

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1670**

COLUMBIA BASIN ELECTRIC  
COOPERATIVE, INC., an Oregon cooperative  
corporation,

Complainant,

v.

PACIFICORP, dba Pacific Power, an Oregon  
business corporation,

Defendant,

and

NORTH HURLBURT WIND, LLC, a foreign  
limited liability company,

Defendant.

**RESPONSE OF NORTH HURLBURT  
WIND, LLC, TO COLUMBIA BASIN  
ELECTRIC COOPERATIVE'S  
MOTION TO AMEND COMPLAINT**

**I. INTRODUCTION**

North Hurlburt Wind, LLC (“North Hurlburt”) answers in opposition to the motion of Columbia Basin Electric Cooperative, Inc. (“Cooperative”), filed on March 26, 2014, to amend its complaint in this proceeding. In its motion, the Cooperative proposes to add South Hurlburt Wind, LLC (“South Hurlburt”), Horseshoe Bend Wind, LLC (“Horseshoe Bend”) and Caithness Shepherds Flat, LLC (“Caithness”) to the list of defendants in this proceeding. The Oregon Public Utility Commission (“Commission”) is not a court of general jurisdiction. Complaints that may be brought before the Commission are limited by the requirements of ORS 757.500, which are not satisfied by the proposed amended complaint. Accordingly, the Cooperative’s motion should be denied. Moreover, the Cooperative’s motion (at 2) admits that it named North Hurlburt as a defendant by mistake. North Hurlburt should be removed as a defendant.

## **II. RELEVANT FACTS OF PUBLIC RECORD**

The Administrative Law Judge in this proceeding has asked on at least two occasions for an explanation of this proceeding. Although North Hurlburt is not privy to the legal theory that might underlie the Cooperative's complaint, it offers the following facts of public record, all subject to judicial or administrative notice, that should aid in explaining this case.

### **A. The Three Wind Energy Generation Facilities and their Owners**

North Hurlburt, South Hurlburt and Horseshoe Bend each own and operate a separate wind energy generation facility in north-central Oregon, pursuant to a separate site certificate granted by the Oregon Energy Facility Siting Council ("EFSC"). None of these entities sell electric energy at retail or engage in any other activities that would subject them to the jurisdiction of the Commission under ORS Chapter 756, 757 or 758. Instead, each of them is an Exempt Wholesale Generator ("EWG")<sup>1</sup> under the Federal Power Act, as administered by the Federal Energy Regulatory Commission ("FERC"), meaning that none sells power at retail to anyone. The FERC order acknowledging the EWG status of each of North Hurlburt, South Hurlburt and Horseshoe Bend is entitled: "Notice of Effectiveness of Exempt Wholesale Generator Status" (Nov. 16, 2009), and may be found at 74 F.R. 61144 (Nov. 23, 2009).

Caithness is the corporate parent of each of these three project-ownership entities.

**Shepherds Flat North Site Certificate.** North Hurlburt owns and operates the Shepherds Flat North wind energy facility under an EFSC site certificate, originally issued on September 9, 2009, as amended on March 12, 2010. Of relevance to this proceeding is the following passage from the Shepherds Flat North site certificate:

The facility includes a collector substation. The facility includes a 230-kV transmission line between the substation and the interconnection site. The interconnection site is located at the Bonneville Power Administration Slatt Switching Station.

---

<sup>1</sup> A FERC-regulated entity, established under the federal Energy Policy Act of 1992.

EFSC, First Amended Site Certificate for Shepherds Flat North, at 3 (March 12, 2010) (description of “Related or Supporting Facilities”) (emphasis supplied).<sup>2</sup> Shepherds Flat North has “an average electric generating capacity of up to 106 megawatts and a peak generating capacity of not more than 318 megawatts that produces power from wind energy.” *Id.*, at 2.

