144 FERC ¶ 61,188
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 Corporation Docket No. EL13-58-000

v.

Midwest Independent Transmission System Operator,
Inc. and PJM Interconnection, L.L.C.

ORDER DISMISSING COMPLAINT

(Issued September 4, 2013)

1. On April 10, 2013, JP Morgan Ventures Energy Corporation (JP Morgan) filed a complaint against Midwest Independent Transmission System Operator, Inc. (MISO)[1] and PJM Interconnection, L.L.C. (PJM) (collectively, Respondents), pursuant to section 206 of the Federal Power Act (FPA)[2] and Rule 206 of the Commission's Rules of Practice and Procedure,[3] alleging that the Respondents' tariffs should be amended if necessary to implement the Commission's suspension of JP Morgan's market-based rate authority.[4] As discussed below, in light of the Commission's recent decision in *J.P. Morgan Ventures Energy Corp.*,[5] we dismiss JP Morgan's complaint as moot.

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[1] MISO recently changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc." The acronym, "MISO," remains the same, however.

[2] 16 U.S.C. § 824e (2006).

[3] 18 C.F.R. § 385.206 (2012).

[4] JP Morgan Complaint at 14-15 (referencing *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

(continued…)

I. Background

A. Suspension Order

2. On November 14, 2012, the Commission suspended JP Morgan's authority to sell energy, capacity, and ancillary services at market-based rates for a period of six months, explaining:

> 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.[[6]]

3. The Commission, however, delayed the effective date of the suspension until April 1, 2013, in response to concerns raised by the California Independent System Operator Corporation (CAISO) that the generating units controlled by JP Morgan play a significant role in enabling CAISO to address system reliability needs.[7]

B. January 30 Filing and March 19 Order

4. On January 30, 2013, JP Morgan filed two tariffs setting forth the rates that JP Morgan proposed to charge during the suspension period.[8] Notably, JP Morgan proposed the General Tariff, which would govern its new sales outside of the CAISO markets. Part I of the General Tariff would govern JP Morgan's sales of electricity, capacity, and ancillary services into organized electricity markets other than CAISO

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would not modify or abrogate agreements entered into by JP Morgan before the suspension's effective date)).

[5] *See* 143 FERC ¶ 61,118 (2013) (May 10 Rehearing Order).

[6] Suspension Order, 141 FERC ¶ 61,131 at P 53.

[7] *Id.*

[8] J.P. Morgan Ventures Energy Corp., Application, Docket No. ER13-830-000 (filed Jan. 30, 2013) (January 30 Filing).

during the suspension period.[9] Part II of the General Tariff purported to authorize JP Morgan's new bilateral sales of energy, capacity, and ancillary services during the suspension period. Part III of the General Tariff set forth the general terms and conditions that would govern Parts I and II.[10]

5. In the March 19 Order, the Commission rejected in part and conditionally accepted in part the General Tariff, finding that Part I of the General Tariff departed from the strictures prescribed in the Suspension Order.[11] Thus, the Commission directed JP Morgan to revise Part I of the General Tariff to reflect the bidding and rate restrictions previously imposed by the Commission by submitting a compliance filing proposing tariff provisions under which JP Morgan would be permitted to either self-schedule energy products or to submit offers at $0/MWh. Additionally, the Commission required JP Morgan's compliance filing to allow JP Morgan to receive a rate capped at the higher of the LMP or default energy bid. The Commission, however, rejected Part II of JP Morgan's General Tariff.[12]

C. March 29 Compliance Filing and May 10 Rehearing Order

6. On March 29, 2013, JP Morgan filed proposed tariff revisions in an effort to comply with the March 19 Order (March 29 Compliance Filing). In the March 29 Compliance Filing, JP Morgan stated that it had revised Part I of the General Tariff to limit its energy offers for energy above minimum load to $0/MWh.[13] With respect to start-up and minimum load/no load costs, JP Morgan proposed to submit offers based on the relevant resource's marginal costs, which JP Morgan stated are on file with the

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[9] JP Morgan proposed in the January 30 Filing that it would sell energy by either self-scheduling energy or submitting bids that do not exceed 110 percent of JP Morgan's applicable cost-based price on file with each market operator. In turn, JP Morgan proposed to receive the energy rate established by the terms of the applicable market operator's tariff.

[10] JP Morgan also proposed a CAISO-Specific Tariff, which would govern JP Morgan's sales into the CAISO markets during the suspension period. That tariff filing is not at issue in this proceeding.

[11] *J.P. Morgan Ventures Energy Corp.*, 142 FERC ¶ 61,190, at P 31 (2013) (March 19 Order).

[12] *Id.* P 32.

[13] March 29 Compliance Filing at 3.

relevant market operator and/or market monitor. JP Morgan asserted that this aspect of its proposal would be consistent with the approach that the Commission approved regarding JP Morgan's participation in the CAISO market.[14]

7. JP Morgan also proposed tariff revisions to set the rate that it would receive at the higher of the applicable LMP or the "Cost-Based Energy Price."[15] JP Morgan explained that, while the organized markets other than CAISO do not use the term "default energy bid" in their tariffs, this proposal would provide for "an equivalent marginal cost-based rate, which is given a different name in each market," consistent with the requirements of the Suspension Order.[16]

8. In response to the March 29 Compliance Filing, intervenors generally argued that the tariffs maintained by PJM and MISO do not include a default energy bid or provisions that would permit JP Morgan to receive the "Cost-Based Energy Price" set forth in JP Morgan's proposal.[17]

9. JP Morgan, in turn, filed a request for rehearing of the March 19 Order.[18] Specifically, if the Commission determined that JP Morgan should be required to submit offers of $0/MWh and to receive only the LMP for its sales into organized markets outside of CAISO, JP Morgan argued that the Commission should approve the cost-based offer cap originally proposed in its January 30 Filing.[19] JP Morgan further suggested that limiting its offers to $0/MWh while simultaneously limiting the rate it receives to the applicable LMP would potentially produce a confiscatory result.

