



McDOWELL RACKNER GIBSON PC
419 SW 11th Ave, Suite 400 | Portland, OR 97205

ALISHA TILL
Direct (503) 290-3628
alisha@mrg-law.com

February 21, 2020

VIA ELECTRONIC FILING

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

**Re: Docket UM 1829, Phase II – In the Matter of Blue Marmots, LLC vs Portland
General Electric Company**

Attention Filing Center:

Attached for filing in the above-captioned docket is Portland General Electric Company's Motion to Compel, expedited consideration requested.

Please contact this office with any questions.

Sincerely,

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

Alisha Till
Paralegal

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1829 – PHASE II

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 MOTION TO COMPEL**

*EXPEDITED CONSIDERATION
REQUESTED*

1 Pursuant to OAR 860-001-0420 and OAR 860-001-0500(7), Portland General Electric
2 Company (PGE or Company) moves the Public Utility Commission of Oregon (Commission) for
3 an order compelling the above-captioned Blue Marmot LLCs (collectively, Blue Marmots) to
4 produce complete responses to five of PGE’s data requests.

5 PGE certifies that the parties have conferred, as required by OAR 860-001-0500(7), but
6 have been unable to resolve this dispute. Over the course of the past two weeks, PGE’s counsel
7 has made efforts to coordinate and confer regarding these data requests and the Blue Marmots’
8 initial responses (Initial Responses). The Blue Marmots, after promising to provide additional
9 responsive information and support for their objections, finally provided supplemental responses
10 to PGE’s data requests (Supplemental Responses) on February 19, 2020. These Supplemental
11 Responses are still largely unresponsive to PGE’s data requests, and do not provide further support
12 for the Blue Marmots’ objections. PGE faces a looming testimony deadline on March 27, 2020,
13 and requires the information sought in the data requests to prepare its testimony. Any additional
14 delay from the Blue Marmots will substantially impair PGE’s ability to prepare and file its
15 testimony in accordance with the schedule established in this case. In consideration of PGE’s

1 impending testimony deadline, PGE requests expedited consideration of this Motion, and the Blue
2 Marmots oppose the request.

I. INTRODUCTION

3 In 2017, the Blue Marmots signed power purchase agreements (PPAs) to develop five
4 qualifying facility (QF) projects in Southern Oregon, with commercial operation dates (COD) of
5 November 30, 2019 for Blue Marmots V and VI, and March 31, 2020 for Blue Marmots VII, VIII,
6 and IX.¹ The expected revenue from these projects is \$160 million over the life of the contracts.²

7 In Phase I of the litigation, PGE and Blue Marmots disputed whether the Blue Marmots
8 should be allowed to deliver their output to a fully subscribed point on PGE’s system, the
9 PACW.PGE point of delivery (POD), or whether the Blue Marmots should be required to deliver
10 their output to the BPAT.PGE POD—which would require them to pay for an extra leg of
11 transmission that would cost an additional \$14 million over the life of the projects.³ Ultimately,
12 the Commission found that all but one of the Blue Marmots’ five projects would be allowed to
13 deliver to the PACW.PGE POD, thereby avoiding the extra leg of transmission.⁴

14 In this Phase II litigation, the Blue Marmots ask the Commission to allow them to extend
15 their CODs—arguing that the existence of the Phase I litigation led them to slow down the
16 development of their projects, and that it was commercially reasonable for them to do so. In
17 particular, the Blue Marmots argue that the possibility that they might have been required to pay
18 the additional \$14 million to deliver their output to the BPAT.PGE POD injected an unacceptable
19 level of uncertainty into the viability of the project.⁵ PGE disagrees with the Blue Marmots’

¹ UM 1829 Phase I, Blue Marmots’ PPAs (attached to Blue Marmots’ complaints in Docket Nos. UM 1829-1833).

² UM 1829 Phase I, PGE’s Response Brief at 22 (Apr. 5, 2019).

³ UM 1829 Phase I, PGE’s Response Brief at 8-9 (Apr. 5, 2019).

⁴ UM 1829 Phase I, Order No. 19-322 at 16.

⁵ The Blue Marmots’ first round of testimony in Phase II of this case was initially due on January 31, 2020, however they requested an extension to allow time to resolve a dispute with PGE regarding references in the testimony to confidential settlement discussion. On February 19, 2020, Administrative Law Judge Allan Arlow issued a ruling rescheduling the Blue Marmots’ testimony deadline for February 24, 2020. Thus, while the Blue Marmots have not

1 arguments on two fundamental bases. First, PGE believes that it is likely that the delays in
2 developing the Blue Marmots’ projects were not caused by the litigation, but rather by unrelated
3 challenges in the siting, permitting and interconnection processes. And second, PGE believes that
4 the Blue Marmots’ projects were likely profitable *even if the Blue Marmots had to pay to deliver*
5 *their output to BPAT.PGE POD*, and that therefore it would not have been reasonable for the Blue
6 Marmots to delay their project development due to the existence of the PPA litigation.

7 In order to develop its testimony in this case, PGE has asked the Blue Marmots to provide
8 information regarding their expected profits, which will allow PGE to better understand the impact
9 that the outcome of the Phase I litigation could have had on the Blue Marmots’ financial returns.
10 In addition, PGE served data requests regarding the Blue Marmots’ permitting and interconnection
11 processes, to better understand the circumstances other than the Phase I litigation that could have
12 led the Blue Marmots to delay their project development. This information is highly probative,
13 and necessary for PGE to develop its testimony in the case. Unfortunately, the Blue Marmots have
14 interposed numerous and unfounded objections, providing limited subsets of requested documents
15 in some cases, and in the case of the requested financial information, stonewalling entirely. PGE’s
16 March 27, 2020 deadline for preparing its testimony is fast-approaching, and the Blue Marmots’
17 delay and refusal to provide key information is impairing PGE’s ability to prepare its case. For
18 this reason, PGE asks the Commission to grant this Motion to Compel.

II. BACKGROUND

19 A. History of Dispute

20 This case concerns a dispute between PGE and the Blue Marmots—five off-system
21 qualifying facilities (QFs), planned for development by EDP Renewables North America (EDPR).

yet filed their testimony in this case, they informally shared a draft of their testimony with PGE for the purposes of coordinating regarding disputed references to confidential settlement communications and to allow PGE to begin issuing discovery requests. Accordingly, PGE’s understanding of the Blue Marmots’ arguments in this case are based on this unfiled testimony.

1 EDPR proposes to construct the Blue Marmot projects in PacifiCorp's service territory and to sell
2 their output to PGE. After the Blue Marmots had signed final executable PPAs with PGE, PGE
3 notified the Blue Marmots that the PACW.PGE POD to which they had planned to deliver their
4 output was fully committed, with no available transfer capability (ATC) to accept the Blue
5 Marmots' output. For that reason, PGE informed the Blue Marmots that if they wished to sell their
6 output to PGE, they would be required to wheel their output to the BPAT.PGE POD, where there
7 was sufficient transfer capability.⁶ The Blue Marmots estimated the cost of wheeling their output
8 to the BPAT.PGE POD at \$14 million over the full terms of the contracts.

9 The case went to hearing in December 2018, and in the prehearing brief, for the very first
10 time (and 18 months after the Blue Marmots filed their Complaint), the Blue Marmots argued that
11 that the Commission should extend the CODs in their PPAs, to accommodate their decision to
12 delay development of their projects pending the outcome of the litigation.⁷ PGE objected, arguing
13 that there was no evidence in the record to support the Blue Marmots' request, in particular
14 pointing out that the Blue Marmots had moved their projects forward during the pendency of the
15 docket.⁸ PGE further argued that it appeared that their projects would be profitable regardless as
16 to whether they would be required to wheel their output to the BPAT.PGE POD,⁹ calling into
17 question any decision to fail to move their projects forward.

18 In its Phase I order, the Commission found that because PGE failed to notify the Blue
19 Marmots of the lack of ATC until after the Blue Marmots had executed PPAs, four of the Blue
20 Marmots were entitled to deliver their output to PGE at the PACW.PGE POD, and would not be
21 required to wheel their output to the BPAT.PGE POD.¹⁰ For that reason, the Commission ordered

⁶ PGE also gave the Blue Marmots the option of paying for upgrades to increase the ATC at the interface, but later discovered upgrades could not sufficiently increase the capacity to allow the Blue Marmots to deliver.

⁷ UM 1829 Phase I, Blue Marmots' Prehearing Brief at 41 (Nov. 30, 2018).

⁸ UM 1829 Phase I, PGE's Response Brief at 77-78 (Apr. 5, 2019).

⁹ UM 1829 Phase I, PGE's Response Brief at 21-22 (Apr. 5, 2019).

