111 FERC ¶ 61,451
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. EL04-130-001

v.

California Independent System Operator
Corporation

ORDER DENYING REHEARING AND CLARIFICATION

(Issued June 22, 2005)

1. On November 19, 2004, the Commission issued an order granting in part a complaint by Duke Energy Moss Landing LLC (Duke) against the California Independent System Operator Corporation (CAISO), and directed the CAISO to revise its open access transmission tariff (Tariff) to conform to the Commission's station power policies.[1] Southern California Edison Company, Pacific Gas and Electric Company, and the Public Utilities Commission of the State of California (Joint Petitioners) filed a joint request for rehearing and clarification of the November 19 Order. The Commission denies the request for rehearing and clarification, for the reasons discussed herein. This order benefits customers by ensuring that wholesale generators may obtain least-cost station power for the ultimate benefit of the customers they serve.

[1] *Duke Energy Moss Landing LLC v. California Independent System Operator Corp.*, 109 FERC ¶ 61,170 (2004) (November 19 Order).

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. (MISO),[4] the Commission set forth its policy relating to station power procurement and delivery.[5] 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."[6]

3. In a September 1, 2004 complaint, Duke challenged the treatment of station power by the CAISO's Tariff. The CAISO acknowledged in its answer that its Tariff needed to conform to the Commission's station power policies, and requested a stakeholder process to develop Tariff revisions to reflect such policies. The November 19 Order found that the CAISO Tariff did not conform to the Commission's station power policies and directed that the CAISO, within 120 days to allow time for stakeholder discussions, make a compliance filing that contains revised tariff sheets conforming to such policies.[7]

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[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), 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-Ravenswood, Inc. v. New York Independent System Operator, Inc.*, 101 FERC ¶ 61,230 (2002), *reh'g denied*, 107 FERC ¶ 61,142 (2004) (*KeySpan IV*), *clarified*, 108 FERC ¶ 61,164 (2004).

[4] *Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,073 (2004) (*MISO*), *order on reh'g*, 110 FERC ¶ 61,383 (2005).

[5] In *Niagara Mohawk Power Corp. v Huntley Power, LLC*, 109 FERC ¶ 61,169 at P 20-35 (2004), *reh'g denied*, 111 FERC ¶ 61,120 (2005) (*Huntley*), we provide a summary of our station power precedent to the date of the issuance of that order.

[6] *PJM II*, 94 FERC at 61,251.

[7] The CAISO filed Amendment No. 68 proposing revisions to its tariff to conform to the Commission's station power policies. The CAISO's tariff filing is being addressed in an order issued contemporaneous with this order, *California Independent System*

(continued…)

4. On December 20, 2004, Joint Petitioners filed a joint request for rehearing and clarification of the November 19 Order. On January 7, 2005, Duke filed an answer to the request for rehearing.

Discussion

A. Procedural Matters

5. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2004), prohibits answers to requests for rehearing. Accordingly, we will reject Duke's answer.

B. Summary

6. We will deny rehearing. Joint Petitioners challenge many of the fundamental principles of the Commission's settled station power policy, including that the self-supply of station power is not a sale (for either wholesale or end-use) of power, and that station power can be netted over a reasonable period of time. Moreover, contrary to the Joint Petitioners' claims, our action here does not constitute a reversal of, and in fact our rulings regarding station power are entirely consistent with, Order No. 888.[8]

C. Commission Jurisdiction

1. November 19 Order

7. The November 19 Order directed the CAISO to develop proposed Tariff revisions reflecting the Commission's station power policies, explaining that:

> [t]he CAISO's filing must reflect the fundamental station power principles established in our precedent. We will not revisit those fundamental principles, as

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Operator Corp., 111 FERC ¶ 61,452 (2005).

