

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PÁTU WIND FARM, LLC,)
)
)
vs.)
) **Docket No.**
PORTLAND GENERAL ELECTRIC)
COMPANY.)
)

COMPLAINT
REQUESTING FAST-TRACK PROCESSING
OF PÁTU WIND FARM, LLC

In accordance with Sections 206 and 306 of the Federal Power Act (“FPA”),¹ Section 210(h)(1) of the Public Utility Regulatory Policies Act (“PURPA”),² and Rule 206 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure,³ PáTu Wind Farm, LLC (“PáTu”) hereby respectfully files this Complaint seeking enforcement of the Commission’s orders in *PáTu Wind Farm, LLC v. Portland General Electric Co.*, 150 FERC ¶ 61,032, *reh’g denied*, 151 FERC ¶ 61,223 (2015), *petitions for review pending sub nom.*, *Portland General Electric Co. v. FERC*, D.C. Cir. Nos. 15-1237 *et al.* In light of the threat that available dynamic transfer capacity (“DTC”) on the Bonneville Power Administration’s (“BPA”) transmission system may be exhausted, as well as the fact that Portland General’s ongoing violations of the Commission’s orders and PURPA are forcing PáTu to bear extraordinary and unjust costs for wind integration and legal expenses, PáTu requests fast-track processing of this Complaint in accordance with FERC Rule 206(h).

¹ 16 U.S.C. §§ 824e & 825e.
² 16 U.S.C. § 824a-3(h)(1).
³ 18 C.F.R. § 385.206 (2014).

I. SUMMARY

This Complaint seeks enforcement of the Commission's orders requiring Portland General to accommodate a dynamic transfer from PáTu's wind farm to Portland General's Balancing Authority Area ("BAA") at the Troutdale substation. Despite the unambiguous commands in the Commission's previous orders that Portland General cooperate to allow PáTu to deliver its entire net output from its wind generation project to Portland General's BAA using whatever transmission regime PáTu arranges with BPA, Portland General continues to stonewall PáTu and defy the clear requirements of the Commission's orders. Portland General's latest gambit is to refuse its cooperation in establishing a pseudo-tie between the PáTu wind project and Portland General's BAA, despite the fact that BPA has made absolutely clear that its long-standing practice is to require a pseudo-tie as a prerequisite to establishing a dynamic schedule for the full output from any generator located within BPA's BAA, including PáTu. PáTu therefore seeks an order from the Commission requiring Portland General forthwith to comply with the Commission's previous orders and imposing appropriate penalties on Portland General for its continued defiance of the Commission's orders.

II. REQUEST FOR FAST TRACK PROCESSING

Because DTC is limited on the BPA system, Portland General's continuing delays in complying with the Commission's EL15-6 Orders create the possibility that DTC on the BPA system may be exhausted by the time this proceeding is resolved. In addition, Portland General's continuing defiance of the Commission's EL15-6 Orders forces PáTu to continue to bear substantial wind integration and legal costs, despite the Commission's clear conclusion that, under the avoided cost rates applicable to PáTu, PáTu is not required to bear wind integration charges. For these reasons, PáTu respectfully requests fast track processing of this complaint.

III. COMMUNICATIONS

Communications regarding this complaint should be sent to the following persons:

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IV. THE PARTIES

A. COMPLAINANT

PáTu Wind Farm, LLC is Delaware limited liability company, with its principal place of business located at 71190 North Klondike Road, Wasco, Oregon 97065. PáTu's wind farm is a self-certified QF with a nameplate capacity of 9 MW.

B. RESPONDENT

Portland General is an Oregon corporation with its principal place of business at 121 Southwest Salmon Street, Portland, Oregon 97204. Portland General is a regulated, vertically-integrated electric utility located in the Western Electricity Coordinating Council region. Portland General is an investor-owned public utility providing electric service in the State of Oregon. Portland General is subject to the regulatory authority of the Oregon Public Utility Commission ("OPUC") and this Commission.

V. BACKGROUND AND FACTS

PáTu operates a 9 MW wind farm located in Sherman County, Oregon. The wind farm is a "Qualifying Facility" under PURPA.⁴ Electricity generated by PáTu is delivered across the local grid in Sherman County to BPA's DeMoss substation. Under the terms of a long-term, firm point-to-point transmission agreement between PáTu and BPA, which operates most of the high-voltage transmission lines in the Pacific Northwest, BPA then delivers PáTu power to Portland General's BAA at the Troutdale substation at Troutdale, Oregon.⁵

PáTu delivers power to Portland General under the terms of a Standard Contract executed on April 29, 2010 (the "Standard Contract") for small, "off-system" wind QFs. The Standard Contract provides that Portland General shall purchase PáTu's "entire Net Output" at standard,

⁴ See *PáTu Wind Farm, LLC v. Portland General Electric Co.*, 150 FERC ¶ 61,032 at P 4 (2015) ("Jan. 22 Order");

⁵ See Jan. 22 Order at P 4; Affidavit of Ormand Hilderbrand at ¶ 4 ("Hilderbrand Aff."), attached hereto as Attachment 2.

fixed avoided cost rates for the first 15 years of the 20-year term. Those rates, and the other terms of the Standard Contract were approved by the OPUC in a 2007 order, which established avoided cost rates and standard contract terms for small wind generators with a capacity of 10 MW or less.⁶

At all times since PáTu achieved commercial operation in late 2010, dynamic scheduling, the only tool that would allow PáTu to deliver its entire net output to Portland General on a kWh basis in each hour, has been available on the BPA system.⁷ PáTu has undertaken all necessary steps, including contracting with BPA and paying for necessary engineering and technical studies, to establish dynamic scheduling. These efforts have come to naught because Portland General has steadfastly refused even to cooperate in the engineering studies BPA needs to complete to allow PáTu's generation to be dynamically scheduled to the Troutdale Substation.⁸

After repeatedly being rebuffed by Portland General,⁹ PáTu filed a complaint with the Commission on October 10, 2014, in Docket No. EL15-6-000, asserting that Portland General's continuing refusal to implement dynamic scheduling violates both the FPA and PURPA. On January 22, 2015, the Commission issued an order granting relief to PáTu. *PáTu Wind Farm, LLC v. Portland General Electric Co.*, 150 FERC ¶ 61,032 (2015) (the "Jan. 22 Order", the Jan. 22 Order and June 18 Order Denying Rehearing are referred to collectively as the "EL15-6

⁶ Jan. 22 Order at PP 5-6; Hilderbrand Aff. at ¶ 5.

