

109 FERC ¶ 61,170
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Duke Energy Moss Landing LLC

Docket No. EL04-130-000

v.

California Independent System
Operator Corporation

ORDER ON COMPLAINT AND REQUIRING NEW TARIFF FILING

(Issued November 19, 2004)

1. This case arises from a complaint filed by Duke Energy Moss Landing LLC (Duke) challenging the treatment of station power by the California Independent System Operator Corporation (CAISO). The CAISO acknowledges in its answer that its open access transmission tariff (Tariff) needs to conform to the Commission's station power policies, and outlines a process that would allow for market participant input in the development of revisions to the CAISO Tariff to reflect such policies. In this order, we will grant the complaint insofar as we find that the CAISO Tariff does not conform to our station power precedent and that the CAISO Tariff must be revised to conform to such precedent, but deny Duke's proposal that the CAISO specifically adopt Duke's summary of the Commission's station power policies.¹ This order will benefit market participants by requiring the development of standardized station power procurement and delivery rules in ISOs.

¹ This summary is included as Attachment A to the Duke complaint.

Background

2. In a series of orders involving PJM Interconnection, LLC (PJM),² New York Independent System Operator (NYISO),³ and Midwest Independent Transmission System Operator, Inc.,⁴ the Commission set forth its policy relating to station power procurement and delivery in ISOs. These orders addressed such matters as the on-site self-supply, remote self-supply, and third-party supply of station power. The Commission has defined “station power” as “the electric energy used for the heating, lighting, air-conditioning, and office equipment needs of the buildings on a generating facility’s site, and for operating the electric equipment that is on the generating facility’s site.”⁵

Complaint and Responsive Pleadings

Duke Complaint

3. On September 1, 2004, Duke filed a complaint pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. § 824e (2000), seeking revision of certain provisions of the CAISO Tariff and protocols to allow Duke to self-supply station power. According to Duke, the CAISO’s existing Tariff and Metering Protocols severely restrict a merchant generator’s right to self-supply station power. Specifically, Duke claims that the CAISO’s rules do not permit netting when a unit supplies energy to and receives energy from the transmission grid at different connections or voltages. Further, according to Duke, the CAISO’s rules permit netting only when a unit is on-line and,

² *PJM Interconnection, LLC*, 94 FERC ¶ 61,251 (2001) (*PJM II*), *clarified and reh’g denied*, 95 FERC ¶ 61,333 (2001) (*PJM III*); *PJM Interconnection LLC*, 95 FERC ¶ 61,470 (2001) (*PJM IV*). In an earlier order, *PJM Interconnection, LLC*, 93 FERC ¶ 61,061 (2000) (*PJM I*), the Commission acknowledged questions concerning treatment of station power, but deferred its decision, consolidating PJM’s proceeding with others raising the same issue.

³ *KeySpan-Ravenswood, Inc. v. New York Independent System Operator, Inc.*, 99 FERC ¶ 61,167 (2002) (*KeySpan I*), *order on reh’g*, 100 FERC ¶ 61,201 (2002) (*KeySpan II*). *KeySpan-Ravenswood, Inc. v. New York Independent System Operator, Inc.*, 101 FERC ¶ 61,230 (2002) (*KeySpan III*), *reh’g denied*, 107 FERC ¶ 61,142 (2004) (*KeySpan IV*), *clarified*, 108 FERC ¶ 61,164 (2004) (*KeySpan V*).

⁴ *Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,073 (2004), *rehearing pending (MISO)*.

⁵ *PJM II*, 94 FERC at 61,251. In *Niagara Mohawk Power Corp. v. Huntley Power, LLC, et al.*, 109 FERC ¶ 61,169 at P 20 - 35 (2004), issued concurrently with this order, we provide a summary of our station power precedent.

therefore, station service load occurring in hours when the unit is not operating cannot be netted against the monthly generation output of the facility. Duke provides, as Attachment A (“Station Power Requirements”) to the complaint, what it characterizes as “basic station power rules previously approved by the Commission,”⁶ and asks that the Commission direct the CAISO make a compliance filing that includes tariff revisions that adopt the requirements contained in Attachment A.

