

154 FERC ¶ 61,167
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

PáTu Wind Farm, LLC

v.

Portland General Electric Company

Docket No. EL16-16-000

PáTu Wind Farm, LLC

Docket No. QF06-17-004

ORDER DENYING COMPLAINT

(Issued March 3, 2016)

1. On November 18, 2015, pursuant to sections 206 and 306 of the Federal Power Act (FPA)¹, section 210(h)(1) of the Public Utility Regulatory Policies Act of 1978 (PURPA),² and the Commission regulations,³ PáTu Wind Farm, LLC (PáTu) filed a complaint seeking enforcement of prior Commission orders.⁴ As discussed below, we deny PáTu's complaint.

¹ 16 U.S.C. §§ 824e, 825e (2012).

² 16 U.S.C. § 824a-3(h)(1) (2012).

³ 18 C.F.R. § 385.206 (2015).

⁴ *PáTu Wind Farm, LLC v. Portland General Electric Co.*, 150 FERC ¶ 61,032 (2015) (*PáTu I*), *reh'g denied*, 151 FERC ¶ 61,223 (*PáTu Rehearing*) (collectively, *PáTu I Orders*).

I. Background

2. PáTu operates a 9 MW net capacity wind farm located in Sherman County, Oregon, that is self-certified as a QF under PURPA. PáTu's output is delivered across the local grid to Bonneville Power Administration's (BPA) DeMoss substation. PáTu has a long-term, firm point-to-point transmission service agreement with BPA to deliver PáTu's output to the Portland General balancing authority area at Portland General's Troutdale substation.⁵

3. On April 29, 2010, PáTu and Portland General entered into the Oregon Public Utility Commission's (Oregon Commission) standard PURPA contract for off-system, intermittent-resource QFs less than or equal to 10 MW nameplate capacity (Standard Contract). PáTu further states that its QF achieved commercial operation in late 2010.⁶

4. On October 10, 2014, PáTu filed a complaint with the Commission asserting that, at all times since achieving commercial operation, dynamic scheduling would allow PáTu to deliver its QF output on a kW-hour basis to the Portland General balancing authority area.⁷ PáTu alleged that Portland General's merchant function refused to accept dynamic scheduling imports from QFs,⁸ thereby forcing PáTu to deliver power to Portland General in prescheduled MW-hour blocks. PáTu explained that, in order to deliver this firm, hourly, full MW-hour product, it was purchasing generator imbalance service, wind regulating reserves, wind following reserves, and wind imbalance service from BPA.⁹

5. The Commission granted, in relevant part, PáTu's complaint and directed Portland General "to accept PáTu's *entire* net output (all energy less onsite uses and losses) delivered to the Portland General balancing authority area."¹⁰ The Commission explained that the Standard Contract provides that PáTu will sell its entire net output

⁵ PáTu November 2015 Complaint at 4.

⁶ *Id.* at 4-5.

⁷ PáTu October 2014 Complaint at 7.

⁸ *Id.* at 22. PáTu alleged that a Portland General transmission function employee stated that Portland General's transmission function could accept PáTu's output using dynamic scheduling. *Id.* at 8-9, Att. 4 at 29-31.

⁹ *Id.* at 11.

¹⁰ *PáTu I*, 150 FERC ¶ 61,032 at P 49.

delivered to Portland General at its Troutdale substation, but does not state that Portland General need only purchase what PáTu has scheduled.¹¹

6. In denying rehearing, the Commission noted the Oregon Commission's finding that, under the "Standard Contract pursuant to which PáTu sells to Portland General, small QFs such as PáTu are not responsible for additional wind integration costs because those costs were already taken into account in calculating the avoided cost rate."¹²

7. The Commission noted that the Oregon Commission directed utilities to pay full avoided costs for all energy delivered under a QF standard contract.¹³ Furthermore, the Commission explained that the Oregon Commission found that the standard avoided costs for small wind projects with standard contracts, like PáTu, should not be adjusted for integration costs.¹⁴ The Commission stated that:

While the parties' pleadings focus on dynamic scheduling, the issue in this proceeding is whether Portland General is fulfilling its obligations under PURPA and the Commission's regulations, as implemented by the Oregon Commission. We find that Portland General, and more specifically in the context of a functionally unbundled utility, Portland General's merchant function, has an obligation to purchase PáTu's entire net output delivered to Portland General's Troutdale substation, as required by PURPA and the Commission's regulations.[¹⁵]

¹¹ *Id.* PP 51-52.

