

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1818

**Served electronically at Salem, Oregon, January 13, 2017 to:**

*Complainant's Attorney*  
Raymond S. Kindley  
Kindley Law, P.C.  
[kindleylaw@comcast.net](mailto:kindleylaw@comcast.net)

**Served via U.S. Mail at Salem, Oregon, January 13, 2017 to:**

*Respondent's Representative*

Thomas Grim, Registered Agent  
Umatilla Electric Cooperative  
750 W. Elm St.  
P.O. Box 1148  
Hermiston, OR 97838

Thomas Grim, Registered Agent  
Umatilla Electric Cooperative  
1001 SW 5<sup>th</sup> Ave., Ste 2000  
Portland, OR 97204

Re: UM 1818, Columbia Basin Electric Cooperative, Inc. vs. Umatilla Electric Cooperative, Inc.

Columbia Basin Electric Cooperative, Inc., has filed a complaint against Umatilla Electric Cooperative. A copy of the complaint is attached and served on Respondent, under ORS 756.512(1). The Commission has assigned Docket No. UM 1818 to this complaint. Please use this number whenever you refer to this case.

The Public Utility Commission must receive an Answer from the Respondent by February 2, 2017, under OAR 860-001-0400(4)(a). A copy must be served on the complainant. Please refer to our rules in effect prior to filing your answer. I have included a link for your convenience at [http://arcweb.sos.state.or.us/pages/rules/oars\\_800/oar\\_860/860\\_tofc.html](http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_860/860_tofc.html). Other useful information can be located on the Commission's website at <http://www.puc.state.or.us>, specifically under the Hearings Division and Filing Center sections.

After the filing of the answer, the matter will be set for hearing and you will be notified of the time and place.

PUBLIC UTILITY COMMISSION OF OREGON



Annette Scott  
Legal Secretary  
Administrative Hearings Division

(503) 378-6678

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Attachments: Complaint  
Notice of Contested Case Rights and Procedures

# KINDLEY LAW, PC

RAYMOND S. KINDLEY

ADMITTED IN OREGON AND WASHINGTON

January 13, 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: In the Matter of Columbia Basin Electric Cooperative v. Umatilla Electric  
Cooperative

Dear Filing Center:

Please find enclosed a Complaint on behalf of Columbia Basin Electric Cooperative against Umatilla Electric Cooperative. Pursuant to ORS § 756.512, OAR 860-001-140 and OAR 860-001-170, I am providing the Commission with an original of this Complaint filed at the Commission's filing center email address [puc.filingcenter@state.or.gov](mailto: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

KINDLEY LAW PC  
PO BOX 569 WEST LINN, OR 97068 TEL: (503) 206-1010

1 Raymond S. Kindley  
OSB No. 964910  
2 Kindley Law, P.C.  
P.O. Box 569  
3 West Linn, OR 97068  
Tel: (503) 206-1010  
4 kindleylaw@comcast.net

5  
6 **BEFORE THE**  
7 **PUBLIC UTILITY COMMISSION OF OREGON**

8 COLUMBIA BASIN ELECTRIC ) Docket No.: \_\_\_\_\_  
COOPERATIVE, INC. an Oregon )  
9 cooperative corporation ) COMPLAINT  
Complainant, )  
10 vs. )  
UMATILLA ELECTRIC COOPERATIVE, )  
11 INC., an Oregon cooperative corporation, )  
12 Defendant )

13  
14 **INTRODUCTION**

15 This is a formal complaint filed by the Columbia Basin Electric Cooperative, Inc.  
16 (“Columbia Basin”) with the Public Utility Commission of Oregon (the “Commission”) under  
17 Oregon Revised Statutes § 756.500, and Oregon Administrative Rules § 860-001-0170.  
18 Columbia Basin alleges that Defendant Umatilla Electric Cooperative, Inc. (“Umatilla”) is  
19 providing utility service in, and/or offering service in or into, Columbia Basin’s exclusive service  
20 territory in violation of the laws of the State of Oregon and the rules of the Commission.  
21 Columbia Basin respectfully requests the Commission to order Umatilla to immediately  
22 terminate utility service and to stop all further actions to extend utility service into the  
23 Cooperative’s exclusive service territory and to grant any other relief that the Commission deems  
24 necessary.

1  
2 **PRELIMINARY MATTERS**

3 Copies of all pleadings and other correspondence in this matter should be served upon  
4 counsel for Columbia Basin:

5 Raymond S. Kindley  
6 OSB No. 964910  
7 Kindley Law, P.C.  
8 P.O. Box 569  
9 West Linn, OR 97068  
10 Telephone: (503) 206-1010  
11 kindleylaw@comcast.net

12 In support of this Complaint, Columbia Basin hereby alleges the following against  
13 Defendant Umatilla.

14 **IDENTITY OF THE PARTIES**

15 1. At all material times herein Columbia Basin was and is an Oregon electric  
16 cooperative corporation registered with the Secretary of State to do business in Oregon.  
17 Columbia Basin's offices are located at 171 W. Linden Way, Heppner, Oregon, 97836, its  
18 website is [www.cbcc.cc](http://www.cbcc.cc), and its telephone number is (541) 676-9146. The manager of Columbia  
19 Basin is Thomas Wolff and his email address is [tommyw@columbiabasin.cc](mailto:tommyw@columbiabasin.cc). Columbia Basin  
20 owns and operates an electrical transmission and distribution system in North Central Oregon to  
21 provide retail electric power, distribution, transmission and other utility services to its electric  
22 cooperative members.

23 2. At all material times herein Umatilla was and is an Oregon electric cooperative  
24 corporation registered with the Secretary of State to do business in Oregon. Umatilla's offices  
25 are located at 750 West Elm St., Hermiston, Oregon, 97838, its website is  
26 [www.umatillaelectric.com](http://www.umatillaelectric.com), and its phone number is (541) 567-6414. Umatilla owns and  
operates an electrical transmission and distribution system adjacent to Columbia Basin's system.

1 **APPLICABLE LAWS AND REGULATIONS**

2 3. The Commission has jurisdiction over this Complaint and Umatilla under O.R.S.  
3 §§ 756.040 and 756.500.

4 4. Columbia Basin expects this case to involve the following Oregon Revised  
5 Statutes: O.R.S § 756.040, § 756.060, § 756.062, § 756.990 § 758.400, and § 758.450 and  
6 Oregon Administrative Rules: O.A.R. § 860-025-0000 *et seq.*

7 **FACTUAL BACKGROUND**

8 5. Under Commission Order No. 38089, Docket No. UF 2308, dated November 1,  
9 1961, issued pursuant to authority in O.R.S. §§ 758.00 to 758.475, the Commission granted to  
10 Columbia Basin an exclusive service territory in parts of Morrow, Umatilla, Wheeler, Sherman  
11 and Gilliam Counties. A true copy of the Commission Order No. 38089 is attached hereto as  
12 **Exhibit 1** and fully incorporated herein by this reference.

13 6. The legal description of Columbia Basin exclusive service territory is set forth in  
14 **Exhibit 1**, page 9.

15 7. At all material times herein, Columbia Basin offered electric utility service in the  
16 exclusive service territory granted to Columbia Basin and it was and is ready, willing, and able to  
17 provide electrical service in its exclusive service territory.

18 8. Under the statutes set forth in O.R.S., §§ 758.400 *et seq.*, Columbia Basin belongs  
19 to the class of utilities with exclusive service territories that are protected under O.R.S.  
20 § 758.450.

21 Service to Willow Creek Dairy

22  
23 9. In the spring of 2016, representatives of Willow Creek Dairy (aka “Lost Creek  
24 Dairy”) developed several irrigation circles within the northern portion of Columbia Basin’s  
25 exclusive territory.  
26

1           10. Columbia Basin has electric distribution lines located adjacent to the Willow  
2 Creek Dairy irrigation circles that are sufficient to serve the new Willow Creek Dairy load  
3 arising from the irrigation circles.

4           11. From approximately the 1960s to the 1990's Columbia Basin provided retail  
5 electric service to irrigation circles in the location of the irrigation circles operated by Willow  
6 Creek Dairy. Although the old irrigation circles were removed for drip irrigation systems,  
7 Columbia Basin maintained its distribution facilities in that location.

8           12. On June 20, 2016, Columbia Basin sent a letter to Willow Creek Dairy notifying  
9 the Dairy that Columbia Basin was ready to serve the loads associated with the new irrigation  
10 circles and their pumps and asked the Willow Creek Dairy employees to contact Columbia  
11 Basin's staff. The letter is attached hereto as **Exhibit 2** and fully incorporated herein by this  
12 reference.

13           13. The June 20, 2016, letter includes a map of the service territory boundary between  
14 Umatilla and Columbia Basin and the location of the new Willow Creek Dairy irrigation circles  
15 and Columbia Basin's electrical facilities.

16           14. After June 20, 2016, Willow Creek Dairy bypassed Columbia Basin's existing  
17 distribution facilities and installed electrical interconnects from the irrigation circles in Columbia  
18 Basin's service territory to Umatilla's electric system. Umatilla began providing retail electric  
19 service to approximately three of Willow Creek Dairy's new irrigation circles located in  
20 Columbia Basin's service territory.

21           15. Umatilla interconnected to the Willow Creek Dairy's facilities in Umatilla's  
22 service territory to provide utility service in and into Columbia Basin's exclusive service  
23 territory.

24           16. Willow Creek Dairy representatives told Columbia Basin staff that the Dairy will  
25 develop about three or four more irrigation circles in Columbia Basin's service territory, which  
26 will also be served by Umatilla.

