

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

California Independent System Operator Corporation))))	Docket No. ER13-872-000
---	------------------	--------------------------------

**MOTION FOR LEAVE TO ANSWER PROTEST AND
ANSWER TO PROTEST AND COMMENTS OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (“ISO”) seeks leave to submit this answer to the protest and submits this answer to comments regarding the ISO’s February 1, 2013, tariff amendment in this proceeding. This tariff amendment is necessary to address the ISO’s 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 six months, beginning April 1, 2013.¹

Comments filed in this proceeding by a range of market participants support the ISO’s filing. Only JPMVEC opposes the tariff amendment. As explained below, JPMVEC’s arguments are without merit, and the Commission should issue an order by March 18, 2013, accepting the ISO tariff amendment.

¹ *JP Morgan Ventures Energy Corp.*, 141 FERC ¶ 61,131 (2012) (“November 14 order”).

I. INTRODUCTION

A range of market participants – from large load serving entities to suppliers – all support the ISO’s tariff amendment.² These commenters have both expressed general support for the ISO’s proposal and specifically endorsed the most important aspect of the ISO’s proposal – the provisions under which the ISO will substitute all of the economic bid segments from a market participant with suspended market-based rate authority with a generated bid based on the resource’s proxy costs.³ These commenters recognize that this element of the ISO’s proposal implements the directives of the November 14 order in a manner that allows the ISO to maintain system reliability while avoiding any distortions of the ISO’s markets or artificially depressing the market clearing prices paid to other market participants. For example, SCE observes that dispatching resources based on a zero price bid for suspended market participants would be contrary to efficient dispatch principles, contrary to general principles of fairness, and would penalize other market participants and their ratepayers, who would bear the burden of any additional costs imposed by such dispatch.⁴ Similarly, Calpine states that the ISO’s proposal prevents the dispatch of less efficient resources ahead of, and in lieu of, more efficient resources and avoids a result where “all market participants that clear the market will receive reduced

² In addition to the protest filed by JPMVEC, comments were filed in this proceeding by the California Department of Water Resources State Water Project (“SWP”); Calpine Corporation (“Calpine”); Northern California Power Agency (“NCPA”); Pacific Gas and Electric Company (“PG&E”); and Southern California Edison Company (“SCE”).

³ PG&E at 3.

⁴ SCE at 3.

compensation compared to what they would receive in a competitive market had the suspended entity not been subject to an enforcement order.”⁵

Commenters also agree that the ISO is the entity with the legal authority to file changes to its tariff under Section 205 of the Federal Power Act to address the implementation of the November 14 order in the ISO’s markets.⁶ The ISO has already explained at length why JPMVEC’s own proposed tariff that would apply to transactions in the ISO’s markets during the six month suspension period must be rejected, and incorporates those arguments here.⁷

JPMVEC alone asks the Commission to reject the ISO’s tariff amendment. Even then, JPMVEC does not object to the bulk of the ISO’s tariff amendment related to Residual Unit Commitment bidding and compensation; permitted bids for minimum load, start-up, and transition costs; ancillary services bidding and compensation; and limitations on operating reserve, operational and regulating ramp rates. Ultimately, the only aspect of the ISO’s filing that JPMVEC challenges is the ISO’s substitution of a generated bid rather than the default energy bid for purposes of resource dispatch and establishing market clearing prices during the suspension period. JPMVEC argues that this is contrary to the November 14 order. JPMVEC raises a related challenge that the use of the

⁵ Calpine at 3.

⁶ See SWP at 1-2; NCPA February 20 filing in Docket No. ER13-830 at 4. Notably, JPMVEC does not respond to the explanation in the ISO’s February 1 filing why individual market participant proposals to change the terms of the ISO tariff are prohibited. February 1 ISO transmittal letter at 8.

⁷ See February 1 ISO transmittal letter at 7-10; February 20 ISO protest in Docket No. ER13-830.

generated bid as opposed to the default energy bid may be confiscatory under the ISO's proposal but does not offer any actual evidence in support of its claim.

