

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

**J.P. Morgan Ventures Energy Corp.,  
Complainant,**

**v.**

**California Independent System  
Operator Corporation,  
Respondent**

**Docket No. EL12-105-000**

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
CORPORATION TO COMPLAINT**

The California Independent System Operator Corporation (“ISO”) hereby submits its answer (“Answer”) to the complaint (“Complaint”) filed in this proceeding by J.P. Morgan Ventures Energy Corp. (“J.P. Morgan”).<sup>1</sup>

**I. INTRODUCTION AND SUMMARY OF ARGUMENT**

J.P. Morgan’s Complaint is an attempt to contravene the settlement statement dispute review process established in the ISO’s tariff. Contrary to J.P. Morgan’s unsupported speculation, the ISO has not sought to impose mitigation on any grounds other than those permitted by the ISO’s tariff. Each of the 18 exceptional dispatches J.P. Morgan included in its Complaint was mitigated because the ISO’s settlement systems and processes flagged the dispatch as falling within one of the three permitted categories for mitigation set forth in section 39.10 of the ISO’s tariff.<sup>2</sup> J.P. Morgan has only recently challenged the mitigation determination for these 18 exceptional

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<sup>1</sup> The ISO submits this filing pursuant to Rules 206(f) and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.206(f), 385.213 (2010).

<sup>2</sup> See Attachment A, Declaration of Michael Turner (“Turner Decl.”) at ¶ 8.

dispatches, as well as for more than 100 other exceptional dispatches, through the ISO's established process for addressing settlement statement disputes. The ISO informed J.P. Morgan that, consistent with the procedure established in its tariff for addressing such disputes, the ISO is reviewing and evaluating all of the disputed settlements and will convey its conclusions as soon as its analysis is concluded.<sup>3</sup> Rather than allowing that process to take place, J.P. Morgan seeks to preempt it by filing a premature Complaint challenging a subset of the disputed settlements.

The Commission should not allow J.P. Morgan to disregard the ISO's Commission-approved settlement statement dispute review process. As discussed below, this process includes provisions directly applicable here that ensure the ISO will have sufficient time to fully review and investigate complex settlement disputes before a complaint may be filed and Commission resources must be expended to resolve it. These provisions protect J.P. Morgan by requiring the ISO to pay interest on any payments that may ultimately be owed depending on the outcome of the ISO's investigation. They also ensure that the Commission's resources are not wasted by prematurely litigating billing and settlement issues that are not ripe for review. The Commission recently considered these procedures and expressly approved them as consistent with the Commission's policy guidance. There is no basis for overturning the ISO's settlement dispute process here, especially given that J.P. Morgan does not even allege (let alone purport to make any showing) that this process is unjust and unreasonable.

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<sup>3</sup> Turner Decl. at ¶¶ 9, 11-12; see also Exhibit 1 to Turner Decl. (August 31, 2012 letter from ISO to J.P. Morgan).

The ISO brought these rules to J.P. Morgan's attention in a letter sent before J.P. Morgan filed its Complaint that explained why they were applicable here. J.P. Morgan did not respond to this showing. Instead, it chose to ignore the ISO's tariff and the letter and filed a Complaint that fails entirely to address this central issue.

Because the ISO's settlement statement dispute review process is ongoing, J.P. Morgan's Complaint is premature and inconsistent with the ISO's tariff. As it has done in other similar contexts, the Commission should dismiss the Complaint without prejudice, thus permitting J.P. Morgan to file a complaint if it is dissatisfied with the ISO's determination once the review process has concluded.

