

As described more fully below, Moss Landing is eligible to self-supply station power under terms upheld by this Commission in a series of station power orders.² However, unlike the Commission-approved station power rules for PJM Interconnection, LLC (“PJM”), New York Independent System Operator, Inc. (“NYISO”) and Midwest Independent Transmission System Operator (“MISO”), CAISO’s Metering Protocols³ expressly prohibit Moss Landing from netting its station power requirements against gross output whenever a generating unit supplies power to and receives power from the grid at different connection points and whenever a generating unit is not on-line. Thus, Moss Landing is improperly denied the opportunity to self-supply its station power and, as a consequence, is forced to bear a cost (*i.e.* retail charges) that has no relationship to any service required to be provided by another party.⁴

² See *e.g.*, *PJM Interconnection, L.L.C.*, 93 FERC ¶ 61,061, at 61,163 (2000) (“*PJM I*”); *PJM II*, 94 FERC ¶ 61,251 (2001); *PJM III*, 95 FERC ¶ 61,333 (2001); *PJM Interconnection, L.L.C.*, 95 FERC ¶ 61,470 (2001) (“*PJM IV*”). On May 15, 2002, the Commission issued four orders concerning station power, further explaining the Commission’s jurisdiction over station power and its delivery. See *Midwest Generation, L.L.C. v. Commonwealth Edison Co.*, 99 FERC ¶ 61,166 (2002); *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 Rehearing Order*”); *Sunbury Generation, L.L.C. v. PPL Electric Utilities Corp.*, 99 FERC ¶ 61,168 (2002) (“*Sunbury I*”), order on reh’g, 100 FERC ¶ 61,200 (2002) (“*Sunbury II*”); *USGen New England, Inc.*, 99 FERC ¶ 61,169 (2002) (“*USGen I*”), order on clarification, 100 FERC ¶ 61,199 (2002) (“*USGen II*”). In addition, the Commission has recently issued *KeySpan-Ravenswood v. NYISO*, 101 FERC ¶ 61,230 (2002) (“*KeySpan II*”); *AES Warrior Run, Inc. v. Potomac Edison Co.*, 104 FERC ¶ 61,051 (2003) (“*Warrior Run*”); *Nine Mile Point Nuclear Station, LLC v. Niagara Mohawk Power Corp.*, 105 FERC ¶ 61,336 (2003) (“*Nine Mile Order*”); *AES Somerset, LLC v. Niagara Mohawk Power Corp.*, 105 FERC ¶ 61,337 (2003) (“*AES Somerset*”); *Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,073 (2004) (“*MISO Order*”); *KeySpan-Ravenswood, Inc. v. New York Independent System Operator, Inc.*, order denying reh’g, 107 FERC ¶ 61,142 (2004) (“*KeySpan III*”).

³ CAISO FERC Electric Tariff, First Replacement Volume No. II, Original Sheet No. 738, MP 2.2.4.3 (“*Metering Protocols*”).

⁴ See *KeySpan I*, 99 FERC ¶ 61,167, at 61,680 (holding that merchant generators must be allowed to net station power against gross output “to ensure that they do not bear a cost that has no relationship to any ‘service’ purportedly being provided by another party.”) (footnote omitted).

The California market is well suited to the application of the Commission's station power precedent established in PJM and New York. Like PJM and New York, CAISO administers organized wholesale markets in which prices are established in real-time and a formal settlement process is in place to settle the market at the conclusion of the monthly period. Such an organized wholesale market structure facilitates the netting process. First, prices are readily available for those periods of time over the monthly period when the generator temporarily is not operating. Second, using these real-time prices, any station power obtained during periods when the generator is not operating is easily settled against revenue received for generation output during other times of the month by the formal settlement process at the conclusion of the month.

Beginning in early March 2004, Duke Energy requested on several occasions that the CAISO reform its Metering Protocols or initiate a stakeholder process to bring the CAISO rules and protocols into alignment with the Commission's decisions concerning station power.⁵ To date, the CAISO has failed to act on these requests, stating that the issue is not one of its top priorities, and that the CAISO is caught between various groups of stakeholders with competing interests with regard to station power.⁶ It is clear that, in the absence of a Commission order, the CAISO will not undertake timely action to revise its procedures to permit the self-supply of station power in accordance with Commission policy and precedent. Consequently, Moss Landing is, for all practical purposes, forced to procure station power at retail – a requirement that clearly is contrary to, and precluded by, the Commission's station power precedent.

