

137 FERC ¶ 61,113
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

CALifornians for Renewable Energy, Inc.,
(CARE) and Barbara Durkin

v.

Docket No. EL11-9-000

National Grid, Cape Wind, and the Massachusetts
Department of Public Utilities

ORDER DISMISSING COMPLAINT

(Issued November 7, 2011)

1. On December 1, 2010, CALifornians for Renewable Energy, Inc. (CARE) and Barbara Durkin (collectively, complainants) filed a complaint, claiming reliance on certain sections of the Federal Power Act (FPA)¹ and Rule 206 of the Commission's Rules of Practice and Procedure,² against National Grid, Cape Wind Associates, Inc. (Cape Wind), and the Massachusetts Department of Public Utilities (Massachusetts Commission or DPU) (collectively, respondents). Complainants appear to allege, among other things, that the Massachusetts Commission violated the FPA and the Public Utility Regulatory Policies Act of 1978 (PURPA)³ by approving a contract for purchases of capacity and energy that exceeds the utility's avoided cost cap and which also usurps the Commission's exclusive jurisdiction to determine the rates for wholesale sales of electricity under its jurisdiction. Complainants also appear to allege that respondents are engaging in manipulative and fraudulent activities and that Cape Wind is affiliated with international criminal organizations.

¹ 16 U.S.C. §§ 824d, 824e, 825e, 825h (2006).

² 18 C.F.R. § 385.206 (2011).

³ See 16 U.S.C. § 796,824a-3 (2006).

2. In this order, we dismiss the complaint.⁴ Complainants' filing fails to state what conduct it believes violates the statutes, much less specify the specific sections of the statutes that allegedly have been violated and precisely why or how they have been violated. In addition, it is unclear from the complaint the relief that complainants seek. Finally, we find that the complainants have failed to provide factual support, as opposed to unsubstantiated allegations, for the claims made in their complaint as required by Rule 206 of the Commission's Rules of Practice and Procedure,⁵ and that complainants have failed to submit a pleading that meets the Commission's filing requirements contained in Rule 203.⁶

I. Complaint

3. In general, complainants challenge an order issued by the Massachusetts Commission, which approved a contract for the purchase of wind power and renewable energy certificates between National Grid and Cape Wind. The Massachusetts Commission concluded that a power purchase agreement (PPA-1) pursuant to which National Grid is to purchase 50 percent of the output of the Cape Wind project is cost-effective, and in the public interest. However, the Massachusetts Commission denied approval of a second power purchase agreement (PPA-2) because "at this time [it] would serve no clear purpose."⁷

4. On December 1, 2010, complainants filed their complaint against National Grid, Cape Wind, and the Massachusetts Commission⁸ claiming that respondents had conspired to violate the FPA "by approving contracts for capacity and energy that

⁴ On March 11, 2011, Commissioner Cheryl A. La Fleur issued a memorandum to the file in sixty dockets, including Docket No. EL11-9-000, documenting her decision, based on a memorandum from the Office of General Counsel's General and Administrative Law section, dated February 18, 2011, not to recuse herself from considering matters in those dockets.

⁵ 18 C.F.R. § 385.206 (2011).

⁶ 18 C.F.R. § 385.203 (2011).

⁷ In D.P.U. 10-54, *Petition of Massachusetts Electric Company and National Electric Company, each d/b/a National Grid, for approval by the Department of Public Utilities of two long term contracts to purchase wind power and renewable energy certificates, pursuant to St. 2008, c. 169, §83 and 220 c. M.R. § 17.00 et. seq.*, Commission Order at xvii (November 22, 2010).

⁸ The complaint did not specify the Massachusetts Attorney General as a respondent, but request that the Commission investigate its activities undertaken with other respondents. *Compare* Complaint at 1, 4 *with* Complaint at 5.

exceeds the utility's avoided cost cap and which also usurps [the Commission's] exclusive jurisdiction to determine wholesale rates ... and aiding and abetting Cape Wind's fraudulent actions and claims to defraud taxpayers of ARRA [American Recovery and Reinvestment Act of 2009] stimulus funds."⁹ Citing the Commission's exclusive jurisdiction to regulate rates, terms and conditions of sales for resale by public utilities in interstate commerce, complainants request the Commission to set aside the Massachusetts Commission's Order in D.P.U. 10-54.¹⁰

