

116 FERC ¶61,279
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. EL06-88-000

v.

Connecticut Light and Power Company

ORDER GRANTING COMPLAINT

(Issued September 22, 2006)

1. In this order, we grant a complaint filed by Dominion Nuclear Connecticut, Inc. (DNC) against Connecticut Light and Power Company (CL&P), regarding CL&P's alleged unlawful charges to DNC for station power¹ and local delivery (retail) service for DNC's 1,954 MW Millstone Nuclear Power Station (Millstone) located in Waterford, Connecticut.

Background

2. DNC owns and operates Millstone, which it acquired in a transaction with subsidiaries of Northeast Utilities.² Millstone has two operating units (Unit 2 and Unit 3) that are interconnected to the ISO New England, Inc. (ISO-NE)-operated transmission

¹ "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." See *PJM Interconnection, LLC*, 94 FERC ¶61,251, at 61,889 (2001), *clarified and reh'g denied*, 95 FERC ¶61,333 (2001).

² Northeast Utilities is the parent company of CL&P.

system through transmission facilities owned by CL&P.³ At the time Millstone was purchased, CL&P and DNC entered into an interconnection agreement (IA) which was accepted by the Commission in Docket No. ER00-3639-000.⁴ According to DNC, after it purchased Millstone, it bought station power under CL&P's Station Service Rate 57 (Large Time-of-Day Electric Service Manufacturers) and CL&P's Station Service Rate 985 (Back-Up and Maintenance Power Service) retail service tariffs, pursuant to terms in the IA.

3. 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.

I. DNC's Complaint

4. DNC argues that CL&P has unlawfully charged DNC for station power that it did not take, and for the delivery of that power, from December 1, 2005 through June 16, 2006, and that CL&P has imposed and continues to impose retail local delivery service charges for station power after the December 1, 2005 effective date of DNC's notice terminating such service.⁵ DNC requests 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.⁶

³ CL&P's transmission facilities are operated by the ISO-NE.

⁴ *Conn. Light and Power Co.*, Docket No. ER00-3639-000 (Nov. 21, 2000) (unpublished letter order).

⁵ According to DNC, it has not paid any of these charges.

⁶ DNC initially states that CL&P treated DNC's October 25 notice not as a notice that Millstone would self-supply, but as a request to switch retail suppliers – requiring DNC to meet the terms of the Connecticut retail choice “slamming” rules.

CL&P responds that, based on DNC's October 25 letter, it appeared that DNC planned to use wholesale transmission service to deliver energy to its station load, which did not make sense to CL&P because it understood that DNC had to purchase energy when both Millstone units are off-line for one hour or more and because retail local delivery service obtained through CL&P retail tariffs is required under the IA. According to CL&P, it originally concluded that it could not make DNC's requested termination without risk of violating the Connecticut retail choice program. Subsequently, CL&P decided it could do so, on a prospective basis, effective June 16, 2006.

5. According to DNC, CL&P claims that sections 4.10.1 and 6.2 and schedule H of the IA require CL&P to offer certain services and to deliver power to DNC from third-party suppliers under its retail tariffs, and that DNC is contractually obligated to continue to pay certain delivery or “non-shoppable” services.⁷ DNC states that it explained to CL&P that it would be self-supplying its station power at Millstone and taking delivery of its station power over transmission (and not local distribution) facilities. Thus, under the Commission’s policies, there would be no retail transactions – either retail sales or retail delivery. After further correspondence between the parties, DNC explains, CL&P finally terminated DNC’s Millstone Units 2 and 3 station power service accounts effective June 17, 2006, but continued to send bills for retail, local delivery service charges.

6. DNC asserts that section 4.10.1 of the IA does not permit CL&P to collect retail local delivery service charges when DNC self-supplies its station power needs, but instead provides for CL&P to supply and charge for delivery service only if and when DNC needs, and takes, such service. DNC also maintains that, even if CL&P’s reading of section 4.10.1 has some merit, section 4.9.1 of the IA provides both parties with the right to terminate service and that its October 25 notice provided the necessary notice. According to DNC, once it began to self-supply station power over transmission facilities, it no longer took any retail service (either energy or local delivery) from CL&P, and therefore, CL&P had no justification for continuing to bill any retail service charges.

7. In addition, DNC states that, while section 6.2 obligates CL&P to deliver station power under applicable tariffs, it does not obligate DNC to take station power service, nor pay CL&P for such service when none is taken. DNC also states that it has met the minimum terms of service for the station power service provided by CL&P⁸ and that its October 25 notice fulfills its termination requirements.

