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VIA ELECTRONIC FILING

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Public Utility Commission of Oregon
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**Re: UM 1829 (Lead Docket), UM 1830, UM 1831, UM 1832, UM 1833 -
Portland General Electric Company's Reply to Motion for Limitations on
Discovery**

Attention Filing Center:

Attached for filing in the above-captioned docket is Portland General Electric Company's Reply to the Motion for Limitations on Discovery.

Please contact this office with any questions.

Very truly yours,

A handwritten signature in blue ink that reads "Alisha Till". The signature is written in a cursive, flowing style.

Alisha Till
Administrative Assistant

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 REPLY TO MOTION
FOR LIMITATIONS ON DISCOVERY**

I. INTRODUCTION

1 After receiving 111 data requests—63 within the span of eight days—Portland
2 General Electric Company (PGE or Company) filed the instant Motion for Limitations on
3 Discovery. PGE's Motion asks the Administrative Law Judge (ALJ) to rule that, after
4 responding to the first five sets of data requests from the Blue Marmot LLCs (Blue Marmot),
5 including 101 separate requests, PGE need not respond to additional requests before PGE
6 files its testimony.

7 Blue Marmot's data requests are unreasonably cumulative, duplicative, and
8 burdensome, and its discovery has not been commensurate with the needs of this case or the
9 resources of the parties. Blue Marmot's limited understanding of the technical transmission
10 issues underlying this case has resulted in a slew of repetitive and confusing data requests.
11 PGE has attempted to understand and respond to these requests, and to educate Blue Marmot

1 about these issues, but requiring it to continue doing so places an unreasonable burden on
2 PGE, whose resources already are strained by significant QF litigation.

3 PGE's responses to the first 101 data requests provided Blue Marmot with substantial
4 information related to the issues Blue Marmot identified in its Response. In addition, PGE is
5 not asking for a blanket discovery limitation, as Blue Marmot suggests. Instead, at Blue
6 Marmot's request, PGE is making its employees available next week for depositions on
7 subjects of Blue Marmot's choosing. PGE hopes that these depositions may prove to be a
8 more efficient and effective approach to providing Blue Marmot with the information it
9 seeks. For these reasons, PGE respectfully requests that the ALJ limit PGE's obligation to
10 respond to further data requests from Blue Marmot until after PGE has filed its testimony.

II. BACKGROUND

11 To date, Blue Marmot has served PGE with seven sets of data requests containing a
12 total of 115 separate requests—many of them multi-part.¹ PGE has responded to the 101
13 requests contained in Blue Marmot's 1st through 5th sets.² Between August 28 and
14 September 5 alone, Blue Marmot served a total of 63 data requests (Blue Marmot's 4th
15 through 6th sets).³ It was only after receiving Blue Marmot's 6th set of data requests that
16 PGE filed its Motion for Limitations on Discovery, along with its Response to Blue
17 Marmot's Motion to Compel.

18 Blue Marmot continues to produce additional data requests, serving its 7th set on
19 September 14,⁴ and has represented that it may serve additional requests in the future.⁵

¹ Attachment A to Blue Marmot's Response (compiling all data requests served by Blue Marmot and most of PGE's responses).

² *Id.*; Attachment A to PGE's Reply (compiling those recently provided data responses that were not attached to Blue Marmot's Response).

³ Attachment A to Blue Marmot's Response.

⁴ Attachment A to Blue Marmot's Response.

⁵ Blue Marmot's Response at 15-16.

1 Although Blue Marmot states that it does not intend to conduct “significant” discovery while
2 PGE is preparing its testimony, it leaves open the possibility of filing more data requests, if
3 warranted, after Blue Marmot files its opening testimony and before PGE files its responsive
4 testimony.⁶ Blue Marmot also has scheduled depositions of PGE employees to occur during
5 the week of September 25.

III. LEGAL STANDARD

6 Oregon Rule of Civil Procedure 36(C) allows for entry of an order limiting discovery
7 or placing restrictions on discovery.⁷ The Commission’s rules provide that “[d]iscovery
8 must be commensurate with the needs of the case, the resources available to the parties, and
9 the importance of the issues to which the discovery relates.”⁸ The rules prohibit “[d]iscovery
10 that is unreasonably cumulative, duplicative, and burdensome, or overly broad.”⁹
11 Determining the reasonableness of discovery is a fact-dependent inquiry, focused on the
12 circumstances of the particular case.¹⁰

13 Blue Marmot has raised the concern that PGE’s Motion does not cite to specific
14 caselaw to support its requested for relief.¹¹ However, given the fact-specific nature of the
15 inquiry into the reasonableness of the discovery in a particular case, courts have found that
16 past decisions are of limited value.¹²

IV. DISCUSSION

17 A. Blue Marmot’s data requests are contrary to the Commission’s rules.

18 The sheer volume of data requests served by Blue Marmot, and their cumulative,
19 duplicative, and burdensome nature are contrary to the Commission’s rules governing

⁶ Blue Marmot’s Response at 5.

⁷ See OAR 860-001-0000(1) (providing that the ORCPs apply in contested cases).

⁸ OAR 860-001-0500(1).

⁹ OAR 860-001-0500(2).

¹⁰ See, e.g., *United States v. Int’l Bus. Mach. Corp.*, 83 F.R.D. 97, 104 (S.D.N.Y. 1979) (analyzing discovery dispute under a similarly worded federal rule).

¹¹ Blue Marmot’s Response at 8.

¹² See *United States v. Int’l Bus. Mach. Corp.*, 83 F.R.D. at 104.

1 discovery. Blue Marmot’s data requests also are not commensurate with the needs of the
2 case and the resources available to the parties. Therefore, a limitation on further written
3 discovery is appropriate in this case.

