

154 FERC ¶ 61,259  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

Berkshire Power Company LLC  
Power Plant Management Services LLC

Docket No. IN16-3-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued March 30, 2016)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement), Berkshire Power Company LLC (Berkshire), and Power Plant Management Services LLC (PPMS). This order is in the public interest because it resolves on fair and equitable terms the investigation into whether Berkshire and PPMS violated section 222 of the Federal Power Act (FPA) and the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.1 (2015), and whether Berkshire separately violated the Market Behavior Rules, 18 C.F.R. § 35.41(a) and (b), the ISO-NE Tariff, and certain Commission-Approved Reliability Standards, by concealing plant maintenance and associated outages from ISO-New England, Inc. (ISO-NE) between January 1, 2008 and March 30, 2011 (the Relevant Period). Berkshire and PPMS admit the violations and agree to pay a civil penalty of \$2,000,000 and to implement measures designed to improve compliance with applicable Commission regulations and jurisdictional tariffs. In addition, Berkshire agrees to pay to ISO-NE disgorgement of \$1,012,563, plus interest. For violations of the Reliability Standards, Berkshire agrees to pay an additional civil penalty of \$30,000.

**I. Facts**

2. Berkshire owns an approximately 245 MW natural gas-fired, combined-cycle generating facility in Agawam, Massachusetts (the Plant). The Plant began operations in June 2000 and has had authority from the Commission under section 205 of the FPA to make sales at market-based rates. Berkshire registered with the North American Electric Reliability Corporation (NERC) as a Generator Owner and Generator Operator on August 14, 2008 and was required to comply with Commission-approved NERC Reliability Standards.

3. PPMS is a general and administrative services management consulting firm that Berkshire hired to provide project management and administrative services at the Plant. PPMS hired a Projects General Manager for the Plant. Before joining PPMS, that person had served in numerous high-level roles at the Plant (including supervising the Plant's construction in the 1990s and subsequently managing the Plant) and had served as Berkshire's representative in various capacities related to the Plant.
4. With PPMS's assistance, Berkshire hired a third party company (Third Party Company) to provide Operations and Maintenance services at the Plant beginning in January 2009. PPMS was responsible for overseeing the Third Party Company's performance. All of the employees at the Plant, with the exception of the Projects General Manager, became employees of the Third Party Company.
5. During the Relevant Period, Berkshire made offers and sold power into the ISO-NE Day Ahead and Real-Time Energy Markets and was required to comply with the ISO-NE Tariff. ISO-NE was Berkshire's transmission operator and balancing authority during that period.
6. In 2005, Berkshire entered into a Reliability-Must-Run (RMR) agreement with ISO-NE requiring it to operate and maintain the Plant in exchange for certain payments. The RMR agreement entitled Berkshire to a Monthly Fixed-Cost Charge, the size of which was based principally on the number of hours the Plant was available that month. The RMR agreement expired on June 1, 2010, and it was not renewed. Berkshire also participated in ISO-NE's installed capacity (ICAP) program during the time the RMR agreement was in effect, and was required to comply with provisions in the ISO-NE Tariff applicable to such ICAP resources.
7. When the RMR agreement expired, Berkshire became a participant in the ISO-NE Forward Capacity Market, and it participated in that market until the end of the Relevant Period. Berkshire was required to comply with provisions of the ISO-NE Tariff applicable to such generating capacity resources during the time it participated in the Forward Capacity Market.
8. At the Projects General Manager's direction, Berkshire Power engaged in a fraudulent scheme to perform unreported maintenance work and to conceal that work and associated maintenance outages from ISO-NE. Individuals at the Plant scheduled maintenance work for times when the Plant was unlikely to be dispatched and then failed to notify ISO-NE about the work or the associated Plant unavailability. The Projects General Manager continued this scheme even after the Third Party plant manager confronted him and informed him that his actions likely were illegal. As a result, Berkshire failed to report at least 16 separate periods of significant maintenance-related outages between January 2008 and March 2011, when the Projects General Manager was

removed from his position at the Plant (due to discovery of potential violations of federal and state environmental laws at the Plant) and the scheme ended.