⁷ Jan. 22 Order at PP 7-8; Hilderbrand Aff. at ¶ 7.

⁸ Hilderbrand Aff. at ¶ 7.

⁹ PáTu initially sought relief from the OPUC. The OPUC rejected some claims and disclaimed jurisdiction over others, including the transmission and scheduling issues at issue here. Order No. 12-316, *PáTu Wind Farm, LLC v. Portland General Electric Co.*, OPUC Docket No. UM-1566 (issued Aug. 21, 2012), *reh'g denied*, Order No. 14-287 (issued Aug. 13, 2014). Copies of the OPUC orders were included in the record of the EL15-6 proceeding as Attachments 8 and 9 to PáTu's Complaint. The orders and related materials are also available on the OPUC's website at: <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=17176>. PáTu has filed an appeal challenging the OPUC's decision on the sole issue of whether the OPUC erred in allowing Portland General to pay less than the specified contract rate for that portion of the power that is delivered by PáTu to Portland General under flat block scheduling but that is not produced by PáTu. *PáTu Wind Farm, LLC v. Portland General Electric Co. & Public Utility Commission of Oregon*, Or. App. Docket No. A158690 (filed Feb. 2, 2015) (in briefing).

Orders”).¹⁰ The Commission ruled that, under PURPA, “Portland General must take from PáTu its *entire* net output (all energy less onsite uses and losses) delivered and to do so at avoided cost rates.”¹¹

Further, the Commission made clear that Portland General cannot use transmission-related requirements to erect barriers to fulfilling its PURPA obligations:

If . . . Portland General were permitted on [the basis of scheduling requirements] to refuse to accept PáTu’s entire net output, Portland General and other electric utilities could routinely escape their PURPA mandatory purchase obligation, and indeed the Standard Contract-imposed purchase obligation, by imposing overly restrictive or un-meetable scheduling requirements, or by the purchasing electric utility’s failing to arrange the necessary transmission service to dispose of its purchase of the QF’s entire net output once it has been delivered to the utility.¹²

Dissatisfied with these holdings regarding its obligations under PURPA, Portland General sought rehearing. The Commission rejected Portland General’s rehearing request in an order issued on June 18, 2015,¹³ emphasizing that “[t]he issue in this proceeding . . . is whether the purchasing utility, Portland General, may take actions and dictate scheduling requirements that limit the deliverability of the QF’s net output so that the purchasing utility can avoid its mandatory obligation to purchase the QF’s entire net output. In the January 22 Order, the Commission found that it cannot.”¹⁴

The Commission made clear that PURPA’s mandatory purchase obligation does not permit Portland General to dictate scheduling requirements:

¹⁰ PáTu also asserted claims that Portland General discriminated against PáTu and other QFs in violation of Section 206 of the Federal Power Act and Order No. 888, and that Portland General violated FERC’s Standards of Conduct in its handling of PáTu’s transmission requests. The Commission denied these claims and PáTu does not reassert them here, although it is pursuing these claims in the appeal of the EL15-6 Orders currently pending in the D.C. Circuit.

¹¹ Jan. 22 Order at P 54.

¹² Jan. 22 Order at P 53.

¹³ *PáTu Wind Farm, LLC v. Portland General Electric Co.*, 151 FERC ¶ 61,223 (2015) (the “June 18 Order”).

¹⁴ *Id.* at P 47.

Based on the record, it is clear that Portland General (and not PáTu) has dictated the manner by which PáTu currently delivers its net output to Portland General to honor the prescheduled amount. By requiring a firm, whole MW-hour product from PáTu, Portland General prevents PáTu from delivering its entire net output and Portland General is thereby able to escape its mandatory purchase obligation as it applies to PáTu's unscheduled net output. In *Entergy*, however, the Commission found that such actions were impermissible: '[e]xcept in certain limited circumstances, Entergy is obligated under federal law to purchase unscheduled QF energy.'¹⁵

Despite the Commission's clear rejection of Portland General's contention that it may dictate how PáTu delivers power from its wind project to Portland General's BAA boundary,¹⁶ Portland General continues to stonewall PáTu's efforts to establish dynamic scheduling from PáTu's wind project to the Troutdale Substation, this time under the specious claim that it is not required to allow a pseudo-tie that would move PáTu's electric output from the BPA BAA to the Portland General BAA.

The critical importance of the pseudo-tie issue has become apparent since the Commission issued its EL15-6 Orders. After the Commission granted PáTu's complaint in the January 22 Order, PáTu entered into another contract with BPA to perform the engineering and study work necessary to establish dynamic transfer capability ("DTC").¹⁷ When BPA contacted Portland General to seek its cooperation with the DTC studies, Portland General refused to cooperate, even refusing to participate in the scoping meeting,¹⁸ recapitulating Portland General's response to PáTu's previous attempts to establish dynamic scheduling prior to the

¹⁵ June 18 Order at P 46 (*quoting Entergy*, 137 FERC ¶ 61,199 at P 52).

¹⁶ The Commission's orders make clear that Portland General has the discretion to determine how power moves across Portland General's transmission system to Portland General's end-use customers once power is delivered to the Troutdale Substation. *See, e.g.*, June 18 Order at n.102. The Commission's orders make equally clear, however, that Portland General must treat power from an "off-system" QF like PáTu on the same terms as it treats an "on-system" QF directly interconnecting to Portland General's system within its BAA. June 18 Order at P 46. Accordingly, this Complaint focuses on Portland General's refusal to allow PáTu to deliver its output to the Troutdale Substation via dynamic scheduling, a clear violation of the Commission's orders. The Complaint does not address Portland General's delivery of power to its end-use customers within its BAA after accepting delivery from PáTu, which is a matter of indifference to PáTu.

¹⁷ Hilderbrand Aff. at ¶ 9 and Attachment 4.

¹⁸ Hilderbrand Aff. At ¶¶ 910 and Attachment 5 (noting that in May 2015, Portland General official Frank Afranji stated Portland General would not cooperate with BPA's engineering and planning study) & Attachment 18 (documenting Portland General's refusal to participate in BPA scoping meeting).

