

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

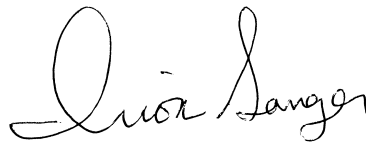
UM 1829, UM 1830, UM 1831, UM 1832, UM 1833

Blue Marmot V LLC (UM 1829))	
Blue Marmot VI LLC (UM 1830))	
Blue Marmot VII LLC (UM 1831))	REVISED OPENING TESTIMONY
Blue Marmot VIII LLC (UM 1832))	
Blue Marmot IX LLC (UM 1833),)	
Complainants,)	
)	
v.)	
)	
Portland General Electric Company,)	
<u>Defendant.</u>)	

Blue Marmot V, LLC, Blue Marmot VI, LLC, Blue Marmot VII, LLC, Blue Marmot VIII, LLC, and Blue Marmot IX, LLC (collectively the “Blue Marmots”) submit revised Opening Testimony pursuant to Oregon Public Utility Commission (the “Commission”) Administrative Law Judge (“ALJ”) Ruling on December 13, 2017.

Dated this 20th day of December, 2017.

Respectfully submitted,



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Of Attorneys for Blue Marmot V, LLC, Blue Marmot VI, LLC, Blue Marmot VII, LLC, Blue Marmot VIII, LLC, and Blue Marmot IX, LLC

**BEFORE THE PUBLIC UTILITY COMMISSION
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UM 1829, UM 1830, UM 1831, UM 1832, UM 1833

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

**REVISED OPENING TESTIMONY OF
WILLIAM TALBOTT
ON BEHALF OF THE
BLUE MARMOT V, VI, VII, VIII, AND IX**

December 20, 2017

1 **I. INTRODUCTION**

2 **Q. Mr. Talbott, please state your name and business address.**

3 **A.** My name is William Talbott. I am employed as a Development Project Manager
4 with EDP Renewables North America (“EDPR NA”). My business address is 53
5 SW Yamhill Street, Portland, Oregon 97204.

6 **Q. Please describe your background and experience.**

7 **A.** I lead development of solar projects for EDPR NA in the West Region, which
8 includes market analysis and prioritization based on commercial prospects, site
9 identification, site acquisition, interconnection, permitting, power marketing and
10 power purchase agreement (“PPA”) negotiations. I have served in this role since
11 2015. Prior to joining EDPR NA, I worked as a management consultant with
12 McKinsey & Company. I received a Bachelor of Arts in Economics from
13 Pomona College, a Master of Business Administration from the MIT Sloan
14 School of Management and a Master of Public Administration from the Harvard
15 Kennedy School.

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

17 **A.** Blue Marmot V, Blue Marmot VI, Blue Marmot VII, Blue Marmot VIII, Blue
18 Marmot IX (jointly, “Blue Marmots”) and their parent company, EDPR NA. The
19 Blue Marmots own each of the individual projects (jointly, “Blue Marmot
20 Projects”).

21 **Q. How is your testimony organized?**

22 **A.** First, I will describe the series of exchanges through which the Blue Marmots
23 pursued and ultimately signed standard renewable off-system variable PPAs with
24 Portland General Electric Company (“PGE”). Second, I will summarize the

1 position PGE has taken in justifying not countersigning the partially executed
2 Blue Marmot PPAs on the grounds of transmission constraints. Third, I will
3 explain the transmission arrangements required by Schedule 201 and the PPA and
4 how the Blue Marmots have satisfied those requirements. Fourth, I will
5 summarize the concept of a legally enforceable obligation, including the Federal
6 Energy Regulatory Commission (“FERC”) precedent on the factors that establish
7 a legally enforceable obligation, as well as the Oregon Public Utility Commission
8 (“OPUC”) policy regarding legally enforceable obligations. Finally, I will
9 explain how, contrary to PGE’s position, the Blue Marmots have demonstrated
10 the ability to meet the requirements under Schedule 201 and the PPA for
11 delivering power to PGE.

12 **II. POWER PURCHASE AGREEMENT NEGOTIATIONS**

13 **Q. When did development of the Blue Marmot Projects begin?**

14 **A.** Work began in the first quarter of 2016. This entailed desktop mapping of the
15 Lakeview area of Lake County to identify development constraints, reaching out
16 to owners of potentially suitable sites to gauge their interest in leasing or selling
17 land for purposes of solar development, and traveling to the Lakeview area to
18 meet with interested landowners. Initial work also included reviewing PGE’s
19 Schedule 201 for terms and eligibility rules. In February 2016, we requested the
20 list of materials and information required to request a PPA from PGE under
21 Schedule 201.

22 **Q. Did each Blue Marmot project pursue a PPA on the same timeline?**

23 **A.** No. Since the projects did not all secure site control on the same timeline, they
24 did not all pursue PPAs on the same timeline. Blue Marmot V and VI were the

1 first projects to begin the process and moved on the same timeline. Blue Marmot
2 VII and IX were the next to begin the process and moved on the same timeline,
3 and Blue Marmot VIII was the last and moved on its own timeline.

4 **Q. Can you please summarize the series of events that led to Blue Marmot V**
5 **and VI executing PPAs provided by PGE?**

6 **A.** On August 1, 2016, Blue Marmot V and VI provided information and materials
7 required for requesting PPAs with PGE. Over the course of the next few months,
8 Blue Marmot V and VI and PGE exchanged information and communicated
9 regarding issues related to the sale of the net output of the Blue Marmot V and VI
10 Projects to PGE, including but not limited to contract terms, required information,
11 and project details. On December 20, 2016, Blue Marmot V and VI requested
12 final draft PPAs for the Blue Marmot V and VI Projects.

13 On January 12 and January 16, 2017, PGE provided Blue Marmot V and
14 VI with executable PPAs for the Blue Marmot V and VI Projects, as well as
15 accompanying cover letters.¹ The letters stated that PGE had determined that
16 Blue Marmot V and VI had provided sufficient information to allow PGE to
17 prepare executable PPAs, and that PGE had attached executable PPAs for the
18 Blue Marmot V and VI Projects. Each letter further stated that, if Seller “executes
19 the enclosed agreement without alteration and returns the partially executed
20 agreement to PGE for full execution, Seller will have established a legally
21 enforceable obligation.” Finally, the letters stated that Blue Marmot V and VI

¹ Blue Marmot/201, Talbot/1-121 (PGE emails and Blue Marmot V and VI executable PPAs)(On January 12, 2017, PGE initially provided the incorrect draft of the Blue Marmot V PPA, but then provided the correct executable PPA on January 16, 2017.).

1 were entitled to receive PGE’s renewable avoided cost rates in effect at the time
2 of execution, if Blue Marmot V and VI executed the final executable PPAs
3 without alteration.

4 On March 29, 2017, Blue Marmot V and VI executed the final executable
5 PPAs without alteration.² The executed PPAs were delivered by hand to PGE on
6 March 31, 2017.

7 **Q. Can you please provide the same summary for Blue Marmot VII and IX?**

8 **A.** On December 21, 2016, Blue Marmot VII and IX provided information and
9 materials required for requesting PPAs with PGE. Over the course of the next
10 couple months, Blue Marmot VII and IX and PGE exchanged information and
11 communicated regarding issues related to the sale of the net output of the Blue
12 Marmot VII and IX Projects to PGE. On February 28, 2017, Blue Marmot VII
13 and IX requested final executable PPAs for the Blue Marmot VII and IX Projects.

14 On March 21, 2017, PGE provided Blue Marmot VII and IX with cover
15 letters and executable PPAs for the Blue Marmot VII and IX Projects.³ The
16 letters stated that PGE had determined that Blue Marmot VII and IX had provided
17 sufficient information to allow PGE to prepare executable PPAs, and that PGE
18 had attached executable PPAs for the Blue Marmot VII and IX Projects. Each
19 letter further stated that, if Seller “executes the enclosed agreement without
20 alteration and returns the partially executed agreement to PGE for full execution,
21 Seller will have established a legally enforceable obligation.” Finally, the letters

² Blue Marmot/202, Talbot/1-131 (Blue Marmot V and VI executed PPAs).

³ Blue Marmot/201, Talbot/122-220 (PGE emails and Blue Marmot VII and IX executable PPAs)(PGE’s letter incorrectly identified the Blue Marmot IX Project as Blue Marmot XI).

1 stated that Blue Marmot VII and IX were entitled to receive PGE's renewable
2 avoided cost rates in effect at the time of execution, if Blue Marmot VII and IX
3 executed the final executable PPAs without alteration.

