



## **II. MOVANT'S INTEREST**

The ISO is a non-profit public benefit corporation organized under the laws of the State of California, with a principal place of business at 250 Outcropping Way, Folsom, CA 95630. The ISO is the balancing authority responsible for the reliable operation of the electric grid comprising the generation and transmission systems of a number of facilities placed under the ISO's operational control. The ISO conducts markets for energy and ancillary services transactions under the provisions of the ISO Open Access Transmission Tariff.

The ISO has an obvious interest in the integrity of the markets that it conducts so that it may provide an environment in which all parties may participate on a fair and equal basis and so that it may foster the confidence of market participants, ratepayers and the general public in the proper functioning of the ISO markets. To achieve this objective, market participants must behave with honesty and candor in their dealings with the ISO. The ISO's interests also include ensuring the adequacy and availability of the resources that are available to participate in its markets.

The ISO supports the Commission taking strong and decisive action to address conduct that does not comport with these principles. Protecting our market integrity and ratepayer interests are key tenets of an independent system operator. To do this we must set expectations for appropriate conduct and enforce them effectively.

In furtherance of the ISO's interest in preserving the integrity of its markets, the ISO's Tariff requires market participants to provide accurate and timely data and information to DMM.<sup>2</sup> A material misrepresentation of any information that a market participant is required to provide under the ISO's Tariff may constitute a violation of

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<sup>2</sup> ISO Tariff, Appendix P, section 8.5.

various obligations under the Federal Power Act (“FPA”) and the Commission’s implementing regulations.

In 2005, the Commission authorized J.P. Morgan Ventures Energy Corporation (“JPMVEC”) to sell electric energy, capacity, and ancillary services at market-based rates in several regions, including the ISO markets. *See J.P. Morgan Ventures Energy Corp.*, 112 FERC ¶ 61,322 (2005). JPMVEC continues to be an active participant in ISO markets.

As recounted in the Order to Show Cause<sup>3</sup>, the factual antecedents of this matter include certain bidding activities in ISO markets by JPMVEC that became the subject of data requests from the ISO’s Department of Market Monitoring (“DMM”), later referrals by DMM to the Commission’s Office of Enforcement, and further investigation by DMM conducted at the direction of the Office of Enforcement.<sup>4</sup>

The Commission’s Order to Show Cause refers to JPMVEC as “JP Morgan” and directs it to:

show cause why it should not be found to have violated section 35.41(b) of the Commission’s regulations under the Federal Power Act (FPA). JP Morgan is alleged to have violated section 35.41(b) by submitting misleading information and omitting material facts in communications with the Commission, the California Independent System Operator Corporation (CAISO), and CAISO’s Department of Market Monitoring (DMM). The Commission further directs JP Morgan to show cause why JP Morgan’s authorization to sell electric energy, capacity, and ancillary services at market-based rates should not be suspended.

Order to Show Cause at P. 1.

JPMVEC is subject to the terms and conditions of the ISO’s Tariff. Suspension of JPMVEC’s market-based rate authority, or other remedies that the Commission may

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<sup>3</sup> *J.P. Morgan Ventures Energy Corp.*, 140 FERC ¶ 61,227 (2012) (“Order to Show Cause”).

<sup>4</sup> *Id.* at PP. 5-13.

impose, will have a direct effect on the ISO's interests in the markets it operates and the services it provides. The ISO has a direct and immediate interest in the outcome of this proceeding that cannot be adequately represented by any other party. Accordingly, good cause exists to permit the ISO to intervene in this proceeding and for it to participate with full rights as a party.

### **III. MOVANT'S COMMENTS**

#### **A. The Allegations in the Show Cause Order Merit the Careful Attention that the Commission is Giving Them.**

The ISO recognizes the importance of ensuring compliance with the Commission's market behavior rules, and agrees that serious sanctions are appropriate if the Commission concludes that material misrepresentations have occurred. The ISO will actively participate in this proceeding, as the Commission deems appropriate.

The ISO takes very seriously its responsibilities for maintaining the integrity of the markets it operates and approaches those responsibilities with diligence and care. The justness and reasonableness of the prices charged in those markets, and the confidence of market participants and the public in the ISO's markets, require nothing less. In this case, DMM believed that it had identified market conduct that might merit referral to FERC's Office of Enforcement and sought additional information from JPMVEC. Those events led to the facts that are chronicled in the Order to Show Cause. When the DMM calls for information from a market participant, forthright and honest answers must be provided in a timely manner.

As the Commission observed in the Order to Show Cause, "[t]he integrity of the Commission's process ensuring that market-based transactions result in just and reasonable rates, as required by sections 205 and 206 of the FPA, relies on the openness

and honesty of market participants in their communications with the Commission and other jurisdictional entities.”<sup>5</sup> It is essential that market participants act with candor and honesty when responding to requests for information regarding matters under investigation. This is especially true where, as here, the communications occur in the context of an investigation by the ISO’s market monitor into potential market misconduct by a market participant that controls resources that the ISO relies upon to operate the grid reliably.

