

174 FERC ¶ 61,203
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, James P. Danly,
Allison Clements, and Mark C. Christie.

Californians for Green Nuclear Power, Inc.

Docket No. EL21-13-000

v.

The North American Electric Reliability
Corporation,
the Western Electricity Coordinating
Council,
the California Independent System
Operator Corporation,
the California Public Utilities Commission,
the California State Water Resources
Control Board,
& the California State Lands Commission

ORDER ON COMPLAINT

(Issued March 18, 2021)

1. On October 26, 2020, Californians for Green Nuclear Power, Inc. (CGNP) filed a complaint¹ against the North American Electric Reliability Corporation (NERC), the Western Electricity Coordinating Council (WECC), the California Independent System Operator Corporation (CAISO), the California Public Utilities Commission (CPUC), the California State Water Resources Control Board (Water Board), and the California State Lands Commission (Lands Commission) (collectively, Respondents) alleging that Respondents have violated or will violate Reliability Standards upon the planned retirement of Diablo Canyon Nuclear Power Plant (Diablo Canyon) in 2024/2025. In this order, we dismiss the Complaint against NERC, WECC, CPUC, Water Board, and Lands Commission, and deny the Complaint against CAISO, as discussed below.

¹ On November 25, 2020, CGNP filed an amended complaint.

I. Background

2. Pacific Gas and Electric Company's (PG&E) Diablo Canyon nuclear power plant is located in coastal San Luis Obispo County, California, and consists of two units that have been operating since 1985 (Unit 1) and 1986 (Unit 2), with a combined generation capacity of 2,240 MW. The units are currently licensed by the Nuclear Regulatory Commission (NRC) to operate until 2024 (Unit 1) and 2025 (Unit 2).²

3. In August 2016, PG&E submitted an application before CPUC proposing to retire Diablo Canyon upon the expiration of its NRC licenses. CGNP intervened in that proceeding and objected to the plant's proposed retirement. In January 2018, CPUC approved PG&E's proposal.³ Although CPUC did not identify Diablo Canyon's replacement in that decision, CPUC stated that it would address such issues through its integrated resource planning process.⁴

4. Meanwhile, in its 2016-2017 transmission planning process, CAISO began modeling the power system with Diablo Canyon offline after 2024.⁵ The following year, CAISO recommended installing additional reactive devices, preferably dynamic, so that they could both absorb reactive power under normal system conditions and supply reactive power after contingencies as needed.⁶ In its 2018-2019 Transmission Plan, CAISO recommended, and the CAISO Board of Governors approved, new transmission solutions to mitigate reliability issues that could be caused by the closure of Diablo Canyon.⁷

² *Decision Approving Retirement of Diablo Canyon Nuclear Power Plant*, D18-01-022, at 2-3 (Cal. Pub. Util. Comm'n Jan. 16, 2018) (CPUC Approval Decision).

³ *Id.* at 57-58.

⁴ *Id.*

⁵ CAISO, 2016-2017 Transmission Plan at 70 (Mar. 17, 2017), http://www.caiso.com/Documents/Board-Approved_2016-2017TransmissionPlan.pdf.

⁶ CAISO, 2017-2018 Transmission Plan at 87 (Mar. 22, 2018), http://www.caiso.com/Documents/BoardApproved-2017-2018_Transmission_Plan.pdf.

⁷ CAISO, 2018-2019 Transmission Plan at 93 (Mar. 29, 2019), http://www.caiso.com/Documents/ISO_BoardApproved-2018-2019_Transmission_Plan.pdf.

II. Complaint

5. CGNP states that its Complaint is filed pursuant to the Federal Power Act (FPA), Energy Policy Act of 2005, the Natural Gas Act of 1938 (NGA), the Federal Pipeline Safety Regulations,⁸ and Rule 206 of the Commission's Rules of Practice and Procedure.⁹ CGNP argues that CPUC, CAISO, the Water Board, and the Lands Commission have violated NERC's Reliability Standards for the Bulk-Power System by approving Diablo Canyon's retirement without first properly analyzing the adverse bulk electric system and adverse bulk natural gas system consequences. In particular, CGNP raises potential risks posed by known California-specific events, including hazards caused by seismic activity and the effects of Public Safety Power Shutoff policies enacted by CPUC.¹⁰ In addition, CGNP alleges that this Commission, NERC, and WECC failed to conduct proper oversight or enforce NERC's Reliability Standards that will allegedly be violated by removing Diablo Canyon's 2,240 MW from the California electric grid.¹¹

6. CGNP states that, in August 2020, for the first time since the 2000-2001 Western Energy Crisis, CAISO ordered rolling blackouts across the state of California in response to a historic heat wave. CGNP asserts that, rather than serving as an isolated incident, the August 2020 blackouts point to much larger system reliability challenges that will be made worse by the closure of Diablo Canyon. CGNP argues that Diablo Canyon protects the reliability of California's Bulk-Power System and indirectly protects the reliability of California's natural gas transmission and distribution system. CGNP asserts that disruptions to California's bulk natural gas transmission and storage system will likely cause immediate and harmful disruptions to California's Bulk-Power System. CGNP emphasizes the dangers posed by various earthquake scenarios or aseismic creep¹² to the natural gas transmission and storage systems. CGNP also contends that Diablo Canyon will likely be unaffected by future PG&E Public Safety Power Shutoff events and, therefore, argues that Diablo Canyon helps protect the reliability of the California Bulk-Power System during such events. Due to these risks, CGNP requests that the Commission perform a reliability analysis within the next 12 months that clarifies how

⁸ 49 C.F.R. § 192 (2020).

⁹ 18 C.F.R. § 385.206 (2020).

¹⁰ The California Public Safety Power Shutoff policies give electric utilities authority to shut off electric power for the prevention of fires where strong winds, heat events, and related conditions are present in order to protect public safety. Cal. Pub. Util. Code §§ 399.2(a) and 451.

¹¹ Complaint at 3-4.

¹² Aseismic creep refers to seismic activity without an earthquake. *Id.* at 4.