II. Notice of Filing and Responsive Pleadings

8. Notice of the complaint was published in the *Federal Register*, 71 Fed. Reg. 43,727 (2006), with interventions and protests due on or before August 14, 2006. Bridgeport Energy, LLC, Casco Bay Energy Company, LLC, Lake Road Generating

⁷ In a November 14, 2005 letter to DNC, CL&P identified the following services, under its Station Service Rates 57 and 985 Tariffs, as the retail services DNC is obligated to pay for: Competitive Transition Assessment Charge, System Benefits Charge, Conservation Charge, Renewable Energy Charge, Transmission Charge, Distribution Charge and FMCC Delivery Charge. *See* Complaint at Exhibit 2.

⁸ The minimum terms are one year for Station Service Rate 57 and two years for Station Rate 985. *See* Complaint at Exhibit 8.

Company, L.P., the Mirant Parties,⁹ Millennium Power Partners, and Milford Power Company, LLC filed timely motions to intervene. The Connecticut Office of Consumer Counsel (CT OCC) filed a motion to intervene and comments, and the Connecticut Department of Public Utility Control (CT DPUC) filed a notice of intervention and comments. Richard Blumenthal, Attorney General for the state of Connecticut (CTAG) filed a motion to intervene out-of-time and an answer to the complaint. Northeast Utilities Service Company (NUSCO), on behalf of itself and CL&P, filed an answer to the complaint and an answer to the answers filed by NRG and DNC. The NRG Companies (NRG)¹⁰ filed a timely motion to intervene, comments, and an answer to CL&P's answer, and DNC filed an answer to CL&P's answer. The New England Power Pool Participants Committee (NEPOOL) filed a motion to intervene and answer to NRG's answer out-of-time.

A. NUSCO's Answer to the Complaint

9. NUSCO asserts that DNC is not capable of self-supplying the Millstone units. It argues that, given that ISO-NE uses hourly netting for station power, when both Millstone units are off-line for an hour or more DNC cannot locally self-supply one Millstone unit with power from the other and must remotely self-supply or purchase energy; therefore, DNC must take delivery service from CL&P. NUSCO also contends that DNC cannot locally self-supply a Millstone unit that is off-line for an hour or more because ISO-NE does not permit netting across different interconnection points (it maintains that the two Millstone units have different interconnection points); hence, DNC must take delivery service from CL&P. NUSCO also maintains that, due to what it believes to be the configuration of the Millstone site, it is electrically impossible for the Millstone units to locally self-supply each other because NUSCO does not believe that there are any physical behind-the-meter facilities over which energy can flow between one unit and the other.

10. NUSCO also asserts that, when DNC does take delivery service from CL&P for station power, DNC must take that delivery service under CL&P's retail tariffs. NUSCO states that DNC agreed contractually (i.e., in the IA) to purchase delivery service for its station power loads under CL&P's state-jurisdictional local delivery tariff. NUSCO explains that section 6.2 of the IA requires that any delivery of station power to the two Millstone units must occur under CL&P's state-jurisdictional local delivery tariff no matter from whom the energy is purchased. NUSCO equates the instant dispute to that

⁹ The Mirant Parties are Mirant Energy Trading, L.L.C., Mirant Canal, LLC, and Mirant Kendall, LLC.

¹⁰ The NRG Companies are NRG Power Marketing, Inc., Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, and Somerset Power LLC.

raised in *Northeast Utilities Service Company v. NRG Energy Inc.*¹¹ NUSCO contends that in *NU*, the Commission found that a generator that had agreed to take delivery service for its station power load under a state-jurisdictional local delivery tariff was bound by that agreement. NUSCO argues that, like the generator in *NU*, DNC contractually committed to take delivery of station power under CL&P's state-jurisdictional local delivery tariff. NUSCO adds that, even in the absence of the IA, DNC would have to take delivery service from CL&P under its state-jurisdictional local delivery tariff, because, given that Connecticut has not unbundled transmission service, the only service available is state-jurisdictional service. NUSCO further argues that, even if the Commission were to find that delivery service was available under ISO-NE's open access transmission tariff, DNC has not sought, received, or paid for such service. Finally, NUSCO also argues that the Commission lacks authority to retroactively order refunds for what are essentially bundled retail charges.

