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VIA ELECTRONIC FILING

PUC Filing Center
Public Utility Commission of Oregon
PO Box 1088
Salem, OR 97308-1088

Re: UM 1829 - Portland General Electric Company's Response to the Blue Marmots' Motion to Strike

Attention Filing Center:

Attached for filing in the above-captioned docket is Portland General Electric Company's Response to the Blue Marmots' Motion to Strike.

Please contact this office with any questions.

Very truly yours,

Wendy McIndoo
Office Manager

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 THE
BLUE MARMOTS’ MOTION TO
STRIKE**

I. INTRODUCTION

1 The case raises a straightforward but critically important question regarding the Public
2 Utility Commission of Oregon’s (Commission) implementation of the Public Utility Regulatory
3 Policies Act (PURPA): Who is responsible for the costs required to facilitate the delivery of
4 energy generated by an off-system qualifying facility (QF)? This question arises because the
5 above-captioned Blue Marmot LLCs (Blue Marmots)—five 10 MW QFs planned for
6 construction in Lake County, Oregon, near the California border—plan to wheel their output
7 over PacifiCorp’s system to the point of interconnection with Portland General Electric
8 Company (PGE) at the PACW-PGE interface, to take advantage of PGE’s higher avoided cost
9 rates. However, there is insufficient firm available transfer capability (ATC) to allow the Blue
10 Marmots to deliver their output via the PACW-PGE interface, resulting in the present dispute.

11 PGE believes that the law is clear. If the Blue Marmots wish to deliver their output to PGE
12 at the PACW-PGE interface, then they must pay for the costs of required upgrades—or they
13 must transmit their output to a point on PGE’s system where there is sufficient ATC for it to be
14 received. The Blue Marmots, on the other hand, contend that it is PGE and its customers who

1 should bear these costs, regardless of how exorbitant. It is their position that their only
2 obligation is to wheel their output to the PACW-PGE interface, at which point PGE's customers
3 must take on the costs of either performing system upgrades to allow for delivery or wheeling the
4 output to an unconstrained interface. Accordingly, the Blue Marmots argue that it is immaterial
5 whether there is sufficient ATC for them to schedule deliveries to PGE over the PACW-PGE
6 interface, or how much upgrades or alternative arrangements for delivery would cost. The Blue
7 Marmots also claim that the Commission is actually preempted from considering any of these
8 matters, contending that they lie within the exclusive jurisdiction of the Federal Energy
9 Regulatory Commission (FERC).

10 Based on their narrow view of a QF's obligations, the Blue Marmots filed a Motion to
11 Strike (Motion) all of PGE's testimony relevant to their inability to deliver at the PACW-PGE
12 interface, the costs of upgrades that would be required to facilitate delivery of their output, and
13 the costs of delivering their output to an unconstrained interface. Specifically, the Blue Marmots
14 ask the Commission to strike PGE's testimony demonstrating that:

- 15 (1) From a technical standpoint, given the current constraint at the PACW-PGE interface,
16 the Blue Marmots cannot schedule deliveries to PGE at that location, and under
17 required processes and procedures, any attempt to schedule deliveries will necessarily
18 be rejected.
- 19 (2) At the Blue Marmots' request, PGE conducted a System Impact Study to determine
20 whether any system upgrades could be made to allow the Blue Marmots to deliver their
21 output via the PACW-PGE interface. That study determined that there is no system
22 upgrade that could achieve that goal. Specifically, the System Impact Study made the
23 following findings:
 - 24 (a) PGE could increase the total transfer capability (TTC) at the PACW-PGE
25 interface, but it would cost approximately \$36 million for upgrades to achieve
26 only a 19 MW increase, with diminishing returns with further investments.
 - 27 (b) The only solution that would allow the Blue Marmots to successfully deliver
28 their output to PGE (other than delivery via an existing, unconstrained
29 interface, which they have declined) would be for PGE to create a new
30 interface to allow the Blue Marmots to deliver their output directly to PGE.
31 This new interface would require an investment of approximately \$360,000,
32 but this solution would also require the Blue Marmots to build a new
33 transmission line from their facilities to PGE at an approximate cost of \$900
34 million.

1 (3) It would cost the Blue Marmots approximately \$14 million over a 20-year term to
2 transmit their output to an unconstrained point on PGE's system.

3 In essence, the Blue Marmots are asking the Commission to order PGE to accept their output at
4 an interface that is constrained—with no real understanding of the nature of the constraint, the
5 potential costs, or the impact on PGE's customers.

6 The Blue Marmots' Motion to Strike must be rejected. First, contrary to the Blue
7 Marmots' claims, PGE's testimony is highly relevant to the issues presented in this case.
8 PURPA requires that utility customers be held indifferent to purchases of QF energy and that
9 customers be required to pay no more than the utility's actual avoided costs. Thus, the
10 Commission cannot fulfill its obligations under PURPA to protect PGE's customers without a
11 clear understanding of the reason for, nature of, and amount of those costs required to facilitate
12 delivery of the Blue Marmots' output to PGE.

13 Second, the Blue Marmots' claim that the Commission is preempted from considering
14 PGE's testimony is unsupported. First, FERC's exclusive jurisdiction over transmission matters
15 does not extend broadly to the transmission-related issues raised in this case. In fact, both
16 Congress and FERC have granted state public utility commissions broad authority under PURPA
17 to set the terms and conditions of QF sales to utilities and have imposed on these commissions
18 the responsibility to protect utility customers from costs in excess of those avoided by virtue of
19 QF purchases. In fulfilling these mandates, the Commission is regularly called upon to address
20 transmission costs, including system upgrades, that are required for QF interconnection and the
21 delivery of QF sales. The subject matter included in PGE's testimony fits squarely within the
22 Commission's jurisdiction.

23 Finally, the Blue Marmots have not actually raised any disputes regarding PGE's
24 transmission studies—despite spending more than 10 pages discussing ways in which they *might*
25 dispute PGE's conclusions. In fact, the Blue Marmots' hypothetical criticisms are utterly

1 unfounded and reflect a fundamental misunderstanding of PGE’s analyses.¹ Moreover, the Blue
2 Marmots’ attempt to remove significant portions of PGE’s testimony from the record because
3 they “may” dispute it, and the potential dispute could be FERC-jurisdictional, is unpersuasive.
4 Their vague and speculative assertions cannot credibly serve as the basis for striking substantial
5 portions of PGE’s testimony.²

6 The issues presented by this case go to the heart of the Commission’s obligation to
7 implement PURPA without causing harm to utility customers. The Commission should reject
8 the Blue Marmots’ invitation to resolve these issues in a vacuum—and instead should decide this
9 case based on a complete evidentiary record, with full knowledge of the technical issues and the
10 impacts on PGE’s customers.

II. FACTUAL BACKGROUND

11 A. The Blue Marmots’ Requests for PURPA Contracts

12 The Blue Marmots are five solar QF projects proposed for development by EDPR NA
13 (EDPR).³ EDPR plans to construct the projects in Lake County, Oregon, near the California
14 border, to interconnect directly with PacifiCorp, and to wheel their net output to PGE, over 300
15 miles away.⁴ After PGE sent EDPR executable Power Purchase Agreements (PPA) for four of
16 the projects, which EDPR eventually signed and returned, the PGE personnel working on the QF
17 contracting process became aware of a lack of ATC at the PACW-PGE interface.⁵ After
18 ascertaining that the Blue Marmots wished to deliver via this interface, PGE informed the Blue

¹ It is beyond the scope of this Response for PGE to respond to the specific issues that the Blue Marmots suggest *may* exist regarding PGE’s transmission studies. Motion to Strike at 15-27. PGE reserves the right to respond to any criticisms of its studies that actually are raised in future testimony or other evidentiary filings.

² It appears that the real reason for the Blue Marmots’ Motion is that they are unhappy with the results of PGE’s analyses and wish to avoid expending the effort to analyze and confirm or challenge PGE’s methodology and conclusions. For example, they assert “[i]f PGE’s transmission allegations are not stricken, then the Blue Marmots will need to submit voluminous and highly technical responsive testimony regarding the transmission service request and the validity of PGE’s Transmission Study.” Motion to Strike at 4. Testimony should not be stricken to relieve the opposing party of the need to respond to it.

³ PGE/100, Greene-Moore/7.

⁴ PGE/100, Greene-Moore/8.

⁵ PGE/100, Greene-Moore/9.

