



WENDY McINDOO
Direct (503) 290-3627
wendy@mrg-law.com

August 3, 2017

VIA ELECTRONIC FILING

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

Re: UM 1823: In the Matter of the Complaint of COLUMBIA BASIN ELECTRIC COOPERATIVE, INC., against UMATILLA ELECTRIC COOPERATIVE, Pursuant to ORS 756.500.

Attached for filing in the above-reference docket is Columbia Basin's Response To Umatilla's Objection To Notice Of Dismissal.

Please contact me with any questions.

Very truly yours,

Wendy McIndoo
Office Manager

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

COLUMBIA BASIN ELECTRIC
COOPERATIVE, INC.

Complainant,

vs.

UMATILLA ELECTRIC COOPERATIVE,
INC.

Defendant.

Docket No. UM 1823

**COLUMBIA BASIN’S RESPONSE
TO UMATILLA’S OBJECTION
TO NOTICE OF DISMISSAL**

On August 1, 2017, Columbia Basin Electric Cooperative, Inc. (“Columbia Basin”) filed a Notice dismissing all claims against Umatilla Electric Cooperative (“Umatilla”) in this matter and closing the case. Umatilla objected to the Notice, arguing that dismissal would leave important questions unanswered.¹

Oregon Rule of Civil Procedure 54(A)(1) provides, “a plaintiff may dismiss an action in its entirety . . . by filing a notice of dismissal with the court and serving such notice on all other parties not in default not less than five days prior to the day of trial if no counterclaim has been pleaded.” The Oregon Rules of Civil Procedure apply in contested cases before the Commission unless they are inconsistent with the Commission’s rules or orders, which Rule 54 is not.² The Commission has applied Rule 54 in the past and dismissed a complaint, over the defendant’s objection, after finding that the notice of dismissal complied with Rule 54’s requirements.³

¹ Columbia Basin is perplexed by Umatilla’s position, given that Umatilla previously asserted that Columbia Basin’s Complaint failed to state a claim and that the Commission lacked subject matter jurisdiction. Umatilla’s Answer to Complaint at 9.

² OAR 860-001-0000(1).

³ *Oli Heat Institute of Oregon v. Northwest Natural Gas Co.*, Docket No. UC 88, Order No. 88-028 at 2 (Jan. 8, 1988).

Columbia Basin's Notice of Dismissal complies with Rule 54 because it was filed more than a month prior to the hearing in this matter and one week before Columbia Basin's initial testimony was due,⁴ and because Umatilla did not plead any counterclaims.⁵ Therefore, Columbia Basin's Complaint must be dismissed without prejudice.⁶ If Umatilla believes there are legal questions that should be considered by the Commission, there are other avenues available for Umatilla to bring those questions before the Commission,⁷ but Umatilla cannot force Columbia Basin to continue litigating claims that Columbia Basin believes have been resolved through its settlement with intervenor Wheatridge. Therefore, Columbia Basin respectfully requests that its claims be dismissed without prejudice and the case be closed.

DATED this 3rd day of August 2017.

Respectfully submitted,

By /s/ Raymond S. Kindley
Raymond S. Kindley, OSB 964910
Kindley Law, PC
Email: kindleylaw@comcast.net
Tel: (503) 206-1010
Attorney for Columbia Basin Electric Cooperative

⁴ See Ruling Granting Motion and Modifying Schedule (July 3, 2017).

⁵ See Umatilla's Answer at 9-10.

⁶ See Order No. 88-028 at 2 ("There being nothing left to consider, the complaint should be dismissed without prejudice.").

⁷ See generally OAR 860-001.