200608185001 Received FERC OSEC 08/18/2006 01:19:00 AM Docket# EL06-89-000

DOCKET
04-AFC-1
DATE AUG 17 2006
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August 17, 2006

VIA E-MAIL FOR ELECTRONIC FILING
The Honorable Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
Dockets Room, Room 1A, East
888 First Street, N.E.
Washington, D.C. 20426

Re: CARE Motion to Reply to 1) MOTION TO INTERVENE AND PROTEST OF THE CITY AND COUNTY OF SAN FRANCISCO and 2) ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR to CARE'S COMPLAINT and MOTION for SUMMARY DISPOSITION

Docket No. EL06-89-000
Californians for Renewable Energy, Inc., Complainants
v.
California Independent System Operator Corporation, Respondent

Dear Ms. Salas:

Californians for Renewable Energy, Inc. hereby e-files its Motion to respond to both 1) MOTION TO INTERVENE AND PROTEST OF THE CITY AND COUNTY OF SAN FRANCISCO and 2) ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR to CARE'S COMPLAINT and MOTION for SUMMARY DISPOSITION in Docket No. EL06-89-000.

CARE doesn't object to the California Electric Oversight Board's late intervention.

Thank you for your attention to this matter.

Sincerely,

/s/ Michael E. Boyd

Michael E. Boyd President
CAlifornians for Renewable
Energy, Inc. (CARE)
5439 Soquel Drive
Soquel, CA 95073

cc: Official Service List of Docket No. EL06-89-000

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Californians for Renewable Energy, Inc.	**)**	**Docket No. EL06-89-000**
Complainants,	**)**	
v.	**)**	
California Independent System Operator	**)**	
Respondent.	**)**	
	)	

Motion to Reply to 1) MOTION TO INTERVENE AND PROTEST OF THE CITY AND COUNTY OF SAN FRANCISCO and 2) ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR to CARE'S COMPLAINT and MOTION for SUMMARY DISPOSITION

Pursuant to Rule 213 of the Rules of Practice and Procedure, 18 C.F.R. § 385.213, of the Federal Energy Regulatory Commission (Commission) Californians for Renewable Energy (CARE) hereby moves for permission to file a response to both the MOTION TO INTERVENE AND PROTEST OF THE CITY AND COUNTY OF SAN FRANCISCO and ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR to CARE'S COMPLAINT and MOTION for SUMMARY DISPOSITION in the above-captioned proceeding.

CARE doesn't object to the California Electric Oversight Board's late intervention.

I. CORRESPONDENCE AND COMMUNICATION

All service of pleadings, orders, correspondence, and communications regarding this Docket should be made on the following persons:

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II. BACKGROUND

On July 24, 2006, CAlifornians for Renewable Energy, Inc. (CARE) filed a complaint against the California Independent System Operator (CA ISO) alleging that the CA ISO provided testimony before the California Energy Commission with regard to a power plant siting application filed by the City and County of San Francisco. CARE alleges further that the CA ISO testified without compliance with the CA ISO's Articles of Incorporation.

Notice of the filing of CARE's complaint was issued by the Commission on July 26, 2006, with Motions to Intervene or Protest in this matter to be filed on or before 5:00 p.m. Eastern Time on August 14, 2006.

CARE's complaint in this docket is not a collateral attack on any Commission orders regarding CARE's prior civil rights claims or any complaints regarding the California Department of Water Resources contracts.

III. MOTION TO RESPOND TO CCSF PROTEST

CARE moves for permission pursuant to Rule 213[1] to respond to the protest filed by the City and County of San Francisco (CCSF) in this docket. The protest indicated that CCSF did not understand CARE's complaint and the CCSF addressed several elements of its confusion. Since these questions have been made a part of the docket, CARE has to respond to them.

CARE intends to answer and explain all the elements of CCSF's confusion, but since they were not listed in an orderly fashion, CARE has prepared its own list in order to present an orderly answer to the CCSF's protest. This list includes all the elements that CARE understands to be the source of CCSF's confusion, and CARE offers to supplement the list if any additional items are identified.

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[1] Sec. 385.213 Answers (Rule 213).

(a) Required or permitted. (1) Any respondent to a complaint or order to show cause must make an answer, unless the Commission orders otherwise.

(2) An answer may not be made to a protest, an answer, a motion for oral argument, or a request for rehearing, unless otherwise ordered by the decisional authority. A presiding officer may prohibit an answer to a motion for interlocutory appeal. If an answer is not otherwise permitted under this paragraph, no responsive pleading may be made.

1. "CARE's complaint also fails to comply with the Commission's Rules of Practice and Procedure. For example, CARE's complaint fails to include the name, address and telephone number of an individual who, with respect to any matter contained in the filing, represents the person for whom the filing is made. See 18 CFR §385.203(a)(10). In the absence of this information, the City will serve its motion to intervene and protest on the persons who signed the complaint.