Diablo Canyon mitigates against bulk electric power and natural-gas system disruptions from large-scale California plate tectonic activity, or to order such analysis to be made public if it has already been performed.¹³

7. CGNP emphasizes the importance of economical, dispatchable power for maintaining reliability in California and argues that non-dispatchable wind and solar power do not contribute a reliability benefit to the power system. Further, CGNP asserts that the increased reliance on wind and solar resources correlates with the increased consumption of natural gas. CGNP also complains that California's pumped hydroelectric storage facilities, such as PG&E's Helms Pumped Storage (Helms), are being used for ancillary services to compensate for the destabilizing effects of wind and solar on the grid instead of for bulk energy storage.¹⁴

8. CGNP argues that the lack of power after a large-scale earthquake or during a Public Safety Power Shutoff event will impose serious social and economic costs.¹⁵ CGNP contends that, because Diablo Canyon is on the same side of the Pacific Plate as the majority of Californians, it could provide for a relatively fast restoration of power. In addition, CGNP argues that replacing Diablo Canyon's 2,240 MW of power with natural gas-fired generation will be more expensive and will contribute to additional air pollution. CGNP estimates that the 20-year incremental ratepayer burden for replacing Diablo Canyon with thermal generation is \$3,404,441,621.79. CGNP also estimates that replacing Diablo Canyon with sources emitting greenhouse gases at California's current average rate will increase California emissions by a minimum of 3.91 million short tons per year. Based on the social cost of carbon calculated by the United States Environmental Protection Agency at \$42/ton of CO₂ in 2024 and \$69/ton by 2050, CGNP argues that increased carbon emissions associated with the early closure of Diablo Canyon will cause environmental, health, and other societal damages of \$4.375 billion through 2045. Finally, CGNP contends that replacing Diablo Canyon with fossil fuel-fired generation will increase mortality rates.¹⁶

9. Based on these assertions, CGNP requests (1) that the Commission open a docket to investigate whether the closure of Diablo Canyon violates Reliability Standards; (2) an in-depth reliability analysis focused on how the continued safe

¹³ *Id.* at 3, 6-12.

¹⁴ *Id.* at 12-14.

¹⁵ For example, CGNP notes the need for reliable electric power to pump water into the Los Angeles area to fight fires and to maintain operations at hospitals and military bases.

¹⁶ *Id.* at 15-19.

operation of Diablo Canyon provides reliability benefits; and (3) that the Commission take action to enforce NERC's Reliability Standards, as well as review and initiate remediation of the significant reliability concerns raised in this complaint.¹⁷

10. In the Amended Complaint, CGNP alleges that the premature retirement of Diablo Canyon violates regional Reliability Standard BAL-002-WECC-2a¹⁸ because retiring Diablo Canyon will result in an unreliable grid. Further, CGNP asserts that section 215 of the FPA¹⁹ gives the Commission a direct role in ensuring electric grid reliability. CGNP contends that the "evidence in the public record shows that California's power-generation system is in a precarious state, even with [Diablo Canyon] operating."²⁰ Thus, CGNP argues that removing Diablo Canyon from the California resource mix will result in a violation of FPA section 215. CGNP contends that both CAISO and WECC analyses indicate a resource deficiency in coming years,²¹ and reiterates its previous arguments that solar and wind do not meaningfully contribute to power system reliability.²²

11. CGNP notes that California has 2,459 MW of pumped hydroelectric storage installed, including the Helms facility. CGNP alleges that "evidence in the public record supports the concept that Helms . . . [is] being used to provide ancillary services to stabilize the California power grid while the 13 GW of solar and 7 GW of wind destabilize the grid,"²³ thereby inappropriately transforming Helms from the world's largest storage battery to a very expensive resistor. CGNP argues that pumped hydro is superior to battery storage scheduled to come online. Thus, CGNP requests that the

¹⁷ *Id.* at 20.

¹⁸ BAL-002-WECC-2a specifies the quantities and types of contingency reserves required to ensure reliability under normal and abnormal conditions.

¹⁹ 16 U.S.C. § 824o.

²⁰ Amended Complaint at 6.

²¹ *Id.* at 6 (citing <http://www.aiso.com/Documents/Briefing-Post-2020-GridOperationalOutlook-Presentation-Sep2019.pdf>; <https://www.wecc.org/ePubs/GenerationResourceAdequacyForecast/Pages/Post-Transfers-LOLH.aspx>-> CAMX region; <https://www.wecc.org/ePubs/GenerationResourceAdequacyForecast/Pages/Post-Transfers-EUE.aspx>-> CAMX region).

²² *Id.* at 5-7.

²³ *Id.* at 7.

Commission allow discovery on PG&E and “selected Respondents”²⁴ with respect to the engagement and usage statistics from 2010 through 2020 pertaining to Helms, and also seeks discovery on the results of PG&E’s internal study or report, completed around 2013, on the ability of Diablo Canyon to operate in a flexible mode. CGNP contends that this discovery is necessary to further probe the fragility of the Bulk-Power System in a post-Diablo Canyon world.²⁵

12. Given Respondents’ alleged violations of Reliability Standards associated with the express or tacit approval of the Diablo Canyon retirement without first analyzing the adverse bulk electric system and natural gas system consequences, and Respondents’ alleged failure to conduct proper oversight or enforcement of Reliability Standards, CGNP requests that the Commission “assert and exercise its plenary jurisdiction to halt the respondents’ violations of the reliability standards in connection with the closure of Diablo [Canyon].”²⁶ In addition, CGNP requests that the Commission open an investigation into whether closure of Diablo Canyon violates federal Reliability Standards. Finally, CGNP requests that the Commission enforce the Reliability Standards and require remediation of the reliability concerns raised in the Amended Complaint.²⁷

13. CGNP reiterates its previous arguments related to the alleged threat to California’s natural gas transmission system as a result of earthquakes or aseismic creep, and again asserts that the proliferation of Public Safety Power Shutoff events due to wildfires in Northern California demonstrates the need for Diablo Canyon because Diablo Canyon is unlikely to be affected by such events. Thus, CGNP requests that the Commission (1) order a reliability analysis, including clarifying how Diablo Canyon mitigates against natural gas system disruptions or, alternatively, (2) initiate an investigation into how federal Reliability Standards for natural gas pipelines could be affected by the retirement of Diablo Canyon, and (3) if the Commission finds that genuine issues of material fact exist in relation to this matter, that the Commission set this matter for hearing.²⁸

²⁴ *Id.* at 8.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 8-12.

