



WENDY MCINDOO  
Direct (503) 290-3627  
wendy@mrg-law.com

November 17, 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 Opening Brief**

Dear Filing Center:

Attached for filing in the above-captioned docket is Columbia Basin Electric Cooperative’s Opening Brief. Confidential copies will be sent via U.S. Mail.

Please contact this office with any questions.

Very truly yours,

A handwritten signature in black ink that reads "Wendy McIndoo". The signature is written in a cursive, flowing style.

Wendy McIndoo  
Office Manager



1 service territory, and therefore Umatilla’s service to the six circles area is not a violation of  
2 Columbia Basin’s exclusive service territory under the Commission’s “geographic load center  
3 test.”

4 Although the Commission has used the geographic load center test to determine the  
5 manner in which electric utility loads straddling service territory boundaries are to be served,  
6 ORS 758.450(2) does not grant the Commission the discretion to unilaterally make exceptions to  
7 established service boundaries.

8 If the Commission arguably does have the discretion to modify existing service territory  
9 boundaries with the geographic load center test, the load that Umatilla serves in Columbia  
10 Basin’s service territory, when objectively examined, is a separate and independent load to  
11 which the geographic load center test would not apply. Indeed, the interconnection between the  
12 six irrigation circles and Umatilla’s point of service was artificially created for Willow Creek  
13 Dairy’s convenience. Umatilla is providing utility service into Columbia Basin’s exclusive  
14 service territory in direct contravention of state law, and Columbia Basin respectfully requests  
15 the Commission to order Umatilla to stop.

## II. BACKGROUND

16 This dispute arises from Umatilla providing electric service to six irrigation circles owned  
17 by the Willow Creek Dairy<sup>1</sup> and located in Columbia Basin’s exclusive service territory in  
18 violation of ORS 758.450.

19 Columbia Basin and Umatilla share a Commission-approved, allocated service territory  
20 boundary that is located several miles to the East of the Naval Bombing Range near Ione,  
21 Oregon. The Commission granted Columbia Basin an exclusive service territory in this area in  
22 Order No. 38089. (Wolff Opening Testimony, Exhibit 105). Order No. 38089 provides that the

---

<sup>1</sup> Willow Creek Dairy is a dba name for Mr. te Velde, who operates his dairy under the assumed business names of Willow Creek Dairy or Lost Valley Farms. Wolff Opening Testimony, p. 4.

1 Boards of Umatilla and Columbia Basin mutually agreed on the placement of the service  
2 boundary between them and the Commission approved that division.

3 The service boundary in the area of the Willow Creek Dairy runs along an East to West  
4 axis and bisects the Southern portion of the Willow Creek Dairy property. That portion of the  
5 Willow Creek Dairy property is several hundred acres and currently includes six irrigation  
6 circles and a field of trees.

7 The Willow Creek Dairy property consists of approximately 5,700 acres of land. Public  
8 Utility Commission Staff Testimony, p. 1. (“PUC Staff Testimony”) Maps of the Willow Creek  
9 Dairy property show the Southern portion of the Willow Creek Dairy property extends into the  
10 exclusive service territory of Columbia Basin. (Wolff Opening Testimony, Exhibits 102 and  
11 103).

12 The Boardman Tree Farm (“BTF”) was the prior owner of the Willow Creek Dairy  
13 property. Columbia Basin stands ready to provide utility service to that portion of the Willow  
14 Creek Dairy property that is located in its service territory because it installed a power line and  
15 transformer, and provided service to, for the property owners prior to the BTF. Wolff Opening  
16 Testimony, p. 13-14. The prior owners had installed irrigation circles in approximately the same  
17 area as the current six irrigation circles. Columbia Basin provided electric service for those prior  
18 circles.

19 When the BTF gained ownership of the property, it converted the crop fields to stands of  
20 trees for fiber production. The BTF relied upon drip irrigation to irrigate its tree stands.  
21 Therefore the irrigation circles on the property in Columbia Basin’s service territory were  
22 removed, along with the circles on the rest of the BTF property, and BTF planted the property  
23 with trees and watered them with drip irrigation. Although Columbia Basin’s electric service to  
24 that property was disconnected, Columbia Basin’s power line and transformer remain in place.  
25 Wolff Opening Testimony, p. 14.

