

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

<b>CAlifornians for Renewable</b>	)	
<b>Energy (CARE) and</b>	)	
<b>Michael E. Boyd</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. EL20-69-000</b>
	)	
<b>California Independent System</b>	)	
<b>Operator Corporation,</b>	)	
<b>California Public Utilities</b>	)	
<b>Commission,</b>	)	
<b>Pacific Gas and Electric Company,</b>	)	
<b>San Diego Gas &amp; Electric</b>	)	
<b>Company, and</b>	)	
<b>Southern California Edison</b>	)	
<b>Company</b>	)	

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

The California Independent System Operator Corporation (CAISO) submits this answer to the complaint filed by CAlifornians for Renewable Energy (CARE) and Michael E. Boyd (collectively, the Complainants) on August 31, 2020, as corrected on September 3, 2020 (Complaint).<sup>1</sup> For the reasons explained below, the Commission should dismiss the Complaint as legally insufficient and unsupported.<sup>2</sup>

---

<sup>1</sup> The CAISO submits this answer pursuant to Rules 206(f) and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.206(f), 385.213, and the Notice of Complaint issued in this proceeding on September 1, 2020. On September 15, 2020, the Commission granted an extension of time, until September 28, 2020, to submit responses to the Complaint.

<sup>2</sup> The CAISO is submitting its answer separately from the other respondents named in the complaint – the California Public Utilities Commission (CPUC), Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE). The CAISO anticipates they will submit their own answer(s).

## **I. Executive Summary**

Complainants reference a few hours of power interruptions in parts of California and wholesale market price increases that occurred a few days in August as support for their claim the markets for energy and ancillary services administered by the CAISO are “not workable,” and that the prices in those markets are unjust, unreasonable, or unduly discriminatory or preferential in violation of section 206 of the Federal Power Act (FPA).<sup>3</sup> Complainants also argue respondents have not met certain obligations under Commission regulations that implement the Public Utilities Regulatory Policies Act (PURPA).<sup>4</sup> Complainants provide no analysis correlating the “facts” alleged to any legal standard or violation of the law, and fail to identify any reason why the CAISO tariff is contrary to statutory standards or regulatory requirements.

Complainants do not meet their legal burden of demonstrating the CAISO markets have become unjust and unreasonable or that the prices resulting from those markets are contrary to law. Under section 206, a complainant must make a convincing showing that existing rates, terms, and conditions are unjust, unreasonable, or unduly discriminatory or preferential. Without such a showing, the Commission has no basis to change the CAISO tariff or to order a new rate. Such a showing cannot be made through bald allegations – a complainant must offer sufficient evidence of its claims and analysis that supports the requested relief.

---

<sup>3</sup> 16 U.S.C. § 824e.

<sup>4</sup> Complaint at PP 1, 4-8, 40-43.

The Complaint falls far short of this standard. The brief, conclusory statements underlying the Complaint do not show how the Commission-approved market rules in the CAISO tariff are no longer just, reasonable, or have become unduly discriminatory or preferential. Thus, there is no basis for reducing the \$1,000/MWh energy bid cap prospectively.

Even if Complainants were able to show the existing price cap is unjust and unreasonable, which they have not, Complainants fail to demonstrate their request to dramatically change market dynamics by imposing a \$250/MWh limit on bids into CAISO energy markets is just and reasonable.<sup>5</sup> Complainants fail to show a \$250/MWh cap is consistent with market pricing principles, is sufficient to allow resources to recover their costs, and would not artificially suppress prices. Complainants' request is also inconsistent with the Commission's current policies on offer caps in markets operated by Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) as reflected in Order No. 831,<sup>6</sup> as well as the current \$1,000/MWh west-wide soft energy price cap.<sup>7</sup> Further, such a limit on bids would put the CAISO at a substantial disadvantage in maintaining service to customers during periods of supply deficiencies. The lower bid cap cannot be justified on the basis the Commission adopted comparable measures in the 2000-2001 Western Energy Crisis (Energy Crisis) because circumstances are far different today than they were twenty years ago.

---

<sup>5</sup> The current ancillary services bid cap is \$250/MWh. CAISO tariff section 39.6.1.3.

<sup>6</sup> *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 831, 157 FERC ¶ 61,115 (2016), *order on reh'g and clarification*, Order No. 831-A, 161 FERC ¶ 61,156 (2017).

<sup>7</sup> *Western Electricity Coordinating Council*, 133 FERC ¶ 61.026 (2010).

Complainants fail to show circumstances are identical. Among other things, the CAISO market design has evolved significantly over the past two decades. The Complaint also states no legal basis for retroactively adjusting market prices prior to the date the Complaint was filed. The Complaint does not specify how the CAISO (or any other entity) violated or misapplied the requirements of the tariff, thus increasing market clearing prices. Indeed, the Complaint does not even mention the CAISO tariff or cite to any of its provisions, let alone indicate which provisions were violated and how.

Complainants' claim the CAISO markets discriminate against rooftop-solar or other forms of distributed generation also cannot withstand scrutiny. The CAISO tariff permits distributed energy resources to participate in the wholesale markets on a non-discriminatory basis in accordance with rules approved by the Commission.

It is also inappropriate for Complainants to group the CAISO together with the "California Parties" as that term has been used in Commission proceedings resulting from the Energy Crisis. The "California Parties," who are the other respondents to the Complaint, have substantially different roles and responsibilities than the CAISO. CARE's attempt to lump all of the respondents together ignores that each of CARE's allegations do not apply to all respondents. For example, relief sought in the Complaint pertains to alleged PURPA violations that do not pertain to the CAISO and are more properly addressed by the other respondents.

CARE has a long history of submitting complaints against the CAISO and the other respondents (in various combinations), and of the Commission dismissing or rejecting those complaints.<sup>8</sup> The Commission has noted that “[a] vast majority of the complaints filed by CARE have been dismissed for failure to comply with the Commission’s rules and standards.”<sup>9</sup> For Complainants’ similar failure to comply with applicable legal standards here, the Commission should dismiss the Complaint.

