

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1818

COLUMBIA BASIN ELECTRIC
COOPERATIVE, INC.,

Complainant,

vs.

UMATILLA ELECTRIC COOPERATIVE,

Defendant.

Regarding Willow Creek Dairy.

ORDER

DISPOSITION: RECONSIDERATION DENIED

I. SUMMARY

On August 30, 2019, Columbia Basin Electric Cooperative, Inc. (Columbia Basin) filed with the Commission an application for reconsideration and rehearing of Order No. 19-221, pursuant to ORS 756.561 and OAR 860-001-0720. In that order, the Commission dismissed a complaint by Columbia Basin against Umatilla Electric Cooperative (UEC) alleging that UEC had violated the Territory Allocation Law. UEC filed a response in opposition to the application on September 16, 2019. For the reasons set forth below, Columbia Basin's application for reconsideration and rehearing is denied.

II. BACKGROUND

In Order No. 19-221, we resolved all issues related to Columbia Basin's complaint against UEC. We reviewed the facts relevant to the 7,300 acre parcel and found that 95 percent of the dairy operations were physically located within the UEC service territory. The facts also demonstrated that, when considering the irrigation pivots only, 86 percent of the irrigation loads are within UEC's service territory.

We concluded that we may rely on the geographic load center test to allow one utility to serve a unified load that straddles two service territories, because the statute is ambiguous as to the appropriate treatment of a unified load that straddles two service territories and the context and purpose of the territorial allocation law supports the geographic load test. We concluded that UEC has the right and obligation to serve the entirety of the Willow Creek Dairy Property electric loads.¹

¹ See Order 19-221 at 6.

III. REQUEST FOR RECONSIDERATION OR REHEARING

A. Applicable Law

ORS 756.561(1) provides that a party may request reconsideration of a final order within sixty (60) days of service of that order. The Commission may grant reconsideration “if sufficient reason therefore is made to appear.” OAR 860-001-0720(3) provides that the Commission may grant an application for rehearing or reconsideration if the applicant establishes one or more of the following grounds:

- (a) New evidence that is essential to the decision and that was unavailable and not reasonable discoverable before issuance of the order;
- (b) A change in the law or policy since the date the order was issued relating to an issue essential to the decision;
- (c) An error of law or fact in the order that is essential to the decision; or
- (d) Good cause for further examination of an issue essential to the decision.

OAR 860-001-0720(2) requires the applicant to specify what changes in the order the Commission is requested to make and to explain how such changes will alter the outcome.

B. Columbia Basin’s Application for Reconsideration

Columbia Basin submitted its petition for reconsideration on August 30, 2019. Columbia Basin made six arguments on reconsideration and requests that the Commission reconsider three of its conclusions: (1) that the Commission has the discretionary authority to adopt and use the geographic load test; (2) that the Commission has the discretionary authority to adopt and use the point of service test; and (3) that UEC’s actions did not result in the duplication of Columbia Basin’s facilities.

C. UEC’s Reply

UEC submitted its reply on September 16, 2019. UEC argues that Columbia Basin’s petition does not follow the law regarding reconsideration in that it “failed to identify any error of law or fact” in the Commission’s decision.² UEC opines that, contrary to Oregon law, Columbia Basin simply “re-argue[s] points of law and fact it already presented to the Commission.”³

IV. DISCUSSION AND RESOLUTION

We conclude that Columbia Basin has not demonstrated grounds justifying reconsideration of Order No. 19-221 and its request is denied.

² UEC Response in Opposition to Petition for Clarification and Reconsideration at 1 (Sep 16, 2019).

³ *Id.* at 2.

A. Commission Has Authority to Apply the Geographic Load Test Under the Facts of This Case.

Columbia Basin argues that we lack the authority to resolve allocated territory disputes using the geographic load center test. Although acknowledging that the territory allocation law does not address situations where a customer's electricity load may straddle two service territories, Columbia Basin claims the statutory language is unambiguous and that we cannot consider any test but the point of use test for resolving disputes over a load straddling two territories.⁴ By implication, Columbia Basin argues that the language of the statute does not and cannot recognize the nature of the customer load – and, if a customer straddles two service territories, that customer *must* receive service from two utilities, regardless of the impact to the customer or the physical or economic constraint on the customer to subdivide that load and receive service from two providers.

