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VIA ELECTRONIC FILING

PUC Filing Center
Public Utility Commission of Oregon
PO Box 1088
Salem, OR 97308-1088

**Re: Docket No. UM 1829
Blue Marmot V LLC, Complainant, v. Portland General Electric, Defendant**

Attention Filing Center:

Attached for filing in the above-captioned docket is Portland General Electric Company's Answer to the Complaint.

Please contact this office with any questions.

Very truly yours,

Wendy McIndoo
Office Manager

Attachment

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1829

Blue Marmot V LLC,
Complainant,

v.

Portland General Electric,
Defendant

**PORTLAND GENERAL ELECTRIC'S
ANSWER TO THE COMPLAINT**

1 **I. Introduction**

2 On April 28, 2017, Blue Marmot V LLC (Blue Marmot) filed a Complaint with the
3 Public Utility Commission of Oregon (Commission) against Portland General Electric
4 Company (PGE or Company). Blue Marmot alleges that PGE has a legally enforceable
5 obligation under the Public Utility Regulatory Policies Act (PURPA) to purchase the output of
6 Blue Marmot's solar generation qualifying facility (QF) at the currently-effective avoided cost
7 rates. Accordingly, Blue Marmot asks the Commission (among other requested relief) to
8 order PGE to enter into the executable power purchase agreement (executable PPA) that
9 PGE previously forwarded for Blue Marmot's signature and that Blue Marmot has signed.

10 PGE does not dispute that the Company would have a legally enforceable obligation
11 to purchase Blue Marmot's output at the avoided cost prices in effect at the time Blue
12 Marmot signed the executable PPA. However, PGE's obligation is contingent on Blue
13 Marmot being able to deliver its power to PGE, which cannot be done at Blue Marmot's
14 requested point of delivery (POD).

15 After Blue Marmot signed the executable PPA, but before PGE had done so, PGE
16 inquired about Blue Marmot's planned POD. Blue Marmot requested to deliver its output at
17 the PACW.PGE POD, and PGE immediately informed Blue Marmot that there was

1 insufficient long-term firm available transmission capability (ATC) at this POD. The
2 PACW.PGE POD has been constrained since 2015, when PGE acquired the long-term firm
3 transmission capability necessary to fully participate in the western Energy Imbalance
4 Market (EIM). This transmission information is posted to PGE's OASIS website, and
5 therefore has been available to Blue Marmot since it received QF certification from the
6 Federal Energy Regulatory Commission (FERC). Given the lack of long-term firm ATC at
7 the PACW.PGE POD, PGE cannot agree to accept delivery of Blue Marmot's output at this
8 POD. Nothing in PGE's Schedule 201 standard PURPA contract, or in the relevant statutes,
9 regulations, or case law, requires PGE to execute a PPA when it knows that it cannot accept
10 delivery at the QF's requested POD. Therefore, PGE has declined to sign the executable
11 PPA until the parties agree on an alternative delivery arrangement.

12 PGE has offered Blue Marmot two alternatives:

- 13 1. Arrange to deliver its output to a POD on PGE's system that has sufficient long-
14 term firm ATC; or
- 15 2. Request a study to assess the upgrades necessary to allow for deliveries of Blue
16 Marmot's output at the PACW.PGE POD, and agree to pay for the study and the
17 required upgrades.

18 If Blue Marmot will agree to one of these alternatives, PGE will sign the executable PPA.

19 For these reasons, PGE respectfully requests that the Commission decline to award
20 Blue Marmot's requested relief and dismiss the Complaint.

21 **II. Answer**

22 PGE hereby answers Blue Marmot's Complaint. PGE denies any allegation not
23 specifically admitted herein and reserves the right to supplement this Answer if Blue Marmot
24 amends its Complaint. With respect to the particular paragraphs of the Complaint, PGE
25 answers as follows:

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III. Identity of Parties

- 1. PGE admits the allegations in paragraph 1.
- 2. PGE has insufficient information or knowledge to admit or deny the truth of the allegations in paragraph 2 of the Complaint, which relate to the identity and corporate structure of Blue Marmot, and therefore denies the same.

IV. Applicable Statutes and Regulations

- 3. Paragraph 3 contains statements and conclusions of law, which require no response.
- 4. Paragraph 4 contains statements and conclusions of law, which require no response.

V. Jurisdiction

- 5. Paragraph 5 contains statements and conclusions of law, which require no response.
 - 6. Paragraph 6 contains statements and conclusions of law, which require no response.
 - 7. Paragraph 7 contains statements and conclusions of law, which require no response.
- PGE admits that it is a public utility, as defined in ORS 758.505(7), and that the Commission has the power to hear complaints by QFs against PGE.

