

ENTERED AUG 06 2015

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1670

In the Matter of

COLUMBIA BASIN ELECTRIC  
COOPERATIVE, INC.,

Complainant;

vs.

PACIFICORP, dba PACIFIC POWER,  
NORTH HURLBURT WIND, LLC,  
SOUTH HURLBURT WIND, LLC,  
HORSESHOE BEND WIND, LLC,  
and CAITHNESS SHEPHERDS  
FLAT, LLC.

Defendants.

ORDER

DISPOSITION: APPLICATIONS FOR CLARIFICATION AND  
RECONSIDERATION DENIED

The defendants seek clarification and reconsideration of Order No. 15-110, in which we resolved a dispute over which utility was entitled to provide station service to the Shepherds Flat wind project. PacifiCorp, dba Pacific Power, asks that we clarify our statement in the order that PacifiCorp “violated the Territorial Allocation Law \* \* \*.”<sup>1</sup> North Hurlburt Wind, LLC, South Hurlburt Wind, LLC, Horseshoe Bend Wind, LLC, and Caithness Shepherds Flat, LLC (collectively the Caithness defendants) ask for reconsideration to add an express statement of dismissal of claims against them. As discussed below, we decline both requests.

**A. PacifiCorp’s Request**

PacifiCorp asks that we clarify our statement that it “violated the Territorial Allocation Law by providing service to Shepherds Flat South via this privately-owned transmission

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<sup>1</sup> Order No. 15-110 at 10 (Apr 10, 2015).

line \* \* \*.<sup>2</sup> Although PacifiCorp does not challenge our conclusion that the Columbia Basin Electric Cooperative, Inc. (Columbia Basin) is entitled to serve Shepherds Flat South, PacifiCorp asserts that our declaration is unnecessary and problematic on three grounds.

First, PacifiCorp states that it would be manifestly unfair to conclude that it violated an admittedly ambiguous law when there was no previous Commission guidance on the appropriate interpretation of the law or the standard that would be applied in Oregon. PacifiCorp states that it was acting in good faith when it determined it was entitled to serve the entire Shepherds Flat load. PacifiCorp explains that its determination was consistent with the point of service test, which we identified in Order No. 15-110 as one of three standards other jurisdictions have used to resolve territory allocation disputes.

Second, because we instructed PacifiCorp to continue to serve Shepherds Flat South until service is transitioned to Columbia Basin, PacifiCorp states that we can avoid ordering an on-going violation by clarifying that PacifiCorp did not violate the Territory Allocation Law.

Finally, PacifiCorp states that our statement that it violated the Territory Allocation Law potentially exposes it to a civil action for penalties of damages—a result that would be inequitable under the facts in this proceeding and considering our instruction that PacifiCorp continue serving the Shepherds Flat South load. The Caithness defendants support PacifiCorp's motion, stating that the Commission had not previously addressed a similar service territory dispute.

In response, Columbia Basin argues that PacifiCorp's requested clarification is a direct attack on the factual findings and legal conclusions of Order No. 15-110, as it would require us to reverse our decision that PacifiCorp has violated the Territory Allocation Law. Columbia Basin argues that the fact that this case was one of first impression does not affect our determination that PacifiCorp violated the Territory Allocation Law with its service to Shepherds Flat South. Columbia Basin states that this determination was a straight-forward finding that a utility has the right to serve a load that is located entirely in its service territory. Columbia Basin states that a determination that PacifiCorp did not violate the Territory Allocation Law would likely leave it without any remedy or right to serve loads in its service territory.

## **B. Caithness Defendants' Request**

If we adopt PacifiCorp's request to clarify the order, Caithness defendants request that we add additional language in the ordering language at the end of the order that explicitly dismisses the claims against Caithness defendants. Caithness defendants acknowledge that we expressly stated those claims were dismissed in the body of the order, but request that we also add similar language in the ordering section.

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<sup>2</sup> *Id.*

Columbia Basin believes the order is clear and no revision is necessary, but does not oppose a clarification.

