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VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
201 High Street SE, Suite 100
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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 Prehearing Brief.

Please contact this office with any questions.

Sincerely,

Alisha Till

Alisha Till
Legal Assistant

Attachment

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1829

Blue Marmot V LLC Blue Marmot VI LLC Blue Marmot VII LLC Blue Marmot VIII LLC Blue Marmot IX LLC, Complainants, v. Portland General Electric Company, Defendant.	**PORTLAND GENERAL ELECTRIC COMPANY'S PREHEARING BRIEF**

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

The Public Utility Commission of Oregon's (Commission) implementation of the Public Utility Regulatory Policies Act (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 harm. The plaintiffs in this case seek to escape the avoided-cost and customer-indifference standards by shifting the costs of their projects to Portland General Electric Company (PGE or the Company), to the significant harm of its customers.

EDP Renewables is a multinational developer of renewable energy projects planning to construct five 10-MW solar QFs in PacifiCorp's service territory in southern Oregon, near the California border. These five QFs are the plaintiffs, Blue Marmot V, Blue Marmot VI, Blue Marmot VII, Blue Marmot VIII, and Blue Marmot IX (collectively, the Blue Marmots). Despite the fact that they will be located hundreds of miles away, the Blue Marmots plan to sell their output to PGE to take advantage of the Company's higher avoided cost prices and more advantageous terms and conditions. Specifically, they have requested to deliver their output to the interface between PacifiCorp and PGE's systems—the PACW-PGE interface. However, PGE has reserved, committed, and is using all transmission capacity at that interface for its participation in the Western Energy Imbalance Market (EIM), and there is currently no available transfer capability (ATC) to allow for the Blue Marmots' delivery.

Given that the transmission capacity at the PACW-PGE interface is fully committed, PGE has correctly declined to execute power purchase agreements (PPAs) with the Blue Marmots until appropriate delivery arrangements have been made. Toward this end, PGE has informed the Blue Marmots that they may either agree to bear the cost to deliver their output to the interface between the Bonneville Power Administration and PGE's systems (the BPA-PGE interface)—where there is sufficient ATC for delivery—or they can pay for any potential upgrades that would allow for

delivery elsewhere. PGE's approach is consistent with applicable law and required to preserve customer indifference and protect customers from harm.

The Blue Marmots 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. They also take the untenable position 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. By doing so, they argue that they have triggered PGE's obligation to purchase their output under PURPA and that they cannot be required to incur any additional costs. Based on this view, the Blue Marmots claim that PGE's customers either need to: (a) pay for any system upgrades that would allow PGE to accept delivery of their output at the PACW-PGE interface; (b) pay for transmission to send the Blue Marmots' output to the BPA-PGE interface; or (c) cede transmission capacity that PGE has committed to and is using for the EIM to facilitate delivery of the Blue Marmots' output. The Blue Marmots also argue that they have a right to deliver to the PACW-PGE interface without incurring additional costs because they executed PPAs forwarded to them by PGE. And finally, they claim that PGE acted in bad faith and 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. These arguments all fail.

First, because there is no ATC at the PACW-PGE interface, as a technical matter the Blue Marmots cannot deliver their output to PGE at that location. To be clear, the Blue Marmots' transmission reservation with PacifiCorp begins and ends on PacifiCorp's system and is insufficient to effectuate delivery to PGE because the PACW-PGE interface is fully subscribed. Therefore, even if the Blue Marmots were correct that their only obligation is to deliver their output to PGE—they cannot do so, and therefore the must-purchase obligation has not been triggered.

Second, regardless of whether the Blue Marmots could theoretically achieve delivery at the PACW-PGE interface, as a matter of law the Blue Marmots do not have the right to insist on delivering their output at that point. This Commission and the Court of Appeals have both

concluded that QFs do not have the right to select their delivery point over the reasonable objection of the utility. For that reason, PGE is well within its rights to insist that the Blue Marmots deliver their output to the BPA-PGE interface, where there is currently sufficient ATC to accommodate them.

Third, even if the Commission finds that the Blue Marmots technically can be said to have achieved delivery by reaching the edge of a fully-subscribed interface, PGE's customers must be held harmless from the costs associated with accepting delivery at that interface, in order to preserve customer indifference and comport with PURPA's avoided-cost principles. This Commission requires QFs to bear any costs they impose on the utility that are not already addressed in the utility's avoided cost rates. And specifically, this Commission requires that QFs pay for the costs of system upgrades and third-party transmission required to move their output to load. There is no rationale under which it would be reasonable or fair to require PGE's customers to pay to move the Blue Marmots' output to the BPA-PGE interface—or to pay for any upgrades that would allow them to deliver elsewhere.

Fourth, there is no support for the Blue Marmots' argument that PGE is required to surrender transmission capacity it has reserved for the EIM, in order to allow them to deliver via the PACW-PGE interface. The EIM represents one of PGE's key strategic initiatives to deliver value for customers, and robust participation is key to the Company's ability to efficiently manage its energy resources. PGE cannot give up transmission capacity for the EIM without eroding the benefits PGE expects to achieve for its customers—or jeopardizing the market-based rate (MBR) authority that PGE believes is critical to achieving those benefits. And there is no basis for the Blue Marmots' claim that a QF's request for capacity trumps every other responsibility or commitment the utility may have. The Commission should reject the Blue Marmots' argument that their desire to deliver their output at a particular interface supplants the Company's prior transmission commitment and active usage for the EIM.

Fifth, the legally enforceable obligation (LEO) achieved by the Blue Marmots is not the equivalent of a fully-executed agreement, and it does not protect them from incurring additional

costs necessary to achieve delivery. On the contrary, the Blue Marmots' LEO—the existence of which PGE does not dispute—only entitles the Blue Marmots to the avoided cost rates in effect at the time the LEO was established. It does not foreclose PGE's right to insist that the Blue Marmots bear the additional costs imposed by their projects, as required to protect PGE's customers from harm.

Finally, the Blue Marmots' bad faith and discrimination claims are unfounded. When PGE's contracting personnel identified the lack of ATC at the PACW-PGE interface, they acted quickly to assess the situation and 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 could be made. Moreover, the fact that PGE had previously executed PPAs with QFs wishing to deliver via the PACW-PGE interface cannot support a claim for discrimination. At the time those PPAs were executed, PGE's QF contracting personnel were unaware that the interface was fully subscribed, and therefore the Blue Marmots are not similarly situated to those QFs with fully executed agreements. Therefore, the Blue Marmots' bad-faith and discrimination claims have no merit and do not provide a basis upon which to impose the costs of delivery on PGE's customers.

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, as well as this Commission's precedent, and necessary to protect PGE's customers from harm.

II. FACTUAL BACKGROUND

A. The Blue Marmots Contracting Process.

The Blue Marmots are five solar QF projects proposed for development by EDPR NA (EDPR), a multi-national development corporation, headquartered in Houston, Texas, and a

wholly-owned subsidiary of the global parent, EDP Renewables, which is headquartered in Madrid, Spain.[1] The Blue Marmots are planned for construction in Lake County, Oregon, which is in PacifiCorp's service territory, near the California border.[2] While the Blue Marmots will directly interconnect with PacifiCorp, they have decided to sell their output to PGE to take advantage of PGE's higher avoided cost rates and then-higher standard-contract threshold.[3] The Blue Marmots wish to deliver their output to PGE via the PACW-PGE interface,[4] and have reserved transmission service from the Blue Marmots' location on PacifiCorp's system to the edge of PacifiCorp's system at the PACW-PGE interface.[5]

Between January and March 2017, PGE sent out final executable PPAs for four of the five Blue Marmot projects.[6] The fifth Blue Marmot project, Blue Marmot VIII, had received a draft PPA at this time but had not yet been provided a final executable PPA.[7] Along with the final executable PPAs, PGE provided the Blue Marmots an explanatory letter, which stated that they would establish a LEO to the avoided cost rates in effect at the time that they signed the PPAs and returned them to PGE for full execution.[8] The Blue Marmots signed the four executable PPAs and returned them to PGE on March 29, 2017.[9]

After receiving the four partially executed PPAs, PGE circulated them for final legal and commercial review and signing, consistent with PGE's standard practice.[10] 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

[1] PGE/100, Greene-Moore/7.
[2] PGE/100, Greene-Moore/8.
[3] 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.
[4] PGE/100, Greene-Moore/9; PGE/400, Greene/1.
[5] PGE/100, Greene-Moore/9.
[6] PGE/100, Greene-Moore/8.
[7] PGE/100, Greene-Moore/9.
[8] *See, e.g.*, Blue Marmot/201, Talbott/124.
[9] PGE/100, Greene-Moore/8.
[10] PGE/100, Greene-Moore/8-9.

(PGE Merchant[11]) had previously reserved all of the capacity for PGE's participation in the EIM.[12] As a result, the Blue Marmots would be unable to schedule their output for delivery to PGE via that interface.[13]

Upon learning of the lack of ATC, PGE's QF contracting personnel contacted the Blue Marmots to determine whether they planned to deliver via the PACW-PGE interface.[14] 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 PPA had been fully executed and the QF was ready to deliver.[15]

When the Blue Marmots informed PGE of their intention to deliver via the PACW-PGE interface, PGE notified them that the interface was fully subscribed and offered them two options for proceeding.[16] Specifically, PGE informed EDPR that it could (1) opt to deliver the Blue Marmots' generation via the BPA-PGE interface, which had sufficient ATC, or (2) request a study and pay for any upgrades at the PACW-PGE interface that would be required to allow the Blue Marmots to deliver at that location.[17] PGE assured EDPR that it would honor the then-effective avoided cost prices—for both the four Blue Marmots that had established LEOs and for Blue Marmot VIII—while the parties worked to resolve the delivery issue.[18] The Blue Marmots filed their complaints shortly thereafter on April 28, 2017.[19]

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[11] PGE Merchant is distinct from PGE's Transmission Function (PGE Transmission), as described in more detail *supra* in footnote 66. PGE/300, Afranji-Larson-Richard/5.
[12] 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.
[13] PGE/300, Afranji-Larson-Richard/3.
[14] PGE/100, Greene-Moore/9, 11.
[15] PGE/100, Greene-Moore/11. The QF contracting team had not previously encountered a fully-subscribed delivery point; therefore, this practice had never been problematic. PGE/100, Greene-Moore/11-12. Since that time, PGE has changed its process to ask for a QF's preferred delivery point at the outset of the contracting process. PGE/100, Greene-Moore/12.
[16] PGE/100, Greene-Moore/3, 11.
[17] PGE/100, Greene-Moore/3, 11.
[18] Blue Marmot/200, Talbott/7.
[19] Blue Marmot/200, Talbott/8; PGE/100, Greene-Moore/11.