**Shepherds Flat Central Site Certificate.** South Hurlburt owns and operates the Shepherds Flat Central wind energy facility under an EFSC site certificate, also originally issued on September 9, 2009, and also as amended on March 12, 2010. The EFSC site certificate designates the same, co-located interconnection site for Shepherds Flat Central: “The interconnection site is located at the Bonneville Power Administration Slatt Switching Station.” EFSC, First Amended Site Certificate for Shepherds Flat Central, at 3 (March 12, 2010) (description of “Related or Supporting Facilities”) (emphasis supplied).<sup>3</sup> Shepherds Flat Central has “an average electric generating capacity of up to 97 megawatts and a peak generating capacity of not more than 290 megawatts that produces power from wind energy.” *Id.*, at 2.

**Shepherds Flat South Site Certificate.** Horseshoe Bend owns and operates the Shepherds Flat South wind energy facility under an EFSC site certificate, also originally issued on September 9, 2009, and also as amended on March 12, 2010. The EFSC site certificate designates the same, co-located interconnection site for Shepherds Flat South: “The interconnection site is located at the Bonneville Power Administration Slatt Switching Station.” EFSC, First Amended Site Certificate for Shepherds Flat South, at 3 (March 12, 2010) (description of “Related or Supporting Facilities”) (emphasis supplied).<sup>4</sup> Shepherds Flat South has “an average electric generating capacity of up to 97 megawatts and a peak generating capacity of not more than 290 megawatts that produces power from wind energy.” *Id.*, at 2.

---

<sup>2</sup> See <http://www.oregon.gov/energy/Siting/Pages/SFN.aspx>

<sup>3</sup> See <http://www.oregon.gov/energy/Siting/Pages/SFC.aspx>

<sup>4</sup> See <http://www.oregon.gov/energy/Siting/Pages/SFS.aspx>

As they are legally required under ORS Chapter 469, North Hurlburt, South Hurlburt and Horseshoe Bend each constructed and operates its wind energy facility in accordance with its EFSC site certificate. Of pertinence here, each facility is interconnected to the Bonneville Power Administration (“BPA”) transmission system, at 230-kV, within BPA’s Slatt Substation.

**B. The Interconnection of All Three Facilities Within BPA’s Slatt Substation**

At the time wind energy development was proposed at the Shepherds Flat sites, before any EFSC site certificate was issued, there was no electrical substation and no 230-kV transmission line in existence that might interconnect any projects of these sizes to the BPA transmission system. No such facilities existed in the service territories of either Pacific Power or the Cooperative. BPA had to construct new facilities, which it did adjacent to its existing Slatt Switching Station. BPA called its new substation “Slatt Substation,” which contains a new 500/230-kV transformer that allows electrical output from each of the three wind energy facilities to be stepped up from the 230-kV voltage specified in each facility’s EFSC site certificate to the 500-kV voltage of the BPA transmission system in this area. The BPA environmental assessment of Slatt Substation was published in the Federal Register, 75 F.R. 64296 (October 19, 2010). “To provide the interconnection, BPA is in the process of expanding its Slatt Substation to accommodate a 230-kilovolt (kV) yard and will provide transmission access for up to 846 MW from the Wind Project to the BPA 500-kV transmission system.” *Id.*, at 64297 (footnote omitted).

It is undisputed in this case that Slatt Substation is physically located within the exclusive retail service territory of Pacific Power.

**C. The Lack of Other Electrical Interconnections and Transmission Lines**

The area occupied by the three wind energy facilities is either dedicated to dry land wheat farming or range land. There are no significant electrical loads. It is undisputed in this case that there are no 230-kV transmission facilities in the area owned by the Cooperative. Indeed, the Cooperative neither owns nor operates any 230-kV transmission line.

**D. The Station-Service Requirements of the Wind Energy Generation Facilities**

This case concerns the “station-service” requirements of the wind energy facilities. Station service relates to the power consumed by the operation of pumps, heaters, battery chargers, electrical control equipment, motors, and computers, and associate electrical losses, in a power plant. It is a parasitic, consumptive load. Power plants have at least nominal station-service power requirements even when they are not in production. Individually, the station-service load of each of these three wind-energy facilities ranges between 0.5 MW and 2.0 MW. North Hurlburt, South Hurlburt and Horseshoe Bend each self-supply their own station-service requirements. At times when the winds are particularly low (which varies across the 28,000+ acres occupied by the three projects), however, each project may have an intermittent need to supplement its own station-service power supply with external supplies.