14. CGNP also argues that what it characterizes as “CAISO’s loading order”²⁹ is unduly discriminatory and preferential. CGNP asserts that, in 2003, CPUC, the California Energy Commission, and the California Power Authority jointly created an energy action plan that included a loading order that designates certain resource types as “preferred,” and requires CAISO to ensure that electricity demand is met first by renewable energy resources and distributed generation. CGNP asserts that this loading order gives the preferred resource types a competitive advantage over nuclear energy and, either directly or in a dormant fashion, resulted in the premature closing of Diablo Canyon. CGNP requests that the Commission open an investigation into whether CAISO accepting the closure of Diablo Canyon will result in market design flaws and whether CAISO is unduly favoring other renewable technologies.³⁰

15. In addition, CGNP alleges that the closure of Diablo Canyon will result in unjust and unreasonable rates. First, CGNP claims that PG&E has sought cost recovery for the infrastructure needed to transmit Diablo Canyon’s power and, therefore, the retirement of the plant means that ratepayers will bear a burden for which they receive no benefit. Thus, CGNP argues that it is not just and reasonable to allow cost recovery in the federal portion of PG&E’s rates for PG&E retiring an asset early. Second, CGNP alleges that the totality of rates paid by California ratepayers will be unjust and unreasonable if Diablo Canyon is prematurely retired because it is not just and reasonable to take 10% of the state’s power offline and then build new transmission lines to deliver less reliable power. CGNP requests that the Commission evaluate whether the retirement of Diablo Canyon would result in market fundamentals that are inconsistent with the expectations of a competitive market, and further requests that the Commission order a

²⁹ *Id.* at 12. The loading order was adopted in a California 2003 Energy Action Plan. It states: “The Action Plan envisions a ‘loading order’ of energy resources that will guide decisions made by the agencies jointly and singly. First, the agencies want to optimize all strategies for increasing conservation and energy efficiency to minimize increases in electricity and natural gas demand. Second, recognizing that new generation is both necessary and desirable, the agencies would like to see these needs met first by renewable energy resources and distributed generation. Third, because the preferred resources require both sufficient investment and adequate time to “get to scale,” the agencies also will support additional clean, fossil fuel, central-station generation. Simultaneously, the agencies intend to improve the bulk electricity transmission grid and distribution facility infrastructure to support growing demand centers and the interconnection of new generation.”
https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Energy_-_Electricity_and_Natural_Gas/2003%20Energy%20Action%20Plan.pdf.

³⁰ *Id.*

preliminary hearing to develop a factual record on whether these charges are unjust or unreasonable.³¹

III. Notice and Responsive Pleadings

16. Notice of the Complaint was published in the *Federal Register*, 85 Fed. Reg. 69,620 (Nov. 3, 2020), with protests and interventions due on or before November 16, 2020. Timely motions to intervene were filed by PG&E; CGNP; Public Citizen, Inc.; Southern California Edison Company (SoCal Edison); Calpine Corporation; Friends of the Earth; Natural Resources Defense Council (NRDC); Edison Electric Institute; New York Energy and Climate Advocates; California Municipal Utilities Association; Northern and California Power Agency. Timely motions to intervene and comments were filed by San Luis Obispo Mothers for Peace (Mothers for Peace); Monterey Bay for Nuclear Power (MBNP); Generation Atomic; and PG&E and NRDC (collectively, Joint Parties). Mothers for Peace also filed a motion for summary dismissal.

17. Timely answers and motions to dismiss were filed by CAISO; jointly by NERC and WECC (collectively NERC/WECC); CPUC; and jointly by Water Board and Lands Commission (collectively, California Agencies).

18. Comments in support of the Complaint were filed by American Nuclear Society; Kris Hubby; Gene Nelson; Alexander Cannara; Dennis Higgins; George Erickson; Keith Schue; Michael Marinak; Climate Coalition; George Burka; Dietmar Detering; Nuclear New York; Heather Hoff; Meredith Angwin; Valerie Gardener; and Brian Campbell. Comments in opposition to the Complaint were filed by Brett Garrett; Alejandro Montague; Nakia Sukal-Fukuda; Xiomara Duran; Haakon Williams; Nicolas Snyder; Nuclear Information and Resource Service (NIRS); and Daniel Hirsch.

19. On November 17, 2020, Thorium Energy Alliance (Thorium Energy) filed an out-of-time motion to intervene and comments in support of the Complaint.

20. On November 25, 2020, CGNP filed an Amended Complaint. Notice of the Amended Complaint was published in the *Federal Register*, 85 Fed. Reg. 78,315 (Dec. 4, 2020), with protests and interventions due on or before December 15, 2020. Californians for Renewable Energy filed a timely motion to intervene. CAISO, CPUC, and NERC/WECC filed timely answers. Xiomara Duran, Haakon Williams, Nakia Sukal-Fukuda, and Audrey Ford filed comments requesting that the Commission dismiss both the Complaint and the Amended Complaint. CGNP filed an answer.

³¹ *Id.* at 13.

21. On January 8, 2021, CGNP filed a motion requesting an extension of time until January 8, 2021 to file an answer and also filed a proposed answer.

A. Respondents' Answers to the Original Complaint

22. CAISO argues that the legal basis for the Complaint is unclear because CGNP fails to cite to any statutory provision that CAISO has allegedly violated. Moreover, CAISO asserts that it is not subject to the NGA or the Federal Pipeline Safety Regulations, both of which are cited by CGNP. CAISO further contends that CGNP has failed to carry its burden to demonstrate that CAISO has violated section 206 of the FPA. CAISO asserts that, under section 206, the complainant bears the burden of proof and that, “[r]ather than bald allegations, [the complainant] must make an adequate proffer of evidence including pertinent information and analysis to support its claims.”³² CAISO argues that CGNP does not identify any specific Reliability Standards that CAISO has supposedly violated but instead makes only bald allegations and provides no evidence, pertinent information, or analysis, to support its allegations. In addition, CAISO contends that the primary facts discussed in the Complaint relate to matters regulated by the NRC and not this Commission, noting that CGNP takes issue with the decision to withdraw the license renewal application for Diablo Canyon. CAISO emphasizes that nuclear plant licensing is regulated by the NRC, and that PG&E holds those licenses and was the entity that decided to seek approval to retire the plant. CAISO states that it plays no role in either of those processes.³³

23. CAISO asserts that it is in full compliance with the NERC Transmission Planning Standards and, more specifically, the closure of Diablo Canyon does not constitute a violation of those or any other Reliability Standards. To the contrary, CAISO states that it has fulfilled its obligations under the NERC Transmission Planning Standards by assuming the closure of Diablo Canyon in its transmission planning processes, starting with its 2016-2017 process. CAISO states that in those transmission planning processes, it has identified, and obtained approval for, the new transmission facilities necessary to address reliability issues associated with the Diablo Canyon closure.³⁴

24. Finally, CAISO states that on November 9, 2020, CGNP sent a document to CAISO purporting to be a data request under 18 C.F.R. § 385.406 (2020). However, CAISO argues that this request is impermissible because CGNP ignores that the rule

³² CAISO Answer to Original Complaint at 6 (quoting *Californians for Renewable Energy, Inc. v. Pac. Gas & Elec. Co.*, 142 FERC ¶ 61,143, at P 18 (2013)).