4 **1. Blue Marmot’s data requests are unreasonably cumulative and duplicative.**

5 Aside from the quantity of requests, the most objectionable aspect of Blue Marmot’s
6 discovery requests lies in their cumulative and duplicative nature. Not only has Blue Marmot
7 asked the exact same data request twice,¹³ it also has served numerous data requests that ask
8 essentially the same question over and over again. For example, Blue Marmot has served a
9 variety of requests asking why the lack of available transfer capability (ATC) at the
10 PACW.PGE point of delivery (POD) prevents Blue Marmot from delivering its power
11 there—despite having received an answer and explanation to this question. Specifically, in
12 its 4th set of requests, Blue Marmot posed the following question: “Blue Marmot believes
13 that it has secured necessary transmission arrangements to make its full net output available
14 to PGE at the PACW.PGE POD. Does PGE agree?” In response, PGE provided the
15 following explanation:

16 No, PGE does not agree. Please see PGE’s response to Blue Marmot Data
17 Request No. 44.^[14] While Blue Marmot may have secured the necessary
18 arrangements to transmit its output to the PACW side of the PACW.PGE
19 POD, there is no ATC at the PACW.PGE POD, and therefore Blue Marmot
20 cannot make its output available to PGE because it cannot deliver to PGE.¹⁵

21 In the same set of data requests, Blue Marmot asked variations of the same question four
22 more times:

- 23 • “65. Does PGE agree that PacifiCorp is able to deliver Blue Marmot’s
24 power to PACW.PGE? If not, please explain why Blue Marmot is not able
25 to deliver its power to PGE at the PACW.PGE POD.”

¹³ Compare Attachment A to Blue Marmot’s Response, data request 57 (asking how a statement in PGE’s 2016 draft renewable RFP is consistent with PGE’s position in this case) with data request 90 (same).

¹⁴ In response to data request 44, PGE explained that PACW.PGE is not a valid sink where power can be left and that power scheduled to that point must continue on to a valid point of receipt. Attachment A to Blue Marmot’s Response, PGE’s response to data request 44.

¹⁵ Attachment A to Blue Marmot’s Response, PGE’s response to data request 59.

- 1 • “68. Does PGE agree that insufficient ATC posted on PGE’s OASIS
2 website may not affect Blue Marmot’s ability to make its power available
3 to PGE at the PACW.PGE POD? Please explain.”
- 4 • “69. Please explain PGE’s position that the lack of long-term firm ATC at
5 the PACW.PGE POD will prevent Blue Marmot from reaching PGE’s
6 system through this POD.”
- 7 • “70. Why does ATC on PGE’s OASIS website affect Blue Marmot’s
8 ability to deliver its output to the PACW.PGE POD?”

9 In its 6th set of data requests, Blue Marmot again asked why PGE believes it is not able to
10 accept delivery at the PACW.PGE POD.¹⁶

11 Blue Marmot also asked—and PGE answered—eight separate data requests related to
12 the Bethel scheduling point, which is one of three scheduling points assigned to the
13 PACW.PGE path, and which does not impact the ATC constraint on that path.¹⁷ In addition,
14 after PGE provided an initial and updated analysis of its EIM participation in response to
15 data request 3, Blue Marmot again requested PGE’s analysis regarding EIM participation in
16 data request 50.¹⁸ The cumulative and duplicative nature of Blue Marmot’s data requests
17 supports PGE’s requested relief.

18 **2. Responding to Blue Marmot’s data requests has placed an unreasonable**
19 **burden on PGE.**

20 One possible reason for some of the duplication in Blue Marmot’s requests is that it
21 appears Blue Marmot is attempting to gain a comprehensive understanding of the technical
22 aspects of transmission systems through the discovery process. This approach imposes an
23 unreasonable burden on PGE. Many of Blue Marmot’s data requests seek basic information
24 about PGE’s transmission system—which PGE has attempted to provide, both in person and

¹⁶ Attachment A to Blue Marmot’s Response, data request 102.

¹⁷ Attachment A to Blue Marmot’s Response, PGE’s responses to data requests 14, 30, 31, 32, 33, 36, 42 & 43.

¹⁸ Attachment A to Blue Marmot’s Response, PGE’s responses to data requests 3 & 50.

1 through written responses. Importantly, many of Blue Marmot’s questions have
2 demonstrated a misunderstanding of the technical issues underlying this case, despite PGE’s
3 patient and thorough efforts to explain these matters.¹⁹ Shortly after the Blue Marmots filed
4 their Complaints, PGE held two meetings with representatives from the Blue Marmots’
5 parent company, EDP Renewables (EDPR), and its counsel. While these meetings were
6 scheduled as settlement discussions, and therefore the substance of the discussions is
7 confidential, PGE did make available several of its transmission experts who provided
8 detailed explanations of the constraint at the PACW.PGE POD, and answered many technical
9 questions about the transmission system.

10 Despite these early efforts, PGE has received confusing data requests that suggest
11 Blue Marmot still does not fully understand certain fundamental aspects of the transmission
12 system. In response, PGE has offered to schedule discovery conferences in an attempt to
13 clarify the facts and issues in this case.²⁰ Unfortunately, Blue Marmot did not take PGE up
14 on these offers until very recently when the parties discussed and resolved one issue in Blue
15 Marmot’s Motion to Compel.²¹ In addition, PGE’s data responses frequently have gone
16 beyond simply answering the question posed, by providing additional background
17 information regarding transmission-related issues in an attempt to clear up Blue Marmot’s
18 misunderstandings.²²

19 Nevertheless, Blue Marmot suggests that PGE has failed to respond to its requests or
20 intentionally has obfuscated the issues. For example, Blue Marmot complains that it was not
21 until the 4th set of data responses that PGE “seemed to confirm that it believed there are two

¹⁹ See, e.g., Attachment A to Blue Marmot’s Response, PGE’s response to data request 36 (explaining the difference between scheduling/e-tagging points and OASIS transmission reservation points).

