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December 22, 2017

VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, Oregon 97301-3398

Re: Docket UM 1818 – Columbia Basin Electric Cooperative Inc.'s Reply Brief

Dear Filing Center:

Attached for filing in the above-captioned docket is the Reply Brief of Columbia Basin Electric Cooperative, Inc.

Please contact this office with any questions.

Very truly yours,

Wendy McIndoo
Office Manager

1 center test it should find in Columbia Basin’s favor because the load on the Willow Creek Dairy
2 property is not a unified load.

3 Either way, Columbia Basin respectfully requests the Commission to determine that
4 Umatilla has invaded Columbia Basin’s exclusive service territory in violation of ORS
5 758.450(2). Columbia Basin also urges the Commission to articulate the rules and policies that
6 apply to loads that straddle service territory boundaries to help avoid future disputes and
7 litigation.

II. ARGUMENT

A. The Commission Should Not Apply the Point of Service Test.

8 ORS 758.450(2) prohibits any person from providing utility service “into” Columbia
9 Basin’s exclusive service territory. The OPUC Staff and Umatilla both argue that Umatilla has
10 not violated ORS 758.450(2) because Umatilla serves the six irrigation circles located in
11 Columbia Basin’s service territory from a point of service (or point of delivery) in Umatilla’s
12 service territory.¹ In other words, the OPUC Staff and Umatilla argue for the application of the
13 point of service test to conclude Umatilla has not violated Columbia Basin’s exclusive service
14 territory.

15 The Commission has already addressed and rejected the point of service test in Order No.
16 15-110.² In that case, PacifiCorp provided electricity to serve the Shepherds Flat South wind
17 project from the Slatt Substation that was located in PacifiCorp’s service territory. The entire
18 load of the Shepherds Flat South project was located in Columbia Basin’s exclusive service
19 territory. The wind project had constructed transmission facilities from its wind turbines and
20 collector substation located in Columbia Basin’s service territory to the Slatt Substation.

¹ OPUC Staff’s Response Brief at 6. Umatilla Response Brief at 16-17.

² *In the Matter of Columbia Basin Electric Cooperative, Inc. v. PacifiCorp et al.* UM 1670, Order No. 15-110 (Apr. 10, 2015).

1 PacifiCorp argued it was not violating ORS 758.450(2) because all “utility service” occurred at
2 the point of delivery – the Slatt Substation - which was in PacifiCorp’s service territory.

3 The Commission held, however that PacifiCorp had violated ORS 758.450(2). The
4 Commission stated:

5 We reject the basis of PacifiCorp’s assertion – that all “utility service” occurs at
6 the point of delivery. Such a premise, if adopted, would effectively render
7 meaningless all allocated service territories, as a customer could choose its own
8 utility service provider simply by constructing its own transmission line to an
9 adjoining service territory.³

10 The Commission also held that, “PacifiCorp has violated the Territory Allocation Law by
11 providing service to Shepherds Flat South via this privately-owned transmission line . . .”⁴

12 Order No. 15-110 clearly demonstrates that a utility can violate ORS 758.450(2) by
13 providing service to a point of delivery in its own service territory to serve load in another
14 utility’s exclusive service territory just as Umatilla does here. As the Commission noted,
15 PacifiCorp was in violation of ORS 758.450(2) because it was providing utility service into
16 Columbia Basin’s territory *via the electric customer’s electric facilities*. In this case, Umatilla is
17 providing utility service into Columbia Basin’s service territory via electric facilities constructed
18 and owned by Willow Creek Dairy.

19 The decision in Order No. 15-110 is consistent with the language of ORS 758.450(2),
20 which provides a person is prohibited from providing utility service into an exclusive service
21 territory by the use of “any” distribution facilities. The statute neither states nor implies that the
22 facilities need to be owned by the person invading the service territory. If ownership of the
23 distribution facilities were a factor, any person could easily evade the prohibitions in ORS
24 758.450(2) by simply creating a subsidiary or new legal entity to own the distribution facilities,
25 or as in this case, using distribution equipment owned by the customer.

