UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation — Docket No. ER05-849-005

ORDER DISMISSING REQUEST FOR REHEARING

(Issued April 12, 2006)

1. In this order, we dismiss Pacific Gas and Electric Company's (PG&E) request for rehearing of the order issued February 17, 2006 in this proceeding.[1] In the February 17 Order, the Commission acted on a single rehearing issue raised from a prior order that conditionally accepted in part and rejected in part the California Independent System Operator Corporation's (CAISO's) proposed Amendment No. 68.[2] The proposed revisions to CAISO's open access transmission tariff (Tariff) intended to implement the Commission's policies related to the procurement and delivery of station power. In this order, the Commission dismisses PG&E's rehearing request in part as moot and in part as an untimely request for rehearing of the June 22 Order.

I. **Background**

2. In a September 1, 2004 complaint, Duke Energy Moss Landing LLC (Moss Landing) challenged the treatment of station power by the CAISO in its Tariff. The CAISO acknowledged in its answer that the Tariff did not conform to the Commission's station power policies, and requested a stakeholder process to develop Tariff revisions to reflect such policies. In an order issued November 19, 2004, the Commission directed the CAISO to make a filing that contained revised Tariff sheets conforming to such policies.[3]

[1] *California Independent System Operator Corporation*, 114 FERC ¶ 61,176 (2006) (February 17 Order).

[2] *See California Independent System Operator Corporation*, 111 FERC ¶ 61,452 (2005) (June 22 Order).

[3] *Duke Energy Moss Landing LLC v. California Independent System Operator Corp.*, 109 FERC ¶ 61,170 (2004), *reh'g denied*, 111 FERC ¶ 61,451 (2005).

3. Subsequently, the CAISO filed Amendment No. 68 to its Tariff, proposing such revisions. The CAISO proposed that eligible generators be allowed to engage in on-site, self-supply of station power and remote self-supply from facilities owned by the same entity, and proposed a monthly netting interval to determine whether a generator's net output is negative or positive for the month. The proposed Amendment No. 68 also retained an existing Tariff provision which allowed netting of load at times contemporaneous with plant generation, called Permitted Netting, and prohibited netting at all other times.

4. In the June 22 Order, the Commission stated that, by retaining the current Tariff provisions that allow Permitted Netting, the CAISO had in fact provided for a fourth category of station power that was inconsistent with the Commission's station power precedent.[4] The June 22 Order also allowed the CAISO to defer the effective date of its station power protocol until the implementation of its new Settlement and Market Clearing System (SaMC).[5] The June 22 Order required that, in the event that SaMC is not ready by July 1, 2006, the CAISO must nonetheless implement the station power protocol at that time using manual tools.[6] Several parties sought rehearing or clarification of the June 22 Order arguing, in pertinent part, that Permitted Netting should not be disallowed and that implementation should not be delayed beyond March 31, 2006.

5. In the February 17 Order, the Commission granted rehearing of the June 22 Order, in part, regarding the effective date of the station power protocol.[7] The order required the CAISO to implement the station power protocol by April 1, 2006.

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[4] June 22 Order, 111 FERC ¶ 61,452 at P 41.

[5] *Id*. at P 62.

[6] *Id*.

[7] The Commission stated that its order addressed just the issue of the effective date of the station power protocol, and that other issues raised in requests for rehearing and clarification of the June 22 Order would be addressed in a later order.

A. CAISO Motion for Stay

6. On March 16, 2006, the CAISO filed a motion for stay of the elimination of the Permitted Netting Tariff provisions.[8] The CAISO stated that communications it had received from generators indicated that elimination of Permitted Netting would place an onerous burden on many suppliers. The CAISO cited a number of examples of significant impacts on its operations, on generators, and on other commercial arrangements and contracts, and argued that substantial harm could come to it and generators absent a stay. It concluded that retention of Permitted Netting would benefit both itself and market participants, and that it was unaware of any opposition to a stay.

B. Request for Rehearing

7. On March 20, 2006, PG&E filed the pleading that is at issue here -- supporting the CAISO's motion and seeking rehearing of the February 17 Order. PG&E states that, to the extent that the June 22 Order requires the CAISO to remove the existing Tariff provisions allowing Permitted Netting, it requests that the Commission grant a stay of the February 17, 2006 Order until the Commission issues an order on the pending motions for clarification on the Permitted Netting issue and seeks rehearing. PG&E states that it agrees with the CAISO that eliminating Permitted Netting would require non-QF generators, including PG&E, to make significant and costly changes to their systems. PG&E notes that, in order to avoid potentially unnecessary and wasteful expenditures of resources, it and other generators have not yet begun to make these changes while motions for clarification are pending. PG&E states that, if the Commission denies these motions, that it joins in the CAISO's request for an extension of time to allow for a transition period in order to permit the CAISO and non-QF generators to make the necessary modifications. PG&E requests that the Commission allow at least six months from the time the Commission issues an order clarifying the June 22 Order and/or the requirement to eliminate Permitted Netting.

C. Order Granting Motion for Stay

8. The Commission subsequently issued an order granting the CAISO's motion for stay on March 30, 2006,[9] staying the requirement to eliminate Permitted Netting in advance of an order addressing rehearing and clarification of the June 22 Order.

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[8] The same pleading also submitted revised Tariff sheets in compliance with the June 22 and February 17 Orders. These will be considered in a future order.

[9] *California Independent System Operator Corporation*, 114 FERC ¶ 61,339 (2006) (March 30 Order).

II. Discussion

9. PG&E's request for a stay of the directive to eliminate Permitted Netting has been rendered moot by the March 30 Order granting a stay. Accordingly, to the extent PG&E seeks a stay, we will dismiss its request as moot.

10. PG&E also seeks specific relief in the event the Commission denies the motions for clarification of the June 22 Order regarding Permitted Netting. This request is procedurally defective, as there is no Commission finding or action taken in the February 17 Order concerning Permitted Netting to reconsider or rehear. The only order ruling on Permitted Netting was the June 22 Order, and the time is well past to seek rehearing of that order. Courts have repeatedly recognized that the time period within which a party may file a request for rehearing of a Commission order is statutorily established at 30 days by section 313(a) of the Federal Power Act (FPA) and that the Commission has no discretion to extend that deadline.[10] Accordingly, to the extent PG&E seeks rehearing, we will dismiss this request as an impermissible untimely request for rehearing.

The Commission orders:

PG&E's request for rehearing is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

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[10] *See, e.g.*, *City of Campbell v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985) ("The 30-day time requirement of [the FPA] is as much a part of the jurisdictional threshold as the mandate to file for a rehearing."). Similarly, the Commission has long held that it lacks the authority to consider requests for rehearing filed more than 30 days after issuance of a Commission order. *Accord*, *e.g.*, *Arkansas Power & Light Co.*, 19 FERC ¶ 61,115 at 61,217-18, *reh'g denied*, 20 FERC ¶ 61,013 at 61,034 (1982); *CMS Midland, Inc.*, 56 FERC ¶ 61,177 at 61,623 (1991).