142 FERC ¶ 61,150
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

J.P. Morgan Ventures Energy Corp. Docket No. EL12-105-001

v.

California Independent System Operator Corporation

ORDER DENYING REHEARING

(Issued February 27, 2013)

1. In this order, we deny a request by J.P. Morgan Ventures Energy Corp. (JP Morgan) for rehearing of an order issued by the Commission on December 5, 2012, that dismissed JP Morgan's complaint against the California Independent System Operator Corp. (CAISO) regarding CAISO's mitigation of certain exceptional dispatches issued between April and June 2012.[1]

I. **Background**

2. Exceptional dispatch is a mechanism that enables CAISO to manually commit and/or dispatch resources that are not cleared through market software in order to maintain reliable grid operations under unusual or infrequent circumstances, including contingencies, such as load uncertainty, loss of excessive amounts of generation, and potential outages of major interties. In most cases of exceptional dispatch, CAISO pays a resource the higher of the resource's bid price, the locational marginal price, or the

[1] *J.P. Morgan Ventures Energy Corp. v. Cal. Indep. Sys. Operator Corp.*, 141 FERC ¶ 61,191 (2012) (December 5, 2012 Order).

resource's default energy bid[2] price for the energy acquired through the exceptional dispatch.[3]

3. During the period when the transactions at issue here occurred, CAISO was authorized under its tariff to mitigate payments for exceptional dispatches in three circumstances where the Commission found that CAISO had demonstrated the potential for market participants to exercise market power: (1) to address reliability requirements related to non-competitive constraints; (2) to ramp ancillary services awards or residual unit commitment capacity to a dispatch level that ensures their availability in real-time; and (3) to address environmental constraints in the Sacramento Delta region known as "Delta Dispatch."[4] For exceptional dispatches that are subject to mitigation, CAISO pays the resource the higher of the locational marginal price or its default energy bid.[5]

4. Pursuant to a Commission directive,[6] CAISO submits regular reports to the Commission detailing its use of exceptional dispatch. These reports provide information on the frequency, volume, costs, causes, and degree of mitigation of exceptional dispatches. The reports are intended to ensure transparency for stakeholders and the Commission regarding CAISO's use of exceptional dispatch and also to discourage CAISO from developing an overreliance on exceptional dispatch.[7]

5. On September 14, 2012, JP Morgan filed a complaint alleging that between April 2012 and June 2012, CAISO exceptionally dispatched its resources at least 18 times without paying the amount required by CAISO's tariff. JP Morgan asserted that, rather than paying the higher of the bid price, locational marginal price, or default energy bid for the exceptionally dispatched energy, CAISO instead mitigated the payments down to

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[2] The default energy bid is a resource-specific amount on file with CAISO that is designed to cover a resource's variable costs, calculated pursuant to one of the methodologies specified in section 39 of the CAISO tariff.

[3] CAISO Tariff, §§ 11.5.6.1, 11.5.6.2, 11.5.6.3.

[4] *Id.*, § 39.10. We note that on October 26, 2012, the Commission issued an order accepting CAISO's proposal to add a fourth category of exceptional dispatch mitigation, to be effective August 29, 2012. *Cal. Indep. Sys. Operator Corp.*, 141 FERC ¶ 61,069 (2012).

[5] CAISO Tariff, §§ 39.10.1, 11.5.6.7.

[6] *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,150, at PP 34, 263 (2009).

[7] *Id.*

the higher of the default energy bid or locational marginal price. JP Morgan represented that none of the three circumstances under which CAISO's tariff authorizes the mitigation of exceptional dispatches were applicable to the 18 exceptional dispatches at issue. JP Morgan disputed the settlements with CAISO pursuant to a CAISO tariff provision that provides 15 months for CAISO to resolve complex disputes.[8]

6. In the December 5, 2012 Order, the Commission dismissed JP Morgan's complaint, without prejudice, as premature. The Commission referenced its well-established policy of encouraging parties to attempt to resolve their disputes before bringing them to the Commission and found that JP Morgan had presented no compelling reason to subvert the currently pending review process.[9] The Commission noted that JP Morgan may also pursue a future complaint if issues remain after CAISO's settlement dispute resolution process has concluded.[10]

II. Rehearing Request

7. JP Morgan argues that the Commission erred in dismissing the complaint because the CAISO tariff does not require a party to exhaust the settlement dispute process before exercising its rights under section 206 of the Federal Power Act (FPA). JP Morgan contends that the CAISO tariff itself and relevant case law preclude any such restriction.[11] JP Morgan argues that the cases cited by the Commission in the December 5, 2012 Order to justify its action are inapposite because those cases involved

[8] JP Morgan September 14, 2012 Complaint (JP Morgan Complaint).

[9] December 5, 2012 Order, 141 FERC ¶ 61,191 at P 14 (citing *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 61,177, at PP 12, 14 (2006) (*Midwest ISO*); *Strategic Energy L.L.C. v. Cal. Indep. Sys. Operator Corp.*, 95 FERC ¶ 61,312, at 62,069 (2001), *aff'd on reh'g*, 96 FERC ¶ 61,146, at 61,629 (2001) (*Strategic Energy*)).

