

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 1818**

COLUMBIA BASIN ELECTRIC  
COOPERATIVE, INC. an Oregon  
cooperative corporation

Complainant,

v.

UMATILLA ELECTRIC  
COOPERATIVE, INC., an Oregon  
cooperative corporation

Defendant.

UMATILLA ELECTRIC  
COOPERATIVE'S RESPONSE TO  
COLUMBIA BASIN ELECTRIC  
COOPERATIVE'S MOTION TO  
CERTIFY

Pursuant to OAR 860-001-0420(4), Umatilla Electric Cooperative (“UEC”) files this response to Columbia Basin Electric Cooperative, Inc.’s (“CBEC”) motion to certify Chief ALJ Nolan Moser’s Ruling dated February 28, 2019 holding this proceeding in abeyance for the consideration of the Public Utility Commission of Oregon (“Commission”) and to take Official Notice of the te Velde bankruptcy matter (“CBEC’s Motion”). UEC agrees with a portion of CBEC’s Motion but disagrees with the majority of CBEC’s request and CBEC’s inaccurate framing of the “primary” and “secondary” issues in this proceeding.

UEC agrees with CBEC that the Commission can confirm its authority to apply the geographic load center test based on the record in this proceeding so that utilities and customers understand what legal standard applies to disputes such as this one.<sup>1</sup> UEC has consistently taken the position that the geographic load center test applies in this case consistent with the precedent

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<sup>1</sup> CBEC’s Motion at 7.

established in Docket UM 1670. CBEC appeared to agree with that position in testimony, but then changed course and challenged the Commission's legal authority to apply that test in response to the overwhelming evidence that Mr. te Velde's load was unified for purposes of the geographic load center test.<sup>2</sup> UEC responded that CBEC's legal challenge was an improper collateral attack on the Commission's order in Docket UM 1670 establishing the geographic load center test,<sup>3</sup> a docket in which CBEC supported the Commission's authority to apply that test. UEC also responded that the case law cited by CBEC in opposing that test was not controlling and that applying the geographic load center test is consistent with Oregon's territory allocation law.<sup>4</sup> It would be helpful to have the Commission resolve this legal issue now so that utilities and customers know the proper standard to use in cases where a customer's property straddles different utilities' service territories. Resolving this legal issue now would also prevent future litigation by utilities like CBEC that support the geographic load center test when it benefits them but oppose that same test when it is to their detriment.

UEC does not object to CBEC's request to have the Commission take official notice of the te Velde bankruptcy and underlying pleadings, but CBEC's argument that the bankruptcy and subsequent sale of the property somehow supports its argument should be dismissed.<sup>5</sup> While the public records in the te Velde bankruptcy, including the sale of the property, the environmental clean-up, the accelerated removal of the trees associated with the Boardman tree farm, and the sale of the cattle, may have some limited application to the disputed issues in this proceeding, the operation for te Velde and the new owner, both in terms of property and electric load, remains

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<sup>2</sup> Compare CBEC/100, Wolff/2-3 (arguing that UEC's utility service to Willow Creek Dairy is not a single, unified load) with CBEC's Motion at 3 (stating that a primary issue before this Commission is "whether the Commission has the statutory authority to apply the geographic load center test).

<sup>3</sup> UEC's Response to CBEC's Opening Brief at 13-15.

<sup>4</sup> *Id.* at 16-18.

<sup>5</sup> CBEC's Motion at 6.

centered in UEC's service territory. These facts have not changed. Once the Commission has confirmed its authority to apply the geographic load center test, the determination of whether there is a unified load can easily be made based on the existing record, even as modified by the public records in the bankruptcy proceeding.

## **RESPONSE**

Despite CBEC's overly complicated framing of the "primary" and "secondary" issues that need to be resolved, the dispute in this proceeding is simple. CBEC's Complaint alleged that UEC was providing utility service to Mr. te Velde d/b/a Willow Creek Dairy and that UEC's action of providing such service violates ORS 758.450 and CBEC's rights to an exclusive service territory.<sup>6</sup> The complaint arose because UEC was serving te Velde's 7,000 acre farming and dairy operation, which had six (out of 49 planned) irrigated crop circles located in CBEC's territory.<sup>7</sup> It was, and remains, undisputed that the vast majority of the electrical load, majority of the operation, and majority of the property is located in UEC's service territory.<sup>8</sup>

After the parties filed testimony and briefed the issues, on April 26, 2018, Mr. te Velde filed a voluntary petition for relief under Title 11 of the United States Bankruptcy Code.<sup>9</sup> As the then-current electric service provider, UEC entered into an Adequate Assurance Stipulation under Section 366 of the Bankruptcy Code requiring UEC to continue to serve the debtor's operation so long as the debtor continued to pay for electric services.<sup>10</sup>

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<sup>6</sup> CBEC's Complaint at 8.

<sup>7</sup> WCD/100, Aylett/2.

<sup>8</sup> UEC/100, Lankford/3.

<sup>9</sup> Order Granting Motion By Chapter 11 Trustee to Sell Real and Personal Property Free and clear of Liens and Interests, Doc ID 1607 at 3, *In re te Velde*, No. 18-11651 A-11 (Bankr. E.D. Cal. Feb. 11, 2019).

<sup>10</sup> Adequate Assurance Stipulation by and between Gregory John te Velde and Umatilla Electric Cooperative, Doc ID 440, *In re te Velde*, No. 18-11651 A-11 (Bankr. E.D. Cal. June 25, 2018).