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

At the time the PGE QF contracting personnel learned that the PACW-PGE interface was fully subscribed, the Blue Marmots were the only off-system QFs in the contracting queue that were located in PacifiCorp's service territory and had received and signed final executable PPAs, thereby establishing LEOs.[20] However, two other off-system QFs sited in PacifiCorp's service territory had approved draft contracts and were awaiting final executable PPAs.[21] PGE explained the situation to each of these QFs and gave them the same two options it provided to the Blue Marmots.[22] Both QFs chose to deliver their output via the BPA-PGE interface.[23]

In addition, three other off-system QFs—totaling 67 MW—in PacifiCorp's service territory had previously received fully executed PPAs that had already been countersigned by PGE at the time the lack of ATC was discovered—Airport Solar, a 47-MW solar QF; OM Power 1, a 10-MW geothermal QF; and Lakeview, a 10-MW solar QF.[24] These three QFs also sought to deliver their output via the PACW-PGE interface.[25] PGE is still determining how best to proceed with these three projects, and its conversations with them are ongoing.[26]

C. The Results of the System Impact Study.

After the Blue Marmots filed complaints, EDPR and PGE met in an attempt to resolve their differences and agreed that EDPR could request a transmission study to determine whether reasonably affordable system upgrades would allow the Blue Marmots to deliver their output at their preferred delivery point.[27] (In making this request, EDPR explicitly did not concede that the Blue Marmots were responsible for any such upgrades.[28]) Therefore, the Blue Marmots requested that PGE's Transmission Function (PGE Transmission) complete a System Impact Study to assess

[20] PGE/100, Greene-Moore/13, 22-23.
[21] PGE/100, Greene-Moore/13.
[22] PGE/100, Greene-Moore/13.
[23] PGE/100, Greene-Moore/13.
[24] PGE/100, Greene-Moore/14.
[25] PGE/100, Greene-Moore/13-14.
[26] PGE/100, Greene-Moore/14; PGE/400, Greene/21.
[27] PGE/100, Greene-Moore/18.
[28] PGE/100, Greene-Moore/18.

any upgrades required to accommodate the Blue Marmots' request for 60 MW[29] of capacity at the PACW-PGE interface.[30] 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), and the study revealed no feasible and economic upgrades.[31]

Specifically, PGE's preliminary analyses indicated that adding 60 MW of generation in the PacifiCorp Balancing Authority Area (PACW BAA) would result in a 30 MW *decrease* in the total transfer capability (TTC) at the PACW-PGE interface.[32] At the Blue Marmots' request, PGE analyzed the feasibility of redispatching generation resources to increase the TTC at the PACW-PGE interface.[33] However, to increase TTC by 60 MW using redispatch would require approximately 30,000 MW of adjustments to generation resources—which is impossible to achieve.[34] Therefore, PGE concluded that redispatch could not yield the necessary TTC increase.[35]

PGE also studied whether adding a second 230 kilovolt (kV) transmission line between PGE's Bethel substation and PacifiCorp's Parish Gap substation would increase TTC.[36] These substations are currently connected by one 230 kV line, which is the single largest transmission facility that moves power between PGE and PACW, and PGE believed that increasing the Bethel-Parish Gap connection was the upgrade most likely to significantly increase the transfer capability of the interface.[37] However, PGE determined that the addition of a second 230 kV line between these substations—which would cost in the neighborhood of $36 million[38]—would increase the

[29] 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. They have not explained their reasoning for doing so, but have since represented in testimony that they are only pursuing 50 MW of capacity. Blue Marmot/400, Moyer/32 n.38.
[30] PGE/300, Afranji-Larson-Richard/16.
[31] PGE/300, Afranji-Larson-Richard/19.
[32] PGE/300, Afranji-Larson-Richard/17.
[33] PGE/300, Afranji-Larson-Richard/17.
[34] PGE/300, Afranji-Larson-Richard/18.
[35] PGE/300, Afranji-Larson-Richard/18.
[36] PGE/300, Afranji-Larson-Richard/18.
[37] PGE/300, Afranji-Larson-Richard/18-19; PGE/600, Edmonds-Larson-Richard/18.
[38] 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.

TTC by only 19 MW.[39] And PGE concluded that constructing additional transmission facilities between the Bethel and Parish Gap substations would yield diminishing returns and would cause increased expense.[40] 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 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.[41] Therefore, it is not surprising that increasing the size of the connection alone could not yield the requisite TTC increase.

In the end, PGE's System Impact Study concluded that there is no feasible and economic upgrade that could increase the TTC at the PACW-PGE interface sufficiently to accommodate the Blue Marmots' output.[42] In fact, 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, which the Blue Marmots had refused to do—would be for the Blue Marmots to build a generation tie line interconnecting directly to PGE's system through a new interface.[43] This option, while effective, would be extremely expensive.[44] Therefore, it became 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.[45]

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

The EIM is a wholesale energy marketplace, which has reshaped the western grid and fundamentally changed the direction of markets for the future.[46] Through the EIM, participants offer available energy resources, and the market optimizes real-time dispatches to reduce overall

[39] PGE/300, Afranji-Larson-Richard/19.
[40] PGE/300, Afranji-Larson-Richard/19.
[41] PGE/300, Afranji-Larson-Richard/17.
[42] PGE/300, Afranji-Larson-Richard/19.
[43] PGE/100, Greene-Moore/20; PGE/300, Afranji-Larson-Richard/4, 18.
[44] PGE/300, Afranji-Larson-Richard/4, 20; PGE/400, Greene/14.
[45] *See* PGE/100, Greene-Moore/25; PGE/600, Afranji-Larson-Richard/18, 23.
[46] PGE/400, Greene/16.

market prices across a wide geographic area.[47] Critically, this capability depends on the EIM's 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.[48] 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 across a wide geographic area.[49] In addition, the EIM enables the grid to be used more efficiently and to avoid unnecessary curtailments of variable energy resources.[50]

The EIM already has been a tremendous success, with economic and environmental benefits growing as the EIM footprint itself has grown.[51] And as additional members have joined the market, they have contributed generation and transmission resources, facilitating increased benefits.[52] Already more than 50 percent of the load in the West is participating in the EIM, and this value could soon be close to 80 percent.[53] Importantly, PGE believes that the benefits of participation in the EIM will increase in the future as more participants join and as renewable resource buildout increases.[54] Therefore, participating in the EIM—both now and in the future—is an important strategic and operational initiative for PGE and its customers.[55]

1. PGE's Entry into the EIM.

PGE first began considering entry into a sub-hourly (or real-time) market in 2012.[56] While PGE was in the process of studying the potential impacts of participating in a sub-hourly market, the Commission specifically directed PGE to "conduct a comprehensive cost-benefit analysis of

[47] PGE/200, Sims-Rodehorst-Sporborg/5.
[48] PGE/200, Sims-Rodehorst-Sporborg/7.
[49] PGE/200, Sims-Rodehorst-Sporborg/7.
[50] PGE/400, Greene/16.
[51] PGE/400, Greene/16.
[52] PGE/400, Greene/16.
[53] PGE/400, Greene/17.
[54] PGE/200, Sims-Rodehorst-Sporborg/7. PGE also believes that EIM benefits will increase if natural gas prices rise.
[55] PGE/200, Sims-Rodehorst-Sporborg/7.
[56] PGE/200, Sims-Rodehorst-Sporborg/6.

joining the PacifiCorp-CAISO EIM."[57] 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.[58] E3's analysis concluded that PGE's customers would benefit from participating in either the NWPP Initiative or the Western EIM.[59] PGE ultimately determined that joining the EIM was the best path forward for PGE's customers.[60]

To determine how much transmission capacity it needed to join the EIM, PGE reviewed the transmission capacity available between other EIM participants in the Northwest.[61] When PGE undertook this assessment in 2015, these allocations generally ranged from 300 to 450 MW.[62] Therefore, the Company determined that it would need a minimum of 300 MW of transmission capacity to adequately participate in the EIM.[63]

However, PGE also believed that increasing the capacity available to the EIM to the upper end of the 300-450 MW range would maximize potential customer benefits by ensuring that a lack of transmission capability did not prevent PGE from accessing EIM transfers and the attendant benefits.[64] Accordingly, between April and June 2015, PGE Merchant reserved 418 MW of long-term firm point-to-point transmission service at the PACW-PGE interface, which at that time had a TTC of 448 MW.[65] PGE Merchant reserved this transmission from PGE Transmission pursuant to the open-access procedures set forth in PGE's OATT.[66]

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[57] *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).
[58] 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).
[59] PGE/200, Sims-Rodehorst-Sporborg/6.
[60] 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.
[61] PGE/200, Sims-Rodehorst-Sporborg/10-11.
[62] PGE/200, Sims-Rodehorst-Sporborg/10-11, Figure 1 (depicting amount of transfer capability between EIM participants).
[63] PGE/200, Sims-Rodehorst-Sporborg/11.
[64] PGE/200, Sims-Rodehorst-Sporborg/13.
[65] PGE/300, Afranji-Larson-Richard/15.
[66] 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 other transmission customer and refrain from giving PGE Merchant any undue preference. In addition, PGE

Later in 2015, the TTC at the PACW-PGE interface decreased from 448 to 306 MW.[67] As a result, on January 7, 2016, PGE Transmission recalled a total of 142 MW from PGE Merchant's EIM reservations.[68] In 2017, PGE Transmission restudied the TTC at the PACW-PGE interface jointly with PacifiCorp, and this Joint TTC Study produced a TTC for the interface of 320 MW.[69] PGE Merchant currently holds 310 MW of transmission capacity at the PACW-PGE interface.[70]

To ensure that capacity is always available for EIM transfers, PGE primarily participates in the EIM by devoting its reserved capacity to the market under the Interchange Rights Holder approach.[71] Under this method, PGE offers all of its reserved firm transmission rights as capacity for EIM transfers.[72] PGE also offers to the EIM any unreserved or unscheduled capacity remaining using the ATC approach, an as-available method.[73] Using the ATC approach alone, the amount of transmission capability available for EIM transfers varies and could be zero.[74]

PGE Merchant chose to participate primarily using the Interchange Rights Holder approach—reserving and committing long-term firm transmission rights exclusively to the EIM—for two reasons. First, given the limited TTC at the PACW-PGE interface, PGE was concerned that other parties might reserve the remaining capacity, thereby reducing or effectively eliminating PGE's ability to participate in the EIM.[75] Second, as discussed in more detail below, committing a specified amount of transmission for EIM transfers helped PGE secure authorization from FERC

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.

