



ALISHA TILL
Direct (503) 290-3628
alisha@mrg-law.com

April 3, 2020

VIA ELECTRONIC FILING AND EMAIL

Attention: Filing Center
Public Utility Commission of Oregon
201 High Street SE, Suite 100
P.O. Box 1088
Salem, Oregon 97308-1088

**Re: Docket UM 1829, Phase II – In the Matter of Blue Marmots, LLC vs Portland
General Electric Company**

Attention Filing Center:

Attached for filing in the above-captioned docket is Portland General Electric Company's Response Testimony of Geoffrey Moore (PGE/900-902). Per Order No. 20-088, confidential copies will be sent via encrypted electronic ZIP file.

Please contact this office with any questions.

Sincerely,

/s/ Alisha Till

Alisha Till
Paralegal

Attachments

cc: UM 1829 Service List

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
RESPONSE TESTIMONY
OF
GEOFFREY MOORE**

April 3, 2020

INTRODUCTION AND SUMMARY

1 **Q. Please state your name, business address, and position at PGE.**

2 A. My name is Geoffrey Moore. My business address is 121 SW Salmon Street, 3 World
3 Trade Center, Mailstop 0306, Portland, OR 97204. My current position at PGE is
4 Principal Originator in the Fundamentals and Strategic Support Group.

5 **Q. Please summarize your educational background and business experience.**

6 A. I received a Bachelor of Science in Economics from Linfield College in 2010 and a
7 Master of Science in Applied Economics from the University of Oregon in 2012. I
8 worked for the Public Utility Commission of Oregon (Commission) as a Utility
9 Analyst/Economist from 2012 to 2013. I then joined the Rates and Regulatory Affairs
10 group at PGE as a Business Analyst. In 2015, I moved to PGE's Merchant
11 Transmission and Resource Integration Group as an Operations Analyst, where I was
12 primarily responsible for managing PGE Merchant's transmission portfolio (e.g.,
13 strategy, procurement, etc.) used for PGE's load service and wholesale market
14 activities. I was also responsible for submitting and managing new generation
15 interconnection requests. I began my present position as an Analyst in the
16 Fundamentals and Strategic Support Group in 2016. In my current position, I perform
17 analysis in support of PGE's wholesale marketing and trading operations in addition to
18 other Company projects or initiatives. I also work within the Structuring and
19 Origination group by performing contract and pricing modeling, assisting in the
20 development of contract terms, and negotiating structured agreements.

21 **Q. What is the purpose of your testimony?**

22 A. The purpose of my testimony is to respond to the request by EDP Renewables North
23 American (EDPR) that the Commission extend the commercial operation dates (CODs)
24 in the power purchase agreements (PPAs) that PGE has provided to Blue Marmot V,
25 Blue Marmot VI, Blue Marmot VII, Blue Marmot VIII, and Blue Marmot IX (the Blue

1 Marmots) pursuant to the Public Utilities Regulatory Policies Act of 1978 (PURPA)
2 and the Commission's order in Phase I of the litigation between PGE and the Blue
3 Marmots. My testimony responds to certain specific points made by the Blue Marmots'
4 witness William Talbott, explains PGE's position regarding the Blue Marmots' request
5 for COD extensions, and conveys the CODs that PGE believes are appropriate for the
6 Blue Marmot qualifying facilities (QFs).

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

8 A. The Blue Marmots claim that they require COD extensions to 2023 because the Phase
9 I litigation caused them to delay their project development. The Blue Marmots assert
10 that their decision to delay development was commercially reasonable due to the risk
11 and uncertainty that resulted from the Phase I litigation. However, the evidence in this
12 Phase II proceeding demonstrates that (1) factors other than litigation impeded the Blue
13 Marmot projects' development, and (2) EDPR's decision to slow development during
14 the litigation was not commercially reasonable given the limited risk.

15 The Blue Marmots made imprudent and unreasonable decisions in their
16 interconnection and permitting processes that prevented them from meeting the CODs
17 in the PPAs they had signed. In the interconnection process with PacifiCorp, the Blue
18 Marmots had received draft interconnection agreements that would have allowed them
19 to timely interconnect the projects, but the Blue Marmots asked PacifiCorp to re-study
20 the projects' interconnections in a consolidated, 50-MW configuration. As a result, the
21 Blue Marmots' current interconnection agreements do not allow them to interconnect
22 the five, 10-MW projects, located at least five miles apart, for which they have PPAs.
23 Instead, the Blue Marmots must again revise their interconnection request before they
24 can bring five separate projects online—but they have not yet initiated this process.
25 The delays caused by the Blue Marmots' unreasonable interconnection decisions are
26 unrelated to the Phase I litigation.

1 In the permitting process, the Blue Marmots originally planned to seek approval
2 through Lake County but, after signing their PPAs, they determined that they should
3 instead pursue approval from the state Energy Facility Siting Council (EFSC)—
4 presumably to mitigate the risk of permitting challenges in the face of local opposition.
5 The Blue Marmots’ failure to timely initiate the EFSC process delayed their permitting
6 efforts. Then, in November 2018, the Blue Marmots halted the EFSC process
7 completely, and they still have not resumed their efforts to obtain a site certificate—six
8 months after the Commission resolved Phase I.

9 To the extent the Blue Marmots’ decisions to delay development were related
10 to the Phase I litigation, these decisions were not commercially reasonable. The Blue
11 Marmots had signed PPAs and created legally enforceable obligations, thus locking in
12 their avoided cost prices. They understood that their legally enforceable obligations
13 required them to develop the projects by the CODs in the PPAs, and they had plans in
14 place at the time they signed the PPAs to timely develop the projects. The only
15 uncertainty in the Phase I litigation was whether the Blue Marmots would be required
16 to pay an additional \$14 million to deliver their output to an alternate delivery point,
17 and the Blue Marmots would have remained profitable even if they had needed to bear
18 this additional cost. Given the known and limited risk of the Phase I litigation, it was
19 unreasonable for the Blue Marmots to delay development.

20 Although the Blue Marmots have not met their burden of showing that the Phase
21 I litigation caused commercially reasonable delays in their development or that their
22 CODs should be extended, PGE nevertheless supports reasonable COD extensions to
23 end this litigation and bring the projects online as quickly as possible. The Blue
24 Marmots have testified that they could be online by the end of 2022, and PGE believes
25 that CODs of December 31, 2022, with no cure period, provide the Blue Marmots with
26 ample time to develop their projects.

BACKGROUND AND PHASE I LITIGATION

1 **Q. Who are the Blue Marmots?**

2 A. The Blue Marmots are five solar QF projects proposed for development in Lake
3 County, Oregon, near the California border. The Blue Marmots are being developed
4 by EDPR, a multi-national development corporation, headquartered in Houston, Texas,
5 and a wholly owned subsidiary of the global parent, EDP Renewables, which is
6 headquartered in Madrid, Spain. As of December 2018, EDP Renewables had installed
7 approximately 11.7 GW of capacity across 11 countries, and that company plans to
8 build 7 GW of new capacity between 2019 and 2022.¹

9 **Q. Were you involved in the Phase I litigation in this case?**

10 A. Yes, I was actively involved in the Phase I litigation from the outset of the case. I filed
11 three pieces of testimony in Phase I (PGE/100, PGE/500, and PGE/700) and provided
12 oral testimony during the evidentiary hearing.

13 **Q. When did the Phase I litigation begin?**

14 A. The Blue Marmots filed their complaints on April 28, 2017.

15 **Q. Please summarize the circumstances that led to the Phase I litigation.**

16 A. After sending final executable PPAs to four of the five Blue Marmots and receiving the
17 Blue Marmots' signatures on March 29, 2017, PGE's QF contracting personnel became
18 aware that the PACW-PGE interface, where the Blue Marmots wished to deliver their
19 output, was fully subscribed. Therefore, PGE did not countersign the four final
20 executable PPAs and did not send a final executable PPA for the fifth project, Blue
21 Marmot VIII. Instead, PGE contacted EDPR, explained the constraint, and informed
22 EDPR that it could opt to deliver the Blue Marmots' generation via the BPA-PGE
23 interface, which had sufficient capacity to accept the Blue Marmots' output, or could
24 request a study and pay for any upgrades at the PACW-PGE interface that might allow

¹ EDP Renewables, *Our Business Strategy* at <https://www.edpr.com/en/edpr/our-business/strategy>.

1 the Blue Marmots to deliver there. On April 24, 2017, EDPR sent PGE demand letters
2 insisting that PGE execute the Blue Marmots' PPAs, and EDPR filed complaints on
3 behalf of each of the Blue Marmots shortly thereafter.

