

**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 MOTION TO  
BIFURCATE

**MOTION**

Pursuant to 860-001-0420(1), Umatilla Electric Cooperative, Inc. ("UEC") moves the Oregon Public Utility Commission ("Commission") to issue a ruling bifurcating the two claims for relief asserted in Columbia Basin Electric Cooperative, Inc.'s ("CBEC") Complaint into separate proceedings. Pursuant to 860-001-0420(2), counsel for UEC conferred with counsel for Commission Staff to seek agreement on the subject of this motion. Counsel for Commission Staff indicated that Staff does not take a position on this Motion. Counsel for UEC also attempted to confer with counsel for CBEC, but is so far unable to determine if CBEC will take a position on the Motion.

This Motion is based on the materials in the record in this proceeding and is supported by the points and authorities set forth below.

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## POINTS AND AUTHORITIES

### I. Introduction

CBEC filed its Complaint against UEC on January 13, 2017, alleging various violations of its rights under Oregon's territorial allocation law, ORS 758.400 *et seq.* The Complaint alleges two specific claims for relief. In its First Claim for Relief, CBEC alleges that UEC is providing utility service to Willow Creek Dairy and that UEC's action of providing such service violates ORS 758.450 and CBEC's exclusive service territory.<sup>1</sup> In its Second Claim for Relief, CBEC alleges that UEC is proposing to build an approximately 25 mile interstate transmission line to transmit power from the Wheatridge Wind Energy, LLC project ("Wheatridge Project") in CBEC's service territory to a point of interconnection with a Bonneville Power Administration ("BPA") substation in UEC's service territory, and that UEC's proposed actions violate ORS 758.450(2) and CBEC's exclusive service territory.<sup>2</sup> CBEC's Complaint asserts other allegations with respect to actions taken by Mariah Wind, LLC, but the Complaint does not assert a specific Claim for Relief against UEC with respect to that project.<sup>3</sup>

Prior to filing this Motion, UEC filed an Answer to the Complaint that denies most of the factual allegations in the Complaint and asserts multiple Affirmative Defenses. UEC asks that the two claims for relief asserted in the Complaint be bifurcated and considered in separate proceedings because the two matters involve different facts, different parties, application of

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<sup>1</sup> Complaint at ¶¶ 34-35.

<sup>2</sup> Complaint at ¶¶ 37-39.

<sup>3</sup> CBEC's Complaint 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 the Mariah Wind project in the prayer for relief is therefore not ripe and the Commission has no jurisdiction over that portion of the Complaint. If the Commission determines that the Complaint does assert a claim for relief with respect to the Mariah Wind Project, UEC respectfully reserves the right to modify this Motion to Bifurcate to seek bifurcation of that claim as well.

different laws, different affirmative defenses, and may be required to be resolved on different timelines.

## **II. Basis for Bifurcation**

Oregon's territorial allocation law, ORS 758.400 *et seq.*, sets out a process by which a utility may be allocated a service territory, "thus providing that utility with the exclusive right, and obligation, to serve customers in that territory."<sup>4</sup> The territorial allocation law does not operate as an outright prohibition on all services by one utility within the service territory of another utility. The law applies only to the provision of "utility service," which is defined in the statute as "service provided by any equipment, plant or facility for the distribution of electricity to users or the distribution of natural or manufactured gas to consumers through a connected and interrelated distribution system."<sup>5</sup> The law thus generally applies only to retail distribution service rather than to unbundled interstate transmission service, the latter of which is under the exclusive jurisdiction of the Federal Energy Regulatory Commission ("FERC").<sup>6</sup> Indeed, the law expressly excludes from the definition of "utility service" any service provided by utility facilities that "pass through or over but are not used to provide service in or do not terminate in an area allocated to another person providing a similar utility service."<sup>7</sup>

The law also expressly exempts other types of service from its scope. For example, individuals may provide power from any energy resource to fewer than 20 customers in certain situations, or from solar or wind resources to any number of customers.<sup>8</sup> Even where those

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<sup>4</sup> *In re Columbia Basin Electric Cooperative, Inc. v. PacifiCorp et al.*, Docket UM 1670, Order 15-110 (Apr. 10, 2015) ("Order 15-110") at p.4.

<sup>5</sup> ORS 758.400(3).

<sup>6</sup> *New York v. FERC*, 535 U.S. 1, 22-24 (2002) ("NY v. FERC")(affirming FERC's determination "that the unbundled transmission service involves only the provision of 'transmission in interstate commerce' which, under the FPA, is exclusively within the jurisdiction of the Commission").

<sup>7</sup> *Id.*

<sup>8</sup> ORS 758.450(4).

exemptions may not apply, the Commission has determined that another exemption exists where an electric customer's load straddles the service territory of two utilities. In that scenario, the Commission's adopted policy is to allow the "utility which serves a majority of a customer's load to serve the entire load, regardless of the territorial boundaries of a service area."<sup>9</sup> As explained below, the two claims for relief asserted in the Complaint will require separate analyses of these variations in the law and, therefore, should be analyzed separately.

