

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

CAlifornians for Renewable)	
Energy, Inc. (CARE) and)	
Michael E. Boyd)	
)	
v.)	Docket No. EL23-90
)	
California Independent System)	
Operator Corporation)	
)	

**MOTION TO INTERVENE AND ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
IN RESPONSE TO PETITION FOR ENFORCEMENT**

The California Independent System Operator Corporation (CAISO) submits this Motion to Intervene and Answer to the Petition for Enforcement filed by CAlifornians for Renewable Energy (CARE) and Michael E. Boyd (collectively, the Petitioners) on August 7, 2023 pursuant to Section 210(h)(2) of the Public Utility Regulatory Policies Act of 1978 (“PURPA”).¹ CARE’s Petition requests that the Commission institute an enforcement action against the CAISO to remedy alleged violations of section 210 of PURPA and the Commission’s

¹ See Combined Notice of Filings #1, Docket No. EL23-90 (establishing the response deadline); see *also* Petition for Enforcement Pursuant to Section 210(H) of the Public Utility Regulatory Policies Act of 1978 of CAlifornians for Renewable Energy, Inc. (CARE), Michael E. Boyd, Docket No. EL23-90 (Aug. 7, 2023) (“Petition”); 16 U.S.C. § 824a- (h)(2)(providing an enforcement mechanism). The CAISO moves to intervene as the Party against which CARE seeks enforcement. See 18 C.F.R. § 385.214(a)(3). The CAISO’s interest and its position are set forth below.

implementing regulations.² CARE's Petition is based on numerous errors of law and fact and, as explained below, the Commission should dismiss it with prejudice.

I. Executive Summary

CARE has a long history of submitting complaints against the CAISO and other respondents (in various combinations), and of the Commission dismissing or rejecting those complaints.³ CARE's Petition is another attempt to re-litigate issues previously adjudicated. Specifically, the Commission has affirmed that PURPA Section 210(h)(2) only authorizes an enforcement action against a state regulatory authority or a non-regulated electric utility, but *not* against the CAISO.⁴ Yet, the CARE Petition again seeks action against the CAISO under PURPA Section 210(h)(2).

Although the Commission is not formally constrained by the limits of the judicial doctrines of claim and issue preclusion, in this situation it is appropriate

² See Petition at PP 53-54.

³ See, e.g., *CALifornians for Renewable Energy, Inc. v. Cal. Indep. Sys. Operator Corp.*, 117 FERC ¶ 61,072 (2006), *reh'g denied*, 142 FERC ¶ 61,161 (2013); *CALifornians for Renewable Energy, Inc. v. Cal. Pub. Utils. Comm'n, et al.*, 119 FERC ¶ 61,058 (2007) (dismissing two CARE complaints); *CALifornians for Renewable Energy, Inc. v. Cal. Pub. Utils. Comm'n, et al.*, 120 FERC ¶ 61,272 (2007) (dismissing two CARE complaints); *CALifornians for Renewable Energy, Inc. v. Cal. Pub. Utils. Comm'n, et al.*, 129 FERC ¶ 61,075 (2009), *reh'g denied*, 131 FERC ¶ 61,102 (2010); *CALifornians for Renewable Energy, Inc. v. Pac. Gas & Elec. Co. and Cal. Energy Comm'n*, 129 FERC ¶ 61,141 (2009), *reh'g denied*, 142 FERC ¶ 61,226 (2013); *CALifornians for Renewable Energy, Inc. v. Pac. Gas & Elec. Co., et al.*, 134 FERC ¶ 61,060, *reh'g denied*, 134 FERC ¶ 61,207 (2011); *CALifornians for Renewable Energy, Inc., et al. v. Pac. Gas & Elec. Co., et al.*, 142 FERC ¶ 61,143 (2013).

⁴ *CALifornians for Renewable Energy, Inc., et al v Cal. Indep. Sys. Operator Corp.*, 174 FERC ¶ 61,204, P 40 (2021), *reh'g denied*, 175 FERC ¶ 61,213, P 15 (2021); *accord Letter Order*, 177 FERC ¶ 61,113 (2021) (explaining that enforcement action could not be taken against LUMA energy corporation).

for the Commission to act expeditiously to dismiss the Petition, with prejudice. Barring new or changed circumstances requiring a different result, which there are none, it is contrary to sound administrative practice and a waste of resources to re-litigate the issues CARE presents in its Petition.