5. Complainants also request that the Commission investigate Cape Wind, National Grid, the Massachusetts Attorney General and the Massachusetts Commission for aiding and abetting "Cape Wind's fraudulent actions and claims whose purpose is to defraud the nation's taxpayers of ARRA stimulus funds it is seeking for its project and Massachusetts electric ratepayers who will be paying through rates for the project costs approved by the state above the avoided cost all in violation of 18 C.F.R. § 1c."¹¹ Further, complainants ask for any relief the Commission may grant and for enforcement penalties against National Grid as the Commission determines is appropriate.¹² Complainants contend that, if the Commission finds that National Grid manipulated the market then the Commission should impose the maximum fine "starting effective June 5, 2010 when Ms. Durkin's notified National Grid of their involvement in possible ARRA tax fraud by Cape Wind," or for a civil enforcement penalty of more than \$175 million.¹³

6. Complainants contend that the Massachusetts Commission's approval of the long term contract between National Grid and Cape Wind "...was approved outside of PURPA and the FPA since Cape Wind has not filed any tariff at the [Commission] for the right to sell at wholesale rates and National Grid failed to file its contract first with the [Commission] before filing it with the [Massachusetts Commission]."¹⁴ Complainants also assert that the energy price contained in the long term agreement (\$187 per MWh in 2013 with an annual escalation of 3.5 percent) approved by the Massachusetts Commission exceeds avoided cost, in violation of Commission precedent.¹⁵ In addition,

⁹ Complaint at 4.

¹⁰ *Id.* at 5.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 5-6.

¹⁴ *Id.* at 14.

¹⁵ *Id.* citing *California Public Utilities Commission*, 132 FERC ¶ 61,047 (2010).

Complainants argue that, in that case, the Commission found that the California Commission lacked authority to set wholesale rates, except as to Qualifying Facilities

(continued...)

Complainants contend that, in the Massachusetts Commission's public notice of the case, it improperly stated a price of 20.7 cents per kilowatt hour on the assumption that Cape Wind would be eligible for both Investment Tax Credits (ITCs) and Production Tax Credits (PTCs).¹⁶ Complainants further allege a connection between Cape Wind and Italian organized crime, through other wind companies including UPC and First Wind.¹⁷

II. Notice of Filings, Motions to Intervene, and Responsive Pleadings

7. Notice of CARE's and Ms. Durkin's complaint in Docket No. EL11-9-000 was published in the *Federal Register*,¹⁸ with interventions and protests due on or before December 22, 2010.

8. The Massachusetts Commission filed an answer, motion to dismiss, and notice of intervention. National Grid and Cape Wind both filed answers and motions to dismiss the complaint. The Massachusetts Attorney General filed an answer, motion to dismiss and motion to intervene.¹⁹ Comments were filed by Robert Pforzheimer²⁰ and Cohocton Wind Watch.²¹

9. On January 6, 2011, CARE and Ms. Durkin filed an answer to the motions to dismiss.

(QFs). Applying that case here, complainants assert that, because the PPA approved by the Massachusetts Commission as part of a settlement was not for a QF, the PPA was unlawful.

¹⁶ *Id.* at 20-21.

¹⁷ *Id.* at 23-46.

¹⁸ 75 Fed. Reg. 76,453 (2010).

¹⁹ *See supra* note 8.

²⁰ Mr. Pforzheimer requests that the Commission "properly vet First Wind (FW) and investigate the origins of this company, their principals and the lies they have told to get permits for their projects." Comments at 1. He also requests that the Commission "investigate the origins and practices of First Wind/UPC/IVPC/VT Wind/Caliber Energy/Evergreen/Canadaigua/DE Shaw/Cape Wind/Madison Dearborn and their subsidiaries and affiliates before granting them anything." Comments at 2.

²¹ Cohocton Wind Watch notes that it has previously commented and questioned submissions of UPC/First Wind and their subsidiaries and request that those previously submitted comments be included in this docket. It notes that it has been questioning the use of multiple LLC names and ownership of these entities for several years in comments and filings with the Commission and the New York State Public Service Commission. Comments at 1.