Commission's EL15-6 Orders.¹⁹ Portland General's obstinate refusal to cooperate continued even after the Commission denied Portland General's requests for rehearing in its June 18 Order.²⁰

Concerned that Portland General's refusal might arise from a misunderstanding of BPA policy, PáTu contacted BPA, seeking clarification of BPA's position regarding the necessity of a pseudo-tie. BPA responded in a July 24 email, which explained that BPA "requires a pseudo-tie" to dynamically transfer the entire output of a generator residing within its BAA. BPA also expressed surprise at Portland General's refusal to permit a pseudo-tie because Portland General "already has several pseudo-ties in place."²¹ On August 28, 2015, BPA notified PáTu by letter that "the Bonneville Power Administration (BPA) is unable to make further progress on the preliminary engineering and planning work associated with moving PáTu Wind's generation from BPA's Balancing Authority (BA) into" Portland General's BA. This is because, "[b]ased on recent feedback provided by [Portland General], [Portland General] does not plan to move PaTu Wind into its BA at this time and will not participate in the development of the technical [plan-of-service] to implement the pseudo-tie."²²

Hoping that a face-to-face meeting between BPA and Portland General technical staff could resolve this conflict, PáTu on September 4, 2015, sent a letter to Portland General noting that BPA "requires a pseudo-tie to be established between PáTu and both BPA and [Portland General], so that common metering data can be telemetered from PáTu to the BPA and [Portland General] balancing authorities."²³ Because of Portland General's refusal to cooperate with

¹⁹ See Jan. 22 Order at PP 8-10 (describing how PáTu's efforts in 2010 and again in 2013 to establish a dynamic transfer were blocked by Portland General).

²⁰ Attachment 5 (notes of telephone calls from BPA to PáTu on July 6, 10, and 20, in which BPA informed PáTu of Portland General's refusal to cooperate with engineering and planning study).

²¹ Attachment 6. See also Hilderbrand Aff. at ¶ 11.

²² Hilderbrand Aff. at ¶ 13 & Attachment 8.

²³ Hilderbrand Aff. at ¶ 14 & Attachment 9.

BPA’s technical plan-of-service for the pseudo-tie, the letter noted, BPA cannot move forward to establish dynamic scheduling and Portland General’s “refusal to cooperate in establishing a pseudo-tie appears to render [Portland General’s] promises. . . to cooperate with establishing a dynamic schedule illusory,” placing Portland General in violation of the EL15-6 Orders.²⁴

In response to the September 4 letter, a meeting involving technical staff from BPA, Portland General, and PáTu took place on October 6, 2015.²⁵ The meeting came to naught, however, because Portland General again refused to discuss the pseudo-tie issue.²⁶ In a last-ditch attempt to resolve the issue without resort to litigation, PáTu sent a letter to Portland General asking that Portland General reconsider its opposition to a pseudo-tie.²⁷ Noting, once again, that BPA requires a pseudo-tie in order to establish a dynamic schedule, the letter explains why Portland General’s refusal to cooperate places it in violation of this Commission’s EL15-6 Orders.²⁸ On October 30, 2015, Portland General replied by letter, refusing to reconsider its position regarding the pseudo-tie based on the illogical proposition that, while “[t]he standard *off-system* power purchase agreement dated April 29, 2010 between PáTu and [Portland General] requires PáTu to deliver power to the Troutdale substation at the electrical border between BPA and [Portland General],” the agreement “does not require [Portland General] to move PáTu’s generation into [Portland General]’s system.”²⁹

Having exhausted all avenues for informal resolution of the dispute, PáTu now respectfully requests the Commission to order Portland General to comply with the EL15-6 Orders by cooperating to establish a pseudo-tie and any other measures reasonably required by

²⁴ Attachment 9 at p. 2.

²⁵ Hilderbrand Aff. at ¶ 16.

²⁶ *Id.*

²⁷ Hilderbrand Aff. at ¶ 17 & Attachment 11.

²⁸ Attachment 11 at pp. 2-3.

²⁹ Attachment 12 (emph. in orig.); *see also* Hilderbrand Aff. at ¶ 18.

BPA and/or PáTu to deliver PáTu's entire net output to Portland General's BAA at the Troutdale substation. In addition, PáTu respectfully requests the Commission to impose appropriate penalties on Portland General for Portland General's willful violation of the EL15-6 Orders.

VI. COMPLAINT

The Commission's EL15-6 Orders make unambiguously clear that, in order to meet its obligations under PURPA, Portland General: (1) may not dictate how PáTu delivers energy to Portland General's BAA; (2) may not impose wind integration charges on PáTu under the OPUC-approved avoided cost rates applicable to PáTu; and, (3) may not discriminate against PáTu based on its status as an off-system QF. Portland General's steadfast refusal to allow PáTu and BPA to establish a pseudo-tie to support dynamic scheduling of PáTu's entire net output to the Portland General BAA violates all three of these requirements and therefore violates the EL15-6 Orders. PáTu therefore respectfully requests the Commission to order Portland General to immediately comply with the EL15-6 Orders and to impose appropriate penalties on Portland General for its willful and continuing violations of the EL15-6 Orders.

A. The Commission May Properly Exercise Jurisdiction to Enforce Its Own Orders.

The Commission's EL15-6 Orders are grounded on the Commission's PURPA rules.³⁰ PURPA Section 210(h)(1)³¹ provides that, "for purposes of enforcement of any rule prescribed by the Commission" under PURPA "with respect to any operations of an electric utility . . . which are subject to the jurisdiction of the Commission under part II of the Federal Power Act, such rule shall be treated as a rule under the Federal Power Act." Thus, where a dispute involves the enforcement of the Commission's PURPA rules against a jurisdictional utility whose

³⁰ See, e.g., Jan. 22 Order at P 50 & n.87 ("the issue in this proceeding is whether Portland General is fulfilling its obligations under PURPA and the Commission's regulations," citing PURPA Section 201 and 18 C.F.R. § 292.303(a)); June 18 Order at P 46 & n.101 (relying on 18 C.F.R. § 292.303(d)).

