

174 FERC ¶ 61,204  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;  
Neil Chatterjee, James P. Danly,  
Allison Clements, and Mark C. Christie.

CALifornians for Renewable Energy  
Michael E. Boyd

Docket No. EL20-69-000

v.

California Independent System Operator Corporation  
California Public Utilities Commission  
Pacific Gas and Electric Company  
San Diego Gas & Electric Company  
Southern California Edison Company

ORDER DENYING COMPLAINT  
AND NOTICE OF INTENT NOT TO ACT

(Issued March 18, 2021)

1. On August 31, 2020, CALifornians for Renewable Energy and Michael E. Boyd (collectively, CARE) filed a complaint<sup>1</sup> alleging that recent blackout events related to heat conditions demonstrate that markets operated by the California Independent System Operator Corporation (CAISO), the California Public Utilities Commission (CPUC), Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SoCal Edison), and San Diego Gas & Electric Company (SDG&E)<sup>2</sup> (collectively, Respondents) are discriminatory and unworkable. CARE also alleges several violations of the Public Utility Regulatory Policies Act of 1978 (PURPA). In this order, we deny the complaint, dismiss CARE's PURPA allegations against the California Utilities and

---

<sup>1</sup> On September 3, 2020, CARE filed a supplement to its complaint that added CARE's address.

<sup>2</sup> PG&E, SoCal Edison, and SDG&E are referred to herein as the California Utilities.

CAISO, and give notice that we decline to initiate an enforcement action pursuant to PURPA section 210(h)(2)(A).

## **I. Background**

2. CARE states that, on the evening of August 14, 2020, more than 400,000 homes and businesses in California were without power for more than three hours and, on the evening of August 15, 2020, more than 300,000 customers had their power shut off for 20 minutes or longer. According to CARE, officials from CAISO said that the reason for the blackouts was that there was not enough electricity to meet demand due to a historic heat storm and unexpected supply deficiencies, including a lack of wind and the outage of a 470 MW gas fired generator.<sup>3</sup>

## **II. Complaint**

### **A. CAISO Markets Allegations**

3. CARE alleges that, during the blackout events on August 14 and 15, 2020, prices in the CAISO markets were unjust and unreasonable. CARE argues that, during the worst of the emergency, prices were 40 to 50 times typical prices and continued to be high for several days after the blackouts, including prices of \$1,500/MWh in the day-ahead markets in the SDG&E and SoCal Edison service territories. CARE contends that the blackouts and associated high prices should not have occurred because, on the dates in question, demand levels in CAISO were below the projected average-year forecast peak. CARE complains that CAISO has not offered a sufficient explanation as to why it did not have, or did not use, the megawatts of capacity held as part of the 15% planning reserve margin established in response to the 2000-2001 Western Energy Crisis. CARE asserts that, on August 14, 2020, when CAISO declared a Stage 3 emergency,<sup>4</sup> operating reserves were at about nine percent, almost three times the three percent standard for ordering blackouts. CARE states that, when CAISO issued the Stage 3 emergency alert on August 15, 2020, operating reserves were above eight percent.<sup>5</sup>

4. CARE asserts that reforms enacted in the wake of the Western Energy Crisis not only established the 15% planning reserve margin but also set resource adequacy

---

<sup>3</sup> Complaint at 2.

<sup>4</sup> A Stage 3 emergency is declared by CAISO when it is unable to meet minimum contingency reserve requirements and load interruption is imminent or in progress. CAISO, *System Alerts, Warnings and Emergencies*, (May 2018), <http://www.caiso.com/informed/Pages/Notifications/NoticeLog.aspx>.

<sup>5</sup> Complaint at 2-3, 5-6.

requirements to ensure that load serving entities would have sufficient power supplies on hand and sought to prevent energy traders from manipulating electricity prices. CARE notes that most of the electricity provided by the California Utilities is procured through long-term contracts, but CAISO has also established day-ahead and real-time markets to meet fluctuating electricity needs. CARE alleges that short-term trades in the CAISO markets often involve much higher prices (i.e., the price for a single MWh that was \$1,535.00 on August 18, 2020, dropped to \$38 by the morning of August 21, 2020). Moreover, CARE notes that CPUC routinely grants waivers of state resource adequacy requirements, pointing to CPUC's recent approval of an SDG&E request to waive its resource adequacy procurement obligation.<sup>6</sup>

5. CARE argues that the blackouts and associated price fluctuations demonstrate that the CAISO markets are not workable. CARE alleges that prices in those markets are unjust and unreasonable because those prices far exceed prior levels and do not reflect legitimate forces of supply and demand. CARE requests that the Commission set just and reasonable rates for the affected period and direct refunds for the overcharges. Further, CARE requests that the Commission prospectively impose a price cap of \$250/MWh in the CAISO markets, as the Commission did in the Western Energy Crisis proceedings.<sup>7</sup>

6. CARE states that California also experienced rolling blackouts in the summer of 2000 during the Western Energy Crisis when the California Utilities cut power to hundreds of thousands of customers by order of CAISO. CARE also asserts that, in a July 17, 2002 order, the Commission found that the composition of the CAISO Board of Governors, whose members are appointed by California's governor, poses a barrier to a new market design that would ensure just, reasonable, and not unduly discriminatory or preferential rates in the CAISO markets.<sup>8</sup> CARE claims that the State of California's dominance of the CAISO Board creates the impression that CAISO is biased and raises jurisdictional issues related to conflicts with or obstacles to the Commission's exclusive jurisdiction over the rates, terms, and conditions of CAISO's transmission service in interstate commerce.<sup>9</sup>

---

<sup>6</sup> *Id.* at 6-8.