26 In late 2015, the BTF sold its property to Mr. te Velde. Wolff Opening Testimony, p. 5.  
27 As part of that property sale transaction, the BTF entered into a long-term agricultural lease

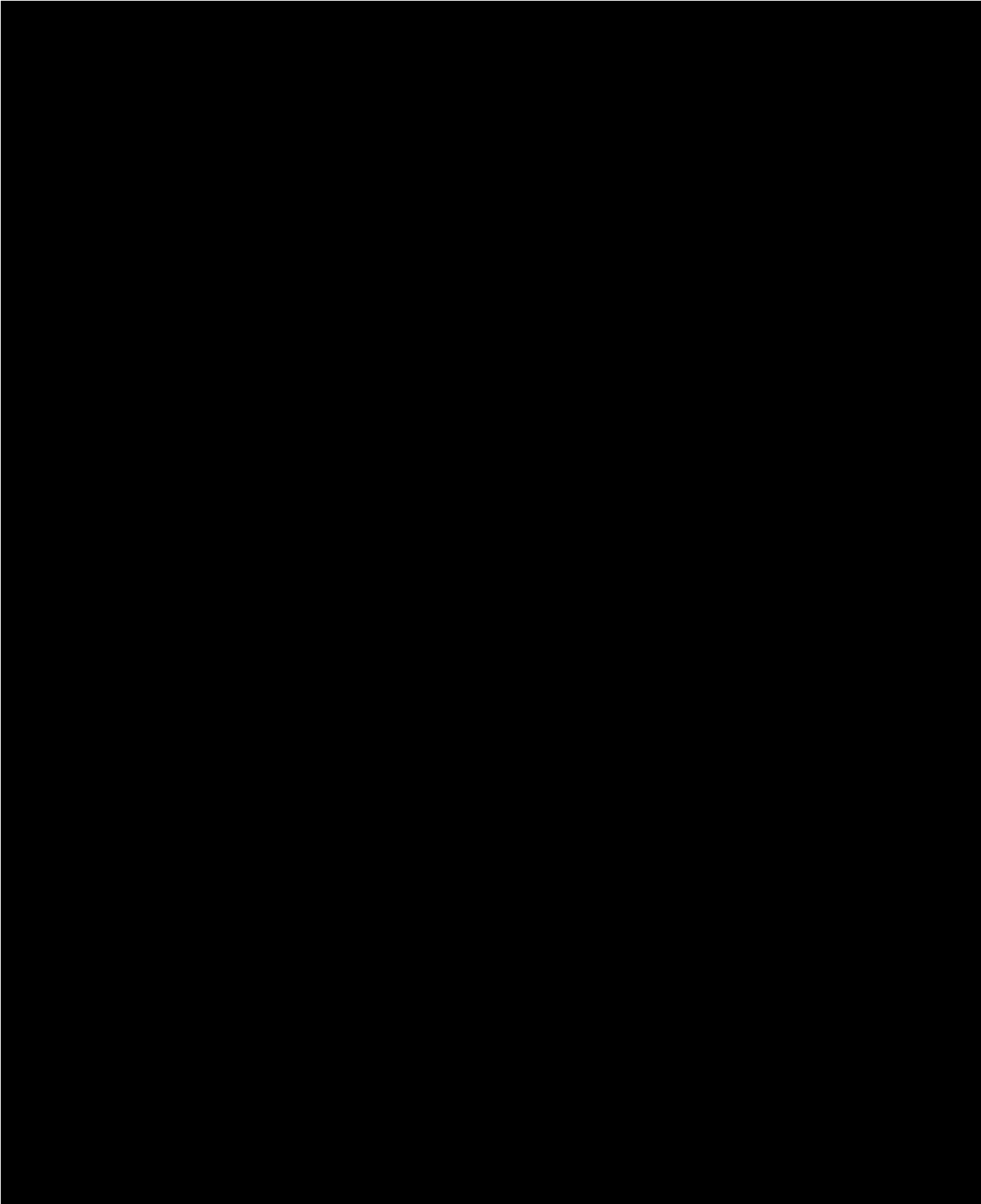
1 agreement with Mr. te Velde concerning the same property. (“Agricultural Lease,” Wolff  
2 Opening Testimony, Exhibit 105.)

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 These facts confirm that the load at the six irrigation circles located in Columbia Basin’s  
24 service territory is geographically isolated and will remain geographically isolated from the rest  
25 of the load on the Willow Creek Dairy property

26 [REDACTED]  
27 [REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



26           After Willow Creek Dairy purchased the property from the BTF in late 2015, Willow  
27 Creek Dairy became a member of Umatilla and had all of Umatilla’s accounts with the BTF

1 transferred to Willow Creek Dairy. Lankford Response Testimony, p. 2. Willow Creek Dairy  
2 began the conversion of portion of the BTF from plots of trees to irrigated crops in early 2016.

3 According to Umatilla's records, Umatilla currently provides electric service to over  
4 thirty metered locations on the Willow Creek Dairy property. (Wolff Opening Testimony,  
5 Exhibit 107) Additionally, Umatilla serves the various loads of the Willow Creek Dairy under  
6 approximately ten different rate schedules. *Id.* These rate schedules are for irrigation facilities,  
7 residential loads, commercial loads and industrial loads. Wolff Opening Testimony, p. 6-7.  
8 Exhibit 107 of the Wolff Opening Testimony is a spreadsheet of Umatilla's accounts with  
9 Willow Creek Dairy that shows all the different accounts, applicable rates and metered locations.