1 Marmots that they could either: (1) deliver their generation via the BPA-PGE interface, or (2)
2 pay for any upgrades that would allow them to deliver via the PACW-PGE interface.⁶ PGE also
3 assured EDPR that PGE would honor the avoided cost prices currently in effect, as reflected in
4 EDPR's partially executed PPAs, if the delivery issue was not resolved before PGE's avoided
5 cost prices changed.⁷ The Blue Marmots filed the instant complaints, alleging that PGE violated
6 its mandatory-purchase obligation under PURPA and requesting the Commission to bar PGE
7 from raising deliverability concerns or seeking to impose costs on the Blue Marmots.⁸

8 **B. The Blue Marmots' Opening Testimony**

9 On October 13, 2017, the Blue Marmots filed their opening testimony. In this testimony,
10 the Blue Marmots state that they have reserved transmission service on PacifiCorp's system to
11 transmit their output to PGE at the PACW.PGE Point of Delivery (POD).⁹ It is their position—
12 as stated in their testimony and repeated throughout their Motion to Strike—that this reservation
13 alone is sufficient to deliver their output to PGE,¹⁰ and that they are not responsible for any
14 additional costs required for PGE to receive their output.¹¹ In particular, the Blue Marmots
15 testify that it is PGE and not the Blue Marmots who must pay for any system upgrades that
16 would be required to allow PGE to accept their deliveries.¹² Alternatively, the Blue Marmots
17 testify that PGE could simply pay to wheel the Blue Marmots' output to the BPA-PGE
18 interface—which they estimate would cost \$14 million over the life of their PPAs.¹³ The Blue
19 Marmots' testimony also conveys their position that they are entitled to deliver their output to
20 any delivery point they choose and that PGE must accept their output at any delivery point.¹⁴

⁶ PGE/100, Greene-Moore/11.

⁷ PGE/100, Greene-Moore/23.

⁸ Blue Marmot V Complaint at 14-15, Docket No. UM 1829 (Apr. 28, 2017).

⁹ Blue Marmot/200, Talbott/11; *see also* PGE/102, Greene-Moore/1-32 (the Blue Marmots' transmission service agreements with PacifiCorp).

¹⁰ *See, e.g.*, Motion to Strike at 3, 4; Blue Marmot/200, Talbott/11-13.

¹¹ *See* Blue Marmot/300, Moyer/6-8, 15-16.

¹² Blue Marmot/300, Moyer/15-17.

¹³ Blue Marmot/100, Irvin/6; Blue Marmot/200, Talbott/11; Blue Marmot/300, Moyer/14, 16-17.

¹⁴ Blue Marmot/300, Moyer/7.

1 Notably, the Blue Marmots’ testimony provides no technical support for their view that
2 their reservation on PacifiCorp’s system would allow them to deliver their output to PGE despite
3 the lack of ATC at the PACW-PGE interface. Nor does the Blue Marmots’ testimony address
4 the System Impact Study performed by PGE Transmission to evaluate whether any upgrades
5 could be performed to facilitate the delivery of the Blue Marmots’ output to PGE via the PACW-
6 PGE interface. That study—discussed in detail below—was not completed until November 17,
7 2017, after the Blue Marmots’ testimony was filed.¹⁵

8 **C. PGE’s Response Testimony**

9 In response to the Blue Marmots’ opening testimony, PGE filed three pieces of testimony,
10 addressing the policy issues raised by this case (Policy Testimony),¹⁶ PGE’s participation in the
11 Western Energy Imbalance Market (EIM Testimony),¹⁷ and transmission issues, including the
12 System Impact Study (Transmission Testimony).¹⁸ Only the testimony relevant to the Blue
13 Marmots’ Motion is summarized here.

14 PGE explains the nature of the constraint at the PACW-PGE interface and why, as a
15 technical matter, the Blue Marmots cannot deliver their output to PGE at that location. PGE’s
16 Transmission Testimony explains that the TTC at that interface, as determined in a joint PGE
17 and PacifiCorp TTC Study, is 320 MW,¹⁹ and that there is insufficient remaining ATC to allow
18 the Blue Marmots to deliver their output to PGE.²⁰ As a result, even though the Blue Marmots
19 have reserved transfer capability on PacifiCorp’s system to *PacifiCorp’s side of the interface*,²¹
20 they will be unable to schedule the delivery of their output to PGE.²²

¹⁵ Confidential PGE/301, Afranji-Larson-Richard/1.

¹⁶ PGE/100, Greene-Moore.

¹⁷ PGE/200, Sims-Rodehorst-Sporborg. The EIM Testimony is largely irrelevant to the issues raised in the Blue Marmots’ Motion and so will not be discussed in this Response.

¹⁸ PGE/300, Afranji-Larson-Richard.

¹⁹ PGE/300, Afranji-Larson-Richard/15.

²⁰ PGE/100, Greene-Moore/9, 17; PGE/300, Afranji-Larson/Richard/12, 15-16.

²¹ PGE/100, Greene-Moore/9-10; PGE/102; Greene-Moore/6 (“This transaction originates in the PACW control area and terminates in the PACW control area.”).

²² PGE/300, Afranji-Larson-Richard/16.

1 In an effort to resolve this dispute through settlement and accommodate the Blue Marmots’
2 wish to deliver their output via the PACW-PGE interface, the parties agreed that EDPR could
3 request that PGE Transmission perform a System Impact Study to evaluate whether upgrades to
4 the PACW-PGE interface could enable delivery of the Blue Marmots’ output.²³ The parties
5 entered a written Agreement Governing Settlement Discussions and Actions Taken to Advance
6 Settlement (Settlement Agreement) clarifying that they took this approach for settlement
7 purposes and agreeing that the study could not be offered as evidence that EDPR concedes it is
8 required to pay for a study of transmission service or that it is responsible for network
9 upgrades.²⁴ However, the Settlement Agreement explicitly states that it does not prohibit PGE
10 from offering in evidence the results of the System Impact Study.

11 PGE’s Transmission Testimony explains that the System Impact Study considered every
12 feasible option for increasing the TTC at the PACW-PGE interface to allow the Blue Marmots to
13 deliver their output to PGE.²⁵ In the end, however, PGE Transmission determined that there is
14 no inexpensive fix to increase PGE’s capability to receive the Blue Marmots’ output.²⁶ PGE
15 Transmission assessed adding a new 230-kV line to the interface, which would cost
16 approximately \$36 million.²⁷ However, that approach increased the TTC by only 19 MW, and
17 PGE determined that adding further lines would yield diminishing returns.²⁸ PGE Transmission
18 also conducted a redispatch analysis to assess varying levels of generation and load in affected
19 Balancing Authority Areas (BAAs), but concluded that no achievable level of redispatch would
20 increase TTC.²⁹

²³ PGE/100, Greene-Moore/18.

²⁴ See PGE/100, Greene-Moore/18. After conferring with the Blue Marmots and given the nature of settlement discussions, PGE is not attaching a copy of the Settlement Agreement to this Response. However, PGE would be happy to provide a copy if the Commission believes it would be helpful and appropriate to do so.

²⁵ PGE/100, Greene-Moore/19-20; PGE/300, Afranji-Larson-Richard/16-19.

²⁶ PGE/100, Greene-Moore/19-20; PGE/300, Afranji-Larson-Richard/16-21.

²⁷ PGE/300, Afranji-Larson-Richard/19.

²⁸ PGE/300, Afranji-Larson-Richard/19. TTC is affected not only by the ability of transmission lines to flow power across the interface but also by the balance of load and generation in the adjacent and neighboring Balancing Authority Areas. PGE/300, Afranji-Larson-Richard/17.

²⁹ PGE/300, Afranji-Larson-Richard/18.

1 Ultimately, the System Impact Study determined that there were no upgrades that could
2 increase the TTC sufficiently to allow for delivery of all the Blue Marmots’ net output over the
3 PACW-PGE interface.³⁰ Given this reality and EDPR’s stated unwillingness to deliver via the
4 BPA-PGE interface, PGE presented the only alternative that could actually achieve delivery to
5 PGE’s system—which would be to create a new interface, bypassing the PACW-PGE interface
6 altogether.³¹ PGE estimated that the cost of creating the new interface would be approximately
7 \$360,000.³² However, this approach would require the Blue Marmots to construct a generation
8 lead line from their facilities to PGE—some 300 miles away—at an estimated cost of \$3 million
9 per mile.³³

10 Finally, PGE’s Policy Testimony explains that none of these system upgrades are reflected
11 in the avoided cost rates included in the Blue Marmots’ PPAs, nor is the cost of the extra leg of
12 transmission that would be required to deliver the Blue Marmots’ output to the BPA-PGE
13 interface.³⁴

III. DISCUSSION

14 PGE’s testimony should not be stricken because it is relevant to the parties’ arguments in
15 this case and is necessary to the Commission’s resolution of this dispute. PGE’s detailed
16 testimony clarifies, rather than confuses, the issues and does not unduly delay or burden this
17 proceeding. The Commission is not barred by field or conflict preemption principles from
18 considering PGE’s transmission-related testimony, and the Commission should reject the Blue
19 Marmots’ unsupported attempt to limit the Commission’s jurisdiction.

