

**Via E-mail**

April 27, 2020

Filing Center  
Public Utility Commission of Oregon  
201 High St. SE  
Salem, OR 97301

Re: BLUE MARMOT V LLC (UM 1829), BLUE MARMOT VI LLC (UM 1830),  
BLUE MARMOT VII LLC (UM 1831), BLUE MARMOT VIII LLC (UM 1832),  
BLUE MARMOT IX LLC (UM 1833) Complainants vs. PORTLAND GENERAL  
ELECTRIC COMPANY Defendant Pursuant to ORS 756.500  
Docket Nos. UM 1829, UM 1830, UM 1831, UM 1832, UM 1833

Dear Filing Center:

Please find enclosed the password protected confidential page of Reply Testimony of William Talbott (Blue Marmot/1000, Talbott/13). It was also sent to the parties via email password protected.

Please do not hesitate to contact me with any questions.

Sincerely,



Min Hu

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the confidential portion of Blue Marmot/1000, Talbott/13 upon the parties shown below by emailing a password protected copy.

Dated at Portland, Oregon, this 27<sup>th</sup> day of April, 2020.

Sincerely,



Min Hu

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1829, UM 1830, UM 1831, UM 1832, UM 1833**

BLUE MARMOT V LLC (UM 1829)            )  
BLUE MARMOT VI LLC (UM 1830)        )  
BLUE MARMOT VII LLC (UM 1831)        )  
BLUE MARMOT VIII LLC (UM 1832)       )  
BLUE MARMOT IX LLC (UM 1833)         )  
  Complainants        )  
  vs.                                 )  
PORTLAND GENERAL ELECTRIC            )  
COMPANY                                    )  
  Defendant                 )  
Pursuant to ORS 756.500.                )  
\_\_\_\_\_ )

**REPLY TESTIMONY OF**

**WILLIAM TALBOTT**

**ON BEHALF OF THE**

**BLUE MARMOT V, VI, VII, VIII, AND IX**

**April 27, 2020**

1 **I. INTRODUCTION**

2 **Q. Please state your name for the record.**

3 **A.** My name is William Talbott.

4 **Q. By whom are you employed, and in what capacity?**

5 **A.** I am employed as a Development Project Manager with EDP Renewables North  
6 America (“EDPR NA”).

7 **Q. On whose behalf are you appearing in this proceeding?**

8 **A.** This testimony is submitted on behalf of Blue Marmot V, Blue Marmot VI, Blue  
9 Marmot VII, Blue Marmot VIII, and Blue Marmot IX (jointly, “Blue Marmots”).  
10 The Blue Marmots own each of the individual projects (jointly, “Blue Marmot  
11 Projects”). EDPR NA is the parent company of the Blue Marmots.

12 **Q. Are you the same William Talbott who previously submitted testimony in  
13 this proceeding?**

14 **A.** Yes, I submitted testimony in both Phase I and Phase II of this proceeding.

15 **Q. Is anyone else providing testimony on behalf of the Blue Marmots in Phase  
16 II?**

17 **A.** Yes. Mr. Steve Irvin, an Executive Vice President with EDPR NA, is also  
18 providing testimony. His testimony addresses how the Blue Marmots and EDPR  
19 NA make business decisions. Mr. Irvin submitted testimony in Phase I of this  
20 proceeding.

21 **Q. Please summarize your testimony.**

22 **A.** The objective of this testimony is to explain the Blue Marmots’ plans for  
23 development and how this litigation adversely impacted those plans. I also  
24 explain further the new commercial operation dates (“CODs”) that the Blue  
25 Marmots are seeking in light of delays caused by the litigation.

1           Finally, I respond to specific points raised by Mr. Moore in his testimony  
2           on behalf of Portland General Electric Company (“PGE”). First, Mr. Moore  
3           claims that the delays were due to factors other than litigation. I disagree. But for  
4           the litigation, all of the Blue Marmot Projects had reasonable plans to meet their  
5           CODs on time. There have not been any other events or changes over the course  
6           of the litigation that would have caused any significant delays, and, but for the  
7           litigation, all of the Blue Marmot Projects would have likely met their CODs on  
8           time, potentially with two projects coming online within a month of the 12-month  
9           cure period. Second, Mr. Moore also claims that the Blue Marmots’ decisions to  
10          delay development in light of the litigation were not commercially reasonable.  
11          Again, I disagree. Any commercially reasonable developer would have made the  
12          same decisions that the Blue Marmots made.

13   **Q.    Please outline how your response testimony is organized.**

14   **A.**   First, I explain the Phase II issues and why certainty about the power purchase  
15          agreements (“PPAs”) and CODs specifically is important. Next, I explain the  
16          CODs that the Blue Marmots propose and why PGE’s proposed CODs are not  
17          reasonable. Then, I explain the specific delays that occurred due to the litigation  
18          and clarify several points raised by PGE. Finally, I respond to PGE’s arguments  
19          that putting tens of millions of dollars at risk during litigation was commercially  
20          reasonable and explain the Blue Marmot’s position that choosing *not* to build the  
21          projects until they had final, executed PPAs was and continues to be  
22          commercially reasonable.

1 **II. PHASE II ISSUES**

2 **Q. Please explain the purpose of this litigation.**

3 **A.** The Blue Marmots' aim throughout this litigation has been to get viable PPAs  
4 from PGE so that they can develop their projects. By viable, I mean fully  
5 executed PPAs with clearly defined and acceptable parameters for COD, price,  
6 term, and point of delivery ("POD"), among other things.

7 **Q. Did the Phase I order effectively guarantee that the Blue Marmots would get**  
8 **viable PPAs?**

9 **A.** No. The Blue Marmots expected that any favorable order from the Commission  
10 would provide the Blue Marmots with viable PPAs, including COD relief. The  
11 Commission's order for Phase I was largely favorable to the Blue Marmots.  
12 However, it did not resolve the COD term. Instead, the Commission provided  
13 that the "Blue Marmots may assert [a claim for new CODs] following this order,  
14 and PGE will be entitled, as it requests in its reply brief, to a full evidentiary  
15 proceeding with discovery as we consider this question."<sup>1</sup> The purpose of this  
16 Phase II is to determine the appropriate CODs for the Blue Marmots so that the  
17 Blue Marmots can finally have viable PPAs and develop their projects.

18 **Q. Are fully executed PPAs necessary for the Blue Marmots to develop their**  
19 **projects?**

20 **A.** Yes. PPAs provide financial certainty, and, without that, it would not be  
21 commercially reasonable for development to proceed. Mr. Irvin explains how the  
22 Blue Marmots make business decisions in his testimony. From my point of view,  
23 these projects were designed on the premise that they would receive PPAs from

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<sup>1</sup> *Blue Marmot V LLC et al. v. PGE*, Docket No. UM 1829 et al., Order No. 19-322 at 20 (Sept. 30, 2019).

1 PGE. When PGE refused to countersign the PPAs, we could no longer rely on  
2 that premise, which limited our ability to proceed with development.

3 **Q. In his testimony, does Mr. Moore agree that the Blue Marmots need fully**  
4 **executed PPAs to develop their projects?**

5 **A.** No. Mr. Moore claims that the Blue Marmots had sufficient certainty about their  
6 PPAs to proceed during the litigation, even though they did not have fully  
7 executed PPAs. In fact, he claims that the *only* uncertainty that the Blue Marmots  
8 faced in Phase I was whether or not they might have to pay approximately \$14  
9 million for additional transmission service. This is incorrect. There were more  
10 than two potential outcomes of the Phase I litigation. Nevertheless, Mr. Moore  
11 characterizes the litigation as posing only a “minimal risk” to the Blue Marmots’  
12 development. Further, Mr. Moore claims that the Blue Marmot Projects would  
13 have been feasible and profitable even if they had to pay the \$14 million. Based  
14 on that assumption, he claims that a commercially reasonable developer would  
15 have proceeded to develop the projects during the litigation. I disagree.

16 **Q. Please explain the issues in this proceeding.**

17 **A.** PGE and the Blue Marmots agreed on the following two issues for Phase II:

18 1. “Whether litigation caused commercially reasonable delays in the Blue  
19 Marmots’ scheduled commercial operation dates listed in their partially  
20 executed PPAs?” and

21 2. “Should the Blue Marmots’ scheduled commercial operation dates be  
22 extended and if so, what new dates should be included in the final  
23 executable PPAs that PGE must offer consistent with the final resolution of  
24 all issues in Phase II of UM 1829 or other subsequent proceedings?”<sup>2</sup>

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<sup>2</sup> Phase II, Joint Issues List at 1 (Jan. 2, 2020).