<sup>7</sup> *Id.* at 2, 15-16.

<sup>8</sup> *Id.* at 4 (citing *Mirant Delta, LLC v. Cal. Indep. Sys. Operator Corp.*, 100 FERC ¶ 61,059, at P 1 (2002) (CAISO Governance Order)).

<sup>9</sup> *Id.* at 2, 4-5. CARE also asks the Commission to include CAISO as part of the "California Parties," which are comprised of PG&E, SoCal Edison, and SDG&E for purposes of the Western Energy Crisis proceedings. *Id.* at 2-3.

## **B. PURPA Allegations**

7. CARE also contends that the blackouts imposed on August 14 and 15, 2020, violated PURPA by curtailing net energy metered solar systems that are qualifying facilities (QF).<sup>10</sup> CARE complains that, although the purported benefit of a net energy metered solar system is that the system will receive net energy metering credit for the excess energy produced by the system that goes out onto the grid, the electric solar system will not work during a blackout unless the customer has backup storage, adding that “even if you have backup storage you aren’t paid anything for the energy capacity you provide the utility [with or without storage].”<sup>11</sup> CARE argues that PURPA requires the provision of supplemental power, backup power, interruptible power, and maintenance power for all QFs.<sup>12</sup> CARE requests that the Commission enforce compliance with these PURPA provisions or provide a schedule for compliance.<sup>13</sup>

8. In addition, CARE alleges that Respondents are violating PURPA’s avoided cost requirements.<sup>14</sup> CARE asserts that a recent decision by the United States Court of Appeals for the Ninth Circuit requires state regulatory agencies to calculate avoided costs, which can include the capacity costs that a utility avoids by purchasing electricity from QFs.<sup>15</sup> CARE contends that Respondents refuse to meet this obligation and request that the Commission enforce compliance or provide a schedule for compliance.<sup>16</sup>

---

<sup>10</sup> The Net Energy Metering program is a program administered by CPUC that provides customers who install small (under one MW) solar, biogas, and fuel cell generation to serve all or a portion of their onsite electricity needs. Participation in the program allows customer-generators to receive retail rate credits on their electric bills for excess energy that is fed back to the grid.  
<https://www.cpuc.ca.gov/general.aspx?id=3800>.

<sup>11</sup> Complaint at 9.

<sup>12</sup> *Id.* at 9-10 (citing 18 C.F.R. § 292.101(b)).

<sup>13</sup> *Id.* at 10.

<sup>14</sup> *Id.* at 10-11 (citing 18 C.F.R. § 292.304(e)).

<sup>15</sup> *Id.* (citing *CALifornians for Renewable Energy v. Cal. Pub. Utils. Comm’n*, 922 F.3d 929, 933 (9th Cir. 2019) (*CARE v. CPUC*)).

<sup>16</sup> *Id.* at 11.

9. Finally, CARE argues that Respondents' failure to provide capacity payments to net energy metered solar systems violates PURPA and discriminates against rooftop solar QFs by denying them access to Commission-regulated wholesale energy markets. CARE asserts that more than 90% of customer-sited solar capacity interconnected to the grid in the California Utilities' service territories operate pursuant to net energy metering tariffs, which entitle them to generate their own onsite energy and receive a credit on their electric bills for any surplus energy fed back to their utility provider. Further, CARE states that solar facilities with a capacity less than 100 kW are credited for such surplus energy based on standard rates and only larger facilities can receive credits based on competitive market rates. CARE contends that Respondents refuse to provide any capacity payments to over a million California net energy metered generators that are QFs with less than one MW nameplate capacity, despite the fact that energy from these facilities constitutes roughly 15% of energy supplied during peak load conditions. More specifically, CARE argues that Respondents are not meeting their obligations under 18 C.F.R. § 292.304(c)(1) to provide for standard rates for QFs with a design capacity of 100 kilowatts or less and 18 C.F.R. § 292.304(c)(2) to provide for competitive rates for QFs with a design capacity above 100 kilowatts. CARE also alleges that this is contrary to *CARE v. CPUC*, which CARE claims stands for the proposition that "[i]f a QF displaces the utility's need for additional capacity...the utility is required to include capacity costs as part of avoided costs."<sup>17</sup> CARE requests that the Commission enforce compliance or provide a schedule for compliance.<sup>18</sup>

### **III. Notice and Responsive Pleadings**

10. Notice of the complaint was published in the *Federal Register*, 85 Fed. Reg. 55,675 (Sept. 9, 2020), with interventions or protests due on or before September 21, 2020. On September 9, 2020, the California Utilities filed a motion requesting an extension of time until September 28, 2020, to answer the complaint. The request was granted in a notice issued on September 15, 2020.

