

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

DOCKET	
04-AFC-1	
DATE	<u>JUL 17 2006</u>
RECD.	<u>JUL 17 2006</u>

CALifornians for Renewable)
Energy, Inc. (CARE),)
Complainant,)
vs.)
CALIFORNIA INDEPENDENT SYSTEM)
OPERATOR (CAISO),)
Respondent)

DOCKET NO.

1 **COMPLAINT OF CARE**

2 Pursuant to Rule 206 of the Rules of Practice and
3 Procedure of the Federal Energy Regulatory Commission
4 ("FERC" or "Commission"), 18 C.F.R. § 385.206 (2005),
5 Californians for Renewable Energy, Inc. (CARE) files this
6 complaint against the California Independent System
7 Operator Corporation (CA ISO). The CA ISO provided
8 testimony in California Energy Commission (CEC) Docket No.
9 04-AFC-01,¹ a power plant siting application by the City and
10 County of San Francisco (CCSF), without complying with its
11 articles of incorporation.

12 The CA ISO is a nonprofit public benefit corporation.
13 It is organized under the Nonprofit Public Benefit
14 Corporation Law for the charitable purposes set forth in
15 Chapter 2.3, Part 1, and Division 1 of the Public Utilities
16 Code of the State of California.

17 The statutory requirements state that CA ISO must
18 consult and coordinate with appropriate state and local
19 agencies to ensure that it operates in furtherance of state
20 law regarding consumer and environmental protection. The
21 site for the power plant proposed in CEC Docket No. 04-AFC-
22 01 has been studied for hazardous waste contamination since

¹ See <http://www.energy.ca.gov/sitingcases/sanfrancisco/index.html>

1 1999, but the state agency overseeing the cleanup process
2 was not notified of the power plant proposal until January
3 2006, months after the CA ISO issued its determination that
4 the power plant had to be located at that site.

5 The CA ISO sent a letter approving the CCSF's Energy
6 Action Plan also without first complying with the statutory
7 mandates of its articles of incorporation. CARE therefore
8 asks the Commission to order the CA ISO to rescind its
9 *ultra vires* approval of the project.

10 These CA ISO actions caused the CCSF to spend money
11 pursuing site approval for three combustion turbine
12 electric generation units, the San Francisco Electric
13 Reliability Project (SFERP). The CA ISO states that it is
14 conducting the power plant location efforts pursuant to a
15 FERC issued tariff². CARE asks FERC to order the CA ISO to
16 rescind its findings and conclusions concerning the power
17 plant application in CEC Docket No. 04-AFC-01 until it can
18 issue conclusions without exceeding its statutory mandate
19 as described in the CA ISO's articles of incorporation.

20 To our knowledge these issues presented are not
21 pending in an existing Commission proceeding but is part of

² <http://www.caiso.com/docs/2005/06/30/2005063008075711458.htm> [note this web address does not work but was provided as the reference by the CAISO's witness in the CEC proceeding see footnote 2 *infra*.]

1 a proceeding before the CEC in which the complainant is a
2 party. Timely resolution cannot be achieved in that forum
3 as the FERC, not the CEC, oversees the CA ISO pursuant to
4 authority granted by 16 USC 824o. The Enforcement Hotline,
5 Dispute Resolution Service, tariff-based dispute resolution
6 mechanisms, or other informal dispute resolution procedures
7 are not appropriate to resolve CARE's complaint.
8 Complainant believes that alternative dispute resolution
9 (ADR) under the Commission's supervision will not resolve
10 the complaint.

11 **DISCUSSION**

12 The CA ISO determination was posted³ at the CEC website
13 for the SFERP docket on April 14, 2006, as "Testimony of
14 Lawrence Tobias from CA ISO." The witness described the CA
15 ISO review process on lines 1 through 9 of page 2 of that
16 exhibit. This description included a citation to the CA
17 ISO tariff but did not address the CA ISO's compliance with
18 applicable California laws.

19 The full name of the corporation is "California
20 Independent System Operator Corporation." This corporation
21 is a nonprofit public benefit corporation. It is organized
22 under the Nonprofit Public Benefit Corporation Law for the

³ http://www.energy.ca.gov/sitingcases/sanfrancisco/documents/intervenors/2006-03-13_TESTIMONY_L_TOBIAS_CA_ISO.PDF

1 charitable purposes set forth in Chapter 2.3, Part 1, and
2 Division 1 of the Public Utilities Code of the State of
3 California.

