

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.

Dominion Nuclear Connecticut, Inc.

Docket No. EL06-88-001

v.

Connecticut Light and Power Company

ORDER DENYING CLARIFICATION AND REHEARING

(Issued May 22, 2007)

1. On October 23, 2006, Northeast Utilities Service Company (NUSCO) (on behalf of Connecticut Light and Power Company (CL&P)), the Connecticut Department of Public Utility Control, the Connecticut Office of Consumer Counsel, and the Connecticut Office of Attorney General (collectively, the Connecticut Parties) filed a request for clarification and rehearing of the Commission's September 22, 2006 Order in this proceeding.¹ In that order, the Commission granted a complaint against CL&P, filed by Dominion Nuclear Connecticut, Inc. (DNC), alleging that CL&P had unlawfully charged DNC for station power² and local delivery (retail) service for DNC's 1,954 MW Millstone Nuclear Power Station (Millstone) located in Waterford, Connecticut. In this order, the Commission denies clarification and rehearing.

¹ *Dominion Nuclear Conn., Inc. v. Conn. Light and Power Co.*, 116 FERC ¶ 61,279 (2006) (September 22, 2006 Order).

² "Station power" is defined 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." *PJM Interconnection, LLC*, 94 FERC ¶ 61,251, at 61,889 (2001), *clarified and reh'g denied*, 95 FERC ¶ 61,333 (2001).

I. Background

2. DNC owns and operates Millstone, which it acquired in a transaction with a subsidiary of Northeast Utilities.³ Millstone has two operating units that are interconnected to the ISO New England, Inc. (ISO-NE)-operated transmission system through transmission facilities owned by CL&P.⁴ At the time Millstone was purchased, CL&P and DNC entered into an interconnection agreement (IA) under which DNC bought station power subject to CL&P's retail service tariffs.

3. In its complaint, DNC stated that it notified CL&P that, as of December 1, 2005, DNC would begin to self-supply its station power needs and that it would take delivery of any remotely supplied station power over transmission facilities only. According to DNC, CL&P responded that, under the terms of the IA, DNC was contractually obligated to continue to pay for certain delivery or "non-shoppable" services. Subsequently, CL&P terminated DNC's Millstone station power service accounts effective June 17, 2006, but continued to bill DNC local delivery service charges. DNC requested that the Commission find that CL&P was not authorized to charge DNC for station power from December 1, 2005 through June 16, 2006 and for the local delivery of station power from December 1, 2005 forward.

4. In the September 22, 2006 Order, the Commission reviewed the terms of the IA and determined that DNC was entitled to self-supply its station power requirements in lieu of taking station power from CL&P and that CL&P thus was not authorized to bill DNC for station power for the period from December 1, 2005 through June 16, 2006. In addition, the Commission found that, because no CL&P local delivery facilities are used to provide station power delivery service to the Millstone units, effective December 1, 2005, CL&P was not authorized to charge DNC state-jurisdictional local delivery rates for station power delivery service.

³ Northeast Utilities is the parent company of CL&P.

⁴ CL&P's transmission facilities are operated by the ISO-NE.

II. Request for Rehearing

A. The Connecticut Parties' Arguments

5. On rehearing, the Connecticut Parties request clarification or, in the alternative, rehearing of the September 22, 2006 Order's findings regarding the delivery of station power to the Millstone units.⁵

6. First, the Connecticut Parties request the Commission confirm that DNC must acquire delivery service when it remotely self-supplies one of the Millstone units or when it purchases station power service from a third party.

7. Second, the Connecticut Parties contend that the September 22, 2006 Order contravenes section 212(h) of the Federal Power Act (FPA).⁶ They argue that, under the Connecticut retail choice program, ISO-NE Open Access Transmission Tariff (OATT) transmission service is not provided to individual end-use customers. Instead, the local distribution company (*i.e.*, CL&P) purchases transmission service on behalf of its end-use load and merely passes on the Commission-jurisdictional charges to its customers through state-jurisdictional tariffs. They explain that a generator consuming power is an end user of energy, and that the September 22, 2006 Order impermissibly compels the provision of transmission service to an end user.

8. Third, the Connecticut Parties argue that the September 22, 2006 Order contravenes the definition of Eligible Customer under the ISO-NE OATT which, according to the Connecticut Parties, provides that an end-user is eligible for transmission service only if the transmission service is provided pursuant to a state requirement that CL&P offer the service. In addition, the Connecticut Parties assert that, even if DNC is eligible for transmission service under the ISO-NE OATT, under that tariff, transmission customers must take state-jurisdictional local delivery service whether or not local distribution facilities are needed to deliver the energy.