11. Finally, NUSCO argues that DNC could not have obtained station power from any source other than CL&P until after June 16, 2006, and that CL&P was justified in continuing to service Millstone's station power load because DNC had not satisfied the state requirement to submit an electronic enrollment to transfer the load obligations.

B. DNC's Reply

12. DNC states that CL&P refused to timely terminate its station power service and that it took over six months for CL&P to acknowledge DNC's decision to either remotely, self-supply station power from its own units or to purchase station power from a third party. DNC also reiterates that CL&P has imposed and continues to impose local delivery charges even though it is undisputed that the Millstone units are connected to the transmission grid at 345kV and there are no local distribution facilities that are used to deliver station power.

13. DNC states that, when both units are operating, they each provide their own station power requirements, and that, when one Millstone unit is down, that unit is remotely self-supplied by the other unit. DNC argues that, although the units are not physically interconnected behind-the-meter, one unit can provide station power to the other unit. In this regard, DNC acknowledges that it must obtain transmission service and pay transmission charges to ISO-NE or, if applicable, to CL&P, if it remotely self-supplies station power or if it purchases station power from a third party.

14. DNC states that it does not dispute that there is delivery service when station service is remotely self-supplied from one Millstone unit to the other, or from a third party. However, according to DNC, because the Millstone units are connected to the transmission grid at 345kV, delivery service for those units is provided using only

¹¹ 101 FERC ¶61,327 (2002) (*NU*).

transmission facilities and that no local distribution facilities are used to deliver station power; therefore, CL&P cannot collect local distribution service charges.

15. DNC also asserts that CL&P can charge DNC only for the service it actually provides. DNC contends that it is not obligated to pay local distribution service charges because no local distribution facilities are used to deliver power to the Millstone units and therefore no local distribution service is provided. DNC points out that *NU*, on which NUSCO relies to support its assertion that DNC must pay CL&P's state-jurisdictional local delivery tariff rates, was superceded by *AES Warrior Run* in which, DNC argues, the Commission rejected an argument that a utility could impose a local distribution service charge premised based on the use of local distribution facilities when no local distribution facilities were, in fact, involved.¹² Finally, DNC argues that the Commission has the authority to order refunds.

C. NUSCO's Response

16. NUSCO reiterates many of the arguments it made in its answer to the complaint. NUSCO continues to assert that, under the IA, any station power delivered to DNC is subject to CL&P's state-jurisdictional local delivery tariff. In addition, NUSCO urges the Commission to deny the relief NRG seeks in its answer (discussed below).

D. Intervenors' Comments and Replies

17. CT OCC, CT DPUC, and CTAG support CL&P and urge the Commission to deny the complaint. NRG supports DNC and argues that the Commission should instruct CL&P to stop charging generators retail tariff rates when generators self-supply station power or obtain station power needs from third parties over transmission facilities.

18. In its answer, NRG requests that the Commission reject NUSCO's assertion that *NU* is dispositive of the issues in the complaint and reaffirm the Commission's subsequent decisions reversing *NU*. NRG also requests that, in light of the D.C. Circuit's decision in *Niagara Mohawk Power Corp. v. FERC*,¹³ the Commission treat the procurement of station power as subject to exclusive Commission jurisdiction. Finally, NRG requests that the Commission direct the ISO-NE to initiate a process for establishing uniform station power rules (DNC itself does not make this request in its complaint).

¹² *AES Warrior Run, Inc. v. Potomac Edison Co. d/b/a Allegheny Power*, 104 FERC¶61,051, at P 16 (2003) (*AES Warrior*), *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) (*AES Warrior Run*).

¹³ 452 F.3d 822 (D.C. Cir. 2006).

19. NEPOOL takes no position on the issues DNC raises in its complaint, but instead states that the Commission should reject NRG's request to initiate a process to examine ISO-NE's station power procedures as beyond the scope of the complaint.

III. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.214 (2006), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Given their interest, the early stage of this proceeding, and the lack of undue prejudice or delay, we will grant CTAG's and NEPOOL's late-filed motions to intervene.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits answers to answers unless otherwise ordered by the decisional authority. We will accept the answers filed by NRG, DNC, NEPOOL and NUSCO, because they have provided information that has assisted us in our decision-making process.

B. Analysis

1. Termination of Station Power Service Under the IA

22. DNC requests the Commission find that CL&P was not authorized to charge DNC for station power service from December 1, 2005, the date of DNC's requested termination of station power service, through June 16, 2006, the date CL&P actually terminated station power service. Thus, we must determine whether, under the terms of the IA, DNC is entitled to self-supply (or purchase from third parties) Millstone's station power requirements in lieu of purchasing such station power service from CL&P.