³ Order No. 15-110 at 5.

⁴ Order No. 15-110 at 4.

1 In spite of Order No. 15-110, the OPUC Staff and Umatilla contend that UEC has not
2 violated ORS 758.450(2) because it has not provided “utility service” in CBEC’s exclusive
3 service territory. The OPUC Staff and Umatilla argue that Umatilla has not provided utility
4 service in Columbia Basin’s territory because Umatilla’s point of service for the six irrigation
5 circles is in Umatilla’s service territory.⁵

6 The OPUC Staff and Umatilla do not discuss the Commission’s holding in Order No. 15-
7 110, which contradicts their view that “utility service” terminates at the point of service or
8 delivery. Order No. 15-110 unambiguously holds that “utility service” does not stop at the point
9 of service or point of delivery.⁶

10 PacifiCorp made the identical argument regarding its service to the Shepherds Flat wind
11 complex and the Commission responded with:

12 PacifiCorp appears to rely on the point of service test when it contends that it has
13 not unlawfully encroached on Columbia Basin’s service territory because it
14 delivers the station service to an interconnection point at the Slatt Substation –
15 located in PacifiCorp’s service territory. Although PacifiCorp makes this
16 argument in the context of serving the three wind projects collectively, the point
17 could be also used to assert the right to serve Shepherds Flat Central
18 individually. . . . We reject the basis of PacifiCorp’s assertion – that all “utility
19 service” occurs at the point of delivery.⁷

20 Umatilla’s assertion that it does not distribute power into Columbia Basin’s territory is
21 directly contrary to the Commission’s decision in Order No. 15-110. The Commission did not
22 apply the point of service test when the load was entirely in a utility’s service territory.⁸ As
23 noted in the above quotation, the Commission also rejected the position that the point of service
24 test applies when a load straddles the service boundaries between two utilities.⁹ Like PacifiCorp,
25 which provided service to the Shepherds Flat Central wind project load that straddled

⁵ OPUC Staff Response Brief at 5-6. Umatilla Response Brief at 17.

⁶ Order No. 15-110 at 5.

⁷ Order No. 15-110 at 5.

⁸ *Id.*, at 4. [B]ecause Shepherds Flat South lies exclusively in Columbia Basin’s territory, we conclude that Columbia Basin has the right to serve Shepherds Flat South.”

⁹ *Id.*, at 5.

1 PacifiCorp’s and Columbia Basin’s service territory boundary, Umatilla provides service into
2 Columbia Basin’s service territory to serve the Willow Creek Dairy load there. The point of
3 service test does not provide a defense to Umatilla’s illegal actions.

4 As correctly noted by the Commission in Order No. 15-110, the OPUC Staff’s and
5 Umatilla’s unsupported interpretation of utility service would permit any customer to choose its
6 utility service provider simply by building its own transmission or distribution facilities to an
7 adjoining service territory.¹⁰ The utility provider would avoid the prohibitions under ORS
8 758.450(2) because its point of service would be in its own service territory. As the Commission
9 noted in Order No. 15-110, such an interpretation would lead to customers choosing their own
10 utility provider regardless of the territory boundaries.¹¹

11 The logical extension of the point of service test would be that Willow Creek Dairy could
12 have requested interconnection to Columbia Basin’s line located adjacent to the six irrigation
13 circles with Willow Creek Dairy’s own facilities and completely bypassed Umatilla’s electric
14 facilities that serve the Willow Creek Dairy property in Umatilla’s service territory. The
15 Commission has already spoken to that concern and stated that if that interpretation was adopted,
16 it would render meaningless all allocated service territories.¹² The Commission cannot interpret
17 its statutes in a manner that would render a statutory provision meaningless.¹³

18 In sum, the Commission should once again reject the point of service test as it conflicts
19 with the language and purpose of ORS 758.450(2). To do otherwise would also, in essence,
20 overrule the portion of the Commission’s decision in Order No. 15-110 that approved Columbia
21 Basin’s right to provide service to the Shepherds Flat South wind project although PacifiCorp

¹⁰ *Id.*, at 5.