4. Duke contends that the existing CAISO Tariff and protocols severely restrict a merchant generator’s right to self-supply station power because they allow netting only on a near-instantaneous basis. It argues that such provisions are inconsistent with Commission precedent holding that a requirement for near-instantaneous netting, rather than monthly netting “not only is impractical, and contrary to both traditional utility practice and our legal precedent, but is also anti-competitive.”⁷ Duke notes that the Commission has never required that net output be measured on a real time or second-by-second basis, but rather allows a generating facility’s output to be measured over a “reasonable period of time,” and that the Commission has approved the monthly netting intervals proposed by both PJM and NYISO.

5. Duke also argues that the CAISO’s Metering Protocols, which prohibit netting when a generating unit supplies and receives power at different connection points, are inconsistent with Commission precedent for the on-site self-supply and remote self-supply of station power. According to Duke, remote self-supply is permitted whenever an entity can supply its station power needs for its generating unit from other units that it owns even if those other units are connected at various transmission voltages. It states that Commission precedent does not limit the nature of the points of connections, and that station power can be netted against facility output regardless of the voltage at which the station power was delivered or the meter through which the power flows.⁸

Notice and Comment

6. Notice of Duke’s filing was published in the *Federal Register*, 69 Fed. Reg. 54,773 (2004), with interventions and protests due on or before September 22, 2004. The CAISO filed a timely answer to Duke’s complaint. The Public Utilities Commission of the State of California (CPUC) filed a timely notice of intervention. Timely motions to intervene were filed by the California Electricity Oversight Board (CEOB), Calpine Corporation (Calpine), the Cogeneration Association of California and the Energy Producers and Users Coalition, Constellation Generation Group, LLC (Constellation),

⁶ Complaint at 4.

⁷ *KeySpan IV*, 107 FERC ¶ 61,142 at P 41.

⁸ Citing *MISO*, 106 FERC ¶ 61,073 at P 43-44.

Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC, Northern California Power Agency (NCPA), Pacific Gas and Electric Company (PGE), Southern California Edison Company (SoCal), and West Coast Power LLC.

7. On October 7, 2004, Duke filed an answer to comments filed in the proceeding.

CAISO Answer and Other Responsive Pleadings

8. In its answer, the CAISO agrees that its Tariff does not reflect the Commission's policies regarding the self-supply of station power. The CAISO states that it objects to Duke's efforts to unilaterally amend the CAISO Tariff by seeking the adoption of specific terms that may not be appropriate for the California market. To allow all market participants an opportunity to provide input in developing a station power policy, the CAISO suggests a plan that would allow the CAISO to develop a proposal, hold market participant meetings, followed by a section 205 filing.

9. Calpine, Constellation and NCPA support Duke's complaint. They agree with Duke that the CAISO's Metering Protocols are inconsistent with Commission policy because they only permit instantaneous netting when a generating unit is on-line and do not allow for remote self-supply of station power.

10. The CPUC and CEOB recommend that Duke's complaint be considered under the Commission's informal dispute resolution procedures. They contend that the complaint raises issues of fact that have to be resolved before the Commission rules on the merits such as a determination of the appropriate netting interval, pricing of the delivery service provided by the investor owned utility (IOU) within the station yard and the delivery of remotely self-supplied station power. The CPUC states that it has been working with market participants, including Duke and the IOUs, on related issues in rate design proceedings before the CPUC, such as the delivery charges a generator would pay a utility for remotely self-supplied station power, the level of standby reservation charges and the netting of auxiliary loads at generation stations. According to the CPUC, Duke's complaint raises issues related to the PGE tariff subject to California jurisdiction, and notes that the CPUC has jurisdiction to determine when and if a retail power sale occurs and to set rates for that sale.

11. SoCal opposes the complaint. According to SoCal, generators that self-supply are actually buying retail power at a rate not set by the CPUC from a source not necessarily authorized to sell retail power. It contends that California, not the Commission, has the legal authority not only to determine what constitutes a retail sale but also to regulate all consumption of power by end-users regardless of whether that transaction constitutes a retail sale.

12. SoCal claims that the Commission, in *MidAmerican Energy Company*, 94 FERC ¶ 61,340 at 62,262-63 (2001) (*MidAmerican*), conceded that end-use power consumption should be regulated by the state. It asserts that *MidAmerican* stands for the proposition that states have the “jurisdictional right to adopt netting for purposes of determining whether a retail sale occurred” and based on this understanding, concludes that states must also have the right to not permit netting on a monthly basis.⁹ SoCal then explains that the State of California, in fact, has enacted a net metering law which only permits a select group of very small generators to use net metering on an annual basis, and all other generators must net meter on a near-instantaneous basis. It also argues that, based on the assumption that the self-supply of station power is a retail sale, most remote self-supply of station power would violate state law because California currently has very limited retail choice (limited to grandfathered contracts) and most if not all generators have no choice but to obtain power from their “host utility.”

