

144 FERC ¶ 61,001
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.

California Independent System Operator Corporation Docket No. ER13-872-001

ORDER ACCEPTING COMPLIANCE FILING

(Issued July 1, 2013)

1. On April 3, 2013, the California Independent System Operator Corporation (CAISO) submitted a compliance filing in accordance with the directives of the Commission's March 19, 2013 order in this docket,¹ which contains revisions to its open access transmission tariff (OATT)² establishing the terms and conditions applicable to market participants whose market-based rate authority has been suspended by the Commission. In this order, we find that CAISO's proposed tariff revisions are in compliance with the March 19 Order and accept them to be effective April 1, 2013, as requested.

I. Background

A. Suspension Order

2. On November 14, 2012, the Commission suspended J.P. Morgan Ventures Energy Corporation's (JP Morgan) authority to sell energy, capacity, and ancillary services at market-based rates for a period of six months.³ Nevertheless, the Commission permitted JP Morgan to participate in wholesale electricity markets within certain parameters. Under the terms of the suspension, the Commission explained:

¹ *Cal. Indep. Sys. Operator Corp.*, 142 FERC ¶ 61,191 (2013) (March 19 Order).

² California Independent System Operator Corporation, Compliance Filing, Docket No. ER13-872-001 (April 3, 2013) (April 3 Compliance Filing).

³ *J.P. Morgan Ventures Energy Corp.*, 141 FERC ¶ 61,131 (2012) (Suspension Order), *order granting clarification*, 142 FERC ¶ 61,085 (2013) (clarifying that the suspension would apply only prospectively and would not modify or abrogate agreements entered into by JP Morgan before the suspension's effective date).

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 [its] 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 [(LMP)] or its default energy bid.⁴

3. The Commission, however, delayed the effectiveness of the suspension until April 1, 2013, in response to concerns raised by CAISO that the generating units controlled by JP Morgan play a significant role in enabling CAISO to address system reliability needs.⁵

B. February 1 Filing and March 19 Order

4. On February 1, 2013, CAISO filed tariff revisions proposing to add a new Appendix II to its OATT to establish the terms and conditions under which entities with suspended market-based rate authority may participate in its markets.⁶ CAISO stated that the proposed revisions were necessary to implement the terms of the Suspension Order, though its proposal would apply to any market participant whose market-based rate authority has been suspended by the Commission under the same terms provided in the Suspension Order, not only JP Morgan.⁷ In particular, CAISO proposed to replace such market participants' self-schedules and zero-price bids with a generated bid based on the resource's proxy costs before each market run to ensure that all resources are dispatched efficiently. CAISO proposed that those market participants that clear the market would then receive the LMP for their sales or their default energy bid.

5. In the March 19 Order, the Commission conditionally accepted CAISO's February 1 Filing to be effective April 1, 2013, subject to CAISO submitting a compliance filing. The Commission concluded that, in general, CAISO's proposal represented a reasonable implementation of the Suspension Order, including CAISO's proposal to replace the bids of market participants with suspended market-based rate authority with a generated bid based on the resource's proxy costs.⁸ However, the

⁴ Suspension Order, 141 FERC ¶ 61,131 at P 53.

⁵ *Id.*

⁶ California Independent System Operator Corporation, Application, Docket No. ER13-872-000 (filed Feb. 1, 2013) (February 1 Filing).

⁷ *Id.* at 1.

⁸ March 19 Order, 142 FERC ¶ 61,191 at P 28.

Commission also found that CAISO's proposal may subject applicable market participants to a confiscatory rate when the generated bid sets the market-clearing price because the generated bid does not account for all of a market participant's costs.⁹ The Commission further found that, to the extent that the CAISO proposal subjects market participants to a more restrictive rate cap than that which was imposed by the Commission, CAISO's proposal was inconsistent with the requirements of the Suspension Order, which specifically provides that "the rate received by JP Morgan will be capped at the higher of the applicable [LMP] or its default energy bid."¹⁰ Thus, in order to ensure that the rate such market participants receive is not confiscatory, the Commission directed CAISO to revise Appendix II to provide that applicable market participants will be paid the higher of the resource's default energy bid or the applicable LMP.¹¹

6. Similarly, the Commission found that the rate proposed in the February 1 Filing for mitigated exceptional dispatch may be confiscatory.¹² The Commission explained that, because the rate established under Appendix II would be based only on the generated bid, CAISO's proposed exceptional dispatch payment would result in a below-cost rate. Therefore, the Commission found that section 11.5.6.7.3 of the CAISO OATT, which describes the calculation of this rate, should not apply to market participants with suspended market-based rate authority. Further, to the extent necessary, the Commission directed CAISO to revise its OATT to clarify that market participants subject to Appendix II that receive exceptional dispatches subject to mitigation are to be paid the higher of the resource's default energy bid or the applicable LMP.¹³

7. Finally, the Commission found that section 5.1 of Appendix II conflicted with the plain language of the Suspension Order because the provisions failed to permit market participants with suspended market-based rate authority to self-schedule ancillary services.¹⁴ The Commission concluded that the February 1 Filing only permitted such market participants to offer either a "Submission to Self-Provide Ancillary Services, or an Ancillary Services Bid with a \$0/MW price," which the Commission concluded

⁹ *Id.* P 29.

