

**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),

and

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

ORDER

**DISPOSITION: MOTION TO REOPEN DOCKET UA 141  
APPLICATION DENIED; MOTION TO DISMISS  
UA 143 APPLICATION GRANTED**

In these two proceedings, PacifiCorp, dba and Pacific Power (Pacific Power) and Wasco Electric Cooperative, Inc. (Wasco), have filed essentially competing applications for exclusive service territory. We find that these applications seek allocation of territory served by more than one person, and conclude that such territory may only be allocated upon receipt of a contract filed under ORS 758.450(1).

**I. BACKGROUND**

**A. Docket UA 141**

On January 16, 2009, Pacific Power filed an application for the allocation of service territory in an area of Sherman County that is “not currently allocated to any electric utility.”<sup>1</sup> The subject area, comprised of an approximate 1 by 10 mile strip of rural land running east-to-west, is known as “Hay Canyon.”

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<sup>1</sup> UA 141 Application at 1.

In its application, Pacific Power stated that it was the only retail electric service supplier providing service in the Hay Canyon area. Pacific Power explains that it provides residential and/or agricultural electric service to four customers in Hay Canyon, and that it was installing a V-Phase line to serve “portions of a 17-turbine wind generation farm being constructed by Iberdrola Renewables (Iberdrola) in the Hay Canyon area.”<sup>2</sup> Although two other retail electric service providers, Wasco and Columbia Basin Electric Cooperative, Inc. hold service territory either immediately adjacent to or in proximity to the Hay Canyon area, Pacific Power’s application stated that neither utility serves any customers within the Hay Canyon area.

By letter filed February 2, 2009, Pacific Power requested that its application be withdrawn. By Order No. 09-056, dated February 9, 2009, the Commission closed docket UA 141.

Meanwhile, by letter filed February 4, 2009, Wasco protested Pacific Power’s application and requested that the Commission terminate the proceeding. According to Wasco, it presently serves two retail customers in the unallocated territory, having served them since 1983 and 1990 respectively. If the Commission were to proceed with Pacific Power’s application, Wasco requested a hearing to address Wasco’s rights to provide service in the Hay Canyon area and the sufficiency of Pacific Power’s application.

On February 4, 2009, Wasco filed its own application for the allocation of exclusive service territory in Hay Canyon. The application, docketed as UA 143, is further addressed below.

On April 2, 2009, Pacific Power filed a motion to reopen docket UA 141. According to the Company, it had withdrawn its application “in hopes of starting a dialogue with (Wasco) regarding service in the area.”<sup>3</sup> Citing Wasco’s application, Pacific Power stated that its interest in serving the Hay Canyon area remained strong, and that it was seeking to reopen the docket “to obtain a determination from the Commission on whether the Hay Canyon area should be allocated to the Company.”<sup>4</sup>

On April 24, 2009, Wasco filed a petition to intervene in UA 141. In its petition Wasco recounts its interactions with Pacific Power regarding service in Hay Canyon in general, and with respect to serving the Iberdrola wind farm in particular. According to Wasco, it had been serving the entire Iberdrola wind farm since December 18, 2008 (including units located in Wasco’s exclusive service territory, and in the unallocated service territory sought by Pacific Power). Wasco serves the wind farm with power purchased from the Bonneville Power Administration (BPA). The point of

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

<sup>3</sup> Pacific Power Motion at 2.

<sup>4</sup> *Id.*

interconnection between Wasco and Iberdrola is at a substation located in Wasco's service territory. Iberdrola is a member of Wasco.

Wasco offers legal argument to the effect that the Commission has no statutory authority to grant Pacific Power's application. Wasco argues that Pacific Power's application is based on false and misleading facts and is based on statutory provisions that do not provide the Commission with authority to grant Pacific Power's request. Wasco asks that its petition to intervene in UA 141 be granted.

On May 4, 2009, Pacific Power filed an answer to Wasco's petition to intervene. Although the Company argues that Wasco mischaracterizes the Company's purpose for its request to reopen this docket, Pacific Power did not object to Wasco's intervention.

