

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1823

COLUMBIA BASIN ELECTRIC
COOPERATIVE, INC. an Oregon
cooperative corporation

Complainant,

v.

UMATILLA ELECTRIC
COOPERATIVE, INC., an Oregon
cooperative corporation

Defendant.

UMATILLA ELECTRIC
COOPERATIVE INC.'S RESPONSE
TO COLUMBIA BASIN ELECTRIC
COOPERATIVE'S MOTION TO
COMPEL

Introduction

Defendant Umatilla Electric Cooperative, Inc. ("UEC") respectfully requests that the Administrative Law Judge ("ALJ") deny Columbia Basin Electric Cooperative Inc.'s ("CBEC") Motion to Compel ("Motion"). UEC has produced over 3,000 pages of documents and has segregated those documents on Huddle as appropriate under the Public Utility Commission of Oregon ("PUC" or "Commission") rules. CBEC complains that UEC's production of documents is disorganized, delayed, and incomplete; UEC disagrees with CBEC's complaints. If there is any difficulty with UEC's production, it is because CBEC's 43 data requests are unreasonably cumulative, duplicative, overly broad, unduly burdensome, and seek irrelevant or non-existent information that is not reasonably calculated to lead to the discovery of admissible evidence. CBEC is simply seeking information that is not relevant or appropriate, with the goal of delay and unnecessarily complicating this proceeding.

Legal Standard

Under the Oregon Rules of Civil Procedure (“ORCP”), “parties may inquire regarding any matter, not privileged, which is relevant to the claim or defense of the party seeking discovery or to the claim or defense of any other party.”¹ Relevant evidence is evidence that tends to make the existence of any fact at issue in the proceeding more or less probable than it would be without the evidence—and be of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs.² The Oregon courts and the Commission have affirmed that the information sought in discovery must be reasonably calculated to lead to the discovery of admissible evidence.³

Background

CBEC filed its Complaint against UEC on January 13, 2017, alleging various violations of Oregon’s territorial allocation law, ORS 758.400 *et seq.* The Complaint alleges two specific claims for relief. In its First Claim for Relief, CBEC alleges that UEC is providing utility service to Willow Creek Dairy and that UEC’s action of providing such service violates ORS 758.450 and CBEC’s exclusive service territory.⁴ In its Second Claim for Relief, CBEC alleges that UEC is proposing to build an approximately 25 mile interstate transmission line to transmit power from the Wheatridge Wind Energy, LLC project (“Wheatridge Project”) in CBEC’s service territory to a point of interconnection with a Bonneville Power Administration (“BPA”) substation in UEC’s service territory, and that UEC’s proposed actions violate ORS 758.450(2)

¹ ORCP 36 B(1). The Oregon Rules of Civil Procedure apply in Commission contested case and declaratory ruling proceedings unless inconsistent with Commission rules, a Commission order, or an Administrative Law Judge ruling. *See* OAR 860-001-0000(1).

² OAR 860-001-0450.

³ *In re Portland Extended Area Service Region*, Docket No. UM 261, Order No. 91-958 at 5 (Jul. 31, 1991); *See Baker v. English*, 324 Or. 585, 588 n.3 (1997).

⁴ Complaint at ¶¶ 34-35.

and CBEC's exclusive service territory.⁵ CBEC's Complaint asserts other allegations with respect to actions taken by Mariah Wind, LLC, but the Complaint does not assert a specific Claim for Relief against UEC with respect to that project.

UEC filed an Answer to the Complaint that denies most of the factual allegations in the Complaint and asserts multiple Affirmative Defenses. On February 10, 2017, UEC moved to bifurcate the Willow Creek and Wheatridge Project matters because the allegations do not involve the same facts, parties, or applicable law. On March 20, 2017, the Commission granted UEC's motion to bifurcate and created a new docket for the Wheatridge matter—UM 1823. The Willow Creek matter remained docketed as UM 1818. Discovery began before the matters were bifurcated, and before the parties had access to Huddle.

Argument

At the outset, CBEC has not complied with its obligation to confer and operate in good faith to informally resolve its disagreements before filing its Motion. On several occasions, counsel for UEC attempted to schedule a telephone conference with counsel for CBEC to discuss discovery related issues and to possibly narrow the issues in dispute, but CBEC's counsel refused to participate in a telephone conference, instead demanding that detailed written responses be provided. Although counsel for UEC provided written responses, the parties' written communications clearly did not operate to provide additional clarity about the issues and telephone communication could have assisted in this regard.

