

February 1, 2013

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: California Independent System Operator Corporation
Docket No. ER13-____ - 000-**

**Tariff Revisions Addressing Treatment of Market Participants with
Suspended Market-Based Rate Authority and
Request for Expedited Treatment**

Dear Secretary Bose:

The California Independent System Operator Corporation (“ISO”) hereby submits for filing the attached amendment to its Fifth Replacement FERC Electric Tariff.¹ The proposed tariff amendment documents the terms and conditions applicable when the Commission has suspended market-based rate authority for a market participant, but nonetheless has permitted the entity to continue participating in the ISO’s markets. This amendment is necessary for the ISO to address the implementation of the Commission’s November 14, 2012 order in Docket No. EL12-103 suspending the market-based rate authority of JP Morgan Ventures Energy Corporation (“JPMVEC”) for a period of six months, beginning on April 1, 2013.² The tariff amendment submitted in this filing would apply to any similarly-situated market participant whose market-based rate authority has been suspended by the Commission.

The ISO is aware that JPMVEC submitted a filing in Docket No. ER13-830 this week which proposes a JPMVEC tariff addressing how JPMVEC will bid into the ISO’s markets and be paid for energy and other services offered into the ISO markets by JPMVEC. As explained below, the Commission should accept the instant filing rather than JPMVEC’s proposed tariff because: (i) Commission precedent establishes that market participants cannot unilaterally file to change the terms of the ISO tariff for the benefit of specific resources, (ii) the JPMVEC proposal is based on a

¹ The ISO makes this filing pursuant to section 205 of the Federal Power Act, 16 U.S.C. § 825d (2006) and 18 C.F.R. Part 35.

² *JP Morgan Ventures Energy Corp.*, 141 FERC ¶ 61,131 (2012) (“November 14 order”).

mischaracterization of the November 14 order, and (iii) the ISO's proposed tariff amendment is needed to address the impacts of the November 14 order not only on JPMVEC but also on the dispatch of other resources needed to maintain system reliability and on the market clearing prices to be paid to other market participants.

The ISO proposes an effective date for the amendment proposed in this filing of April 1, 2013. To provide sufficient time to address any further implementation of the Commission's final order in this proceeding, the ISO respectfully requests expedited treatment and requests that the Commission establish a comment date of February 20 for this filing and issue an order on this filing no later than March 18, 2013.

I. SUMMARY

The ISO strongly supports the Commission's efforts to ensure that market participants comply with market behavior rules requiring the provision of accurate and factual information, and believes the November 14 order is appropriate in light of the importance of honesty and proper conduct in dealings with the Commission, independent system operators, and market monitors. Because implementation of the November 14 order will have operational impacts on the ISO, the Commission delayed the suspension of JPMVEC's market-based rates until April 1, 2013, to allow the ISO sufficient time to take necessary steps to maintain system reliability during the suspension period. JPMVEC schedules and controls the output from ten generating units in Southern California. These resources can have a significant impact on system reliability during high load periods and when there are locational constraints on the system.

The ISO has been evaluating the impacts of the November 14 suspension order on the operation of the ISO controlled grid and the ISO's markets. Indeed, because the six-month suspension period occurs over the summer and at a time when the San Onofre Nuclear Generating station is not expected to be available, the ISO is particularly concerned that nothing impair the ISO's ability to address reliability needs in Southern California in the most efficient manner.

The November 14 order provides guidance on how resources under the control of JPMVEC can be bid into the ISO's markets and compensated through those markets. The November 14 order does not prohibit JPMVEC's participation in the ISO energy and ancillary services markets. The November 14 order, which was written to apply to JPMVEC's activities in all FERC-jurisdictional markets, does not, however, specifically list all implementation consequences for any specific market. The implementation of the order may vary across markets based on the specific tariffs governing any particular market. In the case of the ISO markets, for example, the November 14 order leaves open certain details of the energy bidding mechanisms for the resources of such a market participant that are subject to a must offer obligation either because the resource is subject to a resource adequacy contract or because the resource has been designated under the ISO's capacity procurement mechanism. This is an important element of the ISO market design that enables the ISO to provide reliable service

through its markets. The November 14 order also does not specify how the ISO is to place the permitted bids for such resources in the appropriate merit order for dispatching the resources of such market participants. In the ISO's markets, resources are committed and scheduled on the basis of three-part bids, which include: start-up, minimum load, and energy above minimum load. While the directives in the November 14 order provide guidance with respect to these specific existing bidding rules in the ISO market, the order does not specify all of the more detailed processes required for implementing this guidance in the specific context of the ISO tariff market rules.

The Commission's order does, however, provide sufficient guidance that a market operator should consider in addressing these types of implementation issues. The ISO's instant filing spelling out the detailed implementation of the November 14 order is particularly important in light of JPMVEC's alternative filing made this week proposing a materially different implementation, which as described further in this filing, could adversely impact the ISO market and its participants, as well as the ISO's ability to continue to operate the system reliably. This proposed tariff amendment thus seeks to implement the directives of the November 14 order (and any future similar market-based rate suspension orders) in a manner which allows the ISO to maintain system reliability and which avoids any distortions of the ISO's markets, while still providing the affected market participant with a fair opportunity to earn prices that effectively are capped at the higher of the market participant's default energy bid (or comparable cost-based bid) or the applicable locational marginal price.

This filing includes proposed tariff revisions that define how market participants with suspended market-based rate authorizations can bid into the ISO's markets and be compensated consistent with the suspension order. These tariff revisions are not limited to JPMVEC, but could apply to any market participant that is subject to a market-based rate suspension comparable to the suspension mandated in the November 14 order or a market-based rate revocation on similar terms. The Commission should confirm in its order accepting the instant filing that to the extent JPMVEC is to participate in the ISO markets, the rules under the ISO tariff continue to apply, as will the rules proposed in the instant filing implementing the November 14 order.

The additional tariff revisions proposed in the instant filing include the following:

- The affected resources may only participate in the day-ahead and real-time markets by submitting either a self-schedule or an economic bid with a price of zero (0) dollars per megawatthour (\$0/MWh).
- The ISO will validate and reject bids submitted for affected resources that are not either a self-schedule or an economic bid with a price of \$0/MWh.³

³ For resources with a must-offer obligation as prescribed by the resource adequacy and capacity procurement mechanism provisions of the tariff, existing section 40.6.8 of the ISO tariff directs the ISO to create a generated bid for any of the resource's capacity under such a must-

- Prior to the execution of the applicable ISO market run, the ISO will replace all the resource's economic bid segments with a generated bid based on the resource's proxy costs.
- The resource may only participate in the residual unit commitment submitting a zero (0) dollars per megawatt per hour (\$0/MW-hour) bid. The ISO will validate the bids and will reject any residual unit commitment ("RUC") availability bid that is not a zero value.⁴
- The affected scheduling coordinator will not be entitled to select the Negotiated and LMP options and can only select the Variable Cost Option for their default energy bid during the period of the suspension. If the resource lacks a Variable Cost Option Default Energy Bid during the period of the suspension or revocation, the ISO will create a default energy bid with a \$0/MWh price for the resource.
- The scheduling coordinator responsible for submitting the resource's minimum load, start-up, and transition costs will not be entitled to select the Registered Cost option and can only select the Proxy Cost option for their minimum load and start-up costs. If the resource is registered with the ISO as a Multi-Stage Generating Unit resource, the Scheduling Coordinator may only register a transition cost of \$0 per MW hour.
- If the resource lacks a Proxy Cost option for the minimum load or start-up costs during the period of the suspension or revocation, the ISO will create minimum load and start-up costs with zero costs.
- The resource may only participate in the ancillary services markets by submitting either a submission to self-provide ancillary services or an ancillary service bid with a zero price per megawatt (\$0/MW).
- The ISO will reject any ancillary services bid submitted for such resource that is not a submission to self-provide an ancillary service, or an ancillary services bid with a \$0/MW price.⁵

offer requirement that lacks either a self-schedule or a \$0/MWh bid for the capacity under such a must-offer obligation.

⁴ For resources with a must-offer obligation as prescribed by the resource adequacy and capacity procurement mechanism provisions of the tariff, existing section 40.6.8 of the ISO tariff directs the ISO to create a \$0/MW-hour RUC availability bid for such resource to the extent the capacity for such resource subject to a must-offer obligation is not reflected in a forward market schedule.

⁵ Existing section 40.6.8 of the ISO tariff directs the ISO to create a \$0/MW ancillary services bid for any capacity of such a resource that is under a must-offer obligation arising out

- All of the resource's operating reserve, operational and regulating ramp rates will be based on the maximum ramp rate registered in the ISO's Master File.
- To the extent a scheduling coordinator submits something other than the maximum ramp rate registered in the Master File for these rates, the ISO will replace the ramp rate with the maximum ramp rate value in the Master File.
- In the real-time market, the scheduling coordinator may only modify their maximum ramp rate through submission to the ISO's system for scheduling and logging outages based on actual changes in physical conditions of the resource.

The attached declaration of Dr. Eric Hildebrandt, director of the ISO's Department of Market Monitoring, describes the factors the ISO considered in developing its implementation approach for market participants with suspended market-based rate authority and provides support for these proposed tariff revisions.

The ISO's approach to implementing the November 14 order also covers a number of other implementation issues for market participants with suspended market-based rate authority. While these other implementation issues do not require any changes to the ISO tariff, the ISO includes a description of them in this filing for the information of the Commission and all other interested parties.

The ISO respectfully requests that the Commission accept the proposed tariff revisions defining the treatment of market participants whose market-based rate authority has been suspended by the Commission as just and reasonable and an appropriate implementation of the November 14 order.

The ISO also requests an effective date for the proposed tariff amendment of April 1, 2013. The ISO respectfully requests that the Commission expedite consideration of the proposed amendment under the procedures described in the Commission's *Guidance Order on Expedited Tariff Revisions for Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,009 (2005) ("Guidance Order"). As described in more detail below, good cause exists for the Commission to grant expedited consideration of this filing because the ISO tariff does not include the appropriate rules applicable to a market participant for whom the Commission has suspended market-based rate authority but nonetheless permitted the entity to continue participating in the ISO's markets. Expedited consideration is also justified because the tariff revisions in this filing are needed to ensure that implementation of the November 14 order beginning on April 1 does not artificially

of the resource adequacy and capacity procurement mechanism provisions of the tariff that lacks either a submission to self-provide or a \$0/MW bid.

depress market clearing prices in Southern California or increase the need for the ISO to rely on exceptional dispatch, particularly during the critical summer period. Consistent with the procedures contemplated in the Guidance Order, the ISO requests that the Commission establish a deadline for comments on this filing of February 20, 2013 – the same date comments are due on JPMVEC’s proposed tariff filing addressing similar issues. The ISO also requests that the Commission act on this filing by March 18, 2013.

