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December 12, 2019

VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
201 High Street SE, Suite 100
P.O. Box 1088
Salem, Oregon 97308-1088

Re: Docket UM 1829 – In the Matter of Blue Marmot V, LLC vs Portland General Electric Company

Attention Filing Center:

Attached for filing in the above-captioned docket is Portland General Electric Company's Response to Blue Marmot VIII, LLC's Application for Reconsideration.

Please contact this office with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Alisha Till".

Alisha Till
Paralegal

Attachment

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,

v.

Portland General Electric Company,
Defendant.

PORTLAND GENERAL ELECTRIC
COMPANY'S RESPONSE TO BLUE
MARMOTS' APPLICATION FOR
RECONSIDERATION

1 In Order No. 19-322, the Public Utility Commission of Oregon (Commission) ordered
2 Portland General Electric Company (PGE) to provide Blue Marmot VIII with an executable power
3 purchase agreement (PPA) “with delivery terms acceptable to PGE,”¹ and PGE provided Blue
4 Marmot VIII with an executable PPA providing for delivery at the BPAT-PGE delivery point.²
5 Now the Blue Marmots request reconsideration of Order No. 19-322, and present an entirely new
6 theory under which Blue Marmot VIII’s deliveries could occur at their preferred delivery point, if
7 a series of hypothetical future events were to occur. Specifically, the Blue Marmots ask the
8 Commission to clarify that *if* additional available transfer capability (ATC) appears at the PACW-
9 PGE interface in the future, and *if* the Blue Marmots are able to reserve sufficient ATC to deliver
10 Blue Marmot VIII’s output to PGE’s load via that delivery point, then Blue Marmot VIII may
11 deliver at the PACW-PGE interface.

12 The Blue Marmots’ Application for Reconsideration (Application) should be denied,
13 because the Blue Marmots have not shown “good cause for further examination”³ of Order No.
14 19-322. The hypothetical series of events about which they now seek guidance was not before the

¹ *Blue Marmots v. Portland Gen. Elec. Co.*, Docket UM 1829, Order No. 19-322 at 15 (Sept. 30, 2019).

² Blue Marmot VIII, LLC’s Application for Reconsideration (Application), Attachment A at 5 (Blue Marmot VIII Executable PPA Section 1.27) (Nov. 27, 2019).

³ OAR 860-001-0720(3)(d).

1 Commission when it issued the order and is uncertain ever to occur. Thus, the reconsideration
2 request is procedurally improper, the question posed in the Application is not—and may never
3 become—ripe for review, and it is unnecessary and inefficient for the Commission to address this
4 new question on reconsideration in this case. Moreover, the proposal made by the Blue Marmots—
5 to obtain their own transmission service in a constrained area on a utility system—raises
6 potentially complex legal and policy concerns, the resolution of which could prejudice the rights
7 of other qualifying facilities (QFs) and utilities. Therefore, if the Commission wishes to consider
8 the Blue Marmots’ novel proposal, it should do so in one of the generic dockets currently before
9 the Commission, not on reconsideration or in a subsequent phase of this case.

I. BACKGROUND

10 In Order No. 19-322, the Commission found that four of the Blue Marmot projects were
11 entitled to deliver to the PACW-PGE interface.⁴ The Commission’s analysis differed for the fifth
12 project, Blue Marmot VIII, which had not received a final executable PPA at the time PGE learned
13 about the constraint at PACW-PGE and communicated the deliverability issue to the Blue
14 Marmots.⁵ For Blue Marmot VIII, the Commission ordered PGE to provide a PPA and “propose
15 a delivery term [PGE] determines appropriate.”⁶ The Commission indicated that the delivery term
16 in Blue Marmot VIII’s PPA should be “acceptable to PGE”⁷ and “consistent with what PGE
17 determines necessary considering existing transmission reservations and legitimate management
18 objectives.”⁸ PGE sent Blue Marmot VIII an executable PPA that provides for delivery at the
19 BPAT-PGE interface,⁹ which is the only interface for delivery to PGE’s system that currently has
20 available transfer capability (ATC).¹⁰

⁴ Order No. 19-322 at 16.

⁵ Order No. 19-322 at 14.

⁶ Order No. 19-322 at 21.

⁷ Order No. 19-322 at 15.

⁸ Order No. 19-322 at 14-15.

⁹ Application, Attachment A at 5 (PPA Section 1.27).

¹⁰ See PGE/100, Greene-Moore/11, 24.

