

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AVISTA CORPORATION;
CASCADE NATURAL GAS
CORPORATION; NORTHWEST
NATURAL GAS COMPANY; and
PUGET SOUND ENERGY, INC.,

Plaintiffs,

v.

WASHINGTON STATE
DEPARTMENT OF ECOLOGY and
MAIA D. BELLON, in her
official capacity as Director of
Washington State Department of
Ecology,

Defendants.

NO. 2:16-CV-0335-TOR

ORDER GRANTING PLAINTIFFS'
MOTION TO CONTINUE TO HOLD
CASE IN ABEYANCE

BEFORE THE COURT is Plaintiffs' Motion to Continue to Hold Case in
Abeyance. ECF No. 29. This matter was submitted for consideration without oral
argument. The Court has reviewed the record and files therein, the completed

ORDER GRANTING PLAINTIFFS' MOTION TO CONTINUE TO HOLD
CASE IN ABEYANCE ~ 1

1 briefing and is fully informed. For the reasons discussed below, Plaintiffs' Motion
2 to Continue to Hold Case in Abeyance (ECF No. 29) is **GRANTED**.

3 **BACKGROUND**

4 On September 27, 2016, Plaintiffs Avista Corporation, Cascade Natural Gas
5 Corporation, Northwest Natural Gas Company, and Puget Sound Energy, Inc. filed
6 a Complaint against Defendants Washington State Department of Ecology and
7 Director of Washington State Department of Ecology Maia D. Bellon. ECF No. 1.
8 Plaintiffs seek an order declaring the Clean Air Rule ("CAR"), WAC 173-442
9 unconstitutional and unenforceable. *Id.* at 22.

10 On October 26, 2016, the Court granted the Stipulated Motion to Stay, as the
11 parties sought to stay the matter while awaiting final adjudication of related state
12 court matters in Thurston County Superior Court which could render the issues in
13 this matter moot. ECF No. 27.

14 On May 29, 2018, the parties filed a Joint Status Report. ECF No. 28. The
15 parties stated that on April 27, 2018, the Thurston County Superior Court ruled for
16 Plaintiffs. ECF No. 28 at 3. Defendants filed a notice of appeal to the Washington
17 Supreme Court on May 11, 2018. *Id.* Plaintiffs request the Court continue to hold
18 the case in abeyance until the result of the pending state appeal, but Defendants
19 request the Court lift the stay and allow this case to proceed. *Id.* at 3-7.

1 On June 1, 2018, Plaintiffs filed the instant motion requesting the Court
2 continue to hold the case in abeyance. ECF No. 29. On June 15, 2018, Defendants
3 filed an objection to the stay. ECF No. 31.

4 DISCUSSION

5 “The District Court has broad discretion to stay proceedings as an incident to
6 its power to control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997).
7 Where a stay of proceedings is proposed, the court must weigh competing
8 interests, “which will be affected by the granting or refusal to grant a stay.”
9 *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). In determining if a stay is
10 warranted, the Court considers the following interests: (1) the possible damage
11 which may result from granting a stay; (2) the hardship or inequity a party may
12 suffer in being required to go forward; and (3) the orderly course of justice
13 “measured in terms of the simplifying or complicating of issues, proof, and
14 questions of law which could be expected to result from a stay.” *CMAX, Inc.*, 300
15 F.2d at 268 (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936)); *see also*
16 *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005).

17 1. Possible Damage

18 Plaintiffs contend that Defendants will not suffer damage if the stay
19 continues. ECF No. 29 at 8. Plaintiffs assert that a stay would not delay CAR’s
20 implementation, contrary to Defendants’ argument. *Id.* Plaintiffs state that if the

1 Washington Supreme Court reverses the decision of the state trial court,
2 Defendants will be free to reinstate CAR at that point in time regardless of the
3 remaining state claims that will still be pending at the state trial court level or in
4 this action. *Id.* at 8-9. Plaintiffs argue that regardless of how this case proceeds,
5 Defendants will have to litigate the remaining state claims if CAR is reinstated by
6 the Washington Supreme Court. *Id.* at 9. Plaintiffs then contend that continuing to
7 stay this case will not require Defendants to litigate this action any longer than
8 Defendants will already be litigating the unresolved state law claims. *Id.* Plaintiffs
9 conclude that Defendants' alleged harm is at best theoretical and should be given
10 little to no weight. *Id.*

11 Defendants counter that there is a substantial possibility that they will suffer
12 serious harm. ECF No. 31 at 5. Defendants state that litigation has rendered the
13 first compliance period of 2017-2019 practically unenforceable, making the second
14 compliance period crucial. ECF Nos. 31 at 6; 31-1 at ¶¶ 12-13. Defendants argue
15 that to achieve meaningful progress on climate change and to help Washington
16 State achieve its statutory greenhouse gas emission reduction requirements,
17 Defendants must know no later than January 1, 2020 whether CAR is viable. ECF
18 No. 31 at 6.

