

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Californians for Renewable Energy, Inc.)	
(CARE),)	
)	
Complainant,)	
)	
v.)	Docket No. EL01-2-000
)	
Independent Energy Producers, Inc. and)	
All Sellers of Energy and Ancillary Services)	
Into the Energy and Ancillary)	
Services Markets Operated by the)	
California Independent System Operator)	
Corporation and the)	
California Power Exchange;)	
)	
All Scheduling Coordinators Acting)	
On behalf of the Above Sellers;)	
)	
California Independent System Operator)	
Corporation; and)	
)	
California Power Exchange Corporation)	
)	
Respondents)	

**ANSWER OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO CARE COMPLAINT**

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2000), the California Independent System Operator Corporation ("ISO")¹ hereby submits its Answer to the complaint of

¹ Capitalized terms not otherwise defined herein shall have the meaning as defined in the Master Definitions Supplement, Appendix A to the ISO Tariff.

CALifornians for Renewable Energy, Inc. ("CARE") filed in the above-captioned proceeding on October 6, 2000.

I. Summary

CARE's complaint contends that the ISO, pursuant to an "ISO/Generator Trust," failed properly to respond to the rolling outage of June 14, 2000, and thereby precipitated a public health and safety threat, with a disparate impact on minority populations, to the benefit of exporting Generators. CARE's complaint is entirely without any credible basis.

Central to CARE's complaint is its allegation that the ISO improperly failed to declare a Stage 3 Emergency and curtail exports in response to the June 14, 2000, events. However, this is based on a fundamental misunderstanding of what occurred that day. The outage was the result of insufficient Generation *within* the Bay Area and *insufficient transmission capacity* into the area. The curtailment of exports by Generators located elsewhere in California would have had absolutely *no impact* on the circumstances that led to the rolling outage in the Bay Area. Indeed, it was only by means of those localized outages that more severe disruption was averted. Neither is it correct to lay blame on scheduled generation outages. They were pre-scheduled long before June 14th in compliance with reliability standards and applicable protocols.

CARE's suggestions that the ISO has been complicit in efforts to drive up prices and to impede transmission enhancements are, as discussed below, particularly outrageous.

Indeed, none of CARE's allegations is based on even a thread of factual accuracy and, accordingly, summary dismissal is warranted. While the ISO has supported consolidation of other complaints with the investigation docket, to do so here would ill-serve the expeditious resolution of that proceeding without contributing any benefit whatsoever.

II. Background

The Commission has received a number of complaints and requests for investigation and other relief with respect to prices in wholesale power markets in California this past summer. Although, like other complainants, CARE asks the Commission to rectify unjust and unreasonable prices in California's wholesale markets for Energy and Ancillary Services, its basis for the request is unique. At the core of CARE's complaint is an alleged conspiracy (the "ISO/Generator Trust") among the ISO, the PX, and Generators to create higher Energy prices and justify expanded power plant construction – and to do this in illegal disregard of the impact on low income and minority populations. CARE's complaint is centered on the system emergency that occurred in the San Francisco Bay Area ("Bay Area") on June 14, 2000. CARE contends that by failing to declare a Stage 3 Emergency and curb exports from Generators in California to other Control Areas, the ISO precipitated a public health and safety threat with a disparate impact on minority populations, to the benefit of exporting Generators.

As relief, CARE asks that the Commission: (1) make a determination of the just and reasonable levels of wholesale prices for Energy and Ancillary Services that are based on prior year costs of generation, with allowances for

inflation and increased fuel costs, (2) make a determination of those charges in excess of what is just and reasonable and require refunds, (3) make findings that the events and circumstances surrounding the June 14, 2000, rolling outage warrant investigation by the United States Department of Justice (“DOJ”) of “trust activities in restraint of trade,” (4) make findings that those events and circumstances also warrant investigation by the DOJ of alleged civil rights violations, including an investigation into the identification of injury, loss of life, disability, or hospitalization associated with the outage, (5) seek criminal prosecutions for restraint of trade and civil rights violations, and (6) seek just compensation for those persons or entities allegedly damaged by such illegal activities. Complaint at 9-10. CARE also requests that the complaint be consolidated with the FERC investigation into the ISO and PX markets in Docket Nos. EL00-95-000, EL00-98-000 and EL00-104-000. Complaint at 2.