The only interconnection point at which any facility can take delivery of externally supplied station-service power is Slatt Substation, the sole 500/230-kV point of interconnection for each of the three facilities. There is no other 230-kV transmission line or substation through which power delivery might be made. The revenue metering for each facility has the bi-directional capability, allowing the discrete measurement of both the outgoing wind energy delivered, at 230-kV, into the BPA transmission system at Slatt Substation, and the incoming station-service power, also at 230-kV, and also delivered at Slatt Substation. All of this is covered in each facility’s Large Generator Interconnection Agreement (“LGIA”) with BPA.<sup>5</sup>

As required by BPA’s design specifications under each of the LGIAs, all three facilities are connected into Slatt Substation via a single ring-bus, which North Hurlburt, South Hurlburt and Horseshoe Bend hold in common. Caithness has no ownership, access, or other interest in this ring-bus or any other transmission facility under the LGIAs or any other agreement.

---

<sup>5</sup> BPA’s LGIA is standardized, based on a FERC prototype agreement. *See* BPA Open Access Transmission Tariff, Attachment L: Standard Large Generator Interconnection Procedures (LGIP), Appendix 6, “Standard Large Generator Interconnection Agreement.” This document may be found at: [www.bpa.gov/transmission/Doing%20Business/Tariff/Pages/default.aspx](http://www.bpa.gov/transmission/Doing%20Business/Tariff/Pages/default.aspx)  
Page 5 – DEF. NORTH HURLBURT WIND, LLC’S RESPONSE TO COOP’S MOTION TO AMEND COMPLAINT

**E. The External, Intermittent Supply Of Station-Service Power to each of the Three Wind Energy Facilities within Slatt Substation**

North Hurlburt, South Hurlburt and Horseshoe Bend each take their externally supplied station-service power for delivery at their respective 230-kV interconnection points within Slatt Substation. From there, exclusively by means of their own project facilities, they consume this power in satisfying their respective station-service power requirements. BPA is prohibited by statute from selling power at retail. Pacific Power is the supplier because delivery is made within Slatt Substation, physically located within Pacific Power's exclusive retail service territory. Pacific Power accesses Slatt Substation under its BPA firm transmission agreement.

This consensual arrangement with Pacific Power has met the station-service power needs of all three facilities since their completions, about three years ago. Under this arrangement, North Hurlburt, South Hurlburt and Horseshoe Bend each take delivery directly from Pacific Power at their respective 230-kV points of interconnection within Slatt Substation. Caithness receives a monthly bill from Pacific Power, as billing agent for its affiliates. As agent, Caithness divides up Pacific Power's Schedule 47 demand charge and energy charges among its affiliates, with no mark-up to itself, pursuant to an agreement on file with FERC. *See Order Accepting Shared Facilities Agreement and Granting Request for Waivers*, 135 FERC ¶61,251 (2011).

**F. Locations of the Three Facilities**

All of Shepherds Flat North is in Pacific Power's exclusive service territory. The Slatt Substation interconnection, the ring-bus, most Shepherds Flat Central turbines and transmission line are located in Pacific Power's service territory, but some of the turbines extend into the territory claimed by the Cooperative. However, these Shepherds Flat Central turbines are electrically isolated from the Cooperative, which has no means of serving them from any facility within its claimed territory. The Slatt Substation interconnection, ring-bus and most Shepherds Flat South transmission line are located in Pacific Power's service territory, but the turbines are in the territory claimed by the Cooperative. Shepherds Flat South turbines are also electrically isolated from the Cooperative, which has no means of serving them within its claimed territory.