[10] *Id.*

[11] JP Morgan January 4, 2013 Rehearing Request at 6-8 (citing CAISO Tariff, § 11.29.8.4; *Virginia Elec. and Power Co.*, 123 FERC ¶ 61,098, at P 45 (2008) (rejecting proposed tariff language that would restrict parties' and the Commission's rights under FPA section 206); *Pub. Serv. Elec. & Gas Co.*, 124 FERC ¶ 61,303, at P 18 (2008) (a utility "cannot unilaterally deny a party the statutory right to file a complaint under section 206 of the [FPA] …") (JP Morgan Rehearing Request)).

mandatory arbitration processes and not a voluntary dispute resolution process like the one at issue here.[12]

8. JP Morgan also asserts that the Commission should not impose an exhaustion requirement under any equitable authority it may have because such action would be inequitable under the circumstances. JP Morgan also argues that such action would allow CAISO to continue to mitigate exceptional dispatch payments to JP Morgan through December 2013 without providing an explanation for the mitigation. JP Morgan contends that imposing an exhaustion requirement here would also be contrary to the Commission's statutory responsibilities to provide effective relief under FPA section 206. Further, JP Morgan highlights the Commission's efforts to ensure transparency in CAISO's use of exceptional dispatch, including the mitigation of exceptional dispatch payments, and claims that imposing an exhaustion requirement would contradict the Commission's stated goal of transparency.[13]

9. JP Morgan argues that imposing an exhaustion requirement here would also be inequitable because CAISO has not offered any reason why this dispute is "complex" and requires up to 15 months to resolve. JP Morgan posits that CAISO should already know the reasons why it has mitigated the payments for those dispatches and should not have to conduct any additional research. JP Morgan contends that the Commission did not adequately scrutinize CAISO's claims when it found that CAISO's classification of this dispute as "complex" is reasonable.[14]

10. Finally, JP Morgan argues that imposing an exhaustion requirement would be inequitable here because of the harm it causes JP Morgan. JP Morgan asserts that the Commission's finding that the delay will not harm JP Morgan ignores the fact that the uncertainty caused by CAISO's non-transparent behavior could adversely affect the bidding behavior of JP Morgan or other market participants. JP Morgan also contends that the Commission's delay in addressing CAISO's actions on the merits could permanently deprive JP Morgan of profitable market opportunities for up to 15 months.[15]

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[12] *Id.* at 8-9.

[13] *Id.* at 9-11.

[14] *Id.* at 11-12.

[15] *Id.* at 12.

III. Discussion

11. We will deny JP Morgan's request for rehearing. In the December 5, 2012 Order, the Commission did not deprive JP Morgan of its FPA section 206 rights or otherwise impose an exhaustion requirement. Rather, the Commission exercised its discretion to defer to a Commission-approved, tariff-based dispute resolution process. The Commission controls its own dockets and has substantial discretion to manage its proceedings.[16]

12. The Commission expressly stated that "JP Morgan is not prohibited by CAISO's tariff-based dispute resolution provisions from bringing a complaint under section 206."[17] However, JP Morgan voluntarily availed itself of CAISO's dispute resolution process and we continue to find that JP Morgan should not be permitted to subvert that process.[18] We reiterate the Commission's dismissal in this proceeding does not foreclose JP Morgan's right to pursue its complaint against CAISO under FPA section 206 if it is dissatisfied with CAISO's resolution of this matter. We continue to find, however, that until such time as CAISO completes its review, it is appropriate for the Commission to defer to CAISO's Commission-approved, tariff-based process.

13. Moreover, the Commission's decision in the December 5, 2012 Order did not turn on the question of whether JP Morgan had exhausted the remedies available under the CAISO tariff, but on the Commission's evaluation of which forum was most appropriate for resolving the disputes under the specific facts presented here. The Commission found, based on (1) the ongoing investigation of the disputes under CAISO's Commission-approved, tariff-based dispute resolution process, (2) CAISO's indication of its intention to complete its investigation in an expeditious manner, (3) and JP Morgan's failure to assert any cognizable harm that could be attributed to the Commission's deferral to CAISO's process, that deferral to the CAISO process was appropriate under the circumstances.[19] We are not persuaded by JP Morgan's attempts to distinguish *Midwest ISO* and *Strategic Energy*, which involved mandatory arbitration provisions,

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[16] *People of the State of Cal., ex rel. Edmund G. Brown, Jr. Attorney General of the State of California v. Powerex Corp.*, 139 FERC ¶ 61,210, at P 9 (2011); *see also Fla. Mun. Power Agency v. FERC,* 315 F.3d 362, 366 (D.C. Cir. 2003) (administrative agencies enjoy broad discretion to manage their own dockets).

[17] December 5, 2012 Order, 141 FERC ¶ 61,191 at 15.

[18] *Id*. P 14.

[19] *Id.* PP 14, 15.

from the instant case, which involves a voluntary dispute resolution process. The underlying tenet, that the Commission encourages parties to make all efforts to resolve their disputes before bringing them to us, applies with equal force in both situations.

14. We reject JP Morgan's assertion that our decision to defer to CAISO's dispute resolution process is inequitable due to CAISO's designation of this dispute as "complex." As the Commission emphasized in the December 5, 2012 Order, "CAISO's Commission-approved tariff allows CAISO the sole discretion to designate disputes as complex when the dispute involves policy considerations, extensive research, complicated data, or requires additional information."[20] We find that JP Morgan has not offered any arguments on rehearing to persuade us that designating this dispute as complex was an abuse of CAISO's discretion.

15. Finally, we find no merit in JP Morgan's claims that it will be harmed by waiting for CAISO to resolve the disputes. As noted in the December 5, 2012 Order, CAISO has stated its intention to resolve these disputes in a more expeditious manner than its tariff allows. Further, the CAISO tariff requires CAISO to pay interest if JP Morgan prevails in any of the disputes.[21] We reject as unsupported speculation JP Morgan's suggestion that market participants may stop submitting bids in the CAISO markets due to a delay in resolving this matter. Thus, we continue to find that JP Morgan should not be permitted to subvert CAISO's established dispute resolution process.

The Commission orders:

JP Morgan's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[20] *Id.* P 15.

[21] *Id.*