4 The California Public Utilities Code sections 345
5 through 352.7 are the applicable state law. Section 345.5⁴
6 specifically states the necessary steps for the CA ISO to
7 conduct its operations. The CA ISO must consult and
8 coordinate with appropriate state and local agencies to
9 ensure that it operates in furtherance of state law
10 regarding consumer and environmental protection.

11 The CA ISO testimony in this proceeding shows that it
12 reviewed applicant's proposed new generation project in

⁴ 345.5. (a) The Independent System Operator, as a nonprofit, public benefit corporation, shall conduct its operations consistent with applicable state and federal laws and consistent with the interests of the people of the state.

(b) To ensure the reliability of electric service and the health and safety of the public, the Independent System Operator shall manage the transmission grid and related energy markets in a manner that is consistent with all of the following:

(1) Making the most efficient use of available energy resources. For purposes of this section, "available energy resources" include energy, capacity, ancillary services, and demand bid into markets administered by the Independent System Operator. "Available energy resources" do not include a schedule submitted to the Independent System Operator by an electrical corporation or a local publicly owned electric utility to meet its own customer load.

(2) Reducing, to the extent possible, overall economic cost to the state's consumers.

(3) Applicable state law intended to protect the public's health and the environment.

(4) Maximizing availability of existing electric generation resources necessary to meet the needs of the state's electricity consumers.

(c) The Independent System Operator shall do all of the following:

(1) Consult and coordinate with appropriate state and local agencies to ensure that the Independent System Operator operates in furtherance of state law regarding consumer and environmental protection.

(2) Ensure that the purposes and functions of the Independent System Operator are consistent with the purposes and functions of nonprofit, public benefit corporations in the state, including duties of care and conflict-of-interest standards for officers and directors of a corporation. . . . [sections (c)(3) and (c)(4) omitted]

1 accordance with Amendment 39 of the CA ISO tariff, but did
2 not consult and coordinate with the San Francisco Bay
3 Regional Water Quality Control Board (RWQCB). In fact, the
4 CA ISO approved applicant's project on November 11, 2003,
5 months before the AFC was submitted to the CEC and before
6 the project was proposed at the current site.

7 Testimony by the RWQCB on May 31, 2006, demonstrates
8 that although the Board was named "administering agency"
9 pursuant to the California Health and Safety Code in 1999,
10 it did not begin reviewing the area as a site for a power
11 plant until January 2006. Therefore, it is clear that the
12 CA ISO issued its November 11, 2003, approval of
13 applicant's project without complying with applicable state
14 law. The CA ISO cannot reach a decision about the proposed
15 project until after the RWQCB reviews the site as a site
16 including the proposed power plant and consults with the CA
17 ISO as provided for by California Public Utilities Code
18 section 345.5.

19 Sannis v. Stafford (1996) 48 Cal.App.4th 1935, 56
20 Cal.Rptr.2d 589[No. D020439. Fourth Dist., Div. One. Sep
21 10, 1996.] describes the basic California law in this
22 instance.

23 "[U]ltra vires' refers to an act which is
24 beyond the powers conferred upon a corporation by
25 its charter or by the laws of the state of

1 incorporation" (Marsili v. Pacific Gas &
2 Elec. Co. (1975) 51 Cal.App.3d 313, 322 [124
3 Cal.Rptr. 313, 79 A.L.R.3d 477].)"
4

5 It is clear that the CA ISO has violated a statutory
6 mandate for their activity and the CA ISO's November 11,
7 2003, approval was *ultra vires* of its statutory mandate.
8 The CA ISO cannot approve of the SFERP until after it has
9 complied with its statutory mandate.

10 The CEC regulations section 1744(b), California Code
11 of Regulations, Title 20, states that:

12

13 "(b) Upon acceptance of the application, each
14 agency responsible for enforcing the applicable
15 mandate shall assess the adequacy of the
16 applicant's proposed compliance measures to
17 determine whether the facility will comply with
18 the mandate. The commission staff shall assist
19 and coordinate the assessment of the conditions
20 of certification to ensure that all aspects of
21 the facility's compliance with applicable laws
22 are considered."