\*\*\*

The foregoing explanation is based on matters of public record. The arrangement with Pacific Power has been explained to the Cooperative, and a copy of the relevant electric service agreement has been provided to the Cooperative under the protective order in this case. North Hurlburt's counsel even offered to arrange a facilities tour for the Cooperative.

### **III. ARGUMENT**

#### **A. There is No Violation of the Cooperative's Order from the Commission.**

The gravamen of the Cooperative's complaint is that defendants have somehow violated Commission Order #38089, attached as Exhibit 1 to its complaint. Page 9 of that order deals with the provision of "utility service" within a specified territory, described therein. However, it is physically impossible for anyone to provide "utility service" to Shepherds Flat North, Shepherds Flat Central, or Shepherds Flat South within that specified territory because there are absolutely no transmission facilities, certainly none at 230-kV, within that territory by which station-service power could be delivered to any of the three facilities. It is inescapably true, under facts of public record and subject to judicial or administrative notice, that "utility service" can only be provided at the sole point of 230-kV interconnection for each of the three facilities – Slatt Substation – where delivery of utility service is completed outside the territory claimed by the Cooperative. In short, none of the defendants (existing or proposed) has, or is, doing anything inconsistent with Commission Order #38089. No one is providing "utility service" for any station-service requirement within the Cooperative's claimed service; all such service is, of physical necessity, provided in Pacific Power's service territory – at Slatt Substation.

If the Cooperative were to propose the construction of new 230-kV facilities to effect such delivery within its claimed territory, this would require the extensive and very costly duplication of existing BPA 230-kV facilities in violation of ORS 758.405. Doing so would also be environmentally and economically ridiculous because individual facility station-service power loads are as low as 0.5 MW – at 22 percent load factor. Neither can the Cooperative serve any of these loads at Slatt Substation, within the exclusive retail service territory of Pacific Power.

Page 7 – DEF. NORTH HURLBURT WIND, LLC'S RESPONSE TO COOP'S MOTION TO AMEND COMPLAINT

Contrary to the Cooperative's apparent belief, neither Commission Order #38089 nor the statute on which it was based (ORS 458.400, *et seq.*) grants the Cooperative any royalty payment or other monetary entitlement. Their purpose was, and is, the prevention of duplication of facilities, the stated legislative policy purpose found in ORS 458.405. The existing station-service arrangement serves that legislative purpose, whereas the Cooperative either proposes to duplicate facilities or else seeks to collect a toll or tax for the "privilege" of consuming electricity within its claimed territory. There is no other way to interpret the Cooperative's new, unfounded demands for "treble damages" from Pacific Power in its proposed amended complaint.

**B. A Complaint Action Before this Commission Cannot Be Maintained Against the Added Defendants under ORS 756.500.**

**1. Neither the original nor the amended complaint is permitted under ORS 756.500(1).**

The Commission is not a court of general jurisdiction. To be actionable before the Commission, a complaint must meet the requirements of ORS 756.500. ORS 756.500(1) provides:

(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. The person filing the complaint shall be known as the complainant and the person against whom the complaint is filed shall be known as the defendant. [Emphasis supplied.]

South Hurlburt, Horseshoe Bend and Caithness are not persons "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." None of them is a "public utility" under ORS 757.005(1)(a). South Hurlburt and Horseshoe Bend are FERC-regulated EWGs that are retail consumers of power for their respective station-power needs. Caithness' only role is that of bookkeeper, not regulated by the Commission or by FERC. Thus, the Cooperative's attempt to amend its complaint is fatally flawed under this statute.

For the same reason, North Hurlburt is not a proper defendant under ORS 756.500(1).

**2. Neither the original nor the amended complaint is permitted under ORS 756.500(5)**

Because of the Court of Appeals decision in *Roats Water System, Inc. v. Golfside Investments, LLC*, 225 OR.App. 618 (2009), it is important to discuss ORS 756.500(5):

(5) Notwithstanding subsection (1) of this section, any public utility or telecommunications utility may make complaint as to any matter affecting its own rates or service with like effect as though made by any other person, by filing an application, petition or complaint with the commission.

