UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

J.P. Morgan Ventures Energy Corp.	**)**	**Docket No. ER13-830-000**

MOTION FOR LEAVE TO INTERVENE AND PROTEST OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

The California Independent System Operator Corporation ("ISO") submits this motion to intervene and protest in this proceeding, which concerns two tariffs proposed by J.P. Morgan Ventures Energy Corporation ("JPMVEC").[1] JPMVEC proposes these tariffs as a result of the Commission's November 14, 2012 order suspending JPMVEC's market based rate authority for six months, commencing April 1, 2013.[2]

The Commission should reject JPMVEC's proposed FERC Electric Tariff No. 4 that JPMVEC proposes would apply to transactions in the ISO's markets during the six month suspension period because: (i) JPMVEC's proposed tariff does not include cost-based rates as contemplated by the November 14 order, but instead proposes to change the terms of the ISO tariff as they apply to JPMVEC during the suspension period; (ii) Commission precedent establishes that market participants cannot unilaterally file to change the terms of the ISO tariff for the benefit of specific resources; (iii) the JPMVEC proposal is based on a

[1] The ISO submits this filing pursuant to Rules 212 and 213 of the Commission's rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213 (2012).

[2] *J.P. Morgan Ventures Energy Corp.*, 141 FERC ¶ 61,131 (2012) ("November 14 order").

mischaracterization of the November 14 order, treating a cap on energy payments to JPMVEC as a floor; and (iv) the ISO's own proposed tariff amendment pending in Docket No. ER13-872 is the appropriate means of addressing ISO market issues during the suspension period. The ISO's proposed tariff amendment is consistent with the November 14 order, and addresses the impacts of that order not only on JPMVEC but also on the market clearing prices to be paid to other market participants, and implements the order in a manner that facilitates the efficient dispatch of other resources needed to maintain system reliability in California. Indeed, the ISO's tariff amendment avoids penalizing other market participants by reducing their compensation as a result of violations of a single participant, as JPMVEC's proposal would do. It will also avoid the need for increased reliance on exceptional dispatch as a result of a market participant's market-based rate suspension.

I. BACKGROUND

A. November 14 Order

On September 20, 2012, the Commission issued an order directing JPMVEC to show cause why its authorization to sell electric energy, capacity, and ancillary services at market-based rates should not be suspended.[3] The September 20 order directed JPMVEC to provide an explanation of why certain JPMVEC communications with the Commission, the ISO, and the ISO's Department of Market Monitoring should not be found to violate the

[3] *J.P. Morgan Ventures Energy Corp.*, 140 FERC ¶ 61,227 (2012). The Commission's orders refer to JPMVEC as "JP Morgan."

Commission's market behavior rules, which require sellers with market-based rates to "provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercises due diligence to prevent such occurrences."[4] The communications in question related to certain bidding activities of JPMVEC that became the subject of a Department of Market Monitoring investigation and later referral to the Commission's Office of Enforcement.

The Commission found, in its November 14 order, that JPMVEC's communications constitute violations of the Commission's market behavior rules. As a remedy for JPMVEC's violations of section 35.41(b), the Commission determined:

> [W]e will suspend JP Morgan's authority to sell energy, capacity, and ancillary services at market-based rates for a period of six months, to become effective on April 1, 2013. JP Morgan will only be allowed to participate in wholesale electricity markets by either scheduling quantities of energy products without an associated price or by specifying a zero-price in their offer, as the relevant tariffs require. Furthermore, the rate received by JP Morgan will be capped at the higher of the applicable locational marginal price or its default energy bid.[5]

[4] 18 C.F.R. § 35.41(b) (2012).

[5] November 14 order at P 53.

The Commission also noted that the cap on JPMVEC's compensation will "ensure that load-serving entities have access to adequate generating capacity to serve demand."[6]

In response to the ISO's comments in that proceeding, the Commission also provided additional time for the ISO to evaluate the reliability impacts of the suspension and related directives on system reliability:

> [G]iven CAISO's stated concern that the generating units controlled by JP Morgan and its subsidiaries play a significant role in enabling CAISO to reliably meet system needs, we will delay the suspension until April 1, 2013. Such a delay will allow CAISO sufficient time to take steps necessary to maintain system reliability during the suspension period.[7]

B. California Resources under the Control of JPMVEC

JPMVEC schedules and controls the electric output from ten generating units in Southern California. These resources may be critical for system reliability during the six-month suspension period because that period occurs over the summer months, which generally is a period of peak load on the ISO controlled grid. Reliability concerns in Southern California are heightened during summer 2013 because the San Onofre Nuclear Generating station is not expected to be available during that time.

C. January 30 JPMVEC Filing

On January 30, JPMVEC filed two proposed JPMVEC tariffs in this proceeding, pursuant to section 205 of the Federal Power Act ("FPA"). One tariff

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6 *Id.*

7 *Id.*

would apply to JPMVEC's sales into the California ISO markets during the suspension period; the other would apply to JPMVEC's sales during the suspension period in all other markets, including bilateral sales. JPMVEC claims that these tariffs "set forth the cost-based rates that JPMVEC will charge during the MBR Suspension Period."[8]

JPMVEC's proposed FERC Electric Tariff No. 4 (which JPMVEC refers to in the filing as "JPMVEC's CAISO Tariff") addresses a number of issues related to JPMVEC's participation in the ISO's markets during the suspension period including the terms and conditions for: start-up bids and minimum load energy offers, offers for energy above minimum load, payments for energy, offers and payments for ancillary services, and Residual Unit Commitment ("RUC") offers and payments.

D. February 1 ISO Tariff Amendment

On February 1, the ISO filed in Docket No. ER13-872 a proposed amendment to the ISO tariff addressing the terms and conditions that will apply when the Commission has suspended market-based rate authority for a market participant, but nonetheless has permitted the entity to continue participating in the ISO's markets. The proposed amendment would apply not only to JPMVEC, but also to any similarly situated market participant whose market-based rate authority has been suspended or revoked by the Commission under terms comparable to the November 14 order. Key features of the proposed amendment include the following:

[8] January 30 JPMVEC filing letter at 1.

- Resources of market participants with suspended or revoked market-based rate authority may only participate in the day-ahead and real-time markets by submitting either a self-schedule or an economic bid with a price of zero (0) dollars per megawatt-hour ($0/MWh).

- The ISO will validate and reject bids submitted for affected resources that are not either a self-schedule or an economic bid with a price of $0/MWh.

- Prior to the execution of the applicable ISO market run, the ISO will replace all the resource's economic bid segments with a generated bid based on the resource's proxy costs.