1 I agree with Mr. Moore’s interpretation of the second issue: “The second  
2 issue asks the Commission to consider, given all of the facts, whether the Blue  
3 Marmots’ CODs should be extended, and if so, by how long.”<sup>3</sup>

4 **Q. Do you agree with Mr. Moore’s interpretation of the first issue as whether**  
5 **litigation “as opposed to other factors” caused delays to the Blue Marmots’**  
6 **original CODs?<sup>4</sup>**

7 **A.** No. The issue is “whether litigation caused commercially reasonable delays,” not  
8 whether litigation was the *sole* cause of delays. This proceeding is not intended to  
9 litigate a counter-factual history in which there was no litigation, and what types  
10 of events may also have posed challenges to the development and construction of  
11 the Blue Marmot Projects. In my experience, it is normal for a number of  
12 unexpected events and potential delays to occur during development. It is  
13 important for the Commission to understand that the other factors identified by  
14 Mr. Moore are the types of normal risks that renewable energy project developers  
15 typically overcome.

16 **Q. Has PGE identified any delays that would have resulted in any of the Blue**  
17 **Marmots meaningfully missing their CODs?**

18 **A.** No. If the Commission wishes to engage in a retrospective counter-factual review  
19 of what would have happened but for the litigation, then that review will show  
20 that there was nothing that occurred over the past three years that would have  
21 resulted in any meaningful delays. First, the Blue Marmots had plans to meet  
22 their original CODs, and the litigation disrupted those plans. PGE does not  
23 dispute this fact and appears to agree that the Blue Marmots’ plans would have

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<sup>3</sup> PGE/900, Moore/7.

<sup>4</sup> *Id.*



1 allowed for the projects to meet their CODs.<sup>5</sup> Second, there were minor changes  
2 to the Blue Marmots' plans. Those changes potentially could have caused delays,  
3 including *potentially* pushing *two* of the Blue Marmots into their cure periods by  
4 *one* month. However, if PGE had executed the PPAs instead of litigating, then  
5 the Blue Marmots would have had a reasonable opportunity to meet their CODs  
6 on time or ahead of schedule. However, the litigation caused delays, and now the  
7 Blue Marmots cannot meet their CODs even with the full cure periods.

8 **III. THE PROPOSED CODS**

9 **Q. What CODs are the Blue Marmots requesting?**

10 **A.** The CODs that would provide appropriate relief to the Blue Marmots are as  
11 follows:

12	Blue Marmot V:	September 27, 2023
13	Blue Marmot VI:	October 13, 2023
14	Blue Marmot VII:	November 2, 2023
15	Blue Marmot VIII:	November 23, 2023
16	Blue Marmot IX:	December 7, 2023

17 It should be noted that these dates assume that a final order in the Phase II  
18 proceeding of UM 1829 et al. will be received by roughly September 2020. These  
19 dates reflect the time necessary for the Blue Marmots to come online, given the  
20 development that needs to occur but was delayed due to the litigation.

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<sup>5</sup> PGE/900, Moore/8-9 (agreeing that the Blue Marmots could have completed the interconnection process in time to meet their CODs as planned); PGE/900, Moore/15 (appearing to agree that the Blue Marmots could have completed permitting and construction in time to meet their CODs as planned).

1 **Q. Does PGE agree that the Blue Marmots need new CODs?**

2 **A.** Yes, even PGE ultimately agrees that it would be reasonable to grant new CODs.

3 According to Mr. Moore, “PGE supports the Commission granting the Blue

4 Marmots CODs of December 31, 2022, for all five projects.”<sup>6</sup> PGE caveats this

5 support by requesting that the Blue Marmots receive no cure period.<sup>7</sup>

6 **Q. Why doesn’t PGE support the Blue Marmots’ proposed 2023 CODs?**

7 **A.** PGE argues that the 2023 CODs are unreasonable because the extension would be

8 longer than the duration of the litigation.<sup>8</sup>

9 PGE’s calculations indicate the 2023 CODs are more than a year longer  
10 than the duration of litigation, but this is incorrect.<sup>9</sup> PGE calculates the duration  
11 of litigation from the filing of complaints to the Phase I order.<sup>10</sup> There are several  
12 problems with this approach. First, the dispute did not start with the filing of  
13 complaints on April 28, 2017 but with PGE’s refusal to countersign the PPAs on  
14 April 19, 2017, 9 days prior.<sup>11</sup> Second, the litigation did not end with the Phase I  
15 order. As explained above, the Blue Marmots need viable PPAs with CODs and  
16 cure periods before they construct the facilities. The Blue Marmots hope the

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<sup>6</sup> PGE/900, Moore/25.

<sup>7</sup> PGE/900, Moore/26.

<sup>8</sup> PGE/900, Moore/26.

<sup>9</sup> See PGE/900, Moore/7-8.

<sup>10</sup> PGE/900, Moore/8.

<sup>11</sup> Blue Marmot/200, Talbot/7 (“On April 19, 2017, PGE refused to execute the partially executed PPAs.”). I note in Phase I, the Blue Marmots requested relief starting from April 19, 2017. Phase I, Blue Marmots’ Prehearing Brief at 41 (“In this case, the Blue Marmots request that the Commission modify the COD in their PPAs to on a day for day basis from the date upon which PGE refused to execute the power purchase agreements to the day of the final order in this proceeding.”). The Blue Marmots have modified their request to be more specific in this Phase II and to reflect the seasonal considerations that could otherwise require them to risk development being dependent upon the cure period.

1 litigation will end with a Commission order no later than September 2020, at least  
2 337 days later from the Phase I order.<sup>12</sup> The extensions of time provided to the  
3 Blue Marmots related to the litigation should be based on when the Commission  
4 issues its final order, not a favorable interim order that did not resolve whether the  
5 Blue Marmots would be provided final PPAs that would allow them to construct  
6 the facilities.

7 With these corrections, the Blue Marmots are only asking for a few  
8 months' extension beyond the duration of litigation.<sup>13</sup> As I discuss elsewhere in  
9 my testimony, these months are necessary in light of the nature of the  
10 development work to be done, some of which is seasonally dependent and thus  
11 not commercially reasonable to undertake during certain months of the year.

12 **Q. Do you agree with Mr. Moore that December 31, 2022 CODs without a cure**  
13 **period is appropriate?**

14 **A.** No. The Blue Marmots need a reasonable cure period. It is PUC policy to have  
15 cure periods (i.e., to prohibit utilities from terminating on the basis of unexpected  
16 delays). This reflects the normal process of QF development. There are a number  
17 of factors that can cause problems in achieving commercial operation after PPA  
18 execution, including but not limited to interconnection arrangements, land use  
19 permits, construction risk, weather disruptions or unexpected disruptions in

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<sup>12</sup> 337 days will pass from September 30, 2019, to September 1, 2020.

<sup>13</sup> Specifically, 80 days for Blue Marmot VII, 101 days for Blue Marmot VIII, 115 days for Blue Marmot IX, 166 days for Blue Marmot V, and 182 days for Blue Marmot VI. As I note in my opening testimony, the Blue Marmots would have selected later days for Blue Marmot V and VI originally, but PGE's process for executing PPAs took more time than expected and the Blue Marmots did not want to delay PPA execution further by requesting new CODs for March 2020, as they could have done. Blue Marmot/900, Talbot/8-9.

1 acquiring equipment and or/supplies, such as the current situation involving the  
2 COVID-19 global pandemic. While at this time, we are not aware that any of  
3 these factors will necessarily impact the Blue Marmots' ability to achieve  
4 commercial operations as scheduled, these are exactly the kinds of potential  
5 delays that the cure period is designed to remedy.

6 Further, many, if not most, of the recently developed QFs in PGE's  
7 resource stack missed their scheduled COD. A recent analysis showed that only  
8 approximately 26% of all QFs were able to timely reach their CODs and that, if  
9 you narrow the results to only contracts executed since 2016, none of the projects  
10 achieved commercial operation as scheduled.<sup>14</sup> PGE's data response in this case  
11 confirms this result.<sup>15</sup> PGE provided a list of solar QF projects with PPAs  
12 executed from May 10, 2017, to January 17, 2020, and none of the projects  
13 achieved commercial operations as scheduled.<sup>16</sup> Many more of the projects listed  
14 have not reached commercial operation but are still within their one-year cure  
15 period. Any project can miss its scheduled COD for a variety of reasons, and  
16 therefore cure periods are necessary.

17 **Q. PGE proposes earlier CODs than the Blue Marmots request. Is it possible**  
18 **for the Blue Marmots to achieve the CODs that PGE proposed?**

19 **A.** Not if the Commission does not issue an order this spring, which the current  
20 schedule does not allow. I testified in February that the Blue Marmots could  
21 achieve CODs at the end of 2022, but only if PGE and the Blue Marmots resolved

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<sup>14</sup> *In re Portland Gen. Elec. Co. 2019 Integrated Res. Plan*, Docket No. LC 73, The Renewable Energy Coalition Opening Comments at 6-7 (Oct. 11, 2019).

<sup>15</sup> Exhibit Blue Marmot/1001 (PGE Response to Data Request No. 8 and DR 008 Attachment A).