²⁰ See Attachment A to Blue Marmot’s Response, PGE’s responses to data requests 36, 37 & 88.

²¹ See Email from Irion Sanger to ALJs Kirkpatrick and Arlow, “Blue Marmot Motion to Compel” (Sept. 14, 2017).

²² See, e.g., Attachment A to Blue Marmot’s Response, PGE’s response to data request 8 (“As a threshold matter, PGE notes that the phrasing of this question suggests a faulty premise regarding Network Resources and Network Integration Transmission Service (NITS), as resources can be undesignated but transmission cannot.”), 36 (“PGE also would like to clarify...” explaining relationship between OASIS transmission reservation points and scheduling/e-tagging points), 42 & 43 (“PGE notes that...” providing additional explanatory information beyond that necessary to answer the question posed).

1 sides of [the PACW.PGE] POD.”²³ In reality, in responding to prior discovery requests,
2 PGE assumed that this fundamental information about the structure of a delivery point
3 required no confirmation or explanation. Even after PGE confirmed this basic information,
4 Blue Marmot continued to ask why its transmission reservation to the PacifiCorp side of the
5 PACW.PGE POD does not suffice to deliver its power to PGE.²⁴

6 PGE agrees with Blue Marmot that this case presents technical issues, but PGE
7 disagrees that further discovery is a proper or efficient vehicle to educate Blue Marmot about
8 the basics of transmission systems. Three conferences, 101 data responses, and depositions
9 represent a level of discovery commensurate with the needs of this case and sufficient to
10 permit Blue Marmot to file its opening testimony. Given the unreasonable burden already
11 imposed on PGE by Blue Marmot’s discovery requests, further written discovery should not
12 be permitted until after PGE has filed its testimony.

13 **3. PGE does not have unlimited resources for responding to Blue Marmot’s**
14 **discovery, and Blue Marmot possesses significant resources of its own.**

15 Contrary to Blue Marmot’s assertions, PGE does not have unlimited resources for
16 responding to Blue Marmot’s discovery, and Blue Marmot’s burdensome data requests thus
17 far have significantly strained the resources it does possess. PGE’s QF personnel—the
18 individuals with primary responsibility for responding to Blue Marmot’s discovery—
19 simultaneously must respond to more than 30 other QF complaints and continue to fulfill
20 their normal QF contracting duties. These individuals have worked extremely hard over the
21 past several months to fulfill all of these obligations, including cancelling or cutting short
22 their vacations and rescheduling time off. PGE has reassigned additional personnel to assist
23 with QF matters, but PGE still must ensure the provision of safe, reliable utility and
24 transmission service, and cannot devote all of its attention and resources to the recent spate of
25 QF complaints, as Blue Marmot seems to suggest it should.

²³ Blue Marmot’s Response at 16.

²⁴ Attachment A to Blue Marmot’s Response, PGE’s responses to data requests 65, 68, 69, 70 & 102.

1 Moreover, Blue Marmot’s suggestion that PGE has substantially greater resources
2 than Blue Marmot rings hollow. Blue Marmot’s parent company EDPR—in whose name all
3 of the data requests have been served—is a multi-national company, whose revenue in the
4 first half of this year was €988 million.²⁵ If Blue Marmot has a “finite legal budget,”²⁶ it is
5 only because EDPR has chosen to allocate its substantial resources elsewhere. In any event,
6 contrary to Blue Marmot’s statements, PGE’s legal budget is not “funded by ratepayers
7 without any limitation,”²⁷ and has been significantly strained by the number of QF
8 complaints in general and the unreasonably burdensome discovery in this case, in
9 particular.²⁸ In sum, Blue Marmot’s discovery has not been commensurate with the
10 resources of the parties. Blue Marmot should not be permitted further written discovery and
11 instead should use its own substantial resources to gain the technical knowledge that it lacks.

12 **B. Blue Marmot has sufficient information to prepare its initial testimony.**

13

14 **1. PGE already has provided a substantial amount of information about each of**
15 **the issues raised in Blue Marmot’s Response.**

16 Blue Marmot argues that its voluminous discovery requests are called for because
17 this case raises so many distinct and important issues. In reality, PGE’s responses to Blue
18 Marmot’s first 101 data requests already have provided Blue Marmot with a significant
19 amount of information about each of the issues raised in Blue Marmot’s Response, and
20 further discovery on these points should not be required.

21 a. Points of Delivery.

22 PGE has responded to numerous data requests regarding various points of delivery
23 and has clarified for Blue Marmot the proper terminology for and relationship between
24 OASIS transmission reservation points and scheduling/e-tagging points.²⁹

²⁵ <http://www.edpr.com/en/news/edp-renewables-1h-2017-revenue-increase-eu988-million>.

²⁶ Blue Marmot’s Response at 15.

²⁷ Blue Marmot’s Response at 15; *see also id.* at 12 (referencing the “nearly limitless resources available to PGE”).

²⁸ And contrary to Blue Marmot’s suggestion, Blue Marmot’s Response at 15 n.26, all seven attorneys at McDowell Rackner Gibson are not devoting all of their attention to litigating PGE’s QF Complaints.

²⁹ Attachment A to Blue Marmot’s Response, PGE’s response to data request 36.

1 First, Blue Marmot asked and PGE answered a number of questions about Bethel, a
2 scheduling point within the PACW.PGE POD, and how it is distinct from the Bethel
3 scheduling point within the BPAT.PGE POD.³⁰ PGE explained how the Bethel OASIS
4 transmission reservation point was aggregated with the PACW transmission reservation
5 point, such that Bethel now is a scheduling/e-tagging point within the PACW OASIS
6 transmission reservation point.³¹ PGE also explained that the aggregation did not affect the
7 total transfer capability (TTC) at the PACW and PGE interface.³² To be clear, these details
8 about the Bethel scheduling point have no impact on Blue Marmot's inability to deliver its
9 power to PGE via the PACW.PGE path, and PGE has never suggested that Bethel is at issue
10 in this case. Yet PGE still answered numerous questions about Bethel and patiently
11 explained several fundamental components of the transmission system to Blue Marmot in the
12 process.