³⁰ PGE/300, Afranji-Larson-Richard/17.

³¹ PGE/300, Afranji-Larson-Richard/18-19.

³² PGE/300, Afranji-Larson-Richard/20.

³³ PGE/300, Afranji-Larson-Richard/18-19 & n.11.

³⁴ PGE/100, Greene-Moore/23-24.

1 **A. PGE’s testimony is highly relevant to the issues in this case.**

2 The Blue Marmots’ entire case—and the crux of their Motion to Strike—rests on one
3 simple claim: that by reserving transmission service on PacifiCorp’s system to PacifiCorp’s side
4 of the PACW-PGE interface, the Blue Marmots have fulfilled their obligation under PURPA to
5 deliver their net output to PGE.³⁵ In short, the Blue Marmots believe that their *only* obligation is
6 to transmit their output to PacifiCorp’s side of its interface with PGE at the Blue Marmots’
7 preferred delivery point on PacifiCorp’s system, and that PGE must accept the power there, *no*
8 *matter what*.³⁶ Based on this view, the Blue Marmots now move to strike all PGE testimony that
9 does not align with their overly simplistic, factually incorrect, and legally flawed perspective.

10 The Blue Marmots’ position fails to acknowledge the fundamental and incontrovertible fact
11 that their reservation on PacifiCorp’s system does not ensure deliverability to PGE. In fact, as a
12 practical matter, despite having made reservations on PacifiCorp’s system to wheel their output
13 to the PacifiCorp side of the PACW-PGE interface, they cannot deliver their output to PGE at
14 that location because there is insufficient ATC to allow for scheduling of deliveries. Moreover,
15 as a matter of law: (1) the Blue Marmots are not entitled to deliver their output to any delivery
16 point they desire, regardless of costs or constraints, and (2) the Blue Marmots are responsible for
17 the costs of necessary upgrades or alternative transmission arrangements required to facilitate
18 delivery of their output to PGE’s system. Thus, the testimony the Blue Marmots ask to strike is
19 not just relevant—it is critical to resolution of this case.

20 ***I. As a practical matter, the Blue Marmots cannot deliver their power via the***
21 ***PACW-PGE interface, and PGE’s testimony is relevant because it explains why.***

22 The Blue Marmots’ position—that their only obligation is to reserve transmission service
23 from PacifiCorp to the delivery point of the Blue Marmots’ choosing³⁷—assumes that their
24 reservation currently enables them to deliver their output via the PACW-PGE interface—a
25 crucial fact that PGE disputes. As PGE’s testimony explains, there is no long-term firm ATC at

³⁵ See, e.g., Motion to Strike at 4, 8

³⁶ See Motion to Strike at 3-4.

³⁷ See, e.g., Motion to Strike at 4, 8.

1 this interface, and therefore, as a technical matter, the Blue Marmots' will not be able to schedule
2 their output to reach PGE's system.³⁸ Despite the clear importance of these matters to the
3 resolution of this case, the Blue Marmots ask that PGE's testimony be stricken.³⁹

4 The Blue Marmots' position is paradoxical. On the one hand, the Blue Marmots ask the
5 Commission to determine that they have made their power available to PGE—arguing that their
6 *transmission* arrangements with PacifiCorp are relevant, and in fact dispositive, in this case.⁴⁰
7 On the other hand, they also argue that the Commission may not consider PGE's testimony
8 explaining why these *transmission* arrangements do not and cannot allow the Blue Marmots to
9 reach PGE's system.⁴¹ The contradictory nature of the Blue Marmots' position is evidenced by
10 their proposed treatment of PGE's testimony in the paragraph below, which renders the text both
11 inaccurate and misleading:

12 What that means is that PacifiCorp theoretically can deliver the Blue Marmots'
13 generation to the edge of PacifiCorp's system. ~~However, because there is no ATC~~
14 ~~on the PACW to PGE path, the generation cannot travel from the PACW.PGE~~
15 ~~POD on PacifiCorp's side of the interface to PGE's side of the interface, which is~~
16 ~~technically the Point of Receipt (POR). Furthermore, as explained in the~~
17 ~~Transmission Testimony, power cannot be left at the POD and must continue on~~
18 ~~to its final destination. As a result, despite having made a reservation on~~
19 ~~PacifiCorp's system, the Blue Marmots would be unable to schedule delivery of~~
20 ~~their output to PGE.~~⁴²

21 As this example shows, if PGE's testimony is stricken, the Commission will not have the
22 information it needs to assess whether the Blue Marmots can fulfill their obligation to deliver
23 their output to PGE.

24 ***2. The Blue Marmots do not have unfettered discretion to select a constrained***
25 ***delivery point, and PGE's testimony is relevant because it demonstrates why the***
26 ***Blue Marmots' preferred delivery point is not feasible.***

27 Although PGE does not dispute its obligation to purchase the Blue Marmots' net output,
28 PGE believes that where—as here—a viable alternate delivery point exists, a QF can be required

³⁸ PGE/100, Greene-Moore/18; PGE/300, Afranji-Larson-Richard/13-14, 16.

³⁹ See Motion to Strike, Attachment A.

⁴⁰ See Motion to Strike at 3.

⁴¹ See Motion to Strike, Attachment A.

⁴² Motion to Strike, Attachment A; PGE/100, Greene-Moore/17.

1 to deliver to that alternate point if delivery at the QF’s preferred point could impose significant
2 costs on the utility’s customers. PGE’s testimony is relevant because it demonstrates why the
3 Blue Marmots’ preferred delivery point is not feasible.

4 The Commission, affirmed by the Oregon Court of Appeals, has made clear that a QF does
5 not have absolute discretion to choose its delivery point and that a utility can require a QF to
6 deliver to a reasonable delivery point. In *Water Power Company*,⁴³ an off-system QF and a
7 utility disagreed about the point of delivery.⁴⁴ The QF argued that the utility had “a statutory
8 obligation to purchase electric power from it and that [the utility’s] best interests, or preference
9 as to a delivery point, [we]re irrelevant.”⁴⁵ The Commission rejected the QF’s position,
10 determining that the utility could require the QF to deliver at the point that was better for the
11 utility and found that the utility’s position as to the delivery point was “reasonable in terms of its
12 needs.”⁴⁶ The Court of Appeals upheld the Commission’s decision.⁴⁷

13 As this case demonstrates, nothing in PURPA or FERC’s implementing regulations entitles
14 the Blue Marmots to unilaterally decide on a particular delivery point, if delivery at that point
15 will not be feasible or will impose unreasonable costs on PGE’s customers.⁴⁸ PGE’s testimony
16 that the Blue Marmots seek to strike explains why the delivery point the Blue Marmots have
17 chosen is not feasible, in the absence of upgrades or additional third-party transmission
18 arrangements, and PGE’s testimony is therefore relevant to the issues in this case.

19 **3. *By law, the Blue Marmots are responsible for the costs to deliver their output to***
20 ***PGE, and PGE’s testimony is relevant to determining these costs.***

21 PGE’s position in this case rests on one fundamental principle: If PGE is required to
22 accept the Blue Marmots’ output at their chosen delivery point, and if doing so imposes costs on
23 PGE that are not accounted for in PGE’s avoided cost rate, then the Blue Marmots must bear

⁴³ *Water Power Co., Inv. v. PacifiCorp*, 99 Or App 125 (1989).

⁴⁴ *Id.* at 127-29.

⁴⁵ *Id.* at 130.

⁴⁶ *Id.* at 129.

⁴⁷ *Id.* at 130, 134.

