

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

AES Huntington Beach, LLC

)

Docket No. ER13-351-000

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO MOTION TO INTERVENE AND PROTEST OF J.P.
MORGAN VENTURES ENERGY CORPORATION AND BE CA LLC**

To: The Commission

In accordance with the provisions of Rules 213 of the Commission’s Rules of Practice and Procedure, the California Independent System Operator Corporation (“ISO”) submits this answer to the Motion to Intervene and Protest (“Protest”) of J.P. Morgan Ventures Energy Corporation and BE CA LLC (collectively, “J.P. Morgan”).¹

Although styled as a protest, J.P. Morgan’s submission requested summary rejection of the Reliability Must Run (“RMR”) filing of AES Huntington Beach LLC and the ISO or a hearing. However, as shown below, J.P. Morgan’s contentions are based on its fundamentally incorrect reading of the ISO’s tariff and its citation to an inapposite case. J.P. Morgan’s request for rejection of the tariff filing or a hearing should be denied.

In support, the ISO states as follows:

I. J.P. Morgan’s Pleading Misstates What the ISO Tariff Requires and Ignores What the Tariff Permits.

A. J.P. Morgan Incorrectly Stated What Section 41.4 Provides.

1. J.P. Morgan incorrectly asserts that “[u]nder Section 41.4 of its Tariff, the ISO is

¹ Motion to Intervene and Protest of J.P. Morgan Ventures Energy Corporation and BE CA LLC, Docket No. ER13-351-000 (Nov. 28, 2012) (“Protest”).

obligated to procure RMR generation ‘from the cheapest available sources.’”² Because this showing was absent from the filing, J.P. Morgan claimed, the filing should be rejected or a hearing should be held.

2. In fact, Section 41.4 does not describe criteria to be used in the selection of facilities to be designated as RMR units. Section 41.4 is a tariff provision that describes contract conditions affecting operations of a facility that already has been designated as an RMR unit.

3. In addition, J.P. Morgan’s Protest quoted a portion of the operative sentence in Section 41.4 but omitted an important element. The complete sentence states: “The CAISO will review the terms of the applicable forms of agreement applying to each Reliability Must-Run Unit to ensure that the CAISO will procure Reliability Must-Run Generation from the cheapest available sources *and to maintain System Reliability.*” And so, even in the context of this tariff provision “the cheapest available source” standard does not operate in isolation; it is matched by the standard of maintaining system reliability.³

4. This tariff provision concerns the applicable choice of the form of agreement. It does not relate to how a unit is selected for RMR designation. Plainly put, J.P. Morgan’s description of what Section 41.4 says is simply wrong.

B. J.P. Morgan Ignored the Tariff Section that Establishes How RMR Units Are Selected.

5. The RMR filing amply chronicles the basis for the ISO’s designation of

² Protest at 3.

³ California Independent System Operator Corporation, FERC Electric Tariff, Fifth Replacement Volume at Section 41.4 (effective June 28, 2010) (“ISO Tariff”) (emphasis supplied).

Huntington Beach Units 3 and 4 as RMR Units, under the correct tariff standards, which were not mentioned in J.P. Morgan's Protest.

6. Section 41.3 of the ISO tariff sets forth the bases the ISO uses to select RMR Units. The process described in Section 41.3 of the ISO tariff is based on reliability studies:

In addition to the Local Capacity Technical Study under 40.3.1, the CAISO may perform additional technical studies, as necessary, to ensure compliance with Reliability Criteria. The CAISO will then determine which Generating Units it requires to continue to be Reliability Must-Run Units, which California Independent System Operator Corporation Generating Units it no longer requires to be Reliability Must-Run Units and which Generating Units it requires to become the subject of a Reliability Must-Run Contract which had not previously been so contracted to the CAISO . . .

ISO tariff, Section 41.3. As discussed in the RMR filing, the basis for the RMR designation was established through a reliability study as provided in Section 41.3. *See* August 2013 addendum to the ISO's 2013 Local Capacity Technical Analysis, included as Attachment C to the RMR filing.

C. Those Most Directly Affected By the Costs Support the RMR Agreement.

7. Here, the support of the utilities that will be responsible for the costs⁴, the California Public Utilities Commission, representing ratepayer interests, and other public officials is further evidence of the importance of the synchronous condensers to protect reliability at an appropriate level of cost.

II. The Case Cited by J.P. Morgan in Support of its Protest is Inapposite.

8. J.P. Morgan relies heavily on *Dynegy Midwest Generation, Inc. v. FERC*⁵ as an

⁴ Southern California Edison Company and San Diego Gas & Electric Company.

⁵ 633 F.3d 1122 (D.C. Cir. 2011).

example of a case that supports its claim that the ISO's "approach would unduly discriminate against preferable alternatives."⁶

9. The question presented in *Dynegy Midwest* is succinctly stated in the decision:

We now turn to the merits of the discrimination claim. Its gist is that a compensation regime that allows transmission owners [in different zones] to choose whether or not to compensate generators for providing reactive power within the deadband will create arbitrary differences in the competitive position of generators in different zones, and is thus unduly discriminatory under § 205(b) of the FPA.

633 F.3d at 1126.

10. This RMR proceeding does not involve a dispute about the issues presented in *Dynegy Midwest*, whether the selection by different transmission owners of different generator compensation plans across zones unlawfully discriminates against some generators.

11. The RMR agreement in the present proceeding is a variant of the ISO's *pro forma* RMR agreement, the Commission-approved form of agreement to obtain reliability services. And the question presented is whether the departures from the *pro forma* agreement are just and reasonable. The Court's answer to the question presented in *Dynegy Midwest* is not even remotely instructive in the current proceeding. The discrimination standards applied to zonal differences in generator compensation plans and the justness and reasonableness standard applied to departures from *pro forma* agreements are not the same.

WHEREFORE, in consideration of the foregoing, the ISO submits that the Commission should deny J.P. Morgan's request for rejection of the filing or for a hearing.

⁶ Protest at 3-4.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington, D.C. this 4th day of December, 2012.

/s/ Katharine E. Leesman
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