

ORDER NO. 17 309

ENTERED AUG 11 2017

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1823

COLUMBIA BASIN ELECTRIC
COOPERATIVE, INC.,

Complainant,

vs.

UMATILLA ELECTRIC COOPERATIVE,

Defendant.

Regarding Wheatridge Wind Project

ORDER

DISPOSITION: COMPLAINT DISMISSED, DOCKET CLOSED

We accept the August 1, 2017 notice by Columbia Basin Electric Cooperative, Inc. (Columbia Basin) to dismiss all claims against Umatilla Electric Cooperative, Inc. (UEC) in this matter and close the case.

I. BACKGROUND

This proceeding involves a complaint filed by Columbia Basin alleging that UEC is offering and providing electric utility service within Columbia Basin's exclusive service territory in violation of the Territorial Allocation Law. Columbia Basin asserts that UEC has arranged for the development of electric transmission facilities for the Wheatridge Wind project.

The Wheatridge Wind project is a 500 MW project in the planning stages. Its turbines and facilities will extend across the service territories of Columbia Basin and UEC. Wheatridge Wind and UEC have planned for UEC to design, construct, and build a 23-mile transmission line that would run from a collector substation in Columbia Basin's service territory across UEC's service territory to terminate at BPA's Morrow Flat substation in UEC's service territory. Since Columbia Basin filed its complaint in January 2017, UEC filed an answer and the parties have engaged in extensive discovery.

The transmission line is also the subject of a proceeding at the Federal Energy Regulatory Commission (FERC), docketed as TX17-1.

II. NOTICE OF DISMISSAL AND RESPONSE

On August 1, 2017, Columbia Basin filed a notice of dismissal of its claims against UEC, seeking to close this docket. Columbia Basin states that it reached a settlement with Wheatridge Wind that resolves Columbia Basin's claims and preserves the current service-territory boundary between Columbia Basin and UEC.

On August 2, 2017, UEC responded stating that it is not a party to the settlement and that it fundamentally disagrees with Columbia Basin's assertion that Oregon's territorial allocation laws are relevant to the transmission line at issue in this proceeding. UEC states that the issue in this case is whether Oregon's territory allocation laws apply to facilities providing interstate wholesale transmission service and not retail service. UEC asks the Commission to answer the territorial allocation law issue raised in this docket to provide clarity to utilities like UEC.

On August 3, 2017, Columbia Basin responded and argues that it may withdraw its complaint under ORCP 54 A(1). Columbia Basin maintains that the Commission has applied ORCP 54 A in the past and dismissed a complaint, over the defendant's objection, after finding that the notice of dismissal complied with the requirements of ORCP 54.¹

Columbia Basin states that its notice of dismissal complies with ORCP 54 A 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, and because UEC did not plead any counterclaims. Columbia Basin concludes that its complaint must be dismissed without prejudice. Finally, Columbia Basin explains that if UEC believes there are legal questions that should be considered by the Commission, there are other avenues available for UEC to bring those questions before the Commission, but UEC cannot force Columbia Basin to continue litigating claims that Columbia Basin believes have been resolved through its settlement with intervenor Wheatridge Wind.

III. RESOLUTION

Columbia Basin correctly describes the applicable legal authority. Because the Commission does not have a specific rule regarding withdrawal of a complaint,

¹ Columbia Basin Response at 1 n 3, citing *Oil Heat Institute of Oregon v. Northwest Natural Gas Co.*, Docket No. UC 88, Order No. 88-028 at 2 (Jan 8, 1988).

ORCP 54 A(1) applies.² That rule provides that an action may be dismissed by the plaintiff without order of court by filing a notice of dismissal with the court and serving such notice on the defendant not less than five 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, examining the legislative history and allowing a plaintiff to unilaterally dismiss even when a defendant's motion for summary judgement is pending or has been granted.³

Here, Columbia Basin has filed its voluntary dismissal under ORCP 54 A(1). UEC has not pled a counterclaim that would trigger the exception to the rule. This notice of dismissal is effective without any Commission order. If the Commission took issue with a voluntary dismissal, we could open our own investigation.⁴ In the event that UEC seeks to continue litigating these issues, it may file its own complaint under ORS 756.500 and as the complainant, it will have the burden of proving that the relief requested should be granted.

IV. ORDER

This docket is closed.

Made, entered, and effective on AUG 11 2017.



Lisa D. Hardie
Chair



Stephen M. Bloom
Commissioner



Megan W. Decker
Commissioner



² OAR 860-001-0000 "The Oregon Rules of Civil Procedure (ORCP) also apply in contested case and declaratory ruling proceedings unless inconsistent with these rules, a Commission order, or an Administrative Law Judge (ALJ) ruling." *Portland General Electric Co. v. Verizon Northwest Inc.*, Docket No. UM 1096, Order No. 04-653 (Nov 2, 2004) (dismissing complaint under ORCP 54 A).

³ *Guerin v. Beamer*, 163 Or App 172, 177-178 (1999); *Palmquist v. FLIR Systems, Inc.*, 189 Or App 552, 558, 77 P3d 637 (2003).

⁴ ORS 756.515.