JPMVEC's arguments are baseless. JPMVEC incorrectly claims that the November 14 order guarantees JPMVEC a price for its resources of no lower than its default energy bid, regardless of the prevailing market price. The November 14 order states that "the rate received by JP Morgan will be capped at the higher of the applicable locational marginal price or its default energy bid."⁸ The ISO's filing correctly implements this cap. JPMVEC effectively seeks to turn the cap established by the order into a floor guaranteeing JPMVEC a level of compensation for energy in the ISO's markets no lower than its default energy bid regardless of the market clearing price. JPMVEC's interpretation of the order is particularly problematic because it produces the absurd result that, while JPMVEC can deflate the market clearing price for all resources dispatched through the ISO market, JPMVEC is eligible to have its resources dispatched by the ISO and receive payments above the market clearing price through a guaranteed recovery of its default energy bid. JPMVEC fails to cite any Commission precedent in support of such an outcome when resources have had their market-based rates suspended or revoked, and the ISO is aware of none. The Commission should disregard this attempt to impose an interpretation that is inconsistent with the plain meaning of the November 14 order and that would allow JPMVEC to earn more profits than it could earn with market-based rates, to the detriment of other market participants.

⁸ November 14 order at P 53.

In its proposal in this proceeding, however, the ISO did not ask the Commission to reinterpret its order or change the plain meaning of the language of the order. Rather, the ISO put forth an implementation plan that, for purposes of continuing to dispatch resources efficiently and reliably through the centralized market, required the adoption of additional measures. In response, JPMVEC claims that using generated bids for JPMVEC resources to establish market clearing prices to be paid to JPMVEC and others will result in confiscatory rates. This claim is belied by the fact that the use of a generated bid as a cost-based bid is already permissible under the Commission-approved existing ISO tariff already for resources that are subject to must-offer obligations but not bid into the ISO's markets. In approving these tariff provisions, the Commission essentially has already found that the submission of generated bids into the ISO markets does not result in confiscatory rates because they constitute cost-based bids. Moreover, JPMVEC fails to demonstrate that the use of generated bids, which is designed to reflect a resource's marginal costs for gas-fired units, will prevent JPMVEC from having a just and reasonable opportunity to recover its actual costs.

JPMVEC's real complaint seems to be that the ISO should substitute a different, higher cost-based proxy bid – the default energy bid – for purposes of dispatch and establishing market clearing prices during the suspension period. This argument, too, is without basis. The ISO's proposal appropriately dispatches JPMVEC resources using the same cost-based generated bids that the Commission has accepted for the dispatch of resources that are subject to

must-offer obligations but not bid into the ISO's markets. This approach promotes the efficient use of resources, and also provides adequate compensation to all energy suppliers because the generated bids represent marginal costs for gas-fired units. The default energy bid JPMVEC proposes to use in place of these generated bids includes a 10 percent adder above these marginal costs.

JPMVEC's confiscation claim also ignores the fact that the November 14 order provides JPMVEC with an additional "safety valve" to ensure that it has an opportunity to recover its costs. JPMVEC has the option at any time to file for cost-based rates for the services it provides in the ISO's markets. The Commission has recognized that such a cost-based recovery option will ensure that sellers are not subject to confiscatory rates. JPMVEC has not pursued this option and, in the absence of a showing that this alternative would be inadequate, JPMVEC's unsupported assertion of confiscation does not provide a basis for rejecting the ISO's implementation proposal.

Although JPMVEC provides no support for a finding that the use of generated bids as proposed by the ISO fails to result in a rate that adequately compensates JPMVEC for its marginal costs, the Commission has the option of ordering the ISO to use a default energy bid instead of a generated bid in its proposed tariff amendment. Both are cost-based, Commission-approved, proxy bids used in the ISO's market for differing reasons. While the default energy bids have only been deemed appropriate for use when suppliers bid above this level and have their bids lowered as the result of local market power mitigation

procedures, it is also an existing cost-based bid available to the ISO under its existing tariff. Although the ISO does not believe that there is reason to apply the additional ten percent adder in this case, directing the ISO to substitute the default energy bid for purposes of dispatch and establishing market clearing prices during the suspension period would eliminate JPMVEC's challenge that the ISO's proposed use of the generated bid would be confiscatory. Thus, the ISO is prepared to make the following modification if directed by the Commission: if a market participant with suspended market-based rate authority submits a \$0/MWh bid for a resource during the suspension period, the ISO is prepared to replace all of the resource's economic bid segments with a default energy bid based on the resource's variable cost option rather than replacing the bid segments with a generated bid based on the resource's proxy costs. This modification will not change the existing ISO tariff provisions requiring the use of generated bids for resources that are subject to must-offer obligations but that fail to submit a required bid.