Moreover, CBEC has not complied with the ALJ's recent ruling in this matter on May 3, 2017, where the ALJ expressly requested that the parties: (1) attempt to resolve the discovery request informally, and if they are unable; (2) attempt to agree on one of the options presented in

⁵ Complaint at ¶¶37-39.

the ruling for addressing the dispute. Those options included an informal telephone conference with the ALJ, a formal adjudication process in front of the ALJ, or a motion to compel. While the parties were obviously not able to resolve their dispute informally, CBEC made no attempt to agree on one of the dispute resolution options in the ALJ's ruling and, instead, simply filed its Motion. For those reasons alone, CBEC's Motion should be denied.

CBEC has engaged in expansive discovery well beyond what is reasonable or allowed under the PUC's rules. The Wheatridge Project involves interstate transmission service from a renewable generation project to a point of interconnection with a BPA substation in UEC's territory. The facts are not complicated, the route and purpose of the line is known, and the contract documents have been disclosed. But CBEC's goal is to slow down the proceeding and complicate matters to avoid what is clearly a FERC jurisdictional issue. CBEC's discovery has gone well beyond what is relevant or reasonably calculated to lead to the discovery of admissible evidence.

The issues raised in the Motion, however, are unrelated to the scope of discovery and, instead, appear to take issue only with the manner in which UEC has responded. Despite the production of over 3,000 pages of documents, CBEC indicates that it has not been able to review the documents produced to date efficiently and is reserving the right to file an additional motion to compel as it continues its review of documents.

CBEC complains that the documents are not segregated individually for each of the 43 data requests. This is false and misleading. UEC acknowledges that its first production to CBEC, prior to when Huddle was available, did not separate documents to correspond with the relevant request. But UEC has since segregated documents that have been produced. Within the limits of Huddle, UEC has used reasonable efforts to segregate all documents produced to date. Each file indicates in the file name and in a separate note the request or requests the documents

in that file responds to. This includes documents produced before Huddle was made available, and nearly all of the documents originally produced have been separated and labeled to correspond with CBEC's requests. The remainder will be uploaded in that manner by May 31, 2017.

CBEC nevertheless complains that UEC "has continued to group some DRs on Huddle" because, for example, the uploaded documents include "documents that are responsive to each of the following CBEC data requests: #4, #25, #26, #28, #29, #30, #32, #37, and #40."⁶ This is true, but equally misleading. The grouping of data requests is not a combination of responses in one file. Rather, such grouping is required because, as noted, the documents in those files are responsive to each of the listed requests. It is impossible to segregate all documents further because CBEC's requests are extremely broad and overlapping. For example, the Facilities Agreement between UEC and Wheatridge that UEC produced is responsive to CBEC request #4, which seeks "all Documents relating to Wheatridge Wind Energy, LLC's request to Umatilla for point-to-point transmission service," as well as CBEC request #25, among others, which seeks "all Documents that support or relate to Umatilla's admission in paragraphs 26 and 38 of its Answer...." Because that document is responsive to both requests, UEC properly produced the document and expressly noted that it is responsive to each of those requests. It would be unreasonable and burdensome to require UEC to produce multiple copies of the same document.

In its Motion, CBEC also calls out certain data requests that do not yet have corresponding documents uploaded on Huddle. Below, UEC provides a brief summary of the data requests CBEC identifies in its Motion as having no response:

- CBEC request #8 asks for "*Any and all documents relating to Umatilla's future service of the retail electric loads of the Wheatridge wind project.*" UEC's response

⁶ Motion at p.9, line 6.

indicated it would provide documents, if any, responsive to this request. UEC continues to review documents that may be responsive, but, so far, is not aware of any documents responsive to this request. More importantly, this request presumes that UEC plans to serve the retail load of the Wheatridge facility in UEC's service territory. UEC currently has no plans to serve the retail load of the Wheatridge Project facilities in UEC's service territory and has not been asked by Wheatridge to provide such retail service. Therefore, UEC does not expect to locate any documents that would actually be responsive to this request and CBEC has no basis to believe such documents exist.

