THE UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Californians for Renewable Energy, Inc. ("CARE"),	)	
Complainant	)	
v.	)	**Docket No. EL09-65-000**
California Public Utilities Commission, Southern California Edison, and the California Independent System Operator Corporation,	)	
Respondent	)	

ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR TO CARE'S COMPLAINT AND MOTION FOR SUMMARY DISPOSITION

The California Independent System Operator ("ISO") hereby answers the complaint filed by Californians for Renewable Energy ("CARE") pursuant to Rule 206 and moves for summary disposition pursuant to Rule 217(b) of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure.

I. BACKGROUND AND RESPONSE TO ALLEGATIONS

On July 22, 2009, Californians for Renewable Energy ("CARE") filed a complaint against the California Public Utilities Commission ("CPUC"), Southern California Edison (SCE) and the ISO purportedly "regarding the SCE Application for a Certificate of Public Convenience and Necessity Concerning the Tehachapi Renewable Transmission Project ("TRTP")" and "SCE's Tehachapi amendment to its open access

transmission tariff."[1] However, CARE's Request for Relief does not even mention SCE's application filed with the CPUC for a certificate of public convenience and necessity for the TRTP. Instead, in its Request for Relief, CARE requests that the Commission act on a wholly unrelated matter and order "the CPUC, SCE, and CAISO to provide access (as qualifying facilities) to the market for 515 MW of DG PV Solar, already grid connected, and CARE seeks refunds for any confiscate excess power at the market based rates under the IOUs' avoided cost market index formula." [2] CARE's conclusion appear to be based on CARE's assertions that (1) certain DG PV solar resources participating in California retail programs are not eligible to be counted towards the renewable portfolio standards ("RPS") obligations that the State and the CPUC have imposed on utilities and load-serving entities, and (2) such DG PV resources that have voluntarily elected to participate in the CPUC's California Solar Initiative ("CSI") retail program are not permitted to sell any excess capacity to the market under the express terms of that program. These state-related issues do not implicate the ISO, and the ISO cannot remedy them. The design of state retail initiatives such as these does not fall within the jurisdiction of the Commission.

The allegations in the complaint contain a jumble of factual assertions, but they do not provide a basis for a FERC-jurisdictional cause of action upon which the Commission can grant relief. As discussed in further detail below, CARE fails to meet the minimum requirements for a complaint under the Commission's rules of practice and procedure. CARE alleges no facts that would support a finding that the ISO has violated any tariff provision, Commission rule, order or decision, or has taken any action

[1] CARE Complaint at 1.
[2] *Id.* at 2. .

amounting to unreasonable discrimination or preferential treatment of one wholesale market participant over another. Indeed, CARE offers no evidence -- nor can it -- showing that these DG PV resources have even sought access to the ISO markets (or even satisfy the tariff requirements for access to the ISO grid and markets), let alone been unreasonably denied access by the ISO. Thus, CARE has not satisfied even the most basic condition precedent for a complaint against the ISO. Stated differently, if these resources have not even sought access to the ISO markets, CARE cannot allege that the ISO has unreasonably denied them access.

As indicated above, CARE alleges a hodgepodge of facts most of which have nothing whatsoever to do with the specific relief that CARE requests. These facts do not support any claim that can be granted by the Commission. The ISO discusses the specific facts alleged by CARE below.

The ISO admits that the California South Regional Transmission Planning- 2006 ("CSRTP-2006") Report, issued on December 29, 2006, recommended that the ISO Board of Governors approve TRTP based on the statements set forth in the complaint at pages 5 and 6.[3] The ISO denies, however, that its large generator interconnection process ("LGIP") embodies an "industrial wind" preference. The ISO's Standard LGIP process is set forth at Appendix U of the ISO Tariff.[4] The LGIP process has been approved by the Commission and has been found to be consistent with the principles embodied in Order No. 2003.[5] The CSRTP-2006 study group evaluated the need for TRTP based on information from the ISO's generator interconnection queue and other information from

[3] The CSRTP-2006 Tehachapi Report is available at: http://www.caiso.com/18db/18dbaedf2cca0.pdf
[4] Tariff Appendix U is available at: http://www.caiso.com/23d5/23d5cf4e1f720.pdf
[5] See, *e.g., California Independent System Operator,* Docket Nos. ER04-445-005, *et al.* 112 FERC ¶ 61,009 (July 1, 2005).

