

June 8, 2009

***VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY***

Oregon Public Utility Commission
550 Capitol Street NE, Suite 215
Salem, OR 97301-2551

Attention: Filing Center

**RE: Dockets UA 141 and UA 143- PacifiCorp's Reply to Wasco Electric
Cooperative's Response to PacifiCorp's Explanatory Statement**

PacifiCorp, d.b.a. Pacific Power, encloses for filing its reply to Wasco Electric
Cooperative's Response to PacifiCorp's Explanatory Statement.

Questions on this matter may be directed to Joelle Steward, Regulatory Manager, at (503)
813-5542.

Sincerely,



Andrea L. Kelly
Vice President, Regulation
PacifiCorp

Cc: Service List UA 141, UA 143

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June, 2009, I caused to be served, via E-Mail and US Mail (to those parties who have not waived paper service), a true and correct copy of the foregoing document on the following named person(s) at his or her last-known address(es) indicated below.

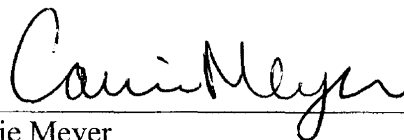
SERVICE LIST UA-141, UA-143

Oregon Dockets
PacifiCorp
825 NE Multnomah, Suite 2000
Portland, OR 97232
oregondockets@pacificorp.com

Michelle Mishoe
Pacific Power & Light
825 NE Multnomah St. Suite 1800
Portland, OR 97232
Michelle.mishoe@pacificorp.com

Raymond S. Kindley
Cable Huston Benedict Haagensen &
Lloyd, LLP
1001 SW Fifth Ave, Suite 2000
Portland, OR 97204-1136
rkindley@cablehuston.com

Jeff Davis
Wasco Electric Cooperative
PO Box 1700
The Dalles, OR 97058
jeffd@wascoelectric.com



Carrie Meyer
Coordinator, Administrative Services

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UA 141 & UA 143

In the Matters of

PACIFICORP, dba PACIFIC POWER
Application for Allocation of Exclusive
Service Territory (UA 141)

PACIFICORP'S REPLY TO WASCO
ELECTRIC COOPERATIVE'S RESPONSE
TO PACIFICORP'S EXPLANATORY
STATEMENT

And

WASCO ELECTRIC COOPERATIVE,
INC. Application for Allocation of Exclusive
Service Territory (UA 143)

1

2 Pursuant to the Prehearing Conference Memorandum issued May 8, 2009 in these
3 dockets, PacifiCorp, d.b.a. Pacific Power ("PacifiCorp" or "Company") submits this reply to
4 Wasco Electric Cooperative's ("WEC") response to PacifiCorp's explanatory statement
5 ("Response").

6 **I. Introduction**

7 In the Response, WEC presented a set of facts relating to Iberdrola's wind farm in the
8 Hay Canyon area. After reviewing these facts, PacifiCorp believes issues of fact regarding
9 service to the wind farm remain to be resolved. In some instances, it is still not clear which
10 facilities belong to which entities in the Hay Canyon area. The parties presented differing
11 facts regarding location of customers and ownership of facilities. Additionally, the Company
12 does not believe WEC's application provides adequate protection for PacifiCorp's customers
13 and assets in the Hay Canyon area.

14 PacifiCorp serves customers and owns assets in the unallocated Hay Canyon area. It
15 would be reasonable to allocate the geographic areas around those customers and assets to

1 PacifiCorp to maximize efficient use of those assets, for both existing and future customers.
2 The Company recognizes WEC also serves customers and owns assets in the unallocated
3 Hay Canyon area. Both companies have a legitimate interest in the unallocated Hay Canyon
4 area. The Company has made several attempts to contact WEC to informally discuss the
5 issues, to no avail. The appropriate mechanism for addressing these service territory
6 allocation issues is for the parties to negotiate an agreement that equitably allocates the Hay
7 Canyon area, taking into consideration each party's customers and assets in the area. To
8 accomplish this, the Company respectfully requests that the Public Utility Commission of
9 Oregon ("Commission") reject WEC's application and direct the parties to present a contract
10 for service territory allocation to the Commission for approval.