- For CBEC request #9, CBEC is asking for “*Any and all documents related to CBEC's future service of the retail electric load of Wheatridge.*” Not only is this request very broad, but any information about future service provided by CBEC would be the knowledge of, and in the possession of, CBEC. UEC is not aware of any documents responsive to this request and, therefore, there is no production to compel.
- For CBEC request #11, CBEC asks for “*Any and all documents describing and/or relating to Umatilla's request to interconnect with the Bonneville Power Administration transmission system for the proposed Umatilla transmission line that would interconnect with the Wheatridge Wind Energy, LLC wind project.*” UEC is not aware of any documents responsive to this request and, therefore, there is no production to compel.
- For CBEC request #14, CBEC asks for “*Any and all documents relating to Umatilla's, Wheatridge Wind Energy, LLC's, Jerry Rietmann's and/or other parties's [sic] easements, right of ways, and/or other property rights or licenses for the location, construction and operation of the proposed Umatilla transmission line that would interconnect with the Wheatridge Wind Energy, LLC wind project.*” UEC has objected to this request, including the objection to the overbroad nature of the request. Easements and other property rights do not bear on whether UEC would be unlawfully providing utility service in CBEC's territory. To the extent such property interests demonstrate the location of the Wheatridge transmission line, the planned location of the line is not in dispute and UEC has provided a significant number of documents that show the planned location of the transmission line and alternative locations considered. Further, UEC has not obtained any easements for the Wheatridge line in CBEC's territory.
- For CBEC request #15, CBEC asks for “*Any and all documents describing and/or relating to the design, location, size, capacity, number of lines, poles and/or any other characteristic of the proposed Umatilla transmission line that would interconnect with the Wheatridge Wind Energy, LLC wind project, including without limitation, any planned or proposed extensions of the transmission line beyond the interconnection with the Wheatridge Wind Energy, LLC wind project.*” UEC objected to this request in part because it is impossible to respond to. By its express terms, this request seeks “all documents...relating to...any other characteristic” of the line. Such a broad request is improper. Further, UEC has objected to the

relevancy of this request. For example, line characteristics like the number of poles or the height of poles is irrelevant to whether or not there is a violation of CBEC's exclusive service territory. By lumping a request for those irrelevant characteristics with other characteristics, UEC cannot reasonably determine which documents it is required to produce.

- CBEC request #17 seeks documents relating to UEC's Board of Directors' discussion of the Wheatridge line. Documents responsive to that request have not been produced. UEC acknowledges it requires extra time to provide those documents. The reason for the extra time is that the relevant materials are contained in larger documents that included other information that is not relevant to this matter or responsive to any request. The relevant information had to be located and then segregated and redacted before it could be produced.
- For CBEC request #27, CBEC asks for "*Any and all documents that relate to Umatilla's admission in paragraph 22 of its Answer that '2Morrow Energy, LLC requested 1,012 MW of PTP transmission service from UEC.'*" Similar to CBEC request #1, #2, and #3, request #27 relates to a different project that is no longer in existence. 2Morrow assigned all its rights and assets, including its spot in the UEC interconnection queue to Wheatridge. Accordingly, UEC objected to the relevance of these documents, because the 2Morrow and Wheatridge projects are separate and distinct projects. Without waiving those objections, however, UEC provided documents responsive to request #27 and indicated that when it uploaded those responses to Huddle.
- CBEC's request 31 asks for the following information "*In Paragraph 42 of Umatilla's Answer, Umatilla claims, 'All auxiliary station power to the Wheatridge Project's retail load in CBEC's service territory would be provided by CBEC.' Please explain how Umatilla believes Columbia Basin would serve the Wheatridge Wind project's auxiliary station power load. Please identify the electrical facilities, owned by Columbia Basin, Umatilla, or others, which Columbia Basin could use to interconnect and provide the retail electric service to the Wheatridge Wind Energy project as claimed by Umatilla.*" This request does not seek documents and, instead, asks for a narrative response from UEC, which UEC provided.
- CBEC's request #33 asks for "*Any and all documents relating to communications between Umatilla and agents or representatives of the Mariah Wind Project regarding transmission or interconnection services, including in your answer the dates such communications have taken place.*" UEC has not provided documents responsive to this request and has objected to this request on the grounds that it seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence. The Mariah Wind Project is a separate project and is not related to the Wheatridge project. CBEC's Complaint alleges certain facts with respect to the speculative development of the Mariah Wind Project but identifies no claim for relief related to that project.

