

150 FERC ¶ 61,032
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PáTu Wind Farm, LLC

v.

Docket No. EL15-6-000

Portland General Electric Company

PáTu Wind Farm, LLC

Docket No. QF06-17-002

ORDER GRANTING IN PART AND DISMISSING IN PART COMPLAINT

(Issued January 22, 2015)

1. On October 10, 2014, PáTu Wind Farm, LLC (PáTu), filed a complaint against Portland General Electric Company (Portland General), pursuant to sections 206, 306 and 309 of the Federal Power Act (FPA),¹ and Rule 206 of the Commission's Rules of Practice and Procedure (Complaint).²
2. In its Complaint, PáTu alleges that Portland General violated the FPA, the Commission's open access regulations, and PáTu's rights under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA)³ by failing to provide transmission services necessary to effectuate a dynamic scheduling import into Portland General's balancing authority area, and by refusing to agree to accept deliveries on a 15-minute schedule. PáTu also alleges improper interference by Portland General's merchant

¹ 16 U.S.C. §§ 824e, 825e and 825h (2012).

² 18 C.F.R. § 385.206 (2014).

³ 16 U.S.C. § 824a-3 (2012).

function in the operations of Portland General's transmission function in violation of the Commission's Standards of Conduct requirements.⁴ PáTu requests that the Commission require Portland General to make monetary reparations to PáTu to remedy these violations of the Commission's policies.

3. As discussed below, we find that Portland General may not refuse to accept PáTu's net output delivered to the Portland General system. We also find that PáTu has not substantiated its claim that Portland General's merchant function and transmission function employees violated the Commission's Standards of Conduct requirements. Finally, we defer to the Public Utility Commission of Oregon (Oregon Commission) or an appropriate court to determine whether monetary reparations should be paid by Portland General to PáTu. We therefore grant PáTu's Complaint in part and dismiss it in part.

I. Background

4. PáTu is a 9 MW net capacity wind farm located in Sherman County, Oregon. PáTu self-certified as a qualifying facility (QF) in Docket No. QF06-17-002. PáTu is interconnected to Wasco Electric Cooperative, Inc. (Wasco) and has a point-to-point transmission service agreement with Wasco for transmission from PáTu's point of interconnection with Wasco to Bonneville Power Administration (BPA) at BPA's DeMoss substation. PáTu also has a point-to-point transmission service agreement with BPA for transmission from BPA's DeMoss substation to Portland General, a vertically-integrated electric utility providing electric service in the State of Oregon, with the point of delivery at Portland General's Troutdale substation.⁵

5. On April 29, 2010, PáTu and Portland General entered into the Oregon Commission's standard PURPA contract for off-system, intermittent-resource QFs less than or equal to 10 MW nameplate capacity (Standard Contract). PáTu states that its wind farm began commercial operation and began selling output under the Standard Contract in December 2010.

6. PáTu states that, when it entered into the Standard Contract, the Oregon Commission required that wind QFs with a nameplate capacity of 10 MW or less receive long-term, standard avoided cost rates without a deduction for wind integration costs and

⁴ 18 C.F.R. Pt. 358 (2014).

⁵ PáTu Complaint at 6.

without purchasing wind balancing services.⁶ Therefore, PáTu states that small wind QFs, such as PáTu, are not subject to wind integration charges, and the Standard Contract does not require PáTu to contract with the transmission provider, or any other third party, to secure wind integration services. PáTu also states that, consistent with its PURPA rights, the Standard Contract establishes PáTu's right to sell its *entire* Net Output to Portland General.⁷

7. PáTu further states that dynamic scheduling has been available from BPA to PáTu, but Portland General has refused to accept dynamic scheduling of PáTu's output. PáTu explains that BPA offered it dynamic scheduling service, which would allow for scheduling and delivery of PáTu's precise, instantaneous output to Portland General. With dynamic scheduling, PáTu states that it could avoid paying for BPA's Generator Imbalance Service, Wind Regulating Reserves, Wind Following Reserves, and Wind Imbalance Service – consistent with the Oregon Commission's pricing policy that small QFs are not responsible for wind integration services.⁸

8. PáTu explains that it has made repeated attempts to dynamically schedule its output with Portland General and Portland General, acting as the receiving balancing authority area, consistently refused to discuss or participate in implementing dynamic scheduling.⁹ PáTu represents that a Portland General transmission function employee informed the merchant function employee that Portland General's transmission function could accommodate dynamic scheduling.¹⁰ PáTu explains that the Portland General

⁶ *Id.* PáTu notes that, several years after PáTu's execution of the Standard Contract, the Oregon Commission changed its policy to require that wind QFs sized 10 MW and under receive a reduction to their avoided cost rates to account for the purchasing utility's wind integration costs, or that they secure such balancing services from another utility's balancing authority area. PáTu states, however, that the Oregon Commission expressly stated that this new policy would be effective prospectively for new PURPA contracts, and not existing PURPA contracts. *Id.* at 6-7 & n.15.

⁷ *Id.* at 7 (stating that its Standard Contract defines "Net Output" as "all energy expressed in [kW-hours] produced by the Facility, less station and other onsite use and less transformation and transmission losses").

⁸ *Id.* at 7-8.

⁹ *Id.* at 8.

¹⁰ *Id.* at 9, Attachment 2 (Affidavit of Ormand Hilderbrand) at P 26 and Attachment 4 at 29 (July 16, 2010 email from John Jamieson to Mike Ryan).

merchant employee responded that he “would prefer to have PáTu get integration service from BPA and provide [Portland General] with a flat schedule per the contract.”¹¹ Nonetheless, PáTu states that, one month later, the same Portland General merchant function employee repeatedly told PáTu that delivering via dynamic scheduling was technically impossible from BPA’s balancing authority area, and refused to discuss the point.¹² PáTu states that Portland General took the position that PáTu must purchase wind integration services from BPA in order to deliver a firmed product under the Standard Contract.¹³

9. PáTu states that, after being admitted to BPA’s dynamic scheduling pilot program, it again contacted Portland General to establish dynamic scheduling. PáTu represents that Portland General’s attorney responded, by email dated September 17, 2010, that: “[Portland General] has not agreed to dynamic transfer¹⁴ and contractually, under your Schedule 201 Agreement [the Standard Contract], Section 4.4, you must schedule on an hourly basis, not dynamic transfer.”¹⁵

10. PáTu states that, by letter dated January 4, 2013, it requested Portland General’s transmission function to allow PáTu to deliver its output to Portland General through dynamic scheduling on a comparable basis to other generators that Portland General has allowed to import into Portland General’s balancing authority area through dynamic scheduling.¹⁶ According to PáTu, Portland General’s transmission function eventually responded by rejecting PáTu’s request for transmission service and stating that ancillary services, such as dynamic scheduling, would be “unavailable in this context given that they are not being requested in connection with Point-to-Point or Network Integration

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ The terms ‘dynamic schedule’ and ‘dynamic transfer’ are used throughout the pleadings without any party distinguishing between the terms.

