143 FERC ¶ 61,188
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

DTE Gas Company; and Washington 10 Storage Corporation — Docket No. IN13-10-000

# ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued May 31, 2013)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and DTE Gas Company (formerly Michigan Consolidated Gas Company) (DTE Gas) and between Enforcement and Washington 10 Storage Corporation (Washington 10) (DTE Gas and Washington 10 are both subsidiaries of DTE Energy). This order is in the public interest because it resolves the investigation into whether DTE Gas violated section 284.8(h)(2) of the Commission's regulations by engaging in flipping and whether Washington 10 violated Section 311 of the Natural Gas Policy Act of 1978 (NGPA), various subparts of 18 C.F.R. §§ 284.122, 284.123, 284.124, 284.126, and its Statement of Operating Conditions (SOC), related to the misclassification of thirty-two firm transportation storage and seventy-two Park and Loan (PAL) agreements as intrastate rather than interstate.

2. DTE Gas has admitted to its violations and accepted responsibility for them. It has agreed to pay a civil penalty of $15,000. In addition, DTE Gas has instituted and will continue to institute additional compliance measures such as distribution of capacity release rules and improved training. Moreover, DTE Gas must submit compliance monitoring reports.

3. Washington 10 has admitted to its violations and has accepted responsibility for them. Washington 10 has agreed to pay a civil penalty of $725,000 and disgorgement of $2,508,227, plus interest. Washington 10 has instituted and will continue to institute additional compliance measures concerning the classification of interstate storage and PAL services and improved training. Moreover, Washington 10 must submit to compliance monitoring reports.

## I. DTE Gas

### A. Background

4. DTE Gas through its parent company DTE Energy, self-reported to Enforcement that it had engaged in fifty-four separate back-to-back capacity release transactions of interstate pipeline capacity (capacity releases) with five counterparties at less than the maximum rate without posting the releases for competitive bidding, in violation of the requirements of Part 284 of the Commission's regulations. Enforcement opened a preliminary, non-public investigation pursuant to Part 1b of the Commission's regulations into DTE Gas's capacity release transactions from March 2001 to March 2006 as identified by DTE Gas in its self-report.

5. DTE Gas is regulated primarily by the Michigan Public Service Commission (MPSC) and is exempt from federal regulation as a natural gas company under Section 1(c) of the Natural Gas Act (NGA), which is often referred to as the "Hinshaw" exemption. Under NGPA Section 311, DTE Gas sought and received authorization to engage in the sale, transportation or assignment of natural gas that is subject to the Commission's jurisdiction under the Natural Gas Act, to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activities by Subparts C, D, and E and section 284.20 of Part 284 of the Regulation.

### B. Investigation

6. "Flipping" is the repeated short-term release of discounted rate capacity to two or more affiliated replacement shippers on an alternating monthly basis that avoids the competitive bidding requirements. As set forth in the attached Agreement, Enforcement determined that DTE Gas violated section 284.8(h)(2) of the Commission's regulations by engaging in flipping from: (i) September 2001 to March 2006, in releases to WPS WPS Energy Services, Inc. (WPS) (currently Integrys Energy Services, Inc. (Integrys)) and its affiliates (and in one case in serial discounted rate releases to the same WPS entity); and (ii) March 2001 through October 2002, with BP, Duke, Reliant and Dynegy.

7. As set forth more fully in the Agreement, from September 2001 through March 2006, DTE Gas released a total of 17,755,000 Dth of capacity to WPS and its affiliates, WPS ESI Gas Storage and FSG Energy Services, on alternating months at less than the maximum rate without offering the capacity for competitive bidding. DTE Gas earned no profits from its capacity release transactions with WPS/Integrys.

8. As set forth more fully in the Agreement, between March 2001 and October 2002, DTE Gas released capacity on an alternating monthly basis at less than the maximum rate without making those releases available to competitive bidding with four other sets of affiliated customers: (1) BP Canada Energy Marketing Corp. and BP Canada; (2) Duke Energy T&M LLC and Duke Energy Fuels LP (Duke); (3) Reliant Energy Retail,

Reliant Energy Shelby County and Reliant Energy Services (Reliant); and (4) Dynegy Gas Transportation Inc. and Dynegy Marketing & Trade (Dynegy). DTE Gas earned no profits from its capacity release transactions with these entities.

9. DTE Gas released 4,395,000 Dth of capacity after the effective date of the Energy Policy Act of 2005 (EPAct).[1] The capacity releases at issue involved 151 post-EPAct days of activity.

### C. Stipulation and Consent Agreement

10. Enforcement and DTE Gas have resolved Enforcement's investigation by means of the attached Agreement. DTE Gas admits that its conduct violated the Commission's rules, regulations, and policies.

11. The Agreement requires DTE Gas to pay a civil penalty of $15,000 to the United States Treasury within ten business days of the Effective Date of the Agreement.

12. Since the onset of Enforcement's investigation, DTE Gas has instituted additional procedures to monitor its capacity release transactions and to train its employees.

13. The Agreement requires DTE Gas to submit semi-annual compliance monitoring reports to Enforcement staff for one year following the Effective Date of the Agreement, with the option of a second year of compliance monitoring reports at Enforcement's discretion. Each compliance report shall describe any new and existing compliance program measures, including training, and alert Enforcement staff to any violations that may have occurred.