III. Answer

As the ISO has indicated in its filings in various complaint proceedings pending before the Commission – most recently in its proposed Offer of Settlement filed on October 20, 2000 – the ISO is concerned about competitive conditions in California’s electricity markets and is actively pursuing corrective action. As a result, the ISO has not asked that the complaints be dismissed, but simply that the Commission not act precipitously. The CARE complaint, however, falls into a different category. As discussed below, CARE’s complaint lacks any credible basis. CARE shows the same disregard for factual and legal

considerations as it does for the Commission's procedural filing requirements. Accordingly, CARE's complaint should be dismissed summarily.

A. CARE Has Proffered No Evidence that the June 14, 2000, Rolling Outage Could Reasonably Have Been Averted.

CARE's allegations regarding the June 14, 2000, rolling outage are founded in a fundamental misunderstanding of the event. The circumstances that led to the rolling outage – as CARE could easily have ascertained – confirm the total absence of misconduct. As discussed below, the outage was the result of insufficient Generation *within* the Bay Area and *insufficient transmission capacity* into the area. The outage could not have been averted by any actions available to the ISO. In particular, the curtailment of exports from California would not have prevented or ameliorated the outage. Importantly, it was only by means of the localized action that was taken that more severe disruption was averted.

The Bay Area is a "transmission constrained" area, i.e., in the event that Generation within the area is insufficient to serve local Load, there may not be sufficient transmission capacity to enable imports into the area to make up the supply deficiency.² The Bay Area Load limit is 8750 MW, i.e., when all Generation within the area is operational and all transmission lines connecting the area to the remainder of the ISO Controlled Grid are fully available, 8750 MW of Load can be served reliably. On June 14, 2000, 879 MWs of Generation within the Bay Area was unavailable, and the estimated Load was 9150 MW.

² ISO operators use Nomograms and Operating Procedures specific to the Bay Area in order to maintain reliability in the area. These Nomograms and Operating procedures relate the level of Bay Area load and generation in a manner that enables the operators to know the "safe operating

The transmission lines into the area were loaded at levels exceeding their limits. As a result, local area voltages approached unacceptable operating levels. Blocks of approximately 130 megawatts of firm load were dropped and restored in a rotating fashion to maintain minimum Bay Area voltages and to minimize the exposure to voltage collapse resulting from a “G-1” or “N-1” contingency. In other words, the rotating outages minimized any negative impacts which could have resulted from the loss of one of the three main generation units on at the time (Pittsburg #7, Moss Landing #7, or Potrero #3) or the one 500-kV line into the Bay Area (Tesla-Metcalf).³

Thus, curtailment of exports originating elsewhere in California would have had absolutely no ameliorating effect on events in the Bay Area. The gravamen of the complaint is entirely erroneous. Regardless of the amount of power available outside the Bay Area, there was no means by which it could have been made available within the Bay Area.⁴ Curtailment of these exports would not have relieved conditions in the Bay Area and would not have averted any of the rolling outages about which CARE complains. Nothing in CARE’s complaint supports a contrary conclusion.

points” at which they can maintain voltage and local area stability.

³ A complete explanation of the causes of the June 14, 2000, rolling outages is included in the Testimony of Terry M. Winter, President and CEO of the ISO, presented to the Electricity Oversight Board, June 29, 2000, pages 34-45. See Attachment A.

⁴ Moreover, there is no factual basis for CARE’s assertion. As support, CARE states that given the capacity on the California-Oregon Intertie (“COI”), California must have been a net exporter of power to Oregon. Complaint at 8. This assumption is incorrect. ISO personnel indicate that any scheduled exports to Oregon that occurred were probably due to long term contractual obligations already in place, or due to Energy being bought out of the Power Exchange Energy Market, and that, in any event, the net flow of power on June 14 was north to south into California.