The ISO also clarifies that, during the suspension period, the exceptional dispatch settlement price of resources subject to mitigation will be based on the substituted cost-based bid used for purposes of dispatch and setting market clearing prices (*i.e.*, the generated bid or the default energy bid if directed by the Commission). This clarification is consistent with the principles underlying the ISO's proposal and addresses JPMVEC's concern that it would not receive a cost-based price for certain exceptional dispatches under the ISO's proposal.

II. MOTION FOR LEAVE TO ANSWER PROTEST

The ISO submits this answer pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213. Under Rule 213(a)(1) of the Commission's Rules of Practice and Procedure, a party may answer any pleading unless otherwise prohibited. There is no prohibition of answers to comments. Rule 213(a)(2) only allows answers to protests if ordered by the decisional authority.⁹

The Commission has accepted answers to protests if such answers clarify the issues in dispute.¹⁰ JPMVEC has raised factual issues about the ISO's filing. The ISO's answer clarifies these issues. The Commission also has accepted otherwise prohibited answers where they contain information that assists the Commission in making a decision.¹¹ The ISO respectfully submits that this answer includes information that will assist its decision in this proceeding.

III. ANSWER

A. The ISO's Filing Is Consistent with the November 14 Order

Contrary to JPMVEC's claims, the ISO tariff amendment is consistent with the November 14 order. JPMVEC, on the other hand, mischaracterizes that order. In its protest, JPMVEC argues that "consistent with Paragraph 53 [of the

⁹ 18 C.F.R. § 385.213(a)(2) (2012).

¹⁰ See *Southwest Power Pool, Inc.*, 89 FERC ¶ 61,284 at 61,888 (1999).

¹¹ See, e.g., *El Paso Electric Co., et al. v. Southwestern Pub. Serv. Co.*, 72 FERC ¶ 61,292 at 62,256 (1995); *Equitrans, L.P.*, 134 FERC ¶ 61,250, at P 6 (2011); *California Independent System Operator Corp.*, 132 FERC ¶ 61,023, at P 16 (2010); *Xcel Energy Services, Inc.*, 124 FERC ¶ 61,011, at P 20 (2008).

November 14 order], JPMVEC's tariff provided that JPMVEC's payments would be at the higher of its default energy bid or the applicable LMP."¹² Paragraph 53 actually states that "the rate received by JP Morgan will be *capped* at the higher of the applicable locational marginal price or its default energy bid"¹³ JPMVEC's approach disregards the term "capped" and instead attempts to insert into the order the concept of a floor that guarantees JPMVEC a level of compensation for energy in the ISO's markets no lower than its default energy bid. That is not what the November 14 order prescribes, and JPMVEC provides no basis to support its implicit position that the Commission's deliberate use of the term "capped" should be ignored.

As explained in the declaration of Dr. Eric Hildebrandt, director of the ISO's Department of Market Monitoring, submitted in support of the ISO's February 1 filing, JPMVEC's proposed conversion of the cap in the November 14 order to a payment floor guaranteeing JPMVEC a minimum energy payment would enable JPMVEC to earn more profits than any participant in the ISO's energy markets could earn with market-based rates.¹⁴ The Commission's order contemplated that JPMVEC's resources would continue to be subject to all relevant tariffs. Therefore, the bids for these resources are expected to be dealt with through the ISO's merit order dispatch performed through the ISO's market, not to be accorded special treatment that would give them an undue preference

¹² JPMVEC at 5.

¹³ November 14 order at P 53 (emphasis added).

¹⁴ Hildebrandt declaration at 16-17.

over other resources in the market. JPMVEC's interpretation turns the Commission's order and the Federal Power Act on their heads by requesting that the Commission force an outcome that enables JPMVEC's bids to artificially deflate the market clearing price for all resources while guaranteeing JPMVEC recovery of ten percent above its marginal costs.¹⁵ These profits come directly at the expense of other sellers (who are paid lower prices) and/or load serving entities that would pay the uplifts needed under JPMVEC's proposed floor.