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

[68] PGE/200, Sims-Rodehorst-Sporborg/13; PGE/300, Afranji-Larson-Richard/16.

[69] PGE/300, Afranji-Larson-Richard/15.

[70] PGE/500, Rodehorst-Moore/2.

[71] PGE/500, Rodehorst-Moore/5.

[72] PGE/500, Rodehorst-Moore/5-6.

[73] PGE/200, Sims-Rodehorst-Sporborg/12; PGE/500, Rodehorst-Moore/6. 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.

[74] PGE/500, Rodehorst-Moore/5.

[75] PGE/500, Rodehorst-Moore/7.

to transact in the EIM at market-based rates.[76] Using only the ATC approach to participate in the EIM would have been inadequate to achieve either of these goals.[77]

2. PGE's Receipt of Market-Based Rate Authority for Participating in the EIM.

In preparation for entering the EIM, PGE applied to FERC for market-based rate (MBR) authority to permit PGE to transact in the EIM at market rates instead of being restricted to cost-based "default energy bids."[78] The ability to bid resources into the EIM at market rates is important to maximizing EIM benefits, because it allows a utility to respond to changing market conditions, account for evolving resource limitations or constraints, and efficiently manage its resource portfolio—in particular its hydro resources.[79]

FERC will grant MBR authority for the EIM to an applicant that demonstrates that it, and its affiliates, lack (or have adequately mitigated) horizontal and vertical market power in the EIM.[80] Therefore, to avoid having its BAA treated as a discrete geographic submarket in which PGE could wield market power, PGE needed to demonstrate to FERC that there are no frequently binding transmission constraints that would limit imports into its BAA.[81] To do so, PGE provided sufficient firm transmission capacity to ensure a competitive supply of imported generation.[82]

On June 17, 2017, PGE filed a Notice of Change in Status with FERC, explaining why its participation in the EIM would not create a new geographic submarket.[83] In that filing, PGE relied on its commitment that a minimum of 200 MW of firm transmission capacity would be dedicated solely for EIM transfers and that the remainder of the Company's capacity at the PACW-PGE interface would also be dedicated to EIM transfers, subject to usage for reliability or servicing existing contractual arrangements.[84] PGE's commitment of 200 MW was supported by an analysis

[76] PGE/500, Rodehorst-Moore/2.
[77] *See* PGE/200, Sims-Rodehorst-Sporborg/12-13; PGE/500, Rodehorst-Moore/5-7.
[78] PGE/500, Rodehorst-Moore/26.
[79] PGE/500, Rodehorst-Moore/27.
[80] PGE/200, Sims-Rodehorst-Sporborg/14.
[81] PGE/200, Sims-Rodehorst-Sporborg/14-15.
[82] PGE/200, Sims-Rodehorst-Sporborg/15.
[83] *Portland Gen. Elec. Co.*, Notice of Change in Status, Docket No. ER10-2249-007 (June 16, 2017) (hereafter, "PGE's Notice of Change in Status").
[84] *Id.* at 7; PGE/200, Sims-Rodehorst-Sporborg/15.

by Navigant Consulting (Navigant), which indicated that approximately 200 MW of dedicated transfer capability was adequate to ensure that sufficient competing imbalance energy would enter PGE's BAA.[85] FERC accepted PGE's filing and granted PGE MBR authority, but cautioned that PGE would need to file a new change in status filing with FERC if PGE's transmission commitment changed.[86]

3. PGE's Achieved Benefits Flowing from the EIM.

During PGE's first year of EIM participation, EIM transfers regularly used at or near the full 310 MW of transmission capacity available at the PACW-PGE interface.[87] Because PGE is only about one year into its EIM participation, PGE views the currently available data as preliminary and fully expects that the transfer levels—and the resulting benefits—experienced to date will increase in the future as a result of several factors. First, PGE expects that EIM transfers will increase as additional participants join the EIM, and at least five entities plan to join over the next three years with more anticipated in the future.[88] Second, PGE expects that the benefits of participating in the EIM will increase if natural gas prices rise.[89] And third, PGE and the Blue Marmots' expert, Keegan Moyer, agree that EIM transfers will increase in the future as more renewable resources come online, increasing the variability in sub-hourly imbalance that the EIM responds to.[90]

III. LEGAL STANDARD

PURPA requires utilities to purchase QF output and mandates that the rates paid by utilities for such output be "just and reasonable."[91] State law and FERC's regulations require that utilities pay QFs no more for their output than the costs that the utility would otherwise incur to generate or purchase energy to serve its customers—referred to as the utility's "avoided cost."[92] The

[85] PGE/200, Sims-Rodehorst-Sporborg/15-16.
[86] PGE/200, Sims-Rodehorst-Sporborg/21.
[87] PGE/500, Rodehorst-Moore/10, 19-20.
[88] PGE/700, Rodehorst-Moore/5.
[89] PGE/200, Sims-Rodehorst-Sporborg/7.
[90] PGE/700, Rodehorst-Moore/5-6; Blue Marmot/700, Moyer/3.
[91] 16 U.S.C. § 824a-3(b); 18 C.F.R. § 292.304(a).
[92] 18 C.F.R. § 292.304(d); *see also* ORS 758.505(1) (defining "avoided cost").

avoided-cost requirement ensures that a utility's customers remain indifferent to the purchase of QF generation and that QFs are not subsidized at customers' expense.[93] As FERC explained:

> 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.[94]

This Commission has made clear that one of its fundamental objectives in implementing PURPA is to protect customers and ensure that they remain indifferent to the purchase of QF generation "by having utilities pay no more than their avoided costs,"[95] and has emphasized that "[t]he Commission has broad authority to prevent customer harm."[96]

IV. ARGUMENT

Contrary to the claims made by the Blue Marmots, their current transmission reservations on PacifiCorp's system are not sufficient to achieve delivery to PGE or to trigger PGE's mandatory-purchase obligation. Moreover, Oregon law confirms that the Blue Marmots do not have unfettered discretion to insist upon delivering to a fully-subscribed delivery point when another reasonable and economic option exists. Accordingly, to successfully achieve delivery to PGE, the Blue Marmots must transmit their output to the BPA-PGE interface; alternatively, they could pay for any feasible upgrade that would increase the capacity of the PACW-PGE interface—though no such upgrade has been identified by either party.

In addition, this Commission has made clear that, while the utility is responsible for managing QF output delivered to it, the QF is nevertheless responsible for any additional costs

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[93] *Indep. Energy Producers Ass'n v. Ca. Pub. Util. 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."); *So. Cal. Edison Co*., 71 FERC ¶ 61,269, at 62,079-80 (June 2, 1995) (stating that in adopting PURPA, "Congress was not asking utilities and utility ratepayers to pay more than they otherwise would have paid for power. . . The intention was to make ratepayers indifferent as to whether the utility used more traditional sources of power or the newly-encouraged alternatives.").

[94] *So. Cal. Edison Co.*, 71 FERC ¶ 61,269, at 62,079.

[95] *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. 05-584 at 1, 11 (May 13, 2005).

[96] *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).

imposed. Therefore, even if the Commission finds as a technical matter that the Blue Marmots' transmission arrangements on PacifiCorp's system are sufficient for delivery to PGE and that PGE must manage the Blue Marmots' output, PURPA and Commission precedent require that the Blue Marmots be held responsible for the additional costs required for PGE to receive their output at a fully-committed interface. And furthermore, nothing in PURPA requires PGE to cede transmission that it previously committed and is actively using for the EIM to accommodate the Blue Marmots' deliveries, particularly when doing so will reduce PGE's EIM participation and harm PGE's customers.

The Blue Marmots' position that their established LEOs must protect them from incurring additional costs is unsupportable and counter to both FERC and Commission precedent. And finally, the Blue Marmots' allegations of bad faith and discrimination are unfounded, because PGE has acted in a reasonable, good faith manner throughout the contracting process with the Blue Marmots—including after identifying the lack of ATC at their preferred delivery point.

A. The Blue Marmots must make and pay for the additional arrangements necessary to achieve delivery of their output to PGE.

Because there is no ATC at the PACW-PGE interface, PGE currently cannot accept the Blue Marmots' output there. For that reason, PGE has appropriately declined to execute the Blue Marmots' PPAs until the Blue Marmots make the necessary arrangements to deliver their output to PGE at a point where it can be received. However, the Blue Marmots incorrectly assert that they have successfully arranged for delivery to PGE at the PACW-PGE interface, and as a result, PGE must accept and manage their output and bear the additional costs imposed. The Blue Marmots claim that PGE's refusal to accept these obligations and finalize their PPAs is a violation of PURPA.