⁴⁸ *See id.*

1 those costs. PGE’s testimony is relevant to this determination because it explains why
2 significant costs would be required to deliver the Blue Marmots’ output to PGE, and further
3 describes the magnitude of the costs. In short, as detailed in the System Impact Study, an
4 estimated \$36 million in system upgrades would be required to allow the Blue Marmots to
5 deliver just 19 MW of their generation to the PACW-PGE interface.⁴⁹ Further, to create a new
6 interface to allow the Blue Marmots to deliver all of their output to PGE would require \$360,000
7 in estimated upgrades, plus approximately \$900 million for construction of a new generation lead
8 line.⁵⁰ Alternatively, as the Blue Marmots state in their own testimony, it would cost
9 approximately \$14 million to wheel the Blue Marmots’ output from the PACW-PGE interface to
10 the BPA-PGE interface for delivery there.⁵¹

11 Despite, or perhaps because of, the exorbitant expense involved, the Blue Marmots seek to
12 strike all⁵² evidence of these costs from the record, essentially asking the Commission to find
13 that PGE is responsible for them, without regard to the impact on the customers who will
14 ultimately bear them. The Commission should reject this position.

15 One of the Commission’s fundamental duties in implementing PURPA is protecting utility
16 customers from bearing any excessive costs. PURPA requires that the rates paid by utilities for
17 QF output be “just and reasonable,”⁵³ and FERC’s regulations and orders mandate that utilities
18 pay QFs no more than the utility’s avoided cost and that customers remain indifferent to the
19 purchase of QF generation.⁵⁴ FERC has recognized that “transmission or distribution costs

⁴⁹ PGE/300, Afranji-Larson-Richard/19; Confidential PGE/301, Afranji-Larson-Richard/12.

⁵⁰ PGE/300, Afranji-Larson-Richard/18-19 & n.11; Confidential PGE/301, Afranji-Larson-Richard-14.

⁵¹ Blue Marmot/100, Irvin/6; Blue Marmot/200, Talbott/11; Blue Marmot/300, Moyer/13.

⁵² Even the \$14 million estimate for the cost of delivery via BPA-PGE, which comes from the Blue Marmots’ own testimony—where it appears three times. Blue Marmot/100, Irvin/6; Blue Marmot/200, Talbott/11; Blue Marmot/300, Moyer/13.

⁵³ 16 U.S.C. § 824a-3(b); 18 CFR § 292.304(a).

⁵⁴ 18 CFR § 292.304(d); *see also* ORS 758.505(1) (defining “avoided cost”); *So. Cal. Edison Co.*, 71 F.E.R.C. ¶ 61,269, 62,079-80 (June 2, 1995) (stating that in adopting PURPA, “Congress was not asking utilities and utility ratepayers to pay more than they otherwise would have paid for power. . . PURPA requires an electric utility to purchase power from a QF, but only if the QF sells at a price no higher than the cost the utility would have incurred for the power if it had not purchased the QF’s energy and/or capacity, i.e. would have generated itself or purchased from another source. The intention was to make ratepayers indifferent as to whether the utility used more traditional sources of power or the newly-encouraged alternatives.”).

1 directly related to installation and maintenance of the physical facilities necessary to permit
2 interconnected operations” may be accounted for in “the determination of avoided costs if they
3 have not been separately assessed as interconnection costs.”⁵⁵ In other words, system upgrades
4 required to permit interconnected operations may be recovered either separately, or in avoided
5 costs, but they must be accounted for. In this case, the avoided cost prices included in the Blue
6 Marmots’ PPAs do not include costs for system upgrades or a second leg of off-system
7 transmission service.⁵⁶ Therefore, if the Blue Marmots wish to deliver their output to PGE’s
8 system via the PACW-PGE interface, they must be held responsible for the costs required to
9 allow them to do so.⁵⁷

10 The Commission recently reaffirmed this principle in Docket No. UM 1610 when it
11 addressed the responsibility QFs bear for costs of third-party transmission service required to
12 move QF generation out of a transmission-constrained area to load.⁵⁸ The Commission
13 recognized that FERC’s orders appear to leave open multiple ways that state commissions may
14 account for additional costs imposed by a QF—“whether by lowering avoided cost rates,
15 separately in interconnection cost assessments, through an addendum . . . or by some other
16 means.”⁵⁹ Stating the matter concisely, the Commission concluded that “any costs imposed on a
17 utility that are above the utility’s avoided costs must be assigned to the QF in order to comport

⁵⁵ *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215, P 38 n.73 (Dec. 16, 2013).

⁵⁶ PGE/100, Greene-Moore/23-24.

⁵⁷ The Commission also is bound by Oregon law, which requires it to set “[t]he terms and conditions for the purchase of energy” from QFs, consistent with PURPA. ORS 758.535(2). More generally, the Commission “shall make use of [its] jurisdiction and powers . . . to protect [public utility] customers . . . from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.” ORS 756.040(1). The Commission cannot ensure that its federal and state mandates are carried out in this case without a clear understanding of the costs that would be imposed if PGE were required to accept delivery at the PACW-PGE interface.

⁵⁸ *In the Matter of Public Utility Commission of Oregon Staff Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 14-058 at 16-22 (Feb. 24, 2014).

⁵⁹ See Order No. 14-058 at 22; see also 18 C.F.R. § 292.101(b)(7) (“Interconnection costs do not include any costs included in the calculation of avoided costs.”); *Pioneer Wind Park I, LLC* at P 38 n.73 (“[I]mplicit in [FERC’s] regulations, transmission or distribution costs directly related to installation and maintenance of the physical facilities necessary to permit interconnected operations may be accounted for in the determination of avoided costs if they have not been separately assessed as interconnection costs.”).

1 with PURPA avoided cost principles.”⁶⁰ The Commission also has made clear that system
2 upgrades for interconnection of a QF are the QF’s responsibility.⁶¹

3 PGE recognizes that the Commission has not previously been presented with the
4 opportunity to categorize or assess costs like those presented in this case, which are required to
5 allow an off-system QF to deliver to the purchasing utility. PGE believes that these costs fit well
6 within FERC’s definition of interconnection costs:

7 [T]he reasonable costs of connection, switching, metering, transmission,
8 distribution, safety provisions and administrative costs incurred by the electric
9 utility directly related to the installation and maintenance of the physical facilities
10 necessary to permit interconnected operations with a qualifying facility, to the
11 extent such costs are in excess of the corresponding costs which the electric utility
12 would have incurred if it had not engaged in interconnected operations, but
13 instead generated an equivalent amount of electric energy itself or purchased an
14 equivalent amount of electric energy or capacity from other sources.⁶²

15 However, these costs also could be viewed simply as the costs of system upgrades required to
16 facilitate delivery. Regardless of how they are labelled, it is clear these costs are not included in
17 PGE’s avoided cost rates,⁶³ and if they are imposed on PGE, customers would be paying more
18 for QF output than the utility’s actual avoided cost and would not be indifferent to the source of
19 the power.⁶⁴ The Blue Marmots must be held responsible for the costs imposed, and PGE’s
20 testimony is relevant to assessing such costs.

21 The Blue Marmots assert that the Commission’s authority to implement PURPA in this
22 case is bound by three FERC orders, which they claim “state that a QF’s only transmission-
23 related obligation is to transmit its power to the purchasing utility and that the purchasing utility
24 must accept and manage that power.”⁶⁵ Based on this simple statement, the Blue Marmots argue

⁶⁰ Order No. 14-058 at 22.

⁶¹ See *In the Matter of Rulemaking to Adopt Rules Related to Small Generator Interconnection*, Docket No. AR 521, Order No. 09-196 at 5 (June 8, 2009); *In the Matter of Investigation into Interconnection of PURPA Qualifying Facilities with Nameplate Capacity Larger than 20 Megawatts to a Public Utility’s Transmission or Distribution System*, Docket No. UM 1401, Order No. 10-132 at 3 (Apr. 7, 2010).

⁶² 18 C.F.R. § 292.101(b)(7).

⁶³ See PGE/100, Greene-Moore/23-24.

⁶⁴ See *So. Cal. Edison Co.* at 62,079-80.

⁶⁵ Motion to Strike at 3.

1 that “the Commission cannot adjudicate whether PGE can impose additional transmission
2 requirements beyond securing transmission service from PacifiCorp to PGE’s system, or at least
3 to the PACW.PGE POD, which is the location at which the change of ownership occurs between
4 PGE and PacifiCorp.”⁶⁶ However, the Blue Marmots’ position is legally flawed because none of
5 the cases they cite address a QF’s responsibility for the costs required to deliver its output to the
6 utility—or otherwise suggest that QFs are not responsible for system upgrades/interconnection
7 costs.