¹⁰ The Commission did find that the one project that had not executed a PPA would need to obtain transmissions to deliver its output to the BPA-PGE.POD.

1 PGE to make necessary revisions to the PPAs executed by the Blue Marmots, consistent with its
2 order. However, the Commission ultimately concluded that there was insufficient evidence in the
3 record to grant the Blue Marmots' request to extend their CODs, and provided that the Blue
4 Marmots could assert that claim, but that PGE would be entitled to a full evidentiary proceeding
5 with discovery to aid the Commission in its consideration of this question.¹¹

6 **B. Discovery Disputes in Phase II**

7 PGE served its first round of 20 data requests on the Blue Marmots on January 23, 2020.
8 These data requests sought to obtain information related to the Blue Marmots' project economics,
9 and details regarding the Blue Marmots' siting, permitting and interconnection processes.¹² On
10 January 27, 2020, counsel for the Blue Marmots, Irion Sanger, called counsel for PGE and
11 explained that they did not intend to provide responses to DRs 7 and 8 requesting financial
12 information regarding the Blue Marmots, because the requested information was irrelevant,
13 commercially sensitive, and the Commission lacked authority to look into the projects' profit.
14 Counsel for PGE explained why PGE believes the information *is* relevant, that PGE understood
15 the information might be commercially sensitive and would be willing to protect it appropriately,
16 and that PGE was not aware that the Commission lacked authority to consider profit information
17 but would be willing to review any authorities the Blue Marmots provided on this point. Mr.
18 Sanger also inquired about the relevance of DR 18, and counsel for PGE responded the following
19 day with an explanation. Mr. Sanger did not mention objections to any data requests other than 7,
20 8 and 18.

21 Then on February 6, 2020, the Blue Marmots provided their Initial Responses to PGE's
22 first round of data requests. Out of 20 data requests, the Blue Marmots provided adequate

¹¹ Order No. 19-322 at 20.

¹² Attachment A, PGE's First Set of Data Requests (Jan. 23, 2020).

1 responses to only 12 data requests.¹³ As expected, the Blue Marmots refused to provide any
2 response to PGE’s Data Requests 7 and 8, which asked for financial information about the projects.
3 The Blue Marmots similarly refused to provide information in response to PGE’s Data Request
4 18, seeking information about safe-harbored equipment. In addition, they objected to and provided
5 only partial responses to PGE’s Data Requests 1, 4, 11, 12, and 15(c), which requested information
6 about the Blue Marmots’ siting and interconnection processes.¹⁴

7 Given the vague nature of the Blue Marmots’ objections in their Initial Responses, on
8 Friday, February 7, 2020, PGE sent a letter to the Blue Marmots seeking clarification of the
9 claimed bases for the objections to PGE’s data requests 7, 8, and 18.¹⁵ Then on February 11, 2020,
10 PGE sent another letter to the Blue Marmots, explaining in detail why the information sought was
11 relevant and discoverable, and requesting that the Blue Marmots reconsider their objections and
12 provide full responses.¹⁶ On February 12, 2020, the Blue Marmots indicated via email that they
13 would respond to PGE’s letter by the close of business that same day and that they would also be
14 providing “additional responsive information and/or further explanations on the basis for the
15 objections.”¹⁷ Yet, the Blue Marmots did not respond to the letter, provide any additional
16 responsive information, or further explanation regarding the basis for their objections on
17 Wednesday, February 12, 2020. PGE again contacted the Blue Marmots on Friday, February 14,
18 2020 to register concern that the Blue Marmots had not yet provided any additional information
19 or support for their objections, and in particular to explain that PGE needs the requested
20 information to prepare its testimony. Mr. Sanger orally represented that additional information

¹³ The Blue Marmots’ Responses to PGE Data Requests 9, 10, 13, 14, 17, 19, 20 appear to provide complete responses. Additionally, the Blue Marmots provided responses to PGE Data Requests 2, 3, 5, 6, 15(b), and 16 based on draft testimony informally shared with PGE. While PGE believes the form of the responses to these data requests is inappropriate, PGE does not seek to compel that information to be provided in a different form in this motion.

¹⁴ See Attachment B, Blue Marmots’ Responses to PGE’s First Set of Data Requests (Feb. 6, 2020).

¹⁵ See Attachment C, February 7, 2020 Letter to Mr. Sanger.

¹⁶ See Attachment D, February 11, 2020 Letter to Mr. Sanger.

¹⁷ See Attachment E, February 12, 2020 Email from Mr. Sanger re Blue Marmot Discovery.

1 and/or explanations would be forthcoming.

2 Finally, on February 19, 2020 the Blue Marmots provided the Supplemental Responses to
3 PGE’s Data Requests 1, 2, 4, 5, 6, 7, 8, 10, 11, 12, 15, and 18—a full week after Mr. Sanger had
4 indicated additional information would be provided.¹⁸ Unfortunately, the information provided in
5 the Supplemental Responses is still inadequate, and only negligibly reduced the scope of this
6 dispute. While the Blue Marmots appear to have provided new information responsive to PGE’s
7 Data Requests 7, 11, and 18—and have walked back several unfounded claims of privilege—they
8 failed to fully address the deficiencies in the remainder of their responses, and provided only
9 limited additional support for their objections. Thus, despite this effort at informal coordination
10 with the Blue Marmots, and despite the Supplemental Responses provided on February 19, 2020,
11 the Blue Marmots still have not provided more detailed or complete responses or justification for
12 their objections for five of PGE’s data requests.

III. LEGAL STANDARDS

13 The Oregon Rules of Civil Procedure (ORCP) apply in Commission proceedings unless
14 they are inconsistent with Commission rules, a Commission order, or an Administrative Law
15 Judge’s ruling.¹⁹ Under ORCP 36(B), the scope of discovery extends to any matter relevant to a
16 claim or defense. The Commission’s rules regarding discovery provide for data requests, which
17 are “written interrogatories or requests for production of documents.”²⁰ “Each data request must
18 be answered fully and separately in writing or by production of documents, or objected to in
19 writing.”²¹

20 The Commission’s rules define relevant evidence as “tending to make the existence of any

¹⁸ Attachment F, Blue Marmots’ Supplemental Responses to PGE’s First Set of Data Requests (Feb. 19, 2020).

¹⁹ OAR 860-001-0000(1).

²⁰ OAR 860-001-0540(1).

²¹ *Id.*

1 fact at issue in the proceedings more or less probable than it would be without the evidence.”²² In
2 accordance with ORCP 36(B)(1), the information sought in discovery must be reasonably
3 calculated to lead to the discovery of admissible evidence.²³

4 The Commission’s rules provide that discovery that is “unreasonably cumulative,
5 duplicative, burdensome, or overly broad is not allowed.”²⁴ In evaluating discovery requests
6 against a claim that the request is burdensome or overly broad, the Commission will consider the
7 needs of the case, the resources available to the parties, and the importance of the issues to which
8 the discovery relates.²⁵

9 In accordance with ORCP 46, a party may move to compel production if the opposing party
10 is not responsive to a discovery request, and for purposes of a motion to compel, “an evasive or
11 incomplete answer is to be treated as a failure to answer.”²⁶

IV. DISCUSSION

12 There are two issues for the Commission to consider in Phase II. The first issue is “whether
13 litigation caused commercially reasonable delays in the Blue Marmots’ scheduled commercial
14 operation dates listed in their partially executed PPAs?”²⁷ This question asks whether the litigation
15 in Phase I (a) actually caused the Blue Marmots to delay project development resulting in the need
16 to delay the CODs in their PPAs; and (b) whether the Blue Marmots’ decision to delay project
17 development was commercially reasonable. The second issue is “whether the Blue Marmots’
18 scheduled commercial operation dates should be extended and if so, what new dates should be
19 included in the final executable PPAs that PGE must offer consistent with the final resolution of

²² OAR 860-001-450(1)(a); see also ORS 40.150 (Oregon Evidence Code 401) .

²³ *In the Matter of PacifiCorp, dba Pac. Power Investigation into Schedule 37 - Avoided Cost Purchases from Qualifying Facilities of 10,000 kW or Less*, Docket UM 1794, Order No. 17-121 (Mar. 23, 2017).

²⁴ OAR 860-001-0500(2).

²⁵ OAR 860-001-0500(1); *Columbia Basic Elec. Coop. v. Umatilla Elec. Coop Re Wheatridge Wind Project*, Docket UM 1823, Ruling at 3-4 (June 16, 2017).

²⁶ ORCP 46(A)(3).

²⁷ UM 1829 Phase II, Joint Issues List at 1 (Jan. 2, 2020).

