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ADMITTED IN OREGON AND WASHINGTON

April 17, 2014

VIA ELECTRONIC AND U.S. MAIL

PUC Filing Center
Public Utility Commission of Oregon
P.O. Box 2148
Salem, OR 97308-2148

**Re: UM1670 – Columbia Basin Electric Cooperative vs Pacific Power &
North Hurlburt Wind LLC**

Attention Filing Center:

Enclosed for filing in docket UM-1670, are an original and two copies of Columbia Basin Electric Cooperative's Reply to the Defendants' Responses to the Cooperative's Motion to Amend Complaint.

A copy of this filing has been served on all parties to this proceeding as indicated on the attached certificate of service.

Please contact this office with any questions.

Sincerely,

/s/ Raymond S. Kindley

Raymond S. Kindley
Attorney for Columbia Basin Electric Cooperative, Inc.

cc: UM 1670 Service List

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of April 2014, I served the foregoing document upon the persons named on the service list by electronic mail only as all parties have waived paper service.

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**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

UM 1670

COLUMBIA BASIN ELECTRIC)	
COOPERATIVE, INC., an Oregon)	
cooperative corporation,)	REPLY OF COLUMBIA BASIN
)	ELECTRIC COOPERATIVE, INC. TO
Complainant,)	NORTH HURLBURT WIND, LLC AND
)	PACIFICORP'S RESPONSES TO
v.)	COLUMBIA BASIN ELECTRIC
)	COOPERATIVE, INC.'S MOTION TO
PACIFICORP, dba Pacific Power, an Oregon)	AMEND COMPLAINT
business corporation,)	
)	
Defendant,)	
)	
and)	
)	
NORTH HURLBURT WIND, LLC, a foreign)	
limited liability company,)	
)	
Defendant.)	
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I. INTRODUCTION

Columbia Basin Electric Cooperative, Inc., (the "Cooperative") replies to North Hurlburt Wind, LLC's and Pacific Power's responses to the Cooperative's motion to amend its complaint in this proceeding.

II. FACTS

The Cooperative has brought this action for violations of the territory allocation statues as set forth ORS §§ 758.400 to 758.475 and the Oregon Public Utility Commission Order #38089.

The operative language under ORS 758.450(2) provides that no "person shall offer, construct or

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extend utility service in or into an allocated territory.” The Cooperative claims that North Hurlburt Wind, LLC, Pacific Power, Caithness Shepherds Flat, LLC, South Hurlburt Wind, LLC, and Horseshoe Bend Wind, LLC have individually or collectively provided utility service into, and in, the Cooperative’s exclusive service territory.

The Commission granted the Cooperative Order #38089 in 1961, which provides the Cooperative with the exclusive right to provide utility service in its service territory.

The Cooperative’s motion to amend its complaint claims that Caithness Shepherds Flat, LLC purchases power, pursuant to a power purchase agreement, from Pacific Power at Pacific Power’s Schedule 47, a retail, industrial power rate. Pacific Power and North Hurlburt do not dispute those claims in their response in opposition to the Cooperative’s motion to amend.

The Cooperative also claims that after the power purchase from Pacific Power, Caithness Shepherds Flat, LLC then distributes that power to North Hurlburt Wind, LLC, South Hurlburt Wind, LLC and Horseshoe Bend Wind, LLC. The three owners of the wind projects then transmit the power across electrical facilities that are jointly owned by the three wind projects. The jointly owned electrical facilities carry the power from the Bonneville Power Administration’s Slatt Substation to the collector substations for each of the wind projects.

Contrary to North Hurlburt Wind, LLC’s contentions, Caithness Shepherds Flat, LLC does not simply act as a “billing agent” or a “bookkeeper” for North Hurlburt Wind, LLC, South Hurlburt Wind, LLC or Horseshoe Bend Wind, LLC. It is the parent corporation and has management control over its three subsidiaries. It also plays a key role in supplying power to

serve the station-service loads of the three projects by its purchase of the power from Pacific Power.

The entire wind project owned by Horseshoe Bend Wind, LLC and a portion of the wind project owned by South Hurlburt Wind, LLC are located in the Cooperative's exclusive service territory. As described by North Hurlburt Wind, LLC in its response, the consumption of the power by these two wind projects occurs primarily at the individual wind generation facilities for each project. Therefore, the station service power used by these wind projects is not consumed at the Slatt Substation or in Pacific Power's service territory. Pacific Power is also not providing "retail service" to loads located at the Slatt Substation.