the LGIP as to the potential of the Tehachapi Wind Resource Area for meeting California's ambitious RPS goals, and found that the project represented the most cost effective network upgrade and expansion plan to deliver large amounts of proposed wind generation projects to the ISO grid. In conjunction with the ISO Board's approval of the CSRTP-2006 Tehachapi Report, the ISO sought a tariff waiver from the Commission to study the individual Tehachapi wind generation projects in its queue in an expanded geographic "cluster" to facilitate further cost efficiencies. That waiver request was approved by the Commission on March 20, 2007.[6] CARE does not make any allegations, or provide any facts, that the ISO has misapplied or violated its LGIP tariff provisions or Commission orders with respect to its approval of the TRTP.

The section of the complaint entitled "The CAISO Interconnection Queue" appears to contain quotations from SCE testimony submitted as part of the TRTP application filed with the CPUC for a certificate of public convenience and necessity for Segments 4-11. The ISO has no reason to disagree with these statements. However, such statements and CARE's subsequent assertions and speculation cannot serve as a basis for any complaint filed with the Commission.[7] SCE's application for a CPCN -- and the issue of whether SCE should be granted a CPCN -- is a CPUC-jurisdictional issue not a FERC-jurisdictional issue. The construction and siting of transmission are not within the scope of the Commission's authority except for the backstop siting authority under EPAct, and that does not apply here. In any event, based on the findings contained in the CSRTP-2006 Report and the information provided by the SCE testimony, CARE's conclusion that "it is highly speculative that with(out)[sic] the construction of TRTP,

[6] *California Independent System Operator*, 118 F.E.R.C ¶ 61, 226 (2007).
[7] Complaint, pp. 6-8.

renewable generation in the Tehachapi area would otherwise remain inaccessible" has no factual basis.[8] In any event, CARE's assertions in this section of the complaint have no relevance whatsoever to CARE's specific request for relief. Moreover, CARE does not make any allegations, or provide any facts, that the ISO has misapplied or violated its tariff in this regard.

CARE's allegation that the ISO's Small Generator Interconnection Procedures ("SGIP") was "due in March 2009" is simply incorrect.[9] The ISO's SGIP is set forth at Appendix S of the ISO tariff and it has been in effect since March 31, 2008.[10] The Commission approved the ISO's SGIP on November 16, 2007 and issued its Order on Rehearing and Compliance Filing on March 3, 2009.[11] On July 9, 2009, the Commission issued a Letter Order in Docket No. ER06-629-005, approving the ISO's filing to comply with the March 3, 2009 order. Contrary to CARE's claims, the ISO has no further filings to make in the SGIP proceeding, and the Commission has found all of the current SGIP tariff language to be just and reasonable. Appendix S is applicable to generation facilities of less than 20 MW. Interconnection to the ISO grid through the SGIP is available to small generation projects that meet the metering, telemetry and other eligibility requirements set forth in the tariff. The CARE complaint contains no allegations or evidence that any small DG PV resources have applied to the ISO for interconnection through the SGIP and were unreasonably denied such access. Likewise, CARE does not make any allegations, or provide any facts, that the ISO has misapplied or violated the SGIP provisions of its tariff.

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[8] *Id.*,p. 8.
[9] *Id.*,p. 9.
[10] Tariff Appendix S is available at: http://www.caiso.com/23d5/23d5cef21d850.pdf
[11] *California Independent System Operator Corporation*, 121 FERC ¶ 61.177 (2007), *order on reh'g*, 126 FERC ¶61,191 (2009).