4 **Q. What relief did the Blue Marmots request in Phase I?**

5 A. The Blue Marmots' complaints asked the Commission to order PGE to finalize PPAs
6 for all five projects that included the standard avoided cost prices and standard contract
7 terms and conditions in effect at that time.² The Blue Marmots further requested that
8 the Commission bar PGE from imposing any deliverability costs on the Blue Marmots.³

9 **Q. When did the Commission resolve Phase I?**

10 A. On September 30, 2019, the Commission entered Order No. 19-322.

11 **Q. Please summarize the Commission's resolution of the disputed issues in Phase I.**

12 A. The Commission determined that four of the Blue Marmots (all except Blue Marmot
13 VIII) were entitled to deliver their output at the PACW-PGE interface.⁴ Recognizing
14 that PGE's standard contract terms had changed during the litigation, the Commission
15 ordered PGE to provide final executable PPAs using the current standard PPA form,
16 which contains provisions consistent with the Commission's intervening decision that
17 the 15-year fixed-price term begins at the scheduled commercial operation date, rather
18 than at execution of the PPA.⁵

19 Thus, the Commission ordered PGE to provide final executable PPAs
20 "consistent with the currently approved standard contract that allow for delivery at the
21 PACW:PGE [point of delivery] with the avoided cost prices effective on March 29,
22 2017," to four of the Blue Marmots.⁶ For Blue Marmot VIII, the Commission ordered

² See, e.g., Phase I, Blue Marmot V Complaint at 14-15

³ See, e.g., Phase I, Blue Marmot V Complaint at 15.

⁴ Order No. 19-322 at 20.

⁵ Order No. 19-322 at 20; see also *Northwest and Intermountain Power Producers Coalition et al. v. PGE*, Docket UM 1805, Order No. 17-373 (Sept. 28, 2017).

⁶ Order No. 19-322 at 20.

1 PGE to provide “an executable contract consistent with the currently approved standard
2 contract with the avoided cost prices effective on April 20, 2017,” and stated, “PGE
3 may propose a delivery term it determines appropriate.”⁷

4 On November 27, 2019, the Blue Marmots sought reconsideration regarding
5 the delivery arrangements that would be permissible for Blue Marmot VIII under
6 different facts and circumstances than those considered in the Order, but the
7 Commission denied the request on January 23, 2020.⁸

PHASE II ISSUES

8 **Q. Mr. Talbott indicates that the Blue Marmots had expected the Commission to**
9 **grant COD extensions in the Phase I litigation and that the Blue Marmots were**
10 **“surprised that they did not receive certainty.”⁹ Did the Blue Marmots request**
11 **COD extensions in their complaints?**

12 A. No, the Blue Marmots did not request COD extensions in their complaints, in any other
13 pleading, or in their written testimony.¹⁰ Indeed, the Blue Marmots did not ask the
14 Commission to extend their CODs until November 30, 2018, in their prehearing brief.¹¹
15 This request came 18 months after the Phase I litigation began and after 7 rounds of
16 pre-filed testimony already had been exchanged.

17 **Q. Did the Commission address the Blue Marmots’ belated request for COD**
18 **extensions in resolving Phase I?**

19 A. Yes, the Commission stated,
20 We conclude that there is insufficient evidence on the record to
21 demonstrate that achievement of the Blue Marmots’ stated CODs is not
22 possible due to litigation, and accordingly we decline to order an
23 extension. The Blue Marmots may assert such a claim following this

⁷ Order No. 19-322 at 21.

⁸ Order No. 20-025 at 4.

⁹ Blue Marmot/900, Talbott/6.

¹⁰ *See, e.g.*, Phase I, Blue Marmot V Complaint at 14-15.

¹¹ Phase I, Blue Marmots’ Prehearing Brief at 41.

1 order, and PGE will be entitled, as it requests in its reply brief, to a full
2 evidentiary proceeding with discovery as we consider this question.¹²

3 **Q. Did a new evidentiary proceeding commence to consider the COD extensions?**

4 A. Yes, on November 26, 2019, approximately two months after the Phase I Order, the
5 Blue Marmots moved for a prehearing conference to initiate this case,¹³ which was
6 designated as Phase II.

7 **Q. What are the issues presented in Phase II?**

- 8 A. The parties jointly filed two issues for the Commission to consider in Phase II:
- 9 1. “Whether litigation caused commercially reasonable delays in the Blue
10 Marmots’ scheduled commercial operation dates listed in their partially
11 executed PPAs?” and
 - 12 2. “Should the Blue Marmots’ scheduled commercial operation dates be extended
13 and if so, what new dates should be included in the final executable PPAs that
14 PGE must offer consistent with the final resolution of all issues in Phase II of
15 UM 1829 or other subsequent proceedings?”¹⁴

17 I understand that the first issue asks whether litigation—as opposed to other factors—
18 was the reason for delay in the Blue Marmots’ ability to achieve their scheduled CODs,
19 and if so, whether such delays were commercially reasonable under the circumstances.
20 The second issue asks the Commission to consider, given all of the facts, whether the
21 Blue Marmots’ CODs should be extended, and if so, by how long.

22 **Q. What specific relief have the Blue Marmots requested in Phase II?**

23 A. The Blue Marmots request extensions of their CODs as follows:

Project	Original COD	Requested COD ¹⁵	Extension Length
Blue Marmot V	November 30, 2019	September 27, 2023	1397 days (3.8 years)
Blue Marmot VI	November 30, 2019	October 13, 2023	1413 days (3.9 years)
Blue Marmot VII	March 31, 2020	November 2, 2023	1311 days (3.6 years)

¹² Order No. 19-322 at 20.
¹³ Blue Marmots’ Motion for Prehearing Conference.
¹⁴ Phase II, Joint Issues List at 1 (Jan. 2, 2020).
¹⁵ Blue Marmot/900, Talbot/3-4.

Blue Marmot VIII	March 31, 2020	November 23, 2023	1332 days (3.6 years)
Blue Marmot IX	March 31, 2020	December 7, 2023	1346 days (3.7 years)

1 **Q. Do these extensions exceed the length of the Phase I litigation?**

2 A. Yes. The length of the Phase I litigation was less than 2.5 years (885 days), from the
3 date the Blue Marmots filed their complaints (April 28, 2017) to the date the
4 Commission issued its Phase I order (September 30, 2019).

**FACTORS OTHER THAN LITIGATION IMPEDED THE BLUE MARMOTS’
ABILITY TO MEET THEIR ORIGINAL CODS**

5 **Q. Does PGE believe that the Phase I litigation caused commercially reasonable**
6 **delays in the Blue Marmots’ development?**

7 A. No, PGE believes that the Blue Marmots’ inability to meet their original CODs is the
8 result of their own unreasonable interconnection and permitting decisions.

9 **1. Interconnection**

10 **Q. What was the earliest date on which the Blue Marmots could have been**
11 **interconnected if they had proceeded reasonably through the interconnection**
12 **process with PacifiCorp?**

13 A. The Blue Marmots had received small generator interconnection agreements (SGIAs)
14 from PacifiCorp on January 29, 2018, under which the “commercial operations”
15 milestone was December 31, 2019—meaning that the Blue Marmots could have been
16 fully interconnected by the end of 2019.¹⁶ Thus, as they have acknowledged,¹⁷ had the
17 Blue Marmots proceeded normally through the interconnection process during the

¹⁶ Blue Marmot/900, Talbott/16; *see, e.g.*, Blue Marmot/914, Talbott/43; *see also* Blue Marmot/915-918.

¹⁷ Blue Marmot/900, Talbott/13 (“At the time the Blue Marmots signed their PPAs in March 2017, they had clear interconnection and transmission plans in place that were compatible with achieving commercial operations by the earliest COD in the Blue Marmot PPAs, i.e. November 30, 2019.”); Blue Marmot/900, Talbott/16 (“Due to schedule slippage in the time elapsed between the Facilities Study results and the tendered SGIAs, the latter show a COD of December 31, 2019[.]”).

1 Phase I litigation, they could have met their CODs (Blue Marmots VII, VIII & IX) or
2 achieved commercial operation just one month late and within the cure period (Blue
3 Marmots V & VI).

4 **Q. Did the Blue Marmots execute the SGIAs that would have allowed them to be**
5 **interconnected by the end of 2019?**

6 A. No. Instead of signing the SGIAs, the Blue Marmots negotiated with PacifiCorp
7 regarding the SGIAs for several months, and then asked PacifiCorp to re-study their
8 interconnection requests—thereby ending their timely progression toward the
9 December 31, 2019, commercial-operation milestone in the SGIAs. In particular, in
10 June 2018, the Blue Marmots asked PacifiCorp to study their projects in a consolidated
11 configuration—i.e., 50 MW of generation at a single site, rather than five, 10-MW
12 projects separated by at least five miles.¹⁸ Thus, the resulting interconnection
13 agreements allowed for development of one consolidated 50-MW project, but not for
14 the development of the five, 10-MW projects for which the Blue Marmots had
15 contracted.

16 **Q. Why did the Blue Marmots alter their interconnection configuration?**

17 A. [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 **Q. Was the Blue Marmots' decision to alter their interconnection configuration in**
23 **June 2018 commercially reasonable?**

24 A. No. [REDACTED]

¹⁸ Blue Marmot/900, Talbott/17.

¹⁹ Blue Marmot/900, Talbott/17.

²⁰ Blue Marmot/900, Talbott/17.

