

142 FERC ¶ 61,161
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

CALifornians for Renewable Energy, Inc.

Docket No. EL06-89-001

v.

California Independent System Operator Corporation

ORDER DENYING REHEARING

(Issued February 28, 2013)

1. On October 19, 2006, the Commission issued an order denying a complaint filed by CALifornians for Renewable Energy, Inc. (CARE) against the California Independent System Operator Corporation (CAISO).¹ The Order Rejecting Complaint rejected CARE's allegation that CAISO violated any Commission orders, rules or regulations by submitting testimony in support of the City and County of San Francisco's (San Francisco) power plant siting application before the California Energy Resource Conservation and Development Commission (CEC). CARE filed a request for rehearing. For the reasons discussed below, the request for rehearing will be denied.

I. Background

2. In its original complaint, CARE argued that San Francisco's proposed power plant, the San Francisco Electric Reliability Project (SFERP),² was sited without considering its impact on the nearby neighborhoods that have a high concentration of minority residents. CARE contended that CAISO violated California law by not

¹ *CALifornians for Renewable Energy, Inc. v. Cal. Indep. Sys. Operator Corp.*, 117 FERC ¶ 61,072 (2006) (Order Rejecting Complaint).

² CARE Complaint at 3; San Francisco Protest at 1.

consulting and coordinating with appropriate state and local agencies to ensure that CAISO operates in furtherance of state law regarding consumer and environmental protection.³ CARE alleged that CAISO's testimony in the CEC proceeding demonstrates that CAISO reviewed and approved San Francisco's siting application without first consulting and coordinating with the San Francisco Bay Regional Water Quality Control Board, as CARE claims is required by state law. CARE argued that CAISO's determination in regard to interconnection of the proposed facility constitutes CAISO's support for the choice of the location of the power plant in question. Accordingly, CARE requested that the Commission require CAISO to rescind its approval of San Francisco's siting application.

3. In the Order Rejecting Complaint, the Commission found, that, since section 201 of the Federal Power Act⁴ expressly exempts "facilities used for the generation of electric energy" from Commission jurisdiction unless "specifically provided" for, the Commission cannot claim jurisdiction over San Francisco's generation project, and, in any event, the construction and siting of generation are not within the scope of the Commission's authority.⁵ Additionally, the Commission noted that the issues of the power plant location and possible environmental and social impacts were before the CEC and not the Commission, and also that, in granting San Francisco's interconnection request, CAISO did not violate any Commission orders, rules, or regulations.⁶ Finally, the Commission informed CARE that alleged violations of state law should be addressed in state courts.⁷

II. Discussion

A. Request for Rehearing

4. CARE asserts five exceptions to the Order Rejecting Complaint. First, CARE argues that the Commission should specify the appropriate venue for review of a CAISO

³ CARE Complaint at 6 (citing Cal. Pub. Util. Code section 345.5(c)(1)).

⁴ 16 U.S.C § 824b(b)(1) (2006).

⁵ Order Rejecting Complaint, 117 FERC ¶ 61,072 at PP 9-11 (citing *Montana Megawatts I, LLC*, 107 FERC ¶ 61,140, at P 6 (2004); *Cleco Power LLC*, 101 FERC ¶ 61,008, at P 117, *order on reh'g*, 103 FERC ¶ 61,272 (2003); *American Municipal Power-Ohio, Inc.*, 58 FERC ¶ 61,182, at 61,566 (1992)).

⁶ *Id.* P 10.

⁷ *Id.* P 11.

action pursuant to a Commission-approved tariff because the CEC has already declared it has no authority over CAISO. Second, CARE argues that the Commission should order CAISO to rescind its statements concerning the siting of San Francisco's power plant because California law requires CAISO to coordinate with state environmental and public health authorities. CARE contends that CAISO did not consult or coordinate with the San Francisco Bay Regional Water Quality Control Board. Third, CARE argues that the Commission found CAISO's procedures for determining Local Capacity Area Resource Requirements ambiguous and in need of revision,⁸ and that its complaint should be reconsidered in light of those revisions.