- CBEC's request #34 asks the following "*In paragraph 44 of Umatilla's Answer, Umatilla claims, 'the irrigation circles located in CBEC's service territory are part of a unified load, the majority of which is located in UEC's service territory.'* Please list and explain in detail all the facts that support Umatilla's claim that the irrigation circles located in Columbia Basin's service territory are part of a "unified load." This request does not seek documents and, instead, asks for a narrative response from UEC, which UEC provided. Moreover, this request relates to UM 1818, and any discovery disputes regarding Willow Creek Dairy should be raised in that proceeding.
- CBEC's request #35 asks for "*Any and all documents that relate to Umatilla's claim in its Notice of Appearance and Comments in Support of Filing of Umatilla Electric Cooperative, Federal Energy Regulatory Commission Docket No. TX17-1-000, Section IV, page 4, that 'UEC is capable of constructing the requested facilities.'*" UEC objects to this request because it is vague, ambiguous, overbroad, and onerous and arguably would include a description of every transmission line that UEC has been involved in, which is not relevant to this proceeding.
- CBEC's request #36 ask UEC to "*identify all transmission facilities that Umatilla has constructed for the transmission of power from a generation facility to the interstate transmission grid.*" CBEC also asked for the "*capacity, length, and location of such transmission lines as wells as the identity of the generation facilities such lines interconnect with and the nominal generation capacity of such generation projects.*" UEC objects to this request because it seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence. Further, this request is overbroad and onerous.
- For CBEC request #38, CBEC has asked for "*any and all documents that show if the proposed transmission line from the Wheatridge Project to a BPA substation would be interconnected to any part of Umatilla's existing distribution system, existing transmission system, or any other existing Umatilla electrical facilities, that are constructed and operating as of the date of this data request.*" UEC responded to this data request with the following "Subject to, as limited by, and without waiving the foregoing General Objections, Defendant, after a search of reasonable scope, will produce for inspection and copying, non-privileged documents, if any, responsive to this request." UEC has not found any documents responsive to this request and, therefore, there is no production to compel.
- For CBEC request #39, CBEC asks the following "*Umatilla claims in its Notice of Appearance and Comments in Support of Filing of Umatilla Electric Cooperative, Federal Energy Regulatory Commission Docket No. TX17-1-000, Section II, page 2 that 'Wheatridge proposed to interconnect the collector substation with UEC's system through facilities to be constructed by UEC' and Umatilla will transmit Project energy to the Bonneville Power Administration Morrow Flats substation. Please identify and provide the location on UEC's existing system where Wheatridge plans to interconnect as Umatilla claims.*" This request does not seek documents and, instead, asks for a narrative response from UEC, which UEC provided.

- For CBEC request #41, CBEC asks the following: “*In Umatilla's Notice of Appearance and Comments in Support of Filing of Umatilla Electric Cooperative, Federal Energy Regulatory Commission Docket No. TX17-1-000, Section III, page 3, Umatilla claims that 'UEC is, however, a "transmitting utility" as defined under Section 3(23) of the FPA. ' Please provide any and all Documents that relate to or support Umatilla's claim that it is a 'transmitting utility.'*” UEC objected to this request because it requires UEC to draw legal conclusions about which facts do or do not support UEC’s claim that it is a transmitting utility. Further, this request is overly broad and burdensome to the extent that it seeks all facts that support UEC’s claim when a subset of those facts is likely to be sufficient for that purpose. Further, this request seeks information that is irrelevant and not likely to lead to admissible evidence.

As described above, and contrary to CBEC’s claims in its Motion, UEC has appropriately and in good faith responded to CBEC’s request. Because of the broad nature of CBEC’s requests, UEC is continuing to search for and review documents that may be responsive to CBEC’s requests. UEC anticipates that its search will have concluded, and that all responsive documents will be provided, by May 31st, 2017.

Conclusion

For the foregoing reasons, UEC respectfully requests that the Commission deny CBEC's Motion to Compel.

Dated this 22nd day of May 2017.

Respectfully submitted,



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