## II. Answer

### A. Complainants Fail to Show the CAISO Markets or the Prices Resulting from Those Markets Are Unjust and Unreasonable

Under FPA section 206, “the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon . . . the complainant.”<sup>10</sup> The Courts and the Commission have long recognized that a complainant “carries the heavy burden of making a convincing showing that [a

---

<sup>8</sup> 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).

<sup>9</sup> *Californians for Renewable Energy, Inc. v. Pac. Gas & Elec. Co., et al.*, 134 FERC ¶ 61,207, at P 10 n.17.

<sup>10</sup> *CXA La Paloma, LLC v. Cal. Indep. Sys. Operator Corp.*, 169 FERC ¶ 61,045, at P 36 (2019) (quoting section (b) of FPA section 206) (“*La Paloma*”). See also, e.g., *FirstEnergy Serv. Co. v. FERC*, 758 F.3d 346, 353 (D.C. Cir. 2014); *Md. Pub. Serv. Comm’n v. FERC*, 632 F.3d 1283, 1285 n.1 (D.C. Cir. 2011).

rate order] is invalid because it is unjust and unreasonable in its consequences.”<sup>11</sup> Further, “[w]ithout a showing that the existing rate is unlawful,” the Commission “has no authority to impose a new rate.”<sup>12</sup> Accordingly, Complainants have the duty to demonstrate that: (1) existing CAISO tariff provisions governing its energy and ancillary services markets have become unjust, unreasonable, or unduly discriminatory, or preferential; or (2) the CAISO has violated its existing tariff provisions regarding its markets.<sup>13</sup> “Rather than bald allegations, [a complainant] must make an adequate proffer of evidence including pertinent information and analysis to support its claims.”<sup>14</sup>

Complainants do not meet this burden. They offer nothing but bald allegations. They summarily claim the “markets for energy and ancillary services operated by the California Independent System Operator Corporation (CAISO), California Public Utilities Commission (CPUC), Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), and Southern California Edison Company (SCE) . . . are not workable.”<sup>15</sup> Putting aside their apparent confusion as to who administers these markets, nothing in the Complaint identifies any specific aspect of those markets or any market tariff

---

<sup>11</sup> *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944). Although Hope addressed section 5 of the Natural Gas Act, the Commission properly applies these bedrock principles to the analogous provisions of the FPA. See *Cal. Mun. Utils. Ass’n v. Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,315 at P 70 (2009), *order on reh’g*, 143 FERC ¶ 61,174 (2013).

<sup>12</sup> *La Paloma* at P 36 (quoting *Emera Maine v. FERC*, 854 F.3d 9, 25 (D.C. Cir. 2017)).

<sup>13</sup> *La Paloma* at P 36.

<sup>14</sup> *Californians for Renewable Energy, Inc., et al. v. Pac. Gas & Elec. Co., et al.*, 142 FERC ¶ 61,143, at P 18 (quoting *Ill. Mun. Elec. Agency v. Cent. Ill. Pub. Serv. Co.*, 76 FERC ¶ 61,084, at 61,482 (1996)).

<sup>15</sup> Complaint at 1.

provision approved by the Commission that is no longer just and reasonable. Repeated statements that the markets are “not workable” is not any proffer of evidence, much less the convincing showing required for a valid FPA section 206 complaint. Therefore, the Complaint fails to meet the burden of proof under FPA section 206 or the evidentiary requirements of the Commission’s regulations.<sup>16</sup>

The Complaint notes market prices were high during a few days in mid-August and claims “those prices do not reflect legitimate forces of supply and demand.”<sup>17</sup> Again, this conclusion is wholly unsupported by evidence. The prices produced by the CAISO’s markets are consistent with the market design approved by the Commission and the CAISO’s current tariff, which includes a \$1,000/MWh bid cap.<sup>18</sup> Complainants provide no specific evidence showing the CAISO’s existing \$1,000 energy bid cap is unjust and unreasonable and must be lowered. Indeed, since the Complaint was filed, the Commission approved the CAISO’s Order No. 831 compliance filing, which will increase the energy bid cap to \$2,000/MWh, effective March 21, 2021.<sup>19</sup>

---

<sup>16</sup> Section 203 of the Commission’s regulations requires that all pleadings contain the “relevant facts” and the “position taken by the participant . . . and the basis in fact and law for such position.” 18 C.F.R. §§ 385.203(a)(6)-(7). Similarly, Rule 206 of the Commission’s regulations requires a complainant to “[c]learly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements” and “[e]xplain how the action or inaction violates applicable statutory standards or regulatory requirements. 18 C.F.R. §§ 385.206(b)(1)-(2).

<sup>17</sup> *Id.* at 1-2.

<sup>18</sup> Starting in 2006, the Commission issued a series of orders in Docket No. ER06-615 finding the tariff provisions to implement the CAISO’s current market design (originally called the Market Redesign and Technology Upgrade, or MRTU), including the design of its energy and ancillary services markets and pricing in those markets, are just and reasonable. *See Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006), *order on clarification and reh’g*, 119 FERC ¶ 61,076 (2007); *see also Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,313 (2007).

<sup>19</sup> *California Indep. System Operator Corporation*, 172 FERC ¶ 61,262 (2020).

The CAISO tariff allows for market prices to rise during periods of significant supply deficiencies, but that fact alone does not render the markets or resulting prices unjust and unreasonable. Several days of high prices amidst a west-wide heat wave do not render the existing price cap and market design unjust and unreasonable. As the Commission has noted, locational marginal prices “that reflect the short-run marginal costs of production are particularly important during high price periods because they provide a signal to consumers to reduce consumption and a signal to suppliers to increase production or to offer new supplies to the market.”<sup>20</sup>

**B. The Commission Must Reject Complainants’ Proposed \$250/MWh Offer Cap**

The Complaint requests the Commission limit bids to sell energy or ancillary services into the CAISO operated markets to \$250/MWh.<sup>21</sup> Because Complainants failed to meet the burden of demonstrating that the CAISO market rules are unjust and unreasonable, there is no basis for this change.