**B. Docket UA 143**

As noted above, on February 4, 2009, Wasco filed its own application for the allocation of exclusive service territory in Hay Canyon. Attached to the application is a map that shows existing service lines of Wasco and Pacific Power. Wasco notes that Pacific Power had recently installed a service drop to provide service to Pacific Power's own Hay Canyon substation. Wasco states that its application excludes the immediate area around Pacific Power's distribution facilities that may provide service to the substation.

Wasco states that it currently provides electric service to two retail electric customers in the Hay Canyon area. Wasco states that, to the best of its knowledge, no other utility currently provides retail electric service in the unallocated Hay Canyon area that Wasco seeks for exclusive service territory.

Wasco's application also provided additional information about the Iberdrola wind farm, which consists of 48 generation units. The geographic area of the project extends from Wasco's existing service territory into the unallocated portion of Hay Canyon. Wasco explains that, when the wind generation units are not operating, each generation unit uses electric power to heat the unit's mechanical equipment and power the unit's electrical equipment. Service to that type of load is called "idle station service." Of the 48 wind generation turbines at Iberdrola, 31 stations are located in Wasco's current service territory. Wasco asks to be allocated the territory surrounding the remaining 17.

According to Wasco, due to limitations on available transmission capacity, the idle station service for all of the wind generation units in Iberdrola must be served through BPA transmission lines that terminate at the Klondike Schoolhouse substation (Schoolhouse substation) in Wasco's service territory. From the Schoolhouse substation, Iberdrola transmits the power needed for its idle station service across its own

transmission lines to its Hay Canyon substation. Therefore, all of the power needed to serve the idle station service for the Iberdrola project must be provided from a point of delivery in Wasco's service territory.

Wasco notes that Pacific Power was apparently intending to provide limited retail electric service for lighting and heating at Iberdrola's Hay Canyon substation. Wasco explains that its application does not include that area or affect that service. According to Wasco, Pacific Power's existing distribution line in Hay Canyon cannot provide sufficient power to support the idle station service load of the wind generation units located in the unallocated Hay Canyon area.

Wasco subsequently filed three amendments to its application to correct the legal description of the subject service territory or to exclude areas served by other utilities.

Meanwhile, on March 30, 2009, Pacific Power filed a petition to intervene in UA 143, motion to dismiss, and request for hearing. With respect to its petition to intervene, Pacific Power notes that it had filed an application for exclusive service territory "essentially requesting the identical territory that is the subject of [Wasco's] petition." Wasco did not oppose Pacific Power's petition to intervene, which was granted by Administrative Law Judge (ALJ) ruling May 8, 2009.

With respect to its motion to dismiss, Pacific Power contends that Wasco's application is not proper, because it seeks allocation of territory served by more than one person. According to Pacific Power, such territory may be allocated only under ORS 758.450(1), which requires a contract between the competing providers. Pacific Power contends that dismissal of the application would allow Wasco and Pacific Power "to work together to reach a mutually acceptable service territory arrangement for the Hay Canyon area."<sup>5</sup>

In the event that the Commission allows the docket to go forward, Pacific Power requests a hearing. Pacific Power notes that, concurrent with its filing in UA 143, it also filed its motion to reopen UA 141.

On April 13, 2009, Wasco filed a reply in opposition to Pacific Power's motion to dismiss and request for hearing. Wasco emphasizes that its application does not seek allocation of a mixed service area, because it has carved out Pacific Power's customers. Wasco also notes Pacific Power's interest in serving Iberdrola's idle station load, but claims that Pacific Power cannot serve Iberdrola "without interfering with Wasco's contract and service relationship with Iberdrola and, indirectly interfering with Wasco's contract relationship with [BPA]." In contrast, Wasco states that it is not requesting to interfere with Pacific Power's existing customers, nor asking for exclusive service territory that includes any of Pacific Power's existing customers.

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<sup>5</sup> Pacific Power Petition to Intervene at 3.