¹¹ *Id.*, at 5.

¹² Order No. 15-110 at 5.

¹³ ORS §§ 42.230 and 174.010, *Gouge v. David*, 185 Or. 437, 456 (1949) “An administrative agency, no less than a court, is bound by the rule given to us in § 2-216, which says; ‘In the construction of a statute or instrument, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted . . .’”

1 served the Shepherds Flat South wind project from a point of service in PacifiCorp's service
2 territory.

B. ORS 758.450(2) Does Not Permit the Adoption and Application of the Geographic Load Center Test.

3 CBEC argued in its Opening Brief that that the plain language of ORS 758.450(2) does
4 not grant the Commission any discretion to adopt or apply the geographic load center test. Both
5 the OPUC Staff and Umatilla argue the geographic load center test provides a defense to
6 Umatilla's invasion of Columbia Basin's exclusive service territory.

7 The language in ORS 758.450(2) is neither ambiguous nor silent on the issue of which
8 utility has the right to provide utility service in an exclusive service territory. It clearly states:

9 Except as provided in subsection (4) of this section, no other person shall offer,
10 construct or extend utility service in or into an allocated territory.

11 An administrative agency cannot construe statutes that need no construction, nor can it
12 alter the meaning of unambiguous passages in statutes.¹⁴ Furthermore, the Commission lacks the
13 authority to put policy considerations into the meaning of the statutes in place of the words that
14 the legislature has chosen to use.¹⁵

15 The Commission cannot use and apply the geographic load center test because it directly
16 conflicts with the express language in ORS 758.450(2). No one can deny that the geographic
17 load center test leads to the predominate utility providing utility service into the subordinate
18 utility's service territory.¹⁶ That result, however, is directly contrary to the express language in
19 ORS 758.450(2), which prohibits any territory invasion under any circumstances. Neither the
20 OPUC Staff nor Umatilla have pointed to any other authority that expressly or implicitly grants

¹⁴ *Gouge v. David*, 185 Or. 437, 456 (1949).

¹⁵ *Northwest Natural Gas Co., v. Oregon Public Utility Comm'n*, 195 Or.App. 547, 557 (2004).

¹⁶ The Commission's rationale in Order No. 15-110 to reject PacifiCorp's defense of the point of service test and, instead, applying the geographic load center test as a defense to PacifiCorp's service to that portion of the Shepherds Flat Central wind project load in Columbia Basin service territory highlights PacifiCorp's invasion of Columbia Basin's service territory.

1 the Commission the discretion to adopt or apply the geographic load center test and ignore the
2 express language of the statute. The Commission should terminate any further use or application
3 of the test.

C. The Commission Does Not Have the Discretion to Use the Three Tests on an Ad Hoc Basis.

4 The OPUC Staff argues that jurisdictions with the authority to allocate territory using the
5 point of delivery test, point of use test, or geographic load center test are not bound to use a
6 particular test in every circumstance.¹⁷ The OPUC Staff’s assertion implies that the Commission
7 can apply any one of the tests on an ad hoc basis depending on circumstances of each case.¹⁸

8 The OPUC Staff’s position references decisions and policy from other jurisdictions. The
9 statutory language in those jurisdictions, however, is different than the statutory language in
10 ORS 758. For instance, the OPUC Staff references, *In the Matter of Northern States Power Co.*,
11 489 N.W.2d 365 (1992), which concerned the statutory language in South Dakota. The OPUC
12 Staff also references an attorney general’s opinion for the state of Virginia. Both of those states
13 have different statutory language for their territory allocation laws.

14 The Commission has already stated in Order No. 15-110 that it cannot adopt and use the
15 point of service (or point of delivery test) because that test would render the all allocated
16 territories meaningless.¹⁹ Therefore, the Commission has already determined it does not have
17 the discretion to use the point of service test.