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[REDACTED]

Moreover, the Blue Marmots’ decision prevented them from developing the five separate projects for which they had contracted on a timeline that would allow them to meet the CODs in the PPAs they had executed. Therefore, I believe that it was entirely unreasonable for the Blue Marmots to make this irrevocable decision [REDACTED]

Q. Was PGE aware that the Blue Marmots had altered their interconnection configuration?

A. No. PGE was aware, based on its review of publicly available information regarding PacifiCorp’s interconnection queue, that the Blue Marmots’ interconnection process had included re-studies. But until receiving Mr. Talbott’s Phase II Opening Testimony, PGE did not understand that the reason for the re-studies was the Blue Marmots’ desire to be studied in a consolidated configuration.

Q. How did the Blue Marmots’ decision to be studied as a consolidated project affect their interconnection timeline?

A. After the re-studies, the Blue Marmots were offered SGIA’s on July 31, 2019, with “commercial operation” milestones and in-service dates for the consolidated configuration of October 31, 2021.²¹ Following a request the Blue Marmots made on September 6, 2019, PacifiCorp extended the “commercial operation” milestones and in-service dates to June 30, 2022, and provided revised SGIA’s reflecting this change.²² EDPR signed the revised SGIA’s on September 27, 2019.²³ Thus, the Blue Marmots’

²¹ Blue Marmot/900, Talbott/17-18; Blue Marmot/920-924, Talbott/46-47.
²² Blue Marmot/900, Talbott/18; PGE/901, Moore/4-5, email from EDPR to PacifiCorp (Sept. 6, 2019) and email from PacifiCorp to EDPR (Sept. 12, 2019); *see e.g.* Blue Marmot/925-929.
²³ Blue Marmot/900, Talbott/18; Blue Marmot/925-929.

1 current interconnection arrangements enable *the 50 MW consolidated project* to be
2 online by June 30, 2022, although the consolidated projects actually could have come
3 online nine months sooner than that if the Blue Marmots had wanted them to.
4 Importantly, however, as the Blue Marmots note, their current SGAs “do not actually
5 support a June 2022 COD for the original 5 x 10 MW configuration.”²⁴

6 **Q. If their current SGAs do not support interconnection as five separate projects,**
7 **why didn’t the Blue Marmots revert their interconnections back to the original**
8 **configuration** [REDACTED]

9 [REDACTED] ?²⁵

10 A. That is a good question. Mr. Talbott states that “it would not be commercially
11 reasonable for the Blue Marmots to request this revision until after receiving a
12 Commission order in this proceeding,”²⁶ and the Blue Marmots indicate that they “have
13 been waiting until it is clear that they will receive viable PPAs corresponding to” a
14 configuration of five separate 10-MW projects.²⁷ They note that “[t]here is very little
15 commercial opportunity in the current market for a geographically disparate cluster of
16 10 MW solar projects, as this project capacity is too large to benefit from standard rate
17 QF PPAs and too small to capture economies of scale required to compete favorably
18 with larger projects in larger energy procurement solicitations.”²⁸

19 **Q. Do you agree with Mr. Talbott that it was commercially reasonable for the Blue**
20 **Marmots to retain the consolidated interconnection configuration** [REDACTED]
21 [REDACTED], **rather than reverting to the original**
22 **configuration?**

23 A. No, I do not. The Blue Marmots have always had a viable path forward for selling the

²⁴ Blue Marmot/900, Talbott/18.

²⁵ Blue Marmot/900, Talbott/17.

²⁶ Blue Marmot/900, Talbott/27.

²⁷ PGE/902, Moore/8, Blue Marmots’ Response to PGE Data Request No. 29.

²⁸ PGE/902, Moore/8, Blue Marmots’ Response to PGE Data Request No. 29.

1 output of five individual QFs to PGE under the legally enforceable obligations they
2 incurred in March and April 2017. Although it was possible that the Commission could
3 have required the Blue Marmots to deliver via BPA, it was not reasonable to assume
4 that the Blue Marmots' ability to sell to PGE at the prices to which they had established
5 legally enforceable obligations would evaporate. In contrast, the Blue Marmots did *not*
6 have commercial arrangements in place for a consolidated project.

7 The Blue Marmots also indicate that they delayed the start of engineering under
8 the current SGIAs until May 2020, because they will be required to spend a total of
9 \$6.4 million in interconnection costs and will not receive refunds unless they come
10 online and take transmission service.²⁹ However, to be clear, if the Blue Marmots
11 proceeded under the SGIAs and later terminated them, they would be responsible for
12 only those costs that actually had been incurred by PacifiCorp at the time they
13 terminated, and they would receive refunds for the amounts that already had been spent
14 if another customer later used the upgrades.³⁰ PacifiCorp confirmed to the Blue
15 Marmots via email that they would get any unspent deposit back if they terminated the
16 SGIAs.³¹

17 **Q. If the Blue Marmots desire to proceed as five separate projects, what is the earliest**
18 **date by which they could be interconnected?**

19 A. While the Blue Marmots have not directly answered this question, it appears that it
20 could take them up to three years (12 months for re-studies and 24 months for
21 engineering and construction)³² from the date on which they ask PacifiCorp to revise

²⁹ Blue Marmot/900, Talbott/18.

³⁰ See, e.g., Blue Marmot/925, Talbott/23 (SGIA Section 5.2.1.2).

³¹ PGE/901, Moore/1, email from PacifiCorp to EDPR (Feb. 9, 2018).

[REDACTED] PGE/901, Moore/3,
email from PacifiCorp to EDPR (Sept. 17, 2018).

³² Blue Marmot/900, Talbott/26-27.

1 their interconnection—which they still have not done. The Blue Marmots note—and
2 PGE agrees—that it may take PacifiCorp substantially less time to conduct re-studies,
3 given that it has already studied the five-separate-project configuration once.³³ The
4 Blue Marmots assume a 6-month timeline for SGIA revisions, followed by a 24-month
5 schedule for engineering and construction,³⁴ and Mr. Talbott represents in his
6 testimony that “it would still be possible to achieve CODs at the end of 2022” if this
7 Phase II proceeding were resolved “by late April 2020.”³⁵

8 **Q. Is the Blue Marmots’ inability to be interconnected prior to 2022 a result of the**
9 **Phase I litigation?**

10 A. No. The Blue Marmots’ current interconnection timeline is entirely the result of their
11 own decisions: First, the Blue Marmots revised their interconnection configuration and
12 pursued re-studies [REDACTED]
13 [REDACTED]. And second, [REDACTED]
14 [REDACTED], the Blue Marmots still have not taken the steps necessary to
15 interconnect their projects in the configuration for which they have legally enforceable
16 obligations and for which they have five executable PPAs that PGE provided them, per
17 the Commission’s Order No. 19-322. In sum, the Blue Marmots’ unreasonable
18 decisions have delayed their development—not the Phase I litigation.

19 **2. Permitting and Siting**

20 **Q. What were the Blue Marmots’ permitting and siting plans at the time they**
21 **executed PPAs in March 2017?**

22 A. According to Mr. Talbott, the Blue Marmots contemplated permitting through the Lake
23 County Planning Department conditional use permit (CUP) process, which they

³³ Blue Marmot/900, Talbott/27 (“One might reasonably hope that a subsequent restudy and revision process could move more quickly since the Blue Marmots would be requesting a configuration that PacifiCorp has already studied, but this certainly would not be guaranteed.”).

³⁴ Blue Marmot/900, Talbott/27.

³⁵ Blue Marmot/900, Talbott/7.

1 believed would take no more than eight months.³⁶

2 **Q. Did the Blue Marmots proceed with permitting through the Lake County CUP**
3 **process?**

4 A. No.

5 **Q. Why not?**

6 A. In May and June 2017, through conversations with counsel and “preliminary
7 consultations with [the Oregon Department of Energy (ODOE)],” the Blue Marmots
8 determined that “the projects might be considered to fall under the jurisdiction of the
9 [EFSC],” and “would be more appropriately permitted collectively through EFSC
10 rather than through a Lake County CUP process.”³⁷ Mr. Talbott’s testimony indicates
11 that the reason for the decision to permit through EFSC was their belief that “based on
12 the shared interconnection facilities and ownership of the projects, they could be
13 considered a single facility from the perspective of EFSC jurisdiction and in aggregate
14 would impact more than the 320 acre threshold for EFSC jurisdiction in effect at the
15 time this decision was made.”³⁸

16 **Q. Do you understand that the Blue Marmots had the option to permit either through**
17 **the Lake County CUP process or through EFSC?**

18 A. Yes, that is my understanding. Reading between the lines, it appears that the Blue
19 Marmots decided to permit collectively through EFSC to mitigate the risk of permitting
20 challenges in the face of local opposition to the projects’ construction on high value
21 farmland.³⁹ In addition, permitting through EFSC gave the Blue Marmots flexibility

³⁶ Blue Marmot/900, Talbott/13.

³⁷ Blue Marmot/900, Talbott/22; PGE/902, Moore/5-6, Blue Marmots’ Supplemental Response to Data Request No. 25.

³⁸ Blue Marmot/900, Talbott/22.

³⁹ See, e.g., <https://ktvl.com/news/local/fighting-for-food-county-residents-call-for-solar-farm-to-move-off-farmland>; https://www.heraldandnews.com/news/local_news/going-solar-lake-county-leading-renewable-energy-boom/article_c56e52d6-d431-5638-93e6-4fc1bb1192d4.html.