1 all issues in Phase II of UM 1829 or other subsequent proceedings?”²⁸ This question asks the
2 Commission to consider, in view of all of the above, whether it is appropriate to extend the Blue
3 Marmots’ CODs. PGE’s data requests to the Blue Marmots are directly relevant to these core
4 issues in the case. Moreover, the Blue Marmots’ claims that the requests are overbroad and
5 burdensome are unsupported.

6 **A. Project Economics Data Request**

7 PGE served the following data request on the Blue Marmots specifically addressing project
8 economics:

- 9 • **PGE Data Request 8.** Assuming the Blue Marmots were able to achieve their
10 original CODs, please provide the total expected profit, by year, not adjusted
11 for present value or inflation, expected over the term of the Power Purchase
12 Agreements (PPA).

13 In their Initial Responses, the Blue Marmots refused to provide any substantive responses
14 to this data request, and instead provided the following generic objections:

15 The Blue Marmots object to this data request on the grounds of relevancy, that the
16 data is [sic] commercial sensitive, and that the Commission does not have the legal
17 authority to compel the requested information. The Blue Marmots object to this
18 data request to extent that production of the requested data would reveal
19 information protected by the attorney-client privilege, the work product doctrine,
20 or any other privilege. Thus, the Blue Marmots do not provide a response.²⁹

21 In their Supplemental Response to PGE’s Data Request 8, the Blue Marmots retain the same
22 objections that were included with their initial response, except for their claim of privilege.³⁰ None
23 of the objections raised by the Blue Marmots is valid, and they should be compelled to provide a
24 full and complete response to PGE’s Data Request 8.

25 ***1. The information PGE seeks to discover is directly relevant to this case.***

26 The financial information requested in PGE’s Data Request 8 is directly relevant to one of
27 the key issues in this case—the question of whether the delays were commercially reasonable. As

²⁸ UM 1829 Phase II, Joint Issues List at 1 (Jan. 2, 2020).

²⁹ Attachment B at 3, Blue Marmots’ Response to PGE Data Request 8.

³⁰ Attachment F at 5, Blue Marmots’ Supplemental Response to PGE Data Request 8.

1 PGE argued below in Phase I, what was at stake for the Blue Marmots was whether the Blue
2 Marmots would be allowed to deliver their output to the PACW.PGE POD, or whether they would
3 be required to pay an additional \$14 million to deliver their output to the BPAT.PGE POD.³¹ In
4 other words, the worst-case scenario for the Blue Marmots in this litigation would have decreased
5 EDPR’s expected profits by \$14 million. Thus, whether or not a reasonable developer would have
6 significantly slowed down project development, pending the outcome of this case—in particular,
7 after they had already committed to a commercial operation date, without any assurance of an
8 extension—will hinge at least in part on what the expected profits would have been under this
9 worst case scenario. Accordingly, PGE is entitled to information required to understand the profit
10 margin EDPR expected both with and without the additional \$14 million cost. PGE explained its
11 views regarding the relevance of PGE’s Data Request 8 in its February 7, 2020 letter,³² but the
12 Blue Marmots have not provided any further response regarding the relevancy of this request in
13 its Supplemental Response.³³

14 Here, PGE requested information about project economics to understand whether the
15 delays in project development were commercially reasonable. Thus, the information PGE
16 requested in its Data Request 8, is evidence “tending to make the existence of any fact at issue in
17 the proceedings more or less probable than it would be without the evidence.”³⁴ The Blue Marmots
18 have put the profitability of their projects at issue in Phase II of this case, and PGE is entitled to
19 discovery on this matter.

20 ***2. Commercial sensitivity is not a valid basis for refusing to disclose the requested***
21 ***information.***

22 The Blue Marmots object that the information requested by PGE is commercially

³¹ UM 1829 Phase I, PGE’s Response Brief at 22 (Apr. 5, 2019).

³² Attachment C, February 7, 2020 Letter to Mr. Sanger.

³³ Attachment F at 5, Blue Marmots’ Supplemental Response to PGE Data Request 8.

³⁴ OAR 860-001-450(1)(a); see also ORS 40.150 (Oregon Evidence Code 401).

1 sensitive.³⁵ However, commercial sensitivity alone does not provide a valid basis for refusing to
2 provide the requested information. Indeed, the Commission has recognized its own ability to
3 provide for additional protections where appropriate,³⁶ and has ordered the production of
4 responsive information over objections on the basis of commercial sensitivity by providing that
5 such information be produced subject to additional protections.³⁷ Thus, while commercial
6 sensitivity may impact *how* the information is disclosed, it does not bear on *whether* the
7 information should be disclosed, and accordingly is not a valid basis for an objection. In its
8 February 7, 2020 letter, PGE indicated that it would consider the Blue Marmots’ proposal for
9 additional protections,³⁸ yet in their Supplemental Response, the Blue Marmots failed to engage
10 on this issue, and made no recommendations regarding additional protections for this information.

11 **3. *The Commission has the legal authority to compel the requested information.***

12 The Blue Marmots argue “that the Commission does not have the legal authority to compel
13 the requested information.”³⁹ The Commission has the authority to compel the production of
14 responses to data requests to the extent those responses are not otherwise properly limited from
15 disclosure by a valid objection. PGE is unaware of any instances in which the Commission has
16 independently concluded that it lacked the “authority” to compel responses to data requests absent
17 other valid objections, and the Blue Marmots have not provided any such authority in response to
18 PGE’s requests that it do so. The Blue Marmots’ bare assertion that the Commission lacks
19 authority is not a valid basis for refusing to provide the requested information.

20 **B. Permitting Data Requests**

21 PGE served several data requests specifically addressing permitting issues, and the Blue

³⁵ Attachment B at 3, Blue Marmots’ Response to PGE Data Request 8.

³⁶ *In the Matter of the Application of Portland Gen. Elec. Co. for Approval of the Customer Choice Plan*, Docket UE 102, Order No. 98-294 (July 16, 1998).

³⁷ *In the Matter of Pub. Util. Comm’n of Or., Investigation into Qualifying Facility Contracting and Pricing*, Docket UM 1610, Order No. 16-434 (Nov. 15, 2016).

³⁸ February 7, 2020 Letter to Mr. Sanger.

³⁹ Attachment F at 5, Blue Marmots’ Supplemental Response to PGE Data Request 8.

1 Marmots objected and provided only partial responses to the following two requests:

- 2 • **PGE Data Request 1.** Please provide all communications between EDPR/ Blue
3 Marmots and Oregon Department of Energy (ODOE)/ Energy Facility Siting Council
4 (EFSC).
- 5 • **PGE Data Request 4.** Please provide all communications between EDPR/ Blue
6 Marmots and Lake County Planning Department.⁴⁰

7 In their responses to PGE Data Requests 1 and 4, seeking communications between EDPR
8 and state and local permitting entities, the Blue Marmots objected on the bases that the requests
9 did not seek relevant information, were overly broad, and sought information covered by the
10 attorney-client privilege, and then proceeded to provide a limited subset of communications which
11 the Blue Marmots determined specifically addressed schedule and timing issues:

12 The Blue Marmots object to this data request on the grounds of relevancy, it would
13 be unduly burdensome, that the request is overly broad, and to the extent that
14 production of the requested data would reveal information protected by the
15 attorney-client privilege, the work product doctrine, or any other privilege.
16

17 Notwithstanding these objections, the Blue Marmots provide the following:
18

19 Please see attached folder DR #1 for correspondence with ODOE / EFSC which
20 focuses on permitting timing and schedule.⁴¹

21 In PGE’s February 11, 2020 letter to the Blue Marmots, PGE communicated its view
22 regarding the relevance of this information, expressed its disagreement with the Blue Marmots’
23 limited responses, and sought more information regarding the Blue Marmots’ objections.⁴² In their
24 Supplemental Response to PGE’s Data Requests 1 and 4, the Blue Marmots renew their previously
25 stated objections (except privilege), and provide the following additional support for their
26 relevance objection:

27 As the Blue Marmots argue in testimony, the litigation caused commercially
28 reasonable delays in project development, in part because it would have been

⁴⁰ Attachment A at 1, PGE’s First Set of Data Requests (Jan. 23, 2020).

⁴¹ See Attachment B at 1, Blue Marmots’ Response to PGE Data Request 1. Note that the Blue Marmots’ response to PGE’s Data Request 4 is identical except for instead referring to “DR #4” and to correspondence with Lake County. Attachment B at 2.

⁴² Attachment D, February 11, 2020 Letter to Mr. Sanger.

