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ADMITTED IN OREGON AND WASHINGTON

June 6, 2017

Via Electronic Mail

Public Utility Commission
Attn: Filing Center
201 High St. S.E., Suite 100
P.O. Box 1088
Salem, OR 97308-1088

Re: UM 1823 Columbia Basin Electric Cooperative v. Umatilla Electric Cooperative

Dear Filing Center:

Please find enclosed Columbia Basin Electric Cooperative's Reply to its Motion to Compel in UM 1823 filed pursuant to OAR 860-001-0420(1). This Reply was filed at the Commission's filing center email address puc.filingcenter@state.or.gov.

Thank you for your assistance.

Sincerely,

/s/ Raymond S. Kindley
Raymond S. Kindley
KINDLEY LAW, P.C.
Of attorneys for Columbia Basin
Electric Cooperative, Inc.

Enclosures

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **UM 1823**

4 In the Matter of the Complaint of
5 COLUMBIA BASIN ELECTRIC
6 COOPERATIVE, INC.,
7 against
8 UMATILLA ELECTRIC COOPERATIVE,
9 Pursuant to ORS 756.500

**COLUMBIA BASIN ELECTRIC
COOPERATIVE, INC.'S REPLY TO
UMATILLA ELECTRIC
COOPERATIVE'S AND WHEATRIDGE
WIND ENERGY'S RESPONSES**

10 **I. INTRODUCTION**

11 Pursuant to OAR 860-001-0500(7) and the Ruling dated May 24, 2017, in the above-
12 listed docket, Columbia Basin Electric Cooperative (Columbia Basin) replies to Umatilla Electric
13 Cooperative's (Umatilla) and Wheatridge Wind Energy's (Wheatridge) responses to Columbia
14 Basin's motion to compel Umatilla and Wheatridge to produce timely and complete responses to
15 Columbia Basin's data requests and to indicate with specificity to which data request the
16 documents they have produced respond.

17 **II. BACKGROUND**

18 Columbia Basin has made two sets of data requests to Umatilla with a total of 43
19 requests. Columbia Basin also has made two sets of data requests to Wheatridge with a total of
20 30 requests. Columbia Basin's data requests instructed both parties to designate their
21 responses to correlate to a specific data request. The Public Utility Commission of Oregon's
22 Staff (Staff) also requested each party to use Huddle and to designate to which data request
23 each response related.

24 On May 5, 2017, Columbia Basin filed a motion to compel in which it argued that
25 Umatilla and Wheatridge had failed to comply with the Commission's administrative rules
26 regarding discovery by failing to provide responses to Columbia Basin's data requests within the

1 required 14 days and failing to provide sufficient information to correlate their data responses
2 with specific data requests submitted by Columbia Basin. Columbia Basin limited its motion to
3 compel to only these two issues concerning the Commission's procedural rules. Columbia
4 Basin's motion to compel did not address the substantive issues regarding Umatilla's and
5 Wheatridge's objections or refusal to provide complete responses to specific data requests.

6 Wheatridge and Umatilla filed their responses to the motion to compel on May 22, 2017.

7 **A. Wheatridge's Response**

8 Wheatridge does not dispute that it has failed to provided data responses within the
9 required 14 days. Wheatridge also does not dispute that it failed to provide information
10 sufficient to correlate each data response with a specific data request. Instead, Wheatridge
11 simply states that as of the date of its response to Columbia Basin's motion to compel,
12 Wheatridge has responded to most of the data requests.

13 **B. Umatilla's Response**

14 1. 14 Day Deadline: Umatilla does not dispute that it has failed to provide data
15 responses within the required 14 days. In fact, Umatilla does not even mention Columbia
16 Basin's claim and instead entirely ignores the issue.

