

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1670

In the Matter of

COLUMBIA BASIN ELECTRIC
COOPERATIVE, INC.,

Complainant;

vs.

PACIFICORP, dba PACIFIC POWER,

and

NORTH HURLBURT WIND, LLC,

Defendants.

RULING

DISPOSITION: PETITION TO INTERVENE GRANTED

I. INTRODUCTION

This proceeding involves a complaint filed by Columbia Basin Electric Cooperative, Inc. (Columbia Basin) alleging that PacifiCorp, dba Pacific Power and North Hurlbut Wind, LLC (North Hurlbut) are providing electric utility service within Columbia Basin's exclusive service territory, in violation of the Territorial Allocation Law and a Commission order that granted Columbia Basin its service territory.¹ Pacific Power and North Hurlbut filed answers to the complaint, denying the allegations and setting forth affirmative defenses, such as failure to state a claim, lack of jurisdiction, the statute of limitations, and the doctrine of laches, among others.

A prehearing conference was held on October 8, 2013. On November 5, 2013, I granted Oregon Rural Electric Cooperative Association's (ORECA) petition to intervene. General Protective Order No. 13-246 was entered in this docket on November 19, 2013.

¹ The Territorial Allocation Law is codified ORS 758.400 – 758.475. Columbia Basin cites Commission Order No. 38089, dated November 1, 1961, which is included as an attachment to Columbia Basin's complaint.

II. UMATILLA ELECTRIC COOPERATIVE'S INTERVENTION

On November 12, 2013, the Umatilla Electric Cooperative (UEC) filed a petition to intervene in this docket. In support of its petition UEC states that: (1) it provides service in an exclusive service territory adjacent to the territories of both Columbia Basin and Pacific Power; (2) the legal and factual issues addressed in this matter may impact UEC's rights and obligations in its own exclusive service territory or in unallocated service territories; and (3) no other party in this proceeding fully represents its interests.

North Hurlburt objects to the UEC's petition to intervene. North Hurlburt questions whether UEC has interests in this proceeding, noting that it does not concern UEC or its service territory. North Hurlburt asserts that the ORECA's party status should adequately represent UEC's interests. North Hurlburt further argues that UEC's petition did not satisfy the Commission's rules which provide that a petition to intervene must contain, among other things, the issues petitioner intends to raise at the proceedings.² Finally, North Hurlburt is concerned with the expansive discovery requested in this docket, and believes that additional parties could further expand discovery and lead to unnecessary dissemination of sensitive records. North Hurlburt requests that, to the extent the Commission grants UEC party status, it restrict UEC's participation to briefing and restrict its access to any discovery in this matter.

In reply, UEC cites the Commission rule that requires a petition to be granted so long as there is a basis to find that the "petitioner has sufficient interest in the proceedings and the petitioner's appearance and participation will not unreasonably broaden the issues, burden the record, or delay the proceedings."³ UEC asserts that it has a strong interest in this matter because the Commission will likely be called on to interpret and apply the Territorial Allocation Law. UEC reiterates that it provides service in an allocated territory in the vicinity of the dispute, that its involvement is motivated by the issues related to exclusive service territories, and that it could therefore be impacted by the Commission's decision. In response to North Hurlburt's point about ORECA, UEC states that ORECA balances UEC's needs and interests with ORECA's other members, and only UEC can directly and fully represent its own interest.

Finally, UEC disagrees that its participation will further expand discovery or improperly result in the dissemination of sensitive information. UEC commits to not propound additional discovery on other parties and would not expect to have discovery propounded on UEC by others. However, UEC asserts that briefs must be based on facts in the record, and in order to provide effective briefs to the Commission, UEC should be given access to the record.

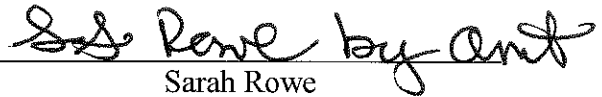
² OAR 860-001-0300(2)(e).

³ OAR 860-001-0300(7). UEC also cites other dockets where the Commission has liberally granted interventions.