## **II. BACKGROUND**

The history of the settlement disputes at issue in J.P. Morgan's Complaint is set forth in detail in the attached declaration of Michael Turner, the ISO's Manager of Market Settlement Validation and Resolution. As Mr. Turner explains, J.P. Morgan first began challenging the mitigation of exceptional dispatches on ISO settlement statements in July and has initiated additional disputes to settlement statements in August and September. For 17 of the 18 exceptional dispatches J.P. Morgan chose to include in its Complaint, all of which occurred in April through June, J.P. Morgan initiated the settlement statement disputes with the ISO in July and August, including as recently as August 24. For the remaining exceptional dispatch raised in the Complaint—the dispatch of one of the Redondo units on May 3, 2012 – the ISO's records indicate that J.P. Morgan has not yet initiated a dispute. As discussed below, the ISO is in the

middle of its process for investigating and evaluating these disputes, and has informed J.P. Morgan of this status.<sup>4</sup>

The disputes included in J.P. Morgan's Complaint are a subset of a larger number of settlement statement disputes recently initiated by J.P. Morgan for exceptional dispatches. On various dates starting in mid-August through September 26, J.P. Morgan has initiated 11 more settlement statement disputes regarding mitigation determinations for 115 additional dispatches that took place on 35 different dates in July and August. The ISO is also in the middle of reviewing those disputes.<sup>5</sup>

The ISO's authority to mitigate the bid price for an exceptional dispatch is set forth in section 39.10 of its tariff. That provision provides for the ISO to mitigate the price to be paid for exceptional dispatches when the resource was dispatched for one or more of three purposes: (1) addressing reliability requirements related to non-competitive transmission constraints; (2) ramping resources that have "Ancillary Services Awards or RUC Capacity" to a dispatch level that ensures they will be available in real time, or (3) addressing environmental constraints relating to the dispatch of units in the Sacramento Delta, which is commonly referred to as "Delta Dispatch".<sup>6</sup> For all of the dispatches for which J.P. Morgan has initiated settlement disputes, including the 18 dispatches at issue in its Complaint, the ISO imposed mitigation during the settlements process because the ISO's settlements systems flagged the dispatches as falling into one or more of these categories.<sup>7</sup> There is no

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<sup>4</sup> Turner Decl. at ¶¶ 6-7, 9.

<sup>5</sup> *Id.* at ¶¶ 7-9.

<sup>6</sup> ISO Tariff, §39.10.

<sup>7</sup> Turner Decl. at ¶ 8.

basis for the suggestion in J.P. Morgan's Complaint that the ISO has "unilaterally and retroactively implement[ed] a new" form of mitigation not permitted by the tariff.<sup>8</sup>

As the Commission is aware, the ISO has recently made a tariff amendment filing seeking authority to enhance the ISO's mitigation authority by proposing to add a new category of dispatches to its existing authority under section 39.10.<sup>9</sup> The ISO made clear in that filing both that its proposed enhancement would be prospective only and that the mitigation the ISO had imposed to date was undertaken pursuant to its *existing* mitigation authority.<sup>10</sup> These statements, which J.P. Morgan acknowledges in its Complaint<sup>11</sup>, belie J.P. Morgan's assertion that it filed the Complaint based on an alleged understanding that the ISO was purporting to engage in the retroactive application of tariff authority it had not yet received.

The ISO is currently engaged in a careful and complete review of all of the 133 exceptional dispatches that J.P. Morgan has disputed, pursuant to the settlement statement dispute process established in the ISO's tariff. As Mr. Turner details in his declaration, this process commenced promptly upon receipt of the first disputes and is a time-consuming undertaking that involves detailed data collection and analysis involving multiple groups within the ISO.<sup>12</sup> Moreover, given the large number of disputed dispatches and the substantial monetary amounts at issue, it is important to ensure that

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<sup>8</sup> J.P. Morgan Complaint at 15.

<sup>9</sup> The ISO made this filing on August 28, 2012 and has sought an effective date of August 29, 2012. See *Cal. Indep. Sys. Operator Corp.*, Docket No. ER-12-2539-000.

<sup>10</sup> *Id.*, ISO Transmittal Letter at 1, 4-5, 8-9, 13; see also *id.*, Attachment D (Dr. McDonald Testimony) at 5-6, 17-18 (distinguishing between existing mitigation provisions and new proposed mitigation authority sought on a prospective basis).

<sup>11</sup> J.P. Morgan Complaint at 14 ("In the August 28 Filing, CAISO represented to the Commission that it has been using its *existing mitigation authority* to mitigate payments made for certain Exceptional Dispatches to one 'market participant.'") (emphasis added).