II. BACKGROUND

A. November 14 Order

On September 20, 2012, the Commission issued an order directing JPMVEC to show cause why its authorization to sell electric energy, capacity, and ancillary services at market-based rates should not be suspended.⁶ The September 20 order directed JPMVEC to provide an explanation of why certain JPMVEC communications with the Commission, the ISO, and the ISO’s Department of Market Monitoring should not be found to violate the Commission’s Market Behavior Rules, which require sellers with market-based rates to “provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercises due diligence to prevent such occurrences.”⁷ The communications in question related to certain bidding activities of JPMVEC that became the subject of a Department of Market Monitoring investigation and later referral to the Commission’s Office of Enforcement.

The November 14 order found that JPMVEC’s communications constitute violations of the Commission’s Market Behavior Rules. As a remedy for JPMVEC’s violations of section 35.41(b), the Commission, in the November 14 order, determined:

[W]e will suspend JP Morgan’s authority to sell energy, capacity, and ancillary services at market-based rates for a period of six months, to become effective on April 1, 2013. JP Morgan will only be allowed to participate in wholesale electricity markets by either scheduling quantities of energy products without an associated price or by specifying a zero-price in their offer, as the relevant tariffs require. Furthermore, the rate received by JP Morgan will be capped at the higher of the applicable locational marginal price or its default energy bid.⁸

⁶ *J.P. Morgan Ventures Energy Corp.*, 140 FERC ¶ 61,227 (2012). The Commission’s orders refer to JPMVEC as “J.P. Morgan.”

⁷ 18 C.F.R. § 35.41(b) (2012).

⁸ November 14 order at P 53.

The Commission went on to note that the cap on JPMVEC's compensation will "ensure that load-serving entities have access to adequate generating capacity to serve demand."⁹

In response to comments made by the ISO in that proceeding, the November 14 order also provided additional time for the ISO to evaluate the reliability impacts of the Commission's suspension and related directives on system reliability:

[G]iven CAISO's stated concern that the generating units controlled by JP Morgan and its subsidiaries play a significant role in enabling CAISO to reliably meet system needs, we will delay the suspension until April 1, 2013. Such a delay will allow CAISO sufficient time to take steps necessary to maintain system reliability during the suspension period.¹⁰

This tariff filing is made pursuant to this opportunity to take such steps as may be necessary to address reliability needs during the suspension period.

B. California Resources under the Control of JPMVEC

As noted above, JPMVEC schedules and controls the electric output from ten generating units in Southern California. These resources may be critical for system reliability during the six-month suspension period because that period occurs over the summer months, which generally is a period of peak load on the ISO controlled grid. Reliability concerns in Southern California are heightened during summer 2013 because the San Onofre Nuclear Generating station is not expected to be available this summer.

As explained by Dr. Hildebrandt, under the ISO's market design, resources may be procured through resource adequacy contracts under which load-serving entities meet their capacity obligations in the ISO tariff. Supply resources under these resource adequacy contracts are subject to a variety of must-offer obligations for under the ISO tariff. As described below, many of the tariff provisions included in the ISO's filing are designed to work in conjunction with these existing must-offer obligations in the ISO tariff.

III. JPMVEC's PROPOSED "CAISO TARIFF" IS A PROHIBITED ATTEMPT TO MODIFY THE ISO TARIFF AND MISREPRESENTS THE NOVEMBER 14 ORDER

On January 30, 2013, JPMVEC filed two proposed tariffs in Docket Nos. EL12-103 and ER13-830. One of these tariffs is a proposed "CAISO Tariff" which addresses many of the same issues covered by this filing, including bidding and payment for start-up and minimum load costs, payments for energy above minimum load in the ISO's

⁹ *Id.*

¹⁰ November 14 order at P 53.

markets, bidding and payment for ancillary services, and offers and payments for RUC capacity.¹¹ The ISO intends to submit a full response to that filing in Docket Nos. EL12-103 and ER13-830 explaining why the Commission must reject the proposed JPMVEC “CAISO Tariff.” The ISO recognizes that briefly explaining some of the fatal flaws in JPMVEC’s filing may assist the Commission in acting on the ISO’s proposed revisions to its own tariff in this proceeding.

First, individual market participant proposals to change the terms of the ISO tariff are prohibited by Commission precedent. The Commission accordingly has consistently rejected attempts by individual market participants that seek to unilaterally change the terms of an ISO tariff. For example, in the *El Segundo* order in 2000, the Commission rejected a tariff filed under Section 205 of the Federal Power Act by a single generator that sought to alter the terms of payments it would receive under the then-applicable California ISO tariff for out-of-market dispatches. The Commission held that “*El Segundo’s* filing is an inappropriate attempt to change the terms of the ISO tariff unilaterally for the benefit of a single generator.”¹² The Commission has likewise rejected other attempts of market participants to file rate schedules that attempt to modify rates, terms and conditions exclusively governed by ISO tariffs.¹³ JPMVEC’s January 30 filing is exactly the type of filing prohibited by this precedent. A review of JPMVEC’s proposed “CAISO Tariff” makes it clear that JPMVEC is seeking to change the terms of the ISO tariff as they apply to JPMVEC.

The Commission’s reasoning in the *El Segundo* order applies with full force to JPMVEC’s filing. JPMVEC has agreed to be bound by the ISO tariff through the Scheduling Coordinator Agreements of its scheduling coordinators and through the Participating Generator Agreements of the resources that it controls. JPMVEC is seeking to avoid its obligations to abide by the terms of the ISO tariff. JPMVEC cannot modify the terms applicable to the transactions under the ISO tariff by a 205 filing, since the ISO has those rights exclusively.

Second, even if JPMVEC’s attempt to establish its own tariff for transactions that are subject to the terms of the ISO tariff were valid, the terms of JPMVEC’s proposed tariff would not apply to any transaction unless the counter party signs a service agreement agreeing to be bound by the JPMVEC tariff. The ISO has not agreed to be bound by JPMVEC’s tariff, and there is no reason for the ISO to do so, since JPMVEC

¹¹ JPMVEC January 30 filing letter at 5-6.

¹² *El Segundo Power, LLC*, 91 FERC ¶ 61,110 at 61,390 (2000).

¹³ *See, e.g., TC Ravenswood, LLC*, 133 FERC ¶ 61,087 at P 25 (“Because NYISO is the sole provider of Market Services, and because the production of wholesale energy by burning fuel oil to comply with NYSRC Rule I-R3 is a Market Service as defined in the Services Tariff, the NYISO Services Tariff bars Ravenswood from proposing its own duplicative rate schedule to provide the same generation service already governed exclusively by the NYISO Services Tariff. The same reasoning leads us to conclude that the NYISO Services Tariff exclusively governs the pricing for this service.”)

has agreed to be bound by the terms of the ISO tariff for every product and transaction contemplated in JPMVEC's "CAISO Tariff". Given JPMVEC's existing contractual obligations, JPMVEC cannot propose to impose on the ISO different, potentially conflicting terms for the transactions.

Third, JPMVEC suggests that its proposed tariffs are "cost-based," presumably relying on the statement in P 53 of the November 14 order that JPMVEC has "the option to file for cost-based rates pursuant to which it could be authorized to sell energy, capacity, and ancillary services during the suspension period." Nothing in JPMVEC's January 30 filing reflects the actual costs of any JPMVEC resource or seeks to implement a classical cost-based rate. Instead JPMVEC's filing is simply an attempt to modify various provisions of ISO and RTO tariffs during the suspension period as they would apply to JPMVEC.

Fourth, not only is JPMVEC's January 30 filing a prohibited attempt to modify the ISO tariff, it also misrepresents the November 14 order in ways designed to allow JPMVEC to profit to the detriment of other market participants. In particular, JPMVEC claims that the directive in P 53 of the November 14 order that "the rate received by JP Morgan will be capped at the higher of the applicable locational marginal price or its default energy bid" is a guarantee that "JPMVEC then would be paid the higher of the applicable locational marginal price or JPMVEC's Default Energy Bid, as defined in the CAISO Tariff."¹⁴ JPMVEC effectively seeks to turn the cap in the order to a floor guaranteeing JPMVEC a level of compensation no *lower* than its Default Energy Bid. That is not what the November 14 order prescribes, and JPMVEC does not attempt to explain why the Commission's deliberate use of the phrase "capped" does not apply – instead JPMVEC appears to ignore altogether the explicit language of the Commission's order.¹⁵ JPMVEC's attempt to change the energy payment *cap* the Commission prescribed to an energy payment *floor* turns the November 14 order on its head. Moreover, as explained by Dr. Hildebrandt, it would enable JPMVEC to earn more profits than any supplier would earn even under uncontrolled market-based rates. These profits come directly at the expense of other sellers (who get lower prices) and/or load serving entities that would pay the uplifts needed under JPMVEC's proposed floor. JPMVEC's attempt to convert an order in which the Commission imposed sanctions for JPMVEC's false and misleading statements into an opportunity for it to earn additional profits is improper.

Finally, as discussed in more detail below and in Dr. Hildebrandt's declaration, the start-up and minimum load provisions proposed by JPMVEC would also allow JPMVEC to submit bids for start-up and minimum load costs up to 200 percent of actual costs (under the "Registered Cost" option) and allow JPMVEC to earn bid cost recovery payments well in excess of JPMVEC's actual costs for start-up and minimum load.

¹⁴ JPMVEC January 30 filing letter at 3.

¹⁵ To the extent JPMVEC could, in the future, argue that the word "capped" should not apply, this would be a prohibited out-of-time request for rehearing of the November 14 order.

These profits again would come at the expense of load-serving entities that would pay for these bid cost recovery payments through their ISO market charges. This also would be contrary to the bidding regime established by the November 14 order and to the Commission's stated purpose to penalize JPMVEC, rather than to reward it.