¹⁵ PáTu Complaint at 9, Attachment 2 (Affidavit of Ormand Hilderbrand) at P 27, and Attachment 4 at 44 (September 17, 2010 email from Richard George to Peter Richardson, Ormand Hilderbrand and James Hall).

¹⁶ *Id.* at 9-10. PáTu states that it provided Portland General with the information required by the Commission’s regulations for a “good faith” request for transmission service. *Id.* at 10.

Transmission Service purchased from [Portland General].”¹⁷ PáTu states that it sent another letter clarifying its request and that Portland General’s transmission function responded reaffirming its prior position and stating that it does not offer import dynamic transfers as a standalone service separate from transmission service.¹⁸

11. Therefore, PáTu states that it has had no choice but to deliver power to Portland General in hourly, prescheduled MW-hour blocks. Under this delivery practice, PáTu states that BPA, the transmission provider, requires PáTu to pay for Generator Imbalance Service, Wind Regulating Reserves, Wind Following Reserves, and Wind Imbalance Service – a considerable expense for a small project. PáTu states that, because its 9 MW wind farm rarely (if ever) produces hourly generation in whole MW-hour increments, the hourly block delivery practice requires BPA to make up the difference between PáTu’s prescheduled amount (in MW-hours) and its actual generation (in kW-hours).

12. PáTu explains that Portland General unilaterally decided that, when “under-generation” occurs (i.e., PáTu generates less than its actual scheduled amount), Portland General will pay avoided cost rates only for that portion of the delivery that Portland General unilaterally determines was actually produced by PáTu, and will only pay market index rates for the energy provided by BPA to fill in the scheduled hourly block. On the other hand, when “over-generation” occurs (i.e., PáTu generates more than its actual scheduled amount), Portland General will not pay for the portion of the QF output that is in excess of the scheduled amount. PáTu explains that the “over-generation” energy is absorbed by BPA because of the hourly scheduling protocol and never reaches Portland General so PáTu is not paid avoided-cost rates for that portion of its output. Instead, PáTu’s “over-generation” is merely absorbed by BPA and used to offset PáTu’s monthly

¹⁷ *Id.* at 10, Attachment 2 (Affidavit of Ormand Hilderbrand) at P 39, and Attachment 4 at 125. PáTu notes that Portland General’s merchant function is Portland General’s transmission function’s customer responsible for purchasing output from QFs delivered to the Portland General system.

¹⁸ *Id.* at 10-11, Attachment 2 (Affidavit of Ormand Hilderbrand) at P 39, and Attachment 4 at 158. In its August 22, 2013 response, Portland General’s transmission function also relied upon its interpretation of the PURPA contract, and claimed: “As you know, [Portland General]’s position in the docket pending before the [Oregon Commission] is that the power purchase agreement between PáTu and [Portland General] requires hourly scheduled energy deliveries that are inconsistent with dynamic transfers.” *Id.*, Attachment 4 at 159.

accumulation of “under-generation” for which PáTu must compensate BPA under BPA’s Generator Imbalance Service.¹⁹

13. PáTu states that, on December 21, 2011, it filed a complaint against Portland General at the Oregon Commission alleging nine claims.²⁰ The first claim, which has not been raised in this proceeding, concerned the provisions in the Standard Contract that govern the amount of time each year that PáTu must be available to produce electricity. In the second through fifth claims, PáTu asserted that Portland General’s failure to accept the import of a dynamic schedule violated the terms of its Standard Contract and the Oregon Commission’s avoided cost pricing policies.²¹ On May 21, 2012, in Order No. 12-316, the Oregon Commission’s Administrative Law Judge addressed the first five claims and concluded that the Oregon Commission “does not have any jurisdiction over the transmission of QF output to a utility” and “does not have any indirect jurisdiction over any transmission function, and could not, therefore, direct [Portland General] to participate in a dynamic transfer under the guise of the standard contract.”²² The Oregon Commission affirmed Order No. 12-316 on August 21, 2012, deciding that “a finding that the standard contract does not prohibit dynamic transfer transmission would have no meaning, because the contract does not address the means of transmission in any way” and “[it does] not have the jurisdiction—nor possibly the expertise—to fully evaluate the impact of a dynamic transfer.”²³

14. In the sixth through ninth claims, PáTu asserted that Portland General should pay PáTu avoided cost rates for all scheduled and delivered energy, including imbalance energy from BPA.²⁴ On August 13, 2014, the Oregon Commission denied the remaining four claims in Order No. 14-287 and found that “the [Standard Contract] does not specify how PáTu should honor the prescheduled amount—whether by dynamic transfer, the purchase of imbalance and wind integration services, or in some other manner” and “[Portland General] is not obligated to purchase undelivered Net Output from PáTu.”²⁵

¹⁹ *Id.* at 11-12.

²⁰ *Id.* at 12.

²¹ *Id.*, Attachment 8 at 2.

²² *Id.*, Attachment 8 at 17-18.

²³ *Id.*, Attachment 8 at 8-9.

²⁴ *Id.*, Attachment 9 at 12.

²⁵ *Id.*, Attachment 9 at 14.

On December 8, 2014 in Order No. 14-425, the Oregon Commission denied reconsideration of Order No. 14-287.²⁶

15. PáTu states that, after the Oregon Commission held that it lacked jurisdiction to decide the dynamic scheduling issue, it contacted the Commission's Enforcement Hotline. It claims that, although Commission staff offered its dispute resolution services, Portland General refused to participate.²⁷

16. In August 2014, PáTu states that it became aware that BPA would offer reduced wind integration charges to transmission customers who pre-enroll in BPA's 15-minute committed scheduling program for the 2015-16 rate period.²⁸ PáTu states that this program is part of BPA's implementation of 15-minute schedules consistent with the Commission's requirement in Order No. 764.²⁹ PáTu states that it sought confirmation from Portland General that it would accept the e-tags from the 15-minute schedules from PáTu to provide the assurance necessary to enroll in BPA's program. PáTu claims, however, that Portland General refused to allow PáTu to use 15-minute scheduling.³⁰

II. PáTu's Complaint

A. Portland General's Purchase Obligation

17. PáTu objects to Portland General's failure to accept -- and pay for at avoided cost rates -- the output it delivers to the Troutdale substation. PáTu alleges that Portland General unduly discriminates in failing to allow a dynamic schedule import of PáTu's QF output into Portland General's balancing authority area in violation of the FPA, the

²⁶ *PáTu Wind Farm, LLC vs. Portland General Electric Co.*, Docket No. UM 1566, Order No. 14-425 at 6 (Dec. 8, 2014).