11. Timely motions to intervene were filed by Public Citizen, Inc.; Calpine Corporation; NRG Power Marketing LLC; Powerex Corp.; California Department of Water Resources State Water Project; Northern California Power Agency; Boston Energy Trading and Marketing LLC; and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California. CAISO filed a timely motion to intervene and answer. The California Utilities filed timely motions to intervene and jointly filed an answer and motion to dismiss the complaint. CPUC filed a notice of intervention and answer. CARE filed an answer in response to the California Utilities' motion to dismiss the complaint.

---

<sup>17</sup> *Id.* at 14.

<sup>18</sup> *Id.* at 11-14.

**A. CAISO Markets Allegations**

12. CAISO and CPUC argue that the Commission should dismiss the complaint as legally insufficient and unsupported. CAISO contends that complainants bear the burden under FPA section 206 to demonstrate that (1) existing CAISO tariff provisions have become unjust, unreasonable, or unduly discriminatory or preferential or (2) CAISO has violated its existing tariff provisions.<sup>19</sup> CAISO and CPUC assert that nothing in the complaint identified any specific market behavior or tariff provisions that are no longer just and reasonable. CAISO and CPUC also argue that CARE's generalized claims of high prices on several days in August 2020 are wholly unsupported by evidence and otherwise insufficient to meet the basic requirements under the Commission's regulations governing complaints. CAISO argues that the prices in question are consistent with the market design approved by the Commission, including the \$1,000/MWh bid cap. CAISO asserts that the mere fact of higher prices during periods of supply deficiencies does not render those prices or the overall market design unjust or unreasonable.<sup>20</sup> The California Utilities argue that the Commission should dismiss CARE's allegations of unjust and unreasonable prices and unworkable CAISO market design against the California Utilities because the California Utilities do not operate and have no control over the CAISO markets.<sup>21</sup>

13. In addition, CAISO argues that the Commission should reject CARE's proposed \$250/MWh bid cap because (1) CARE has not shown that the existing market rules are unjust and unreasonable and (2) even if CARE had met its burden, it did not demonstrate that a \$250/MWh bid cap is just and reasonable. CAISO asserts that CARE's reference to the Western Energy Crisis as a basis for implementing a \$250/MWh bid cap is misplaced because it fails to recognize that conditions today are very different than 20 years ago, including a completely different market design. Further, CAISO notes that decreasing the bid cap to \$250/MWh would be inconsistent with Order No. 831, in which the Commission required each regional transmission organization/independent system operator to cap a resource's cost-based incremental energy offers to a hard cap of \$2,000/MWh for purposes of calculating locational marginal prices (LMP) in order to better facilitate cost recovery, avoid suppressing LMPs below the marginal cost of production, and avoid discouraging more expensive resources from offering into the

---

<sup>19</sup> CAISO Answer at 6 (citing *CXA La Paloma, LLC v. Cal. Indep. Sys. Operator Corp.*, 169 FERC ¶ 61,045, at P 36 (2019)).

<sup>20</sup> *Id.* at 6-8; CPUC Answer at 3-5.

<sup>21</sup> California Utilities Answer at 4-6.

supply market.<sup>22</sup> The California Utilities likewise argue that, even assuming that CARE had demonstrated some market dysfunction warranting a remedy, it did not demonstrate that the proposed \$250/MWh bid cap is appropriate for the same reasons discussed by CAISO.<sup>23</sup>

14. CAISO also argues that CARE provides no basis for adjusting prices retroactively. CAISO notes that CARE requests refunds for a period that begins 20 days before the complaint was filed; however, CAISO explains that the Commission does not have authority under FPA section 206 to change approved rates prior to the date a complaint is filed or such later refund effective date as the Commission may establish. As discussed above, CAISO contends that CARE has provided no evidence to support its claim that the existing tariff resulted in unjust or unreasonable prices in August 2020.<sup>24</sup>

15. Finally, CAISO argues that CARE mischaracterizes facts and circumstances regarding the CAISO's shedding of load on the days in question. CAISO contends that CARE misunderstands that the planning reserve margin is irrelevant to whether CAISO must shed load on any given day because this margin is merely a planning criterion that drives resource adequacy procurement targets, whereas CAISO operates the system based on the actual load and available supply and not what it was expected to be. CAISO avers that it operates the system based on standards set by the North American Electric Reliability Corporation (NERC) and, as such, the decision about whether to shed load is driven by whether CAISO can continue to operate its system consistent with those criteria. CAISO explains that, once reserves become deficient with reference to the applicable NERC standards, as they did on August 14 and 15, it may be required to shed load to comply with those standards regardless of the level at which the planning reserve margin is set. CAISO contends that CARE has not offered any evidence that CAISO was not reserve deficient when it shed load on those two days.<sup>25</sup>

---

<sup>22</sup> CAISO Answer at 7-11 (citing *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 831, 157 FERC ¶ 61,115, at PP 2, 15, 34-41 (2016), *order on reh'g and clarification*, Order No. 831-A, 161 FERC ¶ 61,156 (2017); *Cal. Indep. Sys. Operator Corp.*, 172 FERC ¶ 61,262 (2020)).

<sup>23</sup> California Utilities Answer at 6-7.