9. The Projects General Manager directed and assisted employees of the Third Party Company in preparing the Generating Availability Data System (GADS) reports that Berkshire was required to submit to ISO-NE during the Relevant Period. Those reports did not disclose the unreported maintenance outages.

10. The Projects General Manager instructed the control room operators that if they received a dispatch call from ISO-NE during a time that the generator was unavailable, they should act as if it were available, acknowledge the request, and then call the Projects General Manager. If ISO-NE asked how soon the Plant could start, he directed them generally to respond “within one hour.” The Projects General Manager then called ISO-NE dispatch office himself or told the operator to wait for some amount time and then call ISO-NE and (falsely) assert that the Plant had experienced an unanticipated problem during start-up.

11. There were at least six instances in which employees of the Third Party Company, acting pursuant to the Projects General Manager’s standing order, falsely represented to ISO-NE dispatchers that the Plant was starting up or was able to start up when it was, in fact, unavailable due to ongoing maintenance or other technical problems.

12. After the scheme ended, but before Enforcement began its investigation, Berkshire terminated several employees involved in misconduct at the Plant, ended its operations and maintenance agreement with the Third Party Company, overhauled the Plant infrastructure, and implemented new compliance measures at the Plant. The company took these actions, before the FPA violations were identified, in response to its discovery of the potential environmental violations.

## **II. Violations**

13. Enforcement initiated this investigation in June 2014, following a referral from the United States Attorney’s Office for the District of Massachusetts.

14. After completing its fact-finding, Enforcement concluded that Berkshire and PPMS violated section 222 of the FPA and the Commission’s Anti-Manipulation Rule by concealing its maintenance work and associated outages from ISO-NE. That rule prohibits any entity from using a fraudulent device, scheme, or artifice, or engaging in any act, practice, or course of business that operates or would operate as a fraud; with the requisite scienter; in connection with a transaction subject to the jurisdiction of the Commission. The Projects General Manager’s explicit instructions directing employees at the Plant to tell ISO-NE that Berkshire had tried to start when it had not and his continued efforts to conceal maintenance and associated outages from ISO-NE even after being confronted by the Third Party Company plant manager demonstrates that he

intended to engage in a scheme to defraud ISO-NE. Such intent to defraud satisfies the scienter requirement. Moreover, because the scheme involved sales and offers for sales of energy and capacity in ISO-NE's wholesale markets, the conduct was undertaken in connection with the sale or transmission of electric energy subject to the jurisdiction of the Commission.

15. Section 35.41(a) of the Commission's regulations mandates that "[w]here a Seller participates in a Commission-approved organized market, Seller must operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the Commission-approved rules and regulations of the applicable market." Berkshire, but not PPMS, was a "Seller" during the period relevant to this investigation, as that term is defined in section 35.36(a)(1) of the Commission's regulations. Enforcement concluded that Berkshire violated applicable provisions of the ISO-NE Tariff requiring it to schedule and disclose plant maintenance and to accurately report on plant availability. Such tariff violations also constituted violations of section 35.41(a).

16. Section 35.41(b) of the Commission's regulations requires all Sellers to "provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with . . . Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercises due diligence to prevent such occurrences." Enforcement concluded that Berkshire violated section 35.41(b) through the false and misleading representations that plant operators and Projects General Manager made regarding their purported efforts to start the plant as well by making false and misleading statements in the GADS reports Berkshire submitted to ISO-NE.

17. Finally, Enforcement concluded that Berkshire violated Commission-approved Reliability Standards by withholding information regarding its planned maintenance outages and Plant capabilities and availability.

### **III. Stipulation and Consent Agreement**

18. Enforcement, Berkshire, and PPMS resolved this matter by means of the attached Agreement.

19. Berkshire and PPMS stipulate to the facts, admit the violations set out in the Agreement, and agree to pay a civil penalty of \$2,000,000 to the United States Treasury. Berkshire agrees to pay to ISO-NE disgorgement of \$1,012,563, plus interest.