- The resource may only participate in the Residual Unit Commitment by submitting a zero (0) dollars per megawatt per hour ($0/MW-hour) bid. The ISO will validate the bids and will reject any RUC availability bid that is not a zero value.

- The affected scheduling coordinator will not be entitled to select the Negotiated and LMP options and can only select the Variable Cost Option for their default energy bid during the period of the suspension. If the resource lacks a Variable Cost Option default energy bid during the period of the suspension or revocation, the ISO will create a default energy bid with a $0/MWh price for the resource.

- The scheduling coordinator responsible for submitting the resource's minimum load, start-up, and transition costs will not be entitled to select the Registered Cost option and can only select the Proxy Cost option for their minimum load and start-up costs. If the resource is registered with the ISO as a Multi-Stage Generating Unit resource, the scheduling coordinator may only register a transition cost of $0 per MW hour.

- If the resource lacks a Proxy Cost option for the minimum load or start-up costs during the period of the suspension or revocation, the ISO will create minimum load and start-up costs with zero costs.

- The resource may only participate in the ancillary services markets by submitting either a submission to self-provide ancillary services or an ancillary service bid with a zero price per megawatt ($0/MW).

- The ISO will reject any ancillary services bid submitted for such resource that is not a submission to self-provide an ancillary service, or an ancillary services bid with a $0/MW price.

- All of the resource's operating reserve, operational and regulating ramp rates will be based on the maximum ramp rate registered in the ISO's Master File.

- To the extent a scheduling coordinator submits something other than the maximum ramp rate registered in the Master File for these rates, the ISO will replace the ramp rate with the maximum ramp rate value in the Master File.

- In the real-time market, the scheduling coordinator may only modify their maximum ramp rate through submission to the ISO's system for scheduling and logging outages based on actual changes in physical conditions of the resource.

The ISO's filing was supported by a declaration of Dr. Eric Hildebrandt, director of the ISO's Department of Market Monitoring, who described the factors the ISO considered in developing its implementation approach for market participants with suspended market-based rate authority.[9]

II. MOTION TO INTERVENE

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, California. The ISO is an independent transmission system operator operating the transmission systems of its participating transmission owners. The ISO is a balancing authority and coordinates the ancillary services and electricity markets within its balancing authority area.

The ISO operates under the terms of the ISO tariff, which is on file with the Commission. JPMVEC's January 30, 2012, filing includes a proposed tariff that is intended to alter the terms and conditions of the ISO tariff with respect to bidding into the ISO's markets and compensation to JPMVEC for sales into the

[9] For convenience, a copy of Dr. Hildebrandt's declaration is provided as Attachment A to this filing. The attached declaration is substantively identical to the declaration submitted in Docket No. ER13-872, although a number of typos have been corrected.

ISO's markets during the suspension period. Accordingly, the ISO has a direct and substantial interest in this proceeding and requests that it be permitted to intervene with full rights of a party. Because no other party can adequately represent the ISO's interests in this proceeding, the ISO's intervention is in the public interest and should be granted.

III. PROTEST

A. JPMVEC's Proposed Tariff Is Not a Cost-Based Rate Tariff

JPMVEC argues that its January 30 tariff filing is consistent with the Commission's suggestion in the November 14 order that "JP Morgan would have 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."[10]

In fact, JPMVEC's proposed tariff for sales into the ISO's markets during the suspension period is not a proposed cost-based rate and is not justified by the November 14 order. Cost-based rates under the Federal Power Act provide a utility with an opportunity to earn prudently incurred costs plus a reasonable return on investment. A cost-based rate would reflect the actual costs (or at least categories of costs) of resources controlled by JPMVEC. 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.[11] JPMVEC's January 30 filing includes no cost support information for the resources under its control.

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[10] January 30 JPMVEC filing letter at 4, *citing* November 14 order at P 53.

[11] *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).

The Commission's regulations, and in particular, Subparts B and C of Part 35 of the Commission's regulations, include extensive and detailed requirements for a public utility like JPMVEC that seeks to file cost-based rates. JPMVEC's January 30 filing satisfies none of the Commission's regulatory requirements for cost-based rates.

JPMVEC does request waiver of Subparts B and C of Part 35, except for sections 35.12(a), 35.13(b), 35.15, and 35.16, arguing that, "These waivers are appropriate in this instance because JPMVEC's MBR authority has only been suspended for six months, and the policy underlying the grant of the waivers for MBR tariffs applies equally here."[12] This argument fails to account for the Commission's express finding that the waivers of Subparts B and C of Part 35 granted for market-based rates would not be granted to entities making sales at cost-based rates. In Order No. 697, the Commission stated that, for entities with market based rate authority:

> we will continue to grant waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except for 18 CFR 35.12(a), 35.13(b), 35.15 and 35.16. We note that this waiver would not be granted to an entity that makes sales at cost-based rates.[13]

Nothing in Order No. 697 suggests that waivers of Subparts B and C would be granted to an entity that makes sales at cost-based rates because such cost-based rates would only be in effect for a limited period.

A review of JPMVEC's proposed FERC Electric Tariff No. 4 reveals that, rather than a proposed rate schedule based on the costs (or at least cost

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12 January 30 JPMVEC filing letter at 8.

13 Order No. 697, 119 FERC ¶ 61,295 at P 984 n.1126.

categories) of JPMVEC's resources, the proposed tariff simply states that some provisions of the ISO tariff will apply to JPMVEC during the suspension period while others will not. JPMVEC argues that the provisions of its proposed FERC Electric Tariff No. 4 that are contrary to the ISO tariff are "consistent with the Commission's intent as expressed in Paragraph 53."[14] As explained below, JPMVEC's proposed Electric Tariff No. 4 is inconsistent with the November 14 order in a number of critical respects. In any event, JPMVEC's proposed tariff is not a cost-based rate tariff. As such, the Commission's statement that JPMVEC has the option to file cost-based rates during the suspension period does not provide a basis for JPMVEC's proposed Electric Tariff No. 4.

B. Market Participants Cannot Unilaterally File To Change the Terms of the ISO Tariff

JPMVEC's filing leaves no doubt that it is seeking to change the terms of the ISO tariff as they would apply to JPMVEC during the suspension period. Section 3.0 of JPMVEC's proposed FERC Electric Tariff No. 4 states "In the event of a conflict between the CAISO Tariff and this Tariff, this Tariff shall prevail."

Individual market participant proposals to change the terms of the ISO tariff are prohibited. The Commission has consistently rejected attempts by individual market participants that seek to unilaterally change the terms of an ISO tariff. For example, in the *El Segundo* order in 2000, the Commission rejected a tariff filed under Section 205 of the Federal Power Act by a single generator that sought to alter the terms of payments it would receive under the then-applicable

[14] January 30 JPMVEC filing letter at 5.