23 The CEC signed a memorandum of understanding with the
24 RWQCB on June 5, 2006, and has not provided any similar
25 memorandum signed by the CA ISO and the RWQCB.

26

FERC AUTHORITY

27 The Federal Energy Regulatory Commission (FERC)
28 oversees the CA ISO pursuant to authority granted by 16 USC
29 824o. The regulations implementing this authority are
30 contained in Title 18 of the Code of Federal Regulations,

1 Part 39. 18 CFR 39.12⁵ explains that the CA ISO tariff does
2 not preempt California's statutory authority requiring the
3 CA ISO to coordinate with state environmental and public
4 health authorities issuing a statement concerning
5 reliability standards and requirements pursuant to that

⁵ **18 CFR § 39.12 Review of state action.**

(a) Nothing in this section shall be construed to preempt any authority of any state to take action to ensure the safety, adequacy, and reliability of electric service within that state, as long as such action is not inconsistent with any Reliability Standard, except that the State of New York may establish rules that result in greater reliability within that state, as long as such action does not result in lesser reliability outside the state than that provided by the Reliability Standards.

(b) Where a state takes action to ensure the safety, adequacy, or reliability of electric service, the Electric Reliability Organization, a Regional Entity or other affected person may apply to the Commission for a determination of consistency of the state action with a Reliability Standard.

(1) The application shall:

(i) Identify the state action;

(ii) Identify the Reliability Standard with which the state action is alleged to be inconsistent;

(iii) State the basis for the allegation that the state action is inconsistent with the Reliability Standard; and

(iv) Be served on the relevant state agency and the Electric Reliability Organization, concurrent with its filing with the Commission.

(2) Within ninety (90) days of the application of the Electric Reliability Organization, the Regional Entity, or other affected person, and after notice and opportunity for public comment, the Commission will issue a final order determining whether the state action is inconsistent with a Reliability Standard, taking into consideration any recommendation of the Electric Reliability Organization and the state.

(c) The Commission, after consultation with the Electric Reliability Organization and the state taking action, may stay the effectiveness of the state action, pending the Commission's issuance of a final order.

1 authority. The CA ISO however did issue such a statement
2 and the FERC should order the CA ISO to rescind that
3 approval.

4 **REQUEST FOR RELIEF**

5 CARE asks the Commission to order the CA ISO to
6 rescind its approval of the SFERP because the CA ISO issued
7 its approval without considering the impact on the
8 community as required by the CA ISO's articles of
9 incorporation.

10 Siting the SFERP as proposed by applicant deprives
11 local residents of their environmental justice. This site
12 is located on a 32 acre site proposed for other pollution
13 emitting industrial uses. These emissions should be shared
14 by the entire population of the CCSF. The residential
15 neighborhoods bordering the proposed project are inhabited
16 by a population with a far greater population of minorities
17 than are other sections of CCSF that are located far away
18 from the proposed site.

19 **DISCUSSION**

20 The land use section of the [Final Staff Assessment of](#)
21 [the San Francisco Electric Reliability Project](#), Posted⁶ on
22 the CEC website for Docket No. 04-AFC-01 on February 21,

⁶ <http://www.energy.ca.gov/2005publications/CEC-700-2005-021/CEC-700-2005-021-FSA.PDF>

1 2006, explains that the SFERP is located in a part of San
2 Francisco with planned combined industrial and occupied
3 residential housing projects uses. The discussion on pages
4 4.5-2 and 3 explain that:

5 "The generation unit would be erected on a site
6 owned by the City/County of San Francisco (CCSF).
7 There are no permanent structures on the site,
8 although a temporary concrete batch plant
9 occupies the northern portion of the project
10 site. The area immediately east of the project
11 site, within the proposed staging area, is
12 currently used as a trailer storage facility for
13 a trucking operation.

14
15 "The closest residentially zoned areas occur
16 south and west of the SFERP. The Bayview-Hunters
17 Point neighborhood is less than one mile south of
18 the site at its nearest point. To the west,
19 closer residential areas occur on Potrero Hill,
20 along Third Street, and in the small community
21 known as Dogpatch on Third Street near 22nd
22 Street. Dogpatch is the nearest residentially
23 zoned area to the project (approximately 0.75
24 miles to the northwest)."