³¹ 16 U.S.C. § 824a-3(h)(1).

operations are subject to the Commission’s jurisdiction under Part II of the FPA, this Commission has jurisdiction to enforce the PURPA rules directly against the jurisdictional utility. “[W]hen a utility transmits QF power in interstate commerce from its interconnection with a QF so that the QF can sell its power to a third party, . . . a Commission jurisdictional transaction takes place, and both the transmission in interstate commerce and the agreements affecting or relating to such service are subject to the Commission's exclusive jurisdiction.”³²

For these reasons, the Commission properly concluded in June 18 Order that “PáTu’s filing a FPA section 206 Complaint against Portland General was appropriate,”³³ and this Complaint is likewise properly filed under Sections 206³⁴ and 306³⁵ of the FPA.³⁶ The Commission is authorized under FPA Section 314(a)³⁷ to enjoin violations of the orders and it is authorized under FPA Section 316 and 316A³⁸ to impose penalties of up to \$1 million for Portland General’s violations of PURPA and up to \$25,000 for violation of the Commission’s EL15-6 Orders.

³² *PJM Interconnection, LLC*, 116 FERC P 61,102, 61,534 (July 31, 2006). *See also Western Massachusetts Electric Co.*, 61 FERC P 61,182 at 61,662 (1992), *aff’d*, *Western Massachusetts Electric Co. v. FERC*, 165 F.3d 922, 925-27 (D.C. Cir. 1999).

³³ June 18 Order at P 49. Portland General itself argued before the OPUC this Commission has exclusive jurisdiction over the question of whether Portland General’s refusal to cooperate with dynamic deliveries violates PURPA. *See* PUC Order No. 12-316 at 6, 8-9 (granting Portland General’s argument that PáTu’s claims regarding Portland General’s obligations to accept delivery of power are within FERC’s jurisdiction over interstate transmission).

³⁴ 16 U.S.C. § 824e (providing that if the Commission “upon complaint” finds jurisdictional utility’s actions to violate the just and reasonable standard, it “shall fix the same by order”).

³⁵ 16 U.S.C. § 825e (authorizing “Any person. . . complaining of anything done or omitted to be done by any . . . public utility in contravention of the provisions” of the FPA to file a complaint with the Commission).

³⁶ There is no question that the interstate transmission transaction at issue here is subject to the Commission’s exclusive jurisdiction. *See, e.g.*, 16 U.S.C. § 824(b); *New York v. FERC*, 535 U.S. 1, 16-24 (2002) (holding that unbundled retail transmissions are within the Commission’s transmission jurisdiction even though retail sales themselves are within a state’s jurisdiction); *Transmission Agency of N. California v. Sierra P. Power Co.*, 295 F.3d 918, 928 (9th Cir. 2002) (“FERC's exclusive jurisdiction extends over all facilities for such transmission . . . of electric energy” (internal citation omitted)).

³⁷ 16 U.S.C. § 825m(a). The Commission is also authorized to seek a writ of mandate in the U.S. District Courts for Portland General’s failure to comply with its orders. 16 U.S.C. § 825m(b).

³⁸ 16 U.S.C. §§ 825o & 825o-1. In addition, FPA Section 315, 16 U.S.C. § 825, authorizes a forfeiture remedy for willful violations of its orders, in addition to other remedies provided under the Act.

Further, although appeals of the EL15-6 Orders have been filed in the D.C. Circuit, those orders remain in full force and effect, and are fully binding on Portland General. Section 313(c) of the FPA makes clear that, “unless specifically ordered by the Commission,” the filing of an appeal “shall not. . . operate as a stay of the Commission’s order.”³⁹ Portland General has neither sought nor obtained a stay of the EL15-6 Orders. Accordingly, the EL15-6 Orders now have full legal force and Portland General is obligated to comply with those orders, unless and until those orders are vacated by the D.C. Circuit.⁴⁰

B. Portland General’s Refusal to Cooperate In Establishing a Pseudo-Tie Violates the EL15-6 Orders.

BPA has made clear that it requires installation of a pseudo-tie before it can proceed with dynamic scheduling of power from the PáTu wind project to Portland General’s BAA. BPA’s position is clearly spelled out in its July 24 email and August 28 letter, which were delivered to PáTu after BPA tried but failed to obtain Portland General’s cooperation in establishing a dynamic scheduling arrangement.⁴¹ BPA states it “will require the installation of a pseudo-tie at the PáTu Wind site with common meter data telemetered to the [BPA] and [Portland General] control centers” to allow for dynamic scheduling. However, the BPA letter reports, Portland General “will not participate in development of the technical [plan-of-service] to implement the pseudo-tie,” and BPA therefore “is unable to make further progress on the preliminary engineering and planning work” necessary to establish dynamic scheduling.⁴² Even after PáTu and BPA both repeatedly notified Portland General of the requirement for a pseudo-tie, Portland

³⁹ 16 U.S.C. § 8251(c).

⁴⁰ On July 22, 2015, PáTu filed an action in the U.S. District Court for the District of Oregon seeking contract damages and other relief against Portland General. *PáTu Wind Farms, LLC v. Portland General Electric Co.*, Docket No. 3:15-cv-031373-br. That action is now being held in abeyance pending the D.C. Circuit’s action on appeal of the EL15-6 Orders.

⁴¹ Hilderbrand Aff. at ¶¶ 10, 11 & 13; Attachments 6 & 8.

⁴² Attachment 8.

General continues to refuse to allow the pseudo-tie, or to even study what would be required to establish a pseudo-tie.⁴³

Portland General's stance is old wine in new bottles. In response to PáTu's complaint in EL15-6, Portland General insisted that the Standard Contract under which it purchases PáTu's output requires hourly scheduling in flat, whole-MW blocks, a stance it maintained even after the OPUC rejected its construction of the Standard Contract.⁴⁴ The Commission properly rejected Portland General's claims.⁴⁵ In response, Portland General has changed tack, now insisting that it has no obligation to permit a pseudo-tie. But, because BPA requires a pseudo-tie for dynamic scheduling, the result is the same: Portland General continues to unilaterally dictate how PáTu delivers power to the Portland General BAA, and continues to insist on a form of scheduling that necessarily prevents PáTu from delivering its entire net output to the Portland General BAA. But the Commission's EL15-6 Orders make clear that Portland General may not "take actions and dictate scheduling requirements that limit the deliverability of the QF's net output."⁴⁶ By refusing to even allow study of the pseudo-tie, which necessarily prevents PáTu from establishing a dynamic schedule, Portland General is once again taking "actions" and dictating scheduling requirements that "limit the deliverability" of power from the PáTu wind farm. Portland General's actions therefore patently violate the Commission's EL15-6 Orders.