California ISO tariff for out-of-market dispatches. The Commission held that "El Segundo's filing is an inappropriate attempt to change the terms of the ISO tariff unilaterally for the benefit of a single generator."[15] The Commission has likewise rejected other attempts of market participants to file rate schedules that attempt to modify rates, terms and conditions exclusively governed by ISO tariffs.[16] JPMVEC's proposed FERC Electric Tariff No. 4 is exactly the type of filing prohibited by this precedent.[17]

The Commission's reasoning in the *El Segundo* order applies with full force to JPMVEC's filing. The Commission noted that El Segundo was party to a Participating Generator Agreement with the ISO where it agrees to abide by the terms of the ISO tariff. Likewise, JPMVEC has agreed to be bound by the ISO tariff through its Scheduling Coordinator Agreement and through the Participating Generator Agreements of the resources that it controls.[18] The ISO has exclusive

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[15] *El Segundo Power, LLC,* 91 FERC ¶ 61,110 at 61,390 (2000), ***reh'g denied***, 95 FERC ¶ 61,159 (2001).

[16] *See, e.g., TC Ravenswood, LLC,* 133 FERC ¶ 61,087 at P 25 ("Because NYISO is the sole provider of Market Services, and because the production of wholesale energy by burning fuel oil to comply with NYSRC Rule I-R3 is a Market Service as defined in the Services Tariff, the NYISO Services Tariff bars Ravenswood from proposing its own duplicative rate schedule to provide the same generation service already governed exclusively by the NYISO Services Tariff. The same reasoning leads us to conclude that the NYISO Services Tariff exclusively governs the pricing for this service.").

[17] The ISO recognizes that PJM has filed in support of the other tariff proposed by JPMVEC, stating that the JPMVEC proposal to comply with the order in PJM's markets "is workable and is not anticipated to complicate, or create inconsistencies with, PJM's market operations." PJM February 4 comments at 3. JPMVEC's proposed FERC Electric Tariff No. 5 differs from its proposed Electric Tariff No. 4 in a number of respects. It may be acceptable for a regional transmission organization like PJM to consent to a market participant proposal as to how to bid into its markets, but a market participant has no authority to modify the ISO tariff without the ISO's consent, especially where the ISO has identified significant flaws with the market participant's proposal as it applies to the ISO's markets.

[18] *See also California Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,103 at P 23 ("the CAISO Tariff applies to transactions that impact the CAISO-controlled grid, and if a party chooses to participate in the CAISO market that party is choosing to operate under the CAISO Tariff.") (2009).

rights to modify the ISO tariff. JPMVEC cannot avoid its obligations to abide by the terms of the ISO tariff and cannot modify the terms applicable to the transactions under the ISO tariff through a 205 filing.

Even if JPMVEC could somehow establish its own tariff for transactions subject to the ISO tariff, JPMVEC's proposed tariff would not apply to any transaction unless the counterparty signs a service agreement agreeing to be bound by the JPMVEC tariff. The ISO has not agreed to be bound by JPMVEC's proposed tariff, and there is no reason for the ISO to do so, since JPMVEC has agreed to be bound by the terms of the ISO tariff for every product and transaction contemplated in JPMVEC's proposed FERC Electric Tariff No. 4. Given JPMVEC's existing contractual obligations, the Commission should reject JPMVEC's proposal to impose on the ISO different, potentially conflicting terms for the transactions in the ISO's markets.

C. JPMVEC's Proposal Is Based on a Mischaracterization of the November 14 Order

The Commission also should reject JPMVEC's proposed FERC Electric Tariff No. 4 because the proposed tariff is based on mischaracterizations of the November 14 order designed to allow JPMVEC to profit to the detriment of other market participants.

In particular, JPMVEC claims that the directive in P 53 of the November 14 order that "the rate received by JP Morgan will be capped at the higher of the applicable locational marginal price or its default energy bid" is a guarantee that "JPMVEC then would be paid the higher of the applicable locational marginal

price or JPMVEC's Default Energy Bid, as defined in the CAISO Tariff."[19] JPMVEC effectively seeks to turn the cap in 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. That is not what the November 14 order prescribes, and JPMVEC does not attempt to explain why the Commission's deliberate use of the term "capped" does not apply – instead JPMVEC appears to ignore altogether the explicit language of the Commission's order.[20]

JPMVEC's attempt to change the energy payment *cap* the Commission prescribed to an energy payment *floor* turns the November 14 order on its head. As explained by Dr. Hildebrandt, under JPMVEC's proposed tariff, JPMVEC could schedule capacity through self-schedules or by submitting $0/MW energy bids, and then be guaranteed to receive the higher of the (1) locational marginal price or (2) each unit's default energy bid.[21] Assuming JPMVEC is using the variable cost option for establishing the default energy bid (which the ISO believes is contemplated by the November 14 order), this would ensure that JPMVEC received a minimum 10 percent margin above operating cost for all of this capacity, even during hours and days when these costs exceeded locational marginal prices. Thus, with this proposal, JPMVEC would maximize profits by

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[19] January 30 JPMVEC filing letter at 3.

[20] To the extent JPMVEC could, in the future, argue that the word "capped" should not apply, this would be a prohibited out-of-time request for rehearing of the November 14 order.

[21] Hildebrandt Declaration at 16-17. In the ISO's market, generator bids that are identified as having potential market power are mitigated to default energy bids as part of the approved local market power mitigation procedures in the ISO tariff. These default energy bids are calculated by an independent entity based on a number of options available to market participants, including an option based on a resource's variable costs plus 10 percent, an option based on a weighted average of locational marginal prices in the applicable node, a negotiated option, or an alternative variable cost option available to frequently mitigated units. *See* ISO tariff, section 39.7.1.

self-scheduling or submitting $0/MW energy bids for the entire portfolio of over 3,000 MW of gas-fired generating capacity controlled by JPMVEC in southern California for every hour of every day.

Dr. Hildebrandt provides the following example to illustrate this point.[22] Assume the approximately 3,000 MW of gas-fired generating capacity controlled by JPMVEC has a marginal operating cost of $30/MW and a default energy bid ($33/MW). If this capacity is bid at $0/MW, these resources would be scheduled to run at maximum capacity even on a day when market locational marginal prices equaled only $20/MW. Under the payment floor proposed by JPMVEC, these resources would receive the higher of the locational marginal price ($20/MW) or the default energy bid ($33/MW). Thus, JPMVEC would earn a 10 percent margin above its marginal energy cost ($3/MW) for all energy generated from this 3,000 MW of capacity, even though the marginal cost of this energy was above the market price. In addition to reducing market prices received by other suppliers, this would require uplift payments to JPMVEC of $13/MW above the $20/MW market price that would need to be recovered from load serving entities.