<sup>24</sup> CAISO Answer at 12.

<sup>25</sup> *Id.* at 17-21. CAISO also contends that CARE's purpose in requesting the Commission to include CAISO as one of the "California Parties" is unclear but nevertheless blurs the legitimate distinctions among the individual respondents and

16. CAISO further asserts that CARE failed to show that CAISO discriminates against rooftop solar QFs and net energy metered generators by denying them access to Commission-regulated wholesale energy markets. CAISO argues that CARE provides no evidence of the alleged discrimination. CAISO also highlights that its tariff expressly permits distributed generation (including rooftop solar) to participate in the wholesale markets on a non-discriminatory basis in accordance with the requirements accepted by the Commission. CAISO adds that rooftop solar and other net energy metered consumers have the option of participating in CAISO's markets through CAISO's demand response models, either as individual demand response resources or as aggregations.<sup>26</sup>

17. The California Utilities contend that CARE's allegation of discrimination is unsupported. First, the California Utilities note that CARE's concerns about California's role in CAISO's governance are based on a Commission order that was vacated on appeal.<sup>27</sup> Second, the California Utilities assert that CARE provides no explanation as to how Exhibits A, B, and C to the complaint, which show levels of solar production and prices in the day-ahead and real-time markets during the week of the heat events, support its claims. Third, the California Utilities note that net energy metered QFs have numerous options for participating in the CAISO markets.<sup>28</sup>

#### **B. PURPA Allegations**

18. The California Utilities and CPUC also argue that CARE's request for the Commission to enforce compliance with PURPA obligations to provide supplemental or backup power should be dismissed for failure to satisfy Rule 206 of the Commission's Rules of Practice and Procedure and lack of jurisdiction and factual basis. Regarding Rule 206, the California Utilities assert that CARE fails to identify any relevant statutory standards or regulatory requirements governing its claim. The California Parties and CPUC highlight that CARE cites the "Definitions" portion of the PURPA regulations to support its theory about an obligation under PURPA for utilities to provide backup or supplemental power during a system emergency. The California Utilities also assert that all the services defined in 18 C.F.R. § 292.101 are retail electric services and under state jurisdiction and, therefore, the Commission lacks jurisdiction over this claim. CPUC likewise notes that the Commission has long held that the FPA reserves the retail billing

---

ignores that each of the complaint's allegations do not apply to all of the Respondents. *Id.* at 14-15.

<sup>26</sup> *Id.* at 13-14.

<sup>27</sup> California Utilities Answer at 8 (citing *Cal. Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395 (D.C. Cir. 2004)).

<sup>28</sup> *Id.* at 8-9.

aspect of net energy metering to state jurisdiction. CPUC explains that a net energy metered customer can only reduce the kilowatts that will be billed at the retail rate by the utility, making the netting portion of the net energy metering program a retail rate program subject to CPUC's jurisdiction.<sup>29</sup> The California Utilities emphasize that the Commission has expressly disclaimed jurisdiction over backup services for QFs on the grounds that they are retail services.<sup>30</sup> CAISO asserts that the current net energy metering rules and the related PURPA obligations are a state-administered program and the alleged PURPA violations thus do not implicate CAISO.<sup>31</sup>

19. The California Utilities and CPUC contend that CARE is incorrect that net energy metered customers cannot access their rooftop solar during a system emergency. The California Utilities highlight, as CARE acknowledges in the complaint, that nothing prevents a net energy metered customer from isolating its generator and load from the grid and providing itself backup power during an outage.<sup>32</sup> The California Utilities and CPUC argue that CARE's allegation that net energy metered customers are being illegally deprived of capacity payments should be dismissed because the issue of whether net energy metered QFs merit capacity payments as net surplus payments was already adjudicated in *CARE v. CPUC*. The California Utilities and CPUC contend that CARE raises the same issue that was unambiguously resolved by the Ninth Circuit in *CARE v. CPUC*, where the court reasoned that capacity payments are not warranted in CPUC's net energy metering program.<sup>33</sup> Moreover, the California Utilities point out that compensation under the net energy metering program is subject to state jurisdiction and the Commission has recently declined to address whether this policy should be reexamined.<sup>34</sup>

---

<sup>29</sup> CPUC Answer at 6-7.

<sup>30</sup> California Utilities Answer at 11 (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103, at P 750 (2003)).

<sup>31</sup> CAISO Answer at 16.

<sup>32</sup> *Id.* at 12; CPUC Answer at 7-8.

<sup>33</sup> CPUC Answer at 8-9 (citing *CARE v. CPUC*, 922 F.3d 929); CAISO Answer at 15-16.

<sup>34</sup> California Utilities Answer at 17 (citing *New England Ratepayers Ass'n*, 172 FERC ¶ 61,042 (2020)); CPUC Answer at 8-9.