1 17. Columbia Basin notified Umatilla's management that Umatilla's actions violate  
2 Columbia Basin's exclusive service territory. Umatilla's General Manager told Columbia  
3 Basin's manager that Umatilla would not terminate its utility service to Willow Creek Dairy's  
4 irrigation circles in Columbia Basin exclusive service territory without a court order.

5 18. On November 22, 2016, Columbia Basin's attorney, Kirk Gibson, sent a letter to  
6 Willow Creek Dairy to inform the Dairy that the new irrigation circles are in Columbia Basin's  
7 exclusive service territory, Columbia Basin is ready to serve the new load, and Umatilla's actions  
8 violate Oregon's utility territory allocation laws. The letter is attached hereto as **Exhibit 3** and  
9 fully incorporated herein by this reference.

10  
11 Service to Wheatridge Wind, LLC

12 19. Wheatridge Wind, LLC is planning to develop a wind turbine generation project  
13 ("Wheatridge Project") that will extend across Columbia Basin's and Umatilla's service  
14 territories. The collector substation for the Wheatridge Project is located in Columbia Basin's  
15 exclusive territory. A map depicting the Wheatridge Project is set forth in **Exhibit 4** and is  
16 incorporated herein by this reference.

17 20. The Wheatridge Project submitted permitting and siting documents to the Oregon  
18 Energy Facility Siting Council ("EFSC"). The EFSC approved the proposed Wheatridge Project.  
19 The approved Wheatridge Project description did not include the transmission facilities  
20 necessary to transmit the Wheatridge Project to interstate power lines for the export of the  
21 Wheatridge Project power.

22 21. The Wheatridge Project documents filed at EFSC did not specifically address the  
23 location or who would own and operate the transmission facilities that the Wheatridge Project  
24 would need to export the power generated at the Wheatridge Project or how the Wheatridge  
25 Project would receive retail station service load. The Wheatridge Project documents discuss  
26 several transmission alternatives and ownership arrangements, but do not select one alternative.

1           22.     The Wheatridge Project's predecessor in the wind project, 2Morrow Energy,  
2 LLC, submitted a request for interconnection and transmission service to Umatilla on July 29,  
3 2010. 2Morrow Energy requested 1,012 MW of transmission service from Umatilla. 2Morrow  
4 Energy assigned its transmission rights to Wheatridge. Wheatridge subsequently submitted an  
5 additional request for 238 MW of transmission service from Umatilla

6           23.     Wheatridge Project and Umatilla representatives informed Columbia Basin  
7 management that Umatilla and the Wheatridge Project entered an agreement whereby Umatilla  
8 would construct a 23 mile transmission line from its service territory into and terminating in  
9 Columbia Basin's exclusive service territory to provide utility service to the Wheatridge Project.

10          24.     Columbia Basin management informed the Wheatridge Project and Umatilla that  
11 Columbia Basin would build a comparable transmission line to provide transmission and other  
12 utility services to Wheatridge to enable it to export the power generated at the Wheatridge  
13 Project.

14          25.     Umatilla and the Wheatridge Project entered into a Facilities Agreement, dated  
15 January 11, 2016, that requires Umatilla to identify a primary transmission route, prepare  
16 easements and permits, and perform a preliminary line design.

17          26.     The Wheatridge Project filed on January 6, 2017, at the Federal Energy  
18 Regulatory Commission, an Application for Order to direct Umatilla to interconnect and provide  
19 transmission service to Wheatridge. The Application for Order is attached hereto as **Exhibit 5**  
20 and fully incorporated herein by this reference. The Application for Order provides that  
21 Umatilla's transmission facilities would be used exclusively for the Wheatridge Project to export  
22 power generated at the Wheatridge Project.

23          27.     As a result of Umatilla's incursion into Columbia Basin's exclusive service  
24 territory, Columbia Basin would be forced to use Umatilla's transmission line to distribute retail  
25 electricity at the collector substation to serve the Wheatridge Project's station service load and to  
26 serve Columbia Basin's other retail loads. If Umatilla refuses Columbia Basin's request for use



1 of Umatilla's transmission facilities to serve Columbia Basin's retail loads, then Columbia Basin  
2 would be force to build duplicative facilities to serve the retail power load of the Wheatridge  
3 Project.

4 Service to Mariah Wind Project

5 28. Mariah Wind, LLC proposes to construct four wind generation projects of 10 MW  
6 each in Columbia Basin's exclusive service territory. The Mariah Wind Project may construct a  
7 transmission line from the Mariah Wind Project to the Wheatridge Project's collector substation  
8 to export power generated at the Mariah Wind Project.

9 29. Mariah Wind's proposal would require Columbia Basin to obtain transmission  
10 service from Umatilla to distribute retail power to the Mariah Project. If Umatilla refuses to  
11 permit Columbia Basin to use Umatilla's transmission facilities to distribute retail power to the  
12 Mariah Wind Project, Columbia Basin would be forced to construct duplicative electric facilities  
13 to serve the retail power load of Mariah Wind Project.

14 **LEGAL CLAIMS**

15 **Complainant's First Claim for Relief**

16 **Umatilla's Provisions of Utility Service to Willow Creek Dairy Violates O.R.S. 758.450(2)**

17 30. Columbia Basin re-alleges paragraphs 1-29.

18 31. Under Oregon law, no person "shall offer, construct, or extend utility service in or  
19 into an allocated service territory." O.R.S. § 758.450(2).

20 32. Umatilla is a person as that term is defined under ORS § 758.400.

21 33. Utility service means "service provided by any equipment, plant, or facility for  
22 the distribution of electricity to users . . . through a connected and interrelated distribution  
23 system." O.R.S. § 758.400(3).

24 34. Umatilla is providing utility service to Willow Creek Dairy irrigation circles that  
25 are located entirely in Columbia Basin's territory.

1 35. Umatilla's action of providing utility service and offering to provide utility  
2 service in and into Columbia Basin's service territory to the new irrigation circles in Columbia  
3 Basin's service territory violates O.R.S. 758.450 and Columbia Basin's exclusive service  
4 territory.

5 **Complainant's Second Claim for Relief**

6 **Umatilla's Offering of Utility Service to the Wheatridge Project Violates O.R.S. 758.450(2)  
7 and Columbia Basin's Exclusive Service Territory**

8 36. Columbia Basin re-alleges paragraphs 1- 35.

9 37. The term "utility service" expressly excludes "service provide through or by the  
10 use of any electrical equipment, plant or facilities for the production or transmission of electricity  
11 . . . which pass through or over but are not used to provide service in or do not terminate in an  
12 area allocated to another person providing a similar utility service." O.R.S. § 758.400(3)  
13 Conversely, transmission lines that terminate in an exclusive service territory are included in the  
14 term "utility service."

15 38. Umatilla's proposed transmission line will terminate in Columbia Basin's  
16 exclusive service territory.

17 39. Umatilla's action of entering into contracts or otherwise arranging with the  
18 Wheatridge Project for the development of electric transmission facilities that terminate in  
19 Columbia Basin's service territory, and Umatilla's offer to provide utility services in or into  
20 Columbia Basin's exclusive service territory violates O.R.S. §758.450(2) and Columbia Basin's  
21 exclusive service territory.

22  
23 **PRAYER FOR RELIEF**

24 WHEREFORE, the Cooperative requests that the Commission issue an Order:

25 1. Finding that Umatilla is in violation of Oregon law for its past and continuing  
26 actions of offering and providing utility service into the Cooperative's exclusive service territory.

1           2.     Enjoining any and all actions by Umatilla concerning its offering and providing  
2 utility service to Willow Creek Dairy in or into the Cooperative’s exclusive service territory.

3           3.     Enjoining any and all actions by Umatilla concerning its offering and providing  
4 utility service to the Wheatridge Project and the Mariah Wind Project in Columbia Basin’s  
5 exclusive territory.

6           4.     Granting any other relief that the Commission deems necessary.  
7  
8

9 DATED this 13<sup>th</sup> day of January 2017.  
10  
11

12   KINDLEY LAW PC

13                                        By /s/ Raymond S. Kindley  
14                                        RAYMOND S. KINDLEY, OSB 964910  
15                                        Email: kindleylaw@comcast.net  
16                                        Tel: (503) 206-1010  
17                                        Of Attorneys for Columbia Basin Electric  
18                                        Cooperative, Inc.  
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**EXHIBIT 1  
PUC ORDER**

BEFORE THE PUBLIC UTILITY COMMISSIONER  
OF OREGON  
No. U-F-2308

To—

Columbia Basin Electric Cooperative, Inc.  
Harley B. Young, Manager  
P. O. Box 715  
Heppner, Oregon

In the matter of the Application of  
COLUMBIA BASIN ELECTRIC COOPERATIVE, INC.,  
Heppner, Oregon, for an order allocating  
utility service territory.

Enclosed is Order #38089

in above entitled cause. Please accept service thereof on the enclosed form and mail to the PUBLIC  
UTILITY COMMISSIONER, Salem, Oregon.

PUBLIC UTILITY COMMISSIONER  
OF OREGON

Mailed at Salem, Oregon

Nov. 1, 1961  
Engr

Form No. J-502  
State Printing 20748

Exhibit 1

Order #38089

BEFORE THE PUBLIC UTILITY COMMISSIONER  
OF OREGON  
U-F 2308

In the matter of the Application )  
of COLUMBIA BASIN ELECTRIC )  
COOPERATIVE, INC., Heppner, ) ORDER.  
Oregon, for an order allocating )  
utility service territory. )

The above entitled matter was duly heard on Monday, October 9, 1961, at Heppner, Oregon, before Malcolm L. Jones and Charles E. Leierer, Examiners for the Commissioner. The following appearances are of record herein:

For Applicant:

Raymond M. Kell, Attorney  
Portland, Oregon  
In behalf of Columbia Basin  
Electric Cooperative

For Commissioner:

Norman F. Webb, Assistant Attorney  
General, of Counsel for the Public  
Utility Commissioner  
Salem, Oregon

Interested Parties:

Alfred Cunha, Attorney  
Pendleton, Oregon  
In behalf of Umatilla Electric  
Cooperative Assn.

