



Davison Van Cleve PC

Attorneys at Law

TEL (503) 241-7242 • FAX (503) 241-8160 • mail@dvclaw.com
Suite 400
333 SW Taylor
Portland, OR 97204

June 23, 2015

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
3930 Fairview Industrial Drive SE
Salem OR 97302

Re: In the Matter of GEORGIA-PACIFIC CONSUMER PRODUCTS
(CAMAS) LLC and CLATSKANIE PEOPLE'S UTILITY DISTRICT
Petition for Declaratory Ruling
Docket No. DR 49

Dear Filing Center:

Enclosed for filing in the above-referenced matter, please find the Opening Brief of Georgia-Pacific Consumer Products (Camas) LLC and Clatskanie People's Utility District.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

cc: Service List

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

DR 49

In the Matter of)	
)	
GEORGIA-PACIFIC CONSUMER PRODUCTS (CAMAS) LLC)	OPENING BRIEF OF GEORGIA-PACIFIC CONSUMER PRODUCTS (CAMAS) LLC AND CLATSKANIE PEOPLE'S UTILITY DISTRICT
and)	
)	
CLATSKANIE PEOPLE'S UTILITY DISTRICT)	
)	
Petitioners.)	
_____)	

I. INTRODUCTION

Pursuant to the Oregon Public Utility Commission's ("Commission") May 18, 2015 Prehearing Conference Memorandum issued in the above-referenced matter, Petitioners Georgia-Pacific Consumer Products (Camas) LLC ("GP") and Clatskanie People's Utility District ("Clatskanie") (collectively, the "Petitioners") jointly file this Opening Brief.

On April 10, 2015, the Petitioners filed their Petition for Declaratory Ruling (the "Original Petition") in this proceeding, seeking a Commission ruling on the applicability of Oregon's direct access laws and territory allocation laws to a proposed service agreement between GP's Camas Mill, located in Camas, Washington, and Clatskanie. As the Original Petition explains, the Camas Mill currently takes service from PacifiCorp (or the "Company") over customer-owned 69 kilovolt ("kV") lines (the "69 kV Lines") that interconnect at the Company's Troutdale Substation in Troutdale, Oregon. The terms of service are governed by a

20-year bilateral special contract that expires on December 31, 2015 (“Contract”). The Original Petition seeks a ruling on whether, under the Assumed Facts, GP’s sale of the 69 kV Lines to Clatskanie, and subsequent electric service from Clatskanie in Washington State following expiration of the Contract, would implicate Oregon’s direct access law or infringe on any Oregon exclusive service territory.

Following the prehearing conference in this proceeding, the parties agreed to negotiate modifications to the Assumed Facts, the Applicable Statutes, and the Questions Presented in the Original Petition. The Petitioners filed a new version of the petition with changes that were agreed upon by all parties in this docket on June 2, 2015 (“Revised Petition”).

The agreed upon changes to the Assumed Facts, Applicable Statutes, and Questions Presented in the Revised Petition do not change the Original Petition’s legal arguments or conclusions. For purposes of resolving the issues in this docket, the important facts are these:

- (1) The Camas Mill is located in Washington State and will take service from Clatskanie at a point of delivery in Washington State; and
- (2) Clatskanie will own the 69 kV Lines over which the Camas Mill will take electric service from Clatskanie, and which interconnect with PacifiCorp’s system.

Those assumed facts have not changed in the Revised Petition. They demonstrate that Clatskanie’s service of the Camas Mill will not implicate direct access and will not infringe on any Oregon exclusive service territory.

II. REVISED PETITION

The Revised Petition both adds and removes certain Assumed Facts contained in the Original Petition. It does not, however, for purposes of the ruling requested in this docket, materially modify the Assumed Facts in the Original Petition.

The Revised Petition adds a new Paragraph 2 to the Assumed Facts showing that PacifiCorp has served the Camas Mill since it merged with the Northwestern Electric Company in 1947.^{1/} Paragraphs 3 through 5 of the Revised Petition include additional information regarding the obligations of PacifiCorp and the Camas Mill under the Contract, as well as the Contract's approval by the Commission in 1993, and the recent sale by PacifiCorp to GP of the cogeneration unit at the Camas Mill and a separate 69 kV line.^{2/} Paragraph 7 of the Revised Petition includes a provision in the Contract relating to the Camas Mill's obligation to remain an Oregon customer during the term of the Contract.^{3/} Paragraph 8 provides information on Energy Trust of Oregon programs conducted at the Camas Mill, and the Commission's decision adopting the Staff's recommendation to discontinue these programs following the execution of the memorandum of understanding ("MOU") between Clatskanie and GP.^{4/} Paragraph 9 provides additional information regarding Clatskanie and its service territory.^{5/} The Revised Petition contains some changes to the wording in Paragraph 10 and notes that there will be no change in the physical location of the Camas Mill under the proposed transaction.^{6/} Finally, Paragraph 14

^{1/} Revised Petition at 3.

