

131 FERC ¶ 61,224  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

In re Portland General Electric  
Company

Docket No. IN10-2-000

(Issued June 4, 2010)

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Portland General Electric Company (PGE). This order is in the public interest because it resolves the investigation into PGE's compliance with the Federal Power Act, the Commission's regulations and PGE's Open Access Transmission Tariff (OATT). PGE has agreed to pay a civil penalty of \$375,000 and submit compliance monitoring reports.

**Background**

2. PGE is an Oregon electric utility engaged in the generation, purchase, transmission, distribution, and retail sale of electricity as well as the wholesale sale of electricity. PGE directly interconnects with the Bonneville Power Administration (BPA) and PacifiCorp West (PACW). PGE also owns approximately 16% of the California-Oregon Intertie (Intertie), a 4,800 MW transmission line, co-owned by BPA, which delivers electricity between northern Oregon at the John Day substation (John Day) and the California-Oregon border (COB). The Intertie is perpendicular to, but not directly part of, PGE's regular system. BPA operates the entire Intertie, but transmission customers use PGE's OASIS to request transmission on the PGE-owned portion.

3. PGE's merchant function (PGEM) is responsible for serving PGE's retail load obligations. To serve PGE's retail load obligations, PGEM utilizes network service in PGE's control area as well as on several PGE paths, including: COB to John Day; BPAT (BPA Transmission) to PGE; and PACW to PGE. PGEM also makes wholesale sales of power. To serve its wholesale sales customers, PGEM reserves point-to-point transmission on various PGE (and non-PGE) paths, including one on PGE's John Day to COB path.

4. Enforcement opened an investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2009), based on a referral of issues by the Commission's Division of Audits that arose in Docket No. PA06-9-000 relating to PGE's compliance with its OATT, specifically those provisions related to the providing of transmission service.

### **Violations**

#### **A. Reserving Capacity for Native Load Without Adequate Designated Resources**

5. Section 28.2 of PGE's OATT states that the transmission provider, on behalf of its native load customers, shall be required to designate resources and loads in the same manner as any network customer under PGE's OATT. Section 29.2 of PGE's OATT sets forth the requirements for designating network resources. Section 29. 2(v) of Article III of PGE's OATT, as it was effective in December 2001, required a network service applicant to provide a "(d)escription of purchased power designated as a Network Resource including source of supply, Control Area location, transmission arrangements and delivery point(s) to the Transmission Provider's Transmission System."

6. In Order No. 888, the Commission explained that a reason for the requirement to designate resources for the reservation of transmission capacity is so that transmission providers would not have an incentive to tie up valuable transmission capacity in excess of what it needed to serve native load.<sup>1</sup> The Commission applied this requirement in several cases.<sup>2</sup>

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<sup>1</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,753-54 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>2</sup> *Wisconsin Public Power Inc. v. Wisconsin Public Service Corporation*, 83 FERC ¶ 61,198 at 61,856 (1998) (*WPPI*); *Morgan Stanley Capital Group v. Illinois Power Company*, 83 FERC ¶ 61,204 at 61,911-12, *reh'g denied*, 83 FERC ¶ 61,299 (1998) (*Morgan Stanley*); *Arizona Public Service Company v. Idaho Power Company*, 87 FERC ¶ 61,303 at 62,223 (1999), *reh'g denied*, 89 FERC ¶ 61,061 (1999) (*APS*); *Aquila Power Corp. v. Entergy Services, Inc., et al.*,  
(continued...)

7. Enforcement staff concluded that between January 1, 2002 and December 31, 2005, PGE violated sections 28.2 and 29.2 of its OATT by setting aside transmission capacity that was not adequately supported by designated network resources. Enforcement staff also concluded that PGE's violations impeded the Commission's goal of transparency in electric markets because of the unsupported set asides.