4 On March 29, 2017, Blue Marmot VII and IX executed the final
5 executable PPAs without alteration.⁴ The executed PPAs were delivered by hand
6 to PGE on March 31, 2017.

7 **Q. Did the letters sent by PGE along with the executable PPAs for Blue Marmot**
8 **V, VI, VII and IX state any contingencies or conditions upon which the**
9 **provisions of the letter were based?**

10 **A.** No, these were unconditional statements. Each letter stated: "If Seller executes
11 the enclosed agreement without alteration and returns the partially executed
12 agreement to PGE for full execution, Seller will have established a legally
13 enforceable obligation. Seller is entitled to receive PGE's [Standard Avoided
14 Costs **OR** Renewable Avoided Costs] in effect at the time Seller executes the
15 enclosed agreement without alteration." Therefore, PGE clearly and
16 unambiguously stated that signing the executable PPAs would create a legally
17 enforceable obligation at the renewable avoided costs in effect at the time of
18 signing.

19 **Q. What happened after Blue Marmot V, VI, VII and IX sent PGE executed**
20 **PPAs?**

21 **A.** On April 5, 2017, Blue Marmot asked PGE when PGE would execute the four
22 final executable PPAs signed by Blue Marmot V, VI, VII and IX. On April 5,
23 2017, PGE informed Blue Marmot that PGE usually takes a couple of weeks from

⁴ Blue Marmot/202, Talbot/132-197, 264-329 (Blue Marmot VII and IX executed PPAs).

1 the date the QF executes the executable PPA for PGE to execute the partially
2 executed PPA.

3 On April 6, 2017, PGE informed Blue Marmot that there were two
4 changes PGE wished to make to the PPAs that PGE had provided to Blue Marmot
5 V, VI, VII and IX as executable and that Blue Marmot V, VI, VII and IX had
6 executed. These two non-substantive and immaterial changes were to: 1) attach
7 the FERC Form 556 qualifying facility (“QF”) self-certification forms that Blue
8 Marmot V, VI, VII and IX had previously provided to PGE; and 2) adding page
9 numbers. It is my understanding that PGE has executed previous PPAs with QFs
10 without including the FERC Form 556, and that these non-substantive and
11 immaterial changes did not change the Blue Marmot V, VI, VII and IX Projects’
12 legally enforceable obligations. On April 7, 2017, PGE provided corrections to
13 the partially executed PPAs to add the FERC form 556 and to correct the page
14 numbers. On April 10, 2017, Blue Marmot approved the corrections to the
15 partially executed PPAs.

16 **Q. What about the timeline for Blue Marmot VIII?**

17 **A.** On February 2, 2017, Blue Marmot VIII provided information and materials
18 required for requesting a PPA with PGE. Over the next several weeks, Blue
19 Marmot VIII and PGE exchanged information and communicated regarding
20 issues related to the sale of the net output of the Blue Marmot VIII Project to
21 PGE. On March 22, 2017, PGE provided a final draft PPA for the Blue Marmot
22 VIII Project.⁵ On March 24, 2017, Blue Marmot VIII requested an executable

⁵ Blue Marmot/201, Talbot/221-270 (PGE emails and Blue Marmot VIII draft PPA).

1 PPA for the Blue Marmot VIII Project. On March 28, 2017, PGE informed Blue
2 Marmot VIII that it would provide an executable PPA, or request additional or
3 clarifying information by April 17, 2017.

4 **Q. What interaction did you have with PGE on April 17, 2017?**

5 **A.** On April 17, 2017, PGE inquired about the point of delivery (“POD”) for the Blue
6 Marmot Projects. On April 18, 2017, PGE was informed that the anticipated POD
7 for the Blue Marmot Projects was PACW.PGE.⁶ On April 19, 2017, PGE stated
8 that the POD was constrained and that it was concerned that deliveries to the POD
9 might not be feasible. On April 19, 2017, PGE stated that if PGE’s evaluation of
10 the alleged congestion at the POD went past May 1, 2017, then PGE would honor
11 the avoided cost prices currently in effect for both the partially executed PPAs for
12 Blue Marmot V, VI, VII and IX, as well as for Blue Marmot VIII.

13 **Q. Did the Blue Marmot Projects continue to attempt to obtain fully executed**
14 **PPAs?**

15 **A.** Yes. On April 19, 2017, Blue Marmot expressed its concern with PGE’s refusal
16 to execute the partially executed PPAs for Blue Marmot V, VI, VII and IX, and to
17 provide an executable PPA for Blue Marmot VIII. On April 19, 2017, PGE
18 refused to execute the partially executed PPAs. On April 20, 2017, Blue Marmot
19 specifically informed PGE that its expectation was that PGE countersign without
20 delay the partially executed PPAs, and that Blue Marmot V, VI, VII and IX were
21 continuing to commit and obligate themselves to sell power to PGE from the Blue
22 Marmot V, VI, VII and IX Projects at the Schedule 201 rates, terms, and

⁶ PACW.PGE is a scheduling point between PGE’s and PacifiCorp’s systems, and constitutes several actual points of physical interconnections between PGE’s and PacifiCorp’s systems.

1 conditions in the partially executed PPAs. On April 24, 2017, Blue Marmot
2 attempted to reach an agreement regarding PGE's execution of the partially
3 executed PPAs, and was unable to reach agreement. On April 24, 2017, Blue
4 Marmot sent PGE a demand letter requesting that PGE execute the partially
5 executed PPAs or Blue Marmot V, VI, VII and IX would file a complaint with the
6 OPUC on April 28, 2017. On April 27, 2017, PGE informed Blue Marmot that it
7 would not execute the partially executed PPAs.

8 **Q. What about Blue Marmot VIII?**

9 **A.** On April 20, 2017, Blue Marmot VIII communicated to PGE that it was
10 committing and obligating itself to sell power to PGE from the Blue Marmot VIII
11 Project at the Schedule 201 rates, terms, and conditions in the final draft PPA
12 provided by PGE. On April 28, 2017, Blue Marmot VIII executed the last draft
13 PPA that PGE provided to Blue Marmot VIII. Blue Marmot VIII made no
14 changes to the last draft PPA, other than executing the PPA. Blue Marmot VIII
15 did this because it was concerned that PGE would not provide an executable PPA
16 for Blue Marmot VIII, and because Blue Marmot VIII had requested an
17 executable PPA exactly matching the final draft PPA and was prepared to commit
18 itself to sell power to PGE under the terms of that PPA.⁷ Blue Marmot VIII
19 unequivocally committed itself to sell the net output of the Blue Marmot VIII
20 Project at the terms and conditions included in the partially executed PPA,
21 including but not limited to being subject to penalties for failing to deliver energy
22 on the scheduled commercial on-line date.

⁷ Blue Marmot/202, Talbot/198-263 (Blue Marmot VIII executed PPA).

1 **Q. Had PGE previously inquired about or expressed concern over the viability**
2 **of Blue Marmot’s POD?**

3 **A.** Prior to April 17, 2017, PGE never specifically requested information regarding
4 the POD for any of the Blue Marmot Projects or provided any indication
5 regarding its concerns about potential constraints at the POD. Although PGE
6 never specifically requested information about the POD, each Blue Marmot
7 Project communicated in its request for an initial draft PPA that it would be
8 interconnecting with PacifiCorp, from which it could reasonably be inferred that
9 each Project would deliver to PGE’s system at the interface point between the
10 PacifiCorp and PGE systems, or the PACW.PGE POD.

11 Moreover, on November 14, 2016, Blue Marmot sent several questions to
12 PGE seeking to clarify settlement details under the PPA for projects delivering to
13 PGE via PacifiCorp, again implying that the projects intended to deliver to PGE’s
14 system at the PACW.PGE POD. PGE did not raise any concerns about the Blue
15 Marmot Projects delivering to the PACW.PGE POD in response to these
16 questions. Additionally, the Required Facility Documents in the partially
17 executed PPAs specifically state that the Blue Marmots will secure transmission
18 service agreements with PacifiCorp, but do not mention transmission service from
19 the Bonneville Power Administration (“BPA”), which would be required to
20 deliver to another POD.

21 With any reasonable level of attention, PGE could have determined that
22 the Blue Marmots intended to deliver to PGE’s system at the PACW.PGE POD.
23 By providing executable PPAs, PGE committed to purchase the Blue Marmots’
24 net output at this POD, and pay the then current Schedule 201 avoided cost rates

1 without requiring the Blue Marmots to pay for studies or upgrades on PGE's
2 transmission system or pay for transmission service to a different POD.

