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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

DR 22

In the Matter of the Petition of)
PORTLAND GENERAL ELECTRIC) ORDER
COMPANY for a Declaratory Ruling)
pursuant to ORS 756.450.)

DISPOSITION: TERRITORIAL ALLOCATION DECLARED

BACKGROUND

On February 12, 1999, Portland General Electric Company (PGE) filed a petition for a declaratory ruling, pursuant to ORS 756.450 and OAR 860-013-0020. PGE requests a ruling that a customer, Boise Cascade (BC) in St. Helens, Oregon, is located within a service territory exclusively allocated by the Commission to PGE pursuant to ORS 758.400. On February 22, 1999, Columbia River People's Utility District (CRPUD) filed a petition to intervene, alleging that the BC facility is located within the territory of CRPUD. BC also filed a petition to intervene. We granted both petitions to intervene in Order No. 99-271. On August 18, 1999, CRPUD filed a motion for an order dismissing this proceeding, or in the alternative accepting CRPUD's notice of withdrawal from the proceeding. We denied the motion to dismiss, and accepted CRPUD's notice of withdrawal in Order No. 99-627.

The filings in this proceeding include PGE's petition and attached documents, its briefs, CRPUD's motion and reply arguments, and BC's brief. On April 28, 1999, Administrative Law Judge Lowell Bergen presided over a conference at which the procedures for processing this case were agreed upon and a schedule adopted. In this order, we consider the applicable statutes, the statement of facts set forth in PGE's petition, and the previous decisions of the Commission. We will apply ORS 758.400 through 758.475 to the statement of facts alleged in PGE's petition, pursuant to authority granted to us by ORS 756.450.

In 1961 the Oregon Legislature enacted statutes to create territorial allocations of utility services. ORS 758.405 establishes the state policy of preventing and eliminating duplication of utility facilities. ORS 758.400 to 758.475 provide two methods for a utility company to obtain a territorial allocation. One method is for a utility company that is the only company providing a utility service in a territory to apply to the Commission for an allocation of that territory. Before approving such an application, the Commission must find that the company is exclusively serving the territory covered by the application. ORS 758.440(2). The second method applies when more than one company is providing utility service to an area. The companies may allocate the territory between them by contract and then apply to the Commission for approval of the contract. Before approving a contract, the Commission must find “that the contract will eliminate or avoid unnecessary duplicating facilities, and will promote the efficient and economic use and development and the safety of operation of the utility systems of the parties to the contract, while providing adequate and reasonable service to all territories and customers affected thereby.” ORS 758.415. A territorial allocation is exclusive, meaning that other entities are not allowed to offer, construct, or extend competing utility service into an allocated territory. ORS 758.450(2).

FINDINGS OF FACT

In 1962 PGE applied to the Commission for an allocation of territory within seven counties in Oregon in which PGE was exclusively providing electric service. The Commission approved the application in Order No. 39026 and granted the territorial allocation as of January 26, 1963. The area surrounding the City of St. Helens, including the area where the subject BC mill is now located, was included in the allocation (that area is now within the city’s boundaries).

The area surrounding the city of St. Helens was also within the political boundaries of CRPUD. CRPUD did not have any facilities and was not providing electric service in 1962. Years later CRPUD sought to become an operating utility by taking over PGE facilities and customers within CRPUD's boundaries. CRPUD filed an action in Columbia County Circuit Court in 1981 to condemn PGE’s facilities within CRPUD's boundaries.

On the eve of the trial of the condemnation proceeding in 1984, PGE and CRPUD reached agreement concerning electric utility service in Columbia County. They agreed that a part of the property CRPUD sought to condemn would be transferred to CRPUD upon CRPUD’s payment of \$13 million to PGE. They agreed that CRPUD would not acquire the facilities used to serve the BC plant. If those facilities were transferred in the future, the price would be approximately \$32 million, plus adjustments for inflation. CRPUD has not tendered payment to PGE for the facilities used to serve the BC plant, and PGE has continued to provide electric service to the BC mill.

