

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

Californians for Green)	
Nuclear Power, Inc.)	
)	
v.)	Docket No. EL21-13-000
)	
North American Electric)	
Reliability Corporation,)	
Western Electricity)	
Coordinating Council,)	
California Independent)	
System Operator Corporation,)	
California Public Utilities)	
Commission,)	
California State Water)	
Resources Control Board, and)	
California State Lands)	
Commission)	

**SUPPLEMENTAL ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION**

The California Independent System Operator Corporation (CAISO) submits this supplemental answer (Supplemental Answer) to the amended complaint filed by Californians for Green Nuclear Power, Inc. (CGNP) on November 25, 2020 (Amended Complaint).¹ The Supplemental Answer adds to and incorporates by reference the answer and motion to dismiss the CAISO filed in this proceeding on November 16, 2020 (November 16 Answer), in response to the original version of CGNP’s complaint in this proceeding (Original Complaint)

¹ The CAISO submits its supplemental answer pursuant to Rules 206(f), 213, and 215(b) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.206(f), 385.213, 385.215(b) and the Notice of Amended Complaint issued in this proceeding on November 30, 2020.

regarding the planned retirement of the nuclear Diablo Canyon Power Plant (DCPP) in California.²

For the reasons explained below and in the November 16 Answer, the Commission should dismiss or deny the Amended Complaint.³

I. Executive Summary

Although the Amended Complaint raises a few new arguments,⁴ it continues to have fundamental defects. CGNP again fails to meet its burden of proof to show the CAISO violated Section 206 of the Federal Power Act (FPA). Instead, as discussed below, CGNP once more makes only bald allegations and provides no evidence, pertinent information, or analysis to support its allegations.⁵ The Amended Complaint, like its predecessor, also “consists of a string of vague and unsupported allegations” that respondents have violated the FPA and other statutes have been violated and “fails to clearly and with specificity articulate the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements.”⁶

² Pacific Gas and Electric Company (PG&E) holds the Nuclear Regulatory Commission (NRC) licenses for the two units at DCPP, one of which is scheduled to retire in 2024 and the other in 2025. As explained in the CAISO’s November 16 Answer, the CAISO does not hold any NRC licenses and has no authority to approve or deny any request for a nuclear power plant license extension. November 16 Answer at 7.

³ The CAISO is submitting the Supplemental Answer separately from the other respondents named in the complaint – the North American Electric Reliability Corporation (NERC), Western Electricity Coordinating Council (WECC), California Public Utilities Commission (CPUC), California State Water Resources Control Board, and California State Lands Commission. The CAISO anticipates they will submit their own supplemental answer(s).

⁴ Compare Amended Complaint at 2-3, 5-13 with Original Complaint at 2-4, 5-15.

⁵ See November 16 Answer at 5-7.

⁶ See *id.* at 12-13 (quoting *CALifornians for Renewable Energy, Inc. v. Pac. Gas & Elec. Co.*, 142 FERC ¶ 61,143, at P 18 (2013)).

Although CGNP alleges violations of reliability standards, the Amended Complaint fails to show the CAISO violated any NERC or WECC reliability standard. For the first time, CGNP cites a specific reliability standard, BAL-002-WECC-2a, but provides no evidence of a violation of the standard or even an understanding of the real-time operational requirements of the standard. Indeed, it is impossible for the CAISO to have violated BAL-002-WECC-2a as a result of any actions associated with the closure of the two DCPD units in 2024 and 2025.

The Amended Complaint adds new claims about what it describes as the “CAISO’s Loading Order,” but these claims are based on fundamental errors of fact and law. The CAISO has no loading order. Various California state agencies have adopted procurement policies reflected in a state-established “loading order,” but the CAISO is not responsible for implementing this loading order. CGNP also ignores overwhelming judicial and Commission precedent finding such state procurement policies are outside the scope of the FPA.