A. Massachusetts Commission

10. In its answer, the Massachusetts Commission requests that the complaint be summarily dismissed. The Massachusetts Commission points out that, as a governmental entity, it is not a public utility under the FPA and thus is exempt from regulation.²² Further, it notes that section 206 of the FPA, on which complainants rely, does not provide a basis to bring a complaint against the Massachusetts Commission.²³

11. Notwithstanding the above, the Massachusetts Commission asserts that it has not attempted to set the wholesale rate for power and thus has not violated the FPA or PURPA as alleged by complainants,²⁴ but was acting in accordance with a state law mandate in approving the long term agreement. The Massachusetts Commission contends that “[u]nder the *Pike County* exception to the *Narragansett* doctrine, ‘while the state cannot review the reasonableness of the wholesale rate set by the Commission, it may determine whether it is in the public interest for the wholesale purchaser whose retail rates it regulates to pay a particular price in light of its alternatives.’”²⁵ Citing Order No. 697-A, the Massachusetts Commission states that “[FERC] has consistently recognized that wholesale ratemaking does not, as a general matter, determine whether a purchaser has prudently chosen among available supply options.”²⁶

12. The Massachusetts Commission asserts that it was acting in its traditional role of regulating jurisdictional retail electric distribution companies and pursuant to state law when it reviewed the National Grid’s decision to enter into the agreement with Cape Wind.²⁷ The Massachusetts Commission states that it evaluated the costs and benefits of the agreement to determine whether it was in the public interest and in compliance with Section 83 of the Green Communities Act.²⁸ Further, the Massachusetts Commission asserts that the price in the approved power purchase agreement was the “result of negotiations between Cape Wind and National Grid, and that the terms of the

²² Massachusetts Commission Answer at 7.

²³ *Id.* at 7-8.

²⁴ *Id.* at 1-2.

²⁵ *Id.* at 8, citing *Narragansett Electric Co. v. Burke*, 119 R. I. 559, 381 A. 2d 1358 (1977), *cert. denied*, 435 U.S. 972 (1978), and *Pike County Light & Power Co. v. Pennsylvania Public Utility Comm'n*, 465 A. 2d 735, 737-738 (Pa. 1983).

²⁶ *Id.* at 9, citing *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, at P 415 (2008).

²⁷ *Id.* at 8-9.

²⁸ *Id.*, citing St. 2008, c.169, § 83.

agreement require Cape Wind to seek market-based rate authority from the Commission.”²⁹ Thus, based on the above and the fact that Cape Wind has not expressed an intention to petition for QF status under PURPA, the Massachusetts Commission asserts that its action did not violate the FPA³⁰ or PURPA.

B. Massachusetts Attorney General

13. The Massachusetts Attorney General also argues that complainants have failed to meet filing requirements imposed by Commission rules, and that the complaint is “procedurally defective” in that it requests the Commission to investigate the actions of the Massachusetts Attorney General but fails to name it as a respondent.³¹

14. Responding to complainants’ claims of market manipulation, the Massachusetts Attorney General asserts that the complainants “have not identified any action or inaction to properly plead any element of a market manipulation claim.”³² The Massachusetts Attorney General affirmatively asserts that it did not take any action that would constitute market manipulation.³³ Moreover, the Massachusetts Attorney General notes that the power purchase agreements in question were filed in a public docket and therefore could “not be found to have been concealed in any manner.”³⁴ Additionally, noting that the Commission clarified the necessary demonstration needed to prove a claim of market manipulation in Order No. 670,³⁵ the Massachusetts Attorney General notes that complainants have failed to provide relevant facts to support a claim that it possessed the requisite scienter necessary to be found in violation of the prohibition against market manipulation or that it was aware of any fraudulent behavior.³⁶ Given the unsubstantiated allegations and failure to proffer evidence, the Massachusetts Attorney General requests that the Commission dismiss with prejudice the complaint as it relates to the Massachusetts Attorney General, or, in the alternative, to the extent the Commission

²⁹ *Id.* at 9.

³⁰ The Massachusetts Commission, citing Order No. 697, asserts that the FPA leaves the timing and form of rates schedules to the Commission’s discretion. *Id.* at 10.

³¹ Massachusetts Attorney General Answer at 5-6.

³² *Id.* at 9.

³³ *Id.* at 9.

