

126 FERC ¶ 61,050
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

California Independent System Operator
Corporation

Docket No. ER05-849-009

ORDER ON CLARIFICATION

(Issued January 16, 2009)

1. In an order issued on October 17, 2008, the Commission granted Constellation Generation Group, LLC and the NRG Companies'¹ (collectively, California Generators) joint request that we clarify that our station power orders preclude Southern California Edison Company (SCE) from imposing retail and other load-based charges on merchant generators that self-supply their station power requirements over a monthly netting period under the California Independent System Operator Corporation's (CAISO) Station Power Protocol.² We further held that, by staying the requirement that CAISO eliminate so-called Permitted Netting³ from its Station Power Protocol, we did not limit netting to only Permitted Netting and did not authorize load-serving entities to impose retail and load-based charges on merchant generators that self-supply using monthly netting pursuant to

¹ NRG Companies consist of NRG Power Marketing Inc., Cabrillo Power I LLC, Cabrillo Power II LLC, El Segundo Power LLC, and Long Beach Generation LLC.

² *California Independent System Operator Corporation*, 125 FERC ¶ 61,072 (2008) (October 17 Order).

³ "Permitted Netting" refers to netting that takes place on-site at a single generation facility *when the generator is running*. Permitted Netting differs from the Commission's definition of on-site or remote self-supply in that, in both of the latter, there is no requirement that the generator always be running throughout the specific period of time (the netting interval).

the CAISO's Station Power Protocol. In this order, we address NRG Companies' motion for clarification of our October 17 Order with respect to the effective date.

I. Background

A. Station Power

2. The Commission defines "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."⁴ As the Commission explained in its earlier station power orders, station power is procured by a generating facility in three ways: (1) on-site (or local) self-supply, where the same generator is the source of the station power it is consuming; (2) remote self-supply, where the source of the station power being consumed is another, remote generator owned by the same company; or (3) third-party supply, where the source of the station power consumed is a generator owned by a separate entity.⁵ The Commission further determined that: (1) on-site self-supply and remote self-supply did not involve sales of any type, either wholesale or retail; and (2) when remote self-supply or third-party supply involve the use of another entity's transmission and/or distribution facilities, payment for such usage is appropriate.⁶

3. Because utilities have historically been vertically integrated, the treatment of station power was not previously an issue and utilities generally did not charge themselves, their affiliates, or even their fellow utilities, for station power.⁷ Instead, utilities traditionally treated station power consumption as "negative" generation – the energy output of a generation facility typically was its gross output less the station power consumed at the facility (that is, its output net of station power requirements, or net output).⁸ Similarly, station power consumed during periods when the generator was not operating was also treated as negative generation. If a specific facility's station power

⁴ *PJM Interconnection, LLC*, 94 FERC ¶ 61,251 at 61,889 (*PJM II*), *clarified and reh'g denied*, 95 FERC ¶ 61,333 (2001) (*PJM III*).

⁵ *PJM II*, 94 FERC at 61,890.

⁶ *Id.*

⁷ *Id.* at 61,882.

⁸ *See Cal. Indep. Sys. Operator Corp.*, 111 FERC ¶ 61,452, at P 16 (2005) (June 22 Order), *order on reh'g*, 114 FERC ¶ 61,176 (2006) (February 17 Order), *reh'g dismissed*, 115 FERC ¶ 61,038 (2006), *order granting stay*, 114 FERC ¶ 61,339 (2006), *order on reh'g*, 125 FERC ¶ 61,072 (2008).

needs could not be met by on-site generation, the facility obtained the necessary energy using its (or another's) transmission and/or distribution facilities. Because utilities were vertically integrated, this energy typically was supplied by a utility's other generation facilities or, if the utility was part of a centrally dispatched power pool, by the pool.

4. In response to the "functional unbundling" directive of Order No. 888, many vertically-integrated utilities divested themselves of their generation facilities, often selling their generation facilities to merchant generators. The treatment of station power became an issue upon the entry of merchant generators into the market, since merchant generators sought to obtain and account for station power in the manner employed by traditional utilities – by netting station power consumption against the facility's gross output.⁹

5. In a series of orders involving PJM Interconnection, LLC (PJM),¹⁰ New York Independent System Operator (NYISO),¹¹ and Midwest Independent Transmission System Operator, Inc. (MISO),¹² the Commission set forth its policies relating to station power procurement and delivery.¹³ The Commission's station power rulings allow a

⁹ *PJM III*, 95 FERC at 62,189.