17 2. Separate Responses: Umatilla's response does not deny that Umatilla failed to
18 provide responses in a manner that enables other parties to identify which data responses
19 correlate to specific data requests. Umatilla even admits that it continued the practice of
20 grouping responses when it uploaded responses to Huddle. Umatilla argues its responses
21 needed to be grouped because the same documents relate to several data request and asserts
22 that Columbia Basin's overly broad data requests contributed to the problem.

23 3. Conferral: Umatilla argues that Columbia Basin did not sufficiently confer with
24 Umatilla prior to filing its motion to compel because Columbia Basin declined to participate in a
25 phone call and instead requested written responses.

26

1 4. Other Matters: Umatilla raises a host of substantive issues regarding why it
2 objected to Columbia Basin's data requests or failed to provide the data requested.

3 III. ARGUMENT

4 The Oregon Rules of Civil Procedure apply in Commission proceedings unless they are
5 inconsistent with Commission rules, a Commission order, or an ALJ's ruling. The Commission's
6 rules provide for data requests, which are "written interrogatories or requests for production of
7 documents." OAR 860-001-0540(1). "Each data request must be answered fully and
8 separately in writing or by production of documents, or objected to in writing." *Id.* Responses
9 must be received within 14 days. *Id.*

10 A. **Wheatridge's and Umatilla's failure to provide data responses within 14 days does** 11 **not comply with the Commission's rules.**

12 OAR 860-001-0540(1) provides, "[d]ata requests must be answered within 14 days from
13 the date of service." Wheatridge and Umatilla do not deny they violated this rule. In fact,
14 Wheatridge's and Umatilla's actions during discovery, correspondence with Columbia Basin,
15 and responses to the motion to compel demonstrate that they do not recognize that they need
16 to comply with the 14-day timeline. Instead, they apparently believe that they can set their own
17 deadlines for completing production, without informing or even consulting with Columbia Basin.

18 The opposing parties' decision to ignore the timelines for discovery responses set by the
19 Commission has significantly delayed this proceeding and prejudiced Columbia Basin.
20 Columbia Basin sent data requests to Umatilla on March 7 and April 11 and to Wheatridge on
21 April 13 and June 2. The parties did not begin providing responsive documents to the March
22 and April data requests within 14 days and did not finish responding to those requests until May
23 31—a deadline of their own choosing. In light of its extremely delayed production of discovery,
24 Umatilla's claim that Columbia Basin is intentionally delaying this case is misleading. In fact,
25 this case has been delayed—to Columbia Basin's prejudice—by the opposing parties' failure to
26

1 follow the mandated discovery timelines. Therefore, Columbia Basin requests that Umatilla and
2 Wheatridge be ordered to provide complete responses and responsive documents to each
3 presently pending and any future data request within the 14 days prescribed by the
4 Commission's rules.

5 **B. Wheatridge and Umatilla failed to provide data responses with sufficient**
6 **information to correlate the responses to specific data requests.**

7 OAR 860-001-0540(1) requires, “[e]ach data request must be answered fully and
8 separately in writing or by production of documents . . .” The purpose of separately answering
9 each data request is to enable a party to use it as evidence and, if an objection is made, to
10 enable the objection to be associated with a specific data request or answer. See OAR 860-
11 001-0540(4).

12 Wheatridge and Umatilla do not deny that they failed to respond to each data request
13 separately as required by the Commission rule, and as requested by Columbia Basin's and
14 Staff's instructions. Before the parties began to use Huddle, Umatilla provided Columbia Basin
15 with disks full of documents without any indication of how the files or information on the disks
16 related to specific data requests. After the parties were instructed to upload data to Huddle,
17 Umatilla and Wheatridge simply provided comments on Huddle that the uploaded blocks of files
18 related to a list of data requests. Most recently, the parties have grouped responsive
19 documents as relating to multiple data requests. Umatilla states that grouping responses is
20 more reasonable and less burdensome than producing multiple copies of the same document,
21 but a review of the more than 4000 pages produced by Umatilla reveals that Umatilla's
22 production nevertheless was repetitive and that Umatilla produced multiple copies of many
23 documents, often in response to the same data request. In short, it has been extremely difficult
24 to review the parties' production and to correlate the vast majority of documents that Umatilla
25 and Wheatridge provided to specific data requests made by Columbia Basin.
26

