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November 9, 2017

VIA ELECTRONIC FILING

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

Re: UM 1829 - Portland General Electric Company's Motion to Compel

Attention Filing Center:

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

Please contact this office with any questions.

Very truly yours,

Alisha Till
Administrative Assistant

Attachment

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1829

Blue Marmot V LLC
Blue Marmot VI LLC
Blue Marmot VII LLC
Blue Marmot VIII LLC
Blue Marmot IX LLC,
Complainants,

v.

Portland General Electric Company,
Defendant.

**PORTLAND GENERAL ELECTRIC
COMPANY'S 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 seven of PGE's data requests.

5 The Blue Marmots' testimony includes extensive legal argument on the key legal issues in
6 this case, with few citations to supporting precedent. PGE has moved to strike these portions of
7 the testimony.¹ If this testimony is not stricken, PGE will need to respond in its own testimony,
8 and in order to do so effectively, will need to understand the bases for the Blue Marmots' legal
9 arguments. However, the Blue Marmots have refused to respond fully to PGE's data requests
10 regarding their legal assertions, providing only vague statements that shed no light on the bases
11 for their arguments. For the majority of the data requests related to their legal argument, the Blue
12 Marmots simply respond that their arguments are based on the witness Keegan Moyer's experience
13 and his communications with counsel, which provides no information with which PGE can
14 understand, evaluate, or submit testimony responsive to Mr. Moyer's statements. The Blue

¹ PGE's Motion to Strike (Oct. 25, 2017).

1 Marmots claim that the information PGE seeks is privileged and that, because PGE has moved to
2 strike the testimony, PGE does not believe the information is relevant. Neither objection is valid.

3 The Blue Marmots have presented their legal arguments as the opinions of a non-lawyer.
4 By definition, the attorney-client privilege does not apply to a non-lawyer's opinions about the
5 law. If, as the Blue Marmots assert, the legal arguments in their testimony are based on
6 communications between Mr. Moyer and counsel, then the Blue Marmots have waived any
7 privilege claim by disclosing the substance of the communications, thereby removing the
8 communications' confidentiality. Regardless, the Blue Marmots' privilege claim lacks merit, and
9 they should not be permitted to hide the bases for their legal arguments behind claims of privilege.

10 Moreover, the Blue Marmots' objection that PGE does not believe the information is
11 relevant misses the mark because *PGE's* belief that the information is irrelevant is not germane.
12 Rather, the salient point is that, by including the legal argument in their testimony and opposing
13 PGE's motion to strike it, *the Blue Marmots* have maintained that the information *is* relevant.
14 Therefore, until the legal argument in the testimony is either stricken or withdrawn, PGE must be
15 allowed to conduct full discovery into its bases in preparation for filing its own testimony, despite
16 PGE's belief that the legal testimony is irrelevant, and therefore inadmissible. The Blue Marmots
17 should be compelled to respond fully to PGE's data requests regarding the bases for their legal
18 assertions.

19 PGE certifies that the parties have conferred, as required by OAR 860-001-0500(7), but
20 have been unable to resolve this dispute. PGE requests expedited consideration of this Motion,
21 and the Blue Marmots oppose the request. PGE's response testimony is due on December 22, and
22 PGE seeks to receive a ruling with sufficient time to obtain the requested discovery and prepare
23 its response testimony accordingly. If briefing on this Motion is not expedited, then the Motion
24 will not be fully briefed until December 4, which would allow less than three weeks for the ALJ
25 to issue a ruling and PGE to either receive and incorporate the requested information into its
26 testimony or determine how to prepare its testimony without the information.