¹² *PáTu Rehearing*, 151 FERC ¶ 61,223 at P 54.

¹³ *Id.* P 52 (citing Oregon Commission's May 13, 2005 Order 05-584 (concluding "that intermittent and firm resources should be valued equally, and direct[ed] utilities to pay full avoided costs pursuant to the appropriate methodology for all energy delivered under a QF standard contract, but only up to the nameplate rating of the facility"))).

¹⁴ *Id.* P 53 (citing Oregon Commission's August 20, 2007 Order 07-360 (finding that "[f]or small wind projects under standard contracts, . . . the method for calculating standard avoided cost rates adopted in Order No. 05-584 is a reasonable estimate of the costs the utility will avoid by purchasing from the small QF and the standard avoided costs should not be adjusted for integration costs"))).

¹⁵ *PáTu I*, 150 FERC ¶ 61,032 at P 50 (internal citations omitted).

8. In conclusion, the Commission reiterated its previous finding, stating that:

[I]t is Portland General's obligation to accept PáTu's entire net output, whether by dynamic scheduling or some other method. Regardless of the transmission or delivery service Portland General's merchant function eventually decides to use to deliver PáTu's net output from Portland General's system at the Troutdale Substation to Portland General's load, PURPA and the Standard Contract require Portland General to purchase PáTu's entire net output, including both the scheduled as well as the unscheduled net output delivered to Portland General's system, at full avoided cost rates.^{16]}

II. PáTu's Complaint

9. PáTu subsequently filed this complaint, requesting that the Commission enforce the *PáTu I Orders*. PáTu explains that it is now delivering its output to Portland General using 15-minute scheduling, which precludes PáTu from delivering its entire output to Portland General.¹⁷ PáTu further explains that, while Portland General is now paying PáTu for undelivered output, PáTu is still required to pay wind integration costs to BPA.¹⁸

10. According to PáTu, dynamic scheduling is the only form of scheduling that would allow PáTu to deliver its entire net output to Portland General and, therefore, Portland General is required to cooperate with PáTu and BPA to establish dynamic scheduling.¹⁹ PáTu states that BPA requires installation of a pseudo-tie at PáTu's wind site with common meter data telemetered to the BPA and Portland General control centers to allow for dynamic scheduling of PáTu's entire net output.²⁰ PáTu asserts that, because the output of PáTu's wind project is unpredictable and does not produce electricity in whole MW amounts, 15-minute scheduling still precludes PáTu from delivering its entire net

¹⁶ *Id.* P 56.

¹⁷ PáTu November 2015 Complaint at 14-15, 22.

¹⁸ *Id.* at 22.

¹⁹ *Id.* at 5, 19, 25. A dynamic transfer can be established using either a "pseudo-tie" or a "dynamic schedule." While PáTu uses the terms "dynamic schedule" and "dynamic transfer" interchangeably throughout the complaint, PáTu more precisely seeks to dynamically transfer its output to Portland General via a pseudo-tie.

²⁰ *Id.* at 2.

output to the Troutdale substation as required by the *PáTu I Orders*.²¹ PáTu asserts that by refusing to establish a pseudo-tie, Portland General has rejected the only form of dynamic scheduling that will allow PáTu to deliver its entire net output to Portland General's balancing authority area.²²

11. PáTu states that the Commission concluded that PáTu is not responsible for paying wind integration costs.²³ PáTu asserts that only dynamic scheduling will relieve PáTu of the obligation to pay BPA for wind integration services. PáTu, therefore, argues that Portland General's refusal to allow a pseudo-tie forces PáTu to continue to pay for wind integration services, which results in PáTu receiving less than full avoided cost rates for its output in violation of the *PáTu I Orders*.²⁴

12. PáTu asserts that the Commission instructed Portland General to treat off-system QFs, such as PáTu, on equal terms with on-system QFs.²⁵ According to PáTu, an on-system QF would sell directly to Portland General, and Portland General would be responsible for the integration of an on-system QF.