Even if Complainants had demonstrated the existing price cap tariff provisions are unjust and unreasonable, they offer no factual evidence showing their proposed replacement \$250/MWh energy offer cap is just and reasonable. In particular, Complainants offer no evidence showing a \$250/MWh offer cap will comport with accepted price cap principles, adequately compensate participating resources for their costs to provide service, and not artificially suppress market

---

<sup>20</sup> Order No. 831, FERC Stats. & Regs. ¶ 31,387 at P 5.

<sup>21</sup> Complaint at P 1. In the conclusion, the Complainants make reference to limiting “rates” to \$250/MWh. *Id.* at P 43. The CAISO assumes this is a reference to the offer cap proposed earlier in the Complaint.

prices. Indeed, nothing in the Complaint begins to address the potential ramifications of such a price cap change. For example, during periods of supply deficiencies, the CAISO market design should allow for imports from suppliers in the other parts of the West into the CAISO Balancing Authority Area. Imposing a \$250/MWh offer cap on bids into the CAISO markets could place the CAISO region at a competitive disadvantage in attracting needed supply. Further, a \$250/MWh offer cap could prevent sellers from recovering their legitimate costs of providing service.

Complainants' sole basis for a \$250/MWh energy offer cap is reference to the price cap the Commission approved to address the Energy Crisis.<sup>22</sup>

Complainants fail to recognize the Commission took action during the Energy Crisis to address very different conditions at a time when the CAISO had a very different market design. Complainants make no effort to show the same conditions from 20 years ago exist today. Mere reference to actions from 20 years ago is inadequate justification to dramatically lower the existing price cap.

As the Commission found in one order dismissing prior complaints filed by CARE, the Energy Crisis "was an unprecedented situation in which numerous adverse events occurred simultaneously to place California and the entire West in an electricity crisis that had never before been experienced."<sup>23</sup> The Commission went on to explain that "[s]ince 2001, however, the Commission has undertaken numerous measures to address market structure flaws and potential

---

<sup>22</sup> Complaint at P 1.

<sup>23</sup> *Californians for Renewable Energy, Inc. v. Cal. Pub. Utils. Comm'n, et al.*, 119 FERC ¶ 61,058, at P 30.

market manipulation in California markets and markets nationwide to ensure that there are appropriate market safeguards in place to prevent a repeat of the California 2000-2001 energy crisis.”<sup>24</sup> Those measures included the market design under which the CAISO has continued to operate for over a decade, which “introduce[d], among other things, a more effective congestion management system, a day-ahead market for trading and scheduling energy, system improvements to increase operational efficiency and enhance reliability, a more transparent pricing system, and improved market power mitigation measures.”<sup>25</sup>

Thus, conditions in California today are completely different than they were in the Energy Crisis. It would be inappropriate to impose a \$250 per MWh cap on energy bids or take other actions today akin to those the Commission found necessary 20 years ago.

The proposed \$250/MWh energy offer cap is also contrary to the existing west-wide \$1,000/MWh soft energy price cap and recent Commission directives on offer caps in markets operated by RTOs and ISOs. In Order No. 831, the Commission required each RTO or ISO to cap a resource’s incremental energy

---

<sup>24</sup> *Id.* at P 31.

<sup>25</sup> *Id.* The Commission also explained that since the Energy Crisis it had taken other actions that included: (1) implementing market behavior rules to give it greater ability to respond to instances of market manipulation; (2) exercising enhanced regulatory authority pursuant to the Energy Policy Act of 2005; (3) improving price reporting and the information available to market participants; and (4) strengthening its oversight of markets and market-based rates. *Id.* at PP 32-38. *See also Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,076, at P 2 (“As the Commission stated in the September 2006 Order, our goal throughout the numerous proceedings that culminated in the MRTU proposal has been to avoid a repeat of the California energy crisis of 2000-2001.”).

offer at the higher of \$1,000/MWh or the resource's cost-based incremental energy offer.<sup>26</sup> The Commission also required each RTO or ISO to limit cost-based incremental energy offers to a hard cap of \$2,000/MWh for purposes of calculating locational marginal prices.<sup>27</sup>

In Order No. 831, the Commission offered several reasons for changing the existing \$1,000/MWh cap in effect in most ISO and RTO regions.<sup>28</sup> First, it might prevent a resource from recouping its short-run marginal costs by not permitting the resource to reflect its short-run marginal costs in its energy offers. Second, current offer caps may suppress locational marginal prices below the marginal cost of production. Third, a \$1,000/MWh cap may discourage resources with short-run marginal costs above that level from offering supply into the market even if the market may be willing to purchase that supply. Fourth, when resources have short-run marginal costs above \$1,000/MWh but are unable to reflect those costs in incremental energy offers due to the cap, ISOs and RTOs may not dispatch the most efficient set of resources because they may not be able to distinguish between resources' actual costs. Obviously, lowering the CAISO's existing \$1,000/MWh energy offer cap to \$250/MWh as Complainants propose fails to satisfy these fundamental principles.

---

<sup>26</sup> Order No. 831 at PP 42, 78.

<sup>27</sup> *Id.* at P 1 & n.3, PP 42, 78.

<sup>28</sup> *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 157 FERC, 61,115 at PP 2, 15, 34-41 (2016).

### **C. Complainants Provide No Basis to Adjust Prices Retroactively**

Complainants argue that during the period after August 11 -- twenty days before the Complaint was filed-- market prices should be subject to Commission-ordered refunds.<sup>29</sup> But the Complaint provides no legal (or factual) basis to change market prices retroactively. Where a rate has been calculated in accordance with a Commission-approved tariff, the Commission does not have authority under section 206 of the FPA to change such rates prior to the date a complaint is filed or such later refund effective date as the Commission may establish.