^{2/} Id. at 3-4.

^{3/} Id. at 5.

^{4/} Id.

^{5/} Id.

^{6/} Id. at 5-6.

of the Revised Petition includes a press statement from Clatskanie following execution of the MOU.^{7/}

The Revised Petition also relocates Paragraph 9 of the Original Petition to the end of the “Applicable Statutes” section, deletes the Original Petition’s Paragraphs 10 and 11, and adds additional statutory references relevant to direct access.^{8/} Finally, the Revised Petition consolidates the first two Questions Presented in the Original Petition and rewords (but does not substantively alter) the phrasing of the third Question Presented.^{9/}

Despite these changes, Paragraph 10 of the Revised Petition continues to contain the determinative facts that support the relief requested by the Petitioners: “[u]nder the proposed transaction [in which GP will sell the 69 kV Lines to Clatskanie and purchase electricity from Clatskanie], GP will no longer be interconnected with PacifiCorp or take delivery of electric service from PacifiCorp in Oregon, but instead GP will take delivery of electric service from Clatskanie in Washington over facilities owned by Clatskanie.”^{10/}

II. ARGUMENT

The Assumed Facts set forth in the Revised Petition continue to support the Petitioners’ legal arguments and conclusions. Clatskanie will serve the Camas Mill in Washington over distribution lines Clatskanie itself owns; therefore, Clatskanie will not provide service that is regulated by Oregon’s direct access law and will not violate any Oregon service territory.

^{7/} Id. at 7.

^{8/} Compare Original Petition at 5-7 with Revised Petition at 7-9.

^{9/} Compare Original Petition at 8 with Revised Petition at 10.

^{10/} Revised Petition at 5-6.

A. The Revised Petition Does Not Alter the Conclusion That Clatskanie Will Not Provide Direct Access Service to the Camas Mill Under the Assumed Facts.

The Revised Petition consolidates the first two questions presented. Rather than asking separately whether Oregon’s direct access law applies to an Oregon People’s Utility District’s delivery of electricity in Washington to a Washington customer and, if so, whether Clatskanie would be providing service that is regulated under the direct access law,^{11/} the Revised Petition asks only whether, “[u]nder the Assumed Facts, does Oregon’s direct access law apply to Clatskanie’s delivery of electric service to GP under the terms of the proposed transaction?”^{12/} While these questions have been consolidated, the essence of the issue underlying the question is the same: will Clatskanie provide service regulated by the direct access law to the Camas Mill?

Pages 10-18 of the Revised Petition demonstrate that: (1) Oregon’s direct access law does not apply to delivery of electric service outside of the State; and (2) even if the direct access law did apply to electric service delivered outside of the State, the Commission’s regulatory authority over a consumer-owned utility under the direct access law is limited to instances in which the consumer-owned utility sells electricity to a nonresidential electricity consumer of another electric utility in Oregon. Once the Camas Mill is no longer directly connected to PacifiCorp’s facilities at the Troutdale Substation, the Camas Mill will not be a nonresidential customer of PacifiCorp. Instead, the Camas Mill will take electric service from Clatskanie over Clatskanie’s distribution lines, and Clatskanie will be providing retail electric service to GP in Washington. Rather than implicating Oregon’s direct access law, the proposed

^{11/} Original Petition at 8.
^{12/} Revised Petition at 10.

transaction constitutes distribution service to the Camas Mill that will be facilitated through a common transmission wheeling arrangement between Clatskanie and PacifiCorp subject to the Federal Energy Regulatory Commission’s (“FERC”) jurisdiction under Section 211 of the Federal Power Act (“FPA”).

