142 FERC ¶ 61,226
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

CAlifornians for Renewable Energy, Inc.

v. Docket No. EL09-73-001

Pacific Gas & Electric Company and California
Energy Commission

ORDER DENYING REHEARING

(Issued March 27, 2013)

1. On November 19, 2009, the Commission issued an order[1] denying a complaint filed on September 8, 2009 by CAlifornians for Renewable Energy, Inc. (CARE) against Pacific Gas and Electric Company (PG&E) and the California Energy Commission (CEC), alleging that PG&E has been operating one of its generation stations without permits required by the Clean Air Act[2] and that the CEC has been allowing continued operations of the generation station by approving PG&E's amended permit in August 2009. On December 18, 2009, CARE filed a request for rehearing of the Order Dismissing Complaint. For the reasons discussed below, the request for rehearing will be denied.

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[1] *CAlifornians for Renewable Energy, Inc. v. Pacific Gas & Electric Company and California Energy Commission*, 129 FERC ¶ 61,141 (2009) (Order Dismissing Complaint).

[2] 42 U.S.C. §§ 7401 *et seq*. (2006).

I. CARE's Complaint

2. On September 8, 2009, [3] CARE filed a complaint requesting that the Commission impose civil penalties on PG&E under Part II of the Federal Power Act (FPA)[4] for operating the Gateway Generating Station without a permit required under the Clean Air Act. CARE argued that PG&E's operation of the Gateway Generating Station without required permits violates section 4A of the Natural Gas Act[5] (NGA) and sections 31(a) and 222 of the FPA,[6] as well as the Commission's rules.[7]

3. The Commission noted, among other things, that a complainant must state a legally recognizable claim that the Commission has the statutory or regulatory power to address.[8] The Commission also noted that CARE had failed to explain why and how PG&E's alleged violation of the operating permit requirements constituted manipulative or fraudulent behavior under section 4A of the NGA, section 222 of the FPA, and Order No. 670. The Commission also found that CARE failed to explain, specifically, what fraudulent device, scheme or artifice PG&E employed, or what untrue statements of material fact or omissions PG&E made. Also, the Commission found CARE had not shown that PG&E had committed any act or engaged in any practice or course of business for the purpose of committing a fraud or deceit in connection with the purchase or sale of electric energy or transmission services, or in connection with the purchase or sale of natural gas or transportation services. The Commission further found that CARE

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[3] On September 10, 2009 and October 2, 2009, CARE supplemented its complaint by filing a copy of the document titled "Gateway Generating Station Teleconference Notes" and a copy of a brief (by CARE, the Costa Branch of the Association of Community Organizations for Reform Now, the Local Clean Energy Alliance and Mr. Robert Simpson) filed in the proceeding involving PG&E's Gateway Generating Station before the CEC.

[4] CARE appears to refer to section 316A of the FPA, 16 U.S.C. § 825o-1 (2006).

[5] 15 U.S.C. § 717c-1 (2006).

[6] 16 U.S.C. §§ 823b(a) and 824v (2006).

[7] CARE appears to refer to *Prohibition of Energy Market Manipulation*, Order No. 670, FERC Stats. & Regs. ¶ 31,202, *reh'g denied*, 114 FERC ¶ 61,300 (2006).

[8] *See, e.g.*, *CAlifornians for Renewable Energy v. Cal. Indep. Sys. Operator Corp.*, 117 FERC ¶ 61,072, at PP 8-11 (2006).

did not explain how the CEC's regulatory decision, within its jurisdiction in regard to PG&E's operating permit, was in violation of the NGA, FPA, and Order No. 670.

4. Finally, the Commission found CARE's reliance on section 31(a) of the FPA to support its position was misplaced. Section 31(a) authorizes the Commission to "monitor and investigate compliance with each license and permit *issued under* [Subchapter I]…" (*emphasis added*). Subchapter I of Title 16 of the United States Code addresses the regulation of the development of water power and resources and does not apply to PG&E's operating permit for the Gateway Generating Station. And CARE did not cite any precedent invoking the Commission's authority under Subchapter I that would allow the Commission to monitor, regulate, or investigate operating permits for non-hydropower generating facilities issued by other federal and/or state agencies.

5. Accordingly, the Commission dismissed CARE's complaint.[9]

II. Discussion

A. CARE's Request for Rehearing

6. CARE's request for rehearing essentially makes six arguments. CARE alleges that: (1) the Order Dismissing Complaint was in error "because it failed to state that the Commission had exercised its jurisdiction in determining 'the most appropriate method to use to assess emissions costs because they were incurred in connection with clean air requirements";[10] (2) PG&E had an economic advantage from deferred Clean Air Act (CAA) compliance that constituted energy market manipulation under FPA section 222;[11] (3) PG&E's answer to CARE's complaint knowingly provided false information

[9] The Commission also noted that CARE sought review of the CEC decision, and so found that this proceeding was not an appropriate forum to seek review of a state agency decision.

[10] CARE Rehearing Request at 2. Care does not explain from where it has quoted this language.