1 to pursue a consolidated configuration, which would have a much larger footprint.⁴⁰

2 **Q. Was the Blue Marmots’ decision to permit through EFSC rather than Lake**
3 **County commercially reasonable?**

4 A. I do not know. PGE lacks complete information regarding the reasons for the Blue
5 Marmots’ decision because this information is privileged, but PGE is not currently
6 taking the position that the Blue Marmots’ decision to permit through EFSC was
7 unreasonable. However, PGE does believe that the Blue Marmots should have
8 understood and identified the appropriate permitting authority for their projects *prior*
9 *to* executing PPAs and thereby establishing legally enforceable obligations to specific
10 CODs.

11 **Q. If the Blue Marmots had initially proceeded with permitting through EFSC at the**
12 **time they executed PPAs, could they have met their original CODs?**

13 A. It appears so. The Blue Marmots now anticipate that they could receive a final site
14 certificate from EFSC by October 2022, and this timeline accounts for a full EFSC
15 process and the possibility of an appeal.⁴¹ Based on their estimated timeline it appears
16 that they are budgeting 25 months to complete the EFSC process, beginning in
17 September of this year. Assuming 25 months is the correct number, had they started
18 the EFSC process promptly in the spring—or even the summer—of 2017, they likely
19 could have completed the process in time to construct the projects and meet their
20 original CODs. That said, PGE believes that the Blue Marmots’ estimated timeline for

⁴⁰ Although the footprint of Blue Marmot IX in the Blue Marmots’ EFSC Notice of Intent is much larger than the 320-acre EFSC threshold in effect at that time, the Blue Marmots have confirmed that a 10-MW solar project could have been built on that site with impacts to fewer than 320 acres. PGE/902, Moore/9, Blue Marmots’ Response to PGE Data Request No. 47. I assume the Blue Marmots included a much larger footprint for this site in the Notice of Intent because it is the site on which they planned to develop the consolidated 50-MW project if they proceeded along that route. *See* Blue Marmot/900, Talbott/23 (“The [Notice of Intent] submitted in January 2018 provided flexibility to pursue either the original 5 x 10 MW project configuration or a co-located project of similar capacity[.]”).

⁴¹ Blue Marmot/900, Talbott/23, 31-32.

1 the EFSC process is extremely conservative and represents a worst-case scenario that
2 is highly unlikely to occur.⁴² Importantly, from our review of the Notice of Intent, it
3 appears that the Blue Marmots may be eligible for an expedited EFSC process, and it
4 is unclear why they do not plan to take advantage of this option.⁴³

5 **Q. Did the Blue Marmots proceed to permit through EFSC after they determined**
6 **that EFSC jurisdiction was appropriate?**

7 A. Yes, for a time, but then the Blue Marmots slowed their work with ODOE and
8 ultimately put their EFSC process on hold in November 2018.⁴⁴

9 **Q. Why?**

10 A. [REDACTED]
11 [REDACTED]
12 [REDACTED], the Blue Marmots completely halted their
13 permitting efforts in November 2018, a decision which they claim was due to “revenue
14 contract uncertainty” and “configuration uncertainty.”⁴⁶

15 **Q. Was the Blue Marmots’ decision to halt their permitting efforts in November 2018**
16 **commercially reasonable?**

17 A. No. As discussed in detail below, the Blue Marmots faced little if any “commercial
18 uncertainty,”⁴⁷ because they had legally enforceable obligations to specific avoided
19 cost prices, they knew the litigation posed a risk of just \$14 million over the life of the
20 projects for BPA transmission in the worst-case scenario, and they had committed to
21 CODs of November 2019 and March 2020. Having decided to permit through EFSC

⁴² For example, the 75-MW Boardman Solar Facility, which was eligible for expedited review, completed the expedited EFSC process in less than 18 months, and the 303-MW Bakeoven Solar Facility is expected to complete the full EFSC process in approximately 18 months.

⁴³ See <https://www.oregon.gov/energy/facilities-safety/facilities/Documents/Fact-Sheets/EFSC-Expedited-Review-Process-Flowchart.pdf>.

⁴⁴ Blue Marmot/900, Talbott/24.

⁴⁵ Blue Marmot/900, Talbott/23-24.

⁴⁶ PGE/902, Moore/7, Blue Marmots’ Response to PGE Data Request No. 27.

⁴⁷ Blue Marmot/900, Talbott/24.

1 and anticipating that doing so would take more than two years, the Blue Marmots
2 should reasonably have proceeded toward obtaining permits for those projects.

3 The Blue Marmots also did not face any “configuration uncertainty” at this
4 time. They had legally enforceable obligations to develop five separate projects, and
5 [REDACTED]
6 [REDACTED]. Thus, a commercially reasonable developer would have
7 proceeded to permit the projects for which it had contracted—rather than halting the
8 permitting process.

9 **Q. Is the Blue Marmots’ inability to receive a site certificate prior to 2022 a result of**
10 **the Phase I litigation?**

11 A. No. The Blue Marmots’ current permitting timeline is the result of their own decisions.
12 First, the Blue Marmots imprudently planned to permit through Lake County, rather
13 than EFSC. Then, even after determining they should permit through EFSC, the Blue
14 Marmots slowed the process [REDACTED] before halting it entirely
15 [REDACTED]. Even after the Commission ordered that PGE
16 provide PPAs and allow four of the projects to deliver via BPA, the Blue Marmots still
17 have not taken steps to timely permit their projects. As discussed below, the Blue
18 Marmots now claim that uncertainty regarding their CODs caused them to delay, but
19 any COD uncertainty is also the Blue Marmots’ responsibility because they failed to
20 timely request COD extensions in Phase I.

**DELAYING DEVELOPMENT DURING LITIGATION WAS NOT
COMMERCIALY REASONABLE**

21 **Q. Does PGE believe that it was commercially reasonable for the Blue Marmots to**
22 **delay development during the Phase I litigation due to the risk or uncertainty**
23 **created by the litigation?⁴⁸**

⁴⁸ Blue Marmot/900, Talbott/4.

1 A. No. The Blue Marmots had signed PPAs committing to specific CODs and had formed
2 legally enforceable obligations that locked in their avoided cost prices. The only
3 uncertainty in the Phase I litigation was whether they would be permitted to deliver to
4 the PACW-PGE interface at no additional cost, or whether they would be required to
5 deliver to the BPA-PGE interface at an additional cumulative cost of \$14 million over
6 the life of the projects. Importantly, even if they had been required to incur this added
7 cost, the Blue Marmots would have remained profitable.

8 **Q. Did the Blue Marmots understand that they had incurred legally enforceable**
9 **obligations to develop the projects by the CODs in the PPAs?**

10 A. Yes. During the Phase I hearing, the Blue Marmots conveyed their understanding that
11 the legally enforceable obligations they had established required them to fulfill the
12 requirements of the PPAs or be liable for damages. Specifically, EDPR executive vice
13 president Steve Irvin stated:

14 [W]hen I have a contract in front of me that I'm representing to my
15 company to sign . . . that has requirements that fill COD, which include
16 getting transmission, . . . [and] if I'm not able to get that transmission, I
17 could be in default under the agreement . . . and be liable to PGE for
18 damages. So *we took that very seriously that, once we signed it, we had*
19 *a legally enforceable obligation to uphold.*⁴⁹

20 Mr. Irvin's statement from Phase I that the Blue Marmots viewed their legally
21 enforceable obligations as requiring them to fulfill the requirements under the PPAs
22 appears to be inconsistent with Mr. Talbott's statement from Phase II that the Blue
23 Marmots were reasonable in slowing down the development of their projects, thereby
24 preventing them from meeting one of the key requirements—their CODs.⁵⁰

⁴⁹ Phase I Hearing Transcript, Vol. 1 at 15-16 (Dec. 12, 2018) (Cross Examination of Steve Irvin) (emphasis added).

⁵⁰ In Phase I, PGE took the position that the Blue Marmots' legally enforceable obligations did not entitle them to *all* terms and conditions in the partially executed PPAs. However, whether the Blue Marmots' legally enforceable obligation locked in their CODs was not in dispute. *See In the Matter of Public Utility Commission of Oregon Staff Investigation Into Qualifying Facility Contracting and Pricing*, Docket UM 1610, Order No. 16-174 at 3 (May 13, 2016) (“a [legally enforceable obligation]

1 Further, Mr. Talbott testifies that “[a]t the time the Blue Marmots executed the
2 PPA[]s in March 2017 they had plans in place to complete development and reach
3 commercial operations for all five projects by the CODs listed in those PPAs.”⁵¹ Given
4 the minimal risk posed by the litigation in Phase I, it would not have been commercially
5 reasonable for EDPR to slow down the development of these projects, thereby
6 preventing them from meeting their obligations under the PPAs, while simultaneously
7 arguing that they had obligated themselves to the terms of the PPAs.