23. Section 6.2 of the IA, in pertinent part, reads (emphasis added):

Delivery of AC Service [i.e., Station] Power. In the event that DNC elects to obtain AC Service Power from CL&P or an alternative supplier, CL&P shall deliver such AC Service Power to the Facilities under CL&P's applicable tariffs or rate schedules at the appropriate service rate set forth in Schedule H ...for demand for AC Service Power up to the maximum demand covered by such rate, or at the appropriate rate applicable to DNC's actual demand for AC Service Power, plus any applicable NEPOOL charges.

24. Section 6.2 provides DNC with the *option* of obtaining station power from CL&P or another supplier.¹⁴ Section 6.2 does not require DNC to take and pay for station power service from CL&P and does not prevent DNC from self-supply, either on-site or remote.¹⁵ On the contrary, section 6.2 addresses delivery of station service power by CL&P when DNC *elects* to purchase station power from CL&P or an alternative, for example, third-party supplier. Certainly nothing in section 6.2 precludes DNC from self-supplying its station power needs.

25. Section 4.10.1 is to a like effect, providing that when one of the Millstone units is not on-line, DNC has the right – but not the obligation – to make third-party purchases of station power, which CL&P is obligated to deliver:

4.10.1 AC Service [*i.e.*, Station] Power. During such period when a Facility is not generating power, DNC shall have the right to purchase AC Service Power from other supply sources, and CL&P shall provide all necessary and appropriate delivery services with respect thereto under applicable rates and tariffs.

Therefore, section 4.10.1 also does not preclude DNC from self-supplying.

26. Indeed, NUSCO does not argue that the IA prohibits DNC from self-supplying its station power needs at Millstone. Instead, NUSCO argues that DNC is not physically capable of self-supplying the Millstone units on-site when one or both units are off-line for an hour or more. DNC counters that, when both units are operating, they each provide their own station power requirements, and that, when one unit is off-line, the other unit remotely supplies the off-line unit by delivering the station power to the transmission grid and then having that power transmitted to the off-line unit (remote self-supply). DNC also recognizes that when both units are off-line during the same hour, it must obtain station power from a third party.

¹⁴ Furthermore, under section 4.9.1 of the IA, both parties have the right to terminate service. Section 4.9.1, in pertinent part, reads “if either Party no longer needs or desires a particular Local Service, such Party shall notify the other Party and the Party providing the Local Service shall terminate such service as soon thereafter as practicable.” DNC’s October 25 letter served as notice to CL&P that DNC was terminating station power service.

¹⁵ See *New York Power Auth. v. Consol. Edison Co. of New York, Inc.*, 112 FERC ¶ 61304, at P 44 (2005), *reh’g denied*, 116 FERC ¶ 61,240 (2006); *Entergy Nuclear Operations, Inc. v. Consol. Edison Co. of New York, Inc.*, 112 FERC ¶ 61,117, at P 24 (2005).

27. Based on our review of the relevant provisions of the IA, DNC is entitled to stop taking station power from CL&P and, instead, self-supply station power. Having met its minimum service requirement for service under CL&P's retail tariffs, DNC properly notified CL&P, through its October 25 letter, that effective December 1, 2005, in lieu of taking station power from CL&P, it intended to self-supply its station power requirements.

28. Accordingly, we find that CL&P was not authorized to bill DNC for station power service for the period from December 1, 2005 to June 16, 2006.

2. Continuation of Local Delivery Service Charges

29. DNC requests that the Commission find that, effective December 1, 2005, CL&P was not authorized, and continues not to be authorized, to charge DNC state-jurisdictional local delivery rates for station power delivery service. As discussed below, we find that, because no 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.

30. NUSCO asserts that DNC is obligated under section 4.10.1 of the IA to pay retail local delivery service rates. Section 4.10.1 of the IA provides (emphasis added):

4.10.1 AC Service [*i.e.*, Station] Power. During such period when a Facility is not generating power, DNC shall have the right to purchase AC Service Power from other supply sources, and CL&P shall provide *all necessary and appropriate* delivery services with respect thereto under *applicable* rates and tariffs.