³⁴ *Id.* at 9, referencing *In re Interbank Funding Corp. Sec. Litig.*, 668 F. Supp. 2d 44, 50 (D.D.C. 2009) (citing *Joseph v. Wiles*, 223 F.3d 1155, 1162-63 (10th Cir. 2000)).

³⁵ *Id.* at 7-8.

³⁶ *Id.*

does not dismiss the complaint with respect to the Massachusetts Attorney General, the Commission should grant it leave to intervene.

C. National Grid

15. National Grid requests that the Commission dismiss the complaint because it fails to state any claim upon which relief can be granted.³⁷ National Grid contends that the complaint does not satisfy the Commission's basic rules of practice and "consists of confused arguments, based on misstatements of facts, misunderstandings of the law and innuendo."³⁸ Counter to complainants' contention, National Grid maintains that the Massachusetts Commission's approval of the power purchase agreements did not usurp the jurisdiction of this Commission.³⁹ National Grid maintains that the Massachusetts Commission neither set nor otherwise established wholesale rates; rather, that agency "approved the PPA under the provisions of state law and authorized the recovery of costs associated with the PPA from retail customers, an exercise of authority completely within the traditional jurisdiction of a state public service commission."⁴⁰

16. In response to complainants' contention that the PPA should have been filed first with the Commission before submittal to the Massachusetts Commission, National Grid asserts that there is "[n]othing in the Federal Power Act or the Commission's regulations [that] requires that wholesale power contracts be submitted first to the Commission before they can be reviewed by state agencies for state law purposes."⁴¹ National Grid maintains that "to the extent...the Complaint is premised on this claim, it has no valid basis and must be dismissed."⁴²

17. National Grid also argues that the complaint fails to comply with section 206 of the FPA, because it is disjointed and incoherent, and it appears to allege that National Grid and the Massachusetts Commission are part of an international organized crime conspiracy that includes Cape Wind and First Wind (a Cape Wind competitor).⁴³ National Grid also contends that there is no basis for a finding that it has engaged in market manipulation.

³⁷ National Grid Answer at 1.

³⁸ *Id.* at 2.

³⁹ *Id.* at 8.

⁴⁰ *Id.* at 9.

⁴¹ *Id.* at 11.

⁴² *Id.*

⁴³ *Id.* at 13.

18. National Grid states “the only allegations that even approach the threshold of alleging facts to support their claim” relate to the public notice of the Cape Wind proceeding before the Massachusetts Commission and its statement about Cape Wind’s intended use of ITCs and PTCs. National Grid contends that it was understood and explained fully in the proceeding that, although Cape Wind could potentially be eligible for either or both of these credits for each phase of the project, Cape Wind could not obtain both types of credits for the same phase.⁴⁴ Furthermore, National Grid notes that the price reference in the notice, which was raised by complainant, Ms. Durkin, in the Massachusetts proceeding, was considered by the Massachusetts Commission and determined to be sufficient under state law.⁴⁵ In light of the latter determination, National Grid asserts that this issue is not proper for the Commission’s consideration.

D. Cape Wind

19. Echoing National Grid, Cape Wind contends that the complaint fails to comply with the Commission’s well established rules and standards, and therefore should be summarily dismissed.⁴⁶ Cape Wind argues that each of the claims set forth in the complaint “is premised on fundamental misunderstandings and mischaracterizations of applicable law and standards, as well as unsupported accusations without any basis in fact or law.”⁴⁷ Cape Wind also requests that the Commission impose sanctions on CARE and award the respondents legal costs and other reasonable relief as the Commission deems appropriate.⁴⁸

20. Cape Wind points out that it is not a QF and has no intention of seeking QF status; rather, it will seek to become an Exempt Wholesale Generator (EWG) at a later time.⁴⁹ Further, the Massachusetts Commission’s approval of the long term contract was not in contravention of the FPA, “under the long-recognized and well-settled *Pike County* doctrine, which preserves the authority of state public utility commissions such as the [Massachusetts Commission] to review power-purchase contracts for the purpose of, for example, determining the prudence and reasonableness of its jurisdictional distribution

⁴⁴ *Id.* at 15, 17.

⁴⁵ *Id.* at 16.

⁴⁶ Cape Wind Answer at 1.

⁴⁷ *Id.* at 2-3.

⁴⁸ *Id.* at 3.