<sup>16</sup> *Id.*

1 this dispute by late April 2020.<sup>17</sup> While there may be a small amount of  
2 flexibility, the current briefing schedule has the final brief due June 29, 2020, and  
3 the Blue Marmots do not believe a final order is likely to come any earlier than  
4 September 2020, which is past the time in which the Blue Marmots need viable  
5 PPAs to meet 2022 CODs. Thus, if the Commission has to resolve this  
6 proceeding, then the 2022 CODs will become unachievable and the Blue Marmots  
7 will need CODs in September to December 2023 as I indicated earlier.

8 **Q. What is the basis for PGE's proposal?**

9 **A.** First, PGE argues that the December 31, 2022 CODs are reasonable because I  
10 testified that the Blue Marmot Projects could be online by that date.<sup>18</sup> However,  
11 PGE ignores that I testified in February that those CODs were only achievable if  
12 this dispute was resolved in spring 2020.<sup>19</sup>

13 Second, PGE argues that the December 31, 2022 CODs are reasonable  
14 because the extension is comparable to the time that the Blue Marmots originally  
15 had between partially executing the PPAs in May 2017 and the CODs in those  
16 PPAs.<sup>20</sup> I disagree with PGE's assessment, because PGE's calculations assume  
17 the Blue Marmots either have or will very soon have executed new PPAs. The  
18 Blue Marmots had between 976 and 1098 days to develop their projects,  
19 calculating from partial execution in the spring of 2017 to COD.<sup>21</sup> For the Blue

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17 Blue Marmots/900, Talbot/7.

18 PGE/900, Moore/25.

19 Blue Marmots/900, Talbot/7.

20 PGE/900, Moore/26.

21 Blue Marmot V and VI executed their PPAs on March 29, 2017 for November 30, 2019 CODs (976 days). Blue Marmot VIII executed its PPA on April 20, 2017 for March 31, 2020 COD (1076 days). Blue Marmot VII and IX executed their PPAs on March 29, 2017 for March 31, 2020 CODs (1098 days).

1 Marmots to again have between 976 and 1098 days before CODs of December  
2 31, 2022, the Blue Marmots would need to have had partially executed new PPAs  
3 as early as December 29, 2019, and no later than April 29, 2020.<sup>22</sup> Absent a  
4 settlement with PGE, this is unrealistic. In contrast, the Blue Marmots' proposed  
5 2023 CODs provide comparable extensions (976 or 1098 days), if one assumes  
6 the Blue Marmots will be able to begin executing new PPAs by late October  
7 2020, which is only reasonable if there is a September 2020 order.<sup>23</sup>

8 Third, PGE argues that the Blue Marmots should not receive a cure period  
9 because, in Mr. Moore's words, "they should be held to their revised CODs."<sup>24</sup>  
10 As discussed earlier, it is unclear to me why PGE thinks the Blue Marmots should  
11 "be held" to their CODs when PUC policy and PGE's practice is to provide QFs a  
12 cure period.

13 Finally, PGE argues that the Blue Marmots should not receive CODs  
14 (including cure period) beyond December 2022, because PGE claims the Blue  
15 Marmots will receive more revenue for coming online later. In short, PGE claims  
16 the Blue Marmots have an incentive to delay development. We propose the 2023

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<sup>22</sup> Specifically, December 29, 2019 for Blue Marmot VII and IX (1098 days prior to COD); January 20, 2020 for Blue Marmot VIII (1076 days prior to COD); and April 29, 2020 for Blue Marmot V and VI (976 days prior to COD).

<sup>23</sup> Specifically, comparable extensions for the Blue Marmots' proposed CODs would require PPAs to be partially executed by October 30, 2020 (1098 days prior to Blue Marmot VII's proposed COD), December 4, 2020 (1098 days prior to Blue Marmot IX's proposed COD), December 12, 2020 (1076 days prior to Blue Marmot VIII's proposed COD), January 24, 2021 (976 days prior to Blue Marmot V's proposed COD), and February 9, 2021 (976 days prior to Blue Marmot VI's proposed COD). The Blue Marmots certainly hope to execute viable PPAs prior to February 2021, but as I explain elsewhere, there are seasonal considerations that require us to adjust our CODs beyond a mere day-for-day basis.

<sup>24</sup> PGE/900, Moore/26.

1 CODs because they are achievable, not to game the system as PGE seems to  
2 imply.

3 **Q. Do the Blue Marmots have an incentive to delay development?**

4 **A.** No. Actually, QFs generally have an incentive to develop early and come online  
5 as soon as possible. While there are a number of moving parts that the developer  
6 must coordinate in order to actually achieve commercial operation, generally,  
7 there are benefits to coming online sooner than planned. This is so for a variety  
8 of factors including that: 1) land use permits often have expiration dates or a time  
9 by which they need to be invoked, otherwise the developer would need to re-  
10 apply and go through the permitting process anew; and 2) there is typically a set  
11 timeline for interconnecting the project, and if deadlines are missed, the project  
12 will need to start over in the queue or it may need to be restudied with the added  
13 cost that comes along with the whole study process.

14 Mr. Moore's testimony is also inconsistent with how the Blue Marmots'  
15 PPAs would work. The 15-year fixed price period in the PPAs starts at scheduled  
16 COD and not actual COD. If the Blue Marmots miss their scheduled CODs, then  
17 they will be paid less than 15 years of fixed prices. In contrast, if the Blue  
18 Marmots come online early, then they are paid the off-peak price prior to the  
19 scheduled COD. Thus, based on ensuring that the Blue Marmots obtain the best  
20 fixed prices for the longest period of time, the Blue Marmots have an incentive to  
21 come online early to ensure that they do not miss their scheduled COD and can  
22 obtain a full 15 years of fixed prices.

1 **Q. Can you elaborate on the basis for the Blue Marmots' proposed CODs?**

2 **A.** Yes. The litigation caused delays to the development of the Blue Marmot  
3 Projects, particularly the permitting and interconnection schedules. The new  
4 CODs reflect the time necessary for the Blue Marmots to resume their permitting  
5 and interconnection plans and bring the projects online. In the next section, I  
6 explain the specific delays and work remaining to be done. In short, the proposed  
7 CODs will give the Blue Marmots a reasonable opportunity to develop their  
8 projects.

9 **IV. LITIGATION CAUSED DELAYS TO THE BLUE MARMOTS' CODS**

10 **Q. What development changes have the Blue Marmots made so far, due to the**  
11 **litigation?**

12 **A.** My opening testimony explained all of the changes to the Blue Marmots'  
13 development at length. For the sake of brevity, I focus here on two changes  
14 which PGE addressed in their response testimony.

15 First, in June 2018, the Blue Marmots asked PacifiCorp to re-study the  
16 interconnection of the Blue Marmot Projects because of the litigation. As I  
17 testified previously, at the time of the decision, [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22

23

24

The Blue  
Marmots asked PacifiCorp to formally conduct any re-studies necessary to  
accommodate changing the interconnection plan of service to accommodate 50  
MW of generation co-located at a single site, rather than each 10 MW of



1 generation separated by at least 5 miles, as contemplated by the original SGIAs.<sup>25</sup>

2 But for the litigation, the Blue Marmots would have proceeded with

3 interconnection and would never have requested the re-study.

4 Second, again, because of the litigation, the Blue Marmots suspended  
5 permitting efforts with the Energy Facilities Siting Council (“EFSC”).<sup>26</sup> The Blue  
6 Marmots made these decisions to control permitting expenditure and maximize  
7 credibility with permitting authorities, given the uncertainty from this litigation  
8 over whether the Blue Marmots would receive viable PPAs that are the source of  
9 revenue for the projects. As I testified previously, total costs to permit through  
10 EFSC are estimated at \$700,000, not counting the study costs.<sup>27</sup> But for the  
11 litigation, the Blue Marmots would have proceeded with permitting and would  
12 never have suspended their efforts.

13 **Q. How does the restudy affect the Blue Marmots’ expected development**  
14 **schedule?**

15 **A.** Because of the restudy, the Blue Marmots will now have to ask PacifiCorp to  
16 revert the SGIAs to the original SGIAs for five disaggregated projects. The Blue  
17 Marmots expect that PacifiCorp could revert the SGIAs in approximately six  
18 months, although this is uncertain. The current SGIAs provide a roughly 24-  
19 month timeline for PacifiCorp to complete interconnection. Maintaining the 24-  
20 month schedule between start of engineering and COD would provide a  
21 theoretical COD of March 2023 assuming reversion of the SGIAs begins in  
22 September 2020. However, hitting a March 2023 COD would require

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<sup>25</sup> Blue Marmot/900, Talbot/17.

<sup>26</sup> Blue Marmot/900, Talbot/24.

<sup>27</sup> Blue Marmot/900, Talbot/24.