These considerations, on which the ISO will elaborate in its response to JPMVEC's filing, are more than ample reasons for the Commission to reject JPMVEC's proposed "CAISO Tariff." For present purposes, the Commission should recognize that the ISO's proposed tariff amendment addresses each of these issues in a manner consistent with the November 14 order. As explained in greater detail below the ISO's approach ensures the implementation of the November 14 order in a manner that allows the ISO to maintain system reliability through the efficient dispatch of all resources and which avoids any distortions of the ISO's markets. The Commission should approve this filing as a reasonable and authorized approach to implementing the November 14 order in the ISO's markets.

IV. DESCRIPTION OF TARIFF AMENDMENTS

A. Applicability of the Tariff Amendment

The ISO proposes to add Appendix II to its tariff with additional rates, terms and conditions to implement the Commission's directives under the November 14 order. To the extent JPMVEC is to participate in the ISO markets, the rules under the ISO tariff continue to apply, as will the rules the ISO proposes in the instant proceeding once they are accepted by the Commission. The Commission should confirm this in its order accepting the ISO's proposed tariff amendment in this filing.¹⁶

Appendix II applies to any scheduling coordinator submitting bids or otherwise participating in the ISO's markets for resources that are owned or controlled by any market participant that meets the following three criteria:

- 1) The market participant's authority to sell energy, capacity, and ancillary services at market-based rates is suspended or revoked;
- 2) The market participant will only be allowed to participate in wholesale electricity markets by either scheduling quantities of energy products without an associated price or by specifying a zero-price in their offer, as the relevant tariffs require; and

¹⁶ This request for confirmation is consistent with the Commission's February 1, 2013, order granting JP Morgan's request for clarification of the November 14 order. *J.P. Morgan Ventures Energy Corp.*, 142 FERC ¶ 61,085 (2013). While JPMVEC's pre-existing contracts are not modified or abrogated by the Commission's November 14 order, the terms of the ISO tariff will apply regardless of the terms of their pre-existing contracts.

- 3) The rate received by the market participant will be capped at the higher of the applicable locational marginal price or its default energy bid.

The rates, terms, and conditions in proposed Appendix II to the ISO tariff are intended to supplement the existing rates, terms and conditions in the ISO's existing tariff, which remain in effect for market participants with suspended market-based rate authority to the extent not inconsistent with Appendix II.

B. Use of Cost-Based Generated Bids to Ensure Appropriate Dispatch and Market Clearing Prices

The November 14 order states that "JP Morgan will only be allowed to participate in wholesale electricity markets by either scheduling quantities of energy products without an associated price or by specifying a zero-price in their offer, as the relevant tariffs require."¹⁷ A schedule without an associated price is considered a self-schedule. The order does not specify how bids for JPMVEC's resources should be considered for purposes of determining the dispatch of resources by the ISO's market software or for establishing the appropriate market clearing price. The ISO's proposed tariff amendment addresses these issues in the manner described below.

The Commission's directive that JPMVEC's participation in wholesale markets should be "as the relevant tariffs require" should be implemented in a manner which reflects the fundamental principle underlying the ISO tariff that bids based on marginal energy costs will promote efficient system dispatch and send the right price signals for other market participants. The Commission has long recognized these principles. When the Commission approved the tariff implementing the ISO's current market design based on locational marginal prices ("LMPs"), the Commission recognized that such a market design will "promote efficient use of the transmission grid, promote the use of the lowest-cost generation, provide for transparent price signals, and enable transmission grid operators to operate the grid more reliably."¹⁸ In the same order, the Commission further noted that "LMPs should reflect the marginal cost of energy, in order to send accurate price signals."¹⁹

The ISO acknowledges that the November 14 order does not contemplate JPMVEC submitting bids based on marginal costs. The November 14 order does, however, provide for the ISO to implement the suspension in a manner that allows the ISO to reliably meet system needs. As explained in the declaration of Dr. Hildebrandt, if the ISO were to dispatch JPMVEC resources based on a zero price bid, these resources would be dispatched out of the merit order that would result if these resources had been bid into the ISO's markets based on marginal costs. This would be contrary to the principles underlying efficient dispatch of the ISO system. Moreover, if

¹⁷ November 14 order at P 53.

¹⁸ *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 63 (2006).

¹⁹ *Id.* at P 266.

locational marginal prices were established reflecting zero price bids for the JPMVEC resources, market clearing prices in Southern California would be depressed, significantly reducing the compensation not only to JPMVEC but also to other market participants. Indeed, once market clearing prices are reduced due to the dispatch of JPMVEC resources with zero price bids, the ISO is concerned that other resources without a contractual must-offer obligation may elect not to bid into the market. These other resources may not be available for market dispatch during periods of high system demand or locational reliability needs, thereby potentially causing a negative impact on the ability of the ISO's markets to efficiently ensure system reliability.

While it is true that resources "sitting out" of the market due to reduced market clearing prices during the six-month suspension period could be subject to exceptional dispatch, dispatch through the ISO's market processes is the preferred approach for efficiently addressing system needs. The Commission has encouraged the ISO to explore ways to reduce reliance on exceptional dispatch, and the ISO supports this objective. Indeed, in its October 2012 order approving revised mitigation measures for exceptional dispatch, the Commission directed the ISO to file an informational report within 12 months of the date of the order that describes "the steps [the ISO] has taken to reduce its reliance on exceptional dispatch."²⁰

The ISO's filing includes a mechanism to resolve these dispatch and market efficiency issues. This mechanism is consistent with the bidding directives of the November 14 order and builds on existing must offer requirements in the ISO tariff. If resource adequacy capacity subject to the must offer requirements of the ISO tariff is not bid into the applicable ISO markets, and if the ISO has not received notification of an outage of such capacity, then existing provisions of the ISO's tariff direct the ISO to insert a generated bid for such capacity into the applicable ISO market.²¹ The same generated bid provisions apply to capacity procured through the ISO's capacity procurement mechanism ("CPM") which is not bid into the applicable ISO market if the ISO has not received an outage notice.²² Attachment I to the ISO's Business Practice Manual for Market Instruments sets forth the methodology for calculating such generated bids. As explained by Dr. Hildebrandt, generated bids for gas-fired resources include fuel costs and variable operating and maintenance costs. Cost-based default energy bids are calculated in the same manner as generated bids, but include a 10 percent adder.²³ The Commission's approval of the existing generated bid provisions of

²⁰ *California Independent System Operator Corp.*, 141 FERC ¶ 61,069, at P 45 (2012).

²¹ ISO tariff, section 40.6.8.

²² ISO tariff, section 43.5.1.

²³ In the ISO's market, generator bids that are identified as having potential market power are mitigated to default energy bids as part of the approved local market power mitigation procedures in the ISO tariff. These default energy bids are calculated by an independent entity based on a number of options available to market participants, including an option based on a

the ISO tariff was based on the recognition that they appropriately reflect a resource's marginal costs. The insertion of generated bids as proposed by the ISO ensures that a seller subject to these provisions must make all of this capacity available in the ISO's energy market either as a price-taker or at bid prices equal to its marginal generating costs.

The bid generated based on proxy costs is the same bid the ISO generates for resources under must-offer obligation. While the generated bid does not include the ten-percent adders provided in the default energy bid, it ensures the resource recovers at least its marginal costs for energy provided to the ISO market. Using the generated bid for this purpose is consistent with the November 14 Order because it ensures the resource's overall rate is capped at the higher of the LMP or the default energy bid. Even if the resource were marginal and would set the price in any given market interval, the LMP would never be above the default energy bid given that its bid is based on the proxy costs.

Consistent with the order, section 1.1 of Appendix II proposes that a market participant with suspended market-based rate authority can either submit a zero price energy bid or self-schedule its capacity. The ISO proposes to address the market efficiency issue discussed above by including a provision in section 1.3 of Appendix II that, prior to executing each ISO market run, the ISO will replace all economic bid segments for a resource subject to the Appendix with a generated bid based on the resource's proxy costs. This will enable the ISO to ensure that the affected resources are dispatched in merit order and will not degrade the locational marginal prices produced through the market run.²⁴ It is important to note that self-schedules will not be replaced with generated bids.

This approach preserves the bidding restrictions on market participants with suspended market-based rate authority established in the November 14 order. Such market participants will have no flexibility to influence the market clearing price through anti-competitive bids. Equally important, however, this approach will maintain the appropriate dispatch of resources in a merit order that reflects the marginal costs of each resource and will avoid artificially depressing market clearing prices in Southern California during the critical summer period.

Under the ISO's approach, a market participant with suspended market-based rate authority that submits a zero price energy bid for a resource will receive the

resource's variable costs, an option based on a weighted average of locational marginal prices in the applicable node, a negotiated option, or an alternative variable cost option available to frequently mitigated units. See ISO tariff, section 39.7.1.

²⁴ To the extent that a market participant with suspended market-based rate authority is subject to resource adequacy or CPM must offer requirements and does not bid or self-schedule energy, the ISO will substitute a generated energy bid in accordance with the existing ISO tariff provisions in sections 40.6.8 and 43.5.1.

locational marginal price (which can be established by the inserted generated bid for the resource). If the market participant self-schedules its capacity, the market participant will receive the locational marginal price (which in this case will not reflect a generated bid for the resource). This approach follows the directive of the November 14 order that the rate to be paid will be “capped” at the higher of the market participant’s default energy bid or the applicable locational marginal price.²⁵

Among the benefits of this approach is that it avoids reducing the compensation to other market participants as a result of the Market Behavior Rule violations of a single participant. It will also avoid the need for increased reliance on exceptional dispatch as a result of a market participant’s market-based rate suspension. The market clearing prices produced by this approach are also consistent with the finding in the November 14 order that JPMVEC should be permitted to be compensated based on the higher of a cost-based bid for its resources or the applicable locational marginal price.