²⁷ PáTu Complaint at 13.

²⁸ *Id.*

²⁹ *Integration of Variable Energy Resources*, Order No. 764, FERC Stats. & Regs. ¶ 31,331 (adopting reforms designed to remove barriers to the integration of variable energy resources, including, among other things, requiring each public utility transmission provider to offer intra-hourly transmission scheduling at 15-minute intervals), *order on reh'g and clarification*, Order No. 764-A, 141 FERC ¶ 61,232 (2012), *order on clarification and reh'g*, Order No. 764-B, 144 FERC ¶ 61,222 (2013).

³⁰ PáTu Complaint at 13 (citing Attachment 4 at 161).

Commission's open access regulations and PáTu's PURPA rights. PáTu states that FPA section 205 prohibits jurisdictional transmission providers, like Portland General, from granting "any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage" or maintaining "any unreasonable difference in rates, charges, service, facilities, or any other respect" in providing transmission service.³¹ PáTu also states that PURPA requires that the rules governing QF sales "shall not discriminate against" QFs.³² PáTu explains that the Commission has incorporated this non-discriminatory requirement in its PURPA regulations and in its open access transmission regime by requiring transmission providers to provide open access transmission service on a non-discriminatory basis.³³ PáTu states, therefore, that all QFs are entitled to receive non-discriminatory transmission service on terms comparable to those provided to any other eligible party, and the Commission has invalidated policies where the "treatment of QFs differs markedly, and unjustifiably, from its treatment of other generation in [the purchasing utility's] system."³⁴ PáTu also states that the Commission has applied its non-discrimination requirement to dynamic scheduling.³⁵

³¹ *Id.* at 14 (citing 16 U.S.C. § 824d(b) (2012)). PáTu further states that FPA section 206 directs that the Commission "shall" impose a remedy whenever it finds that a jurisdictional public utility has engaged in an unduly discriminatory or preferential practice. *Id.* (citing 16 U.S.C. § 824e(a) (2012)).

³² *Id.* at 14-15 (citing 16 U.S.C. § 824a-3(b)(2) (2012); *accord* 16 U.S.C. § 824a-3(c)(2) (2012)).

³³ *Id.* at 15.

³⁴ *Id.* (citing *Entergy Servs., Inc.*, 103 FERC ¶ 61,125, at 61,398 (2003)).

³⁵ *Id.* at 15-16 & n.48 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, at P 630 (2007) (stating, "to the extent a transmission provider currently accepts telemetered generation schedules for its native load, the transmission provider must accept such schedules from its network customers on a comparable basis")). PáTu notes that the Commission has stated, "[u]nder Order Nos. 888 and 888-A, transmission providers may not raise unreasonable obstacles to dynamic scheduling" and "[i]f the customer wants to purchase this service from a third party, the transmission provider should make a good faith effort to accommodate the necessary arrangements between the customer and the third party for metering and communication facilities." *Id.* at 16 (citing *New Horizon Electric Cooperative, Inc. v. Duke Power Co.*, 95 FERC ¶ 61,146, at 61,470 (2001); and *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities*

(continued...)

18. PáTu asserts that, although Portland General provides dynamic scheduling service for its own power purchases, including renewable resources, and for nonaffiliated non-QF resources, it categorically refuses to accept dynamic scheduling imports to its balancing authority area from PáTu and other QFs. In particular, PáTu explains that, at the same time Portland General was denying PáTu's requests to deliver its output by dynamic schedule, Portland General required delivery by dynamic schedule for generators bidding into two of Portland General's Requests for Proposals (RFPs). Specifically, PáTu states that Portland General required delivery by dynamic schedule for generators bidding into its RFP for the flexible capacity resource, and that Portland General asserted that "dynamic transfer transmission rights are essential to allow the capacity resource to meet the general capacity need, as well as to integrate intermittent or variable energy resources."³⁶ In a later RFP for renewable resources in 2012, PáTu states that Portland General offered to accept bids from any renewable generator delivering by dynamic transfer to Portland General's balancing authority area, unless that generator was a QF.³⁷

19. PáTu asserts that Portland General's decision to discriminate against PáTu and other QFs in the delivery of imports by dynamic scheduling is not driven by reliability or other concerns related to the operation of its transmission system, but by the commercial interests of Portland General's merchant function. PáTu urges the Commission to require Portland General to treat PáTu and other independent renewable power generators comparably by providing dynamic scheduling on a non-discriminatory basis.

20. PáTu states that, in support of its decision to deny PáTu the ability to dynamically schedule, Portland General has unjustifiably put great weight on the Commission's 1998 decision in *Connecticut Valley*, in which the Commission suggested in a footnote that purchasing utilities are not obligated under PURPA to provide dynamic scheduling to

and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,710 (1996)).

³⁶ PáTu Complaint at 16 (citing *In re Portland General Electric Co.: Request for Capacity Resources*, Oregon Commission Docket No. UM 1535, Order No. 11-371 at 4 (2011)).

³⁷ PáTu Complaint at 16, Attachment 11 at 29.

QFs.³⁸ PáTu explains that Portland General's reliance on *Connecticut Valley* is unjustified because the case did not involve a claim of discrimination in the provision of transmission services by the purchasing utility, the footnote is pure *dictum*, and the case is irrelevant in light of the Commission's current policies, and the generation and market conditions in the Pacific Northwest today.³⁹

21. PáTu also argues that Portland General's discriminatory transmission policy violates PáTu's PURPA right to sell its full output to Portland General. PáTu explains that, under PURPA, Portland General has an absolute obligation to purchase PáTu's QF output.⁴⁰ It further explains that PURPA and the Commission's precedent prohibit the electric utility from imposing extra-contractual requirements on a QF's right to sell its full output at the avoided cost rates in its long-term PURPA contract.⁴¹ PáTu complains that Portland General's refusal to allow it to dynamically schedule reduces what PáTu recovers under its avoided cost rates, because Portland General has forced PáTu to buy wind integration services from BPA.⁴² In addition, when PáTu "over-generates" energy (i.e., PáTu generates more than its actual schedule), PáTu states that Portland General claims that BPA absorbs that generation and does not deliver it to Portland General. PáTu contends that Portland General thus pays PáTu for something less than PáTu's entire net output.⁴³ Finally, PáTu asserts that Portland General's position, that it lacks a transmission customer (Portland General merchant) that is willing to accept a dynamic

³⁸ *Id.* at 17 (citing *Connecticut Valley Electric Co. Inc. v. Wheelabrator Claremont Co.*, 82 FERC ¶ 61,116, at n.13 (1998) (*Connecticut Valley*), *order on reh'g and clarification*, 83 FERC ¶ 61,136 (1998)).