11 **II. Discussion**

12 As stated in the Company's explanatory statement filed May 21, 2009, the Oregon
13 service territory allocation statutes, ORS 758.400 through ORS 758.475, provide limited
14 mechanisms for acquiring exclusive service territory. To acquire exclusive service territory,
15 persons offering similar utility service in an area may contract with each other for exclusive
16 service territory; or in areas where one person offers utility service, that person may submit
17 an application to the Commission for exclusive service territory. ORS 758.410, ORS 758.435
18 and ORS 758.450(1). A Commission interoffice memorandum dated June 28, 1991 ("1991
19 Interoffice Memo"), discusses these mechanisms for acquiring service territories, noting that
20 ORS 758.410 applies to situations where two companies serve the same area, referred to as a
21 "mixed" service area. A copy of the 1991 Interoffice Memo is included with this Reply as
22 Attachment A.

23 These proceedings involve a mixed service area. Both PacifiCorp and WEC offer
24 similar utility service in the Hay Canyon area. WEC states in its Response that its application

1 excludes existing PacifiCorp customers in the Hay Canyon area. This does not eliminate the
2 mixed service territory issue. PacifiCorp owns a distribution line that essentially runs through
3 the middle of the unallocated Hay Canyon territory. This distribution line provides service to
4 the Company's customers in the unallocated Hay Canyon territory. The Company provides
5 utility service in a greater expanse of the unallocated area than WEC's application takes into
6 consideration. The appropriate mechanism for allocating exclusive service territory, if
7 exclusive service territory is to be granted, in the Hay Canyon area is for the parties to reach
8 an agreement to present to the Commission for approval. This will allow the parties to reach
9 an agreement that equitably allocates the Hay Canyon area, taking into account each party's
10 existing customers and facilities.

11 Additionally, WEC's argument that there is only one valid application for service
12 territory in the Hay Canyon area pending before the Commission is not the appropriate test
13 for determining whether to grant exclusive service territory. The Commission articulated its
14 test for granting exclusive service territory in Order No. 98-546, Dockets UA 58/UA 60. The
15 standard, set by statute, is "exclusivity of service." Dockets UA 58/UA 60, Order No. 98-
16 546, p. 9. There is no exclusivity of service in the Hay Canyon area. Both PacifiCorp and
17 WEC serve customers and own assets in the area.

18 The primary interest of the Company in these proceedings is to ensure that the assets
19 currently owned and the customers currently served in the unallocated service territory are
20 protected. The Company does not seek a significant expansion of its service territory in the
21 area. Rather, PacifiCorp's aim is to first take the steps necessary to ensure there is clarity as
22 to ownership of all assets in the unallocated territory. Once that is clear, the Company
23 believes an equitable resolution for both parties will be readily available if given the
24 opportunity to discuss. It is apparent that to facilitate that discussion, the Commission would

1 have to direct the parties to meet directly, which is what the Company seeks in this reply.

2 **III. Conclusion**

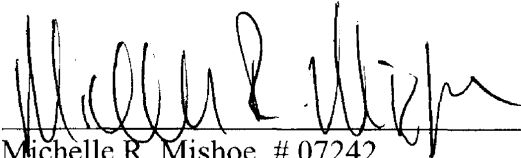
3 PacifiCorp continues to believe that issues of fact exist that should be resolved prior
4 to the Commission rendering any decision on the allocation of the Hay Canyon area. To
5 resolve these issues, the parties should hold discussions outside of these proceedings, with
6 the goal of reaching an agreement to present to the Commission for approval.

7

8

DATED: June 8, 2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michelle R. Mishoe", written over a horizontal line.