³³ *Id.* at 5-7, 12-13.

³⁴ *Id.* at 7-11.

cited applies only to discovery in proceedings set for hearing. Because this matter has not been set for hearing, CAISO contends that formal discovery is not available.³⁵

25. NERC/WECC make similar arguments to those raised by CAISO regarding the legal insufficiency of the Complaint because the Complaint failed to meet the necessary elements of Rule 206 of the Commission's Rules of Practice and Procedure. NERC/WECC contend that the Complaint consists entirely of generalized assertions that NERC and WECC failed to conduct proper oversight of Reliability Standards, but fails to identify any specific Reliability Standards or explain how any Reliability Standards were violated. Moreover, NERC/WECC assert that, by requesting that the Commission investigate "whether the closure of [Diablo Canyon] violates federal reliability standards,"³⁶ the Complaint demonstrates on its face that it fails to satisfy the requirements of Rule 206.³⁷ NERC/WECC deny CGNP's allegations that either entity has failed to satisfy their statutory and regulatory criteria in any way, noting that the Commission has recently found that, "NERC continues to satisfy the statutory and regulatory criteria for certification as the [Electric Reliability Organization]," and that "the Regional Entities [including WECC] continue to satisfy applicable statutory and regulatory criteria."³⁸

26. CPUC argues that the Reliability Standards apply only to owners, operators, and users of the Bulk-Power System. CPUC states that, because it is a state regulatory agency and not an owner, operator, or user of the Bulk-Power System, it is not subject to federal Reliability Standards. Moreover, CPUC asserts that CGNP has not identified any specific Reliability Standard that CPUC has violated, nor a single standard that is applicable to CPUC. Further, CPUC asserts, like CAISO and NERC/WECC, that the Complaint does not meet the requirements of the Commission's Rule 206 because CGNP's general allegations of Reliability Standard violations do not explain how any action or inaction violates the applicable standards, nor does CGNP state the specific relief or remedy requested.³⁹ In addition, CPUC argues that the Complaint is a meritless collateral attack on the CPUC Approval Decision, which approved the retirement of the Diablo Canyon. CPUC asserts that the majority of the arguments raised by CGNP here

³⁵ *Id.* at 11-12.

³⁶ Complaint at 20.

³⁷ NERC/WECC Answer to Original Complaint at 6-9.

³⁸ *Id.* at 10-11 (quoting *N. Am. Elec. Reliability Corp.*, 170 FERC ¶ 61,029, at P 20 (2020)).

³⁹ CPUC Answer to Original Complaint at 2-5.

were considered and rejected by CPUC in that proceeding.⁴⁰ Further, CPUC states that it denied CGNP's application for rehearing of that decision and that CGNP's petition for review in the California Appellate Court was also denied. CPUC avers that its decision to approve the retirement of Diablo Canyon was squarely within its purview because it is well established that the States have exclusive authority to determine their mix of generation resources.⁴¹ CPUC states that it is addressing the retirement of Diablo Canyon in its ongoing integrated resource planning proceeding that will assess the necessary procurement of resources to replace the capacity of Diablo Canyon in 2024 and 2025. CPUC notes that CGNP has opportunities to present its concerns within the context of this proceeding and states that it is on track to issue a fully vetted decision on Diablo Canyon replacement power by May 2021.⁴²

27. Both NERC/WECC and CPUC argue that they are not permissible respondents to the Complaint and thus the Complaint should be dismissed against them. They state that complaints can be brought under FPA section 306 regarding "anything done or omitted by any licensee, transmitting utility, or public utility in contravention of the provisions" of the FPA.⁴³ NERC/WECC explain that neither entity is a licensee, transmitting utility, or public utility because neither NERC nor WECC (1) is licensed under section 4 of the FPA,⁴⁴ (2) owns, operates, or controls facilities used for transmission; or (3) owns or operates facilities subject to the Commission's jurisdiction.⁴⁵ CPUC likewise asserts that, as a State regulatory agency, it is not a licensee, transmitting utility, or public utility. Moreover, NERC/WECC and CPUC contend that dismissing the Complaint on these grounds is consistent with Commission precedent in similar cases.⁴⁶

⁴⁰ CPUC Approval Decision at 11-13.

⁴¹ CPUC Answer to Original Complaint at 7-8.

⁴² *Id.* at 10-11.

⁴³ NERC/WECC Answer to Original Complaint at 5 (quoting 16 U.S.C. § 825e).

⁴⁴ 16 U.S.C. § 797.

⁴⁵ NERC/WECC Answer to Original Complaint at 4-6; CPUC Answer to Original Complaint at 9-10.