**B. Accounts 103 and 303**

8. Section 205 of the Federal Power Act (FPA) prohibits public utilities, with respect to any jurisdictional transmission or sale, from granting an undue preference or subjecting any person to any undue disadvantage. Former section 358.5(c) (5) of the standards of conduct, 18 C.F.R. § 358.5(c) (5) (2007), since recodified at 18 C.F.R. § 358.4(c) (2009), prohibited a transmission provider from giving an undue preference to its merchant function over any other wholesale customer in matters relating to transmission service. Section 37.6(e) of the Commission's regulations requires that all requests for transmission and ancillary service offered by a transmission provider must be made on the OASIS and posted prior to the transmission provider responding to the request, 18 C.F.R. § 358.5(c)(5) (2009). Section 17.1 of PGE's OATT requires that all firm point-to-point transmission requests be submitted on the OASIS.

9. Enforcement staff concluded that from January 1, 2002 through October 30, 2008, PGE provided an undue preference to its wholesale merchant affiliate, PGEM, by allowing PGEM to schedule firm point-to-point transmission service using non-public scheduling numbers 103 and 303 instead of using an OASIS reservation for the first leg of certain transactions. Enforcement staff concluded that PGE's practice violated section 205 of the FPA and then-section 358.5(c) (5) of the Commission's regulations. Moreover, Enforcement staff concluded that because PGEM did not schedule on PGE's OASIS the PGE to BPAT leg in transactions using scheduling number 103 and the PGE to Grizzly leg in transactions using scheduling number 303, PGE violated section 37.6(e) of the Commission's regulations and section 17.1 of PGE's OATT. The total harm from PGEM's preferential use of scheduling numbers 103 and 303 is unquantifiable because it cannot be determined how many of PGE's customers might have used those accounts had they been available. A customer's May 2007 use of the PGE to Grizzly and Grizzly to COB paths indicated an interest in such an arrangement by that customer even though PGE's OASIS did not indicate that the customer

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90 FERC ¶ 61,260 (2000); *order denying reh'g and granting certification*, 92 FERC ¶ 61,064 (2000); *aff'd Entergy Services, Inc. v. FERC*, 375 F.3d 1204 (2004) (*Entergy*).

could combine the two paths into a single path. That customer did not use the two paths again even after the customer was refunded the overcharged amount. Enforcement staff concluded that PGE's violations impeded the Commission's goal of transparency in electric markets because PGEM was obtaining transmission service off the OASIS using non-public means.

10. Enforcement staff concluded that PGE's violations were not the result of manipulation, deceit, fraud or material misrepresentation in an attempt to harm customers. Rather, it appeared that the violations occurred as a result of a lack of attention to the Commission's requirements and PGE's OATT. Enforcement staff found no evidence that senior management intentionally ordered or supported non-compliance. Since the audit in Docket No. PA06-9-000 began, PGE has taken steps to improve its compliance with OATT procedures and Commission requirements by hiring additional compliance personnel, creating a new compliance committee, and holding training sessions on OATT requirements. PGE has also participated in compliance workshops to strengthen PGE's compliance program.

### **C. Other Issues**

11. With regard to three other issues which DOA referred for investigation, Enforcement staff concluded that: (1) between January 1, 2004 and December 31, 2006, PGE violated section 17.1 of its tariff by allowing use of scheduling number 103 on e-Tags in a manner that was not consistent with the purpose of scheduling number 103 instead of point-to-point transmission service on 1,503 occasions; (2) between October 2005 and March 2008, PGE accepted 22 secondary network integrated transmission service requests from PGEM and non-affiliated customers for delivery of power for sales to non-designated loads, because power flowed in one of those instances, PGE violated section 28.4 of its tariff; (3) in December 2005, PGE accepted four power purchase agreements from PGEM as designated network resources before confirming the supporting transmission service arrangements. Enforcement staff concluded that this was a violation of section 29.2 of PGE's OATT. None of these violations resulted in unjust profits for PGE or harm to customers.