1 Umatilla's and Wheatridge's actions prevent Columbia Basin's use of the data requests
2 and answers as evidence in this proceeding. Due to the manner in which Umatilla and
3 Wheatridge provide their data responses, Columbia Basin cannot submit a specific data request
4 and associated answer as evidence as specified in OAR 860-001-0540(4). Additionally,
5 Columbia Basin cannot object to the lack of a response to a specific data request or object to a
6 specific answer because it is almost impossible to determine what information relates to a
7 specific data request. In short, Umatilla's and Wheatridge's actions have made compliance with
8 OAR 860-001-0540(4) next to impossible. Columbia Basin's ability to timely review discovery
9 documents has been impeded, causing delay and significant expense to Columbia Basin.
10 Therefore, Columbia Basin requests that Umatilla and Wheatridge be ordered to separate and
11 individually produce the documents responsive to each presently pending and any future data
12 request.

13 **C. Columbia Basin conferred with Umatilla and Wheatridge.**

14 Umatilla requests that Columbia Basin's motion be denied because Columbia Basin did
15 not confer with Umatilla by phone. Umatilla argues that phone conversations were necessary to
16 "possibly narrow the issues in dispute."
17

18 Although the Commission rules require the parties to confer, they do not require any
19 particular means of conferring. See OAR 860-001-0420(3) and OAR 860-001-0500(5).
20 Columbia Basin conferred extensively with Umatilla in writing, and Umatilla does not deny that
21 fact. Columbia Basin attached the emails exchanged between the parties to its motion to
22 compel. Review of those emails demonstrates that any further conferral between the parties
23 would have been in vain and would not have resolved the parties' fundamental disagreements
24 about the discovery obligations imposed on Umatilla and Wheatridge by the Commission rules.
25 In fact, the opposing parties still have declined to address these issues in response to Columbia
26 Basin's motion to compel.

1 Given the parties' actions and the lack of progress from conferral attempts, Columbia
2 Basin reasonably believed that it needed to file a motion to compel to resolve these fundamental
3 procedural issues and to avoid further delay to this proceeding. Columbia Basin believed and
4 continues to believe that a formal ruling is necessary to obtain adherence to the discovery
5 timelines and requirements.

6 **D. Responses to substantive discovery issues.**

7 As an initial matter, Columbia Basin notes that its motion to compel did not address
8 substantive discovery disputes and instead focused on the procedural issues that were
9 preventing it from timely obtaining and reviewing discovery. However, Umatilla addresses
10 several substantive issues in its response, and the ALJ's May 24, 2017, Ruling requested
11 Columbia basin to provide an updated summary of any outstanding discovery issues that
12 remain. Therefore, Columbia Basin will address substantive issues in this Reply and requests
13 that Umatilla and Wheatridge be compelled to provide responsive documents.

14 1. Station service for Wheatridge

15 The Wheatridge project lies within the service territories of Umatilla and Columbia Basin.
16 Umatilla has publicly indicated that it does not plan to serve any of Wheatridge's retail load.
17 Based on past conversations with Wheatridge, Columbia Basin expected that it would serve, at
18 a minimum, the retail load of the Wheatridge project located in Columbia Basin's service
19 territory. CBEC to UEC Data Requests #8 and #9 seek information related to these issues.
20 Now, NextEra has purchased Wheatridge and states in its supplemental response to CBEC to
21 Wheatridge Data Request #14 that it is evaluating self-service of the Wheatridge station service
22 load. Due to this recent development, Columbia Basin needs additional discovery to
23 understand how Wheatridge's retail load will be served and by whom. Columbia Basin has
24 submitted recent data requests on this topic and expects it will submit additional data requests
25 based on the responses to pending data requests.

