

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1829, UM 1830, UM 1831, UM 1832, UM 1833

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,

v.

Portland General Electric Company,

Defendant.

RULING

DISPOSITION: MOTION TO COMPEL DENIED

I. Overview

On April 28, 2017, Blue Marmot V, LLC, Blue Marmot VI, LLC, Blue Marmot VII, LLC, Blue Marmot VIII, LLC, Blue Marmot IX, LLC, (Blue Marmot) filed a complaint against Portland General Electric Company (PGE). The complaint requests that the Commission: 1) find PGE in violation of the mandatory purchase obligations of the Oregon and federal Public Utility Regulatory Policies Act (PURPA) and related state and federal regulations, policies, and orders; 2) order PGE to enter into a PPA or legally enforceable obligation with Blue Marmot to purchase the full net output of the Blue Marmot projects at the Schedule 201 rates in effect prior to June 1, 2017; and 3) impose any relief the Commission deems necessary. In PGE's answer, filed on May 18, 2017, PGE asserted that the company's obligation to purchase Blue Marmot's output is contingent upon Blue Marmot's delivery of power to PGE, which PGE claims cannot occur at the PACW.PGE point of delivery (POD) without upgrades. PGE claims that a lack of long-term firm available transfer capability (ATC) at the PACW.PGE POD will prevent Blue Marmot from reaching PGE's system. Blue Marmot counters, however, that it has already made transmission arrangements to wheel power to PGE at that POD.

On August 28, 2017, Blue Marmot filed a motion to compel discovery against PGE. The motion requested that PGE be compelled to provide two categories of

information: 1) for each of PGE's executed off-system power QF, identify a point of delivery; and 2) a complete and unredacted copy of any executed off-system PPA not available on the Public Utility Commission of Oregon's website, including the Airport Solar Schedule 202 PPA. On September 5, 2017, PGE filed a response to Blue Marmot's motion to compel, as well as a motion to limit discovery. On September 8, 2017, Blue Marmot filed a reply to PGE's response. On September 14, 2017, Blue Marmot filed a response to PGE's motion to limit discovery. On September 19, 2017, PGE filed a reply. On September 14, 2017, an electronic mail from counsel for Blue Marmot was received indicating that Blue Marmot and PGE had reached an agreement regarding the first category of information addressed by the motion to compel, but not the second category. On September 28, 2017, PGE withdrew its motion to limit discovery.

II. Motion to Compel Discovery

A. Legal Standard

The legal standard for discovery is whether the information sought is relevant. OAR 860-001-0540 provides that relevant evidence must: (1) tend to make the existence of any fact at issue in the proceedings more or less probable than it would be without the evidence; and (2) be of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs.

B. Parties' Positions

Blue Marmot seeks to review whether PGE has agreed to accept other off-system QF deliveries despite ATC concerns like those described above, and has requested complete and non-redacted copies of all off-system contracts. Blue Marmot now understands that PGE executed three QF PPAs with deliveries to the PACW.PGE POD, and that two of these PPAs are reviewable via the PUC's website, but one (Airport Solar) is a non-standard PPA for which a summary (but not the full contract) is available on the PUC's website. Blue Marmot adds that because the Airport Solar PPA was executed on April 3, 2017, around the same time that PGE refused to execute a PPA received from Blue Marmot, it is of particular interest. The focus of the motion to compel, at this point, is that Blue Marmot wants to review the complete and unredacted PPA to understand its transmission arrangements and to determine whether Airport Solar agreed to certain provisions (e.g., curtailments, pricing adjustments, etc.). Blue Marmot contends that it should not be forced to take PGE's word that the Airport Solar contract does not contain pertinent information. Blue Marmot also contends it is entitled to the same treatment contained in the provisions of the Airport Solar contract. Blue Marmot argues that PGE's confidentiality concerns should be handled pursuant to a modified protective order. Blue Marmot also notes that PacifiCorp was recently required to provide all of its PPA,

including nonstandard contracts negotiated with large QFs, in a complaint.¹ PacifiCorp did not raise concerns about confidentiality. Blue Marmot also objects to PGE's apprehension that its counsel will violate the terms of any protective agreement. Blue Marmot notes that it has not raised the same concerns about PGE's counsel despite the fact that the company's counsel is a member of a firm that represents other utilities.

PGE argues that Blue Marmot is not entitled to the full, unredacted Airport Solar contract. The company has already provided the relevant contractual information to Blue Marmot, and Blue Marmot should not receive commercially sensitive information contained in a competitor's full contract, PGE states. As the Airport Solar contract was executed before PGE understood the constraint at the PACW.PGE POD, PGE maintains that none of its terms pertain to the constraint. PGE offers to provide an affidavit to this effect. PGE asserts that "disclosing the contract's terms would chill parties' creativity in coming up with mutually-agreeable solutions to the problems that inevitably arise in negotiating a PPA." PGE also alleges that should Blue Marmot's developers seek to negotiate PPAs in the future with PGE, having knowledge of the terms in Airport Solar may distort such negotiations. PGE is also concerned that since Blue Marmot's attorney represents numerous QFs that negotiate with utilities, including PGE, it would be prejudicial to PGE and its customers to provide access to the unredacted Airport Solar contract. Finally, PGE denies that the *Surprise Valley* ruling is pertinent, observing that PacifiCorp did not challenge the disclosure of commercially sensitive information to competitors.

III. Ruling

I deny Blue Marmot's motion to compel PGE to provide a complete and unredacted copy of the Airport Solar PPA. I am not persuaded that a complete and unredacted copy of the PPA is more relevant to the questions that Blue Marmot seeks to answer than an affidavit from PGE that attests to certain facts, particularly given. I direct PGE to provide an affidavit that the Airport Solar PPA: 1) is the only off-system, nonstandard QF PPA with deliveries to the PACW.PGE POD; and 2) that none of its terms pertain to the constraint at the PACW.PGE POD. A sworn affidavit is a legal document and more than "PGE's word." If there are other facts about the contract that Blue Marmot wishes to know, Blue Marmot may send a new data request.

Dated this 30th day of October, 2017 at Salem, Oregon.


Traci A. G. Kirkpatrick
Administrative Law Judge

¹ *Surprise Valley Electrification Corp. v. PacifiCorp*, Docket No. UM 1742, Ruling (Nov 19, 2015).