1 imprudent for the Blue Marmots, or any commercially reasonable developer, to
2 incur the costs required to advance permitting given the commercial uncertainty
3 caused by the litigation. A comprehensive record of every communication between
4 the projects and ODOE / EFSC is not relevant to the question of the commercial
5 reasonableness of the decision not to incur costs given the uncertainty caused by
6 the litigation, nor is it relevant to the extent of the uncertainty caused by the
7 litigation, nor is it likely to lead to admissible evidence regarding either of the
8 questions posed in this Phase II.⁴³

9 The Blue Marmots provided no additional communications responsive to PGE’s requests, and
10 again referred to the limited subset of responses provided with the Initial Responses. These
11 objections and limited responses are inappropriate and unsubstantiated, and the Blue Marmots
12 should be compelled to provide complete responses.

13 ***1. The information PGE seeks to discover is relevant.***

14 In PGE Data Requests 1 and 4, PGE requested correspondence between the Blue Marmots
15 and ODOE/EFSC and Lake County, respectively, in an attempt to better understand the reasons
16 for, and circumstances surrounding the Blue Marmots’ decision to delay the development of their
17 projects. In particular, PGE seeks to understand whether there may be permitting issues
18 independent from litigation in this case that drove decisions to delay the projects. Based on a draft
19 of their Phase II opening testimony that the Blue Marmots informally shared with PGE, PGE
20 understands that the Blue Marmots intend to discuss the EFSC siting and Lake County Conditional
21 Use Permit process in their testimony—which is consistent with PGE’s view that the state and
22 local siting processes are *highly* relevant to the issues to be determined in Phase II. Further, PGE
23 believes that correspondence with ODOE/EFSC and Lake County regarding matters not directly
24 related to timing and schedule may nevertheless lead to the production of admissible evidence in
25 this case.

26 PGE provided this explanation to the Blue Marmots in its February 11, 2020 letter, but the
27 Blue Marmots failed to address PGE’s statements regarding relevance in their Supplemental

⁴³ Attachment F at 1-2, Blue Marmots’ Supplemental Response to PGE Data Request 1. The supplemental response for PGE’s Data Request 4 is identical except for instead referring to “DR #4” and referencing communications with Lake County. Attachment F at 3-4.

1 Response—apparently ignoring the fact that other potential causes of delay are at issue in this case.
2 In discovery, the applicable standard for assessing relevance is whether the information sought is
3 reasonably calculated to lead to the discovery of admissible evidence.⁴⁴ In this case, PGE’s request
4 for communications with state and local permitting entities is reasonably calculated to lead to the
5 production of evidence regarding permitting obstacles contributing to delay, if any exist, and
6 therefore constitutes a request for relevant information. Given the probative nature of this
7 information, PGE disagrees that the Blue Marmots may decline to provide a fully responsive
8 answer to PGE’s Data Requests 1 and 4 based on objections regarding relevance.

9 **2. Blue Marmots have not articulated why PGE’s requests for permitting**
10 **communications are overbroad, or why producing the information requested would**
11 **be too burdensome.**

12 The Blue Marmots claim that PGE’s request is overbroad and providing the requested
13 information would be unduly burdensome. The Blue Marmots did not confer with PGE regarding
14 these objections in advance, or confer regarding an alternative proposal that would be more limited
15 or less burdensome. Additionally, the Blue Marmots failed to provide any detail to support these
16 objections. Instead, the Blue Marmots apparently address the issue of overbreadth by selecting a
17 subset of correspondence which they claim “focuses on” the permitting timing and schedule.
18 However, this limited response is the type of subjective judgment that should not be within the
19 Blue Marmots’ sole discretion—and does not satisfy PGE’s request for all communications.
20 Indeed, there may be other correspondence addressing permitting obstacles that may not be
21 captured in the emails that the Blue Marmots claim “focus” on permitting timing and schedule.

22 In evaluating discovery requests against a claim that the request is burdensome or overly
23 broad, the Commission will consider the needs of the case, the resources available to the parties,
24 and the importance of the issues to which the discovery relates.⁴⁵ Indeed, in prior cases, the

⁴⁴ ORCP 36(B).

⁴⁵ OAR 860-001-0500(1); *Columbia Basic Elec. Coop. v. Umatilla Elec. Coop Re Wheatridge Wind Project*, Docket UM 1823, Ruling at 3-4 (June 16, 2017).

1 Commission has considered objections that address, among other issues, burden and declined to
2 compel production where completing the request would require significant time and expense, and
3 the requestor had not demonstrated it had no other resource to obtain the data.⁴⁶ Here, we have
4 completely different circumstances. To PGE’s knowledge, identifying and producing all
5 communications between EDPR / Blue Marmots and ODOE/EFSC and Lake County should be a
6 relatively simple, straight-forward exercise, and would not seem to be particularly time consuming.
7 Given the probative nature of this information, PGE disagrees that the Blue Marmots may decline
8 to provide a fully responsive answer to PGE’s Data Requests 1 and 4 based on objections regarding
9 burden or overbreadth.

10 **C. Interconnection Data Requests**

11 PGE served several data requests on the Blue Marmots specifically addressing
12 interconnection issues. Similar to the objections and “selective” responses provided in connection
13 with the permitting data requests, discussed above, the Blue Marmots objected and provided only
14 partial responses to the following data requests addressing interconnection issues.

15 **1. Interconnection Process Communications**

- 16 • **PGE Data Request 12.** Please provide all communications between EDPR and
17 PacifiCorp Transmission regarding the Blue Marmots’ interconnection process,
18 including but not limited to executed study agreements, questions and
19 responses, etc.⁴⁷

20 Regarding PGE Data Requests 12, the Blue Marmots provided the following response:

21 The Blue Marmots object to this data request on the grounds it would be unduly
22 burdensome, that the request is overly broad, and to the extent that production of

⁴⁶ *In the Matter of PacifiCorp, dba Pac. Power Investigation into Schedule 37 - Avoided Cost Purchases from Qualifying Facilities of 10,000 kW or Less*, Docket UM 1794, Order No. 17-121 (Mar. 23, 2017) (Commission affirmed the ALJ’s ruling denying the Renewable Energy Coalition’s (REC) motion to compel, where PacifiCorp argued that the request was unduly burdensome because it would take significant time and expense to perform the 100+ model runs that REC had requested, and would also impede PacifiCorp’s preparation of its upcoming IRP, and Commission concluded that REC had not shown that its needs for the data justified the burden to PacifiCorp, or that it had no other recourse to obtain the data).

⁴⁷ Attachment A at 2, PGE’s First Set of Data Requests (Jan. 23, 2020).

1 the requested data would reveal information protected by the attorney-client
2 privilege, the work product doctrine, or any other privilege.

3
4 Notwithstanding these objections, the Blue Marmots provide the following:

5
6 Please see attached folder DR #12 for correspondence with PacifiCorp which
7 materially impacted transmission timing and schedule.⁴⁸

8 In PGE's February 11, 2020 letter to the Blue Marmots, PGE communicated its view
9 regarding the importance of this information, expressed its disagreement with the Blue Marmots'
10 limited responses, and sought more information regarding the Blue Marmots' objections. In their
11 Supplemental Response to PGE's Data Request 12, the Blue Marmots question the relevance of
12 the information sought, and explain their view that transmission arrangements were not a schedule
13 driver:

14 As the Blue Marmots explain in testimony, the transmission arrangements that the
15 projects have made are not a schedule driver. As the transmission service
16 agreements that the projects have provided to PGE show, there are no network
17 upgrades required to enable transmission service. As the Blue Marmots explain in
18 testimony, that service was originally arranged to begin in 2019 and the projects
19 will pursue deferrals (at significant cost) to align the start of service with
20 commercial operations. A comprehensive record of communication between the
21 projects and PacifiCorp Transmission is not necessary to understand the role of
22 transmission in the two questions relevant for this proceeding.⁴⁹

23 The Blue Marmots provided no additional communications in their Supplemental Response,
24 except for an OASIS report.⁵⁰ These objections and limited responses are inappropriate and
25 unsubstantiated, and accordingly, the Blue Marmots should be compelled to provide complete
26 responses.

27 *a. The information PGE seeks to discover is relevant.*

28 As explained above, one of the key issues in this case is whether the Phase I litigation was
29 the cause for the delays of the projects. The Blue Marmots tacitly concede that this is a key issue

⁴⁸ See Attachment B at 4, Blue Marmots' Response to PGE Data Request 12.

⁴⁹ Attachment F at 6, Blue Marmots' Supplemental Response to PGE Data Request 12.

⁵⁰ Attachment F at 6, Blue Marmots' Supplemental Response to PGE Data Request 12.