1 In their Application, the Blue Marmots are “not seeking to challenge the Commission’s
2 decisions” or “change its core conclusions,” but instead they request reconsideration to clarify how
3 the portion of the Commission’s order regarding Blue Marmot VIII’s delivery rights should be
4 applied “under different facts and circumstances.”¹¹ The Blue Marmots explain that, although
5 there is not currently ATC at PACW-PGE, the amount of ATC may change over the term of the
6 PPA, and they may be able to reserve ATC in the future as a transmission customer pursuant to
7 the terms of PGE’s Open Access Transmission Tariff (OATT).¹² They ask whether PGE must
8 accept Blue Marmot VIII’s deliveries at PACW-PGE if the Blue Marmots use their own
9 transmission rights to deliver Blue Marmot VIII’s output to PGE’s load.¹³ The Blue Marmots do
10 not explain how their new proposal would work but assert that Blue Marmot VIII’s PPA should
11 incorporate sufficient flexibility to allow the project to deliver at PACW-PGE in the future.¹⁴

II. DISCUSSION

12 The Commission will grant a request for reconsideration where the party seeking
13 reconsideration demonstrates good cause “for further examination of an issue essential to the
14 decision.”¹⁵ The Blue Marmots have failed to demonstrate that they are requesting further
15 examination of an issue that was already evaluated in this case, that the new issue they raise is ripe
16 for review, or that the relief they request should appropriately be considered in this docket. Their
17 Application should therefore be denied.

18 **A. The Blue Marmots improperly seek to raise a new issue on reconsideration.**

19 The Commission should decline to consider the Blue Marmots’ new theory as untimely
20 raised and an improper use of the reconsideration process. The purpose of a request for

¹¹ Application at 2.

¹² Application at 6.

¹³ Application at 6, 8.

¹⁴ Application at 9-10.

¹⁵ OAR 860-001-0720(3)(d). Other bases for reconsideration are not relevant to this case. OAR 860-001-0720(3)(a)-(c).

1 reconsideration is not to present questions or theories to the Commission for the first time. To
2 “reconsider” means “to consider again,”¹⁶ and “further examination”¹⁷ implies that an initial
3 examination occurred. The Commission has previously denied reconsideration where a party
4 raised new material for the first time on reconsideration that could have been introduced when the
5 record was open.¹⁸

6 Here, the Blue Marmots’ new delivery theory was not included in their Complaint or
7 otherwise discussed by the parties in the record underlying Order No. 19-322. The Blue Marmots
8 do not justify their delay in presenting their new question to the Commission, nor do they allege
9 that new facts or circumstances arose after the record closed to make their theory viable—in fact
10 they acknowledge that their request is based on “different facts and circumstances” that have not
11 yet occurred but may arise at some time in the future.¹⁹

12 The reconsideration process also is not intended to provide guidance about how an order
13 applies to possible future actions. In a prior case where a QF sought reconsideration to obtain
14 clarification and guidance regarding the application of a Commission order to hypothetical
15 scenarios that were not presented in the record, the Commission found that the QF had not
16 established sufficient grounds for reconsideration and denied the request.²⁰ This is precisely what
17 the Blue Marmots seek in their Application, and the Commission should similarly deny
18 reconsideration in this case.

19 **B. The Blue Marmots present a question that is not currently—and may never become—**
20 **ripe for resolution.**

21 “An issue is ripe for judicial determination when the interests of the plaintiff are in fact

¹⁶ *Reconsider*, Webster’s Third New International Dictionary Unabridged (1961).

¹⁷ OAR 860-001-0720(3)(d).

¹⁸ *In the Matter of Portland Gen. Elec. Co. Application for an Order Authorizing the Issuance of 62,500,000 Shares of New Common Stock Pursuant to ORS 757.410 et seq.*, Docket UF 4218, Order No. 06-156 at 8 (Apr. 10, 2006).

¹⁹ Application at 2.

²⁰ *See Portland Gen. Elec. Co. v. Pac. Nw. Solar, LLC*, Docket UM 1894, Order No. 18-369 at 4 (Oct. 9, 2018).

1 subjected to or imminently threatened with substantial injury.”²¹ An issue is not ripe for decision,
2 however, if “future events may or may not require resolution of th[e] issue.”²² The Blue Marmots’
3 request is unripe, because the factual circumstances envisioned in their Application have not yet
4 occurred and are not “particular and foreseeable,” as the Blue Marmots claim.²³

5 First, it is unclear whether or when ATC could appear at PACW-PGE and whether any
6 future ATC increase would be sufficiently large to accommodate Blue Marmot VIII’s delivery.
7 As the Blue Marmots note, ATC increased by 15 MW during this proceeding.²⁴ However, in 2014,
8 the total transfer capability (TTC) of the path *decreased* by 142 MW.²⁵ In short, ATC could
9 increase or decrease in the future, and neither the Blue Marmots nor PGE can predict if or when a
10 10-MW increase could occur.