20. CPUC further argues that CARE's allegation that small QFs are deprived of a wholesale power purchase agreement is factually incorrect. CPUC concedes that 18 C.F.R. § 292.304(c)(1) requires states to implement PURPA by, among other things, offering a standard rate for purchases from QFs with a design capacity of 100 kW or less. However, CPUC denies the existence of an obligation for the state to provide for competitive rates for QFs with a design capacity above 100 kW. CPUC asserts that nothing in 18 C.F.R. § 292.304(c)(2) is mandatory on the states nor does it mention competitive rates. Similarly, CPUC asserts that CARE's allegations about avoided cost rates are not legally cognizable because 18 C.F.R. § 292.304(e) contains a list of factors to be considered to the extent possible but that CARE does not set forth facts explaining how CPUC has failed to do so.<sup>35</sup>

21. Additionally, the California Utilities contend that they are not the appropriate parties to the complaint's PURPA claims because PURPA authorizes only three types of enforcement actions: (1) implementation challenges by the Commission against states in federal court;<sup>36</sup> (2) implementation challenges by QFs against state commissions in federal court;<sup>37</sup> and (3) as-applied challenges by QFs against utilities in state court. The California Utilities argue that none of the permissible circumstances for bringing an enforcement action under PURPA is present here and, therefore, the Commission has grounds to dismiss this element of the complaint.<sup>38</sup>

### C. CARE Answer

#### 1. CAISO Markets Allegations

22. In response to the California Utilities' statements that the major investor owned utilities are not proper respondents because they do not operate or control the CAISO markets, CARE claims that the CAISO Preliminary Root Cause Analysis (Preliminary Analysis) of the rotating outages in the CAISO footprint on August 14 and 15, 2020, demonstrates that the California Utilities have market power.<sup>39</sup> CARE asserts that the Preliminary Analysis found that CPUC-jurisdictional load serving entities comprise

---

<sup>35</sup> CPUC Answer at 9-12.

<sup>36</sup> California Utilities Answer at 20 (citing 16 U.S.C. § 824a-3(h)(2)(A)).

<sup>37</sup> *Id.* (citing 16 U.S.C. § 824a-3(h)(2)(B)).

<sup>38</sup> *Id.* (citing 16 U.S.C. § 824a-3(g)(2)).

<sup>39</sup> CARE Answer at 2 (citing Attachment B (Preliminary Root Cause Analysis, Mid-August 2020 Heat Storm, <http://www.aiso.com/Documents/Preliminary-Root-Cause-Analysis-Rotating-Outages-August-2020.pdf>)).

approximately 91% of load. CARE also notes that the Preliminary Analysis found that certain practices, such as the under scheduling of load in the day-ahead market, exacerbated supply conditions. CARE states that the Commission conducts indicative screens to determine whether sellers have horizontal market power and questions how a market-based rate seller that owns and operates transmission facilities can satisfy the Commission's vertical market power requirements. CARE requests that the Commission conduct a market power analysis on the investor owned utilities' sales and purchases in CAISO-operated markets for both vertical and horizontal market power.<sup>40</sup>

23. CARE asserts that it has provided evidence of market dysfunction and unjust and unreasonable prices. CARE argues that it has provided market data from CAISO along with its complaint allegations and that the California Utilities do not deny these exhibits or any of CARE's allegations.<sup>41</sup> Next, CARE disputes the California Utilities' argument that CARE has not shown that its proposed \$250/MWh price cap is not appropriate. CARE contends that the conditions that led the CPUC to reduce its buy-side price cap to \$250/MWh following the Western Energy Crisis, such as an increased reliance on imports and reduced reserve margins, are analogous to the "August 2020 crisis."<sup>42</sup> In response to the California Utilities' arguments that the Commission should not rely on the CAISO Governance Order as evidence of undue discrimination because that order was vacated by the courts, CARE argues that the disposition of the case does not change the underlying facts of the order.<sup>43</sup>

24. In response to the California Utilities' assertion that CARE fails to explain how the exhibits to the complaint support CARE's allegations of discrimination against rooftop solar QFs, CARE explains that (1) Exhibit A shows graphically the daily solar power curves for CAISO from August 11, 2020 through August 21, 2020; (2) Exhibit B shows the CAISO Day-Ahead Daily Market Watch Report from August 11, 2020 through August 21, 2020; and (3) Exhibit C shows the CAISO Real-Time Daily Market Watch Report from August 11, 2020 through August 21, 2020. CARE asserts that these exhibits show prices above \$750/MWh more than half an hour before the rolling blackouts occurred. CARE questions whether the solar production figures include rooftop solar or only grid-tied utility scale solar. CARE questions whether rooftop solar is included in the

---

<sup>40</sup> *Id.* at 2-4.

<sup>41</sup> *Id.* at 4-5 (citing Complaint, Exhibits A, B, and C).

<sup>42</sup> *Id.* at 6-7.

<sup>43</sup> *Id.* at 7-8.

solar production figures, and argues that it would be discriminatory for the California Utilities to deny compensation to the rooftop solar units for their energy or capacity.<sup>44</sup>

## 2. PURPA Allegations

25. CARE argues that, contrary to the California Utilities' assertions, rooftop solar generators do not have legitimate options to participate in the CAISO markets because these generators do not have a meaningful opportunity to choose between a net energy metering contract, a standard QF contract, or participation in CAISO markets. CARE states that "[t]he question the [investor owned utilities] are raising is when a [net energy metered] customer-generator puts its joules into the [investor owned utility] grid is it wholesale energy regulated by the [Commission] and when a [net energy metered] customer-generator takes joules from the [investor owned utility's] grid is it retail energy regulated by the State, or not."<sup>45</sup> CARE questions whether this is a matter of physics and not a policy decision and requests that the Commission address these questions.

