

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

DOCKET	
04-AFC-1	
DATE	<u>Sep 5 2006</u>
RECD.	<u>Sep 6 2006</u>

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

DOCKET NO. EL06-89-

1 **Complaint of CARE**

2 Pursuant to Rule 215 and 206 of the Rules of Practice
3 and Procedure of the Federal Energy Regulatory Commission
4 ("FERC" or "Commission"), 18 C.F.R. § 385.215 and § 385.206
5 (2005), Californians for Renewable Energy, Inc. (CARE)
6 files the first amendment to its complaint against the
7 California Independent System Operator Corporation (CA
8 ISO). The CA ISO provided testimony in California Energy
9 Commission (CEC) Docket No. 04-AFC-01,¹ a power plant siting
10 application by the City and County of San Francisco (CCSF),
11 without complying with its articles of incorporation.

12 **Description of CARE'S Amendment**

13 CARE is filing this amendment to provide further
14 information concerning the basis for the complaint. The
15 additional information describes the violation of due
16 process and equal protection under the laws of California
17 and the United States federal government that has occurred
18 during the CEC siting process.

19 First, the CCSF pleadings in this FERC complaint as
20 well as the CEC proceedings include a representative of a
21 California state agency that ceased to operate² in 2004, the
22 California Consumer Power and Conservation Financing

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

² See <http://www.cpowerauthority.ca.gov/News/UpcomingBoardMeetings.htm>

1 Authority. CARE protests the CCSF representation that a
2 California state agency supports its position in this FERC
3 proceeding, Docket No. EL06-89, because there is no such
4 agency.

5 This same misrepresentation was made during the August
6 2, 2006 hearing before the CEC in CEC Docket No. 04-AFC-01.
7 The transcript reports the following exchange:

8
9 "18 ACTING CHAIRPERSON GEESMAN: Thank you.
10 19 Does the applicant wish to make a comment?
11 20 MR. VARANINI: Thank you, Mr. Chairman.
12 21 I'm Gene Varanini; I'm with the DRP program; we're
13 22 counsel to the City and County of San Francisco.
14 23 And I'm representing them here today.
15 24 We agree wholeheartedly with the
16 25 Committee's decision. We filed numerous moving
17 1 papers that lay out our perspective on this
18 2 matter. And we support the staff's analysis, as
19 3 well." [8-2-06 RT at pages 30 and 31]
20

21 Second, the CEC refused to allow relevant testimony
22 from a California Public Utilities Commission (CPUC)
23 proceeding (Application "A."02-09-043) to be entered into
24 evidence.

25 CARE participated before the CPUC in support of the
26 approval of the Jefferson-Martin Transmission 230 kV
27 Transmission Project in return for Pacific Gas and Electric
28 Company's (PG&E's) agreement to shut down their Bay View
29 Hunters Point power plant in a low-income people of color
30 neighborhood. The transcript from the hearing said that

1 they didn't need the proposed power plant (SFERP) to shut
2 down Hunters Point or Potrero power plants and, in fact
3 that there was enough transmission capacity once the
4 Jefferson-Martin and other transmission projects where
5 completed without existing in City generation.

6 CARE supported this because after the power plant is
7 shut down there will not be anymore air pollution emitted
8 from it. The City and County of San Francisco (CCSF) was a
9 Party in that proceeding Application 02-09-043 and they are
10 now claiming they supported the SFERP during the CPUC
11 proceeding. Yet, while present, represented, and
12 participating in the hearings in which the PG&E witness
13 stated that the power plant was not needed they did not
14 object or cross examine the witness. This is a strong
15 indication that the CCSF did not want to admit that they
16 planned to build a new power plant at the same site after
17 PG&E took its power plant off-line. The CCSF did not
18 communicate this to the residents of the poor, people of
19 color neighborhood.

20 Now, the CEC and the CCSF claim that there is no value
21 to this evidence. This evidence was presented in an
22 adjudicatory hearing before an administrative law judge and
23 conducted by the CPUC.