20. Berkshire further agrees to pay a civil penalty of \$30,000 to the United States Treasury for its violations of the Reliability Standards.

#### IV. Determination of the Appropriate Sanctions and Remedies

21. In recommending the appropriate remedy, Enforcement considered the factors in the Revised Policy Statement on Penalty Guidelines,<sup>1</sup> recognizing, in particular, that both companies cooperated fully and comprehensively throughout the investigation, both accepted responsibility for their violations, and neither has a prior history of violations. The remedy also reflects that neither company had an effective compliance program in place during the Relevant Period and that a high-level employee at the plant (i.e., the Projects General Manager) directed the scheme.

22. Furthermore, while the individuals at the Plant were not directly employed by Berkshire during the Relevant Period, Berkshire is responsible for actions taken by its agents and its agents' employees.

23. The cost of purchasing capacity in New England is allocated to network load-serving entities, and the Monthly Fixed-Cost Charge payments that ISO-NE made under the RMR agreement were allocated to transmission companies. Ultimately, all of that money was paid by the customers that make up network load in the region; therefore, those customers ultimately bore the cost of the companies' misrepresentations and fraud.

24. We conclude that the disgorgement, penalty, and compliance monitoring set forth in the Agreement are a fair and equitable resolution of this matter and are in the public interest, as they reflect the nature and seriousness of the violations.

25. The Commission directs Berkshire and PPMS to make the disgorgement and civil penalty payments as required by the Agreement within ten business days of the Effective Date of the Agreement.

26. The Commission directs Berkshire and PPMS to comply with the provisions in the Agreement also requiring them to implement procedures to improve compliance going forward, subject to monitoring via submission of semi-annual reports for at least one year.

27. The Commission directs ISO-NE to allocate the disgorgement funds *pro rata* to network load during the applicable period.

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<sup>1</sup> *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010) (Revised Penalty Guidelines).

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission. Chairman Bay is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Berkshire Power Company LLC  
Power Plant Management Services LLC

Docket No. IN16-3-000

**STIPULATION AND CONSENT AGREEMENT**

**I. Introduction**

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission), Berkshire Power Company LLC (Berkshire), and Power Plant Management Services LLC (PPMS, and together with Berkshire, the Companies) enter into this Stipulation and Consent Agreement (Agreement) to resolve a non-public investigation (Investigation) of the Companies' conduct between January 1, 2008 and March 31, 2011 (Relevant Period). Staff initiated this investigation in June 2014, following a referral from the United States Attorney's Office for the District of Massachusetts. Enforcement conducted the investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2015).

2. The companies admit to violations of the Commission's Anti-Manipulation Rule, Section 222 of the Federal Power Act (FPA), 16 U.S.C. § 824v(a) and 18 C.F.R. § 1c.2 (2015); the Market Behavior Rules, 18 C.F.R. §§ 35.41(a) and (b) (2015); and the ISO-New England, Inc. (ISO-NE) Transmission, Markets, and Services Tariff (ISO-NE Tariff), as described below. The Companies agree to: (a) pay a civil penalty of \$2,000,000 to the United States Treasury and (b) implement procedures to improve compliance going forward, subject to monitoring via submission of semi-annual reports for one year. Berkshire will pay to ISO-NE disgorgement of \$1,012,563, plus interest.

3. In addition, Berkshire admits to violations of several Commission-approved Reliability Standards and agrees to pay a civil penalty of \$30,000 to the United States Treasury for those violations.