<sup>12</sup> Turner Decl. at ¶¶ 6, 9-10.

the ISO has a full and complete understanding of the information it is gathering so that it can evaluate the settlement disputes based on fully verified information and ensure that its determinations are consistent.<sup>13</sup>

In light of these requirements, the ISO has designated these settlement disputes as “complex” under section 11.29.8.5 of the ISO’s tariff, the provision governing the timeline for the ISO to consider and resolve settlement statement disputes.<sup>14</sup> This provision, which is discussed in more detail below, allows the ISO to designate as “complex” settlement statement disputes that it has determined “in its sole discretion” will require more time than usual to address because they “entail extensive research,” require the collection and review of “complicated data” or fall into one of several other categories involving greater work than normal.<sup>15</sup> Where, as here, such a designation is made in connection with the first or second recalculation settlement statement issued by the ISO, the tariff requires the ISO to “make reasonable efforts to reach a determination to approve or deny” the dispute(s) “no later than fifteen (15) months after” the applicable trading day(s) so that the resulting adjustment can be included on the recalculation settlement statement that the ISO is scheduled to provide 18 months from the applicable trade date(s).<sup>16</sup>

The ISO timely informed J.P. Morgan that the disputes were being designated as complex on August 30, 2012 through the communication portal used by the ISO for ongoing settlement issues with market participants and followed up with a letter on

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<sup>13</sup> *Id.* at ¶ 9.

<sup>14</sup> *Id.* at ¶ 10.

<sup>15</sup> ISO Tariff, § 11.29.8.5(c).

<sup>16</sup> *Id.*

August 31, 2012 (“August 31 letter”) explaining the basis for the ISO’s conclusion.<sup>17</sup>

The August 31 letter discussed the history of the disputes as set forth above, explained the importance of performing a complete and thorough analysis of the disputes, informed J.P. Morgan that the ISO is currently in the middle of this review, and committed to communicate the results of the ISO’s analysis as soon as the ISO has completed its analysis.<sup>18</sup> The ISO did not state, as J.P. Morgan appears to suggest, that it had not yet commenced its analysis.<sup>19</sup> Nor did the ISO state that it would take “up to 15 months to investigate and resolve” the disputes, as J.P. Morgan’s selective quotation of the letter would seem to suggest.<sup>20</sup> The ISO did inform J.P. Morgan that the tariff provision provides for a period of up to 15 months to resolve the dispute. But J.P. Morgan fails to mention that the ISO’s letter also specifically informed J.P. Morgan that the ISO “intend[s] to complete [its] investigation and resolve these disputes in a much more expeditious manner than this designation would allow.” The letter also informed J.P. Morgan that it would be entitled to receive interest under the ISO’s tariff if the review concludes that any upward adjustments are necessary and invited J.P. Morgan to contact the ISO to discuss these matters further.<sup>21</sup>

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<sup>17</sup> Turner Decl. at ¶¶ 11-12 & Ex. 1 (August 31 letter).

<sup>18</sup> *Id.*

<sup>19</sup> In its Complaint, J.P. Morgan makes misleading use of selective quotations from the letter to create the impression that the ISO had not yet commenced its investigation. See Complaint at 14 (asserting that: “Instead, CAISO surprisingly stated that it still needed to ‘thoroughly research and evaluate the factual circumstances surrounding, each challenged dispatch.’”). J.P. Morgan omits the next sentence of the ISO’s letter, which states: “Please be assured that **we are actively doing so** and will communicate our conclusions on these disputes as soon as we have completed our analysis.” August 30 letter at 1 (emphasis added).

<sup>20</sup> See J.P. Morgan Complaint at 14.

<sup>21</sup> Turner Decl. at ¶ 12 & Ex. 1 (August 31 letter) at 2.