1 CARE is amending its complaint to inform the FERC that
2 it believes that there is no harm caused to the parties to
3 accept the evidence other than to deprive people who are
4 poor and black and living close enough to the proposed
5 project to breathe its emissions of due process and equal
6 protection of the laws of the State of California and the
7 United States of America.

8 CARE asked the Commission to reverse the July 6, 2006,
9 ruling denying CARE's introduction of the transcript of
10 PG&E's Mr. Yeung into the record as evidence in this case.
11 This evidence is material to CARE's case. It is a denial of
12 due process and the equal protection of law to allow
13 Applicant to present its case and deny CARE to make a
14 presentation. CARE represents the residents who will have
15 to live next to the proposed power plant while the CEC
16 staff and the representatives of the CCSF do not.

17 **CARE's Original Complaint**

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

23 The statutory requirements state that CA ISO must
24 consult and coordinate with appropriate state and local

1 agencies to ensure that it operates in furtherance of state
2 law regarding consumer and environmental protection. The
3 site for the power plant proposed in CEC Docket No. 04-AFC-
4 01 has been studied for hazardous waste contamination since
5 1999, but the state agency overseeing the cleanup process
6 was not notified of the power plant proposal until January
7 2006, months after the CA ISO issued its determination that
8 the power plant had to be located at that site.

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

14 These CA ISO actions caused the CCSF to spend money
15 pursuing site approval for three combustion turbine
16 electric generation units, the San Francisco Electric
17 Reliability Project (SFERP). The CA ISO states that it is
18 conducting the power plant location efforts pursuant to a
19 FERC issued tariff³. CARE asks FERC to order the CA ISO to
20 rescind its findings and conclusions concerning the power
21 plant application in CEC Docket No. 04-AFC-01 until it can

³ <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 issue conclusions without exceeding its statutory mandate
2 as described in the CA ISO's articles of incorporation.

3 **Discussion**

4 The CA ISO determination was posted⁴ at the CEC website
5 for the SFERP docket on April 14, 2006, as "Testimony of
6 Lawrence Tobias from CA ISO." The witness described the CA
7 ISO review process on lines 1 through 9 of page 2 of that
8 exhibit. This description included a citation to the CA
9 ISO tariff but did not address the CA ISO's compliance with
10 applicable California laws.

11 The full name of the corporation is "California
12 Independent System Operator Corporation." This corporation
13 is a nonprofit public benefit corporation. It is organized
14 under the Nonprofit Public Benefit Corporation Law for the
15 charitable purposes set forth in Chapter 2.3, Part 1, and
16 Division 1 of the Public Utilities Code of the State of
17 California.

18 The California Public Utilities Code sections 345
19 through 352.7 are the applicable state law. Section 345.5⁵

⁴ http://www.energy.ca.gov/sitingcases/sanfrancisco/documents/intervenors/2006-03-13_TESTIMONY_L_TOBIAS_CA_ISO.PDF

⁵ 345.5. (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 specifically states the necessary steps for the CA ISO to
2 conduct its operations. The CA ISO must consult and
3 coordinate with appropriate state and local agencies to
4 ensure that it operates in furtherance of state law
5 regarding consumer and environmental protection.

6 The CA ISO testimony in this proceeding shows that it
7 reviewed applicant's proposed new generation project in
8 accordance with Amendment 39 of the CA ISO tariff, but did
9 not consult and coordinate with the San Francisco Bay
10 Regional Water Quality Control Board (RWQCB). In fact, the
11 CA ISO approved applicant's project on November 11, 2003,
12 months before the AFC was submitted to the CEC and before
13 the project was proposed at the current site.

14 Testimony by the RWQCB on May 31, 2006, demonstrates
15 that although the Board was named "administering agency"

(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 pursuant to the California Health and Safety Code in 1999,
2 it did not begin reviewing the area as a site for a power
3 plant until January 2006. Therefore, it is clear that the
4 CA ISO issued its November 11, 2003, approval of
5 applicant's project without complying with applicable state
6 law. The CA ISO cannot reach a decision about the proposed
7 project until after the RWQCB reviews the site as a site
8 including the proposed power plant and consults with the CA
9 ISO as provided for by California Public Utilities Code
10 section 345.5.