The Blue Marmots' efforts to impose on PGE both cost and managerial responsibility for their output are unavailing because the Blue Marmots are responsible for making the arrangements necessary to successfully deliver their output to PGE, and until they do so, PGE has no obligation under PURPA to purchase their output. Neither PURPA nor Oregon law requires PGE to ignore

the lack of ATC and simply accept delivery of the Blue Marmots' output at the point of their choosing. In fact, consistent with PURPA's bedrock customer-indifference and avoided-cost principles, Oregon law confirms that PGE is not required to accept QF output at a fully-subscribed delivery point when a feasible and economic alternative exists.

1. The Blue Marmots have not agreed to a feasible plan for delivery to PGE and thus have not triggered PGE's purchase obligation or successfully transferred responsibility for their output to PGE.

Under PURPA, a utility must purchase QF output that is "made available" by the QF, either directly or indirectly.[97] However, despite the Blue Marmots' protestations, they have not yet made arrangements sufficient to make their output available to PGE. PGE acknowledges that the Blue Marmots have reserved transmission service from PacifiCorp to the edge of PGE's system,[98] but that reservation begins and ends on PacifiCorp's system, and this service alone is therefore insufficient to achieve delivery.[99] Importantly, the Blue Marmots do not dispute that there is insufficient ATC at the PACW-PGE interface for PGE to accept their output there, and they acknowledge that their existing transmission arrangements presently will not permit them to schedule their output for delivery to PGE at that interface.[100] As a result, unless the Blue Marmots agree to pay for upgrades or select an alternate delivery point—which they have thus far refused to do—the Blue Marmots cannot fulfill their delivery obligation. And until they demonstrate a feasible plan for delivery, PGE has no obligation to purchase their output. The Blue Marmots' claims that PGE is in violation of PURPA simply have no basis.

PGE is not seeking to be relieved of its mandatory-purchase obligation, as the Blue Marmots have alleged.[101] Instead, PGE remains willing to purchase the Blue Marmots' output, at

[97] 18 C.F.R. § 292.303(a).
[98] PGE/100, Greene-Moore/9; PGE/300. Afranji-Larson-Richard/3, 7, 14.
[99] 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").
[100] *See* Blue Marmot/600, Moyer/10.
[101] Blue Marmots' Petition for Declaratory Order and Request for Expedited Consideration at 2, 11, Attachment A to Blue Marmots' Motion for Stay (Nov. 7, 2018).

the rates included in the partially executed PPAs, once the Blue Marmots demonstrate their willingness to pursue a feasible approach to delivery—either through transmission to the BPA-PGE interface or through upgrades to the PACW-PGE interface.

2. 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-committed interface.

Fundamental to the Blue Marmots' position in this case is their view that PURPA gives them the absolute right to deliver their output at any point—even if that point is fully subscribed. This is clearly not the case. On the contrary, both the Commission and the courts have concluded that a utility has the right to specify a reasonable delivery point at which an off-system QF is required to make its output available.[102]

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. In a proceeding (conducted *prior* to the parties entering a PPA), the Commission had determined that the utility had the right to designate a particular delivery point, and the parties subsequently executed a PPA that defined the delivery point.[103] Later, the QF's transmission provider—BPA—sought to deliver the output to a different point, and the QF argued that the purchasing utility's "preference as to a delivery point, [was] irrelevant."[104] The Commission disagreed, finding that the utility's preferred delivery point was "reasonable in terms of its needs."[105] Ultimately the matter was reviewed by the Oregon Court of Appeals, which concurred with the Commission, holding that the utility was within its rights to insist upon a particular point of delivery.[106] In so concluding the Court of Appeals reasoned that neither PURPA nor other relevant statutes, regulations, and rules addresses the

[102] *Water Power Co., Inc. v. PacifiCor*p, 99 Or App 125, 130 (1989) ("The utility . . . may insist on provisions that require . . . a particular point of delivery.").
[103] *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'").
[104] *Id.* at 130.
[105] *Id.* at 129.
[106] *Id.* at 130-32.

location of points of delivery for QF power,[107] and that therefore the Commission's decision and the utility's position was correct. While this case is now close to 30 years old, it remains the only binding decision on point and—perhaps as importantly—its central reasoning remains just as strong.

The Blue Marmots have claimed that *Water Power* is "not applicable" for four reasons. However, none of these arguments are valid. First, they claim that *Water Power* is distinguishable because the case "was not decided under FERC jurisdictional transmission"[108] (which PGE interprets to mean "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.[109] If anything, the Court's conclusion in *Water Power* is bolstered by the fact that off-system QFs now have open access to transmission resources and are not limited by their transmission provider's preferences.

Second, the Blue Marmots argue that *Water Power* merely concerned interpretation of an "unfavorable PPA that contained a [delivery point]"—whereas PGE's draft PPAs do not specify a location for delivery.[110] But the Blue Marmots' point is not only self-defeating—because the lack of a specified location for delivery merely reinforces the fact that the location for delivery has not been agreed upon—but is also incorrect; the Commission in fact "ruled that [the utility] could require [a specific] point of delivery" before a PPA was ever executed.[111]

Third, the Blue Marmots argue that *Water Power* is inapplicable because they "are entitled to PGE's avoided cost rates in effect when they established their [LEO]."[112] While the relevance of this statement is not entirely clear, PGE infers that the Blue Marmots are arguing that they cannot be required to select a different delivery point because doing so would impact their costs,

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[107] *Id.*
[108] Blue Marmots' Reply in Support of Motion to Strike at 30 (Mar. 20, 2018).
[109] *Water Power*, 99 Or App at 128-32.
[110] Blue Marmots' Reply in Support of Motion to Strike at 30.
[111] *Water Power*, 99 Or App at 129.
[112] Blue Marmots' Reply in Support of Motion to Strike at 30.

and that their comprehensive costs have been fixed by the establishment of a LEO. However, as explained in more detail below, [113] a LEO establishes a QF's filed avoided cost rate only—not all cost-related terms and conditions as does a PPA. The existence of the Blue Marmots' LEO is therefore irrelevant to the binding force of *Water Power*.

Finally, the Blue Marmots claim that a "recent string of FERC cases" have since "clarif[ied] the responsibilities between utilities and off-system QFs," but they do not cite any FERC cases to support this statement.[114] PGE is not aware of any FERC precedent stating that a QF is entitled to insist on a specific delivery location or impose the costs associated with such a selection on a utility's customers.[115]

Thus, despite the Blue Marmots' disagreement, the holding in *Water Power* remains forceful and binding and allows a utility to require QFs to deliver to a reasonable point. Nothing in PURPA or FERC's regulations mandates otherwise.[116] Therefore, contrary to the Blue Marmots' assertions, PGE is not required to accept the Blue Marmots' output at their chosen delivery point and instead may insist on a reasonable and feasible delivery point. The Blue Marmots' insistence that they have the right to deliver to the PACW-PGE interface—with no regard for the costs that will be imposed on PGE's customers—is inconsistent with Oregon law.

In sum, PGE stands ready to work with the Blue Marmots to ensure successful delivery of their output, but the Blue Marmots' arguments that they have no further responsibility for the deliverability of their output—and instead may impose all additional managerial responsibility and costs on PGE—are contrary to PURPA and Oregon law.

B. Each of the Blue Marmots' proposals for ways by which PGE could accept and manage their output would harm PGE's customers in violation of law.

Even if the Commission finds that the Blue Marmots presently are both (1) permitted and (2) able to achieve delivery to PGE at the PACW-PGE interface, and that PGE must manage their

[113] *See supra* Section IV.D.
[114] Blue Marmots' Reply in Support of Motion to Strike at 30.
[115] *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).
[116] *See Water Power*, 99 Or App at 132.

output thereafter, then PURPA, FERC's regulations and orders, state law, and Commission precedent all ***require*** the Blue Marmots to bear the costs associated with accepting and managing their output that are not accounted for in the Blue Marmots' standard avoided cost rates, and ***prohibit*** such costs from being imposed upon PGE's customers. For this reason, the Blue Marmots' proposals—that PGE either bear the costs of transmitting their output to the BPA-PGE interface, make necessary system upgrades, pursue "creative" solutions, or surrender EIM capacity to accommodate their output—must be rejected.

1. PGE's customers will not be indifferent if they are held responsible for the cost to deliver the Blue Marmots' output to the BPA-PGE interface, and the Commission has already determined that such costs must be borne by the QF.

The Blue Marmots assert that PGE could "manage" their output once PacifiCorp transmits it to the PACW-PGE interface by buying a second leg of transmission and bringing the output onto PGE's system via the BPA-PGE interface.[117] The Blue Marmots estimate that this additional leg of transmission would cost approximately $14 million total over the term of their PPAs.[118] However, PGE's customers will not be held indifferent to the purchase of the Blue Marmots' generation if they must pay for this additional transmission. PGE's 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.[119] If PGE's customers must purchase an additional leg of transmission to accept the Blue Marmots' output, customers would be paying for costs that they do not avoid by virtue of the purchase of the Blue Marmots' output, which is inconsistent with PURPA.[120]

Crucially, the Commission has already determined that it is the Blue Marmots—not PGE—that must bear any additional, third-party transmission cost imposed to comply with PURPA's avoided-cost and customer-indifference requirements. In UM 1610, the Commission considered

[117] Blue Marmot/300, Moyer/5.
[118] Blue Marmot/100, Irvin/6; Blue Marmot/200, Talbott/11; Blue Marmot/300, Moyer/14.
[119] PGE/100, Greene-Moore/24.
[120] PGE/100, Greene-Moore/23-24.