18 The point of use test (location of the load) simply means the strict enforcement of the
19 allocated service territories without any exceptions. In other words, it means the same as the
20 strict application of the prohibitions in ORS 578.450(2).²⁰

¹⁷ OPUC Staff Response Brief at 7.

¹⁸ The *ad hoc* application of different rules under identical facts would be arbitrary, capricious and contrary to law.

¹⁹ Order No. 15-110 at 5.

²⁰ Columbia Basin asserted the “point of use” test applies because, in essence, it means the same as the strict application of the prohibitions in ORS 758.450(2).

1 The OPUC Staff contends that ORS 758.450(2) does not employ the terms “point of
2 service” and the legislative history does not discuss such terms as “point of use,” “point of
3 service,” or “geographic load.”²¹ The OPUC Staff also correctly notes that the Oregon Territory
4 Allocation law predates the case law that discuss such terms.²² In other words, there was never
5 any legislative intent for the Commission to use any of these tests.

6 Columbia Basin agrees the language of Oregon’s Territory Allocation law does not use or
7 imply the use of the various tests. The plain language of ORS 758.450(2) contradicts the
8 application of the geographic load center test and the point of service test. Those jurisdictions
9 that have the discretion to use the three tests on an *ad hoc* basis have a different statutory scheme
10 than Oregon, and the Commission should not interpret its authority so broadly.

D. The Commission Should Not Apply the Geographic Load Center Test in this Situation.

11 Columbia Basin believes the Commission should not apply the geographic load center
12 test in this situation even if the Commission has that authority. The OPUC Staff also concludes
13 the geographic load center test should not be applied here.

14 In spite of its own arguments, the OPUC Staff analyzes the facts of this case under the
15 geographic load center test to conclude Umatilla would have the right to provide utility service to
16 the six irrigation circles in Columbia Basin’s service territory. Umatilla also argues the
17 geographic load center test applies.

18 The OPUC Staff argues that the Willow Creek Dairy is an enterprise of one individual
19 property owner. The OPUC Staff fails to acknowledge the existence of the Boardman Tree Farm
20 or the electricity it uses for its operations on the Willow Creek Dairy property. The OPUC
21 Staff’s failure to even address those facts is a critical error in its analysis and thus renders the
22 OPUC Staff’s arguments infirm.

²¹ OPUC Staff’s Response Brief at 5.

²² *Id.*, at 5.

1 The OPUC Staff is also wrong to claim there is no precedent for CBEC’s argument that
2 load on the Willow Creek Dairy property should be further divided for purposes of analysis. The
3 OPUC Staff’s position is clearly inconsistent with the Commission’s findings in Order No. 15-
4 110.

5 In that proceeding, Columbia Basin argued the entire Shepherds Flat wind complex
6 should be viewed as a single entity and a single load. Columbia Basin noted that (i) a single
7 parent corporation owned all three wind projects, (ii) the Shepherds Flat wind complex had been
8 initially approved by EFSC as a single project, and (iii) a single entity jointly operated and
9 maintained the three wind projects.

10 The Commission dismissed Columbia Basin’s argument that the Shepherds Flat wind
11 complex consisted of a single, unified load. Instead, the Commission divided the entire load of
12 the Shepherds Flat wind project into separate, individual loads according to each wind project’s
13 ownership of facilities.²³ The Commission considered a host of factors, such as power sales
14 contracts and the individual legal existence of each entity. The ownership of the land on which
15 the three wind projects were located never was an issue in the Commission’s analysis that led to
16 Order No. 15-110. The wind projects did not own the real estate on which the turbines were
17 located; local ranchers and farmers owned the land and leased their land to the wind projects.²⁴
18 Therefore, the Commission’s decision in Order No. 15-110 shows that its analysis of whether a
19 unified load exists *does* consider various property interests, including entities with property
20 leases.