These additional requirements will be implemented through the ISO’s bid validation rules prior to the execution of each market run. The ISO will first reject any bid submitted by the responsible Scheduling Coordinator that is neither a self-schedule nor a \$0/MWh price bid. Through the existing bid validation rules, the ISO validates that the resource has submitted a bid under the must offer rules for resource adequacy or CPM pursuant to sections 40.6.1, 40.6.2, and 43.5.1 of the ISO tariff. The ISO conducts a series of validations and generates a proxy cost based bid for any capacity under such must offer obligations that lacks a self-schedule or economic bid. The ISO will continue to do the same for the resources affected by the November 14 order. The ISO conducts a similar validation process to ensure that the resource has an energy bid when required under other parts of the tariff. For example, a resource that submits certain ancillary services bids must also submit an energy bid as provided in sections 30.5.2.6.1, 30.5.2.6.2, and 30.5.2.6.3 of the ISO tariff. The resources will continue to be obligated to follow those requirements under the ISO tariff. In addition, under the additional requirements in proposed Appendix II, any energy bid submitted for these purposes will be limited to a self-schedule or zero dollar energy bid as required by the order. Finally, at the end of the bid validation process, the ISO will replace all the \$0/MWh energy bid segments with a generated bid based on the resource’s proxy cost bid.

C. Default Energy Bids and Energy Payment

As noted above, a number of options for calculating default energy bids are available to market participants, including an option based on a resource’s variable costs, an option based on a weighted average of locational marginal prices in the applicable node, a negotiated option, or an alternative variable cost

²⁵ It is note worth noting that under JPMVEC’s proposal filed this week, they could be compensated at levels above the market clearing price because they propose that the November 14 order be applied as a floor to their recovery and not a cap.

option available to frequently mitigated units. The November 14 order only references the cost-based option. Consistent with this discussion, section 3.1 of proposed Appendix II states that a market participant subject to the Appendix is only permitted to select the variable cost option for resources that the market participant owns or controls. If the resource of a market participant lacks a variable cost option default energy bid during the applicable suspension or revocation period, the ISO will create a default energy bid of \$0/MWh for the resource.

D. Residual Unit Commitment

The residual unit commitment process is one of the tools in the ISO tariff that allows the ISO to ensure that it has sufficient capacity available to maintain reliability. After resources are dispatched through the ISO's integrated forward market, the RUC process enables the ISO to identify and commit, on a day-ahead basis, incremental capacity that will be needed in real-time to meet the demand forecast but may not have been committed in the forward market. Resources subject to a must-offer obligation under the resource adequacy and CPM provisions of the ISO tariff that are not fully committed through the integrated forward market are required to submit RUC Availability Bids.²⁶ Resource adequacy capacity participating in RUC is optimized using a \$0/MW-hour RUC Availability Bid.²⁷

Consistent with this approach and with the directives in the November 14 order that JPMVEC can only submit a zero price offer or a self-schedule, section 2.1 of Appendix II specifies that a Scheduling Coordinator subject to the Appendix may only participate in the residual unit commitment process by submitting a \$0/MW-hour RUC Availability Bid.

E. Minimum Load, Start-Up, and Transition Costs

In the ISO's markets, resources are committed and scheduled to operate on the basis of three-part bids which represent: start-up costs, minimum load costs and cost for energy above minimum load. Bids for start-up and minimum load costs can be a major determinant of whether a unit's capacity is committed and therefore available in the ISO's energy and ancillary service markets. Dr. Hildebrandt explains that it is important that start-up and minimum load bids reflect a unit's actual start-up and minimum load costs in order to ensure a unit's capacity is committed and available in the ISO's markets when the resource is the most efficient option for meeting ISO system needs.

²⁶ ISO tariff, sections 40.6.1 and 43.5.1

²⁷ ISO tariff, section 40.6.1(5). This also true of CPM capacity subject to must-offer obligations. See ISO tariff, section 43.5..

If a unit receives a start-up dispatch or is committed to continue operating by the ISO market software based on these three-part bids, but fails to recover all accepted bid costs through energy and ancillary service market revenues, the resource is eligible to receive bid cost recovery payments under the ISO tariff.²⁸ Thus, it is also important that start-up and minimum load bids accurately reflect a unit's actual start-up and minimum load costs to ensure the seller the opportunity to recover these costs, without allowing the seller to earn excessive revenues or subjecting other market participants that ultimately pay these bid cost recovery payments to excessive costs.

Market participants can select one of two different options for start-up and minimum load bids. The first option is the proxy cost option. Under this option, market participants can submit start-up and minimum load bids each operating day up to the cost-based levels reflecting fuel and variable operating costs at minimum load.²⁹ These actual fuel costs and other variable operating costs are on file with the ISO. Start-up and minimum load bids submitted in excess of these cost-based levels are automatically capped at proxy costs calculated by the ISO market software.

The second option for start-up and minimum load bids is the registered cost option. Under this option, a seller may register values of its choosing for start-up and minimum load bids on a monthly basis subject to a maximum limit of 200 percent of the resource's projected proxy costs.³⁰

The November 14 order does speak to start-up or minimum load bids directly. However, consistent with the order, section 4.1 of proposed Appendix II to the ISO tariff provides that the start-up and minimum load bids of a market participant with suspended market-based rate authority shall be limited to the proxy cost option. In the event that the affected resource lacks a start-up or minimum load cost in a particular run, the ISO will insert the proxy-cost based costs for these two values. If a market participant with suspended market-based rate authority who is subject to the must-offer provisions of the ISO tariff does not submit a start-up or minimum load bid, the ISO software automatically inserts a cost-based proxy bid for the resource. Thus, the proposed tariff provisions – when combined with existing tariff provisions relating to the proxy cost option and must-offer obligation – ensure that a unit's capacity is committed and available in the ISO market when it is economic, while providing any seller subject to these provisions the opportunity to recover its documented actual costs.

The ISO notes that JPMVEC's filing in Docket No. ER13-380 proposes to cap offers for start-up and minimum load "as provided for under section 30.4 of the tariff." Although JPMVEC does not state this implicitly, this language would presumably allow JPMVEC to use the registered cost option set forth in section 30.4.1.2, which is not limited to actual and verifiable costs. As explained by Dr. Hildebrandt, this would result

²⁸ See generally ISO tariff, section 11.8.

²⁹ ISO tariff, section 30.4.1.1.

³⁰ ISO tariff, sections 30.4.1.2 and 39.6.1.6.

in further market distortions and payments to JPMVEC above costs or levels they would receive in a competitive market, especially when combined with JPMVEC's proposal to modify the energy payment cap in the November 14 Order to a payment floor.

The ISO's approach of limiting suspended market participants to the proxy cost option prevents a market participant with suspended market-based rate authority and subject to a must offer obligation from using the registered cost option as a basis for withholding its resources from the ISO's markets. The registered cost option essentially allows market participants to submit start-up and minimum load bids above their documented actual costs on file with the ISO. Under the registered cost option, resources may not be committed and available to the ISO's market when it would be most economically efficient for this capacity to be on-line. In addition, resources under the registered cost option may receive bid cost recovery payments well in excess of actual start-up and minimum load costs, plus the 10 percent adder included in proxy cost bids for minimum load energy. While such flexibility may be justified for market participants with market-based rate authority, it cannot be justified for a market participant whose market-based rate authority is suspended. Such suspended market participants should be limited to a cost-based approach, *i.e.*, the proxy cost option. Limiting such market participants to a cost-based approach is consistent with the November 14 order in that it prevents a market participant with suspended market-based rate authority from submitting market bid components that could affect the economic outcome of the ISO's markets.

The ISO tariff allows resources that register and qualify as multi-stage generating resources the ability to participate in the ISO markets by offering multiple resource configurations in any market interval. In addition to recovering start-up and minimum load costs, multi-stage generating resources are allowed to recover the cost of transitioning from one configuration to another (*i.e.*, transition costs). Section 4.1 of proposed Appendix II to the ISO tariff limits a scheduling coordinator to only registering transition costs of \$0/MWh. The ISO tariff does not provide a proxy bid approach for transition costs. To be consistent with the November 14 order's prohibition on competitive bids, affected scheduling coordinators are limited to transition costs of \$0/MWh.

G. Ancillary Services

In the November 14 order, the Commission held that "we will suspend JP Morgan's authority to sell energy, capacity, and ancillary services at market-based rates for a period of six months."³¹ The order further directs that JPMVEC can participate in wholesale markets by "scheduling quantities of energy products without an associated price or by specifying a zero-price in their offer, as the relevant tariffs require."³² Consistent with this directive, section 5.1 of proposed Appendix II to the ISO tariff

³¹ November 14 order at P 53.

³² *Id.*

provides that a market participant with suspended market-based rate authority can either self-schedule ancillary services capacity or submit a zero price bid for ancillary services capacity.

Resources under resource adequacy contracts or procured through the ISO's capacity procurement mechanism are subject to must-offer provisions that include a must-offer requirement for all available ancillary service capacity.³³ To the extent that a market participant with suspended market-based rate authority is subject to resource adequacy or CPM must offer requirements and does not bid or self-provide ancillary services, the ISO will generate an ancillary services bid of \$0/MW for the Ancillary Services the resource is obligated to offer.

Any seller subject to the additional tariff provisions in this filing would continue to receive the ancillary service locational marginal price for any ancillary service capacity that clears the ISO markets. This ancillary services compensation approach is consistent with the November 14 order's directives for compensating JPMVEC for energy.³⁴

As explained by Dr. Hildebrandt, the ISO's market software performs a simultaneous optimization of energy and ancillary services, which ensures that the ancillary service locational marginal price for each resource fully compensates each resource for any opportunity cost it may incur by providing ancillary services instead of energy. This ensures that any seller subject to these provisions will have the opportunity to fully recover its costs.

H. Ramping Rates

Market participants submitting energy or ancillary service bids in the ISO's markets can include a bid component that indicates the operational ramp rate, regulation ramp rate, and operating reserve ramp rate for a generating unit. In theory, a market participant could submit a ramp rate of zero and avoid being dispatched by the ISO's market software. Although the November 14 order did not directly address this issue, the ISO believes this is a form of competitive bidding that is encompassed by the Commission's prohibition on competitive bidding by a market participant with suspended market-based rate authority. Section 6.1 of proposed Appendix II to the ISO tariff provides that the ISO will automatically enter the maximum ramp rate in the ISO's Master File for all resources bid by a market participant with suspended market-based rate authority. To the extent there is a reason for adjusting this maximum ramp rate related to the operational condition of a resource, such market participants will still retain the flexibility to adjust this ramp rate using the Scheduling and Logging for the

³³ See ISO tariff sections 40.6.1 and 43.5.1.

³⁴ There is no equivalent to default energy bids for ancillary services because ancillary services are not subject to locational market power mitigation provisions.