CARE's assertion that the ISO should have declared a Stage 3 emergency is similarly misguided. A Stage 3 emergency is called when statewide blackouts are necessary to maintain Operating Reserves within the control area. Declaration of a Stage 3 emergency, however, was neither required nor appropriate because the problem was contained to the Bay Area, and the temperature and power use in Southern California were relatively low on that day. Requiring outages elsewhere in California would not have relieved conditions in the Bay Area.

CARE also identifies scheduled Generator outages as "evidence" of the ISO's culpability. In particular, CARE points to Calpine's outages of its Geysers power plants "with ISO concurrence that resulted in the June 14, 2000 outages." *Id.* CARE also suggests that Southern Energy purposely planned to schedule maintenance for its Pittsburg #6 power plant on that same hottest day of the year, and that it also did so "with the ISO's concurrence." Complaint at 8.

CARE's assertions are belied by the ISO's outage procedures. Scheduled maintenance shut downs are planned well in advance. Under ISO Tariff Section 2.3.3.5, maintenance outage planning protocols require that the operator provide to the ISO by October 1 a program of the maintenance outages it wishes to undertake in the following year. The program is then developed in consultation with the utility distribution companies ("UDCs") interconnected with the Participating Transmission Owner's system and takes into account each UDC's planned maintenance requirements. The timing of outages is determined by a number of factors, and it is possible neither to schedule all outages during

nonpeak periods nor to control completely their duration. Under the Outage Coordination Protocol, however, the ISO reviews scheduled outages to ensure that Applicable Reliability Criteria are met at all times. The ISO has strictly adhered to the ISO Tariff provisions in approving the scheduling of maintenance outages, including those that were on-going on June 14th.

CARE is correct that, as of June 14th, there were two Geyser units that had been shut down for scheduled maintenance for some time. Pittsburg #6, also cited by CARE, had been shut down since March 3, 2000, but had been scheduled to return to service on June 6, 2000. The extension of the Pittsburg outage was not planned. There is no indication that the ISO, in permitting owners to schedule these outages well in advance of June 14, 2000, failed in any respect to act in accordance with appropriate WSCC and NERC operating criteria as well as with Commission-approved ISO Tariff protocols. What CARE fails to note is that these outages were compounded by unscheduled outages and limitations of other facilities, which were beyond the ISO's control. CARE offers *no* evidence that in any way suggests that these planned and unplanned outages were part of a scheme to cause the rolling outages; indeed, it cannot, because there is none.

In sum, CARE's has failed entirely to offer *any* foundation for its claims of intentional, or even avoidable, actions by the ISO that contributed to the conditions that led to or extended the rolling outages in the Bay Area on June 14, 2000.

B. CARE Presents No Basis for Its Accusations of an “ISO/Generator Trust in Restraint of Trade” in Violation of Federal Antitrust Law

CARE alleges that the ISO is involved in an “ISO/generator trust to drive up the price of electricity and to justify expedited power plant construction in California to further maximize generator profits” in violation of Title 15 of the United States Code, 15 U.S.C.A. § 1 (2000). Complaint at 1-2. CARE contends that this ISO/Generator Trust “contrived the June 14, 2000 rolling outage, to drive up the price of electricity, and justify expedited power plant construction in California. . . .” *Id.* at 3. This is absurd and reckless.