26. CARE disputes the California Utilities' argument that the PURPA-related allegations in the complaint fail to state a claim under FPA section 206. CARE states that section 206 implicates any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, including the definitions in 18 C.F.R. § 292.101(b). Thus, CARE insists that the Commission has jurisdiction over that provision. CARE adds that, under Commission regulations, the California Utilities have the obligation to provide, upon request, backup power, supplemental power, maintenance power, and interruptible power to QFs.<sup>46</sup> CARE requests that the California Utilities provide these services going forward.<sup>47</sup>

27. CARE defends its allegations about compensation for rooftop solar QFs. First, CARE denies that QFs under one MW nameplate capacity have a choice between operating under a net energy metering tariff or a standard QF contract. CARE points out that generators under one MW automatically become a QF.<sup>48</sup> CARE contends that claims regarding choices between different forms of compensation are "refuted by Mr.

---

<sup>44</sup> *Id.* at 8-9.

<sup>45</sup> *Id.* at 9.

<sup>46</sup> *Id.* at 10-11 (citing 18 C.F.R. § 292.305(b)(1) ("Upon request of a qualifying facility, each electric utility shall provide . . . Supplementary power . . . Back-up power . . . Maintenance power [] and . . . Interruptible power.")).

<sup>47</sup> *Id.* at 10-11.

<sup>48</sup> *Id.* at 13.

Boyd Self Certification as a QF in 2003 with the [Commission], and the fact that under current Commission regulations these customer-generators automatically become a QF anyways, if less than one MW nameplate capacity.”<sup>49</sup> For similar reasons, CARE disagrees that the issue of compensation under the net energy metering program is a state-jurisdictional matter and questions whether a QF’s banked excess power constitutes a wholesale or retail transaction.<sup>50</sup> CARE also alleges that the automatic QF designation for facilities with a design capacity of 100 kilowatts or less violates 18 C.F.R. § 292.304(c)(1).<sup>51</sup>

28. CARE disagrees with the California Utilities’ argument that CPUC is not required to consider capacity costs in avoided cost rates and that this is an issue for the Commission to decide under FPA section 206. CARE also disagrees that *res judicata* bars re-litigation of this issue and asserts that it has not yet litigated this matter before the court. CARE likewise denies that it would be able to address this question through a Petition for Enforcement under the PURPA regulations, as suggested by the California Utilities.<sup>52</sup>

#### IV. Discussion

##### A. Procedural Matters

29. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2020), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

30. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2020), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the answer filed by CARE because it has provided information that assisted us in our decision-making process.

---

<sup>49</sup> *Id.* at 18.

<sup>50</sup> *Id.* at 16-17.

<sup>51</sup> *Id.* at 18 (citing 18 C.F.R. § 292.304(c)(1) (“There shall be put into effect (with respect to each electric utility) standard rates for purchases from qualifying facilities with a design capacity of 100 kilowatts or less.”)).

<sup>52</sup> *Id.* at 13-16.

## **B. Substantive Matters**

### **1. CAISO Markets Allegations**

31. We deny the complaint. 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>53</sup> Additionally, Rule 206 of the Commission’s Rules of Practice and Procedure requires complainants 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 the applicable statutory standards or regulatory requirements.”<sup>54</sup> Accordingly, CARE must demonstrate that CAISO’s existing tariff provisions have become unjust, unreasonable, or unduly discriminatory or preferential, or that CAISO or the other Respondents have violated CAISO’s existing tariff. We find that CARE has failed to make such a demonstration and, thus, we find that CARE has not satisfied its burden under FPA section 206.

32. The Commission has consistently found that a party challenging a rate pursuant to FPA section 206 will have failed to provide a sufficient evidentiary record showing the filed rate to be unjust, unreasonable or unduly discriminatory if the entirety of the challenging party’s submittal is comprised of unsubstantiated speculation.<sup>55</sup> Specifically, the Commission has found that “[d]isputed facts cannot be mere allegations, the complainant must make an adequate proffer of evidence” to support its claim.<sup>56</sup> For the reasons discussed below, we find that CARE has not satisfied the threshold requirements for a complaint under FPA section 206 because its complaint consists entirely of conclusory generalizations and speculation.

---

<sup>53</sup> 16 U.S.C. § 824e(b); *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).

<sup>54</sup> *Californians for Renewable Energy, Inc. v. Cal. Pub. Utils. Comm’n*, 131 FERC ¶ 61,102, at 61,493 (2010) (quoting 18 C.F.R. § 385.203(a)).

<sup>55</sup> *BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,239, at P 35 (2007) (*BP West Coast*); *see also AES Ocean Express, LLC v. Fla. Gas Transmission Co.*, 119 FERC ¶ 61,075, at P 97 (2007).

<sup>56</sup> *BP West Coast*, 121 FERC ¶ 61,239 at P 35.