1 when they reference (yet to be filed) testimony asserting that transmission arrangements were “not
2 a schedule driver.”⁵¹ The Blue Marmots’ assertions aside, PGE is entitled to data that will bear on
3 this question, including correspondence with PacifiCorp Transmission regarding matters not
4 directly related to timing and schedule that may nevertheless lead to the production of admissible
5 evidence in this case, such as interconnection difficulties. Again, the applicable standard is
6 whether the request is reasonably calculated to lead to production of relevant evidence, and PGE’s
7 request is intended to identify correspondence indicating regarding obstacles in the interconnection
8 process, if any exist. The Blue Marmots should not be permitted to withhold potentially relevant
9 information regarding the interconnection process based on their subjective view of what
10 constituted a schedule driver for their projects.

11 *b. The Blue Marmots have not articulated why PGE’s requests for*
12 *interconnection communications are overbroad, or why producing the*
13 *information requested would be too burdensome.*

14 Similar to the responses for PGE’s Data Requests 1 and 4, the Blue Marmots claim that
15 PGE’s Data Request 12 is overbroad, and providing the requested information would be unduly
16 burdensome. Again, the Blue Marmots did not confer with PGE regarding these objections before
17 providing their responses, or confer regarding an alternative proposal that would be more limited
18 or less burdensome. Instead, the Blue Marmots independently narrowed the scope of their
19 response by identifying a subset of correspondence which they claim “materially impacted” the
20 transmission timing and schedule. This limited response is inappropriate, and should not be within
21 the Blue Marmots’ sole discretion. Indeed, there may be other correspondence addressing
22 interconnection-related obstacles that may not be captured in emails focusing on interconnection
23 timing and schedule. The Blue Marmots have not articulated why this request is unduly
24 burdensome, and again based on PGE’s experience, identifying relevant correspondence with an
25 external party is generally a relatively straightforward task that is not particularly time-consuming.

⁵¹ Attachment F at 6, Blue Marmots’ Supplemental Response to PGE Data Request 8.

1 Additionally, these requests are intended to help determine whether there are interconnection
2 related issues driving the delays. Given the importance of this information to the key issues in
3 Phase II of this case, PGE disagrees that the Blue Marmots may decline to provide a fully
4 responsive answer to PGE’s Data Request 12 based on objections regarding burdensomeness or
5 overbreadth.

6 **2. *Aggregated Interconnection-Related Cost Savings***

7 PGE also submitted the following data request seeking detail regarding any potential cost
8 savings from an aggregated interconnection:

- 9 • **PGE Data Request 15.** Was one of the reasons the Blue Marmots sought
10 restudies (of either or both the SIS and Facilities Study) Blue Marmots’ desire
11 to be studied for interconnection as an aggregated project?

12 * * *

- 13 (c) If so, what are the interconnection cost savings and/or equipment cost
14 savings from aggregated interconnection?⁵²

15 The Blue Marmots provided the following response to PGE’s Data Request 15(c):

16 Compare originally tendered SGIAs and executed SGIAs (see Testimony Exhibits
17 914-918 and 925-929) for comparison of original plan of service to co-located plan
18 of service. Primary savings from co-locating projects are associated with
19 construction and collection line costs, not interconnection.⁵³

20 In PGE’s February 11, 2020 letter to the Blue Marmots, PGE explained that although the
21 Blue Marmots’ response clarified source of the cost savings, the response failed to quantify the
22 cost savings, as requested. PGE requested that the Blue Marmots provide the cost savings
23 information.

24 In their Supplemental Response to PGE’s Data Request 15(c), the Blue Marmots state:
25 The answer to this question entails reference to settlement negotiations. If PGE
26 agrees that settlement information is relevant in the proceeding, then the Blue
27 Marmots will provide the information.

⁵² Attachment A at 2, PGE’s First Set of Data Requests (Jan. 23, 2020).

⁵³ Attachment B at 5, Blue Marmots’ Response to PGE Data Request 15(c).

1 To the extent that the response would require reference to settlement negotiations, the Blue
2 Marmots could provide a response confidentially, and only to PGE, as they did for a portion of the
3 response to PGE’s Data Request 15(a).⁵⁴ However, there is no reason why the Blue Marmots
4 should refuse to respond to this data request on that basis.

V. CONCLUSION

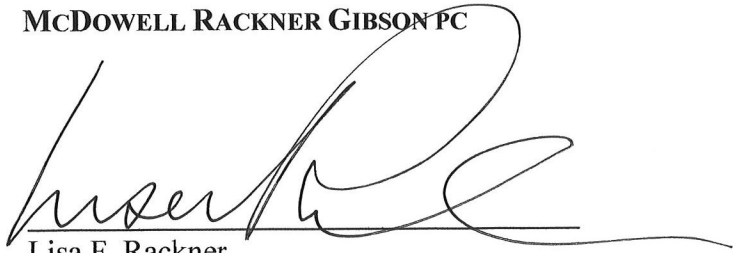
5 In Phase II of this case, the Blue Marmots have failed to provide full and complete
6 responses to PGE’s First Set of Data Requests, and refused to cooperate with PGE’s efforts to
7 resolve this dispute informally. Time is of the essence here, as two whole weeks have elapsed
8 since the initial deadline for the Blue Marmots to respond to PGE’s First Set of Data Requests,
9 and the Blue Marmots have provided few additional substantive responses. The information at
10 issue in this motion to compel is critical to PGE’s ability to prepare its testimony for the upcoming
11 March 27, 2020 deadline, and thus PGE urges that this motion be considered on an expedited basis.
12 PGE respectfully requests that the Commission compel the Blue Marmots to provide full and
13 complete responses to PGE Data Requests 1, 4, 8, 12, and 15(c).

14 ////
15 ////
16 ////
17 ////
18 ////
19 ////
20 ////

⁵⁴ Note, the Blue Marmots redacted certain information in response to PGE’s Data Request 15(a). In the attached version, PGE has redacted additional information to fully retain confidentiality of settlement discussions. The information redacted is irrelevant to this Motion to Compel. *See* Attachment B at 5 and Attachment F at 7.

Dated February 21, 2020

MCDOWELL RACKNER GIBSON PC

A handwritten signature in black ink, appearing to read 'Lisa F. Rackner', written over a horizontal line.

Lisa F. Rackner
Jordan R. Schoonover
419 SW 11th Avenue, Suite 400
Portland, Oregon 97205
Telephone: (503) 595-3925
Facsimile: (503) 595-3928
dockets@mrg-law.com

PORTLAND GENERAL ELECTRIC COMPANY

Donald J. Light
Assistant General Counsel
121 SW Salmon Street, 1WTC1301
Portland, Oregon 97204
Telephone: (503) 464-8315
donald.light@pgn.com

Attorneys for Portland General Electric Company

UM 1829, Phase II

Attachment A

To

Portland General Electric Company's

Motion to Compel

PGE's First Set of Data Requests (Jan. 23, 2020)



Portland General Electric Company
121 SW Salmon Street • Portland, Oregon 97204

January 23, 2020

TO: EDP Renewables (EDPR), the Blue Marmot LLCs, and their attorney
Irion Sanger

FROM: Portland General Electric Company and its attorney Lisa Rackner

**RE: UM 1829 Portland General Electric Company's First Set of Data Requests to
Blue Marmots regarding the Commercial Operation Date (COD) Litigation**

Please provide responses to the following requests for data by **February 6, 2020**. Please note that all responses must be posted to the Public Utility Commission Huddle account. Contact the undersigned before the response due date noted above if the request is unclear or if you need more time. In the event any of the responses to the requests below include spreadsheets, the spreadsheets should be in electronic form with cell formulae intact. For the purposes of responding to these requests, references to "Blue Marmot" or "Blue Marmots" should be interpreted to refer to the Blue Marmot projects individually *and* collectively.

1. Please provide all communications between EDPR/ Blue Marmots and Oregon Department of Energy (ODOE)/ Energy Facility Siting Council (EFSC).
2. Please explain why the Blue Marmots have not yet submitted an EFSC Application.
3. Please explain why the Blue Marmots have delayed their Notice of Intent (NOI).
4. Please provide all communications between EDPR/ Blue Marmots and Lake County Planning Department.
5. Please explain why the Blue Marmots elected to pursue site certification through EFSC rather than through the Lake County conditional use process.
6. Please describe the current status of the Blue Marmots' development permits (e.g. site certificate, conditional use permit, etc.).
7. Please provide the total expected profit, by year, for the Blue Marmots assuming a COD of January 1, 2021, for all projects.
8. Assuming the Blue Marmots were able to achieve their original CODs, please provide the total expected profit, by year, not adjusted for present value or inflation, expected over the term of the Power Purchase Agreements (PPA).
9. Please provide all versions of interconnection studies—both draft and final—conducted by PacifiCorp for EDPR/ Blue Marmots.