19 Additionally, Defendants insist that the Washington Supreme Court sits in
20 the same position as the Thurston County Superior Court and therefore can resolve

1 every issue raised in Plaintiffs’ state court complaint. *Id.* at 6-7. Defendants asked
2 the Washington Supreme Court to resolve all of Plaintiffs’ state court challenges in
3 the pending appeal. *Id.* at 7. Defendants also argue that even if the state court
4 litigation persists beyond the pending Washington Supreme Court appeal, “that
5 fact does not eliminate the cloud of this federal case.” *Id.* Defendants assert they
6 need certainty on both state and federal fronts as soon as possible. *Id.*

7 Plaintiffs reply that the only harm Defendants identify is the potential loss of
8 the second three-year compliance period beginning in January 2020 if the currently
9 invalidated rule is reinstated. ECF No. 32 at 2. Plaintiffs emphasize that, as of
10 now, the second compliance period does not exist because CAR has been declared
11 invalid. *Id.* Plaintiffs state that even assuming CAR is reinstated, there is simply
12 no “fair possibility” of Defendants’ alleged harm occurring because of a stay of
13 this case. *Id.*

14 First, Plaintiffs emphasize that Defendants ask this Court to agree to a
15 “laundry list of assumptions that are not warranted.” *Id.* at 3-4. Plaintiffs insist
16 that just because the Washington Supreme Court can address every issue raised by
17 Plaintiffs, does not mean that they will, especially given that doing so would
18 require the Washington Supreme Court to sift through a record of hundreds of
19 pages of complex documents to make numerous factual determinations that the
20 trial court never took the opportunity to consider. *Id.* at 4. Plaintiffs argue that it is

1 much more likely that if the Washington Supreme Court reinstates CAR on
2 statutory grounds, the case will be remanded to the state trial court for further
3 proceedings. *Id.*

4 Second, Plaintiffs contend that even if one accepts all of Defendants'
5 assumptions, Defendants still fail to offer any rational explanation of how staying
6 this case will actually cause the loss of the second three-year compliance period.
7 *Id.* Plaintiffs reject Defendants' argument that if the "cloud" of this federal case
8 remains as of January 1, 2020, then the uncertainty will result in the loss of the
9 second compliance period. *Id.* Plaintiffs again argue that if the Washington
10 Supreme Court reinstates CAR, there would be nothing arising out of this case
11 preventing Defendants from enforcing CAR or starting the second three-year
12 compliance period. *Id.* at 5. Plaintiffs emphasize that while litigation at the state
13 level was ongoing, Defendants were enforcing the first compliance period. *Id.*
14 Defendants only halted implementation of CAR after the Thurston County
15 Superior Court found the entire rule invalidated. *Id.* at 6.

16 Third, Plaintiffs state that the alleged harm is remote and speculative, and
17 there is no allegation of present harm to Defendants if the stay continues. *Id.* The
18 only alleged harm does not occur until and unless CAR is reinstated by the
19 Washington Supreme Court and the second three-year compliance period is lost.
20 *Id.* Additionally, Plaintiffs argue that a stay would benefit Defendants because it

1 would permit them to focus their limited resources on litigating the Washington
2 Supreme Court appeal without delay, which is the case that is presently their
3 biggest obstacle to reenacting CAR. *Id.* at 7.

4 The Court agrees with Plaintiffs that a limited stay in this case will not
5 damage or harm Defendants. The Court finds Defendants' alleged harm
6 unpersuasive where this case remains a "cloud" over potential implementation of
7 the second compliance period if the Washington Supreme Court reinstates CAR.
8 *See* ECF No. 31 at 6. As Plaintiffs have shown, Defendants may still implement
9 CAR while this litigation is ongoing if the Washington Supreme Court reinstates
10 the rule. Defendants previously enforced CAR during the state court litigation
11 until the final ruling, and the Court sees no reason why Defendants may also not
12 enforce it during this litigation. A future and attenuated possibility that Defendants
13 would not be able to enforce the second three-year compliance period if CAR is
14 reinstated is not a sufficient potential damage to justify ending the stay in this case
15 when the issues in this Court may be determined moot. The Court finds this factor
16 ways in favor of continuing the stay.

17 **2. Hardship or Inequity**

18 Plaintiffs allege they would suffer hardship if required to go forward at this
19 time. ECF No. 29 at 10. Plaintiffs state that any pre-trial discovery would be for
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1 naught if the Washington Supreme Court upholds the trial court's invalidation of
2 CAR, constituting hardship or inequity that warrants a stay. *Id.* at 10-11.