Michelle R. Mishoe, # 07242
Legal Counsel, Pacific Power

Counsel for PacifiCorp

Attachment A

DEPARTMENT OF JUSTICE

Interoffice Memo

DATE: June 28, 1991

TO: Karl Craine, Hearing Officer
Administrative Hearings Division
Public Utility Commission

FROM: John H. Socolofsky
Senior Assistant Attorney General

SUBJECT: Territorial Allocation; ORS 758.400 et seq; Portland
General Electric UA 35; Tidball memo of June 14, 1991
DOJ File No. none

The issue before us is to correctly set forth the theory under which the allocation to PGE can be made. There appears to be no question but what PGE is entitled to the allocation. But the order must make findings which fit the terms under which an allocation can be granted. As it stands the findings do not support an acceptable theory. Let me try to explain why.

There are only two methods to acquire unallocated territory. They are found in ORS 758.410 and 758.435. The first method, under ORS 758.410, is used when two companies are serving the same area. We'll call that a "mixed service area." The second method is used when one company is exclusively serving an area. We'll call that an "exclusive service area."

Where there is a mixed service area, the companies by contract can separate themselves. Mixed service areas are often overlap areas of the larger service areas of each company. That is not always the case. Some mixed service areas are served throughout by both companies. Portland was an example of this. When the entire service area is a mixed service area, all customers in the service area can receive service from either company. When only a portion of a company's service area is a mixed area, then only some of the company's customers are in a position to receive service from both companies.

The idea of ORS 758.410 is to allow the companies, by contract, to voluntarily break apart these mixed service areas and eliminate the duplication of facilities. The end products of this exercise are two separated service areas of two utilities. But when the exercise begins, the assumption is that between the two utilities there is an area which both of them are serving even though both might not be serving all of each other's service territory.

EX. 2 PG. 1 OF 3

Karl Craine
June 28, 1991
Page 2

In the process of making a dividing line between two service territories under this statute, customers often were traded. For example, several customers which might have been those of Pacific Power in an unmixed area might become customers of PGE after the separation, and vice versa.

In addition, once the served territory was thus separated, the statute permitted the new service territory of each company to include additional previously unserved territory "which could be economically served by the then existing facilities of either party, or by reasonable and economic extensions thereto." So the idea was first to separate the common service areas by agreement and then add to the new boundaries that adjacent territory which could easily be served by existing facilities or economical extensions of them. Those usually were limited by the line extension policies of each company. I have underlined the standard for this additional unserved territory, that is, therefore "unserved" by either company, because that is the same standard that is used to add additional territory to the service area of a company which applies for allocation of exclusively served territory under ORS 758.435.

The second method for obtaining an allocation from the Commission is under ORS 758.435. This method is premised upon the assumption that the utility is serving an existing territory exclusively, that is, without competition. So the statutory distinction between the two methods is dependent upon whether there are any mixed service areas involved. One method depends upon agreement; the other exclusive service. They reflect a desire to avoid contests between utilities. The underlying principle of this compromise bill, 1961 SB 487, was that no utility was subjected to actions against its will. The "compromise" was really between the PUC and the utilities.

ORS 758.450 was not a third method of obtaining territory. It was only a codification of the foregoing policy that no utility could acquire territory also being served by another utility, except by the contract under ORS 758.410. There is no suggestion anywhere in the statutes or legislative history that the utilities could by agreement divide up territory that neither was serving. The only way to acquire unserved territory was in conjunction with an application relating to either mixed service areas or exclusive service areas.

This brings us to the findings in the order. On page 2 the proposed order finds that PGE has served the area in question since 1957. It also finds that Oregon Electric has not served the area. Further, it finds that Oregon Electric

EX. 2 PG. 2 OF 3

Karl Craine
June 28, 1991
Page 3

could not serve the area without constructing facilities that would duplicate PGE's existing facilities. In other words, the order does not find that there existed a "mixed service area" which would have made ORS 758.410 the applicable method of allocation. What you have, in essence, is a finding that the area was either exclusively being served by PGE or is adjacent unserved territory to which PGE is entitled.

The contract in this case, therefore, is nothing more than a waiver by Oregon Electric to any claims on the territory. How do I know about this stuff? Well, when I first started with the PUC in 1966, I think I did almost all of PNB's service territorial allocations and a bunch of other telephone companies. In the process I noted that there were only two methods of allocation as I have described above. I have checked the legislative history that I have and nothing in it that I could find is contrary to what I have set out here.

1646Y