J.P. Morgan did not respond to the ISO's August 31 letter and instead chose to file the Complaint that is currently before the Commission.<sup>22</sup>

### III. ARGUMENT

#### A. J.P. Morgan's Complaint Improperly Interferes with the ISO's Settlement Dispute Process.

J.P. Morgan's Complaint is an improper attempt to short circuit the ISO's Commission-approved process for addressing and resolving challenges to its settlement statements. Section 11.29.8.5 of the ISO's tariff expressly provides that, in the case of "[c]omplex settlement statement disputes," the general requirement that the ISO resolve a dispute within 31 business days after the end of the dispute period for the settlement statement is inapplicable, and the ISO is instead required only to "make reasonable efforts to reach a determination to approve or deny" the dispute within "fifteen (15) months" of the trading dates at issue.<sup>23</sup> It is, of course, undisputed that the ISO is nowhere near approaching this deadline. To the contrary, for all but three of the exceptional dispatches at issue in the Complaint, J.P. Morgan filed its Complaint less than 45 calendar days after initiating the dispute and, for one of those dispatches, J.P. Morgan has not yet even initiated a settlement dispute.<sup>24</sup>

The Commission has recently made clear, moreover, that this timeline is just and reasonable and binding on the parties, thus preventing the premature filing of

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<sup>22</sup> Turner Decl. at ¶ 13.

<sup>23</sup> ISO Tariff, § 11.29.8.5(c).

<sup>24</sup> See Turner Decl. at ¶ 6. For all thirteen of the April dispatches, J.P. Morgan did not initiate a dispute until August 1, 2012. For the May 8 dispatch, J.P. Morgan did not initiate a dispute until August 24, 2012. Based on a review of the ISO's records, J.P. Morgan has not yet initiated a dispute for the May 3 dispatch. *Id.* Although it is premature to consider or litigate the merits of the May 3 dispatch at this juncture, the ISO reserves the right to potentially challenge it as untimely due to J.P. Morgan's apparent failure to dispute the applicable settlement statement within the time period permitted by the tariff. See ISO Tariff, § 11.29.8.3.1 (setting 14 business day deadline for a market participant to raise a dispute regarding a recalculation settlement statement).

complaints. Specifically, in its 2010 decision approving the timeline for resolving complex disputes, the Commission held that the ISO's deadlines for resolving settlement disputes are a "key parameter in the settlement process" that are properly established in binding tariff provisions.<sup>25</sup> It further held that the ISO's proposed "dispute response timeline," including the provisions governing the timeline for resolving complex disputes, provide sufficient "certainty and finality" to parties who wish to challenge a settlement statement and therefore "fully comply" with the Commission's directives in this area.<sup>26</sup> The Commission went on to explain that while the time period for resolution of a complex dispute establishes a "considerable period of time [for a scheduling coordinator] to wait for a matter to be resolved, any harm that a scheduling coordinator may suffer is substantially mitigated by the requirement that interest be applied to any incremental changes" in payments ultimately owed.<sup>27</sup> The Commission thus has already made a determination that requiring a party to wait until the completion of the settlement statement dispute resolution process to pursue other remedies is the appropriate course in light of the ISO's obligation to pay interest on any amount the ISO determines should be returned to the market participant. There is no basis for J.P. Morgan to challenge the Commission's prior determination on this matter, nor has J.P. Morgan raised any such basis in its Complaint. In any event, the time for raising such arguments would have been when the Commission was establishing the timelines and procedures for resolving settlement statement disputes, rather than collaterally attacking

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<sup>25</sup> *Cal. Indep. Sys. Operator*, 130 FERC ¶ 60,134 (2010) ("January 21, 2010 Order"), at P 16.

<sup>26</sup> *Id.* at PP 11, 17.

<sup>27</sup> *Id.* at P 17.

the procedures through a complaint case that seeks to proceed in a manner that is inconsistent with them.