10 Commencing in early 2016, Umatilla began a line extension to serve the six new  
11 irrigation circles located in Columbia Basin's service territory that are at issue in this proceeding.  
12 Wolff Opening Testimony, p. 9. Umatilla installed an underground line from existing power line  
13 to a new point of service where meter number 8465525 is located at the edge of its service  
14 territory boundary. That location is designated 3N26E346001. Umatilla also installed a new  
15 transformer at that location to serve the six irrigation circles. Willow Creek Dairy installed  
16 electrical wires and equipment that extend from Columbia Basin's service territory to the new  
17 service point (meter number 8465525) to carry the power from that new point of service back to  
18 each of the six circles. Wolff Opening Testimony, p. 9-10.

19 Columbia Basin timely informed Umatilla and Willow Creek Dairy that the six irrigation  
20 circles were in its service territory and that Columbia Basin was ready and able to provide utility  
21 service to them. Wolff Opening Testimony, p. 13. Indeed, Columbia Basin still had facilities in  
22 place from the time it served the previous owners of the same property. *Id.*, p. 13-14.

23 Columbia Basin's General Manager discussed the service territory concerns with  
24 Umatilla's management over several months in an attempt to find a resolution that would best  
25 serve the Willow Creek Dairy operations and still be legal under state service territory laws.  
26 That effort failed. Umatilla's General Manager stated that Umatilla will not stop providing

1 utility service to the six irrigation circles in Columbia Basin’s service territory without a court  
2 order. (Wolff Opening Testimony, p.13).

3 Columbia Basin subsequently filed its Complaint with the Commission requesting the  
4 Commission to apply service territory laws concerning Umatilla’s provision of utility service  
5 into Columbia Basin’s exclusive service territory.

### III. ARGUMENT

#### A. Umatilla Electric’s Utility Service to the Six Irrigation Circles in Columbia Basin’s Exclusive Service Territory Violates ORS 758.450(2).

6 ORS 758.450(2) provides that no person shall offer, construct or extend utility service in  
7 or into an allocated territory.<sup>2</sup> ORS 758.400(3) defines the term “utility service” as “service  
8 provided by any equipment, plant or facility for the distribution of electricity to users . . . through  
9 a connected and interrelated distribution system.”

10 There are four factors to prove a violation of ORS 758.450(2): (1) the entity must be a  
11 “person” or “persons” as defined in ORS 758.400(2); (2) the arrangement must involve “utility  
12 service” as defined in ORS 758.400(3); (3) the utility service must be in allocated territory; and  
13 (4) none of the exemptions in ORS 758.450(4) can apply. *Northwest Natural Gas Co. v. Oregon*  
14 *Public Utility Comm’n*, 195 Or. App. 547, 554 (2004).

15 Here, Umatilla is a “person” as defined in ORS 758.400(2). Columbia Basin has an  
16 allocated service territory, pursuant to Order No. 38089. Umatilla provides “utility service” as  
17 defined in ORS 758.400(3), to the six irrigation circles that are located in Columbia Basin’s  
18 service territory via a point of service in Umatilla’s service territory adjacent to the six circles.  
19 At that point of service, designated by Umatilla as meter 8465525 and location 3N26E346001,  
20 Umatilla’s electric facilities interconnect with electric wires constructed and owned by Willow  
21 Creek Dairy. That point of service and connected electric facilities provide electricity to the six  
22 irrigation circles in Columbia Basin’s service territory to power the pivots’ electric motor drives.

---

<sup>2</sup> ORS 758.450(2) “Except as provided in subsection (4) of this section, no other person shall offer, construct or extend utility service in or into an allocated territory.” The exceptions set forth in subsection (4) do not apply here.



1           None of the exceptions set forth in ORS 758.450(4) apply. All of the elements necessary  
2 for a violation of ORS 758.450(2) are satisfied.

**1.       Umatilla’s Use of a Point of Service in Its Service Territory for Providing  
Utility Service to Willow Creek Dairy’s Six Irrigation Circles in Columbia  
Basin’s Service Territory Is Not a Defense to a Violation of ORS 758.450(2).**

3           Umatilla’s use of a point of service in its service territory does not provide a defense to  
4 Umatilla’s violation of ORS 758.450(2). In *Columbia Basin Electric Cooperative v. PacifiCorp*  
5 *et al.*, UM 1670 Order No. 15-110, (“Order No. 15-110”) the Commission rejected PacifiCorp’s  
6 claim that its service to Caithness wind complex was not a violation of ORS 758.450(2) because  
7 PacifiCorp’s point of service for the complex was entirely in PacifiCorp’s service territory. The  
8 Commission noted that there are three tests to address which utility serves customers’ loads that  
9 straddle territory boundaries: (i) the point of service test; (ii) the geographic load center test; and  
10 (iii) the point of use test.