VI. Factual Background

- 8. PGE admits that Blue Marmot has represented to PGE that it will be a 10 MW solar generation facility located in Lake County, OR.
- 9. PGE admits that Blue Marmot has represented to PGE that it will interconnect with PacifiCorp.
- 10. PGE has insufficient information or knowledge to admit or deny the truth of the allegations in paragraph 10 of the Complaint regarding the transmission agreement between Blue Marmot and PacifiCorp, and therefore denies the same.
- 11. PGE admits the allegations in paragraph 11.
- 12. PGE admits the allegations in paragraph 12.
- 13. PGE admits the allegations in paragraph 13.

- 1 14. PGE admits the allegations in paragraph 14.
- 2 15. PGE admits the allegations in paragraph 15.
- 3 16. PGE admits that on January 12, 2017, it provided Blue Marmot with a cover letter for
4 an executable standard PPA for the Blue Marmot V Project and also inadvertently
5 provided a draft standard off system PPA for Blue Marmot V.
- 6 17. PGE admits the allegations in paragraph 17.
- 7 18. PGE admits the allegations in paragraph 18.
- 8 19. PGE admits that the allegations in the Complaint correctly summarize the January 12,
9 2017, letter in a general manner.
- 10 20. PGE admits the allegations in paragraph 20.
- 11 21. PGE admits the allegations in paragraph 21.
- 12 22. PGE has insufficient information or knowledge to admit or deny the truth of the
13 allegations in paragraph 22 of the Complaint regarding when Blue Marmot executed
14 the executable PPA, and therefore denies the same. However, PGE admits that Blue
15 Marmot provided PGE with an executable PPA signed by Blue Marmot and dated
16 March 29, 2017.
- 17 23. PGE admits that on April 5, 2017, Blue Marmot asked PGE when PGE likely would
18 execute the executable PPA.
- 19 24. PGE admits the allegations in paragraph 24.
- 20 25. PGE admits the allegations in paragraph 25.
- 21 26. PGE admits the allegations in paragraph 26.
- 22 27. PGE admits the allegations in paragraph 27.
- 23 28. PGE admits that, consistent with its procedures in place at the time, PGE did not
24 inquire about Blue Marmot's requested POD until after the PPA was partially executed.
- 25 29. PGE admits the allegations in paragraph 29.

- 1 30. PGE admits the allegations in paragraph 30.
- 2 31. PGE denies the allegation that, prior to April 19, 2017, PGE never stated or provided
3 any indication that the PACW.PGE POD was constrained. PGE's OASIS website, to
4 which Blue Marmot has access, has indicated since August 2015 that the ATC at the
5 PACW.PGE POD is extremely limited, and, at no point since Blue Marmot first
6 contacted PGE, has the PACW.PGE POD had sufficient long-term firm ATC to
7 accommodate delivery by Blue Marmot.
- 8 32. PGE admits the allegations in paragraph 32.
- 9 33. PGE admits it stated that if evaluation of the feasibility of deliveries at the PACW.PGE
10 POD went past May 1, then PGE would honor the avoided cost prices currently in
11 effect for Blue Marmot. PGE denies the characterization of congestion at the
12 PACW.PGE POD as "alleged."
- 13 34. PGE admits the allegations in paragraph 34.
- 14 35. PGE admits the allegations in paragraph 35.
- 15 36. PGE admits all of the allegations in paragraph 36, except that PGE denies the
16 characterization of its deliverability concerns as "alleged."
- 17 37. PGE admits that it participated in a phone conference with Blue Marmot on April 24,
18 2017, in which each party restated its position, and that neither party's position
19 changed as a result of the meeting.
- 20 38. PGE admits the allegations in paragraph 38.
- 21 39. PGE admits the allegations in paragraph 39.
- 22 40. PGE admits that it told Blue Marmot it was "unwilling to sign the PPAs in their current
23 form for this POD [PACW.PGE] at this time." However, PGE denies Blue Marmot's
24 characterization of PGE's communications in paragraph 40 of the Complaint.
- 25 41. PGE admits that it filed revised avoided cost rates on May 1, 2017.

1 **VII. Legal Claims**

2 **Complainant's First Claim for Relief**

3 42. In response to paragraph 42 of Complainant's First Claim for Relief, PGE refers to and
4 incorporates herein all the preceding paragraphs.

5 43. The allegations in paragraph 43 are legal conclusions and require no response.
6 Therefore, PGE denies the same.

7 44. The allegations in paragraph 44 are legal conclusions and require no response.
8 Therefore, PGE denies the same.

9 45. The allegations in paragraph 45 are legal conclusions and require no response.
10 Therefore, PGE denies the same.

11 46. The allegations in paragraph 46 are legal conclusions and require no response.
12 Therefore, PGE denies the same.

13 47. The allegations in paragraph 47 are legal conclusions and require no response.
14 Therefore, PGE denies the same.

15 48. PGE admits that in the January 12, 2017, letter it sent to Blue Marmot it stated, "If
16 Seller executes the enclosed agreement without alteration and returns the partially
17 executed agreement to PGE for full execution, Seller will have established a legally
18 enforceable obligation."