Robert F. Harrington, Attorney  
Portland, Oregon  
In behalf of Pacific Power &  
Light Company

Order #38089

On August 14, 1961, Columbia Basin Electric Cooperative, Inc., hereinafter referred to as Applicant, filed an application with the Commissioner pursuant to the provisions of Section 8, Chapter 691, Oregon Laws 1961, for an order allocating to Applicant an exclusively served electric service territory and adjacent unserved area within territory in Gilliam and Morrow Counties more particularly bounded as follows:

Beginning at the Southwest corner of Section 33, Township 1 North, Range 27 East, W.M., 15 miles west of the intersection of the Morrow-Umatilla County line with the Willamette Base Line which is the Northeast corner of Section 1, Township 1 South, Range 29 East W.M., thence North 12 miles to the Southwest corner of Section 33, Township 3 North, Range 27 East, thence West approximately 11 miles to the Southwest corner of Section 34, Township 3 North, Range 25 East, thence Northwest to the Southwest corner of Section 20, Township 4 North, Range 24 East, thence North approximately 2 miles to the Columbia River, thence in a Southwesterly direction along and conforming to the South bank of said river to the intersection of the range line between Ranges 21 and 22 East, thence South along said Range line to the Willamette Base line, thence East along said base line to the point of beginning.

Notice of the time and place of hearing of the within matter together with a description of the application was published in newspapers of general circulation in the territory covered by the application once weekly for two successive weeks and in this instance the following publications: Heppner Gazett Times, Heppner, Oregon; East Oregonian, Pendleton, Oregon; and Globe-Times, Condon, Oregon. In addition, notices of the hearing were served upon Applicant, electric utilities engaged in operations in territory adjacent to that being applied for and others. Copies of the notice were also mailed to many individuals and concerns who had heretofore expressed an interest in the matter and whose identities appear on an official mailing list. Information as to the application and hearing was widely circulated to the general press and other informational media.

No one appeared in opposition to the granting of the application. Those appearing as interested parties indicated their position was for purposes of

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observation, not waiving any privilege of thereafter changing the nature and extent of their respective appearances. These interested parties did not otherwise change their appearance or participate in the proceeding.

Evidence was adduced on behalf of the Applicant only, the hearing was completed and the matter was submitted for determination. Based upon the evidence and record in the matter it is found that:

Applicant is a cooperative organized and constituted under the Laws of the State of Oregon, filing its Articles of Incorporation September 20, 1940, for the purpose of generating, purchasing, transmitting, distribution, furnishing and selling electric energy to its members and to acquire, own and hold, among other things, plants, buildings, supplies, apparatus, and electric transmission and distribution lines or systems necessary and useful for carrying out its purposes. Applicant's principal office and headquarters is in Heppner, Oregon. Applicant serves 817 customers in rural areas in Morrow, Gilliam, Wheeler and Umatilla Counties, although the greatest number is in Morrow and Gilliam Counties. Applicant's annual gross revenue is \$197,000.

The within application does not cover Applicant's entire service area. The area selected herein includes territory in Morrow and Gilliam Counties on and north of the Willamette Base Line running east and west approximately 11 miles north of Heppner, the county seat of Morrow County. Applicant makes no attempt herein to include other territory in which it operates south of the aforestated base line.

Applicant introduced its Exhibit No. 1, a key map, to identify the entire territory embraced in the application, bounded in the outer limits in accordance with the description of territory detailed in the application and herein previously set forth. Exhibit No. 1 further delineates the territory which is claimed as exclusively served territory as distinguished from adjacent unserved areas also denoted thereon.



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Applicant defines its exclusively served territory, for ready reference, as (1) the south service area; (2) along and adjacent to Oregon State Highway Route No. 74 - Willow Creek Extension; (3) East of Oregon State Highway Route No. 74 - 6 mile Extension; and (4) from and west of Oregon State Highway Route No. 74 along and adjacent to the Columbia River - Willow Extension.

That area Applicant seeks as adjacent unserved area, likewise included in the prime boundary description, can be generally described as follows:

N. E. Unserved Area

That area in Morrow County north of the south service area, east of Willow Creek Extension service area, south of the 6 mile Extension Service area and easterly to the east boundary of the territory applied for.

West Unserved Area

That area lying north of the south service area, west of the Willow Creek Extension Service area, south of the Willow Extension Service area and westerly to the west boundary of the territory applied for.

Applicant is solely providing service in the areas claimed as exclusively served and heretofore described. Service is and can be provided through the facilities of two independent 69 KV transmission lines, two sub-stations and distribution lines radiating from them. One 69 KV transmission line owned by Applicant extends from Hermiston in Umatilla County southward and through the eastern portion of the south service area and westward along and paralleling Willamette Base Line to the vicinity of Ione in Morrow County. At that point, distribution extends in all directions via 7.2/12.5 KV lines, including territory not under consideration herein. Applicant also has a joint interest in another 69 KV transmission line extending from the De Moss sub-station in Sherman County running easterly to a point terminating at a substation approximately 2 miles south of Blalock in Gilliam County known as the Blalock sub-station. Distribution lines radiating therefrom extend

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to a point approximately two miles west of the west boundary of the West Unserved Area.

Applicant's 7.2/12.5 KV distribution lines extend from Ione northward along Willow Creek and Oregon State Highway No. 74 to the Columbia River, west thereof into the Willow Creek Service territory and east thereof into the 6 mile Extension Service Area. Further, Applicant's distribution system extends into all parts of the South Service Area. No transmission or distribution lines of any other person providing utility service extends into or through any territory designated by Applicant as exclusively served areas.

Applicant has been issued franchises by Morrow and Gilliam Counties to erect and maintain upon county roads and rights of way therein poles, wires, and other appliances for the purpose of transmitting electricity subject to certain terms and conditions therein stated. Applicant is bound thereby to keep and maintain its poles, wires and other appliances in good and safe condition and fully comply with the provisions of Chapter 235 Oregon Laws of 1947 or amendments thereto.

Applicant is seeking as adjacent unserved areas those which it believes that it can serve more economically and feasibly by extensions of its existing facilities than by the extension of the facilities of any other person providing electric utility service. The unserved areas so designated are basically rural areas with the characteristics of areas presently served with the possible exception of a portion of the Northeast Unserved Area which is being considered as an industrial site by The Boeing Company, hereinafter referred to as Boeing. There is no person providing electrical utility service into or through Applicant's designated unserved areas.

Pacific Power & Light Company, hereinafter referred to as Pacific, has transmission and distribution facilities in territory adjoining the western and southern boundaries of Applicant's unserved and served territory. Pacific owns a 22 KV transmission line running south from Arlington to Olex and thence easterly to Ione, and from Ione a 69 KV transmission line extending along Willow Creek to Willow in the vicinity of Heppner with distribution

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facilities along the same route. Pacific serves Lexington, Lone, Heppner and to the west in Gilliam County and by a 22 KV line extension to Gwendolen, Condon and Fossil, all located in territory not involved in the within application.

Umatilla Electric Cooperative originates its system at McNary Dam on the Columbia River with a 69 KV transmission line extending southward to a point one mile north of Hermiston and thence west to a substation east of Boardman. 7.2/12.5 KV distribution lines radiate from the substation eastward to Ordance and westward to a point approximately four miles west of Boardman. Also, Umatilla has a substation at a point on Applicant's 69 KV transmission line running from Hermiston to Heppner, heretofore described, where it serves portions of Butter Creek northward to Hermiston. Thus, Umatilla serves to the north, northeast and east of the boundary of the territory encompassed in the instant application.

Applicant's construction and other costs necessary in providing service are financed by REA loans. Applicant would continue to have access to this type of financing to cover extensions into and through said unserved area.

As to the West Unserved Area, it appears from the nature thereof that it would be developed in the same manner as the service area to the south. Facilities could be easily and readily extended into this area from lines in the north, east and west thereof and only minor extensions of plant would be needed. Power loads of the size which have been constantly supplied in the past in nearby service territory would be required.

A consulting electrical engineer who has performed professional engineering services for Applicant since its inception and for all electrical REA cooperatives east of the Cascade Mountain range in Oregon was produced by Applicant. The witness was not only familiar with Applicant's system but was likewise fully acquainted with Umatilla Electric Cooperative Association, having performed its electrical engineering service since 1946.

It was his considered judgment that the West Unserved Area could be more economically and feasibly

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served by Applicant by extensions of existing facilities than by an extension of the facilities of another person.

As to the Northeast Unserved Area, the witness was of the opinion that it could be readily and easily served by Applicant by extensions thereof when required loads would not exceed 500 KW. Loads of 500 KW and under would be within easy capacity of Applicant or by minor modification of facilities. Larger loads would warrant analysis of each load separately together with the precise point of delivery.

There is nothing of record that any demand would be placed upon Applicant to serve prospective customers with a load demand greater than 500 KW in the Northeast Unserved Area, save and except for the Boeing installation which might be located in the near future in Section 33, Township 3 North, Range 24 East in said designated unserved area. This tentative location is approximately 12 miles due north of Ione, 9 miles due south of Castle Rock and 4 miles inside a segment of Applicant's eastern boundary description when computed to the nearest side of said boundary.

Boeing's test site would be located in the Boardman Space Age Industrial Park, part of which lies with Applicant's Northeast Unserved Area. Boeing has indicated to Applicant that it might require a 900 KW power load with the possibility of an increase to 1500 KW. Boeing's plans are not firm as to site or demand.