J.P. Morgan also has no basis for challenging the ISO's designation of the disputes as complex. As discussed above and in the declaration of Mr. Turner, gathering and evaluating all of the relevant data for the more than 130 exceptional dispatches that J.P. Morgan has disputed is a time-consuming undertaking that involves "an extensive amount of research" and related work.<sup>28</sup> For all of the disputed dispatches, this process includes collection and review of detailed information that includes analysis of systems data to determine why the dispatch was flagged for mitigation at a particular stage in the settlements process, review of logging data and related documentation, and analysis of detailed data regarding the operational conditions at the time of the disputed dispatch.<sup>29</sup> Treating these disputes as complex also furthers one of the objectives underlying this provision, which is to ensure that the ISO has sufficient time to carefully review disputes to ensure that similar issues are resolved in a consistent manner.<sup>30</sup> Moreover, the tariff and the Commission's decision approving it expressly provide that the ISO has "sole discretion" to designate a settlement statement as complex, thus preventing J.P. Morgan from instituting litigation that would require the Commission to adjudicate whether a "complex" designation is appropriate.<sup>31</sup>

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<sup>28</sup> Turner Decl. at ¶¶ 9-10.

<sup>29</sup> *Id.*

<sup>30</sup> See January 21, 2010 Order at P 14.

<sup>31</sup> ISO Tariff, § 11.29.8.5(c); see also January 21, 2010 Order at P 14 ("The CAISO will have the sole discretion to designate a dispute as complex . . . .")

J.P. Morgan's attempt to bring suit without first exhausting the settlement statement dispute review process not only contravenes the tariff, but also seeks to disrupt the Commission's adjudicatory processes. If market participants are permitted to bring disputes before the Commission before the fact gathering and analysis that is the cornerstone of the settlement statement dispute resolution process is completed, the Commission's adjudicatory resources will be improperly overburdened. This will occur both because the Commission will be called upon to resolve disputes that could have been resolved without resort to the Commission's complaint process and because, for disputes that cannot be resolved, the Commission will be called upon to address a larger array of factual issues than would be the case if the settlement dispute resolution process were allowed to run its course.

**B. The Complaint Should Be Dismissed Without Prejudice.**

Because no party has previously disregarded the settlement statement resolution deadlines in the ISO tariff by filing a premature section 206 complaint, the Commission has no precedents specifically addressing this practice. The Commission has, however, on various occasions dismissed as premature complaints that seek to short-circuit binding arbitration provisions set forth in a utility's tariff or other Commission-approved agreements.<sup>32</sup> The Commission has explained such requirements are proper and should be given binding effect in order to ensure that parties "attempt to resolve their disputes before bringing them before the Commission."<sup>33</sup> This reasoning applies with

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<sup>32</sup> See, e.g., *Strategic Energy L.L.C. v. Cal. Indep. Sys. Operator*, 95 FERC ¶ 61,312, at ¶¶ 62,069 (2001); *affirmed on rehearing* 96 FERC ¶ 61,146, at ¶ 61,629 (2001); *American Municipal Power-Ohio, Inc. v. Toledo Edison Co.*, 47 FERC ¶ 61,284, at ¶ 62,004 (1989); *North Carolina Eastern Municipal Power Agency v. Carolina Power & Light Co.*, 45 FERC ¶ 61,487, at ¶ 62,519 (1988).

<sup>33</sup> *Midwest Indep. Sys. Operator, Inc.*, 115 FERC ¶ 61,177 (2006) at P 12; *Pacific Gas & Elec. Co. et al*, 81 FERC ¶61,122, at ¶ 61,489 (1997).

even greater force in this context, where a party is seeking to involve the Commission before the ISO has an opportunity to complete even the settlement statement dispute review process established by the tariff – a process that necessarily occurs long before any arbitration procedures might potentially come into play. Allowing a party to bring a complaint at this early juncture would put the Commission in the position of adjudicating, often on a piecemeal basis, disputes that may well be resolved by the parties through further analysis and discussion in the ISO’s settlement statement dispute process.

Consistent with its precedents in this related context, the Commission should dismiss J.P. Morgan’s Complaint on the ground that it is premature. The dismissal can be without prejudice to J.P. Morgan raising a complaint in the future, if any issues remain after the ISO’s settlement dispute resolution processes have concluded. This outcome fully protects any legitimate interest that J.P. Morgan may ultimately have to pursue a future complaint, while respecting the ISO’s Commission-approved process for resolving such disputes.

#### **IV. COMMUNICATIONS**

All service of pleadings and documents and all communications regarding this proceeding should be addressed to the following:

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**V. CONCLUSION**

For the reasons explained above, the Commission should deny J.P. Morgan's Complaint as premature and dismiss it without prejudice.