11 Second, even if ATC were to increase, there is no guarantee that the Blue Marmots would
12 be able to acquire the new ATC. As the Blue Marmots note, they have the same rights as any other
13 transmission customer to reserve ATC.²⁶ Pursuant to the OATT, PGE Transmission would make
14 any increase in ATC equally available to the Blue Marmots and all other transmission customers
15 on a first-come, first-served basis. The Blue Marmots’ request that the Commission opine
16 regarding future circumstances that are uncertain to occur does not present a ripe dispute and does
17 not demonstrate good cause for reconsideration.

18 **C. The Blue Marmots’ requested relief appears to present significant legal and policy**
19 **questions that would need to be resolved in a generic docket.**

20 Any order requiring PGE to implement the Blue Marmots’ proposal likely would need to

²¹ *In the Matter of Portland Gen. Elec. Co. Deferred Accounting Authorization for Certain Expenses/Revenue Refunds Associated with Senate Bill 408 and the Sale of Certain Non-Util. Assets*, Docket UM 1271, Order No. 07-421 at 8 (Sept. 26, 2007) (quoting *Oregon Newspaper Publishers Assn. v. Peterson*, 244 Or 116, 120 (1966)).

²² *In the Matter of the Petition of Columbia River People’s Util. Dist. for a Declaratory Ruling Pursuant to ORS 756.450*, Docket DR 21, Order No. 99-199, 199 Ore PUC LEXIS 436 at *2 (Mar. 12, 1999).

²³ Application at 3.

²⁴ Application at 8.

²⁵ PGE/300, Afranji-Larson-Richard/14, 16.

²⁶ Application at 7-8.

1 grapple with significant legal and policy considerations that extend beyond this particular docket.
2 The Blue Marmots state that Blue Marmot VIII could secure its own transmission and use it for
3 deliveries by “holding, owning and managing the transmission, Blue Marmot VIII assigning or
4 relinquishing its rights to PGE with the understanding that it will be used to accept Blue Marmot
5 VIII’s deliveries, or some other method.”²⁷ The Blue Marmots also suggest that the transmission
6 system in the Pacific Northwest could change over time,²⁸ but do not indicate how any hypothetical
7 changes could impact Blue Marmot VIII’s deliveries.

8 Although these statements are somewhat ambiguous, it appears that the Blue Marmots may
9 be asking the Commission to approve a framework whereby QFs that wish to locate in
10 transmission-constrained areas may compete with each other to secure the rights to any capacity
11 that frees up—thus potentially allowing later-queued QFs to deliver when QFs earlier in the
12 contracting queue cannot. This proposal naturally raises a number of questions and concerns,
13 including: (1) how to fairly allocate available capacity and avoid claims of discrimination among
14 QFs²⁹; (2) how to navigate the interplay between the Federal Energy Regulatory Commission’s
15 requirement that all customers be offered open access to transmission service and its requirement
16 that the utility manage the transmission of QF output to load³⁰; and (3) whether PGE’s avoided
17 cost rates capture all costs imposed by these not-previously-contemplated transmission
18 arrangements for QFs.

19 Plainly, the Blue Marmots’ novel proposal could have impacts far beyond this case,
20 implicating the rights and obligations not only of other utilities but of other QFs as well. For this
21 reason, other utilities and other QFs selling to Oregon utilities would need to be given an
22 opportunity to weigh in on these issues. And a robust process may well be necessary to thoroughly
23 evaluate the implications. Therefore, to the extent the Commission elects to consider and decide

²⁷ Application at 9.

²⁸ Application at 9.

²⁹ See, e.g., Blue Marmots’ Opening Brief at 74-75 (Feb. 14, 2019) (arguing PGE discriminated against Blue Marmots’ by refusing to accept their output while accepting the output of other QFs).

³⁰ See, e.g., *Entergy Service, Inc.*, 137 FERC ¶ 61,199 at P 52 (Dec. 15, 2011).

1 the new issue the Blue Marmots appear to be raising, it should do so in one of the pending PURPA
2 generic dockets—not on reconsideration or in a subsequent phase of this case.

III. CONCLUSION

3 The Blue Marmots' Application improperly presents a new issue, which is not ripe for
4 Commission resolution. Reconsideration to determine an order's application to a different set of
5 facts and circumstances—which may or may not occur in the future—is neither necessary nor
6 appropriate. The Commission should conserve resources and decline to consider a question that
7 was not previously presented to it and may never need to be. To the extent the Commission desires
8 to take up the hypothetical new question presented by the Blue Marmots, it should do so in a
9 generic docket to ensure that all potentially affected parties are able to participate. For all of these
10 reasons, PGE respectfully requests that the Blue Marmots' Application for Reconsideration be
11 denied.

Dated December 12, 2019

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