### D. Determination of the Appropriate Civil Penalty

14. Pursuant to section 22(a) of the NGA,[2] the Commission may assess a civil penalty up to $1,000,000 for each day that the violation continues.[3] In determining the appropriate remedy, Enforcement considered the factors described in section 22(c) of the NGA and in the Revised Policy Statement on Penalty Guidelines.[4] Specifically, Enforcement considered that: DTE Gas's conduct was serious; the failure to post capacity represents a serious threat to market transparency; the conduct involved more

[1] Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

[2] 15 U.S.C. § 717t-1(a) (2006).

[3] 15 U.S.C. § 717t-1(c) (2006).

[4] *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010).

than 700,000 MMBtus of natural gas and continued for more than 50 days; the conduct interfered with market transparency thereby harming the market; while DTE Gas did not have a compliance program that was fully effective at the time of the violation, it did institute measures before the violations were detected to enhance compliance and it did take additional steps to institute remedial measures immediately upon discovery of the violation and thereafter; DTE Gas self-reported the violations; DTE Gas fully cooperated in the investigation; and DTE Gas admits to the violations found by Enforcement.

15. The Commission concludes that the penalties, enhanced compliance measures, and compliance monitoring reports 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 DTE Gas's conduct. The Commission also concludes that the civil penalty is consistent with the Penalty Guidelines.

## II. Washington 10

### A. Background

16. The Commission authorized Washington 10 to provide NGPA Section 311 service as of June 1, 1999. On October 25, 1999, the Commission granted Washington 10 permission to charge rates for NGPA Section 311 services not to exceed the intrastate cost-based rates approved by the MPSC and conditionally approved its SOC. Washington 10 sought and received authority from the MPSC for revisions to its tariff and to cost and market-based rates in 2004.

17. Washington 10, through its parent company DTE, self-reported to Enforcement that Washington 10 had: (i) misclassified eleven interstate short-term storage contracts as "intrastate" and for which it charged rates in excess of those permitted under its SOC; and (ii) misclassified an unidentified number of interstate park-and-loan (PAL) contracts as "intrastate." Washington 10 admitted that it administered these wrongly classified contracts under the terms of Washington 10's MPSC tariff for intrastate storage instead of its interstate SOC. Enforcement opened its investigation based on Washington 10's disclosure in the self-report. However, Enforcement discovered that the information in the self-report was incomplete as there were a total of thirty-two misclassified storage contracts of which eleven included rates in excess of the interstate SOC, and seventy-two misclassified PAL contracts.

### B. Investigation

18. There were two differences of note between the MPSC tariff and the FERC SOC relating to Enforcement's investigation: (1) the cost-based rates for storage contracts in the SOC were subject to a cap lower than the market-based rates for storage contacts under Washington 10's MPSC tariff; and (2) the MPSC tariff authorized Washington 10

to provide interruptible and firm PAL service, whereas the SOC permitted only interruptible PAL service.

19. Between October 23, 2003 and November 5, 2007, Washington 10 executed thirty-two firm transportation storage contracts and classified those contracts as intrastate firm transportation, when they should have been classified as interstate service. Washington 10 admits that it charged eleven interstate customers more than the maximum rate authorized by the interstate SOC. Washington 10 overcharged those eleven customers a total of $2,508,227, of which $2,053,178 was overcharged after the effective date of EPAct. Washington 10's firm transportation storage contract violations involved 996 post-EPAct days and involved 9,701,227 MMBtus post-EPAct.

20. With respect to the misclassified firm transportation storage contracts, The overcharges collected by Washington 10 exceeded the maximum rate authorized by the Commission under section 284.123(b)(2)(i). By overcharging its customers, Washington 10 also violated: section 284.123(a) (which provides rates be fair and equitable); section 284.122(b) (which provides that no rate charged by an intrastate pipeline may exceed a fair and equitable rate as determined by regulation); section 284.124(which provides that the contracts must state that the transportation arrangement is subject to the provisions of Subpart C); NGPA Section 311; and its interstate SOC (which authorized a capped cost-based rate for firm transportation storage contracts).

21. Between January 1, 2004 and November 8, 2007, Washington 10 executed seventy-two PAL contracts and classified those contracts as intrastate when they should have been classified as interstate. As a result of the misclassification of the PAL contracts as intrastate, Washington 10 contracted to provide firm PAL service to sixty-eight interstate storage customers -- a service it was not permitted to provide under its SOC -- and misclassified four additional interruptible PAL service contracts as intrastate rather than interstate. Washington 10 did not earn unjust profits from its PAL misclassification and no customers were overcharged or treated unfairly.

22. With respect to the misclassified PAL contracts, Washington 10 violated its interstate SOC, which did not authorize Washington 10 to provide firm PAL service. In addition, Washington 10 violated section 284.122(b) of the Commission's regulations (which provides that no rate may exceed a fair and equitable rate as determined by section 284.123, and which determination process Washington 10 failed to follow when it agreed to provide firm service that was unauthorized under its SOC). Washington 10 violated sections 284.123(a), (b)(2)(i), and (e) of the Commission's regulations (which provide, respectively, that rates and charges be fair and equitable as determined in accordance with subpart (b), that an intrastate pipeline apply for Commission approval of proposed rates and charges, and that an intrastate pipeline which engages in any new service shall file a SOC with the Commission within thirty days). In addition, Washington 10 violated section 284.124 of the Commission's regulations (which provides that the contracts must state that the transportation arrangement is subject to the

provisions of Subpart C). Washington 10's PAL violations involved 1024 post-EPAct days and involved 9,698,619 MMBtus post-EPAct.

