

**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)
BLUE MARMOT IX LLC (UM 1833)

Complainants

vs.

PORTLAND GENERAL ELECTRIC
COMPANY

Defendant

Pursuant to ORS 756.500.

RULING

DISPOSITION: MOTION FOR STAY DENIED

I. SUMMARY

I deny the motion of Blue Marmot V, LLC, Blue Marmot VI, LLC, Blue Marmot VII, LLC, Blue Marmot VIII, LLC and Blue Marmot IX, LLC, (complainants or Blue Marmots) for stay pending FERC¹ determination (motion for stay) and affirm the current procedural schedule.

II. DISCUSSION

By Ruling of October 1, 2018, I adopted the schedule for this proceeding up to the dates for hearing, which were set for December 12 and 14, 2018.²

On November 7, 2018, complainants filed a motion for stay, noting that they had simultaneously filed a petition for declaratory order with the FERC. Complainants state that the issues relating to (1) the effect of transmission congestion on a utility's obligation to purchase power from a qualifying utility (QF) and (2) the extent to which a QF is obligated to pay interconnection costs related to transmission services, are rightly resolved by the FERC because the Commission

¹ Federal Energy Regulatory Commission

² By Ruling of November 15, 2018, the second day set aside for the hearing was changed from December 14 to December 13, 2018.

lacks jurisdiction over transmission-related issues and must rely on the FERC determination.³

In response, Portland General Electric Company (PGE), states that complainants filed their complaints over eighteen months ago and that there has been extensive discovery and seven rounds of testimony and that the hearing is to begin very shortly. The FERC petition, according to PGE, is simple forum shopping, and the motion is both untimely and prejudicial to PGE and its customers.⁴ PGE further states that a stay would be neither prudent nor helpful, as there is uncertainty as to whether or how expeditiously FERC would address the issues raised by Blue Marmots.⁵

Resolution

In my ruling of March 22, 2018, denying Blue Marmot's motion to strike PGE's transmission study testimony, I stated at page 3:

I do not reach Marmots' premature contention that this Commission lacks jurisdiction to address all aspects of the complaint Marmots filed and presented for adjudication. Were the Commission to exclude the subject testimony, on jurisdictional grounds or otherwise, the Commission would essentially have concluded that all discussion of costs and feasibility of the proposed means of power delivery are irrelevant—a judgment on the merits of the case in its totality.

Furthermore, inclusion of the portions of PGE's testimony subject to the motion will not prejudice Marmots' rights to make jurisdiction-related argument in the future.

During the intervening nine months, the parties have each provided extensive testimony and prepared to examine opposing witnesses thereon. By going forward with the evidentiary hearing, the Commission will have before it a complete record which it may then choose to act upon or hold in abeyance as the Commissioners decide the circumstances require. Completing this final stage of the development of the evidentiary record will not cause undue hardship on any party or otherwise burden the proceedings.

³ Complainants' Motion at 6. See also Complainants' Prehearing Brief at 8-9.

⁴ PGE Response at 1.

⁵ *Id.* at 6-7.

III. RULING

The complainants' motion for stay pending FERC determination is denied. The proceedings shall continue as set forth in the scheduling rulings of October 1 and November 15, 2018.

Dated this 3rd day of December, 2018, at Salem, Oregon.

A handwritten signature in black ink, appearing to read 'Allan J. Arlow', written in a cursive style.

Allan J. Arlow
Administrative Law Judge