**II. Stipulations**

Enforcement and the Companies hereby stipulate and agree to the following facts:

**A. The Companies**

4. Berkshire is a subsidiary of the EIF Berkshire Holdings, LLC, which, during the Relevant Period, ultimately was managed by Ares EIF Management, LLC, formerly known as EIF Management, LLC (EIF). Berkshire owns an approximately 245 MW (289 MW maximum nominal gross nameplate capacity) natural gas-fired, combined-cycle generating facility in Agawam, Massachusetts (the Plant). The Plant began operations in June 2000 and, during the Relevant Period, had authority from the Commission under section 205 of the FPA to make sales at market-based rates.
5. PPMS is a general and administrative services management consulting firm that was formed in 2006 to provide management services to EIF-affiliated projects.
6. In July 2008, Berkshire engaged PPMS to provide project management and administrative services at the Plant.
7. With PPMS's assistance, Berkshire hired a third party company (Third Party Company) to provide Operations and Maintenance services at the Plant starting January 9, 2009. The Third Party Company hired a plant manager to run the day-to-day operations.
8. In January 2009, PPMS hired a Projects General Manager for the Plant (Projects General Manager). That individual had a long history with the Plant by that point, as he had supervised its construction in the 1990s and had served in capacities including its general manager and/or plant manager since February 1998. He also had served as Berkshire's owner's representative in various capacities.
9. All of the employees at the Plant, with the exception of the Projects General Manager, became employees of the Third Party Company in January 2009.
10. PPMS was responsible for overseeing the Third Party Company's performance.
11. The Projects General Manager's authority was set forth in various employment documents, but notwithstanding certain stated limitations on his authority in those documents, Plant employees viewed him as the ultimate decision maker at the Plant, and he prepared Berkshire's offers for the power markets, directed the Plant's maintenance



program, and managed all communications with ISO-NE and Berkshire's lead market participant.

#### A. Participation in the ISO-NE Markets

12. During the Relevant Period, Berkshire made offers and sold power into the ISO-NE Day Ahead and Real-Time Energy Markets as a Resource and Market Participant, as those terms are defined in the ISO-NE Tariff. As such, it was required to comply with the ISO-NE Tariff, including:

Section III.1.7.20(b), which requires such Resources to “respond to the ISO’s directives to start . . . [and] continuously maintain all Offer Data concurrent with on-line operating information.”

13. Berkshire entered into a Reliability-Must-Run (RMR) agreement with ISO-NE, effective July 1, 2005, requiring it to operate and maintain the Plant in exchange for certain payments. The RMR agreement entitled Berkshire to a Monthly Fixed-Cost Charge, the size of which was based principally on the number of hours that the Plant was available that month. The cumulative Monthly Fixed-Cost Charges were subject to an annual cap of \$26,000,000.

14. The RMR agreement listed the Projects General Manager (who, during the term of the RMR agreement, became and then served as an employee of PPMS) as the Owner's Representative for purposes of implementing the agreement. The parties to the RMR agreement stipulated that their representatives had “full authority to deal with all day-to-day matters arising under th[e] Agreement” and that “[a]cts and omissions of representatives shall be deemed to be acts and omissions of the Party.” They further stipulated that “Owner and ISO shall be entitled to assume that the representatives of each Party are at all times acting within the limits of the authority given by the representatives' Party.” The RMR agreement expired on June 1, 2010, and it was not renewed.

15. Berkshire also participated in ISO-NE's installed capacity (ICAP) program during the time that the RMR agreement was in effect and was required to comply with provisions in the ISO-NE Tariff applicable to ICAP Resources (as that term is defined in the ISO-NE Tariff), including:

Section III.8.3.1(c), which required ICAP Resources to “notify the ISO of any outage (including partial outages) and the expected return date from the outage,” and

Section III.8.3.1(e), which required ICAP Resources to abide by ISO-NE’s maintenance coordination procedures. Such procedures included Manual M-20, which obligated Berkshire to notify the ISO Operations Department for any hour of any day that the resource could not provide the full amount capacity due to a forced outage, and ISO-NE Operating Procedure No. 5, which required Berkshire to notify the ISO Control Room Generation Desk and ISO Forecaster regarding outages.