I. BACKGROUND

1 As explained in greater depth in PGE’s Motion to Strike, this case concerns a dispute
2 between PGE and the Blue Marmots—five off-system qualifying facilities (QFs), planned for
3 development by EDP Renewables North America (EDPR). EDPR proposes to construct the Blue
4 Marmots in PacifiCorp’s service territory and to sell their output to PGE. The Blue Marmots’
5 Complaints allege that PGE has a legal obligation to accept their output at the PACW.PGE Point
6 of Delivery (POD), and that the Blue Marmots have no obligation to pay for upgrades. The Blue
7 Marmots argue that their only obligation is to arrange for transmission on PacifiCorp’s system to
8 the PACW.PGE POD, after which PGE is required to accept such deliveries—even if doing so
9 would require system upgrades, or the displacement of transmission capability reserved by PGE
10 to participate in the Western Energy Imbalance Market (EIM).² The Blue Marmots also argue that
11 they have a legal right to the terms and conditions in their partially executed power purchase
12 agreements (PPAs) and may require PGE to accept delivery at the PACW.PGE POD and pay for
13 any upgrades necessary to do so.³ Thus, the outcome of this case hinges, at least in part, on the
14 resolution of several legal questions.

15 The Blue Marmots’ testimony presents their legal argument and conclusions regarding
16 these issues through the statements of non-lawyer witnesses. Mr. Moyer, who is an engineer by
17 training,⁴ offers extensive testimony on a range of legal issues and provides virtually no support
18 for his legal opinions, other than references to communications with counsel.⁵ In an effort to
19 understand the bases for the legal statements in the Blue Marmots’ testimony, PGE sent the Blue
20 Marmots eight data requests that quoted specific statements from Mr. Moyer’s testimony and
21 asked the Blue Marmots to state the full basis of the statement and to provide supporting

² See, e.g., UM 1829 Complaint at 13-14; Blue Marmot/300, Moyer/12:20-22, 19:10-11.

³ See, e.g., UM 1829 Complaint at 10-11.

⁴ Blue Marmot/300, Moyer/2:14.

⁵ Blue Marmot/300, Moyer/27:23, 28:5, 29:18.

1 documents.⁶ The Blue Marmots responded in full to only one of these data requests. PGE seeks
2 to compel full answers to the remaining requests, which are the following:

3
4 10. Regarding Mr. Moyer’s testimony: “the characterization of the Blue Marmots
5 as ‘on-system’ or ‘off-system’ projects is relevant to the matter at hand because
6 PGE Merchant must purchase a QF’s net output, whether the power is delivered
7 within or wheeled to the PGE system,” (Blue Marmot 300, Moyer/6):

8
9 a. Please state the full basis for Mr. Moyer’s understanding, including any relevant
10 statutes, rules, regulations, orders, rulings, or other documents that support Mr.
11 Moyer’s statement.

12
13 11. Regarding Mr. Moyer’s statement: “Blue Marmots have the choice to sell their
14 power to PGE at the specific point of their choosing where ownership of the
15 transmission between PacifiCorp and PGE changes” (Blue Marmot/300, Moyer 8),
16 please state the full basis for Mr. Moyer’s understanding, including any relevant
17 statutes, rules, regulations, orders, rulings, or other documents that support Mr.
18 Moyer’s statement.

19
20 12. Regarding Mr. Moyer’s statement: “My understanding is that a utility’s PURPA
21 obligations supersede any contractual obligations that a utility might claim would
22 prohibit its ability to purchase a QF’s net output” (Blue Marmot/300, Moyer 12),
23 please state the full basis for Mr. Moyer’s understanding, including any relevant
24 statutes, rules, regulations, orders, rulings, or other documents that support Mr.
25 Moyer’s statement.

26
27 14. Please explain the basis, including any statutes, rules, regulations, orders,
28 rulings, or other documents, for Mr. Moyer’s statement that a “QF cannot be given
29 a choice between paying for upgrades or being unable to deliver its power when
30 there is transmission congestion or limited ATC. Even when there is no ATC on
31 the purchasing utility’s system to deliver the net output to load, the purchasing
32 utility must accept and manage the power at the POD” (Blue Marmot/300,
33 Moyer/13, 16).