⁵ See Affidavit of Layne P. Brown, Attachment C, hereto.

⁶ *Id.*

Accordingly, Moss Landing, requests that the Commission direct the CAISO to:

1. Eliminate the provisions of its Metering Protocols which do not permit netting for station service load for hours when the generating unit is off-line;
2. Eliminate the provisions of its Metering Protocols which do not permit netting if a generating unit supplies and receives power at different connection points on the transmission system; and
3. Within 60 days of the issuance of a Commission order on this complaint, submit a compliance filing amending the CAISO Tariff to expressly allow generators interconnected to the CAISO administered transmission grid to self-supply station power in a manner consistent with Commission policy as applied in PJM, NYISO and MISO. Specifically, the compliance filing should be based on the station power requirements included herewith as Attachment A to this complaint. Attachment A catalogs the basic station power rules previously approved by the Commission for PJM, NYISO and MISO, as applied to the CAISO system. To minimize the potential for dispute and to streamline the compliance process, the Commission should require the CAISO's compliance filing to include a tariff amendment that adopts the station power requirements contained in Attachment A.

These tariff changes will bring the CAISO into compliance with Commission precedent regarding the self-supply of station power. Were these revisions to be adopted, Moss Landing would expect to have positive net output over the monthly

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netting period through either self-supply or remote self-supply, thereby making it entirely self-sufficient with respect to station power.

II. CORRESPONDENCE AND COMMUNICATIONS

All communications with respect to this matter should be addressed as follows:

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III. STATEMENT OF FACTS

1. Moss Landing is a Delaware limited liability company and an indirect, wholly-owned subsidiary of Duke Energy Corporation. Moss Landing owns and operates a generating facility, which it acquired from Pacific Gas and Electric Company ("PG&E") on July 1, 1998, consisting of four natural gas-fired generating units with a combined generating capacity of approximately 2,538 MW.⁷ The facility is located in Monterey County, California and is interconnected to the transmission system of PG&E, which is controlled by the CAISO. Moss Landing sells capacity and energy from the facility, as well as ancillary services, exclusively at wholesale pursuant to its market-based rate tariff on file with the Commission.⁸

⁷ Approximately 1,478 MW of active generating facilities (Units # 6-7) were originally acquired from PG&E in 1998 and were built prior to July 1996. There were also five abandoned generating units at the site. *See Petition of Duke Energy Moss Landing LLC For Order Accepting Initial Rate Schedule*, Docket No. ER98-2680-000 (Apr. 24, 1998). In the summer of 2002, facility modernization efforts yielded approximately 1,060 MW of additional capacity (Units # 1-2).

⁸ *Duke Energy Moss Landing LLC, et al.*, 83 FERC ¶ 61,317 (1998) ("Order Accepting For Filing Proposed Tariffs For Market-Based Power Sales"); *Duke Energy Oakland, L.L.C.*,

2. CAISO develops rules and protocols for and operates the transmission system in California, including the system of PG&E, Moss Landing's current retail service provider.

3. Moss Landing Units 1, 2, 6, and 7 routinely have net output (gross energy output less station power requirements) which is positive, if measured collectively on a monthly basis. Moss Landing expects to meet its station power needs for Units 1, 2, 6, and 7 through self-supply by and between these units.

4. As shown in the simplified one-line diagrams, included as Attachment B, hereto, Moss Landing Units 1, 2, 6 and 7 are interconnected to 115 kV, 230 kV, and 500 kV transmission lines owned by PG&E. Units 1 and 2 supply and receive power through interconnection facilities at 230 kV. Units 6 and 7 supply power to the grid at 500 kV⁹ and, to the extent necessary, receive power from the grid at 115 kV. Thus, any delivery of station power remotely self-supplied between Units 1, 2, 6, and 7 would use only Commission-jurisdictional transmission facilities.