⁴⁹ *Id.* at 8.

companies in electing to enter into such contracts.”⁵⁰ Cape Wind contends that the complaint fails to acknowledge this precedent.⁵¹

21. Further, Cape Wind states that National Grid did not err in first filing the contract with the Massachusetts Commission. Cape Wind asserts that neither it nor National Grid was under any obligation to file the Cape Wind PPA at the Commission prior to seeking approval from the Massachusetts Commission.⁵²

22. Cape Wind asserts that the complaint’s allegation that it and other respondents engaged in market manipulation is baseless. Cape Wind also notes that complainants’ allegations that it intended to take both ITCs and PTCs resulting in defrauding the federal government is not factually or legally supported.⁵³ As an initial observation, Cape Wind notes that there is no private right of action for a violation of the Commission’s regulations regarding market manipulation.⁵⁴ Moreover, Cape Wind contends that complainants have mischaracterized the various statements made during the Massachusetts Commission’s proceeding as to the application of the federal tax incentives, and that the Massachusetts Commission fully vetted the tax incentives that are available to Cape Wind.⁵⁵ Cape Wind states that there will be no “double dipping” of any tax credits and the “validity of the [Massachusetts notice] is squarely within the jurisdiction of the [Massachusetts] DPU and is solely a matter of state law.”⁵⁶

23. Regarding complainants’ allegations that Cape Wind is affiliated with Italian organized crime, Cape Wind states this “bord[ers] on libel, [and] the Complainants’ scurrilous assertions are totally unsubstantiated.”⁵⁷ First, Cape Wind maintains that it is not a subsidiary of and has no relation to UPC or First Wind. Second, Cape Wind states

⁵⁰ *Id.* at 13.

⁵¹ *Id.*

⁵² *Id.* at 14, citing *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S.Ct. 2733 (2008).

⁵³ *Id.* at 15.

⁵⁴ *Id.* at 16, citing 18 C.F.R. § 1c.1(b) (2011) (“[n]othing in this section shall be construed to create a private right of action”).

⁵⁵ *Id.*

⁵⁶ *Id.* at 16-17.

⁵⁷ *Id.* at 18.

it has no connection to any organized crime syndicate, Italian or otherwise, and the complaint's allegations are a complete fabrication without any factual support.⁵⁸

24. Finally, Cape Wind argues that it is entitled to legal costs given CARE's history of filing deficient and frivolous complaints. Cape Wind argues that practitioners before the Commission must conform to certain standards of ethical conduct⁵⁹ and that this complaint seriously crosses the line and should exhaust the Commission's patience.⁶⁰ Thus, Cape Wind requests that the Commission impose sanctions, including the payment of attorneys' fees, upon the complainants.⁶¹

E. CARE's and Ms. Durkin's Response

25. In response to the motions to dismiss, complainants add Martha Coakley, Massachusetts Attorney General, individually, as a respondent, noting that it failed to name her in the December 1, 2010 complaint. Complainants contend that "Ms. Coakley ... had a real conflict of interest in the Cape Wind PPA because she made a pre-election decision to support the project."⁶² After noting the above, the complainants explain that the intent of their answer is to provide supportive information to their complaint and reiterate their argument that National Grid, Cape Wind, Massachusetts Attorney General, and the Massachusetts Commission are incorrect in alleging that the Massachusetts Commission has "wholesale 'market-based' ratemaking authority outside of PURPA for the project's purported 'market-based' wholesale contract...[and that] each agree that Cape Wind is required to make no showing before FERC in advance of entering a wholesale contract."⁶³ With regard to the ARRA tax fraud allegation, complainants maintain that there is factual support for its allegations that Cape Wind intends to take both the ITC and PTC.⁶⁴ Complainants point to a Massachusetts Commission notice which they contend contains an "untrue statement of a material fact ... [resulting in] artificially lower[ing]"⁶⁵ the cost of Cape Wind's project.

⁵⁸ *Id.* at 18-19.

⁵⁹ *Id.* at 19, citing 18 C.F.R. § 385.2101(c) (2011).

⁶⁰ *Id.*

⁶¹ *Id.* at 21.

⁶² CARE response at 3.

⁶³ *Id.* at 4.

⁶⁴ *Id.* at 7.