13. PáTu asks the Commission to: (1) order Portland General to cooperate with PáTu and BPA to establish a pseudo-tie that will move PáTu's output from BPA's balancing authority area to Portland General's balancing authority area; (2) order Portland General to cooperate with any arrangements necessary to establish the dynamic scheduling arrangement agreed to by PáTu and BPA; and (3) impose penalties for Portland General's violation of the *PáTu I Orders*.²⁶

III. Notice of Filing and Responsive Pleadings

14. Notice of PáTu's filing was published in the *Federal Register*, 80 Fed. Reg. 75,091 (2015), with interventions and protests due on or before December 8, 2015. On November 24, 2015, Portland General requested an extension of time to file an answer until December 16, 2015. The Commission partially granted Portland General's request, extending the comment period until December 11, 2015. BPA filed a timely motion to

²¹ *Id.* at 25.

²² *Id.* at 15.

²³ *Id.* at 15-16 (citing *PáTu Rehearing*, 151 FERC ¶ 61,223 at P 53).

²⁴ *Id.* at 16-17.

²⁵ *Id.* at 16 (citing *PáTu Rehearing*, 151 FERC ¶ 61,223 at P 46).

²⁶ *Id.* at 26.

intervene, Community Renewable Energy Association (CREA) and Northwest and Intermountain Power Producers Coalition (NIPPC) filed timely motions to intervene and comments. On December 11, 2015, Portland General filed an answer to PáTu's complaint. On January 13, 2016, PáTu filed a motion for summary disposition. On January 28, 2016, Portland General filed an answer to PáTu's motion for summary disposition. On February 4, 2016, PáTu filed an answer to Portland General's January 28, 2016 answer. On February 8, 2016, Portland General filed an answer to PáTu's February 4, 2016 answer.

15. Portland General argues that it currently compensates PáTu for its entire net output at avoided cost rates on a kW-hour basis, regardless of how PáTu chooses to schedule its output.²⁷ According to Portland General, it allows PáTu to schedule in whatever manner it likes (but clarifies that a schedule is required for reliability and contractual reasons).²⁸

16. Portland General asserts that, in contrast to PáTu's assertions, the Commission did not require Portland General to accept a dynamic schedule and did not require a pseudo-tie. Portland General argues that PURPA imposes energy purchase obligations, not ancillary services or planning obligations, and that Portland General is only obligated to "offer to purchase electric energy" from PáTu – which Portland General is doing.²⁹

17. Portland General adds that dynamic schedules and pseudo-ties are not the same thing, and that the North American Electric Reliability Corporation and the Commission have distinguished between the two.³⁰ Portland General asserts that the Commission has identified a key difference between dynamic schedules and pseudo-ties:

A dynamic transfer is considered a dynamic schedule when the resource supplying the energy or ancillary services remains under the control of the [balancing authority area] where the resource is interconnected. A dynamic transfer is a pseudo-tie when the [balancing authority area] into which the

²⁷ Portland General states that it has adopted a monthly billing period procedure that effectively reviews PáTu's generation over a monthly billing period based upon actual meter data to ensure that Portland General purchases PáTu's entire net output. Portland General adds that it has been over-paying PáTu since 2011 because Portland General's calculations do not account for losses. *Id.* at 9 & n.34.

²⁸ *Id.* at 8-9. Portland General states that it offered to implement dynamic scheduling. *Id.* at 7.

²⁹ *Id.* at 17 (citing 16 U.S.C. § 824a-3(b) (2012)).