1. Oregon’s direct access law does not regulate the provision of electric service in another state.

Currently, the Camas Mill is considered an Oregon customer of PacifiCorp’s because GP takes delivery of electric service at the Troutdale Substation, in Oregon, and brings that electricity to the mill over 69 kV Lines that GP owns.^{13/} Under the Assumed Facts, Clatskanie will serve the Camas Mill in Washington by delivering electricity directly to the Camas Mill over the 69 kV Lines, which Clatskanie will own.^{14/} Consequently, the point of delivery will be in Washington, and the Camas Mill will be a retail electric customer of Clatskanie’s located in Washington State.

As discussed in the Revised Petition, principles of state sovereignty inherently limit the Commission’s general regulatory jurisdiction.^{15/} The Commission has the authority to supervise and regulate public utilities “in this state.”^{16/} The United State Supreme Court has regularly held that “[f]orcing a merchant to seek regulatory approval in one State before undertaking a transaction in another directly regulates interstate commerce” in violation of the

^{13/} Revised Petition at 3-4 (Assumed Facts ¶¶ 2, 6).

^{14/} Id. at 5-6 (Assumed Facts ¶ 10).

^{15/} Id. at 11-12.

^{16/} ORS 756.040(2).

Commerce Clause of the U.S. Constitution.^{17/} By regulating a transaction that occurs in another state, the Commission would overstep its jurisdictional authority.

PacifiCorp, itself, provides a good example of this principle. PacifiCorp operates a multistate system to serve customers in both Washington and Oregon; however, the Commission regulates deliveries to retail customers by PacifiCorp in Oregon, but not in Washington. If PacifiCorp owned the 69 kV Lines and provided electric service to the Camas Mill at a point of delivery in Washington, that delivery would be subject to Washington law, not Oregon law. This same principle applies to Clatskanie.

Furthermore, even in Oregon, the Commission does not generally regulate consumer-owned utilities such as Clatskanie.^{18/} The direct access law only subjects a consumer-owned utility to the Commission’s jurisdiction if, under ORS 757.672(2), the consumer-owned utility sells electricity to a nonresidential electricity consumer of another utility “in this state.” As discussed below, the Assumed Facts do not contemplate that Clatskanie will sell electricity to a nonresidential electricity consumer of another utility; therefore, the sale will not meet the requirements of this statute in any event. However, even if it were the case that Clatskanie would sell electricity to a customer of another utility, that transaction will not occur “in this state,” and therefore, will not trigger the requirements of ORS 757.672(2).

Because the Commission’s general regulatory jurisdiction does not extend to the provision of electricity in Washington to a customer located in Washington, and because the

^{17/} Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth., 476 U.S. 573, 582 (1986); see also, Edgar v. MITE Corp., 457 U.S. 624, 642-43 (1982); Alliant Energy Corp. v. Bie, 336 F.3d 545, 547 (7th Cir. 2003) (noting that direct or facial regulation of wholly extraterritorial transactions is *per se* invalid).

^{18/} Exceptions to this general rule, such as pole attachment rates (ORS 757.276), are not relevant to the Commission’s determinations in this proceeding.

direct access law does not apply to a consumer-owned utility's provision of electric service in another state, Clatskanie's service to the Camas Mill will not constitute service that is regulated by Oregon's direct access law.

2. Rather than providing service regulated under the direct access law, Clatskanie will serve its own retail electric customer.

Even if the Commission did have jurisdiction to regulate service that occurs outside of Oregon, Clatskanie will not provide direct access under the Assumed Facts. A consumer-owned utility only becomes subject to the Commission's jurisdiction under the direct access law if, pursuant to ORS 757.672(2), it "sells electricity ... to a nonresidential electricity consumer of another electric utility"^{19/} Under these circumstances, the consumer-owned utility is "subject to ORS 757.649 (1) to (4) and rules adopted thereunder."^{20/} ORS 757.649(1) requires an "electricity service supplier" to be certified by the Commission, while ORS 757.649(2)-(4) impose certain reliability and customer protection requirements.

ORS 757.672(2) does not apply under the Assumed Facts because Clatskanie will sell electricity to its own nonresidential electricity consumer, not a nonresidential electricity consumer "of another electric utility." Although the direct access law does not define "nonresidential electricity consumer," the Commission's rules define "nonresidential consumer" to mean "a retail electricity consumer who is not a residential consumer."^{21/} Thus, a "nonresidential electricity consumer" is a nonresidential "retail electricity consumer." A "retail electricity consumer" is defined as "all end users of electricity *served through the distribution*

^{19/} ORS 757.672(2).

^{20/} Id.