23. While Washington 10's then-required semi-annual reports were filed in a timely manner, those reports failed to include the contracts that Washington 10 had incorrectly classified as interstate contracts. Enforcement determined that Washington 10's failure to identify these contracts in its semi-annual reports caused Washington 10 to violate then-effective sections 284.122(c) and 284.126(c) of the Commission's regulations, which require storage activity under 284.122 to be reported. In addition, as a result of its internal audit, Washington 10 discovered it had not been filing an annual report reflecting hub services, in violation of then-effective section 284.126(b) of the Commission's regulations.

### C. Stipulation and Consent Agreement

24. Enforcement and Washington 10 have resolved Enforcement's investigation by means of the attached Agreement. Washington 10 admits that the behavior examined by Enforcement violated the Commission's rules, regulations, and policies.

25. The Agreement requires Washington 10 to pay a $725,000 civil penalty to the United States Treasury within ten business days of the Effective Date of the Agreement. Washington 10 will pay disgorgement $2,508,227 plus interest, the amount representing its unjust profits. The disgorgement shall be paid to the State of Michigan, Energy and Weatherization Programs to assist Low Income Residents: Home Heating Credit, State Emergency Relief, and Weatherization Assistance Program within ten business days of the Effective Date of the Agreement. Washington 10 shall provide Enforcement with a record that such payment was made.

26. Since the onset of Enforcement's investigation, Washington 10 has instituted additional procedures to correctly classify interstate contracts and to train relevant individuals charged with working on Washington 10 matters.

27. The Agreement requires Washington 10 to file with the Commission within 10 days: (i) revised semi-annual reports which accurately reflect all interstate contracts; and (ii) all annual reports which Washington 10 had failed to make and which should have been filed. These reports will be filed in the manner they should have been filed with the Commission at the time they were originally required to be filed.

28. The Agreement requires Washington 10 to submit semi-annual compliance monitoring reports to Enforcement staff for one year following the Effective Date of the Agreement, with the option of a second year of compliance monitoring reports at Enforcement's discretion. Each compliance report shall describe any new and existing compliance program measures, including training, and alert Enforcement staff to any violations that have occurred.

### D. Determination of the Appropriate Civil Penalty

29. Pursuant to section 504(b)(6)(A) and (C) of the NGPA, the Commission may assess a civil penalty up to $1,000,000 for each violation and for continuing violations, each day constitutes a separate violation.[5] In determining the appropriate remedy, Enforcement considered the factors described in section 504(b) of the NGPA and in the Revised Policy Statement on Penalty Guidelines.[6] Specifically, Enforcement considered that: Washington 10's conduct was serious; the overcharges to its customers harmed the market; the conduct involved more than 700,000 MMBtus of natural gas and continued for more than 250 days; while Washington 10 did not have a compliance program that was fully effective at the time of the violations, it did institute measures before the violations were detected to enhance compliance and it did take additional steps to institute remedial measures immediately upon discovery of the violations and thereafter; Washington 10 self-reported the violations; and Washington 10 admits to the violations found by Enforcement.

30. The Commission concludes that the penalties, disgorgement, the enhanced compliance measures, and the compliance monitoring reports 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 Washington 10's conduct. The Commission also concludes that the civil penalty is consistent with the Penalty Guidelines.

The Commission orders:

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

By the Commission.

( S E A L )

Kimberly D. Bose,
Secretary.

[5] 15 U.S.C. § 3414(b)(6)(A) and (C)(2006).

[6] *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

| | | |
|---|---|---|
| DTE Gas Company and<br>Washington 10 Storage Corporation | )<br>) | Docket No. IN13-10-000 |

STIPULATION AND CONSENT AGREEMENT

## I. Introduction.

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and DTE Gas Company (formerly Michigan Consolidated Gas Company and hereinafter referred to as DTE Gas) and Washington 10 Storage Corporation (Washington 10) enter into this Stipulation and Consent Agreement (Agreement) to resolve investigations of each company conducted under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2012). The investigations examined certain capacity release transactions conducted by DTE Gas and certain interstate firm transportation storage and Park and Loan (PAL) agreements entered into by Washington 10, as described herein. Specifically, the investigation of DTE Gas examined potential violations of 18 C.F.R. § 284.8 by engaging in "flipping" and the investigation of Washington 10 examined potential violations of Section 311 of the Natural Gas Policy Action of 1978 (NGPA), various subparts of 18 C.F.R. §§ 284.122, 284.123, 284.124, 284.126, and its Statement of Operating Conditions (SOC) related to the misclassification of thirty-two firm transportation storage and seventy-two PAL contracts as intrastate rather than interstate. The Parties to this Agreement have agreed to resolve the separate investigations of DTE Gas and Washington 10 (both subsidiaries of DTE Energy) described herein through a single agreement for purposes of convenience and efficiency.

