

**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,

vs.

PORTLAND GENERAL ELECTRIC
COMPANY,

Defendant.

ORDER

Pursuant to ORS 756.500.

DISPOSITION: APPLICATION FOR RECONSIDERATION DENIED

I. SUMMARY

In this order, we deny the application of Blue Marmot VIII, LLC, to reconsider our decision that Portland General Electric reasonably refused to provide Blue Marmot VIII with a final draft executable contract with a point of delivery (POD) at the PACW:PGE interface.

II. PROCEDURAL HISTORY

In Order No. 19-322 entered September 30, 2019, we granted in part and denied in part the claims for relief of Blue Marmot V, LLC; Blue Marmot VI, LLC; Blue Marmot VII, LLC; Blue Marmot VIII, LLC; and Blue Marmot IX, LLC. We concluded, based on facts specific to this case, that it was reasonable to require PGE to accept delivery at the PACW:PGE interface consistent with the exhibits included in the final draft executable contracts that PGE provided to Blue Marmot LLCs V, VI, VII and IX. PGE had not provided a final draft executable contract to Blue Marmot VIII and we found, for the reasons set forth in our order that PGE did not have to accept power delivery from Blue Marmot VIII at the PACW:PGE interface.

On November 27, 2019, Blue Marmot VIII filed an application for reconsideration, stating that it:

seeks clarification of the portion of the Commission's order that allows PGE to propose an appropriate delivery term for the Blue Marmot VIII power purchase agreement ("PPA"). Specifically, Blue Marmot VIII asks the Commission to clarify that Blue Marmot VIII can deliver its net output at the PACW:PGE point of delivery ("POD"), if Blue Marmot VIII secures transmission that would allow it to transmit its power from PACW:PGE to PGE's load.¹

PGE filed a response to Blue Marmot VIII's application on December 12, 2019, which Blue Marmot VIII filed a reply on December 20, 2019.

III. DISCUSSION

A. Positions of the Parties

1. *Blue Marmot VIII*

Blue Marmot VIII states that it does not challenge our decision in Order No. 19-322 and that PGE does not need to use its own transmission to accept the Blue Marmot VIII's net output at PACW:PGE. Rather, it contends that ordering paragraph 3 of our order which states, in pertinent part "PGE may propose a delivery term it determines appropriate for the Blue Marmot VIII executable contract" is unclear as to whether Blue Marmot VIII would be allowed to deliver power to the PACW:PGE interface under a different set of facts and circumstances: circumstances under which it did not need to impinge upon PGE's transmission rights to effectuate deliveries.

Blue Marmot VIII argues that the executable PPA offered by PGE, which specifies the BPAT:PGE POD as the only acceptable delivery point, may not be consistent with the Commission's language and intent because a contract must have terms which are reasonable, non-discriminatory and negotiated. Absent Commission guidance, further litigation to resolve the question would be necessary.

Finally, Blue Marmot VIII asserts that the Commission may not have considered the specific questions it now presents, as the complexity of this proceeding could well have prevented us from seeing the myriad ramifications flowing from our order.

¹Blue Marmot VIII Application for Reconsideration at 1 (Nov 27, 2019).

2. *PGE*

PGE asserts that it has followed our order to the letter and that the order specifically stated that the PPA offered to Blue Marmot VIII was to be “acceptable to PGE” and “consistent with what PGE determines necessary considering existing transmission reservations and legitimate management objectives.”

PGE states that Blue Marmot VIII now presents a new theory coupled with a hypothetical scenario as grounds for reconsideration. The hypothetical scenario was not posed to the Commission prior to the entry of our order and is thus, in PGE’s view, procedurally improper. PGE states that Blue Marmot VIII has not met the required “good cause for further examination” standard required by OAR 860-001-0720(3)(d).

Furthermore, PGE argues that considering the matters raised by Blue Marmot VIII is an inefficient use of Commission resources because the question posed is based on circumstances whose occurrence is uncertain and may never be ripe for review. Questions related to a QF obtaining its own transmission service in a constrained area on a utility system have complex legal and policy concerns and belong in one or more of the generic dockets currently before the Commission, rather than in a contested case.

B. Applicable Law

OAR 860-001-0720(3) provides that the Commission may grant an application for reconsideration or rehearing if the applicant shows that there is:

- (a) New evidence that is essential to the decision and that was unavailable and not reasonably discoverable before issuance of the order;
- (b) A change in the law or policy since the date the order was issued relating to an issue essential to the decision;
- (c) An error of law or fact in the order that is essential to the decision; or
- (d) Good cause for further examination of an issue essential to the decision.

Blue Marmot VIII does not contend that there is either new evidence or a recent change in law or policy. Neither does it allege an error of law or fact on our part that was essential to our decision. Our decision upon its application for reconsideration is therefore limited to the standard set forth in subsection (d).

C. Discussion

In Order 19-322, we explained the reasons for not requiring interconnection at the PACW:PGE interface for Blue Marmot VIII, yet mandating such interconnection for the other Blue Marmot LLCs. They related not to the reasonableness of PGE’s determination as to the interconnection point, but to the fact that PGE was appropriately conducting due

diligence at the time of the complaint for Blue Marmot VIII and had not forwarded an executable contract with set interconnection terms.

In this case, though we have determined that PGE acted reasonably in not providing an executable contract to Blue Marmot VIII with a PACW:PGE delivery term, Blue Marmot VIII had provided all information required or requested by PGE during the contracting process, and PGE was obligated to provide Blue Marmot VIII with an executable PPA with delivery terms acceptable to PGE. Accordingly, PGE is ordered to provide an executable PPA to Blue Marmot VIII****².

In our order, while we acknowledged the legitimate planning needs of utilities, we also stated that we would “examine whether electric companies *act reasonably and without discrimination* in refusing a delivery point.”³ (emphasis added).

D. Resolution

The application for reconsideration is denied because there is not good cause for further examination of an issue essential to the decision.⁴ The hypothetical scenarios presented in the motion for reconsideration are not ripe for our consideration because they are not facts in the record, but rather speculation on facts that may present themselves in the future. Reconsideration of an order in a complaint docket is not the appropriate process for consideration of hypothetical facts. Though reconsideration is not the appropriate process to speculate on future facts, if facts do change in the future, we have existing processes that provide a forum for resolution of new issues to ensure that the reasonable and non-discriminatory application of utility business decisions is maintained. Blue Marmot VIII’s application does not address any issues that were essential to our decision in Order 19-322 with respect to the question of PGE’s obligation to allow interconnection at the fully-subscribed PACW:PGE interface under the facts presented in the record.

² Order No. 19-322 at 15 (Sep 30, 2019).

³ *Id.* at 7-8.

⁴ *See* OAR 860-001-0720(3)(d).

IV. ORDER

IT IS ORDERED that the application for reconsideration of Blue Marmot VIII, LLC, of Order No. 19-322 is denied.

Made, entered and effective Jan 23 2020.

Megan W. Decker

Megan W. Decker
Chair

Letha Tawney

Letha Tawney
Commissioner



A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.