[8] *See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 62 Fed. Reg. 64,688, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000) (*TAPS*), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

> developed in the final and non-appealable orders of *PJM II* and its progeny. 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*."
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> 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. We will not revisit these fundamental station power issues.[[9]]

2. <u>Request for Rehearing</u>

8. Joint Petitioners begin by arguing that "one fundamental error with regard to the Commission's entire line of station power cases is its claim that it has any jurisdiction to set rates, tariff rules, and/or regulations regarding the sale or self-supply of energy to serve station power load."[10] Joint Petitioners argue that the Commission not only lacks jurisdiction over the self-supply of energy serving station power load, but lacks jurisdiction in the first instance to determine whether a retail sale of energy occurs versus whether self-supply occurs.

9. Joint Petitioners further argue that the Commission has not explained the source of its jurisdiction to permit monthly netting. They claim that, while the Commission has stated that "our precedent rejects the theory that a generator makes a retail purchase of station power whenever there is a single momentary power fluctuation during the netting period,"[11] the Commission does not cite to any precedent to support its proposition. Joint Petitioners allege that the Commission recognized in *Huntley* that remotely-supplied energy is transferred from the third party to the station power load. They claim that the states, not the Commission, have exclusive jurisdiction to determine when such power flows constitute a retail sale.[12]

<u>Commission Determination</u>

10. Joint Petitioners ignore our admonition in the November 19 Order that the fundamental principles of station power are set out in *PJM II* and its progeny, and we will

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[9] November 19 Order, 109 FERC ¶ 61,170 at P 20-21 (footnotes omitted).

[10] Joint Petitioners' Request for Rehearing at 2.

[11] *Quoting Huntley*, 109 FERC ¶ 61,169 at 38.

[12] *Citing MidAmerican Energy Company*, 94 FERC ¶ 61,340 (2001).

not revisit these issues. As for the Joint Petitioner's claim that the doctrine of collateral estoppel does not apply to them in this proceeding, the fact that Joint Petitioners themselves were not parties to the earlier station power proceedings does not mean that our settled precedent does not apply to them.

11. The Joint Petitioners' position that self-supply of station power is a sale for end use has been addressed by the Commission and rejected.[13] The same is true for the allegation that station power rules encroach on state jurisdiction over retail sales and local distribution.[14]

12. Joint Petitioners argue that the Commission, having determined that the self-supply of station power is not a sale for wholesale, lacks jurisdiction in the first instance to determine whether a retail sale of energy occurs versus whether self-supply occurs. The Commission, however, "has jurisdiction, in the first instance, to determine its jurisdiction."[15] The Commission, thus, has the authority to determine whether transactions involving station power (including determining whether a generator has self-supplied station power or whether the generator has instead purchased station power at retail and, importantly, whether the generator has used transmission facilities or local distribution facilities to move station power to it) are subject to Commission jurisdiction pursuant to section 201(b)(1) of the Federal Power Act.[16] Our authority to make this determination does not depend on the ultimate outcome of this determination.[17]

13. Furthermore, the Commission has explained previously that, when there is a conflict between station power provisions in Commission-jurisdictional and state-

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[13] *See, e.g., Huntley*, 109 FERC ¶ 61,169 at P 20, 38-41; *KeySpan IV*, 107 FERC ¶ 61,142 at P 34-40; *KeySpan I*, 99 FERC at 61,679; *PJM II*, 94 FERC at 61,891-93.

[14] *See, e.g., Nine Mile Point Nuclear Station, LLC v. Niagara Mohawk Power Corp*., 110 FERC ¶ 61,033 (2005) (*Nine Mile II*); *AES Somerset, LLC v. Niagara Mohawk Power Corp*., 110 FERC ¶ 61,032 (2005) (*AES Somerset II*).

[15] *Western Massachusetts Electric Co*., 61 FERC ¶ 61,182 at 61,661 (1992), *aff'd*, 165 F.3d 922, 926 (D.C. Cir. 1999); *accord, Nine Mile II*., 110 FERC ¶ 61,033 at P 30 & n.31; *AES Somerset II*, 110 FERC ¶ 61,032 at P 35 & n.41.