## II. PROCEEDINGS

### A. Prehearing Conference

A joint prehearing conference was held in both dockets on May 7, 2009. Following the prehearing conference, the ALJ invited Pacific Power to file an explanatory statement that

explains how it might be in the public interest to allocate to Pacific Power the area encompassing the 17 turbines now served by Wasco. \* \* \* Pacific Power should address factual issues related to the apparent duplicative service, including Pacific Power's cost of providing that service and what public benefits might be realized were the Commission to allocate that territory to Pacific Power. Pacific Power's statement should also explain whether it proposes to serve only the 17 turbines in Hay Canyon, or whether it proposes to serve all 48 turbines. It should include the cost of Pacific Power's facilities needed to serve the turbines, the cost and source of the energy that Pacific Power plans to use to serve the turbines, and the proposed rate it would charge for that service.

Pacific Power also was invited to describe what additional load it may plan to serve using such facilities.

Filing dates were set for Pacific Power's statement, Wasco's response, and Pacific Power's reply.

### B. Pacific Power's Statement

Pacific Power filed its statement on May 21, 2009. The Company summarized the procedural history of these two proceedings and its view of the applicable statutes and the extent of the Commission's authority. Pacific Power also provided further background information regarding its interactions with Wasco and BPA with respect to service to Iberdrola.

According to Pacific Power, Iberdrola owns the 100-megawatt Hay Canyon wind farm near the City of Wasco. Of the 48 turbines, 31 are located within Wasco's service territory. Pacific Power serves the Hay Canyon substation and Iberdrola's maintenance building. The Company's 20.8 kilovolt distribution line extends into the unallocated service territory and serves the substations single-phase load (lights and battery chargers), but is not adequate to provide idle station service.

The Hay Canyon wind farm is metered out of Iberdrola's Schoolhouse substation, which is located in Wasco's service territory. Wasco currently accepts the output of the wind farm and provides the idle station service via either a BPA line from BPA's John Day substation or via a Wasco line from BPA's DeMoss substation.

Pacific Power states that it filed its application for exclusive service territory "to incorporate its existing customers into its designated service territory" and it "does not desire to serve the Iberdrola wind farm"<sup>6</sup> – either by accepting the output, or by providing idle station service. Pacific Power conditions its position on whether the facts assumed to be true can be verified.

Assuming the facts to be true, Pacific Power believes that the applicable statutes establish that the appropriate mechanism for determining the allocation of service territory is for the parties to voluntarily reach agreement and present the Commission with a contract for approval. The Company requests that the procedural schedule in these proceedings be established to allow for such consultation between the parties.

### **C. Wasco's Response**

In its response, Wasco first notes that, because Pacific Power has clarified that it does not want to provide idle station service to Iberdrola, and because its (amended) application excludes Pacific Power's existing customers in Hay Canyon, it is unnecessary for Wasco and Pacific Power to further negotiate an allocation of customers in the Hay Canyon area. Wasco requests that the Commission approve its application without further proceedings.

Wasco further explains the nature of its service to Iberdrola. Wasco serves the wind farm with power that it purchases from BPA. BPA delivers that power to Wasco across BPA's transmission line extending from the John Day substation to the Schoolhouse substation.<sup>7</sup> Wasco transfers title and ownership of the power to Iberdrola at the Schoolhouse substation. Iberdrola transmits its power from the Schoolhouse substation to Iberdrola's Hay Canyon collector substation via Iberdrola's transmission line between those two points. Wasco sells power to Iberdrola at Wasco's General Services/Generators Connected Directly to BPA's Transmission Lines Rate, Rate Class 35. If Iberdrola adds load, Wasco will continue to offer power to those loads pursuant to this rate and pursuant to its current power purchase and delivery arrangements with BPA.

Wasco argues that only one valid application for service territory allocation in Hay Canyon is pending before the Commission. Docket UA 141 was closed and has not been reopened. Pacific Power's application does not meet legal requirements

<sup>6</sup> Pacific Power Statement at 7 (May 21, 2009).

