

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.

New York Power Authority

Docket Nos. EL05-123-001 and
EL05-123-002

v.

Consolidated Edison Company of New York, Inc.

ORDER DENYING REHEARING, GRANTING REQUEST FOR CLARIFICATION,
AND ACCEPTING REFUND REPORT

(Issued September 12, 2006)

1. On October 19, 2005, Consolidated Edison Company of New York, Inc. (Con Edison) requested rehearing of the Commission's order in this proceeding dated September 19, 2005.¹ In that order, the Commission granted, in part, the New York Power Authority's (NYPA) complaint against Con Edison alleging interference with NYPA's desire to have certain of its New York City generating facilities (New York City Plants)² utilize the station power procurement and delivery provisions of the New York Independent System Operator, Inc. (NYISO) Market Administration and Control Area Services Tariff (NYISO Services Tariff),³ and the Commission directed Con Edison to refund charges relating to station power that Con Edison improperly collected from NYPA. On October 19, 2005, NYPA requested clarification with regard to the refund related to charges collected for the Pouch Terminal in October 2003. On November 18,

¹ *New York Power Auth. v. Consol. Edison Co. of New York, Inc.*, 112 FERC ¶ 61,304 (2005) (September 19 Order).

² NYPA's New York City Plants include the Clean Power Projects and the Combined-Cycle Project; the former consisting of ten gas turbine units, the latter consisting of two combustion turbine generators and a steam turbine generator.

³ The Commission accepted for filing the station power provisions (section 4.12) of the NYISO Services Tariff, effective April 1, 2003. *KeySpan-Ravenswood, Inc. v. New York Indep. Sys. Operator, Inc.*, 101 FERC ¶ 61,230 (2002), *reh'g denied*, 107 FERC ¶ 61,142 (*KeySpan IV*), *clarified*, 108 FERC ¶ 61,164 (2004), *affirmed sub nom. Niagara Mohawk Power Corp. v. FERC*, 452 F.3d 822 (D.C. Cir. 2006) (*Niagara Mohawk*).

2005, Con Edison filed a refund report. For the reasons discussed below, we deny Con Edison's request for rehearing, grant NYPA's request for clarification, and accept Con Edison's refund report, as discussed below.

I. Background

2. In its September 19 Order, the Commission explained that, in New York, station power may be provided to a generating facility via (1) on-site self-supply (frequently referred to simply as "self-supply"); (2) remote self-supply; or (3) purchases from a third party. NYISO's station power program, including the registration and enrollment of eligible merchant generators, is implemented through section 4.12 of the NYISO Services Tariff and NYISO Technical Bulletins 117-122. On a monthly basis, NYISO calculates whether each enrolled generator has self-supplied its station power requirements or has made third-party purchases, and what the corresponding transmission loads are. For remote self-supply, point-to-point transmission service charges would apply under Part II of the NYISO Open Access Transmission Tariff (OATT), and for retail transmission of station power purchased from third parties transmission and ancillary service charges would apply under Part IV of the NYISO OATT (unless other arrangements have been made). Participation in the NYISO station power program is optional, and any generator may forgo self-supply and purchase its full station power requirements on a bundled basis under a retail tariff.

3. In its September 19 Order, the Commission found that the Clean Power Interconnection Agreement (Clean Power IA)⁴ between NYPA and Con Edison applies, by its express terms, only to remotely self-supplied station power and station power purchases from third parties. The Commission stated that NYPA is not obligated to pay any delivery charges for station power that it self-supplies on site, but it is obligated, under the Clean Power IA, to compensate Con Edison (at the rates specified in Con Edison's Delivery Service Rate Schedule, PASNY No. 4) for station power deliveries whenever NYPA remotely self-supplies any of the Clean Power Projects and whenever Con Edison delivers station power that NYPA has purchased from a third party.⁵

II. Request for Rehearing

4. In brief, on rehearing Con Edison argues that the Commission misconstrued section 3.14 of the Clean Power IA, and that NYPA, therefore, is subject to charges under PASNY No. 4 Tariff without regard to netting. Con Edison claims that the Commission

⁴ NYISO FERC Open Access Transmission Tariff, Original Volume No. 1, Service Agreement No. 315; see *Consolidated Edison Co. of New York, Inc.*, Docket No. ER02-46-001 (Mar. 27, 2003) (unpublished letter order).