16. When the RMR agreement expired, Berkshire became a participant in the ISO-NE Forward Capacity Market, and it participated in that market until the end of the Relevant Period. As a Generating Capacity Resource (as that term is defined in the ISO-NE Tariff) during that period, Berkshire was required to comply with certain provisions of the ISO-NE Tariff, including:

Section III.13.6.1.1.2 , which requires such Resources to “re-declare to the ISO any changes to the offer parameters that occur in real time to reflect the known capability of the resource,” and

Section III.13.6.1.1.5(c), which requires such Resources to follow ISO New England Manuals and Operating Procedures regarding outages. Such procedures included Manual M-20 and ISO-NE Operating Procedure No. 5.

17. Berkshire registered with the North American Electric Reliability Corporation (NERC) as a Generator Owner and Generator Operator on August 14, 2008. As such, it was required to comply with Commission-approved Reliability Standards, including:

TOP-002-2 R14, which states:

R14. Generator Operators shall, without any intentional time delay, notify their Balancing Authority and Transmission Operator of changes in capabilities and characteristics including but not limited to:

R14.1. Changes in real output capabilities.

TOP-003-1 R1.1, which states:

R1.1. Each Generator Operator shall provide outage information daily to its Transmission Operator for scheduled generator outages planned for the next day (any foreseen outage of a generator greater than 50 MW). The Transmission Operator shall establish the outage reporting requirements.

TOP-006-1 R1, which states:

R.1. Each Transmission Operator and Balancing Authority shall know the status of all generation and transmission resources available for use.

R1.1. Each Generator Operator shall inform its Host Balancing Authority and the Transmission Operator of all generation resources available for use.

18. ISO-NE was Berkshire's Transmission Operator and Balancing Authority during the Relevant Period.

a. The Fraudulent Scheme

19. The Projects General Manager engaged in a fraudulent scheme to perform unreported maintenance work and to conceal that work and associated maintenance outages from ISO-NE. Berkshire is responsible for the actions of its agents.

20. Individuals at the Plant scheduled maintenance work for times when the Plant was unlikely to be dispatched and then failed to notify ISO-NE about the work or the associated Plant unavailability.

21. In March 2009, the Plant manager hired by the Third Party Company confronted the Projects General Manager about the scheme, informed him that his actions likely violated the law, and recommended that Berkshire stop performing unreported maintenance. The Projects General Manager rejected that recommendation, and Berkshire continued to conceal its maintenance work from ISO-NE.

22. Berkshire failed to report at least 16 separate periods of significant maintenance-related outages between January 2008 and March 2011, when the Projects General Manager was removed from his position at the Plant, thereby ending the scheme. The instances were identified based on a review of control room operator logs and other logs, recordings of calls with ISO-NE, invoices, internal company communications, and the testimony of current and former employees at the Plant. At least half of those 16 unreported outages lasted ten hours or more, and one unreported outage lasted 86 hours.

23. The Projects General Manager assisted employees of the Third Party Company in preparing the Generating Availability Data System (GADS) reports that Berkshire was required to submit to ISO-NE during the Relevant Period. Those reports did not disclose the unreported maintenance outages.

24. The Projects General Manager gave the control room operators specific instructions as to how they should respond if the Plant nevertheless was dispatched while it was unavailable due to ongoing maintenance. Specifically, the operators were given a standing order that if they received a dispatch call from ISO-NE during a time that the generator was unavailable, they should act as if it were available, acknowledge the request, and then call the Projects General Manager. If ISO-NE asked how soon the Plant could start, they generally were to respond “within one hour.” The Projects General Manager then called ISO-NE dispatch office himself or told the operator to wait for some amount time and then (falsely) assert that the Plant had experienced an unanticipated problem during start-up.

25. There were at least six instances in which employees of the Third Party Company, acting pursuant to the Projects General Manager’s standing order, falsely represented to ISO-NE dispatchers that the Plant was starting up or able to start up when it was, in fact, unavailable due to ongoing maintenance or other technical problems.

26. The scheme ended in March 2011, when the Projects General Manager’s responsibilities at the Plant were suspended due to the discovery of evidence suggesting violations of federal and state environmental laws.