[16] 16 U.S.C. § 824(b)(1) (2000).

[17] *See supra* note 14 (citing *Nine Mile II* and *AES Somerset II*).

jurisdictional tariffs, the former must control.[18] That does not mean the Commission is approving or disapproving any rate, term, or condition of a retail tariff. Rather, we are only, and as narrowly as possible, harmonizing tariff provisions.

14. What the Commission has done in the November 19 Order is not to intrude into state jurisdiction over retail rates or local distribution services, but only to determine based on applicable law and fact what type of services (wholesale or retail) are actually being provided and to act accordingly. As we illustrated in *KeySpan IV*, conflicts may arise. When they do, the Commission seeks to resolve such conflicts in the most narrowly tailored and careful manner. As we have emphasized from the start of the station power cases, our jurisdiction is over the transmission of station power. The use of a reasonable netting period is designed to determine when, in fact, such transmission has taken place.[19]

15. Joint Petitioners further argue that the Commission has not explained the source of its jurisdiction to permit monthly netting. As we explained in *PJM II*, netting is simply the traditional accounting for station power as net, or negative, generation, that is, calculating the output of a particular generating facility net of station power requirements. We quoted PJM's transmittal letter for a succinct description of the historical treatment of station power as net, or negative, generation:

> In general, vertically-integrated utilities in the PJM control area historically have treated station power as "negative generation." That is, the energy output of a generation facility typically was treated as its gross output less the power consumed at the facility. Station power used during periods when the generator was not operating likewise was treated as negative generation. To the extent that a generation facility's station power needs were not met with on-site power production, the facility received the necessary energy from the utility's transmission and/or distribution facilities. In the case of an integrated utility, such energy typically was supplied by its other generation stations or, if the utility was part of a centrally dispatched power pool such as PJM, by the pool's then available energy supplies.[[20]]

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[18] *Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,073 at P 45 (2004) (*MISO*).

[19] *E.g.*, *PJM II*, 94 FERC at 61,891 & n.60; *PJM IV*, 95 FERC at 62,685; *Huntley*, 111 FERC ¶ 61,120 at P 22, 56.

[20] *PJM II*, 94 FERC at 61,889-90.

16. Joint Petitioners claim that the Commission has not identified precedent to support its statement that "our precedent rejects the theory that a generator makes a retail purchase of station power whenever there is a single momentary power fluctuation during the netting period."[21] On the contrary, in *PJM II*, we addressed whether it is appropriate to consider net capacity as negative over a particular netting interval even though there could be instances during the designated netting interval when output might in fact be positive:

> We emphasize that a generator may net against its gross input as measured over a specific time period, typically one hour, such as in the PJM amendments, even though there may be occasions during that one hour when gross output is less than station power requirements. As long as net output is positive as measured over the entire one hour, then netting is appropriate. Our approach here is consistent with our precedent for measuring a QF's net output. In *American Ref-Fuel of Bergen County*, 54 FERC ¶ 61,287 (1991), the Commission used a "rolling one-hour" period for measuring the size limitation (80 MW) applicable to qualifying small power production facilities. In that case, Ref-Fuel argued that because of the substantial variation in the heat content of solid waste, the net output of the facility would often exceed 80 MW, but that it would be able to use an automatic control system to lower the net output to 80 MW whenever it exceeded 80 MW. Thus, Ref-Fuel said that it could maintain the 80 MW net output level on average over a rolling one-hour period. The Commission agreed to this approach, recognizing that:
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>> generation output fluctuates instantaneously and accordingly must be adjusted many times each hour to follow system load changes. System load or consumer demand typically is determined by averaging energy use over a period of time of 15 to 60 minutes.
>
> The Commission held that because a facility's generation output varies constantly, and the facility would have to compensate for over-production within the rolling 60-minute period by under-producing, a net output in excess of 80 MW would not automatically violate the size limitations of PURPA.[[22]]

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[21] *Quoting Huntley*, 109 FERC ¶ 61,169 at 38.