⁵ September 19 Order, 112 FERC ¶ 61,304 at P 43-56.

abrogated the Clean Power IA and PASNY No. 4 Tariff provisions with regard to amendments and contract demand charges, respectively. Con Edison also submits that the Commission erred in asserting jurisdiction over its contracts, books, and records, or “paper facilities,” and instead should have referred this issue to the New York Public Service Commission (New York Commission). According to Con Edison, the September 19 Order should have concluded that Con Edison can assess state-jurisdictional local distribution charges for the delivery of self-supplied station power to the Combined-Cycle Project. Finally, Con Edison requests that the Commission clarify that the contract demand provisions of PASNY No. 4, including the associated ratchet provision, apply to NYPA’s remote supply of station power to the Pouch Terminal in October 2003 and to the calculation of the refund amount that Con Edison may retain. We discuss these arguments in more detail below.

5. More specifically, Con Edison first contends that the September 19 Order misconstrues section 3.14 of the Clean Power IA. Con Edison submits that the station power that NYPA self-supplies under the ISO Services Tariff is actually purchased and acquired from a third party and, therefore, is subject to charges under the PASNY No. 4 Tariff without regard to netting. Con Edison maintains in this regard that the Commission predicates its findings in the September 19 Order that the station power at issue was self-supplied on two untenable assertions; namely, that the netting of station power over a reasonable period does not entail a retail sale, and that the application of congestion management pricing to station power is not evidence of a sale transaction.

6. Secondly, Con Edison asserts that, by requiring a refund, the September 19 Order abrogates the Clean Power IA and the PASNY No. 4 Tariff, in violation of the *Mobile-Sierra*⁶ and filed rate doctrines. Con Edison argues that the Commission’s refund requirement revises section 3.14 of the Clean Power IA by exempting self-supplied station power from the obligations imposed by that section (*i.e.*, to take and pay for PASNY No. 4 delivery service and not to net), which alleged amendment is prohibited by the terms of the Clean Power IA.

7. Thirdly, Con Edison contends that the September 19 Order erred in deciding the so-called “paper facilities” issue. Con Edison had argued that its contracts, books, and records are state-jurisdictional “paper” facilities, relying on *Hartford Electric Light Company v. FPC.*, the existence of which justified assessing NYPA local distribution charges.⁷ In response, the Commission rejected this theory, noting that in *Hartford* the court considered the term “facilities” as used in section 201(b) of the Federal Power Act

⁶ *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

⁷ *Hartford Electric Light Co. v. FPC*, 131 F.2d 953, 961 (2d Cir. 1942), *cert. denied*, 319 U.S. 741 (1943).

(FPA).⁸ The Commission determined that the court's finding with regard to the "facilities" at issue was specific to the FPA and could not be extended to Con Edison's "paper facilities" under New York law. On rehearing, Con Edison now submits that the Commission should have referred the issue of whether paper facilities are jurisdictional to the New York Commission. Con Edison asserts that the Commission cannot prescribe a ratemaking methodology or otherwise determine the level of state-jurisdictional rates.

8. Fourthly, Con Edison maintains that the September 19 Order erred in failing to find that Con Edison may assess state-jurisdictional local distribution charges for station power deliveries to the Combined Cycle Project. Con Edison repeats its argument that its "contracts, books, and records" constitute "paper" distribution facilities that justify the assessment of state-jurisdictional local distribution charges, and that its state-approved local distribution charges apply whether or not Con Edison uses physical local distribution facilities in the delivery of station power to the Combined Cycle Project. Con Edison argues that the state regulatory agencies may impose retail service charges for the delivery of station power, even when the delivery is effectuated without using local distribution facilities, *i.e.*, "based on the service rendered, not the facilities used."⁹

9. Finally, Con Edison requests that the Commission clarify whether the surcharge and ratchet provisions of the PASNY No. 4 Tariff are applicable to the station power that NYPA remotely self-supplied to the Pouch Terminal during October 2003. Con Edison contends that the September 19 Order effectively reduced the contract demand for the Clean Power Project to zero as of April 1, 2003, on the ground that NYPA began to self-supply its station power on site at that time.¹⁰

III. Request for Clarification

10. NYPA requests clarification of Con Edison's refund obligation with respect to the Pouch Terminal.¹¹ NYPA notes that, while the Commission did not state the exact amount Con Edison is to retain for station power deliveries to the Pouch Terminal in October 2003 (Refund Credit),¹² the Commission should clarify that the Refund Credit is \$16,935.51, because this is the amount of revenues that NYPA actually paid Con Edison for delivery service for the Pouch Terminal in October 2003.

