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VIA ELECTRONIC FILING

Attention: Filing Center
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Re: Docket UM 1829 – In the Matter of Blue Marmot V LLC vs Portland General Electric Company

Attention Filing Center:

Attached for filing in the above-captioned docket is Portland General Electric Company's Response Brief.

Please contact this office with any questions.

Sincerely,

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

Alisha Till
Paralegal

Attachments

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1829**

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

v.

Portland General Electric Company,
Defendant.

**PORTLAND GENERAL ELECTRIC
COMPANY'S RESPONSE BRIEF**

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Pursuant to the Administrative Law Judge’s January 23, 2019 Ruling, Portland General Electric Company (PGE or the Company) hereby files this Response Brief. In light of the complexity of this long-running case—including six rounds of testimony and associated motions, a recent motion to stay and accompanying briefing, as well as cross-examination and prehearing briefing—this Response Brief seeks to serve as a consolidated resource and does not assume familiarity with the prior briefing in this docket.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

The Public Utility Commission of Oregon’s (Commission) implementation of the Public Utility Regulatory Policies Act of 1978 (PURPA) rests on one bedrock principle: utility customers should pay no more for energy sold by qualifying facilities (QFs) than the costs the utility avoids by the purchase. This Commission has made clear its intent to faithfully adhere to this standard to maintain “customer indifference” to the purchase of QF energy, and to thereby protect Oregonians from the harm of overpaying for QF output. The complainants in this case seek to escape the customer-indifference standard by shifting the costs caused by their projects to PGE, to the significant harm of PGE’s customers.

EDP Renewables is a multinational developer of renewable energy projects planning to construct five 10-MW solar QFs, referred to collectively as the Blue Marmots,¹ in PacifiCorp’s service territory near the California border. Despite the fact that these projects will be located hundreds of miles away from PGE’s service territory, the Blue Marmots wish to sell their output to PGE to take advantage of its higher avoided cost prices and more advantageous standard contract terms and conditions. Specifically, they seek to deliver their output to the interface between PacifiCorp’s and PGE’s systems—the PACW-PGE interface. This dispute arises, however, because PGE has reserved and is using the capacity at that location to participate in the

¹ Blue Marmot V, Blue Marmot VI, Blue Marmot VII, Blue Marmot VIII, and Blue Marmot IX (collectively, the Blue Marmots).

Western Energy Imbalance Market (EIM), and there is therefore no available transfer capability (ATC) to allow for the delivery of the Blue Marmots' output across that interface.

Given that the PACW-PGE interface is fully subscribed, PGE has properly declined to execute power purchase agreements (PPAs) with the Blue Marmots until they have agreed to a feasible plan for delivering their output to PGE's system. Toward this end, PGE has provided the Blue Marmots with two options: they can either transmit their output to the interface between the Bonneville Power Administration's and PGE's systems (the BPA-PGE interface), where there is sufficient ATC for delivery; *or* they can pay for any upgrades that would allow for delivery elsewhere. PGE's approach is consistent with its obligations under PURPA to purchase a QF's output once that output has been made available to the utility, while also protecting PGE's customers from harm.

The Blue Marmots claim that PGE has wrongfully refused to execute their PPAs, and that they are not required to pay for any costs necessary to achieve delivery of their output to PGE's system.² Specifically, they incorrectly argue that they have a right to deliver their output to any point on PGE's system—even one at which the capacity is already fully committed; and they further argue that their only obligation as off-system QFs is to transmit their output to any point on the edge of PGE's system, which they claim to have achieved by reserving transmission on PacifiCorp's system.³ Based on these views, the Blue Marmots claim that it is PGE's customers who must pay whatever costs are required to either transmit their output to the BPA-PGE interface or to construct system upgrades that would allow PGE to accept delivery of their output at the PACW-PGE interface.⁴ Alternatively, the Blue Marmots state that PGE must surrender transmission capacity that PGE currently relies upon for EIM participation to facilitate delivery of the Blue Marmots' output.⁵ In addition, the Blue Marmots argue that PGE cannot require them to

² Opening Brief of Complainants Blue Marmots at 7 (Feb. 14, 2019) (hereafter, Blue Marmots' Opening Brief).

³ Blue Marmots' Opening Brief at 34-36.

⁴ Blue Marmots' Opening Brief at 27.

⁵ Blue Marmots' Opening Brief at 33.

bear additional delivery costs because they established a legally enforceable obligation (LEO) to sell their output to PGE at a specific avoided cost price,⁶ and that PGE discriminated against them by failing to execute their PPAs when PGE had previously executed PPAs for other off-system QFs wishing to deliver to the PACW-PGE interface.⁷ The Blue Marmots also briefly reprise their earlier jurisdictional claims, arguing that the Commission lacks jurisdiction to consider the transmission-related issues raised in this case and should therefore stay this proceeding pending the outcome of the Blue Marmots' Federal Energy Regulatory Commission (FERC) petition.⁸ And finally, the Blue Marmots request that the Commission grant them a longer period for developing their projects in order to allow for the time taken to resolve their complaints.⁹

As a whole, the Blue Marmots' arguments wrongfully suggest that federal law ties the Commission's hands and prevents the Commission from protecting PGE's customers from the costs caused by these QF projects. This position has no merit under clear Commission and FERC precedent and in light of the unambiguous mandate of PURPA's customer-indifference standard.

First, PURPA's customer-indifference standard requires that any costs necessary to effect delivery of the Blue Marmots' output to PGE must be borne by the Blue Marmots and not PGE's customers. The Commission has already determined in UM 1610 that QFs must pay for third-party transmission costs necessary to deliver their output to load, and therefore, the Blue Marmots are responsible for the costs required to deliver their output to the BPA-PGE interface.¹⁰ Importantly, the evidence in this case supports PGE's conclusion that there are no feasible and economical system upgrades that would allow delivery of the Blue Marmots' entire output via the

⁶ Blue Marmots' Opening Brief at 69-71.

⁷ Blue Marmots' Opening Brief at 74-75.

⁸ Blue Marmots' Opening Brief at 5-7 (summarizing the Blue Marmots' jurisdictional arguments).

⁹ Blue Marmots' Opening Brief at 76.

¹⁰ *In the Matter of Pub. Util. Comm'n of Or. Staff Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 14-058 at 22 (Feb. 24, 2014) (concluding that "QFs must pay for third-party transmission costs incurred by a utility to move QF output from the point of delivery to load" and that "any costs imposed on a utility that are above the utility's avoided costs must be assigned to the QF in order to comport with PURPA avoided cost principles").

PACW-PGE interface,¹¹ but even if there were, the Blue Marmots would be required to pay for such upgrades—the cost of which is not accounted for in PGE’s standard avoided cost rates.¹²

Second, the Blue Marmots cannot escape their responsibility to pay for feasible delivery arrangements by commandeering PGE’s existing transmission capacity that was previously reserved and is currently used for EIM transfers. The EIM represents one of PGE’s key strategic initiatives to deliver value for customers, and robust participation is critical to the Company’s ability to efficiently manage its variable energy resources. Importantly, PGE cannot give up transmission capacity currently dedicated to the EIM without significantly eroding the benefits PGE expects to achieve for its customers. In addition, if PGE must cede transmission to the Blue Marmots and other QFs with earlier, fully executed PPAs, PGE would likely need to file a notice with FERC and could lose its authorization to transact in the EIM at market-based rates—a result that would further erode PGE’s customer benefits.¹³

Third, as a matter of both law and fact, the Blue Marmots cannot achieve delivery of their output to PGE simply by reserving transmission on PacifiCorp’s system to a fully subscribed interface, and thus they remain responsible for the costs necessary to deliver their output to PGE’s system. Indeed, PGE may require the Blue Marmots to deliver to a reasonable and feasible location, consistent with decisions from this Commission and the Court of Appeals in *Water Power*.¹⁴ As a result, the Commission should conclude that the Blue Marmots have not yet achieved delivery and thus have not yet triggered PGE’s purchase obligation or transferred responsibility for managing their output—and paying the resulting costs—to PGE.

Fourth, the fact that the Blue Marmots achieved LEOs to certain avoided cost prices does not immunize them from responsibility for the costs necessary to achieve delivery. As explained

¹¹ PGE/300, Afranji-Larson-Richard/19 (stating that “there is no acceptable re-dispatch scenario or transmission upgrade that will sufficiently increase the TTC on the PACW-to-PGE path to allow the Blue Marmots to deliver over the PACW-PGE interface”).

¹² Blue Marmot/400, Moyer/3 (“I note that the avoided cost for which the Blue Marmots are eligible does not reflect the cost of transmission upgrades[.]”).

¹³ PGE/500, Rodehorst-Moore/24-29.

¹⁴ *Water Power Co., Inc. v. PacifiCorp*, 99 Or App 125, 130 (1989) (“The utility . . . may insist on provisions that require . . . a particular point of delivery.”).

by both FERC¹⁵ and this Commission¹⁶—and consistent with the terms of the Blue Marmots’ PPAs themselves¹⁷—a LEO is intended to fix a QF’s right to the avoided cost rate in effect at the time the LEO arises; it does not, however, preclude a utility from raising legitimate costs properly allocable to the QF, prior to the time the PPA is fully executed and effective. Moreover, even if the Blue Marmots’ LEOs rendered their PPAs fully effective—which they do not—those PPAs specifically require the Blue Marmots to bear the costs necessary to achieve delivery.¹⁸ Similarly, the PPAs do not designate a point of delivery for the Blue Marmots’ output, and therefore do not entitle them to deliver at the PACW-PGE interface.¹⁹ Thus, the Commission should conclude that the Blue Marmots can be held responsible for the costs caused by their projects, either under the terms of the Blue Marmots’ partially executed PPAs, or because the PPAs have not been fully executed.

Fifth, contrary to the Blue Marmots’ allegations, PGE has acted in a non-discriminatory and good-faith manner throughout the contracting process. As soon as PGE’s QF contracting personnel learned of the constraint at the Blue Marmots’ preferred point of delivery, they acted quickly to assess the situation and to communicate with the Blue Marmots regarding their options to achieve delivery. Under the circumstances, PGE reasonably declined to execute the Blue Marmots’ PPAs until feasible delivery arrangements had been made.

Sixth, the Commission has broad authority to implement PURPA and to protect customers from harm, which includes the jurisdiction to consider relevant transmission-related issues raised by this case, and to allocate to the Blue Marmots the transmission-related costs caused by their

¹⁵ *JD Wind1, LLC*, 129 FERC ¶ 61,148 at P25 (2009), *reh’g denied*, 130 FERC ¶61,127 (2010) (stating that a QF can establish “a non-contractual, but still legally enforceable, obligation” under PURPA).

¹⁶ *In the Matter of Pub. Util. Comm’n of Or. Staff Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 16-174 at 27 (May 13, 2016) (“[A] LEO is formed for the purpose of establishing an avoided cost price.”).

¹⁷ Blue Marmots/201, Talbott/1 (stating that the PPA’s terms become effective only upon signing by “both Parties”).

¹⁸ Blue Marmot/201, Talbott/13 (“The cost of delivering energy from the Facility to PGE is the sole responsibility of the Seller.”).

¹⁹ On the contrary, as noted above, applicable Oregon law allows PGE to designate a reasonable delivery point—which in this case would be the BPA-PGE interface, as that is the only available interface with sufficient capacity for PGE to accept the Blue Marmots’ output.

projects.²⁰ Indeed, the Blue Marmots’ proposed jurisdictional limits would be wholly inconsistent with the Commission’s practice of considering transmission-related issues as necessary to implement PURPA.²¹ Thus, the Commission should conclude that it has the jurisdiction to consider those transmission-related issues integral to resolving the Blue Marmots’ complaints.

Finally, the Blue Marmots have not shown that the fact of this litigation entitles them to extend their commercial operation dates. Not only is their request beyond the scope of their initial prayer for relief in their complaints, but also the Blue Marmots have presented no evidence that an extension is required, and thus have not met their burden of proof.²² Moreover, the Blue Marmots appear to have proceeded with the development of their projects at a full pace since they filed these complaints—suggesting that no such extension is required. The Commission should therefore reject the Blue Marmots’ request to extend their commercial operation dates.

PGE takes its obligations under PURPA seriously and is fully prepared to execute PPAs to purchase the Blue Marmots’ output at the avoided cost rates in effect at the time they established their LEOs—but only after they have made suitable arrangements to deliver their output to PGE at a point where it can be accepted, without imposing additional costs on PGE’s customers. PGE’s actions are consistent with PURPA’s requirements and with this Commission’s precedent, and are necessary to protect PGE’s customers from harm. Therefore, the Commission should deny the Blue Marmots’ requested relief and dismiss their complaints.

²⁰ ORS 758.505 *et seq.*

²¹ See OAR 860-082-0035; OAR 860-082-0060; OAR 860-082-0080; OAR 860-082-0085. The Commission also specifies technical requirements for construction, operation, maintenance, and testing of an interconnected facility, OAR 860-082-0030, and resolves disputes that occur during review of an interconnection application and after an interconnection agreement has been reached. OAR 860-082-0080; OAR 860-082-0085.

²² *Marie Richter v. NW Natural Gas Co.*, Docket No. UC 526, Order No. 00-649 at 2 (Oct. 19, 2000) (noting that the “[c]omplainant bears the burden of proof”); see also *M.J. and C.H. v. PacifiCorp*, Docket No. UCR 125, Order No. 10-293 at 2 (July 30, 2010) (denying complaints for failure to meet the requisite burden of proof).

II. FACTUAL BACKGROUND

A. The Blue Marmots' Contracting Process.

The Blue Marmots are a group of five 10-MW solar QF projects proposed for development in PacifiCorp's service territory near the California/Oregon border in Lake County.²³ The Blue Marmots are being developed by EDPR NA (EDPR), a multi-national corporation headquartered in Texas, and a wholly-owned subsidiary of the global parent, EDP Renewables, which is headquartered in Spain.²⁴ While the Blue Marmots will directly interconnect with PacifiCorp, they have chosen to sell their output to PGE to take advantage of PGE's higher avoided cost rates and (at the time) higher standard contract threshold.²⁵ The Blue Marmots wish to deliver their output to PGE via the PACW-PGE interface,²⁶ and have reserved transmission service from PacifiCorp to the edge of PacifiCorp's system at the PACW-PGE interface.²⁷

The Blue Marmots received final executable PPAs for four of the five projects between January and March of 2017.²⁸ The fifth Blue Marmot project, Blue Marmot VIII, had by this point received a draft PPA, but had not yet been provided a final executable PPA.²⁹ Along with the draft PPAs, PGE provided each of the Blue Marmots an explanatory letter, stating that each project would establish a LEO to the avoided cost rates in effect at the time that the QF signed the PPA and returned it to PGE for full execution.³⁰ These letters clarified that, while execution by the Blue Marmots would fix the projects' avoided cost prices, *no binding PPA would exist unless and until a final executable PPA was signed by both parties.*³¹ The letter was consistent with the language in the accompanying PPAs, which provided that the terms and conditions would become

²³ PGE/100, Greene-Moore/8; PGE/400, Greene/1.

²⁴ PGE/100, Greene-Moore/7.

²⁵ PGE/101, Greene-Moore/1, Blue Marmot Response to PGE Data Request No. 3. PacifiCorp's threshold for standard contracts for solar QFs is 3 MW, whereas PGE's was 10 MW during the relevant time period.

²⁶ PGE/100, Greene-Moore/9; PGE/400, Greene/1.

²⁷ PGE/100, Greene-Moore/9.

²⁸ PGE/100, Greene-Moore/8.

²⁹ PGE/100, Greene-Moore/9.

³⁰ See, e.g., Blue Marmot/201, Talbott/123-124.

³¹ PGE's Cross-Examination Exhibit, PGE/817, included as Attachment A to this filing.

effective only “upon execution by both parties.”³² Four of the Blue Marmots signed final executable PPAs and returned them to PGE on March 29, 2017.³³

After receiving the four partially executed PPAs, PGE circulated them for final legal and commercial review and signing, consistent with PGE’s standard practice.³⁴ However, before PGE completed its review and executed the PPAs, the PGE personnel responsible for QF contracting learned that the PACW-PGE interface was fully subscribed because PGE’s Merchant Function (PGE Merchant³⁵) had previously reserved all of the available capacity for PGE’s participation in the EIM.³⁶ As a result, the Blue Marmots would be unable to deliver their output to PGE via that interface.³⁷

Upon learning of the lack of ATC, PGE’s QF contracting personnel contacted the Blue Marmots to clarify whether they planned to deliver via the PACW-PGE interface.³⁸ This was necessary because, at that point in time, it was not PGE’s practice to ask off-system QFs executing standard contracts where they wished to deliver their output until *after* the PPAs had been executed by the QFs.³⁹ When the Blue Marmots confirmed that they intended to deliver via the PACW-PGE interface, PGE notified them that the interface was fully subscribed and offered two options for meeting their delivery obligations.⁴⁰ Specifically, PGE informed EDPR that it could:

³² Blue Marmot/201, Talbott/6; *see also* Blue Marmot/201, Talbott/11 (“This Agreement shall become effective upon execution by both Parties.”).

³³ PGE/100, Greene-Moore/8; Blue Marmot/200, Talbott/3 (noting that the Blue Marmots executed the PPAs on March 29 and PGE received them on March 31).

³⁴ PGE/100, Greene-Moore/8-9.

³⁵ PGE Merchant is distinct from PGE’s Transmission Function (PGE Transmission), as described in more detail *infra* in footnote 83; *see also* PGE/300, Afranji-Larson-Richard/5.

³⁶ PGE/100, Greene-Moore/3; PGE/200, Sims-Rodehorst-Sporborg/12. For simplicity, PGE generally refers to the PACW-PGE interface as a whole. However, as PGE explained in its testimony, the interface is composed of two separate transmission paths, a point of delivery, and point of receipt. PGE/100, Greene-Moore/9-10, Figure 1.

³⁷ PGE/300, Afranji-Larson-Richard/3, 16.

³⁸ PGE/100, Greene-Moore/9, 11.

³⁹ PGE/100, Greene-Moore/11-12. This practice had never previously been problematic because the QF contracting team had never previously encountered a fully subscribed delivery point. Since that time, PGE has changed its process to ask for a QF’s preferred delivery point at the outset of the contracting process. *See* PGE/100, Greene-Moore/12 (noting that “the availability of sufficient ATC to take QF deliveries had never been an issue for PGE,” but that “PGE has now initiated a new process to address this concern”).

⁴⁰ PGE/100, Greene-Moore/3, 11.

- (1) deliver the Blue Marmots' generation via the BPA-PGE interface, which had sufficient ATC—the estimated cost of which the Blue Marmots later determined to be \$14 million over the terms of their PPAs,⁴¹ or
- (2) request a study and pay for any upgrades at the PACW-PGE interface that would allow the Blue Marmots to deliver at that location.⁴²

PGE assured EDPR that it would honor the then-effective avoided cost prices—both for the four Blue Marmots that had established LEOs and for Blue Marmot VIII—while the Blue Marmots worked toward a feasible delivery plan.⁴³ The Blue Marmots filed their complaints shortly thereafter on April 28, 2017, alleging that PGE had violated its mandatory-purchase obligation under PURPA and asking the Commission to bar PGE from either raising deliverability concerns or seeking to impose costs on the Blue Marmots.⁴⁴

B. Other QFs Affected by the Lack of ATC at the PACW-PGE Interface.

The Blue Marmots were not the only QFs affected by the lack of ATC at the PACW-PGE interface. Two other off-system QFs sited in PacifiCorp's service territory had draft contracts and were awaiting final executable PPAs when the QF contracting personnel learned of the lack of ATC.⁴⁵ PGE explained the situation to each of these QFs and gave them the same two options PGE had provided to the Blue Marmots.⁴⁶ Both QFs chose to deliver their output via the BPA-PGE interface.⁴⁷

In addition, three other off-system QFs—totaling 67 MW—in PacifiCorp's service territory had fully executed PPAs at the time the lack of ATC was discovered: Airport Solar, a 47-

⁴¹ Blue Marmot/100, Irvin/6; Blue Marmot/200, Talbott/11; Blue Marmot/300, Moyer/14.

⁴² PGE/100, Greene-Moore/3, 11.

⁴³ Blue Marmot/200, Talbott/7.

⁴⁴ Blue Marmot V Complaint at 14-15 (Apr. 28, 2017). Since filing their complaints, the Blue Marmots have continued to develop their projects. According to the Blue Marmots, approximately 85 percent of the costs EDPR has incurred in this development process were incurred *after* the complaints were filed. Hearing Transcript, Vol. I at 27-28 (Dec. 12, 2018) (confirming “that 85 percent of all the costs incurred by EDPR for the Blue Marmot projects were incurred after PGE informed EDPR of the constraint at the PACW-PGE POD”).

⁴⁵ PGE/100, Greene-Moore/13.

⁴⁶ PGE/100, Greene-Moore/13.

⁴⁷ PGE/100, Greene-Moore/13.

MW solar QF; OM Power 1, a 10-MW geothermal QF; and Lakeview, a 10-MW solar QF.⁴⁸ These three QFs also sought to deliver their output via the PACW-PGE interface.⁴⁹ PGE is still determining how best to proceed with these three projects, and conversations with them are ongoing.⁵⁰ PGE has sought to negotiate an alternative solution for delivery of these QFs' output, but it appears that the QF counterparties are awaiting resolution of this case.⁵¹ PGE believes that, if it is required to accommodate the Blue Marmots, these other QFs will insist upon similar treatment.⁵²

C. The Results of the System Impact Study.

After the Blue Marmots filed these complaints, EDPR and PGE met in an attempt to resolve their differences and agreed that EDPR could request a study to determine whether reasonably affordable system upgrades would allow the Blue Marmots to deliver their output at their preferred delivery point.⁵³ Accordingly, the Blue Marmots requested that PGE's Transmission Function (PGE Transmission) complete a System Impact Study to determine whether upgrades or redispatching generation resources could accommodate the Blue Marmots' request to deliver 60 MW⁵⁴ of capacity at the PACW-PGE interface.⁵⁵ PGE Transmission completed the System Impact Study utilizing a standard North American Electric Reliability Corporation (NERC) transmission study methodology, consistent with PGE's Open Access Transmission Tariff (OATT).⁵⁶

⁴⁸ PGE/100, Greene-Moore/14.

⁴⁹ PGE/100, Greene-Moore/13-14.

⁵⁰ PGE/100, Greene-Moore/14; PGE/400, Greene/21-22.

⁵¹ Hearing Transcript, Vol. I at 148-153.

⁵² Hearing Transcript, Vol. I at 148-153.

⁵³ PGE/100, Greene-Moore/18. In requesting a study, EDPR explicitly did not concede that the Blue Marmots were responsible for the costs of any such upgrades. *Id.* The parties also agree that EDPR is not required to pay for transmission *service* on PGE's system. *See also* Blue Marmots' Opening Brief at 55 n.162 (explaining that the Blue Marmots requested the System Impact Study as a result of the parties' efforts to achieve settlement).

⁵⁴ The Blue Marmots requested a System Impact Study of 60 MW, rather than the 50-MW total size of their current projects. PGE/300, Afranji-Larson-Richard/16. While the Blue Marmots have not explained the reason for this discrepancy, they have since testified that they intend to pursue only 50 MW of capacity. Blue Marmot/400, Moyer/32 n.38.

⁵⁵ PGE/300, Afranji-Larson-Richard/16-17.

⁵⁶ PGE/300, Afranji-Larson-Richard/16-17.

PGE’s System Impact Study concluded that there is no feasible and economical upgrade or redispatch scenario that could increase the total transfer capacity (TTC) at the PACW-PGE interface sufficiently to accommodate the Blue Marmots’ output.⁵⁷ PGE Transmission studied the upgrade it considered most likely to significantly increase the transfer capability of the interface—adding a second 230 kilovolt (kV) transmission line between PGE’s Bethel substation and PacifiCorp’s Parish Gap substation.⁵⁸ These substations are currently connected by one 230 kV line, which is the single largest transmission facility that moves power between PGE and PACW.⁵⁹ However, PGE determined that the addition of a second 230 kV line between these substations—which would cost an estimated \$36 million⁶⁰—would increase the TTC by only 19 MW.⁶¹ The System Impact Study further established that constructing additional transmission facilities between the Bethel and Parish Gap substations would yield diminishing returns while causing increasing expense.⁶² Indeed, this System Impact Study and past TTC studies have indicated that the primary factor limiting the TTC at the PACW-PGE interface is the load-generation balance in the PGE and PACW Balancing Authority Areas (BAAs)—and in other BAAs to which each is interconnected—rather than the sum of the ratings of the transmission facilities between PGE and PACW.⁶³ Therefore, it is not surprising that increasing the size of the Bethel-Parish Gap connection could not yield the requisite TTC increase.

In the end, the System Impact Study concluded that the only approach that would allow the Blue Marmots to deliver their entire output to PGE—other than delivery to the BPA-PGE interface—would be for the Blue Marmots to build a generation tie line interconnecting directly to PGE’s system through a new interface.⁶⁴ This option, while operationally effective, would be

⁵⁷ PGE/300, Afranji-Larson-Richard/19.

⁵⁸ PGE/300, Afranji-Larson-Richard/18.

⁵⁹ PGE/300, Afranji-Larson-Richard/18-19; PGE/600, Edmonds-Larson-Richard/18.

⁶⁰ The distance between the substations is approximately 12 miles, and a rough estimate for the cost of a new transmission line is \$3 million per mile. PGE/300, Afranji-Larson-Richard/19 n.11.

⁶¹ PGE/300, Afranji-Larson-Richard/19.

⁶² PGE/300, Afranji-Larson-Richard/19.

⁶³ PGE/300, Afranji-Larson-Richard/17.

⁶⁴ PGE/100, Greene-Moore/20; PGE/300, Afranji-Larson-Richard/4, 18.

extremely expensive.⁶⁵ Thus, the System Impact Study made clear that the Blue Marmots’ option of delivering to PGE over the BPA-PGE interface—at a total cost of approximately \$14 million over the life of the Blue Marmots’ PPAs—is by far the most economical alternative for delivering all of their output.⁶⁶

D. PGE’s Reliance on the PACW-PGE Interface for Participation in the EIM.

The EIM is a regional wholesale market that depends on transfers among participating utilities to provide a range of regional benefits.⁶⁷ EIM participants offer available energy resources to the market, which the market then optimizes using real-time dispatches to reduce overall market prices across a wide geographic area.⁶⁸ Through EIM transfers, participants can obtain the least-cost energy to serve customer electric demand and can more effectively integrate output from variable renewable energy resources.⁶⁹ In addition, the EIM enables the grid to be used more efficiently and avoid unnecessary curtailments of renewable resources.⁷⁰ Critically, these optimization capabilities and benefits depend on participants having sufficient transmission capacity available for real-time dispatch by the EIM and its operator (the California Independent System Operator, or CAISO) to transfer lower-cost energy generated in one BAA to other BAAs as needed.⁷¹ The PACW-PGE interface is PGE’s primary path for EIM transfers, and the Company’s reservation and use of the transmission capacity at that point is the reason the interface is fully subscribed.

1. PGE’s Entry into the EIM and Acquisition of Transmission.

PGE first began considering entry into a sub-hourly (or real-time) market in 2012,⁷² and in 2014, the Commission specifically directed PGE to “conduct a comprehensive cost-benefit

⁶⁵ PGE/300, Afranji-Larson-Richard/4; PGE/400, Greene/14.

⁶⁶ See PGE/100, Greene-Moore/25; PGE/600, Afranji-Larson-Richard/18, 23.

⁶⁷ PGE/200, Sims-Rodehorst-Sporborg/7.

⁶⁸ PGE/200, Sims-Rodehorst-Sporborg/5, 20.

⁶⁹ PGE/200, Sims-Rodehorst-Sporborg/7.

⁷⁰ PGE/400, Greene/16.

⁷¹ PGE/200, Sims-Rodehorst-Sporborg/7.