8 **Q. Were the Blue Marmots’ avoided cost prices disputed in the Phase I litigation?**

9 A. No, even before the complaints were filed, PGE confirmed that it would honor the
10 avoided cost prices in effect at the time the Blue Marmots executed their four PPAs for
11 all five of the Blue Marmot projects. Then, in its Answer, PGE again confirmed its
12 view that the Blue Marmots had established legally enforceable obligations, thereby
13 locking in their avoided cost prices.⁵² Thus, there was no dispute that the Blue Marmots
14 were entitled to the avoided cost prices in effect in the spring of 2017, i.e., the avoided
15 cost prices set on October 12, 2016.

16 **Q. If their avoided cost prices were locked in and it was undisputed that they had
17 established legally enforceable obligations, what was the “existential
18 uncertainty”⁵³ the Blue Marmots faced in the Phase I litigation that they claim
19 caused them to slow their development?**

20 A. The only uncertainty the Blue Marmots faced in Phase I was whether they would be
21 permitted to deliver their output to the PACW-PGE interface at no additional cost, or

exist[s] when a QF signs a final draft of an executable standard contract that includes a scheduled [COD] . . . thereby obligating itself to provide power or be subject to penalty for failing to deliver energy on the scheduled [COD].”); *see also* Phase I, Order No. 19-322 at 9 (quoting Order No. 16-174 and confirming “some QF-determined contractual terms, exclusively in the control of the QF, must be part of the [legally enforceable obligation], such as the [COD] . . .”).

⁵¹ Blue Marmot/900, Talbott/7, 9.

⁵² Phase I, PGE’s Answer at 1.

⁵³ Blue Marmot/900, Talbott/4.

1 whether they would be required to deliver to the BPA-PGE interface at an estimated
2 cost of \$14 million over the life of the PPAs for the five projects. The Blue Marmots
3 identified the \$14-million cost in their Phase I Opening Testimony, filed on October
4 13, 2017.⁵⁴ Over the course of the Phase I litigation, the parties also identified various
5 upgrades that could be made to the PACW-PGE interface, but all were significantly
6 more expensive than the \$14 million BPA-delivery option.⁵⁵ Therefore, under a worst-
7 case scenario, the litigation could have resulted in the Blue Marmots incurring \$14
8 million dollars more than they had expected when they signed the PPAs.

9 **Q. Even if the worst-case scenario had occurred and the Commission had determined**
10 **that the Blue Marmots needed to pay for BPA transmission for all five projects,**
11 **could the Blue Marmots have absorbed the BPA transmission cost and still**
12 **developed profitable projects?**

13 A. Yes, the evidence in this case supports that conclusion, and the Blue Marmots have
14 never stated otherwise—despite being asked. For example, in response to a data
15 request in Phase I, the Blue Marmots stated that they “are not currently taking the
16 position that the Blue Marmot projects would be technically/financially infeasible with
17 the additional leg of BPA transmission service . . . , but are continuing to evaluate the
18 feasibility of these arrangements. The Blue Marmots may conclude that such
19 arrangements would be infeasible.”⁵⁶ When asked about this statement over a year
20 later during the Phase I hearing, the Blue Marmots reiterated that they were *not* taking
21 the position that the additional BPA transmission cost rendered the projects technically
22 or financially infeasible.⁵⁷ In evaluating the implications of this testimony, it is
23 important to keep in mind that the Blue Marmots’ position in Phase I clearly would
24 have been strengthened if the Blue Marmots *had* been able to support an argument that

⁵⁴ Phase I, Blue Marmot/100, Irvin/6; Blue Marmot/200, Talbott/11; Blue Marmot/300, Moyer/14.

⁵⁵ *See, e.g.*, Phase I, PGE/100, Greene-Moore/20; PGE/300, Afranji-Larson-Richard/4.

⁵⁶ Phase I, PGE/812, Blue Marmots’ Revised Response to PGE Data Request No. 3.

⁵⁷ Phase I Hearing Transcript, Vol. 1 at 33-34 (Dec. 12, 2018).

1 the additional \$14 million dollars would have rendered their projects financially
2 infeasible. Therefore, given their failure to make this claim despite multiple
3 opportunities, it can safely be assumed that it is simply not true.

4 **Q. Has PGE confirmed that the Blue Marmots remained profitable under the worst-**
5 **case scenario?**

6 A. Yes. The Blue Marmots provided data showing their expected cash flows by year.
7 While the Blue Marmots did not explain the underlying assumptions, which prevented
8 PGE from verifying or analyzing the data, the data show that, had they achieved their
9 original CODs, the Blue Marmots expected to receive at least [REDACTED] in profit,
10 even if they had to purchase 50 MW of BPA transmission.⁵⁸

11 Moreover, PGE believes that the Blue Marmot projects would be more
12 profitable than the Blue Marmots claim. PGE estimates that the Blue Marmots' total
13 revenues under the PPAs would be approximately \$155 million,⁵⁹ and based on my
14 experience, I highly doubt the Blue Marmot projects will cost EDPR [REDACTED] to
15 develop and operate. Indeed, in their testimony, the Blue Marmots estimated the cost
16 to complete their development and construction as "more than \$90 million,"⁶⁰ calling

⁵⁸ PGE/902, Moore/2, Blue Marmots' Confidential Attachment to Second Supplemental Response to PGE Data Request No. 8. Note that the Blue Marmots now need to acquire only 10 MW of BPA transmission, given the Commission's finding that four of the projects are permitted to deliver via PACW.

⁵⁹ PGE used the average 24-hour profile of generation (MWh) and the annual degradation factor provided in the Blue Marmots' initial information requests to estimate total monthly MWh, by year, over the 15-year term of fixed prices in the PPAs. Using this estimate, the monthly generation was divided into on-peak and off-peak estimates by assuming that four days of each month (96 hours) are either a Sunday or NERC holiday because these are types of days for which all hours are designated off-peak. PGE understands that certain hours of Monday-Saturday (non-NEC holidays) are off-peak; however, there was insufficient detail to create estimates for such hours. Furthermore, because the Blue Marmots are solar facilities, it is unlikely that a substantial amount of generation would occur during these Monday-Saturday off-peak hours. Using the generation estimates for each project and the pricing from the Blue Marmots' PPAs, PGE calculated the estimated annual revenue over a 15-year period for all of the Blue Marmots.

⁶⁰ Blue Marmot/900, Talbott/4.

1 into question the profit data they provided.⁶¹

2 On March 26 and 27, PGE served its Seventh and Eighth Set of Data Requests
3 (respectively) on the Blue Marmots in an attempt to better understand the profit
4 information that they provided on March 25. As of the morning of April 3, 2020, we
5 have received responses to the Seventh Set but not the Eighth Set (which is not due
6 until the end of the day). Unfortunately, we do not understand the answers provided in
7 responses to the Seventh Set, and are looking forward to the responses to the Eighth.
8 If the Blue Marmots provide timely and clear answers to the Eighth Set of Data
9 Requests, I will supplement this testimony with more precise estimates of Blue
10 Marmots' expected profits; but regardless, it is clear that the projects would have
11 remained feasible with the added cost of BPA transmission. Therefore, a commercially
12 reasonable developer would not have slowed development pending the outcome of the
13 litigation—particularly when that developer knew it had formed a legally enforceable
14 obligation to develop the projects by certain dates and had a plan in place to do so.

15 **Q. Do the Blue Marmots agree that the additional \$14 million represents the worst-**
16 **case scenario that could have resulted from the litigation?**

17 A. No. In their Response to PGE's First Motion to Compel, the Blue Marmots list other
18 negative outcomes that they claim could have resulted from the litigation. However,
19 none of these circumstances could reasonably have been expected to occur.

20 **Q. Please respond to the Blue Marmots' claim that the cost of BPA transmission**
21 **could have increased, thereby increasing the cost of the \$14 million BPA-delivery**
22 **option.**⁶²

23 A. Based on my experience acquiring transmission for PGE Merchant, I anticipate that the

⁶¹ Compare Blue Marmot/900, Talbott/4 (stating that the Blue Marmots would need to spend "more than \$90 million to complete their development and construction," which with PGE's \$155-million revenue estimate would lead to profit of \$65 million) and PGE/902, Moore/2, Blue Marmots' Confidential Attachment to Second Supplemental Response to PGE Data Request No. 8 (showing profit of approximately [REDACTED]).

⁶² Blue Marmots' Response to PGE's First Motion to Compel at 16 (Mar. 2, 2020).

1 cost of BPA transmission may vary slightly over time, but I do not expect the cost of
2 BPA transmission to increase dramatically. In fact, one of BPA's strategic objectives
3 is to keep its cost increases at or below the rate of inflation, and the actual increases in
4 the last two-year rate periods have been less than the rate of inflation.⁶³

5 **Q. Please respond to the Blue Marmots' claim that there was a risk BPA transmission**
6 **would not have been available, had they been ordered to deliver via BPA.**⁶⁴

7 A. The Blue Marmots have stated they believed this to be a potential outcome in Phase 1,
8 and had approximately 2.5 years during the Phase I litigation to investigate the
9 availability of transmission service and take prudent actions such as participation in
10 BPA studies, if required, and exploring potential opportunities such as bilateral
11 procurement of transmission from third-parties. The Blue Marmots had ample time to
12 conduct diligence and take actions to minimize this risk, if it existed at the time, and
13 such risk should not have caused a reasonable developer to completely halt
14 development.