33. We find that the complaint fails to identify any specific CAISO tariff provisions that are allegedly unjust and unreasonable. Rather, CARE complains generally about high prices during several days in August 2020 and makes loose comparisons to conditions that prevailed during the Western Energy Crisis, which occurred two decades ago. We find that this line of argument fails for several reasons.

34. First, we find that CARE has failed to present evidence that the prices at issue were not the product of legitimate forces of supply and demand. CARE Exhibit A consists of CAISO reporting on the production levels of renewable resources and their contribution of energy to the grid for the period of August 11, 2020, through August 17, 2020. Exhibit B shows CAISO's LMPs and demand levels in the day-ahead markets during the same period. Exhibit C presents the same types of price and demand information, but for the real-time market over the same time period. CARE included no explanation of how these charts demonstrate unjust or unreasonable prices or even general market dysfunction. The explanation provided by CARE in its Answer fares no better because, instead of demonstrating how this data renders any particular provisions of CAISO tariff unjust, unreasonable, or unduly discriminatory or preferential, CARE makes the observation that prices reached a certain level more than half an hour before the rolling blackouts began and questions whether the renewable production data includes output from rooftop solar facilities. CARE has not explained how it reached conclusions about the alleged unworkability of the entire CAISO market structure from this limited data.

35. Second, although CARE alleges that CAISO had sufficient operating reserves at the time it declared the operating emergencies and directed the rolling blackouts, CARE provides no evidence to support these claims. Moreover, CARE discusses the reserve obligations implemented as a result of the Western Energy Crisis but does not allege that CAISO violated these requirements or any other applicable reliability requirement, such as NERC Reliability Standards. CARE also fails to substantiate its assertion that CPUC's waiver of SDG&E's resource adequacy obligations played a role in the load shedding. Thus, we find that each of these arguments amounts to little more than speculation that do not satisfy CARE's burden under FPA section 206.

36. We also are not persuaded by CARE's claim in its Answer that the California Utilities have market power to support its claim that the CAISO markets are not just and reasonable. CARE provides no explanation about how the ratio between CPUC jurisdictional and non-CPUC jurisdictional load serving entities that provide resource adequacy capacity renders the Commission-jurisdictional CAISO markets unjust or unreasonable, or unduly discriminatory or preferential.

37. Because we find that CARE has not satisfied its burden under FPA section 206 to show that the existing rate is unlawful, as discussed above, we need not address the appropriateness of its proposed remedy of a \$250/MWh bid cap or the calculation of refunds.<sup>57</sup>

38. Finally, we find that CARE has also failed to satisfy its burden under FPA section 206 to demonstrate that the CAISO markets unduly discriminate against net energy metered customers by denying them access to Commission-regulated wholesale energy markets. As with its allegations of high prices, CARE cites no provision of the existing CAISO tariff that has become unjust and unreasonable nor does it identify any specific action or inaction by CAISO that constitutes undue discrimination. Rather, CARE appears to base this allegation primarily on its own unsupported perception of bias and the CAISO Governance Order.<sup>58</sup> As correctly noted by the California Utilities, the CAISO Governance Order cannot be relied upon here because it was vacated on appeal.<sup>59</sup> We also find unpersuasive CARE's attempt, in its Answer, to further clarify how the exhibits to the complaint support its claims of discrimination against rooftop solar QFs.<sup>60</sup> We find that CARE's explanation merely describes the data that is depicted in each of the exhibits without connecting the data to any unduly discriminatory behavior.

## 2. PURPA Allegations

39. Although CARE raises its PURPA allegations in an FPA section 206 complaint, we find that these claims are in effect challenges to Respondents' implementation of PURPA because CARE asks the Commission to "enforce compliance or provide a

---

<sup>57</sup> *Emera Maine v. FERC*, 854 F.3d 9, 24-25 (D.C. Cir. 2017) ("Without a showing that the existing rate is unlawful," the Commission "has no authority to impose a new rate.").

<sup>58</sup> Complaint at 4-5.

<sup>59</sup> *See Cal. Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395.

<sup>60</sup> CARE Answer at 8-9.

schedule for compliance.”<sup>61</sup> Accordingly, we will treat this aspect of the complaint as a petition for enforcement pursuant to section 210(h) of PURPA.

40. We dismiss the allegations against the California Utilities and CAISO because they are not subject to Commission jurisdiction under PURPA section 210(h).<sup>62</sup> We decline to initiate an enforcement action against CPUC.<sup>63</sup>

41. Notice is hereby given that the Commission declines to initiate an enforcement action against CPUC pursuant to section 210(h)(2)(A) of PURPA.<sup>64</sup> Our decision not to initiate an enforcement action means that CARE may itself bring an enforcement action against CPUC in the appropriate court.<sup>65</sup>

---

<sup>61</sup> Complaint at 10. Both of CARE’s allegations are fundamental challenges to PURPA implementation: (1) Respondents are violating the mandate that electric utilities provide supplementary power, back-up power, maintenance power, and interruptible power to a QF at its request; and (2) Respondents are not providing capacity payments to NEM rooftop solar QFs. *Id.* at 10, 14. The Commission has previously treated similar complaints as PURPA section 210(h) petitions for enforcement. *Wahl v. Allamakee-Clayton Elec. Coop.*, 115 FERC ¶ 61,318, at P 6 (2006); *ExxonMobil Chem. Co. v. Entergy Servs., Inc.*, 111 FERC ¶ 61,063, at PP 14-15 (2005).