In other words, JPMVEC's proposed conversion of the cap in the November 14 order to a payment floor would enable JPMVEC to earn more profits than any participant in the ISO's energy markets would earn with market-based rates. These profits come directly at the expense of other sellers (who get lower prices) and/or load serving entities that would pay the uplifts needed under

[22] Hildebrandt Declaration at 17.

JPMVEC's proposed floor. JPMVEC's attempt to convert an order in which the Commission imposed a "severe penalty" for JPMVEC's false and misleading statements into an opportunity for it to earn additional profits is improper.

JPMVEC also departs from the directives in the November 14 order in the start-up and minimum load provisions of its proposed tariff. In the ISO's markets, resources are committed and scheduled to operate on the basis of three-part bids which represent: start-up costs, minimum load costs and costs for energy above minimum load. Bids for start-up and minimum load costs can be a major determinant of whether a unit's capacity is committed and therefore available in the ISO's energy and ancillary service markets. Dr. Hildebrandt explains that it is important that start-up and minimum load bids reflect a unit's actual start-up and minimum load costs in order to ensure a unit's capacity is committed and available in the ISO's markets when the resource is the most efficient option for meeting ISO system needs.[23]

Under the ISO tariff, market participants can select one of two different options for start-up and minimum load bids. The first option is the proxy cost option. Under this option, market participants can submit start-up and minimum load bids each operating day up to the cost-based levels reflecting fuel and variable operating costs at minimum load. These actual fuel costs and other variable operating costs are on file with the ISO. Start-up and minimum load bids submitted in excess of these cost-based levels are automatically capped at proxy costs calculated by the ISO market software. The second option for start-up and

[23] Hildebrandt Declaration at 11-14.

minimum load bids is the registered cost option. Under this option, a seller may register values of its choosing for start-up and minimum load bids on a monthly basis subject to a maximum limit of 200 percent of the resource's projected proxy costs.

As discussed in Dr. Hildebrandt's declaration, the start-up and minimum load provisions proposed by JPMVEC would also allow JPMVEC to submit bids for start-up and minimum load costs up to 200 percent of actual costs (under the "registered cost" option) and allow JPMVEC to earn bid cost recovery payments well in excess of JPMVEC's actual costs for start-up and minimum load.[24] These profits again would come at the expense of load-serving entities that would pay for these bid cost recovery payments through their ISO market charges. This also would be contrary to the bidding principles for the suspension period established by the November 14 order and to the Commission's stated purpose to penalize JPMVEC, rather than to reward it.

D. The ISO's Tariff Amendment Addresses System Reliability Needs and the Impact of the November 14 Order on All Market Participants

Because JPMVEC has no authority to submit a tariff that modifies the ISO tariff, JPMVEC's proposed tariff is not a viable alternative to the ISO's tariff amendment pending in Docket No. ER13-872. The Commission should also reject JPMVEC's proposed tariff as inconsistent with the November 14 order. The Commission should recognize that the ISO's proposed tariff amendment

[24] Hildebrandt Declaration at 17-18.

addresses each of the issues raised in the proposed JPMVEC FERC Electric Tariff No. 4 in a manner consistent with the November 14 order. More importantly, the ISO's approach ensures the implementation of the November 14 order in a manner that allows the ISO to maintain system reliability through the efficient dispatch of all resources, and avoids any distortions of the ISO's markets.

Because the six-month suspension period occurs over the summer, and at a time when the San Onofre Nuclear Generating station is not expected to be available, the ISO is particularly concerned that nothing impairs the ISO's ability to address reliability needs in Southern California in the most efficient manner.

The November 14 order directs that JPMVEC's participation in wholesale markets during the suspension period should be "as the relevant tariffs require."[25] One of the fundamental principles underlying the ISO tariff is that bids based on marginal energy costs will promote efficient system dispatch and send the right price signals for other market participants. The Commission has long recognized these principles. When the Commission approved the tariff implementing the ISO's current market design based on locational marginal prices ("LMPs"), the Commission recognized that such a market design will "promote efficient use of the transmission grid, promote the use of the lowest-cost generation, provide for transparent price signals, and enable transmission grid operators to operate the grid more reliably."[26] In the same order, the Commission further noted that

[25] November 14 order at P 53.

[26] *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 63 (2006).

"LMPs should reflect the marginal cost of energy, in order to send accurate price signals."[27]

Although the November 14 order does not contemplate JPMVEC submitting bids based on marginal costs, the order does provide for the ISO to implement the suspension in a manner that allows the ISO to reliably meet system needs. As explained by Dr. Hildebrandt, if the ISO were to dispatch JPMVEC resources based on a zero price bid, these resources would be dispatched out of the merit order that would result if these resources had been bid into the ISO's markets based on marginal costs.[28] This would be contrary to the principles underlying efficient dispatch of the ISO system. Moreover, if locational marginal prices were established reflecting zero price bids for the JPMVEC resources, market clearing prices in Southern California would be depressed, significantly reducing the compensation not only to JPMVEC (under the cap established by the November 14 order) but also to other market participants. Indeed, once market clearing prices are reduced due to the dispatch of JPMVEC resources with zero price bids, the ISO is concerned that other resources without a contractual must-offer obligation may elect not to bid into the market. These other resources may not be available for market dispatch during periods of high system demand or locational reliability needs, thereby potentially causing a negative impact on the ability of the ISO's markets to efficiently ensure system reliability.

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27 *Id.* at P 266.

28 Hildebrandt Declaration at 7-10.

While it is true that resources "sitting out" of the market due to reduced market clearing prices during the six-month suspension period could be subject to exceptional dispatch, dispatch through the ISO's market processes is the preferred approach for efficiently addressing system needs. The Commission has encouraged the ISO to explore ways to reduce reliance on exceptional dispatch, and the ISO supports this objective. Indeed, in its October 2012 order approving revised mitigation measures for exceptional dispatch, the Commission directed the ISO to file an informational report within 12 months of the date of the order that describes "the steps [the ISO] has taken to reduce its reliance on exceptional dispatch."[29]

The ISO's tariff amendment in Docket No. ER13-872 includes a mechanism to resolve these dispatch and market efficiency issues. This mechanism is consistent with the bidding directives of the November 14 order and builds on existing must-offer requirements in the ISO tariff. If resource adequacy capacity subject to the must-offer requirements of the ISO tariff is not bid into the applicable ISO markets, and if the ISO has not received notification of an outage of such capacity, then existing provisions of the ISO's tariff direct the ISO to insert a generated bid for such capacity into the applicable ISO market.[30] The same generated bid provisions apply to capacity procured through the ISO's capacity procurement mechanism ("CPM") which is not bid into the applicable ISO market if the ISO has not received an outage notice.[31] As explained by Dr.