## II. DTE Gas.

Enforcement and DTE Gas hereby stipulate and agree to the following:

### A. Factual Background.

2. In March 2008, DTE Gas through its parent company DTE Energy (DTE), submitted a written self-report to Enforcement in which it admitted that it had engaged in releases of interstate pipeline capacity (capacity releases) at less than the maximum rate without posting the releases for competitive bidding. DTE Gas discovered these violations in December 2007, when a representative of Integrys Energy Services, Inc.

(Integrys) (formerly WPS Energy Services, Inc (WPS)) notified DTE Gas that DTE Gas may have engaged in back-to-back discounted rate releases with different WPS affiliates from 2001 through 2006. As a result, DTE Gas initiated a review of its capacity release transactions beginning in 2001, and discovered that it had engaged in fifty-four separate back-to-back capacity release transactions with WPS/Integrys and four other counterparties that were inconsistent with the requirements of Part 284 of the Commission's regulations. Upon review of DTE Gas' self report, Enforcement commenced a preliminary, non-public investigation pursuant to Part 1b of the Commission's regulations of the capacity release transactions identified by DTE Gas in its self-report from March 2001 to March 2006 (DTE Gas Investigation). Over the course of the investigation, staff issued data requests, reviewed DTE Gas' data responses and conducted extensive conference calls and in-person meetings with DTE Gas' counsel and representatives. DTE Gas cooperated fully in this investigation.

3. DTE Gas is regulated primarily by the Michigan Public Service Commission (MPSC). DTE Gas is exempt from federal regulation as a natural gas company under Section 1(c) of the Natural Gas Act (NGA), which is often referred to as the "Hinshaw" exemption. Consistent with NGPA Section 311, under NGA Section 7, DTE Gas sought and received authorization to engage in the sale, transportation or assignment of natural gas that is subject to the Commission's jurisdiction under the Natural Gas Act, to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activities by Subparts C, D, and E and section 284.20 of Part 284 of the Commission's regulations.

4. On January 1, 1998, DTE Gas and WPS entered into a Variable Transportation Agreement (VTA) whereby DTE Gas transported WPS' gas on DTE Gas' intrastate pipeline system. A 2001 Firm Transportation Service Agreement (TSA) governed DTE Gas' transportation for WPS from 2001 through 2006. Pursuant to the TSA, DTE Gas agreed to release its ANR Link capacity to WPS subject to the terms and the conditions of the VTA. Under the VTA, DTE Gas agreed to release ANR Link capacity to WPS through prearranged capacity releases that would be posted on ANR's Electronic Bulletin Board (EBB) and WPS, as the prearranged replacement shipper, would have the right to match the highest bid. Despite the requirement that the releases be posted on ANR's EBB for competitive bidding, DTE Gas did not post the prearranged capacity releases for competitive bidding.

5. ANR's computer system may have initially rejected DTE Gas' attempt to release previously released capacity to the same replacement shipper (after the first month of the release). To accommodate the release, DTE Gas obtained a "DUNS" number for one of WPS's affiliates, thus allowing ANR then to process the release. DTE Gas likely accommodated back-to-back short-term releases to other replacement shippers in similar fashion.

6. From September 2001 through March 2006, DTE Gas released a total of 17,755,000 Dth of capacity to WPS Energy Services and its affiliates, WPS ESI Gas Storage and FSG Energy Services, on alternating months at less than the maximum rate without offering the capacity for competitive bidding.

7. DTE Gas earned no profits from its capacity release transactions with WPS/Integrys as it reimbursed WPS/Integrys for amounts billed to WPS by ANR for the Link capacity, as required by the VTA and its related agreements.

8. In addition, between March 2001 and October 2002, DTE Gas released approximately 10.96 million Dth of capacity on an alternating monthly basis at less than the maximum rate without making those releases available to competitive bidding with four other sets of affiliated customers: (1) BP Canada Energy Marketing Corp. and BP Canada (BP); (2) Duke Energy T&M LLC and Duke Energy Fuels LP (Duke); (3) Reliant Energy Retail, Reliant Energy Shelby County and Reliant Energy Services (Reliant); and (4) Dynegy Gas Transportation Inc. and Dynegy Marketing & Trade (Dynegy).

9. DTE Gas' capacity releases to Duke, Reliant and Dynegy resulted in a net loss and DTE Gas obtained no profits from these capacity releases. During 2002, a Gas Cost Recovery Mechanism (GCR) was in place which required DTE Gas to pass the revenues related to the BP transactions directly through to DTE Gas' distribution customers. Thus, DTE Gas obtained no profits from the transactions it engaged in with BP.

10. DTE Gas released a total of 4,395,000 Dth of capacity after the effective date of Energy Policy Act of 2005 (EPAct).[7] The capacity releases at issue involved 151 post-EPAct days of activity.