34
35 15.Regarding Mr. Moyer’s statement: “No, my understanding based on
36 communications with counsel is that under existing OPUC and FERC policy, any
37 adjustments to avoided cost rates must be made prospectively and prior to
38 establishing a LEO,” (Blue Marmot/300, Moyer 17-18), please state the date of the
39 communications with counsel, the identity of counsel, and describe the complete
40 content of the communication with counsel, including any reference made by
41 counsel to statutes, rules, regulations, orders, rulings, or other documents.

⁶ See Attachment A, PGE Data Requests 10-12, 14-17. Data Request 13 is not included in Attachment A because it is not a subject of this Motion to Compel.

1
2 16. Regarding Mr. Moyer’s statement: “I have been informed by counsel that PGE
3 or the OPUC cannot unilaterally adjust rates in a fixed price contract, or otherwise
4 adjust the compensation paid to the QF under the contract because PURPA
5 prohibits utilities and regulators from exercising any kind of post-contractual price
6 modifications.” (Blue Marmot/300, Moyer 28), please state the date of the
7 communications with counsel, the identity of counsel, and describe the complete
8 content of the communication with counsel, including any reference made by
9 counsel to statutes, rules, regulations, orders, rulings, or other document.

10
11 17. Regarding Mr. Moyer’s statement: “I have been informed by counsel that, once
12 PGE issues executable PPAs, it is required to honor those PPAs, and is barred from
13 raising any new concerns,” (Blue Marmot/300, Moyer 29), please state the date of
14 the communications with counsel, the identity of counsel, and describe the
15 complete content of the communication with counsel, including any references
16 made by counsel to statutes, rules, regulations, orders, rulings, or other document.⁷
17

18 The Blue Marmots objected to each of these requests “to the extent that production of the
19 requested data would reveal information protected by the attorney-client privilege, the work
20 product doctrine, or any other privilege, and “on the grounds that PGE does not believe the
21 information is relevant and PGE has sought to strike this testimony.”⁸ Without waiving their
22 objections, the Blue Marmots provided the following statement in response to Data Requests 10(a),
23 11, 12, and 14,

24 Mr. Moyer’s understanding is based on his experience in the energy industry and
25 communications with counsel. Mr. Moyer is not required to provide references to
26 specific statutes, rules, regulations, orders, rulings, or other documents to explain
27 his understanding of the requirements under the Public Utility Regulatory Policies
28 Act (“PURPA”). Mr. Moyer’s testimony was not intended to testify to the legal
29 requirements under PURPA, but only his understanding to lay the foundation for
30 his testimony regarding the relevant facts in this proceeding.⁹

31 In response to Data Requests 15, 16, and 17, which specifically asked about the referenced
32 communications with counsel, the Blue Marmots offered the same objections and provided only a
33 privilege log for communications between Mr. Moyer and counsel for the Blue Marmots.¹⁰

⁷ Attachment A, PGE Data Requests 10-12, 14-17.

⁸ Attachment A, Blue Marmots’ Responses to PGE Data Requests 10(a), 11, 12, 14, 15, 16 & 17.

⁹ Attachment A, Blue Marmots’ Responses to PGE Data Requests 10(a), 11, 12 & 14.

¹⁰ Attachment A, Blue Marmots’ Responses to PGE Data Requests 15, 16 & 17.

II. LEGAL STANDARD

1 The Oregon Rules of Civil Procedure (ORCP) apply in Commission proceedings unless
2 they are inconsistent with Commission rules, a Commission order, or an Administrative Law
3 Judge’s ruling.¹¹ Under ORCP 36(B), the scope of discovery extends to any matter relevant to a
4 claim or defense. The Commission’s rules regarding discovery provide for data requests, which
5 are “written interrogatories or requests for production of documents.”¹² “Each data request must
6 be answered fully and separately in writing or by production of documents, or objected to in
7 writing.”¹³

