ORDER NO. 24-140

ENTERED May 20 2024

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UA 177

In the Matter of CITY OF HERMISTON, dba HERMISTON ENERGY, and UMATILLA ELECTRIC COOPERATIVE, Joint Application for Approval of Territory Allocation Agreement.	ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on May 16, 2024, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:

Nolan Moser
Chief Administrative Law Judge

A party may request rehearing or reconsideration of this order under 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 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

ITEM NO. CA1

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: May 16, 2024

REGULAR ____ **CONSENT** __X__ **EFFECTIVE DATE** _____**N/A**_____

DATE: May 3, 2024

TO: Public Utility Commission

FROM: April Brewer

THROUGH: Bryan Conway and Heide Caswell **SIGNED**

SUBJECT: HERMISTON ENERGY SERVICES AND UMATILLA ELECTRIC COOPERATIVE:
(Docket No. UA 177)
Joint Application for Approval of Territory Allocation Agreement.

STAFF RECOMMENDATION:

Staff recommends the Public Utility Commission of Oregon (Commission) approve City of Hermiston, dba Hermiston Energy (HES) and Umatilla Electric Cooperative (UEC) (collectively the Joint Applicants) application (Application) for territory allocation agreement.

DISCUSSION:

Issue

Whether the Commission should approve a service territory allocation agreement between HES and UEC for the purpose of allowing UEC to permanently serve one large Customer located on Tax Lot No. 600, Map No. 4N2824-00-00600 in Umatilla County, Oregon ("Property") and Tax Lot No. 200 Map No. 4N2823-00-00200 in Umatilla County, Oregon ("Adjacent Property").

Applicable Rule or Law

Under ORS 758.410(1):

> Any person providing a utility service may contract with any other person providing a similar utility service 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; and the territories and customers so allocated and designated may include all or any portion of the territories and customers which are being served by either or both of the parties at the time the contract is entered into, or which could be economically served by the then existing facilities of either party, or by reasonable and economic extensions thereto.

ORS 758.430 provides that any contract that has been approved by the Commission may be subsequently amended by the parties thereto. The Commission must approve such an amendment. Amendments are subject to the procedural requirements as set forth in ORS 758.420 and ORS 758.425.

ORS 758.420 requires contracts to be promptly filed with the Commission, and the Commission must give notice of such a filing within 30 days of receipt. For contract amendments, no hearing is required if all affected customers approve the amendatory agreement.

ORS 758.425 provides that the Commission must enter an order approving or disapproving the contract as filed, together with any appropriate findings of facts that support the order.

OAR 860-025-0015 sets forth the filing requirements for applications for approval of amendments to contracts to avoid or eliminate duplicate utility service, which include (1) the amendatory contract, (2) reference to the Commission order approving the initial contract, and (3) such information required by OAR 860-025-0010 as may assist the Commission in reviewing the application. OAR 860-025-0010 includes the filing requirements for applications for approval of service territory.

The criteria for approving an allocation contract are set forth in ORS 758.415. Under this statute, the standard for contract approval is whether:

> ...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.

Opportunity to Request a Public Hearing
Any person had the opportunity to request a public hearing. Notice of the application was published on February 27, 2024. On March 5, 2024, the Commission ordered

notice of the application posted publicly, posting the application to the docket list, as well as publication in the East Oregonian on March 9 and March 16, 2024. No person timely requested a hearing before the deadline of April 16, 2024. Given no public hearing was requested according to the terms of ORS 758.420, the Commission may issue an order approving the Agreement based on this memo and the Application.

Analysis

Background
On February 27, 2024, the Joint Applicants applied for permanent transfer of the allocation of service territory for the parcels, described in the Application as "Property" and "Adjacent Property," from HES's service territory to UEC's Service Territory.

- Lot 2, STAHL REPLAT, recorded in Record No. 2019-6940037, Book 16 Page 95, on 11-27-2019 in Page 1 Joint Application for Approval of Territory Allocation Agreement the office of County Records in Umatilla County, State of Oregon and currently designated as **Tax Lot No. 600**, Map No. 4N2824-00-00600 in Umatilla County, Oregon ("**Property**"); and
- Lot 1, STAHL REPLAT, recorded in Record No. 2019-6940037, Book 16 Page 95, on 11-27-2019 in the office of County Records in Umatilla County, State of Oregon and currently designated as **Tax Lot No. 200** Map No. 4N2823-00-00200 in Umatilla County, Oregon ("**Adjacent Property**").

(emphasis added)

In 2022, the Commission approved a Customer Allocation Agreement between HEC and UEC, allowing UEC to fully serve Amazon Data Services, Inc. ("Customer") located at Property/Tax Lot No. 600.[1] The current service territory allocation designation has HES serving the portion of tax lot 600 in Section 23 and UEC serving the portion of tax lot 600 in Section 24, as shown in Exhibit A in Docket No. UA 175.[2]

Now, the Customer intends to construct, own, and operate one or more industrial facilities and related ancillary facilities on Adjacent Property (Tax Lot No. 200), which lies directly west of the Property (Tax Lot No. 600).[3]

[1] Order No. 22-249, Docket No. UA 175 (July 6, 2022).
[2] See Docket NO. UA 175, Customer Allocation Agreement Between HES and UEC, Exhibit A, February 14, 2022.
[3] Docket No. UA 177, Joint Application (Application) for Approval of Territorial Allocation Agreement, Exhibit C, February 27, 2024.

HES has agreed to transfer the Property (Tax Lot No. 600) and Adjacent Property (Tax Lot No. 200), so that UEC may construct any necessary utility facilities to serve the Customer on the Adjacent Property (Tax Lot No. 200).

Clarity of Utility Responsibilities
The Joint Applicants represent that the Agreement will only impact service to retail Adjacent Property (Tax Lot No. 200). Docket No. UA 175, Order No. 22-249, previously allowed UEC to serve Property (Tax Lot No. 600). HES will continue to serve the existing load on the Adjacent Property (Tax Lot No. 200) until the Customer begins development, at which time HES's service to the existing loads will cease and UEC will be obligated to remove or replace any existing HES facilities.[4]

Avoidance of Duplicative Electrical Service
One fundamental goal of utility regulation is to avoid redundancy in providing service, consistent with ORS 758.415. Service by both HES and UEC would be inefficient and confusing. Approval of the agreement allows a single entity to construct those facilities, promoting efficiency and safe and reliable service to the customer.

Efficient and Economic Use and Safe Development
The Agreement allows the Customer the convenience of having a single utility serve the customer at these two adjacent properties.

Discussion
Staff reviewed the joint application, the customer allocation agreement, dockets for UA 177, and Hermiston Tax lot Map through ArcGIS online, verifying the pertinent authorities, service area boundaries, and notice language are all accurate and consistent with the Application.

Conclusion

Staff review of this application indicates that the Agreement will:

- Do no harm to other Oregon utility customers;
- Increase the efficiency of utility service;
- Clarify responsibilities of the utilities; and
- Facilitate delivery of safe and reliable service to the Customer.

For the reasons listed above, Staff recommends approval of the joint application.

[4] Application, Section 1.3- Existing HES Facilities on Adjacent Property Serving Existing Load.

PROPOSED COMMISSION MOTION:

Approve the Hermiston Energy Services and Umatilla Electric Cooperative service territory allocation agreement.

HES UEC UA 175 Territory Allocation Agreement