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29 *Cal. Indep. Sys. Operator Corp.*, 141 FERC ¶ 61,069, at P 45 (2012).

30 ISO tariff, section 40.6.8.

31 ISO tariff, section 43.5.1.

Hildebrandt, generated bids for gas-fired resources include fuel costs and variable operating and maintenance costs.[32] Cost-based default energy bids are calculated in the same manner as generated bids, but include a 10 percent adder. The Commission's approval of the existing generated bid provisions of the ISO tariff was based on the recognition that they appropriately reflect a resource's marginal costs. The insertion of generated bids as proposed by the ISO ensures that a seller subject to these provisions must make all of this capacity available in the ISO's energy market either as a price-taker or at bid prices equal to its marginal generating costs.

The bid generated based on proxy costs is the same bid the ISO generates for resources under a must-offer obligation. While the generated bid does not include the ten-percent adders provided in the default energy bid, it ensures the resource recovers at least its marginal costs for energy provided to the ISO market. Using the generated bid for this purpose is consistent with the November 14 order because it ensures the resource's overall rate is capped at the higher of the LMP or the default energy bid. Even if the resource were marginal and would set the price in any given market interval, the LMP would never be above the default energy bid given that its bid is based on the proxy costs.

Consistent with the November 14 order, the ISO's tariff amendment proposes that a market participant with suspended market-based rate authority can either submit a zero price energy bid or self-schedule its capacity. The ISO

[32] Hildebrandt Declaration at 6.

proposes to address the market efficiency issue discussed above by replacing all economic bid segments for the resource of JPMVEC (or a similarly situated market participant) with a generated bid based on the resource's proxy costs. This will enable the ISO to ensure that the affected resources are dispatched in merit order and will not degrade the locational marginal prices produced through the market run.[33] It is important to note that self-schedules will not be replaced with generated bids.

This approach preserves the bidding restrictions on market participants with suspended market-based rate authority established in the November 14 order. Such market participants will have no flexibility to influence the market clearing price through anti-competitive bids. Equally important, however, this approach will maintain the appropriate dispatch of resources in a merit order that reflects the marginal costs of each resource and will avoid artificially depressing market clearing prices in Southern California during the critical summer period.

Among the benefits of this approach is that it avoids reducing the compensation to other market participants as a result of the market behavior rule violations of a single participant. It will also avoid the need for increased reliance on exceptional dispatch as a result of a market participant's market-based rate suspension. The market clearing prices produced by this approach are also consistent with the finding in the November 14 order that JPMVEC should be

[33] To the extent that a market participant with suspended market-based rate authority is subject to resource adequacy or CPM must-offer requirements and does not bid or self-schedule energy, the ISO will substitute a generated energy bid in accordance with the existing ISO tariff provisions in sections 40.6.8 and 43.5.1.

permitted to be compensated based on the higher of a cost-based bid for its resources or the applicable locational marginal price.

Lastly, the ISO's tariff amendment addresses other implementation issues in the ISO's markets during the suspension period not addressed by JPMVEC's January 30 filing, such as transition costs for multi-stage generators and ramp rates.[34]

IV. COMMUNICATIONS

Please address all communications concerning this proceeding to the following persons:

Sean A. Atkins
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004
Tel: (202) 239-3300
Fax: (202) 654-4875
sean.atkins@alston.com

Anna McKenna
Assistant General Counsel
California Independent System Operator Corporation
250 Outcropping Way
Folsom, CA 95630
Tel: (916) 608-7287
Fax: (916) 608-7296
amckenna@caiso.com

[34] *See* proposed Appendix II to the ISO tariff, submitted in Docket No. ER13-872.

V. CONCLUSION

The ISO respectfully requests that the Commission grant its motion to intervene in the captioned proceeding, allow the ISO to participate in the proceeding with full rights as a party thereto, reject JPMVEC's proposed FERC Electric Tariff No. 4 that would apply to transactions in the ISO's markets during the six month suspension period, and accept the ISO's proposed tariff amendment pending in Docket No. ER13-872 to address ISO market issues during the suspension period.

Respectfully submitted,

/s/Anna McKenna

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

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 20, 2013

Attachment A

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

DECLARATION OF ERIC HILDEBRANDT ON BEHALF OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

1. My name is Eric Hildebrandt. My business address is 250 Outcropping Way, Folsom, California 95630.

2. I am the Director of the Department of Market Monitoring (DMM) of the California Independent System Operator Corporation (ISO). I oversee the independent market monitoring unit charged with monitoring ISO market performance and behavior. In this capacity, I am responsible for analyzing performance of the ISO markets, assessing the impact of market rules and behavior of market participants on market performance, investigating potential non-compliance with ISO and Federal Energy Regulatory Commission (FERC or Commission) market rules, and helping to design market rules that promote overall market efficiency, mitigate market power and deter detrimental market behavior. Throughout my 15 years working at the ISO, I have previously served in several managerial positions in the Department of Market Monitoring which involved similar responsibilities.

3. I have over twenty years of experience in the electric utility industry, along with a Bachelor of Science degree in Political Economy from Colorado College and Master

of Science and Doctor of Philosophy degrees in Energy Management and Policy from the University of Pennsylvania.

4. This declaration discusses how the Commission's November 14, 2012 Order Suspending Market Based-Rate Authority of J.P. Morgan Ventures Energy Corporation (JPMVEC) can be expected to impact the bidding and compensation of JPMVEC in the ISO's markets, as well as the overall performance of the ISO markets. The declaration includes comments on the ISO's plan for implementing the Order and supports the ISO's proposed tariff revisions that will apply to JPMVEC and any similarly-situated market participant whose market-based rate authority has been suspended by the Commission. The declaration also explains how the approach proposed by JPMVEC in its January 30, 2013 filing is inconsistent with the Commission's November 14 Order, would create inefficiencies and distortions in the ISO's markets, and would enable JPMVEC to profit from gains well in excess of those they would receive in a competitive market or under a cost-based rate.

5. The November 14 Order suspended JPMVEC's authority to sell energy, capacity, and ancillary services at market-based rates for a period of six months, starting on April 1, 2013, and held that, "JP Morgan will only be allowed to participate in wholesale electricity markets by either scheduling quantities of energy products without an associated price or by specifying a zero-price in their offer, as the relevant tariffs require. Furthermore, the rate received by JP Morgan will be capped

at the higher of the applicable locational marginal price or its default energy bid." Order at P 53.