In fact, BPA's current proposal for dynamic scheduling is no different from the arrangement BPA has been attempting to provide for PáTu since 2010. Portland General's repeated rejection of that arrangement forced PáTu to seek relief from this Commission by filing the complaint in Docket No. EL15-6. A review of the correspondence between PáTu, BPA and

⁴³ Hilderbrand Affidavit at ¶¶ 14-18 & Attachment 12.

⁴⁴ See June 18 Order at P 45.

⁴⁵ *Id.*

⁴⁶ June 18 Order at P 47.

Portland General demonstrates that, from the outset, BPA has required a transfer of PáTu’s output from the BPA BAA to the Portland General BAA as part of the dynamic scheduling arrangement for PáTu.⁴⁷ In fact, PáTu’s initial email requesting BPA to establish dynamic scheduling under its Dynamic Transfer Capability (“DTC”) program on August 4, 2010, requested that BPA “telemeter the total output of PáTu out of [BPA’s] BAA and into the BAA of” Portland General, and attached a completed copy of BPA’s standard form for lodging such a request.⁴⁸ The critical language describing the work to be performed under that agreement is:

This Reimbursable Agreement (Agreement) between the Bonneville Power Administration (BPA) and Patu Wind Farm, LLC (Patu Wind Farm) provides for preliminary engineering and planning work associated with moving Patu Wind Generation from BPA's Balancing Authority (BA) to Portland General Electric's BA.⁴⁹

The current contract between BPA and PáTu seeking to establish DTC for the PáTu wind project contains *precisely the same description* of the required work.⁵⁰ This makes it clear that, although Portland General now characterizes its opposition to dynamic scheduling slightly differently than it did before the Commission issued its EL15-6 Orders, there is in fact no difference between the transmission arrangements BPA sought to establish on PáTu’s behalf before those orders and the arrangement BPA now seeks to establish.

Portland General’s latest gambit violates those orders in at least three ways. First, the Commission’s EL15-6 Orders make clear that Portland General must “accept PáTu’s entire net output, whether by dynamic scheduling or some other method.”⁵¹ Hence, “[w]here PáTu has made arrangements to transmit to Portland General its entire net output pursuant to a dynamic

⁴⁷ The correspondence is included as Attachment 3 to this complaint. The same correspondence was included as Attachment 5 to PáTu’s EL15-6 complaint.

⁴⁸ Attachment 3 at pp. 1-6; *see also id.* at pp. 19-20 (reiterating BPA’s position in September 2014, that moving PáTu’s net output out of BPA’s BA to the “Sink” location of “Troutdale” was still possible due to the “*de minimis*” impact of the transfer from such a small generator).

⁴⁹ Attachment 3 at p. 5 (2010 BPA contract and correspondence involving DTC engineering and planning study).

⁵⁰ Attachment 4 at p. 1 (2015 BPA contract for DTC engineering and planning study). *See also* Hilderbrand Aff. at ¶ 9.

⁵¹ June 18 Order at P 56.

schedule with BPA, Portland General may not require a different type of schedule,”⁵² and Portland General may not “take actions and dictate scheduling requirements that limit the deliverability of the QF’s net output.”⁵³ Because prohibiting a pseudo-tie prevents PáTu from establishing a dynamic schedule, Portland General’s refusal to allow a pseudo-tie is just another way to “dictate scheduling requirements” that prevent PáTu from delivering its entire output to Portland General. Refusing to allow a pseudo-tie is therefore “inconsistent with PURPA, the Commission’s regulations, and the Standard Contract.”⁵⁴

In fact, Portland General appears to be willing to allow a dynamic schedule only without a pseudo-tie. But BPA has made clear that it provides dynamic scheduling without a pseudo-tie only where BPA is delivering less than the entire output of the generator, such as a generator used to provide regulating reserves.⁵⁵ In other words, Portland General has rejected the only form of dynamic scheduling that will allow PáTu to deliver its *entire* net output to the Portland General BAA, and will agree to dynamic scheduling only if PáTu *cannot* deliver its entire net output to the Portland General BAA.

Portland General’s behavior also violates the Commission’s clear command in the EL15-6 Orders that, consistent with the OPUC’s avoided cost orders, PáTu is not responsible for paying wind integration charges. As the Commission has made clear, under the 2007 OPUC orders governing the Standard Contract, the avoided cost rate for small wind QFs such as PáTu should not be reduced to reflect the costs of wind integration.⁵⁶ As the Commission concluded:

[T]he Oregon Commission has found that, under the Standard Contract pursuant to which PáTu sells to Portland General, small QFs such as PáTu are not responsible for additional

⁵² *Id.* at P 46.

⁵³ *Id.* at P 47.

⁵⁴ *Id.* at P 48.

⁵⁵ Hilderbrand Aff. at ¶ 11.

⁵⁶ June 18 Order at P 53.

wind integration costs because those cost are already taken into account in calculating the avoided cost rate.⁵⁷

Portland General's refusal to allow a pseudo-tie is a not-very-subtle means to circumvent this unambiguous requirement of the Commission's orders. This is because, without dynamic scheduling, PáTu will be required to pay BPA for wind integration services. With dynamic scheduling, however, PáTu will be relieved of the obligation to pay for wind integration services.⁵⁸ In short, Portland General's refusal to allow a pseudo-tie forces PáTu to continue to pay for wind integration in direction contravention of the EL15-6 Orders, and results in PáTu receiving less than full avoided-cost rates for its output, in contravention of Portland General's obligations under the EL15-6 Orders and PURPA to "take from PáTu its *entire* net output" and "to do so at avoided cost rates."⁵⁹

Third, the Commission's EL15-6 Orders unambiguously instruct Portland General to treat off-system QFs like PáTu on equal terms with on-system QFs. Rejecting Portland General's argument that it owes a lesser obligation to PáTu because it is an off-system QF, the Commission held:

[T]he Commission's regulations require that 'any electric utility . . . shall purchase such energy or capacity [made available indirectly from the off-system QF] . . . as if the qualifying facility were supplying energy or capacity directly to such electric utility.' . . . [T]he Commission's regulations require the electric utility's purchase obligation to be applied to both off-system as well as on-system QFs on a comparable basis. Portland General must treat PáTu, an off-system QF, as it would treat an on-system QF, and Portland General must purchase PáTu's entire net output. Where PáTu has made arrangements to transmit to Portland General its entire net output pursuant to a dynamic schedule with BPA, Portland General may not require a different type of schedule and then claim it is only obligated to purchase and pay avoided cost rates for a lesser amount of energy delivered pursuant to that different type of schedule.⁶⁰

⁵⁷ *Id.* See also Attachment 6 at p. 1 (July 24, 2015, email from BPA noting that, with dynamic scheduling, PáTu would "likely not be" subject to wind integration charges and its imbalance charges would always be zero).