12. During the course of Enforcement's investigation, staff determined that during the period from January 2006 through April 2007, PGE posted on its OASIS the Available Transmission Capability (ATC) for the BPAT to PGE path as being between 42 MW and 1,192 MW, while the actual ATC that PGET calculated was between 1,792 MW and 3,602 MW. During this period, PGE did not deny any transmission requests for lack of ATC on the BPAT to PGE path. Enforcement staff determined that by failing to accurately post ATC, PGE violated 18 C.F.R. § 37.6 (b) (3) (ii) (A).

### **Stipulation and Consent Agreement**

13. Enforcement staff and PGE resolved Enforcement staff's investigation of the violations by PGE by means of the attached Agreement. PGE neither admits nor denies the violations.

14. The Agreement requires PGE to pay a \$375,000 civil penalty to the United States Treasury within ten days of this order accepting and approving the Agreement.

15. PGE also will submit semi-annual monitoring reports to Enforcement for a period of one year with the option of a second year at staff's discretion. Each compliance report shall describe any new and existing compliance program measures, including training, and alert staff to any additional violations of the OATT requirements that may occur. PGE agrees with the facts as stipulated, but neither admits nor denies Enforcement staff's conclusions that its actions or inactions constituted violations of the FPA, the Commission's rules or regulations or PGE's OATT.

### **Determination of the Appropriate Civil Penalty**

16. Under section 316A (b) of the FPA, the Commission may assess a civil penalty up to \$1 million per day per violation for as long as the violation continues.<sup>3</sup> In approving the Agreement and the \$375,000 civil penalty, we considered the factors set forth in the FPA<sup>4</sup>, and the Revised Policy Statement on Enforcement.<sup>5</sup> We conclude that the penalty determination in the instant matter is a fair and equitable resolution of this matter and is in the public interest, as it reflects the nature and scope of Enforcement staff's conclusions concerning PGE's compliance with its OATT. Specifically, this matter arose from a Commission audit and not a self-report. PGE did not receive unjust profits or cause a significant amount of quantifiable harm. However, the violations impeded

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<sup>3</sup> 16 U.S.C. § 825o-1(b). Section 1284(e) of the Energy Policy Act of 2005 amended section 316A(b) of the FPA to grant the Commission authority to assess a civil penalty of not more than \$1,000,000 for each day that a violation of any provision of Part II of the FPA or any provision of any rule or order thereunder continues.

<sup>4</sup> *Id.*

<sup>5</sup> *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156, at PP 54 -71 (2008).

transparency in the electric market thus causing harm to that market. Further, there is no evidence that senior management was involved in any of the violations. Enforcement concluded that during the time of the violations, senior management did not place sufficient emphasis on compliance with PGE's OATT and that PGE had an inadequate and ineffective compliance program for ensuring compliance with the Commission's OATT requirements.

17. We conclude that the civil penalty and the requirement that PGE submit compliance monitoring reports under the conditions specified in the Agreement are fair and equitable, and in the public interest.

The Commission orders:

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

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

In re Portland General Electric Company )

Docket No. IN10-2-000

STIPULATION AND CONSENT AGREEMENT

**I. INTRODUCTION**

The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Portland General Electric Company (PGE) enter into this Stipulation and Consent Agreement (Agreement) to resolve an investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2009), into PGE's compliance with the Federal Power Act, the Commission's regulations and PGE's Open Access Transmission Tariff (OATT).

**II. STIPULATIONS**

Enforcement and PGE hereby stipulate and agree to the following:

**A. Background**

1. This matter originally commenced as an audit, conducted by the Commission's Division of Audits (DOA) in Docket No. PA06-9-000, which resulted in the referral of several matters to the Division of Investigations (DOI) relating to PGE's compliance with its OATT, specifically those provisions related to the providing of transmission service.