1 construction taking place throughout Q4 2022 to Q1 2023, i.e., during the winter.  
2 The Blue Marmots' position is that it would not be commercially reasonable to  
3 build through the winter in Lakeview, Oregon, where average lows for the months  
4 of November through April are close to or below freezing, creating very difficult  
5 soil conditions for construction. The Blue Marmots expect that project  
6 construction would be postponed until roughly May 2023, when soil conditions  
7 are anticipated to be more favorable. The earliest the Blue Marmots anticipate  
8 completing construction is five or six months later, which is why the Blue  
9 Marmots do not request CODs for any of the projects any earlier than late  
10 September 2023. As these are five separate projects in different locations, the  
11 CODs need to be staggered out to allow completion of them all in September  
12 through December 2023.

13 **Q. Have there been other changes to interconnection because of the litigation?**

14 **A.** Yes. The Blue Marmots received SGIAs from PacifiCorp that would have  
15 allowed the projects to meet their CODs on time or within one month of the cure  
16 period. However, to achieve this timing, the projects would have had to post  
17 financial securities with PacifiCorp starting March 12, 2018 to begin funding  
18 design, engineering and procurement of the facilities and upgrades required to  
19 interconnect the projects. Given that at this point in time the Blue Marmots did  
20 not see an imminent resolution of UM 1829 et al. as likely, the projects began  
21 indicating to PacifiCorp that they would likely seek to revise the COD  
22 contemplated in their SGIAs to a later date. As the litigation proceeded, the Blue  
23 Marmots negotiated extensions in order to minimize the need to make  
24 expenditures at risk because of the litigation. Ultimately, prior to the Phase I

1 order, the Blue Marmots negotiated with PacifiCorp to delay the start of  
2 engineering until May 2020, which could have provided for CODs of June 2022.  
3 However, because these CODs are pursuant to the re-study, the Blue Marmots  
4 now expect that interconnection cannot be completed until roughly March 2023,  
5 as discussed above, with CODs trailing in September through December 2023.

6 **Q. How does the suspension of permitting efforts affect the Blue Marmots’**  
7 **expected development schedule?**

8 **A.** There are two relevant components. First, the Blue Marmots need to “re-activate”  
9 their Notice of Intent (“NOI”) in September 2020 following an anticipated order,  
10 which would effectively notify EFSC that the projects intend to resume work on  
11 permitting. That work includes completing studies that are required for an  
12 application to EFSC. As I previously testified, the Blue Marmots have completed  
13 some studies, which may need to be redone due to the delay from litigation, but  
14 there are other studies yet to be completed. The remaining studies cannot be  
15 completed during winter, so the Blue Marmots would expect to resume the studies  
16 in spring 2021. The Blue Marmots’ application could likely be submitted and  
17 deemed complete by May or June 2021. Next, the Blue Marmots expect to  
18 receive an EFSC decision in approximately 10 months, or by April 2022,  
19 followed by 6 months to work through any potential appeals, which would result  
20 in a secure site certificate by roughly October 2022. With a permit, the Blue  
21 Marmots could begin construction, but again construction would not be  
22 commercially reasonable during the winter months. Instead, the Blue Marmots  
23 expect they could mobilize for construction in May 2023, which would enable the

1 projects to come online starting in September 2023 and following the staggered  
2 dates proposed for the new CODs.

3 I also want to clarify a few matters that Mr. Moore appears to  
4 misunderstand. First, Mr. Moore claims our timeline for permitting is “extremely  
5 conservative and represents a worst-cast scenario that is highly unlikely to  
6 occur.”<sup>28</sup> As I explained above, the Blue Marmots would not be able to complete  
7 their permit application until completing certain studies in Spring 2021, well after  
8 a September 2020 resolution from the PUC. We expect to complete the EFSC  
9 process in no more than 18 months, including the possibility of an appeal, after  
10 accounting for this delay until Spring 2021. Mr. Moore calculates the total  
11 timeline from September 2020 to October 2022 as approximately 25 months,  
12 which is correct, but this does not account for the delay until spring 2021  
13 explained above.<sup>29</sup> Additionally, Mr. Moore cites projects that completed the  
14 EFSC process in 18 months or fewer, but neither of the cited projects underwent  
15 an appeal.<sup>30</sup> We estimate an appeal could take approximately 6 months, which  
16 would put Mr. Moore’s cited timelines at approximately 24 months. This means  
17 that we have a comparable timeline to Mr. Moore. Although in my experience,  
18 that timeline represents a relatively aggressive schedule rather than a conservative

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<sup>28</sup> PGE/900, Moore/16.

<sup>29</sup> PGE/900, Moore/15.

<sup>30</sup> PGE/900, Moore/16 n. 42 (citing the Boardman Solar Facility and Bakeoven Solar Facility).

1 schedule. I note that other projects have taken as many as 40 months to complete  
2 the EFSC process.<sup>31</sup>

3 Second, Mr. Moore says it is unclear why the Blue Marmots do not plan to  
4 take advantage of EFSC's expedited process. As a preliminary matter, I note  
5 PGE could have asked this prior to submitting testimony and did not do so.  
6 Regardless, I will explain. The Blue Marmots' schedule does not anticipate  
7 submitting a Request for Expedited Review of Small Capacity Facilities under  
8 OAR 345-015-0300 as it would not save the project any time and would cause  
9 additional permitting risk. This rule allows for qualified applicants to skip the  
10 NOI phase and submit a schedule for when they plan to submit a preliminary  
11 Application for Site Certificate ("pASC"). The Project Order, which establishes  
12 the analysis areas, would then be issued after the pASC was submitted. If an  
13 applicant were to have a pASC ready to submit but had not yet submitted a NOI  
14 this could save the project some time. This is a fairly uncommon situation as  
15 developers can submit their NOIs while they are running their studies and creating  
16 their pASC to get the process in motion.

17 The Blue Marmots do not have a pASC ready to submit yet. Several  
18 surveys still need to be completed that were placed on hold due to commercial  
19 uncertainty. The Blue Marmots could still request an expedited review, but this  
20 would not result in any time savings. This would simply result in Blue Marmots  
21 waiting to submit the pASC while the surveys were completed. If the projects

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<sup>31</sup> Perennial Wind Chaser took 40 months from the first application submission to site certificate, Carty Generating Station took 34 months, and Summit Ridge Wind Farm took 26. This information is publicly available on EFSC's website.

1 were to face any public opposition, going through the expedited review could  
2 undermine the projects as opponents could claim that EFSC was rushing the  
3 process and not properly considering all of the impacts of the project. Instead, the  
4 Blue Marmots are planning on submitting a revised NOI, receiving a Project  
5 Order, and then submitting a completed pASC.

6 **Q. Did the Blue Marmots make other development decisions that may have**  
7 **affected their development schedule during the course of the litigation?**

8 **A.** Yes, the Blue Marmots originally planned to permit through Lake County  
9 Planning Department but changed plans early on to pursue permitting through  
10 EFSC. This decision was not made because of the litigation, as I explained in my  
11 prior testimony. In response, PGE implies this change means the original plan  
12 was a mistake.<sup>32</sup> I disagree as this change is within range of the normal changes  
13 that renewable energy developers make over the course of project planning and  
14 development.

15 However, in any event, PGE does not appear to contest that the Blue  
16 Marmots could have likely met their original CODs even after changing to pursue  
17 EFSC jurisdiction, nor does PGE contest the reasonableness of the Blue Marmots'  
18 decision to pursue EFSC jurisdiction.<sup>33</sup> Thus, even if it were a "mistake", it was  
19 inconsequential and irrelevant to the issue about setting new CODs based on the  
20 litigation delays.

21 **Q. So, if the litigation had not occurred, the Blue Marmots might have made the**  
22 **same decision to switch to permitting through EFSC, but they still would**  
23 **have been able to meet their original CODs?**

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<sup>32</sup> PGE/900, Moore/15.

<sup>33</sup> PGE/900, Moore/15.

1 A. Yes. If not for the litigation, the switch to EFSC permitting would have occurred,  
2 and all five of the projects would have likely come online by their scheduled  
3 CODs or within one month of the twelve-month cure period. To be clear, the  
4 potential one-month delay was due to schedule slippage by PacifiCorp in  
5 returning the SGIAAs and not permitting.<sup>34</sup>

6 **Q. Does PGE agree that the Blue Marmots made the decisions to delay**  
7 **interconnection and permitting decisions because of the litigation?**

8 A. I think so, but I am not sure. According to Mr. Moore, “PGE believes that the  
9 Blue Marmots’ inability to meet their original CODs is the result of their own  
10 unreasonable interconnection and permitting decisions.”<sup>35</sup> My understanding is  
11 that PGE does not disagree that the Blue Marmots made these decisions because  
12 of the litigation; however, PGE thinks that the decisions were not commercially  
13 reasonable.

14 **Q. So PGE thinks the Blue Marmots should have made different decisions than**  
15 **the others above. Are there decisions that PGE thinks the Blue Marmots**  
16 **should have made but did not?**

17 A. Yes. PGE believes that after the Phase I order, the Blue Marmots should have  
18 proceeded to: 1) revert the SGIAAs; and 2) resume permitting. We agree that both  
19 of these steps should be taken if the Blue Marmots have sufficient certainty that  
20 they will receive viable PPAs, but we disagree that the Phase I order provided  
21 sufficient certainty. Notably, the Phase I order did not change the CODs, which  
22 were not possible to achieve. Instead, it left open the question of whether the  
23 CODs should be changed, and without achievable CODs, the PPAs do not provide

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<sup>34</sup> Blue Marmot/900, Talbot/16.