[22] *Id*. at 61,891-92 (footnotes omitted).

17. Further, in *PJM II*, we noted that "[t]he parties have not cited, and we are not aware of, an instance in which we have treated the self-supply of station power through netting as a sale."[23] Rather, we held, "[b]ecause a self-supplying generator is not using another's generating facilities, it is not causing another to incur costs associated with the usage of another's generating resources that would warrant a form of consideration. In other words, there is no sale (for end-use or otherwise) between two different parties, but only one party using its own generating resources for the purposes of self-supply and accounting for such usage through the practice of netting."[24]

18. Accordingly, contrary to the Joint Petitioners' allegations, we have, in fact, expressly rejected the theory that a generator makes a retail purchase of station power whenever there is a momentary power fluctuation during the netting period, and we did so as early as 2001.[25]

19. Accordingly, Joint Petitioners request for rehearing is denied on this issue.

D. <u>Consistency with Order No. 888</u>

20. Joint Petitioners argue that the Commission erred in determining that there is not an element of local distribution in deliveries of station power to generators that receive service at transmission-level voltage facilities. They claim that the Commission, in Order No. 888, ruled that there is always an element of local distribution service in any delivery of power to an end-user and that stranded cost charges could be assessed due to this finding of jurisdiction.[26] According to Joint Petitioners, the Commission, in its station power cases, departed from this precedent without a reasoned explanation.[27]

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[23] *Id.* at 61,890.

[24] *Id.*

[25] We reaffirmed that determination as recently as last year, in *KeySpan* IV, 107 FERC ¶ 61,142 at P 37-41.

[26] *Citing* Order No. 888, FERC Stats. & Regs. & 31,036 at 31,826.

[27] *Citing Nine Mile Point Nuclear Station, LLC v. Niagara Mohawk Power Corp.*, 105 FERC ¶ 61,336 (2003) (*Nine Mile I*), *reh'g denied*, 110 FERC ¶ 61,033 (2005); *AES Somerset, LLC v. Niagara Mohawk Power Corp.*, 105 FERC ¶ 61,337 (2003) (*AES Somerset I*), *reh'g denied*, 110 FERC ¶ 61,032 (2005).

21. Joint Petitioners contend that Order No. 888 does not indicate that a utility first must actually be providing a service for state jurisdiction to attach. According to Joint Petitioners, the point of Order No. 888 was that local distribution service always exists if power was delivered to an end-user, even if no local distribution facilities were at all involved. Further, they contend that the Commission's alleged departure from Order No. 888 is not reasoned because it has not explained "why there *is* an element of local distribution service where power is delivered over only FERC-jurisdictional facilities to an end-use customer that *is not* a customer-generator, but there is not an element of local distribution service in the provision of the *exact same* end-use delivery service to a customer-generator."[28]

22. Joint Petitioners argue that the Commission cannot prevent states from imposing stranded cost and public benefit charges on divested generators that use local distribution facilities. Joint Petitioners point out that the State of California has authorized certain utilities to collect contract costs arising from the Western energy crisis from departing wholesale and retail customers, which the Joint Petitioners characterize as a form of stranded cost.[29] Moreover, they contend that the states, not the Commission, determines when stranded cost recovery is necessary.

Commission Determination

23. Again, Joint Petitioners seek to revisit a legal issue that has been thoroughly addressed in our station power precedent.[30] Moreover, to the extent that Joint Petitioners are arguing for the reversal of our *Nine Mile* and *AES Somerset* precedent, we will not

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[28] Joint Petitioners Request for Rehearing at 11 (emphasis in original).