2. PGE is an Oregon electric utility engaged in the generation, purchase, transmission, distribution, and retail sale of electricity as well as the wholesale sale of electricity. PGE directly interconnects with the Bonneville Power Administration (BPA) and PacifiCorp West (PACW). PGE also owns approximately 16% of the California-Oregon Intertie (Intertie), a 4,800 MW transmission line, co-owned by BPA, which delivers electricity between northern Oregon at the John Day substation (John Day) and the California-Oregon border (COB). The Intertie is perpendicular to, but not directly part of, PGE's regular system. Aside from the Intertie, there is only occasional third-

party use of PGE's system. BPA operates the entire Intertie, but transmission customers use PGE's OASIS to request transmission on the PGE-owned portion.

3. PGE's merchant function (PGEM) is responsible for serving PGE's retail load obligations. To serve PGE's retail load obligations, PGEM utilizes network service in PGE's control area as well as on several PGE paths, including: COB to John Day; BPAT to PGE; and PACW to PGE. PGEM also makes wholesale sales of power. To serve its wholesale sales customers, PGEM reserves point-to-point transmission on various PGE (and non-PGE) paths, including one on PGE's John Day to COB path.

#### **B. Setting Aside Capacity for Native Load Without Adequate Designated Network Resources**

4. Section 28.2 of PGE's OATT states that "[t]he Transmission Provider, on behalf of its Native Load Customers, shall be required to designate resources and loads in the same manner as any Network Customer under Part III of this Tariff." Section 29.2 of Article III of PGE's OATT sets forth the procedures for submitting a network service application. Section 29.2(v) of Article III of PGE's OATT, as it was effective in December 2001, required a network service applicant to provide a "(d)escription of purchased power designated as a Network Resource including source of supply, Control Area location, transmission arrangements and delivery point(s) to the Transmission Provider's Transmission System."

5. In December 2001, PGEM submitted an Application for Network Transmission Service (Application), which included: a description of remote Network Resources (external resources outside of PGE's network); a description of internal Network Resources (resources within PGE's network); and a description of PGE's forecasted native load. In the Application, PGEM identified network resources outside PGE's Network as having a total generation capacity of 2,216 MW. PGE's transmission function (PGET) did not rely on the network resource designations identified in the 2001 Application to allocate capacity for PGEM's network service. As a result, PGET set aside more transmission capacity than PGEM supported with Designated Network Resources. The set asides did not operate as a reservation for PGEM, but made some of the capacity unavailable to third parties.

6. Between January 1, 2002 and September 9, 2005, PGET set aside 651 MW of 651 MW of transmission capacity on the COB to John Day path. PGET did not set aside the transmission capacity based upon any designation of network resources by PGEM because PGEM's Application did not identify any external designated resources to justify setting aside transmission capacity on the COB to John Day path. During this time period, PGET denied nine requests for hourly transmission service for lack of ATC from non-affiliated customers for transmission service on the COB to John Day path totaling 745 MWh. On September 8, 2005, PGET suspended PGEM's service on the COB to John Day path on the grounds that PGEM had not designated any generation resource(s)

to justify setting aside the transmission capacity. On October 15, 2005, PGET set aside 300 MW of transmission capacity when PGEM designated that amount of resources for that path.

7. Beginning on January 1, 2002, PGE set aside 3,500 MW of 4,000 MW of transmission capacity on the BPAT to PGE path. PGET did not set aside the transmission capacity based upon an amount corresponding to the 2,216 MW of external designated resources PGEM had identified in its Application. The BPAT to PGE path serves as an interconnection gateway between PGE's and BPA's systems, and allows power to flow across the interface between the two systems. Sometime between July 2004 and January 2005 (PGE's records do not identify the precise date), PGET reduced the native load set aside on the BPAT to PGE path to 2,500 MW, which still exceeded PGEM's designated resources on that path. On October 1, 2005, PGET reduced its native load set aside on the BPAT to PGE path to 2,000 MW. As a result, the set-aside capacity was fully supported by PGEM's 2,216 MW of designated network resources. From January 1, 2002 through October 1, 2005, ATC was always available and PGET did not deny any transmission requests from non-affiliated customers on the BPAT to PGE path.