It was the opinion of this engineering witness that on required loads ranging from 500 KW to 900 KW, at the specific proposed Boeing location in Section 33, as aforesaid, Umatilla Electric Cooperative Association could possibly serve more economically as less cost would be involved in extending service from its sources and making necessary modifications. Applicant's relative maximum load that its distribution facilities could handle at that location would be slightly in excess of 500 KW. On the other hand, usage of 1500 KW of energy would require construction of transmission facilities by either Applicant or Umatilla to handle the higher level of voltage required to economically supply a large block of power which would exceed normal service limitations on a distribution basis of 7.2/12.5 KV. The witness agreed that Applicant's costs would be lower on a transmission basis.

Order #38089

As to the balance of this area covering territory where no known or indicated demand exists, no easy generalization can be made where required loads would exceed 500 KW. Larger loads would warrant analysis of each load separately and in consideration of its precise location in order to shade costs. The witness testified that any one load between 500-1500 KW might be more economically served by Applicant or Umatilla Electric Cooperative Association depending on the exact location for use. For energy loads of 1500 KW and above, the witness testified that Applicant unquestionably could best serve the area inside its boundaries.

At meetings held both separately and jointly by the boards of directors of Applicant and Umatilla on May 23, 1961, the boundaries between the two cooperatives were established and approved by the respective boards. The boundary agreement contemplates potential service to the Industrial Park. The same boundary description separating the territory of the two cooperatives was included in the within application. Applicant's engineering expert stated uncommon sized loads on either side of the boundary are difficult to fully reconcile and the boundary arrived at by the two cooperatives is a reasonable division of the territory. Also, the application in form filed with the Commissioner was submitted to officials of Pacific prior to the hearing and the latter indicated there would be no objection. Both Umatilla and Pacific appeared and were represented at the hearing and made no objection.

Applicant is exclusively serving the territory designated as exclusive territory in the application. It would be more economical and feasible for Applicant to serve the area designated as adjacent unserved area by extension of its facilities than by an extension of the facilities of another person giving due consideration to the proximity of the service area thereto, the location of transmission and distribution facilities, method of financing and the nature and character of the unserved area and its foreseeable development.

From the foregoing it is concluded that the instant application for allocation of territory within

Order #38089

which to provide electric utility service, both as to exclusively served territory and adjacent unserved area, should be approved; it is therefore

ORDERED that the application of Columbia River Electric Cooperative, Inc., Hermiston, Oregon, for the allocation of territory within which to provide electric utility service, both as to exclusively served territory and adjacent unserved areas as applied for, be and the same is hereby approved; and it is further

ORDERED that the territory herein allocated to Columbia Basin Electric Cooperative, Inc., is described as follows:

Beginning at the Southwest corner of Section 33, Township 1 North, Range 27 East, W.M., 15 miles west of the intersection of the Morrow-Umatilla County line with the Willamette Base Line which is identical to the Northeast corner of Section 1, Township 1 South, Range 29 East, W.M., thence North 12 miles to the Southwest corner of Section 33, Township 3 North, Range 27 East, thence West approximately 11 miles to the Southwest corner of Section 34, Township 3 North, Range 25 East, thence Northwest to the Southwest corner of Section 20, Township 4 North, Range 24 East, thence North approximately 2 miles to the Columbia River, thence in a Southwesterly direction along and conforming to the South bank of said river to the intersection of the range line between Ranges 21 and 22 East, thence South along said range line to the Willamette Base Line, thence East along said base line to the point of beginning; and it is further

ORDERED that this order shall be effective upon the date of the execution hereof.

Made and entered this 27<sup>th</sup> day of October, 1961.

  
Public Utility Commissioner

(SEAL)

BEFORE THE PUBLIC UTILITY COMMISSIONER  
OF OREGON  
No. U-F-2308

To— Columbia Basin Electric Cooperative, Inc.  
Harley B. Young, Manager  
P. O. Box 715  
Heppner, Oregon

In the matter of the Application of  
COLUMBIA BASIN ELECTRIC COOPERATIVE, INC.,  
Heppner, Oregon, for an order allocating  
utility service territory.

Enclosed is

copy of Order #38107

in above entitled cause. Please accept service thereof on the enclosed form and mail to the PUBLIC  
UTILITY COMMISSIONER, Salem, Oregon.

PUBLIC UTILITY COMMISSIONER  
OF OREGON

Mailed at Salem, Oregon

..... Nov. 8 ..... 19 61 .....

Form No. J-502  
State Printing 30519

Exhibit 1

Order #38107

BEFORE THE PUBLIC UTILITY COMMISSIONER

OF OREGON

UF 2308

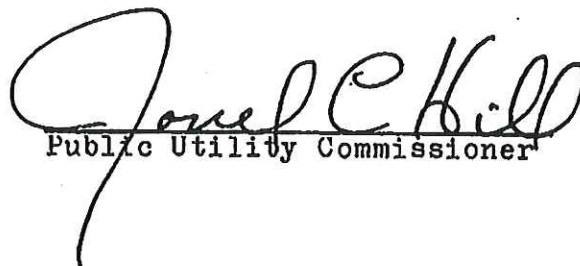
In the matter of the application )  
of COLUMBIA BASIN ELECTRIC )  
COOPERATIVE, INC., Heppner, )  
Oregon, for an Order allocating ) ORDER  
utility service territory. )

It appearing that in Order No. 38089 made and entered October 27, 1961, the name and address of Applicant is erroneously stated in lines 1 and 2 of the first Order provision of page 9 thereof and said Order should be corrected to reflect the correct name and address of the party; it is therefore

ORDERED that the name and address of Applicant appearing in lines 1 and 2 of the first Order provision on page 9 of Order No. 38089 be and the same is hereby corrected to read as follows:

Columbia Basin Electric Cooperative, Inc.,  
Heppner, Oregon

Made and entered this 7<sup>th</sup> day of November  
1961.

  
Public Utility Commissioner

(SEAL)



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**EXHIBIT 2**  
**Columbia Basin Letter to Willow Creek Dairy**  
**Dated June 20, 2016**



# COLUMBIA BASIN ELECTRIC COOPERATIVE, Inc.

171 N. LINDEN WAY • P.O. BOX 398 • HEPPNER, OREGON 97836-0398  
Telephone (541) 676-9146 • Fax (541) 676-5159  
Condon Telephone (541) 384-2023

tommyw@columbiabasin.cc  
andyf@columbiabasin.cc  
briank@columbiabasin.cc  
joshc@columbiabasin.cc  
debbiel@columbiabasin.cc

June 20, 2016

Willow Creek Dairy  
Greg Te Velde  
67500 Taggares Lane  
Boardman, Oregon 97818  
541-481-0900

Jeddie Aylett  
75816 Frontage Lane  
Hermiston, Oregon 97838  
541-571-2477

In Re: Electric power to your southern most circles.

Dear Mr. Te Velde and Mr. Aylett:

Congratulations and Best Wishes on your large dairy and irrigation project in North Morrow County. Your infrastructure development appears to be well underway with a completion in sight!

We have noted that your southern most circles are in the Columbia Basin Service Territory, and we are ready and prepared to serve the power to those units when you need it. We have a three-phase service just to the south of the circles from which service will be made. Please contact our Operations Manager **Brian Kollman** to determine the trench locations and logistics for your electricians. Brian can be reached at our office number of **541-676-9146** or on his company cell phone of **541-377-2842**.

We look forward to serving your electrical needs and having you join our consumer-owned cooperative.

Sincerely,

Thomas Wolff, CPA  
CEO/General Manager

Cc: Brian Kollman

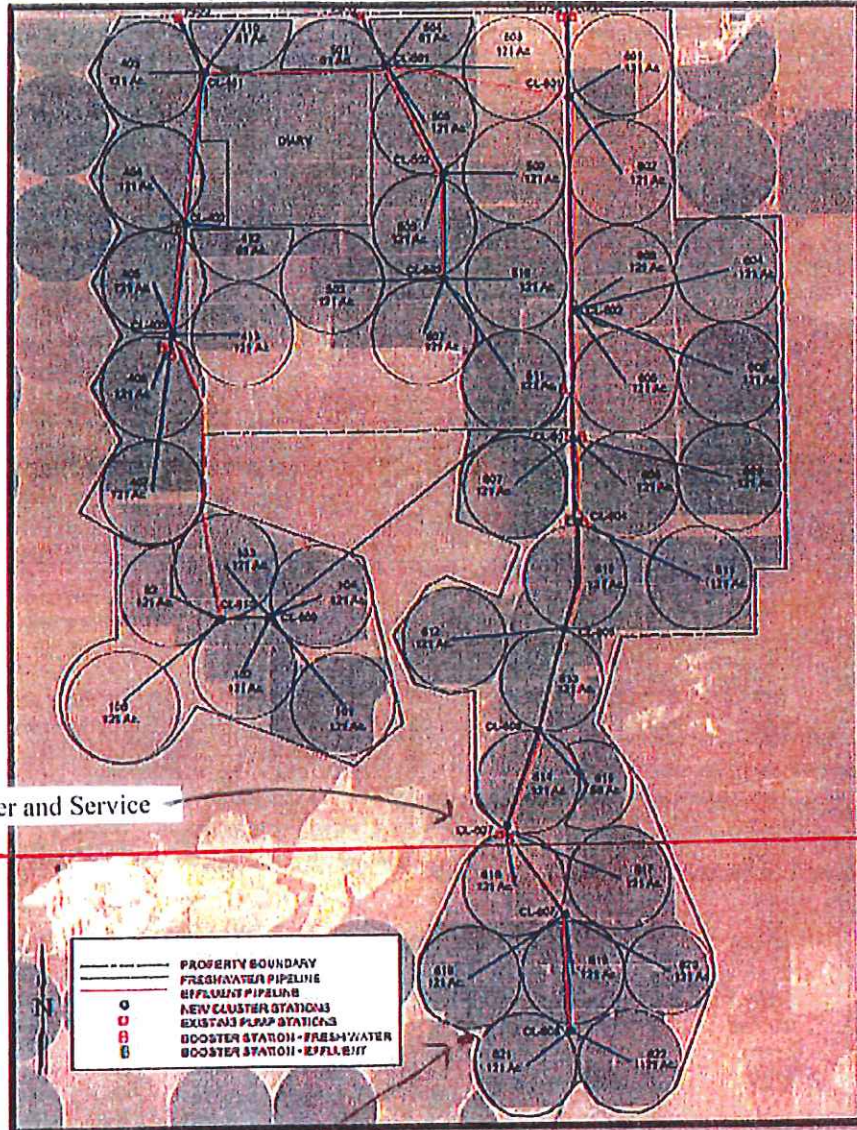


Figure 1: Map provided by IRZ Consulting, LLC showing the proposed center-pivot locations, acres, and delivery system surrounding the Willow Creek Dairy