⁶⁵ *Id.*

26. Clarifying its allegations of Cape Wind's relationship with organized crime, complainants assert that Cape Wind misread its complaint. In its complaint, complainant state that they "did not provide editorial comment; rather they provided a "compilation of articles from New York Times, Financial Times, Boston Business Journal."⁶⁶ Further, citing to Cape Wind's motion, complainants argue that it has identified a "Cape Wind connection to 'Italian organized crime' ...Incredibly Cape Wind admits '[a]t one point in the past, certain affiliates of UPC had an affiliation with Cape Wind, but that relationship was terminated in 2003."⁶⁷

27. Complainants request that the Commission reject the PPA because it violates Commission precedent and also the settlement because it is not in the public interest.⁶⁸

III. Commission Determination

A. Procedural Matters

28. Pursuant to Rule 102(c)(2) of the Commission's Rules of Practice and Procedure, the respondents are parties to this proceeding.⁶⁹ Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the notice of intervention and the timely, unopposed motions to intervene serve to make the movants parties to these proceedings.⁷⁰

29. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,⁷¹ as relevant here, prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We are not persuaded to accept CARE's and Ms. Durkin's January 6, 2011 answer and will, therefore, reject it.

B. Substantive Matters

30. The Commission's Rules of Practice and Procedure requires a complaint to meet certain minimum requirements. Specifically, in pertinent part, Rule 206 requires that:

⁶⁶ *Id.* at 12.

⁶⁷ *Id.* at 13, citing Duffy Aff. at ¶ 10 and Cape Wind Motion at 18-19.

⁶⁸ *Id.* at 27.

⁶⁹ 18 C.F.R. § 385.102(c)(2) (2011).

⁷⁰ 18 C.F.R. § 385.214 (2011).

⁷¹ 18 C.F.R. § 385.213 (2011).

[a] complaint must:

- (1) Clearly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements;
- (2) Explain how the action or inaction violates applicable statutory standards or regulatory requirements;
- (3) Set forth the business, commercial, economic or other issues presented by the action or inaction as such relate to or affect the complainant;
- (4) Make a good faith effort to quantify the financial impact or burden (if any) created for the complainant as a result of the action or inaction;...
- (7) State the specific relief or remedy requested, including any request for stay or extension of time, and the basis for that relief.⁷²

31. Further, our regulations require that all pleadings filed with the Commission must contain the “relevant facts,” and the “position taken by the participant . . . and the basis in fact and law for such position.”⁷³

32. The complaint before us consists of a string of vague and unsupported allegations that the Massachusetts Commission’s order violates the FPA, PURPA and previous Commission orders, allegations of fraudulent behavior and allegations of affiliation with international criminal organizations. The complaint fails to articulate clearly and with specificity the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements or to clearly state the relief that complainants want the Commission to provide. The Commission is unable to discern the specific violations of the FPA and Commission regulations that are alleged or what action the complainants desire the Commission to take. Complainants appear to argue that contracts between electric utilities and Cape Wind exceed the utilities’ avoided costs, but what the contract

⁷² 18 C.F.R. § 385.206 (2011).

⁷³ 18 C.F.R. § 385.203(a) (2011).

rates are, what the utilities' avoided costs are, and whether Cape Wind is even a QF (for which avoided cost rates are relevant)⁷⁴ is not clear from our review of the complaint.⁷⁵

33. To the extent the complainants instead challenge rates as unjust and unreasonable under the FPA, they have not shown how they are unjust and unreasonable. The contracts approved by the Massachusetts Commission indicate that the wind facilities must either have QF status or file rates with this Commission pursuant to section 205 of the FPA. Cape Wind indicates that its rates will be filed with this Commission. Complainants will have the opportunity to intervene in any proceeding seeking Commission approval of those rates. To comply with the prior notice and filing requirements of the FPA, and the Commission's implementing regulations, such a rate filing must be made at least sixty days before the rates are to become effective.⁷⁶ There is, however, no requirement in the FPA or the Commission's regulations that the rates be filed before a retail filing, such as the Massachusetts filing that resulted in the Massachusetts decision that is the subject of CARE's and Ms. Durkin's complaint. Accordingly we find complainant's argument that Cape Wind needed to submit the proposed power purchase agreement to the Commission prior to its filing with the Massachusetts Commission without merit.