First, CARE has previously sought relief for claims that the CAISO Tariff infringes on the rights of Qualifying Facilities,⁵ and the Commission has definitively resolved those claims.⁶ The Petition contains no new allegations or claims of changed circumstances that justify revisiting the Commission's prior holdings. To the extent the Petition's references to the 2022-2023 Transmission Plan are intended to support a claim of change circumstances,⁷ the Commission should dispatch such illusions. Publication of the CAISO's 2022-2023 Transmission Plan does not violate a Qualifying Facility's rights under PURPA.

Second, PURPA does not provide the Commission with jurisdiction to pursue a petition for enforcement against the CAISO, as the Commission previously held.⁸ PURPA Section 210(h)(2) authorizes the Commission only to enforce the requirements of Section 210(f) "against any State regulatory authority

⁵ Compare Petition at P 53 seeking redress for "access to interconnection to the electric grid; and fair and just non-price terms, i.e., a standardized tariff between the California IOUs and the Net Metering Customer-Generators," with *CARE*, 174 FERC ¶ 61,204, P 40 (2021), *reh'g denied*, 175 FERC ¶ 61,213, P 15 (2021).

⁶ *CARE*, 174 FERC ¶ 61,204, P 40 (2021), *reh'g denied*, 175 FERC ¶ 61,213, P 15 (2021).

⁷ See, e.g., Petition at P 3.

⁸ *CARE*, 174 FERC ¶ 61,204, P 40 (2021), *reh'g denied*, 175 FERC ¶ 61,213, P 15 (2021).

or nonregulated electric utility.”⁹ The CAISO is neither a “State regulatory authority” nor a “nonregulated electric utility,” as those terms are defined under PURPA.¹⁰ The CARE Petition offers nothing to question the Commission’s prior holdings explaining how and why the CAISO is “not subject to Commission jurisdiction under PURPA section 210(h),”¹¹ and a prompt dismissal, with prejudice, is appropriate.

Finally, even if PURPA authorized the Commission to pursue an enforcement action against the CAISO, the CAISO has not violated PURPA. Nothing in the CAISO Tariff requires a Qualifying Facility to waive, forgo, or otherwise involuntarily forfeit its statutory rights under PURPA or the Commission’s implementing regulations.¹² In fact, the CAISO’s current practices allow Qualifying Facilities, acting as a Market Participant, including through a distributed energy resource aggregation (DERA), to sell both as-available energy and energy pursuant to long-term contracts, consistent with PURPA. Again, prompt dismissal of the Petition, with prejudice, is appropriate.

⁹ 16 U.S.C. § 824(h)(2).

¹⁰ See 16 U.S.C. § 2602 (4), (9) (17) (defining a nonregulated utility as one that sells electricity and a State regulatory authority as “any State agency which has ratemaking authority with respect to the sale of electric energy by any electric utility (other than such State agency), and in the case of an electric utility with respect to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority.”).

¹¹ *CARE*, 174 FERC ¶ 61,204, P 40 (2021), *reh’g denied*, 175 FERC ¶ 61,213, P 15 (2021).

¹² The Commission has previously held that an ISO/RTO may not condition a QF’s registration as a market participant on the QF’s relinquishing the QF’s PURPA rights, the CAISO tariff is consistent with this requirement. See, e.g., *W. Sys. Power Pool*, 66 FERC ¶ 61,201, at 61,459 (1994); see also *Sw. Power Pool, Inc.*, 126 FERC ¶ 61,314, at PP 38-39 (2008) (explaining that “nothing in SPP’s tariff filing can supersede the rights of QFs under PURPA to make sales to host utilities.”).

II. Background

Congress passed PURPA in 1978 to create a market for Qualifying Facilities to sell their output to host utilities in an era of limited access to the wholesale power grid.¹³ Since then, Congress and the Commission have developed a comprehensive body of laws and regulations focused on establishing open access transmission service, promoting wholesale competition,¹⁴ and the implementation of market-based congestion management mechanisms.¹⁵ Independent System Operators (ISOs), like the CAISO, provide these services through independently administered, Commission-accepted tariffs.