5. The CAISO has not adopted station power rules consistent with Commission-approved rules for PJM, NYISO and MISO. As the Commission is aware, PJM, NYISO and MISO each have adopted comprehensive station power rules and protocols that conform to Commission policy¹⁰ by allowing generators to (1) provide station power through on-site or remote self-supply from another unit owned by the same corporate entity; (2) net station requirements against gross output over a monthly

et al., 84 FERC ¶ 61,186 (1998) ("Order Accepting For Filing Proposed Market-Based Rates For Ancillary Services").

⁹ The PG&E switchyard includes transformers to connect the 500 kV, 230 kV, and 115 kV systems.

¹⁰ See *e.g.*, PJM Interconnection, L.L.C., FERC Electric Tariff, Fifth Revised Volume No. 1, Attachment K-Appendix, Original Sheets 199-217 (Effective April 1, 2002).

netting period; and (3) if remotely self-supplied energy is delivered through the use of only transmission facilities, the service is regulated exclusively by the Commission, and because no retail service is implicated, no distribution service charges are permitted.¹¹

6. The CAISO rules do not permit netting when a unit supplies energy to and receives energy from the transmission grid at different connections or voltages. In addition, the rules permit netting only when the generating unit is running. Therefore, station service load occurring in hours when the plant is not operating cannot be netted monthly against the generation output of the facility. The applicable CAISO protocols read, in relevant part, as follows:

MP 2.2.4.3 Netting

(a) Permitted Netting

ISO Metered Entities may, when providing Meter Data to the ISO pursuant to this MP 2.2, net values for Generating Unit output and auxiliary load equipment electrically connected to that Generating Unit at the same point provided that the Generating Unit is on-line and is producing sufficient output to serve all of that auxiliary load equipment.

MP 2.3.5 Netting

(a) Permitted Netting

[Scheduling Coordinators] may, when providing Settlement Quality Meter Data to the ISO pursuant to this MP 2.3, net values for Generating Unit output and auxiliary load equipment electrically connected to that Generating Unit at the same point.

Based on these Metering Protocols, to the extent that Moss Landing supplies power to the grid at 500 kV and receives power from the grid at 115 kV, netting is not

¹¹ See *PJM IV*, 95 FERC ¶ 61,470, at 62,681; *KeySpan II*, 101 FERC ¶ 61,051, at PP 25, 30; *Nine Mile Order*, 105 FERC ¶ 61,336, at P 27; *Warrior Run*, 104 FERC ¶ 61,051, at P 17.

permitted. Also, station power load cannot be netted for the hours when the unit is not “on-line” (*i.e.* producing sufficient output to serve that unit’s station power load). Consequently, because of these restrictions, Moss Landing currently pays for station power under PG&E’s retail Rate Schedule E-19P, E20T, and Stand-by Schedule S.

IV. DISCUSSION

A. **The CAISO’s Metering Protocol, Which Nets Output Only For Periods When A Unit Is On-Line, Is Inconsistent With Commission Policy and Precedent.**

7. In *PJM II*, the Commission found that a generating facility can self-supply its station power needs so long as its net output for the month is positive. The Commission explained that, when a generating facility self-supplies its station power, either from an on-site source or a remote source owned by the same entity, there is no sale for end-use or otherwise.¹² The Commission stated that “a generator may net its station power requirements against the generating facility’s gross output whenever the generating facility’s gross output exceeds or equals its station power requirements, that is, when the generator is self-supplying its station power requirements.”¹³

8. Similarly, in *KeySpan I*, the Commission found that KeySpan had met its burden of showing that the then-current NYISO rules for station power were not just and reasonable.¹⁴ The Commission held that “the NYISO must allow self-supplying merchant generators to net station power against gross output over some reasonable time period in order ‘to ensure that they do not bear a cost that has no relationship to any “service” purportedly being provided by another party.’”¹⁵ The Commission

¹² *PJM II*, 94 FERC ¶ 61,251, at 61,891.

¹³ *Id.* at 61,882.

¹⁴ *See KeySpan I*, 99 FERC ¶ 61,167, at 61,676.

¹⁵ *Id.* at 61,680 (footnote omitted).

ordered NYISO to file a proposed revise tariff to include the transmission of station power.