<sup>35</sup> PGE/900, Moore/8.

1 commercial certainty. Since it remains unclear whether the Commission will  
2 order PGE to provide achievable CODs, the Blue Marmots continue to lack the  
3 necessary certainty to develop their projects. In short, the risks of development  
4 are still too high to justify the necessary expenditures. I discussed these no-action  
5 decisions further in my prior testimony.

6 **Q. Does PGE raise any other points regarding what happened that you want to**  
7 **clarify?**

8 **A.** Yes, PGE raises two points about the decisions—as opposed to the commercial  
9 reasonableness of the decisions—that I would like to clarify.

10 First, PGE refers to the decision to request a re-study as “irrevocable.” I  
11 understand that term to mean something that cannot be changed or undone.  
12 However, we can ask PacifiCorp to revert the SGIAs, as I discuss above, so I  
13 disagree that the decision was “irrevocable.” PGE tries to explain its language as  
14 specifically being irrevocable in that the decision would cause delays that could  
15 not be undone. That is true, but, even without the request for restudy, the Blue  
16 Marmots would not have proceeded on the original interconnection plan during  
17 litigation.

18 Second, PGE claims that the terms of PacifiCorp’s agreement would  
19 require PacifiCorp to refund the Blue Marmots for any network upgrades, even if  
20 they terminate service, so long as a different customer used the upgrades. It is  
21 true that PacifiCorp confirmed that Blue Marmots would be reimbursed any  
22 unspent deposit amounts in the case that they terminated their SGIAs before those  
23 deposits were spent on work under the SGIA (e.g., administrative, engineering,  
24 entitlement and construction). However, the view that the Blue Marmots would



1 be reimbursed for any constructed or irrevocably committed upgrade expenses in  
2 the case that a future customer makes use of the network upgrades as a mitigant  
3 for at-risk investment is incorrect. Mr. Moore does not recognize the nuance that  
4 much of the Blue Marmots' network upgrade scope comprises upgrades that are  
5 unique to the Blue Marmots' distributed project and shared interconnection  
6 configuration. Further, there is no guarantee that another project would be  
7 constructed that would use any of the network upgrades. Thus, the security  
8 afforded by 5.2.1.2 of PacifiCorp's form SGIA included in its OATT it purely  
9 prospective and unable to be relied upon in evaluating at-risk investment.

10 **V. THE BLUE MARMOTS' DECISIONS TO DELAY DEVELOPMENT**  
11 **WERE COMMERCIALY REASONABLE**

12 **Q. Is it PGE's position that the Blue Marmots should have proceeded with**  
13 **development despite the litigation?**

14 **A.** Well, that is PGE's current position. My understanding from Mr. Moore's  
15 testimony is that PGE thinks it was unreasonable for the Blue Marmots to delay  
16 after signing the PPAs, even though PGE refused to countersign.

17 **Q. Has PGE's position changed?**

18 **A.** Yes. In Mr. Moore's Phase II testimony, he claims that there was not a dispute in  
19 Phase I over whether the Blue Marmots had established legally enforceable  
20 obligations ("LEOs") that "locked in their CODs."<sup>36</sup> However, this statement is  
21 inconsistent with PGE's position in Phase I. PGE's witness Brett Greene  
22 explained PGE's view—in December 2018—that a QF does not obligate itself to  
23 meet requirements like COD and be subject to damages until the PPA is fully

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<sup>36</sup> PGE/900, Moore/18 n. 50.

1           executed. Mr. Greene answered the following question and answer under cross  
2           examination:

3                   Blue Marmot Counsel: Okay. So it's not PGE's view that the QF is  
4                   obligating itself to meet a number of requirements like the . . . COD and if  
5                   they don't meet those requirements be subject to penalty?

6                   Mr. Greene: That is correct. Not until the contract is executed by both  
7                   parties.<sup>37</sup>

8                   PGE made other statements in this docket that indicated that it would be  
9                   prudent to wait to proceed with development until after the Commission decides  
10                  this case, not only for the Blue Marmots but even for the QFs with executed PPAs  
11                  (OM Power, Lakeview, and Airport Solar). Specifically, Witness Greene stated  
12                  that he hoped none of those QFs attempted to deliver their power before  
13                  resolution of this case.<sup>38</sup> He stated that it would be "speculation" to say that PGE  
14                  would accept the delivery from those projects at the PACW.PGE POD should  
15                  they commence commercial operations prior to the conclusion of this case, and  
16                  that PGE had not yet decided what they would do with those other QFs.<sup>39</sup> Aside  
17                  from Airport Solar, which was a Schedule 202 PPA, these other QF PPAs had no  
18                  differences from the Blue Marmots' except that they were executed and PGE's  
19                  QF contracting personnel were not aware of the constraint at the PACW.PGE  
20                  POD at the time those PPAs were executed.<sup>40</sup> Airport Solar's PPA with PGE  
21                  specifically allowed Airport Solar to deliver at the PACW.PGE POD. Yet, PGE  
22                  would not commit to accepting the net output from any of these QFs with fully

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<sup>37</sup>           Hearing Transcript Volume One at 137-138 (Dec. 12, 2018) (Cross-examination  
            of Brett Greene)

<sup>38</sup>           *Id.* at 154.

<sup>39</sup>           *Id.* at 155, 177.

<sup>40</sup>           *Id.* at 189.

1           executed PPAs at the PACW.PGE POD because it was using the Blue Marmot  
2           litigation as a test case. Therefore, PGE’s position at that time appeared to be that  
3           all of these QFs (the Blue Marmots included) should await resolution in this case  
4           before proceeding with development.

5       **Q. Did the Blue Marmots think PGE would require the Blue Marmots to meet**  
6       **the original CODs?**

7       **A.** No. Our understanding from the dispute and Mr. Greene was that PGE did not  
8           expect us to meet the original CODs. We were surprised that PGE opposed  
9           extensions to COD in their reply brief in April 2019.<sup>41</sup>

10      **Q. But now PGE has changed its position?**

11      **A.** Yes, despite giving us—and, we thought, the Commission—the impression that  
12           they would not hold us to the original CODs, PGE now argues that we were and  
13           are obligated to meet the original CODs. PGE’s changed position in this case is a  
14           perfect illustration about why it would be unreasonable for the Blue Marmots to  
15           make investment decisions based on PGE’s statements alone.

16      **Q. Are there reasons why the Blue Marmots thought that PGE might change its**  
17      **position regarding the Blue Marmots’ eligibility for fixed prices?**

18      **A.** Yes. PGE has a reputation in the industry for changing its position or otherwise  
19           committing to do something during negotiations with QFs and then not following  
20           through. Most notably, PGE forwarded 4 of the 5 Blue Marmots executable PPAs  
21           and informed those Blue Marmots that PGE would sign. However, after the Blue

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<sup>41</sup> Phase I, PGE Response Brief at 17, 77-78 (Apr. 5, 2019).

1 Marmots executed the PPAs, PGE changed its position, stating that it would not  
2 sign (raising the issues resolved against PGE in Phase I of this docket).<sup>42</sup>

3           Additionally, as early as 2016, PGE was beginning to show the industry  
4 that its position was changeable, which factored into the decisions that the Blue  
5 Marmots took in this proceeding. These changes sometimes coincide with PGE's  
6 requests to the Commission to decrease its avoided costs. In 2016, after  
7 informing projects that their applications were complete, PGE waited until there  
8 was a pending avoided cost decrease to then ask for a long list of additional  
9 information before providing an executable standard contract.<sup>43</sup> In 2017, in  
10 addition to refusing to countersign the Blue Marmots' executable PPAs, PGE  
11 surprised the Blue Marmots by requesting a quick effective date for its annual  
12 avoided cost update. As in 2016, PGE again told other projects that it was willing  
13 to execute a PPA, but then raised new concerns and threatened not to execute the  
14 PPA.<sup>44</sup> PGE even signed a PPA but then still threatened to terminate the PPA.<sup>45</sup>  
15 Also in 2017, PGE filed two other avoided cost updates, including an out-of-cycle  
16 update and post-IRP avoided cost update, requesting immediate relief in both, and  
17 refusing or otherwise delaying its execution of PPAs for other projects due to

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<sup>42</sup> See *In re PGE Application to Update Schedule 201 Qualifying Facility Info.*, Docket No. UM 1728, EDP Renewables North America Comments (May 17, 2017).

<sup>43</sup> See *Harney Solar I LLC v. PGE*, Docket No. UM 1784, Complaint (June 21, 2016) (PGE required submission of a new list of information immediately prior to contract execution); *Riley Solar I LLC v. PGE*, Docket No. UM 1785, Complaint (June 21, 2016) (same).