³⁹ *Id.* at 18-20.

⁴⁰ *Id.* at 22. PáTu also points out that it has the right to choose to wheel power across the system of a utility with which it interconnects and sell its output to the utility receiving such wheeled QF power at the avoided costs of the receiving utility. *Id.* (citing 18 C.F.R. § 292.303(d) (2014)).

⁴¹ *Id.* at 23-24 (citing *Idaho Wind Partners I, LLC*, 140 FERC ¶ 61,219 (2012), *order on reh'g*, 143 FERC ¶ 61,248 (2013); and *Southwest Power Pool, Inc.*, 125 FERC ¶ 61,314 (2008), *Order denying clarification*, 126 FERC ¶ 61,135 (2009), *correcting order*, 127 FERC ¶ 61,008 (2009)).

⁴² *Id.* at 25-26; *see supra* P 6.

⁴³ PáTu Complaint at 26-27; *see supra* P 12.

schedule, overlooks that Portland General's merchant function is required by PURPA to cooperate with PáTu.⁴⁴

B. 15-Minute Scheduling

22. PáTu asserts that Portland General's failure to accept 15-minute scheduling is not only unduly discriminatory in violation of the FPA, but also unjust, unreasonable and unduly discriminatory in light of the Commission's findings in Order No. 764.⁴⁵ PáTu states that, in Order No. 764, the Commission found that hourly scheduling can cause generator imbalance charges for variable energy resources to be unjust, unreasonable and unduly discriminatory, and so ordered transmission providers to provide 15-minute scheduling. Nevertheless, PáTu states that Portland General is requiring it to operate under the unworkable, hourly scheduling mechanism for the entire term of its Standard Contract, which extends to May 2031. PáTu asserts that Portland General's conduct is inconsistent with the Commission's non-discriminatory transmission policies promoting the integration of variable energy resources.⁴⁶

C. Standards of Conduct

23. PáTu asserts that Portland General has violated at least two of the Commission's Standards of Conduct requirements, including: (1) the requirement to treat all transmission customers, affiliated and non-affiliated, on a non-discriminatory basis;⁴⁷ and (2) the requirement that transmission function employees must operate independently from the merchant function employees, unless expressly permitted.⁴⁸

24. With respect to the non-discrimination requirement, PáTu asserts that Portland General's refusal to provide dynamic scheduling or 15-minute scheduling to PáTu and other QFs when it is providing those same services for Portland General's own purposes is a violation of the Standards of Conduct's non-discrimination requirement.

⁴⁴ PáTu Complaint at 26.

⁴⁵ *Id.* at 20-22.

⁴⁶ *Id.* at 21.

⁴⁷ *Id.* at 28 (citing 18 C.F.R. §§ 358.2(a), 358.4 (2014)).

⁴⁸ *Id.* (citing 18 C.F.R. §§ 358.2(b), 358.5 (2014)).

25. With respect to the independent operation requirement, PáTu alleges that Portland General violated that requirement because its decision to deny dynamic scheduling to PáTu was not driven by Portland General's transmission function, which indicated that it could provide dynamic scheduling to PáTu, but by Portland General's merchant function, which objected to dynamic scheduling for commercial reasons. Specifically, PáTu points out that a Portland General transmission function employee informed the Portland General merchant employee and PURPA contract administrator by email that Portland General could implement a dynamic schedule for PáTu's output.⁴⁹ PáTu states that, when faced with the option to accept a dynamic schedule and precise "unbalanced" kW-hour deliveries each hour from PáTu, Portland General's merchant function informed its transmission function by email that they "would prefer to have PáTu get integration service from BPA and provide [Portland General] with a flat schedule per the contract."⁵⁰ PáTu also asserts that other internal emails between Portland General's merchant function employees demonstrate that Portland General sought to implement PáTu's deliveries in this manner in order to establish a favorable commercial precedent for other QFs in the queue.⁵¹ PáTu argues therefore that the decision to deny PáTu dynamic scheduling was driven by Portland General's merchant function in violation of the independent operation requirement that prevents merchant function employees from conducting transmission operations.⁵²

26. PáTu also alleges that the claim made by Portland General's transmission function in its April 2013 response to PáTu's request for dynamic scheduling service is another violation of the non-discrimination principle.⁵³ PáTu asserts that, in a long string of communications, Portland General stonewalled and rejected PáTu's request on the grounds that ancillary services such as dynamic scheduling are "unavailable in this context given that they are not being requested in connection with Point-to-Point or Network Integration Transmission Service purchased from [Portland General]."⁵⁴ PáTu

⁴⁹ *Id.* at 29; *see supra* P 8.

⁵⁰ PáTu Complaint at 29.

⁵¹ PáTu Complaint at 29, Attachment 2 (Affidavit of Ormand Hilderbrand) at P 30, and Attachment 4 at 50-52. PáTu states that it was the first off-system wind QF selling to Portland General under the Oregon Commission's standard PURPA contract.

⁵² PáTu Complaint at 29.

⁵³ *Id.* at 29-30; *see supra* P 10.

⁵⁴ PáTu Complaint at 30 (citing Attachment 4 at 125).

points out, however, that Portland General's merchant function is obligated to purchase the QF output, and Portland General's merchant function is the transmission customer for Portland General's transmission function.⁵⁵

27. PáTu explains that Portland General offered two additional reasons for denying its dynamic scheduling request and argues that neither is legitimate. First, PáTu notes that Portland General's merchant function initially informed PáTu that a dynamic transfer was impossible. PáTu states, however, that this was false because Portland General's transmission function previously informed its merchant function that Portland General already accepts dynamic transfer imports from generators external to its balancing authority area, and could do so for PáTu.⁵⁶ Second, PáTu states that Portland General's transmission function provided an August 22, 2013 letter to PáTu stating that it could not provide dynamic scheduling because of Portland General's contractual interpretation of the Standard Contract. However, PáTu argues that, on August 21, 2012 in Order No. 12-316, the Oregon Commission rejected Portland General's interpretation of the Standard Contract and held that the Standard Contract does not address the details of the transmission service.⁵⁷ PáTu asserts therefore that, in violation of the Standards of Conduct, Portland General's transmission function relied on an impermissible merchant purpose to deny PáTu's request for dynamic scheduling.⁵⁸

D. Request for Monetary Reparations

28. PáTu argues that the Commission has remedial authority under FPA section 309 to require entities violating the FPA to pay restitution for profits gained as a result of a statutory or tariff violation.⁵⁹ PáTu requests that the Commission order Portland General to pay PáTu \$481,986, plus interest and additional principle and interest accrued after the filing of its Complaint, the costs PáTu was forced to pay BPA for Wind Regulating Reserves, Wind Following Reserves, and Wind Imbalance Service.⁶⁰ Alternatively, PáTu

⁵⁵ *Id.* at 30.