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.[121] 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."[122] In so stating, the Commission acknowledged that the QF technically might be able to deliver its output to the utility, thus triggering the utility's obligation to purchase and manage the output, but found that the QF nevertheless could be held responsible for the costs of transmission required to move the output to load. In assigning responsibility for the additional costs, the Commission applied the general principle "that avoided cost rates should be adjusted for costs imposed on a utility by the particular circumstances of a QF."[123]

The Commission acknowledged FERC precedent upon which the Blue Marmots rely, including *Pioneer Wind Park I, LLC*, 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[.]"[124] 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,"[125] 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."[126]

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[121] *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 16-23 (Feb. 24, 2014).
[122] Order No. 14-058 at 21.
[123] Order No. 14-058 at 22.
[124] Order No. 14-058 at 21-22.
[125] Order No. 14-058 at 22.
[126] *Id.* In his testimony, Mr. Moyer asserted that "FERC's regulations . . . state that [a QF's] rate 'shall not include any charges for transmission.'" Blue Marmot/300, Moyer/27 (citing 18 C.F.R. § 292.303(d)). However, Mr. Moyer's assertion is based upon a misinterpretation of the regulation he cites. 18 C.F.R. § 292.303(d) addresses the situation where a QF and the utility to which it is directly interconnected agree for the utility to transmit the QF's output to another utility for purchase. In those circumstances, the purchasing utility may not charge the QF for transmission by the transmitting utility. 18 C.F.R. § 292.303(d). While this regulation might have been relevant to this case if PGE were attempting to charge the Blue Marmots for PacifiCorp transmission to the PACW-PGE interface, PGE is not trying to do, and therefore the regulation Mr. Moyer cites is irrelevant.

Of great relevance to this case, the Commission found in UM 1610 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."[127] 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."[128] Thus, consistent with the Commission's decision in UM 1610, any incremental costs imposed by the Blue Marmots as a result of their decision to deliver to a fully committed point "*must be assigned*" to the Blue Marmots.[129] 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 principle that it is the QF—rather than customers—that must bear these costs.

Therefore, the Blue Marmots—not PGE—must bear the $14 million cost of the BPA transmission required for PGE to accept and complete delivery of their output. Paying for BPA transmission is unlikely to significantly 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[130]—and EDPR has never claimed that paying an additional $14 million *total* to deliver the projects' output to the BPA-PGE interface over the life of the contracts would render the projects uneconomic. Under these circumstances, it is not only legally mandated but also entirely reasonable to hold EDPR responsible for the costs necessary to deliver the Blue Marmots' output via the BPA-PGE interface.

2. <u>There are no feasible or economic upgrades to the PACW-PGE interface, and if there were, the Blue Marmots, not PGE, would be responsible for the costs.</u>

The Blue Marmots argue that PGE could accept their output at the PACW-PGE interface if PGE paid for necessary system upgrades.[131] Importantly, this argument is not central to the

[127] Order No. 14-058 at 22.
[128] *Id.*
[129] *Id.* (emphasis added).
[130] PGE/100, Greene-Moore/25.
[131] Blue Marmot/100, Irvin/8.

outcome of 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.[132] And although the Blue Marmots level a myriad of criticisms at the System Impact Study, none of their concerns or analyses undermine the System Impact Study's central conclusion.[133] Moreover, even if a feasible and economic upgrade existed that would allow the Blue Marmots to deliver their output via the PACW-PGE interface, the responsibility for paying for such an upgrade would rest with the Blue Marmots—not PGE—because the cost of system upgrades necessary to accept QF output are not included in PGE's standard avoided cost rates,[134] and the Commission already has made clear that excess costs imposed by a QF and not accounted for in the avoided cost rates are the QF's responsibility.[135]

a. Neither PGE nor the Blue Marmots have identified a feasible or economic 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.[136] Most significantly, while the System Impact Study identified one approach that potentially could increase the transfer capability at the PACW-PGE interface, that upgrade could not have achieved delivery of all of the Blue Marmots' output and would have cost more than twice the amount required to deliver the Blue Marmots' output via the BPA-PGE interface.[137]

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[132] PGE/100, Greene-Moore/4, 19; PGE/300, Afranji-Larson-Richard/19, 22; PGE/400, Greene/14; PGE/600, Edmonds-Larson-Richard/2, 16.
[133] PGE/600, Edmonds-Larson-Richard/3.
[134] 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…").
[135] Order No. 14-058 at 22.
[136] PGE/300, Afranji-Larson-Richard/16-17. To the extent the Blue Marmots continue to assert that the Commission is preempted from considering the System Impact Study in resolving this case, PGE responds that neither field nor conflict preemption principles prohibit the Commission from considering the System Impact Study and that the consideration of this type of document is well within the Commission's purview. In support of its position, PGE relies upon its thorough briefing of preemption issues in Response to the Blue Marmots' Motion to Strike, at 3, 17-27 (Mar. 6, 2018) and in Response to the Blue Marmots' Motion to Stay, at 8-11 (Nov. 20, 2018).
[137] PGE/300, Afranji-Larson-Richard/19.

The Blue Marmots, however, have retained an outside expert, Keegan Moyer, who has suggested 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.[138] However, Mr. Moyer's claims about these alternatives fail for several reasons.

First, while Mr. Moyer argues that PGE should have studied these alternatives, he failed to fully do so himself, and therefore cannot conclude that they increase the TTC at the PACW-PGE interface at all—let alone sufficiently to allow delivery of the Blue Marmots' output. The fact is that the upgrades that proposes would be made to the BPA-PGE interface—with the hope that they would indirectly influence the TTC of the PACW-PGE interface.[139] However, analyzing the actual effects of the proposed upgrades would require PGE to reassess and potentially alter its current approach of studying the two interfaces separately[140]—which would involve a time-consuming and costly process that could not be completed in the time frame of this case.[141] And if the study methodology changes, there is no guarantee that the alternatives would lead to the TTC increases Mr. Moyer asserts.[142]

Second, even if Mr. Moyer's proposed upgrades *could* create the TTC increases he surmises—which PGE doubts—PGE estimates that they would likely cost at least $45 to $120 million.[143] Therefore, they are not cost-effective when compared with the existing option of transmitting the Blue Marmots' output for delivery via the BPA-PGE interface for only $14 million total over the life of their contracts.[144] It would have made no sense for PGE to embark on an extremely costly and time-consuming analysis of dubious merit to identify an upgrade the Blue Marmots would never reasonably undertake.[145] It is significant that, when PGE asked whether

[138] Blue Marmot/400, Moyer/36.
[139] PGE/600, Edmonds-Larson-Richard/21.
[140] PGE/600, Edmonds-Larson-Richard/21-22.
[141] *See* Blue Marmot/401, Moyer/10-11, PGE Response to Blue Marmot Data Request Nos. 167 & 168.
[142] PGE/600. Edmonds-Larson-Richard/21.
[143] *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).
[144] PGE/400, Greene/12.
[145] *See* Blue Marmot/401, Moyer/10-11, PGE Response to Blue Marmot Data Request Nos. 167 & 168.

Mr. Moyer believes that these alternatives would be reasonable or economic to construct, he responded that such conclusions were not within the scope of his analyses and testimony.[146]

In short, while Mr. Moyer may feel free to offer abstract criticisms of PGE's System Impact Study, and to propose high-level and hypothetical solutions to increase TTC, the purpose of PGE's System Impact Study analysis 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 upgrades exist.

b. 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 the PACW-PGE interface, both FERC and this Commission have made it clear that the cost of such upgrades would need to be borne by the Blue Marmots—not PGE's customers. 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.[147] 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."[148] 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

[146] PGE/401, Greene/3, Blue Marmots' Response to PGE Data Request No. 33.
[147] *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215 at 38 n.73 (2013) ("[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."
[148] Order No. 14-058 at 22.

delivery point;[149] therefore, any system upgrade costs they impose must be separately accounted for—either as interconnection costs or by another means.[150]

This view is reflected in the Commission's policies governing the interconnection costs that must be borne by on-system QFs. Specifically, under the Commission's orders and rules, on-system QFs interconnecting with the purchasing utility are explicitly required to absorb the costs of any network upgrades that would be required to allow the utility to accept delivery of the QF output and transmit it to load.[151] 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.[152] Although the Commission has not yet had occasion to address similar costs imposed by an off-system QF, the same principles must control. Specifically, the cost of system upgrades necessary to 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 an on-system QF and directly interconnected.

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 a recent case before the Utah Public Service Commission (Utah PSC), the Glen Canyon QF sought to site in a remote and capacity-constrained location within Rocky Mountain Power's (RMP) service territory, where the

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[149] 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…").

[150] Mr. Moyer asserts that the upgrades he identified to increase the PACW-PGE interface TTC would be network upgrades and that the costs would therefore be socialized to all customers of PGE Transmission. Blue Marmot/600, Moyer/46-47. PGE has not studied the upgrades Mr. Moyer identified or determined whether they are network upgrades. *See* PGE/600, Edmonds-Larson-Richard/20. However, even if they were network upgrades and the costs were socialized, PGE's customers would still bear the majority of those costs—in violation of PURPA—because PGE Merchant is the primary customer of PGE Transmission, holding more than 90 percent of the long-term transmission rights. *See* PGE FERC Form 1, at 401 columns (e) and (f), *available at* http://investors.portlandgeneral.com/static-files/40793abf-ffab-4559-9945-07846188dde5.

[151] *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).