6. The ISO's proposed implementation of the order, as discussed further below, is consistent with the Commission's November 14 Order, as it effectively caps all payments JVMEC will receive for sales of energy products at rates that will not exceed the maximum of (1) the locational marginal price applicable to each of these products or (2) the resource's default energy bid. The ISO's proposed tariff revisions incorporate the bidding restrictions mandated by the Order, as well as provisions that ensure JPMVEC resources are bid and dispatched in a manner that prevents pricing distortions in the ISO's markets and ensures the efficient dispatch of resources consistent with principles underlying a competitive market based on locational marginal pricing.

7. In a competitive electricity market in which sellers are paid the market clearing price, a seller will maximize profits by offering all available capacity at its marginal cost. Locational marginal prices are set by the highest priced bids needed to meet demand. Market efficiency is maximized since only the lowest cost resources needed to meet demand are dispatched in the market. All resources dispatched are paid locational marginal prices that equal or exceed their marginal costs. Resources with costs higher than these market prices are not scheduled to operate. Resources that are self-scheduled or bid at $0/MW are essentially price-takers, and are paid the market clearing price. Thus, suppliers have no incentive to self-schedule or bid at

$0/MW unless they expect the market clearing price to meet or exceed their marginal operating costs.

8. The tariff provisions proposed in this filing ensure that JPMVEC's resources will be bid, dispatched and compensated in a manner consistent with the principles of an efficient and competitive market described above. These provisions create the ability for JPMVEC to schedule and offer its capacity consistent with the November 14 Order, but also ensure that JPMVEC's resources are dispatched based on cost-based bids so that these generating units operate whenever market prices exceed marginal costs – but do not operate when this would be uneconomic based on market prices. These provisions also avoid any distortion or decrease in the efficiency of the ISO's energy markets that could be created by the offering of capacity controlled by JPMVEC at prices that exceed competitive levels or are excessively low relative to the actual cost of generation.

9. As required under the Commission's November 14 Order, the proposed provisions will ensure that payments to JPMVEC are effectively capped at the higher of (1) the applicable locational marginal price or (2) a resource's default energy bid. When JPMVEC receives this payment, it will continue to have the opportunity to earn profits equal to the difference between these market prices and its marginal costs. This will allow 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.

Must-Offer Requirements

10. Under the ISO's market design, resources may be procured through resource adequacy contracts under which load serving entities meet their capacity obligations specified in the ISO tariff. Supply resources under these resource adequacy contracts are subject to a variety of must-offer obligations under the ISO tariff. These resource adequacy contracts provide additional compensation to sellers who own or control these resources. Similar must-offer requirements apply to resources that have been designated under the capacity procurement mechanism in the ISO tariff.

11. Based on resource adequacy showings submitted to the ISO pursuant to its existing tariff requirements, the ISO understands that almost all of the over 3,000 MW of capacity controlled by JPMVEC in the ISO balancing authority area will be under a resource adequacy contract during the six month period starting April 1, 2013 during which the Commission has ordered the suspension of JPMVEC's market based rate authority. As described below, many of the additional provisions proposed by the ISO's filing are designed to implement the Commission's order in conjunction with these existing must-offer obligations in the ISO tariff.

12. In the ISO markets, resources are committed and scheduled on the basis of three-part bids that cover: start-up, minimum load energy, and energy above minimum load. Units also submit bids for ancillary service capacity. As described below, the provisions outlined in the ISO's filing ensure that JPMVEC's resources will be

dispatched based on the actual cost of each of these three bid components. When combined with the ISO's existing must-offer and settlement provisions, these provisions will ensure that any seller subject to the limitations specified in the Commission's Order has the opportunity to fully recover their operating costs and receive additional market revenues commensurate with those that would be earned by a supplier bidding competitively in an efficient market. These provisions also ensure that, when it is uneconomic for generation to operate given market prices, this capacity will not be dispatched, so that the seller will not be subject to any loss and no distortion of market prices will occur.

Energy Bids

13. The November 14 Order specifies that resources subject to these provisions may either self-schedule capacity or submit a $0/MW energy bid in the ISO market. As noted in the ISO's filing, if a seller subject to the must-offer provisions of the ISO tariff does not submit energy bids for any of a resource's available capacity, the ISO software automatically inserts a cost-based generated bid for this energy generating capacity. Generated bids for gas-fired resources include fuel costs plus variable operating and maintenance. The combination of these various provisions of the November 14 Order and the ISO tariff ensures that a seller subject to these provisions must make all of this capacity available in the ISO's energy market either as a price-taker or at bid prices equal to its marginal generating costs.

14. As required by the Commission, the ISO proposes to include tariff provisions that explicitly prohibit sellers subject to these energy bid limitations from submitting anything other than a self-schedule or a $0/MW bid. If the seller submits any other bid, the bid validation tool will reject the bid. The ISO will also continue to employ its current bid validation rules and generate bids for resource adequacy capacity for resources that do not have a bid or self-schedule. Prior to conducting the actual market run, the ISO will then convert any $0/MW bids to the resource's cost-based generated bids. This is the same cost-based bid the ISO would utilize for resource adequacy capacity without a bid. The conversion of the resource's $0/MW bid to its cost-based generated bid increases market efficiency and ensures that profits ultimately received by the seller are equal to those the seller would receive in a competitive market. As noted above, in a competitive market, a seller will offer its available capacity at its marginal cost. The substitution of the generated bid (representing the resource's marginal costs) for the $0/MW bid permitted by the order allows for market dispatch and prices to be comparable to what would be expected in a competitive market. This approach also will ensure that prices paid to other market participants are not artificially depressed below the level expected in a competitive market as a result of the special limitations placed on JPMVEC.

15. The ISO's plan to implement the Commission's Order also provides the seller with a fair opportunity to earn market prices that are effectively capped at the higher of (1) the applicable locational marginal price or (2) each resource's cost-based default energy bid. While generated bids are used to enforce the must-offer requirement for

resource adequacy units in the ISO market, default energy bids are only used for purposes of local market power mitigation. Cost-based default energy bids for natural gas-fired generating resources are calculated in the same manner as generated bids, but include a 10 percent adder above marginal operating costs. Thus, as illustrated below, when a unit is dispatched only when the locational marginal price exceeds its generated bid and is then paid this locational marginal price, the resulting payment will not exceed the higher of (1) the locational marginal price, or (2) the unit's default energy bid.