⁸ September 19 Order, 112 FERC ¶ 61,304 at P 60-61.

⁹ Con Edison Request for Rehearing at 20.

¹⁰ *See* September 19 Order, 112 FERC ¶ 61,304 at P54 & n.20.

¹¹ This is the same issue raised by Con Edison and discussed above in paragraph 9.

¹² *See Id.*

11. NYPA contends that Con Edison is proposing to retain a considerably larger, and hypothetical, amount based on certain assumptions: namely, that (1) Con Edison had allowed NYPA to net station power deliveries in October 2003; (2) NYPA had decreased the contract demand for the Pouch Terminal from 1900 kW to zero kW; and (3) NYPA had still remotely self-supplied 12 net MWh to the Pouch Terminal in October 2003, with a peak demand of 1100 kW. NYPA states that, under the ratchet and surcharge provision of the PASNY No. 4 Tariff, a surcharge of 24 times the monthly payment due for 1100 kW that Con Edison proposes, plus a ratcheted contract demand of 1100 kW for twelve months, would amount to a credit against its refund obligation of approximately \$350,000 to \$400,000.

IV. Affirmation of the Commission's Station Power Precedent

12. In the interim between the September 19 Order and this order, the United States Court of Appeals for the District of Columbia Circuit upheld on all issues the Commission's station power precedent.¹³ In *Niagara Mohawk*, the court denied the petitions for review and affirmed Commission orders accepting NYISO's station power procurement and delivery provisions and acting on complaints between New York merchant generators and utilities regarding station power.¹⁴ Among other things, the court affirmed the Commission's approval of NYISO's proposal to net station power over a one-month period and its findings that self-supplying merchant generators that use only—or no—transmission facilities need not pay either retail energy or local delivery service charges.

13. Petitioners had argued that such monthly netting encroaches upon state jurisdiction over local distribution services and retail rates in violation of the FPA, as New York generators might be taking state-jurisdictional services at some time during the one-month netting period. Petitioners therefore contended that the Commission unlawfully extended federal jurisdiction over local distribution services and retail rates because NYISO's monthly netting interval would allegedly allow generators to avoid payment of retail energy or local distribution charges.

¹³ *Niagara Mohawk Power Corp. v. FERC*, 452 F.3d 822 (D.C. Cir. 2006).

¹⁴ *KeySpan-Ravenswood, Inc. v. New York Indep. Sys. Operator, Inc.*, 101 FERC ¶ 61,230 (2002), *reh'g denied*, 107 FERC ¶ 61,142, *clarified*, 108 FERC ¶ 61,164 (2004); *Nine Mile Point Nuclear Station, LLC v. Niagara Mohawk Power Corp.*, 105 FERC ¶ 61,336 (2003), *reh'g denied*, 110 FERC ¶ 61,033 (2005) (*Nine Mile*); *AES Somerset, LLC v. Niagara Mohawk Power Corp.*, 105 FERC ¶ 61,337 (2003), *reh'g denied*, 110 FERC ¶ 61,032 (2005) (*AES Somerset*); *Niagara Mohawk Power Corp. v. Huntley Power LLC*, 109 FERC ¶ 61,169 (2004), *reh'g denied*, 111 FERC ¶ 61,120 (2005) (*Huntley*).

14. In rejecting these arguments, the court cited petitioners' acknowledgement "that an hourly netting tariff would not violate the [FPA]." ¹⁵ The court reasoned that petitioners' argument against netting would logically lead to the conclusion that "any netting out of what it deems 'retail sales' over any period would amount to a statutory violation." ¹⁶ On the other hand, the court averred, if hourly netting is perfectly consistent with the FPA—as petitioners had conceded—then there is no principled reason why monthly netting would violate the FPA.