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[14] *Id.* at 4 (citing *Cal. Indep. Sys. Operator Corp.*, 142 FERC ¶ 61,191 (2013)).

[15] JP Morgan proposed to define the "Cost-Based Energy Price" as "those energy costs for the unit being offered into an [o]rganized [m]arket, required to be filed with the market operator and/or market monitor, in accordance with the tariff applicable to that market." *Id.*, Ex. 3 at 2.

[16] *Id.* at 3.

[17] *See* May 10 Rehearing Order, 143 FERC ¶ 61,118 at P 18.

[18] JP Morgan, Request for Rehearing, Docket No. ER13-830-002 (filed April 10, 2013).

[19] *Id.* at 16-17.

10. In the May 10 Rehearing Order, the Commission granted JP Morgan's request for rehearing of the March 19 Order with respect to the conditions under which the Commission previously accepted Part I of the General Tariff.[20] Specifically, the Commission subjected its acceptance of Part I of the General Tariff to the condition that JP Morgan submits an additional compliance filing capping its offers to supply energy and ancillary services at the costs of providing such services on file with the pertinent market operator and/or market monitor.[21] The Commission also approved JP Morgan's proposal to receive the rate calculated in accordance with the applicable market rules, which JP Morgan originally proposed in its January 30 Filing. The Commission did not, however, adopt JP Morgan's proposal to include a 10 percent adder with its cost-based bids, finding that such an adder was unnecessary to ensure that JP Morgan recovered its costs.[22]

II. JP Morgan's Complaint

11. "To the extent that the Commission finds that the approach it ordered in the . . . Suspension Order and the [March 19 Order] cannot be implemented without changing the PJM and MISO tariffs," JP Morgan alleges that Respondents' tariffs should be amended.[23] Specifically, JP Morgan contends that, if the PJM and MISO tariffs prohibit the Respondents from complying with the Commission's directives in the Suspension Order and the March 19 Order, those tariffs are unjust and unreasonable and, therefore, must be modified. JP Morgan does not, however, proffer specific revisions to be adopted by MISO and PJM. Instead, JP Morgan states that the Commission could direct the Respondents to adopt the specific language required by the Commission or follow an approach similar to that proposed by CAISO.[24]

12. JP Morgan requests that the Commission establish a refund effective date of either April 1, 2013, or at the latest, April 10, 2013.[25]

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[20] May 10 Rehearing Order, 143 FERC ¶ 61,118 at P 24.

[21] *Id.* P 26.

[22] *Id.* P 27.

[23] JP Morgan Complaint at 14-15.

[24] *Id.*

[25] *Id.* at 15.

III. Notice and Responsive Filings

13. Notice of JP Morgan's complaint was published in the *Federal Register*, 78 Fed. Reg. 24,192 (2013), with interventions and protests due on or before April 26, 2013. Monitoring Analytics, LLC (the PJM Market Monitor) filed a timely motion to intervene. PJM filed an answer to the complaint. On May 2, 2013, MISO filed a motion to intervene out-of-time.

14. In its answer, PJM asserts that it is under no obligation to amend its tariff because the Suspension Order and March 19 Order require JP Morgan—not PJM—to comply with the Commission's directives. Moreover, PJM contends that its existing tariff provisions are sufficient to allow JP Morgan to comply with the purpose and intent of the Suspension Order, so long as JP Morgan submits cost-based offers calculated pursuant to PJM's Operating Agreement.[26]

15. PJM also disputes JP Morgan's claim that PJM's tariff is unjust and unreasonable. PJM argues that the Suspension Order requires that JP Morgan submit offers at $0/MWh during the suspension period and that JP Morgan receive the LMP, with any applicable make whole payments, similar to other market participants.[27] Alternatively, if JP Morgan submits an offer of $0/MWh, but is compensated at the higher of LMP or the resource's marginal costs, PJM asserts that other market participants will be forced to pay uplift charges when the resource's costs are higher than LMP. PJM contends that this result would be unjust and unreasonable. Finally, PJM claims that JP Morgan is not entitled to refunds because JP Morgan has not met its burden under section 206 of the FPA.[28]

IV. Discussion

A. Procedural Matters

16. 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 the PJM Market Monitor a party to this proceeding.

17. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant MISO's late-filed motion to

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[26] PJM Answer at 3-4.

[27] *Id.* at 5.

[28] *Id.* at 6.

intervene given MISO's interest in the proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay.

B. Substantive Matters

18. In the May 10 Rehearing Order, the Commission granted JP Morgan's request for rehearing and modified the conditions under which the Commission accepted Part I of the General Tariff. In particular, the Commission found that JP Morgan's offers to supply energy and ancillary services should be capped at the cost of providing such services on file with the pertinent market operator and/or market monitor.[29] Moreover, the Commission concluded that JP Morgan would be eligible to receive make-whole payments to the extent necessary in accordance with the applicable market rules.[30] As a result of the revised conditions set forth in the May 10 Rehearing Order, no modification of the PJM and MISO tariffs is necessary to accommodate JP Morgan's participation in those organized markets during the suspension period. We will, therefore, dismiss JP Morgan's complaint as moot.

The Commission orders:

JP Morgan's complaint is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[29] May 10 Rehearing Order, 143 FERC ¶ 61,118 at P 26.

[30] *Id.* P 27.