3 Defendants counter that "being required to defend a suit, without more, does
4 not constitute a 'clear case of hardship or inequity' within the meaning of *Landis*."
5 ECF No. 31 at 7; *Lockyer*, 398 F.3d at 1112. Defendants argue that if Plaintiffs
6 wish to avoid discovery in their own case, they are free to withdraw their
7 complaint pending resolution of the parallel state court litigation, as Plaintiffs do
8 not allege any statute of limitation requirements. ECF No. 31 at 7. Additionally,
9 Defendants contend that Plaintiffs' Complaint turns on the pure legal issue of
10 whether CAR's requirements violate the dormant Commerce Clause. ECF Nos. 31
11 at 8; 1 at ¶¶ 64-77. Defendants argue that Plaintiffs then exaggerate that they will
12 be forced to conduct substantial, unrecoverable, and wasteful discovery. ECF No.
13 31 at 8.

14 Plaintiffs counter that while they could withdraw now and attempt to refile
15 these federal claims in the event that CAR is reinstated by the Washington
16 Supreme Court, doing so would likely raise questions later of whether such claims
17 are time-barred. ECF No. 32 at 9. Plaintiffs concede that whether the statute of
18 limitations would apply is not presently an issue, but Plaintiffs state that they
19 strongly believe Defendants would argue that the statute of limitations would bar
20 future proceedings. *Id.*

1 The Court is not persuaded by Plaintiffs' argument that Defendants may
2 potentially assert a statute of limitations argument. The Court also finds that the
3 burden of discovery is not sufficient to qualify as a sufficient hardship or inequity.
4 While this factor does not weigh as greatly in favor of continuing the stay, the
5 Court is still persuaded that a stay is appropriate due to the limited harm to
6 Defendants and in the interest of the orderly course of justice, as discussed below.

7 **3. Orderly Course of Justice**

8 First, Plaintiffs assert that continuing to stay this case will promote the
9 orderly course of justice by simplifying or eliminating entirely the issues and
10 questions of law before this Court. ECF No. 29 at 6. Plaintiffs argue that if the
11 Washington Supreme Court upholds the decision, then this case will be moot in its
12 entirety. *Id.* at 7. Second, Plaintiffs insist that a stay would allow this Court to
13 avoid confronting a significant question of constitutional law until it is necessary
14 and unavoidable. *Id.* Plaintiffs note that if this case and the state appeal run
15 concurrently, there is a strong chance that this Court will decide serious
16 constitutional issues relating to the Commerce Clause unnecessarily. *Id.* at 8.
17 Plaintiffs also argue that because CAR has been ruled invalid and is unenforceable,
18 any ruling by this Court as to the rule's merits would amount to an advisory
19 opinion. *Id.*

1 Defendants concede that the Washington Supreme Court may decline to
2 reinstate CAR, which would make this case moot. ECF No. 31 at 8. Yet,
3 Defendants argue that if the Washington Supreme Court reinstates CAR, this case
4 will not be moot and Defendants will need a resolution as soon as possible. *Id.*
5 Defendants insist that given the urgency of the subject matter, the fairer course of
6 action is to address Plaintiffs' claims now. *Id.*

7 The Court finds that the Washington Supreme Court's decision may simplify
8 or render entirely moot the issues before this Court. Both parties agree that if the
9 Washington Supreme Court declines to reinstate CAR, then this case is moot. The
10 Court also acknowledges the importance of avoiding significant constitutional
11 questions until it is necessary to address them. As discussed above, the Court is
12 not persuaded that there exists a great burden on Defendants if the Washington
13 Supreme Court reinstates CAR because they may enforce the rule while this case is
14 litigated. Defendants' urgency argument is then not persuasive to justify
15 proceeding with the case at this time.

16 Accordingly, the Court grants the stay, but declines to order that the stay will
17 automatically expire 300 days after the Washington Supreme Court decision. *See*
18 *id.* at 9. Rather, the Court orders the parties to file a joint status report within thirty
19 days of the Washington Supreme Court's decision.

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1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 1. Plaintiffs' Motion to Continue to Hold Case in Abeyance (ECF No. 29) is

3 **GRANTED.**

4 2. This matter is stayed pending final adjudication of the Washington

5 Supreme Court decision. The parties shall file a joint status report no

6 later than **thirty (30) days** after the resolution of the Washington

7 Supreme Court decision.

8 The District Court Executive is directed to enter this Order and furnish
9 copies to counsel.

10 **DATED** June 29, 2018.



11 *Thomas O. Rice*

12 THOMAS O. RICE

13 Chief United States District Judge
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