8. Beginning on January 1, 2002, PGET set aside 1,000 MW of capacity on the PACW to PGE path. PGET did not set aside the transmission capacity based upon any designation of network resources by PGEM because PGEM's Application did not identify any external designated resources to justify setting aside transmission capacity on the PACW to PGE path. The PACW to PGE path serves as an interconnection gateway between PGE's and PacifiCorp's systems, and allows power to flow across the interface between the two systems. Sometime around March 2004 (PGE's records did not identify the precise date), PGET reduced the native load set aside on the PACW to PGE path to 800 MW. PGET further reduced the set aside on the PACW to PGE path to 500 MW in April 2005. PGET removed the entire set aside for forecasted native load and network customer use on the PACW to PGE path on January 1, 2006. At no time between January 1, 2002 and January 1, 2006 was PGET's native load set aside on the PACW to PGE path supported by any designated network resources. From sometime around March 2004 through January 1, 2006, ATC was always available and PGET did not deny any transmission requests from non-affiliated customers on the PACW to PGE path.

9. Enforcement staff determined that between January 1, 2002 and January 1, 2006, PGE violated sections 28.2 and 29.2 of its OATT by setting aside transmission capacity that was not adequately supported by designated network resources. Enforcement staff further concluded that PGE's violations impeded the Commission's goal of transparency in electric markets because of the unsupported set asides.

### C. Scheduling Numbers 103 and 303

10. Section 205(b) of the Federal Power Act (FPA) prohibits public utilities, with respect to any jurisdictional transmission or sale, from granting an undue preference or subjecting any person to any undue disadvantage. Former section 358.5(c)(5) of the standards of conduct, 18 C.F.R. § 358.5(c)(5) (2007), since recodified at 18 C.F.R. § 358.4(c) (2009), prohibited a transmission provider from giving an undue preference to its merchant function over any other wholesale customer in matters relating to transmission service. Section 37.6(e) of the Commission's regulations requires that all requests for transmission and ancillary service offered by a transmission provider must be made on the OASIS and posted prior to the transmission provider responding to the request, 18 C.F.R. § 358.5(c)(5) (2009). Section 17.1 of PGE's OATT requires that all firm point-to-point transmission requests be submitted on the OASIS.

11. Beginning in January 2002, PGET created and allowed PGEM to use non-public scheduling numbers 103 and 303 in place of OASIS reservation numbers to schedule the first leg of certain multiple-leg PGE paths when PGEM exported power to make off-system wholesale sales. PGE's OASIS allowed customers to make separate point-to-point transmission reservations from PGE to BPAT and from John Day to COB. A PGE to COB path was not available on PGE's OASIS because PGE operated the PGE to BPAT path and, even though reservations were made via PGE's OASIS, BPA operated PGE's portion of the John Day to COB path. To schedule transmission, a non-affiliated customer would have to identify OASIS reservation numbers for each leg of a transmission transaction from PGE to BPA to COB: PGE to BPA (on PGE's system); BPA to John Day (on BPA's system); and John Day to COB (on PGE's Intertie but operated by BPA).

