

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
PHASE II

<p>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),</p> <p style="text-align: center;">Complainants,</p> <p style="text-align: center;">vs.</p> <p>PORTLAND GENERAL ELECTRIC COMPANY,</p> <p style="text-align: center;">Defendant.</p> <p>Pursuant to ORS 756.500.</p>

RULING

DISPOSITION: PROCEDURAL SCHEDULE EXPEDITED

I. SUMMARY

In this ruling, I expedite the schedule for the submission of the response of Blue Marmot LLCs V, VI, VII, VIII, and IX (Blue Marmots) to the Motion to Compel filed by Portland General Electric Company and to PGE’s reply to Blue Marmots’ response.

II. PROCEDURAL HISTORY

At the prehearing conference held on December 16, 2019, the parties agreed to a procedural schedule which included the following dates:

EVENT	DATE
Blue Marmots’ Direct Testimony	January 31, 2020
PGE Response Testimony	March 27, 2020

On February 19, 2020, I issued a ruling denying Blue Marmots’ January 31, 2020 motion for an indefinite extension of time, stating

Blue Marmots have had over six weeks from the date when the mutually-agreed to submission date was adopted in which to prepare and file their direct testimony with respect to whether litigation caused commercially reasonable delays in their scheduled commercial operation dates. I find that Blue Marmots have not shown good cause to further delay the filing of direct testimony in this phase of the proceedings.¹

The ruling also specified that Blue Marmots' direct testimony was to be filed no later than February 24, 2020 and that the remainder of the procedural schedule, including the March 27, 2020 date for the submission of PGE's reply testimony, was unchanged. As a result of these events, PGE's mutually agreed upon time in which to prepare and file reply testimony has been reduced from its original fifty-six days to thirty-two days.

On February 21, 2020, PGE filed a Motion to Compel, seeking "complete responses to five of PGE's data requests" and requesting expedited consideration. PGE certifies that over the past two weeks it has conferred with Blue Marmots as required by OAR 860-001-0500(7), but that its efforts have been unsuccessful. PGE states that Blue Marmots' Supplemental Responses provided on February 19, 2020 were inadequate and did not provide further support for Blue Marmots' objections. PGE further states that the lack of the data sought will substantially impair its ability to prepare and file its testimony.²

On February 24, 2020, Blue Marmots filed a Motion for Extension of Time to permit the filing of direct testimony on February 25, 2020. Blue Marmots request expedited consideration and represent that PGE does not object to the extension.³

III. DISCUSSION

The primary issue in this phase of these proceedings is "[w]hether litigation caused commercially reasonable delays in the Blue Marmots' scheduled commercial operation dates listed in their partially executed PPAs."⁴ It is therefore incumbent upon the parties and the Commission to keep further delays due to litigation to a minimum.

¹ ALJ Ruling at 2 (Feb 19, 2020).

² PGE Motion to Compel at 1 (Feb 21, 2020).

³ Blue Marmots Motion for Extension of Time at 2 (Feb 24, 2020).

⁴ ALJ Prehearing Conference Memorandum and Ruling, at 2 (Jan 31, 2020).

OAR 860-001-0500(7) provides, as follows:

A party may file a motion to compel discovery. The motion must contain a certification that the parties have conferred and been unable to resolve the dispute. A party filing a motion to compel will be allowed the opportunity to file a reply to the response to the motion.

OAR 860-001-0420(4) states, in part, that “A response to a substantive motion must be filed within 15 days of filing of the motion.” A motion to compel is a substantive motion within the meaning of the Commission’s rules and, without expedited consideration, Blue Marmots would be required by this subsection to submit their response by March 9, 2020.

OAR 860-001-0090 provides, in part, as follows:

(1) The Commission delegates to the ALJ the authority to:

* * *

(e) Supervise and control discovery;

* * *

(h) Change filing deadlines[.]

In light of the history of these proceedings, I find good cause to consider the issues raised in the PGE motion on an expedited basis and change filing deadlines accordingly. I further find that Blue Marmots have shown good cause to permit a one-day extension in the filing of their direct testimony.

IV. RULING

1. The consideration of the pending motion to compel shall be addressed on an expedited basis.
2. Blue Marmot LLCs V, VI, VII, VIII, and IX shall file their direct testimony on or before February 25, 2020.
3. Blue Marmot LLCs V, VI, VII, VIII, and IX shall file their response to the motion to compel on or before February 28, 2020.

4. Portland General Electric Company shall file its reply on or before March 4, 2020.
5. The remainder of the procedural schedule is unchanged.

Dated this 24th day of February, 2020, at Salem, Oregon.



Allan J. Arlow
Administrative Law Judge