⁷² PGE/200, Sims-Rodehorst-Sporborg/6.

analysis of joining the PacifiCorp-CAISO EIM.”⁷³ PGE thus engaged Energy and Environmental Economics, Inc. (E3) to analyze the potential costs and benefits of participation in both the Western EIM and the Northwest Power Pool (NWPP) Initiative.⁷⁴ E3’s analysis concluded that PGE’s customers would benefit from participating in either the NWPP Initiative or the Western EIM,⁷⁵ and PGE ultimately determined that joining the Western EIM was the best path forward for PGE’s customers.⁷⁶

To determine how much transmission capacity it needed to join the EIM, PGE reviewed the capacity available between other EIM participants in the Northwest.⁷⁷ When PGE undertook this assessment in 2015, these allocations generally ranged from 300 to 450 MW.⁷⁸ Therefore, the Company determined that it would require a minimum of 300 MW of transmission capacity to adequately participate in the EIM.⁷⁹ However, PGE also believed that increasing the capacity available to the EIM to the upper end of the 300-450 MW range would ensure that a lack of transmission capacity did not prevent PGE from accessing EIM transfers and maximizing the attendant benefits.⁸⁰ Accordingly, between April and June of 2015, PGE Merchant purchased 418 MW of long-term firm point-to-point transmission service at the PACW-PGE interface, which was the full amount available at that time.⁸¹ PGE Merchant secured this reserved transmission from PGE Transmission pursuant to the open-access procedures set forth in PGE’s OATT.⁸²

⁷³ *In the Matter of Portland Gen. Elec. Co., 2013 Integrated Resource Plan*, Docket No. LC 56, Order No. 14-415 at 11 (Dec. 2, 2014). PacifiCorp and CAISO were the original partners in the Western EIM.

⁷⁴ A copy of E3’s comparative analysis was subsequently filed with the Commission. Docket No. LC 56, Comparative Analysis of Western EIM and NWPP MC Intra-Hour Energy Market Options (Nov. 6, 2015).

⁷⁵ PGE/200, Sims-Rodehorst-Sporborg/6.

⁷⁶ Docket No. LC 56, Comparative Analysis of Western EIM and NWPP MC Intra-Hour Energy Market Options at 1. By the time PGE’s analysis was completed, PacifiCorp, NV Energy, Puget Sound Energy, and Arizona Public Service Company were committed to participate in the Western EIM, and other parties had provided notice of withdrawal from the NWPP Initiative, rendering the EIM the best option for PGE to participate in an imbalance market. PGE/200, Sims-Rodehorst-Sporborg/6 n.3.

⁷⁷ PGE/200, Sims-Rodehorst-Sporborg/10-11.

⁷⁸ PGE/200, Sims-Rodehorst-Sporborg/10-11, Figure 1 (depicting amount of transfer capability between EIM participants).

⁷⁹ PGE/200, Sims-Rodehorst-Sporborg/11.

⁸⁰ PGE/200, Sims-Rodehorst-Sporborg/13.

⁸¹ Hearing Transcript, Vol. II at 237 (Dec. 13, 2018).

⁸² PGE/200, Sims-Rodehorst-Sporborg/13. Pursuant to FERC’s Standards of Conduct Regulations, PGE Transmission is functionally separated from PGE Merchant. PGE Transmission must treat PGE Merchant like any

Unfortunately, PGE later lost some of the reserved capacity at the PACW-PGE interface when it was recalled by PGE Transmission. By way of context, PGE Transmission is required to assess TTC each year, and TTC can fluctuate over time as a result.⁸³ Here, a TTC study conducted in 2015 resulted in a 142-MW decrease at the PACW-PGE interface.⁸⁴ For this reason, on January 7, 2016, PGE Transmission recalled 142 MW from PGE Merchant’s EIM reservations—reducing the total amount reserved for participating in the EIM from 418 MW to 276 MW.⁸⁵ In 2017, PGE Transmission again studied the TTC at the PACW-PGE interface, this time jointly with PacifiCorp, and this Joint TTC Study slightly increased the TTC at this interface.⁸⁶ Also in 2017, after PGE joined the EIM, an additional 15 MW of ATC became available.⁸⁷ PGE Merchant was then able to partially restore its previously reserved amount and currently holds 310 MW of capacity at the PACW-PGE interface—still over 100 MW less than its initial reservation.⁸⁸

2. The Importance of Adequate Transmission to EIM Participation.

Participating in, and receiving benefits from, the EIM requires adequate transmission capability to transfer energy between BAAs on a sub-hourly basis.⁸⁹ Thus, because the PACW-PGE interface represents PGE’s primary connection to the EIM,⁹⁰ it is essential that PGE maintain

other transmission customer and refrain from giving PGE Merchant any undue preference. In addition, PGE Transmission may not share with PGE Merchant any non-public transmission function information, such as plans, processes, methodologies, or real-time system information that could provide PGE Merchant with an advantage over other transmission customers. PGE/300, Afranji-Larson-Richard/5.

⁸³ See PGE/300, Afranji-Larson-Richard/11.

⁸⁴ PGE/200, Sims-Rodehorst-Sporborg/13; PGE/300, Afranji-Larson-Richard/15.

⁸⁵ PGE/200, Sims-Rodehorst-Sporborg/13 (noting that 142 MW was recalled from PGE Merchant’s 418 MW reservation); PGE/300, Afranji-Larson-Richard/16.

⁸⁶ PGE/300, Afranji-Larson-Richard/15; PGE/200, Sims-Rodehorst-Sporborg/13.

⁸⁷ PGE/300, Afranji-Larson-Richard/15-16; PGE/302, Afranji-Larson-Richard/4 (loss return discontinued on October 8, 2017). This 15 MW was offered to an affiliate of the Blue Marmots, which declined to accept it, and was subsequently reserved by PGE Merchant. PGE/300, Afranji-Larson-Richard/16; PGE/200, Sims-Rodehorst-Sporborg/13 n.11; PGE/600, Edmonds-Larson-Richard/18.

⁸⁸ PGE/500, Rodehorst-Moore/2.

⁸⁹ Hearing Transcript, Vol. II at 252, 262; PGE/200, Sims-Rodehorst-Sporborg/7; PGE/100, Greene-Moore/20 (“To effectively participate in the EIM, PGE must have sufficient transfer capability on [the PACW-to-PGE] path to allow for EIM transfers.”).

⁹⁰ PGE/200, Sims-Rodehorst-Sporborg/10 (explaining how the PACW-PGE interface is “crucial” to EIM participation because of its full dynamic transfer capability).

sufficient capacity at that interface to ensure robust EIM benefits.⁹¹ For this reason, PGE Merchant dedicates its reserved transmission capacity exclusively to the EIM using the “Interchange Rights Holder” approach.⁹² Under that approach, the transmission reservation’s owner commits firm transmission rights for EIM transfers, thereby maximizing opportunities for transfers.⁹³ While PGE relies on the Interchange Rights Holder approach for its core EIM participation, PGE Transmission also offers any unreserved or unscheduled capacity to the EIM on an as-available basis, after all schedules have been submitted for a given interval (the “ATC” approach).⁹⁴ If PGE used the ATC approach alone (instead of committing reserved capacity to the EIM), the amount of transmission capability available for EIM transfers would vary and could at times be zero.⁹⁵

3. PGE’s Receipt of Market-Based Rate Authority for Participating in the EIM.

In addition to ensuring robust participation in the EIM, PGE also relied on its reserved transmission to receive authorization from FERC to transact in the EIM at market-based rates (known as market-based rate (MBR) authority).⁹⁶ MBR authority permits utilities to transact in the EIM at market rates instead of being restricted to cost-based “default energy bids.”⁹⁷ The ability to bid resources into the EIM at market rates is central to obtaining the economic optimization benefits that a market can provide to utility customers.⁹⁸

⁹¹ To ensure that the full amount of PGE’s capacity at that interface remains available for EIM transfers, PGE recently removed PACW-PGE as a delivery option from the only non-PURPA contract PGE had that allowed delivery via that point. Hearing Transcript, Vol. II at 235, 240-41, 295. PGE also did not list PACW-PGE as an acceptable delivery point in its recently completed Request for Proposals. Hearing Transcript, Vol. II at 258-59.

⁹² PGE/500, Rodehorst-Moore/5. Other EIM participants also use the Interchange Rights Holder approach. PGE/200, Sims-Rodehorst-Sporborg/22-23 (explaining that Puget Sound Energy and PacifiCorp also use the Interchange Rights Holder approach).

⁹³ PGE/500, Rodehorst-Moore/5-6.

⁹⁴ PGE/200, Sims-Rodehorst-Sporborg/12; PGE/500, Rodehorst-Moore/6; Hearing Transcript, Vol. II at 280. Note that “ATC,” in this context, refers to any capability—whether reserved by a customer or not—that has not been *scheduled* for use and is therefore available. The term “ATC” also can be used—as it is elsewhere in this brief—to refer to transfer capability that has not been *reserved*. PGE/200, Sims-Rodehorst-Sporborg/12 n.9.

⁹⁵ PGE/500, Rodehorst-Moore/5.

⁹⁶ PGE/200, Sims-Rodehorst-Sporborg/15; PGE/500, Rodehorst-Moore/2.

⁹⁷ PGE/500, Rodehorst-Moore/26.

⁹⁸ PGE/500, Rodehorst-Moore/26-27.

FERC will grant MBR authority to an applicant that can demonstrate that it (and its affiliates) lack (or have adequately mitigated) horizontal and vertical market power in the EIM.⁹⁹ In PGE’s case, this meant that PGE needed to demonstrate that its BAA was not subject to frequently binding transmission constraints that would limit imports into its BAA—a barrier that would cause PGE’s BAA to be treated as a discrete geographic submarket in which PGE could wield market power.¹⁰⁰ To prevent such constraints, PGE needed to secure sufficient firm transmission capacity to ensure a competitive supply of imported EIM generation.¹⁰¹

Here, relying on its previously secured transmission reservations, PGE applied for MBR authority with FERC on June 17, 2017,¹⁰² committing that a minimum of 200 MW of firm transmission capacity would be dedicated solely for EIM transfers.¹⁰³ PGE further committed that the remainder of the Company’s capacity reserved at the PACW-PGE interface would also be dedicated to EIM transfers, subject to usage for reliability or existing contractual arrangements.¹⁰⁴ While PGE anticipated that this amount of firm capacity would be sufficient to establish MBR authority, it continues to believe that optimal participation requires at least 300 MW, and that additional capacity is needed to maximize customer benefits.¹⁰⁵

While FERC accepted PGE’s filing and granted PGE MBR authority, it cautioned that PGE would need to file a new change in status filing with FERC if PGE’s transmission commitment

⁹⁹ PGE/200, Sims-Rodehorst-Sporborg/14.

¹⁰⁰ PGE/200, Sims-Rodehorst-Sporborg/14-15.

¹⁰¹ PGE/200, Sims-Rodehorst-Sporborg/15.

¹⁰² PGE/200, Sims-Rodehorst-Sporborg/15. PGE applied for MBR authority in 2017—not 2015 when it reserved the transmission—because FERC had required PacifiCorp (the first EIM entrant) to make a market-based rate change of status filing within nine months after entering the market. *PacifiCorp*, 147 FERC ¶ 61,227, at P 206 (2014). It was not until 2016 when FERC clarified the requirements for new entrants into the EIM that PGE learned it needed to request MBR authority *prior* to entering the EIM. *Nevada Power Co.*, 155 FERC ¶ 61,186, at P 22 (2016) (“[W]e clarify that all new EIM participants . . . are required to submit a market power study prior to joining the EIM.”). PGE then conducted the required studies and filed with FERC prior to beginning EIM operations.

¹⁰³ PGE/200, Sims-Rodehorst-Sporborg/15.

¹⁰⁴ Portland Gen. Elec. Co., Notice of Change in Status, Docket No. ER10-2249-007 at 7 (June 16, 2017) (hereafter, “PGE’s Notice of Change in Status”); PGE/200, Sims-Rodehorst-Sporborg/15 (describing filing for Notice of Change in Status).

¹⁰⁵ PGE/200, Sims-Rodehorst-Sporborg/10-13 (discussing the amount of transmission capacity reserved by other EIM participants and PGE’s reason for reserving its specific quantity of firm capacity).

was reduced beyond a certain level.¹⁰⁶ If PGE is required to allocate its reserved transmission capacity to the Blue Marmots and the other QFs with fully executed PPAs, PGE would not be able to retain its commitment to FERC of 200 MW in all hours.¹⁰⁷

4. PGE's Initial EIM Participation and Benefits.

During PGE's first full year of EIM participation in 2018, EIM transfers regularly used at or near PGE's full 310 MW of transmission capacity at the PACW-PGE interface.¹⁰⁸ Because PGE only recently entered the EIM, the currently available data is preliminary and PGE fully expects that the transfer levels—and the resulting benefits—experienced to date will increase in the future due to several factors.¹⁰⁹ **First**, PGE expects that EIM transfers will increase as additional participants join the EIM; at least five entities plan to join over the next three years, with more anticipated in the future.¹¹⁰ **Second**, PGE expects that the benefits of EIM participation will increase if natural gas prices rise—motivating participants to procure cheaper resources from across the EIM's geographic footprint.¹¹¹ Indeed, as described in PGE's most recent Integrated Resource Plan, gas prices are expected to continue to rise over time.¹¹² **And third**, both PGE and the Blue Marmots agree that EIM transfers will increase in the future as more renewable resources come online, increasing the variability in sub-hourly imbalance to which the EIM effectively responds.¹¹³

Although PGE believes it is too early in its EIM participation to draw sweeping conclusions,¹¹⁴ PGE made initial efforts to quantify the impacts to PGE's customers' EIM benefits

¹⁰⁶ PGE/200, Sims-Rodehorst-Sporborg/21.

¹⁰⁷ Hearing Transcript, Vol. II at 283-85, 291-92.

¹⁰⁸ PGE/500, Rodehorst-Moore/10, 19-20.

¹⁰⁹ Hearing Transcript, Vol. II at 313.

¹¹⁰ PGE/700, Rodehorst-Moore/5.

¹¹¹ PGE/200, Sims-Rodehorst-Sporborg/7.

¹¹² *In the Matter of Portland Gen. Elec. Co., 2016 Integrated Resource Plan*, Docket No. LC 66, PGE's Motion for Commission Acknowledgement of 2016 IRP Update, Figure 10 at 30 (March 8, 2018) (showing the anticipated gas price increase over time).

¹¹³ PGE/700, Rodehorst-Moore/5-6; Blue Marmot/700, Moyer/3.

¹¹⁴ Hearing Transcript, Vol. II at 313 (noting that the forecasted benefits are preliminary and do not “represent PGE's forecast into perpetuity of the harm that would occur to PGE's customers [who] pay for PGE to participate in the EIM in order to achieve the benefits”).

of ceding transmission capacity to the Blue Marmots and other QFs.¹¹⁵ Nonetheless, this analysis demonstrates that customers could face millions of dollars of impacts if QF deliveries are allowed to displace EIM transfers.¹¹⁶

III. LEGAL STANDARD

The Blue Marmots filed their PURPA complaint pursuant to ORS 756.500.¹¹⁷ Under that statute, “the moving party, the complainant, has the burden of persuasion.”¹¹⁸ The Blue Marmots also bear the burden of proof to establish that they are entitled to relief.¹¹⁹

IV. ARGUMENT

PURPA requires utilities to purchase QF output, once that output has been made available to the utility,¹²⁰ and requires these purchases to be made at prices that are “just and reasonable” and no greater than the costs the utility otherwise would have incurred to generate or purchase energy—a price referred to as the utility’s “avoided cost rate.”¹²¹ Stated differently, federal statutes,¹²² state law,¹²³ federal regulations,¹²⁴ and federal and state precedent,¹²⁵ all dictate that

¹¹⁵ PGE/700, Rodehorst-Moore/18, Table 1.

¹¹⁶ PGE/700, Rodehorst-Moore/18, Table 1.

¹¹⁷ Blue Marmots’ Complaint at 1.

¹¹⁸ *In the Matter of the Application of Portland Gen. Elec. Co. for an Accounting Order*, Docket No. UM 989, Order No. 01-152 at 2 (Feb. 2, 2001).

¹¹⁹ Order No. 00-649 at 2 (noting that the “Complainant bears the burden of proof”); *see also* Order No. 10-293 at 2 (denying complaints for failure to meet the requisite burden of proof).

¹²⁰ 16 U.S.C. § 824a-3(b); 18 C.F.R. § 292.303(a); 18 C.F.R. § 292.304(a).

¹²¹ 18 C.F.R. § 292.304(d); *see also* ORS 758.505(1) (defining “avoided cost”).

¹²² 16 U.S.C. §§ 824a-3(b), 824a-3(d).

¹²³ ORS 758.505(1) (defining “avoided cost”).

¹²⁴ *See, e.g.*, 18 C.F.R. § 292.304(a)(2) (“Nothing in this subpart requires any electric utility to pay more than the avoided costs for purchases.”); *id.* § 292.101(b)(6) (defining “avoided costs” as “the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility . . . , such utility would generate itself or purchase from another source.”); *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, Order No. 69, 45 Fed. Reg. 12,214, 12,222 (Feb. 25, 1980), FERC Stats. & Regs. ¶ 30,128 at 45 (1980) (“Order No. 69”) (discussing industry comments on Section 304(a) of the then-new regulations and noting that utility customers would be kept whole, paying the same rates as they would have paid had the utility not purchased from the QF).

¹²⁵ *See, e.g.*, *S. Cal. Edison Co. & San Diego Gas & Elec. Co.*, 71 FERC ¶ 61,269, 62,080 (June 2, 1995) (discussing, *inter alia*, what state policies would violate PURPA by imposing costs on utilities in excess of avoided costs); Order No. 69 at 29 (under the definition of “avoided costs” in this section, the purchasing utility must be in the same financial position it would have been had it not purchased the QF’s output); *see also* Order 14-058 at 22.

customers must be held indifferent to the purchase of QF generation. This Commission has made clear that the fundamental customer-indifference principle guides its overarching PURPA implementation, and that “[t]he Commission has broad authority to prevent customer harm.”¹²⁶ Consistent with these principles, the Commission has already determined that QFs must bear the cost of third-party transmission or system upgrades necessitated by their decision to interconnect with and sell to the utility.¹²⁷

As discussed below, the Blue Marmots make several arguments as to why they are legally immune from bearing the costs caused by their projects—including an argument that this Commission lacks jurisdiction to consider the issues raised by the complaints that they filed in this forum. However, controlling state and federal law all confirm that the Blue Marmots are responsible for paying the costs required to deliver their output to PGE at a location where it can be received, and further establish that the Commission has full authority to decide this case.

A. PURPA’s customer-indifference standard requires the Blue Marmots—not PGE’s customers—to bear the costs associated with delivering their output.

PURPA, FERC’s regulations and orders, state law, and Commission precedent all legally *require* the Blue Marmots to bear the costs associated with accepting their output that are not accounted for in the Blue Marmots’ standard avoided cost rates, and *prohibit* such costs from being imposed on PGE’s customers. For this reason, the Blue Marmots must either bear the costs of transmitting their output to the BPA-PGE interface or pay for any system upgrades that would allow them to deliver via the PACW-PGE interface. Thus, resolution of these complaints merely requires the Commission to apply its existing precedent and conclude that the Blue Marmots must be responsible for the additional costs that their deliveries will impose on customers.

¹²⁶ *In the Matter of PacifiCorp, dba Pacific Power, Application to Update Schedule 37 Qualifying Facility Info.*, Docket No. UM 1729, Order No. 18-289 at 8 (Aug. 9, 2018).

¹²⁷ Order No. 14-058 at 22 (concluding that third-party transmission costs are “additional to avoided costs” and that “any costs imposed on a utility that are above the utility’s avoided costs must be assigned to the QF in order to comport with PURPA avoided cost principles”).

1. The Blue Marmots must pay to deliver their output to the BPA-PGE interface, consistent with Commission precedent requiring that such costs be borne by the QF.

The most reasonable and economical option for delivering the Blue Marmots' output to PGE would be for the Blue Marmots to transmit their output to the BPA-PGE interface, where it can be accepted. The Blue Marmots estimate that the additional leg of transmission required to deliver via BPA-PGE would cost approximately \$14 million *total* for all of their projects over the terms of their PPAs.¹²⁸ This cost must be borne by the Blue Marmots—and not PGE's customers—in order to maintain customer indifference, as required by PURPA.¹²⁹ To this point, PGE's standard renewable avoided cost rates—on which the Blue Marmots' LEOs are based—assume an off-system proxy resource that requires just one leg of third-party transmission to get to PGE's system.¹³⁰ If PGE were required to purchase an additional leg of transmission to accept the Blue Marmots' output, its customers would be forced to bear costs that they do not avoid, in violation of PURPA's dictates.¹³¹

Crucially, the Commission has already determined that, in order to comply with PURPA's customer-indifference standard, it is the QF—not utility customers—that must bear any additional, third-party transmission costs caused by QF deliveries. This issue arose in UM 1610, where the Commission considered whether to assign incremental third-party transmission costs to a QF if the utility would incur those costs due to the QF's decision to site its project in a transmission-constrained area.¹³² The Commission clarified that “this question focuses on cost responsibility—as opposed to physical or managerial responsibility—for any third-party transmission that is used to deliver QF output from the point of delivery to load[.]”¹³³ Ultimately, the Commission applied the general principle “that avoided cost rates should be adjusted for costs imposed on a utility by

¹²⁸ Blue Marmot/100, Irvin/6; Blue Marmot/200, Talbott/11; Blue Marmot/300, Moyer/14.

¹²⁹ 16 U.S. Code § 824a-3(b) (limiting the rates for purchase of QF output to the utility's incremental avoided costs). As discussed below, \$14 million represents just a fraction of the total revenues the Blue Marmots expect to receive from these projects and will not hamper their development.

¹³⁰ PGE/100, Greene-Moore/24; Hearing Transcript, Vol. I at 142.

¹³¹ PGE/100, Greene-Moore/23-24.

¹³² Order No. 14-058 at 16-23.

¹³³ *Id.* at 21.

the particular circumstances of a QF,”¹³⁴ and concluded that “any costs imposed on a utility that are above the utility’s avoided costs must be assigned to the QF to comport with PURPA avoided cost principles.”¹³⁵ Specifically, the Commission determined that “any third-party transmission costs incurred by a utility to move QF output from the point of delivery to load would be costs that are not included in the calculation of standard avoided cost rates in standard contracts, and therefore are costs that are additional to avoided costs.”¹³⁶

In reaching its decision in UM 1610, the Commission acknowledged FERC precedent from *Pioneer Wind Park*,¹³⁷ which requires a utility “to purchase a QF’s output where it is received, and to have it physically delivered to load, whether via the utility’s own transmission facilities or the transmission facilities of a third party[.]”¹³⁸ Although the Commission agreed that “a QF cannot be required to obtain transmission *service* to deliver its output from the point of delivery to load,”¹³⁹ it observed that FERC left “open the issue of how a state Commission may account for transmission costs in relation to avoided costs, whether by lowering avoided cost rates, separately in interconnection cost assessments, through an addendum . . . or by some other means.”¹⁴⁰ Thus, while the Commission has not yet adopted a specific mechanism to recover incremental costs imposed by QF siting decisions, it has not wavered from the clear and reasonable principle that it is the QF—rather than customers—that must bear additional costs caused by QF projects.¹⁴¹

Consistent with the Commission’s decision in UM 1610, any incremental costs imposed by the Blue Marmots as a result of their siting decision “*must be assigned*” to the Blue Marmots.¹⁴² Thus, the Blue Marmots are legally responsible for the \$14 million cost of the BPA transmission required for PGE to accept and complete delivery of their output. As a practical matter, paying

¹³⁴ *Id.* at 22.

¹³⁵ *Id.*

¹³⁶ Order No. 14-058 at 22.

¹³⁷ *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215 (2013).

¹³⁸ Order No. 14-058 at 21-22 (emphasis added).

¹³⁹ *Id.* at 22.

¹⁴⁰ *Id.*

¹⁴¹ *In the Matter of Pub. Util. Comm’n of Or. Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 18-181 at 5 (May 23, 2018).

¹⁴² Order No. 14-058 at 22 (emphasis added).

for BPA transmission is unlikely to hamper EDPR's ability to develop the Blue Marmot projects. PGE estimates that it will pay the Blue Marmots \$160 million over the life of the contracts,¹⁴³ and EDPR has never claimed that paying an additional \$14 million to deliver the projects' output would render the projects uneconomic. Thus, it is not only legally mandated but also entirely reasonable to hold EDPR—and not PGE's customers—responsible for the costs necessary to deliver the Blue Marmots' output via the BPA-PGE interface.

2. There are no feasible or economical upgrades to the PACW-PGE interface, but if there were, the Blue Marmots would be responsible for the costs.

Assignment of cost responsibility for system upgrades is no longer a central issue in this case because PGE's System Impact Study determined that there are no feasible upgrades that would increase the TTC of the PACW-PGE interface sufficiently to enable delivery of the Blue Marmots' entire net output.¹⁴⁴ And although the Blue Marmots criticize the System Impact Study, they have not carried their burden of proving that there are viable and cost-effective upgrades that PGE failed to consider in the System Impact Study.¹⁴⁵ Regardless, if there were viable upgrades that would allow the Blue Marmots to deliver to the PACW-PGE interface, the Blue Marmots would be responsible to pay for them to ensure customer indifference.

a. Neither PGE nor the Blue Marmots has identified a feasible or economical upgrade that would enable the Blue Marmots to deliver via the PACW-PGE interface.

Despite a thorough analysis performed by the Company's transmission planning engineers, the System Impact Study that PGE conducted at the Blue Marmots' request identified no reasonable upgrades that would enable the Blue Marmots to deliver their entire output via the PACW-PGE interface.¹⁴⁶ While the System Impact Study identified one approach that potentially could increase the transfer capability at the PACW-PGE interface, that upgrade could not achieve

¹⁴³ PGE/100, Greene-Moore/25.

¹⁴⁴ PGE/100, Greene-Moore/4, 19; PGE/300, Afranji-Larson-Richard/22; PGE/400, Greene/14; PGE/600, Edmonds-Larson-Richard/2, 16.

¹⁴⁵ PGE/600, Edmonds-Larson-Richard/3.

¹⁴⁶ PGE/300, Afranji-Larson-Richard/16-17.

delivery of all of the Blue Marmots’ output and would cost more than twice the amount required to deliver the Blue Marmots’ output via the BPA-PGE interface.¹⁴⁷ While the Blue Marmots offer a litany of criticisms of PGE’s System Impact Study,¹⁴⁸ they nonetheless provide *no evidence that a feasible and economical transmission upgrade alternative exists.*

The Blue Marmots’ expert Keegan Moyer has identified three transmission upgrade alternatives—two of which he contends could potentially increase the TTC of the PACW-PGE interface enough to enable the Blue Marmots’ delivery.¹⁴⁹ However, as PGE explained in testimony, the upgrades that Mr. Moyer proposes would be made to the BPA-PGE interface—with the hope that they would indirectly influence the TTC of the PACW-PGE interface.¹⁵⁰ But analyzing the actual effects of the proposed upgrades would require PGE to reassess and potentially alter its current approach of studying the two interfaces separately¹⁵¹—which would involve a time-consuming and costly process that could not have been completed in the time frame of this case.¹⁵² And even if the study methodology were to change, there is no guarantee that the alternatives would lead to the TTC increases Mr. Moyer asserts.¹⁵³

Importantly, Mr. Moyer admits that he has not thoroughly studied these alternatives—despite having the capability to do so,¹⁵⁴ and therefore he cannot conclude that they are feasible. In fact, at hearing Mr. Moyer characterized his analyses as “preliminary” and stated that his purpose was to identify “potential alternatives,” not to “put any final stamps on transmission projects.”¹⁵⁵ Mr. Moyer also admitted that he has not analyzed the impact of his alternatives on

¹⁴⁷ PGE/300, Afranji-Larson-Richard/19.

¹⁴⁸ Blue Marmots’ Opening Brief at 60-64.

¹⁴⁹ Blue Marmot/400, Moyer/36; Blue Marmots’ Opening Brief at 62.

¹⁵⁰ PGE/600, Edmonds-Larson-Richard/21.