13 PGE also answered several questions regarding the mechanics of the interface
14 between PACW and PGE³³ and the lack of ATC there.³⁴ PGE explained that it cannot accept
15 deliveries from a QF unless there is sufficient long-term firm ATC at the delivery point.³⁵
16 PGE explained that PACW.PGE is a scheduling point associated with the PACW OASIS
17 transmission reservation point (the interface between the PACW and PGE transmission
18 systems).³⁶ PGE clarified that the PACW.PGE scheduling point can be used as a valid POD
19 for scheduling/e-tagging, but that the POD is not a sink and that e-tags cannot terminate there
20 but must continue on to a valid point of receipt.³⁷ PGE also explained that the TTC on
21 PacifiCorp's system is irrelevant because each balancing area authority calculates TTC on its

³⁰ Attachment A to Blue Marmot's Response, PGE's responses to data requests 14, 30, 31, 32, 33, 36, 42 & 43.

³¹ Attachment A to Blue Marmot's Response, PGE's response to data request 36.

³² Attachment A to Blue Marmot's Response, PGE's response to data request 42.

³³ Attachment A to Blue Marmot's Response, PGE's responses to data requests 13, 17, 44, 45 & 46.

³⁴ Attachment A to Blue Marmot's Response, PGE's responses to data requests 12, 59, 67, 68, 69 & 70.

³⁵ Attachment A to Blue Marmot's Response, PGE's response to data request 84.

³⁶ Attachment A to Blue Marmot's Response, PGE's response to data request 45.

³⁷ Attachment A to Blue Marmot's Response, PGE's response to data request 44.

1 own system,³⁸ and that TTC is a calculated value that cannot be re-allocated, as Blue
2 Marmot's questions suggested.³⁹

3 Blue Marmot does not appear to have outstanding questions regarding these issues,
4 other than to ask whether PGE Merchant can make upgrades to the PACW.PGE POD to
5 allow delivery there,⁴⁰ despite PGE repeatedly having explained its view that Blue Marmot is
6 legally obligated to pay for studies and upgrades necessary to enable delivery of its power at
7 PACW.PGE.⁴¹ It appears that the only remaining dispute is a legal one that cannot be
8 resolved through discovery.

9 b. PURPA Mandatory Purchase Obligation.

10 Blue Marmot asserts that there are "unanswered legal issues that need factual
11 support," and that "PGE seems to maintain that *Blue Marmot's delivery to the PACW.PGE*
12 *POD* does not trigger PGE's mandatory purchase obligation under . . . PURPA."⁴² Blue
13 Marmot states it has made 14 data requests addressing this issue.⁴³ However, PGE already
14 has clearly and repeatedly explained that Blue Marmot's net output *cannot be delivered* at
15 the PACW.PGE POD because of the lack of long-term firm ATC.⁴⁴ PGE also has explained
16 that Blue Marmot is responsible for paying for the studies and upgrades necessary if it
17 chooses to deliver its output at PACW.PGE.⁴⁵ Nevertheless, in its 6th set of data requests,

³⁸ Attachment A to Blue Marmot's Response, PGE's response to data request 13.

³⁹ Attachment A to Blue Marmot's Response, PGE's response to data request 17.

⁴⁰ See Attachment A to Blue Marmot's Response, data request 115.

⁴¹ Attachment A to Blue Marmot's Response, PGE's responses to data requests 47, 60, 71 ("Under PURPA, all off-system QFs are responsible for paying the necessary studies and upgrade costs required to deliver output to the purchasing utility. Because PURPA requires that utility customers be held harmless from costs associated with QF activity, PGE would not pay for upgrades itself.") & 73.

⁴² Blue Marmot's Response at 17 (emphasis added).

⁴³ Blue Marmot's Response at 17.

⁴⁴ Attachment A to Blue Marmot's Response, PGE's responses to data requests 47, 58 ("As previously communicated, the PACW.PGE POD lacks the ATC to effectuate delivery of Blue Marmot's output at that POD."), 59 ("While Blue Marmot may have secured the necessary arrangements to transmit its output to the PACW side of the PACW.PGE POD, there is no ATC at the PACW.PGE POD, and therefore Blue Marmot cannot make its output available to PGE because it cannot deliver to PGE."), 60, 65, 70 ("The lack of long-term firm ATC reflected on PGE's OASIS website demonstrates that the PACW.PGE POD is constrained such that Blue Marmot cannot deliver its output there."), 84.

⁴⁵ Attachment A to Blue Marmot's Response, PGE's responses to data requests 71 & 73.

1 Blue Marmot again asks why PGE cannot accept delivery at PACW.PGE POD,⁴⁶ a question
2 that has been asked and answered numerous times.

3 No matter how many data requests Blue Marmot issues, PGE will continue to
4 maintain that Blue Marmot is unable to deliver its power to PGE at PACW.PGE. Blue
5 Marmot apparently disagrees with PGE’s assessment of the situation, but this disagreement is
6 a legal and not a factual one, and therefore is appropriately resolved through the testimony,
7 hearing, and briefing in this case—not through additional data requests. Blue Marmot
8 already has asked many cumulative and duplicative data requests related to these issues, and
9 further written discovery will not cause PGE to change its view of the situation or give Blue
10 Marmot the response it wants to hear.

11 c. EIM Participation.

12 Blue Marmot states it has been “very difficult to obtain, and evaluate” information
13 about PGE’s EIM participation.⁴⁷ In reality, PGE already has explained its approach to EIM
14 participation and has provided analyses and data, as well as legal citations, supporting its
15 position.

