

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

California Independent System  
Operator Corporation

Docket No. ER13-872-001

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
CORPORATION TO THE MOTION TO INTERVENE AND COMMENTS OF  
SOUTHERN CALIFORNIA EDISON COMPANY**

**I. Introduction**

The California Independent System Operator Corporation (ISO) files this Answer to the Motion to Intervene and Comments of Southern California Edison Company (SCE), which was filed in the above-referenced docket on April 24, 2013.<sup>1</sup> SCE's comments express general support for the ISO's efforts at implementing tariff language defining how market participants with suspended market-based rate authority can participate in the ISO markets during the period of suspension. SCE is concerned, however, that a market participant subject to suspension might evade the suspension by hiring a new scheduling coordinator to submit its bids into the ISO markets. SCE accordingly asks the Commission to

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<sup>1</sup> The ISO submits this answer pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2012). Although not styled as such, if the Commission were to deem SCE's filing a protest, then the ISO additionally submits this answer pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.212 (2012), and requests a waiver necessary to permit it to make an answer to SCE's filing. If a waiver were necessary, then good cause for waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case. See, e.g., *Entergy Services, Inc.*, 116 FERC ¶ 61,286, at P 6 (2006); *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,124, at P 11 (2006); *High Island Offshore System, L.L.C.*, 113 FERC ¶ 61,202, at P 8 (2005).

order the ISO to modify its proposed tariff language to reflect that a scheduling coordinator “scheduling on behalf of an entity whose Market-Based Rates are suspended must bid the suspended entity’s units in the same way that the suspended entity would be required to do if it acted as its own [scheduling coordinator].”<sup>2</sup>

## **II. The ISO Agrees with the Principle Stated by the SCE**

Appendix II of the ISO tariff contains the rates, terms, and conditions that specifically apply when the Commission has suspended a market participant’s market-based rate authority but nonetheless has permitted the entity to continue participating in the ISO markets. The ISO agrees with SCE that an entity should not be able to evade application of Appendix II merely by hiring a new scheduling coordinator. The ISO believes, however, that the existing language of Appendix II already addresses this issue. Further, the ISO also notes that a party should not be able to evade the effect of a Commission order no matter what technique is deployed to do so. The Commission’s order and the ISO’s tariff language implementing it were clear as to the intended effect; simply because the tariff language did not enumerate all prohibited ways of evading the order should not make it deficient. However, if so ordered by the Commission, the ISO is prepared to submit additional tariff language providing clarity on the issue raised by SCE.

In its filing, SCE suggests specific edits to the ISO’s proposed tariff language that SCE believes would provide that clarity. SCE’s suggestions

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<sup>2</sup> SCE Comments, at 5.

provide a reasonable start but if the ISO is ordered to make additional changes then the ISO offers further edits to more fully capture what it understands SCE's concern to be. The language SCE proposes to edit lists the conditions of a Commission order that must be met in order for Appendix II to apply. The ISO understands SCE's concern to be with a market participant's conduct in response to a suspension order, rather than the suspension order itself. The ISO does not believe changing the terms of which Commission orders would trigger Appendix II would address SCE's concern.

The introductory paragraph of Appendix II states: "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 . . . where the Federal Energy Regulatory Commission has restricted participation to the following terms." The language is clear that it applies to bids submitted for resources of suspended market participants. The reference to the scheduling coordinator is merely an acknowledgement that under the ISO's market construct, an entity participates in the market through its scheduling coordinator. Thus, the existing language already contemplates that a suspended market participant cannot evade application of Appendix II, and thus its suspension, merely by changing its scheduling coordinator.

To the degree that this point is unclear, rather than amending those "following terms," the ISO believes that amending the introductory paragraph in the following manner would address SCE's concerns more effectively: "This

Appendix provides the rates, terms and conditions that apply to Scheduling Coordinators that submit Bids into the CAISO Markets for any resources controlled by a of Market Participants affected by a suspension or revocation of the Market Participant's market-based rate authority (whether that Market Participant acts as its own Scheduling Coordinator or hires a third party to serve as the Scheduling Coordinator) . . . ." With this clarifying language, there should be no question that the bidding rules in Appendix II apply to any scheduling coordinator bidding in units controlled by the suspended entity and that merely changing scheduling coordinators would not allow an entity to evade a suspension order.