<sup>7</sup> As noted by Pacific Power, Wasco does own and operate a transmission line between BPA's DeMoss substation and the Schoolhouse substation. However, Wasco does not currently serve the Iberdrola load using that line.

because the boundaries of the proposed territorial allocation include Wasco's existing customers. Additionally, Pacific Power has changed its position since its initial filing, now stating that it does not want to serve Wasco's domestic customers or to serve the Iberdrola idle station load.

Wasco does not see any need to conduct negotiations with Pacific Power regarding the allocation of territory in Hay Canyon. The approval of Wasco's application effectively will allocate Wasco's and Pacific Power's existing customers to each respective utility. Given that Pacific Power has disavowed any interest in serving Iberdrola, there is no need to further negotiate service in the territory described in Wasco's (amended) application.

**D. Pacific Power's Reply**

Pacific Power states that, despite further clarification of the service currently provided by each utility in the Hay Canyon area, issues of fact regarding service to the wind farm remain to be resolved. The Company also believes that Wasco's application does not provide adequate protection for Pacific Power's customers and assets in the Hay Canyon area.

Pacific Power notes that both utilities own assets and serve customers in the unallocated Hay Canyon area, and both parties have a legitimate interest in the unallocated area. According to Pacific Power, the appropriate mechanism for addressing the service territory allocation issues is for the parties to negotiate an agreement that equitably allocates Hay Canyon. To that end, Pacific Power requests that the Commission reject Wasco's application and direct the parties to negotiate toward a contract solution.

Pacific Power states that its primary interest is to ensure that the assets currently owned and the customers currently served in the unallocated service territory are protected. The Company does not seek a significant expansion of its service territory in the area. Pacific Power's "aim" is to ensure there is clarity as to ownership of all assets in the unallocated territory. The Company asks the Commission to direct the parties to negotiate.

**III. DISCUSSION**

The convoluted procedural course of these two dockets suggests that these two parties have had little meaningful dialogue regarding the allocation of exclusive service territories in the Hay Canyon area. Their apparently mutual lack of communication left Pacific Power in the position of applying to the Commission for authority to serve the Iberdrola idle station load already served by Wasco – as well as Wasco's two domestic customers.

After Pacific Power withdrew its application, Wasco applied for an allocation of exclusive territory that included Pacific Power's customers in the unallocated territory. Each utility has now refined its position to carve out the customers served by the other, and there is no dispute regarding service to existing customers.

The question remains, however, as to the unallocated portions of Hay Canyon. Oregon law provides two avenues for allocating service territory. If the territory is being served by more than one person, the utility providers may seek Commission approval under ORS 758.410(1) of a "contract for the purpose of allocating territories and customers between the parties and designating which territories and customers are to be served by which of said contracting parties[.]"<sup>8</sup> This avenue allows utilities to reach an agreement on how to draw the boundary lines between what the Commission has traditionally referred to as a "mixed service" area.<sup>9</sup> The Commission must approve or disapprove the agreement after providing affected customers with notice and an opportunity for hearing.<sup>10</sup>

If the territory is being served by only one person, the utility provider may file an application under ORS 758.435 "for an order allocating such territory to it." This avenue allows an exclusive provider to seek allocation simply by filing an application, which also "may include any adjacent area that it is more economical and feasible to serve by an extension of the applicant's existing facilities than by an extension of the facilities of another person."<sup>11</sup> Again, the Commission must approve or disapprove the application after providing affected customers with notice and an opportunity for hearing.<sup>12</sup>

The parties dispute which statute applies here, evidently based on differing interpretations of what constitutes a "mixed service" area. PacifiCorp interprets the term broadly to apply to the general area encompassed by the applications in these proceedings. Under this interpretation, Pacific Power contends that the area in question is a mixed service area because both PacifiCorp and Wasco serve customers within the Hay Canyon area, and because Pacific Power has a distribution line that essentially runs through the middle of the unallocated territory. Thus, Pacific Power concludes that Wasco's attempt to allocate the territory under ORS 758.435 is legally deficient and should be dismissed.

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<sup>8</sup> See also ORS 758.450, which confirms that "[t]erritory served by more than one person providing similar utility service may only become an allocated territory by a contract approved by the Public Utility Commission."

