

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

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

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 DENIED; PROCEDURAL SCHEDULE MODIFIED

**I. SUMMARY**

In this ruling, I deny the motion of Blue Marmot LLCs V, VI, VII, VIII, and IX (Blue Marmots) for an extension of time to file their direct testimony “pending resolution of this disagreement”<sup>1</sup> on the characterization of settlement negotiations between the parties. I modify the procedural schedule to reflect the passage of time since the originally scheduled date for the submission of Blue Marmots’ direct testimony.

**II. PROCEDURAL HISTORY**

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

<b>EVENT</b>	<b>DATE</b>
Blue Marmots’ Direct Testimony	January 31, 2020
PGE Response Testimony	March 27, 2020

On January 31, 2020, Blue Marmots filed a motion for extension of time, stating that their direct testimony intended to include a discussion of details regarding their settlement negotiations with

<sup>1</sup> Blue Marmot Motion for Extension of Time at 2 (Jan 31, 2020).

PGE and that Blue Marmots had provided PGE with a copy of the proposed testimony and exhibits. Blue Marmots seek an indefinite delay in their scheduled submission of direct testimony, pending agreement with PGE regarding the submission of testimony on the settlement negotiations.

On February 7, 2020, PGE filed a response to the Blue Marmots' motion in which it notes that the motion for an indefinite extension was filed on the date Blue Marmots' direct testimony was due. PGE states that it has not reached an agreement with Blue Marmots to allow the admission of evidence relative to the parties' settlement discussions. PGE further states that it opposes the indefinite extension and requests that Blue Marmots be required to promptly file their direct testimony without reference to settlement discussions unless agreed to by PGE.

In support of its position, PGE cites Oregon Administrative Rule 860-001-0350(3) indicating that Blue Marmots are not permitted to file testimony characterizing the parties' settlement discussions without PGE's consent "unless independently discoverable or offered for other purposes allowed under ORS 40.190." PGE also notes that Blue Marmots have the option to petition the Commission to admit evidence over PGE's objection.

Blue Marmots did not file a reply to the PGE response.

### **III. DISCUSSION**

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.

### **IV. RULING**

1. The Motion for Extension of Time filed by Blue Marmot LLCs V, VI, VII, VIII, and IX is denied.
2. Blue Marmot LLCs V, VI, VII, VIII, and IX shall file their direct testimony in this proceeding on or before February 24, 2020.
3. The remainder of the procedural schedule is unchanged.

Dated this 19th day of February, 2020, at Salem, Oregon.



---

Allan J. Arlow  
Administrative Law Judge