As the Supreme Court has explained, for all its complexity, PURPA “contains essentially three requirements: (1) § 210 has the States enforce standards promulgated by FERC; (2) Titles I and III direct the states to consider specified ratemaking standards; and (3) those Titles impose certain procedures

¹³ See, *Am. Paper Institute, Inc. v. Am. Elec. Power Serv. Corp., et al.*, 461 U.S. 402 (1983). See also, *Federal Energy Regulatory Comm'n v. Mississippi*, 456 U.S. 742 (1982).

¹⁴ See, *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Pub. Utilities; Recovery of Stranded Costs by Pub. Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

¹⁵ See, *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, 31,061-62 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Wash. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

on state commissions.”¹⁶ The CARE Petition focuses on the first of these requirements.

Congress designed Section 210 to overcome an identified barrier impeding nontraditional generating facilities.¹⁷ Through Section 210(a), Congress directed FERC to promulgate “such rules as it determines necessary to encourage cogeneration and small power production.” In Section 210(b), Congress established the rate for purchases by electric utilities and established the rates for sales by electric utilities in Section 210(c).¹⁸ Sections 210(d), (e), and (f) establish the relevant definitions, exemptions, and implementation procedures.¹⁹ Finally, Section 210(g) sets forth the path for judicial review²⁰ and Section 210(h) establishes the Commission’s enforcement jurisdiction.²¹ Regarding the Commission’s enforcement jurisdiction, Section 210(h) outlines two arenas: first, the enforcement of rules prescribed by the Commission under Section 210(a) and second, the enforcement of implementation requirements against “any State regulatory authority or nonregulated electric utility” when such entity’s implementation of PURPA is “inconsistent or contrary to the

¹⁶ *FERC v. Mississippi*, 456 U.S. at 759.

¹⁷ *Id.* at 750 (explaining that Section 210 was designed to overcome the fact that traditional electric utilities were reluctant to purchase power from, and to sell power to, these nontraditional facilities).

¹⁸ See 16 U.S.C. § 824a-3(a)-(c).

¹⁹ 16 U.S.C. § 824a-3(d)-(f).

²⁰ 16 U.S.C. § 824a-3(g).

²¹ 16 U.S.C. § 824(h).

Commission's regulations," in contravention of Section 210(f) of PURPA.²² The Commission's enforcement authority under Section 210(h)(2) is discretionary.²³ CARE's Petition requests the Commission exercise its discretion to act under its authority under Section 210(h)(2) to enforce PURPA's requirements against the CAISO.²⁴

III. The Commission Should Dismiss the Petition for its Failure to State a Claim on Which Relief Can be Granted

The CARE Petition fails to state a claim on which relief can be granted, and the Commission should dismiss the Petition, with prejudice. First, the Petition attempts to re-litigate issues on which the Commission has issued a final order; dismissing the Petition is consistent with the doctrines of collateral estoppel and *res judicata*. Second, the Petition requests the Commission take enforcement action pursuant to Section 210(h)(2) against the CAISO; dismissing the Petition is consistent with precedent given that the CAISO is not a State regulatory authority or nonregulated utility. Finally, dismissal is appropriate given that the CAISO has not violated PURPA.

²² See *JD Wind 1 LLC*, 129 FERC ¶ 61,148, P 21 (2009) (quoting *Policy Statement Regarding the Commission's Enforcement Role Under Section 210 of the Public Utilities Regulatory Policies Act of 1978*, 23 FERC ¶ 61,204 at 61,644 (1983)); 16 U.S.C. § 824a-3(f), (h).

²³ See, e.g., *CARE*, 175 FERC ¶ 61,213, P 15 (2021); *FLS Energy, Inc.*, 157 FERC ¶ 61,211, PP18-19 (2016); *Roger & Emma Wahl*, 116 FERC ¶ 61,134 (2006) (explaining that the Commission's enforcement authority is "discretionary and historically, the Commission has been reluctant to exercise this authority. Nothing raised by the Wahls on reconsideration convinces us that we have abused our discretion in following our traditional practice and opting not to go to court on the Wahls' behalf.").