⁵⁸ Hilderbrand Affidavit at ¶¶ 19-21 & Attachment 13 (BPA General Rate Schedule provisions requiring variable generators to pay wind integration charges but creating exception for variable generators moved out of BPA's BAA via a dynamic transfer).

⁵⁹ Jan. 22 Order at P 54.

⁶⁰ June 18 Order at P 46.

Portland General's refusal to allow PáTu to establish a pseudo-tie, or even to allow BPA to conduct the engineering studies necessary to establish dynamic scheduling, also violates this Commission's command.

This is true because Portland General would be responsible for integrating any QF, including any wind QF, operating within its BAA.⁶¹ Further, any on-system QF would deliver its entire output, including scheduled and unscheduled energy, directly to Portland General. By refusing to allow a pseudo-tie, however, Portland General forces PáTu to absorb wind integration costs and prevents PáTu from delivering its entire output to Portland General, thus treating PáTu differently than it would treat an on-system QF. In addition, as BPA's communications with PáTu make clear, Portland General already has several pseudo-ties in place,⁶² and Portland General therefore is not even treating PáTu comparably with other off-system generators. Portland General's behavior therefore clearly violates the Commission's direction that it treat on-system and off-system QFs comparably.

For these reasons, Portland General's refusal to cooperate with BPA and PáTu to establish a pseudo-tie that would allow transfer of PáTu's generation output from the BPA BAA to the Portland General BAA violates the Commission's EL15-6 Orders. The Commission should therefore expeditiously order Portland General to comply with those orders by cooperating with the installation of a pseudo-tie and by cooperating with whatever other steps are necessary for BPA to dynamically schedule output from PáTu to Portland General's BAA at the Troutdale delivery point. The Commission should also impose appropriate penalties on Portland General for its willful, continuing violation of the Commission's EL15-6 Orders.

⁶¹ Hilderbrand Aff. at ¶ 21.

⁶² Attachment 6 at p. 1 (BPA email noting that Portland General already has several pseudo-ties in place).

C. Portland General’s Attempts to Justify Its Refusal to Comply With the EL15-6 Orders Are Without Merit.

In the course of its communications with PáTu on the pseudo-tie issue, Portland General has attempted to rationalize its behavior on several different grounds. Each of these rationalizations fails to come to terms with the plain language of the EL15-6 Orders.

Most persistently, Portland General has claimed, relying on Paragraph 56 of the June 18 Order, that it has no obligation to cooperate with PáTu or BPA to establish dynamic scheduling.⁶³ This is a clear misreading of the Commission’s orders.

Paragraph 56 addressed PáTu’s request that the Commission clarify its Jan. 22 Order by requiring Portland General to cooperate with PáTu’s efforts to deliver its entire net output via the dynamic scheduling arrangement offered by BPA. As PáTu noted, Portland General’s obligation to cooperate flows directly from the Commission’s January 22 Order, where the Commission held: (1) Portland General is obligated to “take from PáTu its *entire* net output” delivered to Troutdale and to pay avoided cost rates for the *entire* net output;⁶⁴ (2) nothing in the Standard Contract governing Portland General’s purchase of power from PáTu trumps Portland General’s obligation to purchase the entire net output or requires any particular form of scheduling;⁶⁵ (3) Portland General is prohibited from imposing “overly restrictive or un-meetable scheduling requirements” on QFs that would allow utilities to “routinely escape their PURPA mandatory purchase obligation;”⁶⁶ and, (4) PáTu and BPA are prepared to “deliver PáTu’s entire net output to Portland General using dynamic scheduling,” and nothing precludes Portland General’s

⁶³ Attachment 10 at p. 2 (letter from Portland General’s legal counsel arguing that, because the Commission “declined to clarify” that Portland General is “required cooperate with PáTu to deliver its entire net output even [*sic*] via dynamic scheduling,” Portland General has no obligation to cooperate, *citing* June 18 Order at P 56).

⁶⁴ Jan. 22 Order at P 54 (emph. in orig.).

⁶⁵ Jan. 22 Order at P 52.

⁶⁶ Jan. 22 Order at P 53.

obligation to purchase PáTu's entire net output "by those means."⁶⁷ Because dynamic scheduling is the only form of scheduling that allows a variable renewable generator like PáTu to deliver its entire net output to Troutdale, PáTu noted, it follows from the Commission's conclusions in the January 22 Order that Portland General is required to cooperate with PáTu and BPA to establish dynamic scheduling.

Read in its entirety, Paragraph 56 of the June 18 Order makes clear the Commission agrees with this proposition and declined to grant PáTu's request for clarification only because the Commission saw "no need to do so" in light of all the other findings set forth in Paragraph 56. Specifically, the Commission noted that BPA "is willing to provide dynamic scheduling to PáTu so that PáTu can deliver its entire net output to Portland General." In light of Portland General's obligation to take and pay for PáTu's "entire net output delivered by BPA to Portland General's system at its Troutdale substation," it is "Portland General's *obligation to accept PáTu's entire net output, whether by dynamic scheduling or some other method.*"⁶⁸ These holdings, the Commission concluded, make it "*unnecessary*" to grant PáTu's clarification request "in order to provide PáTu relief under PURPA and the Standard Contract."⁶⁹

Portland General argues that Paragraph 56 by implication absolves it from any obligation to cooperate with dynamic scheduling. The implication cannot be squared with the plain language of Paragraph 56. Nor can it be squared with many other findings in the Commission's EL15-6 Orders. For example, Paragraph 47 of the June 18 Order, states:

The issue in this proceeding. . . is whether the purchasing utility, Portland General, may take actions and dictate scheduling requirements that limit the deliverability of the QF's net output so that the purchasing utility can avoid its mandatory obligation to purchase

⁶⁷ Jan. 22 Order at P 55.