⁵⁶ *Id.* at 30; *see supra* P 8.

⁵⁷ PáTu Complaint at 30-31; *see supra* P 13.

⁵⁸ PáTu Complaint at 31.

⁵⁹ *Id.*

⁶⁰ *Id.* at 32, Attachment 2 (Affidavit of Ormand Hilderbrand) at 50-51. PáTu also states the \$481,986 is calculated from May 2011, which is the date by which Portland General could have completed the necessary communications pathways for dynamic

(continued...)

states that the Commission could order Portland General to pay restitution for the avoided wind integration costs on Portland General's system, which PáTu estimates as \$374,366, plus interest and additional principle and interest accrued after the filing of its Complaint.⁶¹

III. Notice of Filing and Responsive Pleadings

A. Notice

29. Notice of PáTu's Complaint was published in the *Federal Register*, 79 Fed. Reg. 62,948 (2014), with interventions and protests due on or before October 30, 2014. A timely motion to intervene was filed by BPA. Portland General filed an answer to the Complaint. Timely motions to intervene and comments were each filed separately by the Community Renewable Energy Association (CREA) and the Northwestern & Intermountain Power Producers Coalition (NIPPC).

B. Portland General's Answer

30. Portland General moves for summary disposition of PáTu's claims and, in the event the Commission declines to grant summary disposition, it requests that the Commission set the case for hearing. Portland General maintains that the thrust of PáTu's allegations may be dismissed by the fact that PáTu is not the transmission customer under Portland General's open access transmission tariff (OATT). Instead, Portland General insists that Portland General's merchant function is the transmission customer under Portland General's OATT, and asserts that Portland General's merchant function has made the economic decision, on behalf of Portland General's ratepayers, not to allow dynamic scheduling of PáTu's output, which would transform a firm hourly product into a non-firm product without any adjustment to the Standard Contract's firm-energy avoided cost price. Portland General therefore argues that it has not discriminated against PáTu in the provision of OATT transmission service or violated the Standards of Conduct requirements. It asserts that, instead, this Complaint is PáTu's most recent effort to reform the terms of the Standard Contract.⁶²

scheduling, through August 2014. PáTu also states that this amount is a conservative estimate of the harm to PáTu because it does not include amounts PáTu pays for BPA's Generator Imbalance Service that exceeds the amounts that Portland General pays PáTu for excess energy supplied by BPA. *Id.*

⁶¹ *Id.* at 32, Attachment 2 (Affidavit of Ormand Hilderbrand) at 52-55.

⁶² Portland General Answer at 1-3.

31. Portland General explains that the Commission's policy has never required a transmission provider to provide ancillary services, including dynamic scheduling, to anyone other than a transmission customer taking OATT transmission service.⁶³ Portland General argues, therefore, that ancillary services are associated with the underlying OATT service transaction and are only available to transmission customers.⁶⁴ It states that, under the terms of the Standard Contract, Portland General's merchant function accepts delivery of PáTu's energy at the border of the Portland General transmission system and then it arranges for the necessary transmission service as the transmission customer on the Portland General system. It states that PáTu is not a transmission customer of Portland General because it does not purchase transmission service on Portland General's system.⁶⁵ Portland General argues that it simply has no obligation to offer to provide dynamic scheduling to a non-transmission customer like PáTu.⁶⁶ Further, it states that the appropriate transmission customer – Portland General's merchant function – has not made any request to dynamically schedule PáTu's energy, that it is the only entity that can request dynamic scheduling, and that it is within its contractual rights to decide not to dynamically schedule.⁶⁷

⁶³ *Id.* at 8-12.

⁶⁴ Portland General states that it allows transmission customers with effective transmission arrangements to dynamically schedule off-system resources. It states that it has pseudo-tie or dynamic scheduling arrangements for certain Portland General-owned, off-system, dispatchable generation, but it has no off-system, intermittent generation that is dynamically scheduled. Furthermore, Portland General states that its own off-system wind resources are block scheduled across the BPA transmission system, just like PáTu's, and it pays BPA's wind integration charge, just as PáTu must. *Id.* at 11 & n.24.

⁶⁵ Portland General points out that PáTu's January 3, 2013 formal request to Portland General was not a request for OATT network integration transmission service or point-to-point transmission service; it was a request for stand-alone dynamic scheduling service. Portland General Answer at 10 n.22.

⁶⁶ Portland General states that it has never offered to provide dynamic scheduling as a stand-alone service to an entity that does not take transmission service from Portland General. *Id.* at 11.

⁶⁷ *Id.* at 12.

32. Portland General asserts that its merchant function's decision to not accept delivery of PáTu's output by dynamic scheduling is consistent with the terms of the Standard Contract and is not discriminatory. Portland General states that its merchant function determined that it would not accept PáTu's dynamic schedule because it is inconsistent with the terms of the Standard Contract and diminishes the value of the firm product.⁶⁸

33. Portland General explains that the Oregon Commission addressed the contractual interpretation of whether the Standard Contract itself requires dynamic scheduling, found that PáTu is required to honor the prescheduled amount, but does not specify how PáTu should honor the prescheduled amount. Portland General states that, if PáTu's request for relief is granted, it would effectively change the firm, hourly product contemplated under the Standard Contract into a non-firm, fluctuating energy sale. Portland General argues that this aspect of the Complaint should be dismissed because the decision to maintain the scheduling requirements as written in the contract was a business determination and is not a discriminatory action against PáTu.⁶⁹

34. Portland General argues that PáTu's PURPA rights have not been violated because Portland General is not under any other obligation to offer stand-alone ancillary services, including dynamic scheduling, since PáTu is not a transmission customer under Portland General's OATT, nor has Portland General denied any of PáTu's requests for point-to-point transmission service. Portland General asserts that the Commission should recognize that the issues raised by PáTu regarding alleged violations of the state-approved Standard Contract are properly left to state jurisdiction.⁷⁰

35. Portland General contends that PáTu made a commercial decision to execute the Standard Contract, which was drafted by Portland General at the direction of the Oregon Commission to comply with PURPA, subjected to review and comment by the Oregon Commission and other interested parties, and subsequently approved by the Oregon Commission. Schedule 201 of Portland General's PURPA tariff and Section 4.4 of the

⁶⁸ *Id.* at 13

⁶⁹ *Id.* at 15.