[11] 16 U.S.C. § 824v (2006) (CARE appears to refer to subsection a: "It shall be unlawful for any entity (including an entity described in section 824(f) of this title), directly or indirectly, to use or employ, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance (as those terms are used in section 78j(b) of Title 15), in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the

(continued…)

to the Commission regarding the permit, thus violating FPA section 221;[12] (4) the Commission's enforcement authority[13] extends to PG&E's operation of the Gateway Generating Station without the required federal permits; (5) the CEC's answer to CARE's complaint also knowingly provided false information to the Commission regarding the permit; and (6) Subchapter I of Title 16 of the United States Code, which addresses the regulation and development of water power and resources, does indeed apply to PG&E's operating permit for the non-hydro-power Gateway Generating Station. CARE argues that since the Commission regulates actual hydroelectric facilities owned by PG&E, it must also monitor and investigate a CEC-issued permit for a non-hydropower generating plant.[14]

B. Commission Determination

7. Contrary to CARE's impression, the Commission is not responsible for addressing any and all issues – economic, environmental, or otherwise – involving the electric industry. We do only what Congress has authorized us to do. With that in mind, we address, and deny, all of CARE's claims. None of the arguments enumerated in CARE's rehearing request constitutes grounds for granting rehearing under Rule 713.[15] Indeed, for most of the arguments made by CARE, it does not describe how the item constitutes an error that the Commission made in the Order Dismissing Complaint. Instead, CARE continues to make bald allegations without stating a legally recognizable claim that the Commission has the statutory or regulatory authority to address.

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protection of electric ratepayers.").

[12] 16 U.S.C. § 824u (2006) (which prohibits filing false information relating to the price of electricity sold at wholesale or the availability of transmission of capacity.).

[13] 15 U.S.C. § 3414 (2006).

[14] CARE Rehearing Request at 27.

[15] 18 C.F.R. § 385.713(c)(1) (2012) (requiring parties seeking rehearing to concisely state the alleged error of the underlying order); *see also Union Electric Co. dba AmerenUE*, 120 FERC ¶ 61,015, at P 5 (2007) ([P]arties filing requests for rehearing are obligated to set forth in those documents the grounds on which they are based …. A request for rehearing … must independently set forth grounds of alleged error in the order at hand ….).

8. CARE's first claim - that the Order Dismissing Complaint was in error by failing to state the Commission was exercising its jurisdiction in determining emissions costs - is not only unclear, but is not a specification of error regarding the Order Dismissing Complaint.

9. CARE's second claim - that PG&E had an economic advantage from deferred Clean Air Act (CAA) compliance that constituted energy market manipulation under FPA section 222 – is also not a specification of an error made in the Order Dismissing Complaint. In any event, claiming that PG&E deferred compliance costs, even if true (and we do not concede that) is far from showing that PG&E actually manipulated energy markets; it does not establish a *prima facie* case for manipulation of energy markets, [16] nor does it constitute a specification of error in the underlying order.

10. CARE's third and fifth claims - that PG&E and the CEC's motions to dismiss CARE's complaint knowingly provided false information to the Commission, are not specifications of error since CARE did not make these claims earlier in its answer to the Motions to Dismiss, but are also unsupported by the evidence CARE purports to give.[17] CARE alleges that PG&E falsely claimed to have all permits needed and that the CEC's answer was correspondingly false by supporting PG&E in this statement. However, PG&E explained the Environmental Protection Agency enforcement process it went through, and more importantly, explained PG&E's settlement with the EPA via a Consent Decree filed in federal court.[18]

11. CARE's fourth claim, that the Commission's enforcement authority extends to PG&E's operation of the Gateway Generating Station without the required federal permits, is not a specification of error because CARE did not raise this issue in its complaint, and thus the Commission did not act on it. In any event, we are not charged by Congress with enforcing such permits, and thus have no authority to remedy a failure to comply.

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[16] 18 C.F.R. §§ 1c.1, 1c.2 (2012).

[17] CARE's purported evidence consists, first, of a Bay Area Air Quality Management District email summarizing a Gateway Generating Station teleconference and which is concerned with persons such as CARE members using the Environmental Appeals Board to delay power plant projects, and second, of the federal district court Consent Decree that resolved PG&E's permitting matter with the EPA.

[18] PG&E Answer and Motion to Dismiss at 8-9.

12. CARE's final claim, that since the Commission regulates actual hydroelectric facilities owned by PG&E, it must also monitor and investigate a CEC-issued permit for a non-hydroelectric generating plant – does not address the essential point the Commission made in the Order Dismissing Complaint: that Part I of the FPA does not apply to non-hydroelectric generating plants, and CARE did not cite precedent to the contrary. Indeed CARE admits in its request for rehearing that it did not provide any precedent in its original complaint.[19] Therefore, there is no specification of an error in the Commission's decision on this point, nor was any error made.

The Commission orders:

CARE's rehearing is hereby denied for the reasons discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[19] CARE Rehearing Request at 2.