The ISO has no reason to collude with any other entity to drive up prices and most certainly has not done so. Apart from the ISO’s obligations under restructuring legislation (Cal. Pub. Util. Code §365(a)) and the orders of this Commission – which require the ISO to follow appropriate planning and operational procedures in order to maintain electric reliability – the public record of the ISO’s actions directly refutes any allegation that the ISO was part of a conspiracy to increase prices. Over the objections of Generator members, the ISO Board repeatedly has voted to limit the price that the ISO will pay in its Energy, Ancillary Services and Congestion Management markets.⁶ On October

⁶ See, e.g., *AES Redondo Beach, L.L.C., et al.*, 84 FERC ¶ 61,046 (1998) (for interim period, ISO rejection of bids in excess of appropriate prices for Regulation, Spinning Reserve, Non-Spinning Reserve, and Replacement Reserve authorized as reasonable); *AES Redondo Beach, L.L.C., et al.*, 85 FERC ¶ 61,123 (1998) (ISO allowed to continue with the purchase price cap previously authorized; price caps for Ancillary Services markets are authorized until structural changes in Ancillary Services markets are proposed and implemented); *California ISO*, 86 FERC ¶ 61,059 (1999) (price caps for Imbalance Energy market approved); *AES*, 87 FERC ¶ 61,208 (1999) (ISO retains the authority to impose a purchase price cap through November 15, 1999); *California ISO*, 89 FERC ¶ 61,169 (1999) (proposed price cap approved for additional 12 months); ISO Governing Board Memorandum and Motion, dated March 14, 2000, authorizing continuation of \$750/MWh price caps for Summer 2000. Generators and marketers have

20, 2000, the ISO proposed a Settlement of pending actions that would further limit prices paid.⁷

CARE offers absolutely no evidence to suggest that these or any other ISO actions are part of a clandestine agreement to raise prices. As principal support for this serious (and spurious) allegation, CARE quotes the Electricity Oversight Board Report to Governor Davis, dated August 2, 2000 (“EOB Report”), attributing the rolling outages to “grid instability related to high loads and short supplies in that area, which could not be relieved given the design of the transmission system,” and “generator decisions to generate Energy without notifying the ISO.” Complaint at 3. To suggest that these findings reveal the existence of an “ISO/generator trust” is a non sequitur. The first statement merely indicates that, as discussed above, the interruptions were necessary due to local transmission constraints. The second – that Generators increased production without informing the ISO – directly contradicts claims of collusive behavior.

consistently protested and appealed such action. For examples, *see, El Segundo Power, LLC and Long Beach Generation LLC, v, FERC*, U.S. Court of Appeals, D.C. Circuit, Case 00-1093, Petition for Review filed March 12, 2000; Request for Rehearing and Response of El Segundo Power, LLC and Long Beach Generation LLC to Emergency Motion for Stay of California ISO, filed August 7, 1998, in *AES Redondo Beach, LLC*, Docket Nos. ER98-2843-001, et seq.; Answer to Motion for Clarification of El Segundo Power, LLC and Long Beach Generation LLC, filed December 14, 1998, in *AES Redondo Beach, LLC*, Docket Nos. ER98-2843-001, et seq.; IEP Motion to Intervene and Comments, filed October 5, 2000, in *California ISO*, Docket No. ER00-3673-000; Duke Energy Motion to Intervene and Comments, filed October 5, 2000, in *California ISO*, Docket No. ER00-3673; Dynegy Motion to Intervene and Protest, filed October 5, 2000, in *California ISO*, Docket No. ER00-3673-000; Motion to Intervene and Protest of Williams Energy Marketing & Trading Company, *California ISO*, Docket No. ER99-4462-000, filed October 7, 1999.

⁷ Letter to David Boergers from Edward Berlin, dated October 20, 2000, tendering a proposed Offer of Settlement in Docket Nos. EL0095-000 and EL00-98-000.

CARE also points to a letter from the Independent Energy Producers (“IEP”) to Governor Gray Davis, dated June 27, 2000 (“June 27 Letter”), as further evidence of an “ISO/generator trust.” That public letter, however, is merely one sector’s exercise of its right to present its positions to state policy makers. It does indeed explain how IEP is working with the ISO and the PX to identify anomalies in the market and corrective adjustments. Yet that is precisely what every affected constituency, including consumers, is encouraged to do – to provide the ISO with information regarding its views on how best to ensure reliable, competitively priced, clean electricity. This is evidence of cooperation, not collusion.