In our order, we determined that the territory allocation statute did not address situations where a unified customer load straddled two service territories and was ambiguous in this crucial respect. We then applied the test which we have previously determined best furthers the legislative purpose and direction of the territory allocation law in situations where a unified customer load straddles two service territories. We consider the statute ambiguous with respect to customer loads that straddle two service territories. We appropriately resolved this ambiguity in a manner consistent with the purpose and legislative intent reflected in the territory allocation law.

B. The Commission's Alternative Resolution Correctly Applied the Point of Service Test.

Columbia Basin's second assignment of error asserts that we do not have the authority to adopt the point of service test.⁵ In order No. 19-221, we determined that application of the point of service test resulted in the same conclusion as our application of the geographic load center test, and adopted it as an alternative rationale for our decision.

In applying the geographic load center test, we found that the text was ambiguous and allowed the use of the geographic load test consistent with the intent and purpose of the legislative intent of the territory allocation law. However, in the alternative, we concluded that if the text of the statute is unambiguous it requires a point of service test, not a point of use test, which means the end result would be the same under these facts.

Under an unambiguous interpretation of the statute, utility service refers to the physical act that distributes electricity to users over plant, equipment, or facilities to the point where the user takes some control for its own use. We, therefore, concluded that UEC did not violate ORS 758.450(2) under application of what is commonly referred to as the

⁴ The point of use test requires that only the utility authorized to serve within a certified territory may provide power to a facility within that service territory, even where the consumer or facility straddles or extends into another service territory.

⁵ The point of service test focuses on the point at which the commodity is delivered rather than on the point at which it is consumed. If a utility provides a commodity to a customer within its allocated territory, the sale is proper, even if the customer transport the commodity into the allocated territory of another utility for the customer's use.

point of service test because the facts of this case demonstrate that UEC did not offer, construct, or extend plant, equipment or facilities into Columbia Basin's service territory for the distribution of electricity to users.

We reiterate that we determined in order No. 15-110 that the statute is ambiguous as it applies to a unified load that straddles two allocated service territories and applied the geographic load center test as consistent with the purpose and legislative intent of the territory allocation law.⁶ However, even if the text were determined to be unambiguous and establishes a point of service test, the result would be the same under the facts in this case.

C. The Commission Use of the Point of Service Test as an Alternative Rationale Does Not Reverse the Rationale We Have Previously Adopted When Faced with Factual Situations That Involve a Unified Load That Straddles Two Allocated Service Territories

Columbia Basin asserts that our order reversed the rationale we adopted in order No. 15-110, where we declined to adopt an argument based on the point of service test. That is incorrect. We have not reversed that rationale. Instead, we adopted an alternative rationale that concludes the result would be the same if we applied the point of service test.

D. The Commission's Determination That There Was No Duplication of Facilities Is Supported by the Record

Columbia Basin argues that we erred in finding that facilities were not duplicated in order to serve the Willow Creek Dairy. In making this claim, Columbia Basin states that our determination that facilities were not duplicated was based entirely on Staff testimony. We did rely on Staff testimony in our order, but we also cited to additional evidence in the record, including evidence submitted by Columbia Basin. For example, we reviewed and cited a letter, submitted by Columbia Basin into evidence, which indicated that facility improvements were necessary regardless of whether or not the irrigation circles in question were to be served by Columbia Basin or UEC. The letter stated that new trenches and infrastructure needed to be installed in order for Columbia Basin to serve the Willow Creek dairy.⁷ Based upon the totality of the record, we found "improvements were necessary in either case," which supports the determination that facilities were not duplicated.

⁶ *Columbia Basin Electric Cooperative, Inc., v. PacifiCorp, dba Pacific Power, et al.*, Docket No. UM 1970, Order No. 15-110 at 4 (Apr 10, 2015).

⁷ CBEC/111, Wolff/3.

V. ORDER

IT IS ORDERED THAT Columbia Basin's request for reconsideration and rehearing is denied.

Made, entered, and effective Oct 29 2019.



Megan W. Decker
Chair



Stephen M. Bloom
Commissioner



Letha Tawney
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.