3 **Q. Please summarize your interactions with PGE since April 27 regarding this**
4 **matter.**

5 **A.** PGE communicated on May 18, 2017 that it cannot accept delivery from Blue
6 Marmot at the PACW.PGE POD because of transmission constraints at this POD
7 arising from PGE's acquisition of transmission rights to participate in the Western
8 Energy Imbalance Market ("EIM"). Blue Marmot met with PGE on June 1, 2017
9 and again on June 19, 2017 to explore potential settlement options.

10 **Q. What has PGE's position been?**

11 **A.** PGE has stated that there is "insufficient long-term firm available transmission
12 capacity (ATC) at this POD" and that, "Given the lack of long-term firm ATC at
13 the PACW.PGE POD, PGE cannot agree to accept delivery of Blue Marmot's
14 output at this POD." PGE has "declined to sign the executable PPA[s] until the
15 parties agree on an alternative delivery arrangement." PGE has communicated
16 that Blue Marmot has two options: 1) either pay for upgrades at the PACW.PGE
17 POD; or 2) deliver to a different POD, i.e. the BPAT.PGE POD.

18 **Q. Has PGE changed its position about whether the Blue Marmot V, VI, VII**
19 **and IX have formed legally enforceable obligations?**

20 **A.** Yes. PGE now claims that the legally enforceable obligations described in the
21 cover letters accompanying the executable PPAs for Blue Marmot V, VI, VII and
22 IX are actually contingent upon Blue Marmot making alternative delivery
23 arrangements.

1 **III. TRANSMISSION ARRANGEMENTS**

2 **Q. What transmission arrangements have Blue Marmot already made and what**
3 **new transmission arrangements would be required to deliver at BPAT.PGE?**

4 **A.** EDPR NA has executed on the Blue Marmots' behalf transmission service
5 agreements with PacifiCorp for long term firm point to point transmission service
6 with rollover rights for the full capacity of the Blue Marmot Projects to deliver the
7 net output to the PACW.PGE POD, which is the interface between the PacifiCorp
8 and PGE systems. The total interconnection cost for the Blue Marmots is
9 expected to be approximately \$9.5 million, of which \$5.4 million would
10 eventually be reimbursed to Blue Marmot, and the cost of PacifiCorp transmission
11 is expected to be approximately \$34 million over the term of the PPAs.

12 Delivering at BPAT.PGE would entail redirecting the PacifiCorp
13 transmission service to the PACW.BPAT interface point, and then adding a
14 second path of BPA transmission service from PACW.BPAT to the interface
15 between BPA and PGE at the BPAT.PGE POD. This second leg of transmission
16 would add over \$14 million in costs total to the Blue Marmot Projects over the
17 term of the PPAs. The testimony of Keegan Moyer will address transmission
18 topics in greater detail.

19 **Q. What are the Seller's obligations under Schedule 201 PPAs?**

20 **A.** The Sellers' obligations are to deliver power to PGE's system. Section 4.1 states
21 "Commencing on the Effective Date and continuing through the Term of this
22 Agreement, Seller shall sell to PGE the entire Net Output delivered from the
23 Facility at the Point of Delivery" and Section 1.27 states "Point of Delivery means
24 the PGE System." There is no further delineation of acceptable PODs and neither

1 solution offered by PGE (upgrades at the PACW.PGE POD or delivery to an
2 alternative POD) is contemplated under the contract. PGE is now seeking to alter
3 the PPA and require the Blue Marmots to agree to specify that it will pay for
4 transmission costs not contemplated under the PPA.

5 Indeed, PGE repeatedly emphasized through multiple conversations with
6 Blue Marmot that other than variable terms in the contract, there can be no
7 changes to the Schedule 201 contract to clarify or stipulate unique details or
8 arrangements for specific projects. There is no variable term for the POD and, as
9 stated previously, PGE never inquired about PODs prior to April 17, 2017, until
10 after providing executable PPAs.

11 The closest thing to a variable term for POD in the PPA is specifying the
12 interconnecting utility. For off-system QFs such as the Blue Marmot projects
13 interconnecting with PacifiCorp, it could be reasonably inferred that the
14 PACW.PGE POD would be the interface point between the PacifiCorp and PGE
15 systems.

16 Additionally, the Blue Marmot Projects stipulated in the list of Required
17 Facility Documents in Exhibit B that prior to the Commercial Operation Date, the
18 projects would secure Transmission Service Agreements with PacifiCorp. Given
19 that there was no mention of Transmission Service Agreements with BPA, it
20 could be reasonably inferred that each of the projects intended to deliver to the
21 PACW.PGE POD.

22 In sum, the contract simply requires delivery to PGE's system, with no
23 negotiation on a mutually agreeable POD required, and Blue Marmot's intention

1 to deliver to the PACW.PGE POD was clear from the information included in the
2 executable contracts provided by PGE.

3 **Q. What has PGE communicated regarding the ability of Blue Marmot to**
4 **receive the renewable avoided costs in effect at the time Blue Marmot**
5 **executed PPAs for the Blue Marmot Projects?**

6 **A.** PGE confirmed in its May 18, 2017 answer to complaints filed by Blue Marmot
7 that it communicated in April 2017 that if evaluating the feasibility of Blue
8 Marmot delivering at the PACW.PGE POD went past May 1, 2017 (when PGE
9 filed to reduce its renewable avoided cost rates), then PGE would continue to
10 honor the avoided cost prices in effect at the time Blue Marmot executed its
11 PPAs.

12 **IV. LEGALLY ENFORCEABLE OBLIGATIONS**

13 **Q. What is a legally enforceable obligation?**

14 **A.** While I am not a lawyer, I will explain my understanding of legally enforceable
15 obligations. FERC has established an administrative rule and policy that ensures
16 that a QF has the right and obligation to sell its net output to a utility pursuant to a
17 contract or a legally enforceable obligation.⁸ [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

⁸ 18 CFR 292.304(d).

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 A. When the QF commits itself to sell its net output at specific terms and conditions.
10 While I am not an expert in issues related to the Public Utility Regulatory Policies
11 Act (“PURPA”), my understanding is that the OPUC has concluded that it is up to
12 the QF, and not the utility, to determine when a legally enforceable obligation has
13 been formed. [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

[REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 **Q. How do these factors apply to the Blue Marmot Projects?**

7 **A.** All five projects were well past the point of initial communications, and all five
8 projects unequivocally committed themselves to sell their net output at specific
9 terms and conditions. This included the terms and conditions of the executed
10 PPAs, which determined the applicable avoided cost rates and included details
11 regarding commercial operation dates, minimum and maximum net output,
12 penalties, etc. [REDACTED]

13 [REDACTED]

14 **Q. Have the Blue Marmot V, VI, VII and IX Projects exceeded the standard for**
15 **forming legally enforceable obligations?**

16 **A.** Yes. PGE provided executable PPAs with all the required terms, conditions and
17 rates, which Blue Marmot V, VI, VII and IX all signed. I agree with PGE's
18 statements in its letters that Blue Marmot V, VI, VII and IX established a legally
19 enforceable obligation once they executed without alteration the executable PPAs
20 and then returned the partially executed PPAs to PGE for full execution.

21 **Q. Has PGE agreed that the Blue Marmots have formed legally enforceable**
22 **obligations?**

23 **A.** No. PGE takes the position that the Blue Marmots will only have formed legally
24 enforceable obligations if they agree to pay for transmission upgrades at the

1 PACW.PGE POD, or deliver to a different POD. This is directly inconsistent
2 with PGE's prior statements made when it provided the executable PPAs.

3 In addition, PGE appears to be taking the position that the Blue Marmots
4 will not have formed legally enforceable obligations or otherwise be eligible for
5 the avoided cost rates at the time they executed the PPAs, even if the OPUC,
6 FERC or a court agrees with the Blue Marmots that the Blue Marmots have
7 satisfied their obligations under PURPA and the partially executed contracts by
8 arranging delivery at the PACW.PGE POD. Regardless of the outcome of this
9 litigation, or whether PGE can impose additional transmission costs on a QF that
10 delivers its net output to a POD on its system, the Blue Marmots should be
11 eligible for the prices at the time they executed their PPAs. The Blue Marmots
12 have committed to sell their net output under the terms and conditions of the
13 partially executed PPAs regardless of transmission arrangements the OPUC,
14 FERC, or a court ultimately decide are necessary.

15 **V. CONCLUSION**

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

17 **A.** Yes.