JPMVEC's arguments that the ISO's filing is inconsistent with the November 14 order are fundamentally based on its mischaracterization of the cap as a floor. JPMVEC essentially argues that any time JPMVEC would be paid less than its default energy bid the ISO would be violating the November 14 order.¹⁶ JPMVEC then relies on its mischaracterization of the November 14 order to argue that the ISO's filing (or more accurately the use of a generated bid rather the default energy bid under the ISO's filing) is an out-of-time attack on the

¹⁵ While there are no prior Commission orders addressing the precise circumstances presented in this case, in considering appropriate mitigation where a seller was unable to demonstrate a lack of market power, the Commission has found that in circumstances where "an applicant's proposed mitigation does not eliminate its ability to exercise market power, then the applicant's market-based rate authority will be revoked in geographic areas where market power is found, and the applicant will be subject to cost-based default rates or other cost-based rates that the applicant proposes and the Commission approves." *MidAmerican Energy Co., Cordova Energy Co. LLC*, 114 FERC ¶ 61,280 at P 43 (2006). The Commission explicitly rejected a proposal that would allow a resource to continue to influence a market price and then have the ability to benefit from that price above its costs. The ISO's proposal to use the generated bid for purposes of merit order dispatch does not create such an opportunity and eliminates the potential that JPMVEC is subject to a locational marginal price that is significantly above costs.

¹⁶ See JPMVEC at 6.

November 14 order.”¹⁷ This would be true only if the words “capped at” are read as “guaranteed to be,” which of course is not the meaning of this term. The Commission should reject JPMVEC’s arguments.

B. The Use of Generated Bids to Establish Market Clearing Prices Does Not Result in a Confiscatory Rate

JPMVEC argues that the ISO’s proposal to replace the economic bid segments submitted by a suspended market participant with a generated bid based on the resource’s proxy costs would result in a “confiscatory” below-cost rate for JPMVEC.¹⁸ There is no basis for this assertion.

The ISO’s filing is supported by a declaration by the director of the ISO’s Department of Market Monitoring that explains in detail how the ISO’s proposal provides “JPMVEC the opportunity to earn the same profits – but no more – than would be earned by a seller in a competitive, efficient market without the ability to exercise market power or engage in other anti-competitive behavior.”¹⁹ JPMVEC does not respond to this uncontroverted expert testimony. On that basis alone, the Commission should reject JPMVEC’s objections.

The ISO further notes that nothing in the November 14 order or the ISO’s tariff amendment imposes on JPMVEC any new obligations to offer capacity into the ISO’s markets. JPMVEC generally retains flexibility to determine whether to bid into the ISO’s markets. As such, the ISO’s filing does not impose any new

¹⁷ JPMVEC at 12-13.

¹⁸ JPMVEC at 13-14.

¹⁹ Hildebrandt declaration at 4, *passim*.

rates on JPMVEC. Resources under the control of JPMVEC may be subject to existing must-offer obligations, but the rates that would be paid to JPMVEC under the ISO's tariff amendment are fully consistent with rates paid to all other resources subject to must-offer obligations under the current ISO tariff approved by the Commission. That is, under both the ISO's proposed tariff amendment and the ISO's currently effective tariff, the ISO will generate a bid for a resource that does not submit a bid and that is subject to a must-offer requirement, either because it is a resource adequacy resource or because it is subject to a capacity procurement mechanism designation.²⁰ In approving these tariff provisions under the Federal Power Act, the Commission has, in essence, already found that these cost-based bids do not result in confiscatory rates.

The generated bids mandated by these provisions of the ISO tariff represent marginal costs for gas-fired units subject to must-offer requirements. The Commission approved the use of the generated bid for this purpose in 2006 when it approved the ISO's tariff setting forth the terms and conditions of the new nodal market implemented in February 2009.²¹ As the ISO explained in 2006, the ISO would use a default generated bid for resource adequacy resources that do not submit a bid, absent notification of an outage. The ISO specifically explained that the ISO-generated default bid for resource adequacy resources that failed to participate is not the same as a default energy bid for market power

²⁰ See ISO tariff, sections 40.6.8 and 43.5.1.

