

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1832

BLUE MARMOT VIII, LLC (UM
1832),

Complainant,

v.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

REPLY TO PGE’S RESPONSE TO
APPLICATION FOR
RECONSIDERATION

I. INTRODUCTION

Blue Marmot VIII, LLC (“Blue Marmot VIII”) hereby requests leave from the Oregon Public Utility Commission (“Commission”) to file a reply and submit its proposed reply to Portland General Electric Company’s (“PGE”) response (“Response”) to Blue Marmot VIII’s Application for Reconsideration (“Application”). Blue Marmot VIII seeks to file this limited reply to explain that:¹

- The Application is ripe for resolution because there is a bona fide dispute about the reasonableness and appropriateness of PGE’s proposed contract language; and
- The issue is not as complex as PGE makes it out to be but is instead quite simple: If Blue Marmot VIII itself secures transmission from PGE that will allow Blue Marmot VIII to deliver its net output over the PACW-PGE path to the PGE point of delivery, then will the Commission permit Blue

¹ PGE also argues that Blue Marmot VIII improperly seeks to raise a new issue on reconsideration, but Blue Marmot VIII’s Application sufficiently addressed that argument and no response is needed.

Marmot VIII to use that transmission as an alternative to delivering Blue Marmot VIII's net output to PGE at BPA's BPAT.PGE point of delivery?

II. REQUEST FOR LEAVE TO FILE A REPLY

Blue Marmot VIII respectfully requests that the Commission accept this reply to ensure the record is complete and the arguments on reconsideration are joined. OAR 860-001-0720(4) does not provide for a reply to a response to an application for reconsideration unless requested by the Administrative Law Judge ("ALJ"); however, the Commission has accepted replies when they have been promptly filed and appropriately limited in scope.² Blue Marmot VIII conferred with PGE, and PGE opposes Blue Marmot VIII's request to file a reply.

III. REPLY

A. The Application Is Ripe Because There Is a Dispute About PGE's Proposed Contractual Language

PGE argues that Blue Marmot VIII's Application should be denied because it is not "ripe," and because Blue Marmot VIII has presented a question that PGE claims is not currently and may never come before the Commission.³ PGE asserts that the question of whether Blue Marmot VIII can secure and use transmission to deliver its power over PGE's system across the PACW-PGE path to the PGE point of delivery, which would allow PGE to accept the power and deliver the power to its load, should not

² *Portland General Elec. Co. v. Alfalfa Solar I, LLC et al.*, Docket No. UM 1931, Ruling: Request for leave to Reply Granted, Reply Accepted at 1 (Oct. 24, 2019); *Re PacifiCorp: dba Pacific Power, Transition Adjustment, Five-Year Cost of Service Opt-Out*, Docket No UE 267, Order No 15-195 at 1 n2 (June 16, 2015); *PaTu Wind Farm, LLC v. Portland General Elec. Co.*, Docket No UM 1566, Order No 14-425 at 1 & n1 (Dec. 8, 2014).

³ Response at 4-5.

be addressed now because the circumstances have not occurred nor are particular and foreseeable. Blue Marmot VIII disagrees.

The dispute is ripe for resolution because PGE has proposed specific contractual language implementing a Commission order and has requested that Blue Marmot VIII execute a contract with that language. Blue Marmot VIII disagrees with PGE's contract language, and does not believe that the language is consistent with the Commission's order. Without additional clarity from the Commission, Blue Marmot VIII is not currently prepared to execute a contract with PGE's proposed language. Thus, there is a specific dispute about contract language that must be resolved before Blue Marmot VIII and PGE execute a final power purchase agreement.

Typically, in most Commission proceedings, after the Commission issues its order, the utility makes a formal compliance filing.⁴ The parties to the litigation have an opportunity to review and challenge how and whether the utility complied with the Commission's order. When this occurs, parties often raise substantive and new issues that need to be resolved based on the specific language in the compliance filing, including issues that the Commission had not considered or were not clear from the

⁴ *E.g., Northwest and Intermountain Power Producers Coalition v. PGE*, Docket No. UM 1805, Order 17-373 at 1 and Appendix A at 1-6 (Sept. 28, 2017) (The Commission directed PGE to file revised standard power purchase agreements, which PGE filed in a compliance filing. The revised standard power purchase agreements were challenged by the Complainants. The Commission reviewed the Complainants' challenge and issued an order resolving the dispute regarding the contract language.).

Commission's order.⁵ The Commission then resolves the dispute about the utility's proposed interpretation and compliance with the Commission's order.