¹⁵¹ PGE/600, Edmonds-Larson-Richard/21-22.

¹⁵² See Blue Marmot/401, Moyer/10-11, PGE Response to Blue Marmot Data Request Nos. 167 & 168.

¹⁵³ PGE/600, Edmonds-Larson-Richard/21.

¹⁵⁴ Hearing Transcript, Vol. I at 57-60 (confirming that Mr. Moyer had not studied the alternatives, although his firm “has the technical capability to perform the studies”).

¹⁵⁵ Hearing Transcript, Vol. I at 57, 60.

the interactions between the PACW-PGE and BPA-PGE interfaces.¹⁵⁶ And when PGE asked whether Mr. Moyer believed that his alternatives would be reasonable or economical to construct, he responded that such conclusions were not within the scope of his analyses and testimony.¹⁵⁷ Thus, in the absence of any concrete evidence supporting Mr. Moyer's theoretical alternatives, the Blue Marmots have not met their burden of proving that there are any viable alternatives to increase the TTC at the PACW-PGE interface.

Confusingly, while Mr. Moyer admits that he did not evaluate the costs of his proposed alternatives,¹⁵⁸ the Blue Marmots nonetheless claim that the costs “would be significantly lower than PGE’s preferred option.”¹⁵⁹ However, even if Mr. Moyer’s proposed upgrades to the BPA-PGE interface *could* achieve the unlikely outcome of creating sufficient TTC at the PACW-PGE interface, PGE estimates that such upgrades would likely cost at least \$45-120 million.¹⁶⁰ Therefore, such upgrades actually are *not* cost-effective when compared with the Blue Marmots’ most economical option—transmitting their output to the BPA-PGE interface for delivery for only \$14 million total over the life of their contracts.¹⁶¹ Notably, the Blue Marmots have not expressed a desire to pursue a \$45 million upgrade, if one existed.¹⁶² Thus, it would have made no sense for PGE to embark on an extremely costly and time-consuming analysis of dubious merit to assess a potential upgrade that the Blue Marmots would never reasonably undertake.¹⁶³

The Blue Marmots also assert, without support, that PGE failed to consider the potential benefits associated with any transmission upgrades, which could offset the costs.¹⁶⁴ However,

¹⁵⁶ Hearing Transcript, Vol. I at 59 (quoting Mr. Moyer acknowledging that “there may be some interactions between the [PACW-PGE and BPA-PGE] interfaces that are relevant,” but that he had not “actually looked into those interactions”).

¹⁵⁷ PGE/401, Greene/3, Blue Marmots’ Response to PGE Data Request No. 33.

¹⁵⁸ Hearing Transcript, Vol. I at 61.

¹⁵⁹ Blue Marmots’ Opening Brief at 64.

¹⁶⁰ See PGE/300, Afranji-Larson-Richard/19 n.11 (estimating the cost of a new transmission line to be \$3 million per mile); Blue Marmot/400, Moyer/36 (estimating lengths of proposed upgrade alternatives).

¹⁶¹ PGE/400, Greene/12.

¹⁶² See PGE/401, Greene/3, Blue Marmots’ Response to PGE Data Request No. 33 (stating that Mr. Moyer’s analysis did not contemplate his clients’ willingness to pay for upgrades); see *generally* Blue Marmots’ Opening Brief (conveying the Blue Marmots’ position that they are not responsible to pay for any system upgrades).

¹⁶³ See Blue Marmot/401, Moyer/10-11, PGE Response to Blue Marmot Data Request Nos. 167 & 168.

¹⁶⁴ Blue Marmots’ Opening Brief at 64; Blue Marmot/600, Moyer/3.

given that estimates for the potential transmission upgrades identified by the parties begin at \$36 million and range upward from there,¹⁶⁵ this assertion seems far-fetched. Here, the Blue Marmots carry the burden of proof, and they have provided no evidence of any potential benefits—much less quantified them—meaning that they have failed to establish that the benefits of a transmission upgrade would offset the costs.¹⁶⁶

In short, while Mr. Moyer has offered abstract criticisms of PGE’s System Impact Study, and proposed hypothetical solutions to increase TTC, the purpose of PGE’s System Impact Study was to identify reasonable and feasible options that would allow the Blue Marmots to deliver all of their output to PGE. Nothing in the record undermines PGE’s conclusion that no such upgrade exists. Therefore, the Blue Marmots have not carried their burden of proving that PGE’s System Impact Study is flawed or that PGE failed to identify any reasonable transmission upgrade alternative.

b. Even if reasonable upgrades existed, system upgrade costs required for the utility to accept QF output are the responsibility of the QF—regardless of whether the QF is on- or off-system.

Even if reasonable system upgrades existed that would allow the Blue Marmots to deliver their output to PGE at the PACW-PGE interface, the cost of such upgrades would need to be borne by the Blue Marmots—not PGE’s customers. The Blue Marmots attempt to avoid their cost responsibility by exploiting a loophole—claiming that because they are not directly interconnected with PGE, the Commission cannot require them to bear the same system upgrade costs that on-system QFs must bear.¹⁶⁷ However, precedent from FERC, this Commission, and the Utah Public Service Commission (PSC)—as well as PURPA’s customer-indifference requirement—all support

¹⁶⁵ See PGE/300, Afranji-Larson-Richard/19 n.11 (estimating the cost of a new transmission line to be \$3 million per mile); Blue Marmot/400, Moyer/36 (estimating lengths of proposed upgrade alternatives); PGE/300, Afranji-Larson-Richard/19 (estimating the addition of a second transmission line at a cost of approximately \$36 million).

¹⁶⁶ Order No. 01-152 at 2.

¹⁶⁷ Blue Marmots’ Opening Brief at 64 (claiming that “the allocation of costs associated with the delivery of power across the interface between PAC and PGE is not subject to OPUC authority”). The Blue Marmots also claim that their avoided cost rate cannot be adjusted to account for upgrade costs. Blue Marmots’ Opening Brief 69.

the conclusion that the Blue Marmots cannot escape system upgrade costs simply by siting their projects hundreds of miles from PGE's service territory and delivering via another utility's system.

FERC recognized in *Pioneer Wind Park* that costs required to permit interconnected operations with a QF must be recovered from the QF, either separately as interconnection costs or in avoided cost rates.¹⁶⁸ The Commission in UM 1610 agreed that FERC's regulations and orders leave open multiple ways that state commissions may account for additional costs imposed by a QF—"whether by lowering avoided cost rates, separately in interconnection cost assessments, through an addendum . . . or by some other means."¹⁶⁹ Here, the Blue Marmots are entitled to receive PGE's standard avoided cost rates, which do not account for system upgrades to a fully subscribed delivery point;¹⁷⁰ therefore, any system upgrade costs they impose must be separately accounted for—either as interconnection costs or by another means.

This Commission has repeatedly affirmed, in the on-system interconnection context, that the cost of distribution or transmission upgrades required for the utility to accept delivery of QF output and transmit it to load must be borne by the QF to ensure customers remain indifferent to the QF purchase.¹⁷¹ Specifically, the Commission's orders and rules explicitly require on-system QFs interconnecting with the purchasing utility to absorb the costs of any network upgrades

¹⁶⁸ *Pioneer Wind Park*, 145 FERC ¶ 61,215 at 38 n.73 ("[I]mplicit in [FERC's] regulations, transmission or distribution costs directly related to installation and maintenance of the physical facilities necessary to permit interconnected operations may be accounted for in the determination of avoided costs if they have not been separately assessed as interconnection costs."); *see also* 18 C.F.R. § 292.101(b)(7) ("Interconnection costs do not include any costs included in the calculation of avoided costs."). Clearly, any upgrades required to allow the Blue Marmots to consistently deliver their entire net output to PGE are "necessary to permit interconnected operations."

¹⁶⁹ Order No. 14-058 at 22.

¹⁷⁰ PGE/100, Greene-Moore/23-24; *see also* Blue Marmot/400, Moyer/3 ("I note that the avoided cost for which the Blue Marmots are eligible does not reflect the cost of transmission upgrades[.]").

¹⁷¹ *See In the Matter of Rulemaking to Adopt Rules Related to Small Generator Interconnection*, Docket No. AR 521, Order No. 09-196 at 5 (June 8, 2009); *In the Matter of Investigation into Interconnection of PURPA Qualifying Facilities with Nameplate Capacity Larger than 20 Megawatts to a Public Utility's Transmission or Distribution System*, Docket No. UM 1401, Order No. 10-132 at 3 (Apr. 7, 2010) (concluding that "Interconnection Customers are responsible for all costs associated with network upgrades unless they can establish quantifiable system-wide benefits"); *see also In the Matter of Pub. Util. Comm'n of Or. Staff's Investigation Relating to Elec. Util. Purchases from Qualifying Facilities*, Docket No. UM 1129, Order No. 07-360 at 26 and App'x A at 5 (Aug. 20, 2007) (adopting large QF guidelines that state "The utility should not adjust avoided cost rates for any distribution or transmission system upgrades needed to accept QF power. Such costs should be separately charged as part of the interconnection process.").

necessary for the utility to accept delivery of the QF output and transmit it to load.¹⁷² To do otherwise, the Commission reasoned, would require utilities to pay for QF-imposed upgrade costs and would affect the avoided cost rate, imposing higher costs on customers.¹⁷³ Thus, if the Blue Marmots were interconnected directly to PGE's Bethel substation (instead of attempting to deliver to the Bethel substation via PacifiCorp transmission), they would clearly be required to pay for the upgrades identified in the System Impact Study.¹⁷⁴ Yet the Blue Marmots seek to avoid this result because they are delivering to PGE via PacifiCorp.

This Commission is not alone in determining that QFs must bear the costs of system upgrades imposed by their operations to protect utility customers. In addressing a case in which a QF sited in a remote, transmission-constrained area, the Utah PSC also confirmed that "interconnection costs [assessed to a QF] should include any otherwise unnecessary investments in transmission facilities[.]"¹⁷⁵ In reaching this decision, the Utah PSC posed a hypothetical, asking whether a QF that chose to site in an area where there was no transmission capacity and where the upgrades needed to accommodate the QF were more than \$400 million could require the utility and its customers to pay for the upgrades under PURPA.¹⁷⁶ The Utah PSC answered this question in the negative, stating:

Allowing QFs to make inefficient siting decisions and to shift the attendant costs to ratepayers is inconsistent with the primary objective of ratepayer indifference.¹⁷⁷

Although neither this Commission nor FERC has previously considered the allocation of system upgrade costs caused by an *off-system* QF that is entitled to standard avoided cost rates, the Commission should apply the same principles that guide its state-jurisdictional interconnection policies to ensure that customers remain indifferent. The cost of system upgrades necessary to

¹⁷² Order No. 09-196 at 5; Order No. 10-132 at 3.

¹⁷³ See Order No. 10-132 at 3.

¹⁷⁴ PGE/300, Afranji-Larson-Richard/20-21 (explaining that if the SIS had been an interconnection study it would have yielded the same result).

¹⁷⁵ *Glen Canyon Solar A, LLC and Glen Canyon Solar B, LLC's Request for Agency Action to Adjudicate Rights and Obligations under PURPA, Schedule 38, and Power Purchase Agreements with Rocky Mountain Power*, Docket No. 17-035-36, Consolidated Order at 30 (Utah Pub. Serv. Comm'n Dec. 22, 2017) (hereafter, *Glen Canyon*).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* (emphasis added).

accept the Blue Marmots' delivery are directly analogous to the interconnection costs that would be assessed to an on-system QF, and it would be illogical to conclude that the Blue Marmots bear no responsibility for the very costs that they would clearly have to pay if they were on-system instead of 300 miles away.

The Blue Marmots attempt to escape responsibility for paying for required upgrades by arguing that they are “network upgrades,” as FERC defines the term, and that FERC requires the cost of network upgrades to be borne by all transmission customers in system-wide rates.¹⁷⁸ But the Commission has already rejected the argument that customers should pay for QF-imposed network upgrades,¹⁷⁹ finding that FERC’s transmission rules are not “related to facilities governed by PURPA and thus none faced the limitation of the avoided cost rate.”¹⁸⁰ And fundamentally, the Blue Marmots’ argument is simply another way of saying that PGE’s customers should pay for the costs imposed by their siting decisions. PGE Merchant is the primary customer of PGE Transmission, holding more than 90 percent of the long-term transmission rights.¹⁸¹ Therefore, if the costs necessary to deliver the Blue Marmots’ output are socialized to all of PGE Transmission’s customers, such costs would be paid almost exclusively by PGE Merchant—and thus by PGE’s customers—in violation of the customer-indifference mandate.

In sum, regardless of how they are labelled, it is clear that any additional system upgrade costs resulting from the Blue Marmots’ delivery are not included in PGE’s avoided cost rates,¹⁸²

¹⁷⁸ Blue Marmots’ Opening Brief at 65-68; Blue Marmot/600, Moyer/46-47.

¹⁷⁹ Order No. 10-132 at 3 (“[W]e conclude that . . . Interconnection Customers are responsible for all costs associated with network upgrades unless they can establish quantifiable system-wide benefits, at which point the Interconnection Customer would be eligible for direct payments from the Transmission Provider in the amount of the benefit.”). Here, PGE would not undertake these upgrades absent the Blue Marmots, and the Blue Marmots have not offered evidence showing that the significant cost of these upgrades would be justified by an equal or greater system-wide benefit.

¹⁸⁰ Order No. 10-132 at 4. The Blue Marmots discuss FERC Order 2003 extensively in support of their positions. Blue Marmots’ Opening Brief at 65-68. However, that order dealt with FERC-jurisdictional large generator interconnection agreements and procedures and thus is not relevant to the dispute between PGE and the Blue Marmots.

¹⁸¹ See PGE FERC Form 1, at 401 columns (e) and (f), available at <http://investors.portlandgeneral.com/static-files/40793abf-ffab-4559-9945-07846188dde5>. Pursuant to OAR 860-001-0460(1)(b), PGE respectfully requests that the Commission take official notice of this document. See also PGE/300, Afranji-Larson-Richard/15 and PGE/500, Rodehorst-Moore/2 (explaining that PGE Merchant holds 310 out of 320 MW of transmission capacity at the PACW-PGE interface).

¹⁸² See PGE/100, Greene-Moore/23-24.

and if they are imposed on PGE, customers would be paying more for QF output than the utility's actual avoided cost and would not be indifferent.¹⁸³ Therefore, if PGE is required to pursue expensive and unnecessary system upgrades to accommodate the Blue Marmots, then the Blue Marmots must be held responsible for the costs they impose.

B. There is no legal basis for requiring PGE to surrender to QFs transmission capacity specifically procured and used for the EIM, and forcing PGE to do so would harm customers.

The Blue Marmots seek to avoid their obligation to pay for BPA transmission or system upgrades by arguing that PGE must surrender transmission capacity committed to the EIM to accommodate their deliveries.¹⁸⁴ They incorrectly claim (1) that PGE's EIM benefits will not be significantly impacted;¹⁸⁵ and (2) that PGE has no legal basis for refusing to accept their output using its EIM transmission, and instead offers only policy reasons.¹⁸⁶ However, transmission capacity cannot be simultaneously used for EIM transfers and delivery of QF output, as one necessarily displaces the other,¹⁸⁷ and nothing in PURPA gives the Blue Marmots a legal right to commandeer transmission previously reserved for a legitimate utility purpose. Moreover, PGE's refusal to surrender EIM transmission is based upon the *legal* requirement to preserve its customers' indifference to the purchase of QF output.¹⁸⁸ Contrary to the Blue Marmots' claims, requiring customers to relinquish the opportunity to fully participate in the EIM and to forego the

¹⁸³ See *S. Cal. Edison Co.*, 71 FERC ¶ 61,269, at 62,079-80).

¹⁸⁴ Mr. Moyer also asserted in his testimony that PGE could pursue other "creative" solutions to accepting and managing the Blue Marmots' output. Blue Marmot/300, Moyer/22; Blue Marmot/400, Moyer/7. But the Blue Marmots have abandoned this argument by not raising it in their Opening Brief, and appear to have accepted that there are no "creative" means of achieving delivery. See PGE's Prehearing Brief at 29-30 (explaining why the Blue Marmots' "creative" solutions would impose costs on customers); Hearing Transcript, Vol. I at 45-54 (discussing the possibility of re-dispatch and reselling the Blue Marmots' output to third parties and agreeing that "there is no practical way to increase the TTC at the PACW-PGE interface through re-dispatch").

¹⁸⁵ See Blue Marmots' Opening Brief at 4, 49-50; Blue Marmot/600, Moyer/4-5.

¹⁸⁶ Blue Marmots' Opening Brief at 42-43.

¹⁸⁷ Hearing Transcript, Vol. II at 260-61.

¹⁸⁸ *Indep. Energy Producers Ass'n v. Cal. Pub. Utils. Comm'n*, 36 F3d 848, 858 (9th Cir 1994) ("If purchase rates are set at the utility's avoided cost, consumers are not forced to subsidize QFs because they are paying the same amount they would have paid if the utility had generated energy itself or purchased energy elsewhere."); *S. Cal. Edison Co.*, 71 FERC ¶ 61,269, at 62,079-80 (stating that in adopting PURPA, "Congress was not asking utilities and utility ratepayers to pay more than they otherwise would have paid for power. . . . The intention was to make ratepayers indifferent as to whether the utility used more traditional sources of power or the newly-encouraged alternatives.").

initiative's accompanying benefits in order to accommodate QF deliveries would harm customers significantly in violation of the customer-indifference requirement.

1. Nothing in PURPA gives QFs the right to usurp transmission capacity previously reserved for another purpose.

In the Blue Marmots' view, PGE must give up transmission capacity it specifically reserved and uses for EIM participation to accept the Blue Marmots' deliveries at the PACW-PGE interface.¹⁸⁹ The Blue Marmots' position is premised on both factual and legal errors.

a. PGE purchased transmission specifically for use in a regional market well in advance of the Blue Marmots' PPA requests.

As a factual matter, the Blue Marmots argue that they are entitled to commandeer PGE's EIM transmission reservation because (1) PGE did not actually reserve this transmission for the EIM;¹⁹⁰ and (2) PGE did not seek authorization to enter the EIM until after the Blue Marmots formed LEOs in April 2017.¹⁹¹ Both claims are false.

First, PGE's 2015 reservation of ATC at the PACW-PGE interface was made specifically to secure sufficient transmission capacity for the EIM or another regional market. In 2014, the Commission directed PGE to study EIM participation,¹⁹² and in early 2015, the Company was studying participation in both the NWPP Initiative and the EIM.¹⁹³ Thus, when it reserved transmission at the PACW-PGE interface, PGE understood that regardless of which market it ultimately chose, the Company would require adequate transmission capacity to access the market and ensure benefits for its customers.¹⁹⁴ Until the filing of the Blue Marmots' Opening Brief, PGE understood that its initial intent to use its transmission reservation for use in a wholesale market

¹⁸⁹ Blue Marmots' Opening Brief at 38-40.

¹⁹⁰ Blue Marmots' Opening Brief at 2 (PGE had previously reserved all of the available transfer capability . . . of that interface for its own use, and then proposed to FERC, *after* receiving the Blue Marmots' executed PPAs, that the capability would be used for PGE's participation in the [EIM].").

¹⁹¹ Blue Marmots' Opening Brief at 42 & n.127.

¹⁹² Order No. 14-415 at 11

¹⁹³ PGE/100, Greene-Moore/4 ("PGE has long planned its entry into the EIM"); PGE/100, Greene-Moore/20 ("[I]n April through June of 2015, PGE Merchant reserved firm point-to-point capacity on the PACW-to-PGE path").

¹⁹⁴ PGE/100, Greene-Moore/20. Contrary to the Blue Marmots' assertion, Blue Marmots' Opening Brief at 48, PGE committed *all* of its PACW-PGE transmission rights to the EIM and committed that 200 MW would be available in all hours in its filing with FERC to obtain MBR authority. Notice of Change in Status at 7.

was undisputed. If the Blue Marmots truly are attempting to call this fact into question now, the attempt is improper and prejudicial to PGE and should be rejected.¹⁹⁵

Second, PGE’s reservation of transmission for and commitment to the EIM occurred well before the Blue Marmots requested PPAs.¹⁹⁶ In suggesting otherwise, the Blue Marmots appear to be confusing PGE’s request for MBR authority in the EIM (which was filed shortly before PGE began EIM operations¹⁹⁷) with PGE’s decision to participate in the EIM (which occurred two years earlier¹⁹⁸). As PGE explained in its testimony, MBR authority is an important component of successful EIM participation,¹⁹⁹ but receiving MBR authority is not the same thing as receiving permission to participate in the EIM. PGE announced its intent to enter the EIM in November 2015,²⁰⁰ far in advance of the date on which the Blue Marmots requested PPAs from PGE or formed LEOs.²⁰¹

b. The Blue Marmots do not have a legal right under PURPA to appropriate EIM capacity in order to deliver via a fully subscribed interface.

The Blue Marmots have also taken the position that, as a matter of law, their desire to site their projects in PacifiCorp’s territory and to deliver to PGE via the PACW-PGE interface trumps

¹⁹⁵ Had the Blue Marmots disputed earlier in this proceeding that PGE originally intended to use the transmission for the EIM, PGE would have provided testimony and supporting documents demonstrating that PGE planned to use the transmission to participate in a regional market *at the time it made the reservations*, and decided to use the transmission specifically for the EIM shortly thereafter—by the end of 2015. See EIM Comparative Study Presentation at slide 2, Docket No. LC 56, Public Utility Commission of Oregon Dec. 1, 2015 Public Meeting, Regular Agenda Item 2 (informing the Commission in 2015 that “PGE anticipates participating in the Western EIM beginning in October 2017.”). PGE notes that this presentation was previously provided to the Blue Marmots in a data response. If the Commission questions how PGE originally intended to use the reserved transmission, PGE asks that it consider the attached Affidavit of Geoffrey Moore and the accompanying Attachment B, which is a letter from June 2015 discussing the purpose of PGE’s transmission reservations. This document confirms that PGE intended to use its transmission reservation to participate in a regional market and had no intention to use it for any other purpose.

¹⁹⁶ See Blue Marmot/200, Talbott/3-4, 6 (stating that Blue Marmot V and VI requested PPAs with PGE on August 1, 2016, Blue Marmots VII and IX requested PPAs on December 21, 2016, and Blue Marmot VIII requested a PPA on February 2, 2017).

¹⁹⁷ PGE/200, Sims-Rodehorst-Sporborg/15 (stating that PGE filed a Notice of Change in Status requesting MBR Authority on June 17, 2017).

¹⁹⁸ PGE/200, Sims-Rodehorst-Sporborg/6 (“PGE announced its intent to enter the Western EIM on November 20, 2015.”).

¹⁹⁹ PGE/500, Rodehorst-Moore/26-29 (explaining the importance of MBR Authority).

²⁰⁰ PGE/200, Sims-Rodehorst-Sporborg/6.

²⁰¹ See Blue Marmot/200, Talbott/3-4, 6 (listing the dates PPAs were requested); Blue Marmot/200, Talbott/4-5 (listing the date the PPAs were received).

PGE’s prior commitment of transmission to the EIM—and indeed any other use PGE might have for its reserved transmission rights.²⁰² Specifically, the Blue Marmots assert that a QF’s right to deliver at the point of its choosing supersedes any contractual right or other pre-existing commitment or use a utility may have for transmission it has reserved.²⁰³ As a result, the Blue Marmots seem to believe that any and all prudent uses of transmission by a utility must give way in the face of a QF’s request for a PPA. However, there is nothing in PURPA, or in any FERC or Commission regulations or orders, that supports this extreme position.

The Blue Marmots cite FERC’s decision in *Delta-Montrose*²⁰⁴ for the extraordinary contention that PURPA’s mandatory purchase obligation overwhelms any and all prior contractual commitments.²⁰⁵ The Blue Marmots’ reliance on *Delta-Montrose* is misguided. In that case, the parties disputed whether the utility, Delta-Montrose, was required to purchase a QF’s output where another utility, Tri-State, was already contractually obligated to provide adequate power to serve Delta-Montrose’s customers.²⁰⁶ FERC found that it was, but only after observing that the utility’s contract with Tri-State specifically did *not* address “Delta-Montrose’s right to purchase electric energy from [other] sources,” suggesting that the utility’s ability to purchase the QF’s output was unrestricted.²⁰⁷ As such, FERC did not find that the QF’s right to sell to the utility trumped the contract with Tri-State, but rather that the two were not in conflict. Moreover, FERC’s commentary in that case concerned whether a utility could wholly contract away its mandatory purchase obligation—not, as here, whether a QF is entitled to displace existing transmission reservations simply to ease the QF’s delivery. Therefore *Delta-Montrose* does not support the Blue Marmots’ argument.

²⁰² See, e.g., Blue Marmots’ Opening Brief at 3 (describing PGE’s EIM participation as “voluntary” and thus subject to forfeiture to the Blue Marmots); see also *id.* at 32 (claiming that PURPA’s mandatory purchase obligation supersedes any “contractual provisions”).

²⁰³ Blue Marmots’ Opening Brief at 32; see also Blue Marmot/300, Moyer/12 (“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.”).

²⁰⁴ *Delta-Montrose Elec. Assoc.*, 151 FERC ¶ 61,238 (2015).

²⁰⁵ Blue Marmots’ Opening Brief at 32.

²⁰⁶ 151 FERC ¶ 61,238 at P4 (2015).

²⁰⁷ 151 FERC ¶ 61,238 at P4 (2015).

In fact, the Blue Marmots' position was firmly rejected by the Utah PSC in the recent, and factually similar, *Glen Canyon* case.²⁰⁸ In that case, the Glen Canyon QF sought to site in a remote location where the only transmission line that could deliver its output to Rocky Mountain Power's (RMP) load was fully subscribed by RMP, and RMP's transmission capacity was committed for other purposes.²⁰⁹ Nevertheless, Glen Canyon argued that RMP was required to provide it with capacity on the fully committed transmission line.²¹⁰ Mr. Moyer testified on behalf of Glen Canyon and asserted that "a transmission customer subject to PURPA must utilize its available resources, including transmission rights and redispatch options, for QFs."²¹¹ RMP maintained that it had no obligation under PURPA to devote its existing transmission rights to the Glen Canyon project.²¹²

After several rounds of testimony and a live hearing, the Utah PSC held that *nothing in PURPA requires the utility to devote its existing transmission reservations to a new QF* and declined to impose such a requirement on RMP.²¹³ The Utah PSC recognized that a utility should not be permitted to deter QF development by unreasonably refusing to use its existing resources for QFs, but also questioned whether requiring utilities to "devote every resource they possess, including transmission rights, to insulate QFs from costs arising out of their projects" would be good policy.²¹⁴ The Utah PSC noted that RMP's transmission rights were already encumbered, and rejected Glen Canyon's argument that the utility's preexisting commitment should be disregarded merely because the transmission rights were seldom used.²¹⁵ The Utah PSC also rejected Mr. Moyer's argument that the utility should come up with "creative" ways in which to

²⁰⁸ PGE discussed the Glen Canyon case extensively in its Prehearing Brief, and notes that the Blue Marmots failed to even mention this important precedent.

²⁰⁹ *Glen Canyon*, Consolidated Order at 7-8.

²¹⁰ *Id.* at 12-14.

²¹¹ *Glen Canyon*, Docket No. 17-035-36, Keegan Moyer Direct Testimony at 36 (June 29, 2017).

²¹² *Glen Canyon*, Consolidated Order at 9.

²¹³ *Id.* at 14.

²¹⁴ *Id.* at 15.

²¹⁵ *Id.* at 17-18.

manage the QF output, finding no support in PURPA for a requirement to “go to such lengths to accommodate a QF’s desire to avoid assessable costs.”²¹⁶

The Glen Canyon decision is consistent with PURPA and with this Commission’s own policies, which require QFs to bear the costs they impose on utilities. PURPA undeniably requires PGE to purchase the Blue Marmots’ output once it has been made available, but neither PURPA nor any implementing regulation or order requires PGE to do so at the location of the Blue Marmots’ choosing and at the expense of PGE’s preexisting commitment and investment to participate in the EIM—particularly when another feasible delivery location exists. Therefore, this Commission should reject the Blue Marmots’ attempt to insulate themselves from the impacts of their own siting decisions by usurping transmission capacity that PGE reserved expressly for participation in the EIM.