CARE alleges that this so-called “ISO/generator trust” is denying consumers a voice in control over the power grid in order to drive up prices. Complaint at 8-9. It states that the EOB declined to confirm the ISO Board nominees for the categories of agricultural, industrial, commercial and residential end-users, so now only the Generators are “watching the power grid.” *Id.* Again, CARE’s assertions are based on erroneous factual assumptions. First, all but two of the seats for which nominees were submitted are currently filled. Under California law, sitting Board members will continue to serve until new members are confirmed. Second, there are only two seats assigned to the Generator class and only three seats to the Transmission Owners. Together, they represent less than a third of the sitting Board. Third, under Article 9, section 6, of the ISO Bylaws, as approved by the Commission, no one class alone can prevent Board action and no two classes alone can force Board action.

By law, the ISO Board consists of members of every stakeholder class, including agricultural, industrial, commercial and residential end-user and public interest groups. Like the Generators, these stakeholder groups have all enjoyed the opportunity to participate. There is no evidence to support CARE's allegation that they have been forced out of the process.

Finally, CARE contends that the ISO has supported the growth of new generation in the state of California in order to "further degrade Intertie transfer capability" and, again, thereby drive up prices. Complaint at 8. In particular, CARE alleges that the ISO has refused to support upgrades to the California Oregon Intertie ("COI") and that this "refusal" caused the loss of 300 megawatts on June 14, 2000, as well as a potential total loss of 900 megawatts of transfer capability. Complaint at 8. CARE cites a July 14, 2000, letter from Maury Kruth, Executive Director of the Transmission Agency of Northern California, to Ben Arikawa of the Electricity Oversight Board ("TANC letter") to support this baseless allegation. Complaint at 8. Contrary to the statement in the complaint, the issues discussed in the TANC letter have nothing to do with any proposed upgrades to the California-Oregon Intertie, but rather concern whether some California parties should be compensated for a loss of transfer capacity on the COI due to the construction of other transmission facilities outside of California.⁸

CARE is indeed correct that the ISO supports the construction of additional Generation. California is import dependent – a condition which

⁸ As the Commission is well aware, TANC and a number of other utilities in California have raised issues concerning the impact that the interconnection of the Alturas Intertie with the Northwest AC Intertie may have on the use of the COI for imports of electricity from the Pacific Northwest into California. These issues are being addressed in Docket Nos. ER99-28 *et al.*

complicates preservation of Grid Reliability. CARE's assertion that the ISO is plotting with the Generators to thwart the interests of the people of California does not comport with reality. The construction of new generating capacity in California, following the receipt of all required state approvals, will benefit Californians by *enhancing* reliability and *reducing* prices.

CARE is flatly mistaken, however, when it asserts that the ISO supports the need for new Generation by opposing transmission improvements. The current persistence of transmission constraints in no manner suggests ISO/Generator collusion. The transmission system that the ISO inherited was constructed to meet another paradigm, under which utilities could use Generation at cost-based rates to substitute for transmission facilities. The advent of market-based rates and divestiture has to some extent rendered such reliance impracticable. The ISO therefore has strongly supported transmission upgrades and expansion as evidenced in the Action Plan provided to the Commission on August 11, 2000.⁹ To date, over \$800 million in new transmission investments have been approved by the ISO as needed, and hundreds of millions of dollars of additional transmission investments are undergoing analysis. Moreover, the ISO is in the process of developing a new Long-Term Grid Planning process that is predicated on expanding the grid in a manner that supports a competitive marketplace. As part of that plan the ISO is expressly advocating that the ISO

⁹ Letter to David P. Boergers from Sean A. Atkins, dated August 11, 2000, Re: Investigation of Electric Bulk Power Markets, and Attachments A and B: California ISO's "Action Plan to Accelerate Generation, Transmission, and Demand Response in California" and written Testimony of Terry M. Winter, President and CEO of the California ISO, before the California Senate Energy, Utilities & Communications Committee and Assembly Utilities & Commerce Committee, at the August 20, 2000, Legislative Hearing on Electricity Issues.

