

131 FERC ¶ 61,102
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

CALifornians for Renewable Energy, Inc.

Docket No. EL09-65-001

v.

California Public Utilities Commission, Southern
California Edison Company, and the California
Independent System Operator Corporation

ORDER DENYING REHEARING

(Issued May 4, 2010)

1. On October 28, 2009, the Commission issued an order¹ denying a complaint filed by CALifornians for Renewable Energy, Inc. (CARE) against the California Public Utilities Commission (CPUC), Southern California Edison Company (SoCal Edison) and the California Independent System Operator Corporation (CAISO). On November 30, 2009, CARE and the Acton Town Council (Acton) filed requests for rehearing of the October 28 Order. For the reasons discussed below, the requests for rehearing are denied.

I. Background

2. The CARE complaint raised three issues. First, CARE expressed dissatisfaction with the CPUC-administered programs benefiting small solar power installations and argued that such programs should be coupled with FERC-mandated payments under an

¹ *CALifornians for Renewable Energy, Inc. v. California Public Utilities Commission, Southern California Edison Company, and the California Independent System Operator Corporation*, 129 FERC ¶ 61,075 (2009) (October 28 Order). In the October 28 Order, the Commission also denied the CPUC's Motion to disqualify CARE.

avoided cost standard.² Second, CARE objected to the siting and construction of the Tehachapi Renewable Transmission Project (Tehachapi Project).³ Finally, CARE asserted that small solar distributed generators were being denied access to wholesale energy, capacity, and ancillary services markets.⁴

3. The CPUC, SoCal Edison and the CAISO filed answers to the complaint. Motions to Intervene were filed by Acton,⁵ and Pacific Gas & Electric Company (PG&E). The City of Santa Clara, California and the M-S-R Public Power Agency filed a joint Motion to Intervene.

4. On October 28, 2009, the Commission denied CARE's complaint for failure to meet the procedural requirements of the Commission's Rules of Practice and Procedure.⁶

5. Both CARE and Acton filed timely requests for rehearing. CARE raises a myriad of issues on rehearing. All of Acton's objections pertain to the Tehachapi Project.

II. Discussion

6. CARE raises the following issues on rehearing: (1) does FERC maintain authority over small solar power installations and should such programs be coupled with FERC-mandated payments under an avoided cost standard;⁷ (2) does the CPUC have authority to deny access to the wholesale energy, capacity, and ancillary services markets for small solar distributed generators that are "customer-generators" under the CPUC's net metering program;⁸ (3) does FERC maintain review authority under the Public Utilities Regulatory Policies Act (PURPA) over a "State regulatory authority" such as the CPUC

² CARE Complaint, Docket No. EL09-65-000, at 2-3, 9-10 (filed July 16, 2009).

³ *Id.* at 1-3, 7.

⁴ *Id.* at 2-3, 10-11.

⁵ In its Motion to Intervene, Acton asserted that, based on CARE's conclusions in the complaint, most if not all of the Tehachapi segments which run through Acton should not be approved. Acton Motion to Intervene at 2. Acton did not file any comments supporting this contention.

⁶ October 28 Order, 129 FERC ¶ 61,075 at P11 – P15.

⁷ CARE November 30, 2009 Request for Rehearing at 2 and 5. (CARE Rehearing Request).

⁸ *Id.*

and “electric consumer[s]” that CARE seeks to represent here, before the FERC and the CPUC, including low-income people of color customers as a particular “class” of customer;⁹ and (4) can California’s recent legislation (Senate Bill (“SB”) 32 and Assembly Bill (“AB”) 920) adopted by the California Legislature in 2009, provide California’s small solar distributed generators access to the wholesale markets under the Federal Power Act and PURPA as a Qualified Facility (QF).¹⁰

7. We will deny rehearing on the issues set forth above. CARE’s Request for Rehearing suffers from the same deficiencies as its original complaint. As noted in the October 28 Order, Rule 203, requires that all pleadings contain the “relevant facts,” and the “position taken by the participant . . . and the basis in fact and law for such position.”¹¹ Similarly, Rule 206 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 applicable statutory standards regulatory requirements.”¹² CARE’s filing fails once again to meet even this basic standard. CARE provides no legal argument correlating the “facts” alleged to any legal standard or violation of the law, and fails to identify any action or inaction by the parties which would violate statutory standards or regulatory requirements.

8. CARE also makes the following assertions: (1) an “undue preference” comes from the preference FERC gives to industrial wind in its Standard Interconnection Agreements for Wind Energy and Other Alternative Technologies;¹³ (2) under current CPUC authority, transmission providers are not required to make transparent their available transfer capability and interconnection is at the discretion of the transmission provider and can be denied;¹⁴ (3) the CAISO Small Generator Interconnection Procedures (SGIP) should not be applicable to small solar distributed generators because these entities are not attempting to tie into the CAISO controlled grid, necessarily, but are trying to tie into SoCal Edison’s grid to sell energy to SoCal Edison;¹⁵ (4) if SoCal

⁹ *Id.* at 6.