21 The OPUC Staff’s assertion that “Willow Creek Dairy is the enterprise of one individual
22 property owner” ignores the Boardman Tree Farm load and is too simplistic. If Willow Creek
23 Dairy had leased its land to a wind generation project, instead of Boardman Tree Farm, under the

²³ Columbia Basin’s summary of the Commission’s decision in Order No. 15-110 concerning the division of the Shepherds Flat wind complex into three separate loads should not be construed as Columbia Basin’s agreement that division was appropriate in UM 1670.

²⁴ The fact that Columbia Basin served those ranches and farms also was not a factor in the Commission’s decision.

1 OPUC Staff's analysis, the Dairy's loads and the wind farm loads would be one unified load.
2 The OPUC Staff's refusal to even acknowledge the existence of the Boardman Tree Farm on the
3 property as a separate legal entity with separate operations and a separate electric load is faulty
4 and contrary to the Commission's past analysis. If the Commission adopts the OPUC Staff's
5 analysis that the load from lease holders should be ignored, then the load of each wind
6 generation facility, which leases its property, would be ignored in the application of the
7 geographic load test counter to the result in Order No. 15-110.

8 Application of the Commission's analysis from Order No. 15-110, would show that load
9 on the Willow Creek Dairy property is not unified. As argued in Columbia Basin's Opening
10 Brief, the electric loads of the Boardman Tree Farm should not be attributed to the Willow Creek
11 Dairy. Additionally, the Willow Creek Dairy loads should not be viewed as a unified load. The
12 various operations and loads, such as the dairy operations and the agricultural operations with 30
13 different service points and ten different service classifications all point to multiple loads, not
14 one unified load. Umatilla argues that only the testimony of Willow Creek Dairy's witness
15 should be considered as evidence regarding the Dairy. However, the data that that Columbia
16 Basin obtained during discovery from Umatilla and Willow Creek Dairy evidences the various
17 types and differences in electric loads on the Willow Creek Dairy property.

18 Finally, the fact that the six irrigation circles located in Columbia Basin's service territory
19 are served by a separate meter, a separate transformer and a new, separate distribution line shows
20 that their load is independent and separate from the rest of the load on the Willow Creek Dairy
21 property. Those irrigation circles are separated from the rest of the Willow Creek Dairy
22 operations by hundreds of acres of trees owned by the Boardman Tree Farm. Umatilla and the
23 OPUC Staff have not shown any evidence that the electric *load* of the six irrigation circles is
24 closely integrated with the rest of the electric load on the Willow Creek Dairy property. They
25 have merely offered examples of how the farming operations or the irrigation water operations

1 are integrated. They have not shown the load is “unified.” In contrast, Columbia Basin has
2 provided evidence that the load is not “unified.”

3 Therefore, even if the Commission asserts it has authority to apply the geographic load
4 center test, the facts in the record show that the Commission should not apply it to grant Umatilla
5 a defense for invading Columbia Basin’s service territory in this case.

E. Columbia Basin’s Concern About Customers’ Ability to Choose Their Utility Supplier is a Valid Concern and Within the Scope of this Complaint.

6 The OPUC Staff dismisses Columbia Basin’s concern that a customer could build its own
7 transmission or distribution facilities to circumvent established service territories by arguing
8 Columbia Basin’s concern is beyond the scope of this Complaint.²⁵ The OPUC Staff’s position
9 is, again, directly contrary to the Commission’s decision in Order No. 15-110, where the
10 Commission shared Columbia Basin’s concern and determined that it is the primary policy
11 reason to reject the point of service test. Furthermore, it was this concern that led to the
12 Commission finding PacifiCorp had violated ORS 758.450(2) in that proceeding. The OPUC
13 Staff’s contention that Columbia Basin’s concern is beyond the scope of this proceeding and not
14 relevant to Umatilla’s invasion of Columbia Basin’s service territory is simply wrong and
15 contrary to the Commission’s holding in Order No. 15-110.