**BEFORE THE PUBLIC UTILITY COMMISSION
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BLUE MARMOT V LLC (UM 1829))
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**REVISED OPENING TESTIMONY OF
KEEGAN MOYER
ON BEHALF OF THE
BLUE MARMOT V, VI, VII, VIII, AND IX**

December 20, 2017

1 **I. INTRODUCTION**

2 **Q. Mr. Moyer, please state your name and business address.**

3 **A.** My name is Keegan Moyer. My business address is 215 South State Street, Suite
4 200, Salt Lake City, Utah, 84111.

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

6 **A.** I am a Principal in the firm of Energy Strategies, LLC (“Energy Strategies”).
7 Energy Strategies is an independent energy consulting firm specializing in
8 economic and policy analysis applicable to energy production, transportation, and
9 consumption.

10 **Q. Please describe your professional responsibilities, background, and**
11 **experience.**

12 **A.** As a Principal with Energy Strategies, where I have been employed since 2014, I
13 assist private and public sector clients in the areas of electric transmission,
14 generation, and energy-related economic and public policy analyses. In that
15 capacity, I specialize in transmission system analysis and strategy for power
16 generation and transmission projects. I have performed numerous technical and
17 economic assessments of transmission and generation projects and have a strong
18 understanding of power markets, system planning, and the services that allow
19 power to interconnect and move across the transmission system.

20 Prior to joining Energy Strategies, I was the Manager of Transmission
21 Expansion Planning at the Western Electricity Coordinating Council (“WECC”).
22 In that role, I was responsible for regional transmission assessments and the
23 development of transmission plans for the Western Interconnection. I was
24 responsible for providing leadership and direction to the WECC Transmission

1 Expansion Planning Department, facilitating Transmission Expansion Planning
2 Policy Committee stakeholder activities, and managing the \$14.5 million
3 Department of Energy Regional Transmission Expansion Planning Grant. I also
4 advised WECC senior management on the Federal Energy Regulatory
5 Commission (“FERC”) Order 1000 and other relevant energy and planning
6 policies.

7 In addition to my transmission policy background, I have extensive
8 technical experience designing and conducting production cost model and power
9 flow simulation studies, and providing policy-oriented analyses of complex power
10 system issues. I regularly deal with FERC-approved Open Access Transmission
11 Tariffs, qualified facilities (“QFs”), interconnection and transmission analyses,
12 and support clients in navigating generation interconnection, transmission service,
13 and transmission planning processes.

14 My academic background is in both engineering and business
15 management. I have completed a Master of Science in Engineering and
16 Technology Management and a Bachelor of Science in Engineering with
17 Mechanical Specialty, both at the Colorado School of Mines.

18 In connection with my testimony in this docket, I am familiar with the
19 relevant transmission systems, obligations of QFs as it relates to transmission and
20 interconnection, avoided cost pricing, and the types and nature of transmission
21 service available under Portland General Electric Company’s (“PGE”) transmission
22 function’s (“PGE Transmission”) Open Access Transmission Tariff.

1 **Q. Have you testified previously before any other state utility regulatory**
2 **commissions?**

3 **A.** Yes. I have testified regarding transmission issues before the Colorado Public
4 Utilities Commission and the Utah Public Service Commission.

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

6 **A.** Blue Marmot V, VI, VII, VIII and IX (“Blue Marmots”).

7 **Q. Please summarize your testimony.**

8 **A.** The Blue Marmot QFs have signed power purchase agreements (“PPAs”) to sell
9 their output to PGE under the Public Utility Regulatory Policies Act (“PURPA”).
10 As “off-system” QFs, the Blue Marmots have arranged for transmission service
11 that will allow them to deliver the QF output to PGE’s system. However, PGE’s
12 merchant function (“PGE Merchant”) is refusing to counter-sign the Blue Marmot
13 PPAs on account of transmission constraints on PGE Transmission’s system at
14 the location where the Blue Marmots have arranged to deliver the power. [REDACTED]

15 [REDACTED]
16 [REDACTED] I spend
17 the majority of my testimony explaining why this is the case, while also
18 discussing practical transmission options that could be implemented that would
19 allow PGE Merchant to effectively and efficiently discharge their PURPA
20 responsibilities to accept and manage the QF net output at the location the Blue
21 Marmots have identified.

22 In addition, I address the notion that the Blue Marmots should be held
23 responsible for potential costs to upgrade PGE’s transmission system to further
24 facilitate their delivery [REDACTED]

1 [REDACTED]
2 [REDACTED].

3 Lastly, I review two potential discrimination issues at play that appear to
4 be working against the Blue Marmot projects. The first relates to how PGE
5 Merchant is handling the Blue Marmot QFs relative to other QFs with similar
6 transmission arrangements and contractual obligations, and the other considers
7 PGE Merchant's inability to act objectively and fairly when there is a parallel
8 need to reserve transmission for itself and QFs at the same location.

9 **II. PURPA OBLIGATIONS**

10 **Q. Please summarize this portion of your testimony.**

11 **A.** [REDACTED]

12 [REDACTED] While I am not a lawyer, I will explain my understanding
13 of a QF's obligations under PURPA, and then explain why the Blue Marmots
14 have met these obligations.

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 PGE Merchant, however, has refused to purchase the Blue Marmots' net output
19 and is instead demanding that they pay for transmission upgrades on PGE
20 Transmission's system or deliver their net output to a POD on PGE
21 Transmission's system that has sufficient long-term Available Transfer Capability
22 ("ATC"). PGE Merchant should be barred from raising these obstacles, and
23 should be required to purchase their net output. [REDACTED]

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[REDACTED]

[REDACTED]¹

In addition, I will explain what PGE Merchant should have done instead of refusing to purchase the Blue Marmots’ net output, which is to accept the power and manage it like their other generation resources or market purchases. PGE Merchant is inappropriately attempting to push its PURPA obligations to accept and manage the Blue Marmots’ net output back on to the Blue Marmots. The Blue Marmots are not required to manage PGE’s system or identify all the solutions that PGE could consider, but I have identified some options that PGE could have and may still implement to remedy the situation. These include:

- (1) PGE Merchant converting or otherwise managing existing transmission rights to enable and appropriately prioritize the delivery of QF output to their network loads, which could include reducing its own generation or market purchases to accommodate the QF power within those rights;
- (2) PGE Merchant making alternative transmission arrangements on other third-party transmission systems to deliver the QF output to a location of PGE’s choosing; or
- (3) PGE Merchant requesting and paying for PGE Transmission to construct network transmission upgrades.

In the end, it is not the Blue Marmots’ responsibility to manage PGE’s operations, and there may be more cost-effective ways for PGE Merchant to accept the QF power and fulfill its PURPA obligations.

¹ See e.g., Blue Marmot/202, Talbott/44 (PGE Schedule 201 attached to Blue Marmot V executed Power Purchase Agreement Sheet No. 201-3: “...and making the arrangements necessary for transmission of power to the Company’s [PGE] system.”).

1 **Q. Is PGE required to purchase the net output of the Blue Marmots' electric**
2 **generation?**

3 **A.** Yes. Each of the Blue Marmot projects are QFs under PURPA, which obligates
4 PGE Merchant to purchase each Blue Marmot project's net output. My
5 understanding is that PGE Merchant does not dispute that it is obligated in
6 principle to purchase the Blue Marmots' generation. Instead, PGE Merchant is
7 refusing to purchase the output at the POD on PGE Transmission's system that
8 the Blue Marmots have identified, and is requiring the Blue Marmots to deliver to
9 a different POD or pay for transmission upgrades to PGE's system.

10 **Q. What is your understanding of a QF's obligation to deliver power to a utility**
11 **under PURPA?**

12 **A.** PGE is obligated to purchase a QF's net output regardless of whether a QF is
13 directly interconnected to the purchasing utility (which in Oregon is called an
14 "on-system QF") or is interconnected with a different utility and wheeling its net
15 output over a third party's transmission system (which in Oregon is called an
16 "off-system QF") to the purchasing utility. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 The off-system QF does not need to transmit the power to the purchasing utility's

17 load, but only to the point of change of ownership where the two utilities'

18 transmission systems interconnect. Furthermore, QFs are not restricted to

19 delivering power to a *specific* POD [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 A. [REDACTED] As explained by Mr. Talbott, the Blue Marmots will be interconnected with

25 PacifiCorp and have executed transmission service agreements to purchase firm

1 point-to-point transmission service from PacifiCorp to deliver the net output of
2 the QF projects to PGE at the “PACW.PGE” POD. This means that the Blue
3 Marmots have reserved capacity on PacifiCorp’s system to deliver their net output
4 to PGE at the point of change of ownership between PacifiCorp and PGE. PGE
5 Merchant agrees that the PACW.PGE POD is located on its system,² and the
6 PACW.PGE POD is the only point on PGE’s transmission system where PGE can
7 receive delivery of power directly from PacifiCorp’s transmission system.