¹⁰ *PJM II*, 94 FERC at 61,251; *PJM Interconnection LLC*, 95 FERC ¶ 61,470 (2001). In an earlier order, *PJM Interconnection, LLC*, 93 FERC ¶ 61,061 (2000), the Commission acknowledged questions concerning treatment of station power, but deferred its decision, consolidating PJM's proceeding with two complaint proceedings that raised similar issues.

¹¹ *KeySpan-Ravenswood, Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 99 FERC ¶ 61,167, *order on reh'g*, 100 FERC ¶ 61,201, *order on compliance filing*, 101 FERC ¶ 61,230 (2002), *reh'g denied*, 107 FERC ¶ 61,142, *clarified*, 108 FERC ¶ 61,164 (2004), *aff'd sub nom. Niagara Mohawk Power Corp. v. FERC*, 452 F.3d 822 (D.C. Cir. 2006) *cert. denied*, 127 S. Ct. 2129 (2007); *N.Y. Power Auth. v. Consol. Edison Co. of N.Y., Inc.*, 112 FERC ¶ 61,304 (2005), *clarified and reh'g denied*, 116 FERC ¶ 61,240 (2006), *aff'd sub nom. Consol. Edison Co. of N.Y. v. FERC*, No 05-1372 (D.C. Cir. May 6, 2008) (unpublished opinion).

¹² *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,073 (2004), *order on reh'g*, 110 FERC ¶ 61,383 (2005).

¹³ In *Niagara Mohawk Power Corp. v. Huntley Power, LLC*, 109 FERC ¶ 61,169, at P 20-35 (2004) (*Huntley*), *reh'g denied*, 111 FERC ¶ 61,120 (2005), *aff'd, Niagara Mohawk Power Corp. v. FERC*, 452 F.3d 822 (D.C. Cir. 2006), *cert. denied*, 127 S. Ct. 2129 (2007), we summarized our station power precedent to the date of issuance of that order.

merchant generator to self-supply station power (either on site or remotely) so long as the merchant generator's net output over a reasonable netting interval, typically one month, is positive.¹⁴

6. In developing its station power policy, the Commission has on several occasions considered what length of time or interval is reasonable for the netting of station power. The Commission has approved one-month netting interval proposals made by PJM, NYISO, and the Midwest ISO.

B. History of This Proceeding

7. In September 2004, Duke Energy Moss Landing LLC filed a complaint with the Commission challenging the Permitted Netting provisions of the CAISO tariff on the grounds that they did not conform to the Commission's station power precedent. These provisions allowed the netting of station power only when the generator itself is running (Permitted Netting), rather than over a specific netting interval, and did not allow netting when a unit supplies energy to and receives energy from the transmission grid at different connections or at different times.¹⁵ In November 2004, the Commission found that the CAISO tariff did not conform to the Commission's station power policies, and directed CAISO to make a compliance filing in conformity with the Commission's policies.¹⁶ In April 2005, as amended in May 2005, CAISO submitted its compliance filing to conform to the Commission's station power precedent. This compliance filing consisted of CAISO's Station Power Protocol, designated as Amendment No. 68 to the CAISO tariff. In its Station Power Protocol, CAISO proposed to use a monthly netting interval to determine whether a participating generator had self-supplied station power and whether associated transmission service had been provided to the generator.

¹⁴ Netting over a period means that total station power consumption is subtracted from total gross output during a given period, known as the "netting interval." When a monthly netting interval is used, a generator's total monthly consumption of station power is subtracted from (netted against) its total monthly energy production in order to determine if it is "net positive" or "net negative" for the month. As long as a generator produces more energy over the entire month than it consumes as station power, it is "net positive," even if, during a specific hour, it consumed more station power than it generated. June 22 Order, 111 FERC ¶ 61,452 at P 16-17; *accord PJM II*, 94 FERC ¶ 61,251 at 61,891-92.

¹⁵ *Duke Energy Moss Landing LLC v. Cal. Indep. System Operator Corp.*, 109 FERC ¶ 61,170 (2004) (ISO Station Power Order), *reh'g denied*, 111 FERC ¶ 61,451 (2005).

¹⁶ *Id.*

8. On June 22, 2005, the Commission issued an order conditionally accepting in part and rejecting in part CAISO's Station Power Protocol and allowing CAISO to defer the implementation date of its Station Power Protocol to no later than July 1, 2006.¹⁷ The June 22 Order also accepted CAISO's proposal to allow monthly netting of station power.¹⁸

9. On October 17, 2008, the Commission issued an order that granted, in part, rehearing of our June 22 Order. The October 17 Order also granted California Generators' request that we clarify that our station power orders preclude SCE from imposing retail and other load-based charges on merchant generators that self-supply station power over a monthly netting period under the CAISO Station Power Protocol.