III. ARGUMENT

A. North Hurlburt Wind LLC's Argument that It Has Not Violated the Commission's Order Is Not Relevant to the Cooperative's Motion to Amend Its Complaint.

Oregon statutes, ORS § 756.500, permit a complainant to amend its complaint at any time before the completion of taking evidence by order of the Commission. The Commission should freely permit such amendment "when justice so requires." *Reeves v. Reeves*, 203 Or. App. 80, 84, 125 P.3d 755 (2005). Furthermore, ORCP 28 permits the joining of additional defendants and claims if the complainant asserts against them any right to relief that arises out the same transactions or occurrences. The Cooperative stated in its motion to amend that its claims arise from the same transactions and joint actions taken by North Hurlburt Wind, LLC, Caithness Shepherds Flat, LLC, South Hurlburt Wind, LLC, and Horseshoe Bend Wind, LLC.

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Additionally, the Cooperative argued that the current parties would not be prejudiced by the joining of the new parties or remedy against Pacific Power.

North Hurlburt Wind, LLC's response did not dispute the Cooperative's claims in its motion or its legal arguments. Instead, North Hurlburt Wind, LLC's initial argument is that no one has violated the Commission's Order #38089 because no one has provided "utility service" in the Cooperative's territory. That argument goes to the merits of the case in respect to the definition of the term "utility service" and whether the defendants have provided utility service in the Cooperative's exclusive service territory. The Cooperative obviously disagrees and will provide its factual and legal arguments as to the merits of this case when it is appropriate.

The issue is whether the Commission has the authority to hear claims alleging a person has provided utility service in violation of Oregon statutes or orders. North Hurlburt Wind, LLC's arguments concerning the merits of the case in respect to the Cooperative's motion to amend, therefore, are not relevant or grounds for objecting to the Cooperative's motion. North Hurlburt Wind, LLC's first argument should be ignored.

B. The Cooperative's Complaint Before the Commission Can be Maintained Against the Added and Current Defendants Under ORS § 756.500.

The Commission does have authority to regulate any person who provides utility service. Thus, the Cooperative has the right to file a complaint before the Commission claiming a person has provided utility service in its service territory in violation of Oregon statutes or the Commission's orders.

The Cooperative filed its complaint with the Commission under ORS § 756.500(1), which provides in relevant part:

(1) Any person may file a complaint before the Public Utility Commission, or the commission may, on the commission's own initiative, file such complaint. *The complaint shall be against any person whose business or activities are regulated by some one or more of the statutes, jurisdiction for the enforcement or regulation of which is conferred upon the commission. . . .* [Emphasis added]

Clearly, ORS § 756.500(1) grants express authority to any person to file a complaint before the Commission if such complaint alleges claims against any person whose business or activities are regulated by any statute for which the Commission has jurisdiction.

ORS § 758.405 grants the Commission express authority to regulate territory allocation issues under ORS §§ 758.400 to 758.475:

The elimination and future prevention of duplication of utility facilities is a matter of statewide concern; and in order to promote the effective and economic use and development and the safety of operation of utility service while providing adequate and reasonable service to all territories and customers affected thereby, *it is necessary to regulate in the manner provided in ORS 758.400 to 758.475 all persons and entities providing utility service.* [Emphasis added.]

This statute provides the Commission with express statutory authority to regulate, under the statutes set forth in ORS §§ 758.400 to 758.475, "all persons and entities" providing utility service.

ORS 758.400(2) defines the term "person" as "individuals, firms, partnerships, corporations, associations, cooperatives and municipalities, or their agents, lessee, trustee or referee." The Cooperative claims that the current defendants, North Hurlburt Wind, LLC and Pacific Power, and the proposed defendants, Caithness Shepherds Flat, LLC, Page 5 – CBEC'S REPLY TO DEFENDANTS' RESPONSES TO MOTION TO AMEND

South Hurlburt Wind, LLC, and Horseshoe Bend Wind, LLC, fall within the definition of the term “person.”

Furthermore, ORS 758.400(3) provides, “[u]tility service means service provided by any equipment, plant or facility for the distribution of electricity to users . . .” The Cooperative claims that the current and prospective defendants provide “utility service” in the Cooperative’s exclusive service territory.