5. Fourth, CARE protests that San Francisco relied on representations from a California state agency, the California Consumer Power and Conservation Financing Authority, which ceased to exist in 2004. Fifth, and finally, CARE protests that the CEC refused to allow testimony from a California Public Utilities Commission (CPUC) proceeding to be entered into evidence.⁹

B. Commission Determination

6. We deny CARE's request for rehearing. None of the claims enumerated in CARE's rehearing request constitutes grounds for granting rehearing.¹⁰ In fact, for most of the items listed by CARE, it does not provide a description of how the claim involves an error the Commission made in the Order Rejecting Complaint.

7. CARE's first claim - that the Commission should specify the appropriate venue for review of CAISO's action - is not a specification of error made by the Order Rejecting Complaint. As the Commission noted in the Order Rejecting Complaint, since CARE's concerns were grounded on alleged violations of state law, such allegations

⁸ CARE Rehearing at 4 (citing *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 1119 (2006)).

⁹ *Id.* (citing to a CPUC proceeding referred to as Application A- 02-09-043).

¹⁰ 18 C.F.R. § 385.713(c)(1) (2012) (requiring parties seeking rehearing to concisely state the alleged error of a final order); *see also Union Electric Co. dba AmerenUE*, 120 FERC ¶ 61,015, at P 5 (2007) (“[P]arties filing requests for rehearing are obligated to set forth in those documents the grounds on which they are based A request for rehearing ... must independently set forth grounds of alleged error in the order at hand”).

would appear to be appropriately addressed in state courts.¹¹ And it is not for the Commission to decide which particular court is the appropriate venue; that is beyond our authority.

8. CARE's second claim – that the Commission should direct CAISO to retract its statements regarding the siting of San Francisco's power plant because CAISO's tariff does not preempt California law that requires CAISO to coordinate with state environmental and public health authorities – is also a question of state law. And, as the Commission explained in the Order Rejecting Complaint, such issues are better left to state courts.¹² We are not a forum to decide whether, in this context, state law has been followed or breached, or to remedy any breach that might be found.

9. CARE's third claim – that the Commission has directed CAISO to revise its procedures for determining Local Capacity Area Resource Requirements -- is not a specification of error by the Order Rejecting Complaint. CARE did not raise this issue in its complaint, so the Commission appropriately did not act on it, and so there was no error. Further, on rehearing, CARE still does not argue that CAISO operated inconsistently with the procedures regarding Local Capacity Area Resource Requirements that were in effect at the time.

10. CARE's fourth claim – that San Francisco's pleadings both here and before the CEC “include a representat[ion] of California state agency that ceased to operate in 2004, the California Consumer Power and Conservation Financing Authority”¹³ - is unclear as to its relevance, but since the Commission's determination in the Order Rejecting Complaint did not rely on representations made by San Francisco, this claim is

¹¹ Order Rejecting Complaint, 117 FERC ¶ 61,072 at P 11.

¹² We note that CARE attempted to make similar claims with the CEC that were rejected, and the CEC made a clear statement on their interpretation of state law regarding power plants: “[The CEC is] the agency charged with performing the overall environmental review. As such, we have incorporated Conditions of Certification which specify the manner in which input from the Regional Board will be coordinated with the analysis of mitigation for such potential impact are the Regional Board may identify. This is not within the CAISO's responsibilities.” *San Francisco Electric Reliability Project*, Docket No. 04-AFC-1, at 93-94 (Californian Energy Commission October 19, 2006).

¹³ Request for Rehearing at 4.

not a sufficient basis to grant rehearing.¹⁴ Further, we note that a review of San Francisco's filing with us does not include any mention of the California Consumer Power and Conservation Financing Authority.

11. CARE's fifth claim – the CEC's refusal to admit certain testimony into evidence at the CEC proceeding – is a state issue involving the evidentiary procedures of the CEC (over which we have no authority, we note) and has nothing to do with the grounds on which the Commission made its determination in the Order Rejecting Complaint.

12. Because CARE's original complaint did not raise matters within the Commission's authority, and CARE did not show that CAISO violated any Commission orders, rules or regulations, -- and on rehearing still does not demonstrate that the matters at issue are within our authority or show any violation of a Commission order, rule or regulation -- the Commission finds no error in its Order Rejecting Complaint. Therefore, we deny CARE's request for rehearing.

The Commission orders:

CARE's rehearing request is hereby denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁴ Order Rejecting Complaint, 117 FERC ¶ 61,072 at PP 10-11.