Respectfully submitted,

**By: /s/ Burton Gross**

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## **ATTACHMENT A**

*Declaration of Michael Turner*

**UNITED STATES OF AMERICA  
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**J.P. Morgan Ventures Energy Corp.,  
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**California Independent System  
Operator Corporation,  
Respondent**

**Docket No. EL12-105-000**

**DECLARATION OF MICHAEL TURNER**

I, Michael Turner, do hereby declare and state:

1. My name is Michael Turner, and I am an employee of the California Independent System Operator Corporation ("ISO"). My business address is 250 Outcropping Way, Folsom, CA 95630.
2. I currently serve as the ISO's Manager of Market Settlement Validation and Resolution within the ISO's Market Services department. In this capacity, I manage a group of employees that is responsible for, among other tasks, gathering and evaluating data to assist the ISO in addressing disputes or inquiries raised by market participants concerning the ISO's settlement statements. My group also is involved in developing and implementing the ISO's response to such inquiries or disputes.
3. In my role as Manager of Market Settlement Validation and Resolution, I have supervised and directly participated in the ongoing process of evaluating and

addressing various currently active settlement statement disputes that J.P. Morgan Ventures Energy Corp. (“J.P. Morgan”) has recently raised regarding the amount it is entitled to receive for certain exceptional dispatches of energy from units controlled by J.P. Morgan. With one exception (discussed below), these disputes include the 18 exceptional dispatches that J.P. Morgan has chosen to include in the complaint that it filed with the Commission on September 14, 2012 (the “Complaint”).

**A. Overview and Summary of Declaration.**

4. My declaration provides a summary and timeline of the disputes that J.P. Morgan has submitted to the ISO challenging the payment amounts appearing on its settlement statements for exceptional dispatches of energy from units controlled by J.P. Morgan. As discussed below, my declaration demonstrates that the 18 exceptional dispatches that are identified in J.P. Morgan’s Complaint are actually a subset of a larger number of exceptional dispatch payments that J.P. Morgan has recently disputed. For each of the exceptional dispatch payments that J.P. Morgan has disputed, the ISO’s settlement systems and processes have flagged the dispatch as falling into one of the three categories for which the ISO’s tariff (specifically section 39.10) requires the ISO to mitigate the payment down to an amount lower than the resource’s bid price. In its settlements disputes submitted to the ISO, J.P. Morgan contends that this mitigation determination is incorrect and that, in each case, it should have been paid its full bid price.

5. As the ISO has made clear to J.P. Morgan on several occasions, including in the August 31, 2012 letter to J.P. Morgan discussed below, the ISO is currently in the middle of researching and evaluating all of these disputed exceptional dispatches pursuant to the dispute review process established in the ISO's tariff and will communicate the results of its analysis to J.P. Morgan as soon as that analysis is completed. The ISO has further informed J.P. Morgan that if, as a result of this review, the ISO ultimately determines that mitigation of any of these dispatches were in error, an appropriate payment adjustment will be made with applicable interest. The ISO's settlement statement dispute evaluation process is ongoing and the ISO has not yet concluded its review of J.P. Morgan's disputed settlement statements.

**B. Summary of the Disputes and the Ongoing Investigation Process.**

6. The 18 exceptional dispatches that J.P. Morgan identifies in its Complaint involve dispatches of several units controlled by J.P. Morgan that took place on April 13-17, April 21, May 3, May 8, June 13-14, and June 27, 2012. The relevant settlement disputes, however, were initiated much more recently than the underlying dispatch dates. Based on my review of the Customer Inquiry Dispute and Information ("CIDI") system that the ISO uses to track billing and settlement disputes, it appears that J.P. Morgan has not to date submitted a dispute for the May 3 exceptional dispatch identified in its Complaint. The settlement disputes for the other trade dates were initiated in July and August of 2012. Specifically, J.P. Morgan initiated the disputes for the April dates in its Complaint on August 1,

2012 and initiated the dispute for the May 8 dispatch on August 24, 2012. The disputes for the June 13-14 and June 27 dispatches were initiated by J.P. Morgan on July 2, 3, and 17, respectively. My staff promptly commenced researching these disputes as soon as they were filed.