9. As described above, the CAISO's current rules governing the provision of station power severely restrict a merchant generator's right to self-supply station power because they allow netting only on a near instantaneous basis. In *PJM II*, the Commission explained that it has never required that net output be measured on a real-time or second-by-second basis, that a generating facility's output can be measured over a reasonable time period,¹⁶ and that the Commission would "look favorably upon the use of a longer time period over which to measure netting." In *PJM IV* the Commission found that PJM's monthly netting proposal was consistent with its station power policy articulated in *PJM II* and *PJM III*. In *KeySpan II*,¹⁷ the Commission also approved a monthly netting approach for the NYISO, finding that it was consistent with the PJM netting period, promoted uniformity in the treatment of station power among merchant generators and vertically integrated utilities and corresponds to NYISO's billing and accounting practices. As the Commission held in *PJM II* and in *KeySpan II*, a requirement for near instantaneous netting, rather than monthly netting, is impractical, contrary to traditional utility practice and anti-competitive.¹⁸ In *KeySpan III*, the Commission reasoned:

The [Petitioners] would have us deem a generator to have made retail purchases of station power whenever there was a single momentary power fluctuation during the netting period, even though the generator has positive net output for the netting period. In other words, there would be no netting at all, only real-time measuring of output. This approach not only is impractical, and

¹⁶ *PJM II*, 94 FERC ¶ 61,251, at 61,892.

¹⁷ *KeySpan II*, 101 FERC ¶ 61,051, at P 30.

¹⁸ *Id.* at P 24.

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contrary to both traditional utility practice and our legal precedent, but it also is anti-competitive.¹⁹

10. Adopting the Commission's well-established station power precedent in California will eliminate the disparate treatment between Moss Landing and PG&E regarding the provision of station power. PG&E does not charge itself at retail for the station power associated with its retained generating units. In *PJM II* the Commission held that the practice of netting station power "will better ensure comparable treatment" of merchant generators and integrated utilities relative to their respective generation ownership.²⁰ Similarly, adopting the Commission's station power rules in California will ensure comparable treatment between Duke Moss Landing and PG&E.

11. Each of the reasons addressed in *PJM II* and *KeySpan II* is equally applicable here. As noted above, the Metering Protocols permit netting only on a near instantaneous basis when a unit is "on-line." Such restrictions are inconsistent with Commission precedent, are unjust, unreasonable and unduly discriminatory, and therefore should be eliminated.

B. The CAISO's Prohibition On Netting When A Generating Unit Supplies And Receives Power at Different Connection Points Violates Commission Policy and Precedent.

12. The CAISO Metering Protocols, which prohibit netting whenever the generating unit supplies and receives power at different connection points, are inconsistent with Commission precedent for both self-supply and remote self-supply of station power. There is nothing in Commission precedent which restricts self-supply to only those situations where there is a single metering location. If a generating unit's gross output for the month is equal to or greater than its station load, it is self-supplying

¹⁹ *KeySpan III*, 107 FERC ¶ 61,142, at P 41 (footnotes omitted).

²⁰ *PJM II*, 94 FERC ¶ 61,251, at 61,893.

no matter how many meters are involved. Moreover, remote self-supply is permitted whenever an entity can supply its station power needs for its generating unit from other generating units that it owns even if those other generating units are connected at various transmission voltages. In *MISO* the Commission explicitly held that monthly netting must be used to determine whether station power has been self-supplied by either on-site or remote facilities without any limitation as to the nature of the points of connection.²¹ And in *KeySpan II*, the Commission specifically clarified that energy used for station power can be netted against facility output regardless of the voltage at which the station power was delivered or the meter through which the power flows.²² Thus, the CAISO Metering Protocols violate Commission policy and precedent to the extent they preclude netting across voltages or connection points.

C. There Is Nothing Unique About CAISO That Would Warrant Fundamental Changes To Commission Policy.

13. As the Commission has recognized in its orders approving station power rules for PJM, MISO, and NYISO, clear and equitable procedures for netting station power requirements are a key component for maintaining competition in organized markets.²³ While specific reliability requirements and market design may dictate slightly different protocols in different ISOs/RTOs, the fundamental structure of Commission approved station power rules should be the same across ISOs/RTOs and should encompass certain minimum common characteristics, including: (1) the ability to net over a monthly period; (2) the ability to self-supply and remotely self-supply between commonly owned units; (3) a RTO administered process; and (4) when a

²¹ *MISO Order*, 106 FERC ¶ 61,073, at PP 43-44.