2. The customer-indifference mandate prevents PGE from ceding its reserved EIM capacity for QF deliveries.

The Blue Marmots’ proposal to appropriate PGE’s EIM transmission violates the customer-indifference requirement for four reasons: *First*, the EIM is a key initiative for the Company, and PGE’s customers already invested in EIM participation in expectation of receiving the resulting benefits. *Second*, PGE’s customers are likely to face significantly diminished EIM benefits in the future if PGE must give up previously reserved transmission capacity to QFs. *Third*, any decrease in benefits would harm customers, and the Blue Marmots acknowledge that PGE’s EIM benefits will decrease as a result of accepting their output and displacing EIM transfers. And *fourth*, losing EIM transmission to QFs could impact PGE’s ability to retain MBR authority, which is critical to maximizing EIM benefits.

²¹⁶ *Glen Canyon*, Consolidated Order at 20.

a. *PGE's customers invested in the EIM and therefore PGE must participate effectively and maximize benefits to prevent customer harm.*

The Blue Marmots argue that EIM participation is “voluntary” and, as a result, transmission reserved to participate in the EIM can be supplanted by PURPA purchases.²¹⁷ However, though utilities choose whether and when to enter the EIM, it is a mischaracterization to suggest that PGE may voluntarily relinquish EIM benefits. PGE underwent a thorough, Commission-approved process to assess the benefits of EIM participation.²¹⁸ Since deciding to join the EIM, PGE has invested significant resources—monetary and otherwise—to acquire the expertise and infrastructure necessary to successfully participate in the EIM and to implement the systems required to integrate PGE’s operations into the EIM.²¹⁹ As of December 2017, PGE had incurred approximately \$13 million of capital investment in the EIM.²²⁰ Those investments have been deemed by the Commission to be prudently made and have been included in customer rates—with the expectation that they will be fully offset by the associated benefits.²²¹ And PGE’s customers currently are receiving the benefits of their investment.²²²

By joining the EIM, PGE has committed these customer-supported resources to achieve benefits on behalf of its customers and, contrary to the Blue Marmots’ assertion, PGE is not “free” to walk away from this commitment or these benefits at this time. On the contrary, PGE’s commitment to customers to participate in the EIM and “to achieve the benefits associated with the EIM”—benefits “which are tied directly to the transfer capability PGE has with the rest of the

²¹⁷ Blue Marmots’ Opening Brief at 13, 43, 48, 52 (“PGE’s approach is problematic from a legal perspective because it represents an attempt to bootstrap a voluntary commitment into a mandatory one, and to do it in a way that subverts PGE’s obligations to purchase power from qualifying facilities.”).

²¹⁸ Order No. 14-415 at 11.

²¹⁹ Hearing Transcript, Vol. II at 267-68; PGE/100, Greene/Moore/4, 22; PGE/400, Greene/4; PGE/700, Rodehorst-Moore/21.

²²⁰ PGE/400, Greene/6 n.8.

²²¹ PGE/100, Greene-Moore/22.

²²² PGE/400, Greene/15 (“PGE’s customers are receiving the benefits of their investment in this important initiative.”); PGE/700, Rodehorst-Moore/16 (describing total EIM benefits received during the initial participation period of October 2017 through August 2018 as \$5.7 million, and indicating that rates effective January 1, 2019 attribute a gross benefit of approximately \$5 million).

EIM”—preclude the Company from using its PACW-PGE transmission rights for other purposes.²²³

More fundamentally, the EIM is essential to re-shaping the Western grid and potentially moving the West toward a regional market, meaning that PGE’s continued robust participation is essential to its ability to meaningfully participate in any future energy markets.²²⁴ Over 50 percent of the load in the West is already participating in the EIM and, by 2022, that number will be closer to 80 percent.²²⁵ As additional members join the market, each contributes generation and transmission resources, thereby facilitating increased overall benefits.²²⁶ Thus, as the Blue Marmots acknowledge, PGE’s participation in the EIM is an important initiative,²²⁷ and PGE is not free to sacrifice robust EIM participation and forego expected customer benefits without clear direction from the Commission.

b. The customer impacts of ceding reserved EIM transmission to QFs are significant and will increase over time.

The Blue Marmots also attempt to assert that the impact of losing EIM transmission is “minor,” and therefore customers will not be harmed if EIM transmission is allocated to facilitate their deliveries. In particular, they rely on Mr. Moyer’s study, which estimated an annual EIM benefit reduction of \$25,000 to \$63,000.²²⁸ Thus, the Blue Marmots appear to be implying—without directly stating—that the impacts to customers should be disregarded.²²⁹ However, the

²²³ Hearing Transcript, Vol. II at 252; Hearing Transcript, Vol. II at 266 (“PGE’s customers have already put forward the dollars for PGE’s infrastructure and people to participate in [the EIM], and we’ve also put forward an estimate of benefits for PGE’s customers in the rates that they pay. So we see it as an obligation to fully participate in this market to attain those benefits that our customers have put forward the dollars for us to participate in the market to begin with.”).

²²⁴ PGE/400, Greene/16.

²²⁵ PGE/400, Greene/16-17.

²²⁶ PGE/400, Greene/16.

²²⁷ Blue Marmots’ Opening Brief at 52-53 (“The Blue Marmots are supportive of PGE’s participation in the EIM” and “agree that participation in the EIM has benefits for PGE’s customers and the integration of renewables.”).

²²⁸ Blue Marmots’ Opening Brief at 48.

²²⁹ Blue Marmots’ Opening Brief at 48-49 (characterizing the benefit impacts as “minor” and then concluding “PGE can both honor its legally enforceable obligation to the Blue Marmots, and continue robust participation in the EIM”). Tellingly, the Blue Marmots do not address PURPA’s customer-indifference standard anywhere in their briefing, or attempt to explain how harmful customer impacts can be disregarded while adhering to this foundational principle. *See generally* Blue Marmots’ Opening Brief.

Blue Marmots' attempts to minimize and disregard customer impacts fail because the Blue Marmots have vastly underestimated the potential for customer harm, and PGE's analyses demonstrate that the likely harm would be significant.

- i. The Blue Marmots' analyses underestimate the customer harm.

The Blue Marmots significantly underestimate the impact on EIM benefits of displacing transmission reservations with QF deliveries in three respects. **First**, the Blue Marmots' analyses are based on data from PGE's first year of EIM participation only,²³⁰ which is not determinative of the actual impacts that can be expected in the future. PGE is very early in its EIM participation and anticipates that benefits will increase with time—just as they have for other participating utilities.²³¹ Therefore, the impact of losing any EIM transmission will correspondingly increase over time.

Second, as the Blue Marmots concede, PGE's EIM transfers will increase in the future as additional renewable resources deliver to the system, increasing the variability in sub-hourly imbalance to which the EIM responds.²³² PGE also expects transfers to increase as additional participants join the EIM, and at least five new entities plan to join over the next three years—with more likely in the future.²³³ As EIM transfers increase in both number and magnitude, the resulting benefits will increase as well—which means that the harm to PGE's customers will be greater in the future if PGE is required to cede EIM-dedicated transmission capacity to QFs.

Third, the Blue Marmots' analyses and briefing focus only on the impact of PGE losing 50 MW of transmission capacity to the Blue Marmots and fail to account for the impacts of

²³⁰ PGE/500, Rodehorst-Moore/2-3.

²³¹ See, e.g., *In the Matter of PacifiCorp, dba Pacific Power, 2015 Transition Adjustment Mechanism*, Docket No. UE 287, Order No. 14-330 at 5-6 (Oct. 1, 2014) (finding reasonable a stipulation that accounted for \$1.7 million in Oregon-allocated EIM benefits in PacifiCorp's 2015 TAM); *In the Matter of PacifiCorp, dba Pacific Power, 2016 Transition Adjustment Mechanism*, Docket No. UE 296, Order No. 15-394 at 8 n.18 (Dec. 11, 2015) (finding PacifiCorp's 2016 Oregon-allocated EIM benefits to be \$2.71 million); *In the Matter of PacifiCorp, dba Pacific Power, 2017 Transition Adjustment Mechanism*, Docket No. UE 307, Order No. 16-482 at 16 (Dec. 20, 2016) (accepting PacifiCorp's Oregon-allocated EIM benefit calculation of \$4.41 million).

²³² PGE/700, Rodehorst-Moore/5-6; Blue Marmot/700, Moyer/3.

²³³ PGE/700, Rodehorst-Moore/5.

additional QFs that seek to deliver via the PACW-PGE interface.²³⁴ Importantly, if the Commission determines that the Blue Marmots are allowed to deliver via the PACW-PGE interface and displace EIM transfers, then PGE assumes that the three additional QFs with fully executed PPAs would also insist on delivering via PACW-PGE—meaning that *at least* 117 MW of transmission capacity would be lost to QFs.²³⁵ And if the Commission determines that QFs in general may usurp transmission committed to the EIM, PGE could soon lose all of its EIM-dedicated transmission and be unable to effectively participate in the EIM.²³⁶

- ii. The amount of lost benefits will be very significant over the terms of the Blue Marmots' PPAs.

Despite PGE's belief that it is too early in PGE's EIM experience—and that insufficient data is available—to accurately quantify the impact of accepting QF deliveries in the future, PGE conducted its own analyses that demonstrate that the Blue Marmots have significantly underestimated the potential impacts to PGE's EIM benefits.²³⁷ Specifically, PGE analyzed what the impact would have been during its first year of EIM participation if (a) varying amounts of QFs had been allowed to deliver their output to the PACW-PGE interface; and (b) transfers had increased in magnitude by 20 percent.²³⁸ PGE determined that \$643,000 in benefits would have been lost *in the first year of EIM operation alone* if the Blue Marmots and the other QFs with

²³⁴ Blue Marmots' Opening Brief at 49-51 (arguing that PGE has enough transfer capability to accept 50 MW of the Blue Marmots' output at the PACW-PGE interface).

²³⁵ In addition to the 50-MW Blue Marmots, PGE has 67 MW of other QFs with fully executed contracts. *See* Hearing Transcript, Vol. I at 151 (Mr. Greene testifying that PGE has sought to reach alternative delivery arrangements with the QFs with fully executed agreements, but stating that the counterparties are very interested in the outcome of this case). The Blue Marmots claim that one of these QFs should be disregarded because it failed to meet its commercial operation date, Blue Marmots' Opening Brief at 73 n.222, but Mr. Greene testified at hearing that PGE expects that project to come online. Hearing Transcript, Vol. I at 154 (“[E]very indication that we have is that yes, that project will come online[.]”). The Blue Marmots also claim that the Airport Solar QF should be deemed irrelevant to this proceeding, based upon the ALJ Ruling denying the Blue Marmots' motion to compel production of the Airport Solar PPA. Blue Marmots' Opening Brief at 73 n.222 (citing ALJ Ruling Denying Motion to Compel (Oct. 30, 2017)). However, the Blue Marmots mischaracterize the ALJ's Ruling, which did not find that the entire Airport Solar PPA was irrelevant. Rather, the ALJ denied the motion to compel disclosure of the entire contract but required PGE to produce an affidavit attesting to the PPA's delivery provisions. Ruling at 3. PGE provided such an affidavit, stating that the Airport Solar PPA expressly provides for delivery at the PACW-PGE interface. Given its planned delivery point, the Airport Solar PPA is indisputably relevant to this proceeding.

²³⁶ *See* PGE/200, Sims-Rodehorst-Sporborg/3; PGE/700, Rodehorst-Moore/20, Table 2.

²³⁷ PGE/700, Rodehorst-Moore/3.

²³⁸ PGE/700, Rodehorst-Moore/3, 17-20.

fully executed PPAs had been permitted to deliver.²³⁹ And if additional QFs—beyond those with fully executed PPAs or LEOs—were allowed to displace EIM capacity, then the impact on EIM benefits could increase up to more than **\$2 million annually** (see Table 1, below).²⁴⁰

Table 1: Annual and Cumulative Benefit Impact Under Additional-QF and 20% Transfer-Increase Scenarios.

	Scenario	Annual Impact²⁴¹ with One-Time 20% Increase in Existing Transfers	15-Year Cumulative Impact with One-Time 20% Increase in Existing Transfers²⁴²
A	Only Blue Marmots (50 MW)	\$360,357	\$5,405,355
B	All Executed QFs (117 MW Total QF)	\$643,028	\$9,645,420
C	Add 10 MW of Baseload (127 MW Total QF)	\$726,069	\$10,891,035
D	Add 50 MW of Solar (177 MW Total QF)	\$1,017,821	\$15,267,315
E	Add 50 MW of Solar (227 MW Total QF)	\$1,369,876	\$20,548,140
F	Add 50 MW of Solar (277 MW Total QF) ²⁴³	\$1,807,763	\$27,116,445
G	Add 33 MW of Solar (310 MW Total QF) ²⁴⁴	\$2,154,270	\$32,314,050

In sum, PGE’s analyses demonstrate that the amount of EIM benefits that could be lost in the future—and the potential harm to customers—is significantly higher than the Blue Marmots claim.²⁴⁵

²³⁹ PGE/700, Rodehorst-Moore/20.

²⁴⁰ PGE/700, Rodehorst-Moore/20, Table 2.

²⁴¹ Dollar values based on Mr. Moyer’s \$13/MWh estimate for comparison.

²⁴² Dollar values based on Mr. Moyer’s \$13/MWh estimate for comparison and assume a one-time 20% increase in transfers over the current 2018 transfers with no subsequent transfer increases over the fifteen year period.

²⁴³ Note, this number corrects a typo contained in previous versions of this table; this cell formerly read “275 MW.”

²⁴⁴ 310 MW is the total capacity of PGE Merchant’s transmission reservations on the PACW-to-PGE path.

²⁴⁵ See PGE/100, Greene-Moore/25 (estimating the cost of BPA transmission to be \$14 million *over the life of the Blue Marmots’ PPAs*).

- c. *Any customer harm violates the customer-indifference requirement, and PGE may not accept even a small amount of lost benefits on its customers' behalf.*

Importantly, the Blue Marmots “agree that participation in the EIM has benefits for PGE’s customers,”²⁴⁶ and that ceding 50 MW of EIM transmission to the Blue Marmots will decrease those benefits—although the parties disagree about the amount of the decrease.²⁴⁷ Therefore, *the Blue Marmots concede that customers will be harmed if PGE must give up EIM capacity* to the Blue Marmots. Any customer harm as a result of QF deliveries—regardless of the magnitude—violates the requirement that customers be held indifferent to the purchase of QF generation.

The Blue Marmots argue that the harm to customers should be discounted because it takes the form of lost benefits, or opportunity cost, rather than direct costs.²⁴⁸ Tellingly, they offer no legal support for their assertion that lost benefits do not constitute customer harm under PURPA—an assertion that defies common sense. Contrary to their claim, ceding EIM transmission for QF deliveries constitutes a true customer harm because lost benefits have no less significant monetary value than affirmative costs incurred.²⁴⁹ Moreover, PGE has made significant investments to acquire the expertise and infrastructure required to successfully participate in the EIM.²⁵⁰ Those investments have been found to be prudently made and are being recovered in customer rates—with the expectation that they will be fully offset by the associated benefits.²⁵¹ The acceptance of QF output, however, does not result in such benefits.²⁵² On the contrary, because the rates PGE pays for QF energy are intended to be set at the utility’s avoided cost, those purchases, at best, leave customers indifferent.²⁵³ Therefore, any reduction in EIM participation and benefits that

²⁴⁶ Blue Marmots’ Opening Brief at 53; Blue Marmot/600, Moyer/37.

²⁴⁷ Blue Marmots’ Opening Brief at 48-49; Blue Marmot/600, Moyer/34-36; *see also* PGE/700, Rodehorst-Moore/20 (correcting and supplementing Mr. Moyer’s estimates).

²⁴⁸ Blue Marmots’ Opening Brief at 44-46.

²⁴⁹ PGE/500, Rodehorst-Moore/24.

²⁵⁰ PGE/100, Greene-Moore/22.

²⁵¹ PGE/100, Greene-Moore/22.

²⁵² PGE/500, Rodehorst-Moore/24.

²⁵³ PGE/500, Rodehorst-Moore/24.

results from ceding transmission to QFs—regardless of the magnitude—financially harms PGE’s customers in violation of PURPA.²⁵⁴

The Blue Marmots also claim that PGE’s litigation costs exceed the impact to customers of accepting their deliveries²⁵⁵—suggesting that PGE should simply concede and allow them to deliver. Even if the Blue Marmots’ statement were accurate—which it is not—the potential impacts of this litigation go far beyond accepting just 50 MW of QF output. If the Commission concludes that QFs may commandeer transmission PGE reserved for the EIM, then PGE will likely have to give up at least 117 MW of its EIM capacity—to the Blue Marmots and the three QFs with fully executed PPAs that preceded the Blue Marmots’ LEOs.²⁵⁶ Such a ruling could also result in PGE losing all of its EIM capacity to future QF requests, and PGE could conceivably be unable to meaningfully participate in the EIM, further increasing harm to customers.

Even if PGE were inclined to accept the costs caused by the Blue Marmots as a one-off imposition of harm, neither PGE nor the Commission is entitled to concede and allow adverse customer impacts merely because the impact is purportedly small. For instance, the Commission was recently asked to close the UM 1610 docket by a utility, and the utility offered to simply accept the costs caused by QFs rather than expend additional funds litigating the issue.²⁵⁷ The Commission denied the request, explaining that the question is not *whether* a QF must bear the costs it imposes but instead *how* to assess and assign such costs.²⁵⁸ Thus, even if the customer impacts were relatively small—which PGE has shown they are not—PGE would not be free to accept such costs on its customers’ behalf.

²⁵⁴ The Blue Marmots also argue that PGE is being inconsistent by accepting changes in TTC that reduce its EIM capacity but not accepting the Blue Marmots’ output. Blue Marmots’ Opening Brief at 46-47. However, a physical limit on transmission capacity is not equivalent to a new generator seeking transmission access.

²⁵⁵ Blue Marmots’ Opening Brief at 49 n.146.

²⁵⁶ As Mr. Greene explained at hearing, PGE continues to expect these QFs to come online. *See* Hearing Transcript, Vol. I at 154.

²⁵⁷ Order No. 18-181 at 5 (denying PacifiCorp’s motion to close the docket).

²⁵⁸ *Id.* at 5.

d. Ceding committed transmission capacity could jeopardize PGE's MBR authority, which is critical to maximizing EIM benefits.

If PGE is required to accept deliveries from the Blue Marmots and the three QFs with fully executed PPAs, then PGE could lose the authority to bid at market-based rates in the EIM, which would further diminish customers' EIM benefits.²⁵⁹ MBR authority is important to maximize the benefits of EIM participation because it allows the utility to bid at market-based rates instead of being restricted to cost-based "default energy bids."²⁶⁰

While FERC granted PGE MBR authority based on PGE's commitment of transmission to the EIM, FERC cautioned that PGE must submit a change in status filing if the amount of firm transmission committed to EIM transfers between PacifiCorp and PGE decreases.²⁶¹ PGE's commitment included 200 MW of firm transmission capacity in all market intervals as well as PGE's additional transmission capacity—76 MW at the time of filing and 110 MW currently (due to the TTC restudy)—subject to usage for reliability or servicing existing contractual arrangements.²⁶²

In light of these commitments to FERC, if PGE were required to accommodate the Blue Marmots' output (as well as, by extension, the output of other QFs with fully executed PPAs), PGE would likely be in violation of its commitment to provide 200 MW of firm capacity in all hours and would be required to file a change in status. Any change in status filing would need to include a new market power analysis accounting for the decrease in PGE's committed transmission, and PGE could lose its MBR authority as a result.²⁶³ In short, if PGE must give up committed EIM transmission to the Blue Marmots, then its MBR authority would be jeopardized, and the loss of MBR authority would further erode expected EIM benefits and increase the harm to PGE's customers.²⁶⁴

²⁵⁹ PGE/500, Rodehorst-Moore/25-29 (explaining the implications of MBR authority).

²⁶⁰ PGE/500, Rodehorst-Moore/26.

²⁶¹ Order on Market Power Analysis, Notice of Change in Status, and Market-Based Rate Tariff Changes, Docket Nos. ER10-2249-007 & ER17-1693-000, 160 FERC ¶ 61,131, at P18 (Sept. 28, 2017).

²⁶² PGE's Notice of Change in Status at 7.

²⁶³ PGE/500, Rodehorst-Moore/25.

²⁶⁴ PGE/500, Rodehorst-Moore/28-29.

The Blue Marmots have previously implied that PGE could participate in the EIM absent MBR authority—that is, using cost-based “default energy bids”—without compromising its EIM benefits.²⁶⁵ In support of this dubious claim, the Blue Marmots have asserted that most EIM participants use cost-based bids at times.²⁶⁶ However, the Blue Marmots’ reasoning is flawed because the importance of MBR authority is not that *all* of an authorized participant’s bids would be market-based, but rather that MBR authority grants participants the flexibility to employ market-based bids to respond to changing market conditions and to account for changing resource limitations or constraints.²⁶⁷ MBR authority also benefits participants by helping them manage their resource portfolios—in particular hydro resources, for which the default energy bid does not capture the full opportunity cost of dispatching the resource.²⁶⁸ While EIM participants with MBR authority can (and do) use cost-based bids in addition to market-based bids as part of an overall portfolio management strategy,²⁶⁹ being restricted to *only* default energy bids has significant drawbacks and associated costs.²⁷⁰

The CAISO Department of Market Monitoring agrees that participating in the EIM without MBR authority has significant disadvantages and has filed comments with FERC to that effect.²⁷¹ The importance of MBR authority is further evidenced by the fact that all current EIM participants have MBR authority.²⁷² And in fact, those participants that had lost MBR authority for a time sought and received renewed authorization²⁷³—demonstrating that they view MBR authority as key to their successful EIM participation and their ability to deliver benefits to their customers.

In sum, PGE is not obligated to cede its committed transmission capacity to QFs because PGE has committed to participating in the EIM and reducing or ceasing PGE’s EIM participation

²⁶⁵ Blue Marmot/400, Moyer/26-27.

²⁶⁶ Blue Marmot/400, Moyer/26.

²⁶⁷ PGE/500, Rodehorst-Moore/26-27.

²⁶⁸ PGE/500, Rodehorst-Moore/26-27.

²⁶⁹ *See* PGE/500, Rodehorst-Moore/28.

²⁷⁰ PGE/500, Rodehorst-Moore/26.

²⁷¹ PGE/500, Rodehorst-Moore/26-27.

²⁷² PGE/500, Rodehorst-Moore/27-28; Order on Proposed Market-Based Rate Tariff Changes, Docket No. ER18-2000-000, 164 FERC ¶ 61,169, at P21 (Sept. 6, 2018) (granting Arizona Public Service Co. authority to transact in the EIM at market-based rates after PGE/500 was filed).

²⁷³ PGE/500, Rodehorst-Moore/27-28.

would harm customers. Though any customer harm violates PURPA's customer-indifference requirement, the expected harm of losing EIM transmission to QFs would be substantial and would likely increase over time.

C. The Blue Marmots' reservation of transmission to the PACW-PGE interface does not satisfy their delivery obligation.

The Blue Marmots claim they can avoid paying for BPA transmission or upgrades because they have done all that is required to deliver to PGE and therefore, under FERC precedent, all further responsibility for managing their output—and any resulting costs—are PGE's responsibility.²⁷⁴ As explained above, however, even if the Blue Marmots had made effective delivery arrangements, they would still be responsible for any costs their deliveries impose that are not accounted for in PGE's standard avoided cost rates. And here, despite their claims, the Blue Marmots have not yet made arrangements sufficient to deliver their output to PGE. Therefore, the Blue Marmots' efforts to avoid the costs of BPA transmission or upgrades by claiming to have successfully delivered are unavailing.

The Blue Marmots' claims that they have fulfilled their only delivery obligation and transferred responsibility to PGE are premised on two incorrect assumptions: (1) that they have unfettered discretion to select a delivery point of their choosing, even if their preferred interface is fully subscribed and a reasonable alternative exists; and (2) that they have satisfied their obligation to deliver their output to PGE simply by reserving transmission on PacifiCorp's system to the edge of the PACW-PGE interface.²⁷⁵ The Blue Marmots are mistaken on both points, however, because: (1) long-standing Oregon case law confirms that PGE may insist on a reasonable delivery point for QF output, consistent with PURPA's bedrock customer-indifference and avoided-cost principles; (2) as a technical matter, the Blue Marmots have not actually made arrangements

²⁷⁴ Blue Marmots' Opening Brief at 3 (stating the Commission need only find that the Blue Marmots "have purchased FERC-jurisdictional transmission from PacifiCorp to deliver their power to PGE's system") and 34-37 (summarizing the Blue Marmots' position that by obtaining transmission service, the Blue Marmots have made all necessary arrangements on their end to deliver their output to PGE).

²⁷⁵ See, e.g., Blue Marmots' Opening Brief at 27 (arguing that a utility cannot require a particular point of delivery); see also *id.* at 31 (asserting that delivery is sufficient when power is transmitted "at the edge" of a utility's system).

sufficient to deliver their output to PGE at the PACW-PGE interface; and (3) the FERC decisions cited by the Blue Marmots in no way suggest that off-system QFs may deliver at a fully subscribed interface or are immune from the costs associated with doing so.

Because they have not yet made a plan for delivering their output to PGE at a viable delivery point, the Blue Marmots have not made their output available to PGE—thus triggering PGE’s mandatory purchase obligation—or imposed on PGE responsibility for managing and paying for management of their output. Thus, until they make feasible delivery arrangements, the Blue Marmots remain responsible for managing their own output. PGE has therefore properly declined to execute the Blue Marmots’ PPAs until effective delivery arrangements are made.

To be clear, PGE is *not* disclaiming its mandatory purchase obligation, as the Blue Marmots claim,²⁷⁶ but rather disputing whether this obligation has been triggered by the Blue Marmots’ existing delivery arrangements. PGE also is not arguing that the Blue Marmots must obtain transmission service from PGE to transmit their output to load.²⁷⁷ Instead, PGE remains ready and willing to purchase and manage the Blue Marmots’ output (including by arranging transmission service to move it to load) once the Blue Marmots agree to pursue a delivery approach that allows PGE to accept their output—such as the reasonably affordable option of transmission to the BPA-PGE interface. Thus, the Blue Marmots’ claims that they have no further cost responsibility and that PGE is in violation of PURPA simply have no basis.

1. Oregon law confirms that PGE may insist on a reasonable delivery point and that the Blue Marmots do not have an absolute right to deliver to a fully subscribed interface.

Fundamental to the Blue Marmots’ position is their view that PURPA gives them the absolute right to deliver their output to any point on PGE’s system—even if that point is fully

²⁷⁶ See, e.g., Blue Marmots’ Opening Brief at 76 (arguing that “PGE has not offered a legally cognizable excuse for why it is not required to purchase [the Blue Marmots’] power”).

²⁷⁷ Cf. Blue Marmots’ Opening Brief at 37.

subscribed.²⁷⁸ This is clearly not the case. On the contrary, this Commission and a subsequent reviewing court have concluded that a utility has the right to specify a reasonable location for an off-system QF's delivery.²⁷⁹

The controlling case on this point is *Water Power Company*, in which an off-system QF and a utility disagreed about the point of delivery for the QF's output.²⁸⁰ In the underlying Commission proceeding (conducted *prior* to the parties entering a PPA), the Commission determined that the utility had the right to designate a particular delivery point, and the parties subsequently executed a PPA that incorporated the utility's chosen location.²⁸¹ However, the QF continued to argue that it could deliver its output to a different point on the utility's system, and that the utility's "preference as to a delivery point, [was] irrelevant."²⁸² The Commission disagreed with the QF, finding that the utility's preferred delivery point was "reasonable in terms of its needs."²⁸³

Ultimately, the matter was reviewed by the Oregon Court of Appeals, which concurred with the Commission and held that the utility was within its rights to insist on a particular point of delivery.²⁸⁴ In so concluding, the Court of Appeals reasoned that neither PURPA nor other relevant statutes, regulations, and rules addresses the location of points of delivery for QF power, and that therefore the Commission's decision and the utility's position was correct.²⁸⁵ While this case is now close to 30 years old, it remains the only binding decision on point and its central reasoning remains just as strong.