11. Prior to the March 2008 self-report, DTE Gas did not have a fully effective FERC compliance program. DTE Gas had no written procedures in place to govern capacity releases and it did not train its employees on FERC capacity release requirements until February 2008, just prior to the self-report. However, prior to the March 2008 self-report, DTE Gas' parent, DTE, commenced improvements to the quality of its compliance program and culture which directly impacted DTE Gas. For example, in November 2005, DTE formed its Enterprise Compliance Office (ECO) to provide oversight of all company compliance functions. Moreover, beginning in 2006, DTE Gas started to post all of its proposed capacity release transactions for competitive bidding. These actions took place before WPS/Integrys contacted DTE Gas and before the Commission's first post-EPAct civil penalty assessment for capacity release flipping violations. After DTE Gas commenced its internal investigation in December 2007, it began developing and implementing written procedures designed to promote compliance

[7] Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

with the Commission's capacity release regulations. DTE Gas distributed copies of its written capacity release procedures to all of its employees with any responsibility for capacity releases. Since DTE Gas' self-report to Enforcement, DTE has conducted various audits of DTE Gas to determine compliance with FERC regulations. No exceptions were found in any of the audits conducted. Also upon being informed of DTE Gas' capacity release problems, DTE developed FERC natural gas policy and regulatory training. Beginning in 2009, a training coordinator was put in charge of working to identify all employees who should be trained.

### B. DTE Gas Violations.

12. "Flipping" is the repeated short-term release of discounted rate capacity to two or more affiliated replacement shippers on an alternating monthly basis that avoids the competitive bidding requirements.

13. DTE Gas violated section 284.8(h)(2) of the Commission's regulations by engaging in flipping from: (i) September 2001 to March 2006, in releases to WPS/Integrys and its affiliates (and in one case in serial discounted rate releases to the same WPS entity); and (ii) March 2001 through October 2002, with BP, Duke, Reliant and Dynegy.

14. The discounted releases made by DTE Gas to WPS/Integrys were accomplished on a pipeline with no activity other than the releases in question and DTE Gas had additional capacity it could have released on that pipeline had another market participant wanted additional capacity. Still, because the capacity was not posted, it was not offered to other potential replacement customers. Moreover, the failure to post capacity represents a serious threat to market transparency and thus DTE Gas harmed the market.

15. There was no evidence that DTE Gas' high level personnel participated in, condoned or were willfully ignorant of DTE Gas' non-compliance with the Commission's capacity release requirements.

### C. DTE Gas Remedies and Sanctions.

16. For purposes of settling any and all civil and administrative disputes arising out of, related to, or connected with Enforcement's DTE Gas Investigation, DTE Gas agrees with the facts as stipulated in Section II A of this Agreement and admits the violations described in Section II B of this Agreement. DTE Gas agrees to take the following actions:

**a. Civil Penalty.**

17. DTE Gas shall pay a civil penalty of $15,000 to the United States Treasury, by wire transfer, within ten business days after the Effective Date of this Agreement, as defined below.

**b. Compliance.**

18. In addition to the compliance enhancements already in effect as described above, DTE Gas agrees that DTE Gas will develop and enforce policies that will identify all categories of DTE Gas employees who shall receive annual training in advance and in a manner that is non-subjective and transparent, for example by job function, department, job title, and/or job qualifications, as applicable. The fact that annual training is required of these employees shall be clearly communicated to such employees, for example by including annual training as a part of the job qualifications of the jobs they hold. These policies shall be made effective no later than the first compliance reporting date as outlined below.

19. DTE Gas shall adopt or maintain compliance measures and procedures related to its capacity release transactions. These measures shall include continued training for its employees, supervisors, and managers covered by Paragraph 18 regarding the Commission's regulations prohibiting flipping, governing capacity releases, governing Hinshaw pipelines and concerning prohibited practices and shall include review of the training program by officers responsible for the program, disciplinary mechanisms to ensure enforcement, and procedures for conducting internal investigations. DTE Gas 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 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 period covered by the report shall consist of the six months ending one calendar month prior to the date of such report. The second semi-annual compliance monitoring report shall be submitted six months thereafter for the six month period succeeding the prior reporting period.

20. Each compliance monitoring report shall: (1) advise Enforcement whether violations of Commission regulations have occurred during the applicable period; (2) provide a detailed update of all compliance measures and procedures instituted, and compliance training administered, by DTE Gas (and/or DTE as applicable to DTE Gas) in the applicable period, including a description of the compliance measures and procedures instituted, the compliance training provided to all relevant personnel concerning the Commission's regulations prohibiting flipping, governing capacity releases and Hinshaw pipelines, and concerning prohibited practices, and a statement of the personnel or other evidence demonstrating that the personnel have received such training and when the training took place; and (3) include an affidavit executed by an

officer of DTE Gas that the compliance monitoring reports are true and accurate. Upon request by Enforcement, DTE Gas shall provide to Enforcement documentation to support these reports. After the receipt of the second semi-annual report, Enforcement may, at its sole discretion, require DTE Gas to submit semi-annual reports for one additional year.

## III. Washington 10.

Enforcement and Washington 10 hereby stipulate and agree to the following:

### A. Factual Background.

21. Washington 10 is an intrastate pipeline that provides intrastate storage services under the regulatory framework set forth by the MPSC. Washington 10 has fewer than 10 employees.

22. As of June 1, 1999, the Commission authorized Washington 10 to provide NGPA Section 311 service. On October 25, 1999, the Commission granted Washington 10 permission to charge rates for NGPA Section 311 services not to exceed the intrastate cost-based rates approved by the MPSC and conditionally approved its SOC. *See Washington 10 Storage Corporation*, 89 FERC ¶ 62,058 (1999). Washington 10 sought and received authority from the MPSC for revisions to its tariff and to cost and market-based rates in 2004. It informed the Commission of this via letter dated December 1, 2004.