³⁰ *Id.* at 12.

energy or ancillary services are delivered performs the [balancing authority area] functions for the resource (i.e., supplying the energy or ancillary services) even though that resource is interconnected to another [balancing authority area's] electric system.³¹

18. Portland General argues that, in Order No. 890-A, the Commission declined to make pseudo-ties a mandatory service, and while the Commission allows for negotiated pseudo-ties, Portland General is aware of no instance in the eight years since Order No. 890-A in which the Commission has mandated one.³² Portland General states that the only pseudo-ties Portland General has are for fully dispatchable resources, which it owns and controls, and for which it has acquired transmission rights on intervening systems.

19. Portland General states that it is unwilling to convert the off-system Standard Contract into an on-system Standard Contract and adds that it is not willing to assume the responsibilities that would come with a pseudo-tie.³³ Portland General states that a pseudo-tie would inappropriately shift responsibilities under the Oregon Commission-approved Standard Contract,³⁴ and Portland General would bear responsibilities not contemplated by the Oregon Commission when it drafted the on-system and off-system contracts.³⁵

20. Portland General argues that, if the Commission mandates a pseudo-tie in part on the basis of section 292.303(d) of the Commission's regulations, the Commission would exceed its precedent and its authority under PURPA. Portland General argues that, otherwise, the Commission would effectively require a purchasing utility to provide a pseudo-tie on demand, for any off-system QF anywhere in the country, and without

³¹ *Cal. Indep. Sys. Operator Corp.*, 136 FERC ¶ 61,239, at P 2 (2011), *order denying reh'g*, 138 FERC ¶ 61,090 (2012).

³² Portland General Answer at 15.

³³ Portland General asserts that it would have to bear responsibility for operational responsibility, balancing authority services, load forecasting and reporting, and manual load shedding during an emergency. *Id.*

³⁴ *Id.* at 16.

³⁵ *Id.* at 19.

regard to any contract terms to the contrary.³⁶ Portland General further argues that the Commission lacks jurisdiction to grant PáTu's requested relief, and can initiate litigation against a state public utility commission, but cannot revise a state PURPA contract.³⁷

21. Portland General argues that the integration costs imposed on PáTu from BPA are the true issue in this matter.³⁸ Portland General argues, however, that it is not reasonable to conclude that Portland General must pay for the integration costs PáTu assumed pursuant to a third-party transmission provider tariff.³⁹ Portland General asserts that ancillary services are transmission costs, for which the QF is responsible, and that BPA's variable energy resource integration services at issue here are ancillary services. Portland General states that BPA's Variable Energy Resource Balancing Service business practice makes clear that BPA classifies its integration service as an ancillary service associated with underlying transmission transactions on its system.⁴⁰

22. Portland General states that it is willing to engage in negotiations regarding PáTu's dispute and the contract terms with the assistance of a Commission Settlement Judge. Portland General asserts that it is conceivable that the parties can agree on the terms of a new non-standard contract with the help of a Settlement Judge.⁴¹

23. CREA and NIPPC filed comments in support of PáTu's complaint, requesting that the Commission grant the complaint and impose appropriate penalties.⁴² CREA and NIPPC argue that Portland General's refusal to cooperate with BPA in establishing

³⁶ *Id.* at 18. Section 292.303(d) provides that “[a]ny electric utility to which such energy or capacity is transmitted shall purchase such energy or capacity under this subpart as if the qualifying facility were supplying energy or capacity directly to such electric utility.” 18 C.F.R. § 292.303(d) (2015).

³⁷ Portland General Answer at 20-21 (citing *West Penn Power Co.*, 71 FERC 61,153, at 61,495 (1995)).

³⁸ *Id.* at 25.

³⁹ *Id.* at 28.

⁴⁰ *Id.* (citing Attachment 4.7 (Balancing Service Election for Dispatchable Energy Resource Balancing Service and Variable Energy Resource Balancing Service, Version 3)).

⁴¹ *Id.* at 30.