III. DISCUSSION

As noted by the parties, the Commission or administrative law judge must grant a petition to intervene if the petitioner has sufficient interest in the proceedings and the petitioner's appearance and participation will not unreasonably broaden the issues, burden the record, or delay the proceedings. I find that UEC has sufficient interest in this proceeding due to its interest in the Territorial Allocation Law, and because of its stated geographic proximity to the service area at issue. I further find it reasonable that UEC should be able to represent itself separate from ORECA, because ORECA will presumably represent its collective membership, and not UEC individually. Regarding North Hurlburt's concerns over discovery, UEC has committed that it will not unreasonably broaden the issues or burden the record, and a protective order is in place in this docket.⁴ Finally, at this early stage in the proceeding, UEC's intervention will not cause delay. Thus, for good cause shown, UEC's petition to intervene is granted, without condition or restriction.

Dated this 27th day of November, 2013, at Salem, Oregon.



Sarah Rowe
Administrative Law Judge

Attachment: Notice of Contested Case Rights and Procedures

⁴ Order No. 13-246 at paragraph 16 provides that a party may request additional protection for confidential information by submitting a motion to limit the extent of disclosure.

NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Oregon law requires state agencies to provide parties written notice of contested case rights and procedures. Under ORS 183.413, you are entitled to be informed of the following:

Hearing: The time and place of any hearing held in these proceedings will be noticed separately. The Commission will hold the hearing under its general authority set forth in ORS 756.040 and use procedures set forth in ORS 756.518 through 756.610 and OAR Chapter 860, Division 001. Copies of these statutes and rules may be accessed via the Commission's website at www.puc.state.or.us. The Commission will hear issues as identified by the parties.

Right to Attorney: As a party to these proceedings, you may be represented by counsel. Should you desire counsel but cannot afford one, legal aid may be able to assist you; parties are ordinarily represented by counsel. The Commission Staff, if participating as a party in the case, will be represented by the Department of Justice. Generally, once a hearing has begun, you will not be allowed to postpone the hearing to obtain counsel.

Administrative Law Judge: The Commission has delegated the authority to preside over hearings to Administrative Law Judges (ALJs). The scope of an ALJ's authority is defined in OAR 860-001-0090. The ALJs make evidentiary and other procedural rulings, analyze the contested issues, and present legal and policy recommendations to the Commission.

Hearing Rights: You have the right to respond to all issues identified and present evidence and witnesses on those issues. *See* OAR 860-001-0450 through OAR 860-001-0490. You may obtain discovery from other parties through depositions, subpoenas, and data requests. *See* ORS 756.538 and 756.543; OAR 860-001-0500 through 860-001-0540.

Evidence: Evidence is generally admissible if it is of a type relied upon by reasonable persons in the conduct of their serious affairs. *See* OAR 860-001-0450. Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on grounds that the evidence is unreliable, irrelevant, repetitious, or because its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay. The order of presenting evidence is determined by the ALJ. The burden of presenting evidence to support an allegation rests with the person raising the allegation. Generally, once a hearing is completed, the ALJ will not allow the introduction of additional evidence without good cause.

Record: The hearing will be recorded, either by a court reporter or by audio digital recording, to preserve the testimony and other evidence presented. Parties may contact the court reporter about ordering a transcript or request, if available, a copy of the audio recording from the Commission for a fee set forth in OAR 860-001-0060. The hearing record will be made part of the evidentiary record that serves as the basis for the Commission's decision and, if necessary, the record on any judicial appeal.

Final Order and Appeal: After the hearing, the ALJ will prepare a draft order resolving all issues and present it to the Commission. The draft order is not open to party comment. The Commission will make the final decision in the case and may adopt, modify, or reject the ALJ's recommendation. If you disagree with the Commission's decision, you may request reconsideration of the final order within 60 days from the date of service of the order. *See* ORS 756.561 and OAR 860-001-0720. You may also file a petition for review with the Court of Appeals within 60 days from the date of service of the order. *See* ORS 756.610.