²⁴ Section 210(h)(2)(B) of PURPA authorizes QFs to petition the Commission to enforce the requirement that a state commission implement, and ensure compliance with, FERC's PURPA regulations. See 16 U.S.C. § 824(h)(2)(B).

The CARE Petition presents a variety of piecemeal statements, none of which support a claim that the CAISO has violated PURPA.²⁵ The CAISO denies each of the assertions and allegations in the CARE Petition. At times, CARE's Petition borders on incoherence. The Petition simply fails to state an actionable claim against the CAISO.

A. The Petition attempts to re-litigate allegations for which the Commission has reached a final decision.

The CARE Petition re-litigates issues previously adjudicated by the Commission.²⁶ Although the Commission is not formally constrained by the limits of the judicial doctrines of collateral estoppel,²⁷ and *res judicata*,²⁸ the Commission has held that the preclusion doctrines may apply in the appropriate circumstances.²⁹ Both the courts and the Commission have previously found that, to the extent a complainant fails to present “new evidence” or demonstrate

²⁵ See, e.g., Petition at P 34 (stating that FERC “has statutory and regulatory power to redress the violations committed by the CAISO, which are, specifically: Rates paid Net Metering Customer-Generators; access to interconnection to the electric grid; and fair and just non-price terms, *i.e.*, a standardized tariff between the California IOUs and the Net Metering Customer-Generators.”).

²⁶ *CARE*, 174 FERC ¶ 61,204, P 40 (2021), *reh'g denied*, 175 FERC ¶ 61,213, P 15 (2021).

²⁷ The doctrine of collateral estoppel is defined as “[t]he binding effect of a judgment as to matters actually litigated and determined in one action on later controversies between the parties involving a different claim from that on which the original judgment was based.” See *Western Farmers Elec. Coop.*, 181 FERC ¶ 61,137, P 96 (2022) (citing Black's Law Dictionary 298 (Bryan A. Garner ed., Thomson West 9th ed. 2009) (1891)).

²⁸ The doctrine of *res judicata* holds that a “judgment on the merits in a prior suit bars a second suit involving identical parties ... based on the same cause of action.” *Id.* (citing *Nat'l Comm. for the New River, Inc. v. FERC*, 433 F.3d 830, 834 (D.C. Cir. 2005) (quoting *Apotex, Inc. v. FDA*, 393 F.3d 210, 217 (D.C. Cir. 2004))).

²⁹ See, e.g., *Am. Elec. Power Corp.*, 122 FERC ¶ 61,083 (2008) (explaining the Commission's precedent on issue and claim preclusion).

“changed circumstances,” preclusion doctrines such as collateral estoppel may be applied in the administrative context.

The Petition presents no new evidence, nor does the Petition demonstrate any new circumstances since the Commission previously issued its final decision in 2021.³⁰ Barring new or changed circumstances requiring a different result, “it is contrary to sound administrative practice and a waste of resources to re-litigate issues in succeeding cases once those issues have been finally determined.”³¹ Such is the case here.

First, CARE previously sought relief for claims it has been “forced” into competitive market pricing and for the CAISO’s alleged refusal “to set avoided costs rates for the regulated utilities in their respective regions of operation, in accordance with PURPA / FERC mandates.”³² The courts and the Commission have previously addressed, and resolved the issues and claims underlying the Petition.³³

Second, CARE has previously sought relief for claims that the CAISO Tariff infringes on the rights of Qualifying Facilities.³⁴ The Commission has

³⁰ CARE, 174 FERC ¶ 61,204, P 40 (2021), *reh’g denied*, 175 FERC ¶ 61,213, P 15 (2021).

³¹ See, e.g., *Alamito Co.*, 41 FERC ¶ 61,312, at 61,829, *order on reh’g*, 43 FERC ¶ 61,274 (1988) (citing *Cent. Kansas Power Co., Inc.*, 5 FERC ¶ 61,291, at 61,621 (1978)).