F. Umatilla’s Actions Have and Will Cause Duplication of Facilities.

16 Umatilla and OPUC Staff contend Umatilla’s invasion of Columbia Basin’s exclusive
17 service territory has not resulted in any duplication of electric facilities.²⁶ The OPUC Staff’s
18 Response Brief, however, acknowledges and discusses Columbia Basin’s distribution facilities
19 located immediately adjacent to the six irrigation circles. The OPUC Staff’s apparent
20 justification for dismissing those facilities is its claim that the facilities are decades old.

²⁵ OPUC Staff Response Brief, p. 9.

²⁶ OPUC Staff Testimony/100, Gibbens-Rossow p. 10, Umatilla Response Brief at 18.

1 The fact that Columbia Basin’s distribution facilities have been in place for decades does
2 not mean Umatilla’s actions have not resulted in duplication of facilities. Instead, it
3 demonstrates that Columbia Basin has provided service for years to the very area that Umatilla is
4 now serving. It also demonstrates that Umatilla’s actions are directly contrary to one of the
5 primary purposes of the territory allocation law – to avoid duplication of facilities and stranded
6 costs.

7 OPUC Staff claims it is concerned that if Columbia Basin serves the six irrigation circles
8 that, “would leave UEC members burdened with stranded costs.”²⁷ Umatilla, however, is
9 serving the load from its service territory; consequently, there is no “stranded assets” on
10 Umatilla’s side of the boundary. Perplexingly, OPUC Staff completely ignores the burden
11 placed on Columbia Basin’s members for the stranding of its existing distribution facilities
12 adjacent to the six irrigation circles. As pointed out by OPUC Staff, Columbia Basin’s facilities
13 have been in place for decades. If the Commission adopts the OPUC Staff’s position, the
14 Commission would be directly causing the stranding of assets, which is not a result that is in the
15 public interest.

16 It is important to note that both the Willow Creek Dairy and Umatilla’s management
17 were well aware of the proximity of Columbia Basin’s facilities to the six irrigation circles, and,
18 in spite of the impact to Columbia Basin, both entities decided to install new facilities to
19 intentionally serve the six irrigation circles in Columbia Basin’s service territory. If one of the
20 utilities here assumed the risk of stranded costs under these circumstances, it was Umatilla, not
21 Columbia Basin.

22

²⁷ *Id.*, at 10.

G. The Cost Impact to the Customer is Not a Factor Under ORS 758.450(2).

1 ORS 758.450(2) sets forth four factors to determine whether a person has violated the
2 territory of another utility. Those four factors do not include an exception for economic impacts
3 or operational inefficiencies claimed by a customer.

4 The Commission's past decisions have not given any weight to customer's claims of
5 economic or operational harm. For instance, in UM 1670, the Caithness parties argued they
6 would incur significant harm if Columbia Basin served the Shepherds Flat South wind project
7 because they would have to pay two demand charges, instead of just one if PacifiCorp served all
8 three wind projects. Caithness argued that Columbia Basin's service to the Shepherds Flat South
9 wind project would result in impacts of hundreds of thousands of dollars. The Commission was
10 not swayed by these economic-based arguments.

11 Here, OPUC Staff and Umatilla both argue that Willow Creek Dairy will suffer economic
12 losses and operational harm if Columbia Basin provides service to the six irrigation circles. For
13 instance, Umatilla argues that operational impacts to the irrigation system from two electric
14 service providers could lead to economic harm through loss of or damage to crops. In short, the
15 OPUC Staff and Umatilla want the Commission to add an economic test to the factors in ORS
16 758.450(2). In their view, a violation of ORS 758.450(2) is justified if the violation may reduce
17 costs or potentially improve operational efficiencies for the customer. The Commission has not
18 permitted those factors to be included in its assessment of violations of ORS 758.450(2), and to
19 do so now would result in less clarity regarding application of the Commission's service territory
20 laws and policy.