8 The Commission applies the attorney-client privilege codified in Oregon Evidence Code
9 503,¹⁴ which protects “confidential communications made for the purpose of facilitating the
10 rendition of professional legal services to the client.”¹⁵ The attorney-client privilege is waived if
11 the privilege holder “voluntarily discloses or consents to disclosure of any significant part of the
12 matter or communication.”¹⁶ Waiver of the privilege extends not only to the portion of the
13 confidential communication disclosed, but also to the entire communication and to other
14 communications on the same subject with the same person or other persons.¹⁷

15 The protection for work product also applies in contested cases before the Commission.
16 ORCP 36(B)(3) protects against the discovery of trial preparation materials, *i.e.* work product.
17 The work product protection is waived by disclosure of protected information that will enable an
18 adversary to access the information.¹⁸

¹¹ OAR 860-001-0000(1).

¹² OAR 860-001-0540(1).

¹³ *Id.*

¹⁴ ORS 40.225; *see, e.g., Cent. Lincoln People’s Utility Dist. v. Verizon Nw. Inc.*, Docket No. UM 1087, Order No. 04-379 at 3–5 (July 8, 2004) (applying and analyzing Oregon Evidence Code 503).

¹⁵ ORS 40.225(2) (Oregon Evidence Code 503).

¹⁶ ORS 40.280 (Oregon Evidence Code 511).

¹⁷ Commentary to Oregon Evidence Code 511.

¹⁸ *See, e.g., Westinghouse Elec. Corp. v. Republic of Philippines*, 951 F.2d 1414, 1428 (3d Cir. 1991) (“A disclosure to a third party waives the attorney-client privilege unless the disclosure is necessary to further the goal of enabling the client to seek informed legal assistance. Because the work-product doctrine serves instead to protect an

III. DISCUSSION

1 **A. If PGE’s Motion to Strike is denied, then the information PGE seeks to discover is**
2 **relevant, and the Blue Marmots should be compelled to respond to PGE’s data**
3 **requests.**

4 The Blue Marmots seek to have it both ways by refusing to produce the bases for their legal
5 statements in discovery, on the grounds that PGE has sought to strike the information, while
6 simultaneously opposing PGE’s Motion to Strike.¹⁹ However, their choice is simple: either the
7 legal argument in their testimony is not relevant and should be stricken, or it is relevant, and the
8 Blue Marmots must respond fully to PGE’s data requests regarding the bases for the testimony.

9 If the legal argument is not stricken from the Blue Marmots’ testimony, then discovery into
10 its bases is relevant and is necessary for PGE to prepare effective response testimony. The Blue
11 Marmots offer a non-lawyer witness’s testimony on key legal issues presented in this case as if
12 these statements represent settled fact, rather than one party’s position on legal issues that are very
13 much in dispute. The presence of such extensive legal argument in the Blue Marmots’ testimony
14 requires a response, and PGE is unable to respond effectively unless it understands the bases for
15 the Blue Marmots’ arguments. If the parties are to present competing interpretations of PURPA’s
16 legal requirements through their testimony, then reference to relevant precedent is essential to
17 assist the opposing party in responding and the decision-maker in evaluating the respective
18 arguments. In any event, if these legal assertions remain in the record, the data requests that are
19 the subject of this Motion to Compel seek information and material that is clearly within the scope
20 of proper discovery under the Commission’s rules and ORCP 36.

21 Unfortunately, the schedule in this case did not permit PGE the luxury of waiting for the
22 outcome of the Motion to Strike before beginning to conduct discovery into Mr. Moyer’s legal

attorney’s work product from falling into the hands of an adversary, a disclosure to a third party does not necessarily waive the protection of the work-product doctrine. Most courts hold that to waive the protection of the work-product doctrine, the disclosure must enable an adversary to gain access to the information.”) (citing 8 Wright & Miller, § 2024 at 210).

¹⁹ See Blue Marmots’ Response to PGE’s Motion to Strike (Nov. 6, 2017).

