

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1823

COLUMBIA BASIN ELECTRIC
COOPERATIVE, INC.,

Complainant,

vs.

UMATILLA ELECTRIC COOPERATIVE,

Defendant.

Regarding Wheatridge Wind Project

RULING

DISPOSITION: MOTION GRANTED IN PART

In this ruling, I delay consideration of the motion to compel discovery filed by Columbia Basin Electric Cooperative, Inc. (Columbia Basin), and grant in part the motion to amend the procedural schedule filed by Columbia Basin.

I. The Motion to Compel

A. Parties' Arguments

Columbia Basin asserts that Umatilla Electric Cooperative, Inc. (UEC) and Wheatridge Wind Energy, LLC, have failed to follow the Commission's rules on discovery with their responses that are delayed, incomplete, and disorganized. Columbia Basin specifically alleges that UEC and Wheatridge failed to respond to Columbia Basin's data requests within the required 14 days, significantly delaying this proceeding. Columbia Basin also asserts that UEC and Wheatridge did not correlate their responses with the numbered data requests and this has impeded Columbia Basins' review and use of documents, for example impeding Columbia Basin from submitting a specific data request and associated answer as evidence as specified in OAR 860-001-0540(4).

UEC responds that Columbia Basin's 43 data requests are unreasonable and that Columbia Basin seeks information that is not relevant or appropriate, with the goal of delay and unnecessarily complicating the proceeding. UEC also states that Columbia Basin did not properly attempt to confer and resolve the discovery request informally. UEC believes the Wheatridge Project involves Federal Energy Regulatory Commission (FERC)-jurisdictional interstate transmission service from a renewable generation project to a point of interconnection with a BPA substation in UEC's territory. UEC states the

facts are not complicated, the route and purpose of the line is known, and the contract documents have been disclosed.

UEC acknowledges that its first production did not use Huddle and did not separate documents to correspond with the relevant request. However, UEC maintains that it has since segregated documents and provided a file name and note stating which request the document responds to. UEC states it cannot further segregate its documents because Columbia Basin's requests are broad and overlapping.

In reply, Columbia Basin requests that UEC and Wheatridge be ordered to provide complete responses to any pending and future data request within the 14 day period. Columbia Basin requests that UEC and Wheatridge be ordered to separate and individually produce the documents responsive to any pending and future data request. Columbia Basin also maintains that it adequately conferred with UEC over email. Columbia Basin also raises the following points on substantive discovery issues raised by UEC:

1. *Station Service for Wheatridge*

NextEra has purchased Wheatridge and is evaluating self-service of station service load. Due to this recent development, Columbia Basin states that it needs additional discovery to understand how Wheatridge's retail load will be served and by whom. Columbia Basin states that it has submitted recent data requests on this topic and expects it may submit additional data requests.

2. *Uses of the Proposed Transmission Line*

Columbia Basin seeks information about UEC's communications with the Mariah Wind project. Columbia Basin maintains that this information is relevant because Mariah Wind is in the vicinity of the proposed transmission line, which is the primary issue in this proceeding. Columbia Basin believes that Mariah Wind has communicated with UEC regarding wheeling its power across the line or receiving station service. Columbia Basin states that if UEC intends to interconnect the Mariah Wind project to the proposed transmission line, then that use of the line is relevant to this case.

Columbia Basin also seeks information regarding 2Morrow Energy's transmission rights. UEC has claimed that 2Morrow assigned all of its transmission rights to Wheatridge and that the 2Morrow project no longer is in existence. Columbia Basin states that the users and uses of the proposed transmission line are directly relevant to the service-territory-violation and jurisdictional issues in this case.

3. *Design and Characteristics of the Proposed Transmission Line*

Columbia Basin requested copies of easements, design and other characteristics of the proposed transmission line, including whether the line would extend beyond the Wheatridge project to serve others. Columbia Basin believes this information is relevant

to UEC's claim that the line is FERC-jurisdictional and will only serve to export Wheatridge power to BPA, because the easements would show what type of facility Umatilla is permitted to install and the design information relates to how the line would be used. Columbia Basin believes this information is presumably in the possession of Umatilla or its consultants who have worked to design the line.

4. *Relationship of the Proposed Transmission Line to UEC's System*

Columbia Basin seeks information on how the line will interconnect with UEC's system and UEC responded that it has no documents showing an interconnection.

5. *Ownership and Operation of the Proposed Transmission Line*

Columbia Basin is unsure whether UEC will actually own and operate the line, because some information suggests that UEC will sell the line to Wheatridge. Columbia Basin states that it needs a complete understanding of who will own and operate the line and what projects will be served in the future.

6. *Umatilla as Transmitting Utility*

Columbia Basin seeks additional information related to UEC's claim that it is a FERC-jurisdictional transmitting utility.