7. In addition to the disputes included in the Complaint, J.P. Morgan has to date initiated eleven other pending disputes challenging mitigation imposed by the ISO for exceptional dispatches that took place in July and August for units controlled by J.P. Morgan. These exceptional dispatches took place on July 9, July 11, July 16, July 18-22, July 25, July 30-31, August 1-2, August 6-24, and August 27-31, 2012 and involved a total of 115 separate exceptional dispatches. J.P. Morgan initiated disputes for these dispatches on various dates between August 13 and September 24. The amounts at issue for these disputes are substantially larger than for the April-June disputes.
8. For all of the exceptional dispatches that J.P. Morgan has to date disputed, the ISO imposed mitigation because its settlement systems and processes identified the dispatches as falling into one of the three categories for which mitigation is required under section 39.10 of the ISO tariff. In some instances, the ISO's systems flagged the dispatch as falling within a mitigated category before the first recalculation settlement statement that the ISO issues on the twelfth business day after the applicable trade date (the "T+12B statement"). In other instances, the ISO's systems picked up the dispatch and flagged it as falling within a mitigated category during the period between the T+12B statement and the second

recalculation settlement statement that the ISO issues within 55 business days of the applicable trade date (the “T+55B statement”).

9. The ISO is currently investigating each of the 133 exceptional dispatches that J.P. Morgan has to date disputed, including all of the 18 dispatches that J.P. Morgan chose to include in its Complaint. For all of the disputed dispatches, the ISO’s analysis includes investigating the settlement coding to determine why the dispatch was flagged for mitigation and the reasons for its timing within the ongoing settlement process, reviewing all logging and related documentation regarding the reason for the dispatch, and gathering and analyzing detailed data concerning the operational conditions in existence at the time of each disputed dispatch. This work, which is ongoing, involves data collection, analysis and review by multiple groups within the ISO in addition to work done directly by the employees that I manage. Given the large number of dispatches at issue, this review and analysis involves an extensive amount of research. It is, moreover, important for the ISO to evaluate these dispatches both individually and together, in order to ensure that the ISO’s approach in analyzing and evaluating these disputes is consistent across the challenged dispatches and is premised on a full understanding of the data and information gathered by the ISO.

10. As the number of dispatches that were disputed grew with the influx of the various new disputes that J.P. Morgan initiated throughout August, the ISO concluded that the disputes should be designated as “complex” pursuant to the procedure set forth in section 11.29.8.5 of the ISO’s tariff. This provision authorizes the ISO to

take additional time to evaluate and resolve settlement disputes that “entail extensive research” or other circumstances that render the dispute more complicated than a typical dispute. This tariff provision requires the ISO to “make reasonable efforts to reach a determination to approve or deny a complex dispute” arising from a T+12B or T+55B settlement statement “no later than fifteen (15) months after” the trading date or dates at issue in the dispute.

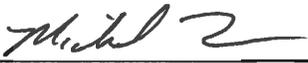
11. On August 30, 2012, the ISO designated the pending J.P. Morgan settlement disputes as complex and communicated this designation to J.P. Morgan through messages posted on the CIDI case file for each of the disputes. This is the standard method that the ISO uses to communicate with a market participant (including J.P. Morgan) on open settlement disputes.
12. In addition, on August 31, 2012 the ISO followed up with a letter to J.P. Morgan reiterating that the disputes had been designated as complex. In the letter, which is attached as Exhibit 1 to my declaration, the ISO informed J.P. Morgan that the ISO was actively engaged in a thorough review of every challenged dispatch and would communicate its conclusions on the disputes as soon as the ISO has completed its ongoing analysis. The letter further informed J.P. Morgan that the ISO expects “to complete [its] investigation and resolve the disputes in a much more expeditious manner” than the tariff permits for resolution of complex settlement disputes. The letter further stated that, consistent with section 11.29.10.2 of the ISO tariff, J.P. Morgan would be paid interest on any underpayments in the event that the ISO were to determine through its ongoing

research that any adjustments are warranted. All of these statements continue to be accurate as of today.