CGNP fails to show Commission-jurisdictional rates “charged due to the shutdown of Diablo” are unjust and unreasonable under the FPA. Their arguments as to the justness and reasonableness of rates resulting from the planned retirement of DCPD are entirely speculative and fall far short of carrying its heavy burden of proof under FPA Section 206.

CGNP also continues to make vague claims the CAISO and other respondents have violated statutes and regulations not applicable to the CAISO. For example, CGNP’s arguments regarding natural gas supply are not applicable to the CAISO, which has no responsibility for maintaining such supply.

For these reasons, and the reasons incorporated by reference from the November 16 Answer, the Commission should deny the Amended Complaint, if the Commission does not dismiss it.⁷

II. Answer

A. The Amended Complaint Fails to Show the CAISO Violated Any Reliability Standard

CGNP alleges retirement of DCPD violates the reliability standards that apply to bulk power, specifically NERC/WECC reliability standard BAL-002-WECC-2a, because the retirement will purportedly result in an unreliable grid. CGNP requests the Commission take remedial action under FPA Section 215.⁸

The November 16 Answer shows the CAISO complies with all applicable planning standards for its balancing authority area.⁹ The Amended Complaint fails to show the CAISO has violated any reliability standard, including BAL-002-WECC-2a. The purpose of that reliability standard, entitled “Contingency Reserve,” is to “specify the quantity and types of Contingency Reserve required to ensure reliability under normal and abnormal conditions.”¹⁰ The reliability standard sets forth four specific requirements to be met as part of a balancing authority’s real-time operations.¹¹ Each of these requirements must be satisfied in the real-time operations time horizon. Further, compliance with BAL-002-

⁷ See November 16 Answer at 13. The Amended Complaint states that it amends or supersedes the Original Complaint. Amended Complaint at 1. Insofar as the Commission still considers the Original Complaint, it should be dismissed or denied for all the reasons set forth in the November 16 Answer.

⁸ Amended Complaint at 2-3, 5-8.

⁹ November 16 Answer at 7-11.

¹⁰ [BAL-002-WECC-2a](#), Section A.3.

¹¹ *Id.*, Section B (listings for R1 through R4) and Table of Compliance Elements (pp. 7-9).

WECC-2a is assessed based on past performance. CGNP provides no evidence to demonstrate the CAISO has violated BAL-002-WECC-2a, any of its four requirements, or any other reliability standard. CGNP does not acknowledge the real-time nature of the requirements in BAL-002-WECC-2a. Indeed, CGNP's reliability standard allegations are entirely about events that will not occur for years in the future.¹² Because DCPD will not close for another four-to-five years, it is impossible for the CAISO to have violated BAL-002-WECC-2a, by its express terms, based on actions associated with the future closure of DCPD. CGNP offers no evidence to demonstrate the CAISO has violated BAL-002-WECC-2a and cannot sustain its complaint by alleging a potential violation of a reliability standard in the future. In short, CGNP has identified no basis for the Commission to take action in this proceeding pursuant to FPA Section 215.

The CAISO is working with, and will continue to work with, the CPUC and other local regulatory authorities to ensure measures are in place for load serving entities to procure sufficient resources and demand response to address needs after DCPD retires and facilitate compliance with these standards at that time. The requirements of BAL-002-WECC-2a can be satisfied by different types of resources. In response to a question posed by another balancing authority as to whether non-traditional resources can meet one of the requirements of BAL-002-WECC-2a, NERC stated such resources may qualify as contingency reserves (CAISO "so long as they meet the [applicable] technical and performance

¹² "The retirement of Diablo Canyon violates BAL-002-WECC-2a, because retiring Diablo will result in an unreliable grid." Amended Complaint a 5. .

requirements.”¹³ NERC also quoted Commission guidance that the reliability standard “does not preclude any specific technology.”¹⁴ Thus, NERC and the Commission have made clear BAL-002-WECC-2a is resource-neutral, allowing future compliance based on any resources capable of providing contingency reserves satisfying the requirements of the reliability standard.