12. PGEM did not obtain a separate OASIS reservation for the PGE to BPA path. Instead, PGET allowed PGEM to use scheduling number 103 to schedule transmission for the PGE to BPA leg when PGEM included its OASIS reservation number for the John Day to COB path. (PGEM did not need to have an OASIS reservation for the BPA to John Day path, which was exclusively on BPA's system, because it was able to take service on that path under a grandfathered transmission agreement with BPA.) Although both the PGE to BPA and the BPA to COB paths were separately available on the OASIS, there was no specific indication on the OASIS that a customer could combine the two paths into a single path. Nor did PGE announce this option as available to non-affiliated customers. From January 1, 2004 (the beginning of the DOA audit period) through April 28, 2008, PGET transmitted 1,860,926 MWhs for PGEM using scheduling number 103 on the PGE to BPAT path. During this time, PGET did not announce the availability of a comparable scheduling number 103 to non-affiliated customers until September 29, 2008, and the comparable number was not available for use by non-affiliated shippers until October 30, 2008. Because PGE has postage-stamp rates and

PGEM had sufficient unused point-to-point transmission service, PGEM did not avoid duplicate transmission fees by using scheduling number 103.

13. From January 1, 2006 through June 1, 2007, PGET created and allowed PGEM to use scheduling number 303 to schedule the first leg of a multiple-leg path when exporting power to make off-system wholesale sales. A non-affiliated customer would have to identify OASIS reservation numbers for each leg of a transmission transaction from PGE to Grizzly to COB: PGE to Grizzly (on PGE's system) and Grizzly to COB (on PGE's Intertie, which is operated by BPA). PGEM did not obtain a separate OASIS reservation for the PGE to Grizzly path. Instead, PGET allowed PGEM to use scheduling number 303 to schedule transmission for the PGE to Grizzly leg when PGEM identified its OASIS reservation number for the Grizzly to COB path. Although both the PGE to Grizzly and the Grizzly to COB paths were separately available on the OASIS, there was no specific indication on the OASIS that a customer could combine the two paths into a single path, nor was this announced as available to non-affiliated customers. Between June 1, 2006 and June 1, 2007, when PGET stopped using scheduling number 303, PGET transmitted 693,913 MWhs for PGEM on the PGE to Grizzly path. Because PGE has postage-stamp rates for transmission within its control area, all transmission service within PGE's control area is charged at the same rate. Because PGEM had sufficient unused point-to-point transmission service within PGE's control area which it could have used for the first leg of the transactions for which PGEM used scheduling number 303, PGEM would not have been subject to duplicate transmission fees had it structured those transactions properly by using two public OASIS reservations or made public its practice of using scheduling numbers.

14. In May 2007, PGE erroneously charged a customer for both legs of a transaction that utilized the PGE to Grizzly and the Grizzly to COB paths through the use of separate OASIS reservations. As noted previously, because PGE had postage-stamp rates for transmission service within its control area, the customer should have incurred only a single charge for this transaction. PGE subsequently refunded the overcharge amount to the customer after OE staff identified the overcharge. PGET did not announce the availability of a comparable scheduling number 303 to non-affiliated customers until September 29, 2008, and the comparable number was not available for use by non-affiliated shippers until October 30, 2008.

15. Enforcement staff determined that from January 1, 2002 through October 30, 2008, PGET provided an undue preference to its wholesale merchant affiliate, PGEM, by allowing PGEM to schedule firm point-to-point transmission service using non-public, scheduling numbers 103 and 303 instead of using an OASIS reservation for the first leg of certain transactions. Enforcement staff determined that PGE's practice violated section 205 of the FPA and then-section 358.5(c)(5) of the Commission's regulations. Moreover, Enforcement staff determined that because PGEM did not schedule on PGE's OASIS the PGE to BPAT leg in transactions using scheduling number 103 and the PGE

to Grizzly leg in transactions using scheduling number 303, PGE violated section 37.6(e) of the Commission's regulations and section 17.1 of PGE's OATT. The total harm from PGEM's preferential use of scheduling numbers 103 and 303 is unquantifiable because it cannot be determined how many of PGE's customers might have used those accounts had they been available. A customer's May 2007 use of the PGE to Grizzly and Grizzly to COB paths indicated an interest in such an arrangement by that customer even though PGE's OASIS did not indicate that the customer could combine the two paths into a single path. That customer did not use the two paths again even after the customer was refunded the overcharged amount. Enforcement staff further determined that PGE's violations impeded the Commission's goal of transparency in electric markets because PGEM was obtaining transmission service off the OASIS using non-public means.