9. In this latter regard, the Connecticut Parties point to several provisions of the ISO-NE OATT to support their claim. Specifically, they state that section II.21.1 provides that each transmission customer that has a load in the New England control area and

⁵ The Connecticut Parties did not request clarification or rehearing of the Commission's findings regarding station power, as opposed to its findings regarding the delivery of station power.

⁶ 16 U.S.C. § 824k(h) (2000).

takes regional network service for a month is subject to the applicable provisions of Part II.B of the OATT (Regional Network Service). They also state that transmission customers who take regional network service must also take local delivery service and that, under section II.12.2(c), a customer interconnected to pool transmission facilities must pay its share of local network service costs directly associated with the pool transmission facilities-connected load. In addition, they state that, under section II.2.b of schedule 21, a network customer is not excused from state law requirements to arrange and pay for local delivery service with the participating transmission owner and distribution company providing that service. The Connecticut Parties also state that, under section II.1.53, local delivery service is subject to state jurisdiction regardless of whether it is provided over local distribution or transmission facilities and that an OATT customer is not excused from any requirements of state law to arrange and pay for local delivery service.

10. The Connecticut Parties also seek two clarifications. First, they state that DNC has not obtained transmission service under the ISO-NE OATT, arguing that DNC did not properly apply for transmission service or enter into a service agreement for transmission service. They claim that, other than from CL&P, DNC had, and continues to have, no means of delivering remotely supplied station power (either self-supplied or purchased from third parties). Therefore, they reason, CL&P should be compensated for providing service under its state-jurisdictional tariff for any energy delivered since December 1, 2005.

11. Second, the Connecticut Parties ask the Commission to clarify that DNC could not remotely self-supply station power from one Millstone unit to the other unless the unit supplying power sold less than its full output into the market or purchased power from a third party. The Connecticut Parties submit that, if DNC remotely self-supplied station power service from one Millstone unit to the other, the on-line unit must have produced energy for the purpose of self-supply rather than sale. According to the Connecticut Parties, if DNC schedules the output of the unit supplying station power for sale into the spot market or to third parties, it would be “double-dipping.” In addition, they contend that, if DNC obtained energy from a third party there would be some record of those purchases. They request that the Commission require DNC to show that, for each hour a Millstone unit was off-line between December 1, 2005 and June 16, 2006, DNC either held back energy from the market to self-supply an off-line unit or purchased energy from a third party.

B. DNC’s Answer

12. On November 7, 2006, DNC filed a motion of leave to answer and an answer to the Connecticut Parties’ request for rehearing.

C. Commission Determination

13. Initially, we note that Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2006), prohibits answers to requests for rehearing. Accordingly, we will reject DNC's answer. Turning to the Connecticut Parties' claims, for the reasons discussed below, the Commission denies clarification and rehearing.

14. We turn first to the two requested clarifications. In the September 22, 2006 Order, we determined that the Millstone units are connected to the transmission grid at 345 kV and that there are no local distribution facilities used to deliver station power to Millstone.⁷ We stated that a utility cannot impose a charge for local distribution service for station power if there are no local distribution facilities involved in the delivery of station power.⁸ Accordingly, because no local distribution facilities are used to deliver station power to the Millstone units and only transmission facilities are involved, we found that CL&P is not authorized to impose on DNC local distribution charges to deliver service station power to the Millstone units.⁹ This language is clear, and no further clarification is required. To the extent that the Connecticut Parties seek a discussion of what delivery services DNC should be taking and from whom, that question is beyond the scope of this proceeding – which was and is focused solely on whether CL&P was properly charging DNC for local delivery (*i.e.*, local distribution) service even

⁷ September 22, 2006 Order, 116 FERC ¶ 61,279 at P 34-35. The Commission stated that NUSCO had offered no evidence that station power is delivered to Millstone on anything other than transmission facilities, nor did NUSCO deny that only transmission facilities are involved. *Id.* at P 34.