²¹ See *Calif. Ind. Sys. Operator Corp.*, 116 FERC ¶ 61,274 at PP 1276, 1279-1286 (2006) ("ISO Market Order") (approving the generated bid as the appropriate bid for resources under a must-offer requirement distinct from the default energy bid used specifically in the context of local market power mitigation).

mitigation in section 39.²² The Commission approved the ISO's use of a generated bid for this purpose.²³ It is just and reasonable to apply the same generated bid in JPMVEC's circumstances because the generated bid is produced based on the marginal costs of operating a resource reflecting its fuel costs. Because the ISO's market systems dispatch resources based on their marginal costs, the resource is guaranteed recovery of its marginal cost-based bid if it is dispatched because it will be paid the market clearing price which will be at or above the resource's marginal costs (depending on whether the resource is marginal and sets the market clearing price).

The Commission cannot overlook the simple fact that, in challenging the ISO's proposal to use a cost-based bid already available to the ISO in its current tariff JPMVEC offers no evidence that generated bids do not cover their marginal costs. Rather, JPMVEC simply asserts that the default energy bid is more appropriate to cover "difficult-to-quantify costs."²⁴ In essence, JPMVEC's confiscation claim is simply a different label for its argument that the November 14 order establishes the default energy bid as a floor for the compensation to be paid to JPMVEC, rather than the cap the Commission ordered. As explained above, this argument is contrary to the plain language of the Commission's order.

The ISO reminds the Commission that the default energy bid is intended for use in the ISO tariff's local market power mitigation provisions. The 10

²² ISO Market Order at P 1276.

²³ ISO Market Order at PP 1279-1286.

²⁴ JPMVEC at 2.

percent adder was designed to ensure these bids are above marginal costs only when a market participant bids a resource above a threshold related to the default energy bid and thus is subject to mitigation for local market power procedures.²⁵ The Commission's decision to permit a 10 percent adder in the context of local market power mitigation is not evidence that the use of generated bids without such an adder for resources will result in confiscatory rates.

Even assuming, *arguendo*, that JPMVEC could demonstrate that a market clearing price based on a generated bid for one of JPMVEC's resources would not result in full cost recovery for JPMVEC, the November 14 order already makes available an option for JPMVEC to avoid this result. Under the order, 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."²⁶ Such a cost-based rate would need to reflect the actual costs of resources controlled by JPMVEC.²⁷ In its Order No. 697 rulemaking, the Commission explained that, where a seller proposes cost-based rates, it must provide cost support for such rates.²⁸ JPMVEC has voluntarily chosen not to make any such cost-based rate showing and instead has opted for a price option that would not require it to make any public cost showing. To the extent a tariff-

²⁵ ISO Market Order at PP 1045-1046.

²⁶ November 14 order at P 53.

²⁷ The Commission's regulations, and in particular, Subparts B and C of Part 35 of the Commission's regulations, set forth detailed requirements for a public utility like JPMVEC that seeks to file cost-based rates.

²⁸ *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 630 (2007).

based price formula is otherwise applicable to JPMVEC, and JPMVEC is not required to make any cost support filing, JPMVEC does not have the right to unilaterally seek some different rate than the applicable tariff rate, unless it makes a separate filing pursuant to Section 205 for cost-based rates.²⁹

Moreover, if JPMVEC develops evidence that provides actual support for its assertion, there is nothing in the November 14 order that would prohibit it from making a cost-based filing at that time. The ISO believes that the cost-based rates contemplated by the November 14 order potentially could be filed at any time. For example, if JPMVEC has evidence that the market clearing price paid under the ISO tariff for the dispatch of JPMVEC's resources during the suspension period did not allow JPMVEC to recover its actual costs, JPMVEC would have the reasonable opportunity to recover its actual demonstrated costs of providing service through a Commission filing with the appropriate cost support.