ISO of California (“SLIC”), the ISO’s web-enabled system for resource owners to communicate outage information.

V. IMPLEMENTATION ISSUES THAT DO NOT REQUIRE TARIFF CHANGES

The ISO considered whether other provisions of the ISO tariff would need revision or clarification to address the treatment of market participants with suspended market-based rate authority.

A. Exceptional Dispatch

The ISO has the authority to commit units at minimum operating levels or dispatch units for energy under the exceptional dispatch provisions of the ISO tariff.³⁵ The ISO exercises this authority when capacity or energy is needed from a unit to meet certain reliability requirements, but the unit is not committed or dispatched for sufficient energy to meet these reliability requirements based on its market bids. Units committed to operate at minimum load through an exceptional dispatch are assured of recovering their start-up and minimum load costs through bid cost recovery provisions of the ISO tariff. Units instructed to provide additional real-time energy through an exceptional dispatch are guaranteed to recover their default energy bid, and in some cases may receive the higher of their default energy bid or the locational marginal price.

The provisions of this filing addressing energy bids and start-up and minimum load bids will therefore affect the compensation for exceptional dispatch to market participants with suspended market-based rate authority. As explained by Dr. Hildebrandt, exceptional dispatches will only be required in cases when capacity or energy is needed from a specific resource, but the commitment or energy costs of this capacity or energy exceed market prices. In such cases, the existing tariff provisions for compensation of exceptional dispatch energy and bid cost recovery for start-up and minimum load costs will ensure that any seller subject to these provisions has the opportunity to recover these costs. The ISO has concluded that no further tariff revisions related to exceptional dispatch are needed.

B. Convergence Bidding and CRRs

The ISO also considered whether the suspension of market-based rate authority under the November 14 order or comparable terms would affect the ability of a market participant to submit virtual bids in the ISO’s markets or to hold or trade congestion revenue rights (“CRRs”). The ISO notes that the Commission has held that reselling financial transmission rights (“FTRs”) and engaging in virtual transactions in ISO markets do not require market-based rate authorization:

Regarding FTRs and, incidentally, virtual trading, we note that Commission-approved market rules for RTOs/ISOs address resales of

³⁵ See generally ISO tariff, section 34.9.

FTRs and virtual trading to ensure that no market power is exercised in such trades. In addition, sellers engaging in these activities sign a participation agreement with RTOs/ISOs which require them to abide by those market rules. Hence, the approval of the market rules in conjunction with approval of the generic participation agreement by the Commission constitutes authorization for public utilities to engage in the resale of FTRs and virtual transactions, and no separate authorization is required under the [Federal Power Act].³⁶

Based on this holding, the ISO has concluded that the November 14 order or other Commission orders suspending or revoking market-based rate authority do not, by themselves, prevent a market participant from engaging in virtual bidding in the ISO's markets or trading CRRs. The ISO does intend to monitor the virtual bidding activity and CRR trading of any market participant with suspended market-based rate authority, as well as the affiliates of such market participants, to ensure that the market participant does not engage in inappropriate market behavior in light of the suspension.

C. Flexible Ramping Constraint

The November 14 order does not impact the affected resource's payment for Flexible Ramping Constraint. Under the current tariff provisions, a resource cannot bid in for Flexible Ramping Constraint awards. Therefore, the resource cannot influence the pricing or the recovery it receives if it contributes to relieving the constraint. Accordingly, the ISO is not proposing any additional provisions to apply for Flexible Ramping Constraint awards.

VI. EFFECTIVE DATE AND REQUEST FOR WAIVERS

The ISO requests an effective date of April 1, 2013. This date will allow the tariff revisions defining and clarifying the treatment of market participants whose market-based rate authority has been suspended by the Commission to take effect on the same date that the JPMVEC six-month suspension begins. As noted below, the ISO is seeking expedited treatment of this filing and respectfully requests an order by March 18, 2013.

The ISO believes that the information submitted with this filing substantially complies with the requirements of Part 35 of the Commission's regulations applicable to filings of this type.³⁷ The ISO requests waiver of any applicable requirement of Part 35 if necessary, in order to permit this filing to become effective as proposed.

³⁶ *Market-Based Rates For Wholesale Sales Of Electric Energy, Capacity And Ancillary Services By Public Utilities*, Order No 697, 119 FERC ¶ 61,295 at P 921 (2007).

³⁷ 18 C.F.R. Part 35 (2012).

VII. REQUEST FOR EXPEDITED TREATMENT AND SHORTED COMMENT PERIOD

In order to permit the proposed amendment to become effective on April 1, 2013, the ISO requests expedited tariff revision procedures pursuant to the Guidance Order including a shortened comment period. In the Guidance Order, the Commission stated that a request by an Independent System Operator (such as the ISO) for expedited treatment of a tariff revision should demonstrate that a rule change is required due to a “flaw” or concern, why action is necessary in the market, and that the proposed tariff revision will correct the concern.³⁸ The tariff revision qualifies for the use of expedited tariff revision procedures if the issue being addressed meets the following criteria:

- (1) it materially adversely impacts the market (due to the unanticipated workings of the tariff or unanticipated actions by market participants);
- (2) it requires prompt action to prospectively revise the tariff to remove the ability to cause such material adverse impacts; and
- (3) it is susceptible to a clear-cut revision or interim tariff revision or market rule.³⁹

The proposed amendment meets these criteria. While the ISO respectfully submits that there is no flaw in the ISO tariff, neither the ISO tariff nor any other wholesale market tariff that the ISO knows of addresses the issue of how to implement a market-based rate suspension under the terms established by the November 14 order. The issues addressed in this filing therefore were unanticipated. There also is a substantial risk of material adverse impacts to the ISO’s markets. For the reasons expressed above and in the attached declaration of Dr. Hildebrandt, these tariff revisions are needed to ensure that implementation of the November 14 order beginning on April 1 does not inadvertently depress market clearing prices in Southern California or increase the need for the ISO to rely on exceptional dispatch, particularly during the critical summer period.

Prompt action is needed because the ISO must determine how to implement the order prior to the April 1 date when the JPMVEC suspension commences. The requested order by March 18, 2013 will provide the ISO with sufficient time to finalize software modifications and other implementation efforts consistent with the Commission’s order in this proceeding. An order by March 18 will also allow JPMVEC time to prepare to participate in the ISO’s markets under the terms approved by the Commission.

³⁸ Guidance Order at P 2.

³⁹ *Id.*

Lastly, the issues addressed in this proceeding are susceptible to a clear-cut set of tariff revisions. The tariff provisions in proposed Appendix II to the ISO tariff are straightforward and easily understandable, covering a range of implementation issues in only two pages of text.

The Guidance Order explains that the Commission will “expeditiously determine whether the reasons presented warrant expedited treatment,” and if they do warrant expedited treatment, the Commission will promptly issue a notice and establish an expedited comment period from the date of the notice.⁴⁰ The ISO requests a comment date not later than February 20, 2013. This is the same date the Commission has established for comments on JPMVEC’s filing in Docket No. ER13-830 addressing similar issues. A February 20 comment period will allow the Commission to issue an order on the proposed amendment by no later than March 18, 2013.

VIII. COMMUNICATIONS

The ISO requests that the Commission address communications regarding this filing to the following individuals and place their names on the official service list established by the Secretary with respect to this submittal:

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IX. SERVICE

The ISO has served copies of this transmittal letter, and all attachments, on the CPUC, the California Energy Commission, and all parties with effective Scheduling Coordinator Service Agreements under the ISO tariff. In addition, the ISO is posting this transmittal letter and all attachments on the ISO website.

X. ATTACHMENTS

In addition to this transmittal letter, the following documents support this filing:

⁴⁰ *Id.* at P 4. The Guidance Order states that the Commission expects that, in three to five business days, it would issue a notice that establishes an expedited comment period.

- Attachment A** Revised ISO Tariff Provisions – Clean
Attachment B Revised ISO Tariff Provisions – Marked
Attachment C Declaration of Eric Hildebrandt

XI. CONCLUSION

For the reasons set forth above, the ISO respectfully requests that the Commission approve the tariff modifications in Attachments A and B, effective as of April 1, 2013. The ISO further requests that the Commission establish a shortened comment period on this filing, issue an order on the filing by no later than March 18, 2013, and accept the proposed amendment to become effective on April 1, 2013.

Respectfully submitted,

/s/Anna McKenna

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Dated: February 1, 2013.

Attachment A – Clean Tariff
Tariff Revisions Addressing Treatment of Market Participants with
Suspended Market-Based Rate Authority
California Independent System Operator
Fifth Replacement FERC Electric Tariff
February 1, 2013

APPENDIX II

Market-Based Rate Authority Suspension

This Appendix provides the rates, terms and conditions that apply to Scheduling Coordinators that submit Bids into the CAISO Markets for resources of Market Participants affected by a suspension or revocation of the Market Participant's market-based rate authority, issued pursuant to Section 35, Subpart H of the Federal Energy Regulatory Commission's Rules of Practice and Procedure (18 C.F.R §§ 35.36 to 35.42) where the Federal Energy Regulatory Commission has restricted participation to the following terms:

- 1) The Market Participant's authority to sell energy, capacity, and ancillary services at market-based rates is suspended or revoked.
- 2) The Market Participant will only be allowed to participate in wholesale electricity markets by either scheduling quantities of energy products without an associated price or by specifying a zero-price in their offer, as the relevant tariffs require.
- 3) The rate received by the Market Participant will be capped at the higher of the applicable locational marginal price or its Default Energy Bid.

This Appendix details the application of the terms specified above as they apply to Market Participants engaged in transactions under the CAISO Tariff. These additional rates, terms and conditions apply in addition to those already specified in other provisions of the CAISO Tariff, which remain in effect for Scheduling Coordinators subject to this Appendix to the extent not inconsistent with this Appendix.

1. Bids for Energy

- 1.1. The Scheduling Coordinator may only participate in the Day-Ahead and Real-Time Markets for the resources of Market Participants subject to this Appendix by submitting either a Self-Schedule or an Economic Bid with a price of zero (0) dollars per megawatthour (\$0/MWh).
- 1.2. Prior to the Market Close of the applicable CAISO Market, the CAISO will validate the Bids submitted by such Scheduling Coordinator based on the Resource ID. If the Scheduling Coordinator submits a Bid that is not either a Self-Schedule or an Economic Bid with a price of \$0/MWh, the CAISO will reject the Bid.
- 1.3. Prior to the execution of the applicable CAISO Market run, the CAISO will replace all the resource's Economic Bid segments with a Generated Bid based on the resource's Proxy Costs.

