on it!) There are a number of
11 scenarios that could develop. For instance, WCD could sell a portion of the
12 property. WCD could face economic difficulties, preventing further development
13 of new irrigation circles or forcing WCD to sell some land. WCD's water rights
14 could be curtailed or limited, which would prevent the further development of the
15 property or of different uses of the property. The most likely event is that WCD
16 and the Boardman Tree Farm could amend the lease agreement to extend the term
17 of the Boardman Tree Farm lease or to permit the Boardman Tree Farm to use the
18 land for different purposes.

19 WCD testifies that the Boardman Tree Farm may harvest the trees earlier
20 than the dates in the lease agreement.⁹ The Boardman Tree Farm and WCD can
21 just as easily extend the schedule. If the unified load analysis includes future
22 plans for development of the "unified load," those plans need to be more definite

⁹ WCD/100, Aylett/3.

1 than a party's wish list or an agreement between two parties, who can easily
2 change those plans or, as WCD testifies, don't even follow the plans. For these
3 reasons, the Boardman Tree Farm's current use of the land should be considered
4 in the unified load analysis, not the planned use of the land that may occur years
5 in the future.

6 **Q. Because the Boardman Tree Farm is not a member of Umatilla and WCD**
7 **pays for the power for both its own operations and the Boardman Tree Farm**
8 **operations, doesn't that show all the load on WCD property is unified?**

9 A. No. It indicates that not all the power supplied by Umatilla is used by WCD,
10 which shows that the WCD property load encompasses two separate entities
11 involved in two separate operations. I do not believe that the isolated fact that
12 WCD pays Umatilla for the Boardman Tree Farm's power makes all operations
13 on WCD's property a unified load. WCD's payment is simply the result of a
14 contractual arrangement between WCD and the Boardman Tree Farm.

15 **Q. Does the sharing of facilities by WCD and the Boardman Tree Farm**
16 **establish a unified load?**

17 A. No. WCD and the Boardman Tree Farm do share the use of the primary irrigation
18 facilities and either one or both operate the system. I consider this to be very
19 similar to the arrangement for the joint operation of the three Shepherds Flat wind
20 projects, which shared ownership and operation of the transmission system that
21 connected the three projects to PacifiCorp's point of delivery. Use of shared
22 facilities should not be a factor in the unified load analysis.

1 Although WCD and the Boardman Tree Farm share and jointly operate the
2 water irrigation facilities, they have different and independent operations and
3 electric load needs. Furthermore, as WCD testifies, the irrigation operations on
4 the WCD property also support Lindsay Farms' operations.¹⁰ The multiple users
5 of the irrigation system show that the irrigation and pumping load does not arise
6 from one customer who owns and operates one business.

7 **Q. Staff's testimony recognizes WCD's statement that it is in WCD's best**
8 **interest to receive power from Umatilla. Do you agree that WCD's best**
9 **interest factors into the unified load analysis?**

10 A. No. The integration of WCD's irrigation operations has no impact on the unity or
11 geographic location of service to its electric load. The integration issues
12 referenced by Staff concern WCD's integration of irrigation water operations, not
13 its electric loads. The integration of the irrigation system does not appear to be
14 relevant to the issue of whether the load of the six irrigation circles is unified with
15 or separate from the rest of the load on the WCD property.

16 **Q. Do you agree that receiving service from two different utilities is problematic**
17 **for WCD?**

18 A. No, although WCD may prefer to receive service from a particular utility, it is my
19 understanding that a utility customer cannot choose its power supplier by running
20 a power line to the neighboring utility.

¹⁰ WCD/100, Aylett/7-8.

1 **Q. Do you agree with Staff that the geographic load center test, as interpreted**
2 **by Staff, precludes a customer from manipulating delivery points and**
3 **running lines across boundaries to obtain service from a neighboring utility?**

4 A. No. Staff's approach would appear to allow a customer to build towards the
5 electric utility of its choice. Staff's position should be cause for alarm by the
6 OPUC in managing its service territory law. WCD's actions should be a warning
7 as to how other companies will use the geographic load center test to connect to
8 the utility of their choice, disregarding the established service territory
9 boundaries.

10 Under Staff's analysis, all a company needs to do is run a power line to
11 another utility and claim (a) it has plans to build a larger load in the neighboring
12 utility's territory within the next ten years and (b) it will be a single customer
13 load, owned and operated by one business. Customers with the resources to take
14 advantage of such circumstances will be able to essentially choose their power
15 supplier under Staff's interpretation.

16 **Q. Do you agree with Staff's claim that the OPUC should be unconcerned about**
17 **utility customers circumventing the service territory boundaries using Staff's**
18 **interpretation of the geographic load center test?**

19 A. No. Staff claims that the main deterrent for customers building their own power
20 lines is economics. However, Staff fails to consider the fact that, for large power
21 customers, relatively minor differences in power rates between two utilities can
22 easily justify the cost of constructing and maintaining a power line.

1 I testified earlier that PacifiCorp and PGE would likely be challenged by a
2 loosely or poorly defined geographic load center test like that advocated in Staff's
3 testimony. The rates charged by these utilities for electric service are generally
4 higher than other utilities within Oregon. Absent a clearly articulated definition
5 of a "unified load" under the geographic load center test, large energy users, who
6 want to save just a few cents per kilowatt hour, will construct power lines to
7 neighboring utilities with lower rates. These issues become magnified when
8 transmission capability of a utility is fully used but another neighboring utility's
9 transmission capacity is available.

