

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1875

KLONDIKE SOLAR, LLC,

Complainant,

vs.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

NOTICE OF DISMISSAL WITHOUT
PREJUDICE

Pursuant to OAR 860-001-0000 and Oregon Rule of Civil Procedure (“ORCP”) 54 A(1) Klondike Solar, LLC (the “Complainant”) hereby files this voluntary Notice of Dismissal Without Prejudice as to all claims in these proceedings against defendant Portland General Electric Company (“PGE”) and respectfully requests that the Oregon Public Utility Commission (“Commission”) close these dockets.

The Commission follows the ORCP unless the rules are inconsistent with the Commission’s own procedural rules.¹ The Commission has no rules regarding the filing of voluntary notices of dismissal, so the ORCP applies.² Under ORCP 54 A(1):

a plaintiff may dismiss an action in its entirety or as to one or more defendants without order of court by filing a notice of dismissal with the court and serving the notice on all other parties not in default not less than 5 days prior to the day of trial if no counterclaim has been pleaded.

¹ OAR 860-001-0000(1).

² *Columbia Basin Elec. Coop., Inc. v. Umatilla Elec. Coop.*, Docket No. UM 1823, Order No. 17-309 at 4 (Aug. 11, 2017).

The courts have liberally construed a plaintiff's right to voluntary dismissal and a plaintiff or complainant may still file a voluntary notice of dismissal without prejudice even while a motion for summary judgment is pending.³ In Guerin, the plaintiff filed an ORCP 54 A(1) voluntary notice of dismissal on the day of the hearing on defendant's motion for summary judgment.⁴ The court examined the legislative history of ORCP 54 A(1) noting that the Council on Court Procedures, in drafting that rule, considered two alternative rules. The first alternative, only required the notice of dismissal to be filed and served not less than 5 days before trial if no counterclaim has been pleaded, but the second alternative rule also required that "no summary judgment adverse to the plaintiff has been filed."⁵ The Council voted to adopt the first alternative.⁶ Therefore, the court concluded that "the legislative history of ORCP 54 A(1) reflects a considered policy choice to permit a plaintiff to dismiss his or her action even though the defendant's summary judgment motion is pending."⁷

Finally, under ORCP 54A(1), "[u]nless otherwise stated in the notice of dismissal. . .the dismissal is without prejudice." Without prejudice means that the dismissal does not operate as an adjudication upon the merits and the plaintiff may re-file the same claim at a later date, if so desired.⁸

³ *Id.* (citing *Guerin v. Beamer*, 163 Or App 172, 177-78 (1999)).

⁴ *Guerin* at 174.

⁵ *Id.* at 176-77.

⁶ *Id.* at 177.

⁷ *Id.* at 177-78.

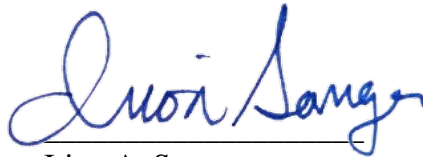
⁸ ORCP 54 A(1) ("Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action against the same parties on or including the same claim unless the court directs that the dismissal shall be without prejudice.")

The Commission has concluded that a Complainant has the right to voluntarily dismiss without prejudice a complaint consistent with ORCP 54 A.⁹

Here, Complainant has met all the requirements for a voluntary notice of dismissal without prejudice. Complainant files this notice of dismissal pursuant to ORCP 54 A(1). There are no hearings set in these cases so this notice meets the requirement that it needs to be filed and served not less than 5 days before trial. PGE has not pled a counterclaim that would trigger the exception to the rule.¹⁰ As such, Complainant respectfully requests that the Commission dismiss these cases without prejudice and close these dockets.

Dated this 5th day of June 2019.

Respectfully submitted,



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⁹ *Bottlenose Solar, LLC et al. v. PGE*, Docket Nos. UM 1877-1882, UM 1884-1886, UM 1888-90, Order No. 19-001 (Jan. 2, 2019).

¹⁰ See PGE's Answers.