8 *Pioneer Wind Park I, LLC*⁶⁷ dealt with an on-system QF—not an off-system QF seeking to
9 deliver through a constrained interface—and in that case, FERC held that the utility may not
10 curtail a QF or charge the QF for transmission service from the point of interconnection to the
11 utility’s load.⁶⁸ Thus, this case is inapplicable here because PGE does not propose to curtail the
12 Blue Marmots’ operation or to charge them for transmission service. To be clear, PGE
13 understands that once the Blue Marmots have achieved delivery of their output, PGE is
14 responsible for transmitting their output to load. However, in issuing its holding in *Pioneer*
15 *Wind Park*, FERC explicitly noted that the QF would still be required to pay interconnection
16 costs or to “account for transmission or distribution costs directly related to installation and
17 maintenance of the physical facilities necessary to permit interconnected operations” in the
18 determination of avoided costs.⁶⁹ Thus, PGE’s position in this case is consistent with FERC’s
19 holding in *Pioneer Wind Park*.

20 *Kootenai Electric Cooperative, Inc.*⁷⁰ dealt with the technical question of where a QF’s
21 delivery occurred on a transmission line where the point of delivery for scheduling purposes was
22 located separate from and prior to the point of change in ownership of facilities.⁷¹ In that case,
23 there was no suggestion that delivery was impossible—or that system upgrades/interconnection

⁶⁶ Motion to Strike at 3-4.

⁶⁷ *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215.

⁶⁸ *Id.* at PP 37-38.

⁶⁹ *Id.* at P 38, n.73.

⁷⁰ *Kootenai Electric Cooperative, Inc.*, 143 FERC ¶ 61,232 (June 14, 2013).

⁷¹ *Id.* at PP 30-32.

1 costs would be required to facilitate delivery of the QF’s output.⁷² Here, in contrast, the parties’
2 dispute concerns whether delivery is possible at the QF’s proposed delivery point, not where the
3 delivery occurs. Therefore, FERC’s statement in *Kootenai* that the QF’s delivery occurred at the
4 change in ownership of facilities is not relevant to or dispositive in this case.

5 Finally, in *PáTu Wind Farm, LLC*,⁷³ the parties’ dispute centered around the QF’s desire to
6 deliver using dynamic scheduling.⁷⁴ Again, there was no question about whether delivery was
7 possible; instead, the question concerned the method of delivery. FERC stated that, “once
8 PáTu’s net output is delivered” to PGE, it is up to PGE to determine how to deliver the output to
9 load.⁷⁵ FERC was not presented with, nor did it comment upon, the proper approach when
10 delivery at the QF’s chosen delivery point is not feasible.

11 **B. Consideration of PGE’s transmission-related testimony clarifies, rather than**
12 **confuses, the issues and does not delay the case or prejudice the Blue Marmots.**

13 The Blue Marmots assert that PGE’s transmission study testimony “confuses the issues,
14 may cause undue delay, and results in unfair prejudice that substantially outweighs its probative
15 value.”⁷⁶ Each of these assertions is incorrect. First, rather than confusing the issues in this
16 case, PGE’s testimony provides detailed explanation of key factual issues to avoid confusion.
17 Second, PGE agreed to the Blue Marmots’ request to adjust the schedule in this case to allow the
18 Blue Marmots additional time to receive a ruling on their Motion to Strike and to respond to
19 PGE’s testimony, and therefore, to the extent the schedule has been delayed, it was at the Blue
20 Marmots’ request.⁷⁷

⁷² *Id.*

⁷³ *PáTu Wind Farm, LLC*, 150 FERC ¶ 61,032 (Jan. 22, 2015).

⁷⁴ *Id.* at P 2.

⁷⁵ *Id.* at P 54.

⁷⁶ Motion to Strike at 7.

⁷⁷ See Motion to Amend Procedural Schedule (Feb. 23, 2018); Ruling Granting Motion to Amend Procedural Schedule (Feb. 23, 2018).

1 Third, the possibility that the Blue Marmots’ responsive testimony “may require
2 independent study of PGE’s transmission system,”⁷⁸ or that “[a]dditional discovery would be
3 necessary,”⁷⁹ does not mean PGE’s testimony should be stricken. PGE has responded to
4 numerous data requests about technical aspects of its transmission-related testimony and will
5 continue to respond to reasonable discovery. If EDPR persists in its belief that PGE’s TTC
6 Study and/or System Impact Study are flawed, EDPR has adequate resources to retain a
7 consultant to review the studies. In fact, this process appears to be underway, as EDPR has
8 requested through discovery that the cases PGE used in its System Impact Study and TTC Study
9 be sent to EDPR’s consultants at Energy Strategies, LLC, one of whom already has provided
10 testimony in this case,⁸⁰ and PGE complied with that request.⁸¹ Furthermore, PGE already
11 obtained an independent, third-party review of its TTC Study and made that report available to
12 the Blue Marmots by attaching it to PGE’s testimony.⁸²

13 Finally, PGE’s testimony is highly probative because it adds crucial detail to the key issues
14 in dispute, which weighs against striking PGE’s testimony. The mere fact that EDPR finds the
15 detailed information in PGE’s testimony harmful to EDPR’s legal arguments does not mean that
16 PGE’s testimony results in “unfair prejudice” and should be stricken.

17 **C. The Commission is not preempted from considering PGE’s transmission-related**
18 **testimony.**

19 The Supremacy Clause provides that the Constitution and federal laws “shall be the
20 supreme Law of the Land,”⁸³ and, as a result, “federal law preempts contrary state law.”⁸⁴ State
21 law can be preempted either expressly or implicitly, and courts ascertain whether a federal law

⁷⁸ Motion to Strike at 8.

⁷⁹ Motion to Strike at 16.

⁸⁰ Blue Marmot/300, Moyer/1.

⁸¹ PGE Response to Blue Marmot Data Request No. 119.

⁸² PGE/300, Afranji-Larson-Richard/19-20; PGE/302.

⁸³ U.S. Const. Art. VI, § 2.

⁸⁴ *Hughes v. Talen Energy Mktg., LLC*, 136 S.Ct. 1288, 1297 (2016).

1 preempts state law by examining legislative intent.⁸⁵ If a federal law expressly preempts state
2 authority, courts “need not go beyond that language to determine whether Congress intended”
3 preemption.⁸⁶ “In the absence of explicit statutory language signaling an intent to pre-empt,”
4 courts will “infer such intent where” the state law is either “field” or “conflict” preempted by
5 federal law.⁸⁷

6 Here, the Blue Marmots argue that the validity of PGE’s System Impact Study and “other
7 related transmission claims” are subject to exclusive FERC jurisdiction and that both field and
8 conflict preemption principles prevent the Commission from considering PGE’s testimony on
9 these subjects.⁸⁸ In particular, the Blue Marmots suggest that they may dispute the validity of
10 both PGE’s TTC Study and its System Impact Study and that the Commission does not have
11 either the jurisdiction or technical expertise to consider these issues.⁸⁹ Similarly, the Blue
12 Marmots assert that the Commission does not have jurisdiction to “evaluate PGE’s claim that the
13 transmission service the Blue Marmots have purchased from PacifiCorp . . . is not legally or
14 technically sufficient to reach PGE’s transmission system.”⁹⁰ At times, the Blue Marmots also
15 appear to assert even more broadly that any testimony related to the Blue Marmots’ options for
16 delivery of their output and the costs of these options, or testimony that contains technical
17 information about the transmission system or the requirements for scheduling transmission
18 service, is also preempted and must be stricken.⁹¹

19 The Blue Marmots’ claims of field and conflict preemption should both be rejected. First,
20 FERC’s exclusive jurisdiction over interstate transmission service does not preclude the

⁸⁵ *Nw. Cent. Pipeline Corp. v. State Corp. Comm’n*, 489 U.S. 493, 509 (1989).

⁸⁶ *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 484 (1996).

⁸⁷ *Northwest Cent. Pipeline*, 489 U.S. at 509; *Talen Energy Mktg.*, 136 S.Ct. at 1297.

⁸⁸ Motion to Strike at 1-2, 7-8, 13. In basing their preemption argument on field and conflict preemption, the Blue Marmots appear to concede—correctly—that the Commission’s jurisdiction over this case has not been expressly preempted.

⁸⁹ Motion to Strike at 1-2, 13.