⁷⁰ *Id.* at 13 (citing *New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities*, Order No. 688, FERC Stats. & Regs. ¶ 31,233, at P 23 (2006), *order on reh'g*, Order No. 688-A, FERC Stats. & Regs. ¶ 31,250 (2007); *see also Southwest Power Pool, Inc.*, 125 FERC ¶ 61,314, at P 37 (2008)).

Standard Contract describes the terms of pricing options, which were fairly priced, and the terms of power delivery. As noted by the Oregon Commission, Portland General asserts that PáTu “could have elected but chose not to negotiate a non-standard contract with [Portland General] that may have specifically addressed the QF’s circumstances.”⁷¹

36. Portland General insists that PáTu’s Complaint both misconstrues Portland General’s citation and use of the *Connecticut Valley* precedent, and improperly attempts to distinguish that case from the instant matter. Portland General clarifies that here, as the Commission found in *Connecticut Valley*, the purchasing utility need not schedule QF energy delivery dynamically.⁷² Portland General has consistently maintained that ancillary services, including dynamic scheduling, are services only available to transmission customers under the Portland General OATT and that it cannot discriminate in the provision of a transmission service against entities such as PáTu that are not, in fact, transmission customers.⁷³

37. Portland General reiterates that its merchant function made a prudent economic decision on behalf of its ratepayers to not dynamically schedule PáTu’s energy. Portland General states that its position is entirely consistent with the state-jurisdictional Standard Contract terms, which do not require dynamic scheduling, and that Portland General will continue to purchase PáTu’s delivered net output under the terms of the Standard Contract.⁷⁴ Portland General argues that PáTu’s complaint amounts to an inappropriate attempt to change the terms of the state-jurisdictional Standard Contract and should be dismissed because dynamic scheduling is not required under the state-jurisdictional contract or any Commission precedent.⁷⁵

38. Portland General claims that PáTu’s argument that Portland General has violated Order No. 764 by failing to offer 15-minute scheduling is a misreading of the Commission’s directive because PáTu is not situated to receive 15-minute scheduling from Portland General and PáTu’s interpretation would retroactively revise numerous power supply agreements. Portland General asserts that Order No. 764 applies to

⁷¹ *Id.* at 19-20 & n.43.

⁷² *Id.* at 22-23.

⁷³ *Id.* at 23.

⁷⁴ *Id.* at 25.

⁷⁵ *Id.* at 26.

transmission providers and transmission customers, and given that PáTu is not a transmission customer, the requirement to offer 15-minute scheduling is entirely inapposite. Portland General states that the Oregon Commission has found that 15-minute scheduling would be inconsistent with the plain terms of the Standard Contract, and the Commission should decline PáTu's efforts to retroactively revise an agreement it voluntarily signed.⁷⁶

39. Portland General asserts that it has not violated the Commission's Standards of Conduct and characterizes this portion of PáTu's Complaint as an attempt to argue that communications between Portland General's merchant function personnel and Portland General's transmission function personnel have amounted to undue interference with transmission service determinations for PáTu's generation. Portland General offers that the relevant question is not whether Portland General's transmission function personnel communicated with Portland General's merchant function personnel regarding PáTu's dynamic transfer request, but is instead whether Portland General's merchant function's determination that dynamic transfer was not desirable amounted to either conducting transmission functions or providing preferential access.⁷⁷

40. Portland General states that, when approached by BPA regarding dynamic transfer capability, its transmission function personnel then inquired whether the transmission customer—in this case, Portland General's merchant function—actually wanted to schedule PáTu's power dynamically. Portland General claims that its transmission function would convey a comparable request in a comparable manner for any transmission customer.⁷⁸

41. Portland General argues that decisions regarding dynamic transfers are the prerogative of the transmission customer and it is the responsibility of the transmission provider, where appropriate, to facilitate a decision to use dynamic transfer if the transmission customer so desires. Portland General represents that its merchant function decided not to request or accept a dynamic transfer and at no point did its merchant function personnel conduct or influence a transmission function. Further, Portland General claims that all decisions were properly made by the transmission customer—its merchant function—alone. Portland General indicates that its merchant function independently determined that dynamic scheduling was not a prudent economic decision and communicated that decision to its transmission function. Portland General argues

⁷⁶ *Id.* at 28.

⁷⁷ *Id.* at 28-29.

⁷⁸ *Id.* at 30.

that PáTu mistakes this communication as undue interference, that PáTu fails to identify any improper communication of confidential transmission information to Portland General's merchant function, and as a result, this portion of PáTu's Complaint is baseless and should be dismissed.⁷⁹

42. Portland General claims that it has not violated its OATT, any statute, or any Commission regulation. Therefore, Portland General argues that no monetary reparations are appropriate under section 309 of the FPA.⁸⁰ Portland General notes that PáTu requests repayment of the \$481,986 PáTu has paid in wind integration services to BPA or, as an alternative, the \$374,366 in wind integration that PáTu believes Portland General has avoided. Portland General states that these calculations stem from Portland General's rational decision to act consistently with the terms of the Standard Contract and receive a firm, hourly block of energy rather than a dynamic schedule. Finally, Portland General insists that there has been no systematic discrimination against PáTu, QFs in general, or non-affiliate transmission customers.⁸¹

C. Comments by CREA and NIPPC

43. CREA urges the Commission to grant the Complaint to reverse a major impediment to the development of renewable resources in Oregon. CREA explains that many regions with favorable renewable resources in Oregon are located in parts of the state where the directly interconnecting utility would be a publicly-owned utility with avoided costs set based on BPA's low cost, federal, hydroelectric projects, and, to date, these costs have been far too low to finance new QF projects. Therefore, it is important for CREA and Oregon QFs to be able to use the transmission grid to deliver and sell QF output indirectly to a utility with higher avoided costs, such as Portland General. CREA asserts that Portland General's conduct in this case has set a dangerous precedent of denying QFs the right to use all available forms of transmission and scheduling, and thereby stymied efforts to develop renewable resources in Oregon.⁸²

44. Furthermore, CREA asserts that Portland General's insistence on hourly schedules severely limits the ability of Oregon QFs to use PURPA to market renewable power, especially from small QFs. CREA points out that, in Order No. 764, the Commission found that scheduling output in hourly blocks is difficult for variable energy resources

⁷⁹ *Id.* at 30-31.

⁸⁰ *Id.* at 31; *see* 16 U.S.C. § 825h (2012).

⁸¹ Portland General Answer at 31-32.