³² Petition at P 23; compare Petition at P 53 seeking redress for “Rates paid Net Metering Customer-Generators” with *CAIfomians for Renewable Energy v. Cal. Pub. Utils. Comm’n*, 922 F.3d 929 (9th Cir. 2019).

³³ See, e.g., *CAIfomians for Renewable Energy v. Cal. Pub. Utils. Comm’n*, 922 F.3d 929 (9th Cir. 2019).

³⁴ Compare Petition at P 53 seeking redress for “access to interconnection to the electric grid; and fair and just non-price terms, i.e., a standardized tariff between the California

resolved these claims through issuance of a final order.³⁵ The Petition does not even attempt to demonstrate changed circumstances that would justify the Commission revisiting its prior holding.³⁶ To the extent the Petition's references to the 2022-2023 Transmission Plan are intended to support a claim of change circumstances,³⁷ the Commission should dispatch any such illusions. The CAISO prepared its 2022-2023 Transmission Plan in accordance with the FERC-approved tariff and the publication of the 2022-2023 Transmission Plan does not impact in any way a Qualifying Facility's rights under PURPA. As the plan and supporting materials make clear, the CAISO modeled behind-the-meter resources as a reduction to net load in order to be consistent with the load forecasts and load modifier forecasts the CAISO relies on, which the California Energy Commission develops through its Integrated Energy Policy Report process.³⁸ Reflecting these resources as generation would be inconsistent, and in direct conflict, with the load forecasts and load modifier forecasts the California

IOUs and the Net Metering Customer-Generators," *with CARE*, 174 FERC ¶ 61,204, P 40 (2021), *reh'g denied*, 175 FERC ¶ 61,213, P 15 (2021).

³⁵ *CARE*, 174 FERC ¶ 61,204, P 40 (2021), *reh'g denied*, 175 FERC ¶ 61,213, P 15 (2021).

³⁶ For avoidance of doubt, the CAISO is unaware of any recent tariff changes that directly or indirectly impact Qualifying Facilities' participation in the CAISO Markets in a manner that is any different from all other Market Participants.

³⁷ See, e.g., Petition at P 3.

³⁸ The CAISO's Board of Governors approved this year's transmission plan, developed in coordination with the California Public Utilities Commission (CPUC) and the California Energy Commission and reflecting input from load-serving entities and other key stakeholders, on May 18, 2023. A record of the extensive stakeholder process, as well as a final copy of the 2022-2023 Transmission Plan, is available on the CAISO website at <https://stakeholdercenter.caiso.com/RecurringStakeholderProcesses/2022-2023-Transmission-planning-process>.

Energy Commission prepares through its Integrated Energy Policy Report process.³⁹ In any case, neither the Transmission Plan nor the modeling techniques the CAISO utilized in preparing its Transmission Plan infringe on a Qualifying Facility's rights under PURPA, and such modelling techniques do not alter or call into question the Commission's prior holding on this question.⁴⁰

The Commission has noted "[a] vast majority of the complaints filed by CARE have been dismissed for failure to comply with the Commission's rules and standards."⁴¹ For Complainants' similar failure to comply with applicable legal standards here, the Commission should dismiss the Complaint. The CAISO respectfully requests that the Commission dismiss the Petition, with prejudice, so as not to expend further time and resources on previously litigated matters.

B. The CAISO is not a state regulatory authority or nonregulated electric utility.

CARE's Petition requests the Commission take action pursuant to PURPA Section 210(h)(2). Section 210(h)(2) authorizes FERC to enforce the

³⁹ The CAISO's modeling technique is computationally efficient and supported by industry standard software. Specifically, behind-the-meter solar generation is a component of the load model. The CAISO uses the DG field on the PSLF load model, with the total nameplate capacity represented under PDGmax field. The total nameplate capacity is specified by the CEC, and the allocation and location for projected distributed generation is derived from the latest Distribution Resource Plan (DRP) filed with the CPUC as provided by Distribution Planning.

⁴⁰ *CARE*, 174 FERC ¶ 61,204, P 40 (2021) (denying CARE's complaint alleging the CAISO tariff violated PURPA after addressing the claims on their merits), *reh'g denied*, 175 FERC ¶ 61,213, P 15 (2021).