15. Furthermore, the court found nothing in Order No. 888 ¹⁷ that would buttress petitioners' jurisdictional argument. According to the court, although Order No. 888 used the term "end user," the Commission "has made it clear that [Order No. 888's] purpose was to prevent large industrial and commercial users from avoiding their share of a utility's stranded costs" ¹⁸ and that it was reasonable for the Commission to carve out an exception from the term "end user" for wholesale merchant generators. The court added that it was reasonable that the Commission not extend the fiction that an end user takes local distribution *service* even if it does not physically use a utility's local distribution facilities to "the new creature in the market, the wholesale [merchant] generator." ¹⁹

V. Commission Determination

16. For the reasons given below, we will deny rehearing, but we will grant NYPA's requested clarification. In addition, we will accept Con Edison's refund compliance report.

A. Monthly Netting of Station Power

17. Con Edison maintains at the outset that the Commission's findings in the September 19 Order are based on two "untenable" assertions: that monthly netting of

¹⁵ *Niagara Mohawk*, 452 F.3d at 828.

¹⁶ *Id.*

¹⁷ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997); *order on reh'g*, Order No. 888-B, 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), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

¹⁸ *Niagara Mohawk*, 452 F.3d at 829.

¹⁹ *Id.*

station power does not entail a retail sale; and that the application of congestion management pricing to station power withdrawals and injections is not evidence of that retail sale.²⁰ To the contrary, these supposed fallacies are Commission precedent²¹ that the D.C. Circuit upheld in *Niagara Mohawk*.

18. The validity of monthly netting and Con Edison's opposition to it were expressly addressed in our station power precedent and *Niagara Mohawk*. In the *KeySpan* proceeding,²² one of the proceedings before the court in *Niagara Mohawk*, the Commission explained that "[s]imply because there may be momentary instances during the netting interval when a particular generating facility's output is negative does not mean that the facility's owner is buying station power at retail."²³ In *Niagara Mohawk*, the court affirmed the Commission's approval of NYISO's monthly netting proposal, finding that, as hourly netting did not violate the FPA, monthly netting would not violate the FPA. The court explained that the petitioners had conceded that it would be a "valid policy judgment" on the part of the Commission to determine that no retail sale occurred, and no local distribution service was provided, if a generator was net positive over a one-hour netting interval. Given this, the court held, "if hourly netting is perfectly consistent with the [FPA], we see no principled reason why monthly netting violates the Act."²⁴

19. In *KeySpan IV*, the Commission explained why the application of congestion management pricing to the withdrawals and injections of station power that a merchant generator is transmitting from one of its on-line generators to one of its off-line generators (as remote self-supply), is not a retail sale of energy between a buyer and a seller.²⁵ In *Niagara Mohawk*, the court specifically upheld the Commission's analysis of this issue.²⁶

²⁰ Con Edison Request for Rehearing at 4.

²¹ *KeySpan IV*, 107 FERC ¶ 61,142 (2004); accord *PJM Interconnection, L.L.C.*, 95 FERC ¶ 61,470 (2001) (*PJM IV*).

²² *KeySpan-Ravenswood, Inc. v. New York Indep. Sys. Operator, Inc.*, 101 FERC ¶ 61,230 (2002), *reh'g denied*, 107 FERC ¶ 61,142, *clarified*, 108 FERC ¶ 61,164 (2004), *affirmed sub nom. Niagara Mohawk Power Corp. v. FERC*, 452 F.3d 822 (D.C. Cir. 2006).

²³ *KeySpan IV*, 107 FERC ¶ 61,142 at P 40; *see Id.* P 37-41; *see also KeySpan-Ravenswood, Inc. v. New York Indep. Sys. Operator, Inc.*, 99 FERC ¶ 61,167, at 61,677, 61,679 (2002).

²⁴ *Niagara Mohawk*, 452 F.3d at 828.

²⁵ *KeySpan IV*, 107 FERC ¶ 61,142 at P 29-36; September 19 Order, 112 FERC ¶ 61,304 at P 50 & n.17 (adopting this explanation in the instant proceeding).