25 The public health section on page 4.7-44 contains a section
26 describing the demographics of the area:

27 **"Demographics of San Francisco, Bayview Hunter's**
28 **Point & Potrero Hill**

29 "The population characteristics of the Bayview
30 Hunter's Point neighborhood with regards to
31 racial/ethnic makeup, based on the results of the
32 2000 census, have been described by the San
33 Francisco Planning Department in their report
34 "Profiles of Community Planning Areas: San
35 Francisco's Eastern Neighborhoods" (SFPD 2002)".

36
37 "While residents of the Bayview Hunter's Point
38 neighborhood of San Francisco represent 4.4% of
39 the total population of San Francisco, 27% of the
40 City's African American population resides in the

1 Bayview Hunter's Point neighborhood. Likewise,
2 while 7.6% of the population of San Francisco is
3 African American, 46% of the population of
4 Bayview Hunter's Point is African American....."

5 **ENVIRONMENTAL JUSTICE**

6 The United States Environmental Protection Agency
7 (USEPA) provides the definition of *environmental justice* on
8 its website:

9
10 "Environmental Justice is the fair treatment and
11 meaningful involvement of all people regardless
12 of race, color, national origin, or income with
13 respect to the development, implementation, and
14 enforcement of environmental laws, regulations,
15 and policies. EPA has this goal for all
16 communities and persons across this Nation. It
17 will be achieved when everyone enjoys the same
18 degree of protection from environmental and
19 health hazards and equal access to the decision-
20 making process to have a healthy environment in
21 which to live, learn, and work."

22 Applicant's witness Anne Eng stated at the May 31,
23 2006, hearing that the southeastern portion of the CCSF is
24 such an environmental justice area. Applicant insists that
25 the SFERP is necessary and must be located at the proposed
26 site because of a CA ISO determination. However, there is
27 no need for the SFERP and siting it in a part of San
28 Francisco that is a known environmental justice area is a

1 violation of the equal protection clause of the State⁷ and
2 Federal constitutions.

3 **CONCLUSION**

4 CARE asks the Commission to grant the relief described
5 in this complaint and any other relief deemed appropriate.

⁷ CALIFORNIA CONSTITUTION ARTICLE 1 DECLARATION OF RIGHTS

SEC. 7. (a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws; provided, that nothing contained herein or elsewhere in this Constitution imposes upon the State of California or any public entity, board, or official any obligations or responsibilities which exceed those imposed by the Equal Protection Clause of the 14th Amendment to the United States Constitution

Respectfully submitted,

Lynne Brown

Lynne Brown Vice-President
CALifornians for Renewable
Energy, Inc. (CARE)
Resident, Bayview Hunters
Point
24 Harbor Road
San Francisco, CA 94124

Michael E. Boyd

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

CC.

Magalie Roman Salas
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

California Independent System Operator Corporation
- By US Mail

Gene Waas, E-mail: GWaas@caiso.com
J. Phillip Jordan, Counsel for CAISO,
E-mail: jpjordan@swidlaw.com
151 Blue Ravine Road
Folsom, CA 95630
Telephone: (916) 608-7049

California Energy Commission
San Francisco Electric Reliability Project
Power Plant Licensing Case, Docket Number: 04-AFC-1
Bill Pfanner - Project Manager
Systems Assessment & Facility Siting Division
Margret J. Kim - Public Adviser
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814
Phone: 916-654-4206

Docket 04-AFC-01 E-mail: docket@energy.state.ca.us
E-mail: bpfanner@energy.state.ca.us
E-mail: PAO@energy.state.ca.us
04-AFC-1 electronic service list
Jeanne.sole@sfgov.org,
Sarveybob@aol.com,
SLee@aspenerg.com,
Wwalters@aspenerg.com,
steve4155@astound.net,
mail@blackeagleconsulting.com,
djordan@caiso.com,
jcarrier@ch2m.com,
Bbastian@energy.state.ca.us,
Ctooker@energy.state.ca.us,
Dgomez@energy.state.ca.us,
Dratliff@energy.state.ca.us,
Gfay@energy.state.ca.us,
Hkalleme@energy.state.ca.us,
Jboyd@energy.state.ca.us,
jgeesman@energy.state.ca.us,
Lbeckstr@energy.state.ca.us,
Mjones@energy.state.ca.us,
Msmith@energy.state.ca.us,
Rjohnson@energy.state.ca.us,
Rtyler@energy.state.ca.us,
York@energy.state.ca.us,
Skhoshma@energy.state.ca.us,
Svalkosk@energy.state.ca.us,
Tngo@energy.state.ca.us,
zephyr@innercite.com,
joeboss@joeboss.com,
michael.carroll@lw.com,
Jeffrey.russell@mirant.com,
mark.osterholt@mirant.com,
agreenberg@risksci.com,
steven@sfpower.org,
BHale@sflower.org,
kkubick@sflower.org,
L_brown369@yahoo.com,
martinhomec@comcast.net