<sup>9</sup> See Department of Justice Interoffice Memo dated June 28, 1991, from John H. Socolofsky, Senior Assistant Attorney General to Karl Craine, Hearing Officer, Administrative Hearings Division, Public Utility Commission.

<sup>10</sup> ORS 758.420 and ORS 758.425.

<sup>11</sup> ORS 758.435.

<sup>12</sup> ORS 758.435(2).



Wasco interprets “mixed service” area more narrowly. Wasco apparently contends the terms should be applied solely to the area it seeks to allocate in its application. Because the application, as amended, has carved out Pacific Power’s customers in Hay Canyon, Wasco contends the territory sought to be allocated is not a mixed service area. Wasco also notes that the Hay Canyon area is extremely rural with a low density of customers. For these reasons, Wasco contends that it is exclusively serving the territory it seeks to allocate, and that an application under ORS 758.435 is permissible.

Based on the description and map of the Hay Canyon area provided by Wasco as Attachment B to its Response to Pacific Power’s Explanatory Statement, which Pacific Power does not dispute, we find that Wasco’s application in UA 143 seeks allocation of a mixed service area. Both Wasco and Pacific Power have facilities that might be used to serve new customers in Hay Canyon. Which utility might serve more economically would depend on the location of the customer(s) and the nature of the load to be served. Any such customer *might* be in a position to receive service from both utilities. Moreover, both Pacific Power and Wasco currently serve the Iberdrola wind farm. Pacific Power serves the Hay Canyon substation and Iberdrola’s maintenance building, while Wasco provides Iberdrola’s idle station load. This further confirms our finding that the Hay Canyon area is a mixed service area.

The fact that Wasco’s application has been amended to exclude any current Pacific Power customers does not transform the territory to one of exclusive use. As noted above, Pacific Power has a distribution line, used to serve these customers, that essentially runs the length of the unallocated area. Wasco’s application seeks allocation of the area encompassing that distribution line, as well as adjoining areas where future customers may be served by Pacific Power.

Pursuant to ORS 758.450(1), “territory served by more than one person providing similar utility service may only become an allocated territory by a contract approved” by this Commission, with any resulting contract subject to the approval of the Commission pursuant to statute. Accordingly, Pacific Power’s motion to dismiss docket UA 143 is granted. Dismissal of Wasco’s application does not disturb the *status quo*, with respect to existing customers.

As noted above, Pacific Power’s own application under ORS 758.435, docketed as UA 141, was closed at Pacific Power’s request. Pacific Power filed a motion to reopen the docket. Because we have found that a portion of Hay Canyon is a “mixed service” area, Pacific Power’s application is denied.

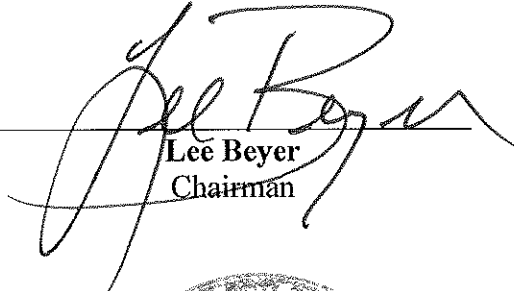
This disposition is without prejudice to the right of either party to file a new application for allocation of only the unallocated area now served by that party if the parties are not able to negotiate an agreement. In light of the known circumstances in Hay Canyon, a negotiated agreement would be presumed reasonable.

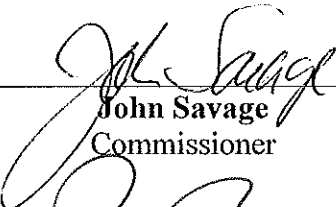
**IV. ORDER**


IT IS ORDERED that:

1. The application of Wasco Electric Cooperative, Inc., as amended, for allocation of exclusive service territory, docketed as UA 143, is **DISMISSED**.
2. The motion of PacifiCorp, dba Pacific Power, to reopen docket UA 141, is **DENIED**.

Made, entered, and effective SEP 16 2009.

  
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**Lee Beyer**  
Chairman

  
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**John Savage**  
Commissioner

  
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**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.