The court in *Roats Water System* held that a public utility could use ORS 756.500(5) to bring a complaint against one of its customers for collection of a tariff-imposed charge that the customer had agreed to pay by executing a Water Services Agreement with the complainant utility.

By its terms, ORS 756.500(5) cannot be used by the Cooperative as the basis of a complaint before the Commission against any of North Hurlburt, South Hurlburt, Horseshoe Bend, or Caithness. None of them is a station-service customer of the Cooperative, and none wishes to be one.<sup>6</sup> None has signed any agreement with the Cooperative regarding station-service power. There is no amount owed by any of them to the Cooperative.

No electric “rate” is at issue. The only rate applicable is Pacific Power’s Schedule 47.

No question of “service” is presented. Nor could such a question be presented. As explained above, it is physically impossible for the Cooperative to provide station-power to any of the facilities within its claimed territory because there is no 230-kV transmission line in existence by which it would be possible to do so. It is legally impossible for the Cooperative to provide such service within Slatt Substation, which would violate the exclusive retail-service territorial rights of Pacific Power under ORS 758.400, *et seq.*<sup>7</sup>

---

<sup>6</sup> South Hurlburt buys power from the Cooperative, but only for a small, distribution-voltage, maintenance-building load that is electrically isolated from its station-power load.

<sup>7</sup> At least, legally impossible in the absence of an agreement between Pacific Power and the Cooperative within the scope of ORS 758.410. The Cooperative has never even alleged that such an agreement exists. To North Hurlburt’s knowledge, it does not exist.

Given these physical and legal impossibilities, it is hard to imagine what remedy the Cooperative might be seeking from the Commission. The Cooperative has never explained its legal theory. The both the original and amended complaints are frivolous, and not actionable under ORS 756.500 against South Hurlburt, Horseshoe Bend, Caithness, or North Hurlburt.

Turning to the other defendant, Pacific Power has merely followed applicable law by exercising its exclusive right, and fulfilling its public-utility obligation, to deliver power at Slatt Substation to retail end-users in its service territory. Had Pacific Power done otherwise, by refusing a request for service at published tariff rates, it would have subjected itself to a possible complaint action under ORS 756.500(1) by North Hurlburt, South Hurlburt, or Horseshoe Bend as retail consumers of electricity.

**3. The Cooperative Admits in its Motion that It Mistakenly Named North Hurlburt as a Defendant.**

At page 2 of its Motion to Amend Complaint, the Cooperative admits the following:

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

The Cooperative failed to correct its mistake by removing North Hurlburt as a defendant. However, it is undisputed that all of North Hurlburt's Shepherds Flat North wind energy facility is located in the exclusive service territory of Pacific Power. The Cooperative's naming of North Hurlburt is a major error that should be corrected now by immediate removal of North Hurlburt as a defendant. Because the Cooperative has neglected to do so, North Hurlburt respectfully requests that the Administrative Law Judge do so in her order on the Cooperative's motion to amend the complaint.

North Hurlburt is concerned about the outcome of this case because it fears the Cooperative intends to increase its costs of operating a wind energy facility. Although not properly a defendant in this case for the reasons stated above, North Hurlburt respectfully requests that it be allowed to participate as an intervenor in order to protect its interests, which

cannot adequately be protected by any other party. Given the peculiar circumstances of this case, a request for intervention could not have been made earlier.

#### IV. CONCLUSION

The only question before the Commission in this case is whether the Cooperative may lawfully serve retail customers at Slatt Substation, which is within the exclusive retail service territory of another utility, Pacific Power. This case has languished because the Cooperative must already know that, under ORS 758.400, *et seq.*, the answer to that question is “no” because it does not have an agreement with Pacific Power under ORS758.410 that would allow it to do so at Slatt Substation.<sup>8</sup> The Cooperative waited two years after Shepherds Flat North, Shepherds Flat Central and Shepherds Flat South commenced operations before filing its complaint. Now, North Hurlburt fears that involvement by the Cooperative would only increase its costs of producing wind energy and/or the costs of its affiliates.