16 PGE has stated that the long-term firm transmission rights it currently holds on the
17 PACW to PGE path will be made available for the EIM, with a portion also subject to usage
18 for reliability or servicing existing contractual arrangements.⁴⁸ PGE has explained that
19 adequate transmission capacity is necessary to optimize the economic benefits of EIM
20 dispatch, and that the studies commissioned by PGE indicate that about 300 MW of two-way
21 connectivity is needed to optimize benefits.⁴⁹ PGE also provided its analysis of EIM
22 participation, updates thereto, and inputs to the analysis showing expected transfers between
23 PGE and PACW, so that Blue Marmot can independently evaluate PGE’s conclusions.⁵⁰

⁴⁶ Attachment A to Blue Marmot’s Response, data request 102.

⁴⁷ Blue Marmot’s Response at 18.

⁴⁸ Attachment A to Blue Marmot’s Response, PGE’s response to data request 10.

⁴⁹ Attachment A to Blue Marmot’s Response, PGE’s response to data request 1.

⁵⁰ Attachment A to Blue Marmot’s Response, PGE’s responses to data requests 2, 3, 34, 50 & 51.

1 In addition, PGE has explained that adequate transmission connectivity is a practical
2 and economic requirement of EIM participation, not a legal requirement.⁵¹ PGE also has
3 explained that adequate connectivity, and in particular import capacity, is a requirement for
4 establishing eligibility for market based rates in the EIM.⁵² PGE provided a copy of the
5 Notice of Change in Status, filed with FERC,⁵³ as well as a citation to a FERC Order
6 explaining the importance of adequate transmission connectivity.⁵⁴ PGE explained why its
7 access to EIM is not impacted by the ATC constraint.⁵⁵

8 Blue Marmot has asked 19 data requests related to these issues, 16 of which PGE
9 already has answered.⁵⁶ Its remaining, unanswered data requests on this matter appear to be
10 aimed at understanding PGE’s legal theory or interpretation of its legal obligations, which are
11 not proper subjects of discovery.⁵⁷ Blue Marmot already has all the factual information that
12 exists about PGE’s EIM participation and PGE clearly has stated its positions. PGE should
13 not be required to respond to further written discovery on this issue.

14 d. PGE’s Open Access Transmission Tariff (OATT).

15 In response to a data request from Blue Marmot asking whether “PGE believe[s] that
16 its OATT requires it to construct new transmission facilities when a transmission constraints
17 [sic] cannot be resolved, to accommodate QF sales or otherwise,” PGE informed Blue
18 Marmot that its “OATT obligations and its PURPA obligations are not directly related, and
19 there is nothing in PGE’s OATT specific to QF transmission or sales.”⁵⁸ Blue Marmot’s 6th
20 set of data requests includes four additional questions referring to PGE’s OATT and asking
21 about PGE’s obligations to Blue Marmot, but PGE’s answer to these requests would be the
22 same as its response to the prior request on this subject—the OATT is not related to PGE’s

⁵¹ Attachment A to Blue Marmot’s Response, PGE’s response to data request 1

⁵² Attachment A to Blue Marmot’s Response, PGE’s response to data request 1.

⁵³ Attachment A to Blue Marmot’s Response, PGE’s response to data request 2.

⁵⁴ Attachment A to Blue Marmot’s Response, PGE’s response to data request 35.

⁵⁵ Attachment A to Blue Marmot’s Response, PGE’s response to data request 58.

⁵⁶ Blue Marmot’s Response at 18.

⁵⁷ Attachment A to Blue Marmot’s Response, data requests 109, 110 & 111 (“Does PGE believe…”).

⁵⁸ Attachment A to PGE’s Reply, PGE’s Response to data request 87.

1 PURPA obligations.⁵⁹ Blue Marmot does not require additional discovery to understand
2 PGE's position on this issue.

3 e. Commission Jurisdiction.

4 Blue Marmot suggests that it cannot determine whether the Commission has
5 jurisdiction over the issues in this case because PGE has not confirmed whether it is
6 requiring transmission upgrades from Blue Marmot.⁶⁰ However, PGE has answered all of
7 Blue Marmot's data requests on this issue,⁶¹ and Blue Marmot's Response does not assert
8 that it seeks additional discovery.⁶² Moreover, to the extent that Blue Marmot seeks to
9 obtain PGE's legal arguments, this is not an appropriate use of the discovery process.

10 f. Concerns Regarding Discrimination Between QFs.

11 Blue Marmot has made numerous, broad data requests regarding PGE's treatment of
12 other off-system QFs, and PGE has worked with Blue Marmot to narrow these requests and
13 provide information relevant to Blue Marmot's concerns. PGE has explained that, prior to
14 learning about the constraint at the PACW.PGE POD, it had not been PGE's practice to ask
15 off-system QFs about their requested delivery point until after they had executed their
16 contract.⁶³ PGE explained that its QF contracting personnel first became aware of the
17 constraint at the PACW.PGE POD in mid-April,⁶⁴ and around April 18, it began asking QFs
18 in the queue to identify their PODs and informing QFs about the constraint.⁶⁵ PGE has
19 explained that all off-system QFs who have requested—but not received—PPAs with a
20 PACW.PGE POD will be given the same options as Blue Marmot.⁶⁶ And finally, PGE has

⁵⁹ See Attachment A to Blue Marmot's Response, data requests 105, 106, 107 & 108.

⁶⁰ Blue Marmot's Response at 19.

⁶¹ Attachment A to Blue Marmot's Response, PGE's responses to data requests 60 & 61.

⁶² See Blue Marmot's Response at 19.

⁶³ Attachment A to Blue Marmot's Response, PGE's response to data request 78.

⁶⁴ Attachment A to Blue Marmot's Response, PGE's response to data request 78.

⁶⁵ Attachment A to Blue Marmot's Response, PGE's responses to data requests 22, 26, 29, 74 & 75.