⁴⁶ NERC/WECC Answer to Original Complaint at 5-6 (citing *Morris v. N. Am. Reliability Corp. and SERC Reliability Corp.*, 153 FERC ¶ 61,266, at P 10 (2015) (dismissing a complaint under FPA Section 306 because neither respondent is a licensee, transmitting utility, or public utility) (*Morris*); *Citizens Energy Task Force v. Midwest Reliability Org.*, 144 FERC ¶ 61,006, at P 38 (2013) (dismissing complaint because respondent is not a licensee, transmitting utility, or public utility and, therefore, not a

28. The California Agencies assert that they have made no decisions, orders, authorizations, or taken other actions to approve the retirement of Diablo Canyon, nor do they have jurisdiction to do so under California law. Moreover, the California Agencies state that neither agency's statutory authority affords any basis for enforcing Reliability Standards. The California Agencies contend that the Complaint's failure to identify any action or inaction by the California Agencies that allegedly violated Reliability Standards, as well as the Complaint's failure to provide any basis to argue that the California Agencies are subject to jurisdiction under the FPA, render the Complaint lacking in any cognizable claims against the California Agencies and establishes that the California Agencies are not proper respondents to the Complaint. Accordingly, the California Agencies argue that the Commission should dismiss the Complaint against the California Agencies.⁴⁷

B. Comments on Original Complaint

29. The Joint Parties argue that the Commission lacks jurisdiction to provide the relief requested by CGNP. The Joint Parties state that, under the FPA, the Commission has jurisdiction over the transmission of electricity in interstate commerce and wholesale sales of electricity in interstate commerce, but reserves to the States authority over generation facilities. The Joint Parties assert that the States' authority over generation extends to the determination of what kind of generation will be built and what types of resources will be procured by load serving entities in the state. The Joint Parties contend that CPUC properly exercised this authority when it approved the retirement of Diablo Canyon. The Joint Parties highlight that, in the CPUC proceeding, CPUC rejected CGNP's arguments that the retirement of Diablo Canyon would have adverse impacts on reliability and CGNP's petition for review of CPUC's decision was denied.⁴⁸ The Joint Parties also assert that CPUC is actively considering the reliability impacts of the retirement of Diablo Canyon in its integrated resource planning proceeding, in which CGNP is a participant, and that is the appropriate venue for addressing what resources

proper party to the complaint) (*Citizens Energy*); CPUC Answer to Original Complaint at 9 (citing *Vote Solar Initiative and Montana Env't'l Info. Center v. Montana Pub. Serv. Comm'n.*, 157 FERC ¶ 61,080, at P 10 (2016) (finding that the Montana Commission is not one the entities subject to Commission jurisdiction under FPA Section 306) (*Vote Solar*)).

⁴⁷ California Agencies Answer at 6-8.

⁴⁸ Joint Parties Comments at 3-5 (citing *Californians for Green Nuclear Power v. Cal. Pub. Utils. Comm'n.*, Case No. B293420 (Court of Appeal, Second Appellate Dist., Div. 6), Order Denying Petition for Writ of Review (January 29, 2019)).

may be needed to ensure reliability after Diablo Canyon retires.⁴⁹ Finally, the Joint Parties argue that CGNP has failed to state a claim that the Commission can address. The Joint Parties assert that CGNP generally alleges that Respondents' actions have triggered a violation of Reliability Standards but fails to point to a single specific standard or explain how it has been violated.⁵⁰

30. Other comments opposing the Complaint assert that the Complaint lacks merit.⁵¹ They highlight that the same seismic activity that forms the basis of the Complaint also poses significant risks to Diablo Canyon and claim that Diablo Canyon was not designed to withstand earthquakes. Further, these comments point out that studies have shown that Diablo Canyon is no longer economic and would require costly upgrades to remain operational. Finally, these comments note that PG&E's analysis indicates that there will be no reliability issues related to the Diablo Canyon retirement and CPUC already rejected many of the same arguments in the proceeding approving the retirement.⁵²

31. Comments supporting the Complaint generally question California energy policies and argue that California is too dependent on natural gas. These comments contend that California overpays for solar and wind, both of which allegedly raise reliability issues. Supportive comments also tout the benefits of nuclear power and argue that Diablo Canyon is necessary to ensure a safe and reliable energy supply in California. These comments dispute claims regarding earthquake threats to Diablo Canyon as well as claims that Diablo Canyon is inefficient or uneconomic. Finally, these comments allege flaws in the CPUC process and approval of Diablo Canyon's retirement.⁵³

⁴⁹ *Id.* at 5-8.

⁵⁰ *Id.* at 8-9.

⁵¹ *See, e.g.*, Mothers for Peace Comments at 1-2; Montague Comments at 1-2; Sakal-Fukuda Comments at 1-3; Duran Comments at 1-4; Williams Comments at 1-2; Snyder Comments at 2; NIRS Comments at 1-5.

⁵² *Id.*

⁵³ *See, e.g.*, American Nuclear Society Comments at 2-3; Hubby Comments at 1; Nelson Comments at 1-2; Cannara Comments at 1-4; MBNP Comments at 1-3; Higgins Comments at 1-2; Erickson Comments at 1-4; Schue Comments at 1-2; Marinak Comments at 1-3; Campbell Comments at 1; Climate Coalition Comments at 1-3; Burka Comments at 1; Detering Comments at 1-2; Nuclear New York at 1-3; Hoff Comments at 1; Angwin Comments at 1; Generation Atomic Comments at 1-4; Gardner Comments at 1-3.

C. Answers to and Comments on Amended Complaint

32. CAISO asserts that the Amended Complaint suffers from the same factual and legal deficiencies as the original Complaint. First, CAISO argues that the Amended Complaint fails to show that CAISO violated any Reliability Standard, including regional Reliability Standard BAL-002-WECC-2a. CAISO highlights that CGNP fails to acknowledge that this standard sets forth requirements to be met as part of a balancing authority's real-time operations, but instead speculates about potential violations that may occur years in the future. CAISO contends that it is impossible, based on the express terms of BAL-002-WECC-2a, for CAISO to have violated the standard based on actions associated with the future closure of Diablo Canyon.⁵⁴

33. CAISO also contends that CGNP's arguments regarding the State-established loading order are factually inaccurate and outside the scope of the FPA. CAISO clarifies that it did not create the loading order and is not responsible for implementing it; rather, the loading order is used in the State's regulation of California load serving entities. CAISO also emphasizes that overwhelming judicial and Commission precedent establishes that the States, and not the Commission, have exclusive jurisdiction over resource planning and determining the mix of resources their load serving entities procure.⁵⁵

34. CAISO argues that CGNP has failed to demonstrate that retiring Diablo Canyon will result in unjust and unreasonable rates. CAISO points out that the only specific rates discussed by CGNP are those of PG&E, and not any Respondent. Nevertheless, CAISO maintains that CGNP fails to provide any explanation as to how PG&E's rate has become unjust and unreasonable. In addition, CAISO asserts that CGNP's claims about the "totality of rates"⁵⁶ becoming unjust and unreasonable is pure speculation and fails to explain how the retirement of Diablo Canyon violates applicable standards or regulatory

⁵⁴ CAISO Answer to Amended Complaint at 4-6.