⁴¹ *Californians for Renewable Energy, Inc. v. Pac. Gas & Elec. Co., et al.*, 134 FERC ¶ 61,207, at P 10 n.17.

requirements of Section 210(f) “against any State regulatory authority or nonregulated electric utility.”⁴² The CAISO is not a “State regulatory authority” under PURPA.⁴³ Rather, the CAISO is a not-for-profit public benefit corporation authorized by this Commission to perform the function of an Independent System Operator. Furthermore, the CAISO is not a “nonregulated electric utility” under PURPA.⁴⁴ Rather, the CAISO clears sales of electric energy by its market participants and does not itself sell electric energy.⁴⁵ The Commission has affirmed that Section 210(h)(2) only authorizes enforcement action against a state regulatory authority or a non-regulated electric utility, but *not* against a “utility” such as the CAISO.⁴⁶ The CARE Petition offers nothing to question the Commission’s prior holdings explaining how and why the CAISO is “not subject to Commission jurisdiction under PURPA section 210(h).”⁴⁷

⁴² 16 U.S.C. § 824(h)(2).

⁴³ See 16 U.S.C. § 2602(17) (defining a State regulatory authority as “any State agency which has ratemaking authority with respect to the sale of electric energy by any electric utility (other than such State agency), and in the case of an electric utility with respect to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority.”).

⁴⁴ See 16 U.S.C. § 2602(4), (9) (defining nonregulated electric utility in relation to electric utility, itself defined as one that “sells electric energy.”).

⁴⁵ See, e.g., CAISO Tariff § 4.5.3.2.2 (providing that “the CAISO is not, and shall not be listed as, the “Purchasing Selling Entity” for purposes of E-Tags. Title to Energy shall pass directly from the entity that holds title when the Energy enters the CAISO Controlled Grid to the entity that removes the Energy from the CAISO Controlled Grid, in each case in accordance with the terms of this CAISO Tariff.”).

⁴⁶ CARE, 174 FERC ¶ 61,204, P 40 (2021), *reh’g denied*, 175 FERC ¶ 61,213, P 15 (2021); *accord Letter Order*, 177 FERC ¶ 61,113 (2021) (explaining that enforcement action could not be taken against LUMA energy corporation).

⁴⁷ CARE, 174 FERC ¶ 61,204, P 40 (2021), *reh’g denied*, 175 FERC ¶ 61,213, P 15 (2021).

C. The CAISO has not violated PURPA.

Even if the statute provided for enforcement against the CAISO, which it does not, FERC should follow its own practice and decline to exercise its discretionary enforcement authority under PURPA Section 210(h)(2).⁴⁸ The CAISO's markets provide all generators, including Qualifying Facilities, non-discriminatory open access to the transmission system and the ability to sell their power at known, transparent prices. The CAISO Tariff provides Qualifying Facilities the opportunity to engage in PURPA transactions while also participating in the CAISO's markets in various participation models, including but not limited to, the DERA participation model.⁴⁹ Consumers—including those with rooftop solar and participating in NEM programs—may also participate in the CAISO's wholesale markets through the CAISO's demand response models. Thus, the CAISO's markets establish the very type of structure, and provide fundamentally the same opportunities to Qualifying Facilities as contemplated by Congress when it implemented PURPA.

In the Petition, CARE alleges that the CAISO, "acting in concert" with the California Public Utilities Commission (CPUC) "and/or" the Investor Owned Utilities (IOUs), has improperly applied the Rule 21 interconnection standards to Petitioner's Qualifying Facility.⁵⁰ CARE states that it was involved in the

⁴⁸ See, e.g., *CARE*, 175 FERC ¶ 61,213, P 15 (2021); *FLS Energy, Inc.*, 157 FERC ¶ 61,211, PP18-19 (2016); *Roger & Emma Wahl*, 116 FERC ¶ 61,134 (2006) (explaining that the Commission's enforcement authority is "discretionary and historically, the Commission has been reluctant to exercise this authority.").