11           The Commission stated, “The point of service test focuses on the point at which  
12 electricity is delivered rather than on the point at which it is consumed. If a utility provides  
13 electricity to a customer with its certified territory, the sale is proper, even if the customer  
14 transports the electricity into the certificated territory of another utility for the customer’s use.”

15           The Commission noted, “The point of use test requires that only the utility authorized to  
16 serve within a certificated territory may provide power to a facility within that territory. Thus,  
17 this test strictly enforces the territory boundaries of regulated utilities in the provision of their  
18 electric service.” The Commission rejected the point of use test.

19           Columbia Basin agrees with the Commission that the point of service test should not be  
20 used to determine the appropriate service provider. Pursuant to ORS 758.450(2) and the  
21 Commission’s reasons in Order No. 15-110, Umatilla cannot rely upon the location of its point  
22 of service as a defense to its action of providing utility service into Columbia Basin’s exclusive  
23 service territory.

1           The point of service test is inconsistent with plain language and meaning of ORS  
2 758.450(2). The statute prohibits a utility from providing “utility service in or into” another  
3 utility’s exclusive service territory. The term “into” another’s exclusive service territory  
4 expressly precludes a utility from having a point of service in its own service territory and  
5 providing power “into” another’s territory. Moreover, as noted in Order No. 15-110, the point of  
6 use test “would effectively render meaningless all allocated service territories, as a customer  
7 could choose its own utility service provider simply by constructing its own transmission line to  
8 an adjoining service territory.” Order No. 15-110, p. 7.

9           Other states have also noted the problems with the point of service test and its conflicts  
10 with exclusive service territories and the policy of avoiding duplication of electric facilities. In  
11 *O’Brien County Rural Elec. Co-op. v. Iowa State Comm. Commission*, 352 N.W.2d 264 (1984)  
12 (“*O’Brien*”), the court noted that a point of service test would permit a customer to select its  
13 utility of preference by constructing its own (unregulated) power lines to its preferred utility.  
14 *O’Brien* at 268. The court noted that applying the point of service test to situations where a  
15 customer straddled a territory boundary would permit customers to “jump” territories merely by  
16 creating an artificial use or load in another territory and constructing lines to that artificial point  
17 of service. *Id.* at 269.

18           Willow Creek Dairy cannot “jump” territories by constructing lines to an artificial point  
19 of service in Umatilla’s service territory. The point of service test is not the law in the state of  
20 Oregon and Umatilla cannot rely on that test to justify its violation of ORS 758.450(2).

**2.           The Geographic Load Center Test is Also Inconsistent with ORS 758.450(2).**

21           The geographic load center test likewise conflicts with the express language of ORS  
22 758.450(2). The plain and ordinary meaning of ORS 758.450(2) does not authorize the  
23 application of the geographic load center test. ORS 758.450(2) states that “Except as provided in  
24 subsection (4) of this section, no other person shall offer, construct or extend utility service in or  
25 into an allocated territory.” Other than the exceptions listed in subsection (4), which do not apply

1 here, there are no exceptions to the prohibition on the provision of utility service in or into a  
2 territory allocated to another.

3 The prohibitions in ORS 758.450(2) also do not provide the Commission with any  
4 discretionary authority to unilaterally modify or revise an exclusive service territory once  
5 granted. Stated differently, nothing in ORS 758.450 expressly or implicitly grants the  
6 Commission the discretion to unilaterally revise the service territory boundaries after they have  
7 been established.

8 ORS Chapter 758 does give the Commission the authority to establish exclusive service  
9 territories through two methods: (i) approval of utility contracts for allocation of service  
10 territories, or (ii) approving applications by a single utility for areas not served by any other  
11 utility. ORS Chapter 758, however, does not include any statutes or provisions that permit the  
12 Commission to unilaterally modify or adjust the exclusive service boundaries.

13 Consequently, the procedure for any modifications or revisions to the established  
14 boundaries is for the utilities to agree on boundary changes and to submit those changes to the  
15 Commission for approval. After review, the Commission may issue an order establishing the  
16 new geographic boundaries. *See* ORS 758.430.

17 The Commission did adopt and use the geographic load center test in its decision in  
18 Order No. 15-110 concerning the dispute between PacifiCorp, Caithness Energy, and Columbia  
19 Basin. In Order No. 15-110 the Commission did not address its discretionary authority to adopt  
20 the geographic load test. The Commission declared that the statute is silent as to the legality of  
21 service to a customer whose load straddles a territory boundary and applied the geographic load  
22 center test.