31. Under this section, DNC has the right, when a unit at the Millstone facility is not operating, to meet its needs for station power by, for example, purchasing it from a third party. In that event, CL&P is obligated under section 4.10.1 to provide all necessary and appropriate delivery service under *applicable* rates and tariffs. NUSCO argues that in all instances when DNC opts to purchase station power service from a third party, the applicable rates and tariffs are CL&P's state-jurisdictional rates and tariffs. However, as we have found in other cases, 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 the station power.¹⁶ That is, a utility must actually be providing a service

¹⁶ *E.g.*, *AES Warrior Run*, 104 FERC ¶61,051 at P 16.

before it can levy charges.¹⁷ This means that, to the extent that only Commission-jurisdictional transmission facilities are used in the delivery of station power, CL&P cannot charge state-jurisdictional local distribution rates.

32. In addition, nothing in section 4.10.1 permits CL&P to impose retail, local delivery services charges in the event DNC self-supplies, on-site, its station power needs. Section 4.10.1 is inapplicable when DNC self-supplies, on-site, its station power needs at the Millstone facility.

33. NUSCO also asserts that DNC must pay state-jurisdictional retail rates because state rather than federal jurisdiction applies to the delivery of station power to Millstone. However, we find that none of NUSCO's arguments are persuasive in light of our precedent holding that where, as here, there are no local distribution facilities involved in the delivery of station power, but only transmission facilities, the Commission has exclusive jurisdiction over the delivery and the rates for the delivery.¹⁸ CL&P relies on *NU* to support its position. However the Commission reversed the language in *NU* upon which NUSCO relies, stating:

The quoted language from *NU* reflects a misreading of Order Nos. 888 and 888-A, where we discussed local distribution service that would remain subject to state jurisdiction after unbundling - so that a state would be able to "assign stranded costs and benefits through a local distribution service charge." We did not intend to suggest, as the dictum in *NU* implies, and as Allegheny Power argues, that the use (or, here, non-use) of local distribution facilities for delivery of station power is entirely irrelevant, no matter the circumstances, to whether a local distribution charge for delivery of station power can be assessed. Indeed, to accord Order Nos. 888 and 888-A such a reading results in rates that would be contrary to longstanding principles of cost causation. Allowing Allegheny Power to charge for retail distribution service in this circumstance would also frustrate Commission efforts to create a more level playing field with more comparable treatment between merchant generators and vertically integrated utilities.¹⁹

¹⁷ *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 v. FERC*, 452 F.3d 822 (D.C. Cir. 2006).

¹⁸ *Midwest Indep. Transmission Sys. Operator*, 110 FERC ¶61,383 at P 36 (2005); *Niagara Mohawk Power Corp. v. Huntley Power LLC*, 109 FERC ¶61,169 at P 28 (2004), *aff'd*, *Niagara Mohawk v. FERC*, 452 F.3d 822 (D.C. Cir. 2006); *AES Somerset*, 105 FERC ¶61,337 at P 11.

¹⁹ *AES Warrior Run*, 104 FERC ¶61,051 at P 17 (footnotes omitted).

34. DNC explains that the Millstone units are connected to transmission grid at 345 kV; thus, the relevant facilities are transmission facilities and there are no local distribution facilities used to deliver station power to Millstone. This is confirmed by schedule H of the IA which indicates that service to Millstone is delivered at transmission voltage levels. On the other hand, NUSCO offers no evidence that station power is delivered to Millstone on anything other than transmission facilities. In addition, NUSCO does not deny DNC's assertion that only transmission facilities are involved nor does it claim that local distribution facilities are actually used.

35. Accordingly, we find that, because no local distribution facilities are used to provide station power delivery service to the Millstone units, and only transmission facilities are involved, CL&P is not authorized to impose on DNC local distribution charges for station power delivery service to the Millstone units.²⁰

3. NRG's Requests for Relief

36. In addition to supporting DNC's complaint, NRG seeks relief not requested by DNC. In light of the fact that we have resolved the issues DNC, the complainant, raised in its complaint, we need not address the broader issues NRG raises in its answer. Indeed, the issues NRG raises are beyond the scope of the relief DNC seeks.

The Commission orders:

(A) DNC's complaint is hereby granted, as discussed in the body of this order.

(B) CL&P is hereby directed, effective December 1, 2005, to cease charging DNC any retail local delivery charges for the delivery of station power to the Millstone units.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

²⁰ As noted above, DNC states that it has not paid any of the contested bills it has received from CL&P, and it does not seek a refund. Therefore, we need not reach the issue of whether we are authorized to order refunds.