

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 WKN CHOPIN, LLC,
5 *Petitioner,*

6
7 vs.

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9 UMATILLA COUNTY,
10 *Respondent,*

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12 and

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14 BLUE MOUNTAIN ALLIANCE,
15 DAVE PRICE, RICHARD JOLLY,
16 and UMATILLA ELECTRIC COOPERATIVE,
17 *Intervenors-Respondents.*

18
19 LUBA No. 2012-016

20 ORDER

21 **MOTIONS TO INTERVENE**

22 Under our rules, “[s]tatus as an intervenor is recognized when a motion to intervene
23 is filled, but [LUBA] may deny that status at any time.” OAR 661-010-0050(1). On March
24 20, 2012, Blue Mountain Alliance (BMA) moved to intervene in this appeal on the side of
25 respondent. On April 4, 2012, Umatilla Electric Cooperative (UEC) moved to intervene in
26 this appeal on the side of respondent. We have not taken action on either motion. Because
27 UEC had not yet moved to intervene in this appeal, BMA did not serve a copy of its March
28 20, 2012 motion to intervene on UEC. Presumably because UEC was unaware of BMA’s
29 previously filed motion to intervene, UEC did not serve a copy of its April 4, 2012 motion to
30 intervene on BMA. BMA and UEC shall have seven days from the date of this order to serve
31 copies of their motions to intervene on each other.

32 **MOTION TO EXTEND DEADLINE FOR FILING RECORD OBJECTIONS**

33 On April 5, 2012, UEC filed a motion in which it requests an “extension of time from
34 April 11, 2012, to May 2, 2012, to file record objections (if any).” UEC also states “UEC’s

1 counsel will be out of the office for two weeks on vacation, returning on April 23, 2012, and
2 then out again until April 30, 2012.” From that we cannot tell what days, if any, UEC’s
3 counsel is available in April. But since today is April 10, 2012, it may mean that UEC’s
4 counsel is now out of the office and may not be available to participate in this appeal until
5 April 30, 2012. UEC represents that counsel for petitioner and counsel for the county do not
6 object to its request. However, UEC’s April 5, 2012 motion was not served on BMA and
7 UEC does not represent that BMA’s counsel agrees with the request.

8 UEC’s April 5, 2012 motion creates an awkward situation. We do not know whether
9 BMA consents to the April 5, 2012 motion, and UEC did not serve a copy of the motion on
10 BMA. Because we do not have the consent of all parties, granting the motion would not
11 automatically extend the deadline for filing the petition for review under OAR 661-010-
12 0067(2). Because the April 5, 2012 motion says nothing about the briefing schedule, the
13 deadline for petitioner to file the petition for review would remain April 20, 2012, 12 days
14 before the requested May 2, 2012 deadline for UEC to file record objections. That creates
15 the possibility that the record will be supplemented after petitioner files its petition for
16 review, which would necessitate delaying this appeal to provide petitioner and opportunity to
17 file an amended petition for review. And finally, UEC’s counsel may not be available to
18 assist in resolving this awkward situation until April 30, 2012.

19 For lack of a better alternative, LUBA will take no action on UEC’s April 5, 2012
20 motion until BMA advises LUBA that it consents to the extension requested in the April 5,
21 2012 motion. Unless BMA consents to the extension requested in the April 5, 2012 motion,
22 that motion will be denied. The briefing schedule remains as set out in LUBA’s March 30,
23 2012 letter to the parties, and the deadline for filing the petition for review remains April 20,
24 2012.

25 Dated this 10th day of April, 2012.
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Michael A. Holstun
Board Member