CBEC's existing 3-Phase Bank

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**EXHIBIT 3**  
**Letter to Willow Creek Dairy**  
**Dated November 22, 2016**



KIRK H. GIBSON  
Direct (503) 595-3626  
kirk@mrg-law.com

November 22, 2016

SENT VIA U.S. MAIL

Greg Te Velde  
Willow Creek Dairy  
67500 Taggares Lane  
Boardman, OR 97818

Jeddie Aylett  
75816 Frontage Lane  
Hermiston, OR 97838

Re: Electric Power to Your Southern Most Circles

Dear Mr. Te Velde and Mr. Aylett:

This firm represents Columbia Basin Electric Cooperative, Inc. (CBEC). On June 20, 2016, Thomas Wolff, CBEC's CEO/General Manager, sent you the attached correspondence regarding its readiness to serve the electric service needs of Willow Creek Dairy in CBEC's allocated service territory and asked you to contact CBEC. To date, no response has been received from Willow Creek by CBEC.

CBEC is aware that Umatilla Electric Cooperative, Inc. (UEC) is providing electric service to Willow Creek Dairy's operations located in CBEC's exclusive service territory. Please be advised that UEC is serving the electricity needs of Willow Creek that are in CBEC's service territory in violation of Oregon State law. CBEC has without success attempted to work with UEC to find a mutually acceptable solution to this service issue. Yesterday, by phone, UEC refused to move forward with accommodating a direct service solution under which CBEC would supply Willow Creek Dairy's electricity needs in CBEC's exclusive service territory. UEC stated that it would not act "without a court order."

This letter is being sent to advise you that CBEC will be seeking formal adjudication of this issue. CBEC will make its best efforts to limit any inconvenience to your operations as practicable under the circumstances, but UEC's unilateral and illegal actions leave CBEC with no other choice.

As noted in the attached letter, CBEC remains ready, willing, and able to connect and provide service to your operations located in CBEC's exclusive service territory. Please contact Tommy

**Exhibit 3**

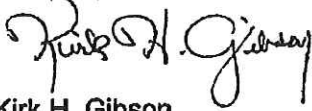
main: 503 595 3922 | fax: 503 595 3928 | www.mrg-law.com  
419 SW 11th Ave, Suite 400 | Portland, Oregon 97205-2605

Mr. Greg Te Velde  
Mr. Jeddie Aylett  
November 22, 2016  
Page 2

Wolff [541-676-9146] immediately if you would like to proceed with setting up electric service with CBEC for those parts of your operation located in CBEC's exclusive service territory.

Please have your legal counsel contact me, or Attorney Ray Kindley [503- 206-1010], should you have any questions or desire further information about this matter and/or CBEC's intentions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kirk H. Gibson". The signature is written in a cursive style with a large initial "K".

Kirk H. Gibson

KHG/slc  
Attachment



# COLUMBIA BASIN ELECTRIC COOPERATIVE, Inc.

171 N. LINDEN WAY • P.O. BOX 398 • HEPPNER, OREGON 97836-0398  
Telephone (541) 676-9146 • Fax (541) 676-5159  
Condon Telephone (541) 384-2023

tommyw@columbiabasin.cc  
andyf@columbiabasin.cc  
brlank@columbiabasin.cc  
joshc@columbiabasin.cc  
dabbie@columbiabasin.cc

June 20, 2016

Willow Creek Dairy  
Greg Te Velde  
67500 Taggares Lane  
Boardman, Oregon 97818  
541-481-0900

Jeddie Aylett  
75816 Frontage Lane  
Hermiston, Oregon 97838  
541-571-2477

In Re: **Electric power to your southern most circles.**

Dear Mr. Te Velde and Mr. Aylett:

Congratulations and Best Wishes on your large dairy and irrigation project in North Morrow County. Your infrastructure development appears to be well underway with a completion in sight!

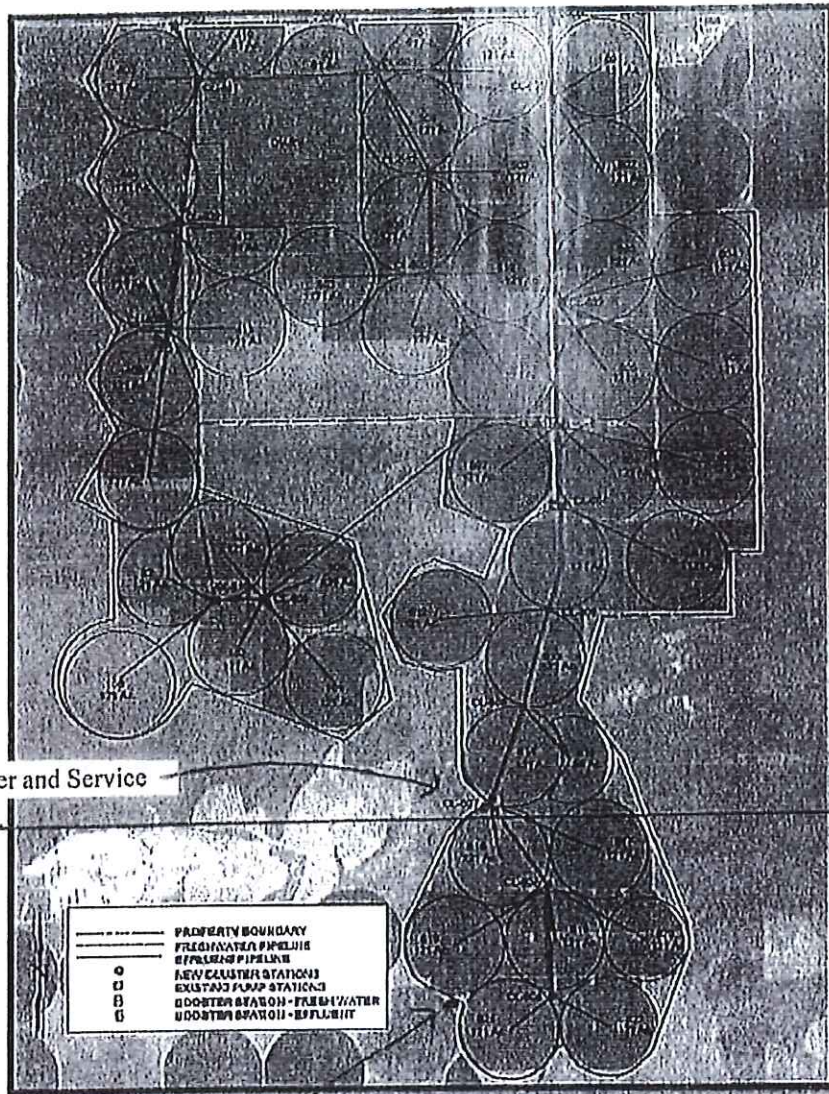
We have noted that your southern most circles are in the Columbia Basin Service Territory, and we are ready and prepared to serve the power to those units when you need it. We have a three-phase service just to the south of the circles from which service will be made. Please contact our Operations Manager **Brian Kollman** to determine the trench locations and logistics for your electricians. Brian can be reached at our office number of **541-676-9146** or on his company cell phone of **541-377-2842**.

We look forward to serving your electrical needs and having you join our consumer-owned cooperative.