23 ORS 758.450(2) is not silent as to this issue, however. It expressly provides that no one  
24 shall provide utility service in or into another utility's exclusive service territory. The  
25 Commission cannot ignore the plain language of the statute and create its own interpretation or  
26 adopt its own rule that is inconsistent with the statutory language. *Northwest Natural*, 195 Or.  
27 App. at 559 (The Commission cannot ignore the meaning of words that the legislature used when

1 the Commission interprets the statute.). The plain language of the statute implies that the point  
2 of use test is the only test that the Commission can apply and use under the Oregon territory  
3 allocation laws.

4 The geographic load center test cannot be used where utility commissions lack statutory  
5 authority or the administrative discretion to unilaterally modify exclusive service territories. In  
6 *Nishnabotna Valley Rural Elec. Co-op. v. Iowa Power & Light Co.*, 161 N.W.2d 348 (1968), the  
7 court rejected adoption of the geographic load center because the Iowa statute did not give the  
8 commission that authority.<sup>3</sup> Later, when the Iowa legislature revised the state’s territory  
9 allocation law, the Iowa commission had the authority to adopt and use the geographic load  
10 center test. *O’Brien County Rural Elec. Co-op. v. Iowa State Commerce Commission*, 352  
11 N.W.2d 264, 270 (1984). The revised statute, however, granted the Iowa commission the  
12 express authority to modify or revise existing service boundaries by providing:

13 However, those boundaries maybe modified by the commission to promote the  
14 public interest, to preserve existing service areas and electric utilities’ rights to  
15 serve existing customers, and to prevent unnecessary duplication of facilities, to  
16 take account of natural and physical barriers which would make electric service  
17 beyond these barriers uneconomic and impractical . . .

18 Iowa Code § 476.25

19 In Colorado, the public utility commission concluded that it could not use the geographic  
20 load center test because it lacked the statutory authority and the test conflicted with the doctrine  
21 of a regulated monopoly.<sup>4</sup> *Public Service Co. of Colorado v. Public Utilities Comm’n of the*  
22 *State of Colorado*, 765 P.2d 1015, 1021 (1984) (“*PSC v. CPUC*”). The Colorado PUC  
23 determined that it had to use the point of use test, because the geographic load test would directly

---

<sup>3</sup> “We think it sufficient to observe that the legislature did not use the geographic load center or center of electrical distribution and those phrases cannot be read into the statute.” *Nishnabotna*, 161 N.W.2d at 354.

<sup>4</sup> “The geographic-load-center test cannot be adopted in this proceeding because it is prohibited by Colorado law which allows only the authorized utility to serve in its certificated area. The geographic-load-center test as applied in the circumstances of this matter would allow Public Service to extend service from its certificated territory into Union’s exclusive service territory and allow Public Service to serve an independent, preexisting Union load. Union is the sole utility authorized to serve in its territory and Public Service’s action in providing service into Union’s territory cannot be approved by the Commission.” *PSC v. CPUC* 765 P.2d at 1021.

1 conflict with Colorado law that only permits the utility with the certificated service territory to  
2 provide service in certificated area.

3 Here, if the Commission applies the geographic load center test and permits Umatilla to  
4 provide electric service into Columbia Basin’s exclusive service territory, the Commission’s  
5 decision would be in direct conflict with the plain language in ORS 758.450(2). Additionally,  
6 the logical extension of the Commission’s action would appear to permit Umatilla to extend its  
7 power lines and other electric facilities into Columbia Basin’s service territory if Willow Creek  
8 Dairy purchases additional property and expands its irrigation facilities further into Columbia  
9 Basin’s service territory without limitation; certainly not a result contemplated by the plain  
10 language of the statute.<sup>5</sup> The express prohibitions in ORS 758.450(2) simply do not permit  
11 Umatilla to extend its distribution system and utility service into Columbia Basin’s exclusive  
12 service area.

**3. The Geographic Load Center Test Does Not Provide a Defense to Umatilla’s Violation of ORS 758.450(2).**

13 If it applies, the geographic load center test also does not provide defense for Umatilla’s  
14 service territory violation under the present circumstances. In Order No. 15-110, the  
15 Commission provided, “The geographic load center test is defined as a theoretical point  
16 determined by giving consideration to the location of the permanent electric loads which have  
17 been or which will be installed within a reasonable time as part of existing plans. In effect, this  
18 test permits the utility which serves a majority of a customer’s load to serve the entire load,  
19 regardless of the territory boundaries of a service area.”

20 In Order No. 15-110, the Commission applied the geographic load center test to  
21 determine if the combined station service load of the three wind generation facilities, Shepherds

---

<sup>5</sup> Should the Commission authorize for Umatilla to serve the six irrigation circles in Columbia Basin’s territory it would necessarily imply that Umatilla has the exclusive right to serve all of the Willow Creek Dairy properties and load in Columbia Basin’s territory, via points of service in Umatilla’s Territory and/or via Umatilla extending distribution facilities into Columbia Basin’s service territory.

