

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM 1191

QWEST CORPORATION

Complainant,

v.

CENTRAL ELECTRIC COOPERATIVE,
INC.,

Defendant.

QWEST'S MOTION TO DISMISS
DEFENDANT'S COUNTERCLAIM

Under Oregon law, a counterclaim must contain all the elements necessary for a cause of action, and it must set forth a cause of action. It must be complete in itself and show that the counterclaimant is entitled to recover from the plaintiff if an action had been instituted for that purpose. *Chance v. Carter*, 81 Or. 229, 239, 158 P. 947 (1916) (judgment of nonsuit appropriate because counterclaim "does not, strictly speaking, set forth a cause of action"); *see Hammer v. Campbell Gas Burner Co.*, 74 Or. 126, 135, 144 P. 396 (1914) (counterclaim must have same particularity that would be required in complaint); *LeClare v. Thibault*, 41 Or. 601, 608, 69 P. 552 (1902) ("An answer setting up a counterclaim must contain the substantial requisites of a complaint, and allege facts which legally entitle the defendant to recover in a suit instituted by him for that purpose against the plaintiff . . ."). Under ORCP 18, a counterclaim must contain a plain and concise statement of the ultimate facts constituting a claim for relief, and it must demand specific relief.

Pursuant to OAR 860-011-0000(3) and ORCP 21A(8), Qwest moves to dismiss CEC's "counterclaim" for failure to state a claim for relief. Although CEC purports to assert a counterclaim in its Answer, there is no claim asserted. Paragraphs 2 through 16 simply make allegations, and CEC does not even bother to attach a label to its alleged claim or otherwise set

1- MOTION TO DISMISS COUNTERCLAIM

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forth the purported claim that it asserts. There is no allegation that Qwest violated any statute, regulation, or contract provision because Qwest has not violated any statute, regulation, or contract provision. Neither Qwest nor the Commission is required to guess at the cause of action purportedly asserted by CEC. Under well-established Oregon law and ORCP 18, CEC's "counterclaim" is fatally defective and should be dismissed.

DATED: February ____, 2005.

PERKINS COIE LLP

By _____
Lawrence H. Reichman, OSB No. 86083
John P. (Jay) Nusbaum, OSB No. 96378
Tel: 503-727-2000
Fax: 503-727-2222

Leslie Kelly (to be admitted pro hac vice)
Qwest Communications International Inc.
1801 California Street
Denver, CO 80202

Attorneys for Complainant Qwest Corporation

AMENDED CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2005 I served the foregoing **Qwest's Motion to Dismiss** on the following person by causing to be emailed and mailed a full, true and correct copy thereof contained in a sealed envelope with postage prepaid addressed to said to person at the following addresses and deposited in the post office at Portland, Oregon:

Martin Hansen
Francis, Hansen & Martin, LLP
1148 N.W. Hill Street
Bend, OR 97701-1914

I hereby certify that on February 18, 2005 I served the foregoing **Qwest's Motion to Dismiss** by causing a full, true, and correct copy thereof contained in a sealed envelope with postage prepaid addressed to said to persons at the following addresses and deposited in the post office at Portland, Oregon:

Brooks Harlow
Miller Nash LLP
601 Union St., Ste. 4400
Seattle, WA 98101-2352

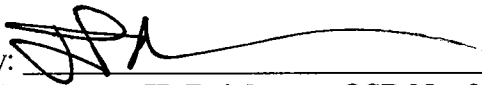
Amy Tykeson
Bend Cable Communications, Inc.
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Bend, OR 97701

Michael T. Weirich
Department Of Justice
Regulated Utility & Business Section
1162 Court St. N.E.
Salem, OR 97301-4096

Roger Harris
Crestview Cable Communications
125 South Fir Street
Medford, OR 97501

DATED: February 18, 2005.

PERKINS COIE LLP

By: 
Lawrence H. Reichman, OSB No. 86083
John P. (Jay) Nusbaum, OSB No. 96378
Telephone: (503) 727-2000

Of Attorneys for Claimant

**CERTIFICATE OF SERVICE
UM 1191**

I hereby certify that on this day I served the foregoing **Amended Certificate of Service** on the following persons by causing to be mailed a true copy thereof, contained in a sealed envelope, with postage prepaid, addressed to said persons at the following addresses and deposited in the post office at Portland, Oregon, on this day:

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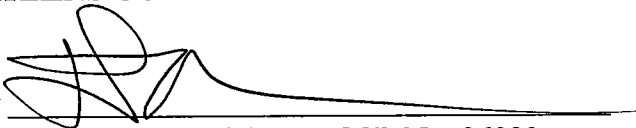
MICHAEL T. WEIRICH
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DATED: February 18, 2005.

PERKINS COIE LLP

By



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