<sup>44</sup> *Evergreen BioPower, LLC v. PGE*, Docket No. UM 1844, Complaint (May 31, 2017).

<sup>45</sup> *Id.* at ¶ 16.

1 those pending changes.<sup>46</sup> There have been over 60 complaints between PGE and  
2 QFs over various issues, the majority of which were occurring during 2017 and  
3 2018. At a minimum, PGE's actions show that QFs should be cautious before  
4 they rely upon PGE's statements or commitments to honor avoided cost prices.

5 **Q. Do you agree with PGE's new position that the Blue Marmots' LEO required**  
6 **them to develop the projects, even if they had to buy additional**  
7 **transmission?**

8 **A.** Mr. Irvin testified in Phase I that the Blue Marmots understood that a LEO  
9 requires a QF to continue with its commitment to deliver power to a utility, which  
10 might mean having to buy additional transmission or pay damages for  
11 defaulting.<sup>47</sup> Mr. Moore makes much of this in his testimony.<sup>48</sup> However, Mr.  
12 Irvin merely described the ordinary course of business between a QF and a utility.  
13 QFs typically execute PPAs before utilities do so. In this case, the Blue Marmots  
14 expected PGE to countersign when they executed their *executable* PPAs. Even  
15 Blue Marmot VIII, who signed after PGE refused to countersign, still hoped that  
16 PGE would relent and countersign the Blue Marmots' PPAs.

17 Notably, the Blue Marmots did not delay development for more than eight  
18 months after filing their complaints, with the continuing hope that PGE would  
19 honor the LEOs. Instead, PGE argued strenuously in Phase I that it should not be  
20 required to accept power pursuant to the Blue Marmots' LEOs. Since PGE

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<sup>46</sup> See Docket No. UM 1728, Strata Solar Development, LLC Comments at 18-19 n. 30 (Sept. 7, 2017) (PGE "does not expect to provide you with an executable Standard PPA before the Commission has ruled on PGE's motion for interim relief in UM 1854"). I am aware that there are other similar comments, but I do not cite them here.

<sup>47</sup> Phase I Hearing Transcript, Vol. 1 at 15-16 (Dec. 12, 2018) (Cross-examination of Steve Irvin).

<sup>48</sup> PGE/900, Moore/18-19.

1       disputed power delivery—and took the position that a LEO does not extend to  
2       CODs—the Blue Marmots thought it was reasonable in this specific instance to  
3       not proceed at full speed towards development and defer significant investments.  
4       Given PGE’s other statements, as noted above, this was the prudent course of  
5       action.

6       **Q.    Are there other reasons that PGE argues the Blue Marmots should have**  
7       **proceeded with development?**

8       **A.**    Yes. PGE argues that the Blue Marmots should have proceeded with  
9       development because the projects would still be “feasible” and “profitable” even  
10      in the so-called “worst-case” scenario of having to pay \$14 million in additional  
11      transmission costs.

12      **Q.    Do you agree that paying \$14 million was the “worst-cast” scenario?**

13      **A.**    No. There were multiple worse possible outcomes of Phase I, which PGE  
14      dismisses out of hand.<sup>49</sup> In this case, hindsight is not 20/20.

15                One potential worse outcome was paying more than \$14 million due to  
16      increases in the costs of Bonneville Power Administration’s (“BPA’s”) transmission rates. Mr. Moore disagrees with this possibility. He states that he  
17      would not expect the cost of BPA transmission to “increase dramatically” beyond  
18      \$14 million.<sup>50</sup> However, the Blue Marmots did not expect cost increases that  
19      were outside the scope of possibility. BPA Long-Term Firm Point-To-Point  
20      Transmission Rates increased by 18.10% in the 10-year period between the 2010  
21      Transmission and Ancillary Service Rate Schedules, Effective October 1, 2009,  
22      Transmission and Ancillary Service Rate Schedules, Effective October 1, 2009,

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<sup>49</sup> PGE/900, Moore/22.

<sup>50</sup> PGE/900, Moore/23.

1 and the 2020 Transmission, Ancillary and Control Area Services Rate Summary,  
2 Effective October 1, 2019. While rates fluctuated by rate case, transmission rates  
3 increased by 3.53% every two years on average. The Blue Marmots' claim  
4 regarding potential increases in BPA transmission is informed by historical  
5 increases to BPA transmission rates and an understanding that, strategic  
6 objectives notwithstanding, historical rates are not a perfect indicator of future  
7 rates and increases larger than what has been recently observed are a possibility.

8 Another possible outcome was paying over \$450 million to deliver at the  
9 PACW.PGE POD by constructing a new 300-mile generation tie line.<sup>51</sup> This  
10 outcome could have occurred because a different entity reserved the necessary  
11 BPA transmission capacity or because the Commission ordered the parties to  
12 pursue this approach.

13 In its final brief in Phase I, PGE noted that \$14 million reflected the most  
14 cost-effective way to deliver the Blue Marmots' energy to PGE's system, and  
15 PGE now claims that the Commission would not have ordered a more expensive  
16 outcome.<sup>52</sup> The Blue Marmots do not presume to know what the Commission  
17 would or would not have ordered. Even if the Commission ordered the Blue  
18 Marmots to pay only 5% of the costs of new gen-tie line, while PGE paid the  
19 remainder, the Blue Marmots would have needed to pay over \$20 million, a more  
20 expensive outcome for the Blue Marmots than PGE's so-called "worst-cast"

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<sup>51</sup> PGE never backed down from its position that this was the only possible way for the Blue Marmots to deliver their power to the POD in the executable PPAs they had signed. Phase I, Blue Marmots Opening Brief at 53-54 n. 159; Phase I, PGE Response Brief at 22-25.

<sup>52</sup> Phase I, PGE Response Brief at 12; PGE/900, Moore/24.

1 scenario of paying \$14 million. Further, in Phase I, PGE also argued that the  
2 Commission should *fully* allocate the costs of delivery—whatever they might  
3 be—to the Blue Marmots, an argument the Commission recognized as an  
4 inappropriate attempt to effectively reduce the avoided cost prices that the Blue  
5 Marmots were entitled to.<sup>53</sup> Thus, PGE argued itself that the Blue Marmots  
6 should pay the full costs of delivery, even if the Commission decided that the  
7 appropriate action was more costly than \$14 million for BPA transmission.

8 While none of these outcomes ultimately occurred, the Blue Marmots  
9 reasonably believed that they could occur.

10 **Q. If the Blue Marmots had needed to pay an additional \$14 million for**  
11 **transmission, would development have been feasible?**

12 **A.** I do not know. The Blue Marmots never evaluated whether the projects would be  
13 feasible or not, which is why the Blue Marmots did not take a position one way or  
14 the other during Phase I. Mr. Moore takes our non-position as incontrovertible  
15 evidence that the projects would be feasible, but that was not certain.<sup>54</sup> The  
16 simple fact is that we did not undertake that analysis because the Blue Marmots  
17 were not willing to construct the facilities without viable PPAs. Certainly, when  
18 they decided to execute the PPAs in 2017, the Blue Marmots did not consider or  
19 plan for the possibility that they might be saddled with millions of dollars in  
20 unanticipated costs.

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<sup>53</sup> *E.g.*, Phase I, PGE Response Brief at 72 (“[T]he Blue Marmots must bear the costs associated with their delivery to maintain customer indifference . . .”); Order No. 19-322 at 17-19.

<sup>54</sup> PGE/900, Moore/20-21.



1                    Even if we had analyzed the projects' feasibility with the added \$14  
2 million in costs, that analysis would have been only one possible outcome. Mr.  
3 Irvin discusses this issue of financial decision-making further.

4 **Q.    So, during the litigation, it was unclear if development would be a reasonable**  
5 **investment?**

6 **A.**    Exactly. Mr. Irvin discusses this more, but in short, there was too much  
7 uncertainty to make at-risk investments before we had viable PPAs that we could  
8 rely on as the source of revenue for the projects.

9 **Q.    But Mr. Moore's position is that development during litigation would have**  
10 **been reasonable?**

11 **A.**    Yes, that appears to be his position.

12 **Q.    Do you think Mr. Moore's position is a reasonable one?**

13 **A.**    No. The Blue Marmots fundamentally disagree with PGE's position. Putting tens  
14 of millions of dollars at risk during litigation is not commercially reasonable.

15 **Q.    Does this conclude your testimony?**

16 **A.**    Yes.