**III. Additional Concerns Raised by Filings in Docket Nos. ER10-2794-012, *et seq.*, and ER10-2712-001**

Two recent filings at the Commission potentially raise a similar concern to that raised by SCE. On April 11, 2013, EDF Trading North America, LLC filed a notice in Commission docket no. ER10-2794-012, *et seq.*, reporting that on March 7, 2013, it executed a swap agreement with BE CA LLC under which EDF would have the right to "purchase all energy, capacity and ancillary services from" Alamitos Generating Station (Units 1 and 2), Huntington Beach Generating Station (Unit 1), and Redondo Beach Generating Station (Units 5 and 8). The swap contract is reported to run from April 1, 2013 through September 30, 2013. Separately, on April 30, 2013, Cargill Power Markets, LLC filed a notice in Commission docket no. ER10-2712-001 reporting that it had acquired control of Alamitos Generating Station (Units 3, 4, and 6) and Redondo Beach Generating Station (Units 6 and 7). Cargill explained that "[t]he range of the entire output of

these five combined facilities is committed under a contract dated from April 1, 2013 through September 30, 2013 . . . .” Cargill’s filing does not state that BE CA LLC is the counterparty in its transaction, nor does it address whether the contract is a swap contract or some other form of agreement.

The information presented in EDF’s and Cargill’s respective filings raise questions as to whether the contracts BE CA LLC has entered into with EDF and Cargill have the same effect of evading a suspension order that SCE rightfully cautions should be prevented.<sup>3</sup> BE CA LLC is a wholly-owned subsidiary of JP Morgan Ventures Energy Corporation (JPMVEC), the entity at issue in the November 14 suspension order. The units covered by the EDF and Cargill contracts together comprise the total capacity previously controlled by JPMVEC and BE CA LLC in California.<sup>4</sup> Additionally, both contracts coincide with the period of JPMVEC’s market-based rate suspension. EDF specifically mentions that its agreement is a swap contract. This fact also raises concerns, as there is precedent for firms using swap contracts to secure a portion of the profit stream from a unit, while masking the identity of a party that has some level of control over the bidding activity.<sup>5</sup>

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<sup>3</sup> Based on the information presented in the Cargill filing it is not clear that Cargill’s contract is with BE CA LLC. For the purposes of this answer, however, the ISO assumes that BE CA LLC is the counterparty.

<sup>4</sup> *J.P. Morgan Ventures Energy Corp. v. Cal. Indep. Sys. Operator Corp.*, Complaint of J.P. Morgan Ventures Energy Corp. Against California Independent System Operator Corp., at 6, FERC Docket No. EL12-105-000 (Sept. 14, 2012) (“During the relevant time period (April 2012 and forward), JPMVEC and BE CA controlled through tolling agreements the following ten generating units operating in the CAISO markets: Alamos Unit Nos. 1 through 4, Alamos Unit No. 6, Huntington Beach Unit No. 1, and Redondo Beach Unit Nos. 5 through 8.”)

<sup>5</sup> *United States v. Morgan Stanley*, Final Judgment, Docket No. 1:11-cv-06875-WHP (Aug. 7, 2012 S.D.N.Y.); *United States v. KeySpan Corp.*, Final Judgment, Docket No. 1:10-CV-01415-WHP (Feb. 2, 2011 S.D.N.Y.).

Based on these factors, it is possible that JPMVEC, through its wholly-owned subsidiary, may be evading the Commission's order by using swap contracts to obtain profits during the suspension period beyond those contemplated in the Commission's suspension order. If JPMVEC were to have done so, then the ISO believes that such actions could be inconsistent with the explicit purpose of the November 14 suspension order. Thus, the ISO believes that in considering any further tariff modifications necessary to apply the Commission's November 14 suspension order, the Commission should stipulate that the proposed language of Appendix II should capture transactions with or by affiliates that are for the purpose of evading the Commission's suspension order, as may be the case with the contracts BE CA LLC entered into with EDF and Cargill. Therefore, if the Commission so orders, the ISO would include additional appropriate language in Appendix II to capture scenarios where a market participant structured transactions to evade its suspension of market-based rate authority. Assuming the Commission were to so order, the ISO further requests direction from the Commission as to whether the contracts recently reported in Commission docket nos. ER10-2794-012, *et seq.*, and ER10-2712-001 were designed to evade the Commission's November 14 suspension order.

#### **IV. Conclusion**

The ISO generally agrees with the spirit of SCE's comments and would not object, if so ordered by the Commission, to making additional changes to its tariff to accommodate SCE's concern. Additionally, two recent filings raise a potentially related concern to that expressed by SCE. As with the issue raised by

SCE, the ISO would not object, if so ordered by the Commission, to making additional changes to its tariff to address other circumstances in which a suspended entity potentially sought to evade a Commission suspension order.

Respectfully submitted,

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Dated: May 9, 2013

## CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service lists in the above-referenced proceedings, 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 Folsom, California this 9<sup>th</sup> day of May 2013.

*/s/ Anna Pascuzzo*  
Anna Pascuzzo