⁴² CREA Comments at 4; NIPPC Comments at 3.

dynamic scheduling violates the Commission directives. CREA asserts that regulated utilities have attempted to keep small QF generators, such as PáTu, out of the market through various tactics similar to Portland General's refusal to accommodate the delivery of off-system QF energy. CREA argues that the "backstop against this type of monopoly power" is the Commission's complaint process.⁴³

24. On January 13, 2016, PáTu filed a motion for summary disposition arguing that, in its answer, Portland General does not contest that: (1) BPA requires a pseudo-tie in order to establish dynamic scheduling of PáTu's entire net output; (2) since Portland General refuses to establish a pseudo-tie, PáTu must pay wind integration costs to BPA; (3) the Oregon Commission calculated the avoided cost rate assuming that a QF does not have to pay wind integration charges; and (4) by relieving Portland General from having to provide wind integration services, PáTu is receiving less than the avoided cost rate for its entire net-output. PáTu asserts that, since Portland General's answer does not dispute any facts material to PáTu's complaint, the Commission should grant summary disposition in PáTu's favor.⁴⁴

25. PáTu argues that, based on the prior orders, PáTu has the authority to determine how its generation will be delivered to the Troutdale station and Portland General is required to cooperate with PáTu in establishing any reasonably available method of transmission.⁴⁵ PáTu reiterates its arguments that, by refusing to establish a pseudo-tie or even participate in the necessary engineering studies to establish a pseudo-tie, Portland General continues to dictate how PáTu can deliver its net output to Troutdale violating the *PáTu I Orders*.⁴⁶ PáTu again argues that a dynamic transfer is consistent with the Standard Contract and that it has sought a dynamic transfer via a pseudo-tie in its initial conversations with Portland General.

26. PáTu agrees with Portland General that PáTu is responsible for delivering its net output to Portland General, and states that it will continue to pay both the Wasco Electric Cooperative and BPA for long-term firm point to point transmission service across their respective systems to Portland General's system at Troutdale.⁴⁷ But PáTu argues that, despite Portland General's revised payment methodology, it is still not being paid the full

⁴³ CREA Comments at 5.

⁴⁴ PáTu Motion at 2-3.

⁴⁵ *Id.* at 7.

⁴⁶ *Id.* at 9

⁴⁷ *Id.* at 31.

avoided cost rate for its entire net output. First, PáTu reiterates its arguments that, since it is still required to pay wind integration charges to BPA, it is being charged twice since the Oregon Commission included the wind integration costs in calculating the avoided cost rate. Second, PáTu argues that by only paying for PáTu's net output instead of accepting delivery, Portland General has unilaterally chosen to pay damages it has unilaterally calculated for violating the Standard Contract.⁴⁸

27. PáTu also argues that, with Portland General's revised scheduling requirements, there is still output that cannot be delivered to Portland General. For example, PáTu argues that, since June 17, 2015, there have been approximately 509 MW-hours that could not be delivered and had to be absorbed by BPA. PáTu also argues that Portland General's revised payment methodology does not account for BPA's treatment of excess generation⁴⁹ or deviation penalties,⁵⁰ and employs a different market index.⁵¹

28. Portland General responds that the Commission should deny PáTu's motion for summary disposition because it asserts there are material facts in dispute and when reviewing the motion, the presumption for summary disposition favors the non-moving party. Portland General asserts that the parties disagree as to whether: (1) Portland General's revised payment schedule is consistent with the Commission's directives in the *PáTu I Orders*; (2) BPA's policy requires Portland General to install a pseudo-tie; (3) PáTu has always intended to be treated as an on-system resource; and (4) PáTu's contract to sell power to Portland General includes an entitlement to transmission service on Portland General's system.

⁴⁸ *Id.* at 37.

⁴⁹ *Id.* at 41. PáTu asserts that excess energy is only credited to PáTu if there is a positive balance in its Deviation Band 1 monthly account balance and if the amount of over-generation is within 2 MW in any given hour or 15-minute schedule period in aggregate over the relevant month. *Id.*

⁵⁰ *Id.* at 41-42. According to PáTu, if the difference between PáTu's schedule and actual output exceeds 2 MW or more in any given hour or 15-minute schedule period, BPA charges PáTu a penalty equal to 10 percent of BPA's incremental costs. Furthermore, PáTu states that persistent deviation penalties can eliminate any credit for excess energy by requiring PáTu to pay 125 percent of BPA's incremental costs. *Id.* (citing Attachment 16 § D (BPA's Generation Imbalance Service Business Practice)).