⁹⁰ Motion to Strike at 2.

⁹¹ Motion to Strike at 3-5, 15-21; Attachment A (seeking to strike information not related to the System Impact Study, including, for example, testimony regarding the anatomy of the PACW-PGE interface, the costs of delivering the Blue Marmots’ output to BPA, and the Blue Marmots’ inability to schedule their output for delivery via the PACW-PGE interface).

1 Commission’s consideration of all transmission-related matters and is not so broad as to preempt
2 the issues raised in this docket. On the contrary, FERC, the federal courts, and this Commission
3 all recognize the state’s central role in implementing PURPA, which regularly includes
4 consideration of transmission-related issues, such as the costs to deliver QF energy. Therefore,
5 contrary to the Blue Marmots’ claim, field preemption does not apply. Second, there is no
6 conflict between state regulation of QF activities and federal laws or regulations; and therefore,
7 conflict preemption is inapplicable.

8 ***1. Field preemption does not apply.***

9 Field preemption occurs where “Congress has legislated comprehensively to occupy an
10 entire field of regulation, leaving no room for the States to supplement federal law.”⁹² The Blue
11 Marmots’ field preemption argument appears to be premised upon the fact that the Federal
12 Power Act (FPA) grants FERC exclusive authority to regulate and maintain the integrity of
13 interstate transmission,⁹³ which, in their view, means that the Commission may not consider or
14 decide factual matters that relate to transmission.⁹⁴ However, a review of relevant precedent
15 reveals that FERC has not occupied the field of any and all issues related to transmission. While
16 the FPA grants FERC authority to regulate interstate transmission, FERC has clarified that not
17 all transmission issues are subject to its exclusive jurisdiction.⁹⁵ Indeed, FERC has emphasized
18 “the need for heightened cooperation between federal and state regulators in areas where there
19 are overlapping federal and state policy concerns.”⁹⁶

20 Crucially, an examination of PURPA reveals that, far from leaving no room for state
21 regulation, Congress and FERC explicitly delegated authority to the states to enforce. Relevant

⁹² *Northwest Cent. Pipeline*, 489 U.S. at 509.

⁹³ 16 U.S.C. § 824.

⁹⁴ Motion to Strike at 10.

⁹⁵ For example, FERC has specifically declined to exercise jurisdiction over bundled retail transmission. *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540, 21,542, 21,577-78 (May 10, 1996). The U.S. Supreme Court subsequently affirmed FERC’s decision, *New York v. FERC*, 535 U.S. 1, 25-28 (2002), and FERC has declined to revise its position, *Preventing Undue Discrimination and Preference in Transmission Service*, 115 FERC ¶ 61,211, P 61 (May 19, 2006) (“We propose to retain the jurisdictional divide we established in Order No. 888.”).

⁹⁶ *Preventing Undue Discrimination and Preference in Transmission Service*, 115 FERC ¶ 61,211, P 61.

1 to the Blue Marmots’ Motion, the Commission has broad authority to implement PURPA and the
2 responsibility to protect PGE’s customers from QF-related costs in excess of avoided costs.
3 Thus, the Blue Marmots’ claim that, in implementing PURPA’s mandates, state commissions are
4 preempted from considering interconnection costs/system upgrades or addressing deliverability
5 of QF output, finds no support in the law.

6 PURPA requires utilities to purchase energy from QFs,⁹⁷ and delegates to state regulatory
7 authorities, such as the Commission, the authority to implement this requirement and FERC’s
8 associated regulations.⁹⁸ “[S]tates are allowed a wide degree of latitude in establishing an
9 implementation plan” under PURPA, as long as the plan is consistent with FERC’s regulations.⁹⁹
10 PURPA requires that the rates electric consumers pay for their output be “just and
11 reasonable,”¹⁰⁰ and FERC’s regulations prohibit a utility from paying QFs more than the utility
12 otherwise would pay to produce the power itself.¹⁰¹ Therefore, the Commission has the
13 responsibility and the duty to set avoided cost rates and to ensure that the costs incurred by
14 utilities to accept QF deliveries are accounted for, such that utility customers pay no more for QF
15 output than the utility’s avoided cost—i.e., that customers remain indifferent to the purchase of
16 QF power.¹⁰² FERC recognizes that “the determinations that a state commission makes to
17 implement the rate provisions of . . . PURPA are by their nature fact-specific and include
18 consideration of many factors,”¹⁰³ and while FERC’s regulations provide state commissions

⁹⁷ 16 U.S.C. § 824a-3(a); 18 C.F.R. § 292.303(1).

⁹⁸ 16 USC § 824a-3(f).

⁹⁹ *Cal. Pub. Utils. Comm’n, et al.*, 133 FERC ¶ 61,059, P 24 (2010) (internal citations omitted).

¹⁰⁰ 16 U.S.C. § 824a-3(b).

¹⁰¹ 18 CFR § 292.304; *see also* ORS 758.505(1) (defining “avoided cost”).

¹⁰² *See So. Cal. Edison Co.* at 62,079-80 (stating that in adopting PURPA, “Congress was not asking utilities and utility ratepayers to pay more than they otherwise would have paid for power. . . PURPA requires an electric utility to purchase power from a QF, but only if the QF sells at a price no higher than the cost the utility would have incurred for the power if it had not purchased the QF’s energy and/or capacity, i.e. would have generated itself or purchased from another source. The intention was to make ratepayers indifferent as to whether the utility used more traditional sources of power or the newly-encouraged alternatives.”); *Pioneer Wind Park I, LLC* at P 38 n.73 (stating that FERC’s regulations permit a state to account for “transmission or distribution costs directly related to installation and maintenance of the physical facilities necessary to permit interconnected operations” in the determination of avoided costs if such costs are not assessed as interconnection costs).

¹⁰³ *Cal. Pub. Utils. Comm’n*, 133 FERC ¶ 61,059, P 24.

1 with guidelines of the factors to take into account in setting avoided cost,¹⁰⁴ FERC is “reluctant
2 to second guess the state commission’s determination.”¹⁰⁵

3 Moreover, under FERC’s regulations, the Commission is also delegated authority over the
4 interconnection costs between a QF and a purchasing utility, including the responsibility to
5 assess interconnection costs against a QF on a nondiscriminatory basis and to “determine the
6 manner for payments of interconnection costs.”¹⁰⁶ FERC has made clear that the definition of
7 interconnection costs,

8 [I]s designed to provide the State regulatory authorities . . . with the flexibility to
9 ensure that all costs which are shown to be reasonably incurred by the electric
10 utility as a result of interconnection with the qualifying facility will be considered
11 as part of the obligation of the qualifying facility . . . These costs may include,
12 but are not limited to, operating and maintenance expenses, the costs of
13 installation of equipment elsewhere on the utility’s system necessitated by the
14 interconnection, and reasonable insurances expenses.¹⁰⁷

15 In sum, Congress and FERC delegated to the Commission broad authority to implement
16 and enforce PURPA, and the Commission’s authority is not implicitly preempted because
17 PURPA or FERC’s regulations occupy the field. To fulfill its obligation to ensure that customers
18 remain indifferent to PGE’s purchase of the Blue Marmots’ output, the Commission must
19 consider the studies and information in PGE’s testimony, which demonstrate that the Blue
20 Marmots’ interconnection with PGE will be impossible at their chosen delivery point and explain
21 the costs that would be imposed by interconnection costs/system upgrades to enable delivery or
22 by alternative arrangements for delivery. This information clearly is within the Commission’s
23 delegated authority and is information the Commission must consider to effectively implement
24 PURPA and protect customers.

25 The Blue Marmots argue that PGE’s transmission-related testimony is exclusively FERC-
26 jurisdictional because the System Impact Study was “requested by a transmission customer” and

¹⁰⁴ 18 C.F.R. § 292.304(e).

¹⁰⁵ *Cal. Pub. Utils. Comm’n*, 133 FERC ¶ 61,059, P 24.

¹⁰⁶ 18 C.F.R. § 292.306.

¹⁰⁷ *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, Order No. 69, 45 Fed. Reg. 38 at 12,217 (Feb. 25, 1980).