13. PGE opposes the complaint and contends that Duke seeks revisions to the CAISO Tariff so that Duke can have the benefits of “stand-by service” without paying for such service. PGE states that Commission precedent upon which Duke relies is distinguishable because such decisions arose from disputes in retail-choice states. (PGE also states that it shares many of the concerns raised by SoCal in its answer.)

Duke Answer

14. In its answer, Duke notes that the CAISO agrees with the complaint and acknowledges the CAISO’s need for a more flexible implementation process. It argues that SoCal and PGE, which oppose the complaint, mischaracterize Duke’s request and collaterally attack the Commission’s well-established station power policies. Duke contends that it is not seeking or taking retail service and, thus, it is a mischaracterization of Duke’s complaint when PGE asserts that Duke is seeking “stand-by service” without having to pay for it and also when SoCal refers to Duke as a “customer-generator” that will be serving station power needs by obtaining retail power from its host utility.

15. Duke states that the Commission, in its station power orders, has consistently held that there is no sale of any kind and no related transmission in interstate commerce when a generator’s net output is positive for the month, even though its output could be negative in certain instances during the month. Duke argues that, contrary to SoCal’s position, the Commission’s station power rulings are consistent with *MidAmerican*, in which the Commission saw no reason to interfere with an Iowa Board determination to permit net metering on a monthly basis. Duke explains that the Commission chose not to interfere with the Iowa Board’s preferred netting period although it had the authority to do so.

⁹ *Id.* at 7.

16. Duke contends that SoCal and PGE cannot charge retail rates for station power because no retail service is being provided. Similarly, Duke argues that state net metering laws do not apply and retail wheeling is not implicated since it will not be taking any retail services.

Discussion

Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the CPUC's timely filed notice of intervention makes it a party to this proceeding. The timely, unopposed motions to intervene filed by the remaining parties serve to make them parties to this proceeding.

18. Although the Commission's Rules prohibit answers to comments or protests, 18 C.F.R. § 385.213(a)(2) (2004), we may, for good cause, waive this provision. We find good cause to do so in this instance because Duke's answer provides information that clarifies the issues and aids us in our decision-making. Accordingly, Duke's answer is accepted.

Duke's Complaint

19. The CAISO acknowledges in its answer that the CAISO Tariff should conform to the Commission's policies regarding the self-supply of station power. We agree that the CAISO Tariff does not currently meet the Commission's station power precedent. Thus, the Commission will require the CAISO, after working with market participants, to file a proposed revised tariff consistent with the Commission's fundamental station power principles. This is the approach we took in *Keyspan I*, also a complaint proceeding, where we found that a NYISO tariff did not conform to our station power precedent and required the NYISO, after working with market participants, to file new tariff language to conform to such precedent.¹⁰

20. The CAISO's proposal may include provisions that take into consideration the unique operating characteristics of the CAISO, as was the case in *MISO*.¹¹ However, the CAISO's filing must reflect the fundamental station power principles established in our

¹⁰ *Keyspan I*, 99 FERC ¶ 61,167.

¹¹ For example, in *MISO*, 106 FERC ¶ 61,073 at P 23, the Commission allowed MISO to treat station power as network load, which is not the case in PJM or the NYISO. The Commission explained that this unique approach was justified because MISO does not operate markets with Locational Marginal Pricing, while PJM and NYISO do operate such markets.

precedent. We will not revisit those fundamental principles, as developed in the final and non-appealable orders of *PJM II* and its progeny.¹² As the Commission explained in *KeySpan I*, “the fundamental questions about the appropriate treatment of station power were answered in *PJM II* and *PJM III*.”¹³

21. SoCal and PGE rehash arguments regarding the Commission’s jurisdiction, whether a retail sale has occurred, and whether there is an element of local distribution in deliveries of station power, all of which have been addressed in previous orders where we fully articulated our station power policies.¹⁴ We will not revisit these fundamental station power issues.¹⁵

22. The Commission agrees with the CAISO that it should allow market participant input in the development of tariff provisions that would implement the Commission’s station power policies, as was the case when we directed the NYISO to develop and submit station power rules.¹⁶ The Commission will not preside over a market participant meeting but rather, will leave to the discretion of the CAISO how it will receive market participant input. The Commission directs the CAISO to submit, within 120 days of the

¹² *PJM II*, 94 FERC ¶ 61,251.