Similar approaches have long been accepted by the Commission. For example, in its protest, JPMVEC cites a 2006 Commission order in the Western energy crisis refund proceeding to support the proposition that the Commission has a "statutory obligation to ensure than [an ordered rate] does not result in a

²⁹ The ISO has explained in detail in the February 1 ISO transmittal letter at 7-10 and throughout the ISO's February 20 protest in Docket No. ER13-830 that JPMVEC's proposed FERC Electric Tariff No. 4 is a prohibited attempt to modify the ISO tariff. See *El Segundo Power, LLC*, 91 FERC ¶ 61,110 at 61,390 (2000); *TC Ravenswood, LLC*, 133 FERC ¶ 61,087 at P 25 (2010). The ISO has also explained why JPMVEC's proposed FERC Electric Tariff No. 4 is not a cost-based rate that complies with the applicable Commission requirements.

confiscatory rate for any individual seller.”³⁰ That proceeding involved a mitigated market clearing price designed to emulate a competitive market price. The 2006 order notes that the Commission’s refund methodology had a “safety valve” mechanism to ensure that the mitigated rate did not result in confiscatory rates for any seller.”³¹ An earlier order in this same proceeding explained that this safety valve mechanism:

extended to all sellers an opportunity at the conclusion of the refund rehearing to "submit evidence as to whether the refund methodology results in an overall revenue shortfall for their transactions in the ISO and PX spot markets during the refund period." This additional procedure is designed to assure that any refunds will not result in confiscatory rates for any seller due to the application of the ceiling price approach.³²

To address any theoretical concern regarding confiscation, the Commission could clarify that JPMVEC’s opportunity to submit a cost-based showing has not expired as a result of its decision not to do so to date. The opportunity of JPMVEC to submit cost-based rates in accordance with the November 14 order thus would provide JPMVEC with a similar safety valve in this proceeding and would ensure that JPMVEC has every opportunity to avoid any outcome that could lead to confiscatory rates.

³⁰ JPMVEC at 14, *citing San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 114 FERC ¶ 61,070 at P 4 (2006).

³¹ *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 114 FERC ¶ 61,070 at P 6.

³² *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 105 FERC ¶ 61,065 at P 22 (2005), *quoting San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 99 FERC ¶ 61,160 at 61,656 (2002).

C. If Ordered by the Commission, the ISO Is Prepared to Substitute Default Energy Bids for Zero Price Energy Bids during the Suspension Period

Although JPMVEC has failed to provide any support for its claim that the use of the generated bid to establish market clearing prices does not adequately cover the resource's costs, one option the Commission could consider to dispel any JPMVEC concerns that the use of a generated bid under the ISO's proposal is in any way confiscatory is to require the ISO to substitute a default energy bid instead of the generated bid for the zero price bids of a suspended market participant. In the event the Commission opts for this approach, the ISO would be prepared to modify its proposal in response to a Commission directive to provide that: if a market participant with suspended market-based rate authority submits a \$0/MWh bid for a resource during the suspension period, the ISO would replace all of the resource's economic bid segments with a default energy bid based on the variable cost option rather than a generated bid based on the resource's proxy costs.³³ If the Commission wishes to direct this change, the ISO respectfully requests that the Commission issue an order to do so by no later than March 18, as requested in the ISO's February 1 filing.

The generated bid and the default energy bid are two types of cost-based bids already approved by the Commission for use in the ISO markets. Both are intended to cover a resource's marginal costs, and both are used in considering a resource in merit dispatch order through the ISO's market clearing process.

³³ Because the difference between the generated bid and the variable cost default energy bid is the 10 percent adder, in practice the ISO's proposed modification will result in the ISO adding a 10 percent adder to the generated bid for the resource.

While JPMVEC has not demonstrated that it is necessary to provide the 10 percent adder incorporated into the default energy bid, if the Commission were to require the use of the default energy bid as a modification of the ISO's proposal, all of JPMVEC's concerns with the ISO's proposal would be addressed.

The ISO notes that, with or without this modification, the ISO's filing does not change sections 40.6.8 and 43.5.1 of the ISO tariff. Under these existing tariff provisions, if JPMVEC or any other market participant before, during, and after the suspension period, does not bid pursuant to its must-offer obligations, the ISO's systems will automatically insert a generated bid for the must-offer resources without the 10 percent adder, consistent with the existing tariff.

The ISO also emphasizes that substituting some form of cost-based bid for purposes of dispatch and establishing market clearing prices is essential to avoid disruptions to the ISO's markets and to prevent the need for increased reliance on exceptional dispatch during the critical summer period.