B. CGNP’s Arguments Regarding the State-Established Loading Order Are Factually Inaccurate and Outside the Scope of the FPA

The Amended Complaint claims what it calls “CAISO’s Loading Order,” as applied to “authorize the premature scuttling of [DCPP], is unduly preferential and discriminatory.”¹⁵ CGNP states in 2003 the CPUC, California Energy Commission, and California Power Authority jointly created an Energy Action Plan (EAP) envisioning a “loading order” that would “guide decisions made by the agencies jointly and singly” as to which types of resources should be prioritized for procurement purposes, designating “renewable energy resources and distributed generation” as preferred.¹⁶

The Commission should reject CGNP’s loading order arguments. First, it is completely inaccurate to refer to the loading order as being the “CAISO’s.” The loading order is solely a product of the EAP created by the CPUC, California Energy Commission, and California Power Authority and used in their regulation

¹³ *Id.*, Section E.

¹⁴ *Id.* (quoting *Regional Reliability Standard BAL-002-WECC-2 – Contingency Reserve*, Order No. 789, 145 FERC ¶ 61,141, at P 48 (2013)).

¹⁵ Amended Complaint at 3, 12.

¹⁶ *Id.*, at 12.

of California load serving entities.¹⁷ The CAISO did not create the loading order and is not responsible for implementing it.

Further, the state procurement policies reflected in the loading order established by the EAP are not within the scope of the FPA. CGNP ignores overwhelming judicial and Commission precedent that states, rather than the Commission, have exclusive jurisdiction over resource planning and determining the mix of resources their load-serving entities procure. The courts have recognized the broad powers of states to direct the resource procurement decisions of utilities under their jurisdiction¹⁸ and to require the retirement of existing generation.¹⁹ Similarly, the Commission has recognized state authority to determine the types of resources their load-serving entities procure.²⁰ Thus, there is no merit in CGNP's claim the FPA provides a basis to "reject" the loading

¹⁷ See [original version of EAP](#); [revised version of EAP](#) (established in 2005). CGNP inaccurately alleges that the EAP ordered the CAISO to ensure that demand was met first by certain resources. Amended Complaint at 12. The EAP does nothing of the sort, instead stating that "the agencies would like to see these needs met first by renewable energy resources and distributed generation."

¹⁸ See, e.g., *Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288, 1292 (2016) (citing *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 205 (1983) (finding that the need for new power facilities and their economic feasibility are areas characteristically governed by the states) (*Talen*); *N.J. Board of Pub. Utils. v. FERC*, 744 F.3d 74, 97-98 (3rd Cir. 2014) (finding that states can develop whatever capacity resources they wish and use such resources to the extent they wish so long as the states' choices do not adversely affect wholesale capacity rates in a capacity market). See also the additional supporting citations provided at pages 86-87 of the answer the CAISO filed on August 24, 2018 in Docket No. EL18-177-000 (CAISO La Paloma Answer), in response to a prior FPA 206 complaint filed against the CAISO involving, among other things, CPUC procurement policies.

¹⁹ See *Conn. Dept. of Pub. Util. Control v FERC*, 569 F.3d 477,481 (D.C. Cir.), *reh'g, en banc, denied* (2009).

²⁰ See, e.g., *Cal. Pub. Utils. Comm'n*, 134 FERC ¶ 61,044, at P 30 (2011) (finding that states have the authority to dictate the generation resources from which utilities may procure electric energy); *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022, at P 142 (2011) (finding that a state may act within its borders to ensure resource adequacy or to favor particular types of new generation). See also the additional supporting citations provided at pages 87-88 of the CAISO La Paloma Answer.

order established pursuant to the EAP as unduly discriminatory and preferential. In this regard, in denying a prior 206 complaint against the CAISO, the Commission found that “[the complainant’s] undue discrimination argument and its claim that [a CPUC-established process] gives undue preference to renewable resources is not legally cognizable under FPA section 206.” For like reasons, the Commission should make a similar finding in this proceeding.