26 2. Uses of the proposed transmission line

1 CBEC to UEC Data Request #33 asked for information concerning Umatilla's
2 communications with the Mariah Wind Project representatives. Umatilla objects to providing
3 information about its communications with the Mariah Wind Project claiming it is not relevant to
4 the Wheatridge project. Contrary to Umatilla's assertions, the Wheatridge project is not the
5 issue in this proceeding; the issue is Umatilla's proposed transmission line. And such
6 communications are relevant because Mariah Wind is in the vicinity of the proposed
7 transmission line. Columbia Basin has been informed that Mariah Wind has communicated with
8 Umatilla regarding the use the proposed transmission line to wheel its power or receive station
9 service. If Umatilla intends to interconnect the Mariah Wind Project to the proposed
10 transmission line, then that use of the line is relevant to a determination of the issues in this
11 case.

12 In CBEC to UEC Data Request #27, CBEC requested information regarding 2Morrow
13 Energy's transmission rights. Umatilla objects to providing this information, claiming 2Morrow
14 assigned all of its transmission rights to Wheatridge and that the 2Morrow project no longer is in
15 existence. In response to CBEC to Wheatridge Data Request #3, #4, #6, and #7, Wheatridge
16 also objects to providing information regarding 2Morrow Energy's transmission rights. However,
17 documents that Umatilla or Wheatridge provided indicate that 2Morrow Energy has not assigned
18 all of its transmission rights to Wheatridge. If 2Morrow Energy or other entities besides
19 Wheatridge have transmission rights on the proposed line, then that is relevant to this
20 proceeding. The users and uses of the proposed transmission line are directly relevant to the
21 service-territory-violation and jurisdictional issues in this case.

22 3. Design and characteristics of the proposed transmission line

23 In CBEC to UEC Data Requests #14 and #15, Columbia Basin requested copies of
24 easements, design and other characteristics of the proposed transmission line, including
25 whether the line would extend beyond the Wheatridge project to serve other potential
26 generation projects. Umatilla refused to provide the information requested in Data Requests

1 #14 and #15, claiming the information is irrelevant. However, the characteristics of the
2 proposed transmission line are relevant because Umatilla and Wheatridge claim the proposed
3 line is a transmission line that is exclusively regulated by the Federal Energy Regulatory
4 Commission (FERC) and would be used only to export power from the Wheatridge project.
5 Information concerning the characteristics of the proposed transmission line that either confirms
6 or contradicts Umatilla's and Wheatridge's claims is relevant to this proceeding. The easements
7 would provide evidence or lead to evidence regarding what type of facility Umatilla is permitted
8 to install. The design information relates to Umatilla's claims regarding how the line would be
9 used. Contrary to Umatilla's claim, this information is relevant or likely to lead to relevant
10 information. Providing this information would not be overly burdensome, as it presumably is in
11 the possession of Umatilla or its consultants who have worked to design the line.

12 4. Relationship of the proposed transmission line to Umatilla's electric system

13 The relationship of the proposed transmission line to Umatilla's existing electric system
14 is information that is directly relevant to the application of ORS 758.450 and the definition of
15 utility service in 758.400. Umatilla has provided some information in response to data requests
16 concerning this topic, but stated in response to CBEC to UEC Data Request #38 that it has
17 located no documents showing that the proposed transmission line will interconnect with any
18 part of Umatilla's existing transmission or distribution system or electrical facilities. Also, as
19 mentioned above, Umatilla has refused to provide some information regarding the
20 characteristics of the proposed transmission line (Data Requests #14 and #15) claiming that it is
21 not relevant. Columbia Basin believes the information is relevant or likely to lead to relevant
22 information.