II. Motion for Clarification and Responsive Pleadings

10. On November 17, 2008, NRG Companies filed a motion for clarification of our October 17 Order. NRG Companies note that the Commission, in the October 17 Order, stated that generators that self-supply their station power using monthly netting may not be assessed retail and load based charges for months in which they are net positive.¹⁹ NRG Companies seek clarification with respect to the effective date of the Commission's finding. NRG Companies request that the Commission clarify that self-supplying generators using monthly netting may not be assessed such retail and load based charges after June 22, 2005, the date of the Commission order conditionally accepting CAISO's Station Power Protocol. Alternatively, NRG Companies request that the Commission find that self-supplying generators using monthly netting may not be assessed such retail and load based charges after April 1, 2006, the date when CAISO's Station Power Protocol ultimately became effective, regardless of whether or not the generators had CAISO-approved Station Power Portfolio plans.

11. On December 2, 2008, SCE, CAISO, and the Public Utilities Commission of the State of California (CPUC) filed answers to NRG Companies' motion. SCE asserts that the relief requested by NRG Companies violates the filed rate doctrine. CAISO disputes the NRG Companies' assertions regarding the processing of Station Power Portfolio applications. The CPUC argues that, pursuant to the Station Power Protocol, NRG

¹⁷ June 22 Order, 111 FERC ¶ 61,452 at P 1, 62. CAISO's Station Power Protocol ultimately became effective April 1, 2006.

¹⁸ *Id.* P 6, 15-25, 37-42.

¹⁹ NRG Companies Motion at 3 (citing October 17 Order, 125 FERC ¶ 61,072 at P 87).

Companies must apply for a CAISO-approved Station Power Portfolio in order to engage in monthly netting. On December 17, 2008 NRG Companies filed an answer.

III. Discussion

A. Procedural Matters

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept NRG Companies' answer and will, therefore, reject it.

B. Motion for Clarification

13. NRG Companies state that the Commission correctly determined in the October 17 Order that “[a]ny attempt at the state level to assess (or to assess and then ‘waive’) charges for merchant generators on the basis of whether they net station power on a monthly or hourly basis would amount to an unlawful attempt to circumvent our authority over matters that are properly within [the Commission’s] jurisdiction.”²⁰ NRG Companies also agree with the Commission’s finding that, to the extent a generator self-supplies its station power requirements through monthly netting, no retail service is provided and retail charges may not be levied. However, NRG Companies request that the Commission confirm that self-supplying generators that maintained a net positive total monthly energy production each month since the Commission “approved” monthly netting for CAISO in its June 22 Order are not responsible for any retail and other load based charges because no retail service was provided.

14. NRG Companies assert that prohibiting the assessment of retail and other load based charges to such generators after June 2005 is consistent with an earlier order involving station power self-supply in NYISO. NRG Companies rely on *Huntley*, where according to NRG Companies the Commission determined that it was appropriate for NRG Companies to use monthly netting in NYISO even before NYISO’s tariff was amended to include a station power protocol.²¹ According to NRG Companies, after the Commission accepted CAISO’s proposal to permit monthly netting in June 2005 (in the June 22 Order), all parties were on notice that monthly netting was the appropriate

²⁰ *Id.* at 5 (citing October 17 Order, 125 FERC ¶ 61,072 at P 72).

²¹ *Huntley*, 109 FERC ¶ 61,169 at P 48.

netting period,²² notwithstanding the fact that the Station Power Protocol did not become effective until April 1, 2006.

15. NRG Companies argue, in the alternative, that, if the Commission does not find that the June 22, 2005 acceptance of CAISO's proposal to permit monthly netting is the relevant date for the purpose of recalculating generators' bills, then the Commission should find that April 1, 2006, the effective date of the Station Power Protocol, is the relevant date. NRG Companies conclude that the Commission should then require refunds of all retail and other load based charges imposed on self-supplying generators that engaged in monthly netting after April 1, 2006, regardless of whether the generators had actually submitted a Station Power Portfolio to CAISO or whether CAISO has approved such a Portfolio. NRG Companies note that generators were unable to avail themselves of the CAISO Station Power Protocol due to: (1) CAISO's delayed processing of Station Power Portfolio applications; and (2) the CPUC and certain entities' assessment of retail and load based charges in contravention of the Commission's station power policies while rehearing requests were pending in this proceeding.