Although the Commission is responsible for maintaining well-functioning wholesale electricity markets, the states have jurisdiction over resource portfolios, renewable portfolio standards, and integrated resource planning. As the United States Supreme Court clarified in *Talen*, states programs interfere with the Commission’s authority only when they disregard an interstate wholesale rate required by the Commission.²¹ Nothing precludes states from encouraging production of new or clean energy through measures “untethered to a generator’s wholesale market participation.”

CGNP provides no support for its argument the loading order under the EAP is within the scope of the FPA, nor does CGNP provide any evidence to show that the loading order raises any concerns within the Commission’s jurisdiction. Accordingly, there is no basis for the Commission to accept any of CGNP’s arguments or requests for relief related to its claims on the loading order.²²

²¹ *Talen*, 136 S. Ct. at 1299.

²² See Amended Complaint at 12.

C. CGNP Fails to Show Retiring DCPD Would Result in Unjust and Unreasonable Rates

In the Amended Complaint, CGNP argues there are two reasons the “federal rates” charged due to the retirement of DCPD are unjust and unreasonable under FPA Sections 205 and 206.²³ Neither reason has merit.

First, the only specific rates cited in the Amended Complaint are not the rates of the CAISO or any other respondent. CGNP suggests PG&E, in Docket No. ER19-2568, has requested cost recovery for the infrastructure needed to transmit power from DCPD. CGNP claims it is unjust and unreasonable to allow cost recovery in the federal portion of PG&E rates for DCPD’s retirement. Not only does CGNP fail to provide any explanation as to *how* these rates have become unjust and unreasonable, but they also fail to recognize that PG&E is not even a respondent to the Original Complaint or the Amended Complaint.

Without citing any other specific rates, CGNP then summarily claims that “the totality of FERC rates paid by California ratepayers will be unjust and unreasonable” if DCPD is allowed to retire.²⁴ This argument is sheer speculation and fails to explain how the retirement of DCPD violates applicable statutory standards or regulatory requirements.

D. The CAISO Has No Responsibility for Maintaining Natural Gas Supply

CGNP states it is filing the Amended Complaint pursuant to the same statutory and regulatory provisions listed in the Original Complaint – namely, the

²³ Amended Complaint at 3, 12.

²⁴ *Id.*, at 12.

FPA, Rule 206 of the Commission's Rules of Practice and Procedure, the Energy Policy Act of 1935, the Natural Gas Act of 1938, and the Federal Pipeline Safety Regulations.²⁵ CGNP argues the retirement of DCPD will affect the reliability of jurisdictional natural gas assets and requests issuance of a Commission order to protect the supply of natural gas in interstate commerce.²⁶ However, these portions of the Amended Complaint are inapplicable to the CAISO. As explained in the November 16 Answer, the CAISO has no responsibilities for natural gas storage, transportation, or distribution. Thus, the CAISO is not subject to provisions of the Natural Gas Act of 1938 or the Federal Pipeline Safety Regulations.²⁷

IV. Service and Communications

All service of pleadings and documents and all communications regarding this proceeding should be addressed to the following:²⁸

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²⁵ Compare Amended Complaint at 1 with Original Complaint at 1.

²⁶ Amended Complaint at 3, 8-12.

²⁷ November 16 Answer at 4.

²⁸ These are the same contact persons listed in the November 16 Answer.

V. Conclusion

For the foregoing reasons and the reasons set forth in the November 16 Answer, the Commission should dismiss the Amended Complaint submitted by CGNP in this proceeding or deny it in its entirety.

Respectfully submitted,

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Dated: December 15, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the captioned proceeding, 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 15th day of December, 2020.

/s/ Martha Sedgley
Martha Sedgley