⁵⁵ *Id.* at 6-8 (citing *Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288, 1292 (2016) (citing *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 205 (1983) (finding that the need for new power facilities and their economic feasibility are areas characteristically governed by the states)); *N.J. Board of Pub. Utils. v. FERC*, 744 F.3d 74, 97-98 (3rd Cir. 2014) (finding that states can develop whatever capacity resources they wish and use such resources to the extent they wish so long as the states' choices do not adversely affect wholesale capacity rates in a capacity market)).

⁵⁶ Amended Complaint at 12.

requirements.⁵⁷ Finally, CAISO argues that CGNP's arguments regarding potential threats to the natural gas assets are inapplicable because CAISO has no responsibilities for natural gas storage, transportation, or distribution.⁵⁸

35. CPUC again asserts that federal Reliability Standards do not apply to CPUC and that CGNP's Amended Complaint remains deficient. Further, CPUC notes that, in the Amended Complaint, CGNP seeks discovery on unspecified "selected Respondents,"⁵⁹ but argues that CGNP should not be authorized to conduct discovery on CPUC in relation to the retirement of Diablo Canyon. CPUC states that CGNP was a party to the CPUC proceeding that approved the retirement and had access to all the evidence and arguments considered and relied upon by CPUC. CPUC avers that there is nothing relevant and non-privileged for CGNP to discover.⁶⁰

36. NERC/WECC argue that the Commission should dismiss the Amended Complaint against NERC and WECC for the same reasons they requested dismissal of the original Complaint, i.e., because neither NERC nor WECC is a proper party to a complaint under FPA section 306 and because CGNP fails to satisfy its burden under Commission Rule 206. NERC/WECC also reiterate their prior position that they have performed their statutory obligations regarding Reliability Standards and oversight.⁶¹

37. Comments filed by Xiomara Duran, Haakon Williams, Nakia Sukal-Fukuda, and Audrey Ford urge the Commission to dismiss the Amended Complaint because it does not cure any of the fundamental deficiencies discussed in the Respondents' Answers.⁶²

38. In its December 15, 2020 answer, CGNP complains that CPUC's approval of Diablo Canyon's retirement circumvented the normal integrated resource planning process and ignored the critically important diversity Diablo Canyon brings to the grid and how it helps satisfy the California statutory requirement rely on zero carbon-emitting resources to the maximum extent possible. Further, CGNP contends that CPUC ignored

⁵⁷ CAISO Answer to Amended Complaint at 9.

⁵⁸ *Id.* at 9-10.

⁵⁹ Amended Complaint at 8.

⁶⁰ CPUC Answer to Amended Complaint at 2-4.

⁶¹ NERC/WECC Answer to Amended Complaint at 6-14.

⁶² Duran Comments on Amended Complaint; Williams Comments on Amended Complaint; Sakal-Fukuda Comments on Amended Complaint; Ford Comments on Amended Complaint.

how Diablo Canyon helps shield the grid from extreme dependence on natural gas lines that cross major earthquake faults, putting reliability and resilience at risk. CGNP asserts that the CPUC proceeding approving the Diablo Canyon retirement discounted CGNP's evidence that Diablo Canyon's firm generating capacity is needed and points to the August 2020 rolling blackouts and testimony by CAISO in a recent CPUC proceeding to demonstrate the urgent need for additional capacity.⁶³

39. CGNP contends that commenters exaggerate concerns regarding Diablo Canyon's seismic safety. CGNP avers that analysis by teams of geologists from NRC have concluded that Diablo Canyon is safe from all seismic effects. CGNP likewise disputes commenters' claims that Diablo Canyon is outdated or uneconomical. CGNP also asserts that Diablo Canyon's carbon-free baseload power will continue to be needed for grid stability and that any problems with overgeneration are the product of errant policy that fails to recognize the declining value and increasing cost of unreliable power sources.⁶⁴

40. CGNP also disputes CAISO's assertion that CGNP fails to satisfy its burden under FPA section 206, arguing that "[t]here is no standard of proof required to find CAISO has acted in a manner that is unjust, unreasonable or unduly discriminatory or preferential."⁶⁵ CGNP maintains that there is an abundance of evidence showing that CAISO's loading order discriminates in favor of renewable sources of energy to the detriment of the reliability of California's grid. CNGP contends that CAISO's analysis of the causes of the August 2020 rolling blackouts shows the vulnerability associated with relying on wind, solar, and other resources of a variable nature.⁶⁶ Finally, CGNP includes the text of a section of the California Public Utilities Code that sets forth CPUC's statutory responsibilities to assess the consequences of its decisions.⁶⁷

41. In its January 8, 2021 Answer to Motions to Dismiss, CGNP asserts that, in its prior filings in this proceeding, it requested that the Commission "open a formal Proceeding," but because the Commission "has yet to make an issuance opening such a Proceeding," any motions to dismiss are premature and should be dismissed as a

⁶³ CGNP December 15, 2020 Answer at 2-3 (citing CAISO's comments in CPUC proceeding R21-11-003, in which CAISO projects a shortfall of up to 3,000 MW in September 2021 with a 20% Planning Reserve Margin).

⁶⁴ *Id.* at 4-12.

⁶⁵ *Id.* at 13.

⁶⁶ *Id.* at 13-14.