Complainants have not even alleged, let alone demonstrated, that the CAISO calculated energy and ancillary service market prices in a manner inconsistent with the CAISO tariff or that there were other tariff violations that caused unjust and unreasonable prices in August 2020.<sup>30</sup> As indicated above, the Complaint cites no CAISO tariff provisions, let alone CAISO tariff provisions that were violated. Merely citing to events from the Energy Crisis 20 years ago does not constitute evidence supporting retroactive price adjustments for prices calculated during August 2020. Nor do bald assertions that the markets were “not workable” or failed to “reflect legitimate forces of supply and demand” satisfy the requisite legal standard. As such, the Commission must reject Complainants’ request for retroactive price changes.

---

<sup>29</sup> Complaint at P 40.

<sup>30</sup> See *San Diego Gas & Elec. Co., et al.*, 149 FERC ¶ 61,116, PP 2, 46-50(2014), *order on reh’g*, 153 FERC ¶ 61,144, at P 193 (2015) (“Section 206 of the FPA provides for the establishment of a refund effective date and for relief thereafter, and this precludes refunds prior to that date, unless the sellers were found to have violated the tariff.”).

#### **D. Complainants Fail to Show that the CAISO Discriminates Against Distributed Generation**

Complainants allege, almost in passing, that the CAISO discriminates against rooftop solar qualifying facilities and net energy metered (NEM) “customer-generators” in California by denying them access to Commission-regulated wholesale energy markets.<sup>31</sup> Complainants provide no evidence of such discrimination.

In fact, the CAISO tariff permits distributed energy resources to participate in the wholesale markets on a non-discriminatory basis in accordance with requirements accepted by the Commission. First, stand-alone distributed energy resources may participate in the CAISO markets similar to any transmission-connected resource, and hundreds do so today.<sup>32</sup> Second, consumers—including those with rooftop solar and participating in NEM programs—may participate in the CAISO’s wholesale markets through the CAISO’s demand response models.<sup>33</sup> They may do so as stand-alone demand response resources or as aggregations. Third, for any distributed energy resources that cannot meet the CAISO’s minimum capacity requirements (100 kW for energy storage and 500 kW for conventional generation),<sup>34</sup> the CAISO allows a

---

<sup>31</sup> Complaint at P 13 and Exhibits A-C thereto. The Complainants make the same allegation against the other respondents (*see id.*), but the CAISO does not address that allegation in this answer.

<sup>32</sup> See CAISO tariff sections 4.6.3.1 and 25.2.

<sup>33</sup> See CAISO tariff section 4.13.

<sup>34</sup> The CAISO intends to lower the 500 kW requirement to 100 kW in compliance with Order No. 2222, *Participation of Distributed Energy Resource Aggregations in Markets Operated by*

distributed energy resource provider to aggregate the distributed energy resources to participate in the CAISO markets together as a single resource.<sup>35</sup> Nothing in the Complaint acknowledges the existing participation models for distributed energy resources in the CAISO's markets or the CAISO tariff provisions that can facilitate such participation, much less explains how the CAISO discriminates against distributed generation. Unsupported allegations cannot form the basis for a complaint.

**E. Complainants Improperly Attempt to Group the CAISO Together with the "California Parties"**

As Complainants acknowledge,<sup>36</sup> the other respondents to the Complaint have been included among the "California Parties" in the Energy Crisis litigation, but the CAISO has not.<sup>37</sup> Nevertheless, Complainants now suggest the Commission include the CAISO as one of the California Parties for purposes of the Complaint.<sup>38</sup> It is unclear what purpose Complainants' (mis)characterization serves other than to rationalize their attempt to attribute all of the allegations in

---

*Regional Transmission Organizations and Independent System Operators*, 172 FERC ¶ 61,247 at P 171 (2020) (Order No. 2222).

<sup>35</sup> See CAISO tariff section 4.17 *et seq.* (addressing distributed energy resource aggregations). To avoid double-counting of the same energy, the Commission approved the CAISO's prohibition on distributed energy resources in NEM programs also participating in these aggregations. The same rule was codified in Order No. 2222, 172 FERC ¶ 61,247 at P 159.

<sup>36</sup> Complaint at P 9.

<sup>37</sup> See, e.g., *San Diego Gas & Elec. Co., et al.*, 167 FERC ¶ 61,231, at P 1 n.1 (2019) ("For the purpose of these respective [Energy Crisis] settlements, the California Parties are Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, the People of the State of California, *ex rel.* Attorney General, the California Department of Water Resources acting solely under the authority and powers created by Assembly Bill 1 of the First Extraordinary Session of 2001-2002, codified in Sections 80000 through 80270 of the California Water Code, the California Electricity Oversight Board, and the California Public Utilities Commission.").

<sup>38</sup> Complaint at P 10.

the Complaint to all of the respondents whether they apply or not. Complainants inappropriately blur the legitimate distinction among the individual Respondents, ignore respondents' separate roles and responsibilities, and ignore that each of Complainants' allegations do not apply to all of the respondents.

Respondents are not a monolith as the Complaint seeks to portray. The CAISO is an Independent System Operator approved by the Commission with responsibilities for designing and administering wholesale markets approved by the Commission.<sup>39</sup> In contrast, the other respondents to the complaint are the CPUC, which is a state regulatory commission, and PG&E, SCE, and SDG&E, which are investor-owned utilities (IOUs). The other Respondents have very different roles regarding wholesale markets and the provision or regulation of related electricity infrastructure and service. In light of these differences, there is no basis to treat the CAISO as part of a single group of "California Parties" with identical obligations. Thus, Complainants unjustified attempt to shoehorn the CAISO as a California Party cannot serve as the basis for imputing claims to the CAISO -- such as those regarding PURPA -- that do not otherwise apply.