⁶⁶ Attachment A to Blue Marmot's Response, PGE's response to data request 23.

1 informed Blue Marmot that PGE has not yet determined how to treat off-system QFs that
2 have executed PPAs for delivery at PACW.PGE POD.⁶⁷

3 PGE has provided information about all off-system QF contracts it has executed since
4 April 2015,⁶⁸ and also has provided and continues to provide information about
5 communications with QFs in the queue seeking to deliver at PACW.⁶⁹ In addition, PGE and
6 Blue Marmot resolved a portion of Blue Marmot’s Motion to Compel, with PGE agreeing to
7 provide additional information related to these issues.⁷⁰ Blue Marmot has ample information
8 to determine that PGE has not discriminated against it.

9 PGE also has explained to Blue Marmot that it is working to determine an approach
10 to allocating any additional ATC that becomes available at the PACW.PGE POD, and that it
11 will update Blue Marmot when it has determined its approach.⁷¹ This is not a situation
12 where, as Blue Marmot asserts, PGE simply has to retrieve preexisting documents.⁷² Rather,
13 PGE has been working diligently since it became aware of this issue to develop the best
14 approach to a difficult situation, communicate with affected QFs, and respond to related
15 litigation. PGE already has an obligation to supplement its data responses once it determines
16 its approach, and has assured Blue Marmot that it will do so.⁷³ Further discovery will not
17 hasten PGE’s response; instead, it only will serve to divert PGE resources away from
18 analyzing this issue and making this important determination.

⁶⁷ Attachment A to Blue Marmot’s Response, PGE’s response to data request 23.

⁶⁸ Attachment A to Blue Marmot’s Response, PGE’s responses to data requests 40 & 56.

⁶⁹ Attachment A to Blue Marmot’s Response, PGE’s responses to data requests 25, 41 & 76.

⁷⁰ Email from Irion Sanger to ALJs Kirkpatrick and Arlow, “Blue Marmot Motion to Compel” (Sept. 14, 2017) (“Blue Marmot and PGE have reached a mutual agreement regarding PGE’s provision of additional information, which has resolved one of the two discovery disputes at issue in Blue Marmot’s August 28, 2017 motion to compel.”).

⁷¹ Attachment A to Blue Marmot’s Response, PGE’s response to data request 24.

⁷² Blue Marmot’s Response at 11.

⁷³ Attachment A to Blue Marmot’s Response, PGE’s response to data request 24 (“PGE is in the process of developing a policy to address the circumstances posited in this DR. When that policy is developed, PGE will supplement its response to this DR.”).

1 g. Possible Discrimination in Favor of PGE's Merchant Function.

2 Blue Marmot's concerns regarding discrimination in favor of PGE's Merchant
3 function appear to relate to the fact that PGE Merchant acquired additional transmission
4 capacity at the PACW.PGE POD in June but did not acquire 15 MW of ATC that will
5 become available in November. PGE explained this situation in great depth in its response to
6 data request 55. Like all transmission customers, PGE Merchant's knowledge of ATC is
7 limited to the information posted on OASIS.⁷⁴ PGE Merchant previously held additional
8 transmission on the PACW.PGE path dedicated to the EIM, but when the path was
9 downgraded, that transmission was recalled.⁷⁵ PGE sought to re-acquire some of the recalled
10 transmission after it learned that TTC on the path once again had been increased.⁷⁶ PGE
11 Merchant did not find and acquire the 15 MW that was available starting in November
12 because it did not result from a TTC change and therefore PGE Merchant had no reason to
13 believe additional ATC would be freed up.⁷⁷ PGE has provided a thorough explanation of
14 this issue, and Blue Marmot does not assert that it requires additional information.⁷⁸
15 Therefore, further written discovery is unnecessary.

16 **2. PGE continues to cooperate with Blue Marmot to provide additional**
17 **information and to make its employees available for depositions.**

18 Recently, PGE and Blue Marmot resolved a portion of Blue Marmot's Motion to
19 Compel, and PGE agreed to provide additional information and to search for documents.⁷⁹
20 PGE also has worked cooperatively with Blue Marmot to schedule depositions and identify
21 the appropriate individuals to address the topics of interest to Blue Marmot. Given both

⁷⁴ Attachment A to PGE's Reply, PGE's response to data request 55.

⁷⁵ Attachment A to Blue Marmot's Response, PGE's responses to data requests 4 & 52; Attachment A to PGE's Reply, PGE's response to data request 55.

⁷⁶ Attachment A to PGE's Reply, PGE's response to data request 55.

⁷⁷ Attachment A to PGE's Reply, PGE's response to data request 55.

⁷⁸ Blue Marmot's Response at 21.

⁷⁹ Email from Irion Sanger to ALJs Kirkpatrick and Arlow, "Blue Marmot Motion to Compel" (Sept. 14, 2017) ("Blue Marmot and PGE have reached a mutual agreement regarding PGE's provision of additional information, which has resolved one of the two discovery disputes at issue in Blue Marmot's August 28, 2017 motion to compel.").

1 parties' frustrations with the progress of written discovery and Blue Marmot's struggle to
2 understand the technical issues raised by this case and to pose questions that PGE
3 understands, PGE believes that the depositions—not further data requests—will be the most
4 efficient and effective way for Blue Marmot to obtain any additional information it requires
5 to prepare its opening testimony.

V. CONCLUSION

6 Blue Marmot's data requests have not been commensurate with the needs of the case
7 or with the resources available to the parties, and many of them are unreasonably duplicative,
8 cumulative, and burdensome. As a result of its misunderstanding of the technical issues
9 underlying this case and its disagreement with PGE's view of the facts and interpretation of
10 the law, Blue Marmot has posed numerous data requests that are repetitive and difficult to
11 understand. Nevertheless, PGE has endeavored to interpret Blue Marmot's questions and
12 provide it with helpful answers and with additional context on all of the issues identified by
13 Blue Marmot as relevant to this case.