CARE's response is that the relevant part of FERC Rule 203, 18 CFR §385.203(a) (10) states:

> "(a) Requirements for a pleading or a tariff or rate filing. Each pleading and each tariff or rate filing must include, as appropriate: . . .
> 10) The name, address, and telephone number of an individual who, with respect to any matter contained in the filing, represents the person for whom filing is made;"

The complaint in this docket did provide this information on the signature page. Rule 203 does not specify the format of the identification or a specific location in the complaint document where the information is supposed to be located, only that it be clearly identified in the complaint. CCSF was able to find the information so CARE believes that it complied with the applicable FERC rules for identifying the name, address, and telephone number of the individuals who, with respect to any matter contained in the filing, represents the person for whom the filing is made.

2. "alleges that the CA ISO provided testimony in the California Energy Commission (CEC) Docket No. 04-AFC-001 without complying with its articles of incorporation."

The CARE response is that CARE's complaint provides a detailed description of these concerns beginning on page 4, line 19 through page 7.

3. "The complaint goes on to cite disparate statutes and cases without a single description of the CA ISO's articles of incorporation or how these are implicated in any way."

CARE's response is that the CA ISO articles of incorporation in Article III state that the Board of Governors has powers to the full extent allowed by law. The complete articles of incorporation can be found at the CA ISO's website:
http://caiso.com/docs/2005/08/26/2005082613595716266.html

CARE's complaint provides a description of the law: California Public Utilities Code sections 345 through 352.7. The CA ISO's actions are inconsistent with this law, so CARE is asking the FERC to order the CA ISO to rescind its actions approving the CCSF's proposed power plant.

4. CARE has failed to articulate a legal basis for FERC action in this case.

CARE's response is that the CA ISO stated in its testimony before the CEC in CEC Docket No. 04-AFC-001 that it made its determination pursuant to a FERC tariff. This

tariff is issued by the FERC and delegates FERC authority to the CA ISO. Therefore, the FERC has a legal basis to order it rescinded.

5. The California Public Utilities Code sections 345 through 352.7 have never been interpreted by a court of law and therefore, the CCSF and the CA ISO don't have to comply with them.

CARE's response is that this is an indication of the confusion that protestor CCSF has itself caused. After a law is passed, codified, and the date for it to take effect has passed, there is no further requirement to have a court of law interpret it. It is the law with which the CA ISO and the CCSF have to comply. CARE's complaint in this docket asks the FERC to order the CA ISO to comply with applicable state law when implementing the authority FERC has granted it.

IV. MOTION TO RESPOND TO CA ISO ANSWER and MOTION for SUMMARY DISPOSITION

CARE moves for permission pursuant to Rule 213 to respond to the answer filed by the CA ISO in this docket. The protest indicated that CA ISO did not understand CARE's complaint and CA ISO addressed several elements of its confusion. Since these questions have been made a part of the docket, CARE has to respond to them.

The following is CARE's response:

The CA ISO testimony in CEC Docket No. 04-AFC-001 does not address where the proposed power plant (SFERP) should be located, rather it approves the proposed connection to the transmission grid.

CARE's response is that the CA ISO's testimony was introduced in the CEC proceeding to demonstrate the need for the SFERP. The CA ISO employee, Lawrence Tobias, testified as a witness in the CEC proceeding to determine the appropriate site for the power plant. Mr. Tobias' testimony only referred to a FERC tariff granting FERC authority to the CA ISO to make the determination. However, the CA ISO is a nonprofit public benefit corporation organized pursuant to California law and so must comply with statutory mandates. The CA ISO is an entity controlled by both state and federal law and cannot act pursuant to federal law while violating state law by the same act.

Since the CA ISO did not comply with the mandates contained in Chapter 2.3, Part 1, Division 1 of the Public Utilities Code of the State of California, Mr. Tobias' testimony in the CEC proceeding should be rescinded. The FERC should make this order since the CA ISO employee states that the determination to approve the power plant connection to the transmission grid is made pursuant to FERC authority granted in tariffs. A state commission cannot overrule a determination made under auspices of federal law in a matter in which the federal government has preempted the state's authority. In this case, the CA ISO is ignoring its state statutory requirements and claiming that its federal powers allow it to do so. This is not true.

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V. CONCLUSION

For the above-mentioned reasons, CARE respectfully moves the Commission to grant its motion to respond to the filings by the CA ISO and the CCSF.

Respectfully submitted,

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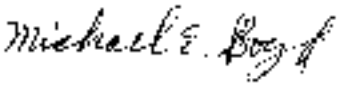

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Poli A. Marmolejos-Director
U.S. Department of Energy
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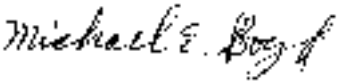
Verification

I am an officer of the Intervening Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 17th day of August, 2006 at Soquel, California.



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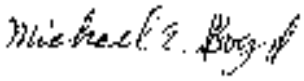
Certificate of Services

I hereby certify that I have this day served the foregoing document upon each Respondent and the Secretary of the Commission via US mail, and other Interested Agency via email if available, until such time as the restricted service list is established for the above captioned matter. Rule 2010(f)(3) provides that you may serve pleadings by email. I further certify that those parties without electronic mail have been served this day via US mail.

Dated on the 17th day of August 2006.

Respectfully submitted,



President, CARE

Verification

I am an officer of the Complainant Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

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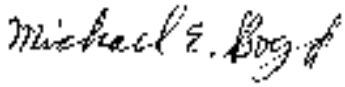

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Submission Contents

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