2. Residual Unit Commitment Bids

- 2.1. The Scheduling Coordinator may only participate in the Residual Unit Commitment for the resources of Market Participants subject to this Appendix by submitting a RUC Availability Bid of zero (0) dollars per megawatt per hour (\$0/MW-hour).
- 2.2. Prior to the Market Close of the applicable CAISO Market, the CAISO will validate the bids submitted by such Scheduling Coordinator based on the Resource ID. If the Scheduling Coordinator submits a RUC Availability Bid that is not a \$0/MW-hour, the CAISO will reject the RUC Availability Bid.

3. Default Energy Bid

- 3.1.** The Scheduling Coordinator will not be entitled to select the Negotiated and LMP options for the resources of Market Participants subject to this Appendix and can only select the Variable Cost Option as specified in Section 39.7 of the CAISO Tariff for their Default Energy Bid during the period of the suspension.
- 3.2.** If the resource lacks a Variable Cost Option Default Energy Bid during the period of the suspension or revocation, the CAISO will create a Default Energy Bid with a \$0/MWh price for the resource.

4. Minimum Load, Start-Up, and Transition Costs

- 4.1.** The Scheduling Coordinator responsible for submitting the resource's Minimum Load and Start-Up Costs for the resources of Market Participants subject to this Appendix will not be entitled to select the Registered Cost option available under Section 30.4.1.2 and can only select the Proxy Cost option as specified in Section 30.4.1.1 of the CAISO Tariff for their Minimum Load and Start-Up Costs.
- 4.2.** If the resource is registered with the CAISO as a Multi-Stage Generating Unit resource, the Scheduling Coordinator may only register a Transition Cost of \$0 per MW hour.
- 4.3.** If the resource lacks a Start-Up or Minimum Load Cost in any market intervals, the CAISO will insert the Start-Up or Minimum Load Costs calculated based on the Proxy Cost option.

5. Ancillary Services

- 5.1.** The Scheduling Coordinator for the resources of Market Participants subject to this Appendix may only submit either a Submission to Self-Provide Ancillary Services or an Ancillary Service Bid with a zero price per megawatt (\$0/MW).
- 5.2.** Prior to the Market Close, the CAISO will reject any Ancillary Services Bid submitted for such resource that is not a Submission to Self-Provide an Ancillary Service, or an Ancillary Services Bid with a \$0/MW price.

6. Ramping Rates

- 6.1.** All of the Operating Reserve, Operational and Regulating Ramp Rates for the resources of Market Participants subject to this Appendix will be based on the maximum ramp rate registered in the Master File.
- 6.2.** To the extent the Scheduling Coordinator for such resources submits something other than the maximum ramp rate registered in the Master File for these rates, the CAISO will replace the ramp with the maximum ramp rate value in the Master File.
- 6.3.** In the Real-Time Market, the Scheduling Coordinator may only modify their maximum Ramp Rate through a SLIC submission based on actual changes in physical conditions of the resource.

Attachment B – Marked Tariff
Tariff Revisions Addressing Treatment of Market Participants with
Suspended Market-Based Rate Authority
California Independent System Operator
Fifth Replacement FERC Electric Tariff
February 1, 2013

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APPENDIX II

Market-Based Rate Authority Suspension

This Appendix provides the rates, terms and conditions that apply to Scheduling Coordinators that submit Bids into the CAISO Markets for resources of Market Participants affected by a suspension or revocation of the Market Participant's market-based rate authority, issued pursuant to Section 35, Subpart H of the Federal Energy Regulatory Commission's Rules of Practice and Procedure (18 C.F.R §§ 35.36 to 35.42) where the Federal Energy Regulatory Commission has restricted participation to the following terms:

- 1) The Market Participant's authority to sell energy, capacity, and ancillary services at market-based rates is suspended or revoked.
- 2) The Market Participant will only be allowed to participate in wholesale electricity markets by either scheduling quantities of energy products without an associated price or by specifying a zero-price in their offer, as the relevant tariffs require.
- 3) The rate received by the Market Participant will be capped at the higher of the applicable locational marginal price or its Default Energy Bid.

This Appendix details the application of the terms specified above as they apply to Market Participants engaged in transactions under the CAISO Tariff. These additional rates, terms and conditions apply in addition to those already specified in other provisions of the CAISO Tariff, which remain in effect for Scheduling Coordinators subject to this Appendix to the extent not inconsistent with this Appendix.

1. Bids for Energy

- 1.1. The Scheduling Coordinator may only participate in the Day-Ahead and Real-Time Markets for the resources of Market Participants subject to this Appendix by submitting either a Self-Schedule or an Economic Bid with a price of zero (0) dollars per megawatthour (\$0/MWh).
- 1.2. Prior to the Market Close of the applicable CAISO Market, the CAISO will validate the Bids submitted by such Scheduling Coordinator based on the Resource ID. If the Scheduling Coordinator submits a Bid that is not either a Self-Schedule or an Economic Bid with a price of \$0/MWh, the CAISO will reject the Bid.
- 1.3. Prior to the execution of the applicable CAISO Market run, the CAISO will replace all the resource's Economic Bid segments with a Generated Bid based on the resource's Proxy Costs.

2. Residual Unit Commitment Bids

- 2.1. The Scheduling Coordinator may only participate in the Residual Unit Commitment for the resources of Market Participants subject to this Appendix by submitting a RUC Availability Bid of zero (0) dollars per megawatt per hour (\$0/MW-hour).
- 2.2. Prior to the Market Close of the applicable CAISO Market, the CAISO will validate the bids submitted by such Scheduling Coordinator based on the Resource ID. If the Scheduling Coordinator submits a RUC Availability Bid that is not a \$0/MW-hour, the CAISO will reject the RUC Availability Bid.

3. Default Energy Bid

- 3.1.** The Scheduling Coordinator will not be entitled to select the Negotiated and LMP options for the resources of Market Participants subject to this Appendix and can only select the Variable Cost Option as specified in Section 39.7 of the CAISO Tariff for their Default Energy Bid during the period of the suspension.
- 3.2.** If the resource lacks a Variable Cost Option Default Energy Bid during the period of the suspension or revocation, the CAISO will create a Default Energy Bid with a \$0/MWh price for the resource.

4. Minimum Load, Start-Up, and Transition Costs

- 4.1.** The Scheduling Coordinator responsible for submitting the resource's Minimum Load and Start-Up Costs for the resources of Market Participants subject to this Appendix will not be entitled to select the Registered Cost option available under Section 30.4.1.2 and can only select the Proxy Cost option as specified in Section 30.4.1.1 of the CAISO Tariff for their Minimum Load and Start-Up Costs.
- 4.2.** If the resource is registered with the CAISO as a Multi-Stage Generating Unit resource, the Scheduling Coordinator may only register a Transition Cost of \$0 per MW hour.
- 4.3.** If the resource lacks a Start-Up or Minimum Load Cost in any market intervals, the CAISO will insert the Start-Up or Minimum Load Costs calculated based on the Proxy Cost option.

5. Ancillary Services

- 5.1.** The Scheduling Coordinator for the resources of Market Participants subject to this Appendix may only submit either a Submission to Self-Provide Ancillary Services or an Ancillary Service Bid with a zero price per megawatt (\$0/MW).
- 5.2.** Prior to the Market Close, the CAISO will reject any Ancillary Services Bid submitted for such resource that is not a Submission to Self-Provide an Ancillary Service, or an Ancillary Services Bid with a \$0/MW price.

6. Ramping Rates

- 6.1.** All of the Operating Reserve, Operational and Regulating Ramp Rates for the resources of Market Participants subject to this Appendix will be based on the maximum ramp rate registered in the Master File.
- 6.2.** To the extent the Scheduling Coordinator for such resources submits something other than the maximum ramp rate registered in the Master File for these rates, the CAISO will replace the ramp with the maximum ramp rate value in the Master File.
- 6.3.** In the Real-Time Market, the Scheduling Coordinator may only modify their maximum Ramp Rate through a SLIC submission based on actual changes in physical conditions of the resource.

Attachment C – Declaration of Eric Hildebrandt
Tariff Revisions Addressing Treatment of Market Participants with
Suspended Market-Based Rate Authority
California Independent System Operator
Fifth Replacement FERC Electric Tariff
February 1, 2013

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

**California Independent System
Operator Corporation**

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Docket No. ER13-____-000

**DECLARATION OF ERIC HILDEBRANDT ON BEHALF OF THE CALIFORNIA
INDEPENDENT SYSTEM OPERATOR CORPORATION**

1. My name is Eric Hildebrandt. My business address is 250 Outcropping Way, Folsom, California 95630.

2. I am the Director of the Department of Market Monitoring (DMM) of the California Independent System Operator Corporation (ISO). I oversee the independent market monitoring unit charged with monitoring ISO market performance and behavior. In this capacity, I am responsible for analyzing performance of the ISO markets, assessing the impact of market rules and behavior of market participants on market performance, investigating potential non-compliance with ISO and Federal Energy Regulatory Commission (FERC or Commission) market rules, and helping to design market rules that promote overall market efficiency, mitigate market power and deter detrimental market behavior. Throughout my 15 years working at the ISO, I have previously served in several managerial positions in the Department of Market Monitoring which involved similar responsibilities.

3. I have over twenty years of experience in the electric utility industry, along with a Bachelor of Science degree in Political Economy from Colorado College and Master

of Science and Doctor of Philosophy degrees in Energy Management and Policy from the University of Pennsylvania.