---

<sup>39</sup> The Complainants' comments on the independence of the CAISO ignore the fact that 15 years ago the Commission found that the CAISO Board selection process, which the CAISO still uses today, satisfies the independence requirements of Commission Order Nos. 888 and 2000. *Cal. Indep. Sys. Operator Corp.*, 112 FERC ¶ 61,010, at P 1, *order denying late intervention and dismissing reh'g request*, 112 FERC ¶ 61,337 (2005) (denying CARE's late-filed motion to intervene and request for rehearing).

## **F. Alleged PURPA Violations Do Not Implicate the CAISO**

Complainants allege PURPA violations that are properly addressed solely by respondents other than the CAISO. First, Complainants raise issues related to allowing Qualifying Facilities (QFs) that are NEM customers to access their solar power during system emergency conditions in a manner consistent with the PURPA regulations.<sup>40</sup> The current NEM program in California was established by a CPUC decision issued in 2016 and is available to customers of the IOUs pursuant to CPUC-approved tariff provisions.<sup>41</sup> The CAISO is not involved in approving or administering the NEM program. Therefore, these issues are properly addressed by the CPUC and the IOUs, not the CAISO.

Complainants also raise issues regarding compensation for QFs in a manner consistent with PURPA and the PURPA regulations.<sup>42</sup> PURPA and the related regulations require each state regulatory authority to set avoided-cost rates for the utilities over which it has ratemaking authority.<sup>43</sup> The CPUC is a state regulatory authority, the CAISO is not. Therefore, these issues do not pertain to the CAISO and are more properly addressed by the CPUC.

---

<sup>40</sup> Complaint at PP 24-28.

<sup>41</sup> See <https://www.cpuc.ca.gov/general.aspx?id=3800> (CPUC website page on NEM program); [https://www.pge.com/en\\_US/residential/solar-and-vehicles/green-energy-incentives/solar-and-renewable-metering-and-billing/net-energy-metering-program-tracking/net-energy-metering-and-tracking-faq.page](https://www.pge.com/en_US/residential/solar-and-vehicles/green-energy-incentives/solar-and-renewable-metering-and-billing/net-energy-metering-program-tracking/net-energy-metering-and-tracking-faq.page) (PG&E website page on NEM program); <https://www.sce.com/residential/generating-your-own-power/net-energy-metering/getting-started> (SCE website page on NEM program); <https://www.sdge.com/residential/savings-center/solar-power-renewable-energy/net-energy-metering> (SDG&E website page on NEM program).

<sup>42</sup> Complaint at PP 29-37.

<sup>43</sup> PURPA section 210(f)(1), 16 U.S.C. § 824a-3(f)(1); 18 C.F.R. § 292.304.

### III. The Complaint Reflects Factual Inaccuracies and Misunderstandings

Even if every factual allegation in the Complaint were accurate, the Complaint falls far short of satisfying the burden of proof required by section 206 for the reasons explained above. The Complaint, however, includes several factual inaccuracies and misunderstandings. Many of the claims in the Complaint related to the power interruptions in parts of California and wholesale market price increases that occurred a few days in August are allegations presented without source citation or supporting evidence.<sup>44</sup> The CAISO responds to several of these allegations as follows:

First, contrary to the claim made in the declaration of Mr. Boyd, the Complaint was not served by e-mail on the individuals designated to receive service for the CAISO.<sup>45</sup>

Second, the Complaint mischaracterizes certain facts and circumstances regarding the CAISO's shedding of load. Complainants mention the CAISO ordered power interruptions in August<sup>46</sup> and suggest the CAISO should not have been in a position to have to issue stage alerts or curtail load.<sup>47</sup> Complainant's state projected demand levels were below the forecasted average annual peak.<sup>48</sup> They also state the CAISO has not explained why it did not rely on the reserve

---

<sup>44</sup> The CAISO is developing a root cause analysis that will address the relevant facts during the mid-August period addressed by the Complaint. The CAISO intends to publish this root cause analysis later this year.

<sup>45</sup> See <https://www.ferc.gov/electric-matters-c>.

<sup>46</sup> See Complaint at 2-3.

<sup>47</sup> Complainants appear to be seeking an explanation for the blackouts. Complaint at 3.

<sup>48</sup> *Id.* at 2.

capacity provided by the 15 percent planning reserve.<sup>49</sup> Complainants assert it “was just another day in California [that] should not have led to stage alerts [or] blackouts.”<sup>50</sup>

Complainants misunderstand that the planning reserve margin (PRM) is irrelevant to whether the CAISO must shed load on any given day. As the name implies, the planning reserve margin is merely a planning criteria used for purposes of determining load serving entities’ annual and monthly resource adequacy showing requirements.<sup>51</sup> However, the PRM does not determine whether the CAISO must shed load on a given day. At any given point in time, it is immaterial that the load is below the forecasted average annual peak. In the operational timeframe, the CAISO operates the system based on the actual load and available supply and not what it had expected to have.

The CAISO operates to standards set by the North American Electric Reliability Corporation (NERC) and to Western Electricity Coordinating Council (WECC) regional standards as approved by the Commission. The decision to shed load is driven by whether or not the CAISO can continue to operate its Balancing Authority Area consistent with those criteria.

Specifically, under reliability standards BAL-002-3 and BAL-002-WECC-2a, the CAISO, as the Balancing Authority, is required to maintain contingency

---

<sup>49</sup> *Id.* at 3.

<sup>50</sup> *Id.* at 2-3.