²⁷⁸ Blue Marmots' Opening Brief at 27-33 (explaining why the Blue Marmots believe QFs can choose their delivery location).

²⁷⁹ *Water Power Co.*, 99 Or App at 130 ("The utility . . . may insist on provisions that require . . . a particular point of delivery.").

²⁸⁰ *Id.* at 128 (noting that PacifiCorp wished to require delivery at the Cottage Grove substation, while the QF wished to leave the point of delivery open).

²⁸¹ *Id.* at 129 (quoting the PPA as defining "'Point of Delivery' as 'the location where Net Delivered Output is delivered to [the utility's] system at BPA's Cottage Grove Substation, . . . or at such other location as may reasonably be required by [the utility] to allow [the utility] to accept Net Delivered Output'").

²⁸² *Id.* at 130.

²⁸³ *Id.* at 129.

²⁸⁴ *Id.* at 130-32.

²⁸⁵ *Id.*

While devoting only a footnote’s rebuttal to this case in their otherwise lengthy Opening Brief, the Blue Marmots have previously claimed that *Water Power* is “not applicable” for several reasons, each of which demonstrates a failure to closely read this critical case.²⁸⁶

First, the Blue Marmots argue that *Water Power* merely concerned interpretation of “a PPA that specified the delivery point”—whereas PGE’s draft PPAs do not specify a location for delivery.²⁸⁷ This statement is simply incorrect and appears to confuse the Commission’s underlying decision in *Water Power* with the subsequent Court opinion. The Commission in fact “ruled that [the utility] could require [a specific] point of delivery” *before* a PPA was executed.²⁸⁸ Following the Commission’s decision, a specified delivery point was included in the PPA, at which point the dispute was escalated to the courts.²⁸⁹ While the reviewing court was presented with a PPA containing a point of delivery, the court nonetheless upheld the Commission’s decision allowing the utility to require a reasonable delivery point for the off-system QF.²⁹⁰

Second, the Blue Marmots have claimed that *Water Power* is distinguishable because the case “was not decided under FERC jurisdictional transmission.”²⁹¹ PGE understands the Blue Marmots to mean that *Water Power*’s discussion of delivery is inapplicable because it was decided before FERC instituted open access transmission service. But the nature of the off-system QF’s transmission arrangements in *Water Power* was irrelevant to the Court’s conclusion—that nothing in PURPA prohibited the utility from insisting upon a particular delivery point.²⁹² If anything, the fact that off-system QFs now have open access to transmission resources and are not limited by their transmission provider’s preferences strengthens the *Water Power* holding, because a QF can easily accommodate a utility’s selection of a reasonable delivery point.

²⁸⁶ See Blue Marmots’ Opening Brief at 71 n.219 (briefly addressing *Water Power*); see also Blue Marmots’ Reply in Support of Motion to Strike at 30 (containing a lengthier effort at rebuttal). In addition to the three reasons discussed below, Blue Marmots have also presented a LEO-based argument for their right to a particular delivery point, which PGE addresses in depth below. *Infra* Section IV.D.

²⁸⁷ Blue Marmots’ Opening Brief at 71 n.219 (emphasis omitted).

²⁸⁸ *Water Power*, 99 Or App at 129.

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ Blue Marmots’ Reply in Support of Motion to Strike at 30 (Mar. 20, 2018).

²⁹² *Water Power*, 99 Or App at 128-32.

Third, the Blue Marmots have claimed that a “recent string of FERC cases” have since “clarif[ied] the responsibilities between utilities and off-system QFs,” but they did not cite any FERC cases to support this statement.²⁹³ PGE is not aware of any FERC precedent stating that a QF is entitled to insist on a specific, infeasible delivery location or impose the costs associated with such a selection on a utility’s customers, and, as discussed below, none of the FERC cases the Blue Marmots cite in their Opening Brief support their position.²⁹⁴

Thus, the holding in *Water Power* remains forceful and binding and allows a utility to require a QF to deliver to a reasonable point.²⁹⁵ Therefore, contrary to the Blue Marmots’ assertions, PGE is not required to accept the Blue Marmots’ output at their preferred delivery point and instead may insist on a reasonable and feasible point of delivery.

2. As a technical matter, the Blue Marmots are not currently able to deliver their output to PGE at the PACW-PGE interface.

Although the Blue Marmots claim to have achieved delivery to PGE, they do not dispute two crucial facts that disprove their claim: (1) the PACW-PGE interface is fully subscribed,²⁹⁶ and (2) the Blue Marmots’ transmission reservation begins and ends on PacifiCorp’s system,²⁹⁷ and presently will not permit them to schedule their output for delivery to PGE via the PACW-PGE interface.²⁹⁸ Likely recognizing that they cannot dispute the fundamental facts regarding their inability to deliver, the Blue Marmots attempt to call into question PGE’s TTC calculation (which their own expert confirmed) and offer a strained interpretation of the OATT definition of “point of delivery” to support their claims.

²⁹³ Blue Marmots’ Reply in Support of Motion to Strike at 30.

²⁹⁴ See PGE’s Response to Blue Marmots’ Motion to Strike at 15-16 (Mar. 6, 2018) (distinguishing each of the FERC cases relied upon by the Blue Marmots in their Motion to Strike). PGE distinguishes the FERC case law cited in Blue Marmots’ Opening Brief *infra* in Section IV.C.3.

²⁹⁵ See *Water Power*, 99 Or App at 132.

²⁹⁶ Blue Marmots’ Opening Brief at 39 (acknowledging that all ATC at the PACW.PGE interface has been reserved).

²⁹⁷ PGE/102, Greene-Moore/6, Blue Marmots’ Response to PGE Data Request No. 18, PacifiCorp Transmission Service Agreements (“This transaction originates in the PACW control area and terminates in the PACW control area”).

²⁹⁸ See Blue Marmot/600, Moyer/10. The Blue Marmots’ claim that they could deliver if PGE would use its EIM capacity to accept their output is addressed *infra* in Section IV.B.1.

The Blue Marmots agree that PGE correctly calculated the PACW-PGE TTC value, consistent with NERC's MOD-029 Rated System Path modeling methodology.²⁹⁹ Yet the Blue Marmots devote significant testimony and briefing to criticizing the “counter-intuitive” nature of the MOD-029 contract path methodology,³⁰⁰ and suggest that the Commission should ignore the TTC value and consider “real-world power flows” when deciding this dispute.³⁰¹ The Blue Marmots further bemoan the lack of an organized market in the West, which they believe could resolve transmission constraints like the one in this case.³⁰²

However, the Blue Marmots' commentary and critiques are wholly irrelevant and have no bearing on the issues presented in this case for three reasons. **First**, Mr. Moyer's independent analysis concluded that PGE's TTC Study methodology was reasonable and consistent with NERC's MOD-029, and he confirmed PGE's TTC calculation.³⁰³ And though Mr. Moyer characterizes the MOD-029 methodology as “wasteful” and “confusing,” the Blue Marmots have offered no evidence that PGE should utilize a different planning approach or that doing so would increase TTC.³⁰⁴ As a result, there is no basis for second-guessing PGE's TTC value. **Second**, the Blue Marmots acknowledge that PGE must adhere to NERC modeling standards and may not disregard the resulting TTC limits, even if the power-flow impacts of exceeding a path's TTC are relatively minor.³⁰⁵ As Mr. Moyer recognizes, PGE cannot accept transmission schedules that would exceed a path's TTC because “doing so would go against important operational and planning protocols that protect the reliability of the system.”³⁰⁶ Therefore, the Commission need not consider the power flow impacts of the Blue Marmots' output. **Finally**, the question of whether the West should move to an organized market, and the potential impacts of such a transition on the

²⁹⁹ Blue Marmot/403, Moyer/16-17; Hearing Transcript, Vol. I at 55 (Mr. Moyer confirming “that the company's TTC study which sets the TTC at the PACW-PGE interface at 320 megawatts in the summer is correct”).

³⁰⁰ Blue Marmots' Opening Brief at 57; Blue Marmot/400, Moyer/41.

³⁰¹ Blue Marmots' Opening Brief at 58-59; Blue Marmot/400, Moyer/40.

³⁰² Blue Marmots' Opening Brief at 59-60; Blue Marmot/400, Moyer/32, 42.

³⁰³ Blue Marmot/403, Moyer/16-17.

³⁰⁴ In fact, the Blue Marmots acknowledge that they are not asking the Commission to require PGE to utilize a different methodology. Blue Marmots' Opening Brief at 59.

³⁰⁵ See Blue Marmot/400, Moyer/39.

³⁰⁶ Blue Marmot/400, Moyer/39.

PACW-PGE interface, raise larger policy questions that plainly are not presented in the Blue Marmots' complaints and are outside the scope of this docket.

Thus, in resolving this case, the Commission should accept that PGE correctly calculated TTC at the PACW-PGE interface and that the interface is fully subscribed, because the Blue Marmots have not raised a legitimate dispute about these issues and in fact have confirmed PGE's conclusions.

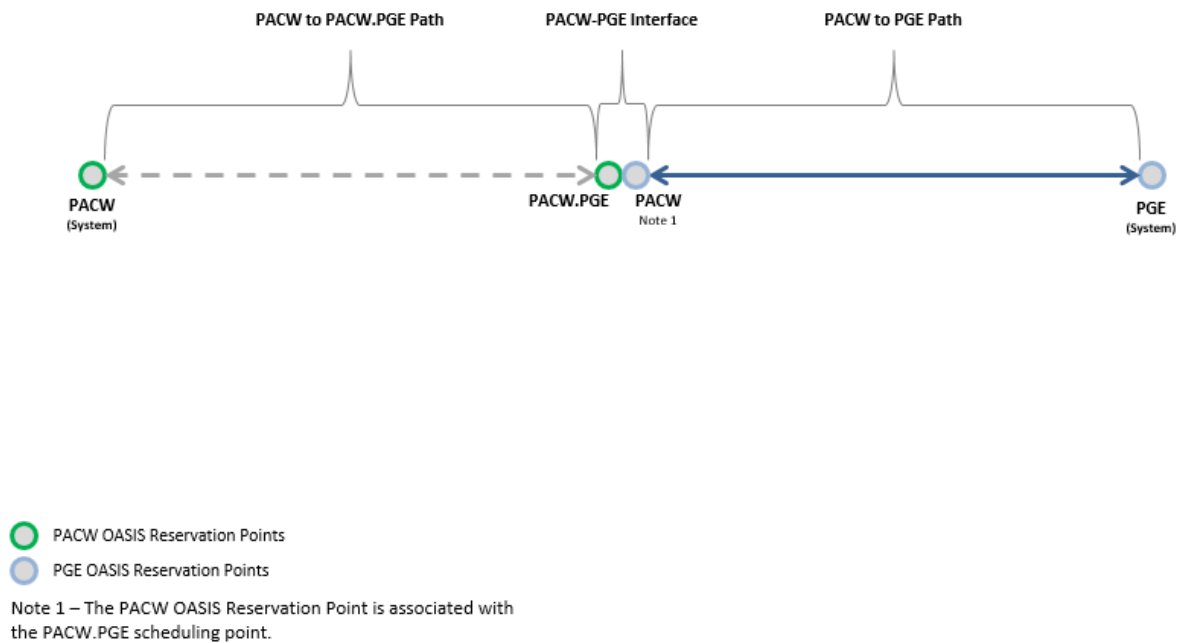
The Blue Marmots also rely on the OATT definitions of "Point of Delivery" (POD) and "Point of Receipt" (POR) to support their argument that their existing transmission arrangements are sufficient to make their output available to PGE.³⁰⁷ In their view, the fact that the OATT defines POD as the point where transmitted output "will be made available to the receiving party" suggests that simply reserving PacifiCorp transmission to the POD on the PacifiCorp system is enough to make their output available to PGE.³⁰⁸ But, logically, output cannot be made available to the utility where it cannot be received. And as shown in Figure 1 below, simply reaching PacifiCorp's PACW.PGE POD does not achieve delivery if power cannot flow across the PACW-PGE interface because PGE's side of the interface is fully subscribed.³⁰⁹

³⁰⁷ Blue Marmots' Opening Brief at 35-36.

³⁰⁸ Blue Marmots' Opening Brief at 36.

³⁰⁹ See PGE/102, Greene-Moore/6, Blue Marmots' Response to PGE Data Request No. 18, PacifiCorp Transmission Service Agreements (demonstrating that the Blue Marmots reserved transmission that "originates in the PACW control area and terminates in the PACW control area").

Figure 1: PACW-PGE interface³¹⁰



In fact, the OATT supports PGE’s view by articulating that the POD and POR are distinct concepts. If power that reached a POD always and automatically moved to the POR, then there would be no need to separate the two. In other words, the OATT does not assume that power that reaches a POD can always be received at the POR. In some cases, an OATT-defined POD may be available while the corresponding POR may be unavailable. Such is the case here, as there is insufficient ATC to allow receipt of the Blue Marmots’ output at the PGE side of the PACW-PGE interface. Thus, the Blue Marmots’ existing transmission arrangements alone are insufficient to enable delivery. As a result, the Blue Marmots have not triggered PGE’s mandatory-purchase obligation or transferred management and cost responsibility for their output to PGE.

³¹⁰ PGE/100, Greene-Moore/10.

3. None of the FERC case law the Blue Marmots cite suggests that QFs may deliver at a fully subscribed interface or are immune from the costs associated with doing so.

The Blue Marmots cite a series of six FERC cases that they claim support their view that their sole obligation is to transmit their power to any point of their choosing at the edge of PGE's system, and that they are thereafter absolved of any responsibility—including responsibility for any additional costs necessary to accommodate their output.³¹¹ However, none of the cases cited by the Blue Marmots support their narrow conception of delivery or lack of cost accountability. On the contrary, each of these cases is premised on the assumption that the QF in question has the ability to successfully deliver its output to the purchasing utility—which the Blue Marmots cannot achieve. Moreover, as discussed below, these cases actually support PGE's position that the Blue Marmots are responsible for establishing delivery of their output where it can actually be received, and that the costs caused by the projects cannot be shifted to customers. The following discussion thus briefly reviews the implications of FERC's decisions addressing (1) curtailment-related issues in *Entergy*,³¹² *Exelon*,³¹³ *Southwest Power Pool*,³¹⁴ and *Pioneer Wind Park*,³¹⁵ (2) method of delivery issues in *PáTu*,³¹⁶ and (3) delivery point issues in *Kootenai*.³¹⁷

³¹¹ Blue Marmots' Opening Brief at 27-32. Note, while the Blue Marmots include *Delta Montrose* in their recitation of purportedly relevant FERC precedent, that case is cited for the separate proposition that a utility's mandatory purchase obligation must supplant even preexisting contractual obligations. Given that the Blue Marmots appear to be arguing that PGE is therefore required to relinquish any committed transmission reservations dedicated to EIM participation, PGE addresses the implications of this case in its EIM discussion above, in Section IV.B.1.b.

³¹² *Entergy Services, Inc.*, 137 FERC ¶ 61,199 (Dec. 15, 2011).

³¹³ *Exelon Wind 1, LLC*, 140 FERC ¶ 61,152 (Aug. 28, 2012).

³¹⁴ *Southwest Power Pool, Inc.*, 140 FERC ¶ 61,225 (Sept. 20, 2012).

³¹⁵ *Pioneer Wind Park*, 145 FERC ¶ 61,215.

³¹⁶ The *PáTu* proceeding actually involved a series of cases, including four substantive Commission orders, three FERC orders, and a D.C. Circuit decision. *PáTu Wind Farm, LLC v. Portland Gen. Elec. Co.*, Docket No. UM 1566, Order No. 12-316 (Aug. 21, 2012); Docket No. UM 1566, Order No. 12-494 (Dec. 20, 2012); Docket No. UM 1566, Order No. 14-287 (Aug. 13, 2014); Docket No. UM 1566, Order No. 14-425 (Dec. 8, 2014); *PáTu Wind Farm, LLC*, 150 FERC ¶ 61,032 (Jan. 22, 2015); *PáTu*, 151 FERC ¶ 61,223 (June 18, 2015), and *PáTu*, 154 FERC ¶ 61,167 (Mar. 3, 2016); *Portland Gen. Elec. Co. v. Fed. Energy Reg. Comm'n*, 854 F3d 692 (Apr. 25, 2017). The FERC decisions discussed here, 150 FERC ¶ 61,032 and 151 FERC ¶ 61,223, are those cited by the Blue Marmots. Blue Marmots' Opening Brief at 30-31.

³¹⁷ *Kootenai Electric Cooperative, Inc.*, 143 FERC ¶ 61,232 (June 14, 2013).

a. Curtailment Cases

The Blue Marmots claim that four curtailment-related cases place a general obligation on the utility to accommodate QF output, regardless of any impact on the utility's own system and without holding QFs responsible for any associated costs.³¹⁸ However, not one of these cases concerns either a QF's ability to actually deliver its output to a utility's system, or the accompanying cost responsibility, as each case simply assumed that delivery was readily achievable and that QFs had already been held responsible for "transmission or distribution costs . . . necessary to permit interconnected operations."³¹⁹

First, in *Entergy*, the utility sought to curtail unscheduled QF energy sold on an as-available basis.³²⁰ The utility argued that it should be entitled to curtail such energy under 18 C.F.R. 292.304(f), which provides that a utility "will not be required to purchase electric energy or capacity during any period during which, due to operational circumstances, purchases from [QFs] will result in costs greater than those which the utility would incur if it did not make such purchases[.]"³²¹ FERC rejected the utility's proposal and concluded that cost-related exemption "cannot be relied upon to curtail purchases of unscheduled QF energy for general economic reasons."³²²

Second, in *Exelon*, on-system QFs objected to new tariff provisions that, they argued, would require the QFs to either pay for additional transmission delivery upgrades or accept curtailment, despite the fact that the QFs had already "funded all required upgrades many years before."³²³ However, the state commission and the utility clarified that the tariff revision would *not* authorize the utility to curtail QF purchases on the same basis as non-firm transactions, nor

³¹⁸ Blue Marmots' Opening Brief at 28-32.

³¹⁹ *Pioneer Wind Park*, 145 FERC ¶ 61,215 at P38 n.73.

³²⁰ *Entergy*, 137 FERC ¶ 61,199 at PP1-2, 17.

³²¹ *Id.* at PP43, 45.

³²² *Id.* at P55.

³²³ *Exelon*, 140 FERC ¶ 61,152 at P8.

would it require QFs to fund additional transmission delivery upgrades to avoid curtailment.³²⁴ As a result, FERC upheld this portion of the revised tariff.³²⁵

Third, in *Southwest Power Pool*, the utility proposed revisions to its OATT that would entail curtailing QFs selling on an as-available basis, specifically during periods of congestion.³²⁶ FERC rejected the tariff changes, noting that the proposed tariff revisions were broad and the implications unclear from the filing,³²⁷ while also observing that the proposal to curtail as-available QFs along with non-firm service might be inconsistent with FERC’s limited, system-emergency exception for curtailment.³²⁸

Finally, in *Pioneer Wind Park*, an on-system QF seeking to enter a long-term, fixed-rate PPA objected to being offered a contract proposal that would have allowed the utility to curtail the QF’s output ahead of utility resources during transmission capacity constraints.³²⁹ FERC clarified that, because the QF was not attempting to sell on an as-available basis, the utility was permitted to curtail the QF’s output only during system emergencies.³³⁰ FERC further commented that the QF was not required “to obtain transmission service” necessary to deliver its output all the way “to the purchasing utility’s load.”³³¹

As the above decisions illustrate, QF output cannot be subject to curtailment outside of narrowly prescribed parameters. However, this fact does not suggest that QFs are immune from bearing the costs necessary to ensure that they can reliably deliver, or that the purchasing utility is prohibited from requiring a plan for reliable delivery through the contracting process. In fact, the preferential treatment of QF output required by PURPA places a special emphasis on ensuring deliverability during the initial onboarding process—and on maintaining a QF’s responsibility for the associated costs, to protect utility customers from harm. FERC clearly envisions that QFs will

³²⁴ *Id.* at P51.

³²⁵ *Id.*

³²⁶ *Southwest Power Pool*, 140 FERC ¶ 61,225 at P2.

³²⁷ *Id.* at PP12, 14.

³²⁸ *Id.* at P15 (citing 18 C.F.R. 292.307(b)).

³²⁹ *Pioneer Wind Park*, 145 FERC ¶ 61,215 at P3.

³³⁰ *Id.* at P36.

³³¹ *Id.* at P38.

have already covered the costs associated with ensuring the deliverability of their output, and certainly has not excused QFs from responsibility for delivery-related costs.³³² FERC’s decisions thus distinguish this initial cost-allocation process from a utility’s ongoing system-management and possible curtailment issues—a distinction that the Blue Marmots attempt to ignore in this case.

b. PáTu

Next, the Blue Marmots point to FERC’s decisions in *PáTu*, which they cite for the twin propositions that a QF’s “obligation to pay for transmission ends at the POD” and that what happens with output after it reaches the POD is the utility’s problem and not the QF’s.³³³ However, the Blue Marmots completely misconstrue the implications of FERC’s decisions, which concerned the *method* by which the utility would receive QF output—not whether such delivery was possible or what the costs necessary to achieve delivery might be.³³⁴ Specifically, in *PáTu* the QF sought to deliver its output to PGE using dynamic, sub-hourly transfers, arguing that its existing scheduling process prevented the project from delivering its entire net output.³³⁵ PGE disagreed, citing the additional costs and logistical challenges posed by dynamic transfers.³³⁶ FERC denied the QF’s request, refusing to require the Company to implement dynamic transfers.³³⁷ In denying the QF’s request, FERC reaffirmed that it is the utility’s responsibility to manage a QF’s output once it reached PGE’s “system.”³³⁸

In sum, as with the curtailment decisions discussed above, FERC’s decisions in *PáTu* assumed that the relevant interface (there, the BPA-PGE interface) was unconstrained and that delivery could therefore be achieved. FERC’s decisions did *not* address whether a QF could achieve delivery by reserving transmission to a fully constrained interface. Moreover, FERC did

³³² See, e.g., *Exelon*, 140 FERC ¶ 61,152 at P8 (noting that QFs had already “funded all required upgrades many years before”).

³³³ Blue Marmots’ Opening Brief at 30-31; see also *id.* at 6 (claiming that FERC has found the Blue Marmots’ transmission arrangements to be “reasonable and sufficient for QF power deliveries under PURPA” while citing no authority).

³³⁴ *PáTu*, 150 FERC ¶ 61,032 at P1.

³³⁵ *Id.* at P53.

³³⁶ *Id.* at P41 (stating “that dynamic scheduling was not a prudent economic decision”).

³³⁷ *Id.* at P54.

³³⁸ *PáTu*, 151 FERC ¶ 61,223 at P56.

not and has not excused a QF from responsibility for the costs necessary to achieve delivery—on the contrary, FERC specifically stated that “*the QF is responsible for delivering its net output to the purchasing utility.*”³³⁹ Thus, consistent with FERC’s decisions in *PáTu*, PGE agrees that it will be responsible for managing the Blue Marmots’ output *once the Blue Marmots have successfully delivered their output to PGE’s system.* Nonetheless, the question remains whether the Blue Marmots have actually achieved delivery by reserving transmission to a fully subscribed interface and, even if delivery has been achieved, whether the Blue Marmots must be responsible for any costs caused by accepting their output.

c. Kootenai

Lastly, the Blue Marmots claim that FERC’s *Kootenai* decision “shows that a QF has the right to have a utility purchase its power if it can show delivery of the power to the point where the ownership of the line changes to the purchasing utility.”³⁴⁰ But in *Kootenai*, the path by which the QF’s output would be transmitted was undisputed and there was no question that delivery was possible along the agreed-upon path—rather, the question was where along that path the transfer would be deemed to have been completed. Specifically, FERC was asked to interpret an agreement with a specified delivery point in order to determine whether the QF was entitled to Idaho Power’s Oregon-specific avoided cost rates.³⁴¹ While the point of delivery between Avista (the wheeling utility) and Idaho Power (the purchasing utility) was located in Idaho for scheduling purposes, the physical point of ownership change between the two utilities’ facilities was located in Oregon.³⁴² While not initiating an enforcement action, FERC commented that the proper point of delivery was the physical point of change in ownership of transmission facilities, thus entitling the QF to the utility’s Oregon avoided cost rates.

³³⁹ *Id.* at P47 (emphasis added).

³⁴⁰ Blue Marmots’ Opening Brief at 30.

³⁴¹ *Kootenai*, 143 FERC ¶ 61,232 at P5 (stating that the agreement between Kootenai and Avista, the wheeling utility, described the point of delivery as “the point on the Lolo-Oxbow 230 kV transmission line where the 230 kV facilities of Idaho Power Company and Avista are interconnected and, for scheduling purposes, the LOLO POD”).

³⁴² *Id.* at P3 n.6; *see also id.* at PP30-32 (discussing the utilities’ facilities and their physical interconnection).

Thus, FERC was not asked to resolve, and did not comment upon, whether a QF can deliver to a utility across a fully subscribed interface, or whether a QF has a right to insist upon a specific point of delivery. On the contrary, FERC made clear that a QF has “discretion to choose to sell to a more distant utility” only “*as long as the QF can deliver its power to the utility,*” thereby confirming PGE’s position that a QF cannot impose obligations on the purchasing utility where delivery is impossible.³⁴³ As a result, FERC appears to implicitly accept that a QF can, in fact, be unable to sell its power to a distant utility due to deliverability constraints.

In short, the Blue Marmots’ FERC cases have no bearing on the central concerns in this case: (1) the Blue Marmots have not achieved delivery by reserving transmission to a fully subscribed interface; and (2) the Blue Marmots remain responsible for the costs associated with accommodating their output. Such requirements in no way “condition” PGE’s mandatory purchase obligation and, indeed, are consistent with FERC’s clear direction that QFs must bear the costs caused by their projects.

D. The Blue Marmots’ LEOs do not give them the right to deliver to the PACW-PGE interface and to shift the resulting costs to PGE’s customers.

Despite the clear outcome dictated by PURPA’s customer-indifference standard, the Blue Marmots spend a substantial portion of their briefing arguing that they are nonetheless immune from delivery-related costs because their projects have established LEOs—which they claim are the equivalent of fully executed PPAs.³⁴⁴ This position misconstrues the nature of a LEO, as well as what the Blue Marmots’ obligations would be under the PPAs, if they were fully effective.

The concept of a noncontractual LEO was created by FERC to address the problem of utility delays in the contracting process, where those delays lead to QFs receiving later (and lower) avoided cost prices. As described by this Commission, a LEO is a means for a QF “to receive more advantageous per-megawatt-hour payments than it might otherwise be able to negotiate,”³⁴⁵

³⁴³ *Id.* at P33 (emphasis added).

³⁴⁴ Blue Marmots’ Opening Brief at 8-42 (discussing the scope and implications of the Blue Marmots’ LEOs).