UM 1829 – COD Litigation  
PGE Response to Blue Marmot’s Second Set of Data Requests

April 23, 2020

TO: Irion Sanger  
Leslie Freiman  
Will Talbott

FROM: Karla Wenzel  
Manager, Pricing and Tariffs

**PORTLAND GENERAL ELECTRIC  
UM 1829 - Commercial Operation Date (COD) Litigation  
PGE Response to Blue Marmot Data Request No. 8**

**Request:**

- 8. For each solar qualifying facility that PGE has entered into a power purchase agreement with, please identify the: 1) project name; 2) size; 3) scheduled commercial operation date; 4) actual commercial operation date; 5) the date the scheduled commercial operation date was requested; and 6) the date the power purchase agreement was fully executed.**

**Response:**

PGE objects that this request is unduly burdensome and overly broad in that it contains no temporal limitation. PGE also objects that most of the requested information regarding PGE’s executed PURPA PPAs is publicly available in docket RE 143. In addition, item #5 of this request seeks information that PGE does not track and that would be burdensome to create. Notwithstanding and without waiving these objections, PGE provides the following response for standard solar QF PPAs PGE executed over the past three years that remain in effect: See Attachment 8-A.

QF Name	MW Capacity	Date PPA Executed	Scheduled Commercial Operation Date	Actual COD
Kale Patch Solar	2.2	5/10/2017	7/31/2019	10/31/2019
Thomas Creek Solar	2.2	5/31/2017	2/1/2019	11/8/2019
Stark Solar (Solar Star Oregon)	10	6/2/2017	12/31/2019	
Brush Creek Solar	2.2	6/23/2017	4/5/2019	
Tickle Creek Solar	1.85	8/23/2017	1/31/2019	12/27/2019
Volcano Solar	0.75	10/18/2017	3/1/2018	7/17/2019
SSD Marion 3	2	10/20/2017	4/1/2020	
SSD Clackamas 4	2	10/20/2017	4/1/2020	
Liberal Solar	10	12/27/2017	10/31/2020	
Delaney Solar	2.5	12/27/2017	10/31/2020	
Eagle Creek Solar	5	12/27/2017	10/31/2020	
Eola Solar	2.2	1/29/2018	1/31/2020	
Rock Creek Solar	2.2	2/7/2018	12/31/2020	
PG - West Sheridan	3	4/18/2018	12/2/2019	
Dunn Rd Solar	1.85	4/19/2018	10/31/2019	
DF - West Eagle Creek	2.79	4/19/2018	12/2/2019	
AM - West Silverton	2.97	4/19/2018	12/2/2019	
DC - Donald	2.16	4/19/2018	12/2/2019	
SB - South Wilamina	2.97	4/19/2018	12/2/2019	
DB - Bull Run	2.565	4/19/2018	12/2/2019	
KT - Molalla	2.97	4/19/2018	12/2/2019	
Dryland Solar	2.5	4/19/2018	12/1/2019	
Bristol Solar	3	4/19/2018	12/2/2019	
Fairview Solar	3	4/19/2018	12/2/2019	
Cosper Creek Solar	2.5	4/19/2018	12/1/2019	
Milford Solar	2.97	4/19/2018	12/2/2019	
SSD Clackamas 1	4	5/8/2018	10/5/2021	
SSD Marion 5	2	5/8/2018	4/1/2020	
SSD Clackamas 7	2	5/8/2018	4/1/2020	
SSD Marion 6	2	5/8/2018	4/1/2020	
Greenpark Solar	1.26	5/8/2018	12/2/2019	

QF Name	MW Capacity	Date PPA Executed	Scheduled Commercial Operation Date	Actual COD
Gun Club Solar	2.5	5/8/2018	12/1/2019	
SSD Marion 1	2	5/25/2018	4/1/2020	
Sandy River Solar	1.85	5/25/2018	12/1/2019	
Brush College Solar	2	5/25/2018	12/1/2019	
Mountain Meadow Solar	2.5	5/25/2018	12/1/2019	
Mt Hope Solar	2.5	5/25/2018	12/1/2019	
River Valley Solar	2	5/25/2018	12/1/2019	
Fruitland Creek	1.75	5/25/2018	12/1/2019	
Raven Loop	2	5/25/2018	12/1/2019	
Kaiser Creek Solar	2	6/4/2018	12/1/2019	
Ridgeway Solar	2.5	6/4/2018	12/1/2019	
Townsend Solar	2.25	6/4/2018	9/30/2019	
Ashcroft Solar	2.25	6/4/2018	9/30/2019	
Cow Creek Solar	1.75	6/4/2018	2/1/2020	
Zena Solar	2.5	6/4/2018	12/1/2019	
Williams Acres Solar	2.5	6/4/2018	12/1/2019	
Waconda Solar	2.25	6/4/2018	2/1/2020	
Parrott Creek Solar	2	6/28/2018	12/1/2019	
Carnes Creek Solar	2.5	8/31/2018	11/1/2020	
Manchester Solar	1.8	9/26/2018	7/2/2021	
Clayfield Solar	2.565	11/7/2018	7/2/2021	
Sesqui-C Solar	2.5	11/29/2018	12/31/2020	
Radio Solar	2.5	11/29/2018	12/31/2020	
Buckner Creek Solar	2.5	11/29/2018	12/1/2020	
Marquam Creek Solar (2)	2	2/9/2019	12/1/2020	
Walker Creek Solar (2)	2.5	2/9/2019	12/1/2020	
Connley Solar	10	5/21/2019	12/1/2021	
Reed Solar	2.2	5/21/2019	12/1/2020	
Waterford Solar (2)	2.565	8/27/2019	5/2/2022	
Belvedere Solar (2)	2.97	9/9/2019	5/2/2022	
Pika Solar	2.2	9/17/2019	5/1/2020	

<b>QF Name</b>	<b>MW Capacity</b>	<b>Date PPA Executed</b>	<b>Scheduled Commercial Operation Date</b>	<b>Actual COD</b>
Minke Solar	2.2	9/17/2019	5/1/2020	
Big Horn	2.2	9/17/2019	5/1/2020	
Dover Solar (2)	1.98	10/2/2019	5/2/2022	
Cork Solar (2)	1.26	1/17/2020	5/2/2022	
Auburn Solar	1.26	1/17/2020	11/2/2022	
Cusack Solar	2.565	1/17/2020	11/2/2022	
Stilorgan Solar	1.53	1/17/2020	11/2/2022	

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1829, UM 1830, UM 1831, UM 1832, UM 1833**

BLUE MARMOT V LLC (UM 1829)            )  
BLUE MARMOT VI LLC (UM 1830)        )  
BLUE MARMOT VII LLC (UM 1831)        )  
BLUE MARMOT VIII LLC (UM 1832)       )  
BLUE MARMOT IX LLC (UM 1833)         )  
  Complainants        )  
  vs.                                )  
PORTLAND GENERAL ELECTRIC            )  
COMPANY                                    )  
  Defendant                )  
Pursuant to ORS 756.500.                )  
\_\_\_\_\_ )

**REPLY TESTIMONY OF**

**STEVE IRVIN**

**ON BEHALF OF THE**

**BLUE MARMOT V, VI, VII, VIII, AND IX**

**April 27, 2020**

1 **I. INTRODUCTION**

2 **Q. Please state your name for the record.**

3 **A.** My name is Steve Irvin.

4 **Q. By whom are you employed, and in what capacity?**

5 **A.** I am employed as an Executive Vice President with EDP Renewables North  
6 America (“EDPR NA”).

7 **Q. On whose behalf are you appearing in this proceeding?**

8 **A.** This testimony is submitted on behalf of Blue Marmot V, Blue Marmot VI, Blue  
9 Marmot VII, Blue Marmot VIII, and Blue Marmot IX (jointly, “Blue Marmots”).  
10 The Blue Marmots own each of the individual projects (jointly, “Blue Marmot  
11 Projects”). EDPR NA is the parent company of the Blue Marmots.

12 **Q. Are you the same Steve Irvin who previously submitted testimony in this**  
13 **proceeding?**

14 **A.** Yes, I submitted testimony in Phase I of this proceeding.

15 **Q. Is anyone else providing testimony on behalf of the Blue Marmots in Phase I?**

16 **A.** Yes. The Development Project Manager for the Blue Marmots, Mr. William  
17 Talbott, is also providing testimony. His testimony addresses the Blue Marmots’  
18 plans for development and how this litigation adversely impacted those plans.

19 **Q. Please summarize your testimony.**

20 **A.** The objective of my testimony is to explain how the Blue Marmots make business  
21 decisions. Portland General Electric Company (“PGE”) claims that the Blue  
22 Marmots made imprudent and unreasonable decisions during this litigation that  
23 delayed their development.<sup>1</sup> I disagree. The Blue Marmots’ decisions were

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<sup>1</sup> PGE/900, Moore/2.



1 commercially reasonable and aligned with industry standards. Any commercially  
2 reasonable developer would have made the same decisions that the Blue Marmots  
3 made.

4 **II. THE BLUE MARMOTS' DECISION-MAKING PROCESS**

5 **Q. Please describe EDPR NA's experience with development.**

6 **A.** EDPR NA and its subsidiaries develop, construct, own, and operate wind farms  
7 and solar parks throughout North America. Headquartered in Houston, Texas,  
8 with 52 wind farms, eight solar parks, and seven regional offices across North  
9 America, EDPR NA has developed more than 7,300 megawatts ("MW") and  
10 operates more than 7,000 MW of renewable energy projects.