PGE's First Set of Data Requests to Blue Marmot re COD Litigation

January 23, 2020

Page 2

10. Please provide all versions of the Blue Marmots' Interconnection Agreement (IA) and final executed IA with PacifiCorp.
11. Please provide all feedback EDPR/ Blue Marmots provided to PacifiCorp regarding their interconnection studies and IA.
12. Please provide all communications between EDPR and PacifiCorp Transmission regarding the Blue Marmots' interconnection process, including but not limited to executed study agreements, questions and responses, etc.
13. Was the System Impact Study (SIS) restudy required or requested by EDPR/ Blue Marmots? Please explain the reason(s) why a re-study was either required or requested.
14. Was the Facilities Study restudy required or requested by EDPR/ Blue Marmots? Please explain the reason(s) why a re-study was either required or requested.
15. Was one of the reasons the Blue Marmots sought restudies (of either or both the SIS and Facilities Study) Blue Marmots' desire to be studied for interconnection as an aggregated project?
 - a) If not, please explain.
 - b) If so, are the Blue Marmots able to proceed as five separate projects given the IA they signed?
 - c) If so, what are the interconnection cost savings and/or equipment cost savings from aggregated interconnection?
16. Please explain the reason for the difference between the interconnection COD contained in the IA and the interconnection COD contained in the Feasibility Study.
17. Has EDPR signed a panel supply agreement? If so, when?
18. Has EDPR safe-harbored any equipment for the Blue Marmot projects, per the IRS guidance regarding the Investment Tax Credit? If so, what equipment and for what dates?
19. Has EDPR/Blue Marmots signed an engineering, procurement and construction (EPC) contract for the Blue Marmot projects? If so, when was the contract signed? And when is the expected starting date of construction?
20. Has EDPR/Blue Marmots procured any equipment for the Blue Marmot projects? If so, what equipment and when was it procured?

DIRECT QUESTIONS TO:

Lisa Rackner and Jordan Schoonover
McDowell Rackner Gibson PC
Attorneys for Portland General Electric Company
Telephone Nos: (503) 595-3925 and (503) 290-3633
Emails: lisa@mrg-law.com and jordan@mrg-law.com

UM 1829, Phase II

Attachment B

To

Portland General Electric Company's

Motion to Compel

Blue Marmots' Responses to PGE's First Set of Data Requests (Feb. 6, 2020)

Oregon Public Utility Commission
OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
February 6, 2020
Blue Marmots' Response to PGE Data Request 1

PGE Data Request 1

Please provide all communications between EDPR/ Blue Marmots and Oregon Department of Energy (ODOE)/ Energy Facility Siting Council (EFSC).

Response to PGE Data Request 1

The Blue Marmots object to this data request on the grounds of relevancy, it would be unduly burdensome, that the request is overly broad, and to the extent that production of the requested data would reveal information protected by the attorney-client privilege, the work product doctrine, or any other privilege.

Notwithstanding these objections, the Blue Marmots provide the following:

Please see attached folder DR #1 for correspondence with ODOE / EFSC which focuses on permitting timing and schedule.

Oregon Public Utility Commission
OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
February 6, 2020
Blue Marmots' Response to PGE Data Request 4

PGE Data Request 4

Please provide all communications between EDPR/ Blue Marmots and Lake County Planning Department.

Response to PGE Data Request 4

The Blue Marmots object to this data request on the grounds of relevancy, it would be unduly burdensome, that the request is overly broad, and to the extent that production of the requested data would reveal information protected by the attorney-client privilege, the work product doctrine, or any other privilege.

Notwithstanding these objections, the Blue Marmots provide the following:

Please see attached folder DR #4 for correspondence with Lake County which focuses on permitting timing and schedule.

Oregon Public Utility Commission
OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
February 6, 2020
Blue Marmots' Response to PGE Data Request 8

PGE Data Request 8

Assuming the Blue Marmots were able to achieve their original CODs, please provide the total expected profit, by year, not adjusted for present value or inflation, expected over the term of the Power Purchase Agreements (PPA).

Response to PGE Data Request 8

The Blue Marmots object to this data request on the grounds of relevancy, that the data is commercial sensitive, and that the Commission does not have the legal authority to compel the requested information. The Blue Marmots object to this data request to the extent that production of the requested data would reveal information protected by the attorney-client privilege, the work product doctrine, or any other privilege. Thus, the Blue Marmots do not provide a response.

Oregon Public Utility Commission
OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
February 6, 2020
Blue Marmots' Response to PGE Data Request 12

PGE Data Request 12

Please provide all communications between EDPR and PacifiCorp Transmission regarding the Blue Marmots' interconnection process, including but not limited to executed study agreements, questions and responses, etc.

Response to PGE Data Request 12

The Blue Marmots object to this data request on the grounds it would be unduly burdensome, that the request is overly broad, and to the extent that production of the requested data would reveal information protected by the attorney-client privilege, the work product doctrine, or any other privilege.

Notwithstanding these objections, the Blue Marmots provide the following:

Please see attached folder DR #12 for correspondence with PacifiCorp which materially impacted transmission timing and schedule. .

Oregon Public Utility Commission
OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
February 6, 2020
Blue Marmots' Response to PGE Data Request 15

PGE Data Request 15

Was one of the reasons the Blue Marmots sought restudies (of either or both the SIS and Facilities Study) Blue Marmots' desire to be studied for interconnection as an aggregated project?

- a) If not, please explain.
- b) If so, are the Blue Marmots able to proceed as five separate projects given the IA they signed?
- c) If so, what are the interconnection cost savings and/or equipment cost savings from aggregated interconnection?

Response to PGE Data Request 15

A) Yes.

[REDACTED]

B) See Testimony Exhibits 925-929 for plan of service in executed SGIA's and Blue Marmot/900, Talbott/26-28 for additional detail.

C) Compare originally tendered SGIA's and executed SGIA's (see Testimony Exhibits 914-918 and 925-929) for comparison of original plan of service to co-located plan of service. Primary savings from co-locating projects are associated with construction and collection line costs, not interconnection.

¹ The redacted information is confidential material that is only being provided to PGE.

UM 1829, Phase II

Attachment C

To

Portland General Electric Company's

Motion to Compel

February 7, 2020 Letter to Mr. Sanger



JORDAN SCHOONOVER
Direct (503) 290-3633
jordan@mrg-law.com

February 7, 2020

VIA EMAIL

Irion Sanger
Sanger Law PC
1041 SE 58th Place
Portland, OR 97215
irion@sanger-law.com

Re: Blue Marmot Discovery

Dear Mr. Sanger:

This letter relates to the data responses the Blue Marmots provided on February 6, and follows up on our January 28 phone call in which we discussed the Blue Marmots' objections to the data requests. Specifically, the Blue Marmots object to data requests 7 and 8, which inquire about the Blue Marmots' expected profits, and to data request 18, which asks whether the Blue Marmots have safe-harbored equipment pursuant to the Investment Tax Credit.

First, the Blue Marmots object that the information requested by PGE is commercially sensitive. PGE understands that the requested information may be sensitive and would certainly consider implementing any appropriate protections that the Blue Marmots suggest. However, commercial sensitivity does not provide a valid basis for refusing to provide the requested information.

Second, the Blue Marmots state "that the Commission does not have the legal authority to compel the requested information." PGE is not aware of any support for this statement and requests that you promptly provide citations to the authority on which the Blue Marmots rely. Absent provision of binding authority supporting this objection, PGE does not accept the Blue Marmots' objection as a valid basis for refusing to provide the requested information.

Third, the Blue Marmots' objections appear to indicate that the requested information may be protected by the attorney-client privilege, the work product doctrine, "or any other privilege." However, the Blue Marmots have not provided a privilege log or otherwise explained how the requested information is privileged. PGE requests that the Blue Marmots promptly explain why the requested information is privileged, which specific privilege(s) the Blue Marmots contend apply to which specific information, and provide a privilege log so that PGE can evaluate the claims of privilege.

Finally, the Blue Marmots object that the requested information is not relevant to this case. On the contrary, the information is directly relevant to one of the key issues in this case— “[w]hether litigation caused commercially reasonable delays in the Blue Marmots’ scheduled commercial operation dates listed in their partially executed PPAs[.]”¹ As you are aware, what was at stake for the Blue Marmots in Phase I was whether the Blue Marmots would be allowed to deliver their output to the PACW.PGE POD, or whether they would be required to pay an additional \$14 million to deliver their output to the BPA.PGE POD. The worst-case scenario for the Blue Marmots in this litigation would have decreased EDPR’s expected profits by \$14 million. Thus, whether or not a reasonable developer would have significantly slowed down project development, pending the outcome of this case—in particular, after they had already committed to a commercial operation date and without any assurance of an extension—will hinge at least in part on what the expected profits would have been under this worst case scenario. Accordingly, PGE is entitled to know the profit margin EDPR expected both with and without the additional \$14 million cost.