<sup>51</sup> For example, under the CPUC’s resource adequacy program, the CPUC applies a 15 percent PRM to the demand forecast calculated by the California Energy Commission, which is based on a one year-in two forecast. However, in the CAISO, individual local regulatory authorities are free to set their own PRM level, and the CAISO can only apply a 15 percent default PRM if a LRA sets no PRM. CAISO tariff section 40.2.2.1.

reserves. Contingency reserves are designated resources that can be deployed to address unplanned and unexpected events on the system such as a loss of significant generation, sudden unplanned outage of a transmission facility, sudden loss of an import, and other grid reliability balancing needs. The CAISO maintains contingency reserves to ensure the grid can respond quickly in case the CAISO loses a major element on the grid such as the Diablo Canyon Power Plant (Diablo Canyon) or the Pacific DC Intertie (PDCI) transmission line. The NERC and WECC standards specifically require grid operators to identify and have reserves sufficient to address at least the most severe single contingency that could potentially destabilize the Balancing Authority Area and cause cascading outages throughout the Western interconnected grid if that resource is lost. For the CAISO, this tends to be either Diablo Canyon or the PDCI.

Once reserves become deficient -- as they did on August 14 and 15 -- the CAISO may be required to shed load to comply with reliability criteria regardless of what level the PRM is set. Generally, the CAISO is required to carry reserves equal to three percent of load plus three percent of generation. Under normal conditions, the CAISO uses two types of generating resources to meet this requirement: spinning and non-spinning reserves. Spinning reserves are generating resources that are running (*i.e.*, "spinning") and can quickly and automatically provide energy in case of a contingency. Non-spinning reserves are resources that may include demand response, which are available to respond within 10 minutes but are not running. The standards require that at least 50% of the operating reserves must be spinning. Under extraordinary

conditions if the resources the CAISO normally uses are not available, the CAISO may be able to designate load that is not specifically designated as demand response resources and that can be curtailed within 10 minutes as non-spinning reserves. Although the CAISO can utilize such load to meet its reserve requirements, it can only do so for non-spinning reserves. Continuing to operate while lacking sufficient spinning reserves runs the risk that if an actual contingency were to occur, such as the loss of Diablo Canyon or PDCI, the CAISO Balancing Authority Area would lack automatic response capability needed to stabilize the grid, leading to uncontrolled load shed that could potentially destabilize the greater Western grid.

Although the PRM provides the target that drives resource adequacy procurement requirements, the PRM is irrelevant as to what resources are actually operationally available in the operational time frame. On any given day, the availability of any capacity procured through the resource adequacy programs will be modified by a number of factors such as outages, high temperatures, and transmission constraints. Complainants suggests the CAISO had a substantial amount of reserves on August 14 and 15.<sup>52</sup> Complainants offer no evidence – nor can they – show the CAISO was not reserve deficient when it

---

<sup>52</sup> Complainants make these unsubstantiated statements: “[w]hen CAISO issued its second-stage alert, at about 3:20 p.m. on Friday August 14, 2020, the system had an operating reserve of up to 12 percent. By 6:36 p.m., when CAISO issued a Stage 3 alert, the data showed operating reserves at about 9 percent, almost three times the 3 percent standard for ordering blackouts. The following day, when CAISO issued its second-stage alert at about 6:15 p.m., the system had an operating reserve near 10 percent. When CAISO issued the Stage 3 alert a short time later, the data showed operating reserves above 8 percent. CAISO cited excessive demand across the West for the unexpected surge in demand, as well as the loss of some expected supplies.” (Complaint, P 14).

called the Stage 3 emergency and shed load.<sup>53</sup> Complainant's unsupported allegation, lacking any citation, that there may have been sufficient reserves is incorrect. Contrary to the Complainants suggestions, the CAISO was not flush with reserves and, as indicated on the CAISO's OASIS, the CAISO dipped below the required 6 percent amount in multiple intervals of the hours in which it declared emergency status and curtailed load.

---

<sup>53</sup> When the CAISO responds to events or circumstances under normal system conditions, it uses the generation control it is able to obtain from the energy and ancillary services bids it has received to respond to operating events and maintain reliability. However, if the bids are insufficient for those purposes, the CAISO will assume supervisory control over additional generating units. CAISO tariff section 7.6.1. "When, in the judgment of the CAISO, a System Emergency has occurred or is imminent," the tariff authorizes the CAISO to declare a System Emergency and issue an emergency notice to that effect, setting forth the actions the CAISO is taking to address the System Emergency. CAISO tariff section 7.7.1(a). The tariff defines a System Emergency as "[c]onditions beyond the normal control of the CAISO that affect the ability of the CAISO Balancing Authority Area to function normally, including any abnormal system condition which requires immediate manual or automatic action to prevent loss of Load, equipment damage, or tripping of system elements which might result in cascading Outages or to restore system operation to meet Applicable Reliability Criteria." CAISO tariff appendix A, definition of "System Emergency". The CAISO declared System Emergencies and issued emergency notices in August pursuant to these tariff provisions.

The actions the CAISO may take in a System Emergency include: (1) suspending the CAISO markets and applying an administrative price; (2) authorizing full use of black start generating units; (3) initiating full control of manual load shedding; (4) authorizing the curtailment of curtailable demand; and (5) taking "such other action that it considers necessary to preserve or restore stable operation of the CAISO Controlled Grid, to the extent such actions are consistent with Good Utility Practice and Applicable Reliability Criteria and not inconsistent with the CAISO Tariff." CAISO tariff section 7.7.1(c). Thus, the tariff permits short-term power interruptions and the other actions the CAISO undertook in August, based on the CAISO's determination that such actions were necessary to maintain system reliability.