City and County of San Francisco
Office of the City Attorney
City Hall, Room 234
San Francisco, CA 94102
E-mail: Jeanne.sole@sfgov.org,

Karen D. Higginbotham
Director of the Office of Civil Rights
U.S. Environmental Protection Agency
Mail Code 1201A
1200 Pennsylvania Ave NW
Washington, D.C. 20460
E-mail: civilrights@epa.gov

Gail Cooper
USEPA REGION 9
75 Hawthorne Street
Mail Code: ORC-2
San Francisco, CA 94105
cooper.gail@epa.gov

US Department of Justice - by US Mail
Reference, US DOE OCRD Title VI Complaint File No: 03-003-HQ
Civil Rights Division,
Coordination and Review Section
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Poli A. Marmolejos-Director
U.S. Department of Energy
Reference, US DOE OCRD Title VI Complaint File No: 03-003-HQ
Office of Civil Rights and Diversity
1000 Independence Avenue, S.W.
Washington D.C. 20585
poli.marmolejos@hq.doe.gov

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

Californians for Renewable Energy,
Inc. (CARE),
Complainant,
vs.

Docket No. EL06-___-000

CALIFORNIA INDEPENDENT SYSTEM
OPERATOR (CA ISO),
Respondent

**Notice of Section 206 Complaint
(July __, 2006)**

Take notice that on July __, 2006, Californians for Renewable Energy, Inc. (CARE) (Complainant) submitted a complaint against the California Independent System Operator Corporation (CA ISO). The CA ISO provided testimony in California Energy Commission (CEC) Docket No. 04-AFC-01, a power plant siting application by the City and County of San Francisco (CCSF), without complying with its articles of incorporation.

The CA ISO is a nonprofit public benefit corporation. It is organized under the Nonprofit Public Benefit Corporation Law for the charitable purposes set forth in Chapter 2.3, Part 1, and Division 1 of the Public Utilities Code of the State of California.

The statutory requirements state that CA ISO must consult and coordinate with appropriate state and local agencies to ensure that it operates in furtherance of state law regarding consumer and environmental protection. The site for the power plant proposed in CEC Docket No. 04-AFC-01 has been studied for hazardous waste contamination since 1999, but the state agency overseeing the cleanup process was not notified of the power plant proposal until January 2006, months after the CA ISO issued its determination that the power plant had to be located at that site.

The CA ISO sent a letter approving the CCSF's Energy Action Plan also without first complying with the statutory mandates of its articles of incorporation. CARE therefore asks the Commission to order the CA ISO to rescind its ultra vires approval of the project.

These CA ISO actions caused the CCSF to spend money pursuing site approval for three combustion turbine electric generation units, the San Francisco Electric Reliability Project (SFERP). The CA ISO states that it is

conducting the power plant location efforts pursuant to a FERC issued tariff . CARE asks FERC to order the CA ISO to rescind its findings and conclusions concerning the power plant application in CEC Docket No. 04-AFC-01 until it can issue conclusions without exceeding its statutory mandate as described in the CA ISO's articles of incorporation.

Copies of this filing were served upon Respondents and other interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before _____, 2006. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before _____, 2006. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie Roman Salas
Secretary

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 July 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.

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

Executed on July 17th, 2006, at Soquel, California



Michael E. Boyd - President, CARE,
CALifornians for Renewable Energy, Inc.
5439 Soquel Dr.
Soquel, CA 95073-2659
Tel: (408) 891-9677
E-mail: michaelboyd@sbcglobal.net