The Cooperative’s motion to amend its complaint should be denied. North Hurlburt respectfully requests that it be removed immediately as a defendant in this case.

DATED this 10th day of April, 2014.

DAVIS WRIGHT TREMAINE LLP

By /s/ John A. Cameron

John A. Cameron, OSB #92873

Derek D. Green, OSB#042960

Tel: 503-241-2300

Fax: 503-778-5299

Email: [johncameron@dwt.com](mailto:johncameron@dwt.com)

Email: [derekgreen@dwt.com](mailto:derekgreen@dwt.com)

Of Attorneys for Defendant North Hurlburt Wind, LLC

---

<sup>8</sup> North Hurlburt prepared a draft stipulation of facts last October, on which the parties could ground their respective motions for summary judgment. The facts are simple matters of public record. Six months later, the Cooperative has still not agreed to a set of stipulated facts, or proposed one of its own, likely because the facts do not support its complaint. In the meantime, however, the Cooperative has now filed its motion to amend its complaint.

**CERTIFICATE OF FILING AND SERVICE**  
**Docket No. UM 1670**

I hereby certify that on the date given below the original and one true and correct copy(ies) of the foregoing **RESPONSE OF NORTH HURLBURT WIND, LLC, TO COLUMBIA BASIN ELECTRC'S MOTION TO AMEND COMPAINT** were sent by email and first-class mail to:

Public Utility Commission of Oregon  
3930 Fairview Industrial Drive SE  
PO Box 1088  
Salem, OR 97308-1088  
E-mail: puc.filingcenter@state.or.us

On the same date, a true and correct copy of the foregoing document was sent to the parties by electronic mail as indicated on the attached Service List.

DATED this 10th day of April, 2014.

DAVIS WRIGHT TREMAINE LLP

By: /s/ John A. Cameron

John A. Cameron, OSB #92873  
Derek D. Green, OSB #042960  
1300 SW Fifth Avenue, Suite 2400  
Portland OR 97201  
Tel: 503-241-2300  
Fax: 503-778-5299  
Email: johncameron@dwt.com  
Email: derekgreen@dwt.com

Of Attorneys for Defendant  
North Hurlburt Wind, LLC

## SERVICE LIST

W = waives paper service

W  
Jerry M. Healy, Manager  
COLUMBIA BASIN ELECTRIC  
COOPERATIVE, INC.  
P O Box 398  
Heppner, OR 97836-0398  
Email: jerryh@columbiabasin.cc

W  
Charles N. Fadeley  
Attorney at Law  
P. O. Box 1408  
Sisters, OR 97759  
Email: fade@bendbroadband.com

W  
Raymond S. Kindley  
KINDLEY LAW, PC  
P O Box 569  
West Linn, OR 97068  
Email: kindleylaw@comcast.net

W  
Thomas M. Grim  
Tommy a. Brooks  
CABLE HUSTON  
1001 SW Fifth Ave., Suite 2000  
Portland, OR 97204-1136  
Email: tgrim@cablehuston.com  
tbrooks@cablehuston.com

W  
Sarah Wallace, Senior Counsel  
PACIFIC POWER  
825 NE Multnomah, Suite 1800  
Portland, OR 97232  
Email: Sarah.Wallace@PacifiCorp.com

W  
Pacifcorp, dba Pacific Power  
Oregon Dockets  
825 NE Multnomah St., Suite 2000  
Portland, OR 97232  
Email: oregondockets@pacifcorp.com

W  
Ted Case, Executive Director  
OREGON RURAL ELECTRIC  
COOPERATIVE ASSOCIATION  
698 12<sup>th</sup> Street SE, Suite 210  
Salem, OR 97301  
Email: tcase@oreca.org

W  
Steve Eldrige  
Umatilla Electric Cooperative Assn.  
P O Box 1148  
Hermiston, OR 97838  
Email: steve.eldrige@ueinet.com