8 [REDACTED] PGE Merchant contends that it is
9 willing to accept the Blue Marmots’ delivery at a POD of *its* choosing, namely
10 where PGE Transmission and Bonneville Power Administration’s (“BPA”)
11 transmission systems interconnect. However, this would require Blue Marmot to
12 incur significant, unnecessary transmission charges to move power from
13 PacifiCorp’s system, through BPA’s system to the POD where BPA and PGE
14 intersect (BPAT.PGE). [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

² Blue Marmot/301, Moyer/26-28 (PGE Response to Blue Marmot Data Request (“DR”) 44-46).

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 **Q. Are you aware of any exceptions to PGE’s mandatory purchase obligation?**
9 **A.** Yes, but they do not apply here.³ There are two general categories of exceptions:
10 1) exceptions that allow a utility to refuse to enter into a QF PPA; and 2)
11 exceptions that allow a utility to temporarily refuse to purchase the output from an
12 operating QF project. Neither category applies to the Blue Marmots.

13 The first category, which allows utilities to avoid PURPA obligations
14 entirely, including executing PPAs, applies only if QFs have nondiscriminatory
15 access to competitive markets in which they can meaningfully sell their capacity
16 and electric energy output. This exception can only be established through FERC
17 filings and approvals. Since Oregon QFs do not have access to competitive
18 markets and PacifiCorp and PGE have not made these filings, this exception does
19 not apply.

20 The second category of exceptions are temporary in nature and apply to
21 QFs that are *already operating* under a PPA. One allowable exception under this

³ 18 CFR 292.304(f); 18 CFR 292.307(b).

1 category authorizes a utility to not purchase a QF project's net output during any
2 limited period when there is a system emergency.

3 Another temporary exception for *operating* QFs allows a utility to curtail a
4 QF's net output during specific operational circumstances during which accepting
5 unscheduled QF output would require reductions in the output of base load
6 generation units due to light load conditions.

7 **Q. Do any of these exceptions allow PGE Merchant to issue a blanket refusal to**
8 **even enter into a power purchase agreement?**

9 **A.** No. As explained above, the Blue Marmots do not have access to competitive
10 markets and exceptions for system emergencies and light load conditions only
11 apply during specific periods of time when the QF is operational. Thus, these
12 provisions cannot be used as justification for PGE Merchant's refusal to execute
13 contracts with the Blue Marmots.

14 **Q. Please explain what is meant by system emergency conditions.**

15 **A.** A system emergency is when there is an imminent risk of significant disruption of
16 service to customers or danger to life or property. A system emergency occurs
17 when the transmission system is operating within its planned limits with sufficient
18 transfer capability, but there is an unplanned or unusual event that requires the
19 transmission provider to curtail electricity to prevent the system emergency.

1 **Q. Does PGE claim that there would be system emergencies if it accepted the**
2 **Blue Marmots' net output?**

3 **A.** Yes. PGE Merchant claims that accepting the delivery of Blue Marmot's output
4 could harm system reliability by resulting in usage of the path above its total
5 transfer capability which could be detrimental to system reliability.⁴

6 **Q. Do you agree with PGE?**

7 **A.** No. PGE Merchant is describing a situation in which PGE accepts the Blue
8 Marmots' net output without otherwise operating its system as a reasonable or
9 prudent utility. As explained below, PGE Merchant has options for accepting the
10 Blue Marmots' net output without causing system emergencies by either
11 increasing the total transfer capability of the relevant path or staying within the
12 existing transfer capability on its system by managing existing transmission
13 capacity differently.

14 **Q. Please explain what is meant by light load conditions.**

15 **A.** Light load conditions are a narrow circumstance in which a utility operating only
16 base load units would be forced to cut back output from the generation units to
17 accommodate unscheduled QF energy purchases. These base load units might not
18 be able to increase the output rapidly enough if the QF resource output suddenly
19 drops off, which may result in the utility relying upon higher cost units to
20 maintain system reliability. FERC has confirmed that this exception only applies
21 during this unique light loading scenario and does not apply to curtail energy for
22 only general economic reasons.

⁴ Blue Marmot/301, Moyer/36 (PGE Response to Blue Marmot DR 103).

1 **Q. Does PGE claim that there would be curtailments because of light load**
2 **conditions if it accepted the Blue Marmots' net output?**

3 **A.** No. PGE concedes that it does not anticipate this type of circumstance based on
4 current conditions.⁵

5 **Q. Even if these circumstances applied, are they relevant to the Blue Marmots?**

6 **A.** No. [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] As explained by Mr. Talbott, the Blue Marmots

10 have LEOs with PGE.

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 [REDACTED] My understanding is that a utility's PURPA obligations supersede any
19 contractual obligations that a utility might claim would prohibit its ability to
20 purchase a QF's net output. [REDACTED]

21 [REDACTED]

22 [REDACTED]

⁵ Blue Marmot/301, Moyer/37 (PGE Response to Blue Marmot DR 104).

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 **Q. Does this mean that the Blue Marmots do not pay for any transmission costs?**

13 **A.** No. The Blue Marmots will pay for point-to-point transmission service from
14 PacifiCorp to wheel their power to PGE, and are paying for the costs to
15 interconnect to PacifiCorp's system at the POI. Thus, the Blue Marmots are
16 already paying significant transmission and interconnection costs to deliver their
17 power to PGE.

18 **Q. Why is PGE Merchant refusing to execute a contract with the Blue**
19 **Marmots?**

20 **A.** PGE Merchant claims that the Blue Marmots have not made necessary
21 transmission arrangements to deliver their net output to PGE's system.
22 Specifically, PGE Merchant is refusing to agree to accept any power deliveries at
23 the PACW.PGE POD. PGE Merchant appears to agree that the Blue Marmots

1 have made arrangements to deliver the power to PGE's system,⁶ but PGE says
2 that it will not accept delivery at that the PACW.PGE POD because there is
3 insufficient ATC to deliver the QF power from the POD to PGE Merchant's load.

4 **Q. What is PGE Merchant's justification for refusing to execute a PPA?**

5 PGE Merchant has proposed that the Blue Marmots must either: 1) make
6 arrangements to deliver their power to PGE's system through another POD that is
7 not constrained; or 2) pay for required studies and upgrades to PGE's system at
8 the PACW.PGE POD.⁷ Instead of taking responsibility for the power that is
9 delivered to its system, PGE Merchant has taken the position that the Blue
10 Marmots must deliver to a different POD or pay for transmission upgrades to
11 increase transmission capability on PGE's system between the PACW.PGE POD
12 and PGE's network load.

13 **Q. Please explain what PGE Merchant means by making arrangements to**
14 **deliver to another POD.**

15 **A.** As one of two alternatives offered by PGE Merchant to overcome the
16 transmission congestion PGE Merchant claims to exist on PGE's transmission
17 system, PGE Merchant would require the Blue Marmots to purchase transmission
18 on BPA's system to deliver at the PGE.BPA POD. This would require a "double
19 wheel" as the Blue Marmots would need to purchase point-to-point transmission
20 from both PacifiCorp and BPA. As explained in Mr. Talbott's testimony, this
21 would result in approximately \$14 million in additional costs for the Blue
22 Marmots over the term of the PPAs.

⁶ Blue Marmot/301, Moyer/26 (PGE Response to Blue Marmot DR 44).

⁷ E.g., UM 1829 PGE Answer to Blue Marmot V Complaint at ¶¶ 70-71.

1 **Q. Please explain what PGE Merchant means by paying for transmission**
2 **studies and upgrades at the PACW.PGE POD.**

3 **A.** There is limited ATC at the PACW.PGE POD, primarily because PGE Merchant
4 has reserved the transmission for itself, including for its participation in the EIM,
5 serving its own load, and other uses.