1 arguments. PGE notes that, if the Motion to Strike is granted, this Motion to Compel will be moot.
2 Therefore, PGE requests that the Commission decide this Motion only if necessary after ruling on
3 the Motion to Strike, and PGE reiterates its request that both motions be resolved expeditiously so
4 that PGE will have the information required to effectively prepare its response testimony before
5 the December-22 due date.

6 **B. The information PGE seeks to discover is not protected from disclosure by any**
7 **privilege.**

8 The Blue Marmots object to disclosing the bases for Mr. Moyer’s legal statements, “to the
9 extent that production of the requested data would reveal information protected by the attorney-
10 client privilege, the work product doctrine, or any other privilege.” However, the bases for Mr.
11 Moyer’s legal statements plainly are not protected from disclosure, and the Blue Marmots should
12 be compelled to respond to PGE’s data requests regarding this information.

13 *1. If Mr. Moyer’s statements are based on communications with an attorney, the*
14 *attorney-client privilege has been waived by public disclosure of the content of the*
15 *communications.*

16 It appears that the legal assertions in the Blue Marmots’ testimony are based on Mr.
17 Moyer’s communications with counsel. The Blue Marmots’ responses to PGE’s data requests
18 state that “Mr. Moyer’s understanding is based on his experience in the energy industry and
19 communications with counsel.” Mr. Moyer’s testimony itself also indicates that his understanding
20 of certain legal issues is “based on communications with counsel” and he prefaces some of his
21 legal statements with “I have been informed by counsel.”²⁰

22 The attorney-client privilege does not shield the bases of Mr. Moyer’s legal statements
23 from discovery. The attorney-client privilege protects only *confidential* communications between
24 attorney and client.²¹ A “confidential communication” is “a communication not intended to be
25 disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of

²⁰ Blue Marmot/300, Moyer/27-29.

²¹ ORS 40.225(2) (Oregon Evidence Code 503).

1 professional legal services to the client or those reasonably necessary for the transmission of the
2 communication.”²² Because the contents of the communications between counsel for the Blue
3 Marmots and Mr. Moyer were disclosed to PGE via the Blue Marmots’ testimony, the
4 communications are no longer “confidential” and therefore are not protected by the attorney-client
5 privilege.²³

6 Disclosure of a portion of a communication waives the privilege as to all communications
7 on the same subject.²⁴ Waiver occurs as soon as a significant part of the communication is
8 disclosed.²⁵ Here, Mr. Moyer’s testimony discloses and expounds on legal conclusions regarding
9 key issues in dispute in this case.²⁶ The testimony and data responses make clear that this
10 information comes from Mr. Moyer’s communications with counsel, as well as his experience in
11 the energy industry.²⁷ Therefore, the Blue Marmots plainly have waived any attorney-client
12 privilege as to the full content of communications that underlie the statements in Mr. Moyer’s
13 testimony. The Blue Marmots should be compelled to respond to PGE’s requests for this
14 information.

15 **2. *If Mr. Moyer’s testimony represents his own opinions based on his experience, then***
16 ***the attorney-client privilege does not apply, and PGE is entitled to complete***
17 ***answers to its data requests.***

18 To the extent that Mr. Moyer’s legal statements represent his own opinions and are not the
19 product of communications with counsel, the attorney-client privilege does not apply. It is
20 axiomatic that the opinions of a non-lawyer—such as Mr. Moyer—on legal issues are not
21 confidential communications made to facilitate the rendition of professional legal services.²⁸ PGE

²² ORS 40.225(1)(b) (Oregon Evidence Code 503).

²³ ORS 40.225 (Oregon Evidence Code 503).

²⁴ Commentary to Oregon Evidence Code 511.

²⁵ Commentary to Oregon Evidence Code 511 (citing *Bryant v. Dukehard*, 106 Or 359 (1922); *Gerlinger v. Frank*, 74 Or 517 (1915)).

²⁶ Blue Marmot/300, Moyer.

²⁷ Blue Marmot/300, Moyer/27-29; Attachment A, Blue Marmots’ Responses to PGE Data Requests 10-17.