³⁴⁵ *In the Matter of the Complaint of Portland General Elec. Co. Against Covanta Marion, Inc.*, Docket No. UM 1887, Order No. 18-169 at 9 (May 16, 2018).

and “is formed *for the purpose of establishing an avoided cost price.*”³⁴⁶ FERC has similarly explained that the purpose of establishing a LEO is to ensure that the QF is not subject to “a later and lower avoided cost” due to delays caused by the utility.³⁴⁷ The Commission’s rules dictate that a QF establishes a LEO when it “signs a final draft of an executable standard contract[.]”³⁴⁸ Here, PGE agrees that the Blue Marmots maintain a right to the avoided cost prices in effect when they signed executable PPAs on March 29, 2017, meaning that the central purpose of a LEO has been served.³⁴⁹

However, the Blue Marmots now attempt to expand the rights established by a LEO, arguing that the LEOs render their partially executed PPAs fully effective.³⁵⁰ The Blue Marmots further argue that the PPAs’ terms and conditions entitle the Blue Marmots both to deliver at the PACW-PGE interface,³⁵¹ and to avoid responsibility for any additional costs imposed by their delivery.³⁵² In other words, the Blue Marmots argue that their partially executed PPAs are now binding, and that these PPAs guarantee the Blue Marmots the right to deliver at the PACW-PGE interface while shielding them from any associated costs.³⁵³ In addition, the Blue Marmots claim that, even if their LEOs only fixed avoided cost prices, these prices would be undermined if they can be required to bear additional costs.³⁵⁴

The Blue Marmots’ claims fail to reconcile the plain language of the PPAs, improperly broaden the definition of a LEO, and ignore consistent FERC and Commission precedent, as detailed below.

³⁴⁶ Order No. 16-174 at 27 (emphasis added).

³⁴⁷ *FLS Energy, Inc.*, 157 FERC ¶ 61,211 at P25 (Dec. 15, 2016) (emphasis added).

³⁴⁸ Order No. 16-174 at 27.

³⁴⁹ PGE/100, Greene-Moore/8. Blue Marmot VIII did not sign a final executable PPA, but PGE agreed to honor the then-effective avoided cost prices for that project while the parties resolved the delivery issue. Blue Marmot/200, Talbott/7; Blue Marmots’ Opening Brief at 12.

³⁵⁰ Blue Marmots’ Opening Brief at 17.

³⁵¹ Blue Marmots’ Opening Brief at 17 (claiming that “the terms of the PPA regarding delivery of the power . . . allow for the Blue Marmots to deliver their output to the PACW.PGE interface”).

³⁵² Blue Marmots’ Opening Brief at 4.

³⁵³ Blue Marmots’ Opening Brief at 15.

³⁵⁴ Blue Marmots’ Opening Brief at 69 (arguing that imposing delivery-related costs would “adjust” the Blue Marmots’ avoided cost rates).

1. Even if the Blue Marmots' LEOs rendered the partially executed PPAs fully effective, the Blue Marmots still are not entitled to deliver at the PACW-PGE interface and must pay for the costs necessary to establish delivery.

Even if the Blue Marmots' LEOs made their PPAs fully effective, the plain terms of the PPAs themselves require the Blue Marmots to be responsible for the costs necessary to deliver their output, and do not entitle the projects to deliver at the PACW-PGE interface.³⁵⁵ Therefore, the Commission should not take up the Blue Marmots' efforts to expand the definition of a LEO because the language of the PPAs would require the same result.

a. The PPAs require the Blue Marmots to bear delivery-related costs.

Section 3.1.11 of the Blue Marmots' partially executed PPAs states that "[t]he cost of delivering energy from the Facility to PGE is the sole responsibility of the Seller."³⁵⁶ The Blue Marmots do not mention or otherwise comment on this obligation in the course of their briefing. Nonetheless, this core responsibility has not been fulfilled merely by reserving transmission to a fully subscribed interface.³⁵⁷ Thus, to the extent that the Commission feels bound to apply the terms and conditions of the partially executed PPAs, the Commission can and *must* conclude that the costs necessary to facilitate the Blue Marmots' delivery remain the Blue Marmots' responsibility under the terms of the PPAs. As discussed in more detail above, in Section V.C.2, the Blue Marmots' existing purchase of transmission to a fully subscribed interface is not sufficient to establish delivery because, logically, delivery cannot be achieved where receipt is not possible.

³⁵⁵ Blue Marmot/201, Talbott/13. PGE's position is entirely consistent with the position taken in UM 1610, in which PGE urged the Commission to adopt a rule fixing a QF's avoided cost prices only after there was sufficient opportunity to demonstrate that the QF was truly viable. *See, e.g.*, Docket No. UM 1610, PGE's Prehearing Brief at 10 (noting that it would be inappropriate to "require a utility to accept and pay for energy from a QF that the utility has little or no information about"). Thus, the Blue Marmots' claim that PGE should be estopped from distinguishing between a LEO to specific avoided cost prices and a fully executed PPA is misplaced. *See* Blue Marmots' Opening Brief at 20-21.

³⁵⁶ Blue Marmot/201, Talbott/13.

³⁵⁷ *See supra* Section IV.C (explaining that the Blue Marmots have not achieved delivery by reserving transmission to a fully subscribed interface).

b. The PPAs do not specify a point of delivery other than “PGE’s system.”

Moreover, the draft PPAs also do not specify a right to deliver at the PACW-PGE interface.³⁵⁸ As a result, even if the PPA were fully executed, the delivery point would not be fixed.

The Blue Marmots claim that the PPAs entitle them to deliver at the PACW-PGE interface for three reasons: (1) because “there is only one point of delivery that can be used to provide power to PGE from PacifiCorp’s service territory”;³⁵⁹ (2) because an exhibit (“Exhibit B”) to the PPAs does not provide for any transmission arrangements beyond transmission service over PacifiCorp’s system, despite the fact that PGE generally requires QFs to demonstrate that they have all of the agreements necessary to effectuate their PPAs;³⁶⁰ and (3) if the PPAs truly did not specify a delivery point, then PGE would have signed them.³⁶¹ All of these arguments must be rejected.

First, the PACW-PGE interface is *not* the only means of transferring power from PacifiCorp to PGE, and certainly the Blue Marmots’ output would not, as they claim, “*have to be* delivered at that interface.”³⁶² As PGE has explained, the only practical means of accepting the Blue Marmots’ power at present is via the BPA-PGE interface.³⁶³ The Blue Marmots’ argument that the PACW-PGE interface is the “only” reasonable location for delivery depends on their assumption that delivery through the PACW-PGE interface is feasible.³⁶⁴ But delivery through a fully subscribed interface is neither feasible nor reasonable. On the contrary, given that the PPAs specify that the Blue Marmots must deliver to “the PGE system,”³⁶⁵ and that the BPA-PGE

³⁵⁸ Blue Marmots’ Opening Brief at 25.

³⁵⁹ Blue Marmots’ Opening Brief at 25.

³⁶⁰ Blue Marmots’ Opening Brief at 26.

³⁶¹ Blue Marmots’ Opening Brief at 26 (“If PGE legitimately believed that the PPAs prevented the Blue Marmots from delivering at PACW.PGE, then it could have counter-signed them without objection and relied upon those terms to refuse to accept delivery.”). The Blue Marmots also appear to suggest that PGE knew they intended to deliver via the PACW-PGE interface and “refused to discuss” the Blue Marmots’ questions regarding delivery. Blue Marmots’ Opening Brief at 24. However, there is no support in the record for this statement. Indeed, the cross examination cited by the Blue Marmots merely acknowledges that PGE and the Blue Marmots were in ongoing communication regarding the contracting process. Hearing Transcript, Vol. I at 77-80.

³⁶² Blue Marmots’ Opening Brief at 25 (emphasis added).

³⁶³ See *supra* Section IV.A.

³⁶⁴ Blue Marmots’ Opening Brief at 17 (claiming that “PGE can in fact receive the power using the ATC that its Merchant function has at the PACW.PGE interface”).

³⁶⁵ Blue Marmots/201, Talbott/9.

interface is the only practical—and by far the least expensive—means of reaching PGE’s system, the contract logically directs the Blue Marmots to deliver their output at that location.³⁶⁶

Second, Exhibit B to the PPAs includes “Required Facility Documents,” which are defined as “all licenses, permits, authorizations, and agreements necessary for construction, operation, interconnection, and maintenance of the Facility including without limitation those set forth in Exhibit B.”³⁶⁷ While it is true that Exhibit B to PGE’s standard PPA normally incorporates the necessary transmission arrangements to allow a QF to deliver its output to PGE, the Blue Marmots’ Exhibit B did not include additional transmission arrangements because the parties *were not aware that such arrangements were required*. However, once PGE became aware that the Blue Marmots were attempting to deliver to a constrained interface, it became clear that the Blue Marmots could *not* perform their delivery obligations with only the arrangements included in Exhibit B.³⁶⁸ The lack of additional transmission arrangements in Exhibit B is precisely the reason why PGE could not and did not execute the contracts. Indeed, the Blue Marmots’ own arguments relying on the sufficiency of Exhibit B suggest that PGE could not have executed the contracts without implying that PGE considered the Blue Marmots’ delivery arrangements sufficient—which they are not.

Third, it would have been wholly irresponsible for PGE to execute the PPAs knowing full well that the parties disagreed on the meaning of the contracts’ central terms. Having learned of the infeasibility of the Blue Marmots’ delivery plans, PGE would not and could not expose its customers to any increased risk of bearing the additional costs those plans would impose. As the Commission recently commented, utilities are not permitted, even in the interest of practicality and efficiency, to absorb costs over and above the utility’s avoided costs when purchasing a QF’s output.³⁶⁹

³⁶⁶ See *supra* Section IV.B.2.b.ii (explaining the relative costs of foregoing EIM benefits and obtaining the necessary transmission to achieve delivery at the BPA-PGE interface).

³⁶⁷ Blue Marmots/201, Talbott/10.

³⁶⁸ PGE/100, Greene-Moore/11 (explaining that the PACW-PGE interface was constrained and that the Blue Marmots would need to choose an alternative delivery point).

³⁶⁹ Order No. 18-181 at 5 (concluding that because the Commission had determined that “third-party transmission costs [were] not accounted for in the avoided cost price calculation,” the Commission had also “effectively precluded” the utility from failing to assess those costs from future QFs).

In sum, the Commission should conclude that the Blue Marmots are not entitled to deliver at the PACW-PGE interface while imposing the costs necessary to enable their delivery on customers because, regardless of whether the Blue Marmots' LEOs made their PPAs fully effective, the PPAs themselves do not entitle the projects to deliver at the PACW-PGE interface and specifically assign the Blue Marmots responsibility for any delivery-related costs.

2. The Blue Marmots' LEOs did not render the partially executed PPAs effective.

Even if the Commission concludes that the PPAs do *not* allow PGE to require delivery at the BPA-PGE interface, and do *not* require the Blue Marmots to bear any corresponding costs, the Commission should nonetheless agree that PGE may require the Blue Marmots to bear responsibility for their delivery-related costs because the contracts have not been fully executed.

The Blue Marmots argue that their unilateral execution of the standard PPAs rendered them operative—thereby fixing not only the relevant avoided cost prices, but also all the terms and conditions contained in those PPAs—because they have agreed to abide by all such terms and conditions³⁷⁰ and because, as a factual matter, they *believed* that they were entitled to all of the terms and conditions in the standard PPAs.³⁷¹ This argument is unpersuasive. The Blue Marmots have neither a factual nor legal basis for claiming that their one-sided execution made the PPAs effective because (a) FERC and this Commission have clearly distinguished between a LEO and an executed contract, describing a LEO as establishing avoided cost prices only; (b) the Blue Marmots' claim would render central provisions of PGE's standard PPAs meaningless; and (c) PGE specifically and repeatedly told the Blue Marmots that their signature would establish only avoided cost prices, while the PPAs would become effective only once signed by both parties.

³⁷⁰ Blue Marmots' Opening Brief at 4 (asserting that "the terms of the PPAs that PGE provided . . . are binding" because the Blue Marmots signed the PPAs); *see also id.* at 74 (claiming that there is no "meaningful distinction" between fully executed PPAs and the Blue Marmots' LEOs).

³⁷¹ Blue Marmots' Opening Brief at 23 ("[T]he economic value of a contract is based on the totality of *all* terms and conditions[.]") (emphasis added).

a. *Both the Commission and FERC describe a LEO as establishing avoided cost rates only.*

The Blue Marmots' definition of a LEO ignores the central purpose of a LEO, which is to fix a QF's avoided cost prices where a utility's delay would result in a QF receiving a lower avoided cost rate.³⁷² Neither FERC nor this Commission has suggested that a LEO functions to execute a partially executed contract. On the contrary, both the Commission and FERC distinguish between a LEO and an executed contract, and repeatedly describe a LEO as fixing a QF's avoided cost prices only.

For instance, in Order No. 16-174, the Commission considered "when a LEO arises *outside of an executed contract*,"³⁷³ and clarified that a LEO sets "the date for which avoided costs are calculated."³⁷⁴ FERC's precedent likewise defines a LEO by reference to price alone, repeatedly describing LEOs as establishing only the relevant "avoided cost rate."³⁷⁵ More explicitly, FERC has referred to LEOs as "non-contractual legally enforceable obligations," clearly stating that LEOs are not the same thing as fully executed contracts.³⁷⁶ In *FLS Energy, Inc.*, FERC clarified that a QF may establish a LEO without entering a fully executed contract, and indeed that a QF's LEO *cannot* be limited to the creation of such a contract.³⁷⁷ That is, a QF's commitment to sell power can "result either in contracts or in *non-contractual*, but binding, legally enforceable

³⁷² PGE's Brett Greene attempted to explain this narrow purpose of a LEO during cross examination, highlighted by the Blue Marmots' Opening Brief at 14. Given that the utility is being required to purchase the QF's output, practically speaking it is the utility that is *obligated* under a LEO—whereas the QF is voluntarily initiating the sale.

³⁷³ Order No. 16-174 at 23 (emphasis added).

³⁷⁴ Order No. 16-174 at 24.

³⁷⁵ See, e.g., *Windham Solar LLC & Allco Fin. Ltd.*, 157 FERC ¶ 61,134, at 61,475 (Nov. 22, 2016) ("[R]egardless of whether a QF can provide firm output, that QF has the option to sell its output pursuant to a legally enforceable obligation *with a forecasted avoided cost rate*." (emphasis added)); *Winding Creek Solar LLC*, 151 FERC ¶ 61,103, at P6 (May 8, 2015) ("[A]s long as a state provides QFs the opportunity to enter into long-term legally enforceable obligations at *avoided-cost rates*, a state may also have alternative programs that QFs and electric utilities may agree to participate in.") (emphasis added).

³⁷⁶ *Exelon Wind*, 140 FERC ¶ 61,152 at 61,697 n.4 (citing *JD Wind*, 129 FERC ¶ 61,148 at P25 (stating that a QF can establish "a non-contractual, but still legally enforceable, obligation" under PURPA)). Indeed, the Blue Marmots note that LEOs are "non-contractual," thus recognizing that, in crucial respects, a LEO is not the same as a fully executed contract. Blue Marmots' Opening Brief at 15.

³⁷⁷ *FLS Energy*, 157 FERC ¶ 61,211 at P24 (noting that "a state may not limit the methods through which a legally enforceable obligation may be created to only a fully-executed contract").

obligations.”³⁷⁸ Similarly, in *Midwest Renewable Energy Projects*, FERC specifically distinguished a contract from a LEO that “ha[s] not yet ripened into” a contract—reaffirming that a LEO is not simply interchangeable with a fully executed contract.³⁷⁹

To further clarify this terminology, FERC defines a “rate” separately from “avoided costs.”³⁸⁰ “Rates” are broadly defined as “any price, rate, charge, or classification made, demanded, observed or received with respect to the sale or purchase of electric energy or capacity, or any rule, regulation, or practice respecting any such rate, charge, or classification, and any contract pertaining to the sale or purchase of electric energy of capacity.”³⁸¹ By comparison, the phrase “avoided costs” refers to the incremental cost impact for utilities.³⁸² Thus, when FERC refers to LEOs setting “avoided cost rates,” it is the “estimated avoided cost of energy on [a utility’s] system” that is fixed—not the more general term of “rates.”³⁸³

The Blue Marmots suggest that their PPAs must nonetheless be fully effective because their LEOs were formed by signing specific PPAs, and that QFs are entitled to a standard suite of terms and conditions through PGE’s standard PPA.³⁸⁴ Yet this fact does not impact the clear implication of FERC and Commission precedent defining a LEO as fixing a particular avoided cost price. By the Blue Marmots’ reasoning, they could present a novel and costly situation not envisioned by the terms of a standard PPA, and customers would be helpless to account for the particular costs imposed by their projects. On the contrary, and as the Blue Marmots acknowledge, mechanisms within the PPAs, such as Exhibit B, allow for the parties to account for special costs imposed by a QF in order to protect customers.³⁸⁵

³⁷⁸ *JD Wind*, 129 FERC ¶ 61,148, at P25 (emphasis added).

³⁷⁹ *Midwest Renewable Energy Projects*, 116 FERC ¶ 61,017, at PP2, 15-16 (July 7, 2006) (interpreting “any contract or obligation” language in Section 210(m) of PURPA and concluding that the terms “contract” and “obligation” are not synonymous and that the language therefore encompasses both executed contracts and legally enforceable obligations “that had not yet ripened into contracts.”).

³⁸⁰ 18 C.F.R. 292.101 (“Definitions”).

³⁸¹ 18 CFR 292.101(b)(5).

³⁸² 18 CFR 292.101(b)(5).

³⁸³ Order No. 69 at 12218.

³⁸⁴ Blue Marmots’ Opening Brief at 18-19.

³⁸⁵ Blue Marmots/201, Talbott/10.

In sum, the body of Commission and FERC precedent has repeatedly described LEOs as discrete and apart from contracts. There is no legal support for the Blue Marmots' claim that a QF's sole signature is sufficient to render a PPA effective on behalf of both parties.

b. If a LEO made the PPAs fully effective, then portions of PGE's standard PPA would be rendered meaningless.

Interpreting the Blue Marmots' LEOs as being identical to a fully executed PPA would nullify critical sections of the standard PPAs.³⁸⁶ The Commission interprets standard PPAs using established contract interpretation principles,³⁸⁷ which require a contract to be interpreted "to give effect to all of its provisions."³⁸⁸ The Commission analyzes disputes about a standard PPA "with the understanding that the contract . . . has been previously deemed compliant with PURPA and implementing federal and state law."³⁸⁹

Here, the very first full sentence of the standard PPAs states that the contract "is effective upon execution *by both Parties*."³⁹⁰ Later on, Section 2.1 again specifies that the PPAs' terms and conditions will become effective only "upon execution by both parties."³⁹¹ The meaning of these terms is undisputed and unambiguous.³⁹² But if the Blue Marmots' unilateral signatures were

³⁸⁶ See *Portland Gen. Elec. Co. v. Pacific Nw. Solar, LLC*, Docket No. UM 1894, Order No. 18-284 at 6 (Aug. 2, 2018) (declining to interpret PGE's standard PPA in a way that "would give little certainty and meaning" to the representations and warranties of PGE's standard PPA).

³⁸⁷ *Id.* at 5 ("When examining the language of a provision of a contract, we look at both the text of the provision and the context of that provision within the meaning and purpose of the contract as a whole in accordance with the standards for analysis prescribed under Oregon law.").

³⁸⁸ *Williams v. RJ Reynolds Tobacco Co.*, 351 Or 368, 271 P3d 103 (2011) ("The court must, if possible, construe the contract so as to give effect to all of its provisions."); see also ORS 42.230 ("In the construction of an instrument, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; **and** where there are several provisions or particulars, such construction is, if possible, to be adopted as will give effect to all.") (emphasis in original).

³⁸⁹ Order No. 14-287 at 13.

³⁹⁰ Blue Marmot/201, Talbott/6 (emphasis added).

³⁹¹ Blue Marmot/201, Talbott/6; see also Blue Marmot/201, Talbott/11 ("This Agreement shall become effective upon execution by both Parties.").

³⁹² *Batzer Construction v. Boyer*, 204 Or App 309, 317 (2006) (noting that contract interpretation begins by determining whether the provision at issue is unambiguous); see also Blue Marmots' Opening Brief (neither mentioning nor disputing the meaning of this provision). At no point in the Blue Marmots' Opening Brief do they mention this dispositive contract language—let alone dispute its meaning. See generally Blue Marmots' Opening Brief. This silence is perplexing given the Blue Marmots' insistence that *all* of the terms and conditions of the partially executed PPAs must apply to their projects. Blue Marmots' Opening Brief at 23 ("[T]he economic value of a contract is based on the totality of *all* terms and conditions[.]") (emphasis added).

sufficient to execute the PPAs, then these central provisions would be effectively nullified. Indeed, based on the Blue Marmots' stated understanding, there would be no need for a utility to sign a PPA at all—negating the need for another provision of the PPAs: PGE's signature line.³⁹³

The Blue Marmots' efforts to ignore critical portions of the standard PPAs are particularly troubling because a utility's standard contract is drafted at the Commission's direction, and is subject to the Commission's review, revision, and approval.³⁹⁴ Here, the Commission approved the "upon execution" provision of PGE's PPAs, thus suggesting that this provision—requiring the utility's signature to fix the contract's terms and conditions—comports with a QF's ability to establish a LEO unilaterally; nor has the Commission subsequently directed PGE to withdraw this provision of the Company's standard PPA. In sum, both to give effect to the unambiguous terms of the standard PPAs and to reconcile the Commission's approval, the Blue Marmots' unilateral signatures cannot have been sufficient to fully execute the PPAs.

c. As a factual matter, the Blue Marmots had no basis to believe that a LEO fixed the terms and conditions of the partially executed PPAs.

Finally, the Blue Marmots argue that they are entitled to the full set of terms and conditions in the partially executed PPAs because they believed that they "were entitled to the prices *and* the contract terms and conditions in place when the LEO was established"—apparently suggesting that their misunderstanding creates an affirmative obligation.³⁹⁵ Regardless of whether one party's misapprehension would translate into a legal obligation on behalf of the other, the Blue Marmots' claimed understanding is wholly inconsistent with written communications between the parties during contract negotiations and with the express terms of the PPAs.

Specifically, when PGE provided draft PPAs to the Blue Marmots, the cover letter clearly explained that the PPAs would become effective only once *both* parties had signed:

³⁹³ Blue Marmot/201, Talbott/22 (showing space for PGE's signature).

³⁹⁴ Order No. 14-287 at 13 (noting that standard PPA provisions are reviewed and approved by the Commission).

³⁹⁵ Blue Marmot/500, Irvin-Talbott/9 (emphasis in original).

No binding Standard PPA will exist between PGE and Blue Marmot V LLC unless and until PGE has provided Blue Marmot V LLC with an executable Standard PPA and **both** Blue Marmot V LLC **and PGE** have executed the document.³⁹⁶

The letter also distinguished between a fully executed PPA and a LEO, with the latter establishing only pricing:

Once you receive an executable Standard PPA, you can execute it without alteration and establish a legally enforceable obligation. Pursuant to PGE's Schedule 201 at Sheet No. 201-3 and OPUC Order No. 16-174 at 3, ***the power purchase prices*** you are entitled to receive under your Standard PPA will be based on PGE's Standard Avoided Costs or Renewable Avoided Costs ***in effect at the time that you execute an executable Standard PPA***.[.]³⁹⁷

That is, the Blue Marmots were specifically told that their unilateral execution would fix the relevant power purchase prices, while the PPA as a whole would become binding only once *both* parties had executed the contract.

A similar communication accompanied the Blue Marmots' executable PPAs, clarifying that by signing, the Blue Marmots would establish a LEO that would fix the projects' avoided cost prices only:

If Seller executes the enclosed agreement without alteration and returns the partially executed agreement to PGE for full execution, Seller will have established a legally enforceable obligation. ***Seller is entitled to receive PGE's Renewable Avoided Costs*** in effect at the time Seller executes the enclosed agreement without alteration.³⁹⁸

Thus, it is clear that the Blue Marmots were fully informed regarding what they would establish by signing and when the PPA's terms and conditions would be fully effective.

Moreover, each of these communications was accompanied by the standard PPAs themselves, which, as described above, clearly stated that the relevant terms and conditions would only be fixed upon execution by both parties. In sum, given the repeated clarifications provided by PGE and the express provision of the PPAs, it is difficult to conceive how the Blue Marmots could have believed that their signatures alone established fully effective PPAs.

³⁹⁶ Attachment A, PGE/817 at 1 (emphasis added); *see also* Hearing Transcript, Vol. I at 17 (confirming "that the Blue Marmots received identical transmittal letters with each of the final draft PPAs for each of the Blue Marmots").

³⁹⁷ Attachment A, PGE/817 at 2 (emphasis added).

³⁹⁸ *See, e.g.*, Blue Marmot/201, Talbott/124 (emphasis added).

The Blue Marmots also argue that the terms and conditions must have been fixed because the Blue Marmots felt bound to proceed under the terms of the partially executed PPAs—including procuring transmission and delivering by the commercial operation date.³⁹⁹ The Blue Marmots state that they took this step “very seriously” in light of the duties (and potential for damages) imposed by the PPAs.⁴⁰⁰ However, the Blue Marmots’ concerns are tied to terms in the PPAs—not to the projects’ LEOs. Certainly, when two parties execute a contract, the first signatory must be comfortable with all of the terms and conditions and be prepared for its obligations to be triggered by the other party. Nonetheless, if the other party does not sign, the first party’s obligations are not triggered.⁴⁰¹

Far from PGE being insensitive to its obligations, as the Blue Marmots claim,⁴⁰² both parties have approached the execution of these PPAs with serious consideration. As the first party to execute, the Blue Marmots rightfully considered the duties that the PPAs would impose once they were fully executed. And as the second party to execute, PGE conducted a thorough final review before committing itself and its customers to the terms and conditions of the PPAs.⁴⁰³ Having established through this review that a serious deliverability issue existed,⁴⁰⁴ it would have been wholly irresponsible for PGE to proceed to execute the PPAs without first resolving the issue.

3. The Blue Marmots’ LEOs to specific avoided cost prices do not immunize them from bearing delivery costs properly allocable to them.

The Blue Marmots argue that, if a utility could raise additional costs after a LEO is formed, then the avoided cost prices would be meaningless.⁴⁰⁵ However, there is no support for such a

³⁹⁹ Blue Marmots’ Opening Brief at 22.

⁴⁰⁰ Blue Marmots’ Opening Brief at 21.

⁴⁰¹ *Pacific Photocopy, Inc. v. Canon U.S.A., Inc.*, 57 Or App 752, 757, rev den 293 Or 635 (1982) (“It is a fundamental rule of contract law that the provisions of an offer as to the place and manner of acceptance must be complied with.”); see also *Cochran v. Connell*, 53 Or App 933, 937 (1981) (“An offeror may restrict the manner of acceptance, provided his intention to do so is clearly expressed.”).

⁴⁰² See, e.g., Blue Marmots’ Opening Brief at 22 (describing PGE’s approach to its obligations as “apathetic”).

⁴⁰³ PGE/100, Greene-Moore/8-9 (“After PGE received the contracts signed by EDPR, the Company circulated the agreements for final legal and commercial review and signing.”).

⁴⁰⁴ PGE/100, Greene-Moore/9 (before signing, PGE “became aware that the PACW-PGE interface was constrained”).

⁴⁰⁵ Blue Marmots’ Opening Brief at 69 (arguing that imposing delivery-related costs would “adjust” the Blue Marmots’ avoided cost rates).

broad understanding of avoided cost prices and, indeed, FERC has specifically recognized that requiring a QF to incur additional costs does not undermine the QF's avoided cost prices.⁴⁰⁶

In *PáTu*, an off-system QF with a fully executed contract argued that it could not be required to pay the costs associated with providing power to PGE, and that PGE was responsible for establishing a pseudo-tie (along with the associated costs)⁴⁰⁷ to allow the QF to freely deliver its full output.⁴⁰⁸ In particular, the QF claimed paying additional charges would functionally change its avoided cost rate.⁴⁰⁹ FERC disagreed, noting that the QF “has chosen to sell to [PGE] rather than to its host utility” and, “[a]s such, PáTu is responsible for the costs it incurs to deliver its output over BPA’s system to [PGE].”⁴¹⁰ Thus, a QF’s avoided cost rate is not jeopardized merely by incurring additional costs necessary to achieve delivery.

Moreover, QFs are commonly required to bear additional interconnection- and transmission-related costs after establishing LEOs, and these costs do not undermine the QF’s right to its fixed avoided cost prices.⁴¹¹ As the Commission recently explained, the costs associated with a QF’s decision to site in a constrained geographic location *must* be assessed through some form of addendum to avoid violating customer indifference principles, and these costs are *in addition to* the QF’s avoided costs.⁴¹² Here, PGE’s standard avoided cost rates do not account for system upgrades necessary to achieve delivery via a fully subscribed interface or for the second

⁴⁰⁶ *PáTu*, 154 FERC ¶ 61,167, at P40 (holding that the costs the QF incurred for wind integration services “should not be interpreted to mean that [the QF] is not receiving the full avoided cost rate”).