6 **Q. How would the Blue Marmots pay for transmission studies and upgrades?**

7 **A.** PGE Merchant has not made it clear how this would work. QFs, by nature, are
8 not transmission customers on the purchasing utility's system, so the specifics are
9 unknown. It appears that PGE Merchant is requiring that the Blue Marmots
10 become PGE transmission customers and make a transmission service request to
11 deliver from one location on PGE's transmission system (i.e., the PACW.PGE
12 POD) to another location on PGE's transmission system (i.e., PGE load). PGE
13 Transmission would then study whether any transmission upgrades are necessary
14 and how much they would cost. PGE Merchant would then require the Blue
15 Marmots to pay for any needed transmission upgrades and for transmission
16 service on PGE's system. While PGE Merchant does not appear willing to do so,
17 it is possible that PGE may reimburse the Blue Marmots for these paid upgrades
18 and reduce the transmission rates they pay to PGE Transmission (if any). Even if
19 PGE Transmission reimburses or credits the Blue Marmots for payment of these
20 transmission upgrades, the Blue Marmots would not be held harmless because
21 they would then have to pay PGE Transmission for use of PGE's transmission
22 system as long as they are selling power to PGE. This process is consistent with a
23 non-QF generator seeking point-to-point transmission service, however this is not
24 at all appropriate for QFs. Given that QFs are not required to purchase

1 transmission on the purchasing utility's system and the unprecedented nature of
2 PGE Merchant's actions, PGE Merchant may not even understand what it intends
3 to require the Blue Marmots to do.

4 **Q. Do you agree with PGE Merchant's proposal that the Blue Marmots must**
5 **make arrangements to deliver to a different POD or that the Blue Marmots**
6 **must pay for transmission studies and upgrades at the PACW.PGE POD to**
7 **allow PGE Merchant to accept the power?**

8 **A.** No. [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 **Q. Instead of requiring the Blue Marmots to deliver to another POD or pay for**
16 **network upgrades, what are PGE's options?**

17 **A.** After assuming its responsibility for the power, PGE Merchant must then decide
18 what it wants to use the net output for. PGE Merchant can make this decision
19 independently. After doing so, PGE Merchant can make the necessary
20 transmission arrangements to ensure that the Blue Marmots' net output is
21 transferred from the PACW.PGE POD to the location in which PGE elects to use
22 the power. Some of the specific options that PGE Merchant can take when
23 managing the power could include PGE Merchant: 1) completing transmission
24 upgrades that increase ATC and allow for PGE to accept the QF output at
25 PACW.PGE POD by obtaining *new* transmission rights; 2) obtaining transmission
26 service from a third-party transmission provider to wheel the power from the

1 PACW.PGE POD to another location of PGE's choosing; or 3) utilizing its own
2 currently held *existing* transmission rights to accept and deliver the power,
3 including reducing its own generation or market purchases to accommodate the
4 QF power within those rights. There may be other options as well.

5 It is important to keep in mind that the Blue Marmots do not have the
6 expertise and are not responsible for managing PGE Merchant's network
7 resources or identifying all of PGE's options. PGE is a sophisticated, vertically
8 integrated utility that serves its load with a variety of generation resources and
9 market purchases transferred using both network and point-to-point transmission
10 rights. If PGE makes an effort, I am confident that PGE can figure out a least cost
11 and least risk approach to ensuring that the Blue Marmots' net output that is
12 delivered to the PACW.PGE POD can be accepted and used to serve load.

13 **Q. Please explain what you mean by PGE Merchant can request and pay for**
14 **transmission upgrades.**

15 **A.** Rather than the Blue Marmots making a transmission service request, PGE
16 Merchant can make a transmission service request with PGE Transmission, pay
17 for any studies associated with the request, and then pay for transmission
18 upgrades to increase ATC at the PACW.PGE POD. These transmission upgrades
19 could provide significant benefits to all of PGE Transmission's customers.

20 **Q. Are you certain that there would be additional costs or required upgrades?**

21 **A.** No. PGE Merchant has not analyzed what the specific impacts would be if PGE
22 decided to accept the Blue Marmots net output at the identified POD.⁸ The Blue

⁸ Blue Marmot/301, Moyer/21, 30, 38-41 (PGE Response to Blue Marmot DR 18, 53, 105-108).

1 Marmots sought to understand in the discovery process what actions PGE
2 Merchant has taken to verify if there is any transmission available to PGE, and if
3 PGE Merchant has done anything other than look at PGE Transmission's Open
4 Access Same Time Information System.⁹ PGE Merchant has not requested
5 transmission service from PGE Transmission to wheel the Blue Marmots' net
6 output from the PACW.PGE POD to load or another location. It is not known
7 what, if any, the costs and nature of the additional upgrades might be. We also do
8 not know if there are any strategies (e.g., re-dispatch) that could be put into place
9 to mitigate the need for the upgrades in the first place.

10 **Q. How would the costs of these network upgrades be recovered?**

11 **A.** FERC's transmission policy requires transmission costs to generally be assessed
12 in a rolled-in rate, and not as an incremental basis for upgrades. Thus, PGE
13 Transmission function would construct the upgrades and then the costs would be
14 charged to all of PGE Transmission's customers, including PGE Merchant. This
15 process is clear and well accepted, unlike PGE Merchant's effective requirement
16 that a QF become a transmission customer of the purchasing utility and pay the
17 purchasing utility for both transmission upgrades and transmission rates. Blue
18 Marmot's preference is for PGE Merchant to work out a solution that avoids the
19 need for transmission upgrades altogether.

20 **Q. Does PGE Merchant have other options?**

21 **A.** Yes. PGE could seek to convert its existing point-to-point transmission rights
22 between PACW and PGE to network integration transmission service rights by

⁹ Blue Marmot/301, Moyer/30 (PGE Response to Blue Marmot DR 53).

1 seeking to designate the Blue Marmots as network resources delivered at the
2 PACW.PGE POD. While I understand that PGE Merchant has committed to use
3 the point-to-point rights to facilitate imports (and exports) when participating in
4 the EIM [REDACTED]
5 [REDACTED]. For example,
6 PGE could, during hours in which the Blue Marmots are generating, temporarily
7 reduce its imports of power at the PACW.PGE POD. Doing so would impact
8 PGE Merchant's operations only in situations where scheduled imports are
9 *greater* than the transfer capability remaining after the Blue Marmots' net output
10 is scheduled. Alternatively, PGE could temporarily adjust the amounts of
11 transmission included in the EIM (again, only as required when the Blue Marmots
12 are generating, and only in partial reductions relative to PGE's total transmission
13 rights on the path). Both options would allow PGE to accept the Blue Marmots'
14 net output while still allowing PGE Merchant to benefit from accessing these
15 markets.

16 **Q. Has PGE Merchant taken any actions to understand how it could manage its**
17 **generation and transmission resources, including backing down its own**
18 **generation or re-allocating its transmission to accept the Blue Marmots net**
19 **output?**

20 **A.** Not that the Blue Marmots are aware of. Submitting a transmission service
21 request to PGE Transmission would be the first step and PGE does not appear to
22 have done this.

1 **Q. Are you aware of other utilities which have attempted to better manage their**
2 **transmission assets to incorporate more QF power?**

3 **A.** Yes. FERC has allowed PacifiCorp to attempt to better manage its transmission
4 assets to accept QF power in transmission constrained areas by amending
5 PacifiCorp's Network Operating Agreement.¹⁰

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 **Q. Is this situation similar to what PGE is facing?**

19 **A.** Yes, it is very similar. The main difference is that PacifiCorp was facing a
20 situation related to QF facilities on its system that were located in remote,
21 constrained areas and PGE's constraint is at a commonly used interface integrated
22 into its system. Both areas can be considered transmission constrained in terms of
23 a lack of long-term firm ATC.

¹⁰ PacifiCorp, 151 FERC ¶ 61,170 (2015).

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[REDACTED] In contrast, PGE is refusing to accept the Blue Marmots' net output as a network resource because of insufficient ATC and is refusing to take responsibility for the Blue Marmots' net output. Given that PGE Merchant holds significant transmission rights between the PACW and PGE transmission footprints, PGE's situation seems easier to manage because there are more options to solve the alleged "problem."

Q. How did PacifiCorp propose to solve the issue of delivering a QF's net output from a constrained area on its own system to its load?

A. PacifiCorp proposed that its transmission function be able to grant additional designated network resource status for its merchant function to enable firm delivery from QFs even *when* there is no long-term firm ATC. Commensurately, the PacifiCorp merchant function agreed to operate its portfolio of designated network resources in the affected area within system reliability limits and curtail QF power last, even if that is out of economic merit order. PacifiCorp would curtail its own non-QF generation before curtailing QF power.

Q. Are you recommending that PGE Merchant adopt PacifiCorp's approach?

No. The point is not that PGE Merchant must take exactly the same approach as PacifiCorp. Instead, I am referring to PacifiCorp's actions as an illustrative example that there are practical approaches that a utility like PGE can take to

1 efficiently and effectively discharge its PURPA obligations. PGE Merchant has
2 taken the approach of simply refusing to purchase the Blue Marmots' net output
3 rather than looking for creative solutions, which could include allowing PGE
4 Transmission to grant designated network resource status to enable firm delivery
5 from QFs, even when there is no long-term firm ATC.