Figure 1: Operating Reserves August 14, 2020 as Posted on CAISO

OASIS

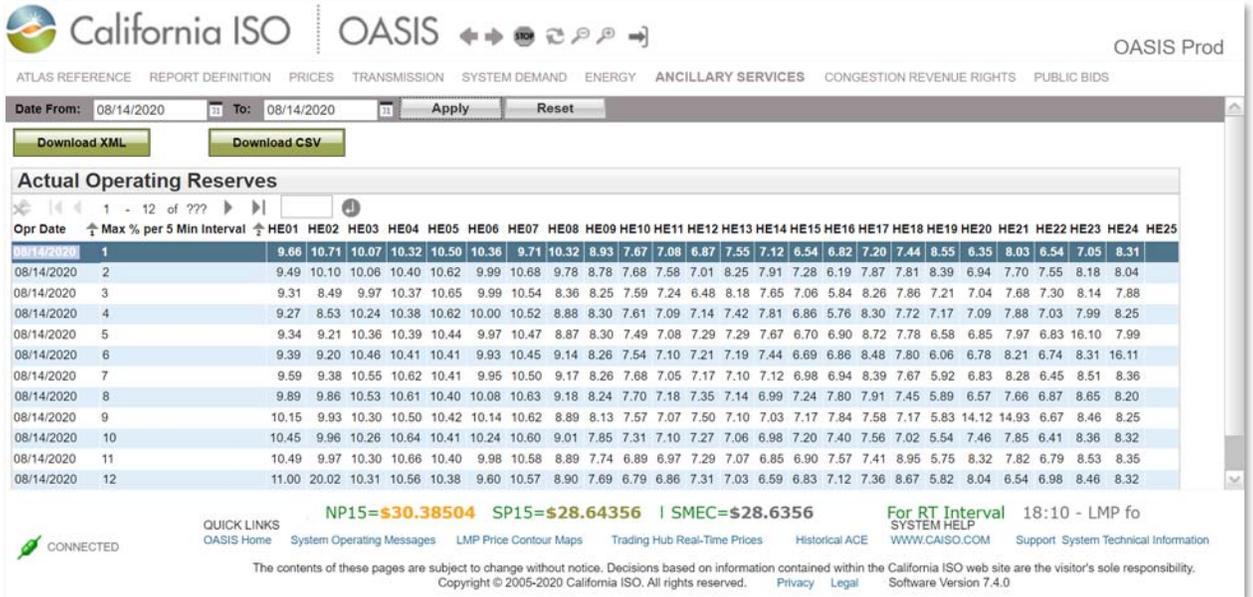
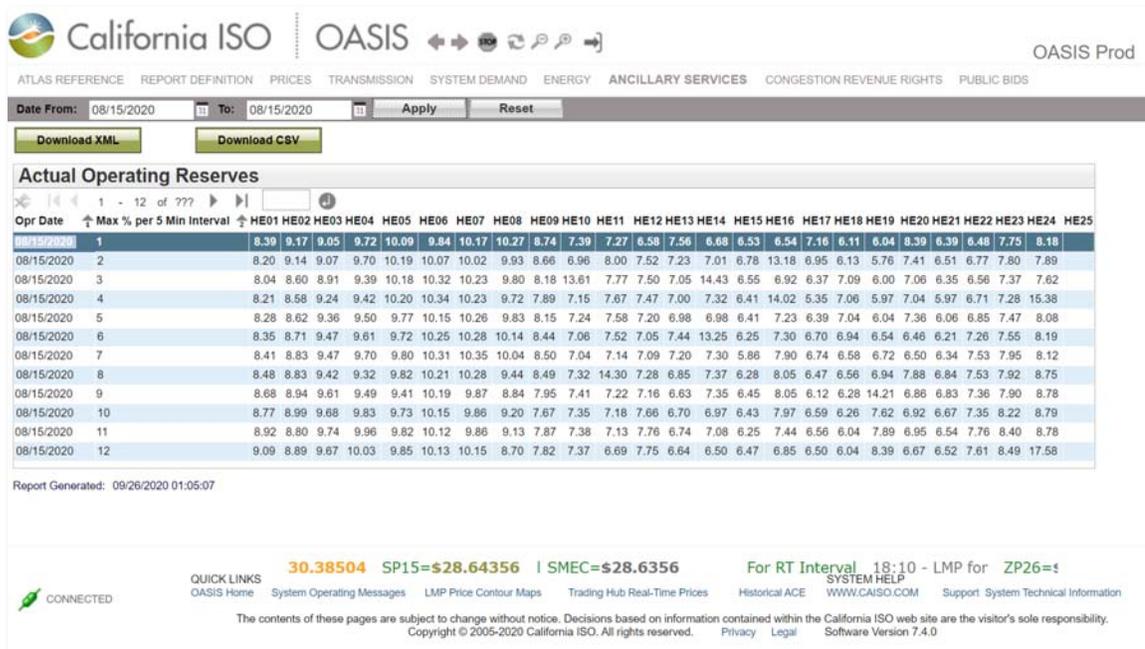


Figure 2: Operating Reserves August 15, 2020 as Posted on CAISO

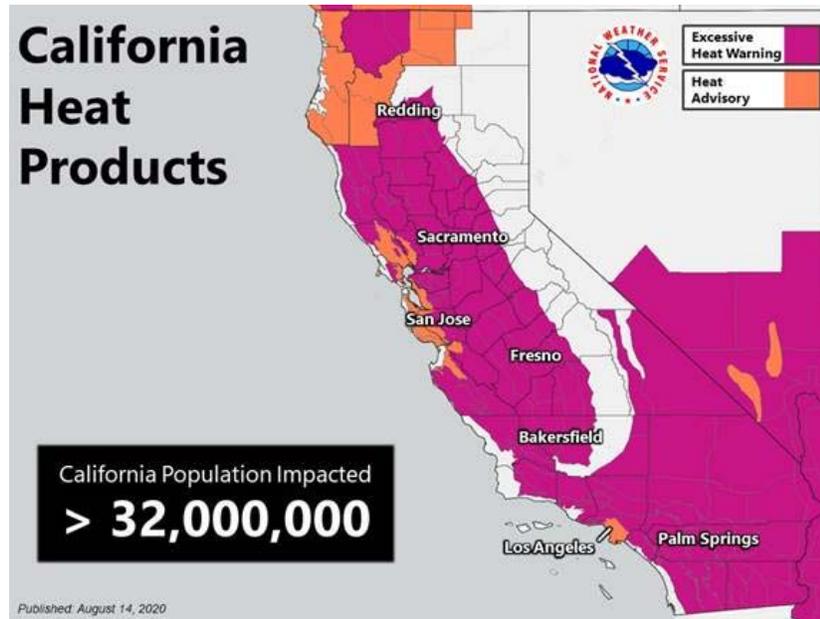
OASIS



Contrary to Complainants assertions, August 14 and 15 was not “just another day in California [that] should not have led to stage alerts [or] blackouts.”<sup>54</sup> In fact, from August 14 through 19, California experienced state-wide extreme heat with temperatures 10-20 degrees above normal. As Figure 3 below shows, this impacted 32 million California residents.