¹⁰ *Id.* at 18.

¹¹ October 28 Order, 129 FERC ¶ 61,075 at P11, *citing* 18 C.F.R. § 385.203(a) (2009).

¹² *Id.*, *citing* 18 C.F.R. § 385.206(b) (2009).

¹³ CARE Rehearing Request at 11.

¹⁴ *Id.* at 12.

¹⁵ *Id.*

Edison's portion of the 515 MW of solar distributed generation being denied access to sell its capacity in to the markets is greater than 100 MW, the Commission should require SoCal Edison to file additional information in connection with a change in status filing as directed by the Commission in its March 16, 2006 *Order Accepting Updated Market Power Analysis*,¹⁶ including an updated market power analysis, if necessary to determine the effect of an entity's change in status on its market-based rate authority;¹⁷ (5) small solar distributed generation projects are "must take" energy under the CAISO tariff and to the extent QF's are interconnected at the distribution level the CPUC's Rule 21 process is appropriate but this would require QF contracts to be compensated at avoided cost rates;¹⁸ (6) since the CAISO maintains operational control of [SoCal Edison's] transmission assets it is CAISO then that must have given "undue preference" with respect to new transmission infrastructure for the purposes of transmission in interstate commerce to industrial wind, conventional generation, and industrial solar;¹⁹ and (7) the only distributed generation that SoCal Edison is willing to interconnect is the distributed generation power that they themselves make despite FERC orders that SoCal interconnect any wholesale generator to the transmission line.²⁰

9. We find that rehearing is not warranted based upon CARE's assertions set forth above. In the past, we have admonished parties that "rather than bald allegations, [complaining parties] must make an adequate proffer of evidence including pertinent information and analysis to support its claims."²¹ CARE has provided no evidence supporting its claims. To the contrary, CARE concedes that the only evidence it provided in its original complaint is inapplicable to SoCal Edison.²² In addition, as noted above, Rule 206(a)(8) of the Commission's Rules of Practice and Procedure requires that

¹⁶ See *Southern California Edison Company*, 114 FERC ¶ 61,268 (2006).

¹⁷ *Id.* at 12-13.

¹⁸ *Id.* at 15-16.

¹⁹ *Id.* at 14. CARE asserts that the CAISO did not act alone in granting this undue preference. According to CARE, the CAISO acted in concert with the CPUC and SoCal Edison. *Id.*

²⁰ *Id.* at 4.

²¹ *Illinois Municipal Electric Agency v. Central Ill. Pub. Serv. Co.*, 76 FERC ¶ 61,084, at 61,482 (1996).

²² CARE Rehearing Request at 16.

documents and affidavits supporting the factual allegations of a complaint should be attached to the complaint. However, CARE failed to do so.

10. Furthermore, CARE's objections to the Standard Interconnection Agreements for Wind Energy and Other Alternative Technologies constitutes an untimely request for rehearing of the orders establishing the standard agreements. Therefore, CARE's objections must be rejected on that basis as well.²³ Moreover, we note that CARE misinterprets our decision in *Order Accepting Updated Market Power Analysis*. This order addresses SoCal Edison's purchase and sale of electric power, it does not pertain to transmission interconnection.²⁴ Finally, we note the inconsistencies in some of CARE's allegations. For example, at one point, CARE contends that small solar distributed generators are not attempting to tie into the CAISO controlled grid, but are trying to tie into SoCal Edison's grid to sell energy to SoCal Edison. However, in later arguments, CARE contends that small distributed generators are "must-take" under the CAISO tariff and, further, that since the CAISO maintains operational control of [SoCal Edison's] transmission assets it is CAISO then that must have given "undue preference" with respect to new transmission infrastructure. CARE fails to provide evidence supporting its allegations and fails to offer an explanation for its inconsistent arguments.

11. Finally, both CARE and Acton raise a number of issues and allegations regarding the Tehachapi Project. CARE asserts that (1) the Tehachapi Project and SoCal Edison's Tehachapi amendment to its open access transmission tariff (OATT) under Commission Docket No. ER08-375-000 gives undue preference with respect to new transmission infrastructure for the purposes of transmission in interstate commerce to industrial wind, conventional generation, and industrial solar;²⁵ (2) that the Commission's Declaratory Order and its subsequent actions taken to support the Tehachapi project constitute a "post hoc rationalization" of a prior approval of the project pre-committing to a certain plan prior to conducting an independent environmental review, which violated the public participation requirements under the National Environmental Policy Act (NEPA);²⁶

²³ We also note that treating dissimilar entities differently does not constitute an undue preference.