This proceeding reflects the careful and measured attention the Commission and its staff pay to the ISO’s markets. The ISO supports taking decisive action where a market participant does not comport with the Market Behavior Rules, and believes that the appropriate sanction could well be suspension of market-based rate authority or some similar sanction to protect the integrity of the ISO’s markets.

**B. The Commission Should Consider Expanding the Order to Show Cause to Include a Subsidiary of JPMVEC as a Respondent.**

The Order to Show Cause requires a response from JPMVEC based on specific conduct attributed to JPMVEC. However, the Commission should consider expanding the scope of the Order to Show Cause to include BE CA LLC (“BE CA”), as a respondent. BE CA is a subsidiary of JPMVEC that may have been involved in the conduct at issue in the Order to Show Cause.

BE CA appears to hold its own market-based rate authority, in addition to the market-based rate authority held by JPMVEC.<sup>6</sup> Submissions by JPMVEC in other proceedings, moreover, suggest that BE CA may control some or all of the underlying

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<sup>5</sup> Order to Show Cause at P. 2 (footnote omitted).

<sup>6</sup> *BE Allegheny LLC et al.*, Letter Order, Docket Nos. ER07-1112 *et al.* (Aug. 9, 2007).

facilities and thus, may be involved in submitting bids on behalf of JPMVEC in the ISO market.

In its August 17, 2012 Asset Appendix filed in Docket No. ER10-2331 *et al.* J.P. Morgan Chase & Company identifies BE CA LLC as controlling numerous facilities in the ISO market. The Commission is able to identify which of those facilities are involved in the conduct specified in this proceeding.

In its September 14, 2012 Complaint against the ISO in Docket No. EL12-105-000, JPMVEC stated that it was operating in the ISO markets through tolling agreements held by JPMVEC “and its subsidiary BE CA LLC.”<sup>7</sup> JPMVEC stated that BE CA is a “Delaware corporation and indirect, wholly-owned subsidiary of JPMVEC” that is “authorized to sell energy, capacity, and ancillary services in the CAISO’s market at market-based rates.”<sup>8</sup> JPMVEC asserted that BE CA has the “right to dispatch and purchase the output of certain generating facilities in the CAISO’s markets through tolling agreements.”<sup>9</sup>

These facts suggest that the Commission may wish to expand the Show Cause proceeding to include BE CA as an additional respondent, if for no other reason than to avoid the risk of having an affiliate of JPMVEC circumvent and frustrate any remedy the Commission may determine is appropriate.

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<sup>7</sup> Complaint of J.P. Morgan Ventures Energy Corp. Against California Independent System Operator Corp. at p. 1, Docket No. EL12-105 (Sept. 14, 2012).

<sup>8</sup> *Id.* at p. 5.

<sup>9</sup> *Id.*

**C. The Commission Should Consider Operational Factors When it Determines Whether to Suspend JPMVEC's Market-Based Rate Authority.**

There are many matters to consider in determining whether to suspend a market participant's market-based rate authorization for acts such as those described in the Order to Show Cause. In addition to considering the punitive and deterrent effects of its contemplated order and protecting against offense to regulation itself, the ISO submits that the Commission also should consider operational factors that may affect the ISO's markets.

JPMVEC and its subsidiaries control ten generating units in the ISO markets through tolling agreements with the units.<sup>10</sup> These facilities are located in Southern California, a high load area that experiences high temperatures during certain parts of the year. Collectively, the energy and capacity that is available from these facilities plays a significant role in enabling the ISO to reliably meet system needs. It therefore is important that any remedy imposed in the proceeding does not result in the ISO losing access to the energy and capacity provided by these facilities.

The Commission should consider the operational need for these facilities in connection with determining the most appropriate remedy for any violations it may find. This need should not be a basis for reducing the severity of any sanction. In fact, the contrary may be true. Nevertheless, any remedy must be tailored in a manner that accounts for this need and considers any operational impacts the ISO and its markets may confront if their ability to call on those facilities is compromised. The Commission also

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<sup>10</sup> *Id.* at p. 6.

should consider how the resources would be dispatched into the ISO's markets in the context of any remedy it may impose.

**IV. CONCLUSION**

For the reasons set forth above, the ISO requests that the Commission grant its motion to intervene, according it full-party status in the proceeding, and further requests that the Commission consider expanding the scope of the proceeding, to include BE CA, consistent with the comments herein.

Respectfully submitted,

*/s/ Lawrence G. Acker*

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## CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served the foregoing document upon all parties on the official service list compiled by the Secretary of the Commission in this proceeding.

Dated at Washington, D.C., this 17th day of October, 2012.

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