PGE respectfully requests that the Blue Marmots promptly provide the requested information supporting the objections. Absent evidence that the requested information is privileged or somehow outside the Commission’s authority, PGE intends to continue seeking the requested information, including by promptly filing a Motion to Compel discovery, if necessary.

Please do not hesitate to contact me if you have any questions.

Sincerely yours,



Jordan Schoonover

cc: Lisa Rackner and Donald Light

¹ Docket UM 1829, Joint Issues List at 1 (Jan. 2, 2020).

UM 1829, Phase II

Attachment D

To

Portland General Electric Company's

Motion to Compel

February 11, 2020 Letter to Mr. Sanger



LISA RACKNER
Direct (503) 595-3925
lisa@mrg-law.com

February 11, 2020

VIA EMAIL

Irion Sanger
Sanger Law PC
1041 SE 58th Place
Portland, OR 97215
irion@sanger-law.com

Re: Blue Marmot Discovery

Dear Mr. Sanger:

I am writing to confer regarding Blue Marmots' responses to PGE's First Set of Data Requests, which we received on February 6, 2020. As you know, we sent you a letter on February 7, 2020, in which we reiterated our disagreement with the Blue Marmots' refusal to provide the financial information requested in Data Requests (DRs) 7, 8, and 18, and requested that the Blue Marmots provide support for their stated objections. In addition, upon review of all of Blue Marmots' responses, we ask that the Blue Marmots reconsider their objections on the following DRs as well:

- In DR 1, PGE requested correspondence between the Blue Marmots and ODOE/EFSC, in an attempt to better understand reasons for, and circumstances surrounding the Blue Marmots' decision to delay the development of their projects. In response, the Blue Marmots have objected on the basis of relevance, burden, and attorney-client privilege and work product doctrine, and have limited their response to certain correspondence focusing on permitting timing and schedule. PGE disagrees that these objections or limited responses are appropriate. We understand from the Blue Marmots' draft testimony that they will be discussing the EFSC siting process in depth—which is consistent with PGE's view that the siting process is highly relevant to the issues to be determined in Phase II. Further, we believe that correspondence with ODOE/EFSC regarding matters not directly related to timing and schedule may nevertheless lead to admissible evidence in this case. Moreover, whether or not certain correspondence "focuses on" the timing or schedule of the projects is a subjective judgment that should not be within the Blue Marmots' sole discretion. Given the probative nature of this information, we object to the Blue Marmots declining to provide it based on claims that it is irrelevant, burdensome or overbroad. Moreover, we do not understand how correspondence with a government agency could be covered by attorney client privilege, work product doctrine, or any other

privilege. To the extent that the Blue Marmots can legitimately claim such protections, PGE requests that the Blue Marmots provide a privilege log.

- In the Blue Marmots' responses to DRs 2, 5, and 6, the Blue Marmots refer to testimony that has not yet been filed. Given that the testimony is not yet in the record, and contains descriptions and characterizations of settlement discussions, PGE believes that references to the testimony are inappropriate. Instead, PGE requests that the Blue Marmots provide full responses to these data requests—with the caveat that any reference to settlement discussions may not be disclosed to any third-party and so should not be posted to Huddle.
- In DR 4, PGE requested all correspondence between the Blue Marmots and Lake County, in an attempt to better understand challenges raised by the permitting process, and the circumstances and reasons for the Blue Marmots' decision to delay the development of their projects. In response, the Blue Marmots have objected on the basis of relevance, burden, and attorney-client privilege and work product doctrine and have limited their response to certain correspondence focusing on permitting timing and schedule. PGE disagrees that these objections or limited responses are appropriate. We understand from the Blue Marmots' draft testimony that they will be discussing the processing of Blue Marmots' Conditional Use Permit, which is consistent with PGE's view that the Lake County permitting process is relevant, and we believe that correspondence regarding matters not directly related to timing and schedule of that process may nevertheless lead to admissible evidence. Moreover, whether or not certain correspondence could impact the timing or schedule of the project is a subjective judgment that should not be within the Blue Marmots' sole discretion. Given the probative nature of this information, we object to the Blue Marmots declining to provide it based on claims that it is burdensome. Finally, we do not understand how correspondence with a government agency could be covered by attorney client privilege, work product doctrine, or any other privilege. However, if the Blue Marmots are withholding any documents on these bases, PGE requests that they provide a privilege log.
- In DRs 11 and 12, PGE requested that the Blue Marmots provide (a) feedback the Blue Marmots provided to PacifiCorp regarding their interconnection studies, and (b) communications between EDPR and PacifiCorp Transmission regarding the interconnection process. PGE requested this information in an attempt to better understand the reasons for and consequences of the Blue Marmots' decision to delay their project development and to restudy their interconnection with PacifiCorp as one aggregated project. The Blue Marmots have objected on the basis of relevance, burden, and attorney-client privilege and work product doctrine, and have limited their responses to certain correspondence that "materially impacted timing and schedule." PGE disagrees that these objections or limited responses are appropriate. We understand from the Blue Marmots' draft testimony that they discuss in depth the interconnection process with PacifiCorp, and believe that correspondence regarding matters not directly related to timing and schedule may lead to admissible evidence. Moreover, whether or not certain correspondence "materially impacted timing and schedule" is a subjective judgement that should not be left to the Blue Marmots' sole discretion. Given the probative nature of this information, we object to the Blue Marmots declining to provide it based on claims that it is burdensome. Finally, we do not understand how correspondence with PacifiCorp could be covered by attorney-client privilege, work product doctrine, or any other privilege.

February 11, 2020
Page 3

However, if the Blue Marmots are withholding any documents on these bases, PGE requests that they provide a privilege log.

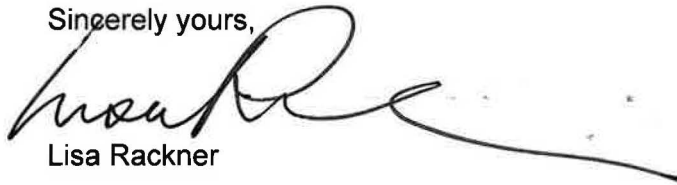
- In DR 15, PGE asked the Blue Marmots what interconnection cost savings they expect from aggregated interconnection. In its response, the Blue Marmots pointed out that the primary savings from co-locating the projects are associated with construction and collection line costs, not interconnection. However, the Blue Marmots failed to provide any detail on these savings. PGE requests that it be provided.

PGE is particularly concerned that the Blue Marmots have failed to provide full and prompt responses to data requests, in view of its impending deadline for Response Testimony of March 27, 2020. In the event that PGE is forced to move to compel this information, it may require an extension of the due date for its testimony.

For all of the above reasons, PGE urges the Blue Marmots to reconsider their refusal to provide information that is clearly within the scope of this case and necessary for the drafting of PGE's Response Testimony, and to provide the requested information promptly to avoid delays to the schedule.

Please do not hesitate to contact me if you have any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Lisa Rackner', with a long horizontal flourish extending to the right.

Lisa Rackner

cc: Donald Light and Jordan Schoonover

UM 1829, Phase II

Attachment E

To

Portland General Electric Company's

Motion to Compel

February 12, 2020 Email from Mr. Sanger re Blue Marmot Discovery

From: [Irion Sanger](#)
To: [Alisha Till](#); [Lisa Rackner](#); [Don Light](#); [Jordan Schoonover](#)
Cc: [Joni Sliger](#)
Subject: Re: Letter re Blue Marmot Discovery
Date: Wednesday, February 12, 2020 3:49:01 PM

All

I have discussed this with my client, and we intend to provide a response to the letter by the close of business Wednesday. We will also be providing additional responsive information and/or further explanations on the basis for the objections.

Thanks

Irion Sanger
Sanger Law PC
1041 SE 58th Place
Portland, OR 97215

503-756-7533 (tel)
503-334-2235 (fax)
irion@sanger-law.com

This e-mail (including attachments) may be a confidential attorney-client communication or may otherwise be privileged and/or confidential and the sender does not waive any related rights and obligations. Any distribution, use or copying of this e-mail or the information it contains by other than an intended recipient is unauthorized. If you believe that you may have received this e-mail in error, please destroy this message and its attachments, and call or email me immediately.

UM 1829, Phase II

Attachment F

To

Portland General Electric Company's

Motion to Compel

Blue Marmots' Supplemental Responses to PGE's
First Set of Data Requests (Feb. 19, 2020)

Oregon Public Utility Commission

OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833

February 19, 2020

Blue Marmots' Supplemental Response to PGE Data Request 1

PGE Data Request 1

Please provide all communications between EDPR/ Blue Marmots and Oregon Department of Energy (ODOE)/ Energy Facility Siting Council (EFSC).