²² *KeySpan II*, 101 FERC ¶ 61,051, at P 25.

²³ *PJM IV*, 95 FERC ¶ 61,470, at 62,682; *KeySpan II*, 101 FERC ¶ 61,051 at P 30; *MISO Order*, 106 FERC ¶ 61,073, at P 43.

generator is self-supplying and using only transmission facilities for the delivery of remotely self-supplied energy, no retail charges are warranted. With respect to characteristics 1-3, above, Attachment A sets forth the Commission-approved station power requirements common to PJM, NYISO and MISO. Given the similarity between CAISO and these ISOs/RTOs, the CAISO's station power compliance filing, should reflect these minimum requirements.

14. In addition, the Commission's prior holdings provide that station power may be netted by a generating facility against its output at all times, and that such facility is not required to procure retail delivery service from the local utility, provided that the generating facility is interconnected to transmission facilities and has net positive output over the netting period. On May 15, 2002 the Commission issued a series of four station power orders.²⁴ Those orders addressed the issue of whether remotely self-supplied, unbundled station power required the payment of a local distribution charge. In each case, the Commission's determination turned on the nature of the facilities used to deliver the station power. Where the unbundled station power is delivered solely by means of transmission facilities, the delivery of such station power is subject to the exclusive jurisdiction of the Commission.²⁵ More recently, the Commission specifically rejected an assertion that a retail distribution rate, stranded costs, or other retail charges would apply where no retail service is provided (*i.e.*, no local distribution facilities are used).²⁶ Based on the electrical configuration and

²⁴ See *KeySpan I*, 99 FERC ¶ 61,167; *Sunbury I*, 99 FERC ¶ 61,168, at 61,683 ; *Midwest Generation, LLC v. Commonwealth Edison Co.*, 99 FERC ¶ 61,166 (2002) ("*Midwest*"); *USGen I*, 99 FERC 61,169, at 61,686.

²⁵ *Nine Mile Order*, 105 FERC ¶ 61,336, at P 27; *Sunbury I*, 99 FERC ¶ 61,168, at 61,680; *USGen I*, 99 FERC ¶ 61,169, at 61,684-85.

²⁶ *Nine Mile Order*, 105 FERC ¶ 61,336, at P 27.

operating characteristics of Moss Landing, there is no basis for it to be required to incur *any* retail charges for station power. Moss Landing, however, has been precluded from self-supplying its facility due to the unjust, unreasonable and unduly discriminatory Metering Protocols, and the absence of comprehensive CAISO station power rules reflecting the Commission's minimum station power requirements as set forth in Attachment A. Following the CAISO's submission of a compliance filing in response to a Commission order issued in this proceeding, Moss Landing intends to self-supply its station load requirements.²⁷

V. ADDITIONAL REQUIREMENT OF RULE 206

In accordance with 18 C.F.R. § 385.206(b)(6), Moss Landing states that similar station power issues have been litigated in the Commission Orders cited *infra*, one of which is on appeal.²⁸ In accordance with 18 C.F.R. § 385.206(b)(9), Moss Landing verifies that it made a good faith effort to resolve these matters with the CAISO, but those efforts were unsuccessful.²⁹ Because the affected parties' positions with respect to station power are firmly held, and similar disputes have been litigated in other proceedings, Moss Landing does not believe that it would be productive to use the Commission's informal dispute resolution procedures.

²⁷ Moss Landing acknowledges that to the extent that its remote self-supply, if any, requires the use of CAISO-controlled transmission facilities, it may incur a Commission-approved charge under the CAISO tariff for the delivery of station power.

²⁸ Petition for Review of Niagara Power Mohawk Corp., filed Jul. 8, 2004, D.C. Cir. Case No. 04-1227 *Niagara Power Mohawk Corp. v. FERC* (D.C. Cir. Case No. 04-1227 is the lead docket for the consolidated D.C. Cir. cases 04-1229 and 04-1231).