⁵¹ PáTu states that, while BPA uses the Powerdex Mid-Columbia Hourly Index, Portland General's revised payment methodology uses the daily ICE Mid-C Index. *Id.* at 42 (citing Attachment 16 § E (Energy Indices)).

29. Portland General reiterates its arguments that, in order to accept PáTu's net output, as required by the *PáTu I Orders*, Portland General has adopted a billing convention that reviews PáTu's generation over a monthly billing period to ensure PáTu is being paid for all generation, whether scheduled or not. Portland General argues that only scheduled power can be delivered to a specific location, and that unscheduled power flows at the point of the generator's interconnection are the interconnected balancing authority area's (here, BPA's) responsibility to address.⁵²

30. Portland General argues that its obligations under PURPA do not begin until PáTu's power is delivered to the Troutdale station, hence Portland General argues it is not responsible for unscheduled power that flows to BPA or any charges BPA assigns for managing the unscheduled power flows. Portland General argues that, consistent with the Commission's directives, it is accepting and paying for PáTu's entire net output at avoided cost rates and it will accept either 15 minute or dynamic scheduling. However, Portland General argues that its refusal to establish a pseudo-tie does not equate to Portland General dictating PáTu's scheduling requirements.

31. Portland General again argues that the *PáTu I Orders* required Portland General's merchant function to deliver PáTu's power from Troutdale to load, but did not require Portland General to install a pseudo-tie. Portland General reiterates that the *PáTu I Orders* require PáTu to arrange for transportation to the Troutdale station.⁵³

32. Portland General also again argues that, in calculating the avoided cost rate, the Oregon Commission did not require Portland General to pay for BPA's wind integration costs. Finally, Portland General asserts that PáTu originally requested dynamic scheduling and not a pseudo-tie.⁵⁴

33. PáTu filed a subsequent response, arguing that Portland General belatedly and inappropriately included new evidence in its response.⁵⁵ Portland General responded, asserting that: (1) PáTu's response was inappropriate; (2) PáTu's response disputing the new evidence is further proof that there are facts in dispute supporting Portland General's

⁵² Portland General Response to Motion at 11-12.

⁵³ *Id.* at 17.

⁵⁴ *Id.* at 24.

⁵⁵ PáTu February 4, 2016 Answer to Portland General's Response at 2 (referencing an April 2009 letter written by PáTu General Manager). *Id.*

request that the Commission deny PáTu's motion; and (3) the new evidence is appropriate and necessary to dispute PáTu's motion for summary disposition.⁵⁶

IV. Discussion

A. Procedural Matters

34. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

35. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by Portland General and PáTu because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

36. In *PáTu Rehearing*, the Commission held that Portland General "must take from PáTu its *entire* net output . . . delivered and to do so at avoided cost rates."⁵⁷ Since *PáTu Rehearing*, Portland General has been paying PáTu the avoided cost rate for PáTu's entire net output delivered to Portland General, and has been paying the difference between the avoided cost rate and a market rate for PáTu's unscheduled output. This approach is consistent with our discussion in the *PáTu I Orders*, which also declined to require Portland General to accept PáTu's net output using dynamic scheduling.⁵⁸ Instead, the Commission directed Portland General to accept PáTu's entire net output by dynamic scheduling or *some other method*.⁵⁹ In response, Portland General now accepts

⁵⁶ Portland General February 8, 2016 Response to PáTu's February 4, 2016 Answer.

⁵⁷ *PáTu Rehearing*, 151 FERC ¶ 61,223 at P 44; *accord, id.* PP 46, 47, 48.

⁵⁸ *Id.* P 56.

⁵⁹ *Id.* (emphasis added).

15-minute scheduling; provides additional payments for PáTu's unscheduled net output;⁶⁰ and allows PáTu to schedule and deliver on a kW-hour basis, as opposed to the whole MW-hour blocks it previously required. Given this, we find that Portland General's combined efforts of physical and financial arrangements comply with the directives in the *PáTu I Orders*.

