

145 FERC ¶ 61,004
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. EL13-21-001

ORDER ON REHEARING

(Issued October 1, 2013)

1. On January 4, 2013, the Commission issued an order¹ granting a petition for declaratory order filed by the California Independent System Operator Corporation (CAISO) finding that certain agreements between AES Huntington Beach LLC (AESHB) and BE CA LLC, a subsidiary of J.P. Morgan Ventures Energy Corporation (collectively, JP Morgan) did not provide JP Morgan with contractual consent authority regarding the conversion of Units 3 and 4 of the Huntington Beach Generating Station to synchronous condensers. On February 4, 2013, JP Morgan filed a request for rehearing of the Declaratory Order. As discussed below, in this order, the Commission dismisses as moot JP Morgan's request for rehearing.

I. Background

2. In August 2012, in order to address forecast reliability concerns, CAISO designated Huntington Beach Generating Station Units 3 and 4 (Units 3 and 4) as reliability must-run (RMR) units, based on a planned conversion of the units into synchronous condensers that could provide the needed voltage support. CAISO entered

¹ *Cal. Indep. Sys. Operator Corp.*, 142 FERC ¶ 61,016 (2013) (Declaratory Order).

into a non-conforming RMR Agreement with AESHB for these units to provide voltage support for the 2013 contract year.²

3. The RMR Agreement contained a condition that AEHSB must receive consent from JP Morgan for the conversion project or confirmation that such consent is not required. The consent rights at issue derive from a Tolling Agreement, under which AESHB operates, and JP Morgan controls the output from, Units 1 and 2 at the Huntington Beach Generating Station. AESHB and JP Morgan executed a Supplemental Agreement concurrently with the Tolling Agreement that pertains to the development of generating capacity in a specified geographic area, which includes Units 3 and 4. On November 19, 2012, CAISO filed a petition requesting that the Commission interpret the Tolling Agreement and Supplemental Agreement to confirm that JP Morgan does not have consent rights over the synchronous condenser project.³

4. In the Declaratory Order, the Commission found that the Supplemental Agreement and Tolling Agreement together form a single, Commission-jurisdictional agreement, such that the consent provisions contained in the Supplemental Agreement are within the scope of its jurisdiction.⁴ The Commission also found that the ancillary services produced by the synchronous condensers are not included in the Tolling Agreement's definition of "capacity" because their output is measured in MVARs, not MWs. Therefore, the Commission found that JP Morgan's consent rights to "capacity" additions do not cover the synchronous condenser project.⁵

5. Further, the Commission dismissed protests concerning CAISO's technical studies and the actions CAISO takes to address identified reliability concerns as beyond the scope of the proceeding. Instead, the Commission found that CAISO has the authority under its tariff, based on technical analyses, to designate any generating unit as an RMR unit, and that the synchronous condenser project and associated RMR Agreement present a feasible technical solution to address the reliability needs described in its petition.⁶

² On November 9, 2012, AESHB and CAISO filed the RMR Agreement with the Commission in Docket No. ER13-351-000. On January 4, 2013, the Commission conditionally accepted the RMR Agreement, subject to a further compliance filing to address non-substantive tariff revisions. *AES Huntington Beach, L.L.C. and Cal. Indep. Sys. Operator Corp.*, 142 FERC ¶ 61,017 (2013).

³ Declaratory Order, 142 FERC ¶ 61,016 at PP 4-6.

⁴ *Id.* P 43.

⁵ *Id.* P 47.

⁶ *Id.* P 51.

6. Subsequent to the issuance of the Declaratory Order, JP Morgan and Southern California Edison Company (SoCal Edison) entered into a capacity sale and tolling agreement that would effectively transfer to SoCal Edison any consent rights that JP Morgan may have had with regard to the synchronous condenser conversion project (SoCal Edison-JP Morgan Agreement). CAISO reported that, pursuant to this agreement, SoCal Edison will consent to the operation of the synchronous condensers upon final and non-appealable CPUC approval of the SoCal Edison-JP Morgan Contract.⁷ On May 9, 2013, CPUC approved the contract.⁸ Subsequently, CAISO confirmed that the conditions precedent in the RMR Agreement had been satisfied and the RMR Agreement had gone into effect.⁹

II. JP Morgan's Request for Rehearing

7. JP Morgan requested rehearing of the Commission's Declaratory Order, asserting that the Commission exceeded its jurisdiction and erroneously interpreted the applicable agreements to reach its determinations.¹⁰ Specifically, JP Morgan argued that the Commission improperly asserted its authority to interpret the Supplemental Agreement based on its jurisdiction over the Tolling Agreement. JP Morgan argued that the two agreements are separate contracts and that only the Tolling Agreement is within the Commission's jurisdiction.¹¹

8. Also, JP Morgan argued that the Commission's interpretation of the meaning of the term "capacity" in the Supplemental Agreement is inconsistent with applicable contractual arrangements and, as a result, defeats the intent of the parties. JP Morgan again contended that, when construed in its proper context, "capacity," as it is used in the Supplemental Agreement, includes ancillary services such as the voltage support that would be provided by the synchronous condensers.¹²

⁷ *E.g.*, CAISO, Informational Filing, Docket No. ER13-351-000, at 2-3 (filed April 12, 2013).

⁸ *S. Cal. Edison Co.*, Final Resolution E-4584 (Cal. Public Utils. Comm'n, May 9, 2013), *available at* <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M065/K136/65136761.PDF>.

⁹ CAISO, Informational Filing, Docket No. ER13-351-000, at 1 (filed June 24, 2013).

¹⁰ JP Morgan February 4, 2013 Request for Rehearing at 4 (citing section 206 of the Federal Power Act, 16 U.S.C. § 824 (2006)).

¹¹ *Id.* at 2, 5.

¹² *Id.* at 10-12.

9. JP Morgan asserted that the Commission improperly refused to consider JP Morgan's arguments that CAISO overstated the reliability concerns underlying its petition and the RMR Agreement, and refused to consider alternatives, such as a controlled load-shedding scheme. JP Morgan also argued that the Commission's refusal to consider the evidence it presented regarding reliability issues as being beyond the scope of the proceeding constitutes arbitrary and capricious decision-making because the Commission used CAISO's reliability concerns to justify its action.¹³

10. Finally, JP Morgan argued that, to the extent that the Commission is justifying its ruling by claiming it has the authority to modify the Supplemental Agreement to eliminate JP Morgan's consent rights, such an attempt exceeds the Commission's authority to make retroactive changes in economic arrangements. Also, JP Morgan argued that, because the Commission's jurisdiction is circumscribed by the *Mobile Sierra* doctrine, even if the Commission has jurisdiction to modify an agreement, the Commission did not make the requisite findings here to alter a contract.¹⁴

III. Discussion

11. We dismiss JP Morgan's request for rehearing as moot. JP Morgan no longer has the consent rights under the contracts at issue here. In light of CPUC's final and non-appealable approval of the SoCal Edison and JP Morgan Agreement, including the transfer of any consent rights that may have been necessary as a condition precedent to the RMR Agreement, we find that the issues raised in JP Morgan's rehearing request are moot.

The Commission orders:

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹³ *Id.* at 17-18.

¹⁴ *Id.* at 19-20.