11 Sammis v. Stafford (1996) 48 Cal.App.4th 1935, 56
12 Cal.Rptr.2d 589[No. D020439. Fourth Dist., Div. One. Sep
13 10, 1996.] describes the basic California law in this
14 instance.

15 "[U]ltra vires' refers to an act which is
16 beyond the powers conferred upon a corporation by
17 its charter or by the laws of the state of
18 incorporation" (Marsili v. Pacific Gas &
19 Elec. Co. (1975) [51 Cal.App.3d 313](#), 322 [124
20 Cal.Rptr. 313, 79 A.L.R.3d 477].)"
21

22 It is clear that the CA ISO has violated a statutory
23 mandate for their activity and the CA ISO's November 11,
24 2003, approval was *ultra vires* of its statutory mandate.
25 The CA ISO cannot approve of the SFERP until after it has
26 complied with its statutory mandate.

1 not preempt California's statutory authority requiring the
2 CA ISO to coordinate with state environmental and public
3 health authorities issuing a statement concerning
4 reliability standards and requirements pursuant to that
5 authority. The CA ISO however did issue such a statement
6 and the FERC should order the CA ISO to rescind that
7 approval.

8 **Request for Relief**

9 CARE asks the Commission to order the CA ISO to
10 rescind its approval of the SFERP because the CA ISO issued
11 its approval without considering the impact on the
12 community as required by the CA ISO's articles of
13 incorporation.

(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 "The closest residentially zoned areas occur
2 south and west of the SFERP. The Bayview-Hunters
3 Point neighborhood is less than one mile south of
4 the site at its nearest point. To the west,
5 closer residential areas occur on Potrero Hill,
6 along Third Street, and in the small community
7 known as Dogpatch on Third Street near 22nd
8 Street. Dogpatch is the nearest residentially
9 zoned area to the project (approximately 0.75
10 miles to the northwest)."

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

13 **"Demographics of San Francisco, Bayview Hunter's**
14 **Point & Potrero Hill**

15 "The population characteristics of the Bayview
16 Hunter's Point neighborhood with regards to
17 racial/ethnic makeup, based on the results of the
18 2000 census, have been described by the San
19 Francisco Planning Department in their report
20 "Profiles of Community Planning Areas: San
21 Francisco's Eastern Neighborhoods" (SFPD 2002)".
22

23 "While residents of the Bayview Hunter's Point
24 neighborhood of San Francisco represent 4.4% of
25 the total population of San Francisco, 27% of the
26 City's African American population resides in the
27 Bayview Hunter's Point neighborhood. Likewise,
28 while 7.6% of the population of San Francisco is
29 African American, 46% of the population of
30 Bayview Hunter's Point is African American....."

31 **Environmental Justice**

32 The United States Environmental Protection Agency
33 (USEPA) provides the definition of *environmental justice* on
34 its website:

35
36 "Environmental Justice is the fair treatment and
37 meaningful involvement of all people regardless
38 of race, color, national origin, or income with
39 respect to the development, implementation, and

1 enforcement of environmental laws, regulations,
2 and policies. EPA has this goal for all
3 communities and persons across this Nation. It
4 will be achieved when everyone enjoys the same
5 degree of protection from environmental and
6 health hazards and equal access to the decision-
7 making process to have a healthy environment in
8 which to live, learn, and work."

9 Applicant's witness Anne Eng stated at the May 31,
10 2006, hearing that the southeastern portion of the CCSF is
11 such an environmental justice area. Applicant insists that
12 the SFERP is necessary and must be located at the proposed
13 site because of a CA ISO determination. However, there is
14 no need for the SFERP and siting it in a part of San
15 Francisco that is a known environmental justice area is a
16 violation of the equal protection clause of the State⁸ and
17 Federal constitutions.

18 **Conclusion**

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

⁸ 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,

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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 this 5th day of September 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 September 5th, 2006, at Soquel, California



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