21

H. Columbia Basin has not engaged in “invited error.”

1 Umatilla claims that Columbia Basin engaged in “invited error” by actively participating
2 in the Commission’s decision in UM 1670 to adopt and use the geographic load center test.²⁸
3 Umatilla points to Columbia Basin’s response to PacifiCorp’s motion for clarification in that
4 proceeding as evidence of the invited error and claims Columbia Basin cannot now argue against
5 the geographic load center test. Umatilla mistakenly believes that Columbia Basin had some
6 hand in the Commission decision to apply the geographic load center test. Umatilla’s claims
7 misrepresent Columbia Basin’s actions in UM 1670 and should be rejected.

8 Under the invited error doctrine, a party who “was actively instrumental in bringing
9 about” an alleged error “cannot be heard to complain, and the case ought not be reversed because
10 of it.”²⁹ The goal of the rule is to ensure the parties who make intentional or strategic trial
11 choices do not later blame the trial court if those choices prove to be unwise.³⁰

12 As a factual matter, PacifiCorp’s motion for clarification regarding the Commission’s
13 decision in Order No. 15-110 that PacifiCorp had violated ORS 758.450(2) by providing service
14 to the Shepherds Flat South wind project, did not involve the application of the geographic load
15 center test.³¹ The Commission only applied the geographic load center test to determine which
16 utility had the right to serve the Shepherds Flat Central wind project.

17 Columbia Basin never argued for the adoption or use of the geographic load test in UM
18 1670, and it never benefitted from the Commission’s adoption of the test. A cursory review of

²⁸ Umatilla Response Brief at 14.

²⁹ *State v. Kammeyer*, 226 Or.App. 210, 215 (2009).

³⁰ *Crawford v. Jackson*, 252 Or. 552, 555 (1969).

³¹ PacifiCorp’s Motion for Clarification, p. 1: “Specifically, PacifiCorp as the Commission to clarify its statement that PacifiCorp ‘violated the Territory Allocation Law by providing service to Shepherds Flat South via [a] privately-owned transmission line[.]’ PacifiCorp does not challenge the Commission’s adoption of the geographic load center test or its conclusion that the Columbia Basin Electric Cooperative (Cooperative) is entitled to serve the Shepherds Flat South load (once it is able to do so).”

1 Columbia Basin’s Motion for Summary Judgment and its Response Brief in that proceeding
2 indicates there is no mention of the geographic load center test.

3 In Order No. 15-110, the Commission did not use the geographic load center test to
4 address which utility had the right to serve the Shepherds Flat South wind project. The
5 Commission noted in Order No. 15-110 that all of the Shepherds Flat South wind project’s load
6 was located in Columbia Basin’s service territory and under ORS 758.450(2) Columbia Basin
7 had the right to serve that load. In other words, the Commission did not need to apply the
8 geographic load test because the Shepherds Flat South wind project load did not straddle the
9 boundary between PacifiCorp and Columbia Basin.

10 After the Commission made its decisions in Order 15-110, PacifiCorp (not Columbia
11 Basin) filed a motion for clarification. In that motion, PacifiCorp argued it did not violate ORS
12 758.450(2) because (i) the case was one of first impression and PacifiCorp was reasonable in
13 relying on the point of service test, (ii) Columbia Basin could not serve the load of the Shepherds
14 Flat South wind project, and (iii) the decision would expose PacifiCorp to civil damages.

15 None of Columbia Basin’s arguments in its response to PacifiCorp’s motion for
16 clarification supported the Commission’s decision to apply the geographic load center test to the
17 Shepherds Flat Central wind project. In fact, Columbia Basin’s only comment regarding the
18 geographic load center test was:

19 The only novel legal analysis concerning this issue was the Commission’s
20 determination of which utility had the right to serve the Shepherd’s Flat Central
21 project, which fell in PacifiCorp’s favor.³²

22 Columbia Basin made a simple declarative statement that Columbia Basin found the
23 application of the geographic load center test to be novel. That observation does not equate to
24 Columbia Basin being actively instrumental in bringing about the Commission’s decision to
25 apply the geographic load center test.