6 While I do not agree with certain other aspects of PacifiCorp's
7 characterizations of its PURPA obligations, creative approaches like this would
8 be reasonable steps for PGE to take. The Commission should recognize that
9 FERC has allowed utilities some latitude to manage their QF power, and it is
10 reasonable to leave it up to PGE Merchant to properly manage its network
11 resources, including QF generation, because PGE Merchant is responsible for the
12 Blue Marmots' net output.

13 **Q. Could PGE manage its EIM participation in a manner that accommodates**
14 **delivery of the Blue Marmots' output to PGE load?**

15 **A.** Yes. PGE could choose to manage its participation in the EIM in such a way that
16 would allow it to accept the output from the Blue Marmots at the PACW.PGE
17 POD and deliver that output to PGE load.

18 **Q. Please explain the options for PGE transfer of EIM energy with other EIM**
19 **participants and how PGE could manage EIM participation while accepting**
20 **delivery from Blue Marmot.**

21 **A.** Under PGE's tariff, PGE has established, and FERC has accepted, two methods
22 for enabling transfers between itself and other EIM Entities (such as PacifiCorp).
23 One method to enable EIM Transfers¹¹ is referred to as the "Interchange Rights

¹¹ Under PGE's Tariff, EIM Transfers are defined as: "The transfer of real-time energy resulting from an EIM Dispatch Instruction: (1) between the PGE BAA and the CAISO BAA; (2) between the PGE BAA and an EIM Entity BAA; or (3)

1 Holder” methodology. A PGE Interchange Rights Holder is “a Transmission
2 Customer who has informed the PGE EIM Entity that it is electing to make
3 reserved firm transmission capacity available for EIM Transfers without
4 compensation.”¹² This methodology allows a PGE Interchange Rights Holder to
5 “donate” its reserved transmission capacity to the EIM. For instance, to facilitate
6 EIM Transfers between PacifiCorp and the CAISO, PacifiCorp Merchant donates
7 some of its transmission rights on the California-Oregon Intertie. PGE indicated
8 it plans to use the Interchange Rights Holder methodology for EIM Transfers on
9 two paths that will enable energy exchanges between PGE and the CAISO.¹³

10 Notably, PGE did not indicate that it planned to use the PGE Interchange
11 Rights Holder method for EIM Transfer to and from PacifiCorp. Instead, for the
12 transfer of EIM energy to and from PacifiCorp West, PGE’s FERC filing stated
13 that PGE will utilize the ATC method for EIM Transfers at the direct interface
14 between the PGE Balancing Authority Area (“BAA”) and the PacifiCorp West
15 BAA.¹⁴ The ATC method allows for EIM Transfers based on the ATC that PGE
16 calculates to exist prior to the operating hour. The ATC calculation for EIM
17 Transfers takes place at approximately 40 minutes prior to the operating hour and
18 takes into account all scheduled uses of the relevant path that have been

between the CAISO BAA and an EIM Entity BAA using transmission capacity available in the EIM.”

¹² Portland General Electric, *Pro Forma Open Access Transmission Tariff*; updated May 1, 2017 at 1.78.

¹³ Portland General Electric Company, “*Amendments to the Portland General Electric Company Open Access Transmission Tariff to Facilitate Energy into the Energy Imbalance Market*,” FERC Docket No. ER17-1075-000, filed March 1, 2017, at II.E.

¹⁴ Id.

1 submitted. Note that 40 minutes prior to the operating hour will occur after the
2 Blue Marmots have scheduled their output, giving PGE the information it would
3 need to release any unused transmission rights into the EIM.

4 The remaining ATC on the path is then communicated to the EIM operator
5 (the CAISO) and the EIM is optimized based on the transmission capacity that the
6 EIM Entity (in this case PGE) has indicated to be available. Under this method,
7 there is no requirement for transmission service to be donated by a PGE
8 Interchange Rights Holder and PGE Merchant has no obligation to hold long-term
9 firm transmission capacity on the path to enable its EIM participation. Therefore,
10 one option available to PGE is to schedule the anticipated output from the Blue
11 Marmot on the PACW.PGE to PGE path along with other uses of the path, and
12 then utilize the remaining transmission capacity on the path to enable EIM
13 Transfers, consistent with the ATC method for EIM Transfers.

14 **Q. Would this approach be consistent with the approaches of other EIM**
15 **Entities?**

16 **A.** Yes. Most other EIM Entities participate in the EIM primarily using the ATC
17 method. To the best of my knowledge, these EIM Entities continue to enable
18 other uses of their transmission system prior to the EIM time horizon and no other
19 EIM Entity's merchant function has procured new transmission capacity that is
20 purely dedicated to enabling EIM Transfers.

21 **Q. Is there any reason PGE couldn't manage its EIM participation in the**
22 **manner described above, which would allow delivery of the Blue Marmots'**
23 **output to PGE load?**

24 **A.** Not that I am aware of. In fact, the method of accepting Blue Marmot's output
25 and conducting EIM Transfers is consistent with the manner in which PGE told

1 FERC it would be effectuating EIM Transfers between its own BAA and the
2 PACW BAA. When PGE sought, and subsequently received, Market Based Rate
3 Authority in the EIM, PGE represented to FERC that its merchant function would
4 provide at least 200 megawatts (“MW”) of transmission to the EIM in all
5 intervals.¹⁵ Therefore, should PGE choose this option for accepting the Blue
6 Marmots’ net output, PGE would likely need to make a Market Based Rate
7 Authority change in status filing at FERC. The change in status filing, and any
8 resulting decisions, should not prevent PGE from managing its EIM participation
9 in a manner that allows for delivery of the Blue Marmots output.

10 **Q. Are you recommending that PGE manage its EIM participation to allow**
11 **delivery of the Blue Marmots’ output to PGE load?**

12 **A.** No. I am not familiar enough with all of the details of PGE’s EIM participation
13 and system operations to know whether this is the appropriate action for PGE to
14 take to accept the Blue Marmots’ net output. I am simply pointing out that PGE
15 has a variety of options available to accept the Blue Marmots’ net output and that,
16 should PGE choose this option, it would be consistent with PGE’s tariff, its
17 representations to FERC in filing for approval of its EIM tariff modifications, and
18 with the approaches of other EIM Entities.

19 **III. AVOIDED COST RATES**

20 **Q. Please summarize this portion of your testimony.**

21 **A.** The avoided cost rate at the time a QF enters into a contract or LEO cannot
22 change or be altered by the utility. Since the Blue Marmots have legally

¹⁵ Blue Marmot/301, Moyer/1-20 (PGE Response to Blue Marmot DR 2, Appendix A).

1 enforceable obligations at the rates that were in effect in April 2017, PGE cannot
2 now change the Blue Marmots avoided cost rate. This change to the Blue
3 Marmots' avoided cost rates cannot be in the form of an actual change to the
4 contract price, nor can it be an effectual change resulting from incremental
5 transmission costs.

6 **Q. What is your understanding of how PGE's avoided cost rates are set?**

7 **A.** While I am generally familiar with and have reviewed PGE's avoided cost rate
8 workpapers, I am not an expert on all the details regarding the calculation of
9 Oregon avoided cost rates. There are a variety of different ways in which avoided
10 cost rates are calculated around the country,¹⁶ and Oregon uses a form of the
11 "proxy" methodology for QFs under the size threshold for standard rates.¹⁷ At the
12 time the Blue Marmots obtained their LEOs, the standard rate eligibility cap was
13 10 MW for solar generation selling power to PGE. These standard rates are
14 intended to reflect the utility's full avoided costs, but are administratively
15 determined by the OPUC. The standard rates are adjusted to be based on the
16 generic resource characteristics of each QF technology type, which means that a
17 solar QF's rates reflect the different peak capacity credit versus a baseload QF
18 with a different generation profile. Thus, there are generic resource type

¹⁶ Carolyn Elefant, REVIVING PURPA'S PURPOSE: The Limits of Existing State Avoided Cost Ratemaking Methodologies In Supporting Alternative Energy Development and A Proposed Path for Reform, First Impression – Last resort (Oct. 2011), <http://lawofficesofcarolynelefant.com/reports-publications/>. (explaining basic methodologies for calculating avoided cost rates).