^{21/} OAR 860-038-0005(40).

system of an electric utility ...^{22/} “Distribution” is defined as “the delivery of electricity to retail electricity consumers through a distribution system ...”^{23/} Finally, “distribution utility” is defined as “an electric utility that owns and operates a distribution system connecting the transmission grid to the retail electricity consumer.”^{24/} Under the Assumed Facts, Clatskanie will own the 69 kV Lines that connect PacifiCorp’s transmission system at the Troutdale Substation to the Camas Mill.^{25/} Accordingly, these lines will be part of Clatskanie’s “distribution system,” Clatskanie will be the Camas Mill’s “distribution utility,” and the Camas Mill will, therefore, be Clatskanie’s own “nonresidential electricity consumer.” Thus, Clatskanie will not sell electricity to a nonresidential electricity consumer “of another electric utility,” and ORS 757.672(2) will not apply.

Moreover, ORS 757.672(2) requires that, if its conditions are met, a consumer-owned utility must be certified by the Commission as an “electricity service supplier.”^{26/} Under the Assumed Facts, however, Clatskanie will not meet the definition of “electricity service supplier,” which further demonstrates that ORS 757.672(2) was not intended to apply to the proposed transaction. “Electricity service supplier” is defined as “a person or entity that offers to sell electricity services available *pursuant to direct access* to more than one retail electricity consumer.”^{27/} “Direct access” is defined as “the ability of a retail electricity consumer to purchase electricity and certain ancillary services ... directly from an entity *other than the*

^{22/} ORS 757.600(29) (emphasis added).

^{23/} ORS 757.600(8).

^{24/} ORS 757.600(9)

^{25/} Revised Petition at 5-6 (Assumed Facts ¶ 10).

^{26/} ORS 757.672(2); ORS 757.649(1).

^{27/} ORS 757.600(16) (emphasis added).

distribution utility.^{28/} As noted above, under the Assumed Facts, Clatskanie will be the Camas Mill’s “distribution utility” because it will own the 69 kV Lines that connect the Camas Mill to PacifiCorp’s transmission system.^{29/} Accordingly, Clatskanie will provide bundled retail service, not services available “pursuant to direct access.” Consequently, Clatskanie will not be an “electricity service supplier” that is required to register with the Commission under ORS 757.649(1).

As the legislative history of ORS 757.672(2) demonstrates, the very purpose of this statute was to ensure that a consumer-owned utility could not act as an electricity service supplier by providing direct access service to customers of other utilities while evading the Commission’s oversight.^{30/} That is not the situation under the Assumed Facts. The Camas Mill, a customer located in Washington State, is taking electric service under a special contract that is expiring.^{31/} The proposed transaction does not maintain PacifiCorp as the distribution utility while the Camas Mill simultaneously purchases electricity from Clatskanie. Rather, it makes Clatskanie the distribution utility after the mutual obligations of the Camas Mill and PacifiCorp under the Contract terminate.^{32/} As explained below, PacifiCorp’s role in the arrangement will

^{28/} ORS 757.600(6) (emphasis added).

^{29/} ORS 757.600(9).

^{30/} OPUC Suggested Amendments to Senate Public Affairs Committee, New Section 24 (Consumer Owned Utility Exemption) (Apr. 2, 1999); see also OPUC Suggested Amendments to House Commerce Committee, Section 14 (Consumer Protection) (May 19, 1999).

^{31/} Revised Petition at 3 (Assumed Facts ¶ 3).

^{32/} Moreover, the timing of the proposed transaction is immaterial to whether it implicates direct access. The Revised Petition assumes that Clatskanie will begin serving the Camas Mill on January 1, 2016, immediately upon expiration of the Contract. If the Camas Mill instead continues to take service from PacifiCorp on this date under a standard tariff, however, the legality of the proposed transaction under the direct access laws is not impacted. Under either scenario, the Camas Mill will be a retail electricity consumer (in Washington State) of Clatskanie’s, and connected to Clatskanie’s distribution system, once the 69 kV Lines are sold to Clatskanie and the Camas Mill begins taking electric service from Clatskanie.

be to provide FERC-regulated transmission to Clatskanie under its Open Access Transmission Tariff (“OATT”).^{33/}