15 **Q. Please respond to the Blue Marmots' claim that the Commission could have**
16 **ordered them to pay for upgrades to the PACW-PGE interface at a cost of \$450**
17 **million.**⁶⁵

18 A. If the Blue Marmots truly believed that this was a possible outcome of the litigation,
19 their belief was not reasonable. Once PGE completed the studies necessary to
20 determine that the potential upgrades to allow delivery at the PACW-PGE interface
21 would cost significantly more than the BPA transmission option and conveyed that
22 information in its Response Testimony filed on January 12, 2018,⁶⁶ PGE focused its

⁶³ BPA transmission charges increased by just 0.17 percent in BPA's 2018 rate case and by 3.01 percent in BPA's 2020 rate case.

⁶⁴ Blue Marmots' Response to PGE's First Motion to Compel at 16.

⁶⁵ Blue Marmots' Response to PGE's First Motion to Compel at 16.

⁶⁶ Phase I, PGE/300, Afranji-Larson-Richard/4, 18.

1 advocacy to the Commission on the BPA option.⁶⁷ There was not a realistic possibility
2 that the Commission would nevertheless order the Blue Marmots to pay for upgrades
3 that were many times more expensive than the BPA-transmission option.

4 **Q. The Blue Marmots also have suggested that there was a possibility PGE would**
5 **reverse course and argue that the Blue Marmots had *not* locked in their avoided**
6 **cost prices.⁶⁸ Was this a valid concern?**

7 A. Absolutely not. To the extent the Blue Marmots actually believed that PGE would
8 suddenly change the position that it had consistently conveyed in writing to the Blue
9 Marmots *and to the Commission* by arguing that the Blue Marmots' avoided cost prices
10 were not fixed, this belief was unrealistic and wholly without support. A commercially
11 reasonable developer would not have delayed development based on such a far-fetched
12 concern.

13 **Q. In addition to asserting that delivery costs were uncertain, the Blue Marmots now**
14 **seem to claim that they did not have assurance that they would have viable PPAs**
15 **during the Phase I litigation because they did not know whether their CODs would**
16 **be extended.⁶⁹ Please respond.**

17 A. First, any uncertainty the Blue Marmots are currently experiencing is a result of their
18 own litigation strategy, because the Blue Marmots elected not to ask for COD
19 extensions until the end of the Phase I litigation. Presumably, the Blue Marmots did
20 not have concerns regarding extending their CODs until November 2018, when they

⁶⁷ Phase I, PGE's Response Brief at 60-61 (Apr. 5, 2019) (“[T]he BPA-PGE interface is the only practical—and by far the least expensive—means of reaching PGE's system[.]”).

⁶⁸ Blue Marmots' Response to PGE's First Motion to Compel at 16-17 (characterizing as “untenable” the “position that PGE could be counted on not to change its position in the litigation (which was that the avoided cost prices in the partially executed PPAs were locked in), and not to argue that the Commission ought to change the prices to be paid to the Blue Marmots” and asserting that the number of complaints filed against PGE show “a wide variety of creative circumstances in which PGE sought to avoid its obligation to purchase the net output from QFs.”).

⁶⁹ Blue Marmot/900, Talbot/5; PGE/902, Moore/3, Blue Marmots' Response to PGE Data Request No. 21.

1 asked the Commission for this relief, so this concern does not justify their decision to
2 slow development prior to that date. Second, if COD extensions are required to make
3 the projects viable, the Blue Marmots should have stuck to the development plan they
4 had in place to meet those CODs during the Phase I litigation. Instead, they made the
5 unreasonable decision to slow project development—while at the same time
6 reconfiguring their project so that it no longer comports with their PPAs—such that
7 further proceedings are now required to extend their CODs. Finally, to the extent the
8 Blue Marmots believed, as they claim, that the Commission would issue an order
9 granting them COD relief even though they did not ask for it,⁷⁰ then they should have
10 continued development based on that expectation.

PGE SUPPORTS REASONABLE COD EXTENSIONS

11 **Q. Does PGE believe that litigation caused commercially reasonable delays in the**
12 **Blue Marmots’ development?**

13 A. No, for all of the reasons I explained above.

14 **Q. Is PGE nevertheless willing to agree to reasonable COD extensions for the Blue**
15 **Marmots?**

16 A. Yes. In the interest of ending the litigation and bringing the projects online as quickly
17 as possible, PGE supports the Commission granting the Blue Marmots CODs of
18 December 31, 2022, for all five projects.

19 **Q. Why is it important to PGE that the projects come online as soon as possible?**

20 A. The projects’ avoided cost pricing, which was set in October 2016, is already stale and
21 becoming increasingly so.

22 **Q. Why are CODs of December 31, 2022 appropriate?**

23 A. First, the Blue Marmots have indicated that they can be online by that date, stating,

⁷⁰ Blue Marmot/900, Talbott/20 (“The Blue Marmots expected that by May 2020 the Commission would have issued an Order granting COD relief . . .”).

1 “[t]he Blue Marmots are willing to work with PGE to execute PPAs prior to the end of
2 April 2020 which would allow for achieving CODs by December 2022.”⁷¹ Second,
3 this proposed extension is longer than the Phase I litigation and is comparable in length
4 to the amount of time the Blue Marmots originally had between PPA execution and
5 their CODs. Specifically, the litigation lasted less than 2.5 years,⁷² and when the Blue
6 Marmots originally executed PPAs in March 2017, they had 2.5 to 3 years between
7 PPA execution and their originally scheduled CODs.⁷³ In contrast, the Blue Marmots’
8 request for COD extensions to 2023 if this case is fully litigated represents extensions
9 of between 3.5 and 4 years and is unreasonably long.

10 **Q. If the Blue Marmots’ CODs are extended to December 31, 2022, does PGE believe**
11 **that the PPAs should include the standard one-year cure period for failure to meet**
12 **COD?**

13 A. No. The Blue Marmots have testified they can be online by the end of December 2022.
14 If the Blue Marmots receive substantial COD extensions that are longer than the Phase
15 I litigation, they should be held to their revised CODs and should not receive an
16 automatic one-year extension in the form of a cure period.

17 **Q. Doesn’t EDPR have an incentive to bring the projects online as quickly as**
18 **possible?**

19 A. Not necessarily. The avoided cost prices that the Blue Marmots locked in increase over
20 time,⁷⁴ and the later the Blue Marmots come online, the more revenue they will receive.
21 Therefore, PGE believes that the Blue Marmots’ CODs (including cure period) should
22 not be extended past December 2022.

23 **Q. Does this conclude your Response Testimony?**

⁷¹ Blue Marmot/900, Talbott/7.

⁷² April 28, 2017 to September 30, 2019.

⁷³ March 29, 2017 to November 30, 2019 (Blue Marmots V & VI) or March 31, 2020 (Blue Marmots VII, VIII & IX).

⁷⁴ See Phase I, Blue Marmot/201, Talbott/45 (Schedule 201 Pricing Table Attached to PPA executed by Blue Marmot V).

1 A. Yes.

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1829, Phase II

Portland General Electric Company

**Exhibit 901 to Response Testimony of
Geoffrey Moore**

Emails

REDACTED

April 3, 2020

From: Moore, Robin [mailto:Robin.Moore@pacificcorp.com]

Sent: Friday, February 09, 2018 3:17 PM

To: Talbott, William <William.Talbott@edpr.com>

Cc: Defo Toguem, Cedric <Cedric.DefoToguem@edpr.com>; Littlefield, Sam <SAM.LITTLEFIELD@EDPR.COM>; Maccia, Ilana <Ilana.Maccia@edpr.com>

Subject: RE: Blue Marmot / Q0825-830 – Small Generator Interconnection Agreements

This email is sufficient to change the date, I will go ahead to change to 10/1/2020.

Depending on what form of financial security you are providing, Letter of Credit, Guaranty, or deposit, yes, it will either be released or refunded if all bills are paid to date.

Robin Moore

Ph: 503-813-6419

From: Talbott, William [mailto:William.Talbott@edpr.com]

Sent: Friday, February 09, 2018 3:10 PM

To: Moore, Robin <Robin.Moore@pacificcorp.com>

Cc: Defo Toguem, Cedric <Cedric.DefoToguem@edpr.com>; Littlefield, Sam <SAM.LITTLEFIELD@EDPR.COM>; Maccia, Ilana <Ilana.Maccia@edpr.com>

Subject: [INTERNET] RE: Blue Marmot / Q0825-830 – Small Generator Interconnection Agreements

**** STOP. THINK. External Email ****

Robin,

On 1 below, knowing what the impact to scope, if any, would be if we changed COD to October 2020 would be helpful. Do I need to formally request that beyond this email?

On 5 below, to clarify, if we terminate the IA after executing and posting security, as long as we have paid the bills for all actual costs incurred by PacifiCorp to date at the time of termination, the full security is refunded to us?