⁸² CREA Comments at 4.

that have difficulty following their own schedules over the hour. CREA explains that this problem is exacerbated for small resources because, for example, even a baseload QF that has a predictable output of 2.5 MW for a given hour must choose whether to schedule 2 MW or 3 MW (as scheduling is required in whole megawatts each hour), which guarantees it will have a 20 percent scheduling inaccuracy for each hour. CREA comments that these inaccuracies would obviously be exacerbated for a variable small wind or solar resource. CREA argues, therefore, that the transmission provider's refusal to offer PáTu dynamic scheduling and intra-hour scheduling effectively curtails PáTu's ability to sell to a utility of its choice under PURPA in Oregon.⁸³

45. In addition, CREA asserts that Portland General's position shifts the integration costs to the QF in direct contradiction of the Oregon Commission's policy that was in effect when PáTu signed the Standard Contract for long-term, fixed avoided cost rates with Portland General. CREA argues that such a retroactive revision of the pricing terms in a PURPA contract, if allowed to stand, would create an additional impediment to QF projects that need the assurance of a predictable revenue stream required for long-term investment.⁸⁴

46. NIPPC urges the Commission to fully and promptly investigate PáTu's claims against Portland General in order to ensure open and non-discriminatory access to the transmission system for all generators, whether those generators are affiliated or non-affiliated, thermal (dispatchable) or renewable (intermittent), or QFs.⁸⁵ NIPPC asserts that in the Western Electricity Coordinating Council, outside of California, there are too many opportunities for transmission providers to exercise their antipathy toward competitive electricity markets generally and independent power producers in particular, and that the Commission needs to remain vigilant against attempts by transmission providers to discriminate against variable energy resources and other generators in the

⁸³ *Id.* at 4-5. CREA notes that the vast majority of QF projects in Oregon are small renewable energy projects sized under Oregon's long-standing 10 MW cap for eligibility to obtain standard avoided cost rates and the Oregon Commission's standard PURPA.

⁸⁴ *Id.*

⁸⁵ NIPPC Comments at 4, 7. In particular, NIPPC states that PáTu introduced compelling evidence that Portland General's refusal to allow dynamic scheduling of imports by PáTu resulted from economic considerations by Portland General's merchant function employees, rather than reliability or other transmission-related considerations by Portland General's transmission function employees. *Id.* at 5 (citing Complaint at 27-31).

provision of transmission services.⁸⁶ NIPPC asserts that prompt resolution of PáTu's Complaint is not only needed by PáTu, but also to maintain confidence that the Commission will protect open and nondiscriminatory transmission access for all generators.

IV. Discussion

A. Procedural Matters

47. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

48. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. PáTu filed answers on November 14, 2014 and December 8, 2014. Portland General filed an answer on November 26, 2014. We are not persuaded to accept these later-filed answers of PáTu and Portland General and will, therefore, reject them. On December 12, 2014, Portland General supplemented its filing by submitting the Oregon Commission Order No. 14-425 which denies reconsideration of Order No. 14-287.

B. Commission Determination

49. As discussed below, the Commission partially grants the Complaint by ordering Portland General to accept PáTu's *entire* net output (all energy less onsite uses and losses) delivered to the Portland General balancing authority area, and dismisses those portions of the Complaint relating to 15-minute scheduling, Standards of Conduct violations, and the request for monetary reparations.

⁸⁶ *Id.* at 6. NIPPC points out that, in the past several years, the Commission has taken several important steps to ensure that non-discriminatory transmission access is available to variable energy resources, including, for example, Order No. 764's requirement that transmission providers offer 15-minute scheduling in order to protect variable energy resources from unjust and unreasonable generator imbalance charges. *Id.* at 5-6.

1. Portland General's Purchase Obligation

50. While the parties' pleadings focus on dynamic scheduling, the issue in this proceeding is whether Portland General is fulfilling its obligations under PURPA and the Commission's regulations,⁸⁷ as implemented by the Oregon Commission.⁸⁸ We find that Portland General, and more specifically in the context of a functionally unbundled utility, Portland General's merchant function, has an obligation to purchase PáTu's entire net output delivered to Portland General's Troutdale substation, as required by PURPA and the Commission's regulations.⁸⁹

51. Section 1.18 of the Standard Contract defines "Net Output" as "*all* energy ... produced by [PáTu]" less onsite uses and losses, and Section 4.1 of the Standard Contract states that PáTu shall sell its "entire Net Output delivered from the Facility at the Point of Delivery." This language, expressly providing for the sale to Portland General of the net output produced by PáTu and delivered to Portland General at its Troutdale substation, is consistent with section 292.303(a) of the Commission's regulations⁹⁰ that requires each electric utility to purchase "*any* energy and capacity which is made available from a [QF]."

52. Portland General, however, argues that Section 4.4 of the Standard Contract defines the "energy product" that Portland General must purchase.⁹¹ Section 4.4 of the Standard Contract states:

Seller shall provide preschedules for all deliveries of energy hereunder, including identification of receiving and generation control areas by 10:00:00 PPT on the last Business Day prior to the scheduled date of delivery. The Parties' respective representatives shall maintain hourly

⁸⁷ 16 U.S.C. § 824a-3(a) (2012); 18 C.F.R. § 292.303(a) (2014).

⁸⁸ See Portland General Answer at 1 ("The standard contract was approved by the [Oregon Commission] under Oregon's implementation of [PURPA].").

⁸⁹ PáTu Complaint at Attachment 3 at 17 (Exhibit A of the Standard Contract states that "[a]s a Qualifying Facility (QF) under PURPA, the project will sell 100% of its wind generated power output to Portland General Electric at the 230kV Troutdale Substation beginning in October, 2010.").

⁹⁰ 18 C.F.R. § 292.303(a) (2014).

⁹¹ Portland General Answer at 14, 18.

real-time schedule coordination; provided, however, that in the absence of such coordination, the hourly schedule established by the exchange of preschedules shall be considered final. Seller and [Portland General] shall maintain records of hourly energy schedules for accounting and operating purposes. The final E-Tag shall be the controlling evidence of the Parties' schedule. All energy shall be prescheduled according to customary WECC scheduling practices. Seller shall make commercially reasonable efforts to schedule in any hour an amount equal to its expected Net Output for such hour. Seller shall maintain a minimum of two years records [sic] of Net Output and shall agree to allow [Portland General] to have access to such records and to imbalance information kept by the Transmission Provider.