²⁶ *Niagara Mohawk*, 452 F.3d at 830.

20. Thus, we reject Con Edison's claim that our September 19 Order at the outset is based on "untenable" assertions. To the contrary, Con Edison's rehearing is based on positions that our precedent, as affirmed by the D.C. Circuit, has consistently rejected. Thus, with the monthly netting allowed in NYISO's station power program, the station power at issue here was self-supplied and not purchased from third parties.

B. Enforcement of Clean Power IA and PASNY No. 4

21. Con Edison contends that the September 19 Order abrogates the Clean Power IA and the PASNY No. 4 Tariff in violation of the *Mobile-Sierra* and filed rate doctrines, claiming that the Commission's refund requirement supposedly revises section 3.14 of the Clean Power IA by exempting self-supplied station power from the obligations imposed by that section. This argument was made below, and in the September 19 Order we explained that, rather than changing any rate on file, the Commission was enforcing the filed rates, terms, and conditions of the rate schedule at issue.²⁷

22. On rehearing, we reiterate that the Commission is not barred from, and indeed has the statutory duty of, interpreting jurisdictional contracts and tariffs when considering whether their terms and conditions are just and reasonable. The Commission here is acting under section 206 of the FPA,²⁸ and, as we explained, is not abrogating or amending the Clean Power IA or PASNY No. 4 Tariff. Rather, in the September 19 Order, the Commission determined that, while NYPA is not obligated to pay delivery charges for station power that it self-supplies on site, it is obligated, under the express terms of the Clean Power IA, to compensate Con Edison (at the rates specified in PASNY No. 4) for station power deliveries whenever NYPA remotely self-supplies any of the Clean Power Projects and whenever Con Edison delivers station power to these generators that NYPA has purchased from a third party. We reaffirm that this is contract interpretation, not contract abrogation or amendment.²⁹

23. Further, contrary to Con Edison's allegation that section 3.14 of the Clean Power IA imposes obligations "to take and pay for PASNY No. 4 delivery service and not to net," the PASNY No. 4 provisions in question do not use the term "take and pay" with regard to station power delivery service.

²⁷ September 19 Order, 112 FERC ¶ 61,304 at P 56.

²⁸ 16 U.S.C. § 824e (2000).

²⁹ September 19 Order, 112 FERC ¶ 61,304 at P 46.

C. Paper Facilities

24. Con Edison contends that the Commission erred in deciding the “paper facilities” issue; Con Edison submits that the Commission should have referred the paper facilities issue to the New York Commission to determine the level of state-jurisdictional rates.

25. In response to Con Edison’s argument, which relies on *Hartford*, that the “paper facilities” it uses to deliver station power to the Clean Power Projects constitute local distribution facilities, and thus establish state jurisdiction sufficient to warrant the assessment of local distribution charges, the Commission found in the September 19 Order that the court’s decision in *Hartford* regarding such facilities was a finding specific to the FPA and cannot be extended to Con Edison’s “paper facilities” under New York law.³⁰ As we explained in the September 19 Order, in *Hartford*, the court considered specific language in the FPA, particularly the term “facilities” as used in section 201(b) of the FPA, as well as comparable provisions of the Natural Gas Act. What the court did not do was examine any state statutes, including New York’s. The court’s decision that Congress intended the Commission to have jurisdiction over an entity owning the type of facilities at issue therein was a finding specific to the FPA, and the Congressional mandate therein, and cannot be extended to Con Edison’s non-physical, paper facilities under New York law.

26. On rehearing, Con Edison argues that the Commission “lacks authority to determine when and under what circumstances a state-jurisdictional service is rendered”; “[h]owever, the NYISO’s Commission-approved monthly netting program does just that.”³¹ In *Niagara Mohawk*, the court clarified that the Commission does indeed have such authority.³² Further, the Supreme Court has affirmed that it is the Commission, not the state commissions, that must make the factual and legal determinations to define the scope of its own jurisdiction, even if those decisions also may effectively delineate the scope of state jurisdiction.³³

³⁰ *Id.* P 61; *see Hartford*, 131 F.2d at 961.

³¹ Con Edison Request for Rehearing at 22.

³² *Niagara Mohawk*, 452 F.3d at 829.