1 Flat North, Central and South<sup>6</sup>, which were owned and operated by Caithness Energy, was a  
2 unified load.<sup>7</sup>

3 The Commission noted several factors that supported the conclusion that each project  
4 was an independent operation: (i) each wind project is owned by separate legal entities; (ii) each  
5 legal entity is sole owner of the property on which each project lie; (iii) each used its own  
6 facilities to transmit its generated power; (iv) each project had its own maintenance building that  
7 receives low voltage power under separate retail service agreements; (v) various state and federal  
8 agency permits and documents identified each project as a separate entity; (vi) each project had a  
9 separate large generator interconnection agreement with the Bonneville Power Administration;  
10 (vii) each project had a separate power sales agreement with the Southern California Edison  
11 Company; and (viii) an option agreement exists with Saddle Butte Wind, LLC, to add a fourth  
12 independent wind project to the Shepherds Flat wind complex.

13 The Commission conceded some evidence indicated the project was an integrated  
14 operation, but that evidence was not dispositive in the analysis of a unified load: (i) the three  
15 wind projects were owned by one parent corporation – Caithness Energy; (ii) Caithness Energy  
16 retained management authority over the three wind projects; (iii) Caithness Energy purchased  
17 station service power from PacifiCorp for all three projects under one utility service contract; (iv)  
18 the Shepherds Flat wind complex was initially permitted as one generation project; (v) the three  
19 wind projects jointly owned transmission facilities and maintenance equipment; and (vi) the  
20 three projects were operated independent of each other.

21 The facts also showed that PacifiCorp served the three wind projects under one rate  
22 schedule, Schedule 47, and aggregated the energy and capacity demand of all three wind projects  
23 as if they are a single load. Each substation that served each project had two bidirectional

---

<sup>6</sup> The three wind generation projects, Shepherds Flat North, Shepherds Flat Central, and Shepherds Flat South were also called and permitted as, North Hurlburt, South Hurlburt, and Horseshoe Bend, respectively.

<sup>7</sup> “First, as a threshold issue, we examine whether the entire Shepherds Flat wind complex should be treated as a unified load, or whether each wind project should be treated as a separate load or customer for purposes of the Territory Allocation Law.” PUC Order No. 15-110, p. 4.

1 meters, which were owned by BPA. Caithness Energy held the retail power contract with  
2 PacifiCorp and divided the monthly bill among the wind projects without markup.

3 The fact that Columbia Basin served the maintenance building for the Shepherds Flat  
4 Central project and PacifiCorp would serve the station service loads for the wind generation  
5 facilities for the same project was not a detriment to the Commission’s conclusion. The  
6 Commission apparently deemed the service to the maintenance building was a separate,  
7 independent load.

8 The Commission concluded that PacifiCorp had the right under the geographic load  
9 center test to serve the Shepherds Flat Central Wind Project. The Commission determined “a  
10 single entity may develop separate facilities and share infrastructure” and “the aggregated station  
11 power contract between Caithness and PacifiCorp was negotiated between the parties and is not  
12 binding on our analysis” and “regardless of how the complex was initially proposed, the complex  
13 was ultimately permitted and constructed as three separate and independent facilities.” The  
14 Commission noted that the three wind projects’ operations are not so integrated that service from  
15 two utilities would impossible or impractical.

16 In short, the Commission found that the three wind projects were separate legal entities  
17 and they operated independently, in spite of ownership by a single parent company, and joint  
18 ownership and operation of some infrastructure and real estate.

**a. There are multiple, separate loads on the Willow Creek Dairy property.**

19 Here, the evidence shows that Willow Creek Dairy and the BTF are separate legal entities  
20 and their business operations on the Willow Creek Dairy property likewise are not one integrated  
21 operation. The Willow Creek Dairy property consists of approximately 5,700 acres. [REDACTED]

22 [REDACTED]

23 [REDACTED]

1 [REDACTED] The BTF  
2 operations are clearly separate and distinct from the dairy and agricultural operations of the  
3 Willow Creek Dairy.

4 [REDACTED]  
5 [REDACTED] But the Commission's analysis for  
6 the geographic load test indicates the use of shared facilities is not sufficient evidence to show a  
7 unified load.

8 [REDACTED]  
9 [REDACTED] Again, the  
10 Commission's prior application of the geographic load test indicates that joint operation of  
11 infrastructure is not sufficient evidence of a unified load.

12 The evidence shows that the Willow Creek Dairy load and the BTF load are independent  
13 and separate loads under the Commission prior application of the geographic load center test.  
14 Given these factors, all of the loads on the Willow Creek Dairy property cannot be viewed as one  
15 unified load under the geographic load center test.

**b. The various loads of the Willow Creek Dairy operations cannot be one unified load.**

16 Umatilla provides utility service to Willow Creek Dairy through approximately 30  
17 different points of service and meters. Additionally, Umatilla bills Willow Creek Dairy with ten  
18 different power rates, including rates for residential service, commercial service and industrial  
19 service. Wolff Opening Testimony, Exhibit 107.