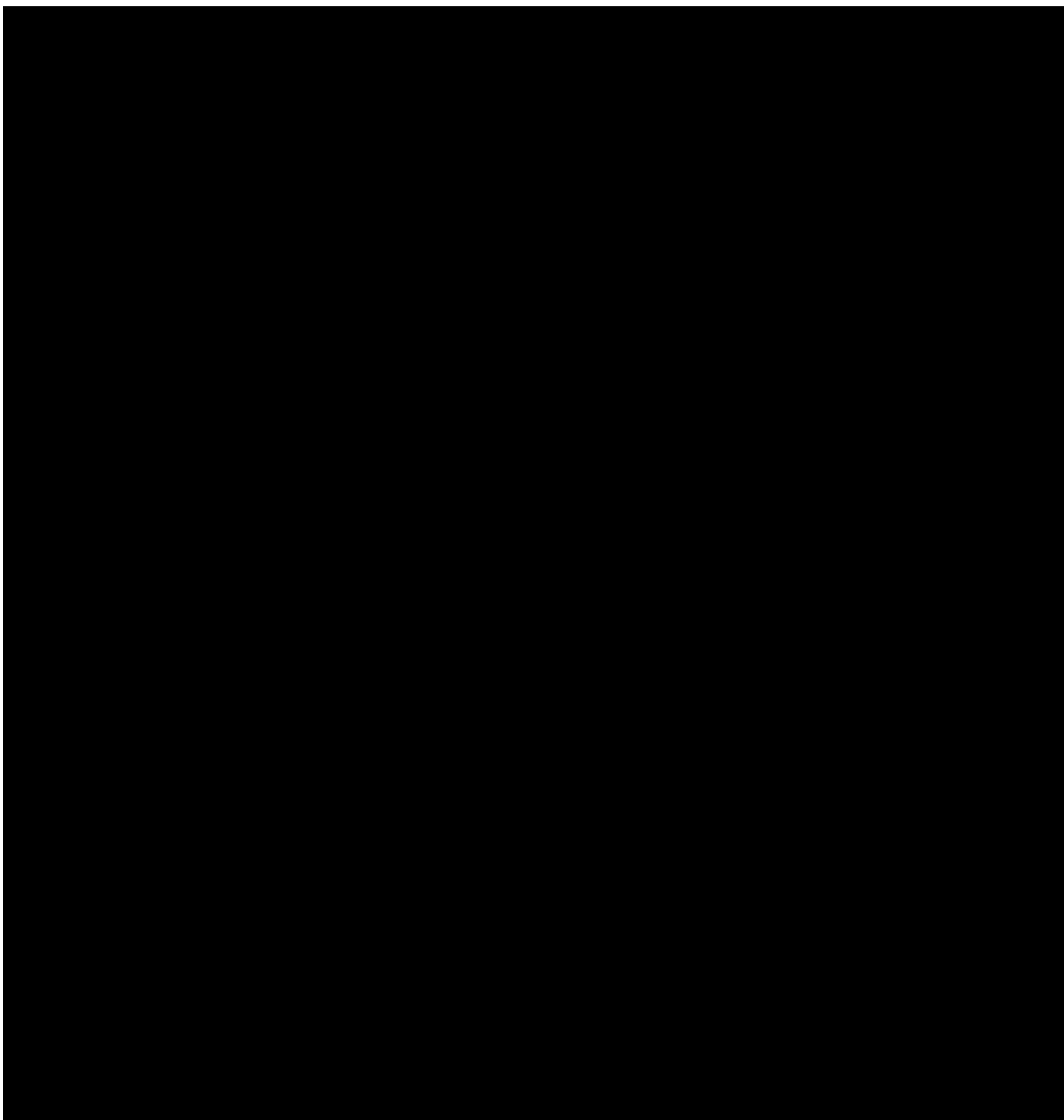
Thanks,
Will



Will Talbott

EDP Renewables North America LLC
Development - Western Region
53 SW Yamhill Street, Portland, OR 97204
Direct: 503.535.1525 Cell 971.325.6238 Fax 503.222.9404

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From: [Bremer, Kristopher](#)
To: [Maccia, Ilana](#); [Talbott, William](#); [Sullivan, John](#)
Subject: RE: Q0825-830: Blue Marmot projects / Small Generator Interconnection Agreements
Date: Thursday, September 12, 2019 3:53:29 PM
Attachments: [image001.png](#)

Ilana,
I got your voicemail. John is working with our contracts group to get the SGIA milestone dates updated and should have those along with responses to your other questions in the next couple of business days. Thank you.

Kris Bremer
PacifiCorp Transmission
W:503-813-6496
C:503-504-5901
825 NE Multnomah St, Suite 1600
Portland, OR 97232

From: Maccia, Ilana [mailto:Ilana.Maccia@edpr.com]
Sent: Friday, September 6, 2019 9:07 AM
To: Bremer, Kristopher <Kristopher.Bremer@pacificorp.com>; Talbott, William <Will.Talbott@edpr.com>; Sullivan, John <John.Sullivan@pacificorp.com>
Subject: [INTERNET] RE: Q0825-830: Blue Marmot projects / Small Generator Interconnection Agreements

**** REMEMBER SAIL WHEN READING EMAIL ****

Sender	The sender of this email is Ilana.Maccia@edpr.com using a friendly name of "Maccia, Ilana" . Are you expecting the message? Is this different from the message sender displayed above?
Attachments	Does this message contain attachments? Yes If yes, are you expecting them? image001.png
Internet Tag	Messages from the Internet should have [INTERNET] added to the subject.
Links	Does this message contain links? Yes Check links before clicking them or removing BLOCKED in the browser.
Cybersecurity risk assessment: Medium	

Kris, John,
I added one additional item in my email below in red.
Thank you,
Ilana



Ilana Maccia
EDP Renewables North America LLC
Development – Western Region
53 SW Yamhill Street, Portland, OR 97204
Direct 503.535.1538 Cell 503.250.2514 Fax 503.222.9404
[BLOCKEDedpr\[.\]com](#)BLOCKED | [BLOCKEDedprnorthamerica\[.\]com](#)BLOCKED

Take action. Use energy efficient products.

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From: Maccia, Ilana

Sent: Thursday, September 5, 2019 11:35 AM

To: 'Bremer, Kristopher' <Kristopher.Bremer@pacificcorp.com>; Talbott, William <WILL.TALBOTT@EDPR.COM>; 'Sullivan, John' <John.Sullivan@pacificcorp.com>

Subject: RE: Q0825-830: Blue Marmot projects / Small Generator Interconnection Agreements

Hi Kris and John,

Following up on the below. Our technical teams have completed their review and below are the outstanding items that we would like to discuss prior to executing:

- Please send revised copies of the IA's updating to reflect NERC registration
- Please let me know if you are ok with our changes to the audit requirements in the attached, or if you would like to have a call to discuss
- Do we have another opportunity to update the single line diagrams and inverters after executing the IA's?
- Can we post a letter of credit for the security? If so, can you send your standard LC form?
- **We would like to push out the milestone dates for an ISD of June 2022.**

Thank you!

Ilana



Ilana Maccia

EDP Renewables North America LLC

Development – Western Region

53 SW Yamhill Street, Portland, OR 97204

Direct 503.535.1538 Cell 503.250.2514 Fax 503.222.9404

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1829, Phase II

Portland General Electric Company

**Exhibit 902 to Response Testimony of
Geoffrey Moore**

Data Responses

REDACTED

April 3, 2020

Oregon Public Utility Commission
OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
March 25, 2020
Blue Marmots' Second Supplemental Response to PGE Data Request 8

PGE Data Request 8

Assuming the Blue Marmots were able to achieve their original CODs, please provide the total expected profit, by year, not adjusted for present value or inflation, expected over the term of the Power Purchase Agreements (PPA).

Response to PGE Data Request 8

Original Response:

The Blue Marmots object to this data request on the grounds of relevancy, that the data is commercial sensitive, and that the Commission does not have the legal authority to compel the requested information. The Blue Marmots object to this data request to the extent that production of the requested data would reveal information protected by the attorney-client privilege, the work product doctrine, or any other privilege. Thus, the Blue Marmots do not provide a response.

Supplemental Response:

The Blue Marmots object to this data request on the grounds of relevancy, that the data is commercial sensitive, and that the Commission does not have the legal authority to compel the requested information. Thus, the Blue Marmots do not provide a response.

The Blue Marmots originally objected to this data request to the extent that production of the requested data would reveal information protected by the attorney-client privilege, the work product doctrine, or any other privilege with the belief and understanding that some or all of the documents were privileged. The Blue Marmots have not identified any potentially responsive documents protected by the attorney-client privilege or the work product doctrine, and do not provide a privilege log.

Second Supplemental Response:

See the folder "2nd Supplemental Response to DR #8 (CONFIDENTIAL)". There were numerous litigation outcomes that could have impacted the expected profits. The Blue Marmots have provided three expected profits, by year, not adjusted for present value or inflation, expected over the term of the Power Purchase Agreements (PPA) based on three of the many different possible litigation outcomes.



Oregon Public Utility Commission
OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
February 26, 2020
Blue Marmots' Response to PGE Data Request 21

PGE Data Request 21

Please refer to Blue Marmot/900, Talbott/6, which states that there is “no assurance that the projects would ultimately secure viable PPAs with PGE” and Blue Marmot/900, Talbott/19, which states, “the Blue Marmots projects would never be built without viable PPAs in place to generate a predictable stream of revenue.”