[152] *See* Order No. 10-132 at 3.

only transmission line to RMP's load had been committed for other purposes.[153] Despite this fact, Glen Canyon argued that RMP should provide it with capacity on the fully-committed transmission line to avoid the need for upgrades.[154] However, the Utah PSC ruled against Glen Canyon, and concluded that "interconnection costs [assessed to a QF] should include any otherwise unnecessary investments in transmission facilities . . ."[155] In so doing, the Utah PSC posed the following hypothetical:

> [S]uppose, for the sake of argument, a QF chooses to site its project in an area where no transmission capacity is available, the deficiency cannot be remedied through redispatch or otherwise, and the cost to upgrade the transmission capacity sufficient to accommodate the QF's output is more than $400 million. Under such a scenario, does PURPA contemplate the QF may nevertheless unilaterally elect to site in the transmission constrained area, force PacTrans [PacifiCorp's transmission function] to invest more than $400 million to upgrade its transmission network to accommodate the QF's output and see those costs passed through to RMP and its ratepayers? We conclude the answer is "no." ***Allowing QFs to make inefficient siting decisions and to shift the attendant costs to ratepayers is inconsistent with the primary objective of ratepayer indifference***.[156]

The Glen Canyon case—which will be discussed in more detail below—involved an on-system QF, but the same principles hold true for off-system QFs like the Blue Marmots. Here, any upgrade undertaken to allow the Blue Marmots to deliver via PACW-PGE would be an "otherwise unnecessary investment" that the Blue Marmots must pay for, in order to maintain customer indifference.[157]

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,[158] 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.[159] Therefore, if PGE is required to pursue

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[153] *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 7-8 (Utah Pub. Serv. Comm'n Dec. 22, 2017).
[154] *Id.* at 12-14.
[155] *Id.* at 30.
[156] *Id.* at 30 (emphasis added).
[157] *See id.* at 30.
[158] *See* PGE/100, Greene-Moore/23-24.
[159] *See So. Cal. Edison Co*. 71 FERC ¶ 61,269, at 62,079-80.

expensive and unnecessary system upgrades to accommodate the Blue Marmots, then the Blue Marmots must be held responsible for the costs they impose.

3. Each of the "creative" solutions proposed by the Blue Marmots is unworkable and would impose additional costs on PGE's customers.

Mr. Moyer asserts, without basis, that PGE could accept the Blue Marmots' output and avoid the lack of ATC at the PACW-PGE interface simply by reselling the Blue Marmots' output to a third party or selling their output into the market in place of other market sales.[160] Significantly, in the Glen Canyon case—in which Mr. Moyer also served as an expert witness—the Utah PSC soundly rejected the proposal that the utility should be required to sell into the market the output it cannot use due to lack of transmission capacity.[161] The Utah PSC stated, "Glen Canyon offers no legal basis to support this extraordinary claim, and we conclude no such requirement exists."[162] Mr. Moyer's proposals in this case are similarly extraordinary and unworkable for PGE and the Blue Marmots. Moreover, Mr. Moyer's proposals are flawed for the following specific reasons.

First, Mr. Moyer's proposals run counter to PURPA's avoided-cost framework, which is based on the expectation that the utility will purchase the QF's output in place of its own generation during the deficiency period.[163] If PGE were required to resell the Blue Marmots' output throughout the contract term, PGE would inevitably sell the output at a loss during the deficiency period when the avoided cost rates include a capacity payment and will almost always be significantly above spot market prices.[164] Thus, an arrangement premised upon the QF's generation never actually reaching the utility upends the very assumptions on which PURPA was based, harming utility customers.

Second, PGE would be obligated to accept the Blue Marmots' output *at any time* and would not have the ability to curtail them, yet Mr. Moyer offers no evidence to suggest that his proposed

[160] Blue Marmot/400, Moyer/7.
[161] *Glen Canyon*, Consolidated Order at 21.
[162] *Id.*
[163] PGE/400, Greene/10.
[164] PGE/400, Greene/10.

sales of the Blue Marmots' output could actually occur when the Blue Marmots are generating. Mr. Moyer incorrectly assumes that PGE would be able to find a willing third-party buyer to accept the Blue Marmots' output whenever they are generating and transmission to deliver the output to that buyer—neither of which is likely.[165] And Mr. Moyer's assumption that PGE could use the Blue Marmots' output to displace market sales is similarly unfounded because there is no guarantee that PGE would otherwise be making market sales when the Blue Marmots are generating.[166] In periods of high load, PGE typically would make market *purchases*, not sales.[167] And when market pricing is very low or negative, PGE would opt to curtail its own generation resources rather than selling output into the market.[168] Mr. Moyer's proposed sales do not offer a feasible solution for accepting the Blue Marmots' output.

Third, even if the proposed sales could occur at the specific times that the Blue Marmots were generating, the sales would result in imposition of additional costs on PGE and its customers—an outcome that would harm customers in violation of PURPA and FERC's dictates. Specifically, reselling the Blue Marmots' output—either to another utility or into the market—would require PGE to expend resources to acquire transmission to move the power to the buyer or to the market.[169] Even if the requisite transmission capacity were available at the times when the Blue Marmots were generating, PGE would then be forced to accept whatever market price it could obtain—even if market pricing were negative.[170] And PGE also could incur costs to facilitate the sale.[171]

In sum, Mr. Moyer's "creative" proposals for disposal of the Blue Marmots' output do not actually provide viable ways for PGE to accept and manage the output. And even if PGE could resell the Blue Marmots' output—which is by no means certain—doing so would impose a variety of costs on PGE and its customers, in violation of PURPA.

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[165] PGE/400, Greene/9-10.
[166] PGE/400, Greene/10-11.
[167] PGE/400, Greene/11.
[168] PGE/400, Greene/11.
[169] PGE/400, Greene/9.
[170] PGE/400, Greene/10.
[171] PGE/400, Greene/10.

C. PGE's customers cannot be forced to surrender transmission capacity reserved for the EIM, thereby impeding EIM participation and market-based rate authority, simply because of the Blue Marmots' siting decisions.

As an alternative to insisting that PGE pay for upgrades or the cost to move the Blue Marmots' output to the BPA-PGE interface, Mr. Moyer argues that PGE can simply give up 50 MW of its transmission reserved for the EIM to accommodate the Blue Marmots' deliveries. However, PGE disagrees that a new QF's request to pursue a fully-subscribed delivery point requires customers to relinquish the opportunity to fully participate in the EIM and to forego the initiative's accompanying benefits.

The EIM is an important strategic and operational initiative for PGE, both now and in the future, as it enables PGE and the other participants to use the grid more efficiently at lower cost for customers and to integrate increasing renewable resources with fewer curtailments.[172] Adequate transfer capability is necessary for PGE to participate in the EIM and to maximize the benefits in which customers have invested.[173] PGE also must have adequate connectivity to other market participants to prevent it from having market power in its BAA and allow it to transact in the EIM at market-based rates.[174] PACW-PGE is PGE's primary interface for accessing the EIM, and all of PGE's reserved transmission rights at the interface currently are committed to the EIM.[175]

The Blue Marmots' argument that PGE must give up its EIM-reserved capacity fails because (1) nothing in PURPA requires PGE to cede transmission already committed and used for another purpose to QFs and (2) ceding such transmission capacity would harm customers.

1. Nothing in PURPA requires PGE to cede its transmission committed to the EIM to the Blue Marmots.

PGE reserved transmission for the EIM well before the Blue Marmots sought PPAs from PGE,[176] and did so only after careful study and with the knowledge and approval of this

[172] PGE/400, Greene/16.
[173] PGE/200, Sims-Rodehorst-Sporborg/3.
[174] PGE/200, Sims-Rodehorst-Sporborg/4.
[175] PGE/200, Sims-Rodehorst-Sporborg/10.
[176] PGE/200, Sims-Rodehorst-Sporborg/6.

Commission.[177] Despite these facts, the Blue Marmots now argue that the Commission should require PGE to use the capacity PGE reserved for and committed to the EIM to accept delivery of QF output.[178] Specifically, Mr. Moyer asserts—without any support—that a QF's right to deliver at the point of its choosing trumps any contractual right or other pre-existing commitment or use a utility may have for transmission it has reserved.[179] However, there is nothing in PURPA, or in FERC or Commission regulations or orders, that supports this extreme position.

In fact, the Blue Marmots' position was firmly rejected by the Utah PSC in the Glen Canyon case. As discussed above, in that case, Glen Canyon sought to deliver to RMP at a location where RMP could move the power to load only through a transmission line on which RMP had reserved all of the transmission rights to comply with an existing contract with another utility.[180] 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."[181] RMP maintained that it had no obligation under PURPA to devote its existing transmission rights to the Glen Canyon project.[182]

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 rights to a new QF and declined to impose such a requirement on RMP.[183] 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.[184] The Utah PSC noted that RMP's transmission rights were already encumbered, and

[177] Order No. 14-415 at 11; Docket No. LC 56, Comparative Analysis of Western EIM and NWPP MC Intra-Hour Energy Market Options.
[178] Blue Marmot/400, Moyer/45.
[179] 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.").
[180] *Glen Canyon*, Docket No. 17-035-36, Consolidated Order at 7-8.
[181] *Glen Canyon*, Keegan Moyer Direct Testimony at 36 (June 29, 2017).
[182] *Glen Canyon*, Consolidated Order at 9.
[183] *Id.* at 14.
[184] *Id.* at 15.

rejected Glen Canyon's argument that the preexisting commitment should be disregarded because the transmission rights were seldom used.[185] The Utah PSC also rejected Mr. Moyer's argument—echoed in this case—that the utility should come up with "creative" ways in which to 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."[186]

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—when another feasible delivery location exists. Therefore, this Commission should reject the Blue Marmots' attempt to insulate themselves from the impacts of their siting decisions by usurping transmission capacity that PGE reserved expressly for participation in the EIM.

2. Ceding transmission capacity to the Blue Marmots would harm customers and violate the customer-indifference standard.

The Blue Marmots claim that PGE should nevertheless be required to surrender transmission capacity committed to the EIM, arguing that PGE's EIM benefits will not be significantly impacted.[187] PGE rejects this assertion for three reasons. First, the Blue Marmots acknowledge that PGE's EIM benefits will decrease as a result of accepting their output in lieu of EIM transfers at the PACW-PGE interface—meaning the Blue Marmots concede that PGE's customers will not be indifferent if reserved transmission is ceded. Second, the Blue Marmots have underestimated the decrease in EIM benefits that PGE is likely to face in the future if it must give up transmission capacity to QFs. And third, losing EIM-dedicated transmission capacity to

[185] *Id.* at 17-18.
[186] *Id.* at 20.
[187] *See* Blue Marmot/600, Moyer/4-5.