27. The Projects General Manager passed away in December 2012.

### **III. Violations**

28. The Companies admit that they violated the Anti-Manipulation Rule. That rule prohibits any entity from using a fraudulent device, scheme, or artifice, or engaging in any act, practice, or course of business that operates or would operate as a fraud; with the requisite scienter; in connection with a transaction subject to the jurisdiction of the Commission.

29. The Projects General Manager directed Berkshire to engage in a fraudulent scheme to conceal certain maintenance work and related unavailability from ISO-NE. From January 2008 until the scheme ended in March 2011, oversight of and control over

management of the Plant was within the real or apparent scope of the Projects General Manager's employment (which, from 2009 until after the scheme ended, was with PPMS).

30. The Projects General Manager's explicit instructions directing employees at the Plant to tell ISO-NE that Berkshire had tried to start when it had not and his continued efforts to conceal maintenance and associated outages from ISO-NE even after being confronted by the Third Party Company plant manager demonstrates that he intended to engage in a scheme to defraud ISO-NE. Such intent to defraud satisfies the scienter requirement. Moreover, because the scheme involved sales and offers for sales of energy and capacity in ISO-NE's wholesale markets, the conduct was undertaken in connection with the purchase, sale or transmission of electric energy subject to the jurisdiction of the Commission.

31. Berkshire, but not PPMS, was a "Seller" during the period relevant to this investigation, as that term is defined in section 35.36(a)(1) of the Commission's regulations. Section 35.41(a) of those regulations mandates that "[w]here a Seller participates in a Commission-approved organized market, Seller must operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the Commission-approved rules and regulations of the applicable market."

32. Berkshire violated the ISO-NE Tariff and section 35.41(a) of the Commission's regulations by failing to schedule and disclose maintenance and failing to accurately disclose its availability. The provisions of the ISO-NE tariff that it violated include sections III.1.7.20(b), III.8.3.1(c) and (e), III.13.6.1.1.2, and III.13.6.1.1.5(c) during the relevant time period for each of those provisions.

33. Section 35.41(b) of the Commission's regulations requires all Sellers to "provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with . . . Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercises due diligence to prevent such occurrences."

34. The Projects General Manager and the Third Party Company's operators made false and misleading representations that they were trying to start the Plant (or could start the Plant), and made false and misleading representations regarding the Plant's

availability. Berkshire made false and misleading GADS reports. These false and misleading representations and reports violated section 35.41(b).

35. Berkshire admits that it violated Commission-approved Reliability Standards TOP-002-2 R14, TOP-003-1 R1.1, and TOP-006-1 R1 by withholding information regarding its planned maintenance unavailability, both before and during the unavailability.

#### **IV. Remedies and Sanctions**

36. For purposes of settling any and all claims, civil and administrative disputes and proceedings arising from Enforcement's Investigation, the Companies agree with the facts as stipulated in Section II of this Agreement, and they admit the violations described in Section III of this Agreement. The Companies further agree to undertake obligations set forth in the following paragraphs.

##### **b. Disgorgement**

37. Berkshire shall pay to ISO-NE disgorgement of \$1,012,563, plus interest calculated pursuant to 18 C.F.R. § 35.19a (2015).

38. That disgorgement amount represents (1) for the sixteen periods of substantial unreported maintenance, the Capacity Payments or Fixed-Cost Charges that accrued for the hours when the Plant was not actually able to generate power; and (2) for the six instances in which the Projects General Manager and/or the operators affirmatively misstated availability to ISO-NE staff in connection with a dispatch call, the Capacity Payments or Fixed-Cost Charges for the days on which such misstatements were made.

##### **c. Civil Penalty**

39. The Companies agree to pay a civil penalty of \$2,000,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined herein. The Companies agree to be held jointly and severally liable for payment of the \$2,000,000 civil penalty.

40. The penalty is based, in part, on the following factors: (1) an individual with substantial authority (the Projects General Manager ) participated in the violation, (2) the Companies did not have an effective compliance program at the Plant during the Relevant Period, and (3) the Companies provided full cooperation during the Investigation.