16. For instance, assume a resource with a marginal operating cost of $30/MW is dispatched based on its generated bid in the ISO energy market on a day when applicable locational marginal prices equal $32/MW. The resource would be scheduled to operate and, under normal ISO settlement procedures, would be paid the locational marginal price of $32/MW. In this case, the payment cap specified in the Commission's Order would not be reached since the $32/MW locational marginal price did not exceed the maximum of the (1) locational marginal price ($32/MW) or (2) the unit's default energy bid ($33/MW). Thus, the unit would be paid the locational marginal price of $32/MW and would earn a $2/MW margin over its $30/MW operating costs. This also ensures the efficient dispatch of other resources and overall market prices which reflect the highest cost supply needed to meet demand ($32/MW).

17. Using this same example, assume a resource with a marginal operating cost of $30/MW is dispatched based on its generated bid in the ISO energy market on a day

when applicable locational marginal prices equal $34/MW. Again, the payment cap specified in the Commission's Order would not be reached since the $34/MW locational marginal price paid under normal settlement procedures did not exceed the maximum of the (1) locational marginal price ($34/MW) or (2) the unit's default energy bid ($33/MW).

18. If the ISO's dispatch was required to be based on either a self-schedule or $0/MW bid for all available capacity subject to the must-offer requirement, this would effectively require JPMVEC's 3,000 MW of capacity to be scheduled to generate at maximum output virtually all hours and under all market conditions. In most, if not all cases, this would displace dispatch of other lower cost generation available to meet demand. However, since these price-taking self-schedules and bids do not set market clearing prices, prices paid to all participants would be set by lower cost bids that would need to be dispatched to meet demand without these price-taking self-schedules and bids. Thus, without the ISO's proposed substitution of a generated bid for purposes of dispatch and setting market clearing prices, during many hours, market prices paid to all market participants would be less than the marginal cost of the most efficient mix of resources actually needed to meet demand. In addition, sellers subject to the requirements of the November 14 Order would be subject to operating at a loss, as described below. This is inconsistent with the compensation contemplated in the November 14 Order.

19. For instance, assume a resource with a marginal operating cost of $30/MW was offered at $0/MW in the ISO energy market on a day when market locational marginal prices equaled only $20/MW. The resource would be scheduled to run at maximum capacity and, under normal ISO settlement procedures, would be paid the locational marginal price of $20/MW. In this case, the payment cap specified in the Commission's Order would not be reached since the $20/MW locational marginal price did not exceed the maximum of the (1) locational marginal price ($20/MW) or (2) the unit's default energy bid ($33/MW). Thus, the unit would be paid the locational marginal price of $20/MW. In this example, overall market prices would be lower than if the resource was bid in at its marginal cost ($30/MW) and was not scheduled to operate since it exceeded the market clearing price ($20/MW). In addition, the supplier would incur a $10/MW loss as a result of difference in its marginal operating cost of $30/MW and the $20/MW locational marginal price it would receive.

20. Under the scenario described above, the tariff provisions proposed by the ISO ensure efficient market dispatch, pricing and compensation. If the resource is bid at its $30/MW marginal cost and the applicable locational marginal price is only $20/MW, the unit would be uneconomic and would not be dispatched. Market prices would not be distorted and the supplier would not incur any loss.

21. The ISO's plan for implementing the November 14 Order preserves the ability of JPMVEC to self-schedule capacity in the ISO market. However, under normal ISO

pricing and settlement provisions, self-schedules will not directly set market prices and will only be paid the applicable locational marginal price. Thus, JPMVEC should have no incentive to self-schedule capacity unless they expect the market clearing price to exceed their marginal operating costs. The payment cap specified in the Commission's Order would also not be exceeded by sales made through self-schedules, since the normal settlement payment that will continue to made for these schedules would never exceed the maximum of the (1) locational marginal price or (2) the unit's default energy bid.

22. The alternative approach proposed by JPMVEC in its January 30, 2013 filing is inconsistent with the Commission's November 14 Order in that it would change the payment cap specified the Order to a payment floor that JPMVEC could earn for all energy that they either self-scheduled or bid at $0/MW in the ISO market. As described in the final section of this declaration, JPMVEC's proposal would create inefficiencies in the ISO's markets, and allow JPMVEC to garner profits well in excess of those they would receive in a competitive market or under a cost-based rate.

Start-up and Minimum Load Bids

23. In the ISO markets, resources are committed and scheduled to operate on the basis of three-part bids which represent: start-up costs, minimum load energy costs and cost for energy above minimum load. Bids for start-up and minimum load energy can be a major determinant of whether a unit's capacity is committed and therefore

available in the ISO energy and ancillary service markets. Consequently, it is important that start-up and minimum load energy bids reflect a unit's actual start-up and minimum load energy costs in order to ensure a unit's capacity is committed and available in the ISO market when this represents the most efficient option for meeting ISO system needs.

24. If a unit is started-up or committed to continue operating by the ISO market software based on these three-part bids, but fails to recover all accepted bid costs through energy and ancillary service market revenues, the resource is eligible to receive bid cost recovery. Thus, it is also important that start-up and minimum load energy bids accurately reflect a unit's actual start-up and minimum load energy costs to ensure the seller the opportunity to recover these costs, without allowing the seller to earn excessive revenues or subjecting other participants that ultimately pay these bid cost recovery payments to excessive costs.

25. Under the current ISO tariff, scheduling coordinators for gas-fired generating units can select one of two different options for start-up and minimum load bids. The first option is the proxy cost option. Under this option, scheduling coordinators can submit start-up and minimum load bids each operating day up to the cost-based levels reflecting fuel plus variable operating costs incurred at their minimum operating level. Start-up and minimum load bids submitted in excess of these cost-based levels are automatically capped at proxy costs calculated by the ISO market software. Thus, the proxy cost option for start-up and minimum load bids is

analogous to the generated bid for a unit's energy above minimum load. Just as use of generated bids ensures efficient dispatch and reasonable compensation for energy above minimum operating levels, the proxy cost option for start-up and minimum load bids ensures efficient unit commitment and reasonable compensation for these start-up and minimum load energy costs.

26. The second option for start-up and minimum load bids under the current ISO tariff is the registered cost option. Under this option, sellers can submit start-up and minimum load bids on a monthly basis at levels up to 200 percent of the resources' projected start-up and minimum load energy costs. With this option, resources may not be committed and available to the ISO market when it would be most economically efficient for this capacity to be on-line. In addition, resources under the registered cost option may receive bid cost recovery payments well in excess of actual start-up and minimum load costs, plus the 10 percent adder included in proxy cost bids for minimum load energy.