10 **IV. DUPLICATION OF FACILITIES AND STRANDED ASSETS**

11 **Q. Do you agree with Staff's assertion that WCD was an existing customer of**
12 **Umatilla when it built the service conductor and not a customer of any other**
13 **utility?**

14 A. I am not certain whether this assertion is correct, but I know that WCD was not a
15 long-term member of Umatilla when it built the new line from Columbia Basin's
16 territory to receive service from Umatilla. WCD purchased the WCD property
17 from the Boardman Tree Farm in late 2015. Umatilla testified that WCD became
18 a member of Umatilla on January 14, 2016, but that the "connect" date for WCD
19 was January 1, 2016.¹¹ WCD and Umatilla began construction in January 2016 of
20 the various electric facilities that serve the WCD property and had much of the
21 system installed by late summer 2016. As part of that construction project,
22 Umatilla constructed and installed an entirely new radial line, a new meter base,

¹¹ UEC/100, Lankford/2.

1 meter, and transformer pad and transformer to serve the six irrigation circles
2 located in Columbia Basin's service territory. Additionally, WCD constructed
3 and installed its own electric facilities to interconnect with Umatilla's new point
4 of service. WCD's construction included the electric facilities interconnections
5 that provide service to the six irrigation circles. Regardless of the exact dates on
6 which the new service was built, it is reasonable to conclude that, when it built the
7 service conductor, WCD was a new customer requesting a new service.

8 **Q. Do you agree with Staff's claim that Umatilla did not duplicate utility**
9 **facilities?**

10 A. No. On the duplication of facilities issue, Staff's testimony overlooks the actual
11 result of the parties' actions. Staff simply ignores the fact that Columbia Basin
12 previously provided electric service to the very location where the six irrigation
13 circles operate and that Columbia Basin still has electric facilities immediately
14 adjacent to the six irrigation circles. Umatilla's extension of service duplicated
15 Columbia Basin's existing lines and has resulted in stranding of Columbia Basin's
16 utility assets. I believe the avoidance of stranded utility assets is a key objective of
17 the service territory laws.

18 Columbia Basin installed the point of service immediately adjacent to the
19 six irrigation circles years ago when Saber Farms, who owned the land prior to
20 WCD and the Boardman Tree Farm, used the land for irrigated crops. Columbia
21 Basin provided utility service to irrigation circles owned by Saber Farms basically
22 in the same location where WCD's six irrigation circles are currently located.

1 Each utility has served the load located in its service territory. Columbia Basin
2 proposed to divide the WCD load in the same manner.

3 In my discussions with Umatilla’s General Manager on this load issue,
4 however, Umatilla has refused to resolve the dispute as we have in the past. The
5 Umatilla General Manager told me that Umatilla would not stop serving the six
6 irrigation circles in Columbia Basin’s territory without a court order. Based on
7 that statement, Columbia Basin filed its complaint with the OPUC and is
8 requesting the OPUC to apply Oregon law and OPUC precedent to these
9 circumstances.

10 **Q. Do you have any recommendations regarding how the OPUC can assist**
11 **utilities and consumers who encounter these types of situations in the future?**

12 Yes. Columbia Basin believes the only way to resolve this—and potential
13 future—disputes is for the OPUC to develop a clearly articulated definition of the
14 term “unified load.” The definition needs to explain the factors that indicate what
15 is a “unified load” and what is not.

16 For instance, Staff’s position that “a single customer load, who owns and
17 operates one business” constitutes a unified load is too broad and open to
18 considerable interpretation. Staff’s definition of what constitutes a unified load
19 can easily be circumvented by one business acting on behalf of one or more
20 separate businesses under a contract arrangement to avoid the service territory laws
21 as WCD has done.

22 The definition of “unified load” needs to address what is an appropriate
23 “plan” for future development. Does it need to be a plan approved by a regulatory

1 agency, a contract, or merely a document drafted by a customer concerning what
2 the customer wishes to do or may do in the future? I suggest that future plans
3 need to be more than a simple document prepared, or assertion made, by a
4 customer and need to be something more than a simple bilateral contract between
5 parties, which can be easily amended.

6 A definition of “unified load” also needs to better define what a
7 “reasonable period” is for determining whether to include such plans in the
8 unified load analysis. WCD’s proposal to eventually control the land used by the
9 Boardman Tree Farm over a ten-year period does not appear to be a “reasonable
10 period.” In my opinion, a reasonable period should be based on the expected
11 period to develop a project and to interconnect the project to the applicable utility.
12 For instance, if WCD had immediate control of all of its property for its own
13 purposes, a reasonable time would be the period it would take for WCD to
14 construct or install the infrastructure to support its dairy and agricultural
15 operations on all of its property. It appears from WCD’s current development
16 schedule for those sections of land it controls, a reasonable period could be a year
17 to two. But, as demonstrated by WCD’s current situation, if a project
18 development is delayed long in to the future because the developer doesn’t even
19 control the land that it wants to develop, that period of delay is unreasonable.

20 Finally, the OPUC must address whether a consumer can choose its
21 electric service provider by building the necessary infrastructure to connect and
22 deliberately circumvent service territory laws.

1 In sum, the industry requires the OPUC's guidance in clearly articulating
2 what constitutes a unified load to resolve the present dispute and to avoid future
3 litigation regarding service territory issues.

4 **CONCLUSION**

5 **Q. Does this conclude your reply testimony?**

6 A. Yes.