²⁴ Even if the Order was generally applicable to this situation, the Order requires a change in status filing when SoCal Edison **increases** its purchases by 100 MW, while CARE is alleging a failure to purchase available distributed generation power. Thus, even if CARE had provided evidence of its failure to purchase claim, which it did not, the *Order Accepting Updated Market Power Analysis* would be inapplicable.

²⁵ CARE Rehearing Request at 7.

²⁶ *Id.* at 25-27; 30-31.

(3) the CPUC failed to consider the “no-action alternative in its Final EIS;²⁷ (4) the CPUC’s Final EIR is inconsistent with the requirements of NEPA;²⁸ and (5) CARE contends that a statement made by SoCal Edison in its tariff filing in Docket No. ER10-160 is false.²⁹

12. We will deny rehearing of CARE’s Tehachapi Project claims. CARE’s objections to the decisions rendered in Docket No. ER08-375-000 and the Commission’s Declaratory Order constitute an untimely request for rehearing of those orders. Similarly, CARE’s objection to statements made by SoCal Edison in ER10-160 must be raised in that proceeding. Finally, this is not the appropriate forum to consider objections to the CPUC’s actions regarding NEPA and the final EIS/EIR. Those objections must be raised before the CPUC or in the appropriate California court on appeal of any CPUC decision.

13. Acton objects to the CPUC’s decision regarding rate recovery under CPUC Section 399.2.5. Acton contends that, as a 570 MW conventional generator proposing to operate 24 hours per day, Palmdale is NOT a renewable resource. Thus, according to Acton, the new Segment 11 transmission line and other facilities included in the Tehachapi Project that are specifically intended to serve this conventional generation resources are not legally eligible for consideration under CPUC Section 399.2.5.³⁰

14. According to Acton, the CPUC has disregarded the plain language of the law in their Proposed Decision and has chosen to extend Section 399.2.5 eligibility to transmission facilities that are clearly intended to interconnect conventional generation. Acton argues that the CPUC determination is based upon the “vague and unsupportable notion” that, since portions of the Tehachapi Project will access renewable resources needed to comply with RPS goals and the project as a whole is intended to achieve renewable power goals, every component of the Tehachapi project should be deemed necessary to affect this purpose. Acton argues that in determining that the transmission infrastructure intended to serve the Palmdale project qualifies as renewable resource integration facilities, the CPUC unlawfully confers a substantial and preferential financial benefit to the Palmdale project because it shifts the \$150 million transmission facility construction cost obligation from Palmdale to California’s retail customers.³¹

²⁷ *Id.* at 25-27.

²⁸ *Id.* at 30-31.

²⁹ *Id.* at 33-34.

³⁰ Acton November 30, 2009 Request for Rehearing at 2-3.

³¹ *Id.* at 4-5.

15. Acton also claims that Segment 11 of the Tehachapi Project is intended specifically to serve a single 570 MW conventional generation facility proposed by the City of Palmdale (Palmdale) on a nearly exclusive basis. Thus, Acton asserts that in light of this fact the cost of this transmission infrastructure should, at a minimum, be considered network upgrades that are the financial responsibility of Palmdale (as the interconnecting customer). Moreover, according to Acton, it is even reasonable to conclude, based on the evidence, that this infrastructure constitutes a “gen-tie” facility and not a “network upgrade” that is eligible for cost recovery through transmission rates.³²

16. Finally, Acton asserts that the CPUC’s deliberation of the Tehachapi Project does not address, or even consider, the distributed generation alternative. Acton contends that the CPUC ignores the small-scale distributed generation alternative in the Tehachapi Project because it simply does not fit anywhere within California’s rigid energy procurement and transmission structure. According to Acton, not only do California’s energy procurement regulations discriminate against distributed generation facilities; California’s transmission infrastructure development process is also structured to sidestep small scale distributed generation systems and specifically benefit utility-scale generators, as the Tehachapi Project demonstrates. Thus Acton argues that the CPUC’s Proposed Decision confers undue and substantial preference on large-scale wind and solar utility generators and it specifically disregards any market participation opportunity for small scale distributed generators.³³

17. We will deny Acton’s request for rehearing. This is not the appropriate forum for parties to raise objections to the actions taken by the CPUC. Any concerns regarding the CPUC’s consideration of the Tehachapi Project must be raised in the CPUC’s proceedings or in the appropriate California court on appeal of any CPUC decision.

The Commission orders:

The rehearing requests filed by CARE and Acton are hereby denied.

By the Commission.

Kimberly D. Bose,
Secretary.

³² *Id.* at 2-3.

³³ *Id.* at 5-7.