Response to PGE Data Request 1

Original response:

The Blue Marmots object to this data request on the grounds of relevancy, it would be unduly burdensome, that the request is overly broad, and to the extent that production of the requested data would reveal information protected by the attorney-client privilege, the work product doctrine, or any other privilege.

Notwithstanding these objections, the Blue Marmots provide the following:

Please see attached folder DR #1 for correspondence with ODOE / EFSC which focuses on permitting timing and schedule.

Supplemental Response:

The Blue Marmots object to this data request on the grounds of relevancy, it would be unduly burdensome, and that the request is overly broad.

The Blue Marmots disagree that all communications between the projects and ODOE/EFSC are relevant for this Phase II proceeding. The questions for this proceeding are “Whether litigation caused commercially reasonable delays in the Blue Marmots’ scheduled commercial operation dates listed in their partially executed PPAs?” and “Should the Blue Marmots’ scheduled commercial operation dates be extended and if so, what new dates should be included in the final executable PPAs that PGE must offer consistent with the final resolution of all issues in Phase II of UM 1829 or other subsequent proceedings?” As the Blue Marmots argue in testimony, the litigation caused commercially reasonable delays in project development, in part because it would have been imprudent for the Blue Marmots, or any commercially reasonable developer, to incur the costs required to advance permitting given the commercial uncertainty caused by the litigation. A comprehensive record of every communication between the projects and ODOE / EFSC is not relevant to the question of the commercial reasonableness of the decision not to incur costs given the uncertainty caused by the litigation, nor is it relevant to the extent of the uncertainty caused by the litigation, nor is it likely to lead to admissible evidence regarding either of the questions posed in this Phase II.

The Blue Marmots originally objected to this data request to the extent that production of the requested data would reveal information protected by the attorney-client privilege, the work product doctrine, or any other privilege with the belief and understanding that some or all of the documents were privileged. The Blue Marmots have not identified any potentially responsive documents protected by the attorney-client privilege or the work product doctrine, and do not provide a privilege log.

Notwithstanding these objections, the Blue Marmots provide the following:

Please see folder DR #1 attached to the Original Data Response for correspondence with ODOE / EFSC which focuses on permitting timing and schedule.

Oregon Public Utility Commission
OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
February 19, 2020
Blue Marmots' Supplemental Response to PGE Data Request 4

PGE Data Request 4

Please provide all communications between EDPR/ Blue Marmots and Lake County Planning Department.

Response to PGE Data Request 4

Original response:

The Blue Marmots object to this data request on the grounds of relevancy, it would be unduly burdensome, that the request is overly broad, and to the extent that production of the requested data would reveal information protected by the attorney-client privilege, the work product doctrine, or any other privilege.

Notwithstanding these objections, the Blue Marmots provide the following:

Please see attached folder DR #4 for correspondence with Lake County which focuses on permitting timing and schedule.

Supplemental Response:

The Blue Marmots object to this data request on the grounds of relevancy, it would be unduly burdensome, and that the request is overly broad.

The Blue Marmots originally objected to this data request to the extent that production of the requested data would reveal information protected by the attorney-client privilege, the work product doctrine, or any other privilege with the belief and understanding that some or all of the documents were privileged. The Blue Marmots have not identified any potentially responsive documents protected by the attorney-client privilege or the work product doctrine, and do not provide a privilege log.

Notwithstanding these objections, the Blue Marmots provide the following:

Please see the folder DR #4 attached to the Original Data Response for correspondence with Lake County which focuses on permitting timing and schedule.

The Blue Marmots disagree that all communications between the projects and Lake County are relevant for this Phase II proceeding. The questions for this proceeding are "Whether litigation caused commercially reasonable delays in the Blue Marmots' scheduled commercial operation dates listed in their partially executed PPAs?" and "Should the Blue Marmots' scheduled commercial operation dates be extended and if so, what new dates should be included in the final

executable PPAs that PGE must offer consistent with the final resolution of all issues in Phase II of UM 1829 or other subsequent proceedings?” As the Blue Marmots argue in testimony, the litigation caused commercially reasonable delays in project development, in part because it would have been imprudent for the Blue Marmots, or any commercial developer, to incur the costs required to advance permitting given the commercial uncertainty caused by the litigation. A comprehensive record of every communication between the projects and Lake County is not relevant to the question of the commercial reasonableness of the decision not to incur costs given the uncertainty caused by the litigation, nor is it relevant to the extent of the uncertainty caused by the litigation, nor is it likely to lead to admissible evidence regarding either of the questions posed in this Phase II.

Oregon Public Utility Commission
OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
February 19, 2020
Blue Marmots' Supplemental Response to PGE Data Request 8

PGE Data Request 8

Assuming the Blue Marmots were able to achieve their original CODs, please provide the total expected profit, by year, not adjusted for present value or inflation, expected over the term of the Power Purchase Agreements (PPA).

Response to PGE Data Request 8

Original Response:

The Blue Marmots object to this data request on the grounds of relevancy, that the data is commercial sensitive, and that the Commission does not have the legal authority to compel the requested information. The Blue Marmots object to this data request to the extent that production of the requested data would reveal information protected by the attorney-client privilege, the work product doctrine, or any other privilege. Thus, the Blue Marmots do not provide a response.

Supplemental Response:

The Blue Marmots object to this data request on the grounds of relevancy, that the data is commercial sensitive, and that the Commission does not have the legal authority to compel the requested information. Thus, the Blue Marmots do not provide a response.

The Blue Marmots originally objected to this data request to the extent that production of the requested data would reveal information protected by the attorney-client privilege, the work product doctrine, or any other privilege with the belief and understanding that some or all of the documents were privileged. The Blue Marmots have not identified any potentially responsive documents protected by the attorney-client privilege or the work product doctrine, and do not provide a privilege log.

Oregon Public Utility Commission
OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
February 19, 2020
Blue Marmots' Supplemental Response to PGE Data Request 12

PGE Data Request 12

Please provide all communications between EDPR and PacifiCorp Transmission regarding the Blue Marmots' interconnection process, including but not limited to executed study agreements, questions and responses, etc.

Response to PGE Data Request 12

Original Response:

The Blue Marmots object to this data request on the grounds it would be unduly burdensome, that the request is overly broad, and to the extent that production of the requested data would reveal information protected by the attorney-client privilege, the work product doctrine, or any other privilege.

Notwithstanding these objections, the Blue Marmots provide the following:

Please see attached folder DR #12 for correspondence with PacifiCorp which materially impacted transmission timing and schedule.

Supplemental Response:

The Blue Marmots disagree that all communications between the projects and PacifiCorp Transmission are relevant. The questions for this proceeding are "Whether litigation caused commercially reasonable delays in the Blue Marmots' scheduled commercial operation dates listed in their partially executed PPAs?" and "Should the Blue Marmots' scheduled commercial operation dates be extended and if so, what new dates should be included in the final executable PPAs that PGE must offer consistent with the final resolution of all issues in Phase II of UM 1829 or other subsequent proceedings?" As the Blue Marmots explain in testimony, the transmission arrangements that the projects have made are not a schedule driver. As the transmission service agreements that the projects have provided to PGE show, there are no network upgrades required to enable transmission service. As the Blue Marmots explain in testimony, that service was originally arranged to begin in 2019 and the projects will pursue deferrals (at significant cost) to align the start of service with commercial operations. A comprehensive record of communication between the projects and PacifiCorp Transmission is not necessary to understand the role of transmission in the two questions relevant for this proceeding.

See the folders "DR #12" attached to the Original Data Response and "DR #12 addl" for a report from OASIS with additional information on the projects' transmission arrangements.

Oregon Public Utility Commission
OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
February 19, 2020
Blue Marmots' Supplemental Response to PGE Data Request 15

PGE Data Request 15

Was one of the reasons the Blue Marmots sought restudies (of either or both the SIS and Facilities Study) Blue Marmots' desire to be studied for interconnection as an aggregated project?

- a) If not, please explain.
- b) If so, are the Blue Marmots able to proceed as five separate projects given the IA they signed?
- c) If so, what are the interconnection cost savings and/or equipment cost savings from aggregated interconnection?

Response to PGE Data Request 15

Original Response:

A) Yes. [REDACTED]

B) See Testimony Exhibits 925-929 for plan of service in executed SGAs and Blue Marmot/900, Talbott/26-28 for additional detail.

C) Compare originally tendered SGAs and executed SGAs (see Testimony Exhibits 914-918 and 925-929) for comparison of original plan of service to co-located plan of service. Primary savings from co-locating projects are associated with construction and collection line costs, not interconnection.

Supplemental Response to 15(C):

C) The answer to this question entails reference to settlement negotiations. If PGE agrees that settlement information is relevant in the proceeding, then the Blue Marmots will provide the information.