[29] Joint Petitioners note the November 19 Order's silence regarding protestors mention of a CPUC decision interpreting California law as allowing the CPUC to assess Departing Load Charges to load served by customer generation. Joint Petitioners state that they assume the Commission's silence means that it will not interfere with any CPUC action involving the collection of Departing Load Charges, and ask for clarification on this matter. The Commission denies the request for clarification. This issue is, at best, tangential to the matters at issue in this proceeding. Further, as Joint Petitioners acknowledge, the Commission addressed this matter in *Pacific Gas and Electric Co.*, 109 FERC ¶ 61,255 at P 96 (2004).

[30] *E.g.*, *KeySpan IV*, 107 FERC ¶ 61,142 at P 44-52; *Nine Mile*, 105 FERC ¶ 61,336 at P 32-37 and 110 FERC ¶ 61,033 at P 40-46; *AES Somerset*, 105 FERC ¶ 61,337 at P 42-47 and 110 FERC ¶ 61,032 at P 45-51.

revisit our orders in those proceedings. Nonetheless, we will again explain, albeit more briefly, that our station power precedent is consistent with our policies set forth in Order No. 888

24. In Order No. 888, the Commission discussed generation-based stranded costs, which may become stranded if, as a result of open access, former retail customers (such as industrial or commercial customers) leave a utility's system to take power service from a competing power supplier, and sunk costs associated with serving that retail customer may otherwise not be recovered. That is simply not the case here, however. And, where, in Order No. 888, we stated that states have jurisdiction over the service of delivering energy to end users even when there are no identifiable local distribution facilities, we were addressing situations such as where large industrial or commercial customers took bundled retail electric service at high voltages (rather than the low voltages typically associated with local distribution facilities) so that local distribution facilities might not be readily identifiable, which is distinguishable from the circumstances in this proceeding. Again, that is simply not the case here, however.

25. A state may approve whatever rate level it deems appropriate, including the recovery of stranded costs and benefits, when a utility is selling station power at retail or is using local distribution facilities for the delivery of station power. When neither of those services is being provided, however, and a generator is self-supplying its station power requirements (as we have required the CAISO to include in its Tariff) and any delivery service is transmission service, the charges specified in the CAISO's Tariff apply to the exclusion of any retail tariff. This is, as well, consistent with Order No. 888's pro-competition policy because it prevents competing suppliers from being charged inappropriate costs by utilities with whom they compete for load, thus encouraging competition in electricity products.

26. Joint Petitioners state that they understood Order No. 888 to provide that there is always local delivery service involved in service to end-use customers, that states have exclusive jurisdiction over local delivery service, and that states may impose non-bypassable distribution or retail stranded cost charges.

27. As we have done in our earlier station power cases,[31] we re-emphasize that we have not undermined any critical assurances made in Order No. 888. We have only stated that Order No. 888 cannot be relied upon to justify efforts to burden competing suppliers with additional, and unjustified, costs that would make them less competitive.

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[31] *E.g.*, *KeySpan IV*, 107 FERC ¶ 61,142 at P 49; *Nine Mile*, 105 FERC ¶ 61,336 at P 26 and 110 FERC ¶ 61,033 at P 16, 43; *AES Somerset*, 105 FERC ¶ 61,337 at P 43 and 110 FERC ¶ 61,032 at P 19, 48.

As we explained in *KeySpan IV*,[32] we also have not interfered with or prevented stranded cost recovery, or even significantly impaired any such recovery, because utilities may still recover stranded costs and benefits from their retail-turned-wholesale customers and from those generators that actually do purchase station power at retail or actually do take delivery over local distribution facilities. Nothing in our station power orders is to the contrary.

28. Thus, we have not reversed or changed our holdings in Order No. 888; we have only clarified that a small subset of generators cannot, on the basis of what we said in Order No. 888, be charged retail rates when they are not taking a retail service. And even if the allegation that our interpretation of Order No. 888 somehow impairs stranded cost recovery or undermines prior understandings of Order No. 888 were correct (which we do not concede), the utilities are free to seek, and the state is free to approve, offsetting adjustments in other rates that recover stranded costs from appropriate classes of customers or to extend the recovery period for stranded costs.