C. Answers

16. SCE asserts that the relief requested by NRG Companies violates the filed rate doctrine because the filed rate, i.e. the CAISO tariff, contains limits on netting and imposes an hourly netting period on market participants that do not have an approved Station Power Portfolio. SCE argues that the Station Power Protocol is the vehicle for generators seeking to be subject to netting rules that differ from the netting prohibitions previously set forth in the CAISO tariff. SCE contends that the NRG Companies are effectively asking the Commission to retroactively find the Station Power Portfolio's application requirements to be unjust and unreasonable. SCE also notes that there are several practical reasons for CAISO to require sign-up through an application process, such as the facilitation of load-tracking and billing. SCE argues that NYISO is different from CAISO with respect to the treatment of station power because, in NYISO, any seller or purchaser was permitted to engage in monthly netting prior to the New York generators filing their cases, whereas since 1997 CAISO has imposed an hourly netting interval on all services except transmission charges for generators signed up for the Station Power Protocol. SCE also asserts that the NRG Companies have not

²² We note that our June 22 Order expressly found that the Station Power Protocol should *not* be made effective "now," but instead was to become effective "upon no less than 10 days notice by the CAISO that the necessary software modifications have been implemented, but no later than July 1, 2006." June 22 Order, 111 FERC ¶ 61,452 at P 62-63, Ordering Paragraph A; *accord* February 17 Order, 114 FERC ¶ 61,176 at P 6. The Station Power Protocol ultimately became effective April 1, 2006. February 17 Order, 114 FERC ¶ 61,176 at P 10-12.

demonstrated that, in fact, they are eligible for refunds, and may have had net negative generation for certain months.

17. CAISO disputes the NRG Companies' assertions regarding the processing of Station Power Portfolio applications. CAISO states that it has been ready and willing to process Station Power Portfolio applications since the implementation of the Station Power Protocol, but that applicants have been reluctant to proceed due to regulatory uncertainty. CAISO states that several applicants have requested that CAISO place their proceedings on hold. CAISO also points out that it processed and approved several applications for Station Power Portfolios in 2006. CAISO also disputes NRG Companies' implication that CAISO did not have any provision for compliance with the Commission's station power policies until it implemented the Station Power Protocol. CAISO notes that its provisions for Permitted Netting have been a part of its tariff since 1998 and that generators have benefited from Permitted Netting.

18. The CPUC argues that NRG Companies must apply for a CAISO-approved Station Power Portfolio in order to engage in monthly netting, pursuant to the Station Power Protocol. The CPUC asserts that, because it appears NRG Companies either have not applied for a Station Power Portfolio, or have not received approval of their application, neither of the dates proposed in the NRG Companies' motion should be adopted. The CPUC contends that the effective date on which any generator can self-supply station power using monthly netting depends on compliance with the Station Power Protocol, i.e. the date that the generator's Station Power Portfolio application was approved by CAISO.

D. Commission Determination

19. The effective date of the CAISO Station Power Protocol is, as described in footnote 22 above and as set forth on the tariff sheets, April 1, 2006; we expressly determined in conditionally accepting in part the Station Power Protocol that for "compelling" reasons it should not be made effective on June 22, 2005, i.e., the date of issuance of our June 22 Order, but rather should be made effective at a later date – ultimately April 1, 2006. Any argument for an earlier effective date amounts to a belated and thus impermissible request for rehearing of our June 22 Order and February 17 Order.²³

20. The Protocol – now part of the accepted, filed rate – also includes provisions requiring generators seeking to self-supply via monthly netting to submit Station Power

²³ See 16 U.S.C. § 8251(a) (2006).

Portfolios to CAISO and to have those Portfolios approved.²⁴ Given that the NRG Companies have neither submitted an application to self-supply station power pursuant to the Station Power Protocol nor demonstrated that action on such applications has been unreasonably delayed, we will not direct refunds to the NRG Companies of any retail or other load-based charges. The Station Power Protocol sets forth a process that generators seeking to benefit from monthly netting must follow. NRG Companies have not followed this process. Rather, they unsuccessfully argue that the Commission-accepted tariff should not apply to them. We see no reason to excuse them from the requirements of the filed rate.

