

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UA 110

In the Matter of PROPERTY OWNERS OF)
TAX LOT 501; Petition to Review Service)
Area for Tax Lot 501, Petitioners, and)
PACIFICORP, dba PACIFIC POWER &)
LIGHT COMPANY, and HOOD RIVER)
ELECTRIC COOPERATIVE, INC.,)
Respondents.)

ORDER

DISPOSITION: PETITION DENIED

Procedural History

On February 5, 2007, the property owners of Tax Lot 501, Section 7, T. 2N., R. 11E., Willamette Meridian (Petitioners), filed a petition with the Public Utility Commission of Oregon (Commission) requesting a review of the service territory boundary between PacifiCorp, dba Pacific Power & Light Company (PacifiCorp), and the Hood River Electric Cooperative (HREC). Specifically, Petitioners request that the Commission “redraw” the boundary line to enable HREC to provide electric service to a proposed dwelling site on Tax Lot 501 currently located within PacifiCorp’s service territory.

On February 27, 2007, HREC filed a response in support of the Petition. HREC asserts that it is willing and able to provide service to Tax Lot 501. It points out that it currently serves other parcels formerly within PacifiCorp’s service territory that were transferred to HREC pursuant to “Agreement[s] to Serve Fringe Area Customers.”

On March 1, 2007, PacifiCorp filed an answer opposing the petition. PacifiCorp states that the proposed dwelling site is clearly within its service territory, and that the surrounding territory is ripe for development. PacifiCorp also denies Petitioners’ claim that the proposed territory allocation would be more efficient.

On April 4, 2007, the presiding Administrative Law Judge (ALJ) convened a telephone conference to discuss issues relating to the petition. The parties were subsequently directed to file a joint statement indicating whether the parties disagreed regarding the location of Tax Lot 501.

On April 13, 2007, the parties met at Tax Lot 501 to conduct a visual inspection of the site. On May 21, 2007, the parties filed a joint statement stipulating that:

1. PacifiCorp's and HREC's service territory boundary lines run across a minimal portion of the south and west portions of Tax Lot 501.
2. Whiskey Creek separates PacifiCorp's service territory from HREC's service territory. PacifiCorp's service territory rests to the north of the creek, and HREC's service territory rests to the south.
3. The proposed building site for Tax Lot 501 is to the north of Whiskey Creek, within PacifiCorp's service territory.

In response to inquiries from the ALJ, the parties filed a second joint statement on July 9, 2007. The parties agree that there are no disputed facts requiring an evidentiary hearing, and request that the Commission enter its decision based upon the facts stipulated in the first joint statement.

On August 10, 2007, the parties filed a third joint statement requesting an opportunity to file closing statements. At a telephone conference convened on August 23, 2007, the parties confirmed that the closing statements would be confined to legal and policy arguments and would not raise additional facts beyond those stipulated to in the first joint statement.

On August 31, 2007, closing statements were filed by Petitioners, HREC, PacifiCorp and the PUC Staff (Staff). PacifiCorp subsequently moved to strike HREC's statement and portions of the Petitioners' statement, because those filings include additional facts not stipulated to by the parties. For reasons set forth below, it is unnecessary to rule on the motions to strike.

Applicable Law

Oregon law provides two avenues for allocating service territory among utilities that provide similar service. The first avenue allows utilities to reach an agreement on how to draw the boundary lines between their respective service territories. ORS 758.410. The utilities must file the agreement with the Commission, who then must approve or disapprove the agreement after providing affected customers with notice and an opportunity for hearing. ORS 758.420 - 758.425. Any Commission-approved contract may be subsequently amended by the parties to the agreement. Any amendatory agreement must be filed with the Commission for approval. ORS 758.430.

The second avenue for service territory allocation allows a utility to file an application for Commission approval of an exclusive service territory in instances where the utility is already the exclusive service provider and the area is otherwise unallocated.

ORS 758.435. This method of allocating service territory is not relevant to this proceeding.

Commission Disposition

On January 12, 1967, the Commission entered Order No. 43350, approving an agreement between PacifiCorp and HREC allocating electric service territories and customers between the two utilities. The approved contract established exclusive service territories for PacifiCorp and HREC to provide electric utility service. As the Staff points out, the Commission approved the service territory allocation agreement pursuant to former ORS 757.615 - 757.625 (1965), which, like the current statutory scheme, permitted utilities to divide territory by contract subject to Commission approval. After the right to appeal Order No. 43350 expired, the PacifiCorp/HREC agreement became a valid and enforceable contract.

For purposes of this case, PacifiCorp's service territory lies to the north of Whiskey Creek and HREC's service territory lies to the south. Nearly all of Tax Lot 501, including the Petitioner's proposed building site, lies to the north of Whiskey Creek within PacifiCorp's allocated service territory. Petitioners request that the Commission redraw the existing service boundary to allow HREC, rather than PacifiCorp, to provide electric service to the proposed building site on Tax Lot 501. HREC supports the request. PacifiCorp and Staff are opposed.

As emphasized above, current Oregon law allows utilities to divide service territories by agreement subject to Commission approval. The law also permits utilities to subsequently agree to amend their service territories, again subject to Commission approval. There is, however, no provision in the territory allocation statutes that permits amending a service territory agreement over the objection of one of the utility signatories to the agreement. Instead, ORS 758.430 provides that Commission-approved allocated service territories may only be altered if the utilities mutually agree to amend the contract. Since PacifiCorp objects to the proposed service territory reallocation in this case, the statutory requirements have not been met. Furthermore, since Petitioners are not signatories to the service territory allocation agreement between PacifiCorp and HREC, they do not have standing under Oregon law to seek amendment of the agreement.

In support of their position, Petitioners rely on ORS 758.460(1). That statute provides:

758.460 Assignment or transfer of rights acquired by allocation; approval of commission. (1) The rights acquired by an allocation of territory may only be assigned or transferred with the approval of the Public Utility Commission after a finding that such assignment or transfer is not contrary to the public interest.

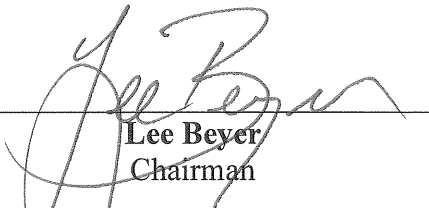
As Staff points out, ORS 758.460(1) does not apply to the circumstances at hand, because the statute contemplates that the assignment or transfer of allocated service territory will occur as a result of an agreement between utilities. Since PacifiCorp does not agree with the proposed territory reallocation, ORS 758.460(1) does not come into play.

For the reasons set forth above, the Commission finds that the Petition should be denied.

ORDER

IT IS ORDERED that the Petition filed by the property owners of Tax Lot 501, Section 7, T. 2N., R. 11E., Willamette Meridian, is denied.

Made, entered, and effective SEP 21 2007.



Lee Beyer
Chairman



John Savage
Commissioner



Ray Baum
Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.