### C. Commission Resolution

We agree with Columbia Basin that Order No. 15-110 needs no clarification. The order adequately addressed all of the issues necessary to resolve the territory allocation dispute. As conceded by the parties, we first determined that each of the three wind projects is an individual customer, rather than one integrated customer. Next, in the section titled “Application of the Territory Allocation Law,” we determined which utility is entitled to serve each project. We found that PacifiCorp has the right to serve Shepherds Flat North and Shepherds Flat Central, and that Columbia Basin has the right to serve Shepherds Flat South. No party challenges these determinations.

Having determined which utility *should* serve each wind project under the Territory Allocation Law, we next considered which utility *is* serving each wind project in the section titled “Violations of the Territory Allocation Law.” We granted Columbia Basin’s motion for summary judgment concerning PacifiCorp’s violation of the Territory Allocation Law as it relates to Shepherds Flat South. In other words, we found that PacifiCorp has violated the Territory Allocation Law with its service to Shepherds Flat South.<sup>3</sup> We disagree with PacifiCorp’s statement that this finding “is not necessary to support the Commission’s principal rulings (*i.e.*, that the Cooperative is entitled to serve the Shepherds Flat South load).” This proceeding was not one simply seeking a declaratory ruling as to which utility is entitled to serve a customer—rather it was a complaint proceeding addressing the legality of service being provided to a customer.

PacifiCorp is correct that different jurisdictions have adopted different tests to resolve service territory disputes, and we considered the three different tests in the context of Shepherds Flat Central, which straddles the boundary of the PacifiCorp/Columbia Basin service areas. Because that customer straddles adjoining service territories, we applied the geographic load center test as a matter of policy to resolve the circumstances presented here. However, for the two customers (Shepherds Flat North and Shepherds Flat South) that are wholly within the service territory of a single utility, no test or analysis was necessary.<sup>4</sup> We have not found, and the parties have not presented, any ambiguity in the application of the Territory Allocation Law for a customer that is wholly within an allocated territory. No party has asked for reconsideration of our finding that the three wind projects are individual customers. Thus, our finding that Columbia Basin should serve Shepherds Flat South, and the related finding that PacifiCorp is violating the Territory Allocation Law with its service to Shepherds Flat South, are neither unfair nor involve an ambiguous law.

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<sup>3</sup> *Id.* at 8 (“Columbia Basin contends PacifiCorp is illegally providing station power to the Shepherds Flat wind complex. \* \* \* Given our finding that Columbia Basin is entitled to serve the Shepherds Flat South wind project, we grant Columbia Basin’s motion for summary judgment as it relates to that wind project”).

<sup>4</sup> ORS 758.450(2) (“no other person shall offer, construct, or extend utility service in or into an allocated territory”).

Further, we need not change the order to address PacifiCorp's current service of Shepherds Flat South, because we already concluded that "[p]ending resolution, we authorize PacifiCorp to continue to provide service to Shepherds Flat South."<sup>5</sup> As the agency charged with interpreting the Territory Allocation Law, we believe our statement negates any potential on-going violation while the Shepherds Flat South station service is transitioned to Columbia Basin.<sup>6</sup>

Because we are not modifying the order, we will not make Caithness defendants' requested addition to the order. Our findings are clear as to Caithness defendants, and the parties concede that the order states, "[w]e dismiss the Territory Allocation claims against the Caithness defendants."<sup>7</sup>

### ORDER

IT IS ORDERED that:

1. PacifiCorp's motion for clarification is denied.
2. Caithness defendants' petition for reconsideration is denied.

Made, entered, and effective AUG 06 2015.



**Susan K. Ackerman**  
Chair



**John Savage**  
Commissioner



  
**Stephen M. Bloom**  
Commissioner

A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

<sup>5</sup> Order No. 15-110 at 12.

<sup>6</sup> We note that PacifiCorp also asks that we correct an error to a statutory citation on page 4 of our order. Because the error does not affect our decision, we decline to correct it.

<sup>7</sup> Order No. 15-110 at 10.