27. The ISO proposes that sellers subject to restrictions specified in the Commission's Order also be required to select the proxy cost option. As noted above, under this option, a seller's bids for start-up and minimum load are automatically limited by the ISO software to cost-based levels calculated based on the actual fuel and other variable operating costs on file with the ISO. If a seller under the proxy cost option that is subject to the must-offer provisions of the ISO tariff does not submit start-up or minimum load bids, the ISO software automatically inserts a cost-based proxy

cost start-up and minimum load bid for the resource. Thus, the proposed tariff provisions – when combined with existing tariff provisions relating to the proxy cost option and must-offer obligation – ensure that a unit's capacity is committed and available in the ISO markets when it is economic, while providing any seller subject to these provisions the opportunity to recover these costs, as described in the Commission's Order.

Ancillary Service Capacity

28. In the ISO markets, resources under resource adequacy contracts are subject to must-offer provisions that include a must-offer requirement for all available ancillary service capacity. Scheduling coordinators not subject to restrictions on their bidding may offer this ancillary service capacity at any price up the $250/MW cap for ancillary services. If a resource's full ancillary services capacity subject to a must-offer obligation is not bid into the market by its scheduling coordinator, the ISO market software automatically inserts a $0/MW bid for this capacity.

29. Any seller subject to the additional tariff provisions in this filing would only be permitted to offer a unit's ancillary service capacity at a $0/MW bid price, consistent with the Order. As noted above, under the ISO's existing tariff provisions and market software, if a resource's full ancillary services capacity subject to a must-offer obligation is not bid into the market by its scheduling coordinator, the ISO market software will automatically insert a $0/MW bid for this capacity.

30. Any seller subject to the additional tariff provisions in this filing would continue to receive the ancillary service locational marginal price for any ancillary service capacity that clears the ISO markets. The ISO market software performs a simultaneous optimization of energy and ancillary services, which ensures that the ancillary service locational marginal price for each resource fully compensates each resource for any opportunity cost it may incur by providing ancillary services instead of energy. This ensures that the $0/MW bid limit for ancillary service bids provides any seller subject to these provisions the opportunity to fully recover costs and earn the same profits that a supplier would receive if bidding competitively in an efficient market.

Exceptional Dispatch

31. In the ISO markets, units may be committed at minimum operating levels or dispatched for energy above minimum operating levels though the exceptional dispatch provisions of the ISO tariff. This occurs when capacity or energy is needed from a unit to meet special reliability requirements, but the unit is not committed or dispatched for sufficient energy to meet these reliability requirements based on its market bids. Units committed to operate at minimum load through an exceptional dispatch are assured of recovering their start-up and minimum load costs through bid cost recovery provisions of the ISO tariff. Units instructed to provide additional real-time energy through an exceptional dispatch are guaranteed to recover their default energy bid, and in some cases may receive the higher of their default energy bid and the locational marginal price.

32. Under the directives of the Order as incorporated in the ISO's tariff filing, the need for exceptional dispatch of capacity will be limited by the fact that resources' start-up, minimum load and energy bids will not significantly exceed these resources' actual costs (plus the 10 percent adder included in default energy bids and minimum load bids under the proxy cost option). Exceptional dispatches will only be required in cases when capacity or energy is needed from a specific resource, but the commitment or energy costs of this capacity or energy exceed market prices. In such cases, the existing tariff provisions for compensation of exceptional dispatch energy and bid cost recovery for start-up and minimum load costs will ensure that any seller subject to these provisions has the opportunity to recover these costs.

JPMVEC Proposal

33. In its January 30, 2013 filing, JPMVEC proposes to change the payment cap specified the Commission's November 14 Order to a payment floor for all energy that JPMVEC either self-schedules or bids at $0/MW in the ISO energy market. This would create inefficiencies and price distortions in the ISO markets, and would allow JPMVEC to garner profits well in excess of those they would receive in a competitive market or under a cost-based rate.

34. Under JPMVEC's proposed tariff, JPMVEC could schedule capacity through self-schedules or by submitting $0/MW energy bids, and then be guaranteed to receive the higher of the (1) locational marginal price or (2) each unit's default energy bid. As previously noted, the default energy bid for each unit used in local market power

mitigation includes a 10 percent adder above marginal operating costs. This would ensure that JPMVEC received a minimum 10 percent margin above operating cost for all of this capacity, even during hours and days when these costs exceeded locational marginal prices. Thus, with this proposal, JPMVEC would maximize profits by self-scheduling or submitting $0/MW energy bids for the entire portfolio of over 3,000 MW of gas-fired generating capacity controlled by JPMVEC in southern California for every hour of every day.

35. For instance, assume the approximately 3,000 MW of gas-fired generating capacity controlled by JPMVEC has a marginal operating cost of $30/MW and a default energy bid ($33/MW). If this capacity is bid at $0/MW, these resources would be scheduled to run at maximum capacity even on a day when market locational marginal prices equaled only $20/MW. Under the payment floor proposed by JPMVEC, these resources would receive the higher of the locational marginal price ($20/MW) or the default energy bid ($33/MW). Thus, JPMVEC would earn a 10 percent margin above its marginal energy cost ($3/MW) for all energy generated from this 3,000 MW of capacity, even though the marginal cost of this energy was above the market price. In addition to reducing market prices received by other suppliers, this would require uplift payments to JPMVEC of $13/MW above the $20/MW market price that would need to be recovered from load serving entities.

36. The provisions proposed by JPMVEC would also allow JPMVEC to submit bids for start-up and minimum load costs up to 200 percent of actual costs under the registered cost option provided to other sellers under the ISO tariff. This would result in further market distortions and payments to JPMVEC above costs or levels

they would receive in a competitive market, especially when combined with JPMVEC's proposal to modify the energy payment cap in the November 14 Order to a payment floor.

37. As previously described, JPMVEC's proposal to modify the energy payment cap in the November 14 Order to a payment floor would allow JPMVEC to maximize profits by bidding energy from all of the over 3,000 MW of capacity it controls in southern California at $0/MW during all hours and market conditions. Even if JPMVEC submits bids for start-up and minimum load costs up equal to 200 percent of actual costs, the $0/MW bids for all energy above minimum operating levels would ensure that this 3,000 MW of capacity is committed in the ISOs' day-ahead market. When market prices were not sufficient to cover these minimum load cost bids, JPMVEC would be guaranteed to receive their 200 percent of actual start-up and minimum load bids through the ISO's bid cost recovery provisions.

38. This concludes my declaration.

I, Eric W. Hildebrandt, affirm under penalty of perjury that the statements in this declaration are true and correct to the best of my knowledge, information, and belief.

Eric W. Hildebrandt

Executed this 1st day of February, 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 20, 2013.

/s/ Sean Atkins

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