1 performed by PGE Transmission, using methodologies approved by FERC and the North
2 American Electric Reliability Corporation.¹⁰⁸ However, as the Settlement Agreement makes
3 clear, EDPR requested the System Impact Study for settlement purposes to assess the feasibility
4 of system upgrades to allow the Blue Marmots' delivery via the PACW-PGE interface.¹⁰⁹ It is
5 not, and never has been, PGE's intent to make the Blue Marmots transmission customers of PGE
6 Transmission or to require EDPR to pay for transmission service on PGE's system to deliver the
7 Blue Marmots' output to load. The System Impact Study was conducted to assess the feasibility
8 of accommodating the Blue Marmots' request to deliver at their chosen point on PGE's system,
9 and to provide an estimate of costs associated with accommodating that request.¹¹⁰ This is the
10 same type of information utilities study in the interconnection process for on-system QFs, and
11 that analysis is clearly within the Commission's jurisdiction. Therefore, PGE's testimony about
12 the System Impact Study is well within the Commission's jurisdiction.

13 The Blue Marmots also appear to suggest that state commissions are entirely prohibited
14 from considering transmission-related issues, relying on this Commission's statements in *PáTu*
15 *v. PGE*.¹¹¹ However, the Blue Marmots read the *PáTu* decisions too broadly. As discussed
16 above, the *PáTu* dispute did not address *whether* the QF could deliver its energy to PGE—rather
17 the question was whether the QF could require PGE Transmission to receive delivery of its
18 output in a particular way.¹¹² Specifically, the Commission stated it lacked jurisdiction to order
19 PGE Transmission to receive a QF's delivery using a particular type of transmission service.¹¹³
20 The Commission did not suggest that it lacked jurisdiction to assess whether delivery could
21 occur.¹¹⁴

¹⁰⁸ Motion to Strike at 13.

¹⁰⁹ See also PGE/100, Greene-Moore/18.

¹¹⁰ PGE/100, Greene-Moore/18.

¹¹¹ *PáTu Wind Farm, LLC v. PGE*, Docket No. UM 1566, Order No. 12-316 (Aug. 21, 2012) & Order No. 14-287 (Aug. 13, 2014).

¹¹² Order No. 12-316 at 8.

¹¹³ Order No. 12-316 at 8.

¹¹⁴ See Order No. 12-316 at 8; Order No. 14-287 at 14 (“If it is PaTu’s position that a dynamic transfer arrangement is the *only* means to perform its duties under the contract . . . then the contract may be void or voidable, but PaTu does not request this remedy.”).

1 The Blue Marmots also overlook the subsequent decision of the D.C. Circuit Court of
2 Appeals in *PGE v. FERC*,¹¹⁵ which clarified the bounds of Commission and FERC jurisdiction
3 in *PáTu* specifically and in QF cases in general. In that case, the D.C. Circuit confirmed that the
4 Commission, not FERC, controls PURPA implementation, that issues related to a utility’s
5 purchase obligation under PURPA are entirely subject to the Commission’s jurisdiction, and that
6 FERC’s “discussions of PURPA-related issues are advisory only.”¹¹⁶ As the court explained:

7 [Th]e Federal Power Act and the relevant PURPA provisions confine FERC
8 enforcement authority to wholesale generation and the interstate transmission
9 activities of transmission providers. . . . Although [PGE] is a transmission
10 provider subject to FERC jurisdiction, it is not PáTu’s transmission provider; . . .
11 [PGE] is a *purchaser* of PáTu’s power, which is why their relationship is
12 controlled by a state-regulated power-purchase agreement, not a FERC-approved
13 tariff. . . . Because [PGE] provides PáTu with no transmission services, this case
14 does not involve the “operations of an electric utility . . . subject to the jurisdiction
15 of [FERC] under part II of the Federal Power Act.”¹¹⁷

16 Thus, to the extent that this Commission declined to consider a *delivery* issue in the *PáTu* case,
17 both FERC and the federal court have concluded that state jurisdiction *was* appropriate, because
18 the central issue in *PáTu* concerned a utility’s purchasing obligation under PURPA¹¹⁸—which is
19 the subject of this case as well. As the D.C. Circuit stated, “[s]tate-based adjudication serves as
20 the mainstay for enforcing PURPA rights.”¹¹⁹

21 Therefore, this Commission should reject the Blue Marmots’ incorrectly limited view of
22 its jurisdiction. Instead the Commission should consider all of PGE’s testimony regarding the
23 costs of interconnection/system upgrades, alternative transmission arrangements, and the Blue
24 Marmots’ inability to deliver to PGE via the PACW-PGE interface, all of which is required to
25 effectively adjudicate this case.

¹¹⁵ See *Portland Gen. Elec. Co. v. FERC*, 854 F.3d 692 (D.C. Cir. 2017) (“*PGE v. FERC*”).

¹¹⁶ *PGE v. FERC*, 854 F.3d at 695, 698, 700-02.

¹¹⁷ *Id.* at 702 (emphasis in original).

¹¹⁸ The Idaho Public Utilities Commission similarly considered transmission constraints in the context of PURPA when it upheld Rocky Mountain Power’s conclusion that “transmission in the area of [the QF’s] requested interconnection was constrained.” *XRG-DP-7, XRG-DP-8, XRG-DP-9, XRG-DP-10, LLCs, v. PacifiCorp dba Rocky Mountain Power*, Case No. PAC-E-10-08, Order No. 32553 at 9 (May 18, 2012).

¹¹⁹ *PGE v. FERC*, 845 F.3d at 698.

1 It is important to point out that, contrary to the Blue Marmots’ assertions,¹²⁰ the
2 Commission regularly considers transmission-related issues in implementing PURPA and has the
3 authority and expertise to do so here. In fact, consideration of transmission issues—including
4 System Impact Studies and the information underlying them—is an important part of the
5 Commission’s implementation of PURPA and assessment of system upgrade/interconnection
6 costs.

7 Most relevant to this case, the Commission has jurisdiction to oversee a QF’s
8 interconnection to the purchasing utility.¹²¹ Under the Commission’s small generator
9 interconnection rules, the Commission has authority to review the interconnection study
10 process—which typically includes a Feasibility Study, System Impact Study, and Facilities
11 Study,¹²² as well as allocation of costs required for interconnection facilities, interconnection
12 equipment, and system upgrades.¹²³ Under the Commission’s standard large generator
13 interconnection procedures, the Commission oversees a process that is based upon the FERC-
14 jurisdictional Open Access Transmission Tariff interconnection process,¹²⁴ and includes System
15 Impact Studies similar to the one at issue in this case. Any disputes regarding these matters—
16 which clearly would require technical expertise regarding utility transmission systems—are
17 unquestionably within the Commission’s authority to resolve.

18 In addition, the Commission also has considered whether an off-system QF had made
19 sufficient transmission arrangements to interconnect with PGE and trigger PGE’s mandatory
20 purchase obligation.¹²⁵ In resolving that case, the Commission explicitly referenced 18 C.F.R.
21 § 292.303(d), FERC’s regulation regarding transmission of off-system QF output to the

¹²⁰ Motion to Strike at 2, 7, 9, 11, 13.

¹²¹ 18 C.F.R. § 292.306.

¹²² See OAR 860-082-0060; OAR 860-082-0080; OAR 860-082-0085.

¹²³ OAR 860-082-0035; OAR 860-082-0080; OAR 860-082-0085. The Commission also specifies technical requirements for construction, operation, maintenance, and testing of an interconnected facility, OAR 860-082-0030, and resolves disputes that occur during review of an interconnection application and after an interconnection agreement has been reached, OAR 860-082-0080; OAR 860-082-0085.

¹²⁴ Order No. 10-132 at 1.

¹²⁵ *Portland Gen. Elec. Co. v. Or. Energy Co., LLC et al.*, Docket No. UC 315, Order No. 98-238, 1998 Or PUC LEXIS 204 at *19 (June 12, 1998).

1 purchasing utility, and the Commission concluded that the QF did not have the necessary
2 transmission agreement in place to trigger PGE’s obligation to purchase the QF’s power.¹²⁶ The
3 Commission plainly acted within its jurisdiction in that case in analyzing whether the QF had
4 made the transmission arrangements necessary to deliver its output.