B. Ruling

The parties correctly cite the legal standards applicable to discovery in a Commission proceeding, which is a combination of Commission rules and the Oregon Rules of Civil Procedure. Under those standards, UEC and Wheatridge must comply with the Commission's default discovery rules by responding to data requests within 14 days, and correlating responses with the numbered data request, absent a waiver or different agreement. Further, parties must confer to attempt to resolve discovery disputes informally.¹ With regard to this last requirement, I find that the parties' made adequate attempts here, considering the parties' different positions.

In response to the substantive discovery issues, I cannot at this time make specific findings. In part, this is because the responses are a moving target, as the parties have continued to produce data requests and responses as recently as two days ago. If there are any outstanding substantive discovery requests, parties will need to submit the specific data request and response with a motion for a ruling. In that event, I will evaluate whether the data request seeks relevant information,² or is unreasonably cumulative, duplicative, burdensome, or overly broad.³ In determining reasonableness, I will consider the needs of the case, the resources available to the parties, and the

¹ OAR 860-001-0500(5).

² OAR 860-001-0450(1) states that relevant evidence is evidence tending to make the existence of any fact at issue in the proceedings more or less probable than it would be without the evidence.

³ OAR 860-001-0500(2).

importance of the issues to which the discovery relates.⁴ I will observe that, although the parties have struggled with discovery here, it appears that the parties have made significant progress in working through these issues in the last few weeks, judging from the attachments to the pleadings and the narrative descriptions of the responses.

II. The Motion to Amend the Procedural Schedule

A. Parties' Arguments

Columbia Basin's second motion seeks to amend the procedural schedule in this proceeding. Columbia Basin requests approximately one additional month to prepare its initial testimony. Columbia Basin states the additional time will allow for resolution of its motion to compel and to complete ongoing discovery. Columbia Basin also states that Wheatridge recently notified the parties that the ownership of the Wheatridge project has changed and that Wheatridge intends to self-supply station service and these changed circumstances necessitate additional discovery.

Wheatridge opposes a one-month delay, but would accept a one-week extension for initial testimony with all other dates remaining the same. Wheatridge states that any delay in this proceeding is detrimental to the continued development its 500 MW project, which just recently received its siting certificate from the Oregon EFSC.

Wheatridge believes that it has completed all discovery and that no further discovery is needed. Wheatridge states that its change in ownership is not material to Columbia Basin's complaint, and that Columbia Basin has known Wheatridge's plan to explore self-providing station service since a June 8 data response. Wheatridge explains that only a few facts are needed and they are undisputed: that UEC's line will include a point of interconnection in Columbia Basin's service territory, that Wheatridge will take transmission service over that line from its collector substation in Columbia Basin's service territory to the BPA substation and that Wheatridge is exploring self-providing station service.

UEC opposes the extension. UEC states that it has responded to 50 data requests with thousands of pages of documents and narrative responses. UEC maintains that this proceeding involves FERC-jurisdictional transmission service from the Wheatridge project to a BPA substation, and the route and purpose of the line is known, and the transaction documents have been disclosed. UEC adds that additional discovery is not commensurate to the needs of this case and does not justify an extension of the procedural schedule.

UEC specifically responds to the two new issues on station service and new ownership. UEC states that if Wheatridge self-supplies station service, it simplifies this proceeding. UEC also states that Wheatridge's new ownership has no relation to the purpose of the transmission line, the proposed route, or the determination of whether there is a violation of Columbia Basin's exclusive service territory. UEC summarizes

⁴ OAR 860-001-0500(1).

that it and Wheatridge have invested a great deal of time and resources on the proposed transmission line and the expeditious resolution of this proceeding is necessary to give the parties certainty to move forward.

B. Ruling

Columbia Basin's motion to amend the procedural schedule is granted in part. I grant the extension, in part, because the discovery disputes in this proceeding have been ongoing from mid-April until now, effectively putting parties on notice to expect some extension to the schedule.

In choosing new scheduling dates, I recognize the burden on Columbia Basin, as complainant, to set forth its case in testimony, and the burden on UEC and Wheatridge of regulatory uncertainty as they develop their projects. However, UEC and Wheatridge also have the regulatory uncertainty of their outstanding FERC proceeding, and considering that timeline, I find that a two week extension of this case should not harm the proposed transmission line.

The following schedule is adopted:

Event	Deadline
Columbia Basin Initial Testimony	July 5, 2017
UEC, Wheatridge, and Staff Reply Testimony	July 21, 2017
Columbia Basin Reply Testimony	August 4, 2017
Cross-Examination Statements Due	August 11, 2017
Hearing	August 28, 2017 (tentative)

Any party may appeal this ruling to the Commission under OAR 860-001-0110 within 15 days of the date of service of this ruling.

Dated this 16th day of June, 2017, at Salem, Oregon.



Sarah Rowe
Administrative Law Judge