29. Accordingly, we deny Joint Petitioners' request for rehearing on this issue.

E. <u>Retail Wheeling</u>

30. Joint Petitioners argue that the November 19 Order erred in rejecting arguments that the Commission's station power policies violate California law prohibiting retail choice. They contend that California law requires that all customers without grandfathered contracts remain customers of the host utility in their service. According to Joint Petitioners few, if any, generators have such grandfathered contracts and, thus, they must obtain power from their host utility.[33]

31. Joint Petitioners also argue that monthly netting and remote self-supply can result in violations of section 212(h) of the FPA, which bars the Commission from compelling retail wheeling not authorized by a state.[34] They contend that, while the Commission's netting policy results in transmission service never being purchased, the factual reality is

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[32] 107 FERC ¶ 61,142 at P 49.

[33] The November 19 Order noted that the "Commission has approved station power rules for [Midwest ISO], which includes non-retail choice states." 109 FERC ¶ 61,170 at P 21 n.15, *citing MISO*, 106 FERC ¶ 61,073 at P 42, 46. Joint Petitioners claim that, unlike *MISO*, state law would be violated.

[34] 16 U.S.C. § 824k(h) (2000) (emphasis added).

that power is being transmitted to an ultimate end-use consumer. According to Joint Petitioners, the Commission is requiring that the CAISO physically transmit power directly to ultimate end-use consumers in violation of section 212(h) of the FPA.

Commission Determination

32. The Commission denies rehearing on this issue. California's current state law that allows for limited retail sales cannot affect a self-supplying generator.[35] As we explained in *MISO*, however, "[t]he formal enactment of retail choice by a state is not a prerequisite for a generator to be able to self-supply." As long as a generator is self-supply, that is, has a positive net output during a Commission-approved netting period, it is not purchasing station power from any party.[36] Moreover, as we explained above, in the event of a conflict between Federal and State tariff provisions, the Federal tariff must control.[37]

33. Joint Petitioners' allegations that the Commission's station power policies result in mandated retail wheeling in violation of section 212(h) of the FPA previously have been addressed and rejected.[38] As we explained in *KeySpan IV*,[39] since self-supply of station power does not involve a retail sale in the first place, there is no retail wheeling involved, mandatory or otherwise. Joint Petitioners' focus on the "ultimate 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 a generator is providing its own power. In addition, a Commission finding that generators may avail themselves of the station power

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[35] *See*, *e.g*., *MISO*, 106 FERC ¶ 61,073 at P 40.

[36] *See*, *e.g*., *AES Somerset II*, 110 FERC ¶ 61,032 at P 76. This issue is also addressed in the contemporaneous order concerning Amendment No. 68. *See supra* note 7.

[37] *E.g*., *KeySpan IV*, 107 FERC ¶ 61,142 at P 42-43.

[38] Our reasoning is set out fully in *KeySpan IV*, 107 FERC ¶ 61,142 at P 50-51; *PJM III*, 95 FERC at 62,185; *PJM II*, 94 FERC at 61,890-92 & n. 60, 63.

[39] See *KeySpan IV*, 107 FERC ¶ 61,142 at P 51. *See also City of College Station, Texas*, 76 FERC ¶ 61,138 at 61,743 (1996), *final order*, 86 FERC ¶ 61,165 (1999), *order on reh'g*, 97 FERC ¶ 61,152 (2001), *order on reh'g*, 98 FERC ¶ 61,222, *reh'g denied*, 99 FERC ¶ 61,163 (2002) (Commission has authority to order wholesale transmission services).

provisions proposed by the CAISO does not run afoul of the restrictions of section 212(h). The Commission has not required transmission of electric energy directly to any generator, as an end user, which is what is prohibited by that section.

34. Contrary to Joint Petitioners' arguments, the transmission of station power does not mandate retail wheeling in violation of section 212(h) of the FPA.

The Commission orders:

The Joint Petitioners' request for rehearing and clarification is hereby denied.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.