4. This declaration discusses how the Commission's November 14, 2012 Order Suspending Market Based-Rate Authority of J.P. Morgan Ventures Energy Corporation (JPMVEC) can be expected to impact the bidding and compensation of JPMVEC in the ISO's markets, as well as the overall performance of the ISO markets. The declaration includes comments on the ISO's plan for implementing the Order and supports the ISO's proposed tariff revisions that will apply to JPMVEC and any similarly-situated market participant whose market-based rate authority has been suspended by the Commission. The declaration also explains how the approach proposed by JPMVEC in its January 30, 2013 filing is inconsistent with the Commission's November 14 Order, would create inefficiencies and distortions in the ISO's markets, and would enable JPMVEC to profit from gains well in excess of those they would receive in a competitive market or under a cost-based rate.
5. The November 14 Order suspended JPMVEC's authority to sell energy, capacity, and ancillary services at market-based rates for a period of six months, starting on April 1, 2013, and held that, "JP Morgan will only be allowed to participate in wholesale electricity markets by either scheduling quantities of energy products without an associated price or by specifying a zero-price in their offer, as the relevant tariffs require. Furthermore, the rate received by JP Morgan will be capped

at the higher of the applicable locational marginal price or its default energy bid.”

Order at P 53.

6. The ISO’s proposed implementation of the order, as discussed further below, is consistent with the Commission’s November 14 Order, as it effectively caps all payments JPMVEC will receive for sales of energy products at rates that will not exceed the maximum of (1) the locational marginal price applicable to each of these products or (2) the resource’s default energy bid. The ISO’s proposed tariff revisions incorporate the bidding restrictions mandated by the order, as well as provisions that ensure JPMVEC resources are bid and dispatched in a manner that prevents pricing distortions in the ISO’s markets and ensures the efficient dispatch of resources consistent with principles underlying a competitive market based on locational marginal pricing.

7. In a competitive electricity market in which sellers are paid the market clearing price, a seller will maximize profits by offering all available capacity at its marginal cost. Locational marginal prices are set by the highest priced bids needed to meet demand. Market efficiency is maximized since only the lowest cost resources needed to meet demand are dispatched in the market. All resources dispatched are paid locational marginal prices that equal or exceed their marginal costs. Resources with costs higher than these market prices are not scheduled to operate. Resources that are self-scheduled or bid at \$0/MW are essentially price-takers, and are paid the market clearing price. Thus, suppliers have no incentive to self-schedule or bid at

\$0/MW unless they expect the market clearing price to meet or exceed their marginal operating costs.

8. The tariff provisions proposed in this filing ensure that JPMVEC's resources will be bid, dispatched and compensated in a manner consistent with the principles of an efficient and competitive market described above. These provisions create the ability for JPMVEC to schedule and offer its capacity consistent with the November 14 Order, but also ensure that JPMVEC's resources are dispatched based on cost-based bids so that these generating units operate whenever market prices exceed marginal costs – but do operate when this would be uneconomic based on market prices. These provisions also avoid any distortion or decrease in the efficiency of the ISO's energy markets that could be created by the offering of capacity controlled by JPMVEC at prices that exceed competitive levels or are excessively low relative to the actual cost of generation.

9. As required under the Commission's November 14 Order, the proposed provisions will ensure that payments to JPMVEC are effectively capped at the higher of (1) the applicable locational marginal price or (2) a resource's default energy bid. When JPMVEC receives this payment, it will continue to have the opportunity to earn profits equal the difference between these market prices and its' marginal costs. This will allow JPMVEC the opportunity to earn the same profits – but no more – than would be earned by seller in a competitive, efficient market without the ability to exercise market power or engage other anti-competitive behavior would earn.

Must-Offer Requirements

10. Under the ISO's market design, resources may be procured through resource adequacy contracts under which load serving entities meet their capacity obligations specified in the ISO tariff. Supply resources under these resource adequacy contracts are subject to a variety of must-offer obligations under the ISO tariff. These resource adequacy contracts provide additional compensation to sellers who own or control these resources. Similar must-offer requirements apply to resources that have been designated under the capacity procurement mechanism in the ISO tariff.

11. Based on resource adequacy showings submitted to the ISO pursuant to its existing tariff requirements, the ISO understands that almost all of the over 3,000 MW of capacity controlled by JPMVEC in the ISO balancing authority area will be under a resource adequacy contract during the six month period starting April 1, 2013 during which the Commission has ordered the suspension of JPMVEC's market based rate authority. As described below, many of the additional provisions proposed by the ISO's filing are designed to implement the Commission's order in conjunction with these existing must-offer obligations in the ISO tariff.

12. In the ISO markets, resources are committed and scheduled on the basis of three-part bids that cover: start-up, minimum load energy, and energy above minimum load. Units also submit bids for ancillary service capacity. As described below, the provisions outlined in the ISO's filing ensure that JPMVEC's resources will be

dispatched based on the actual cost of each of these three bid components. When combined with the ISO's existing must-offer and settlement provisions, these provisions will ensure that any seller subject to the limitations specified in the Commission's order has the opportunity to fully recover their operating cost and receive additional market revenues commensurate with those that would be earned by a supplier bidding competitively in an efficient market. These provisions also ensure that, when it is uneconomic for generation to operate given market prices, this capacity will not be dispatched, so that the seller will not be subject to any loss and no distortion of market prices will occur.

Energy Bids

13. The November 14 Order specifies that resources subject to these provisions may either self-schedule capacity or submit a \$0/MW energy bid in the ISO market. As noted in the ISO's filing, if a seller subject to the must-offer provisions of the ISO tariff does not submit energy bids for any of a resource's available capacity, the ISO software automatically inserts a cost-based generated bid for this energy generating capacity. Generated bids for gas-fired resources include fuel costs plus variable operating and maintenance. The combination of these various provisions of the November 14 Order and the ISO tariff ensures that a seller subject to these provisions must make all of this capacity available in the ISO's energy market either as a price-taker or at bid prices equal to its marginal generating costs.

14. As required by the Commission, the ISO proposes to include tariff provisions that explicitly prohibit sellers subject to these energy bid limitations from submitting anything other than a self-schedule or a \$0/MW bid. If the seller submits any other bid, the bid validation tool will reject the bid. The ISO will also continue to employ its current bid validation rules and generate bids for resource adequacy capacity for resources that do not have a bid or self-schedule. Prior to conducting the actual market run, the ISO will then convert any \$0/MW bids to the resource's cost-based generated bids. This is the same cost-based bid the ISO would utilize for resource adequacy capacity without a bid. The conversion of the resource's \$0/MW bid to its cost-based generated bid increases market efficiency and ensures that profits ultimately received by the seller are equal to those the seller would receive in a competitive market. As noted above, in a competitive market, a seller will offer its available capacity at its marginal cost. The substitution of the generated bid (representing the resource's marginal costs) for the \$0/MW bid permitted by the order allows for market dispatch and prices to be comparable to what would be expected in a competitive market. This approach also will ensure that prices paid to other market participants are not artificially depressed below the level expected in a competitive market as a result of the special limitations placed on JPMVEC.

15. The ISO's plan to implement the Commission's Order also provides the seller with a fair opportunity to earn market prices that are effectively capped at the higher of (1) the applicable locational marginal price or (2) each resource's cost-based default energy bid. While generated bids are used to enforce the must-offer requirement for

resource adequacy units in the ISO market, default energy bids are only used for purposes of local market power mitigation. Cost-based default energy bids for natural gas-fired generating resources are calculated in the same manner as generated bids, but include a 10 percent adder above marginal operating costs. Thus, as illustrated below, when a unit is dispatched only when the locational marginal price exceeds its generated bid and is then paid this locational marginal price, the resulting payment will not exceed the higher of (1) the locational marginal price, or (2) the unit's default energy bid.

16. For instance, assume a resource with a marginal operating cost of \$30/MW is dispatched based on its generated bid in the ISO energy market on a day when applicable locational marginal prices equal \$32/MW. The resource would be scheduled to operate and, under normal ISO settlement procedures, would be paid the locational marginal price of \$32/MW. In this case, the payment cap specified in the Commission's Order would not be reached since the \$32/MW locational marginal price did not exceed the maximum of the (1) locational marginal price (\$32/MW) or (2) the unit's default energy bid (\$33/MW). Thus, the unit would be paid the locational marginal price of \$32/MW and would earn a \$2/MW margin over its \$30/MW operating costs. This also ensures the efficient dispatch of other resources and overall market prices which reflect the highest cost supply needed to meet demand (\$32/MW).

17. Using this same example, assume a resource with a marginal operating cost of \$30/MW is dispatched based on its generated bid in the ISO energy market on a day

when applicable locational marginal prices equal \$34/MW. Again, the payment cap specified in the Commission's Order would not be reached since the \$34/MW locational marginal price paid under normal settlement procedures did not exceed the maximum of the (1) locational marginal price (\$34/MW) or (2) the unit's default energy bid (\$33/MW).

18. If the ISO's dispatch was required to be based on either a self-schedule or \$0/MW bid for all available capacity subject to the must-offer requirement, this would effectively require JPMVEC's 3,000 MW of capacity to be scheduled to generate at maximum output virtually all hours and under all market conditions. In most, if not all cases, this would displace dispatch of other lower cost generation available to meet demand. However, since these price-taking self-schedules and bids do not set market clearing prices, prices paid to all participants would be set by lower cost bids that would need to be dispatched to meet demand without these price-taking self-schedules and bids. Thus, without the ISO's proposed substitution of a generated bid for purposes of dispatch and setting market clearing prices, during many hours, market prices paid to all market participants would be less than the marginal cost of the most efficient mix of resources actually needed to meet demand. In addition, sellers subject to the requirements of the November 14 Order would be subject to operating at a loss, as described below. This is inconsistent with the compensation contemplated in the November 14 Order.

19. For instance, assume a resource with a marginal operating cost of \$30/MW was offered at \$0/MW in the ISO energy market on a day when market locational marginal prices equaled only \$20/MW. The resource would be scheduled to run at maximum capacity and, under normal ISO settlement procedures, would be paid the locational marginal price of \$20/MW. In this case, the payment cap specified in the Commission's Order would not be reached since the \$20/MW locational marginal price did not exceed the maximum of the (1) locational marginal price (\$20/MW) or (2) the unit's default energy bid (\$33/MW). Thus, the unit would be paid the locational marginal price of \$20/MW. In this example, overall market prices would be lower than if the resource was bid in at its marginal cost (\$30/MW) and was not scheduled to operate since it exceeded the market clearing price (\$20/MW). In addition, the supplier would incur a \$10/MW loss as a result of difference in its' marginal operating cost of \$30/MW and the \$20/MW locational marginal price it would receive.