### **C. Other Issues**

16. Enforcement staff determined that between January 1, 2004 and December 31, 2006, PGET violated section 17.1 of its tariff by allowing use of scheduling number 103 on e-Tags in a manner that was not consistent with the purpose of scheduling number 103 instead of point-to-point transmission service on 1,503 occasions. Only 592 of these instances involved e-Tags created by PGEM. PGE contends that these issues occurred as the result of human error and the erroneous use of tagging templates. Because PGEM had existing point-to-point capacity to cover the schedules, PGEM did not earn unjust profits or cause harm from its use of scheduling number 103 in this manner.

17. Between October 2005 and March 2008, PGET accepted 22 secondary network integrated transmission service requests from PGEM and non-affiliated customers for delivery of power for sales to non-designated loads. PGET stopped these transactions before power flowed in 21 of the 22 instances. Enforcement staff determined that PGE violated section 28.4 of its OATT in the one instance that power flowed. No customers had service interrupted from this incident.

18. In December 2005, PGET accepted four power purchase agreements from PGEM as designated network resources before confirming the supporting transmission service arrangements. Enforcement staff determined that this was a violation of section 29.2 of PGE's OATT, which required that a) a network service customer provide a "[d]escription of purchased power designated as a Network Resource including source of supply, Control Area location, transmission arrangements and delivery point(s) to the Transmission Provider's Transmission System;" and b) a transmission provider is to contact the customer if an application is incomplete and, if the application is not cured, return the application without prejudice. Enforcement staff considers this a technical violation as the transmission arrangements were supported, so no harm occurred.

19. During the period from January 2006 through April 2007, PGET posted on its OASIS the ATC for the BPAT to PGE path as being between 42 MW and 1,192 MW. However during this time the actual ATC that PGET calculated was between 1,792 MW and 3,602 MW. During the time period that PGET posted incorrect ATC on the BPAT to PGE path, PGET did not deny any transmission requests for lack of ATC on that path. Enforcement staff determined that by failing to accurately post ATC, PGE violated 18 C.F.R. § 37.6 (b)(3)(ii)(A).

#### **D. Self Corrective Action**

20. Enforcement staff determined that PGE's senior management was not involved in the violations, however senior management did not place sufficient emphasis on OATT compliance and failed to ensure adequate OATT compliance procedures. Enforcement staff determined that during the time of the violations, although PGE had a compliance program related to the Commission's Standards of Conduct and Code of Conduct, PGE had an inadequate and ineffective compliance program for ensuring compliance with the Commission's OATT requirements.

21. After DOI's investigation began, PGE made numerous improvements to its compliance program. Specifically, PGE hired additional compliance personnel, created a new compliance committee, implemented new compliance procedures and held training sessions on OATT requirements.

### **III. REMEDIES AND SANCTIONS**

22. For purposes of settling any and all civil and administrative disputes arising from Enforcement staff's investigation, PGE agrees with the facts as stipulated, but neither admits nor denies Enforcement staff's conclusions that the facts set forth herein constitute a violation of the FPA, Commission rules or regulations or PGE's OATT. Nonetheless, for purposes of settling any and all civil and administrative disputes arising from DOI's investigation, PGE agrees to take the following actions.

#### **A. Civil Penalty**

23. PGE shall pay a civil penalty of \$375,000.00 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below. PGE shall not pass through the civil penalty, either directly or indirectly, to any present or future customers or ratepayers of PGE or of PGE's affiliates.