The Cooperative’s claims are substantiated by North Hurlburt Wind, LLC’s statements and public documents. North Hurlburt Winds, LLC’s response and documents filed by defendants at the Federal Regulatory Commission show that the electrical facilities jointly owned by North Hurlburt Wind, LLC, South Hurlburt Wind, LLC, and Horseshoe Bend Wind, LLC are used by them to distribute electrical power, purchased by Caithness Shepherd Flat, LLC from Pacific Power, to service the station-service loads of users, Horseshoe Bend Wind, LLC and South Hurlburt Wind, LLC, located in the Cooperative’s exclusive service territory. *See* North Hurlburt Wind, LLC Response at p. 2-7 and Declaration of Raymond S. Kindley in Support of Columbia Basin Electric Cooperative, Inc.’s Motion to Amend, Exhibit 2. For the purposes of amending its complaint, the Cooperative claims squarely fall within the scope of the Commission’s regulatory authority.

North Hurlburt Wind, LLC’s contends, however, that it, Caithness Shepherds Flat, LLC, South Hurlburt Wind, LLC and Horseshoe Bend Wind, LLC are not a “public

utility” as defined in ORS 757.500(1)(a) and are not “persons” whose business is regulated by the Commission. As discussed above, the Commission regulates “all persons and entities” providing utility service under the statutes set forth in ORS §§ 758.400 to 758.475. The issue of whether the defendants are a “public utility” is not relevant.

Under the express statutory authority set forth in ORS §§ 756.500(1) and 758.400 to 758.475, the Commission regulates all of the current and prospective defendants and the Cooperative has the right file a complaint, and to amend its complaint, for review by the Commission.

C. The Cooperative Did Not Mistakenly Name North Hurlburt Wind, LLC as a Defendant

North Hurlburt Wind, LLC claims that the Cooperative mistakenly named North Hurlburt Wind, LLC as a defendant in the Cooperative’s initial complaint. Its claim is based on misrepresenting a statement set forth in the Cooperative’s motion to amend. The statement provides:

The Cooperative named Pacific Power and North Hurlburt Wind, LLC as the defendants in its initial complaint based on incorrect information available to the Cooperative at the time.

Nothing in the above sentence states that the Cooperative made a mistake in naming North Hurlburt Wind, LLC as a defendant. It simply means that the Cooperative limited the defendants in its initial complaint to only Pacific Power and North Hurlburt Wind, LLC based on

incorrect information. The incorrect information was provided by North Hurlburt Wind, LLC counsel, John Cameron, who stated in an email that North Hurlburt Wind, LLC was a customer of Pacific Power “purchasing in aggregate for North, Central and South” Shepherds Flat Wind projects. The email further provides, “Pacific serves 100% of that load.” *See* Cooperative’s Complaint, Exhibit 7. The Cooperative is attempting to amend its complaint based on correct information provided through discovery.

The Cooperative also is not requesting the Commission to remove North Hurlburt Wind, LLC as a defendant. As stated above, North Hurlburt Wind, LLC is one of the owners of the joint facilities used to provide utility service into, and in, the Cooperative’s exclusive service territory. The Cooperative was correct in naming North Hurlburt Wind, LLC as defendant in its initial complaint and correct in retaining it as a defendant in its amended complaint.

D. The Cooperative Would be Prejudiced by Denial of Its Request for Treble Damages and Fees Against Pacific Power.

Pacific Power argues that the Commission should deny the Cooperative’s motion to amend because of the Cooperative’s inclusion of an additional remedy of treble damages and attorneys’ fees under ORS § 756.185. Pacific Power claims the Commission lacks authority to grant treble damages and attorneys fees.

The Cooperative believes ORS § 756.185 should not be construed as narrowly as Pacific Power alleges. ORS § 756.185(1) states that any public utility is subject to treble damages for violations under ORS chapters 756, 757 or 758. It does not state that only courts may award those treble damages. Denying the Cooperative’s motion to amend its complaint would

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preclude the Cooperative from arguing the Commission does have the authority to grant treble damages. Denying the Cooperative the opportunity to make its argument would be prejudicial to the Cooperative.

Additionally, if the Commission denies the Cooperative's entire motion to amend its based on Pacific Power's objections to the inclusion of a claim for treble damages and attorneys' fees, the Cooperative would incur additional costs and time to refile another amended complaint. The Cooperative would be prejudiced by those additional fees, time and delay in this proceeding.

IV. CONCLUSION

For the reasons set forth above, Columbia Basin Electric Cooperative, Inc. respectfully requests that its Motion to Amend Complaint be granted. If the Commission determines that the Cooperative's complaint should not include the additional remedy for treble damages or attorneys' fees under ORS § 756.185, the Cooperative respectfully requests the Commission's order to only deny that aspect of the Complaint and permit the other proposed amendments to be granted.

Respectfully submitted this 17th day of April, 2014.

By /s/ Raymond S. Kindley
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Attorney for Columbia Basin Electric
Cooperative, Inc.