21. With respect to our findings in *Huntley*, and NRG Companies' claim that such findings warrant our adopting a June 22, 2005 effective date, we note that we have already – in our prior orders – addressed the issue of the effective date. In addition, in *Huntley*, based on the facts before us there, we chose to make the monthly netting effective prior to April 1, 2003.²⁵ In this case, on the facts before us when we issued our June 22 Order, we reasonably chose a different, later date.²⁶ There was nothing inappropriate in our doing so. Given the fact-specific nature of the question of what is an appropriate effective date and given the different facts of the two proceedings, we do not agree that *Huntley*'s findings as to the effective date of the NYISO station power provisions are controlling here. Further, the NYISO tariff, unlike the CAISO Station Power Protocol here, does not include provisions requiring generators seeking to self-supply via monthly netting to submit applications that must be approved before the generators can engage in monthly netting. In other words, in accepting the NYISO tariff's station power provisions, unlike the CAISO tariff's station power provisions, we did not accept a provision requiring that a generator submit an application prior to availing itself of monthly netting.

22. We disagree with NRG Companies' assertion that after the Commission accepted CAISO's proposal to permit monthly netting in the June 22 Order, all parties were on notice that monthly netting was the appropriate netting period, notwithstanding the fact that the Station Power Protocol did not become effective until April 1, 2006. To the contrary, as we have explained above, our June 22 Order explicitly allowed CAISO to

²⁴ CAISO, FERC Electric Tariff, App. S §§ 1.2.1, 2 (stating that generators seeking to self-supply under the Station Power Protocol must have CAISO-approved Station Power Portfolio plans and describing the Station Power Portfolio application process).

²⁵ See *Huntley*, 109 FERC ¶ 61,169 at P 36, 47-48; *Huntley*, 111 FERC ¶ 61,120 at P 46-48.

²⁶ See *supra* note 22.

defer the implementation date of its Station Power Protocol to no later than July 1, 2006.²⁷ Moreover, when, in the February 17 Order, we subsequently accepted the Station Power Protocol effective April 1, 2006, we also accepted the CAISO's proposal for processing Station Power Portfolio applications, set forth in sections 1.2.1 and 2 of the Station Power Protocol. The specific date upon which any individual generator could begin engaging in monthly netting under the Station Power Protocol is governed by that process.

23. We find NRG Companies' alternative request for relief and explanation for why they neglected to follow CAISO's Station Power Protocol process to be unpersuasive. First, NRG Companies allege that CAISO has delayed processing Station Power Portfolio applications. We cannot find that CAISO has unduly delayed processing applications, given that it approved several Station Power Portfolio applications after the Station Power Protocol became effective on April 1, 2006,²⁸ and that several other applications are pending.²⁹ More to the point, NRG Companies cannot claim that they have been harmed by any purported delay in the processing of Station Power Portfolio applications, given that NRG Companies have failed to even file a Station Power Portfolio application.

24. To the extent that there was any "regulatory uncertainty" as to the ultimate outcome of the treatment of station power in California, as the NRG Companies maintain, this does not change the effectiveness of CAISO's Commission-accepted Station Power Protocol. The Station Power Protocol became effective on April 1, 2006 and NRG Companies could have submitted an application any time after that date. Indeed, several other generators did just that, following the requirements of the Station Power Protocol, and we see no reason to exempt NRG Companies from these same requirements. Although NRG Companies filed a motion for clarification on July 11, 2006 to inform the Commission that certain load-serving entities were not, in NRG Companies' view, adhering to the Commission's station power precedent, that did not prevent NRG Companies from concurrently filing Station Power Portfolio applications with CAISO.

25. To conclude, as provided in our prior orders, the effective date of the CAISO Station Power Protocol is April 1, 2006. In addition, as stated in the October 17 Order, a generator exercising its right to self-supply under the Commission-accepted Station

²⁷ June 22 Order, 111 FERC ¶ 61,452 at P 1, 62-63.

²⁸ CAISO, *Station Power Approved Portfolios* (Apr. 2008), <http://www.caiso.com/180c/180ccbd8143a0.pdf>.

²⁹ CAISO, *Station Power Applications in Progress* (Nov. 2008), <http://www.caiso.com/182b/182bca5bf130.pdf>.

Power Protocol cannot be lawfully assessed retail and other load-based charges. Accordingly, from the date of the effectiveness of a generator's CAISO-approved Station Power Portfolio, any such charges should be refunded. The NRG Companies do not fall into this category of generators, given that they have not yet submitted Station Power Portfolio applications nor had their applications approved, and thus we deny their request for relief as set forth in their motion for clarification.

The Commission orders:

The NRG Companies' motion for clarification of the October 17 Order is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.