37. We deny PáTu's request that the Commission require Portland General to establish a pseudo-tie with PáTu. We did not order a pseudo-tie for PáTu in our prior orders, and we do not do so here. Neither PURPA nor the Commission's regulations require a purchasing utility, on the facts presented here, to establish a pseudo-tie with an off-system QF. Indeed, the Commission has "decline[d] to impose unlimited planning, reliability and ancillary service requirements on transmission providers by forcing them to accept any load or generator that seeks to move to their systems."⁶¹

38. Moreover, the Commission declined to find in the *PáTu I Orders* that Portland General was required to accept PáTu's output on an instantaneous basis. While Portland General's mandatory purchase obligation requires Portland General to purchase PáTu's entire net output, it decidedly does not require Portland General to establish a pseudo-tie to accept a dynamic transfer from PáTu.⁶²

39. With respect to the wind integration costs that PáTu incurs, the Commission deferred to the Oregon Commission's treatment of wind integration costs.⁶³ The Oregon

⁶⁰ Portland General is paying the avoided cost rate for all of PáTu's scheduled and delivered net output. Additionally, under certain conditions, BPA purchases PáTu's unscheduled net output at the Powerdex Mid-Columbia Hourly Index-based market rate. Portland General supplements BPA's purchase by paying PáTu the difference between the daily ICE Mid-C Index-based market rate and the avoided cost rate for PáTu's unscheduled net output.

⁶¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, at P 631 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁶² While the Commission previously held that there is no basis to find that the purchase price in the Standard Contract was for a more valuable scheduled product, the Commission also noted that the Oregon Commission previously "concluded that the Standard Contract does not mention how PáTu should honor the prescheduled amount." *PáTu Rehearing*, 151 FERC ¶ 61,223 at P 52.

⁶³ *PáTu Rehearing*, 151 FERC ¶ 61,223 at P 54.

Commission's Administrative Law Judge (later affirmed by the Oregon Commission) stated that the Oregon Commission "does not have any jurisdiction over the transmission of QF output to a utility" and "could not, therefore, direct [Portland General] to participate in a dynamic transfer under the guise of the standard contract."⁶⁴ The Commission, however, did not find that BPA, as distinct from Portland General, was barred from imposing wind integration costs.⁶⁵

40. PáTu has chosen to sell to Portland General rather than to its host utility or to BPA. As such, PáTu is responsible for the costs it incurs to deliver its output over BPA's system to Portland General. As specified under section 3.1.11 of the Standard Contract, "the cost of delivering energy from the [PáTu] facility to Portland General is the sole responsibility of the Seller [PáTu]."⁶⁶ The costs of the wind integration services provided by BPA are part of the costs PáTu incurs to deliver its output over BPA's system to Portland General. PáTu thus has to separately pay BPA for such wind integration services. That payment, however, should not be interpreted to mean that PáTu is not receiving the full avoided cost rate from Portland General for its entire net output delivered to Portland General.

⁶⁴ *PáTu I*, 150 FERC ¶ 61,032 at P 13.

⁶⁵ *Id.* P 52-54.

⁶⁶ *See also PáTu Rehearing*, 151 FERC ¶ 61,223 at P 47 ("[o]f course, under PURPA and the Commission's regulations and precedent, the QF is responsible for delivering its net output to the purchasing utility"); *see generally Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, Order No. 69, FERC Stats. & Regs. ¶ 30,128, at 30,872, *order on reh'g sub nom.* Order No. 69-A, FERC Stats. & Regs. ¶ 30,160 (1980), *aff'd in part & vacated in part*, *Am. Elec. Power Serv. Corp. v. FERC*, 675 F.2d 1226 (D.C. Cir. 1982), *rev'd in part sub nom. Am. Paper Inst., Inc. v. Am. Elec. Power Serv. Corp.*, 461 U.S. 402 (1983); 18 C.F.R. 292.303(d) (2015).

The Commission orders:

PáTu's complaint is hereby denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.