

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1829

BLUE MARMOT V LLC,  
BLUE MARMOT VI LLC,  
BLUE MARMOT VII LLC,  
BLUE MARMOT VIII LLC,  
BLUE MARMOT IX LLC,

Complainants,

vs.

PORTLAND GENERAL ELECTRIC  
COMPANY,

Defendant.

RULING

DISPOSITION: REQUEST FOR ALJ CERTIFICATION DENIED

**I. SUMMARY**

I deny the request of Blue Marmot V LLC, Blue Marmot VI LLC, Blue Marmot VII LLC, Blue Marmot VIII LLC, and Blue Marmot IX LLC (collectively complainants or Marmots) to certify my March 22, 2018 ruling denying their motion to strike portions of the Response Testimony on behalf of Portland General Electric Company (PGE).

**II. BACKGROUND AND PROCEDURAL HISTORY**

Marmots filed complaints against PGE on April 28, 2017. The essence of these complaints relate to the obligation of PGE to purchase the output of Marmots at a specific point of delivery without upgrades. PGE asserted that its obligation to purchase is contingent on Marmots' delivery of power to the PACW.PGE point of delivery, which the utility claims is not possible without upgrades that address the lack of long-term firm available transfer capability (ATC) at that point.<sup>1</sup> In its direct testimony, Marmots challenged PGE's assertion that PGE's obligation was a

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<sup>1</sup> See ALJ Ruling on Motion to Compel (Oct 30, 2017), for a more detailed summary description of the dispute.

contingent one. PGE's assertion of contingent obligation formed the basis for the PGE response testimony.

On February 12, 2018, Marmots filed a joint motion to strike portions of PGE's response testimony supporting the company's claim that its obligation to purchase Marmots' output was contingent upon the pre-existence of sufficient, reliably available transmission capacity. Specifically, Marmots sought to strike PGE/100-102, Greene-Moore; PGE/200-201, Sims-Roderhorst-Sporborg; and PGE/300-302, Afranji-Larson-Richard.

By ruling of March 22, 2018, I denied the Marmots' joint motion to strike. Marmots filed a request for certification on April 5, 2018, and PGE filed a response in opposition to the request on April 19, 2018.

### **III. DISCUSSION**

#### **A. Positions of the Parties**

Marmots contend that my March 22, 2018 ruling prejudices them by requiring the preparation of reply testimony to testimony that may not be relevant. Marmots state that PGE's testimony would not be relevant if the Commission lacked jurisdiction over the issues presented by PGE and the jurisdictional question should thus be dealt with early in the proceeding. Marmots claim that FERC regulations and order provide sufficient guidance to resolve the issues without determining whether PGE's claims are true.

Marmots state that they did not seek summary judgment as to whether they have established legally enforceable obligations including terms that would affect transmission; such findings, Marmots assert, should be made without consideration of transmission arrangements or incremental costs.

PGE responds that my ruling should be upheld, contending that Marmots have shown neither good cause nor the existence of undue prejudice. PGE asserts that Marmots are seeking to resolve the case without offering factual support on the central issue of transport sufficiency and the associated economic price paid by PGE's customers. PGE states "the ALJ correctly declined to make such a drastic finding in the context of a Motion to Strike, and properly deferred resolution of the jurisdictional and relevance issues until later in the proceeding \* \* \*."<sup>2</sup>

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<sup>2</sup> PGE's Response to the Marmots' Request for ALJ Certification at 2 (Apr 19, 2018).

PGE further argues that its testimony is relevant and presents issues within the Commission jurisdiction because it must take cognizance of the substantial costs to overcome the capacity constraints, the fact that the costs are not reflected in avoided cost prices, and that the Commission regularly considers transmission issues related to QF interconnection and delivery in developing standard contract terms and conditions and calculating avoided costs.

## **B. Applicable Law**

OAR 860-001-0110 allows a party to request the certification of an ALJ ruling for the Commission's consideration. Section (2) of the rule provides that an ALJ must certify the ruling to the Commission if the ALJ finds that:

- (a) The ruling may result in substantial detriment to the public interest or undue prejudice to a party;
- (b) The ruling denies or terminates a person's participation; or
- (c) Good cause exists for certification.

## **C. Discussion**


Marmots contend that they are being unduly prejudiced by the failure to strike PGE's testimony relative to transmission feasibility because they will be required to prepare responsive testimony. However, requiring a party to prepare responsive testimony on an issue that the opposing party asserts is central to its defense is in no way prejudicial to the rights of the complainants.

Marmots have also failed to demonstrate that other good cause exists for certification. In the amended procedural schedule jointly submitted by the parties on March 28, 2018, and adopted by ruling of April 2, 2018, no briefing schedule specifically directed to questions relating to jurisdiction was proposed. In order for the Commission to address the jurisdictional issues raised by the complainants, the Commission will need to examine the parties' evidence and hear subsequent legal arguments on the scope and applicability of relevant statutory requirements and rules upon the evidence presented. The parties will be given ample opportunity to set forth their arguments with respect to whether and how much weight should be afforded by the Commission to testimony offered by the opposing party during the course of these proceedings.

#### IV. RULING

For the reasons set forth above, the Motion to Strike filed by Blue Marmot V LLC, Blue Marmot VI LLC, Blue Marmot VII LLC, Blue Marmot VIII LLC, and Blue Marmot IX, LLC is denied.

Dated this 27th day of April, 2018, at Salem, Oregon.



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Allan J. Arlow  
Administrative Law Judge