5 And finally, the Commission regularly considers transmission-related costs in crafting and
6 approving standard contract terms and conditions and in setting avoided costs. In its most recent
7 generic PURPA docket, one of the primary issues addressed by the Commission was how to deal
8 with transmission costs required to move QF power out of a load pocket.¹²⁷ None of the parties
9 in that case or the Commission suggested that the Commission lacked jurisdiction to consider
10 such costs.¹²⁸ Moreover, as explained in PGE’s testimony, PGE’s standard avoided cost rates for
11 off-system QFs include transmission costs,¹²⁹ and the Commission necessarily must evaluate the
12 appropriateness of those calculations.¹³⁰ Similarly, PGE’s Commission-mandated and approved
13 off-system standard contract contains terms addressing transmission service and an entire
14 section—Section 9—related to transmission curtailments.¹³¹ Even though the rates, terms, and
15 conditions of the off-system transmission service addressed in these contexts are FERC-
16 jurisdictional, the Commission was not precluded from considering these costs. Here, even if the
17 issues raised by PGE’s transmission-related testimony were solely FERC-jurisdictional—which
18 they are not—the Commission would not be precluded from considering them in its
19 implementation of PURPA.

20 For all of these reasons, PGE’s transmission studies and transmission-related testimony fall
21 well within the Commission’s jurisdiction—not FERC’s—because they relate to interconnection
22 costs/system upgrades necessary for delivery of QF output. The Commission should reject the

¹²⁶ *Id.* at *17-19.

¹²⁷ Order No. 14-058 at 16-23.

¹²⁸ *Id.*

¹²⁹ PGE/100, Greene-Moore/23-24.

¹³⁰ *See, e.g., In the Matter of Portland General Electric Company Application to Update Schedule 201 Qualifying Facility Information*, Docket No. UM 1728, Staff Report at 5 (June 2, 2016); Order No. 16-220 (June 8, 2016).

¹³¹ *See Blue Marmot V Power Purchase Agreement, Attachment A to the Complaint in Docket No. UM 1829.*

1 Blue Marmots’ attempt to remove important information related to the constraint at their
2 preferred delivery point and the costs of alternatives to address this constraint from the record in
3 this case.

4 **2. Conflict preemption does not apply.**

5 Conflict preemption occurs “where the state law at issue conflicts with federal law, either
6 because it is impossible to comply with both, or because the state law stands as an obstacle to the
7 accomplishment and execution of congressional objectives.”¹³² There is a presumption against
8 finding conflict preemption because doing so tends to interfere with the historic powers of the
9 States.¹³³

10 Here, the Blue Marmots claim that any Commission order adopting or relying upon PGE’s
11 System Impact Study would inevitably conflict with PURPA regulations and FERC guidance,¹³⁴
12 arguing that “[n]umerous FERC orders have addressed the obligations imposed on utilities (to
13 purchase QF output) and QFs (to make their power available) suggesting that the Commission
14 could neither intentionally nor unintentionally stand in the way of those FERC decisions.”¹³⁵
15 Thus, it appears that the Blue Marmots’ conflict preemption argument is premised upon their
16 belief that, if the Commission considers PGE’s transmission-related testimony and accepts
17 PGE’s conclusion that the Blue Marmots cannot deliver at their preferred delivery point, the
18 Commission’s decision inherently would conflict with FERC orders discussing a utility’s
19 obligations under PURPA.¹³⁶ The Blue Marmots’ assertion of conflict preemption is incorrect
20 because each of the FERC orders upon which the Blue Marmots rely is distinguishable—as
21 addressed in depth above in Section III.A.3. More importantly, the FERC orders that the Blue
22 Marmots cite cannot serve as the basis for a finding of conflict preemption because they are non-

¹³² *Nw. Cent. Pipeline*, 489 U.S. at 509 (internal citations omitted).

¹³³ *New York v. FERC*, 535 U.S. at 17-18 (noting that a “presumption against pre-emption” applies when evaluating “whether a given state authority conflicts with, and thus has been displaced by, the existence of Federal Government authority”).

¹³⁴ Motion to Strike at 14.

¹³⁵ Motion to Strike at 14-15.

¹³⁶ Motion to Strike at 14-15.

1 binding, declaratory orders, and therefore FERC’s statements about PURPA’s requirements in
2 them are not mandatory.¹³⁷

3 The Blue Marmots’ confusion about the nature of FERC’s orders is understandable. As the
4 D.C. Circuit Court of Appeals repeatedly has noted, “FERC’s orders contain language that
5 appears mandatory,” but is nonetheless “declaratory.”¹³⁸ The court went on to note that it was
6 “mystified by FERC’s continued use of mandatory language to resolve PURPA disputes in
7 orders that it later insists are purely hortatory.”¹³⁹ Nonetheless, both FERC and the courts
8 acknowledge that FERC’s pronouncements on PURPA issues in these contexts remain merely
9 advisory,¹⁴⁰ and therefore in no way can conflict with state commissions’ authority to implement
10 PURPA. The Commission can resolve the issues raised by this case without creating a conflict
11 with FERC precedent.

IV. CONCLUSION

12 The Blue Marmots ask the Commission to adopt their overly simplistic view of this case
13 and to consider only the information that supports the Blue Marmots’ position. Their Motion

¹³⁷ *Public Service Co. of New Hampshire v. New Hampshire Elec. Coop., Inc.*, 83 FERC ¶ 61,224 (May 29, 1998) (declining to initiate PURPA enforcement action); *Kootenai Electric Cooperative, Inc.*, 143 FERC ¶ 61,232 (declining to initiate PURPA enforcement action); *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215, P 41 (“We note that it is the state's responsibility in the first instance to determine an avoided-cost rate consistent with the Commission's PURPA regulations. Therefore, if Pioneer Wind has concerns regarding the ultimate avoided-cost rates for its QF output, it should first pursue such concerns at the Wyoming Commission, which will review and make a determination concerning those avoided-cost rates. After the Wyoming Commission has made its determination and if Pioneer Wind is dissatisfied with that determination, Pioneer Wind may exercise its rights to file a petition pursuant to sections 210(g) and/or 210(h)(2)(B) of PURPA.”); *PáTu Wind Farm, LLC*, 150 FERC ¶ 61,032 (issuing pronouncement that, upon appeal, FERC insisted was non-binding, *see PGE v. FERC*, 854 F.3d at 701).

¹³⁸ *PGE v. FERC*, 854 F.3d at 701; *see also Midland Power Coop. v. FERC*, 774 F.3d 1, 7-8 (D.C. Cir. 2014); *Niagara Mohawk Power Corp. v. FERC*, 117 F.3d 1485, 1488 (D.C. Cir. 1997) (“An order that does no more than announce the Commission's interpretation of the PURPA or one of the agency's implementing regulations is of no legal moment unless and until a district court adopts that interpretation when called upon to enforce the PURPA.”); *New York State Elec. & Gas Corp. v. FERC*, 117 F.3d 1473, 1477 (D.C. Cir. 1997) (“[FERC] did nothing more than state why in its opinion the challenged rates comply with the PURPA [We lack jurisdiction] to review a non-binding declaratory order.”).

¹³⁹ *PGE v. FERC*, 854 F.3d at 701.

¹⁴⁰ *See id.* at 702 (“FERC could avoid a great deal of confusion and waste of judicial resources by not using words like ‘shall’ and ‘must,’ and by making clear in its orders—as opposed to later in this court—that its discussions of PURPA-related issues are advisory only.”).

1 seeks to remove from the record information related to the constraint at the PACW-PGE
2 interface, the lack of affordable upgrades, and the costs of alternate delivery options—
3 information that is crucial to both PGE’s defenses, and to their own argument that they have
4 made sufficient arrangements to deliver their output to PGE. The Commission not only has
5 explicitly delegated authority to consider this information, it also has the duty to understand the
6 interconnection costs/system upgrades that the Blue Marmots’ delivery would require so that the
7 Commission can ensure those costs are allocated to EDPR and that PGE’s customers remain
8 indifferent to PGE’s purchase of the Blue Marmots’ output.

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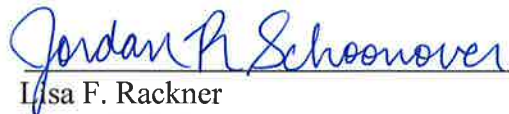
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1 The Blue Marmots urge the Commission to “keep things simple” by ignoring vast swaths
2 of PGE’s testimony.¹⁴¹ However, this case presents important issues and cannot be fairly
3 decided without full consideration of PGE’s testimony. Fortunately, the Commission and the
4 parties to this case regularly deal with complex and technical issues such as those presented here,
5 and the Commission is fully capable of considering the evidence in the record and making a
6 decision based upon it. PGE respectfully requests that the Commission deny the Blue Marmots’
7 Motion to Strike.

Dated: March 6, 2018.

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¹⁴¹ Motion to Strike at 9.