3. The proposed transaction requires a common FERC-jurisdictional wheeling arrangement.

While Oregon’s direct access law is not implicated in the proposed transaction between GP and Clatskanie, this is not intended to suggest that the arrangement is entirely unregulated. On the contrary, it is a transaction that FERC has found time and again to involve a permissible transmission wheeling arrangement under Section 211 of the FPA.^{34/} That section states that “[a]ny electric utility ... may apply to [FERC] for an order ... requiring a transmitting utility to provide transmission services ... to the applicant.”^{35/} Clatskanie is an “electric utility” for certain purposes under the FPA because it sells electric energy, and PacifiCorp is a “transmitting utility” because it owns facilities used for the transmission of electric energy in interstate commerce.^{36/} Under Section 212 of the FPA, FERC may grant an application under Section 211 if the applicant is a political subdivision of a state and utilizes transmission or distribution facilities that it owns or controls to deliver power to the end-use customer.^{37/} FERC has ruled that those transmission or distribution facilities need not be extensive,^{38/} and can be used to provide service to only one customer.^{39/}

^{33/} Revised Petition at 6 (Assumed Facts ¶ 12).

^{34/} See n. 38 & 39, *infra*; People’s Elec. Coop., 93 F.E.R.C. ¶61,218, PP. 61,726, 61,732-33 (Nov. 24, 2000); Southwestern Pub. Serv. v. El Paso Elec. Co., 80 F.E.R.C. ¶61,159, PP. 61,695-96 (Aug. 1, 1997).

^{35/} 16 U.S.C. § 824j(a).

^{36/} 16 U.S.C. §§ 796(22), (23).

^{37/} 16 U.S.C. § 824k(h)(2).

^{38/} Laguna Irrigation Dist., 84 F.E.R.C. ¶61,226, PP. 62,088-89 (Sept. 16, 1998) and 95 F.E.R.C. ¶61,305, PP. 62,036-38 (May 30, 2001); PG&E, Fresno Irrigation Dist., 88 F.E.R.C. ¶61,231, P. 61,763 (Sept. 16, 1999)

^{39/} Cleveland Elec. Illuminating Co., 76 F.E.R.C. ¶61,115, PP. 61,599-600 (July 31, 1996), and Order Denying Rehearing, 82 F.E.R.C. ¶61,254, PP. 62,018-19 (Mar. 13, 1998).

Clatskanie’s proposed transaction with GP meets these requirements and is similar to situations in which FERC has ordered the transmitting utility to provide transmission services in the past. As a People’s Utility District, Clatskanie is a political subdivision of the state,^{40/} and it will use distribution facilities that it owns to deliver power to the Camas Mill.^{41/} FERC, therefore, has jurisdiction over the only transaction that is occurring in Oregon – the transmission wheeling arrangement between PacifiCorp and Clatskanie – and may order PacifiCorp to provide transmission services to Clatskanie. Indeed, supporting the FERC-jurisdictional nature of the transmission transaction, the Assumed Facts acknowledge that PacifiCorp Transmission and Clatskanie have already executed a Long-Term Firm Point-to-Point Transmission Service Agreement, pursuant to PacifiCorp’s FERC-approved OATT.^{42/}

B. The Revised Petition Does Not Alter the Conclusion That Clatskanie Will Not Infringe on Any Oregon Exclusive Service Territory

The second Question Presented in the Revised Petition is: “Under the Assumed Facts, does Clatskanie’s delivery of electric service to GP under the terms of the proposed transaction violate Oregon’s territorial laws?”^{43/} The Revised Petition does not add or modify any Assumed Facts related to the allocation of service territory in and around PacifiCorp’s Troutdale Substation. Accordingly, the conclusion of the Original Petition remains valid: Clatskanie will not violate any allocated service territory in Oregon because it will not provide “utility service” in Oregon, including at PacifiCorp’s Troutdale Substation.

^{40/} See, e.g., Bd. of Dir. of N. Wasco County Peoples’ Util. Dist. v. Kelly, 171 Or. 691, 698 (1943); Springfield Util. Bd. ex rel. City of Springfield v. Emerald People’s Util. Dist., 191 Or. App. 536, 548-50 (2004) (noting that people’s utility districts are considered governmental agencies).

^{41/} Revised Petition at 5-6 (Assumed Facts ¶ 10).

^{42/} Revised Petition at 6 (Assumed Facts ¶ 12).

^{43/} Revised Petition at 10.