⁴⁰⁷ A pseudo-tie is a form of dynamic transfer service used to treat output physically located in one BAA as part of a different BAA, thereby establishing a “virtual” tie-line. See NERC Glossary of Terms, available at https://www.nerc.com/files/glossary_of_terms.pdf.

⁴⁰⁸ 154 FERC ¶ 61,167, at P26 (“PáTu reiterates its arguments that, since it is still required to pay wind integration charges to BPA, it is being charged twice since the Oregon Commission included the wind integration costs in calculating the avoided cost rate.”).

⁴⁰⁹ *Id.* at P26.

⁴¹⁰ *Id.* at P40.

⁴¹¹ See Order No. 14-058 at 22 (concluding that QFs must pay for third-party transmission costs not included in the utility’s avoided costs in order to comport with avoided-cost principles); Order No. 16-174 at 28 (citing with approval the OPUC’s decision in Order No. 14-058); and Order No. 18-181 at 5 (citing with approval the OPUC’s decision in Order No. 14-058).

⁴¹² Order No. 18-181 at 5-6 (directing the parties to further brief two options for assigning third-party transmission costs, both of which require the addition of such costs on top of avoided cost prices).

leg of transmission necessary to deliver via an alternate interface.⁴¹³ Thus, any system upgrade or third-party transmission costs the Blue Marmots impose can and must be separately accounted for, and the allocation of such costs does not jeopardize the Blue Marmots' avoided cost prices.

The Blue Marmots argue that the Ninth Circuit's decision in *Independent Energy Producers Association, Inc. (IEPA)* means that avoided cost prices preclude the imposition of additional costs.⁴¹⁴ However, *IEPA* concerned a program that was specifically designed to reopen and revise existing QFs' avoided cost prices.⁴¹⁵ In that case, the California Public Utilities Commission (CPUC) program allowed utilities to lower preexisting QFs' avoided cost prices based on utilities' determinations that the QFs were failing to comply with federal operating and efficiency standards.⁴¹⁶ Thus, the CPUC's program did not concern the allocation of costs not otherwise reflected in avoided cost rates, but instead allowed utilities to determine that QFs were failing to meet the definition of qualifying facilities, and then lower such "non-complying" QFs' avoided cost rates.⁴¹⁷ In overturning the CPUC's program, the court concluded that the CPUC was functionally granting utilities "the authority to make QF status determinations," a role that "resides exclusively" with FERC.⁴¹⁸ The court was *not* asked to consider whether a QF could be required to bear responsibility for costs not reflected in that QF's avoided cost prices, or whether the imposition of such costs would functionally void the QF's avoided cost rate.

In sum, a QF's LEO establishes the relevant avoided cost price in effect at the time the QF executes a PPA. However, this LEO does not grant immunity from responsibility for costs caused by that QF; instead, QFs must bear such costs where necessary to protect utility customers.

⁴¹³ PGE/100, Greene-Moore/23-24; *see also* Blue Marmot/400, Moyer/3 ("I note that the avoided cost for which the Blue Marmots are eligible does not reflect the cost of transmission upgrades[.]").

⁴¹⁴ Blue Marmots' Opening Brief at 69.

⁴¹⁵ *Indep. Energy Producers Ass'n*, 36 F.3d at 854.

⁴¹⁶ *Id.* at 852.

⁴¹⁷ *Id.* at 854.

⁴¹⁸ *Id.* at 855.

E. PGE has acted as a reasonable, good-faith, and non-discriminatory business partner.

The Blue Marmots make vague bad-faith and discrimination arguments—apparently suggesting that PGE’s alleged failures mean that PGE should bear their delivery costs. However, throughout the contracting process, PGE has acted in good faith—first by working with EDPR to develop PPAs for each of the Blue Marmot projects, and later by notifying the Blue Marmots of the lack of ATC at the PACW-PGE interface and explaining the Blue Marmots’ options for delivering their output to PGE.⁴¹⁹ PGE also diligently studied potential upgrades that might facilitate delivery via the PACW-PGE interface at a reasonable cost.⁴²⁰ In sum, PGE complied with PURPA’s mandates and the Commission’s policies and rules.

The Blue Marmots argue that PGE discriminated against them by refusing to execute their PPAs while agreeing that the three other off-system QFs with fully executed PPAs have an enforceable right to sell their output to PGE.⁴²¹ In making this argument, the Blue Marmots imply that they are in precisely the same legal position as these QFs—a view that depends on the unsupportable assumption that there is no “meaningful distinction” between a QF with an executed PPA and a QF with a LEO.⁴²² As explained above, a LEO does not establish precisely the same terms and conditions as does a fully executed standard PPA.⁴²³ Nor is there any factual basis for the Blue Marmots’ discrimination claim, as PGE has not yet determined how best to proceed with the other projects’ deliveries, and its conversations with them are ongoing.⁴²⁴

The Blue Marmots also appear to argue that PGE has discriminated against them because PGE declined to execute the PPAs after learning of the constraint at the Blue Marmots’ intended

⁴¹⁹ PGE/100, Greene-Moore/8-12 (describing the contracting process, steps taken upon learning of the lack of ATC, and communications regarding next steps).

⁴²⁰ PGE/300, Afranji-Larson-Richard/16-21 (summarizing the studies PGE performed regarding potential delivery options).

⁴²¹ Blue Marmots’ Opening Brief at 74-75 (citing ORS 757.325).

⁴²² Blue Marmots’ Opening Brief at 74.

⁴²³ See *infra* Section IV.D (explaining the distinction between a LEO and a fully executed PPA).

⁴²⁴ PGE/100, Greene-Moore/14; PGE/400, Greene/21-22.

delivery point.⁴²⁵ Yet, as explained above, it would have been irresponsible for PGE to execute PPAs with the Blue Marmots after learning that the QFs intended not only to attempt to deliver at a fully subscribed interface, but also to refuse to bear the costs associated with achieving delivery.

Separately, the Blue Marmots claim that PGE is discriminating against the Blue Marmots in favor of PGE itself by requiring the Blue Marmots to bear responsibility for the costs of system upgrades associated with their delivery.⁴²⁶ However, as explained above, the Blue Marmots must bear the costs associated with their delivery to maintain customer indifference (nor have the Blue Marmots carried their burden of proving that there is a feasible and reasonable upgrade that either party could undertake).⁴²⁷ Thus, PGE is not discriminating against the Blue Marmots by insisting that they bear the costs associated with achieving delivery of their output.

Finally, the Blue Marmots claim that PGE discriminated against them in favor of PGE itself by reserving additional transmission for the EIM after the Blue Marmots had established LEOs.⁴²⁸ The Blue Marmots are mistaken for two reasons: **First**, PGE's transmission reservation was a partial replenishment of its preexisting transmission reservation that, as a result of a restudy and recall, had been reduced from 418 MW to 276 MW.⁴²⁹ Indeed, the replenishment was insufficient to restore PGE's prior reserved amount; PGE now holds only 310 MW of firm ATC for use in the EIM—over 100 MW less than PGE's initial reservation.⁴³⁰ **Second**, even if PGE were required to forfeit the more recently acquired transmission to QFs, it would be allocated first to those QFs that had fully executed PPAs well before the Blue Marmots formed LEOs. These other QFs would almost certainly use all of the 34 MW of later-replenished capacity that the Blue Marmots seek.

⁴²⁵ Blue Marmots' Opening Brief at 75 (arguing that the Blue Marmots are entitled to the same "terms of the PPA" as other QFs with executed PPAs).

⁴²⁶ Blue Marmots' Opening Brief at 65 (asserting that PGE is "discriminating against the Blue Marmots in favor of itself").

⁴²⁷ See, *supra*, Section IV.A.2.

⁴²⁸ Blue Marmots' Opening Brief at 51-52.

⁴²⁹ PGE/200, Sims-Rodehorst-Sporborg/13 (noting that 142 MW was recalled from PGE Merchant's 418 MW reservation); PGE/300, Afranji-Larson-Richard/16.

⁴³⁰ PGE/500, Rodehorst-Moore/2.

In sum, PGE responsibly provided the Blue Marmots with options to allow the projects to proceed while accounting for their challenging siting decisions, and appropriately did not execute the PPAs once it realized that the Blue Marmots had failed to establish deliverability. The Blue Marmots are not similarly situated to any other QFs, and PGE treated them fairly in light of their specific facts and circumstances. PGE remains willing to execute their PPAs and to purchase their output once the Blue Marmots agree to make feasible delivery arrangements that do not impose costs on PGE's customers beyond those accounted for in PGE's standard avoided cost rates.

F. The Commission has jurisdiction to resolve the Blue Marmots' complaints.

Despite the Blue Marmots having brought these complaints to this Commission, they nonetheless claim that the Commission should stay this proceeding because critical, transmission-related issues in this case are subject to FERC's exclusive jurisdiction under the doctrines of field and conflict preemption.⁴³¹ The Blue Marmots' jurisdictional claims fail because this Commission has clear authority to consider transmission-related questions as part of its delegated authority to implement PURPA.⁴³² Neither field nor conflict preemption principles preclude the Commission from considering these crucial issues.⁴³³

By way of background, both field and conflict preemption are rooted in the Supremacy Clause, which provides that the Constitution and federal laws "shall be the supreme Law of the

⁴³¹ Blue Marmots' Opening Brief at 6-7 (summarizing the various transmission-related issues). While the Blue Marmots' jurisdictional objections are not fully addressed in the Blue Marmots' Opening Brief, the Blue Marmots incorporate by reference a range of such arguments raised in their prior briefing. *Id.* at 6.

⁴³² Perplexingly, the Blue Marmots simultaneously characterize the Commission as having jurisdiction to conclude that the Blue Marmots have purchased transmission service "that will deliver the power to the point of ownership change between PacifiCorp and PGE's system," thus appearing to concede that the Commission must consider and resolve the adequacy of the Blue Marmots' transmission reservation. Blue Marmots' Opening Brief at 7.

⁴³³ Earlier in this case, the Blue Marmots argued that the Commission should resolve this case by simply assuming that the Blue Marmots were correct regarding all relevant transmission-related issues. *See* Blue Marmots' Motion to Strike at 3 ("The Commission can resolve the core legal issues in this case by determining that the standard third-party FERC jurisdictional transmission arrangements commonly made by [QFs] wheeling their power to make a [PURPA] sale are sufficient to form legally enforceable obligations here, and that the Blue Marmots have made their power available to PGE[.]"). Such an argument asks the Commission to order PGE to accept the Blue Marmots' output at a constrained interface, with no understanding of the nature of the constraint, the potential costs, or the impact on PGE's customers. PGE understands that the Blue Marmots have now abandoned this argument and simply seek a stay of their own complaints.

Land,”⁴³⁴ and that federal law “preempts contrary state law.”⁴³⁵ State law can be preempted either expressly or implicitly, and courts ascertain whether a federal law preempts state law by examining legislative intent.⁴³⁶ If a federal law expressly preempts state authority, courts “need not go beyond that language to determine whether Congress intended” preemption.⁴³⁷ “In the absence of explicit statutory language signaling an intent to pre-empt,” courts will infer such intent where federal law conflicts with state law or where federal law occupies the relevant field.⁴³⁸

As relevant here, FERC has made clear that not all transmission issues are subject to its exclusive jurisdiction.⁴³⁹ Indeed, FERC has emphasized “the need for heightened cooperation between federal and state regulators in areas where there are overlapping federal and state policy concerns.”⁴⁴⁰ Most importantly, PURPA necessitates cooperative implementation by requiring states to ensure that the rates electric consumers pay for their output remain “just and reasonable,”⁴⁴¹ and that customers pay no more for QF output than the utility’s avoided cost—*i.e.*, that customers remain indifferent.⁴⁴² Thus, the Commission has the responsibility and the duty to ensure that the costs incurred by utilities to accept QF deliveries are accounted for.

⁴³⁴ U.S. Const. Art. VI, § 2.

⁴³⁵ *Hughes v. Talen Energy Mktg., LLC*, 136 S.Ct. 1288, 1297 (2016).

⁴³⁶ *Nw. Cent. Pipeline Corp. v. State Corp. Comm’n*, 489 U.S. 493, 509 (1989).

⁴³⁷ *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 484 (1996).

⁴³⁸ *Nw. Cent. Pipeline*, 489 U.S. at 509; *Talen Energy Mktg.*, 136 S.Ct. at 1297.

⁴³⁹ For example, FERC has specifically declined to exercise jurisdiction over bundled retail transmission. *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540, 21,542, 21,577-78 (May 10, 1996). The U.S. Supreme Court subsequently affirmed FERC’s decision, *New York v. FERC*, 535 U.S. 1, 25-28 (2002), and FERC has declined to revise its position, *Preventing Undue Discrimination and Preference in Transmission Service*, 115 FERC ¶ 61,211, P 61 (May 19, 2006) (“We propose to retain the jurisdictional divide we established in Order No. 888.”).

⁴⁴⁰ *Preventing Undue Discrimination and Preference in Transmission Service*, 115 FERC ¶ 61,211, P 61.

⁴⁴¹ 16 U.S.C. § 824a-3(b).

⁴⁴² *See S. Cal. Edison Co.* 71 FERC ¶ 61,269 at 62,079-80 (stating that in adopting PURPA, “Congress was not asking utilities and utility ratepayers to pay more than they otherwise would have paid for power. . . . PURPA requires an electric utility to purchase power from a QF, but only if the QF sells at a price no higher than the cost the utility would have incurred for the power if it had not purchased the QF’s energy and/or capacity, *i.e.* would have generated itself or purchased from another source. The intention was to make ratepayers indifferent as to whether the utility used more traditional sources of power or the newly-encouraged alternatives.”); *Pioneer Wind Park*, 145 FERC at P 38 n.73 (stating that FERC’s regulations permit a state to account for “transmission or distribution costs directly related to installation and maintenance of the physical facilities necessary to permit interconnected operations” in the determination of avoided costs if such costs are not assessed as interconnection costs).

FERC has recognized this cooperative implementation, noting that “the determinations that a state commission makes to implement the rate provisions of . . . PURPA are by their nature fact-specific and include consideration of many factors.”⁴⁴³ FERC is thus “reluctant to second guess the state commission’s determination.”⁴⁴⁴ Indeed, to the extent that FERC has commented on PURPA implementation details, reviewing courts have confirmed that FERC’s “discussions of PURPA-related issues are advisory only.”⁴⁴⁵ As the court in *PáTu* explained:

[Th]e Federal Power Act and the relevant PURPA provisions confine FERC enforcement authority to wholesale generation and the interstate transmission activities of transmission providers. . . . Although [PGE] is a transmission provider subject to FERC jurisdiction, it is not PáTu’s transmission provider[.] . . . [PGE] is a purchaser of PáTu’s power, which is why their relationship is controlled by a state-regulated power-purchase agreement, not a FERC-approved tariff. . . . Because [PGE] provides PáTu with no transmission services, this case does not involve the “operations of an electric utility . . . subject to the jurisdiction of [FERC] under part II of the Federal Power Act.”⁴⁴⁶

Thus, the court confirmed that this Commission, not FERC, controls PURPA implementation issues generally, and those related to a utility’s purchase obligation in particular—even where such decisions implicate the transmission of QF output.

In sum, Congress and FERC delegated to the Commission broad authority to implement and enforce PURPA, and the Commission’s authority to consider related transmission and deliverability issues is not implicitly preempted by either the Federal Power Act or by FERC’s associated regulations.

Moreover, the Blue Marmots’ argument that the Commission lacks jurisdiction over any transmission-related issues ignores the Commission’s long-standing practice of considering such issues as necessary to implement PURPA. For instance, under the Commission’s small generator interconnection rules, the Commission has authority to review the interconnection study process—

⁴⁴³ *Cal. Pub. Utils. Comm’n*, 133 FERC ¶ 61,059, P 24 (2010).

⁴⁴⁴ *Id.*

⁴⁴⁵ *PGE v. FERC*, 854 F.3d at 695, 698, 700-02.

⁴⁴⁶ *Id.* at 702 (emphasis in original).

which typically includes a Feasibility Study, System Impact Study, and Facilities Study,⁴⁴⁷ as well as allocation of costs required for interconnection facilities, interconnection equipment, and system upgrades.⁴⁴⁸ Under the Commission’s standard large generator interconnection procedures, the Commission oversees a process that is based upon the FERC-jurisdictional OATT interconnection process, and includes System Impact Studies similar to the one at issue in this case.⁴⁴⁹ Any disputes regarding these matters are unquestionably within the Commission’s jurisdiction.⁴⁵⁰

In addition, the Commission has previously considered whether an off-system QF had made sufficient transmission arrangements to interconnect with PGE and trigger PGE’s mandatory purchase obligation.⁴⁵¹ In resolving that case, the Commission explicitly referenced 18 C.F.R. § 292.303(d), FERC’s regulation regarding transmission of off-system QF output to the purchasing utility, and the Commission concluded that the QF did not have the necessary transmission agreement in place to trigger PGE’s obligation to purchase the QF’s power.⁴⁵² The Commission plainly acted within its jurisdiction in that case in analyzing whether the QF had made the transmission arrangements necessary to deliver its output.

And finally, the Commission regularly considers transmission-related costs in crafting and approving standard contract terms and conditions and in setting avoided costs. In Docket UM 1610, one of the primary issues addressed by the Commission was how to deal with transmission costs required to move QF power out of a load pocket.⁴⁵³ Neither the parties in that case nor the Commission suggested that the Commission lacked jurisdiction to consider such

⁴⁴⁷ See OAR 860-082-0060; OAR 860-082-0080; OAR 860-082-0085.

⁴⁴⁸ OAR 860-082-0035; OAR 860-082-0080; OAR 860-082-0085. The Commission also specifies technical requirements for construction, operation, maintenance, and testing of an interconnected facility, OAR 860-082-0030, and resolves disputes that occur during review of an interconnection application and after an interconnection agreement has been reached, OAR 860-082-0080; OAR 860-082-0085.

⁴⁴⁹ Order No. 10-132 at 1.

⁴⁵⁰ *Id.* at 7 (stating that the Commission’s rules “provide the option of petitioning the Commission for resolution of disputes”).

⁴⁵¹ *Portland Gen. Elec. Co. v. Or. Energy Co., LLC et al.*, Docket No. UC 315, Order No. 98-238, 1998 Or PUC LEXIS 204 at *19 (June 12, 1998).

⁴⁵² *Id.* at *19 (concluding that “PGE has refuted [the QF’s] argument about FERC’s jurisdiction to require reciprocal transmission services”).

⁴⁵³ Order No. 14-058 at 16-23.

costs.⁴⁵⁴ Moreover, as explained in PGE’s testimony, PGE’s standard avoided cost rates for off-system QFs include transmission costs through the BPA-PGE interface, and the Commission necessarily must evaluate the appropriateness of those calculations.⁴⁵⁵ Similarly, PGE’s Commission-mandated and approved off-system standard contract contains terms addressing transmission service and an entire section—Section 9—related to transmission curtailments.⁴⁵⁶ Even though the rates, terms, and conditions of the off-system transmission service addressed in these contexts are FERC-jurisdictional, the Commission was not precluded from considering these costs as part of its PURPA implementation.

Thus, the Commission has repeatedly confirmed its authority to consider transmission-related issues necessary to its implementation of PURPA and the protection of customers. As a result, the Commission should proceed to resolve the Blue Marmots’ complaints with consideration of all relevant constituent issues—including transmission-related concerns.

G. The Commission should reject the Blue Marmots’ request for an extension of their commercial operation date.

In their Opening Brief, the Blue Marmots simultaneously claim that they are entitled to the terms of their partially executed PPAs, while also asking the Commission to adjust their projects’ commercial operation date (COD) “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.”⁴⁵⁷ The Commission should deny the Blue Marmots’ request.

As an initial matter, the Blue Marmots’ complaints did not ask for an adjustment to their CODs—nor was this issue raised in the Blue Marmots’ filed testimony or at hearing. As a result, PGE has been deprived of an opportunity to litigate such a proposal, and the Commission should deny the Blue Marmots’ request for this reason alone. More importantly, the Blue Marmots have not met their burden of proving that this litigation has actually hindered their ability to achieve the

⁴⁵⁴ Order No. 14-058 at 16-23.

⁴⁵⁵ PGE/100, Greene-Moore/23-24.

⁴⁵⁶ See *Blue Marmot V Power Purchase Agreement*, Attachment A to the Complaint in Docket No. UM 1829.

⁴⁵⁷ Blue Marmots’ Opening Brief at 76.

CODs in the PPAs to which they claim they are entitled. Indeed, approximately 85 percent of EDPR's costs associated with these projects have been incurred since the date that PGE informed the Blue Marmots of the constraint at the PACW-PGE interface—suggesting that the projects have continued to proceed at a full pace.⁴⁵⁸ In the absence of a showing of delay resulting from the litigation, and in light of the cursory discussion provided, the Commission should conclude that the Blue Marmots fail to meet their burden to prove that relief is required or appropriate.

Moreover, if the Blue Marmots were granted an extension for their projects' CODs, this would undermine the Blue Marmots' avoided cost prices, which were premised on a specific anticipated completion date. If the Blue Marmots were granted a two-year COD extension to account for the time required to resolve their complaints, their avoided cost prices at the time they begin delivery could be up to six years out of date.⁴⁵⁹ However, if the Commission is nevertheless inclined to adjust the Blue Marmots' CODs, PGE requests the opportunity to conduct discovery and provide supplemental briefing regarding the appropriate relief on this new issue.

V. CONCLUSION

PGE recognizes its obligations under PURPA to purchase the output of off-system QFs that have made appropriate delivery arrangements, to make payments to them consistent with the avoided cost rates in effect at the time they establish a LEO, and to treat them in a reasonable and non-discriminatory manner. However, PGE rejects the notion that those obligations require its customers to bear the costs of the Blue Marmots' decision to send their output to a delivery point that is fully subscribed. On the contrary, controlling precedent of both this Commission and FERC mandate that all QFs, including those located off-system, pay all costs required to effect delivery of a project's output. As this Commission has observed, these costs may be assessed either through

⁴⁵⁸ Hearing Transcript, Vol. I at 27-28.

⁴⁵⁹ The CODs in the Blue Marmots' partially executed PPAs are 11/30/2019 (for Blue Marmots V and VI) and 3/31/2020 (for Blue Marmots VII, VIII, and IX). *See* Blue Marmots' PPAs (attached to Blue Marmots' complaints in Docket Nos. UM 1829-1833). The standard avoided cost prices in the Blue Marmots' partially executed PPAs were approved on October 11, 2016. *In the Matter of Pub. Util. Comm'n of Or. Staff Investigation into Qualifying Facility Contracting and Pricing*, Docket No. UM 1610, Order No. 16-377 (Oct. 11, 2016) (approving PGE's avoided cost prices filed on July 12, 2016).

avoided cost schedules, interconnection costs, or other arrangements; however, they must be paid by the QFs to protect utility customers from harm and to avoid running afoul of the customer-indifference standard. These same principles dictate that QFs have no right to demand that a utility surrender transmission capacity reserved and in use for a legitimate utility need simply because these QFs wish to deliver to a fully subscribed location.

In short, there is nothing in PURPA that supports the Blue Marmots' view that they can shift to PGE's customers the costs required to effectuate delivery of their output to PGE—whether by requiring PGE's customers to pay for third-party transmission or upgrades, or by requiring PGE to cede transmission capacity reserved for the EIM. For all of these reasons, PGE respectfully requests that the Commission find in its favor and deny the Blue Marmots the relief requested in their complaints.

Respectfully submitted this 5th day of April, 2019.

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UM 1829

Attachment A

To

Portland General Electric Company's

Response Brief



09/29/2016

Will Talbott

EDP Renewables North America LLC
Development - Western Region
53 SW Yamhill Street, Portland, OR 97204
Will.Talbott@edpr.com

RE: Transmittal of Draft Standard PPA
Blue Marmot V project, a proposed 10 megawatt solar QF

Dear Will,

Thank you for your interest in entering into a Standard Power Purchase Agreement (Standard PPA) with Portland General Electric (PGE). We received your written response to PGE's *Schedule 201 Initial Information Form* on 09/07/2016. PGE has determined that you have provided sufficient information to allow PGE to prepare a draft Standard PPA.

Enclosed please find a draft Standard PPA for your Blue Marmot V project, a proposed 10 megawatt solar generating facility that was self-certified as a qualifying facility (QF) pursuant to 18 CFR 292.207 on 9/6/2016. PGE understands that Blue Marmot V, LLC a limited liability company formed under the laws of the State of Delaware is the owner of the Blue Marmot V project and will be the Seller under the Standard PPA. If any of this information or any of the factual details contained in the enclosed draft Standard PPA are incorrect or change, please inform PGE immediately.

The enclosed draft Standard PPA is a discussion draft; it is not a binding offer and PGE reserves the right to revise any of its variable terms, including exhibits. No binding Standard PPA will exist between PGE and Blue Marmot V LLC unless and until PGE has provided Blue Marmot V LLC with an executable Standard PPA and both Blue Marmot V LLC and PGE have executed the document.

At this stage in the process you have several options: you can decide not to pursue a contract any further; you can propose in writing substantive changes to your project proposal or to the variable terms of the draft Standard PPA; or you can send PGE a written request to prepare a final draft Standard PPA without proposing any substantive changes to your project or the draft contract.

If you propose substantive changes to your project or the variable terms of the draft Standard PPA, PGE will treat your proposal as a new request for a draft Standard PPA. Within 15 business days of receiving your written proposal, PGE will send you either a new draft Standard PPA or PGE will request additional or clarifying information if PGE

Will Talbott
09/29/2016
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reasonably determines that it requires more information before it can prepare a new draft Standard PPA in response to your proposal to change contract terms or project details.

If you request a final draft Standard PPA without proposing substantive changes to your project proposal or to the variable terms of the draft Standard PPA, then within 15 business days of receiving your written request, PGE will send you either a final draft Standard PPA or request additional or clarifying information if PGE reasonably determines that additional information is necessary to prepare a final draft Standard PPA.

Once you have received a final draft Standard PPA, you will need to request in writing an executable Standard PPA. Within 15 business days of receiving such a written request, PGE will send you either an executable Standard PPA, a new draft Standard PPA (if you have requested substantive revisions to the final draft Standard PPA as part of your request for an executable Standard PPA), or a request for additional or clarifying information if PGE determines more information is needed to prepare an executable or new draft Standard PPA.

Once you receive an executable Standard PPA, you can execute it without alteration and establish a legally enforceable obligation. Pursuant to PGE's Schedule 201 at Sheet No. 201-3 and OPUC Order No. 16-174 at 3, the power purchase prices you are entitled to receive under your Standard PPA will be based on PGE's Standard Avoided Costs or Renewable Avoided Costs in effect at the time that you execute an executable Standard PPA provided to you by PGE.

This letter summarizes certain aspects of the Standard PPA process; it does not address every detail of the process. Additional details will be provided for each stage in PGE's letters associated with each stage. If you have any questions, please contact PGE's Power Production Coordinator at (503) 464-7013.

Sincerely,


Shawn P Davis
Project Manager

Enclosure: *Draft Standard PPA for Blue Marmot V LLC's Blue Marmot V solar Project*
cc: Blue Marmot V LLC c/o EDP Renewables North America LLC; Attention: General Counsel



09/29/2016

Will Talbott

EDP Renewables North America LLC
Development - Western Region
53 SW Yamhill Street, Portland, OR 97204
Will.Talbott@edpr.com

RE: Transmittal of Draft Standard PPA
Blue Marmot VI project, a proposed 10 megawatt solar QF

Dear Will,

Thank you for your interest in entering into a Standard Power Purchase Agreement (Standard PPA) with Portland General Electric (PGE). We received your written response to PGE's *Schedule 201 Initial Information Form* on 09/07/2016. PGE has determined that you have provided sufficient information to allow PGE to prepare a draft Standard PPA.