20 Umatilla's application of different rates to the various loads shows that under Umatilla's  
21 own analysis, the Willow Creek Dairy service consists of at least ten different loads. Rate  
22 classifications are based on differences in load characteristics. Ten different rates means there  
23 are ten different types of load that comprise the Willow Creek Dairy service.

24 The 30 different points of service, or meters, also show the Willow Creek Dairy load is  
25 not uniform or the same load, rather, it is a succession of separate and independent loads. Unlike



1 the evidence in Order No. 15-110, where PacifiCorp served each of the Shepherds Flat wind  
2 projects with one rate and two bidirectional meters, where two meters were only used to ensure  
3 reliability, Umatilla’s use of 30 different points of service demonstrates multiple loads are being  
4 served. The saying, “one meter one, service” does not apply to the Willow Creek Dairy.

**c. The Load of the Six Irrigation Circles in Columbia Basin’s Service Territory are Separate and Distinct from the Loads on the Willow Creek Dairy Property in Umatilla's Service Territory.**

5 The crux of the geographic load center test in this circumstance, if applied, is whether the  
6 load of the six irrigation circles in Columbia Basin’s service territory is unified with the rest of  
7 the load on the Willow Creek Dairy property in Umatilla’s territory. Applying the  
8 Commission’s analysis in Order No. 15-110, as discussed previously, it does not appear that the  
9 load to the BTF is unified with the Willow Creek Dairy load and even the loads of the Willow  
10 Creek Dairy are independent of each other. Therefore, the geographic load center test is not  
11 applicable.

12 The load of the six irrigation circles is separate and distinct from the rest of the Willow  
13 Creek Dairy load. For instance, Umatilla serves that load with a separate line, meter, and  
14 transformer. The operation of the six irrigation circles is not integrated in any manner with the  
15 rest of the loads on Willow Creek Dairy property. They are separated from the rest of the  
16 Willow Creek Dairy loads by hundreds of acres of trees owned by the BTF. Additionally, those  
17 six irrigation circles can, and do, operate independent from the rest of the loads on Willow Creek  
18 Dairy property. The only conclusion that can reasonably be made is the load of the six irrigation  
19 circles in Columbia Basin’s service territory is not unified with the other loads on the Willow  
20 Creek Dairy property.

**d. The future development of the Willow Creek Dairy property is too speculative to be considered in the geographic load center test.**

21 The geographic load center test permits future loads that might be developed in the  
22 reasonable future to be considered in the calculation of the load.

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED] That period is  
4 simply too long to be considered reasonable under the geographic load test. The schedule could  
5 easily be modified by Willow Creek Dairy and BTF with by an amendment to the Agricultural  
6 Lease. Willow Creek Dairy could sell a portion of the Willow Creek Dairy property or decide to  
7 not develop the land due to a host of factors, such as lack of funding. [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]

**B. Permitting Umatilla to Serve the Six Irrigation Circles will Result in the Duplication of Electric Facilities.**

11 If the Commission permits Umatilla to continue to serve the load of the six irrigation  
12 circles, that service will result in duplication of electric facilities. ORS 758.405 sets forth the  
13 primary purpose of Oregon’s utility territory allocation statues. It provides, “the elimination and  
14 future prevention of duplication of utility facilities is a matter of statewide concern . . .”

15 Here, Columbia Basin has a 14.4 kV power line and transformer installed and a point of  
16 service immediately adjacent to the six irrigation circles to provide an electrical connection with  
17 Columbia Basin’s distribution system for Willow Creek Dairy. Wolff Opening Testimony, p.  
18 13. These facilities are not new. Columbia Basin installed the facilities decades ago to serve the  
19 irrigation equipment of owners of the property prior to the BTF ownership. Although some  
20 upgrades to these facilities would be necessary to serve the specific load requirements of the six  
21 irrigation circles of Willow Creek Dairy, the facilities stand ready for use by Willow Creek Dairy  
22 to obtain service from Columbia Basin. These facilities may very well become stranded if  
23 Willow Creek Dairy is permitted to choose its electric service provider.

24 Umatilla Electric had to construct a new line extension and install a new transformer to  
25 serve the six irrigation circles. Umatilla’s new installations duplicated Columbia Basin’s pre-

1 existing distribution facilities. By connecting with the line constructed by Willow Creek Dairy,  
2 Umatilla's actions are directly contrary to the policy and purpose of Oregon's territory allocation  
3 law.

**C. Operational Efficiencies on the Willow Creek Dairy Irrigation System that May Result from Umatilla's Service Do Not Justify Violations to Columbia Basin's Exclusive Service Territory.**

4 Willow Creek Dairy claims that only Umatilla should provide service to the six irrigation  
5 circles because of operational efficiencies that may occur from having one utility serve all the  
6 various loads on the Willow Creek Dairy property. Willow Creek Dairy argues that such  
7 efficiencies supersede the territory allocation law.