ORS 758.450(2) states that a person shall not “offer, construct or extend utility service in or into an allocated territory.”^{44/} “Utility service” is defined as “service provided ...for the distribution of electricity to users ... through a connected and interrelated distribution system.”^{45/} It is expressly defined to *exclude* service that “pass[es] through ... or do[es] not terminate in” an allocated service territory.^{46/}

In a recent order (the “Columbia Basin Order”) issued the same day that the Original Petition was filed, the Commission found that “utility service” occurs where the load is located.^{47/} The Columbia Basin Order resolved a dispute between PacifiCorp and the Columbia Basin Electric Cooperative, Inc. (“Columbia Basin”) regarding which utility had the right to serve the Shepherds Flat wind complex.^{48/} The Commission first found that this wind complex consisted of three separate projects, one of which was located entirely in PacifiCorp’s service territory, another of which was located entirely in Columbia Basin’s service territory, and a third that straddled both utilities’ service territories (“Shepherds Flat Central”).^{49/} PacifiCorp argued that it had the right to serve the entire wind complex because the “point of service” (i.e., where title to the electricity was transferred to the wind complex) occurred at Slatt Substation, which is within PacifiCorp’s service territory.^{50/} The Commission, however, found that “[w]hen an entire load is located within the service territory of a single utility, that utility has the right and

^{44/} ORS 758.450(2).

^{45/} ORS 758.400(3).

^{46/} Id.

^{47/} Columbia Basin Elec. Coop., Inc. v. PacifiCorp, et al., Docket No. UM 1670, Order No. 15-110 at 6-7 (Apr. 10, 2015).

^{48/} Id. at 1-2.

^{49/} Id. at 6-8.

^{50/} Id. at 7.

obligation to serve that load.”^{51/} Similarly, with respect to Shepherds Flat Central, the Commission adopted the “geographic load center” test.^{52/} The Commission found that if all “utility service” occurred at the point of delivery, as PacifiCorp had argued, this “would effectively render meaningless all allocated service territories, as a customer could choose its own utility service provider simply by constructing its own transmission line to an adjoining service territory.”^{53/} The Commission, therefore, found that for purposes of resolving the circumstances in which Shepherds Flat Central straddled both utility service territories, PacifiCorp had the right to serve the load because the majority of it was in the Company’s service territory, not because the point of delivery was at Slatt Substation.^{54/}

The Commission’s determination that the location of the load determines where “utility service” occurs for purposes of territorial allocation leads to the unequivocal conclusion that Clatskanie will not violate any service territory allocated to PacifiCorp or any other Oregon utility because that load is located in Washington State.^{55/} Furthermore, this result would not change under PacifiCorp’s proposed (but rejected) “point of service” test.^{56/} Under the proposed transaction, Clatskanie will purchase the 69 kV Lines that interconnect the Camas Mill to the Troutdale Substation.^{57/} Therefore, electricity will not be delivered to the Camas Mill until it passes over these lines and reaches the point of interconnection at the mill’s site, in Washington State. Under the Assumed Facts, then, the “utility service” Clatskanie provides to the Camas

^{51/} Id. at 6.

^{52/} Id. at 8.

^{53/} Id. at 7.

^{54/} Id. at 8.

^{55/} Revised Petition at 3 (Assumed Facts ¶¶ 1-2).

^{56/} In the Columbia Basin Order, the Commission referred to the “point of service” test as “the point at which electricity is delivered rather than [] the point at which it is consumed.” Docket No. UM 1670, Order No. 15-110 at 7.

^{57/} Revised Petition at 5-6 (Assumed Facts ¶ 10).

Mill will “pass through,” and “[will] not terminate” at, the Troutdale Substation.^{58/} Thus, under either the “point of service” test or the “geographic load center” test, the result is the same – “utility service” will occur at the Camas Mill in Washington, not at the Troutdale Substation.

Relying on the location of the load, rather than the point of service, in determining where “utility service” occurs in this case also avoids a finding that PacifiCorp has been violating the service territory laws for at least the past 23 years. As the Revised Petition discusses, the Commission has allocated service territory that includes the Troutdale Substation to Portland General Electric Company (“PGE”), not PacifiCorp.^{59/} To summarize, most of the territory around the Troutdale Substation was allocated to PGE in 1963, pursuant to Commission Order No. 39026.^{60/} Due to objections from the City of Portland, however, the area that includes the Troutdale Substation was specifically excluded from the allocated territory.^{61/} Eventually, PacifiCorp and PGE entered into a facilities exchange agreement, in which PacifiCorp agreed to transfer all of its distribution facilities around, and including, the Troutdale Substation to PGE.^{62/} The Commission approved this facilities exchange agreement in Order No. 72-870, but did not specifically invoke the territory allocation laws.^{63/}

Consequently, in a subsequent federal antitrust lawsuit brought under Section 1 of the Sherman Act, the Ninth Circuit Court of Appeals ruled that PGE did not, as a matter of law, have an exclusive service territory in the area that was the subject of its facilities exchange agreement with PacifiCorp, including the Troutdale Substation, because the allocation of service

^{58/} ORS 758.400(3).

