

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1829, UM 1830, UM 1831, UM 1832, UM 1833

BLUE MARMOT V, LLC (UM 1829),
BLUE MARMOT VI, LLC (UM 1830),
BLUE MARMOT VII, LLC (UM 1831),
BLUE MARMOT VIII, LLC (UM 1832), and
BLUE MARMOT IX, LLC (UM 1833),

Complainants,

v.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

COMPLAINANTS' REPLY IN
SUPPORT OF MOTION FOR STAY
PENDING FERC DETERMINATION

I. INTRODUCTION

Pursuant to OAR 860-001-0420 and Administrative Law Judge (“ALJ”) Alan Arlow’s ruling of November 21, 2018, Blue Marmot V, LLC, Blue Marmot VI, LLC, Blue Marmot VII, LLC, Blue Marmot VIII, LLC, and Blue Marmot IX, LLC (collectively the “Blue Marmots”) hereby file this Reply in Support of their Motion for Stay Pending Federal Energy Regulatory Commission (“FERC”) Determination. The Blue Marmots have asked FERC to resolve two narrowly-tailored issues, one related to the scope of the purchase obligation prescribed by the Public Utility Regulatory Policies Act of 1978 (“PURPA”), as interpreted by FERC, and the next the scope of authority delegated by FERC regulations over interconnection costs. FERC’s authority in these matters will appropriately govern the scope of this proceeding, and for that reason the Blue Marmots have asked the Oregon Public Utilities Commission (“OPUC”) to await FERC’s determinations. Staying this proceeding will be the most efficient way to resolve these

issues, and will enable the OPUC to take FERC's decisions into account, thereby minimizing the potential for conflicting decisions. The Blue Marmots' filing is not an attempt to further delay this proceeding or "forum shop," but is rather designed to provide the OPUC with guidance enabling it to work within controlling federal authority. The OPUC should stay this docket pending FERC's resolution in order to avoid potentially needing to reverse or modify its decision following FERC's order.

II. REPLY

This case presents two distinct issues: 1) did the Blue Marmots establish legally enforceable obligations ("LEOs") to sell their net output to Portland General Electric Company ("PGE") and, if so, when and under what prices, terms, and conditions; and 2) whether PGE can require that the Blue Marmots pay for additional transmission to wheel their power to a point of delivery of PGE's choosing, upgrades at the PACW.PGE interface, or a 300-mile transmission line under the guise of "interconnection costs." The Blue Marmots filed their complaints with the OPUC with the primary goal of enforcing their LEOs and worked diligently over the course of these cases to investigate the factual reality underlying PGE's assertions and defenses, which include FERC-jurisdictional issues. Contrary to PGE's assertions, the Motion for Stay Pending FERC Determination is not an attempt to further delay this case or to unduly prejudice PGE. Instead, it is an attempt to provide the OPUC with additional clarity and guidance surrounding the FERC-jurisdictional transmission aspects that the OPUC does not have the legal authority to decide so that the OPUC can make better and more informed decisions.

The two issues the Blue Marmots have presented to FERC are fundamental predicates for the issues before the OPUC for decision in this case. The Blue Marmots have asked FERC to clarify its position only on these issues; they have not asked FERC to opine on the aspects of this

case that lie within the OPUC's authority. First, the Blue Marmots have asked FERC for guidance on whether PGE can refuse to honor the terms a LEO or otherwise be relieved of its PURPA mandatory purchase obligation due to a transmission constraint on its system.¹ The Blue Marmots do not dispute that it is squarely within the OPUC's jurisdiction to initially decide whether, when, and under what terms and conditions a LEO was formed, and they have not asked FERC to examine this issue. Of particular note, the Blue Marmots ask FERC to assume that "all other predicates to the creation of a legally enforceable obligation have been established" because this issue is reserved for the OPUC to at least initially decide.

Second, the Blue Marmots have asked FERC to clarify jurisdictional authority for assessing costs for facilities and services required to move qualifying facility ("QF") output to its point of delivery. The Blue Marmots agree that it is within the OPUC's authority to assess interconnection costs on QFs for the direct, physical interconnection between a QF and the utility with which it is interconnecting (PacifiCorp, in the case of the Blue Marmots). However, the facilities comprising the interface between the PacifiCorp and PGE transmission systems, where PGE has identified the transmission constraint that it argues precludes it from purchasing the Blue Marmots' output, are not a physical interconnection between a QF and the interconnecting utility. The Blue Marmots have asked FERC to clarify the jurisdictional authority for assessing

¹ Specifically, Blue Marmots ask FERC to declare that "[t]ransmission congestion on the purchasing utility's system will not relieve the electric utility of its obligation to purchase power from a QF under PURPA, where all other predicates to the creation of a legally enforceable obligation have been established." Blue Marmots Petition for Declaratory Order and Request for Expedited Consideration at 2-3, November 7, 2018 (attached to Motion for Stay as Attachment A).

costs associated with any potentially required upgrades to these facilities.² As such, the Blue Marmots are not “forum shopping,” but are rather asking FERC to provide guidance on limited issues within its jurisdiction that should inform the OPUC’s decision on issues within its own jurisdiction.

FERC’s direction prior to the OPUC’s ruling will help guide the OPUC in its decision process in an area in which the OPUC has recently articulated a desire to promote OPUC education and discussion—transmission.³ The Blue Marmots appreciate the OPUC’s desire to better educate staff, commissioners, and stakeholders on transmission issues. Transmission issues can be complex, and as articulated more fully in the Motion for Stay, the wholesale and interstate commerce dimensions of the transmission issues raised to FERC by the Blue Marmots underscore their place within FERC’s jurisdiction. Additionally, the OPUC has previously had to reverse its decisions following guidance from FERC.⁴ Therefore, in order to promote efficiency and avoid a possible OPUC reversal following a later-issued FERC order, the OPUC should stay this case pending that FERC order.

III. CONCLUSION

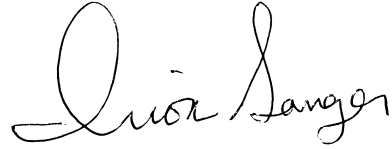
The Blue Marmots ask the OPUC to stay this proceeding for the reasons articulated in their initial motion and above. Dated this 28th day of November 2018.

² Specifically, Blue Marmots ask FERC to declare that “FERC’s direction in 18 C.F.R. § 292.306 that QFs are obligated to pay such interconnection costs as are assessed by state regulatory authorities extends only to the physical interconnection between the QF and the utility system to which it is directly interconnected, not to other aspects of transmission service over which FERC retains authority.” *Id.* at 3.

³ See Oregon Public Utility Commission, Public Meeting on Nov. 20, 2018 (starting at 3:36).

⁴ See *Kootenai Elec. Coop. Inc. v. Idaho Power Co.*, Docket No. UM 1572, Order No. 14-013 at 2 (Jan. 9, 2014).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Irion Sanger". The signature is fluid and cursive, with a large initial "I" and a long, sweeping tail.

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Of Attorneys for Complainants