¹⁰ *Id.* (quoting Suspension Order, 141 FERC ¶ 61,131 at P 53).

¹¹ *Id.*

¹² *Id.* P 30.

¹³ *Id.*

¹⁴ *Id.* P 31.

differs from the CAISO OATT's definition of a "self-schedule."¹⁵ Thus, the Commission directed CAISO to revise Appendix II in a manner consistent with the Suspension Order.¹⁶

II. April 3 Compliance Filing

8. In the April 3 Compliance Filing, CAISO proposes to revise section 1 of Appendix II to state that, after the execution of each market run, for intervals in which the resource is dispatched or committed by CAISO, CAISO will pay the relevant resource the higher of either its default energy bid or the LMP. CAISO explains that this provision addresses the Commission's directive to clarify that market participants with suspended market-based rate authority will receive the higher of the applicable LMP or default energy bid. In addition, CAISO clarifies that this payment will not be produced by its market software. Instead, CAISO states that, for those instances when the LMP is less than the default energy bid of a resource subject to Appendix II, it will replace the LMP-based price with the default energy bid for that resource during the settlement process.¹⁷

9. In addition, CAISO proposes to add a new section 1.4 to Appendix II to provide for the payment of the higher of the resource's default energy bid or the applicable LMP when a market participant subject to Appendix II receives an exceptional dispatch subject to mitigation.¹⁸

10. CAISO also proposes to revise sections 5.1 and 5.2 of Appendix II to replace original references to "Submission to Self-Provide an Ancillary Service" with references to self-schedules of ancillary services.¹⁹ CAISO also clarifies that, as explained in the February 1 Filing and approved in the March 19 Order, that it will not replace self-schedules with generated bids. Thus, CAISO adds that the April 3 Compliance Filing does not modify the treatment of energy self-schedules and that market participants that

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ CAISO asserts that this payment structure, while compliant with the Suspension Order, will create market inefficiencies in some circumstances, particularly when the default energy bid of a resource subject to Appendix II exceeds the applicable LMP. April 3 Compliance Filing at 4.

¹⁸ *Id.* at 5.

¹⁹ CAISO states that it does not intend for this revision to suggest that there is a substantive distinction between a submission to self-provide ancillary services and to self-schedule ancillary services. *Id.*

choose to self-schedule their resources will receive the LMP only and will never receive their resource's default energy bid.²⁰

III. Notice, Interventions, and Responsive Filings

11. Notice of CAISO's April 3 Compliance Filing was published in the *Federal Register*, 78 Fed. Reg. 21,924 (2013), with interventions and protests due on or before April 24, 2013. A motion to intervene and comments were filed by Southern California Edison Company (SoCal Edison). On May 9, 2013, CAISO filed an answer to SoCal Edison's comments.

12. SoCal Edison argues that it is unclear whether Appendix II of CAISO's OATT applies only to market participants with suspended market-based rate authority that act as their own scheduling coordinator or if Appendix II also applies when that market participant contracts with a third party to act as the market participant's scheduling coordinator. SoCal Edison argues that Appendix II must be clarified in order to prevent market participants with suspended market-based rate authority from avoiding the Commission's intended restrictions on their bidding practices by scheduling through a separate scheduling coordinator. Therefore, SoCal Edison requests that the Commission direct CAISO to revise Appendix II to clarify that the associated tariff provisions also apply to any scheduling coordinator bidding a suspended market participant's units unless the scheduling coordinator and the suspended market participant had an existing agreement prior to the Commission determining that suspension was appropriate and the suspended entity does not control the bids submitted by the third-party scheduling coordinator.²¹

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motion to intervene serves to make SoCal Edison a party to this proceeding.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept CAISO's answer and, therefore, reject it.

²⁰ *Id.*

²¹ SoCal Edison Comments at 4.

B. Substantive Matters

15. In its compliance filing, CAISO revised Appendix II of its OATT to provide that, after the execution of the market run, for intervals in which the resource subject to Appendix II is dispatched or committed by CAISO, including any exceptional dispatches, CAISO will pay the higher of the resource's default energy bid or the applicable LMP, as directed by the Commission. CAISO also revised section 5 of Appendix II to clarify that these provisions apply to self-schedules, as directed by the Commission. In addition, no party has alleged that the compliance filing fails to conform to the directives of the March 19 Order. Therefore, we accept CAISO's proposed tariff revisions, as they comply with the directives of the March 19 Order, to be effective April 1, 2013, consistent with the effective date established in the March 19 Order.

16. We find that SoCal Edison's request that the Commission order CAISO to submit an additional compliance filing to ensure that JP Morgan cannot participate in CAISO markets through a third-party scheduling coordinator amounts to a belated, and now impermissible, challenge to both the Suspension Order and the March 19 Order. SoCal Edison effectively requests that the Commission modify the terms previously established by the Suspension Order under which JP Morgan may participate in wholesale electricity markets.²² In neither order did the Commission address JP Morgan's participation in the markets through the use of a third-party scheduling coordinator nor did any party request that the Commission clarify this issue in either comments or a timely request for rehearing. As a result, we will not require the modifications sought by SoCal Edison.

The Commission orders:

CAISO's revised Appendix II is hereby accepted, effective April 1, 2013, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²² Suspension Order, 141 FERC ¶ 61,131 at P 53.