²⁸ Even if they were, they would be waived by disclosure through Mr. Moyer’s testimony, as explained in detail above.

1 is entitled to conduct discovery into the bases for the opinions stated in Mr. Moyer’s testimony
2 about key legal issues in this case.²⁹

3 **3. *No other privilege protects the information PGE seeks from disclosure.***

4 Based on the Blue Marmots’ data responses and on PGE’s communications with counsel
5 for Blue Marmot, it appears that the Blue Marmots’ objections to disclosure of the requested
6 information primarily are based on the attorney-client privilege. However, to the extent that the
7 Blue Marmots’ objections to providing the requested data are based on the work product doctrine,
8 any protection has been waived. The work product protection is waived by disclosure of protected
9 information that will enable an adversary to access the information.³⁰ Here, the Blue Marmots
10 disclosed the information directly to their adversary, thereby waiving any claim that the
11 information PGE seeks is protected work product. The Blue Marmots have not asserted, and PGE
12 is not aware of, any other privilege that would apply to protect the information sought in PGE’s
13 data requests. Therefore, the Blue Marmots should be compelled to provide full responses to
14 PGE’s data requests.

IV. CONCLUSION

15 The Blue Marmots chose to include in their testimony a significant amount of legal
16 argument about key, disputed issues in this case. Although PGE has moved to strike this improper
17 legal argument, the Blue Marmots have opposed the Motion to Strike, which remains pending. If
18 the Motion to Strike is denied, fundamental fairness requires that PGE be allowed to conduct
19 discovery into the bases of the Blue Marmots’ legal assertions so that it can fully and effectively

²⁹ See ORCP 36(B).

³⁰ See, e.g., *Westinghouse Elec. Corp. v. Republic of Philippines*, 951 F2d 1414, 1428 (3d Cir 1991) (“A disclosure to a third party waives the attorney-client privilege unless the disclosure is necessary to further the goal of enabling the client to seek informed legal assistance. Because the work-product doctrine serves instead to protect an attorney’s work product from falling into the hands of an adversary, a disclosure to a third party does not necessarily waive the protection of the work-product doctrine. Most courts hold that to waive the protection of the work-product doctrine, the disclosure must enable an adversary to gain access to the information.”) (citing 8 Wright & Miller, § 2024 at 210).

1 respond in its own testimony. PGE believes that argument regarding key legal issues disputed in
2 the case belongs in legal briefs where supporting citations are required. Here, the Blue Marmots
3 have placed such argument in their testimony, and, if they are permitted to do so, they should be
4 required to provide support for it. The information PGE seeks is not protected by the attorney-
5 client privilege or the work product protection, and the Blue Marmots waived any applicable
6 privilege by disclosing the information in their testimony. For these reasons, PGE respectfully
7 requests that the Commission compel the Blue Marmots to provide full and complete responses to
8 PGE Data Requests 10(a), 11, 12, 14, 15, 16, and 17.

Dated November 9, 2017

MCDOWELL RACKNER GIBSON PC



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PORTLAND GENERAL ELECTRIC COMPANY

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Attorneys for Portland General Electric Company

Attachment A

To

Portland General Electric Company's

Motion to Compel

Oregon Public Utility Commission
OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
October 31, 2017
Blue Marmots' Response to PGE Data Request 10

PGE Data Request 10

Regarding Mr. Moyer's testimony: "the characterization of the Blue Marmots as 'on-system' or 'off-system' projects is relevant to the matter at hand because PGE Merchant must purchase a QF's net output, whether the power is delivered within or wheeled to the PGE system," (Blue Marmot 300, Moyer/6):

- a. Please state the full basis for Mr. Moyer's understanding, including any relevant statutes, rules, regulations, orders, rulings, or other documents that support Mr. Moyer's statement.
- b. Does Mr. Moyer believe that a QF's characterization as "on-system" or "off-system" is irrelevant for all purposes related to QF contracting? If the answer is no, please state to what extent a QF's characterization as "on-system" or "off-system" is relevant to QF contracting. In responding, please provide any relevant statutes, rules, regulations, orders, rulings, or other documents that support Mr. Moyer's view.