Sincerely,

Thomas Wolff, CPA  
CEO/General Manager

Cc: Brian Kollman



UEC's existing Meter and Service

UEC Service Territory  
 CBEC Service Territory

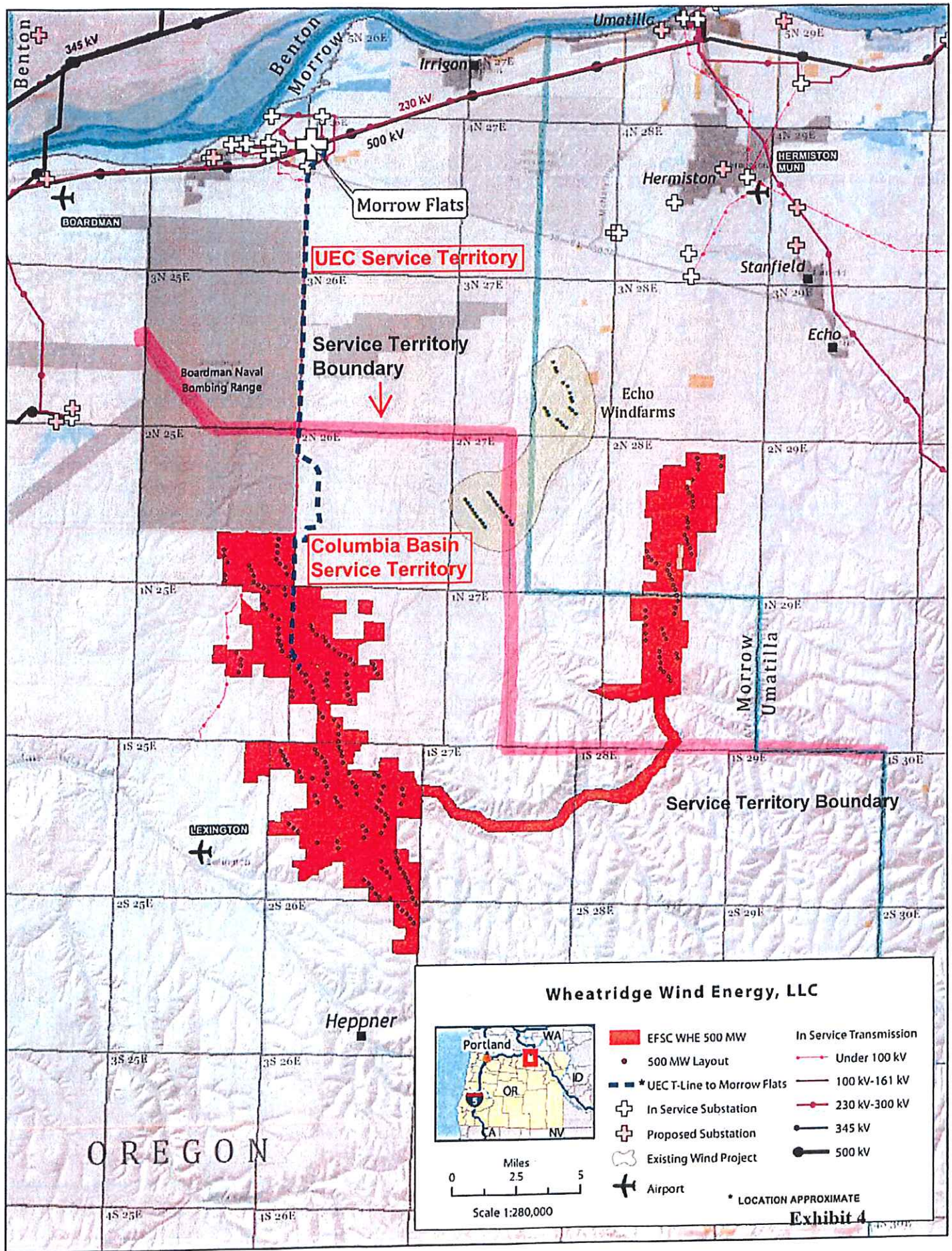
Figure 1: Map provided by INZ Consulting, LLC showing the proposed center-pivot locations, acres, and delivery system surrounding the Willow Creek Dairly

CBEC's existing 3-Phase Bank



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**EXHIBIT 4  
MAP OF WHEATRIDGE PROJECT**



OREGON

**UEC Service Territory**

**Columbia Basin Service Territory**

**Service Territory Boundary**

**Service Territory Boundary**

BOARDMAN

Morrow Flats

Boardman Naval Bombing Range

Hermiston

HERMISTON MUNI

Starfield

Echo

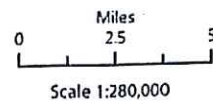
Echo Windfarms

Morrow  
Umatilla

Service Territory Boundary

LEXINGTON

Heppner



\* LOCATION APPROXIMATE

**Exhibit 4**

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**EXHIBIT 5  
FERC APPLICATION FOR ORDER**

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Wheatridge Wind Energy, LLC ) Docket No. TX17-\_\_\_-000

**APPLICATION FOR ORDER DIRECTING  
GENERATOR INTERCONNECTION AND TRANSMISSION SERVICE**

Pursuant to Sections 210, 211, and 212 of the Federal Power Act (“FPA”), 16 U.S.C. §§ 824i, 824j, and 824k, Wheatridge Wind Energy, LLC (“Wheatridge” or “Applicant”) hereby applies for an order from the Commission requiring Umatilla Electric Cooperative (“UEC”) to interconnect with Wheatridge’s proposed wind-generation project and to provide transmission service to a substation owned and operated by the Bonneville Power Administration (“BPA”). As explained below, UEC is willing to design, construct, own and operate the interconnection and transmission facilities necessary to accommodate Wheatridge’s request but requires a Commission order to clarify that UEC’s provision of such service is consistent with the requirements of a transmitting utility under Sections 210, 211, and 212 of the Federal Power Act. Wheatridge requests that the Commission issue its final order within 90 days of this application (by April 5, 2017) so as not to delay the timely development of the project.

**I. BACKGROUND**

Wheatridge is developing a wind powered generation facility that will have a maximum nominal generating capacity of 500 MW and will be located in eastern Oregon in Morrow and Umatilla Counties (“the Project”). The Project will utilize an internal conductor to aggregate and transmit the energy from the turbines to a project collector substation in Morrow County. Wheatridge proposes to interconnect the collector substation with UEC’s system through facilities to be constructed by UEC and transmit all the energy generated by the Project to BPA’s

Morrow Flats substation to facilitate Wheatridge's sale of its electric energy at wholesale in interstate commerce. In order to transmit the Project's energy to the BPA transmission system, a request for interconnection and point-to-point transmission service was submitted to UEC on July 29, 2010 by 2Morrow Energy, LLC ("2Morrow"), and a Deposit Agreement was entered into by 2Morrow with UEC for transmission of 1,012 MW of electrical power across UEC's transmission system. 2Morrow subsequently assigned to Wheatridge all of 2Morrow's right, title and interest in the 1,012 MW of transmission service it had requested. On August 5, 2011, Wheatridge also submitted to UEC a point-to-point transmission service request and deposit for an additional 238 MW of capacity on the UEC transmission system.<sup>1</sup>

UEC is a not-for-profit rural electric cooperative operating in Morrow and Umatilla Counties, Oregon. UEC is exempt from Commission regulation as a public utility pursuant to section 201(f) of the FPA, 16 U.S.C. § 824(f). Notwithstanding this exemption, and as discussed in greater detail below, UEC has long provided wheeling service to third parties across its system under non-discriminatory rates, terms and conditions and is a transmitting utility as defined by the FPA.<sup>2</sup>

Wheatridge and UEC have entered into several letters of intent and other agreements for the purpose of identifying a route and the UEC infrastructure that would be necessary for a 230 kV transmission line to connect the Project's facilities to a BPA substation. The current proposed route is addressed in a Letter of Intent dated April 15, 2015 (the "2015 LOI"). The 2015 LOI sets forth the mutual understandings and intentions of UEC and Wheatridge relating to

<sup>1</sup> The two transmission requests are to accommodate the current Project and future development by Wheatridge.

<sup>2</sup> A "transmitting utility" is defined as "an entity (including an entity described in 201(f)) that owns, operates, or controls facilities used for the transmission of electric energy – (A) in interstate commerce; (B) for the sale of electric energy at wholesale." FPA Section 3(23), 16 U.S.C. § 796(23).

multiple agreements under which UEC will design, construct and own a 230 kV transmission line of approximately 23 miles in length in Morrow County connecting the Project to a BPA substation near Boardman, Oregon (the "UEC 230 kV Line"). UEC and Wheatridge have also executed a Facilities Agreement, dated January 11, 2016, that obligates UEC to identify a primary route corridor, prepare easements and permits and perform a preliminary line design. The primary route corridor identified for the UEC 230 kV Line is shown on the map attached as Exhibit A.<sup>3</sup>

It is currently contemplated that while UEC will design, construct, own and operate the necessary generator interconnection and transmission facilities, Wheatridge, as the first party to use the UEC 230 kV Line, will pay all capital costs for the construction of the UEC 230 kV Line and interconnection facilities and thereafter will receive transmission revenue credits (up to the amount of its capital contribution) from wholesale transmission service revenues received by UEC from service provided to third parties using the excess capacity of the UEC 230 kV Line, should any such revenues ever be collected by UEC.

The Project turbines will fall within the franchised retail service territories of both UEC and a neighboring electric distribution cooperative, Columbia Basin Electric Cooperative ("CBEC") which, like UEC, is not a public utility. Approximately 20 miles of the primary route corridor for the UEC 230 kV Line traverses CBEC's franchised retail service territory.

Retail service to the Project in the form of station power would be provided in accordance with state franchised retail service territories. In accordance with Oregon law, UEC could only supply the station power for the Project facilities located within the UEC franchised

<sup>3</sup> The map in Exhibit A identifies the UEC 230 kV Line as the UEC T-Line to Morrow Flats.

retail service territory. Station power for the Project facilities to be located in the CBEC franchised retail service territory would be supplied by CBEC under its retail tariff.

**II. AN ORDER UNDER FPA SECTIONS 210 AND 211 IS REQUIRED FOR APPLICANT TO OBTAIN INTERCONNECTION AND TRANSMISSION SERVICE.**

Wheatridge requests the Commission to issue an order under FPA Sections 210 and 211 to require UEC to interconnect with the Project and provide the point-to-point transmission service required by Wheatridge to transmit the energy from the Project to the BPA transmission system for sale into the wholesale market. UEC has informed Wheatridge that UEC desires to provide these services and, as noted above, Wheatridge and UEC have entered into the 2015 LOI and the Facilities Agreement for that purpose. As a transmitting utility UEC understands that it is obligated to provide the service requested by Wheatridge. However, UEC requires a Commission order under FPA Sections 210 and 211 to clarify that the service to be provided for Wheatridge – more specifically the provision of generator interconnection and transmission service to the bulk electric grid – is subject to the Commission’s jurisdiction and not limited by state law affecting franchised retail service territories.<sup>4</sup> Accordingly, Wheatridge is seeking such a Commission determination that requiring UEC to provide the interconnection and transmission services proposed in this application would meet the standards of FPA sections 210, 211 and 212.<sup>5</sup> The proposed order requested here would remove these jurisdictional uncertainties, thereby advancing the development of the Project and associated interconnection and transmission facilities by confirming that the services UEC will be ordered to provide are

<sup>4</sup> See *Tex-La Electric Cooperative of Texas*, 67 FERC ¶ 61,019 at p. 61,055 (1994) (A Commission order under Section 211 “is not an assertion of jurisdiction over specific facilities, but rather an assertion of authority to order specific services ... [without] distinctions between transmission and distribution facilities.”)