QFs could impact PGE's ability to retain market-based rate authority, which is critical to maximizing EIM benefits.

a. Any degree of customer harm violates the customer-indifference standard.

PGE has made significant investments to acquire the expertise and infrastructure required to successfully participate in the EIM.[188] 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.[189] The acceptance of QF output, however, does not result in such benefits.[190] At best, customers remain indifferent to the purchase of QF output.[191] Therefore, any reduction in EIM participation that results from ceding transmission to QFs—regardless of the magnitude—financially harms PGE's customers, contrary to PURPA.

b. Ceding reserved transmission capacity would result in increasing harm as the amount of transmission available for the EIM decreases and as EIM transfers increase.

The Blue Marmots claim that PGE should not be concerned about ceding transmission capacity to them because, in their view, the impacts of foregone EIM participation are limited and should therefore be disregarded. This argument is not only self-serving, it is also incorrect. Mr. Moyer's analyses significantly underestimate the actual effect on EIM benefits for three reasons.

First, the Blue Marmots' analyses are based upon data from PGE's first year of EIM participation only,[192] 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 from the first-year level—just as they have for other utilities participating in the EIM.[193]

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[188] PGE/100, Greene-Moore/22.
[189] PGE/100, Greene-Moore/22.
[190] PGE/500, Rodehorst-Moore/24.
[191] PGE/500, Rodehorst-Moore/24.
[192] PGE/500, Rodehorst-Moore/2-3.
[193] *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).

Second, as Mr. Moyer concedes, PGE's EIM transfers will increase in the future as additional renewable resources deliver to the system, increasing the variability in sub-hourly imbalance that the EIM responds to.[194] PGE also expects that additional participants joining the EIM will result in increased transfers, and at least five new entities plan to join the EIM over the next three years—with more likely in the future.[195] 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 if PGE is required to cede EIM-dedicated transmission capacity to the Blue Marmots—and to other QFs who wish to deliver via the PACW-PGE interface.

Third, Mr. Moyer's analyses focus only on the impact of PGE being required to cede 50 MW of transmission capacity to the Blue Marmots and fail to account for the impacts of additional QFs that seek to deliver via the PACW-PGE interface. Importantly, if the Commission determines that the Blue Marmots are allowed to deliver via the PACW-PGE interface and displace EIM-committed transmission capacity, 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.[196] 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.[197]

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 to demonstrate that Mr. Moyer has significantly underestimated the potential impacts to PGE's EIM benefits. Specifically, PGE analyzed what the impact in its first year of EIM participation would have been if QFs had been allowed to deliver and if transfers had increased in magnitude by 20%.[198] 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 fully

[194] PGE/700, Rodehorst-Moore/5-6; Blue Marmot/700, Moyer/3.
[195] PGE/700, Rodehorst-Moore/5.
[196] In addition to the 50-MW Blue Marmots, PGE has 67 MW of other QFs with fully executed contracts.
[197] *See* PGE/200, Sims-Rodehorst-Sporborg/3; PGE/700, Rodehorst-Moore/20, Table 2.
[198] PGE/700, Rodehorst-Moore/3, 17-20.

executed PPAs had been permitted to deliver.[199] And if additional QFs—beyond those with fully executed PPAs or LEOs—were allowed to deliver, then the impact to EIM benefits could increase up to more than $2 million ***annually***.[200] 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 Mr. Moyer claims.

c. Ceding committed transmission capacity to the Blue Marmots could jeopardize PGE's market-based rate authority, which is critical to maximizing EIM benefits.

If PGE is required to accept additional QF deliveries that displace EIM-committed transmission, then PGE could lose the authority to bid at market-based rates in the EIM, which would further diminish customers' EIM benefits. Market-based rate (MBR) authority is important to efficient EIM participation with maximum benefits because it allows the utility to bid at market-based rates instead of being restricted to cost-based "default energy bids."[201]

FERC granted PGE MBR authority based on PGE's commitment of transmission to the EIM, and FERC cautioned that PGE must submit a change in status filing if the amount of firm transmission committed to EIM transfers between PACW and PGE decreased.[202] 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—subject to usage for reliability or servicing existing contractual arrangements.[203] Because the Blue Marmots did not have fully executed PPAs when PGE filed for and received MBR authority, PGE cannot use its existing capacity to accommodate the Blue Marmots without violating its commitment to FERC. If the commitment were violated, PGE would need to assess the appropriate response.

[199] PGE/700, Rodehorst-Moore/20.
[200] PGE/700, Rodehorst-Moore/20, Table 2.
[201] PGE/500, Rodehorst-Moore/26.
[202] 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).
[203] PGE's Notice of Change in Status at 7.

And if PGE were required to accommodate both the Blue Marmots and the other QFs with fully executed PPAs—which is likely if the Blue Marmots prevail—then PGE would be in violation of its commitment of 200 MW of firm capacity in all hours and would certainly 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.[204] In short, if PGE must give up transmission currently committed to the EIM to the Blue Marmots, then its MBR authority would be jeopardized, and the loss of MBR authority would erode expected EIM benefits.[205] Such an outcome would harm customers, contrary to PURPA's customer-indifference standard.

Mr. Moyer implies that PGE could participate in the EIM absent MBR authority—that is, using default energy bids—without compromising its EIM benefits. In support of this dubious claim, he asserts that most EIM participants use cost-based bids at times.[206] However, Mr. Moyer misses the mark because the import 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 when circumstances warrant. As PGE explained in its testimony, MBR authority allows participants the flexibility to respond to changing market conditions and account for changing resource limitations or constraints, and it also helps participants 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.[207] EIM participants with MBR authority can—and do—use cost-based bids in addition to market-based bids,[208] as part of an overall strategy to manage their resource portfolios. However, being restricted to *only* default energy bids has significant drawbacks.[209]

[204] PGE/500, Rodehorst-Moore/25.
[205] PGE/500, Rodehorst-Moore/28-29.
[206] Blue Marmot/400, Moyer/26.
[207] PGE/500, Rodehorst-Moore/26-27.
[208] *See* PGE/500, Rodehorst-Moore/28.
[209] PGE/500, Rodehorst-Moore/26.

PGE is not alone in its view of the importance of MBR authority. The CAISO Department of Market Monitoring agrees that participating in the EIM without MBR authority has disadvantages and has filed comments with FERC to that effect.[210] Other EIM participants also value MBR authority, as evidenced by the fact that all current EIM participants have MBR authority.[211] And in fact, those participants that had lost MBR authority for a time sought and received renewed authorization[212]—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 no such affirmative obligation exists in PURPA, and because doing so would harm customers. Any customer harm violates PURPA's customer-indifference standard, but as demonstrated in PGE's testimony, the expected harm of losing EIM transmission to QFs would be substantial and would likely increase in the future.

D. The LEO achieved by the Blue Marmots does not give them the right to shift additional costs to PGE's customers.

When PGE sent final executable PPAs to the Blue Marmots, the accompanying letter stated:

> 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.[213]

The Blue Marmots executed and returned the PPAs, thereby securing their right to receive the then-effective avoided cost rates.[214] Later, after PGE discovered the lack of ATC, it assured the Blue Marmots that it would honor the avoided cost rates for all of their projects while the parties worked to resolve the delivery issue.[215]

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[210] PGE/500, Rodehorst-Moore/26-27.
[211] 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).
[212] PGE/500, Rodehorst-Moore/27-28.
[213] *See, e.g.*, Blue Marmot/201, Talbott/124.
[214] PGE/100, Greene-Moore/8; *and see, e.g.*, Blue Marmot/201, Talbott/124.
[215] Blue Marmot/200, Talbott/7.

However, the Blue Marmots now attempt to expand that right, arguing that their LEO fixed not just the projects' avoided cost rates, but also all of the terms of the unexecuted contracts.[216] Based on this erroneous assertion, the Blue Marmots claim that their LEOs shield them from incurring any additional costs necessary for PGE to accept their output.[217] This claim is plainly incorrect because (1) FERC distinguishes a LEO from a contractual obligation, and both the Commission and FERC describe a LEO as establishing the avoided cost price alone—not as fixing the comprehensive terms and conditions in a PPA; and (2) the Blue Marmots' understanding would render substantial portions of PGE's standard PPA meaningless.

1. Commission and FERC precedent explain that a LEO establishes avoided cost rates only.

Under PURPA, a QF has the option to sell its output to the utility pursuant to a LEO, based on the avoided cost rates calculated at the time the obligation is incurred.[218] FERC has made clear that the QF may establish a LEO, without entering a fully executed contract, and thereby obligate the utility to purchase its output, in order to prevent utilities from evading the requirement to purchase from QFs by refusing to enter a contract.[219] FERC defers to state regulatory authorities to determine when a LEO is created before a fully executed contract,[220] and this Commission has ruled that a QF may establish a LEO by signing a final draft of an executable contract provided by a utility.[221] However, neither FERC nor this Commission has ever suggested that a LEO creates a fully executed contract or entitles the QF to more than the effective avoided cost rates. On the contrary, FERC has *rejected* the notion that the terms "obligation" and "contract" are synonymous and distinguished a contract from a LEO that "ha[s] not yet ripened into" a contract.[222]

[216] Blue Marmot/500, Irvin-Talbott/7-8.
[217] Blue Marmot/500, Irvin-Talbott/8.
[218] 18 C.F.R. § 292.304(4).
[219] *See FLS Energy, Inc.*, 157 FERC ¶ 61,211, at 61,730-31 (Dec. 15, 2016).
[220] New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities, 119 FERC ¶ 61,305, at P136 & 139 (2007).
[221] Docket No. UM 1610, Order No. 16-174 at 3 (May 13, 2016).
[222] *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.").