CARE claims that 515 MW of DG PV solar, already grid connected, remains denied access to sell its capacity and ancillary services to the markets and this capacity remains unrecognized as contributing to the state's RPS compliance resulting in a double charge to SCE's ratepayers once for the cost of CSI resources already on line in their service territory and again as a second time when an equivalent amount of renewable energy is purchased under RPS contract." CARE is taking issue with the requirements of the California Solar Initiative ("CSI') program and the State's Renewable Portfolio Standards ("RPS") program. These are retail programs and state environmental initiatives -- not ISO programs -- and are beyond the Commission's jurisdiction. CARE's repeated reference to "515 MW of PV solar DG, already grid connected" is based on statistics contained in the CPUC's *CSI Annual Program Assessment* to the Legislature issued on June 30, 2009.[12] According to this assessment and other information about this voluntary retail program on the CPUC website, the CSI program provides financial incentives for existing residential locations, and new or commercial, industrial, government, non-profit and agricultural customers. If CARE does not agree with the eligibility requirements of the CSI program or the qualifications for RPS resources established by the CPUC, then its disagreement should be raised with the CPUC and the California legislature. This aspect of the complaint does not implicate the ISO and raises issues that are not FERC-jurisdictional. The criteria for participation in the CSI program certainly has no connection to the ISO, and consequently CARE's allegations that the ISO has somehow "erected a barrier to entry" by the 515 MW of small solar installations has no basis in fact or logic. Further, as indicated above, CARE fails to show that these resources (1) qualify to interconnect to the ISO and participate in ISO markets, (2) have sought to

[12] Complaint, p.2 fn. 3.

interconnect to the ISO and participate in the ISO markets, and (3) have (unreasonably) been denied that opportunity by the ISO. Accordingly, there is no basis for a complaint against the ISO.

Finally, with respect to the testimony of Robert Sarvey, the ISO has no knowledge about PG&E's net metering program and therefore denies the allegations in the complaint regarding the rates and true-up provisions associated with his individual invoice from PG&E. The ISO admits that Mr. Sarvey filed a Qualifying Facility ("QF") application with the Commission and received a QF number. However, to the best of the ISO's knowledge and belief, Mr. Sarvey has never applied to the ISO, through the SGIP, to participate in the ISO's wholesale market. CARE has not shown that Mr. Sarvey meets the requirements under the ISO tariff to participate in the ISO's markets and that he has even sought to participate in such markets and wrongly been denied access. Thus, CARE has not even satisfied the most basic precondition for any claim against the ISO.

The ISO denies all other allegations in the complaint either as untrue, or because the ISO lacks a sufficient basis to admit or deny them.

II. THE COMMISISON SHOULD SUMMARILY DISMISS CARE'S COMPLAINT

Under Rule 217(b), if there is no genuine issue of fact material to the decision of a proceeding, the Commission may summarily dispose of all or part of the proceeding. In this instance, summary disposition is appropriate with respect to the ISO because, as noted above, the CARE complaint does not raise any genuine issues of fact that are material to a decision

The complaint is also defective because it does not identify any violation of law by the ISO. In particular, the complaint is defective because it does not identify any

violation by the ISO of the ISO tariff, the Federal Power Act, or Commission order, rule or regulation. "A complaint must[] clearly identify the action or inaction which is alleged to violate the 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). The complaint fails to satisfy this fundamental requirement.

As noted above, the complaint contains nothing more than bald assertions -- with no factual support -- that the ISO has "erected barriers to entry" and that the Commission should order the ISO "to provide access (as qualifying facilities) to the market." There is no reference to any specific action or inaction by the ISO, and CARE has not identified any statutory standard, regulatory requirement or tariff provision that the ISO violated by its "actions or inactions." Indeed, CARE has failed to show that the resources on behalf of whom it is purportedly filing this complaint (1) have met all of the requirements of the ISO Tariff to interconnect to the ISO grid and participate in ISO markets, (2) have even sought to interconnect to the ISO and participate in the ISO markets, and (2) have actually and unreasonably been denied that opportunity by the ISO. Absent a demonstration of these facts, CARE does not even satisfy the basic requirements for a complaint against the ISO under the Commission's regulations.

The remainder of CARE's complaint pertain to issues that are jurisdictional to the CPUC not FERC. In that regard, the CPCN process, retail CSI program, and the State's RPS programs are not FERC-jurisdictional matters. Thus, the complaint must be summarily dismissed.

III. CONCLUSION

The Complaint does not raise any genuine issues of material fact and is defective as a matter of law. Accordingly, the CAISO respectfully requests that the Commission grant summary disposition in its favor and deny the Complaint. The Commission should also provide any other relief it deems appropriate.

Respectfully submitted,

/s/ Judith Sanders

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Certificate of Service

I hereby certify that I have this day served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-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 this 11th day of August, 2009 at Folsom, California.

/s/ Jane Ostapovich
Jane Ostapovich