Response to PGE Data Request 10

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. In addition, the Blue Marmots object on the grounds that PGE does not believe the information is relevant and PGE has sought to strike this testimony.

Notwithstanding these objections, the Blue Marmots provide the following:

- a. Mr. Moyer's understanding is based on his experience in the energy industry and communications with counsel. Mr. Moyer is not required to provide references to specific statutes, rules, regulations, orders, rulings, or other documents to explain his understanding of the requirements under the Public Utility Regulatory Policies Act ("PURPA"). Mr. Moyer's testimony was not intended to testify to the legal requirements under PURPA, but only his understanding to lay the foundation for his testimony regarding the relevant facts in this proceeding.
- b. No. Mr. Moyer understands that the characterization of a QF as an "on-system" or "off-system" may be relevant to determining a utility's obligation to purchase the net output of any energy that is delivered to a point of delivery. Mr. Moyer understands that "off-system" QFs under Schedule 201 must make transmission arrangements, which are not required of "on-system" QFs. Please also refer to the response to PGE Data Request 10(a).

Oregon Public Utility Commission
OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
October 31, 2017
Blue Marmots' Response to PGE Data Request 11

PGE Data Request 11

Regarding Mr. Moyer's statement: "Blue Marmots have the choice to sell their power to PGE at the specific point of their choosing where ownership of the transmission between PacifiCorp and PGE changes" (Blue Marmot/300, Moyer 8), please state the full basis for Mr. Moyer's understanding, including any relevant statutes, rules, regulations, orders, rulings, or other documents that support Mr. Moyer's statement.

Response to PGE Data Request 11

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. In addition, the Blue Marmots object on the grounds that PGE does not believe the information is relevant and PGE has sought to strike this testimony.

Notwithstanding these objections, the Blue Marmots provide the following:

Mr. Moyer's understanding is based on his experience in the energy industry and communications with counsel. Mr. Moyer is not required to provide references to specific statutes, rules, regulations, orders, rulings, or other documents to explain his understanding of the requirements under the Public Utility Regulatory Policies Act ("PURPA"). Mr. Moyer's testimony was not intended to testify to the legal requirements under PURPA, but only his understanding to lay the foundation for his testimony regarding the relevant facts in this proceeding.

Oregon Public Utility Commission
OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
October 31, 2017
Blue Marmots' Response to PGE Data Request 12

PGE Data Request 12

Regarding Mr. Moyer's statement: "My understanding is that a utility's PURPA obligations supersede any contractual obligations that a utility might claim would prohibit its ability to purchase a QF's net output" (Blue Marmot/300, Moyer 12), please state the full basis for Mr. Moyer's understanding, including any relevant statutes, rules, regulations, orders, rulings, or other documents that support Mr. Moyer's statement.

Response to PGE Data Request 12

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. In addition, the Blue Marmots object on the grounds that PGE does not believe the information is relevant and PGE has sought to strike this testimony.

Notwithstanding these objections, the Blue Marmots provide the following:

Mr. Moyer's understanding is based on his experience in the energy industry and communications with counsel. Mr. Moyer is not required to provide references to specific statutes, rules, regulations, orders, rulings, or other documents to explain his understanding of the requirements under the Public Utility Regulatory Policies Act ("PURPA"). Mr. Moyer's testimony was not intended to testify to the legal requirements under PURPA, but only his understanding to lay the foundation for his testimony regarding the relevant facts in this proceeding.

Oregon Public Utility Commission
OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
October 31, 2017
Blue Marmots' Response to PGE Data Request 14

PGE Data Request 14

Please explain the basis, including any statutes, rules, regulations, orders, rulings, or other documents, for Mr. Moyer's statement that a "QF cannot be given a choice between paying for upgrades or being unable to deliver its power when there is transmission congestion or limited ATC. Even when there is no ATC on the purchasing utility's system to deliver the net output to load, the purchasing utility must accept and manage the power at the POD" (Blue Marmot/300, Moyer/13, 16).