23. During the time period at issue, there were two notable differences between the MPSC tariff and FERC SOC related to staff's investigation: (1) the cost-based rates for storage contracts in the SOC were subject to a cap lower than the market-based rates for storage contracts under Washington 10's MPSC tariff; and (2) the MPSC tariff authorized Washington 10 to provide interruptible and firm PAL service, whereas the FERC-approved SOC permitted only interruptible PAL service.

24. In March 2008, Washington 10, through its parent company DTE, submitted a written self-report to Enforcement in which it disclosed that Washington 10 had (i) misclassified eleven interstate short-term storage contracts as "intrastate" and for which it charged rates in excess of those permitted under its SOC and (ii) that it had misclassified an unidentified number of interstate PAL contracts as "intrastate." As a result of its improper designation of contracts as intrastate, Washington 10 admitted that it administered the wrongly classified contracts under the terms of Washington 10's MPSC tariff instead of its interstate SOC.

25. After receiving the Washington 10 self-report, Enforcement commenced a preliminary investigation (Washington 10 Investigation) based on the eleven misclassified storage contracts and the unidentified number of misclassified PAL

contracts. Over the course of the investigation, staff issued data requests, reviewed Washington 10's data responses and conducted extensive conference calls and in-person meetings with Washington 10's counsel and representatives. Enforcement discovered that the information in the March 2008 self-report was incomplete as there were a total of thirty-two misclassified storage contracts of which eleven included rates in excess of the interstate SOC, and seventy-two misclassified PAL contracts.

26. Specifically, between October 23, 2003 and November 5, 2007, Washington 10 negotiated and executed thirty-two firm transportation storage contracts with various customers and classified those contracts as intrastate firm transportation under the MPSC tariff, when they should have been classified as interstate service under the FERC-approved SOC. Although the rates in some of the misclassified storage contracts did not exceed the SOC rate, Washington 10 charged eleven customers a total of $2,508,227 in excess of SOC rates, of which $2,053,178 was overcharged after the effective date of EPAct.

27. In addition, between January 1, 2004 and November 8, 2007, Washington 10 executed seventy-two PAL contracts with various customers and classified those contracts as intrastate when they should have been classified as interstate because of the receipt and delivery points. As a result of the misclassification, Washington 10 agreed to provide firm PAL service to sixty-eight interstate storage customers and misclassified four additional interruptible PAL service contracts as intrastate rather than interstate. Washington 10's SOC only authorized Washington 10 to provide interruptible PAL service to interstate storage customers. Washington 10 did not earn unjust profits from its PAL misclassification and no customers were overcharged or treated unfairly.

28. Prior to the March 2008 self-report, Washington 10 did not have a fully effective FERC compliance program. Prior to the March 2008 self-report, DTE commenced improvements to the quality of its compliance program and culture which directly impacted Washington 10. For example, in November 2005, DTE formed its ECO to provide oversight of all company compliance functions. In late 2007, Washington 10 initiated a comprehensive review of its gas storage services contracting practices resulting in its March 2008 self-report. After November 2007, Washington 10 ceased using the methodology it had been employing to classify its contracts and implemented a written decision tree to determine the jurisdictional status of each contract. As of January 2008, Washington 10 added a field to its automated contract tracking mechanism to indicate that the contract administrator has reviewed the contract for interstate/intrastate designation and rate compliance pursuant to Washington 10's interstate SOC. In addition, on March 3, 2008, Washington 10 filed revisions to its SOC to incorporate firm park and loan services.[8] And, on October 3, 2008, Washington 10

[8] Washington 10 Storage Corporation Revised Statement of Operating Conditions, Docket No. SA99-30-000 (March 3, 2008).

obtained FERC authorization to charge market-based rates for NGPA Section 311 storage services.[9] As noted above in the DTE Gas discussion, certain Washington 10 and other DTE-related employees participated in February 2008 and February 2009 training workshops that included as topics the distinction between intrastate and interstate services. Beginning in 2009, a training coordinator was put in charge of working to identify employees who should be trained.

### B. Washington 10 Violations.

#### a. Washington 10 Misclassified Firm Transportation Storage Contracts.

29. The overcharges collected by Washington 10 related to the misclassified firm transportation storage contracts exceeded the maximum rate authorized by the Commission under section 284.123(b)(2)(i) of the Commission's regulations, which provides that an intrastate pipeline, in certain circumstances, shall apply to the Commission for permission to charge rates for service, and therefore represents a violation of that section.

30. In addition, the act of overcharging by Washington 10 violated section 284.123(a) of the Commission's regulations, which provides that rates be fair and equitable. Moreover, Washington 10 violated section 284.122(b) of the Commission's regulations, which provides that no rate charged by an intrastate pipeline may exceed a fair and equitable rate as determined by regulation and section 284.124 of the Commission's regulations, which provides that the contracts must state that the transportation arrangement is subject to the provisions of Subpart C. In addition, Washington 10 violated NGPA Section 311.

31. Washington 10 violated its interstate FERC-approved SOC, which authorized a capped cost-based rate for firm transportation storage contracts and the Commission's order authorizing Washington 10 to charge cost-based rates.