- a. Please explain what Mr. Talbott means by “viable” in this context.
- b. Is it the Blue Marmots' position that the PPAs the Blue Marmots executed in 2017 would not be “viable” if the Blue Marmots had to secure BPA transmission to deliver via the BPA-PGE interface? If so, please explain why.

Response to PGE Data Request 21

- a. In the context of the sentences in Blue Marmot/900, Talbott/6 and Blue Marmot/900, Talbott/19, “viable” refers to fully executed PPAs with clearly defined and acceptable parameters for commercial operation date, price, term, and point of delivery, among other things.
- b. The Blue Marmots object on the grounds of relevancy and on the vague and speculative phrasing of this question.

Notwithstanding these objections, the Blue Marmots provide the following:

The Blue Marmots' position is that the PPAs the Blue Marmots executed in 2017 were not “viable” because PGE did not counter sign the partially executed PPAs. The Blue Marmots did not consider the PPAs to be “viable” once PGE began disputing the point of delivery stated in those PPAs (i.e., PACW.PGE), among other terms.

Oregon Public Utility Commission
OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
March 12, 2020
Blue Marmots' Response to PGE Data Request 25

PGE Data Request 25

Please refer to Blue Marmot/900, Talbott/22.

- a. Please provide the date on which the Blue Marmots determined that their projects fell under Energy Facility Siting Council (EFSC) jurisdiction.
- b. Please explain how the Blue Marmots determined that their projects fell under EFSC jurisdiction.
- c. If the Blue Marmots proceed as five 10-MW projects, are the Blue Marmots required to permit their projects with EFSC, or do the Blue Marmots have the option to permit with Lake County?
- d. If the Blue Marmots proceed as one 50-MW project, are the Blue Marmots required to permit their projects with EFSC, or do the Blue Marmots have the option to permit with Lake County?

Response to PGE Data Request 25

Original Response:

- a. This determination was made during the months of May and June 2017 but there was no single date on which this happened.
- b. The Blue Marmots object to this data request on the grounds of relevancy and to the extent that production of the requested data would reveal information protected by the attorney-client privilege, the work product doctrine, or any other privilege.

Notwithstanding this objection, the Blue Marmots provide the following privilege log:

4/25/2017: discussion between EDPR NA and Stoel Rives
4/26/2017: materials provided by Stoel Rives to EDPR NA
6/2/2017: discussion between EDPR NA and Stoel Rives

- c. The Blue Marmots object to this data request to the extent that it requests a legal opinion.

Notwithstanding this objection, the Blue Marmots provide the following citation to the relevant Oregon Revised Statutes regarding EFSC jurisdiction: ORS 469.470 and 469.300(11)(a)(D).

- d. See DR 25c.

Supplemental Response:

- a. This determination was made during the months of May and June 2017 but there was no single date on which this happened.
- b. The Blue Marmots object to this data request on the grounds of relevancy and to the extent that production of the requested data would reveal information protected by the attorney-client privilege, the work product doctrine, or any other privilege.

Notwithstanding this objection, the Blue Marmots provide the following privilege log:

4/25/2017: discussion between EDPR NA and Stoel Rives
4/26/2017: materials provided by Stoel Rives to EDPR NA
6/2/2017: discussion between EDPR NA and Stoel Rives

As stated in testimony, EDPR NA determined that the Blue Marmot projects would be more appropriately permitted through Energy Facility Siting Council (“EFSC”) than through the Lake County Conditional Use Permit (“CUP”) process based upon privileged advice from counsel. The Blue Marmots do not waive attorney-client privilege and understand that PGE does not intend for this data request to ask for privileged communications with counsel.

The Blue Marmots understand that PGE intended for this data request to inquire about the basis for the above determination. To this re-phrased question, the Blue Marmots provide the following response, notwithstanding the objection above:

Please refer to Blue Marmot/900, Talbott 22, which states, “After extensive internal discussions, as well as preliminary consultations with ODOE, it was determined that the projects would be more appropriately permitted collectively through EFSC rather than through a Lake County CUP process. The reason was that based on the shared interconnection facilities and ownership of the projects, they could be considered a single facility from the perspective of EFSC jurisdiction and in aggregate would impact more than the 320 acre threshold for EFSC jurisdiction in effect at the time this decision was made.” The last sentence of this quote is the basis for permitting through EFSC.

The Blue Marmots decided to pursue permitting through EFSC because there was a risk that, had the projects pursued permitting through Lake County, a party could have argued that the shared interconnection facilities and ownership of the 5x10 MW projects made them in effect a single facility impacting a footprint that would trigger EFSC jurisdiction based on acreage thresholds. This could have resulted in a party challenging the projects’ permitting via Lake County. The 50 MW co-located configuration would have triggered the same acreage thresholds. A project description encompassing both configurations to allow for flexibility between them triggered the same acreage thresholds. The decision to pursue permitting through EFSC sought to mitigate against this risk of legal challenge and the delays to development that would result from such a challenge.

c. The Blue Marmots object to this data request to the extent that it requests a legal opinion.

Notwithstanding this objection, the Blue Marmots provide the following citation to the relevant Oregon Revised Statutes regarding EFSC jurisdiction: ORS 469.470 and 469.300(11)(a)(D).

The Blue Marmots do not waive attorney-client privilege and understand that PGE does not intend for this data request to ask for privileged communications with counsel.

The Blue Marmots understand that PGE intended for this data request and data request 25(d) below to inquire about whether project configuration played a role in the permitting process. To this re-phrased question, the Blue Marmots provide the following response, notwithstanding the objection above:

The determination to pursue permitting through EFSC was independent of considerations around project configuration(s) and was appropriate regardless of whether EDPR NA planned for the 5x10 MW disaggregated configuration, the 50 MW co-located configuration, or permitting for both configurations (as the NOI ultimately submitted by the Blue Marmots did).

As explained in DR 25b, the treatment of the 5x10 MW projects as a single facility for purposes of permitting, driven in part by shared interconnection facilities and common ownership, was the basis for the decision to pursue EFSC permitting, not factors related to project configurations.

d. See DR 25c.

Oregon Public Utility Commission
OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
February 26, 2020
Blue Marmots' Response to PGE Data Request 27

PGE Data Request 27

Please refer to Blue Marmot/900, Talbott/24. Please explain why the Blue Marmots placed a hold on their work with the EFSC in November 2018.

Response to PGE Data Request 27

The Blue Marmots placed a hold on their work with EFSC to control permitting expenditure and maximize credibility with permitting authorities, given the revenue contract uncertainty and the configuration uncertainty.

Oregon Public Utility Commission
OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
February 26, 2020
Blue Marmots' Response to PGE Data Request 29

PGE Data Request 29

Please refer to Blue Marmot/900, Talbott/24, 26. Please explain why the Blue Marmots did not “coordinate with PacifiCorp to revert the SGIAs” back to the original 5 x 10 MW configuration after September 2018.

Response to PGE Data Request 29

The Blue Marmots have not taken this step with PacifiCorp because they have been waiting until it is clear that they will receive viable PPAs corresponding to this interconnection plan of service. (See DR 21 on the meaning of viable PPA.) There is very little commercial opportunity in the current market for a geographically disparate cluster of 10 MW solar projects, as this project capacity is too large to benefit from standard rate QF PPAs and too small to capture economies of scale required to compete favorably with larger projects in larger energy procurement solicitations. The original 5 x 10 MW configuration was specifically designed for the commercial opportunity available at the time the projects signed their Schedule 201 PPAs with PGE.

Oregon Public Utility Commission
OPUC Dockets UM 1829, UM 1830, UM 1831, UM 1832, UM 1833
March 26, 2020
Blue Marmots' Response to PGE Data Request 47

PGE Data Request 47

Please see the Blue Marmots' Notice of Intent, Exhibit C, which describes the "Duvaroo" site as "approximately 1,412 acres." (<https://www.oregon.gov/energy/facilitiesafety/facilities/Facilities%20library/2018-01-19-BMS-NOI-part-1.pdf>)

- a. Which Blue Marmot project(s) is proposed for the "Duvaroo" site?
- b. Please explain why EDPR proposed to permit all of the Blue Marmot projects through the Lake County CUP process, given that this site alone exceeds the 320-acre threshold for EFSC jurisdiction in effect at the time the decision to permit through Lake County was made (per Blue Marmot/900, Talbott/13-14, 22)?

Response to PGE Data Request 47

- a. Blue Marmot IX.
- b. A 10 MW solar project could be designed and built on this site with impacts to fewer than 320 acres.

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of PGE's Response Testimony of Geoffrey Moore in Docket UM 1829, Phase II on the following named person(s) on the date indicated below by email addressed to said person(s) at his or her last-known address(es) indicated below.

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

NATASCHA SMITH (C)
201 HIGH ST SE SUITE 100
SALEM OR 97301
natascha.smith@state.or.us

MEREDITH BERGER CHAMBERS
EDP RENEWABLES NORTH AMERICA LLC
808 TRAVIS ST STE 700
HOUSTON TX 77002
meredith.chambers@edpr.com

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

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

DATED: April 3, 2020

/s/ Alisha Till

Alisha Till
Paralegal