14 ////

15 ////

16 ////

17 ////

18 ////

19 ////

20 ////

21 ////

1 Given all of these facts, PGE respectfully requests that the ALJ grant PGE's Motion
2 for Limitations on Discovery and preclude Blue Marmot from issuing or PGE from
3 responding to written discovery served after Blue Marmot's 5th Set of Data Requests and
4 before PGE files its testimony in this case on December 22, 2017. Alternatively, PGE
5 requests that the ALJ require PGE to respond to only a very limited number of additional
6 written data requests and prohibit Blue Marmot from serving data requests on PGE after Blue
7 Marmot files its testimony and before PGE files its testimony.

Dated September 19, 2017

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Attorneys for Portland General Electric Company

ATTACHMENT A

To

Portland General Electric Company's

Reply to Motion for Limitations on Discovery

September 15, 2017

TO: Irion Sanger
Leslie Freiman
Will Talbott

FROM: Karla Wenzel
Manager, Pricing and Tariffs

**PORTLAND GENERAL ELECTRIC
UM 1829
PGE Response to Blue Marmot Data Request No. 55
Dated August 25, 2017**

Request:

- 55. Why did PGEM not determine the availability of 15 MW of LTF-PTP that the Blue Marmots (via SUSP) were informed was available following its TSR for 60 MW (via SUSP).**

Response:

Like all transmission customers, PGE Merchant's knowledge of ATC is limited to the information posted on OASIS. Further, since PGE Merchant does not have any transmission requests in study state, it does not receive direct communication regarding ATC that could impact any open requests.

In 2015, PGE Merchant reserved 418 MW of transmission service importing from PACW to PGE for the purpose of participating in the CAISO EIM. 142 MW was recalled in 2016, which reduced PGE's reserved capacity to 276 MW. In June 2017, PGE Merchant noted that changes in TTC had resulted in an additional 19 MW of availability. Because a portion of its original transmission reservations had been recalled, PGE Merchant believed that any increase in available transmission would function to "reload" the recalled amount. PGE Transmission informed PGE Merchant that this was not the case. This is discussed in Attachment 52-A of PGE's response to Blue Marmot Data Request No. 52. Hence, PGE Merchant reviewed OASIS for availability following the TTC change and reserved 19 MW. Because PGE Merchant was focused on re-acquiring 19 MW of the previously recalled capacity, it did not find the additional 15 MW that was available further out that was not associated with a change in TTC.

September 14, 2017

TO: Irion Sanger
Leslie Freiman
Will Talbott

FROM: Karla Wenzel
Manager, Pricing and Tariffs

**PORTLAND GENERAL ELECTRIC
UM 1829
PGE Response to Blue Marmot Data Request No. 87
Dated August 28, 2017**

Request:

87. Does PGE believe that its OATT requires it to construct new transmission facilities when a transmission constraints cannot be resolved, to accommodate QF sales or otherwise? Please explain.

Response:

PGE objects to this question to the extent that it requests a legal conclusion. PGE also objects to the clause "or otherwise" as vague, undefined and overbroad. Without waiving these objections, PGE responds that PGE's OATT obligations and its PURPA obligations are not directly related, and there is nothing in PGE's OATT specific to QF transmission or sales.

September 15, 2017

TO: Irion Sanger
Leslie Freiman
Will Talbott

FROM: Karla Wenzel
Manager, Pricing and Tariffs

**PORTLAND GENERAL ELECTRIC
UM 1829
PGE Response to Blue Marmot Data Request No. 91
Dated September 1, 2017**

Request:

- 91. Please refer to PGE's response to Blue Marmot data request 23. Please update this response with PGE's "determination."**

Response:

PGE still is working to craft its approach to this issue and will update Blue Marmot when it has done so.

September 15, 2017

TO: Irion Sanger
Leslie Freiman
Will Talbott

FROM: Karla Wenzel
Manager, Pricing and Tariffs

**PORTLAND GENERAL ELECTRIC
UM 1829
PGE Response to Blue Marmot Data Request No. 92
Dated September 1, 2017**

Request:

- 92. Please refer to PGE's response to Blue Marmot data request 23. Please identify the PGE current or former employees familiar with whether PGE will accept deliveries from other offsystem QFs that have entered into PPAs with PGE and/or have requested PPAs from PGE and that are planning to deliver at PACW.PGE.**

Response:

As noted above, PGE has not yet developed an approach for addressing deliveries from off-system QFs with fully executed PPAs who have indicated that they wish to deliver to the PACW.PGE POD. Once PGE develops its approach regarding QFs with executed contracts, Brett Sims will be able to discuss it. Brett Sims is familiar with PGE's discussions with off-system QFs who have requested PPAs from PGE and indicated that they wish to deliver to the PACW.PGE POD, but do not yet have fully executed PPAs.

September 15, 2017

TO: Irion Sanger
Leslie Freiman
Will Talbott

FROM: Karla Wenzel
Manager, Pricing and Tariffs

**PORTLAND GENERAL ELECTRIC
UM 1829
PGE Response to Blue Marmot Data Request No. 93
Dated September 1, 2017**

Request:

- 93. Please identify the PGE representative(s) who is available to answer deposition questions regarding whether PGE will accept deliveries from other offsystem QFs that have entered into PPAs with PGE and/or have requested PPAs from PGE and that are planning to deliver at PACW.PGE.**

Response:

Please see PGE's response to Blue Marmot Data Request No. 92.

September 15, 2017

TO: Irion Sanger
Leslie Freiman
Will Talbott

FROM: Karla Wenzel
Manager, Pricing and Tariffs

**PORTLAND GENERAL ELECTRIC
UM 1829
PGE Response to Blue Marmot Data Request No. 94
Dated September 1, 2017**

Request:

- 94. Please identify the individual who helped prepare the response to Blue Marmot data request 23.**

Response:

PGE counsel drafted this response at the direction of the client. Once PGE determines its approach for addressing deliveries from off-system QFs with fully executed PPAs who have indicated that they wish to deliver to the PACW.PGE POD, Brett Sims will be able to discuss PGE's approach.