32. Washington 10 harmed the market by overcharging its customers $2,508,227, of which $2,053,178 was overcharged after the effective date of EPAct.

33. Washington 10's violations involved 996 post-EPAct days and involved 9,701,227 MMBtus post-EPAct.

#### b. Washington 10 Misclassified PAL Contracts.

[9] *See* Letter Order from Larry D. Gasteiger, Director, Division of Tariffs and Market Development - East to James F. Bowe, Jr., Dewey & LeBoeuf LLP, attorney for Washington 10 Storage Corporation, Docket No. PR08-26-000 (October 3, 2008).

34. Washington 10 violated its interstate SOC, which did not authorize Washington 10 to provide firm PAL service. In addition, Washington 10 violated section 284.122(b) of the Commission's regulations, which provides that no rate may exceed a fair and equitable rate as determined by section 284.123, and which determination process Washington 10 did not follow when it agreed to provide a service it was not authorized under its SOC to provide for a fee which was not approved.

35. Washington 10 violated sections 284.123(a), (b)(2)(i), and (e) of the Commission's regulations, which provide, respectively, that rates and charges be fair and equitable as determined in accordance with subpart (b), that an intrastate pipeline apply for Commission approval of proposed rates and charges, and that an intrastate pipeline which engages in any new service shall file a SOC with the Commission within thirty days.

36. Finally, Washington 10 violated section 284.124 of the Commission's regulations, which provides that the contracts must state that the transportation arrangement is subject to the provisions of Subpart C.

37. Washington 10's PAL violations involved 1024 post-EPAct days and involved 9,698,619 MMBtus post-EPAct.

#### c. Washington 10 Filed Inaccurate Semi-annual and Annual Reports.

38. While Washington 10's semi-annual reports were filed in a timely manner, those reports failed to include the contracts which were inaccurately classified by Washington 10 as intrastate contracts, but which should have been classified as interstate contracts. Washington 10's failure to identify these contracts in its semi-annual reports caused Washington 10 to violate then effective sections 284.122(c) and 284.126(c) of the Commission's regulations which require storage activity under section 284.122 to be reported on a semi-annual basis.

39. As a result of its internal audit, Washington 10 discovered it had not been filing an annual report reflecting hub services in violation of then effective section 284.126(b) of the Commission's regulations.

40. The failure to report all of the interstate contracts created a lack of transparency in the market.

### C. Washington 10 Remedies and Sanctions.

41. For purposes of settling any and all civil and administrative disputes arising out of, related to, or connected with Enforcement's Washington 10 Investigation, Washington 10 agrees with the facts as stipulated in Section III A of this Agreement and

admits the violations described in Section III B of this Agreement. Washington 10 agrees to take the following actions:

**a. Disgorgement.**

42. Washington 10 shall pay disgorgement of $2,508,227, plus interest, within ten business days of the Effective Date of this Agreement. The entirety of this sum shall be paid to the State of Michigan, Department of Human Services for use in its Energy and Weatherization Programs to assist Low Income Residents: Home Heating Credit, State Emergency Relief, and Weatherization Assistance Program.

**b. Civil Penalty.**

43. Washington 10 shall pay a civil penalty of $725,000 to the United States Treasury, by wire transfer, within ten business days after the Effective Date of this Agreement, as defined below.

**c. Compliance.**

44. In addition to the compliance enhancements already in effect as described above, Washington 10 agrees that Washington 10 will develop and enforce policies that will identify all categories of Washington 10 employees, DTE-related employees and contractors who perform work on Washington 10 related issues (collectively Washington 10 Employees) who shall receive annual training in advance and in a manner that is non-subjective and transparent, for example by job function, department, job title, and/or job qualifications, as applicable. The fact that annual training is required of these employees shall be clearly communicated to such employees, for example by including annual training as part of the respective job qualifications for the jobs they hold. These policies shall be made effective no later than the first compliance reporting date as outlined below.

45. Washington 10 shall adopt or maintain compliance measures and procedures related to FERC regulations under the NGA and NGPA Section 311. The measures shall include continued improved training for relevant Washington 10 Employees, supervisors, and managers covered by Paragraph 44 regarding interstate designation protocols, the differences between Hinshaw pipelines and those operating under the authority of NGPA Section 311, and prohibited practices and shall include review of the training program by officers responsible for the program, disciplinary mechanisms to ensure enforcement, and procedures for conducting internal investigations. Washington 10 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 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 period covered by the report shall consist of the six months ending one calendar month prior to the date of

such report. The second semi-annual compliance monitoring report shall be submitted six months thereafter for the six month period succeeding the prior reporting period.

46. Each compliance monitoring report shall: (1) advise Enforcement whether violations of Commission regulations have occurred during the applicable period; (2) provide a detailed update of all compliance measures and procedures instituted, and compliance training administered, by Washington 10 (and/or DTE as applicable to Washington 10) in the applicable period, including a description of the compliance measures and procedures instituted, the compliance training provided to all relevant personnel concerning the Commission's regulations related to interstate designation protocols, the differences between Hinshaw pipelines and those operating under the authority of NGPA Section 311, and prohibited practices, and a statement of the personnel or other evidence demonstrating that the personnel have received such training and when the training took place; and (3) include an affidavit executed by an officer of Washington 10 that the compliance monitoring reports are true and accurate. Upon request by Enforcement, Washington 10 shall provide to Enforcement documentation to support these reports. After the receipt of the second semi-annual report, Enforcement may, at its sole discretion, require Washington 10 to submit semi-annual reports for one additional year.