³² Columbia Basin Response to PacifiCorp’s Motion for Clarification at p.8.

1 Umatilla misrepresents the facts and claims Columbia Basin invited error based on one
2 phrase taken out of context – Columbia Basin’s statement that the Commission’s order was
3 based on “findings of fact and conclusions of law grounded in statutory language and case
4 law.”³³ Umatilla omits the following sentence that clearly states the conclusions that Columbia
5 Basin was referring to concerned the Commission’s findings and law regarding PacifiCorp’s
6 service to the Shepherds Flat South wind project.³⁴

7 Columbia Basin’s response to PacifiCorp’s motion further explains the phrase:
8 PacifiCorp is basically requesting the Commission to ignore existing law and,
9 alternatively, to use the three new legal tests proposed by PacifiCorp [to show
10 PacifiCorp did not violate ORS 758.450(2) by serving Shepherds Flat South.]
11 PacifiCorp’s Motion should be denied to the extent it request the Commission to
12 overrule existing statutory language and applicable case law.³⁵

13 The above text shows that Columbia Basin’s statement concerned the conclusion that
14 PacifiCorp’s service to the Shepherds Flat South wind project violated ORS 758.450(2). The
15 statement did not concern the geographic load center test.

16 The Commission should reject Umatilla claim of invited error because it is inapplicable
17 and based on a misrepresentation of facts.

I. The Boundary between Columbia Basin and Umatilla is Based on an Agreement.

18 OPUC Staff concludes its Response Brief with a statement that the dispute between
19 Columbia Basin and Umatilla is a matter best resolved by mutually agreed-upon contract.³⁶ The
20 boundary between Columbia Basin and Umatilla, however, is based on mutual agreement. Order
21 No. 38089, which concerns the Commission granting the allocated territory to Columbia Basin,
22 provides:

³³ Columbia Basin Response to PacifiCorp’s Motion for Clarification, p. 2.

³⁴ *Id.*, “The Order concludes that PacifiCorp violated the Territory Allocation Law by providing utility service to the Horseshoe Bend Wind Project (“Shepherds Flat South Project”) located in the Cooperative’s exclusive service territory.”

³⁵ *Id.*, at 5.

³⁶ OPUC Staff Response Brief at 12.

1 At a meeting held both separately and jointly by the boards of directors of
2 Applicant [Columbia Basin] and Umatilla on May 23, 1961, the boundaries
3 between the two cooperatives were established and approved by the respective
4 boards. The boundary agreement contemplates potential service to the Industrial
5 Park. The same boundary description separating the two cooperatives was
6 included in the within application.

7 Thus, the territory boundary between Umatilla and Columbia Basin is based on a mutual
8 agreement between the boards of both utilities.

9 The fact is that Columbia Basin did try to resolve this issue with Umatilla through
10 negotiation only to have the manager of Umatilla declare that it will take a court order before
11 Umatilla stops its violation of Columbia Basin’s service territory. Based on the Umatilla
12 manager’s statement, Columbia Basin reasonably concluded that further negotiations would be
13 fruitless and turned to the Commission to apply the law to these circumstances.

14 It is disappointing for Columbia Basin to experience the OPUC Staff requesting the
15 Commission to dismiss Columbia Basin’s Complaint and to instruct Columbia Basin to seek
16 additional review from a circuit court or commence negotiations again with a party that already
17 has stated its position that only a court order will stop its invasion. Columbia Basin would not
18 have expended substantial time and resources on this litigation if it did not believe guidance from
19 the Commission to be the best path to resolution of this dispute and the prevention of similar
20 disputes in the future.

21

III. CONCLUSION

1 The Commission should rule on this case using the express language of ORS 758.450 and
2 find that Umatilla has violated ORS 758.450(2); alternatively, the Commission should find that
3 the geographic load center test does not provide a defense to Umatilla's invasion of Columbia
4 Basin's service territory and that Umatilla has violated ORS 758.450(2).

Respectfully Submitted this 22nd day December, 2017.

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