

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1877-UM 1882, UM 1884-UM 1886, UM 1888-UM 1890**

In the Matters of

BOTTLENOSE SOLAR, LLC;  
VALHALLA SOLAR, LLC;  
WHIPSSNAKE SOLAR, LLC;  
SKYWARD SOLAR, LLC;  
LEATHERBACK SOLAR, LLC; PIKA  
SOLAR, LLC; COTTONTAIL SOLAR,  
LLC; OSPREY SOLAR, LLC; WAPITI  
SOLAR, LLC; BIGHORN SOLAR,  
LLC; MINKE SOLAR, LLC; HARRIER  
SOLAR, LLC,

Complainants,

v.

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) Bottlenose Solar, LLC, Valhalla Solar, LLC, Whipsnake Solar, LLC, Skyward Solar, LLC, Leatherback Solar, LLC, Pika Solar, LLC, Cottontail Solar, LLC, Osprey Solar, LLC, Wapiti Solar, LLC, Bighorn Solar, LLC, Minke Solar, LLC, and Harrier Solar, LLC (collectively the “Complainants”) hereby file 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.<sup>1</sup> The Commission has no rules regarding the filing of voluntary notices of dismissal, so the ORCP applies.<sup>2</sup> 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.

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.<sup>3</sup> 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.<sup>4</sup> 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."<sup>5</sup> The Council voted to adopt the first alternative.<sup>6</sup> 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."<sup>7</sup>

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<sup>1</sup> OAR 860-001-0000(1).

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

<sup>3</sup> Id. (citing Guerin v. Beamer, 163 Or App 172, 177-78 (1999)).

<sup>4</sup> Guerin at 174.

<sup>5</sup> Id. at 176-77.

<sup>6</sup> Id. at 177.

<sup>7</sup> Id. at 177-78.

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.<sup>8</sup>

Here, Complainants meet all the requirements for a voluntary notice of dismissal without prejudice. Complainants filed 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.<sup>9</sup> Last, it does not make a difference that there are pending motions for summary judgment in these cases because the specific intent and effect of ORCP 54 (A)(1) is to permit voluntary notices of dismissal, even if a motion for summary judgment is pending. As such, Complainants respectfully requests that the Commission dismiss these cases without prejudice and close these dockets.

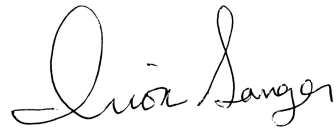
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<sup>8</sup> ORCP 54 A(1) (“Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once 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.”)

<sup>9</sup> See PGE’s Answers.

Dated this 22nd day of October 2018.

Respectfully submitted,

A handwritten signature in black ink that reads "Irion Sanger". The signature is written in a cursive style with a large initial "I" and a long, sweeping underline.

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Of Attorneys for Complainants