⁶⁷ *Id.* at 14-15 (citing Cal. Pub. Util. Code § 321.1(a)).

consequence of this procedural defect.⁶⁸ Further, CGNP contends that the NERC/WECC motion to dismiss does not satisfy the requirements of Rule 213 of the Commission's Rules of Practice and Procedure⁶⁹ because its answer did not specifically admit or deny each material allegation of the Complaint, did not set forth every defense relied on, and did not include documents to support their arguments.⁷⁰ CGNP argues that NERC/WECC's motion to dismiss is premature because current NERC reliability studies are flawed, and the motion to dismiss is an action that serves to maintain the status quo without considering the electric and gas reliability concerns raised in the Complaint and Amended Complaint. CGNP again requests that the Commission use its authority to require NERC, WECC, and CAISO to take meaningful action to improve bulk electric and natural gas system reliability following a California-specific reliability analysis.⁷¹

42. CGNP contends that the result of California's expenditures on solar and wind generation is a less reliable grid and, as evidenced by the August 2020 blackouts, that solar and wind can never substitute for nuclear power. Thus, CGNP asserts that the core question for the Commission in determining whether to open a proceeding in response to the Complaint and Amended Complaint is whether "reliable, safe, abundant, cost-effective, long-lived zero-emission nuclear power plants such as [Diablo Canyon] should be replaced with unsafe . . . aging and vulnerable gas transmission and storage system – and polluting power plants burning natural gas and fossil fuel liquids."⁷²

43. Finally, CGNP complains about the fossil fuel industry's promotion of wind and solar and opposition to nuclear power. CGNP also contends that given the transportation sector's contribution to air pollution, lithium-ion batteries should be used for vehicle electrification instead of bulk energy storage. In addition, CGNP again objects to the use of PG&E's Helms pumped storage facility for the provision of ancillary services required for the integration of solar and wind on California's power grid.⁷³

⁶⁸ CGNP January 8, 2021 Answer at 1.

⁶⁹ 18 C.F.R. § 385.213 (2020).

⁷⁰ CGNP January 8, 2021 Answer at 2.

⁷¹ *Id.* at 2-3.

⁷² *Id.* at 4-5.

⁷³ *Id.* at 6-7.

IV. Discussion

A. Procedural Matters

44. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2020), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

45. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we grant Thorium Energy's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

46. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We accept CGNP's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

47. As a threshold matter, we note that we are treating the Complaint⁷⁴ as if it was brought pursuant to sections 206 and 306 of the FPA and Rule 206 of the Commission's Rules of Practice and Procedure. CGNP, for its part, only references Rule 206 of the Commission's Rules of Practice and Procedure and broadly references the FPA, the NGA, the Energy Policy Act of 2005, and Federal Pipeline Safety Regulations without identifying specific provisions of those statutes.⁷⁵

48. With this treatment in mind, we dismiss the Complaint against the reliability organizations (i.e., NERC and WECC) and the California state agencies (i.e., CPUC, the Water Board, and the Lands Commission). As correctly stated by NERC, WECC, and CPUC, complaints can be brought under FPA section 306 regarding "anything done or omitted to be done by any licensee, transmitting utility, or public utility in contravention of the provisions" of the FPA.⁷⁶ However, none of these entities is a licensee, transmitting utility, or public utility because none of them (1) is licensed under section 4

⁷⁴ For purposes of this determination, the term "Complaint" refers to both the original Complaint and the Amended Complaint.

⁷⁵ In any event, the Commission has no authority to enforce the Federal Pipeline Safety Regulations. <https://www.ferc.gov/industries-data/natural-gas/overview/natural-gas-pipelines> ("FERC itself has no jurisdiction over pipeline safety or security . . .").

⁷⁶ NERC/WECC Answer to Original Complaint at 5 (quoting 16 U.S.C. § 825e).

of the FPA; (2) owns, operates, or controls facilities used for transmission; or (3) owns or operates facilities subject to the Commission's jurisdiction.⁷⁷ Furthermore, these entities do not have rates (including terms and conditions) on file with the Commission that are subject to the Commission's jurisdiction under section 206 of the FPA.⁷⁸ Moreover, as discussed below, the Complaint does not identify any Reliability Standard that has or will be violated or provide any analysis to support a claim of a violation of a Reliability Standard.

49. We also deny the Complaint against CAISO. We find that CGNP has not satisfied its burden under FPA section 206. Under FPA section 206, "the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon . . . the complainant."⁷⁹ Additionally, Rule 206 of the Commission's Rules of Practice and Procedure 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 the applicable statutory standards and regulatory requirements."⁸⁰ Further, the Commission has repeatedly stated that "rather than bald allegations, [a

⁷⁷ See *Vote Solar*, 157 FERC ¶ 61,080 at P 10 (dismissing a complaint against a state commission for lack of jurisdiction); *Morris*, 153 FERC ¶ 61,266 at P 10 (dismissing a complaint against NERC and a Regional Entity for lack of jurisdiction); *Citizens Energy*, 144 FERC ¶ 61,006 at P 38 (dismissing a complaint against a Regional Entity for lack of jurisdiction); *Californians for Renewable Energy, Inc. v. Pac. Gas & Elec. Co.*, 134 FERC ¶ 61,060, at P 61 (2011) (finding that a Commission proceeding is not a proper forum to challenge a CPUC decision); *cf.* 16 U.S.C. § 825e (establishing the statutory authority for the Commission to consider complaints against "any licensee, transmitting utility, or public utility").

⁷⁸ NERC and WECC recover their costs through a Commission-approved process under section 215 of the FPA. See 16 U.S.C. § 824o(c)(2)(B); 18 C.F.R. § 39.4 (2020); *see, e.g., N. Am. Elec. Reliability Corp.*, 169 FERC ¶ 61,040 (2019). However, we do not believe these rates are subject to change through section 206 of the FPA, and CGNP articulates no legal theory upon which the Commission could grant its requested relief against NERC and WECC. *Cf.* 16 U.S.C. § 824e(a) (allowing for the Commission to change rates charged by "any public utility for any transmission or sale" (emphasis added)).

⁷⁹ 16 U.S.C. § 824e(b); *see also, e.g., FirstEnergy Serv. Co. v. FERC*, 758 F.3d 346, 353 (D.C. Cir. 2014); *Md. Pub. Serv. Comm'n v. FERC*, 632 F.3d 1283, 1285 n.1 (D.C. Cir. 2011).

⁸⁰ *Californians for Renewable Energy, Inc. v. Cal. Pub. Utils. Comm'n*, 131 FERC ¶ 61,102, at P 7 (2010) (quoting 18 C.F.R. § 385.206(b)).

complainant] must make an adequate proffer of evidence including pertinent information and analysis to support its claims.”⁸¹ Additionally, with regard to alleged violations of Reliability Standards, the Commission has previously stated that a complainant must “at a minimum, set forth *the specific provision of the Reliability Standard that is at issue and provide some explanation* as to how the Respondent’s alleged action or inaction caused the violation.”⁸²

50. We find that CGNP’s Complaint fails to comply with these requirements in several ways. First, CGNP fails to identify any specific statutory or regulatory requirements that CAISO has allegedly violated. Much of the Complaint focuses on pipeline safety issues or matters regulated by the NRC, which do not apply to CAISO as an electric grid operator, and alleged procedural defects in CPUC proceedings, over which this Commission does not have jurisdiction. To the extent that CGNP references any relevant statutory or regulatory requirements, it does so only while broadly alleging potential reliability violations, but even in this context, CGNP fails to identify any relevant Reliability Standard or provide any analysis to support its arguments. CGNP specifically mentions regional Reliability Standard BAL-002-WECC-2a in its Amended Complaint, a Reliability Standard that relates to the quantity and types of contingency reserves required in real-time operations to ensure reliability under normal and abnormal conditions.⁸³ However, CGNP fails to specifically identify or explain which of the four requirements of this Reliability Standard it alleges is being violated or will be violated.