⁶⁸ June 18 Order at P 56 (emph. added).

⁶⁹ *Id.* (emph. added).

the QF's entire net output. In the January 22 Order, the Commission found that it cannot.⁷⁰

Similarly, Paragraph 49 concludes “it is Portland General’s actions dictating the manner by which PáTu delivers its net output, which are not mandated by the Standard Contract, that are in violation of PURPA.”⁷¹ In refusing to cooperate with the studies and other reasonable steps necessary to establish a pseudo-tie, Portland General is once again “dictating the manner by which PáTu delivers its net output,” and its actions therefore continue to violate PURPA.⁷²

Portland General also claims that the EL15-6 Orders do not specifically require it to cooperate in establishing a pseudo-tie.⁷³ Portland General’s argument amounts to this: it does not have an obligation to cooperate with dynamic scheduling because the Commission did not explicitly list and require Portland General to undertake each and every step necessary to establish a dynamic schedule. The argument only underscores Portland General’s willful refusal to comply with the Commission’s EL15-6 Orders. As the language from Paragraphs 47 and 56 of the June 18 Order quoted above demonstrate, the Commission has imposed a categorical obligation on Portland General to allow PáTu to establish a dynamic schedule or whatever other form of scheduling BPA agrees to use for moving power from PáTu to the Troutdale substation. The Commission also categorically prohibited Portland General from taking actions and dictating scheduling requirements that limit PáTu’s ability to deliver its entire output to Portland General. These categorical mandates logically include all subordinate mandates. Thus, Portland General is required to undertake whatever measures are necessary to establish a dynamic schedule to Troutdale, which may include establishing a pseudo-tie, establishing the proper

⁷⁰ June 18 Order at P 47.

⁷¹ June 18 Order at P 49.

⁷² It is important to note that PáTu has offered to pay for all reasonable costs Portland General may incur for all such studies and related hardware and software necessary to accept the deliveries of PáTu’s output via BPA’s dynamic scheduling protocols. Portland General has not, therefore, cited these costs as a basis for its objection to accepting dynamic deliveries. Hilderbrand Aff. at ¶ 19.

⁷³ Attachment 10 at p. 2.

communication links and software systems to schedule PáTu's output to Portland General, and other measures that may have escaped the parties' attention at this point, or that may become reasonably necessary during the remainder of the Standard Contract's 20-year term. Portland General's refusal to permit a pseudo-tie therefore constitutes brazen defiance of the Commission's EL15-6 Orders.

Portland General's most recent attempt to evade its obligations under the EL15-6 Orders is the rather bizarre argument that:

The standard *off-system* power purchase agreement dated April 29, 2010 between PáTu and [Portland General] requires PáTu to deliver power to the Troutdale substation at the electrical border between BPA and [Portland General]. It does not require [Portland General] to move PáTu's generation into [Portland General]'s system.⁷⁴

While obviously specious, the argument also ignores the plain language of the Commission's EL15-6 Orders. For example, the Orders repeatedly make clear that Portland General must "accept PáTu's entire net output delivered to the Portland General balancing authority and to do so at avoided cost rates."⁷⁵ And the Orders also make clear that Portland General has the obligation to dispose of the power once it is purchased, finding that Portland General cannot escape its PURPA purchase obligations by "failing to arrange the necessary transmission service to dispose of its purchase of the QF's entire net output once it has been delivered to" Portland General.⁷⁶ Further, while Portland General's intent in emphasizing the "off-system" nature of the PáTu Standard Contract is unclear, the Commission left no doubt that Portland General's obligations with respect to off-system QFs are no different than its obligation to on-system QFs.⁷⁷ And, as discussed above, establishing a pseudo-tie and dynamic scheduling will result in

⁷⁴ Attachment 12 at p. 1 (emph. in orig.).

⁷⁵ June 18 Order at P 6.

⁷⁶ June 18 Order at P 7 (quoting January 22 Order at P 53).

⁷⁷ June 18 Order at P 46.

delivery of PáTu’s off-system power on the same terms as on-system QFs that deliver directly to Portland General.

For the same reason, Portland General’s refusal to comply with the EL15-6 Orders cannot be excused by its recently-adopted practice of paying PáTu for undelivered output.⁷⁸ This practice does not meet its obligations under the EL15-6 Orders which make clear that Portland General “must take from PáTu its *entire* net output” and pay avoided cost rates for PáTu’s entire net output.⁷⁹ Portland General violates this obligation when it requires a delivery method that “prevents PáTu from delivering its entire net output” to Portland General.⁸⁰ Paying for PáTu’s undelivered output does not meet Portland General’s obligation to *accept* the output. In fact, in the months since the EL15-6 Orders, PáTu has generated net output in excess of what was scheduled in advance for delivery, and under the delivery terms Portland General has continued to dictate, that unscheduled net output was not delivered to Portland General.⁸¹ In addition, the new arrangement still requires PáTu to pay wind integration costs, which means PáTu is receiving less than the avoided cost rates prescribed by the OPUC and enforced by this Commission in the EL15-6 Orders.⁸²

Further, we note that this Complaint does not open the EL15-6 Orders to collateral attack.⁸³ For example, the Commission has already concluded that: (1) the Standard Contract does not require PáTu to deliver power to Portland General in flat, hourly, whole-MW blocks;⁸⁴ (2) Portland General’s insistence on whole MW scheduling is inconsistent with its obligation to

⁷⁸ The practice was unilaterally adopted by Portland General, as described in a July 27 letter from Portland General official Bruce True. Hilderbrand Aff. at ¶ 22. The letter is appended to this complaint as Attachment 16.

⁷⁹ June 18 Order at P 44.

⁸⁰ June 18 Order at P 46.

⁸¹ Hilderbrand Aff. at ¶¶ 21-22; Attachment 17.

⁸² June 18 Order at PP 53-54.

⁸³ See, e.g., *Missouri Pub. Serv. Comm'n v. FERC*, 783 F.3d 310, 320 (D.C. Cir. 2015); *Pac. Gas & Elec. Co. v. FERC*, 533 F.3d 820, 825 (D.C. Cir. 2008).