September 15, 2017

TO: Irion Sanger
Leslie Freiman
Will Talbott

FROM: Karla Wenzel
Manager, Pricing and Tariffs

**PORTLAND GENERAL ELECTRIC
UM 1829
PGE Response to Blue Marmot Data Request No. 95
Dated September 1, 2017**

Request:

- 95. Please refer to PGE's response to Blue Marmot data request 23. Please provide all communications with each of the off-system QFs regarding whether PGE will accept deliveries from off-system QFs at the PACW.PGE POD. If the communications were oral, please provide the date, a summary of the communications, and the individuals who made the communications.**

Response:

Please see PGE's Response to Blue Marmot Data Request No. 76 for communications from PGE informing off-system QFs that requested to deliver at PACW.PGE POD that the POD is constrained. PGE informed the developer of the Airport Solar and Lakeview QFs about the constraint at the PACW.PGE POD and that it was working to determine how the constraint might impact deliveries from these QFs via phone call when discovery issues arose in this case concerning the Airport Solar PPA.

September 15, 2017

TO: Irion Sanger
Leslie Freiman
Will Talbott

FROM: Karla Wenzel
Manager, Pricing and Tariffs

**PORTLAND GENERAL ELECTRIC
UM 1829
PGE Response to Blue Marmot Data Request No. 96
Dated September 1, 2017**

Request:

- 96. Please refer to PGE's response to Blue Marmot data request 23. Please identify the PGE representative(s) who is available to answer deposition questions regarding PGE's communications with each of the off-system QFs regarding whether PGE will accept deliveries from off-system QFs at the PACW.PGE POD.**

Response:

Brett Sims.

September 15, 2017

TO: Irion Sanger
Leslie Freiman
Will Talbott

FROM: Karla Wenzel
Manager, Pricing and Tariffs

**PORTLAND GENERAL ELECTRIC
UM 1829
PGE Response to Blue Marmot Data Request No. 97
Dated September 1, 2017**

Request:

97. Does PGE agree that PacifiCorp is able to deliver Blue Marmot's power to PACW.PGE? If not, please explain why Blue Marmot is not able to deliver its power to PGE at the PACW.PGE POD.

Response:

PGE has no update to its response to Data Request No. 24.

September 11, 2017

TO: Irion Sanger
Leslie Freiman
Will Talbott

FROM: Karla Wenzel
Manager, Pricing and Tariffs

**PORTLAND GENERAL ELECTRIC
UM 1829
PGE Response to Blue Marmot Data Request No. 98
Dated September 1, 2017**

Request:

- 98. Please refer to PGE's response to Blue Marmot data request 24. Please provide all internal documents, including draft policies, regarding PGE's draft policy referred to in PGE's response to Blue Marot data request 24.**

Response:

PGE objects that this request seeks emails and drafts of documents that are covered by the attorney-client privilege. Attachment 98-A contains a privilege log that documents the privileged drafts.

UM 1829 PRIVILEGE LOG

Document	Author	Privilege
Draft ATC Allocation Policy	Gary Bachman, outside counsel, Van Ness Feldman	Attorney-Client
Comments on and Redlines to Draft ATC Allocation Policy	David White, counsel, PGE	Attorney-Client
Comments on and Redlines to Draft ATC Allocation Policy	Jordan Schoonover, counsel, McDowell Rackner Gibson	Attorney-Client
Comments on and Redlines to Draft ATC Allocation Policy	Lisa Rackner and Jordan Schoonover, counsel, McDowell Rackner Gibson	Attorney-Client

September 15, 2017

TO: Irion Sanger
Leslie Freiman
Will Talbott

FROM: Karla Wenzel
Manager, Pricing and Tariffs

**PORTLAND GENERAL ELECTRIC
UM 1829
PGE Response to Blue Marmot Data Request No. 99
Dated September 1, 2017**

Request:

99. Please identify the individuals who helped prepare the response to Blue Marmot data request 24.

Response:

PGE counsel drafted this response at the direction of the client. Once PGE determines its approach for addressing any additional ATC that becomes available, Brett Sims will be able to discuss PGE's approach.

September 15, 2017

TO: Irion Sanger
Leslie Freiman
Will Talbott

FROM: Karla Wenzel
Manager, Pricing and Tariffs

**PORTLAND GENERAL ELECTRIC
UM 1829
PGE Response to Blue Marmot Data Request No. 100
Dated September 1, 2017**

Request:

100. Please identify the representative(s) who is available to answer deposition questions regarding the following question: "If additional ATC is made available at the PACW.PGE POD, how would priority be established PGE accept deliveries from other offsystem QFs that have entered into PPAs with PGE and/or have requested PPAs from PGE and that are planning to deliver at PACW.PGE?"

Response:

PGE is working to develop an approach that responds to this request. Once PGE develops such an approach, Brett Sims will be able to discuss it.

September 15, 2017

TO: Irion Sanger
Leslie Freiman
Will Talbott

FROM: Karla Wenzel
Manager, Pricing and Tariffs

**PORTLAND GENERAL ELECTRIC
UM 1829
PGE Response to Blue Marmot Data Request No. 101
Dated September 1, 2017**

Request:

101. Regarding the Airport Solar PPA. Please identify the price for each relevant time period listed in the PPA (e.g., on-peak, off-peak, month, daily, etc.) and the methodology by which PGE calculated the price, including any adjustments for deliverability, transmission, etc.

Response:

PGE objects that this request seeks information that is the subject of a pending Motion to Compel. If the Commission resolves the Motion to Compel in Blue Marmot's favor, PGE will provide the requested information.