Enclosed please find a draft Standard PPA for your Blue Marmot VI project, a proposed 10 megawatt solar generating facility that was self-certified as a qualifying facility (QF) pursuant to 18 CFR 292.207 on 9/6/2016. PGE understands that Blue Marmot VI, LLC a limited liability company formed under the laws of the State of Delaware is the owner of the Blue Marmot VI project and will be the Seller under the Standard PPA. If any of this information or any of the factual details contained in the enclosed draft Standard PPA are incorrect or change, please inform PGE immediately.

The enclosed draft Standard PPA is a discussion draft; it is not a binding offer and PGE reserves the right to revise any of its variable terms, including exhibits. No binding Standard PPA will exist between PGE and Blue Marmot VI LLC unless and until PGE has provided Blue Marmot VI LLC with an executable Standard PPA and both Blue Marmot VI LLC and PGE have executed the document.

At this stage in the process you have several options: you can decide not to pursue a contract any further; you can propose in writing substantive changes to your project proposal or to the variable terms of the draft Standard PPA; or you can send PGE a written request to prepare a final draft Standard PPA without proposing any substantive changes to your project or the draft contract.

If you propose substantive changes to your project or the variable terms of the draft Standard PPA, PGE will treat your proposal as a new request for a draft Standard PPA. Within 15 business days of receiving your written proposal, PGE will send you either a new draft Standard PPA or PGE will request additional or clarifying information if PGE

Will Talbott
09/29/2016
Page 2 of 2

reasonably determines that it requires more information before it can prepare a new draft Standard PPA in response to your proposal to change contract terms or project details.

If you request a final draft Standard PPA without proposing substantive changes to your project proposal or to the variable terms of the draft Standard PPA, then within 15 business days of receiving your written request, PGE will send you either a final draft Standard PPA or request additional or clarifying information if PGE reasonably determines that additional information is necessary to prepare a final draft Standard PPA.

Once you have received a final draft Standard PPA, you will need to request in writing an executable Standard PPA. Within 15 business days of receiving such a written request, PGE will send you either an executable Standard PPA, a new draft Standard PPA (if you have requested substantive revisions to the final draft Standard PPA as part of your request for an executable Standard PPA), or a request for additional or clarifying information if PGE determines more information is needed to prepare an executable or new draft Standard PPA.

Once you receive an executable Standard PPA, you can execute it without alteration and establish a legally enforceable obligation. Pursuant to PGE's Schedule 201 at Sheet No. 201-3 and OPUC Order No. 16-174 at 3, the power purchase prices you are entitled to receive under your Standard PPA will be based on PGE's Standard Avoided Costs or Renewable Avoided Costs in effect at the time that you execute an executable Standard PPA provided to you by PGE.

This letter summarizes certain aspects of the Standard PPA process; it does not address every detail of the process. Additional details will be provided for each stage in PGE's letters associated with each stage. If you have any questions, please contact PGE's Power Production Coordinator at (503) 464-7013.

Sincerely,


Shawn P Davis
Project Manager

Enclosure: *Draft Standard PPA for Blue Marmot VI LLC's Blue Marmot VI solar Project*
cc: Blue Marmot VI LLC c/o EDP Renewables North America LLC; Attention: General Counsel



December 7, 2016

Will Talbott
EDP Renewables north America LLC
Development-Western Region
53 SW Yamhill Street, Portland OR 97204
will.talbott@epdr.com

RE: Transmittal of New Draft Standard PPA
Blue Marmot V project, a proposed 10 megawatt solar QF

Dear Will,

Thank you for your interest in entering into a Standard Power Purchase Agreement (Standard PPA) with Portland General Electric (PGE). On November 14, 2016, PGE received your email requesting a final draft Standard PPA and proposing substantive changes to your project or to the variable terms of the draft Standard PPA. On December 1, 2016 PGE sent you a request for additional or clarifying information, and you responded in writing on December 1, 2016. To reflect the changes you have proposed, PGE prepared a new draft Standard PPA.

Enclosed please find a new draft Standard PPA for your Blue Marmot V project, a proposed 10 megawatt solar generating facility that was self-certified as a qualifying facility (QF) pursuant to 18 CFR 292.207 on September 9, 2016. PGE understands that Blue Marmot V LLC a limited liability company formed under the laws of the State of Delaware is the owner of the Blue Marmot V project and will be the Seller under the Standard PPA. If any of this information or any of the factual details contained in the enclosed new draft Standard PPA are incorrect or change, please inform PGE immediately.

The enclosed new draft Standard PPA is a discussion draft; it is not a binding offer and PGE reserves the right to revise any of its variable terms, including exhibits. No binding Standard PPA will exist between PGE and Blue Marmot V LLC unless and until PGE has provided Blue Marmot V LLC with an executable Standard PPA and both Blue Marmot V LLC and PGE have executed the document.

At this stage in the process you have several options: you can decide not to pursue a contract any further; you can propose in writing substantive changes to your project or the variable terms of the new draft Standard PPA; or you can send PGE a written request to prepare a final draft Standard PPA without proposing any substantive changes to your project or the contract.

Blue Marmot V
December 7, 2016
Page 2 of 2

If you propose substantive changes to your project or to the variable terms of the enclosed draft Standard PPA, PGE will treat your proposal as a new request for a draft Standard PPA. Within 15 business days of receiving your written proposal, PGE will send you either a new draft Standard PPA or PGE will request additional or clarifying information if PGE reasonably determines that it requires more information before it can prepare a new draft Standard PPA in response to your proposal to change contract terms or project details.

If you request a final draft Standard PPA without proposing substantive changes to your project or the enclosed draft Standard PPA, then within 15 business days of receiving your written request, PGE will send you either a final draft Standard PPA or request additional or clarifying information if PGE reasonably determines that additional information is necessary to prepare a final draft Standard PPA.

This letter summarizes certain aspects of the Standard PPA process; it does not address every detail of the process. Additional details will be provided for each stage in PGE's letters associated with each stage. If you have any questions, please contact me at (503) 464-7013.

Sincerely,

Shawn P Davis
Project Manager
Portland General Electric

enclosure: *Draft Standard PPA for Blue Marmot V LLC's Blue Marmot V Project*



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

December 7, 2016

Will Talbott
EDP Renewables north America LLC
Development-Western Region
53 SW Yamhill Street, Portland OR 97204
will.talbott@epdr.com

RE: Transmittal of New Draft Standard PPA Blue Marmot VI project, a proposed 10 megawatt solar QF

Dear Will,

Thank you for your interest in entering into a Standard Power Purchase Agreement (Standard PPA) with Portland General Electric (PGE). On November 14, 2016, PGE received your email requesting a final draft Standard PPA and proposing substantive changes to your project or to the variable terms of the draft Standard PPA. On December 1, 2016 PGE sent you a request for additional or clarifying information, and you responded in writing on December 1, 2016. To reflect the changes you have proposed, PGE prepared a new draft Standard PPA.

Enclosed please find a new draft Standard PPA for your Blue Marmot VI project, a proposed 10 megawatt solar generating facility that was self-certified as a qualifying facility (QF) pursuant to 18 CFR 292.207 on September 9, 2016. PGE understands that Blue Marmot VI LLC a limited liability company formed under the laws of the State of Delaware is the owner of the Blue Marmot VI project and will be the Seller under the Standard PPA. If any of this information or any of the factual details contained in the enclosed new draft Standard PPA are incorrect or change, please inform PGE immediately.

The enclosed new draft Standard PPA is a discussion draft; it is not a binding offer and PGE reserves the right to revise any of its variable terms, including exhibits. No binding Standard PPA will exist between PGE and Blue Marmot VI LLC unless and until PGE has provided Blue Marmot VI LLC with an executable Standard PPA and both Blue Marmot VI LLC and PGE have executed the document.


At this stage in the process you have several options: you can decide not to pursue a contract any further; you can propose in writing substantive changes to your project or the variable terms of the new draft Standard PPA; or you can send PGE a written request to prepare a final draft Standard PPA without proposing any substantive changes to your project or the contract.

Blue Marmot VI
December 7, 2016
Page 2 of 2

If you propose substantive changes to your project or to the variable terms of the enclosed draft Standard PPA, PGE will treat your proposal as a new request for a draft Standard PPA. Within 15 business days of receiving your written proposal, PGE will send you either a new draft Standard PPA or PGE will request additional or clarifying information if PGE reasonably determines that it requires more information before it can prepare a new draft Standard PPA in response to your proposal to change contract terms or project details.

If you request a final draft Standard PPA without proposing substantive changes to your project or the enclosed draft Standard PPA, then within 15 business days of receiving your written request, PGE will send you either a final draft Standard PPA or request additional or clarifying information if PGE reasonably determines that additional information is necessary to prepare a final draft Standard PPA.

This letter summarizes certain aspects of the Standard PPA process; it does not address every detail of the process. Additional details will be provided for each stage in PGE's letters associated with each stage. If you have any questions, please contact me at (503) 464-7013.

Sincerely,

Shawn P Davis
Project Manager
Portland General Electric

enclosure: *Revised Draft Standard PPA for Blue Marmot VILLC's Blue Marmot VI Project*



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

January 24, 2017

Will Talbott
EDP Renewables north America LLC
Development-Western Region
53 SW Yamhill Street, Portland OR 97204
will.talbott@epdr.com

RE: Transmittal of Draft Standard PPA Blue Marmot VII project, a proposed 10 megawatt solar QF

Dear Will,

Thank you for your interest in entering into a Standard Power Purchase Agreement (Standard PPA) with Portland General Electric (PGE). We received your written response to PGE's *Schedule 201 Initial Information Form* on January 4, 2017. PGE has determined that you have provided sufficient information to allow PGE to prepare a draft Standard PPA.

Enclosed please find a draft Standard PPA for your Blue Marmot VII project, a proposed 10 megawatt solar generating facility that was self-certified as a qualifying facility (QF) pursuant to 18 CFR 292.207 on December 21, 2017. PGE understands that Blue Marmot VII, LLC a Limited Liability Corporation formed under the laws of the State of Delaware is the owner of the Blue Marmot VII project and will be the Seller under the Standard PPA. If any of this information or any of the factual details contained in the enclosed draft Standard PPA are incorrect or change, please inform PGE immediately.

The enclosed draft Standard PPA is a discussion draft; it is not a binding offer and PGE reserves the right to revise any of its variable terms, including exhibits. No binding Standard PPA will exist between PGE and Blue Marmot VII, LLC unless and until PGE has provided Blue Marmot VII, LLC with an executable Standard PPA and both Blue Marmot VII, LLC and PGE have executed the document.

At this stage in the process you have several options: you can decide not to pursue a contract any further; you can propose in writing substantive changes to your project proposal or to the variable terms of the draft Standard PPA; or you can send PGE a written request to prepare a final draft Standard PPA without proposing any substantive changes to your project or the draft contract.

If you propose substantive changes to your project or the variable terms of the draft Standard PPA, PGE will treat your proposal as a new request for a draft Standard PPA. Within 15 business days of receiving your written proposal, PGE will send you either a new draft Standard PPA or PGE will request additional or clarifying information if PGE

Blue Marmot VII
January 24, 2017
Page 2 of 2

reasonably determines that it requires more information before it can prepare a new draft Standard PPA in response to your proposal to change contract terms or project details.


If you request a final draft Standard PPA without proposing substantive changes to your project proposal or to the variable terms of the draft Standard PPA, then within 15 business days of receiving your written request, PGE will send you either a final draft Standard PPA or request additional or clarifying information if PGE reasonably determines that additional information is necessary to prepare a final draft Standard PPA.

Once you have received a final draft Standard PPA, you will need to request in writing an executable Standard PPA. Within 15 business days of receiving such a written request, PGE will send you either an executable Standard PPA, a new draft Standard PPA (if you have requested substantive revisions to the final draft Standard PPA as part of your request for an executable Standard PPA), or a request for additional or clarifying information if PGE determines more information is needed to prepare an executable or new draft Standard PPA.

Once you receive an executable Standard PPA, you can execute it without alteration and establish a legally enforceable obligation. Pursuant to PGE's Schedule 201 at Sheet No. 201-3 and OPUC Order No. 16-174 at 3, the power purchase prices you are entitled to receive under your Standard PPA will be based on PGE's Standard Avoided Costs or Renewable Avoided Costs in effect at the time that you execute an executable Standard PPA provided to you by PGE.

This letter summarizes certain aspects of the Standard PPA process; it does not address every detail of the process. Additional details will be provided for each stage in PGE's letters associated with each stage. If you have any questions, please me or Angeline Chong at (503) 464-7013 or (503) 464-7343 respectively.

Sincerely,


Shawn P Davis
Project Manager

enclosure: *Draft Standard PPA for Blue Marmot VII, LLC's Blue Marmot VII Project*
cc: Blue Marmot VII LLC
c/o EDP Renewables North America LLC; Attention: General Counsel
808 Travis, Suite 700
Houston, Texas 77002



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

January 24, 2017

Will Talbott
EDP Renewables north America LLC
Development-Western Region
53 SW Yamhill Street, Portland OR 97204
will.talbott@epdr.com

RE: Transmittal of Draft Standard PPA Blue Marmot XI project, a proposed 10 megawatt solar QF

Dear Will,

Thank you for your interest in entering into a Standard Power Purchase Agreement (Standard PPA) with Portland General Electric (PGE). We received your written response to PGE's *Schedule 201 Initial Information Form* on January 4, 2017. PGE has determined that you have provided sufficient information to allow PGE to prepare a draft Standard PPA.

Enclosed please find a draft Standard PPA for your Blue Marmot XI project, a proposed 10 megawatt solar generating facility that was self-certified as a qualifying facility (QF) pursuant to 18 CFR 292.207 on December 21, 2017. PGE understands that Blue Marmot XI, LLC a Limited Liability Corporation formed under the laws of the State of Delaware is the owner of the Blue Marmot XI project and will be the Seller under the Standard PPA. If any of this information or any of the factual details contained in the enclosed draft Standard PPA are incorrect or change, please inform PGE immediately.

The enclosed draft Standard PPA is a discussion draft; it is not a binding offer and PGE reserves the right to revise any of its variable terms, including exhibits. No binding Standard PPA will exist between PGE and Blue Marmot XI, LLC unless and until PGE has provided Blue Marmot XI, LLC with an executable Standard PPA and both Blue Marmot XI, LLC and PGE have executed the document.

At this stage in the process you have several options: you can decide not to pursue a contract any further; you can propose in writing substantive changes to your project proposal or to the variable terms of the draft Standard PPA; or you can send PGE a written request to prepare a final draft Standard PPA without proposing any substantive changes to your project or the draft contract.

If you propose substantive changes to your project or the variable terms of the draft Standard PPA, PGE will treat your proposal as a new request for a draft Standard PPA. Within 15 business days of receiving your written proposal, PGE will send you either a new draft Standard PPA or PGE will request additional or clarifying information if PGE

Blue Marmot XI
January 24, 2017
Page 2 of 2

reasonably determines that it requires more information before it can prepare a new draft Standard PPA in response to your proposal to change contract terms or project details.

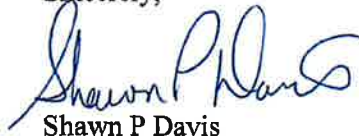
If you request a final draft Standard PPA without proposing substantive changes to your project proposal or to the variable terms of the draft Standard PPA, then within 15 business days of receiving your written request, PGE will send you either a final draft Standard PPA or request additional or clarifying information if PGE reasonably determines that additional information is necessary to prepare a final draft Standard PPA.

Once you have received a final draft Standard PPA, you will need to request in writing an executable Standard PPA. Within 15 business days of receiving such a written request, PGE will send you either an executable Standard PPA, a new draft Standard PPA (if you have requested substantive revisions to the final draft Standard PPA as part of your request for an executable Standard PPA), or a request for additional or clarifying information if PGE determines more information is needed to prepare an executable or new draft Standard PPA.

Once you receive an executable Standard PPA, you can execute it without alteration and establish a legally enforceable obligation. Pursuant to PGE's Schedule 201 at Sheet No. 201-3 and OPUC Order No. 16-174 at 3, the power purchase prices you are entitled to receive under your Standard PPA will be based on PGE's Standard Avoided Costs or Renewable Avoided Costs in effect at the time that you execute an executable Standard PPA provided to you by PGE.

This letter summarizes certain aspects of the Standard PPA process; it does not address every detail of the process. Additional details will be provided for each stage in PGE's letters associated with each stage. If you have any questions, please me or Angeline Chong at (503) 464-7013 or (503) 464-7343 respectively.

Sincerely,



Shawn P Davis
Project Manager

enclosure: *Draft Standard PPA for Blue Marmot XI, LLC's Blue Marmot XI Project*

cc: Blue Marmot XI LLC
c/o EDP Renewables North America LLC; Attention: General Counsel
808 Travis, Suite 700
Houston, Texas 77002



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

02/27/2017

Will Talbott
EDP Renewables North America LLC
Development-Western Region
53 SW Yamhill Street, Portland OR 97204
will.talbott@epdr.com

RE: Transmittal of Final Draft Standard PPA Blue Marmot VII project, a proposed 10 megawatt solar QF

Dear Will,

Thank you for your interest in entering into a Standard Power Purchase Agreement (Standard PPA) with Portland General Electric (PGE). We received your written request for a final draft Standard PPA on February 06, 2017. PGE has determined that you have provided sufficient information to allow PGE to prepare a final draft Standard PPA.

Enclosed please find a final draft Standard PPA for your Blue Marmot VII project, a proposed 10 megawatt solar generating facility that was self-certified as a qualifying facility (QF) pursuant to 18 CFR 292.207 on December 21, 2017. PGE understands that Blue Marmot VII LLC, a Limited Liability Corporation formed under the laws of the State of Delaware is the owner of the Blue Marmot VII project and will be the Seller under the Standard PPA. If any of this information or any of the factual details contained in the enclosed final draft Standard PPA are incorrect or change, please inform PGE immediately.

The enclosed final draft Standard PPA is a discussion draft; it is not a binding offer and PGE reserves the right to revise any of its variable terms, including exhibits. No binding Standard PPA will exist between PGE and Blue Marmot VII LLC unless and until PGE has provided Blue Marmot VII LLC with an executable Standard PPA and both Blue Marmot VII LLC and PGE have executed the document.

At this stage in the process you have several options: you can decide not to pursue a contract any further; you can propose in writing substantive changes to your project proposal or to the variable terms of the final draft Standard PPA; or you can send PGE a written request to prepare an executable Standard PPA without proposing any substantive changes to your project or the final draft contract.

If you propose substantive changes to your project or the variable terms of the final draft Standard PPA, PGE will treat your proposal as a new request for a draft Standard PPA. Within 15 business days of receiving your written proposal, PGE will send you either a

Blue Marmot VII
February 27, 2017
Page 2 of 2

new draft Standard PPA or PGE will request additional or clarifying information if PGE reasonably determines that it requires more information before it can prepare a new draft Standard PPA in response to your proposal to change contract terms or project details.

If you request an executable Standard PPA without proposing substantive changes to your project proposal or the variable terms of the final draft Standard PPA, then within 15 business days of receiving your written request, PGE will send you either an executable Standard PPA or request additional or clarifying information if PGE reasonably determines that additional information is necessary to prepare an executable Standard PPA.

Once you receive an executable Standard PPA, you can execute it without alteration and establish a legally enforceable obligation. Pursuant to PGE's Schedule 201 at Sheet No. 201-3 and OPUC Order No. 16-174 at 3, the power purchase prices you are entitled to receive under your Standard PPA will be based on PGE's Standard Avoided Costs or Renewable Avoided Costs in effect at the time that you execute an executable Standard PPA provided to you by PGE.

This letter summarizes certain aspects of the Standard PPA process; it does not address every detail of the process. Additional details will be provided for each stage in PGE's letters associated with each stage. If you have any questions, please contact PGE's Power Production Coordinator at (503) 464-7343.

Sincerely,

Angeline Chong
Project Manager

enclosure: *Final Draft Standard PPA for Blue Marmot VII LLC's Blue Marmot VII Project*

cc: Blue Marmot VII LLC
c/o EDP Renewables North America LLC; Attention: General Counsel
808 Travis, Suite 700
Houston, Texas 77002



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

02/27/2017

Will Talbott
EDP Renewables North America LLC
Development-Western Region
53 SW Yamhill Street, Portland OR 97204
will.talbott@epdr.com

RE: Transmittal of Final Draft Standard PPA Blue Marmot IX project, a proposed 10 megawatt solar QF

Dear Will,

Thank you for your interest in entering into a Standard Power Purchase Agreement (Standard PPA) with Portland General Electric (PGE). We received your written request for a final draft Standard PPA on February 06, 2017. PGE has determined that you have provided sufficient information to allow PGE to prepare a final draft Standard PPA.

Enclosed please find a final draft Standard PPA for your Blue Marmot IX project, a proposed 10 megawatt solar generating facility that was self-certified as a qualifying facility (QF) pursuant to 18 CFR 292.207 on December 21, 2017. PGE understands that Blue Marmot IX LLC, a Limited Liability Corporation formed under the laws of the State of Delaware is the owner of the Blue Marmot IX project and will be the Seller under the Standard PPA. If any of this information or any of the factual details contained in the enclosed final draft Standard PPA are incorrect or change, please inform PGE immediately.

The enclosed final draft Standard PPA is a discussion draft; it is not a binding offer and PGE reserves the right to revise any of its variable terms, including exhibits. No binding Standard PPA will exist between PGE and Blue Marmot IX LLC unless and until PGE has provided Blue Marmot IX LLC with an executable Standard PPA and both Blue Marmot IX LLC and PGE have executed the document.

At this stage in the process you have several options: you can decide not to pursue a contract any further; you can propose in writing substantive changes to your project proposal or to the variable terms of the final draft Standard PPA; or you can send PGE a written request to prepare an executable Standard PPA without proposing any substantive changes to your project or the final draft contract.

If you propose substantive changes to your project or the variable terms of the final draft Standard PPA, PGE will treat your proposal as a new request for a draft Standard PPA. Within 15 business days of receiving your written proposal, PGE will send you either a

Blue Marmot IX
February 27, 2017
Page 2 of 2

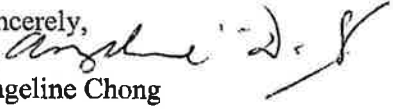
new draft Standard PPA or PGE will request additional or clarifying information if PGE reasonably determines that it requires more information before it can prepare a new draft Standard PPA in response to your proposal to change contract terms or project details.

If you request an executable Standard PPA without proposing substantive changes to your project proposal or the variable terms of the final draft Standard PPA, then within 15 business days of receiving your written request, PGE will send you either an executable Standard PPA or request additional or clarifying information if PGE reasonably determines that additional information is necessary to prepare an executable Standard PPA.

Once you receive an executable Standard PPA, you can execute it without alteration and establish a legally enforceable obligation. Pursuant to PGE's Schedule 201 at Sheet No. 201-3 and OPUC Order No. 16-174 at 3, the power purchase prices you are entitled to receive under your Standard PPA will be based on PGE's Standard Avoided Costs or Renewable Avoided Costs in effect at the time that you execute an executable Standard PPA provided to you by PGE.

This letter summarizes certain aspects of the Standard PPA process; it does not address every detail of the process. Additional details will be provided for each stage in PGE's letters associated with each stage. If you have any questions, please contact PGE's Power Production Coordinator at (503) 464-7343.

Sincerely,


Angeline Chong
Project Manager

enclosure: *Final Draft Standard PPA for Blue Marmot IX LLC's Blue Marmot IX Project*

cc: Blue Marmot IX LLC
c/o EDP Renewables North America LLC; Attention: General Counsel
808 Travis, Suite 700
Houston, Texas 77002

UM 1829

Attachment B

To

Portland General Electric Company's

Response Brief

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.

**AFFIDAVIT OF GEOFFREY
MOORE**

STATE OF OREGON)
) ss
County of Multnomah)

1 I, Geoffrey Moore, being first duly sworn on oath, depose and say:

2 1. My name is Geoffrey Moore and I am employed by Portland General Electric
3 Company (PGE) as a Fundamentals, Structuring and Origination Analyst.

4 2. I am the same Geoffrey Moore that previously filed testimony on behalf of PGE
5 in this matter, *see* PGE/200-201, PGE/500-502, and PGE/700-701, and provided
6 live testimony upon cross examination at the hearing in this case on December 13,
7 2018.

8 3. On June 15, 2015, I authored and sent the attached letter to PGE's then-Senior
9 Vice President of Power Operations and Resource Strategy, Maria Pope, and to
10 PGE's General Manager of Risk Management, Jim Barnes.

11 4. The aforementioned letter describes PGE Power Operations' acquisition of bi-
12 directional, long-term firm transmission between PGE and PacifiCorp "to ensure
13 access to regional markets and regional trading partners."

14 5. The aforementioned letter confirms that the transmission procured by PGE Power
15 Operations in 2015 was obtained with the specific intent that it be used to


1 participate in a regional market. At that time, the regional markets under
2 consideration included the California Independent System Operator's Energy
3 Imbalance Market and the Northwest Power Pool Initiative.

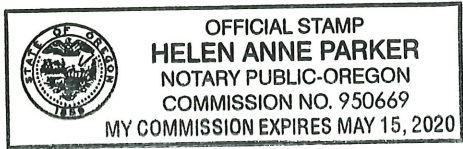
4 I declare under penalty of perjury under the laws of the state of Oregon that the foregoing
5 is true and correct based on my information and belief.

SIGNED this 5th day of April, 2019, at Portland, Oregon.

Signed: 

SUBSCRIBED AND SWORN to before me this 5th day of April, 2019.


Notary Public, State of Oregon
My Commission Expires 05-15-2020





Portland General Electric Company
121 SW Salmon Street, Portland, Oregon 97204
PortlandGeneral.com

June 22, 2015

To: Maria Pope, Senior Vice President – Power Operations and Resource Strategy
Jim Barnes, General Manager – Risk Management

RE: PGE Merchant Requests for Long-Term Firm Point-to-Point Transmission Service

Attached please find PGE Power Operations' applications and the corresponding pre-approval memos to acquire the remaining annual long-term firm available transfer capacity between PGE's system and the PacifiCorp West (PACW) system from PGE Transmission and Reliability Services. Power Operations recently acquired 300MW of bi-directional long-term firm transmission between PGE and PACW. The requested acquisitions are in addition to Power Operations' previous acquisitions and are a part of Power Operations' long-term transmission strategy to ensure access to regional markets and regional trading partners. Upon completion of the requested acquisitions, Power Operations will have rights to 418MW of long-term firm service from PACW to PGE and 448MW of long-term firm service from PGE to PACW. If you have any questions, please contact Geoff Moore at (503) 464-8534 or geoffrey.moore@pgn.com.

Sincerely,

A handwritten signature in blue ink, appearing to read "Geoff Moore", is written over a light blue circular stamp.

Geoff Moore
PGE - Merchant Transmission and Resource Integration
Geoffrey.Moore@pgn.com
503-464-8534

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of PGE's Response Brief in Docket UM 1829 on the following named person(s) on the date indicated below by first-class mail addressed to said person(s) at his or her last-known address(es) indicated below.

STEPHANIE S ANDRUS
PUC STAFF--DEPARTMENT OF JUSTICE
BUSINESS ACTIVITIES SECTION
1162 COURT ST NE
SALEM OR 97301-4096
stephanie.andrus@state.or.us

LESLIE FREIMAN
EDP RENEWABLES NORTH AMERICA LLC
808 TRAVIS ST STE 700
HOUSTON TX 77002
leslie.freiman@edpr.com

IRION A SANGER
SANGER LAW PC
1117 SE 53RD AVE
PORTLAND OR 97215
irion@sanger-law.com

WILL TALBOTT
EDP RENEWABLES NORTH AMERICA LLC
DEVELOPMENT - WESTERN REGION
53 SW YAMHILL ST
PORTLAND OR 97204
will.talbott@edpr.com

DATED: April 5, 2019



Alisha Till
Paralegal