Moreover, both this Commission and FERC describe a LEO as establishing avoided cost rates—not an overall contract value or comprehensive sets of contractual terms. For instance, the Commission recently stated that a LEO entitles a QF "to receive more advantageous per-megawatt-hour ***payments*** than it might otherwise be able to negotiate."[223] Similarly, in UM 1610, the Commission noted that a LEO is formed "for the purpose of establishing ***an avoided cost price***."[224] FERC's precedent likewise defines a LEO by reference to price alone, most clearly by defining a LEO under 18 C.F.R. § 292.304—which is specifically titled "***Rates for purchase***."[225] FERC has also repeatedly described LEOs as establishing only the relevant "avoided cost rate."[226] In addition, FERC has recognized that requiring an off-system QF to incur the costs necessary to deliver its output to the utility does not mean that the QF is not receiving the full avoided cost rate.[227] There is simply no basis in either Commission or FERC precedent for the Blue Marmots' contention that non-price contractual terms are established by a LEO or that their LEOs insulate them from incurring additional delivery-related costs.

2. <u>If a LEO established all contractual terms and conditions, then portions of PGE's Commission-approved standard PPA would be rendered meaningless.</u>

Under Oregon statutes and case law, a contract must be interpreted "to give effect to all of its provisions."[228] Here, the standard PPAs sent to the Blue Marmots each specify that their terms

[223] *Portland Gen. Elec. Co. v. Covanta Marion, Inc.*, Docket No. UM 1887, Order No. 18-169 at 9 (May 16, 2018).
[224] Order No. 16-174 at 27.
[225] 18 C.F.R. § 292.304.
[226] *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); *Idaho Wind Partners I, LLC.*, 140 FERC ¶ 61,219, at P41 (Sept. 20, 2012) ("[A]s a matter of law, changes over time, such as light loading periods, are considered in the calculation of avoided cost rates in a long-term bilateral PPA that provides for an ***avoided-cost rate determined at the time the legally enforceable obligation is incurred***.") (emphasis added).
[227] *PáTu Wind Farm, LLC v. Portland Gen. Elec. Co.*, 154 FERC ¶ 61,167, at P40 (March 3, 2016).
[228] *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)).

and conditions will become effective only "upon execution by both parties."[229] Were the Blue Marmots correct that the contract's terms and conditions could become effective once signed by only the QF, then this provision of the PPAs 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. Significantly, the Commission approved the "upon execution" provision of PGE's PPAs 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. Only by understanding a LEO as fixing the QF's right to just the *avoided cost rates* can the Commission's approval of the PPA's language be reconciled.

3. <u>The Blue Marmots had no basis to believe that a LEO fixed the comprehensive contract terms.</u>

The Blue Marmots also claim, as a factual matter, to have believed that they "were entitled to the prices *and* the contract terms and conditions in place when the LEO was established"—suggesting that their misapprehension creates an affirmative obligation.[230] But such an understanding would have been inconsistent with the letter PGE sent with the executable PPA, which stated that the Blue Marmots could establish a LEO by signing the contract and would be entitled to the *avoided cost rates* in effect at the time they did so.[231] And that understanding also would be in direct conflict with the terms of the PPAs that the Blue Marmots signed.[232]

In sum, both Commission and FERC precedent clearly indicate that a LEO fixes a QF's avoided cost rates but does not establish the comprehensive terms and conditions—which are established upon execution of a PPA by both parties, pursuant to the terms of PGE's standard PPA. This conclusion is consistent with PGE's communication to the Blue Marmots at the time their LEOs were established.

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[229] Blue Marmot/201, Talbott/6; *see also* Blue Marmot/201, Talbott/11 ("This Agreement shall become effective upon execution by both Parties.").
[230] Blue Marmot/500, Irvin-Talbott/9.
[231] Blue Marmot/201, Talbott/4.
[232] Blue Marmot/201, Talbott/6; *see also* Blue Marmot/201, Talbott/11 ("This Agreement shall become effective upon execution by both Parties.").

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

Throughout the contracting process, PGE acted in good faith—first in working with EDPR to develop PPAs for each of the Blue Marmot projects, and later in 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. In addition, PGE met with the Blue Marmots in a good faith attempt to resolve their differences in settlement, and diligently studied potential upgrades that might facilitate delivery via the PACW-PGE interface at a reasonable cost. In all of these matters, PGE complied with PURPA's mandates and the Commission's policies and rules.

The Blue Marmots make several baseless claims of bad faith and discrimination, each of which should be rejected. They first claim that PGE failed to act in good faith both by declining to execute the Blue Marmots' PPAs after learning of the lack of ATC at the PACW-PGE interface, and by quickly reaching out to the Blue Marmots upon learning of the issue to inform them of their options—rather than investigating some "creative" means of avoiding the lack of ATC.[233] The Blue Marmots also assert an overlapping claim that PGE discriminated against them by refusing to execute PPAs with them, when PGE had previously executed PPAs for other off-system QFs that planned to deliver to the same point.[234] And finally, the Blue Marmots argue that PGE discriminated against them by "claiming that there is no ATC to accept their power, but then obtaining ATC that becomes available at the [PACW-PGE interface] for other non-QF purposes."[235] None of these claims is supportable.

First, contrary to the Blue Marmots' assertions, it would have been entirely inappropriate for PGE to execute their PPAs after learning that the PACW-PGE interface was fully subscribed. On the contrary, PGE's decision to halt the contracting process was the only rational action, pending a reasonable resolution of the deliverability issue. It would have been irresponsible for PGE to execute PPAs with the Blue Marmots after learning that ATC was not available, as doing

[233] *See* Blue Marmot/500, Moyer/11-12.
[234] Blue Marmot/300, Moyer/28-31.
[235] Blue Marmot/300, Moyer/28.

so would only exacerbate the known issue. Moreover, PGE's decision cannot be found to be discriminatory because the other off-system QFs to which the Blue Marmots compare themselves all had fully executed and effective PPAs at the time PGE learned of the lack of ATC.[236] Therefore, these other off-system QFs are not, as the Blue Marmots suggest,[237] similarly situated to the Blue Marmots.

Second, the Blue Marmots' claim of bad faith regarding the options PGE provided the Blue Marmots appears to be based on two misconceptions: (1) that PGE is responsible for the deliverability of the QFs' output, and (2) that there is some "creative" way of resolving the fully-subscribed interface that PGE could have identified if only it had taken more time. As explained in detail above, neither of these suppositions is true. Under PURPA, the Blue Marmots are responsible for making their output available to PGE.[238] And there is no duty imposed by either statute or rule that requires a utility to find "creative ways" around costs resulting from a QF's inefficient siting decisions.[239] Indeed, as the Utah PSC explained in *Glen Canyon*, a QF is responsible for its "inefficient siting decisions" and may not "shift the attendant costs" of such decisions to a utility's customers.[240] Here, PGE fully and promptly informed the Blue Marmots of their options, immediately after determining that the projects intended to deliver at a fully-subscribed delivery point.[241] The fact that the Blue Marmots dislike these options does not transform PGE's conscientious behavior into bad faith. Indeed, PGE's swift outreach to the Blue Marmots once the Company learned that the QFs' power was not deliverable "is precisely how a good faith business partner behaves when a problem arises during the contracting process."[242]

Moreover, even if PGE were obligated to attempt to identify some means of alleviating the lack of ATC, there is no support for the existence of some "creative" remedy—that is, for a way by which PGE might accept the Blue Marmots' output without upgrades, an additional leg of

[236] PGE/100, Greene-Moore/14; PGE/400, Greene/2.1
[237] Blue Marmot/300, Moyer/29.
[238] 18 C.F.R. § 292.303(a).
[239] *Glen Canyon*, Consolidated Order at 20.
[240] *Id.* at 30.
[241] PGE/100, Greene-Moore/3.
[242] PGE/100, Greene-Moore/16.

transmission, or undermining PGE's ability to participate fully in the EIM.[243] Despite repeated requests and lengthy technical testimony, the Blue Marmots have identified no feasible alternative option that avoids the costs associated with the Blue Marmots' siting decision. Importantly, PGE has obligations not only to QFs, but also to its retail customers, and the Blue Marmots' proposed resolutions of this dispute would unacceptably shift significant costs from them to PGE's customers.[244]

Finally, PGE did not discriminate against the Blue Marmots by acquiring transmission for the EIM when it became available. The Blue Marmots claim that PGE "could have reserved or obtained" additional ATC "to accept at least a portion of the Blue Marmots' net output."[245] But this proposal ignores two key facts: First, utilities may not curtail a QF and must ensure the consistent ability to accept delivery of all of a QF's output.[246] The ability to accept "a portion" of a QF's output is irrelevant when the utility is obligated to ensure 100 percent deliverability. Second, when 15 MW of capacity became available, PGE in fact offered this ATC to the Blue Marmots, but the Blue Marmots declined to pursue the 15 MW.[247]

In sum, PGE responsibly informed the Blue Marmots as soon as its QF contracting personnel became aware of the deliverability issue, and appropriately provided the Blue Marmots with options to allow the projects to proceed while accounting for their challenging siting decisions. 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 committed to being a fair and good-faith business partner with QFs during PPA contracting processes. And PGE is ready and willing to execute the Blue Marmots' PPAs and 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.

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[243] PGE/400, Greene/27-28.
[244] PGE/100, Greene-Moore/16.
[245] Blue Marmot/300, Moyer/32.
[246] *Entergy Services, Inc.*, 137 FERC ¶ 61,199, at P49 (Dec. 15, 2011); *PacifiCorp*, 151 FERC ¶ 61,170, at P27 (May 21, 2015) ("[FERC] precedent requires electric utilities . . . to deliver a QF's power on a firm basis.").
[247] PGE/600, Edmonds-Larson-Richard/17-18.

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 construct their projects hundreds of miles from PGE's service territory and 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 permit interconnected operations, including any necessary upgrades or third-party transmission costs required to allow the purchasing utility to move their output to load. As this Commission has observed, these costs may be assessed either through avoided cost schedules, interconnection costs, or other arrangement; 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 for a legitimate utility need, simply because they 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 the 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, thereby depriving customers of expected benefits. 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.

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