<sup>62</sup> 16 U.S.C. § 824a-3(h)(2)(A) (providing for action only against “State regulatory authorities and nonregulated electric utilities.”). California Utilities and CAISO do not fall within either of these categories.

<sup>63</sup> The Commission’s enforcement authority under PURPA section 210(h)(2)(A) is discretionary. *ConocoPhillips Co. v. Los Angeles Dept. of Water and Power*, 110 FERC ¶ 61,368 (2005) (declining to initiate a 210(h) enforcement action in response to a FPA section 206 complaint because the “Commission’s enforcement authority . . . is discretionary”); *Policy Statement Regarding the Commission's Enforcement Role Under Section 210 of the Public Utility Regulatory Policies Act of 1978*, 23 FERC ¶ 61,304, at 61,545 (1983) (stating that “the Commission is not required to undertake enforcement action”).

<sup>64</sup> 16 U.S.C. § 824a-3(h)(2)(A).

<sup>65</sup> *Id.* § 824a-3(h)(2)(B).

The Commission orders:

(A) CARE's complaint is hereby denied, as discussed in the body of this order.

(B) Notice is hereby given that the Commission declines to initiate an enforcement action under PURPA section 210(h)(2)(A), as discussed in the body of this order.

By the Commission. Commissioner Danly is concurring with a separate statement attached.

( S E A L )

Kimberly D. Bose,  
Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Californians for Renewable Energy  
Michael E. Boyd

Docket No. EL20-69-000

v.

California Independent System Operator Corporation  
California Public Utilities Commission  
Pacific Gas and Electric Company  
San Diego Gas & Electric Company  
Southern California Edison Company

(Issued March 18, 2021)

DANLY, Commissioner, *concurring*:

1. I concur with the Commission’s decision to deny Californians for Renewable Energy and Michael E. Boyd’s complaint for failing to meet our pleading requirements. I share complainants’ concerns about blackouts and other failures during the heat and wildfire event in August, 2020, but complainants must do more than make bare allegations. I previously voted to initiate a Federal Power Act section 206<sup>1</sup> investigation into the same facts, but the Commission failed to support that action.<sup>2</sup> I understand that the California Independent System Operator Corporation (CAISO) plans to file a package of tariff modifications, and I will carefully review that filing. In addition to these efforts, I still welcome a section 206 investigation, or failing that, for affected parties to file legally sufficient section 206 complaints identifying specific tariff revisions and other relief, supported by substantial evidence. In my view, comprehensive action is necessary to prevent more blackouts.

2. The dominant narrative since the California reliability crisis last summer is that a “perfect storm” of extended hot weather and devastating wildfires is to blame for CAISO

---

<sup>1</sup> 16 U.S.C. § 824e.

<sup>2</sup> See *Staff Presentation on California Independent System Operator (EL21-19-000)*, FERC (Dec. 17, 2020), <https://www.ferc.gov/news-events/news/staff-presentation-california-independent-system-operator-el21-19-000>.

implementing rolling blackouts.<sup>3</sup> As I previously have stated, I reject that excuse.<sup>4</sup> If there was a “perfect storm,” it was not from weather and wildfires but the convergence of market and regulatory failures.

3. I see two immediate and critical areas in need of reform. First, CAISO’s markets appear inadequate to allow dispatchable generation resources the opportunity to recover sufficient revenues to remain in operation or to invest in necessary equipment and upgrades. CAISO has no capacity market, and the energy market prices, which are capped, suffer from longstanding price formation problems, by which I mean artificially low prices. CAISO has several reliability must-run contracts for essential plants which allow those favored resources to continue operating, but support for them undercuts market prices for everyone else. These market failures have existed for years.

4. Second, subsidies for renewable power are doled out without sufficient consideration for their inferior reliability and security attributes, as compared to the generators they drive out of the market. Intermittent resources in their current configurations simply do not provide the full reliability benefits for which they are given credit. We can either admit this and directly confront the issue, or we can have more blackouts and be driven to confront it in an emergency when the situation is dire and there are no appealing alternatives to be implemented before resorting to curtailments.

5. I thus welcome complaints that satisfy our pleading standards so that the Commission will be forced to squarely confront the issue with a procedural vehicle by which to build a factual record and to then, in turn, go on the record with a decision on the merits of CAISO’s current markets. If necessary, parties to the litigation can then appeal that decision in the courts.

For these reasons, I respectfully concur.

---

James P. Danly  
Commissioner

---

<sup>3</sup> Cheri Mossburg, *More than 3 million California homes may lose power in record heat wave due to rolling blackouts*, CNN (Aug. 17, 2020), <https://www.cnn.com/2020/08/17/us/california-blackouts-investigation/index.html> (quoting Steve Berberich, Chief Executive Officer of CAISO).

<sup>4</sup> *Grid Resilience in Reg’l Transmission Orgs. & Indep. Sys. Operators*, 174 FERC ¶ 61,111 (2021) (Danly, Comm’r, concurring in the result at P 3).