¹⁷ Re OPUC Investigation Into Qualifying Facility Contracting and Pricing, Docket No. UM 1610, Order No. 14-058 at 8-14 (Feb. 24, 2014).

1 adjustments, but there are no project specific adjustments to the avoided cost rate
2 calculation.

3 **Q. Can PGE adjust an off-system QF's avoided cost rates to reflect the costs of**
4 **transmission on its system?**

5 **A.** While I am not an attorney, my understanding is that PGE cannot. As mentioned
6 above, FERC regulations provide that off-system QFs like the Blue Marmots can
7 wheel their power to a purchasing utility like PGE, and the purchasing utility must
8 purchase the net output as if the QF were supplying the net output directly.

9 FERC's regulations also state that the rate "shall not include any charges for
10 transmission."¹⁸ This is consistent with the discussion above that the purchasing
11 utility is responsible for accepting and managing the power that is delivered to its
12 system. Therefore, the rate paid to the off-system QF cannot directly or indirectly
13 include any transmission charges.

14 **Q. Is PGE seeking to impose a transmission charge on the Blue Marmots and**
15 **thereby lower the Blue Marmots' *effective* avoided cost rates?**

16 **A.** Yes. PGE is not explicitly seeking to change the specific rate that is paid to the
17 Blue Marmots; however, PGE is requiring that before it will accept the Blue
18 Marmots' net output, they must purchase transmission from PGE or another third-
19 party, or fund transmission upgrades. This is a de facto transmission charge
20 which ultimately lowers the avoided cost rate paid to the Blue Marmots.

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

[REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 **IV. DISCRIMINATION**

14 **Q. Please summarize this portion of your testimony.**

15 **A.** PGE is discriminating against the Blue Marmots because it has refused to execute
16 the Blue Marmots' PPAs while executing contracts with other QFs that are
17 planning to deliver their net output at the PACW.PGE POD. PGE has also
18 discriminated in favor of itself over the Blue Marmots by claiming that there is no
19 ATC to accept their power, but then obtaining ATC that becomes available at the
20 PACW.PGE POD for other non-QF purposes. This is troubling because PGE
21 appears to be procuring transmission solely for its own purposes when it should
22 be seeking to arrange for transmission service to be used to deliver power from
23 QFs that have LEOs.

1 **Q. Is PGE allowed to discriminate against similarly situated QFs?**

2 **A.** No. Again, while I am not a lawyer, my understanding is that PGE cannot unduly
3 discriminate between different QFs.

4 **Q. Is PGE discriminating against the Blue Marmots?**

5 **A.** Yes, PGE is discriminating or treating the Blue Marmots differently from other
6 similarly situated QFs. PGE has entered into at least three off-system QF
7 contracts that will deliver to the PACW.PGE POD.¹⁹ These include the Airport
8 Solar PPA, which is also planned to interconnect to PacifiCorp and deliver its net
9 output to PGE via PacifiCorp's system. The Airport Solar PPA was executed a
10 couple weeks before PGE informed the Blue Marmots that it would not execute
11 PPAs but after PGE had provided executable PPAs and after Blue Marmot had
12 executed these PPAs.²⁰

13 **Q. What should PGE have done?**

14 **A.** PGE should have executed the Blue Marmots' contracts, just as it had already
15 done for the other off-system QFs delivering at the PACW.PGE POD. If PGE has
16 any concerns regarding the specific transmission arrangements, then it should not
17 use those as an excuse not to execute these contracts and should have handled all
18 of the tendered PPAs similarly. [REDACTED]

19 [REDACTED]
20 [REDACTED]

¹⁹ Blue Marmot/301, Moyer/25 (PGE Response to Blue Marmot DR 28).
²⁰ Re PGE Information Filing of Qualifying Facility Contracts or Summaries per OAR 860-029-0020(1), Docket No. RE 143, PGE's Summary of Qualified Facility Agreements (June 21, 2017) (PGE summary of Airport Solar PPA with an execution date of April 3, 2017) Available at: <http://edocs.puc.state.or.us/efdocs/HAQ/re143haq165856.pdf>

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[REDACTED]

[REDACTED]

Q. Are you taking the position that PGE should now refuse to accept the net output of the other off-system QFs that it has already agreed to accept deliveries from at the PACW.PGE POD?

A. No. PGE should not remedy its discriminatory treatment against the Blue Marmots by refusing to accept the net output of any off-system QFs that have entered into contracts or otherwise have established legally enforceable obligations.²¹ Instead, PGE should accept responsibility for managing at least the power of all the QFs that have entered into contracts or obtained legally enforceable obligations.

Q. Is PGE treating the Blue Marmots as QFs that have contracts or legally enforceable obligations?

A. No. PGE has vaguely stated that “All QFs that have requested PPAs from PGE and that have requested to deliver at PACW.PGE will be given the same options as Blue Marmot.”²² This statement only applies to QF requests, and not to QFs that have already entered into contracts. Thus, PGE appears to be treating Blue Marmot as a QF that has merely requested a PPA from PGE, rather than as a QF that has executed a contract or established a legally enforceable obligation.

²¹ As noted above, PGE is obligated to purchase the net output of all off-system QFs and manage their power regardless of whether they have entered into a contract or not. There are additional reasons why PGE cannot refuse to purchase the net output of QFs like the Blue Marmots which have legally enforceable obligations or contracts.

²² Blue Marmot/301, Moyer/23 (PGE Response to Blue Marmot DR 23).

1 **Q. Do we know what PGE is planning to do regarding QFs that have entered**
2 **into fully executed contracts with PGE?**

3 **A.** No. The Blue Marmots sought to obtain this information in the discovery
4 process, and PGE has not determined how to proceed.²³ For example, the Blue
5 Marmots sought to obtain PGE's position on what it would do with any additional
6 ATC that is made available at the PACW.PGE POD, whether PGE would use that
7 ATC for other off-system QFs, and whether there would be any priority between
8 off-system QFs that are requesting to deliver at the PACW.PGE POD.²⁴ PGE
9 claims that it "is in the process of developing a policy to address" these
10 circumstances, that it has not yet made a determination about whether it can even
11 accept deliveries, or how deliveries will be handled.²⁵

12 **Q. What does PGE mean by stating that it "is reviewing off-system QFs that**
13 **have entered PPAs and has not made a determination about whether it can**
14 **accept deliveries from each of them at this time" or that "PGE is evaluating**
15 **how deliveries anticipated to be made from [the projects that have executed**
16 **contracts] to the PACW.PGE POD will be handled"?**

17 **A.** We do not know. PGE's statement is inconsistent with its other positions in this
18 case. On one hand, PGE claims that it cannot accept any power deliveries at the
19 PACW.PGE POD because of insufficient ATC. However, on the other hand,
20 PGE has not made a determination about how it will handle deliveries or whether
21 it can even accept deliveries at the same location that has insufficient ATC from
22 those QFs that have already entered into contracts.

²³ Blue Marmot/301, Moyer/22-24 (PGE Response to Blue Marmot DR 22-24).

²⁴ Blue Marmot/301, Moyer/24 (PGE Response to Blue Marmot DR 24).

²⁵ Blue Marmot/301, Moyer/23-24, 25, 34-35 (PGE Response to Blue Marmot DR 23-24, 28, 91, 92).

1 There are over 67 MW of off-system QFs that have already entered into
2 contracts with PGE to deliver at the PACW.PGE POD, and PGE appears to be
3 holding open the door to accept some or all of their net output at this POD.²⁶ PGE
4 also appears to be taking the position that the time a QF enters into a contract
5 somehow impacts whether PGE has to accept delivery at the PACW.PGE POD.

6 **Q. Separate from its obligations to individual QFs, is PGE discriminating**
7 **against the Blue Marmots in favor of other transmission uses?**

8 **A.** It appears so. Additional ATC became available after PGE informed the Blue
9 Marmots that PGE would not purchase their net output due to limited ATC.²⁷
10 PGE could have reserved or obtained this to accept at least a portion of the Blue
11 Marmots' net output or otherwise meet its PURPA obligations, but PGE elected
12 to reserve this for itself as point-to-point transmission. PGE also could have
13 informed the Blue Marmots that this ATC had become available. Instead PGE
14 appeared to act as if it had no knowledge of its obligations to accept the Blue
15 Marmots' output on that same transmission path.

16 **V. CONCLUSION**

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

18 **A.** Yes.

²⁶ The Airport Solar QF (47.25 MW), OM Power (10 MW), and Obsidian
Renewables (10 MW).

²⁷ Blue Marmot/301, Moyer/29-32 (PGE Response to Blue Marmot DR 52-55).