¹³ *Keyspan I*, 99 FERC at 61,679.

¹⁴ See, e.g., *PJM II*, 94 FERC at 61,889-891 (addressing jurisdictional issues); *Keyspan IV*, 107 FERC at P 29-43 (whether a retail sale has occurred); *Nine Mile Point Nuclear Station, LLC v. Niagara Mohawk Power Corp.*, 105 FERC ¶ 61,336 (2003) (whether there is an element of local distribution in deliveries of station power).

¹⁵ See *Niagara Mohawk v Huntley Power*, 109 FERC ¶ 61,169 at P 20 - 35, which discusses the development of the Commission’s station power precedent, and is incorporated herein by reference.

PGE contends that this Commission precedent is distinguishable because such decisions arose from disputes in retail-choice states. While the presence of retail choice was one consideration in our *PJM* and *NYISO* orders, it was not our sole rationale. In fact, the Commission has approved station power rules for MISO, which includes non-retail choice states. See *MISO*, 106 FERC ¶ 61,073 at P 42, 46. Regardless of the presence of retail choice, it is in the public interest for the Commission to ensure that merchant generators who serve retail load are not charged for station power services they do not receive and do not want. *PJM II*, 94 FERC at 61,893; *AES Somerset LLC v. Niagara Mohawk Power Corporation*, 105 FERC ¶ 61,337 at P 33, 38 (2003), rehearing pending.

¹⁶ *Keyspan I*, 99 FERC at 61,678.

date of this order, a compliance filing that contains revised tariff sheets conforming to the Commission's station power policies. This should allow adequate time for the CAISO to seek market participant input and develop its compliance filing.

23. While we generally agree with Duke's summation of the Commission's station power policy in Attachment A to the complaint, we will not direct the CAISO to strictly adopt Attachment A, so that the CAISO may receive market participant input and have the opportunity to reflect revisions necessary for the CAISO's specific operational characteristics. In addition, we note that the parties argue whether the Commission has mandated the use of a monthly netting interval. While it is correct that we have not previously mandated a one month netting interval, nonetheless, the monthly netting interval has evolved into the standard, and we would require a strong justification for proposing a different netting interval.

24. NCPA contends that there is no reason to limit the Commission's policies to just merchant generators and all generation owners, including municipals and metered subsystem entities, should be entitled to self-supply station power. While the NYISO's station power provisions expressly exclude non-merchants, MISO's provisions do not. Thus, we see no reason to pre-judge the issue of whether non-merchant generators should be eligible to self-supply in the Cal ISO. This issue is best resolved through the stakeholder process; we will consider comments on the proposed treatment when the entire proposal is filed.

25. SoCal cites to *MidAmerican* to claim that the Commission's station power netting rules violate state net metering laws. In *MidAmerican*, 94 FERC at 62,264, we expressly took note of our decision in *PJM II*, in which we, for the first time, held that a merchant generator must be allowed to account for its station power usage through netting, rather than being forced to purchase all of its station power requirements from the host utility. We found that, as was the case with netting station power, when an individual homeowner or farmer installs generation intended to reduce its purchases from the utility, there is no sale of energy. *Id.* Thus, Duke is correct in claiming that state net metering laws are not implicated. We also agree with Duke that our requirement that merchant generators be allowed to net station power over a monthly interval does not affect net metering rules that apply to generators that self-supply load that is not station power. In short, *MidAmerican* is harmonious with our station power precedent and does not support SoCal's claims.

26. Finally, we expect the CAISO's proposal to mirror the Commission's policy on the aggregating of different metering points, as discussed in our precedent.¹⁷

¹⁷ See *MISO*, 106 FERC ¶ 61,073 at P 43-44; *KeySpan IV*, 107 FERC ¶ 61,142 at P 61-63.

Docket No. EL04-130-000

9

The Commission orders:

The CAISO is hereby directed to make a compliance filing within 120 days revising its open access transmission tariff to conform to the requirements of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.