Controlled Grid be expanded to access regional energy supplies and to mitigate the market power of strategic suppliers.¹⁰ Transmission facilities, however, cannot be built overnight. CARE offers no support for its suggestions that the ISO is impeding transmission improvements.

C. CARE's Assertions that the ISO Discriminates Against Minority or Low-Income Populations In Violation of Federal Civil Rights Law Are Baseless

CARE also alleges that the events of June 14, 2000 violated Title VI of the Civil Rights Act of 1964 by “disparately impact[ing]” “low income and minority populations” and creating “an eminent threat to public health and safety, that overburdened Northern California emergency services, hospitals, and law enforcement with unanticipated costs of public and private funds.” *Id.* at 4. Again, CARE offers no support for these baseless accusations. Without indicating which specific segments of the population were “disparately impacted,” CARE makes a sweeping statement that those populations tend to be located near transmission systems and power plants, and that they must therefore have suffered worse than others. Complaint at 4. In point of fact, however, the outages were no more prevalent close to transmission facilities or power plants.

Further, there is absolutely no evidence, nor could there be, to suggest that the ISO's actions during the emergency were taken with the intent of discriminating against any particular population. In discharge of its statutory mandate to take all reasonable action to ensure the reliable operation of the electric power grid in California, the ISO operates in strict accordance with the

¹⁰ See memorandum to ISO Governing Board dated October 19, 2000 “Comprehensive Market Redesign (CMR) – Global Policy Issues Recommendation” posted on the ISO Home Page.

WSCC, NERC and Commission-approved planning and operational procedures. The actions taken on June 14 were consistent with those procedures as well as with standard industry practice. No other considerations came into play or guided the ISO's actions, and CARE offers no evidence to the contrary.

Moreover, CARE's contention that the procedures undertaken on June 14 "created an eminent threat to public health and safety, that overburdened Northern California emergency services, hospitals, and law enforcement with unanticipated costs of public and private funds" ignores the consequences to such services had action not been taken. Absent the rolling outages, facility overloads could have caused a much more extensive loss of power with catastrophic impacts for a lengthy period of time. The emergency procedures undertaken were reasonable and proportional to what the situation mandated. The ISO anticipated the problem and took appropriate preventative measures to mitigate negative impacts. Thanks in large part to those transmission planning measures and to anticipatory practice drills, the ISO was able to respond immediately and decisively when the problem arrived. The local news media coverage of the scorching heat wave cited by CARE only confirms the fact that the ISO acted appropriately given the circumstances. It was a critical time in the Bay Area, and emergency actions were necessary to contain the problem. The ISO determined how many megawatts needed to be curtailed and PG&E, the UDC, directed and implemented the actual customer interruptions.¹²

¹² Finally, even if CARE had a colorable claim of discrimination -- which it patently does not -- it would be seeking relief in the wrong forum. CARE's allegation fall beyond the scope of the Commission's jurisdiction. See *NAACP, et al., v. FPC*, 425 U.S. 662 (1976).

IV. The Complaint Should be Dismissed, Not Consolidated

As set forth above, the ISO believes that CARE has not met the basic requirements for its complaint to stand, and it has not provided any reason for consolidation with other proceedings. In the event that the Commission should find sufficient support for CARE's Section 206 complaint, however, the ISO opposes consolidation with the pending investigation into the ISO and PX markets. While the ISO has supported the consolidation of other complaints with the market investigation proceeding, inclusion of CARE's allegations can only serve to delay the implementation of measures needed to correct market imperfections.

V. Communications

Communications regarding this docket should be sent to the following individuals, whose names should be entered on the official service list established by the Secretary for this proceeding:

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VI. Conclusion

WHEREFORE, for the reasons discussed above, the Commission should summarily dismiss the CARE complaint.

Respectfully submitted,

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