^{59/} Revised Petition at 21-24.

^{60/} Docket No. UF 2342, Order No. 39026 (Jan. 21, 1963).

^{61/} Id. at 5, 7, 25-26.

^{62/} Docket Nos. UF 2797 & UF 2800, Order No. 70-219 at 1 (Mar. 12, 1970).

^{63/} Docket No. UF 2947, Order No. 72-870 at 8-9 (Dec. 15, 1972).

territory was not “clearly articulated and affirmatively expressed as state policy.”^{64/} To rectify this situation, the Commission issued Order No. 92-557 in which it explicitly allocated the area included in the facilities exchange agreement, including the location of the Troutdale Substation, to PGE as exclusive retail service territory.^{65/} No subsequent order the Petitioners are aware of modifies this exclusive service territory assignment.

Thus, if PacifiCorp’s preferred interpretation of “utility service,” which hinges on the point of delivery, were applied, it follows that PacifiCorp has been infringing, and continues to infringe, on territory allocated to PGE because its point of delivery is within PGE’s exclusive service territory. The Commission’s recent decision to adopt the location of the load test in the Columbia Basin Order avoids that result, because PacifiCorp’s “utility service” to the Camas Mill takes place in Washington, outside of any Oregon-allocated service territory. Likewise, the location of the load test places the “utility service” that will be offered by Clatskanie at the Camas Mill in Washington State, outside of any territory the Commission has the power to allocate to PacifiCorp or any other utility.^{66/} As a result, the proposed arrangement does not, and cannot, violate any service territory allocation.

^{64/} Columbia Steel Casting Co., Inc. v. Portland Gen. Elec. Co., 111 F.3d 1427, 1436, 1440-41 (9th Cir. 1996).
^{65/} Docket Nos. UA 37 & UA 41, Order No. 92-557 (Apr. 16, 1992).

^{66/} This argument should not be interpreted to suggest that the Commission has been unlawfully regulating PacifiCorp’s service to the Camas Mill. “Utility service” is a defined term only for purposes of the territory allocation laws. See ORS 758.400. Therefore, a conclusion that PacifiCorp currently provides “utility service” to the Camas Mill at the location of the load in Washington merely results in the conclusion that such “utility service” cannot invade an exclusive service territory that the Commission has the power to allocate. For purposes of determining which state has the power to regulate the *service* PacifiCorp provides to the Camas Mill, the relevant fact is the point of delivery because that is where title to the electricity passes from the utility to the customer, i.e., where the service occurs. See ORS 756.010(8) (defining “service” as including “equipment and facilities related to providing ... the product served”). As discussed above, while PacifiCorp currently provides service to the Camas Mill at the Troutdale Substation, where GP’s 69 kV Lines interconnect, that service will transfer to the point of interconnection at the Camas Mill in Washington, outside of the Commission’s jurisdiction, after sale of the 69 kV Lines to Clatskanie.

IV. CONCLUSION

The Assumed Facts contained in the Revised Petition continue to demonstrate that Clatskanie's service to the Camas Mill will not implicate Oregon's direct access laws, nor will it infringe on any Oregon exclusive service territory. The Commission should grant the relief requested in the Revised Petition.

Dated this 23rd day of June, 2015.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ S. Bradley Van Cleve

S. Bradley Van Cleve
333 S.W. Taylor, Suite 400
Portland, Oregon 97204
(503) 241-7242 telephone
(503) 241-8160 facsimile
bvc@dvclaw.com
Of Attorneys for Georgia-Pacific Consumer
Products (Camas) LLC

CABLE HUSTON LLP

/s/ J. Laurence Cable

J. Laurence Cable
1001 SW 5th Ave, Suite 2000
Portland OR 97204
503 224-3092
503 224-3176
lcable@cablehuston.com
Of Attorneys for Clatskanie People's Utility
District