20. Under the scenario described above, the tariff provisions proposed by the ISO ensure efficient market dispatch, pricing and compensation. If the resource is bid at its \$30/MW marginal cost and the applicable locational marginal price is only \$20/MW, the unit would be uneconomic and would not be dispatched. Market prices would not be distorted and the supplier would not incur any loss.

21. The ISO's plan for implementing the November 14 Order preserves the ability of JPMVEC to self-schedule capacity in the ISO market. However, under normal ISO

pricing and settlement provisions, self-schedules will not directly set market prices and will only be paid the applicable locational marginal price. Thus, JPMVEC should have no incentive to self-schedule capacity unless they expect the market clearing price to exceed their marginal operating costs. The payment cap specified in the Commission's Order would also not be exceeded by sales made through self-schedules, since the normal settlement payment that will continue to be made for these schedules would never exceed the maximum of the (1) locational marginal price or (2) the unit's default energy bid.

22. The alternative approach proposed by JPMVEC in its January 30, 2013 filing is inconsistent with the Commission's November 14 Order in that it would change the payment cap specified in the Order to a payment floor that JPMVEC could earn for all energy that they either self-scheduled or bid at \$0/MW in the ISO market. As described in the final section of this declaration, JPMVEC's proposal would create inefficiencies in the ISO's markets, and allow JPMVEC to garner profits well in excess of those they would receive in a competitive market or under a cost-based rate.

Start-up and Minimum Load Bids

23. In the ISO markets, resources are committed and scheduled to operate on the basis of three-part bids which represent: start-up costs, minimum load energy costs and cost for energy above minimum load. Bids for start-up and minimum load energy can be a major determinant of whether a unit's capacity is committed and therefore

available in the ISO energy and ancillary service markets. Consequently, it is important that start-up and minimum load energy bids reflect a unit's actual start-up and minimum load energy costs in order to ensure a unit's capacity is committed and available in the ISO market when this represent the most efficient option for meeting ISO system needs.

24. If a unit is started-up or committed to continue operating by the ISO market software based on these three-part bids, but fails to recover all accepted bid costs through energy and ancillary service market revenues, the resource is eligible to receive a bid cost recovery. Thus, it is also important that start-up and minimum load energy bids accurately reflect a unit's actual start-up and minimum load energy costs to ensure that the seller the opportunity to recover these costs, without allowing the seller to earn excessive revenues or subjecting other participants that ultimately pay these bid cost recovery payments to excessive costs.

25. Under the current ISO tariff, scheduling coordinators for gas-fired generating units can select one of two different options for start-up and minimum load bids. The first option is the proxy cost option. Under this option, scheduling coordinators can submit start-up and minimum load bids each operating day up the cost-based levels reflecting fuel plus variable operating costs incurred at their minimum operating level. Start-up and minimum load bids summited in excess of these cost-based levels are automatically capped at proxy costs calculated by the ISO market software. Thus, the proxy cost option for start-up and minimum load bids is

analogous to the generated bid for a unit's energy above minimum load. Just as use of generated bids ensures efficient dispatch and reasonable compensation for energy above minimum operating levels, the proxy cost option for start-up and minimum load bids ensures efficient unit commitment and reasonable compensation for these start-up and minimum load energy costs.

26. The second option for start-up and minimum load bids under the current ISO tariff is the registered cost option. Under this option, sellers can submit start-up and minimum load bids on a monthly basis at levels up to 200 percent of the resources' projected start-up and minimum load energy costs. With this option, resources may not be committed and available to the ISO market when it would be most economically efficient for this capacity to be on-line. In addition, resources under the registered cost option may receive bid cost recovery payments well in excess of actual start-up and minimum load costs, plus the 10 percent adder included in proxy cost bids for minimum load energy.

27. The ISO proposes that sellers subject to restrictions specified in the Commission's Order also be required to select the proxy cost option. As noted above, under this option, a seller's bids for start-up and minimum load are automatically limited by the ISO software to cost-based levels calculated based on the actual fuel and other variable operating costs on file with the ISO. If a seller under the proxy cost option that is subject to the must-offer provisions of the ISO tariff does not submit start-up or minimum load bids, the ISO software automatically inserts a cost-based proxy

cost start-up and minimum load bid for the resource. Thus, the proposed tariff provisions – when combined with existing tariff provisions relating to the proxy cost option and must-offer obligation – ensure that a unit’s capacity is committed and available in the ISO markets when it is economic, while providing any seller subject to these provisions the opportunity to recover these costs, as described in the Commission’s Order.

Ancillary Service Capacity

28. In the ISO markets, resources under resource adequacy contracts are subject to must-offer provisions that include a must-offer requirement for all available ancillary service capacity. Scheduling coordinators not subject to restrictions on their bidding may offer this ancillary service capacity at any price up to the \$250/MW cap for ancillary services. If a resource’s full ancillary services capacity subject to a must-offer obligation is not bid into the market by its scheduling coordinator, the ISO market software automatically inserts a \$0/MW bid for this capacity.

29. Any seller subject to the additional tariff provisions in this filing would only be permitted to offer a unit’s ancillary service capacity at a \$0/MW bid price, consistent with the order. As noted above, under the ISO’s existing tariff provisions and market software, if resource’s full ancillary services capacity subject to a must-offer obligation is not bid into the market by its scheduling coordinator, the ISO market software will automatically insert a \$0/MW bid for this capacity.

30. Any seller subject to the additional tariff provisions in this filing would continue to receive the ancillary service locational marginal price for any ancillary service capacity that clears the ISO markets. The ISO market software performs a simultaneous optimization of energy and ancillary services, which ensures that the ancillary service locational marginal price for each resource fully compensates each resource for the any opportunity cost it may incur by providing ancillary services instead of energy. This ensure that the \$0/MW bid limit for ancillary service bids provides any seller subject to these provisions the opportunity to fully recover costs and earn the same profits that a supplier would receive if bidding competitively in an efficient market.

Exceptional Dispatch

31. In the ISO markets, units may be committed at minimum operating levels or dispatched for energy above minimum operating levels though the exceptional dispatch provisions of the ISO tariff. This occurs when capacity or energy is needed from a unit to meet special reliability requirements, but the unit is not committed or dispatched for sufficient energy to meet these reliability requirements based on its market bids. Units committed to operate at minimum load through an exceptional dispatch are assured of recovering their start-up and minimum load costs through bid cost recovery provisions of the ISO tariff. Units instructed to provide additional real-time energy through an exceptional dispatch are guaranteed to recover their default energy bid, and in some cases may receive the higher of their default energy bid and the locational marginal price.

32. Under the directives of the Order as incorporated in the ISO's tariff filing, the need for exceptional dispatch of capacity will be limited by the fact that resources start-up, minimum load and energy bids will not significantly exceed these resources' actual costs (plus the 10 percent adder included in default energy bids and minimum load bids under the proxy cost option). Exceptional dispatches will only be required in cases when capacity or energy is needed from a specific resource, but the commitment or energy costs of this capacity or energy exceed market prices. In such cases, the existing tariff provisions for compensation of exceptional dispatch energy and bid cost recovery for start-up and minimum load costs will ensure that any seller subject to these provisions has the opportunity to recover these costs.

JPMVEC Proposal

33. In its January 30, 2013 filing, JPMVEC proposes to change the payment cap specified in the Commission's November 14 Order to a payment floor for all energy that JPMVEC either self-schedules or bids at \$0/MW in the ISO energy market. This would create inefficiencies and price distortions in the ISO's markets, and would allow JPMVEC to garner profits well in excess of those they would receive in a competitive market or under a cost-based rate.

34. Under JPMVEC's proposed tariff, JPMVEC could schedule capacity through self-schedules or by submitting \$0/MW energy bids, and then be guaranteed to receive the higher of the (1) locational marginal price or (2) each unit's default energy bid. As previously noted, the default energy bid for each unit used in local market power

mitigation includes a 10 percent adder above marginal operating costs. This would ensure that JPMVEC received a minimum 10 percent margin above operating cost for all of this capacity, even during hours and days when these costs exceeded locational marginal prices. Thus, with this proposal, JPMVEC would maximize profits by self-scheduling or submitting \$0/MW energy bids for the entire portfolio of over 3,000 MW of gas-fired generating capacity controlled by JPMVEC in southern California for every hour of every day.

35. For instance, assume the approximately 3,000 MW of gas-fired generating capacity controlled by JPMVEC has a marginal operating cost of \$30/MW and a Default Energy Bid (\$33/MW). If this capacity is bid at \$0/MW, these resources would be scheduled to run at maximum capacity even on a day when market locational marginal prices equaled only \$20/MW. Under the payment floor proposed by JPMVEC, these resources would receive the higher of the locational marginal price (\$20/MW) or the default energy Bid (\$33/MW). Thus, JPMVEC would earn a 10 percent margin above its marginal energy cost (\$3/MW) for all energy generated from this 3,000 MW of capacity, even though the marginal cost of this energy was above the market price. In addition to reducing market prices received by other suppliers, this would require uplift payments to JPMVEC of \$13/MW above the \$20/MW market price that would need to be recovered from load serving entities.

36. The provisions proposed by JPMVEC would also allow JPMVEC to submit bids for start-up and minimum load costs up to 200 percent of actual costs under the registered cost option provided to other sellers under the ISO tariff. This would result in further market distortions and payments to JPMVEC above costs or levels

they would receive in a competitive market, especially when combined with JPMVEC's proposal to modify the energy payment cap in the November 14 Order to a payment floor.

37. As previously described, JPMVEC's proposal to modify the energy payment cap in the November 14 Order to a payment floor would allow JPMVEC to maximize profits by bidding energy from all of the over 3,000 MW of capacity it controls in southern California at \$0/MW during all hours and market conditions. Even if JPMVEC submits bids for start-up and minimum load costs up equal to 200 percent of actual costs, the \$0/MW bids for all energy above minimum operating levels would ensure that this 3,000 MW of capacity is committed in the ISOs' day-ahead market. When market prices were not sufficient to cover these minimum load cost bids, JPMVEC would be guaranteed to receive their 200 percent of actual start-up and minimum load bids through the ISO's bid cost recovery provisions.

38. This concludes my declaration.

I, Eric W. Hildebrandt, affirm under penalty of perjury that the statements in this declaration are true and correct to the best of my knowledge, information, and belief.



Eric W. Hildebrandt

Executed this 1st day of February, 2013