⁸ *Id.* at P 31 (citing *AES Warrior Run, Inc. v. Potomac Edison Co. d/b/a Allegheny Power*, 104 FERC ¶ 61,051, at P 16 (2003), *reh'g denied*, 105 FERC ¶ 61,357 (2003) *order on remand*, 108 FERC ¶ 61,316 (2004), *order on reh'g*, 112 FERC ¶ 61,020 (2005), and *AES Somerset, LLC v. Niagara Mohawk Power Corp.*, 105 FERC ¶ 61,337, at P 42 (2003), *reh'g denied*, 110 FERC ¶ 61,032 (2005) (*AES Somerset*), *aff'd*, *Niagara Mohawk Power Corp. v. FERC*, 452 F.3d 822 (D.C. Cir. 2006), *cert. denied*, __U.S.__, 75 U.S.L.W. 3583 (2007)); *accord Id.* at P 35.

⁹ *Id.* at P 35.

though DNC was not using any local delivery facilities.¹⁰ Similarly, the Connecticut Parties' requested clarification as to one Millstone unit supplying the station power needs of the other is equally outside the scope of this proceeding; indeed, it is virtually a stand-alone petition for declaratory order, and one not appropriately addressed here in the context of this very differently-focused proceeding.¹¹

15. Turning to the Connecticut Parties' request for rehearing, the Connecticut Parties claim that the September 22, 2006 Order contravenes both section 212(h) of the FPA¹² and the ISO-NE OATT. First, we find the Connecticut Parties' contention that the September 22, 2006 Order contravenes section 212(h) of the FPA to be without merit. Contrary to the Connecticut Parties' assertion, the September 22, 2006 Order does not compel the provision of transmission service to an ultimate consumer in violation of section 212(h) of the FPA. As the Commission has repeatedly explained, since self-supply of station power does not involve a retail sale in the first place, there is no retail wheeling involved.¹³ Furthermore, the Connecticut Parties' reference to the "ultimate

¹⁰ *See Id.* at P 4, 31, 34-35. While the Connecticut Parties also phrase their request as a separate basis for rehearing, it is, in fact, merely their request for clarification restated. It is not a basis for the Commission to grant rehearing and find that the September 22, 2006 Order was in error when it concluded that CL&P could not charge for local delivery service when no such service was being provided.

¹¹ *Id.*

¹² Subject to certain exceptions, section 212(h)(1) of the FPA, provides, in pertinent part:

No order issued under this Act shall be conditioned upon or require the transmission of electric energy: (1) directly to an ultimate consumer, or (2) to, or for the benefit of, an entity if such electric energy would be sold by such entity directly to an ultimate consumer.

¹³ *E.g., Entergy Nuclear Operations, Inc. v. Consol. Edison Co. of New York, Inc.*, 112 FERC ¶ 61,117, at P 29 (2005); *California Indep. Sys. Operator Corp.*, 111 FERC ¶ 61,452, at P 18 (2005), *order on reh'g*, 114 FERC ¶ 61,176, *order dismissing reh'g*, 115 FERC ¶ 61,038 (2006); *Duke Energy Moss Landing, LLC v. California Indep. Sys. Operator Corp.*, 111 FERC ¶ 61,451, at P 33 (2005).

(continued...)

consumer” language of the statute is misplaced, as section 212(h) of the FPA relates to retail wheeling and does not implicate the situation at issue here where DNC has stated that it will self-supply its power over transmission facilities.¹⁴ Accordingly, the Commission has not impermissibly required the transmission of electric energy directly to an end user.

16. In addition, the Commission finds nothing in the ISO-NE OATT provisions referenced by the Connecticut Parties that would allow local distribution service charges to be assessed to DNC when it self-supplies its station power needs over transmission facilities, or that demonstrates that the September 22, 2006 Order contravenes the ISO-NE OATT. Those sections do not require DNC to pay for local delivery service when it is not taking such service; they do not contradict the Commission’s well-established policy that a utility cannot impose a charge for local distribution charges for delivery of station power when there are no local distribution facilities involved in the delivery of station power.¹⁵ The OATT sections that the Connecticut Parties reference are thus inapplicable to the central question in this proceeding that is relevant here on rehearing – whether CL&P is authorized to charge DNC local delivery service charges when DNC does not take service over local delivery facilities. The answer to that question is “no,” because, put simply, DNC does not use local delivery facilities. The ISO-NE OATT provisions cited by the Connecticut Parties do not lead to a different result.