19 49. PGE admits that it informed Blue Marmot it would "honor the avoided cost prices
20 currently in effect" if its evaluation of the feasibility of delivery at the PACW.PGE POD
21 went past May 1. PGE denies the remainder of the allegations in paragraph 49 of the
22 Complaint, which appear to be legal conclusions.

23 50. PGE admits that Blue Marmot has stated its commitment to sell the net output of Blue
24 Marmot V to PGE.

1 51. The allegations in paragraph 51 are legal conclusions and require no response.

2 Therefore, PGE denies the same.

3 52. The allegations in paragraph 52 are legal conclusions and require no response.

4 Therefore, PGE denies the same.

5 **Complainant's Second Claim for Relief**

6 53. In response to paragraph 53 of Complainant's Second Claim for Relief, PGE refers to

7 and incorporates herein all the preceding paragraphs.

8 54. The allegations in paragraph 54 are legal conclusions and require no response.

9 Therefore, PGE denies the same.

10 55. The allegations in paragraph 55 are legal conclusions and require no response.

11 Therefore, PGE denies the same.

12 56. The allegations in paragraph 56 are legal conclusions and require no response.

13 Therefore, PGE denies the same.

14 57. The allegations in paragraph 57 are legal conclusions and require no response.

15 Therefore, PGE denies the same.

16 58. PGE admits the allegations in paragraph 58.

17 59. PGE admits the allegations in paragraph 59.

18 60. PGE denies that Schedule 201 permits a QF to request the POD of its choosing, even

19 if the POD is constrained such that PGE cannot accept delivery there. PGE admits

20 that the executable PPA did not ask Blue Marmot to specify the POD. PGE's practice

21 at the time was to work out the POD after the QF executed the PPA.

22 61. PGE denies that Schedule 201 is inconsistent with FERC's rules and policies.

23 62. PGE has insufficient information or knowledge to admit or deny the truth of the

24 allegations in paragraph 62 of the Complaint related to Blue Marmot's transmission

25 arrangements and therefore denies the same.

1 63. The allegations in paragraph 63 are legal conclusions and require no response.

2 Therefore, PGE denies the same.

3 64. The allegations in paragraph 64 are legal conclusions and require no response.

4 Therefore, PGE denies the same.

5 65. The allegations in paragraph 65 are legal conclusions and require no response.

6 Therefore, PGE denies the same.

7 **VIII. PGE's Allegations**

8 In addition to the answers provided above, PGE alleges the following facts relevant
9 to Blue Marmot's Complaint:

10 66. In 2015, PGE announced its plan to participate in the EIM starting in October 2017. In
11 support of its decision, PGE filed an assessment with the Commission showing
12 potential cost savings and efficiency gains for PGE and its customers from EIM
13 participation. PGE determined that acquiring additional long-term firm capability at the
14 PACW.PGE POD would significantly impact its ability to realize the full benefits of
15 entry into the EIM. PGE requested and purchased this capability during the spring and
16 summer of 2015.

17 67. Also in 2015, in conjunction with its decision to enter the EIM, PGE looked at its history
18 of short-term monthly firm transmission purchases through the PACW.PGE POD and
19 determined that converting short-term purchases to long-term reservations would
20 provide it with roll-over rights and provide greater benefits for serving customers and
21 participating in future imbalance markets. Therefore, PGE purchased additional long-
22 term firm capability.

23 68. Beginning in August 2015, PGE's OASIS website showed the ATC at the PACW.PGE
24 POD to be zero, effective in 2016. At all times since that date, the long-term firm ATC
25 shown on OASIS for the PACW.PGE POD has ranged between 0 and 4 MW.

1 69. There is currently insufficient long-term firm ATC at the PACW.PGE POD to allow Blue
2 Marmot to deliver its output at that POD.

3 70. PGE's Schedule 201 states that an off-system QF "may enter into a PPA with the
4 Company after following the applicable Standard or Negotiated PPA guidelines and
5 making the arrangements necessary for transmission of power to the Company's
6 system." Sheet No. 201-3. The lack of long-term firm ATC at the PACW.PGE POD
7 will prevent Blue Marmot from reaching PGE's system through this POD at present,
8 and PGE informed Blue Marmot of this fact when Blue Marmot first requested delivery
9 at the PACW.PGE POD.

10 71. If Blue Marmot makes arrangements to deliver its power to the Company's system
11 through another POD that is not constrained or by paying for required studies and
12 upgrades to the PACW.PGE POD, then PGE will sign the executable PPA. However,
13 PGE is not required to, and cannot in good faith, execute a PPA with Blue Marmot
14 when it knows the planned route for transmission of the power to the Company's
15 system would be impossible.

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IX. Prayer for Relief

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PGE respectfully requests that the Commission deny Blue Marmot's requested relief

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and dismiss the Complaint.

Dated 5/18/17

MCDOWELL RACKNER & GIBSON PC



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