Response to PGE Data Request 14

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. In addition, the Blue Marmots object on the grounds that PGE does not believe the information is relevant and PGE has sought to strike this testimony.

Notwithstanding these objections, the Blue Marmots provide the following:

Mr. Moyer's understanding is based on his experience in the energy industry and communications with counsel. Mr. Moyer is not required to provide references to specific statutes, rules, regulations, orders, rulings, or other documents to explain his understanding of the requirements under the Public Utility Regulatory Policies Act ("PURPA"). Mr. Moyer's testimony was not intended to testify to the legal requirements under PURPA, but only his understanding to lay the foundation for his testimony regarding the relevant facts in this proceeding.

Oregon Public Utility Commission
OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
October 31, 2017
Blue Marmots' Response to PGE Data Request 15

PGE Data Request 15

Regarding Mr. Moyer's statement: "No, my understanding based on communications with counsel is that under existing OPUC and FERC policy, any adjustments to avoided cost rates must be made prospectively and prior to establishing a LEO," (Blue Marmot/300, Moyer 17-18), please state the date of the communications with counsel, the identity of counsel, and describe the complete content of the communication with counsel, including any references made by counsel to statutes, rules, regulations, orders, rulings, or other documents.

Response to PGE Data Request 15

The Blue Marmots object to this data request on the grounds that it would be unduly burdensome 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. In addition, the Blue Marmots object on the grounds that PGE does not believe the information is relevant and PGE has sought to strike this testimony.

Notwithstanding these objections, the Blue Marmots provide the following:

The Blue Marmots interpret this question as relating to only communications in this proceeding.

Please refer to Confidential Attachment to PGE Data Request 15, 16 and 17.

Oregon Public Utility Commission
OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
October 31, 2017
Blue Marmots' Response to PGE Data Request 16

PGE Data Request 16

Regarding Mr. Moyer's statement: "I have been informed by counsel that PGE or the OPUC cannot unilaterally adjust rates in a fixed price contract, or otherwise adjust the compensation paid to the QF under the contract because PURPA prohibits utilities and regulators from exercising any kind of post-contractual price modifications." (Blue Marmot/300, Moyer 28), please state the date of the communications with counsel, the identity of counsel, and describe the complete content of the communication with counsel, including any references made by counsel to statutes, rules, regulations, orders, rulings, or other document.

Response to PGE Data Request 16

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. In addition, the Blue Marmots object on the grounds that PGE does not believe the information is relevant and PGE has sought to strike this testimony.

Notwithstanding these objections, the Blue Marmots provide the following:

The Blue Marmots interpret this question as relating to only communications in this proceeding.

Please refer to Confidential Attachment to PGE Data Request 15, 16 and 17.

Oregon Public Utility Commission
OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
October 31, 2017
Blue Marmots' Response to PGE Data Request 17

PGE Data Request 17

Regarding Mr. Moyer's statement: "I have been informed by counsel that, once PGE issues executable PPAs, it is required to honor those PPAs, and is barred from raising any new concerns," (Blue Marmot/300, Moyer 29), please state the date of the communications with counsel, the identity of counsel, and describe the complete content of the communication with counsel, including any references made by counsel to statutes, rules, regulations, orders, rulings, or other document.

Response to PGE Data Request 17

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. In addition, the Blue Marmots object on the grounds that PGE does not believe the information is relevant and PGE has sought to strike this testimony.

Notwithstanding these objections, the Blue Marmots provide the following:

The Blue Marmots interpret this question as relating to only communications in this proceeding.

Please refer to Confidential Attachment to PGE Data Request 15, 16 and 17.

**THIS PAGE IS CONFIDENTIAL PER
PROTECTIVE ORDER 17-219 AND
WILL BE PROVIDED SEPARATELY**