³³ *E.g.*, *FPC v. So. Cal. Edison Co.*, 376 U.S. 205, 210 n.6 (1964) (determination of the jurisdictional status of facilities “involves a question of fact to be decided by the FPC as an original matter.”); *accord Western Massachusetts Elec. Co.*, 61 FERC ¶ 61,182, at 61,661 (1992), *aff’d*, 165 F.3d 922, 926 (D.C. Cir. 1999); *AES Somerset, LLC v. Niagara Mohawk Power Corp.*, 110 FERC ¶ 61,032 at P 35 & n.41; *Nine Mile*, 110 FERC ¶ 61,033 at P 30 & n.31; *Huntley*, 111 FERC ¶ 61,120 at P 22 & n.25.

D. Distribution Charges for Combined-Cycle Project

27. In its September 19 Order, the Commission directed Con Edison and NYPA to utilize the Commission's Dispute Resolution Service to mediate any outstanding issues with respect to whether distribution facilities would be used to deliver station power to the Combined-Cycle Project.³⁴ The parties subsequently stipulated that the physical facilities used to interconnect the Combined-Cycle Project are transmission facilities, but their stipulation expressly did not address whether any paper facilities used constituted distribution facilities.

28. On rehearing, Con Edison again argues that NYPA's "usage" of Con Edison's "paper facilities" justifies assessing local distribution charges for the "delivery" of station power to the Combined-Cycle Project, whether or not NYPA actually uses any physical local distribution facilities in the delivery,³⁵ because a state agency's jurisdiction to impose such charges is "based on the service rendered, not the facilities used."³⁶

29. As we noted above with respect to Con Edison's first paper facilities argument, Con Edison's position is completely at odds with the *Niagara Mohawk* court's affirmation of the Commission's acceptance of monthly netting.³⁷ Con Edison's reliance on its paper facilities to justify assessing local distribution charges is, moreover, merely a recasting of its opposition to monthly netting which we have previously rejected and which the D.C. Circuit likewise has rejected.

E. Calculation of Refund Credit

30. The Commission directed Con Edison to refund to NYPA, with interest, revenues collected (under the Clean Power IA and PASNY No. 4) during the refund period for the Clean Power Projects, with the exception of the revenues associated with Con Edison's delivery of the 12 net MWh that NYPA remotely self-supplied to the Pouch Terminal in October 2003 (Refund Credit).³⁸ Both Con Edison and NYPA request that we clarify how this Refund Credit should be calculated.

³⁴ September 19 Order, 112 FERC ¶ 61,304 at P62-63.

³⁵ Con Edison Request for Rehearing at 19-24.

³⁶ *Id.* at 20.

³⁷ *Niagara Mohawk*, 452 F.3d at 829-30; *see, e.g., KeySpan-Ravenswood, Inc. v. New York Indep. Sys. Operator, Inc.*, 101 FERC ¶ 61,230, at P 24 (2002) (accepting proposed monthly netting).

³⁸ September 19 Order, 112 FERC ¶ 61,304 at P 54.

31. We will grant NYPA's request for clarification with respect to the Refund Credit, and deny Con Edison's request for rehearing. NYPA requests that the Refund Credit be set at \$16,935.51, *i.e.*, the actual amount of revenues that NYPA paid Con Edison for delivery service for the Pouch Terminal in October 2003. We agree that Con Edison should retain \$16,935.51.

32. As described above, NYPA contends that Con Edison is proposing to retain a hypothetical amount based on certain assumptions, all of which we reject. It was our intention in the September 19 Order that Con Edison retain only the actual revenues NYPA paid and Con Edison received.

VI. Refund Report

33. On November 18, 2005, Con Edison filed its refund report. Con Edison noted that it had included in the refund NYPA's payments for the 12 net MWh delivered to the Pouch Terminal in October 2003, pending clarification of how the Refund Credit is to be calculated. We find that Con Edison has made refunds as directed, with the exception of the Refund Credit we discuss above, and therefore accept the refund report, as clarified herein.

The Commission orders:

(A) Con Edison's request for rehearing is hereby denied, as discussed in the body of this order.

(B) Con Edison's refund report is hereby accepted as clarified, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.