8 Under Oregon's territory allocation law, efficiencies or economies that customers may  
9 receive are not factors in the analysis of violations of the Oregon territory allocation law.

10 *Northwest Natural*, 195 Or. App. at 554. If such factors are considered, then an industrial  
11 customer's construction of a transmission to a neighboring utility to take advantage of a lower  
12 industrial rate could be easily justified; this is especially true in the Greater Portland area.

**IV. CONCLUSION**

13 The primary issue of this proceeding is whether the Commission has the discretion to  
14 adopt and apply the geographic load center test given the plain language of ORS 758.450(2). If  
15 not, Umatilla's actions violate ORS 758.450(2).

16 If so, the issue is whether the geographic load center test provides a defense to Umatilla's  
17 actions of providing utility service into Columbia Basin's exclusive service territory in violation  
18 of ORS 758.450(2). The evidence in the record demonstrates that the geographic load center test  
19 does not provide Umatilla with a defense to its actions.  
20

1           The Commission should find that Umatilla has violated ORS 758.450(2) by providing  
2 utility service into Columbia Basin’s exclusive service territory.

3

4 Respectfully Submitted this 17th day November, 2017.

5

6

By /s/ Raymond S. Kindley  
RAYMOND S. KINDLEY, OSB 964910  
KINDLEY LAW, PC  
Email: kindleylaw@comcast.net  
Tel: (503) 206-1010  
Of Attorneys for Columbia Basin Electric  
Cooperative, Inc.

7

8

9

10

11

12

13

**CERTIFICATE OF SERVICE – UM 1818**


I hereby certify that I served a true and correct copy of Columbia Basin Electric Cooperative Inc.’s Opening Brief on the parties listed below via electronic mail and/or overnight delivery in compliance with OAR 860-001-0180.

**C=Confidential**

<b>COLUMBIA BASIN UM 1818</b>	
RAYMOND S KINDLEY (C) KINDLEY LAW PC PO BOX 569 WEST LINN OR 97068 kindleylaw@comcast.net	THOMAS F WOLFF (C) COLUMBIA BASIN ELECTRIC PO BOX 398 HEPPNER OR 97836 tommy@columbiabasin.cc
<b>STAFF UM 1818</b>	
SCOTT GIBBENS (C) PUBLIC UTILITY COMMISSION 201 HIGH ST SE SALEM OR 97301 scott.gibbens@state.or.us	JOHANNA RIEMENSCHNEIDER (C) PUC STAFF - DEPARTMENT OF JUSTICE BUSINESS ACTIVITIES SECTION 1162 COURT ST NE SALEM OR 97301-4796 johanna.riemenschneider@doj.state.or.us
PAUL ROSSOW (C) PUBLIC UTILITY COMMISSION OF OREGON PO BOX 1088 SALEM OR 97308-1088 paul.rossow@state.or.us	
<b>UMATILLA ELECTRIC COOP. UM 1818</b>	
TOMMY A BROOKS (C) CABLE HUSTON BENEDICT HAAGENSEN & LLOYD 1001 SW FIFTH AVE, STE 2000 PORTLAND OR 97204-1136 tbrooks@cablehuston.com	THOMAS M GRIM CABLE HUSTON BENEDICT ET AL 1001 SW FIFTH AVE STE 2000 PORTLAND OR 97204-1136 tgrim@cablehuston.com
CHAD M STOKES (C) CABLE HUSTON BENEDICT HAAGENSEN & LLOYD LLP 1001 SW 5TH - STE 2000 PORTLAND OR 97204-1136 cstokes@cablehuston.com	
<b>WHEATRIDGE UM 1818</b>	
CAROLINE HARRIS CROWNE TONKON TORP LLC 888 SW FIFTH AVE PORTLAND OR 97204 caroline.harris.crowne@tonkon.com	MICHAEL M MORGAN TONKON TORP LLP 888 SW 5TH AVE STE 1600 PORTLAND OR 97204-2099 mike@tonkon.com

BRIAN J MURPHY NEXTERA ENERGY RESOURCES LLC 700 UNIVERSE BLVD JUNO BEACH FL 33408 brian.j.murphy@nee.com	
<b>WILLOW CREEK DAIRY UM 1818</b>	
JEDDIE AYLETT 75816 FRONTAGE LANE HERMISTON OR 97838 aylettjeddie@yahoo.com	MICHAEL COLLINS COLLINS & COLLINS, LLP PO BOX 1457 PENDLETON OR 97801 mike@pendletonlaw.net
GREG TE VELDE WILLOW CREEK DAIRY 5850 AVENUE 160 TIPTON CA 93272 gjtevelde@aol.com	

Dated this 17th day of August, 2017.

  
Wendy McDow  
Office Manager  
McDowell Rackner & Gibson