⁸⁴ June 18 Order at PP 44-45, 50-51.

purchase PáTu's entire net output and allows Portland General "to escape its mandatory purchase obligation as it applies to PáTu's unscheduled net output,"⁸⁵ (3) Portland General's insistence on flat-block scheduling is inconsistent with its mandatory purchase obligation under PURPA and the fact that PáTu is forced to overschedule to meet these requirements does not absolve Portland General of its purchase obligations; and, (4) the purchase price in the Standard Contract specifically assumes that PáTu will not be required to pay for wind integration costs.⁸⁶ These propositions are settled, unless the D.C. Circuit takes some contrary action. The only question in this complaint proceeding is whether Portland General is complying with the EL15-6 Orders.

With respect to the last point, we emphasize that BPA's position with respect to pseudo-ties is not a surprise to Portland General. On the contrary, as early as August 2010 – four months before PáTu achieved commercial operation – PáTu made clear that, under BPA's Dynamic Scheduling Pilot Program (in which PáTu was enrolled), PáTu was "officially requesting to telemeter the total output of PáTu out of the BPA Power Administration BAA and into the BAA of Portland General Electric."⁸⁷ Similarly, the underlying agreement between PáTu and BPA, dated September 9, 2010, makes clear that the study was intended to support "preliminary engineering and planning work associated with moving PáTu Wind Generation from BPA's Balancing Authority (BA) to Portland General Electric's BA,"⁸⁸ that is, moving PáTu's entire output from BPA's BA to Portland General's BA. This is, of course, exactly what a pseudo-tie would accomplish. BPA has unambiguously informed Portland General that this is the only type of dynamic scheduling arrangement it offers, and Portland General has itself admitted in the

⁸⁵ June 18 Order at P 46.

⁸⁶ June 18 Order at P 52-54.

⁸⁷ Hilderbrand Aff. at ¶ 8 and Attachment 3 at p. 1.

⁸⁸ Attachment 3 at p. 5.

EL15-6 proceeding that it has accepted imports to its system using pseudo-ties.⁸⁹ And it bears emphasizing that, through its stonewalling, Portland General has now delayed BPA and PáTu's ability to use dynamic scheduling for more than five years.

It is therefore not surprising that Portland General repeatedly argued in response to PáTu's EL15-6 complaint that it should not be required to accept output scheduled from PáTu into its BAA and it should not be required to absorb the costs of wind integration for PáTu. What is surprising is that Portland General continues to make these arguments even after they were rejected by the Commission. For example, Portland General argued in its Answer and Motion for Summary Disposition of PáTu's complaint that "PáTu's sole interest in dynamically scheduling the PáTu energy is to avoid ongoing BPA wind integration costs and inappropriately shift those costs to" Portland General,⁹⁰ and, in this context, Portland General specifically addressed its use of pseudo-ties, admitting that it already uses pseudo-ties for many of its own generation resources.⁹¹ Similarly, Portland General argued that, "under a dynamic scheduling approach, PáTu would be treated as within [Portland General]'s own transmission system, and [Portland General] would then become responsible for those ongoing integration costs."⁹² The Commission properly rejected these contentions in the EL15-6 Orders, concluding that Portland General did not contract for a more valuable "scheduled product,"⁹³ that small wind QFs like PáTu are not responsible for integration costs under the applicable OPUC policy,⁹⁴ and that Portland General must cooperate with PáTu to allow delivery of "PáTu's entire net output,

⁸⁹ Answer and Motion for Summary Disposition of Portland General Electric Co. at n.24, FERC Docket No. EL15-6 (filed Oct. 30, 2014).

⁹⁰ *Id.* at p. 11.

⁹¹ *Id.* at n.24.

⁹² *Id.* at p. 25.

⁹³ June 18 Order at P 52.

⁹⁴ June 18 Order at PP 53-54.

whether by dynamic scheduling or otherwise.”⁹⁵ In short, the Commission has already rejected every justification Portland General might point to for refusing to allow a pseudo-tie and there is no basis for allowing Portland General to either ignore the Commission’s findings or relitigate the Portland General claims the Commission has already rejected.

Finally, while PáTu is now delivering its output to Portland General using 15-minute schedules, 15-minute scheduling by itself does not achieve the level of integration that could be achieved by dynamic scheduling. On the contrary, because the output of PáTu’s wind project cannot be predicted with certainty, and it does not produce electricity in whole-MW amounts, 15-minute scheduling still precludes PáTu from delivering its entire net output to the Troutdale substation. Only dynamic scheduling can achieve this goal.⁹⁶ Portland General therefore has not fully complied with the EL15-6 Orders by allowing 15-minute scheduling because 15-minute scheduling does not allow PáTu to deliver its entire net output to Portland General.

VII. STATEMENT REGARDING ALTERNATIVE DISPUTE RESOLUTION

In accordance with Rule 206(b)(9),⁹⁷ PáTu states: (1) PáTu has not contacted the Commission’s Enforcement Hotline concerning matters specific to this complaint (although PáTu did contact the Enforcement Hotline prior to filing the complaint in Docket No. EL15-6); and, (2) PáTu believes this dispute is not amenable to resolution using the Commission’s alternative dispute resolution procedures. PáTu reaches this conclusion because it attempted, but failed, to engage Portland General in Commission dispute resolution processes in connection with the EL15-6 complaint proceeding. Subsequent attempts to engage Portland General in settlement on an informal basis after the EL15-6 Orders also came to naught.

VIII. CONCLUSION

⁹⁵ June 18 Order at P 56.

⁹⁶ Hilderbrand Aff. at ¶ 21.

⁹⁷ 18 C.F.R. § 385.206(b)(9).

For the reasons stated herein, the Commission should expeditiously: (1) order Portland General to cooperate with BPA and PáTu to establish a pseudo-tie that will move the output of PáTu's wind generator from the BPA BAA to the Portland General BAA; (2) order Portland General to cooperate with any and all other arrangements necessary to complete the dynamic scheduling arrangement agreed to between PáTu and BPA; and, (3) impose such penalties as the Commission deems appropriate for Portland General's continuing and intentional violations of the Commission's orders in Docket No. EL15-6.



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