⁴⁹ See *Cal. Indep. Sys. Operator Corp.*, 179 FERC ¶ 61,197, *order on reh'g*, 181 FERC ¶ 61,035 (2022); *Cal. Indep. Sys. Operator Corp.*, 183 FERC ¶ 61,119 (2023).

⁵⁰ Petition at PP 36-37.

stakeholder process for the CAISO's 2022-2023 Transmission Plan and explains how, through that process, CARE made efforts to "obtain tariffs with CAISO in accordance with PURPA and its implementing plans" and was unable to do so due to "the refusal of the CAISO to enforce PURPA and its implementing regulations."⁵¹ The Petition states that CARE has been "frustrated in [its] efforts to enter the energy market and prevented from doing so in a manner and in accordance with the public policies set forth in PURPA and its implementing regulations."⁵² CARE alleges that this result is due to the "the failure and refusal of the CAISO to comply with and/or enforce compliance with PURPA and its implementing regulations."⁵³ CARE also makes various allegations of collusion and conspiracy.⁵⁴ To the extent any of CARE's allegations make sense, the CAISO denies each allegation in the CARE Petition, in full.

First, the CAISO does not administer or even participate in CPUC Rule 21 tariffs, which are for retail interconnections like rooftop solar participating in NEM. Second, nothing in the CAISO Tariff requires a Qualifying Facility to waive, forgo, or otherwise involuntarily forfeit its statutory rights under PURPA or the Commission's implementing regulations.⁵⁵ The CAISO's current practices allow

⁵¹ *Id.* at P 50.

⁵² *Id.* at P 51.

⁵³ *Id.*

⁵⁴ *See, e.g.,* Petition at PP 3, 42-43.

⁵⁵ The Commission has previously held that an ISO/RTO may not condition a QF's registration as a market participant on the QF's relinquishing the QF's PURPA rights, the CAISO tariff is consistent with this requirement. *See, e.g., W. Sys. Power Pool*, 66 FERC ¶¶ 61,201, at 61,459 (1994); *see also Sw. Power Pool, Inc.*, 126 FERC ¶¶ 61,314, at PP 38-39 (2008)

Qualifying Facilities, whether acting as a Market Participant or through a DERA, to sell both as-available energy and energy pursuant to long-term contracts, consistent with PURPA. An entity must become a Market Participant to participate directly in CAISO's markets and Tariff activities.⁵⁶ A Qualifying Facility can then participate in the CAISO's markets exactly as any other generator participating in the CAISO's markets.⁵⁷ Recognizing the barriers faced by distributed energy resources (DERs), including behind-the-meter resources, the CAISO has also implemented the DERA participation model that allows DERs that are also Qualifying Facilities to register their resource as part of an aggregation through a registered Distributed Energy Resource Provider (DERP).⁵⁸ Upon registration within a DERA, a Qualifying Facility can participate in the CAISO's markets on a just, reasonable, and nondiscriminatory basis. The CAISO Tariff is not inconsistent with PURPA nor does the CAISO Tariff infringe on CARE's rights under PURPA. To the extent the Petition alleges otherwise, the CAISO denies all such allegations.

(explaining that "nothing in SPP's tariff filing can supersede the rights of QFs under PURPA to make sales to host utilities.").

⁵⁶ CAISO Tariff, Section 12 (setting forth the minimum participation requirements for Market Participants).

⁵⁷ See, e.g., *CaWind Resources, Inc.*, 146 FERC ¶ 61,121 (2014) (evaluating section 25 of the CAISO tariff and finding that the process by which the CAISO converts legacy QF interconnections is just, reasonable, and not unduly discriminatory).

⁵⁸ See, e.g., CAISO Tariff § 4.17 (setting forth the DER participation model).

IV. Service and Communications

All service of pleadings and documents and all communications regarding this proceeding should be addressed to the following:

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V. Conclusion

For the foregoing reasons, the Commission should dismiss the Petition, with prejudice.

Respectfully submitted,

/s/ Heather Curlee

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September 6, 2023

CERTIFICATE OF SERVICE

I certify that I have served the foregoing document upon the parties listed on the official service list in the captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California, this 6th day of September, 2023.

ls/ Martha Sedgley
Martha Sedgley