### d. Semi-annual and Annual Reports.

47. Within 10 days of the Effective Date of this Agreement, Washington 10 shall file with the Commission Revised Semi-annual Reports which accurately reflect all interstate contracts and it shall file all Annual Reports which, as described above, Washington 10 had failed to make and which should have been filed. These reports will be filed in the manner they should have been filed with the Commission at the time they were originally required to be filed.

## IV. 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 as to DTE Gas and Washington 10, and any affiliated entity, and their agents, officers, directors and employees, both past and present, and any successor in interest to Washington 10 and DTE Gas.

49. Commission approval of this Agreement in its entirety and without material modification shall release DTE Gas and forever bar the Commission from holding DTE Gas, its affiliates, agents, officers, directors and employees, both past and present, liable for any and all administrative or civil claims arising out of, related to, or connected with the DTE Gas Investigation, as defined in this Agreement.

50. Commission approval of this Agreement in its entirety and without material modification shall release Washington 10 and forever bar the Commission from holding Washington 10, its affiliates, agents, officers, directors and employees, both past and present, liable for any and all administrative or civil claims arising out of, related to, or connected with the Washington 10 Investigation, as defined in this Agreement.

51. DTE Gas' failure to: (a) make a timely civil penalty payment; (b) comply with the compliance requirements specified herein; or (c) comply with any other provision of this Agreement applicable to DTE Gas, shall be deemed a violation of a final order of the Commission issued pursuant to the NGA or the NGPA, as appropriate, and may subject DTE Gas to additional action under the enforcement and penalty provisions of the NGA or NGPA, as appropriate.

52. Washington 10's failure to: (a) make a timely civil penalty payment; (b) make a timely disgorgement payment as set forth in paragraph 42 above; (c) comply with the compliance requirements specified herein; (d) file Revised Semi-Annual and Annual Reports or (e) comply with any other provision of this Agreement applicable to Washington 10, shall be deemed a violation of a final order of the Commission issued pursuant to the NGA or the NGPA, as appropriate, and may subject Washington 10 to additional action under the enforcement and penalty provisions of the NGA or NGPA, as appropriate.

53. If DTE Gas and/or Washington 10 fail to make the civil penalty and disgorgement payments described above at the times 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. § 154.501(d) (2012) from the date the payments are due, in addition to any other enforcement action and penalty that the Commission may take or impose.

54. DTE Gas and Washington 10 each agree that they shall not seek, nor shall they take any action, to pass through to rate payers any of the monies they will pay pursuant to this Agreement.

55. This Agreement binds DTE Gas and Washington 10 and their respective agents, successors, and assigns. The Agreement does not create any additional or independent obligations on DTE Gas or Washington 10, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.

56. 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, DTE Gas, or Washington 10 has been made to induce the signatories or any other party to enter into the Agreement.

57. Unless the Commission issues an order approving this Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement, DTE Gas, nor Washington 10 shall be bound by any provision or term of this Agreement, unless otherwise agreed to in writing by Enforcement, DTE Gas, and Washington 10.

58. In connection with the payment of the civil penalty provided for herein, DTE Gas and Washington 10 each agree that the Commission's order approving this Agreement without material modification shall be a final and unappealable order assessing a civil penalty under § 22(a) of the NGA, 15 U.S.C. § 717t-1(a) and under the NGPA, 15 U.S.C. § 3414, et seq. DTE Gas and Washington 10 each waive findings of fact and conclusions of law, rehearing of any Commission order approving this Agreement without material modification, and judicial review by any court of any Commission order approving this Agreement without material modification.

59. This Agreement may be modified only if in writing and signed by DTE Gas and/or Washington 10, as applicable, and Enforcement. No waiver of any provision of this Agreement or departure from any term of this Agreement shall be effective unless in writing and signed by DTE Gas and/or Washington 10, as applicable, and Enforcement. No modification will be effective unless any approval of the Commission that may be required with respect to such modification has been received.

60. 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 this Agreement on the entity's behalf.

61. The undersigned representatives of DTE Gas and Washington 10 each affirm that he or she has read this Agreement, that all of the matters set forth in this Agreement are true and correct to the best of his or her knowledge, information, and belief, that he or she understands that this Agreement is entered into by Enforcement in express reliance on those representations, and that he or she has had the opportunity to consult with counsel.

62. This Agreement may be signed in counterparts.

Agreed to and Accepted:

Norman C. Bay, Esq.
Director
Office of Enforcement
Federal Energy Regulatory
Commission

4-22-13
Date

Mark W. Stiers
Vice President – Gas Sales & Supply
DTE Gas Company

Date

Peter Cianci
President
Washington 10 Storage Corporation

4/18/2013
Date

Agreed to and Accepted:

Norman C. Bay, Esq.
Director
Office of Enforcement
Federal Energy Regulatory
Commission

4-22-13
Date

Mark W. Stiers
Vice President – Gas Sales & Supply
DTE Gas Company

Apr 18/2013
Date

Peter Cianci
President
Washington 10 Storage Corporation

Date