<sup>5</sup> See, e.g., *Southern Cross Transmission LLC and Pattern Power Marketing LLC*, 139 FERC ¶ 62,206 (2011).

required of UEC as a transmitting utility under the FPA and are not inconsistent with Oregon law allocating retail service territories between distribution utilities.<sup>6</sup>

As required by Section 36.1(b) of the Commission's regulations, 18 CFR § 36.1(b), attached to this application is a form of notice suitable for publication in the Federal Register and a sworn statement that actual notice has been provided to each affected party, as defined in Section 36.1(a)(1) of the regulations.<sup>7</sup>

**III. THIS APPLICATION MEETS THE REQUIREMENTS OF FPA SECTIONS 210, 211 AND 212.**

This application meets the requirements for a Commission order under FPA Sections 210, 211 and 212 under the terms of those statutory provisions as interpreted in Commission precedent.<sup>8</sup>

**A. Jurisdiction**

Under Section 210(a) of the FPA, any electric utility may apply to the Commission for "an order requiring the physical interconnection of its facilities with the transmission facilities of any electric utility."<sup>9</sup> Under Section 211(a) of the FPA any electric utility or any other person generating electric energy for sale for resale may apply to the Commission for an order requiring a transmitting utility to provide transmission service to the Applicant. Wheatridge is eligible to be an Applicant as an electric utility<sup>10</sup> because it intends to construct generation facilities to

<sup>6</sup> OR. Rev. Stat. §§ 758.400 to 758.475.

<sup>7</sup> Wheatridge has used a broad definition of affected parties in providing notice.

<sup>8</sup> See generally *Nevada Power Co.*, 110 FERC ¶ 61,029 (2005).

<sup>9</sup> *Kiowa Power Partners, LLC*, 99 FERC ¶ 61,251 P28 (2002) (internal quotations omitted) ("*Kiowa*").

<sup>10</sup> An "electric utility" is defined as a "person or Federal or State agency (including an entity described in section 201(f) that sells electric energy." FPA Section 3(22), 16 U.S.C. § 796(22)(A).



engage in sales for resale.<sup>11</sup> Similarly, UEC is currently a transmitting utility under the FPA<sup>12</sup> because it provides non-jurisdictional interstate transmission service for a small landfill gas facility (Finley Buttes) to the BPA transmission system and provides transmission service to BPA for the benefit of a BPA preference power customer, Hermiston Energy Services. UEC has committed to construct and operate the additional associated interconnection facilities and the UEC 230 kV Line originating at the Project and terminating at BPA's Morrow Flats substation so as to permit Wheatridge to make wholesale sales in interstate commerce. Consequently, Applicant has been informed by UEC that UEC waives its rights to an evidentiary hearing under Sections 210 and 211 of the FPA.

**B. Good Faith Request**

Section 211(a) requires the Applicant to make a request to the transmitting utility for transmission service at least 60 days prior to filing the application. Wheatridge made a good faith request to UEC for interconnection and transmission services as early as 2010, more than 60 days prior to filing this application. Further, Section 213(a) contains procedures for an electric utility to request service and for the transmitting utility to respond to that request. Wheatridge waives the procedures in Section 213(a) applicable to UEC and has been informed by UEC that it waives notice under Sections 211(a) and 213(a).

**C. Public Interest**

Sections 210(c) and 211(a) provide that the Commission can issue an order directing the interconnection and transmission service if the order is in the public interest and meets the requirements of Section 212. With respect to an order under Section 210, the Commission must

<sup>11</sup> E.g., *Southern Cross Transmission LLC and Pattern Power Marketing LLC*, *supra*, P 25.

<sup>12</sup> 16 U.S.C. § 796(23).

find that the order (1) is in the public interest, (2) would encourage overall conservation of energy or capital, optimize the efficiency of use of facilities and resources, or (3) improve the reliability of any electric utility system or Federal power marketing agency to which the order applies.

The Commission has previously found that “[n]ew interconnections generally meet the public interest test by making transmission service available to new generators and, thus increasing the supply of electricity and improving competition.”<sup>13</sup> Further, the Commission has previously determined that, “as a general matter, the availability of transmission service enhances competition in power markets by increasing power supply options of buyers and sales options of sellers, and that this should result in lower costs to consumers.”<sup>14</sup> The Supreme Court has agreed, finding that “[n]on-discriminatory open access to transmission services is critical to the full development of competitive wholesale generation markets and the lower consumer prices achievable through such competition” and “[e]lectricity consumers are demanding access to lower cost supplies available in other regions of the United States, and access to . . . lower cost generation resources.”<sup>15</sup>

These principles are equally applicable here, where a non-jurisdictional transmitting utility is capable and willing to provide service to a generator seeking to connect to its system to

<sup>13</sup> *Kiowa, supra*, P 36. *Accord Morgan Stanley Capital Grp. Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527, 535-36 (2008) (“*Morgan Stanley*”) (Order No. 888 transmission breaks down barriers that hinder a free market in wholesale electricity and “promote[s] competition in those areas of the industry amenable to competition, such as the segment that generates electric power, while ensuring that the . . . transmission grid . . . cannot exert monopolistic influence.”).

<sup>14</sup> *Nevada Power Co., supra*, P 17 (citing *Florida Municipal Power Agency v. Florida Power & Light Co.*, 65 FERC ¶ 61,125, *reh'g dismissed*, 65 FERC ¶ 61,372 (1993), *final order*, 67 FERC ¶ 61,167 (1994), *order on reh'g*, 74 FERC ¶ 61,006 (1996), *aff'd* 315 F.3d 362 (D.C. Cir. 2003); and *Duquesne Light Co.*, 71 FERC ¶ 61,155 at pp 61,505-06 (1995) (public interest is satisfied if the transmitting utility is fairly compensated and reliability is not unreasonable impaired).

<sup>15</sup> *Morgan Stanley Capital Grp. Inc. v. Pub. Util. Dist. No. 1, supra*, at 536.

obtain access to the wholesale market. The public interest will be served by directing UEC to provide Wheatridge the requested interconnection and transmission service to enable the sales of its wind-generated energy in broader wholesale market.

D. Reliability

Section 211(b) precludes the Commission from issuing an order directing transmission service if the Commission finds it would impair the continued reliability of the electric systems affected by the order. Since the Project is a new generation facility, the effects of its interconnection to the BPA transmission system and on affected systems have been studied by BPA with System Impact Studies and Facilities Studies to identify the upgrades necessary to the Morrow Flat substation to avoid impairment of the continued reliability of the BPA transmission system. No impacts on any other systems were identified in the BPA studies. Further, the interconnection and operation of the UEC 230kV Line and BPA's Morrow Flats 230kV substation will be performed in compliance with all applicable reliability standards.<sup>16</sup> As a result, the Commission's final order will not direct a service that impairs reliability.

E. Effect on Contracts or Rate Schedules

Section 211(c) provides that the Commission cannot order transmission service if it would replace electric energy provided to the applicant under a contract with the transmitting utility or a rate schedule on file with the Commission. Wheatridge does not currently purchase electric energy from UEC or receive transmission service from UEC, or from anyone else, since it is a new generation facility, so Section 211(c) does not preclude an order for transmission

<sup>16</sup> Section 211 of the FPA predates the inclusion of Section 215 relating to mandatory reliability standards to protect the Bulk Power System. See 16 USC § 824o.

service here. Further UEC is not subject to the Commission's jurisdiction as a public utility; therefore, it does not have any rate schedules on file with the Commission.

F. Rates

Section 212(a) requires the transmitting utility subject to an order under Section 211 to provide wholesale transmission services at rates, charges, terms and conditions that permit the recovery of the transmitting utility's costs for the transmission services and related services. Further, to the extent practicable, the recovery of such costs should be from the applicant and not the transmitting utility's existing wholesale, retail, and transmission customers. Wheatridge confirms that it will pay the costs to construct the interconnection and transmission facilities to be constructed by UEC for the Wheatridge services, as described above. Further, pursuant to the 2015 LOI and the Facilities Agreement, Wheatridge will fund the capital costs of the facilities to construct the UEC 230 kV Line and pay an appropriate cost of service rate for the interconnection and point-to-point transmission services to be provided by UEC pursuant to applicable UEC rates and policies. This will not result in subsidization of the transmission service by UEC's existing customers.

G. Sections 212(g) and 212(h) concerning retail marketing areas, retail transmission and sham transactions

Section 212(g) prohibits the Commission from issuing an order that is inconsistent with any state law governing the retail marketing areas of electric utilities. Section 212(h) provides that no order issued under the FPA can require transmission of electric energy (1) directly to an ultimate consumer, or (2) to, or for the benefit of, an entity that would sell the electric energy directly to an ultimate consumer except in circumstances not applicable in this case. The interconnection and transmission service that UEC would be directed to provide will be solely for the purpose of providing Wheatridge a reliable high voltage transmission path to the BPA

transmission system to enable Wheatridge to make sales for resale of the energy generated by its 500 MW project.