CRPUD and PGE filed settlement papers with the Columbia County Circuit Court, including a Stipulation for Entry of Judgment and a Stipulated Judgment. The Stipulated Judgment states that all facilities serving or necessary to serve BC, and the right to serve BC, are excluded from the property condemned and vested in CRPUD. It provides that all “facilities and property necessary to serve Boise-Cascade and the sole and exclusive right to serve and provide electricity to Boise-Cascade shall remain with and is reserved to defendant [PGE]. Plaintiff expressly relinquishes and waives forever any and all rights to acquire the facilities and properties necessary to distribute electricity to or serve Boise-Cascade.” CRPUD and PGE also executed an Acquisition Agreement between them, which states that “[i]n the event CRPUD seeks to acquire by condemnation or negotiation the facilities serving or necessary to serve Boise Cascade, or in fact serves Boise Cascade, it is agreed that CRPUD shall pay PGE the appraised value of the facilities to serve Boise Cascade in the amount of \$31,710,046.00, which figure shall be escalated annually on the anniversary of the Effective Date by the U.S. C.P.I., All Items, All Urban Consumers (CPI-U). In the event that CRPUD commences to serve Boise Cascade, this Agreement shall be void at the option of PGE.”

On November 20, 1984, PGE filed an application with the Commission to transfer its utility property condemned by CRPUD (Docket No. UP 19). The application stated that “PGE and CRPUD agreed to stipulate the value at \$13 million for the subject property with one important caveat – CRPUD would forego, forever, any rights to serve the Boise Cascade facility (and successors) in St. Helens. If CRPUD, for any reason, served the Boise Cascade facility, CRPUD agreed to pay PGE the additional sum of \$31,710,046.” PGE attached copies of the documents filed in the Columbia County Circuit Court, and the Acquisition Agreement to its application. PGE stated that the purpose of the filing was to comply with the law, rather than any desire to sell the property. It stated the value of the transferred property to be \$13 million. On January 21, 1985, PGE filed an application to exchange service territories with CRPUD to effectuate the Acquisition Agreement (Docket No. UA 11).

The Commission consolidated the two applications for consideration and announced its decision in Order No. 86-1012. The Commission noted that the requested actions were occasioned by CRPUD's use of eminent domain to acquire PGE's property. The Commission stated that its role in reviewing the sale was to determine the adequacy of the sale price. The Commission approved the sale price for the facilities, and allocated the sales profit among ratepayers and stockholders. In addressing the request to exchange service territories, the Commission stated that under ORS 758.470, when a municipality (CRPUD is a municipality under the statutory definition) condemns the facilities of a serving utility like PGE, the municipality is entitled to all the rights to the territories acquired through condemnation. The Commission stated that CRPUD was “entitled to a transfer of that part of PGE's previously allocated service territory which lies within the boundaries of the District. Thus, the actual transfer of territory under such circumstances is a ministerial act.” In the ordering paragraphs, Order No. 86-1012 granted PGE's application to sell property to CRPUD.

OPINION

It is clear from the events recited above that CRPUD and PGE agreed to transfer a portion of PGE's facilities to CRPUD because of condemnation action by CRPUD. It is also clear that the facilities to serve BC were carefully and specifically excluded from the property condemned and transferred to CRPUD. The accompanying territorial allocation was limited by operation of law to the areas served by the transferred facilities. The territorial allocation that was granted to PGE in Order No. 39026 to serve the area where the BC mill is located is still effective.

Order No. 86-1012 states that CRPUD is entitled to a transfer of that portion of PGE's allocated service territory which lies within the District. CRPUD uses the words "service territory which lies within the District" to contend that all PGE's territorial allocation within CRPUD's boundaries were transferred to CRPUD. We disagree. Order No. 86-1012 grants PGE's request to transfer the facilities that were condemned by CRPUD, and states that the exchange of service territories follows as a matter of law to serve the territory served by the transferred facilities. PGE applied for the transfer of property condemned by CRPUD and the territorial allocation for the area served by the condemned facilities. The Commission noted that the transfer of territory to CRPUD was pursuant to ORS 758.470, which states that a condemning entity "shall acquire all of the rights of the person whose property is condemned to serve the territory served by the acquired properties." The Commission did not intend to go beyond the authority requested in PGE's application, nor to go beyond the grant of territory authorized by ORS 758.470. The Commission intended to grant the transfer of property requested by PGE, and to authorize the transfer of the territorial allocation only to the area served by the condemned facilities.

ORDER

The Commission makes the following declaratory rulings:

1. Pursuant to Order No. 39026, since January 26, 1963, Portland General Electric Company has had the exclusive territorial allocation to provide electric service to the area in Columbia County in which the Boise Cascade mill facilities are located.

2. Order No. 86-1012 did not change the territorial allocation to serve the Boise Cascade facilities in the St. Helens area, nor did any other Commission order.

Made, entered, and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
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 of 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. A party may appeal this order to a court pursuant to ORS 756.580.

Dr22pgecrpudord2