²⁹ See Affidavit of Layne P. Brown, Attachment C.

VI. CONCLUSION

Based on the foregoing, Moss Landing respectfully requests that the Commission require CAISO to conform its Metering Protocols and amend its Tariff as described above and in Attachment A.

Respectfully submitted,

Dated: September 1, 2004

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served this day by first class United States mail, postage prepaid, upon the CAISO as well as PG&E.

Dated at Washington, DC this 1st day of September, 2004.

/s/ Michael J. Rustum (e-filed)
Michael J. Rustum

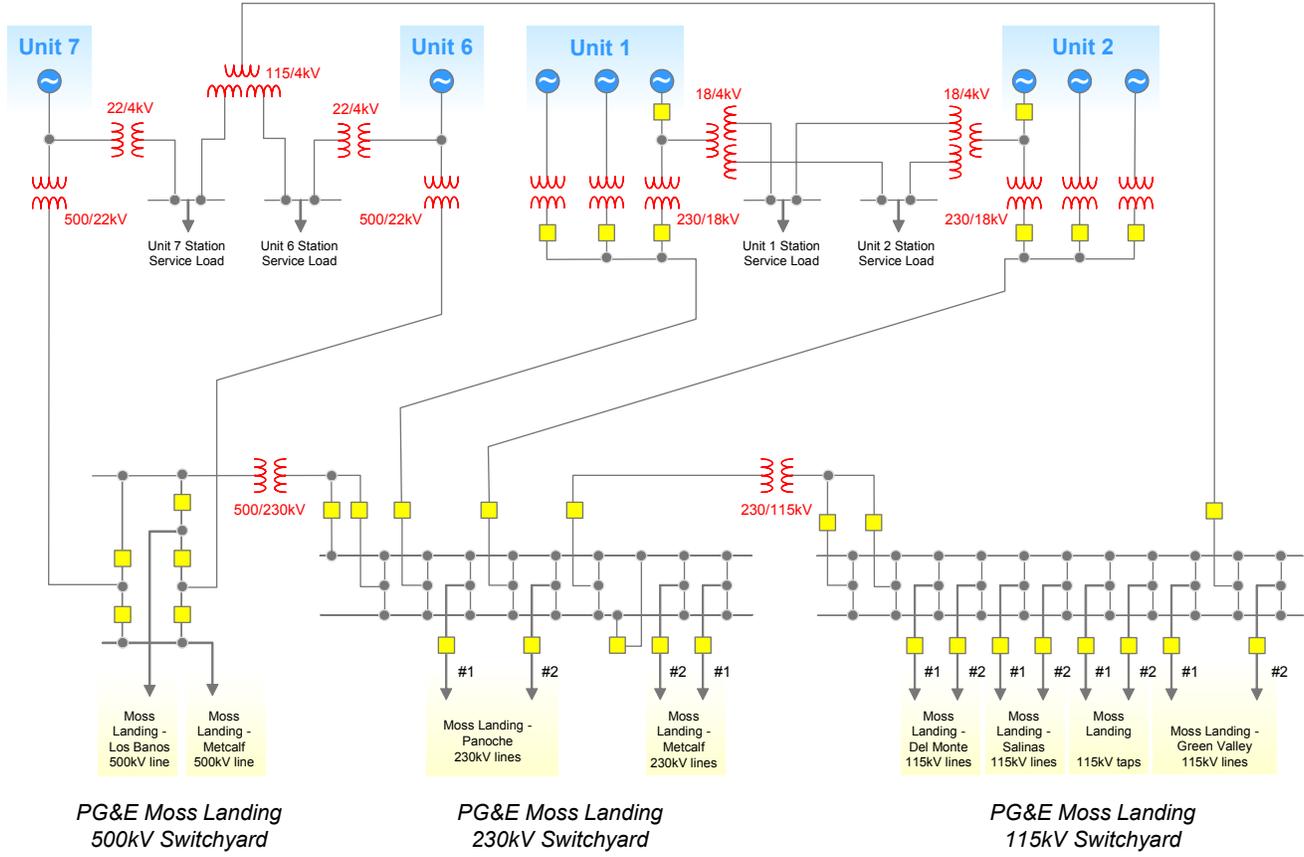
ATTACHMENT A

STATION POWER REQUIREMENTS

- A generating facility should be permitted to self-supply or remotely-self-supply station power during any calendar month. A generating facility is self-supplying when its gross output for the month is equal to or greater than its station load, regardless of the number of connections or metering points. A generating facility is remotely self-supplying when its gross output for the month plus energy received from other facilities it owns is equal to or greater than its station load, regardless of the number of connections or metering points.
- The determination of the monthly net output (gross energy output less station power load) of a generator's facility will apply only to determine whether the generator has self-supplied or remotely self-supplied station power for its generation facility during the month and will not affect the price of energy sold or consumed by the generating facility at any bus during any hour during the month.
- For each hour when a generator's facility has positive net output and delivers energy into the CAISO transmission system, it will be paid the Real-Time zonal price at its bus for that hour for all of the energy delivered pursuant to this rule. Conversely, for each hour when a generator's facility has negative net output, it will pay the Real-Time zonal price, as appropriate, at its bus for that hour for all of the energy consumed.
- CAISO will determine the extent to which each affected generator's facilities self-supplied its station power during the month and will incorporate those determinations into its accounting and billing for the month.

- In the event that a generator self-supplies its station power requirements during the month, as determined through the monthly net output calculation, no transmission charges will be applicable.
- In the event that a generator remotely self-supplies station power during the month, the generator shall pay the appropriate rate for transmission service, if any, for the amount of station power remotely self-supplied during the month.

ATTACHMENT B Duke Energy Moss Landing LLC Simplified One-Line Diagram