Although the transmission facilities would interconnect with part of the Project located in the franchised retail service territory of CBEC, Wheatridge emphasizes that this application is solely for the purpose of enabling transmission from the Project to the BPA transmission system for wholesale sales. Wheatridge is not seeking an order that would require the transmission of electric energy directly to an ultimately consumer, or to or for the benefit of an entity that would otherwise sell electric energy directly to an ultimate consumer. Further, whether the facilities could be used for retail service in a particular state allocated retail service territory would be determined by the Oregon Public Utility Commission under Oregon law. Therefore, the Commission order requested in this application is not prohibited by Sections 212(g) and 212(h) because it would “not compel any transaction prohibited by Section 212(g) and (h).”<sup>17</sup>

#### H. Further Procedures

Section 212(c)(1) provides that prior to issuing a final order under Section 211 the Commission must issue a proposed order establishing a reasonable time for the parties to agree to the terms and conditions under which the proposed interconnection or transmission order will be carried out, including the allocation of costs between the parties and the compensation or reimbursement due. As noted above, Wheatridge and UEC have entered into agreements under which Wheatridge will fund the capital costs of the facilities and pay an appropriate cost of service rate for the interconnection and point-to-point transmission services to be provided by UEC pursuant to applicable UEC rates and policies. As a result, Wheatridge and UEC have a voluntary framework in place to reach agreement on the terms and conditions as contemplated by

<sup>17</sup> *Kiowa, supra*, P 46.

Section 212(c)(1). Consequently, UEC has informed Wheatridge that UEC waives its right to a proposed order under Section 212(c) so that the Commission can issue a final order expeditiously.<sup>18</sup> Therefore, Wheatridge requests the Commission to issue its final order within 90 days after the date of this application (by April 5, 2017) so that the development of the Project will not be delayed.

#### IV. CORRESPONDENCE AND COMMUNICATIONS

Applicant requests that all correspondence and communications regarding this application be addressed to the following:

Andrea Wolfman  
Michael Kunselman  
Alston & Bird LLP  
950 F Street, NW  
Washington, D.C. 20426  
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<sup>18</sup> See, e.g., *PacifiCorp*, 111 FERC ¶ 61,070 P 5 (2005) (citing Order No. 888-A at p. 30,296 for the policy that upon receipt of a transmission provider's waiver of its rights to a request for service under Section 213(a) and the issuance of a proposed order under Section 212(c) the Commission will issue an order under Section 211).

V. **CONCLUSION**

For the reasons set forth above, Applicant respectfully requests the Commission to order UEC under Sections 210, 211, and 212 of the FPA to provide the requested interconnection and transmission services. Further, Wheatridge requests the Commission to issue its final order within 90 days after the date of this application.

Respectfully submitted,

/s/ Andrea Wolfman

Andrea Wolfman  
Michael Kunselman

*Counsel to Wheatridge Wind Energy, LLC*

Date: January 6, 2017

**AFFIDAVIT OF SERVICE**



**AFFIDAVIT OF SERVICE**

Pursuant to 18 C.F.R. § 36.1(b)(2), I, being duly sworn, state that the entities identified on the following page have been provided notice that Wheatridge Wind Energy, LLC this day filed with the Federal Energy Regulatory Commission the foregoing Application For Order Directing Generator Interconnection And Transmission Service pursuant to Sections 210, 211, and 212 of the Federal Power Act ("FPA"), 16 U.S.C. §§ 824i, 824j, and 824k, requiring Umatilla Electric Cooperative to interconnect with the applicant's proposed 500 MW wind-generation project and to provide transmission service to a substation owned and operated by the Bonneville Power Administration. This order is requested to clarify that the provision of such service is consistent with the requirements of a transmitting utility under Sections 210, 211 and 212 of the Federal Power Act. This notice and the forgoing application have been served pursuant to 18 C.F.R. § 385.2010 of the regulations of the Federal Energy Regulatory Commission.

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Sworn and subscribed before me to this 6th day of January, 2017.

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Notary Public

My Commission expires:

**Affected Parties Served:**

<p><b>Bonneville Power Administration, U.S. Dept. of Energy</b></p> <p>Timothy A. Johnson Assistant General Counsel for Power Bonneville Power Administration Post Office Box 3261 - LP Portland, OR 97208-3621 Telephone: 503-230-5285 Fax: 503-230-7405 Email: <a href="mailto:tajohnson@bpa.gov">tajohnson@bpa.gov</a></p> <p>Mary K. Jensen Assistant General Counsel for Transmission Bonneville Power Administration Post Office Box 3261 - LT Portland, OR 97208-3621 Telephone: 503-230-5758 Fax: 503-230-7405 Email: <a href="mailto:mkjensen@bpa.gov">mkjensen@bpa.gov</a></p>	<p><b>Umatilla Electric Cooperative</b></p> <p>Robert Echenrode General Manager &amp; CEO Umatilla Electric Cooperative 750 West Elm Ave. PO Box 1148 Hermiston, OR 97838 Telephone: (541) 564-4348 Fax: (541) 567-8142 E-Mail: <a href="mailto:Robert.echenrode@umatillaelectric.com">Robert.echenrode@umatillaelectric.com</a></p> <p>Thomas M. Grim Cable Huston 1001 SW Fifth Ave., Suite 2000 Portland, OR 97204-1136 Telephone: (503) 224-3092 Fax: (503) 224-3176 E-Mail: <a href="mailto:tgrim@cablehuston.com">tgrim@cablehuston.com</a></p>
<p><b>Oregon Public Utility Commission</b></p> <p>201 High Street, SE Suite 100 PO Box 1088 Salem OR 97301 <a href="mailto:puc.commission@state.or.us">puc.commission@state.or.us</a></p>	<p><b>Columbia Basin Electric Cooperative</b></p> <p>Thomas Wolff Columbia Basin Electric Cooperative 171 Linden Way PO Box 398 Heppner OR 97836-0398 Telephone: 541-676-9146 Fax: 541-676-5159 <a href="mailto:tommyw@columbiabasin.cc">tommyw@columbiabasin.cc</a></p>

**FORM OF NOTICE**

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Wheatridge Wind Energy, LLC

Docket No. TX17-\_\_-000

NOTICE OF FILING

(January , 2017)

Take notice that on January \_\_, 2017, pursuant to sections 210, 211, and 212 of the Federal Power Act, 16 USC 824i, 824j, 824k, and Part 36 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR Part 36, Wheatridge Wind Energy, LLC submitted an application for an order directing the provision of interconnection and transmission service.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date:

Secretary

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**CERTIFICATE OF FILING**

I hereby certify that on January 13, 2017, on behalf of Columbia Basin Electric Cooperative, Inc. I filed the foregoing COMPLAINT with the Public Utility Commission; Att'n Filing Center, by electronic transmission to [puc.filingcenter@state.or.gov](mailto:puc.filingcenter@state.or.gov).

KINDLEY LAW PC

By /s/ Raymond S. Kindley  
Raymond S. Kindley, OSB No. 964910  
Of Attorneys for Complainant  
Columbia Basin Electric Cooperative, Inc.

## NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Oregon law requires state agencies to provide parties written notice of contested case rights and procedures. Under ORS 183.413, you are entitled to be informed of the following:

**Hearing:** The time and place of any hearing held in these proceedings will be noticed separately. The Commission will hold the hearing under its general authority set forth in ORS 756.040 and use procedures set forth in ORS 756.518 through 756.610 and OAR Chapter 860, Division 001. Copies of these statutes and rules may be accessed via the Commission's website at [www.puc.state.or.us](http://www.puc.state.or.us). The Commission will hear issues as identified by the parties.

**Right to Attorney:** As a party to these proceedings, you may be represented by counsel. Should you desire counsel but cannot afford one, legal aid may be able to assist you; parties are ordinarily represented by counsel. The Commission Staff, if participating as a party in the case, will be represented by the Department of Justice. Generally, once a hearing has begun, you will not be allowed to postpone the hearing to obtain counsel.

**Administrative Law Judge:** The Commission has delegated the authority to preside over hearings to Administrative Law Judges (ALJs). The scope of an ALJ's authority is defined in OAR 860-001-0090. The ALJs make evidentiary and other procedural rulings, analyze the contested issues, and present legal and policy recommendations to the Commission.

**Hearing Rights:** You have the right to respond to all issues identified and present evidence and witnesses on those issues. *See* OAR 860-001-0450 through OAR 860-001-0490. You may obtain discovery from other parties through depositions, subpoenas, and data requests. *See* ORS 756.538 and 756.543; OAR 860-001-0500 through 860-001-0540.

**Evidence:** Evidence is generally admissible if it is of a type relied upon by reasonable persons in the conduct of their serious affairs. *See* OAR 860-001-0450. Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on grounds that the evidence is unreliable, irrelevant, repetitious, or because its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay. The order of presenting evidence is determined by the ALJ. The burden of presenting evidence to support an allegation rests with the person raising the allegation. Generally, once a hearing is completed, the ALJ will not allow the introduction of additional evidence without good cause.

**Record:** The hearing will be recorded, either by a court reporter or by audio digital recording, to preserve the testimony and other evidence presented. Parties may contact the court reporter about ordering a transcript or request, if available, a copy of the audio recording from the Commission for a fee set forth in OAR 860-001-0060. The hearing record will be made part of the evidentiary record that serves as the basis for the Commission's decision and, if necessary, the record on any judicial appeal.

**Final Order and Appeal:** After the hearing, the ALJ will prepare a draft order resolving all issues and present it to the Commission. The draft order is not open to party comment. The Commission will make the final decision in the case and may adopt, modify, or reject the ALJ's recommendation. If you disagree with the Commission's decision, you may request reconsideration of the final order within 60 days from the date of service of the order. *See* ORS 756.561 and OAR 860-001-0720. You may also file a petition for review with the Court of Appeals within 60 days from the date of service of the order. *See* ORS 756.610.