<sup>54</sup> *Id.* at 2-3.

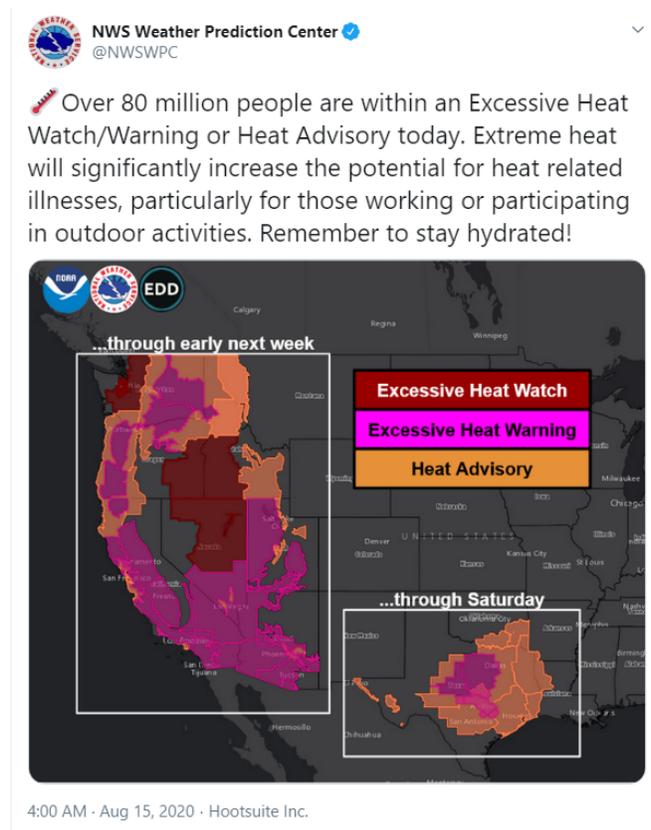
**Figure 3: Heat Rate Maps Published by the National Weather Service,  
August 14, 2020<sup>55</sup>**



In total, 80 million people fell within an excess heat watch or warning as shown in Figure 4 below from the National Weather Service (NWS).

55 Source: <https://twitter.com/NWSSacramento>.

**Figure 4: Weather Prediction Maps and Warnings Published by National Weather Service, August 15, 2020.<sup>56</sup>**



The rest of the West also experienced record or near-record highs with forecasts ranging between five and 20 degrees above normal, with the warmest temperatures in the Southwest (Las Vegas and Phoenix) as well as the Coastal Pacific Northwest (Portland and Seattle).

No doubt, this rare West-wide heat storm affected both the demand for and the supply of generation. Typically high day-time temperatures are offset by cool and dry evening conditions. However, the multi-day heat storm meant there

<sup>56</sup>

Source: <https://twitter.com/NWSWPC/status/1294589703254167557>.

was limited overnight cooling so air conditioners continued to run well into the evening and the next day.

#### **IV. Service and Communications**

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

Anthony J. Ivancovich  
Deputy General Counsel, Regulatory  
Anna A. McKenna  
Assistant General Counsel  
Andrew Ulmer  
Director, Federal Regulatory Affairs  
California Independent System  
Operator Corporation  
250 Outcropping Way  
Folsom, CA 95630  
Tel: (916) 608-7144  
Fax: (916) 608-7296  
[amckenna@caiso.com](mailto:amckenna@caiso.com)

Sean A. Atkins  
Bradley R. Miliauskas  
Davis Wright Tremaine LLP  
1301 K Street, NW  
Suite 500 East  
Washington, DC 20005  
Tel: (202) 973-4200  
Fax: (202) 973-4489  
[seanatkins@dwt.com](mailto:seanatkins@dwt.com)  
[bradleymiliauskas@dwt.com](mailto:bradleymiliauskas@dwt.com)

## V. Conclusion

For the foregoing reasons, the Commission should dismiss the Complaint submitted by the Complainants in this proceeding.

Respectfully submitted,

By: Anna McKenna

Sean A. Atkins  
Bradley R. Miliauskas  
Davis Wright Tremaine LLP  
1301 K Street, NW  
Suite 500 East  
Washington, DC 20005  
Tel: (202) 973-4200  
Fax: (202) 973-4489  
[seanatkins@dwt.com](mailto:seanatkins@dwt.com)  
[bradleymiliauskas@dwt.com](mailto:bradleymiliauskas@dwt.com)

Anthony J. Ivancovich  
Deputy General Counsel, Regulatory  
Anna A. McKenna  
Assistant General Counsel  
Andrew Ulmer  
Director, Federal Regulatory Affairs  
California Independent System  
Operator Corporation  
250 Outcropping Way  
Folsom, CA 95630  
Tel: (916) 608-7144  
Fax: (916) 608-7296  
[amckenna@caiso.com](mailto:amckenna@caiso.com)

Attorneys for the California Independent  
System Operator Corporation

Dated: September 28, 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 28th day of September, 2020.

/s/ Jacqueline Meredith  
Jacqueline Meredith