Based on the public records in Mr. te Velde's bankruptcy: (a) the property was sold by public auction to Canyon Farms, LLC;<sup>11</sup> (b) the dairy cows have been sold separately from the property;<sup>12</sup> (c) a significant clean-up must occur on portions of the property;<sup>13</sup> (d) the trees associated with the Boardman tree farm will be removed on an accelerated basis;<sup>14</sup> and (e) the dairy portion of the operation (i.e. non-agricultural portion) has been discontinued, at least temporarily.<sup>15</sup> Representatives of Canyon Farms, LLC contacted UEC and asked to transfer all accounts serving the property to Easterday Farms, including the account and meter that serves the 6 crop circles located in CBEC's service territory.<sup>16</sup> All of the electric service thus goes to a single customer that will continue the agricultural portion of the operation until the dairy can be operated.

Even though some facts have changed since the briefing was completed (like the owner of the property and temporary discontinuation of the dairy operation), the evidence presented to the Commission demonstrated that whether the load drawn by the facilities is measured by actual usage or installed capacity, more than 95 percent of the load was located in UEC's service territory.<sup>17</sup> The evidence also demonstrated that a similar outcome occurs even if the Commission makes the determination that the agricultural operations have a load distinct from the rest of the dairy operation.<sup>18</sup> For example, the six irrigation pivots in CBEC's territory are

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<sup>11</sup> Order Granting Motion *supra* note 8, at 4.

<sup>12</sup> Order Granting Trustee's Motion for Order Authorizing Sale of Lost Valley Farm Livestock Herd by Public Auction Free and Clear of Liens and to Pay Auctioneer's Commission and Expenses, Doc ID 1119, *In re te Velde*, No. 18-11651 A-11 (Bankr. E.D. Cal. Nov. 14, 2018).

<sup>13</sup> Exhibit 1, Order and Mutual Agreement (Lost Valley Farm) at 10-18, Exhibits to Declaration of Randy Sugarman in Support of Motion for Order Authorizing Compromise of Controversy with Oregon Department of Agriculture, Doc ID 1477, *In re te Velde*, No. 18-11651 A-11 (Bankr. E.D. Cal. Jan. 22, 2019).

<sup>14</sup> Motion for Order Authorizing Compromise of Controversy with Boardman Tree Farm, LLC, Doc ID 1585 at 3-4, *In re te Velde*, No. 18-11651 A-11 (Bankr. E.D. Cal. Feb. 27, 2019).

<sup>15</sup> Exhibit 1, *supra* note 12, at 10-18 (terminating the CAFO permit).

<sup>16</sup> UEC's Notice of Contract from Buyer of Willow Creek Dairy (Mar. 7, 2019).

<sup>17</sup> UEC/100, Lankford/3.

<sup>18</sup> UEC/100, Lankford/3-4.

only twelve percent of the total number of irrigation pivots. Each pivot has a similar load, meaning that 88 percent of the load from the pivots is located in UEC's service territory.<sup>19</sup> This evidence is particularly important now that the cattle have been sold and the dairy operation has been discontinued, at least temporarily, and there is no evidence in the record of this proceeding or in the bankruptcy proceeding that the agricultural portion of the operation has been eliminated. To the contrary, the evidence in the bankruptcy proceeding is that the agricultural operation will continue and, indeed, increase as the removal of the remaining trees on the property will be removed on a faster-than-planned schedule to make room for additional agricultural activities.<sup>20</sup>

CBEC will argue that the facts have changed and that it needs to reopen the record to relitigate the issues. But the record already contains evidence about the operation and whether it is a unified load, even if the agricultural portion is viewed as distinct from the dairy portion of the operation. In fact, in many respects, the issues are even less complicated now because the Commission can look at the agricultural operation only. Assuming the Commission confirms its authority to use the geographic load center test, it is hard to imagine a situation where the six crop circles in CBEC's territory would be totally unrelated and independent of the farming operation on the rest of the property.

The Commission should also reject CBEC's continued argument that the future plans for the property are too speculative for the Commission to determine whether there is a unified load.<sup>21</sup> Under CBEC's theory, the Commission could never make a determination of whether

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<sup>19</sup> UEC/100, Lankford/4.

<sup>20</sup> Motion for Order Authorizing Compromise, *supra* note 14, at 3-4.

<sup>21</sup> CBEC's Motion at 6.

there is a unified load until an operation is fully developed and there is no chance that plans could change in the future.

Finally, CBEC's Motion complains that the Commission has not yet entered an order in this case.<sup>22</sup> UEC notes, however, that the Commission was unable to enter an order impacting the bankruptcy estates of Mr. te Velde without seeking consent from the bankruptcy court. UEC was required to provide electrical service to the entire property (including the portion in CBEC's service territory) under the Adequate Assurance Stipulation under Section 366 of the Bankruptcy Code.<sup>23</sup> Now that the property has been sold, and is no longer an asset of the bankruptcy estate, it would be proper for the Commission to enter an order in this proceeding.

### **CONCLUSION**

UEC agrees that it would be helpful for the Commission, at a minimum, to confirm its authority to apply the geographic load center test so that UEC and CBEC can apply the appropriate legal standard to the operation of the new owner of the property and to any other areas where a customer may straddle both service territories. Once the Commission confirms its authority to apply the geographic load center test, the record contains sufficient evidence about the farming operation and whether it qualifies as a unified load, now that the cows have been sold and the dairy operation has been temporarily discontinued. If other facts change in the future, the parties can determine the appropriate application of the geographic load center test at that time, with or without the Commission's involvement as appropriate.

*[Signature Page Follows]*

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<sup>22</sup> *Id.* (arguing that "a justiciable controversy exists right now" and "should be ruled upon by the Commission").

<sup>23</sup> Adequate Assurance Stipulation, *supra* note 9, at 2.

Dated this 28<sup>th</sup> day of March 2019.

Respectfully submitted,



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