13. J.P. Morgan has not to my knowledge responded to the ISO's August 31, 2012 letter or to the notifications in CIDI identifying the ongoing settlement disputes as complex. On September 16, 2012, J.P. Morgan instead proceeded to file its Complaint challenging the April, May, and June exceptional dispatches that the ISO is in the middle of investigating.

I declare under penalty of perjury that the foregoing facts are true and correct to the best of my knowledge and belief.

Dated: October 3, 2012

  
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Michael Turner

## **EXHIBIT 1**

*August 31, 2012 Letter from the ISO to J.P. Morgan*

August 31, 2012

***Via Certified Mail***

Mr. William Scherman  
Skadden, Arps, Slate, Meagher & Flom LLP  
1140 New York Avenue, N.W.  
Washington, D.C. 20005-2111

Dear Mr. Scherman,

This letter responds to your letter to me on August 27, 2012 regarding a series of pending settlement disputes J.P. Morgan Energy Ventures Corp. ("J.P. Morgan") has recently filed involving the amount to be paid for exceptional dispatches of generating units controlled by J.P. Morgan.

In the disputes, J.P. Morgan generally contends that the ISO has erroneously applied mitigation to the challenged exceptional dispatches. Although your letter refers to disputes for energy dispatched in April, May, and June of this year, it is important to note that these disputes have been initiated only more recently. J.P. Morgan initiated its first dispute in July, challenging an individual exceptional dispatch that took place in June. In July and August, J.P. Morgan has since filed more than ten additional disputes relating to exceptional dispatches that took place on more than 20 trade dates over the period of April through August. Eight of these disputes, covering exceptional dispatches on 14 disputed trade dates, were initiated only within the last three weeks.

Given the relatively large number of exceptional dispatches and disputes at issue and the substantial monetary amounts at stake, it is important for the ISO to thoroughly research and evaluate the factual circumstances surrounding each challenged dispatch. Please be assured that we are actively doing so and will communicate our conclusions on these disputes as soon as we have completed our analysis.

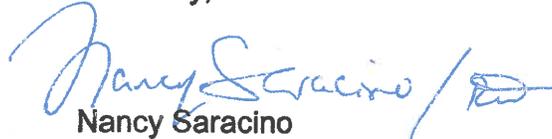
Your letter reserves the right to take further action, including potentially filing a complaint with the Federal Energy Regulatory Commission, if the ISO does not remit payment of the disputed amounts within seven days. This course of action would be inconsistent with the dispute resolution process set forth in the ISO's tariff. As I'm sure you are aware, tariff section 11.29.8.5 sets forth the timelines for resolution of settlement disputes and affords the ISO up to 15 months to investigate and resolve any complex settlement disputes. The ISO has designated the settlement disputes at issue

in your letter as complex. Although we certainly intend to complete our investigation and resolve these disputes in a much more expeditious manner than this designation would allow, it would be improper for J.P. Morgan to short circuit this process by prematurely filing a complaint with FERC.

Finally, your letter demands the payment of interest on any underpayments, pursuant to section 35.19 of FERC's rules. Although section 35.19 is not directly applicable in this context, section 11.29.10.2 of the ISO's tariff requires the ISO to pay interest on incremental changes to settlement statements using the interest calculation methodology identified in section 35.19 of FERC's rules. Thus, if the ISO determines through its ongoing review that any adjustments are necessary, interest will be paid on those adjustments. This provision serves to protect J.P. Morgan by allowing the recovery of the time value of money for any adjustments that may ultimately be made.

Please do not hesitate to contact me if you want to discuss this matter further.

Sincerely,

A handwritten signature in blue ink that reads "Nancy Saracino" followed by a stylized flourish.

Nancy Saracino  
Vice President, General Counsel  
and Chief Administrative Officer  
California Independent System  
Operator Corporation  
250 Outcropping Way  
Folsom, CA 95630

## 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 3<sup>rd</sup> day of October 2012.

*/s/ Anna Pascuzzo*

Anna Pascuzzo