Here, PGE prepared a contract intended to comply with the Commission order, but there is no formal compliance filing for Blue Marmot VIII to dispute PGE's proposed language in Docket No. UM 1832 et al. Blue Marmot VIII understands that the procedural options available to it include: 1) seeking reconsideration because Order No. 19-322 is not clear; 2) requesting that the Commission address this question in a Phase II of the proceeding; 3) filing a new complaint against PGE; or 4) executing PGE's proposed contract.

Blue Marmot VIII asks that the Commission not require it to file a new complaint against PGE to resolve this dispute. Blue Marmot VIII asks that the Commission address it now through this reconsideration filing or in the alternative in a Phase II.

B. The Application Does Not Present Significant Legal and Policy Questions that Need to Be Resolved in a Generic Docket

PGE argues that Blue Marmot VIII's Application raises "significant legal and policy considerations that extend beyond this particular docket."⁶ PGE states that Blue

⁵ *Id.* In UM 1805, the Commission's Order No. 17-256 concluded that the its policy was that the 15 year fixed price term started from power deliveries, but had not considered the question of whether this meant actual power deliveries (commercial operation date) or the scheduled time for power deliveries (actual commercial operation date). Only after PGE made its compliance filing did the question need to resolve this lack of clarity in its original order. It is no different here as PGE's actual proposed contract language raises a question that the Commission does not appear to have considered (at least is unclear from the text of the order).

⁶ Response at 6.

Marmot VIII's "proposal naturally raises a number of questions and concerns" and then PGE proceeds to list its questions and concerns.⁷

Blue Marmot VIII believes the question is much simpler and can be quickly resolved by the Commission now, or if the Commission agrees that more briefing is necessary then that can easily occur in this proceeding. Blue Marmot VIII's right to an appropriate contract term should not be delayed or held hostage to a future generic proceeding, which is not yet opened, and there is no certainty about if or when it would be opened or resolved.

The Commission resolved the question about whether PGE must use its presently contractually constrained transmission at the PACW.PGE point of delivery to accept the net output, and then use it to deliver the Blue Marmots net output to load; however, the Commission does not appear to have considered the specific question of what would happen if Blue Marmot VIII secured transmission as a PGE transmission customer and that transmission is then used to deliver the net output to PGE for PGE's subsequent delivery to load. This alternative transmission arrangement would allow the net output to "cross" the PACW.PGE to PGE path on PGE's transmission system to the PGE point of delivery and allow PGE to then deliver the net output to PGE's load. Essentially, PGE would then receive the energy at the PGE point of delivery (i.e., other side of the interface) in the case that Blue Marmot VIII purchase transmission from PGE (as a more optimal path versus using the PACW to BPAT.PACW to BPAT.PGE path, if and when such transmission becomes available).

⁷ *Id.*

The specific question that Blue Marmot VIII asks is whether Blue Marmot VIII can secure transmission under PGE’s Open Access Transmission Tariff (“OATT”) to deliver its net output over PGE’s transmission system from the PACW point of receipt to the PGE point of delivery and then allow PGE to deliver the power to its load. Or put in the terms of the contract PGE has proposed, whether PGE can impose a contract provision that prohibits Blue Marmot VIII from securing transmission in accordance with PGE’s OATT to cross the PACW.PGE interface or that allows PGE to refuse to use that transmission to deliver its power to PGE’s load.

Blue Marmot VIII believes that the answer is clear and simple under the Commission’s order. The Commission has determined that PGE can decide what point of delivery a QF can use but that point of delivery must be “appropriate and most reasonable.”⁸ Blue Marmot VIII, like any other PGE transmission customer, can under the Federal Energy Regulatory Commission’s standards and PGE’s OATT secure transmission from PACW.PGE. It would not be reasonable or appropriate, without additional briefing and argument, to allow PGE to foreclose Blue Marmot VIII’s ability to, like any other transmission customer, secure transmission to deliver its net output to PGE’s load.

Therefore, the Commission should simply direct PGE to provide an executable power purchase agreement that does not prevent Blue Marmot VIII from delivering over

⁸ *Blue Marmots V, LLC, et al. v. Portland Gen. Elec. Co.*, Docket No. UM 1829 et al., Order No. 19-322 at 9-10 (Sept. 30, 2019).

the PACW to PGE path on PGE's transmission system at the PGE point of delivery, if Blue Marmot secures transmission at that point of delivery.

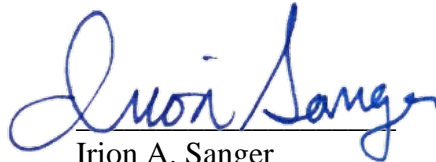
IV. CONCLUSION

For the reasons explained above, Blue Marmot VIII requests that the Commission accept this reply and grant reconsideration to complete and clarify Order No. 19-322.

Dated this 20th day of December 2019.

Respectfully submitted,

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