23 5. Ownership and operation of the proposed transmission line

24 Columbia Basin has sought information regarding the ownership and operation of the
25 proposed transmission line. Umatilla has asserted in its FERC filings and in filings in this
26 proceeding that it will own and operate the proposed transmission line. However, the discovery

1 documents, other statements at FERC, and statements to EFSC have raised questions about
2 who will actually own and operate the proposed transmission line long-term. For instance,
3 Umatilla has provided information that infers Umatilla would not own the proposed transmission
4 line if it has to operate the line and become subject to FERC jurisdiction or if the proposed line
5 falls under EFSC jurisdiction. Also, Wheatridge appears to hold all of the interconnection rights
6 with the Bonneville Power Administration to interconnect the transmission line with Bonneville
7 Power Administration's transmission system. Umatilla's response to CBEC to UEC Data
8 Requests #38 and #11 appears to confirm that Umatilla holds no interconnection rights with the
9 Bonneville Power Administration for the proposed transmission line. Further, Wheatridge has
10 submitted responses that suggest that Umatilla may sell the power line to Wheatridge or one of
11 its affiliates, or that Wheatridge may gain ownership rights through other mechanisms. Umatilla
12 and Wheatridge have entered into contracts that appear to allocate necessary functions for the
13 ownership and operation of the proposed transmission line between the two parties.

14 Understanding which entity will own and operate the proposed transmission line—both
15 initially and long-term—is directly relevant to the territorial-allocation claims raised in this
16 proceeding. Columbia Basin needs a complete understanding of who will own and operate the
17 transmission line and what projects are intended to be served by the line in the future to make
18 its case and rebut Umatilla's defenses. CBEC to UEC Data Requests #25, #27, and #33 and
19 CBEC to Wheatridge Data Requests #2 and #12, seek to obtain this information. Thus far,
20 Umatilla and Wheatridge have refused to provide complete responses regarding these issues.

21 6. Umatilla as transmitting utility

22 Umatilla and Wheatridge claimed to FERC that Umatilla is a transmitting utility and, thus,
23 subject to FERC jurisdiction. Umatilla holds the position that if it and the proposed transmission
24 line is subject to FERC jurisdiction, the Commission cannot apply the Oregon territorial-
25 allocation laws to the proposed transmission line.

26

1 CBEC to UEC Data Requests #41, #35, and #36 asked for factual information related to
2 Umatilla’s claim that it is a transmitting utility. Umatilla has refused to provide the information
3 claiming it either is not relevant or requires a legal conclusion. However, Columbia Basin’s
4 request is relevant as it concerns a defense that Umatilla has raised in this proceeding. Also,
5 Data Request #41 asked for “facts” that support Umatilla’s assertions, which does not require a
6 legal conclusion.

7 **IV. Conclusion**

8 Umatilla and Wheatridge have not disputed or defended their failure to comply with the
9 procedural requirements of the Commission’s discovery rules, and therefore Columbia Basin’s
10 motion to compel the parties to fully respond to data requests within 14 days and to provide
11 separate, labeled responses for each request should be granted. Further, the information that
12 Columbia Basin still seeks—described above—is relevant to this case and not unduly
13 burdensome to produce. Therefore, Columbia Basin requests that Umatilla and Wheatridge be
14 ordered to immediately provide this information.

15 DATED: June 6, 2017.

16 Respectfully submitted

17 By /s/ Raymond S. Kindley
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22 Of Attorneys for Columbia Basin Electric
23 Cooperative, Inc.
24
25
26

CERTIFICATE OF FILING

I hereby certify that on June 6, 2017, on behalf of Columbia Basin Electric Cooperative, Inc. I filed the foregoing COLUMBIA BASIN ELECTRIC COOPERATIVE INC.'S REPLY TO UMATILLA ELECTRIC COOPERATIVE'S AND WHEATRIDGE WIND ENERGY'S RESPONSES in UM 1823 with the Public Utility Commission; Att'n Filing Center, by electronic transmission to puc.filingcenter@state.or.gov.

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