Section 4.4's providing for day-ahead pre-schedules and hourly real-time schedules does not, however, trump the purchase obligation spelled out in Sections 1.18 and 4.1 of the Standard Contract, or in PURPA and our regulations. While Section 4.4 of the Standard Contract both provides for day-ahead pre-schedules and states that in the absence of "hourly real-time schedule coordination, . . . the hourly schedule established by the exchange of preschedules shall be considered final,"⁹² and also provides that PáTu "shall make commercially reasonable efforts to schedule in any hour an amount equal to its expected Net Output for such hour," Section 4.4 decidedly does *not* state that, in the event PáTu schedules inaccurately, Portland General does not have to purchase or pay for (at avoided cost rates) the output that PáTu produces and delivers to the Troutdale substation. Indeed, in contrast to Sections 1.18 and 4.1 (expressly spelling out Portland General's purchase obligation, i.e., Portland General's obligation to purchase PáTu's net output delivered to Portland General), Section 4.4 does *not* state that Portland General need only purchase what PáTu has scheduled, either in day-ahead pre-schedules or in real-time schedules.⁹³ And the Oregon Commission has stated that the Standard Contract does not mention how PáTu should honor the prescheduled amount.⁹⁴

⁹² It bears noting that the day-ahead pre-schedule is only "final" in the absence of real-time schedule coordination.

And, in any event, Section 4.4 states that the schedules that PáTu provides to Portland General need only reflect "commercially reasonable efforts to schedule in any hour an amount equal to [PáTu's] expected Net Output for such hour." Such "commercially reasonable efforts," while they may assist Portland General's day-to-day operations, amount to no more than best estimates and Section 4.4 does not define those best estimates as Portland General's purchase obligation.

⁹³ *See., e.g., Florida Power & Light Co.*, 67 FERC ¶ 61,141, at 61,396 & n.11 (1994) ("the Commission has every right to expect contracting parties to express clearly

(continued...)

53. If, on the other hand, Portland General were permitted on this basis to refuse to accept PáTu's entire net output, Portland General and other electric utilities could routinely escape their PURPA mandatory purchase obligation, and indeed the Standard Contract-imposed purchase obligation, by imposing overly restrictive or un-meetable scheduling requirements, or by the purchasing electric utility's failing to arrange the necessary transmission service to dispose of its purchase of the QF's entire net output once it has been delivered to the utility. Similarly, that the Commission has not in its regulations required the use of dynamic scheduling is not a basis to excuse Portland General from the separate obligation under PURPA and the Commission's regulations, as relevant here, to purchase PáTu's entire net output delivered to Portland General.⁹⁵

54. It is Portland General's merchant function's decision, once PáTu's net output is delivered to Portland General's Troutdale substation, to then choose how to subsequently deliver that net output to Portland General's load, whether through the use of dynamic scheduling or some other method. But, regardless of the transmission service that Portland General's merchant function uses to subsequently deliver the net output to Portland General's load, Portland General must take from PáTu its *entire* net output (all energy less onsite uses and losses) delivered and to do so at avoided cost rates.⁹⁶

their intentions and not require the Commission to read into their agreements what is not spelled out there"; the Commission repeated that "[i]t is a reasonable interpretation device to conclude that what someone has not said, someone has not meant"); *accord*, e.g., *Discovery Gas Transmission LLC*, 148 FERC ¶ 61,183, at P 42 (2014).

⁹⁴ PáTu Complaint, Attachment 9 at 14 (*PáTu Wind Farm, LLC vs. Portland General Electric Co.*, Docket No. UM 1566, Order No. 14-287 (Oregon Commission Aug. 13, 2014)).

⁹⁵ In *Connecticut Valley*, the issue was not whether dynamic scheduling was required, but instead whether a QF could sell more than its net output. Moreover, the particular footnote in *Connecticut Valley*, 82 FERC ¶ 61,116 at n.13, relied upon by Portland General merely reflects the fact that the Commission has not, in its regulations, expressly mandated that electric utilities must provide dynamic scheduling.

⁹⁶ *Entergy Services, Inc.*, 137 FERC ¶ 61,199, at P 52 (2011) (finding that Entergy's statutory obligation to purchase unscheduled QF energy is not subordinate to tariff considerations and once that energy is purchased, it is Entergy's responsibility to deliver that energy to its load (or otherwise manage the energy)).

2. 15-Minute Scheduling

55. As addressed above, the Standard Contract does not govern or restrict the manner by which PáTu's output is transmitted and delivered to Portland General. PáTu and BPA are willing to deliver PáTu's entire net output to Portland General using dynamic scheduling, and we find that the Standard Contract does not preclude the ability to do that or Portland General's obligation to purchase PáTu's entire net output by those means.⁹⁷

3. Standards of Conduct

56. Based on the evidence, it does not appear that Portland General's transmission and merchant function employees violated the Standards of Conduct in their discussions concerning the delivery of PáTu's output to the Portland General balancing authority area. The Standards of Conduct specifically permit the transmission function of a transmission provider to communicate with the merchant function of the transmission provider concerning transmission service to the extent that the merchant function is a transmission customer.⁹⁸ The record shows that Portland General's transmission function provided to its merchant function several transmission delivery options for the subsequent transmission of PáTu's output following delivery, and that Portland General's merchant function decided the form of transmission delivery that it would take to deliver PáTu's output from the Troutdale substation to Portland General's load.

4. Monetary Reparations

57. PáTu requests monetary reparations from Portland General because PáTu was forced to incur expenses to procure wind integrations services from BPA that PáTu would not have incurred if Portland General had accepted PáTu's entire net output through a dynamic schedule. PáTu argues that, under the Standard Contract, Portland General, as purchaser, is responsible for paying for any wind integration services from BPA.⁹⁹ PáTu is essentially asking for damages resulting from a Portland General breach

⁹⁷ See *supra* P 51.

⁹⁸ 18 C.F.R § 358.7(b) (2014) (stating a transmission provider's transmission function employee may discuss with its marketing function employee a specific request for transmission service submitted by the marketing function employee).

⁹⁹ According to PáTu, when PáTu and Portland General entered into their Standard Contract, the Oregon Commission required that wind QFs with a nameplate capacity of 10 MW or less receive long-term, standard avoided cost rates without a deduction for wind integration costs and without purchasing wind balancing services. PáTu Complaint

of contract. Under these circumstances, whether “reparations” are owed, and in what amount, is a matter best left to the Oregon Commission or an appropriate court.

The Commission orders:

PáTu’s Complaint is hereby granted in part and dismissed in part, as discussed in the body of this order.

By the Commission. Commissioner Honorable is voting present.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

at 10 (citing *Staff’s Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket No. UM 1129, Order No. 07-360 at 24 (Oregon Commission August 20, 2007) (finding that “the method for calculating standard avoided costs adopted in Order No. 05-584 is a reasonable estimate of the costs the utility will avoid by purchasing from the small QF, and standard avoided costs should not be adjusted for integration costs.”)).