#### **B. Compliance Monitoring**

24. PGE shall make semi-annual reports to Enforcement staff for one year following the Effective Date of this Agreement. The first semi-annual report, covering the time period from February 12, 2009 until six months after the Effective Date of this Agreement, shall be submitted no later than ten days after the end of the second calendar

quarter after the quarter in which the Effective Date of this Agreement falls. The second report shall be submitted six months thereafter. With respect to all of PGE's wholesale electric transmission business, each compliance report shall: (1) describe any new measures taken to amend, revise, or restructure those transmission procedures that Enforcement staff herein concludes violated the Commission's regulations and requirements; (2) advise staff whether additional violations have occurred; (3) provide an update of the compliance measures instituted and training administered during the preceding period; and (4) include an affidavit executed by an officer of PGE that the compliance reports are true and accurate. Upon request by staff, PGE shall provide to staff all backup documentation supporting its reports. After the receipt of the second semi-annual report, Enforcement staff may, at its sole discretion, require PGE to submit semi-annual reports for one additional year.

#### IV. TERMS

25. 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 in the self-report as to PGE and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to PGE.

26. Commission approval of this Agreement without modification shall release PGE, its agents, officers, directors and employees, both past and present, and any successor in interest to PGE from, and forever bar the Commission from bringing against PGE, any and all administrative or civil claims arising out of the alleged violations addressed herein in Docket No. IN10-2-000. Upon the Effective Date of this Agreement, Enforcement's investigation of PGE shall terminate in Docket No. IN10-2-000.

27. In connection with the payment of the civil penalty provided for herein, PGE agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 316A(b) of the FPA, 16 U.S.C. § 825o-1(b), as amended. PGE further waives rehearing of any Commission order approving the Agreement without modification, and judicial review by any court of any Commission order approving the Agreement without modification.

28. PGE consents to the use of Enforcement staff's conclusions of violations set forth in Paragraph 9 and Paragraphs 15 through 19 of this Agreement for the purpose of assessing the factors in any further matter, including the factor of determining the company's history of violations, that are set forth in the *Revised Policy Statement on Enforcement, Enforcement of Statutes, Regulations, and Orders*, 123 FERC ¶ 61,156 (2008), or that may be set forth in any successor policy statement or order. Such use may be in any other proceeding before the Commission or to which the Commission is a party; provided, however, that PGE does not consent to the use of specific acts set forth

in this Agreement as the sole basis for any other proceeding brought by the Commission, nor does PGE consent to the use of this Agreement by any other party in any other proceeding. This Agreement shall have no precedential effect except as set forth in the first sentence of this paragraph.

29. Failure to make a timely civil penalty payment agreed to herein, or any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued under the FPA, 16 U.S.C. § 791a, *et seq.*, and may subject PGE to additional action under the enforcement and penalty provisions of the FPA.

30. If PGE does not make the civil penalty payment above at the time agreed by the parties, interest payable to the United States Treasury will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19a(a)(2)(iii) (2009) from the date that payment is due, in addition to the penalty specified above.

31. The Agreement binds PGE and its agents, successors, and assigns. The Agreement does not create any additional or independent obligations on PGE, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in Section III of this Agreement.

32. 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 PGE has been made to induce the signatories or any other party to enter into the Agreement.

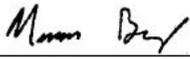
33. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor PGE shall be bound by any provision or term of the Agreement, unless otherwise agreed to in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

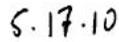
34. Each of the undersigned warrants that [he or she] is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.

35. The undersigned representative of PGE affirms that [he/she] has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of [his/her] knowledge, information and belief, and that [he/she] understands that the Agreement is entered into by Enforcement in express reliance on those representations.

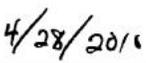
36. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original. The Agreement may be signed in counterparts.

Agreed to and accepted:

  
\_\_\_\_\_  
Norman Bay  
Director  
Office of Enforcement  
Federal Energy Regulatory Commission

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
J. Jeffrey Dudley  
Vice President, General Counsel &  
Corporate Compliance Officer  
Portland General Electric Company

  
\_\_\_\_\_  
Date