Implementation of the November 14 order as proposed by JPMVEC (*i.e.*, dispatch based on \$0/MWh bids) will lead to the out-of-merit dispatch of JPMVEC's resources with JPMVEC earning profits in excess of what it could earn if its market-based rate authority remained in effect while the clearing prices to other market participants are artificially depressed.³⁴ JPMVEC claims that the ISO's reliability and efficiency concerns are unsubstantiated and that the ISO's argument is based on economics not on reliability concerns.³⁵ In fact, the ISO's

³⁴ See Hildebrandt declaration at 16-17.

³⁵ JPMVEC at 2, 7-8.

reliability and efficiency concerns are well documented in the ISO's filing and supported by the declaration of the director of the ISO's Department of Market Monitoring, who explains how the ISO's market rules should result in the dispatch of the most efficient resources for meeting ISO system needs. The ISO's concerns are also supported by other commenters in this proceeding.³⁶

D. The ISO's Proposal Allows Resources to Recover Their Costs When Exceptionally Dispatched

For certain mitigated exceptional dispatches of resources, section 11.5.6.7.3 of the ISO tariff mandates an exceptional dispatch settlement price of the actual energy bid if the applicable locational marginal price is lower than both the energy bid and the default energy bid for the resource. JPMVEC argues that this provision could prevent it from recovering its costs when its units are exceptionally dispatched during the suspension period.³⁷ Any such concern, however, is not the result of the ISO's proposal. Absent the ISO's proposal to replace all of the economic bid segments for the resources of a suspended market participant with a cost-based bid for dispatch and settlement purposes, the applicable energy bid would be the mandated \$0/MWh bid. The ISO clarifies that, under its proposal, the applicable energy bid for applying section 11.5.6.7.3 to a market participant with suspended market-based rate authority will be the

³⁶ See, e.g., Calpine at 3 ("These results are not hypothetical. The CAISO Filing describes how, absent the CAISO proposal to clear its market using proxy bids, a suspended entity operating high heat rate units in Southern California would suppress market clearing prices in that zone significantly reducing the compensation to all market participants.").

³⁷ JPMVEC at 11-12.

generated bid (or the default energy bid if the Commission directs the ISO to make the modification discussed in Section III.C above). For the reasons explained above, the use of either the generated bid or the default energy bid will provide JPMVEC with a full and fair opportunity to recover its costs.

E. There Is No Basis for JPMVEC’s Claim That the ISO Should Have Consulted With JPMVEC

Lastly, JPMVEC complains that the ISO did not “communicate with or attempt to coordinate with JPMVEC regarding implementation of the MBR suspension.”³⁸ This observation should have no bearing on Commission’s consideration of the issues in this proceeding, particularly given that JPMVEC itself did not contact the ISO to discuss JPMVEC’s own proposal to file a tariff that would supersede the ISO tariff in the event of a conflict during the suspension period.

The ISO developed a tariff amendment that addresses the implications of the November 14 order for system reliability and that takes into account the impact of the order (or similar market-based rate suspension or revocation orders) on all market participants. The relatively short time frame for the ISO to consider these important and novel issues precluded a full stakeholder process on the ISO’s proposal. The ISO did not share its proposal with other stakeholders in advance of filing and did not believe that it would be appropriate to share it selectively with JPMVEC. In any event, the comments in this

³⁸ JPMVEC at 4.

proceeding demonstrate that other interested stakeholders view the ISO's tariff amendment as a fair proposal to address the numerous issues resulting from the implementation of the November 14 order in the ISO's markets.

IV. CONCLUSION

The ISO respectfully requests that the Commission approve the ISO tariff modifications proposed in this proceeding, effective as of April 1, 2013. The ISO also requests that the Commission issue an order on the filing by no later than March 18, 2013.

Kenneth G. Jaffe
Sean A. Atkins
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004
Tel: (202) 239-3300
Fax: (202) 654-4875

Respectfully submitted,

/s/Anna McKenna
Nancy Saracino
General Counsel
Roger Collanton
Deputy General Counsel
Anna McKenna
Assistant General Counsel
California Independent System
Operator Corporation
250 Outcropping Way
Folsom, CA 95630
Tel: (916) 608-7135
Fax: (916) 608-7296
Counsel for the
California Independent System
Operator Corporation

Dated: February 28, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party listed on the official service list for these proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C. on February 28, 2013.

/s/ Sean Atkins

Sean Atkins
Alston & Bird LLP
(202) 239-3300