11 **Q. How does EDPR NA make decisions about how or when to develop a**  
12 **project?**

13 **A.** EDPR NA's business is the development, construction, ownership, and operation  
14 of renewable energy projects. The company maintains and continuously updates  
15 a portfolio of development-stage projects at different levels of maturity. Maturity  
16 in this context refers to how much certainty there is across major development  
17 areas such as site control, permitting, interconnection, and off-take, and how close  
18 to being finalized the documents and agreements governing these arrangements  
19 are. As projects gain more maturity and commercial certainty, more money is  
20 invested in their on-going development. Developing and constructing renewable  
21 energy projects is very capital-intensive and one of the pillars of EDPR NA's  
22 strategy is to invest selectively only in those projects that have predictable future  
23 cash flows. Therefore, the most expensive aspects of development, such as  
24 procurement of major components, funding of interconnection facilities and

1 upgrades and construction of projects themselves, are generally only advanced  
2 when the commercial arrangements by which a project will generate revenue are  
3 certain. This certainty is only obtained once a power purchase agreement  
4 (“PPA”) has been mutually executed by EDPR NA and a counterparty. EDPR  
5 NA’s approach to development is to carefully manage how much money is spent  
6 “at risk” on projects that do not yet have off-take agreements and to prioritize that  
7 spend on development activities that establish and preserve project viability until  
8 an off-take agreement can be secured. In evaluating investment decisions across  
9 this portfolio of projects, EDPR NA evaluates potential financial returns as well  
10 as potential risks, including the likelihood of projects securing off-take  
11 arrangements. Given a robust portfolio of development opportunities, it would  
12 not make sense for EDPR NA to invest heavily in projects with major risks.  
13 Uncertainty over whether a counterparty will countersign a PPA would be an  
14 example of a major risk. Put differently, advancing costly development and  
15 construction of a project with major uncertainty around off-take arrangements  
16 would be directly counter to EDPR NA’s strategy and approach to development.

17 **Q. Would the Blue Marmots start significant construction and expenditures**  
18 **based on a utility’s statement that it would honor avoided cost prices?**

19 **A.** No. As I explained in my prior testimony, a contract or other legal obligation to a  
20 price, without the corresponding terms and provisions, is worthless to a business  
21 because the economic value of a contract is based on the totality of all terms and  
22 conditions—not just the price. Even if that was not the case, the Blue Marmots  
23 could not rely on a mere statement from PGE or any counter party. Mr. Talbott  
24 discusses this further in his testimony.

1 **Q. Would the Blue Marmots start significant construction and expenditures**  
2 **without a fully executed PPA?**

3 **A.** No. Ordinarily, once a developer executes a PPA, the utility only needs a brief  
4 amount of time to counter-sign, and no significant construction or expenditures  
5 would be needed before the utility returned the fully executed PPA. The Blue  
6 Marmots were in an unusual position. After they executed their PPAs, PGE  
7 refused to counter-sign. When a utility actively opposes the PPA, like PGE did,  
8 we would never start significant construction and expenditures until the dispute  
9 was fully resolved.

10 **Q. Didn't the Phase I order from the Oregon Public Utility Commission (the**  
11 **"Commission") resolve the dispute?**

12 **A.** No, not fully. The Blue Marmots hoped that the Commission would fully resolve  
13 the dispute, but the Commission declined to rule on the question of what the Blue  
14 Marmots' new CODs should be.<sup>2</sup> Since PGE continues to dispute the Blue  
15 Marmots' proposed new CODs, the Blue Marmots still lack the commercial  
16 certainty they need to start any significant construction and expenditures.

17 **Q. Why do the Blue Marmots need certainty about the COD term specifically?**

18 **A.** The COD term is crucial. My understanding is that if a developer does not  
19 achieve COD on time or within a given cure period, the utility may be able to  
20 terminate the PPA. That possibility puts all other PPA terms at risk. Thus, the

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<sup>2</sup> Order No. 19-322 at 20 (Sept. 30, 2019) ("We conclude that there is insufficient evidence on the record to demonstrate that achievement of the Blue Marmots' stated CODs is not possible due to litigation, and accordingly we decline to order an extension. The Blue Marmots may assert such a claim following this order, and PGE will be entitled, as it requests in its reply brief, to a full evidentiary proceeding with discovery as we consider this question.").

1 Blue Marmots cannot rely on the partial PPAs and start significant construction  
2 and expenditures until they have fully executed PPAs with achievable CODs.

3 **III. INDUSTRY STANDARD FOR DEVELOPMENT DECISION-MAKING**

4 **Q. Do independent power producers that develop multiple projects make**  
5 **development decisions for each project in isolation from other development**  
6 **opportunities?**

7 **A.** No. Developers that develop multiple projects are typically constantly evaluating  
8 and re-evaluating the relative costs and benefits of each project in comparison  
9 with other potential development opportunities. Developers will not typically  
10 proceed with development if it becomes apparent that a particular project will not  
11 ultimately provide appropriate investment returns in comparison to other  
12 investment opportunities, and will instead devote their time and energy towards  
13 other development opportunities that have better potential. While the developer,  
14 itself, has the main role in this decision-making, it is also influenced by the actual  
15 or potential project financiers, who often require even greater certainty before  
16 investing their capital in a particular project over the vast array of other business  
17 opportunities to invest capital. There is a similar cost, benefit and risk analysis,  
18 even if they differ between independent power producers that rely upon internal  
19 or external capital. Additionally, any development decision must necessarily be  
20 made in light of overall market risk.

21 **Q. What is your understanding of PGE's stance on what a commercially**  
22 **reasonable developer would have done in the Blue Marmots' position?**

23 **A.** My understanding is that PGE believes that a commercially reasonable developer  
24 would have accepted PGE's word that PGE would honor the avoided cost prices

1 and proceeded with development so long as the projects appeared feasible and  
2 profitable, given those prices and given the expected potential costs of litigation.

3 **Q. Do you agree that a commercially reasonable developer would take PGE at**  
4 **its word?**

5 **A.** No, I do not. First, EDPR NA would not rely upon the word of *any* counter party  
6 to make the investment decisions necessary to construct the Blue Marmot  
7 projects. Second, I direct you to Mr. Talbott's testimony, which discusses PGE's  
8 history of changing its position during negotiations with independent power  
9 producers and qualifying facilities ("QFs") in particular. Given this history, no  
10 commercially reasonable developer would assume PGE's position was final until  
11 after PGE countersigned their PPA, which PGE refused to do for the Blue  
12 Marmots. Third, while PGE made statements about honoring the avoided cost  
13 prices, PGE also made arguments in this litigation that would have effectively  
14 changed those avoided cost prices. Again, this is explained in Mr. Talbott's  
15 testimony. From an investment perspective, whether prices are reduced, or costs  
16 are increased, the result is the same: lost revenue. So long as the potential  
17 revenue was uncertain, development was not a prudent or reasonable decision.  
18 Given that PGE was making arguments that would have reduced our potential  
19 revenue, it would have been unreasonable for us to move forward, even if we  
20 could rely upon PGE honoring its statements about not changing its avoided cost  
21 prices.

1 **Q. Do you agree that a commercially reasonable developer would proceed with**  
2 **a project during litigation so long as the project appeared feasible or**  
3 **profitable?**

4 **A.** No, because this litigation was so broad in scope, it would have been  
5 commercially unreasonable for any developer to proceed before the litigation was  
6 resolved. PGE claims the worst-case scenario was \$14 million in additional costs;  
7 the Blue Marmots and I disagree. As explained by Mr. Talbott, the Blue  
8 Marmots' litigation explored the universe of possibilities for how the Blue  
9 Marmots could deliver power to PGE and how PGE could accept that power.  
10 There were multiple potential outcomes, and thus there was too much uncertainty  
11 and risk. We're developers, not gamblers. Even if a developer wanted to move  
12 forward, responsible financiers would never approve the expenditures, including  
13 EDPR NA's investors.

14 **IV. THE BLUE MARMOTS' DECISIONS WERE REASONABLE**

15 **Q. If placed in similar circumstances, what would a commercially reasonable**  
16 **developer have done?**

17 **A.** Exactly what the Blue Marmots did.

18 **Q. Why do you think Mr. Moore claims a commercially reasonable developer**  
19 **would act differently than the Blue Marmots did?**

20 **A.** I do not know. As a general matter, it seems to me that PGE misunderstands the  
21 extent of the uncertainty that was caused when they refused to counter-sign the  
22 agreements. Even if PGE fully intended to honor its statements at the time they  
23 were made, we could not have known that, and it would have unreasonable for us  
24 to rely upon those statements. Mr. Talbott explains this in more detail in his  
25 testimony.

1 **Q. To sum up, in your opinion, the Blue Marmots acted in accordance with**  
2 **industry standards?**

3 **A.** Yes, absolutely.

4 **Q. Does this conclude your testimony?**

5 **A.** Yes.