**A. The Commission Has Previously Ordered Bifurcation to More Efficiently Address Issues Raised in a Single Proceeding.**

Although the Commission's rules do not expressly provide for bifurcation of issues in a proceeding, the Commission uses bifurcation of issues as a tool to more efficiently address multiple issues raised in a single proceeding and to separate issues that may involve different parties, different fact scenarios, or the application of different laws. For example, in a proceeding involving a PacifiCorp general rate filing, the Commission granted a request to bifurcate a requested rate increase that involved both a general tariff revision and an alternative form of regulation ("AFOR") plan. The stated purpose for seeking the bifurcation was "to allow additional time to review and discuss the various AFOR proposals submitted by the parties" separately from the cost of service issues analyzed in traditional ratemaking.<sup>10</sup> Similarly, in a proceeding involving GTE Northwest, the administrative law judge proposed bifurcation of issues in a filing establishing rates for collocation services.<sup>11</sup> One issue addressed generic collocation issues common to multiple utilities, while the other issue addressed rate issues applicable only to GTE Northwest.<sup>12</sup> The Commission has also granted a request by a

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<sup>9</sup> Order 15-110 at pp.7-8.

<sup>10</sup> *In re PacifiCorp dba Pacific Power and Light Company*, Docket UE 94, Order 96-175 (July 10, 1996).

<sup>11</sup> *See In re GTE Northwest, Inc.*, Docket UT 150, Order 00-240 (May 5, 2000).

<sup>12</sup> *Id.*

telecommunications company seeking bifurcation of an application to process a request to provide interexchange service separately from a request in the same application to provide local service.<sup>13</sup>

**B. Bifurcation Is Appropriate Here Because the Complaint Includes Two Unrelated Claims Involving Different Facts, Different Laws and Different Parties.**

Although CBEC's two claims for relief both allege violations of the territorial allocation law, the claims involve different parts of that law and other laws, different parties, and very distinct fact scenarios. First, as alleged in the Complaint, service by UEC to Willow Creek Dairy involves electric distribution service to a customer that straddles the boundary between UEC's service territory and CBEC's service territory.<sup>14</sup> The Wheatridge Project, on the other hand, involves interstate transmission service from a renewable generation project to a point of interconnection with a BPA substation,<sup>15</sup> and retail station service to the project will be provided by CBEC.<sup>16</sup> Moreover, CBEC acknowledges there is an ongoing FERC proceeding relating to the Wheatridge Project addressing the same subject addressed in the Complaint, and CBEC, UEC and Wheatridge Wind Energy LLC are parties in that proceeding.<sup>17</sup> Thus, resolution of the claims with respect to Willow Creek Dairy will require an analysis of the Commission's policy relating to customers that straddle the boundary between service territories, whereas resolution of the allegations with respect to the Wheatridge Project will depend on FERC's 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. Even if this Commission

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<sup>13</sup> See *In re Application of Pacific Fiber Link, LLC, for a Certificate of Authority to Provide Telecommunications Service in Oregon and Classification as a Competitive Provider*, Docket CP 449, Order 98-271 (July 7, 1998).

<sup>14</sup> Complaint at ¶13 and Exhibit 2.

<sup>15</sup> Complaint at ¶26.

<sup>16</sup> Complaint at ¶27.

<sup>17</sup> Complaint at ¶26 and Exhibit 5.

had jurisdiction over the claims relating to the Wheatridge Project, those claims would invoke different parts of the territorial allocation law because the line provides interstate transmission service from the generation source to a BPA substation, which is different than the distribution service at issue with the Willow Creek Dairy.

Second, the two claims for relief asserted in the Complaint involve different parties. CBEC has alleged no connection or relationship between the Willow Creek Dairy customer and the Wheatridge Project customer. The outcome of each of the claims will depend in part on the facts that relate to each of those customers and are not dependent on each other. The entire proceeding would be more complex and potentially delayed if multiple parties are forced to participate in the litigation of issues on which they are not taking a position. The participation of multiple, unrelated parties could also impede settlement discussions.<sup>18</sup>

Finally, because the two matters are distinct, it may be possible to resolve one matter more efficiently than the other. That is, it is unlikely that the jurisdictional issues related to the Wheatridge Project and the factual issues related to the Willow Creek Dairy will be resolved on the same timeline.

Resolutions of the issues in each claim for relief are not dependent on each other, or dependent on the same set of facts or law. CBEC will therefore not be prejudiced if its claims are processed separately.

## **CONCLUSION**

Because of the differences in law, parties, and facts at issue in each of CBEC's two claims for relief asserted in the Complaint, it will be more efficient for the Commission to bifurcate these issues and process CBEC's claims separately. UEC therefore respectfully

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<sup>18</sup> UEC acknowledges that no other parties have intervened in this docket yet. However, UEC believes it is reasonable to expect that one or more customers will participate in the proceeding.

requests the Commission issue a ruling bifurcating those two claims and establish a separate docket and schedule for each claim.

Dated this 10th day of February 2017.

Respectfully submitted,



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