Our reasoning is set out fully in *KeySpan-Ravenswood, Inc.*, 107 FERC ¶ 61,142 at P 50-51 (2004), *clarified*, 108 FERC 61,164 (2004) *aff’d*, *Niagara Mohawk v. FERC*, 452 F.3d 822 (D.C. Cir. 2006), *cert. denied*, ___ U.S. ___, 75 U.S.L.W. 3583 (2007); *PJM Interconnection, LLC*, 94 FERC at 61,890-92 & n. 60, 63 (2001), *clarified and reh’g denied*, 95 FERC ¶ 61,333 (2001).

¹⁴ September 22, 2006 Order, 116 FERC ¶ 61,279 at P 3 (explaining that “DNC states that, on October 25, 2005, it provided written notice to CL&P that, effective December 1, 2005, DNC would stop taking station power from CL&P and that it would begin to self-supply its station power needs, including when Millstone Units 2 and 3 are both off-line, and that it would take delivery of station power over transmission facilities only.”); *see Duke Energy Moss Landing, LLC*, 111 FERC ¶ 61,451 at P 33 (2005) (rejecting argument that the Commission’s netting policy, with regard to a generator self-supplying station power, results in power being transmitted to an ultimate end-use consumer).

¹⁵ *E.g.*, *AES Warrior Run, Inc. v. Potomac Edison Co. d/b/a Allegheny Power*, 104 FERC ¶ 61,051, at P 16 (2003), *reh’g denied*, 105 FERC ¶ 61,357 (2003) *order on remand*, 108 FERC ¶ 61,316 (2004), *order on reh’g*, 112 FERC ¶ 61,020 (2005).

17. In its complaint, DNC stated that it had notified CL&P that it planned to self-supply its station power needs at Millstone and take delivery over transmission facilities. DNC requested, among other things, that the Commission find that CL&P was not authorized to charge DNC for the local delivery of station power as of December 1, 2005. Hence, the issue that the Commission sought to address in the September 22, 2006 Order, as relevant here on rehearing, was whether CL&P is authorized to charge DNC local delivery service charges when DNC does not use local delivery facilities.

18. Upon review of the IA between DNC and CL&P, we determined that DNC was entitled to self-supply its station power needs at Millstone. Further, based on our review of the IA's terms governing delivery of station power¹⁶ and on the uncontroverted fact that no local distribution facilities are involved in any delivery of station power to the Millstone units,¹⁷ the Commission concluded that CL&P was not authorized to charge DNC for local delivery service. Thus, in the September 22, 2006 Order we addressed those issues germane to the questions raised in DNC's complaint — *i.e.*, is DNC authorized to self-supply its station power requirements at Millstone and is CL&P authorized to charge DNC local delivery service charges when DNC self-supplies. It was (and remains) unnecessary to explore other issues, including those CL&P raises on rehearing.¹⁸

19. Finally, we note the United States Court of Appeals for the District of Columbia Circuit has upheld our station power findings, including our determination that self-

¹⁶ September 22, 2006 Order, 116 FERC ¶ 61,279 at P 30-32.

¹⁷ As noted above, NUSCO offered no evidence that station power is delivered to Millstone on anything other than transmission facilities nor did it deny that only transmission facilities are involved. September 22, 2006 Order, 116 FERC ¶ 61,279 at P 34.

¹⁸ The Commission is afforded "broad discretion in determining how best to handle related, yet discrete, issues in terms of procedures." *Louisiana Pub. Serv. Comm v. FERC*, _____ F.3d _____, 2007 U.S. App. LEXIS 7596, at *27 (D.C. Cir. 2007)(internal citations omitted); *accord, e.g., Domtar Me. Corp. v. FERC*, 347 F.3d 304, 314 (D.C. Cir. 2003); *Southern Co. Services, Inc.*, 119 FERC ¶ 61,023, at P 17 (2007).

supplying merchant generators that use only transmission facilities need not pay either retail energy or local delivery service charges.¹⁹ We see no basis to revisit this fundamental station power principle on rehearing here.

20. For the reasons stated above, we deny clarification and rehearing.

The Commission orders:

The Connecticut Parties' request for clarification and rehearing of the September 22, 2006 Order is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁹ *Niagara Mohawk Power Corp. v. FERC*, 452 F.3d 822, 830 (D.C. Cir. 2006), *cert. denied*, __U.S. __, 75 U.S.L.W. 3583 (2007); *accord New York Power Auth. v. Consol. Edison Co. of New York, Inc.*, 116 FERC ¶ 61,240, at P 12 (2006).