34. In the past, we have admonished parties that "rather than bald allegations, [complainants] must make an adequate proffer of evidence including pertinent information and analysis to support its claims."⁷⁷ As observed by National Grid, "[o]f the 11 complaints filed with the Commission by CARE in the past 10 years, 10 have been dismissed for failure to comply with Commission rules and standards."⁷⁸ For the past ten

⁷⁴ See 18 C.F.R. Part 292 (2011).

⁷⁵ The complainants also seem to disagree with an order of the Massachusetts Commission, but the most appropriate remedy for any such disagreement would be an appeal of that order to an appropriate court, and not a filing with the Commission.

⁷⁶ 16 U.S.C. § 824d (2006); 18 C.F.R. Part 35 (2011).

⁷⁷ *Illinois Municipal Electric Agency v. Central Illinois Public Serv. Co.*, 76 FERC ¶ 61,084, at 61,482 (1996).

⁷⁸ National Grid Answer at 2, n. 4, citing *Californians for Renewable Energy, Inc. v. Pacific Gas & Electric Co.*, 129 FERC ¶ 61,141 (2009); *Californians for Renewable Energy, Inc. v. California Pub. Utils. Comm'n*, 129 FERC ¶ 61,075 (2009), *reh'g denied*, 131 FERC ¶ 61,102 (2010); *Californians for Renewable Energy, Inc. v. California Pub. Utils. Comm'n*, 120 FERC ¶ 61,272 (2007) (dismissing two CARE complaints); *Californians for Renewable Energy, Inc. v. California Pub. Utils. Comm'n*, 119 FERC ¶ 61,058 (2007) (dismissing two CARE complaints); *Californians for Renewable*

(continued...)

years, through its orders on these complaints, the Commission has provided guidance to CARE on the Commission's Rules of Practice and Procedure and the requirements for a complaint. The current complaint demonstrates that CARE has chosen to ignore those orders and the Commission's guidance. In this regard, the Commission reminds the complainants that, pursuant to Rule 2102 of the Commission's Rules of Practice and Procedure,⁷⁹ after a hearing, the Commission may disqualify and deny the privilege of appearing or practicing before it. The Commission is normally averse to taking this action and will not take such action here, however.

35. The complaint is also peppered with allegations of fraud⁸⁰ and illegal activities,⁸¹ and allegations that one of the respondents is associated with organized crime⁸² without any evidentiary support. Moreover, complainants never state what authority they believe the Commission has, if any, to remedy the alleged association with organized crime.

36. In short, the complaint in this proceeding fails to meet the requirements of the Commission's Rules of Practice and Procedure to lay out a case before the Commission and with evidentiary support rather than bare allegations. Rather, here the complaint fails to make a case and is instead a pleading that is unsupported and unclear as to both the alleged violations and the sought-for remedy; it is a pleading that is, in large part, incomprehensible. Accordingly, the Commission will dismiss the complaint.

Energy, Inc. v. California Indep. Sys. Operator Corp., 117 FERC ¶ 61,072 (2006); *Californians for Renewable Energy, Inc. v. Calpine Energy Servs., L.P.*, 106 FERC ¶ 61,055 (2004), *reh'g denied*, 107 FERC ¶ 61,238 (2004); *Californians for Renewable Energy, Inc. v. British Columbia Hydro and Power Auth.*, 98 FERC ¶ 61,085 (2002); *Californians for Renewable Energy, Inc. v. Indep. Energy Producers, Inc.*, 93 FERC ¶ 61,294 (2000). *Accord Californians for Renewable Energy, Inc. v. Pacific Gas and Electric Company*, 134 FERC ¶ 61,060 (2011).

⁷⁹ Rule 2102, 18 C.F.R. § 385.2102 (2011), provides:

(a) After a hearing the Commission may disqualify and deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to a person who is found:

- (1) Not to possess the requisite qualifications to represent others, or
- (2) To have engaged in unethical or improper professional conduct, or
- (3) Otherwise to be not qualified.

⁸⁰ Complaint at 4, 5, 20, 21, 23.

⁸¹ *Id.* at 13.

⁸² *Id.* at 26, 37.

The Commission orders:

The complaint filed by CARE and Ms. Durkin is hereby dismissed, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.