51. Regarding CGNP’s undue discrimination claims, CGNP is incorrect that CAISO has any responsibility for implementing California’s loading order and presents no arguments or evidence that this State policy binds or guides CAISO. We also find that CGNP’s rate arguments are unpersuasive. First, the only specific rates CGNP discusses are PG&E’s rates, and PG&E is not a named respondent in this proceeding. Second, CGNP fails to demonstrate that Commission-jurisdictional rates will become unjust and unreasonable. Instead, CGNP compares the current costs of thermal generation and Diablo Canyon, provides estimates of the social costs of carbon, and claims summarily that rates will become unjust and unreasonable because, in CGNP’s view, replacing Diablo Canyon with thermal generation will increase rates and decrease reliability. We find that this claim

⁸¹ *Ill. Muni. Elec. Agency v. Cent. Ill. Pub. Serv. Co.*, 76 FERC ¶ 61,084, at 61,482 (1996) (*Illinois Municipal*).

⁸² *Citizens Energy*, 144 FERC ¶ 61,006 at P 39 (emphasis added).

⁸³ Regional Reliability Standard BAL-002-WECC-2a applies to balancing authorities and reserve sharing groups. This regional Reliability Standard relates to real-time operations and not future planning; therefore, it is irrelevant to the kind of relief being sought by CGNP (i.e., ordering the retention of a nuclear power plant for alleged reliability concerns).

constitutes the type of speculative allegation that the Commission has previously found to be insufficient to satisfy a complainant's burden under FPA section 206.⁸⁴

52. We agree with CAISO that the November 9, 2020, document sent by CGNP to CAISO, purporting to be a data request under 18 C.F.R. § 385.406, is impermissible discovery under the Commission's regulations. Rule 406 of the Commission's Rules of Practice and Procedure pertains to discovery procedures for matters set for hearing by the Commission. This matter has not been set for hearing and, therefore, CAISO is under no obligation to respond to the request. We also deny CGNP's request to seek discovery on PG&E and "selected Respondents" because (1) PG&E is not a named respondent to this proceeding and CGNP has not specified who the other "selected" Respondents may be; and (2) this matter has not been set for hearing.

The Commission orders:

(A) CGNP's Complaint against NERC, WECC, CPUC, the Water Board, and the Lands Commission is hereby dismissed, as discussed in the body of this order.

(B) CGNP's Complaint against CAISO is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Danly is concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

⁸⁴ *Illinois Municipal*, 76 FERC ¶ 61,084 at 61,482.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Californians for Green Nuclear Power, Inc.

Docket No. EL21-13-000

v.

The North American Electric Reliability
Corporation,
the Western Electricity Coordinating
Council,
the California Independent System
Operator Corporation,
the California Public Utilities Commission,
the California State Water Resources
Control Board,
& the California State Lands Commission

(Issued March 18, 2021)

DANLY, Commissioner, *concurring*:

1. I concur with the Commission's decision to deny Californians for Green Nuclear Power, Inc.'s complaint for failing to meet our pleading requirements. I share the complainant's concerns about the reliability consequences of Diablo Canyon Nuclear Power Plant's (Diablo Canyon) planned retirement, but complainant must do more than list a handful of entities with reliability oversight and baldly assert potential reliability violations for its pleading to be viable.

2. I previously voted to initiate a Federal Power Act section 206¹ investigation into the California Independent System Operator Corporation's (CAISO) markets following the reliability crisis of August, 2020, but the Commission failed to support that action.² I continue to believe a section 206 complaint proceeding is warranted. In pursuing a section 206 action, I would include an inquiry into whether and why CAISO's markets cannot sustain a resource like Diablo Canyon, even though its capacity appears to be

¹ 16 U.S.C. § 824e.

² See *Staff Presentation on California Independent System Operator (EL21-19-000)*, FERC (Dec. 17, 2020), <https://www.ferc.gov/news-events/news/staff-presentation-california-independent-system-operator-el21-19-000>.

critical to maintaining reliability in California. We should keep in mind that CAISO needed to implement emergency rolling blackouts in the heat and wildfires of last summer even though it had access to Diablo Canyon's 2,240 MW of capacity. Now CAISO needs not only to remedy the deficiencies in its market needed to ensure that last summer's emergency is not repeated, but also to replace the capacity that was provided by Diablo Canyon.

3. The Commission has no plans to initiate any such investigation. I understand that CAISO plans to file a package of tariff modifications, and I will carefully review that filing. I also hope affected parties will file legally sufficient section 206 complaints identifying specific market failures and proposed tariff modifications and other relief, supported by substantial evidence, to present the matter squarely for the Commission's consideration so that we can ensure the CAISO markets will maintain reliability at just and reasonable rates. In my view, such actions are necessary to prevent more blackouts.

4. My separate concurrence today in *Californians for Renewable Energy v. California Independent System Operator Corporation* broadly highlights the areas where I suspect the CAISO markets are falling short, including the unreasonable over-reliance on less reliable renewable resources without adequately taking into account their actual operating characteristics.³ I add to my list of concerns the planned retirement of Diablo Canyon, a reliable baseload resource. Every resource owner should have the right to retire an uneconomic resource, but the Commission has the obligation to ensure that markets do not hasten retirements by undercompensating owners of non-renewable generation resources with unjust and unreasonable rates.

For these reasons, I respectfully concur.

James P. Danly
Commissioner

³ *Californians for Renewable Energy v. Cal. Indep. Sys. Operator Corp.*, 174 FERC ¶ 61,204 (2021) (Danly, Comm'r, concurring).