41. In addition, Berkshire agrees to pay a separate civil penalty of \$30,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined herein.

d. Compliance

42. The Companies shall institute new policies and associated processes to improve compliance with the Commission's Anti-Manipulation Rule, the ISO-NE Tariff, and Commission-approved Reliability Standards.

43. The Companies shall make semi-annual compliance monitoring reports to Enforcement for one year following the Effective Date of this Agreement. The first semi-annual compliance monitoring report shall be submitted on or before June 1, 2016. Future reports shall be submitted at six month intervals thereafter. Each report following the first such report shall cover the six-month period that ends one month before the report's submission date. After the receipt of the second semi-annual report, Enforcement may, at its sole discretion, require the Companies to submit semi-annual reports for one additional year.

44. Each compliance monitoring report shall: (1) identify any known violations of Commission regulations that occurred during the applicable period, including a description of the nature of the violation and what steps were taken to rectify the situation; (2) describe all compliance measures and procedures related to compliance with Commission regulations that each Company instituted or modified during the applicable period; and (3) describe all Commission-related compliance training that each Company administered during the applicable period, including the dates such training occurred, the topics covered, and the procedures used to confirm which personnel attended.

45. Each compliance monitoring report shall also include an affidavit stating that it is true and accurate to the best of his/her knowledge, executed by an officer of each Company.

46. The Companies may submit joint reports or separate reports.
47. Upon request by Enforcement, the Companies shall provide to Enforcement documentation supporting the contents of their reports.

## **V. Terms**

48. The “Effective Date” of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein, and that arose on or before the Effective Date, as to the Companies or any affiliated entity.
49. Commission approval of this Agreement without material modification shall release the Companies and forever bar the Commission from holding either of the Companies, any affiliated entity, and any successor in interest to either of the Companies liable for any and all administrative or civil claims arising out of the conduct addressed and stipulated to in this Agreement that occurred on or before the Agreement’s Effective Date.
50. Failure by the Companies to make civil penalty payments or comply with the compliance obligations agreed to herein, or any other provision of this Agreement, including failure by Berkshire to make the disgorgement payment, shall be deemed a violation of a final order of the Commission issued pursuant to the FPA, 16 U.S.C. § 792, *et seq.*, and may subject the Companies to additional action under the enforcement provisions of the FPA.
51. If the Companies do not make the required civil penalty payment, or if Berkshire does not make the disgorgement payment, described above at the time agreed by the parties, interest will begin to accrue pursuant to the Commission’s regulations at 18 C.F.R. § 35.19a (2015) from the date that payment is due, in addition to the penalty specified above and any other enforcement action and penalty that the Commission may take or impose.
52. The Agreement binds each of the Companies and its agents, successors, and assignees. The Agreement does not create any additional or independent obligations on either Company, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.



53. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or the Companies has been made to induce the signatories or any other party to enter into the Agreement.

54. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor the Companies shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and the relevant Company.

55. In connection with the civil penalty provided for herein, the Companies agree that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under the FPA, 16 U.S.C. § 792, *et seq.*, as amended. The Companies waive findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

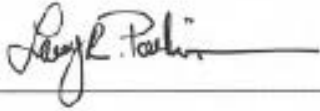
56. This Agreement can be modified only if in writing and signed by Enforcement and the Companies, and any modifications will not be effective unless approved by the Commission.

57. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity, and accepts the Agreement on the entity's behalf.

58. The undersigned representatives of the Companies affirm that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

59. This Agreement is executed in triplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:



Larry Parkinson  
Director  
Office of Enforcement  
Federal Energy Regulatory Commission  
DATE: 2/25/16



NORTH EHRENPREIS  
AUTHORIZED AGENT & ATTORNEY  
Berkshire Power Company LLC

DATE: 2-24-2016



Fred Barber  
President  
Power Plant Management Services LLC  
DATE: 2/21/2016