ATTACHMENT C

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Duke Energy Moss Landing LLC
v.
California Independent System
Operator Corporation

Docket No. EL04-____-000

AFFIDAVIT OF LAYNE P. BROWN

Comes now the Affiant, Layne P. Brown, and deposes and states as follows:

- 1) I am the Manager, Regulatory Affairs for Duke Energy Trading and Marketing, L.L.C. My principle office address is 4 Triad Center, Suite 1000, Salt Lake City, Utah 84180.
- 2) Among my responsibilities is coordination of various regulatory policy issues with the California Independent System Operator ("CAISO").
- 3) Beginning in March 2004, on behalf of Duke Energy Moss Landing LLC ("Moss Landing") I began communicating with the CAISO regarding the Federal Energy Regulatory Commission's ("FERC") numerous station power decisions, including providing the CAISO with a memorandum outlining those decisions. In those communications I repeatedly asked for the CAISO to initiate a process to bring the CAISO tariffs, rules and protocols into alignment with the FERC's decisions permitting the netting of station power.
- 4) To date the CAISO has failed to act on my requests. At one point it was suggested that a stakeholder meeting would be set for June or July, 2004 to address the issue.

No such meeting was set. A CAISO representative has indicated that modification of existing CAISO tariffs, rules and protocols to allow station power netting to the full extent of FERC policy and precedent is not a high priority item, and that CAISO feels it is caught between various groups of stakeholders with competing interests with regard to station power.

- 5) In my communications with the CAISO I have not been given any concrete assurance that the CAISO will address this matter anytime in the near future. As a result, Moss Landing is forced to procure station power at retail.
- 6) Were the CAISO to adopt station power protocols consistent with those approved for other regions (e.g. PJM), Moss Landing could self-supply its station power because its generating units would experience net positive output over the course of the monthly netting period.

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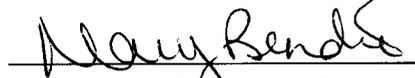
Further Affiant sayeth naught.

Dated this 31st day of August, 2004



Layne P. Brown

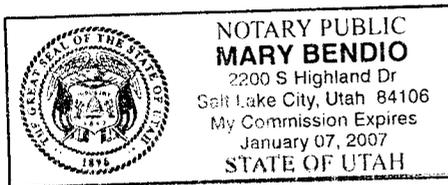
Subscribed and sworn to before me this 31 day of August, 2004



Notary Public for the State of Utah

My Commission expires:

1-7-07



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Comment Date: 5:00 pm Eastern Time on September ____, 2004.

Magalie R. Salas
Secretary

Submission Contents

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