141 FERC ¶ 61,191
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

J.P. Morgan Ventures Energy Corp. Docket No. EL12-105-000

v.

California Independent System Operator Corporation

ORDER DISMISSING COMPLAINT

(Issued December 5, 2012)

1. On September 14, 2012, J.P. Morgan Ventures Energy Corp. (JP Morgan) filed a complaint against the California Independent System Operator Corporation (CAISO) alleging that CAISO violated its tariff by underpaying JP Morgan for energy generated pursuant to exceptional dispatch instructions issued by CAISO in April, May, and June, 2012. In this order, we dismiss JP Morgan's complaint, without prejudice.

I. Background

2. Exceptional dispatch is a mechanism that enables CAISO to manually commit and/or dispatch resources that are not cleared through market software in order to maintain reliable grid operations under unusual or infrequent circumstances, including contingencies, such as load uncertainty, loss of excessive amounts of generation, and potential outages of major interties. Previously, the Commission has stated that CAISO has sufficiently demonstrated that the potential for market participants to exercise market power exists when exceptional dispatches are issued for the following reasons: (1) to address reliability requirements related to non-competitive constraints; (2) to ramp ancillary services awards or residual unit commitment capacity to a dispatch level that ensures their availability in real-time; and (3) to address environmental constraints in the Sacramento Delta region known as "Delta Dispatch."[1]

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

3. In most cases of exceptional dispatch, CAISO pays a resource the higher of the resource's bid price, the locational marginal price, or the resource's default energy bid[2] price for the energy acquired through the exceptional dispatch.[3] For exceptional dispatches that are subject to mitigation, as listed above, CAISO pays the resource the higher of the locational marginal price or its default energy bid.[4]

4. Pursuant to a Commission directive,[5] CAISO submits regular reports to the Commission detailing its use of exceptional dispatch. These reports provide information on the frequency, volume, costs, causes, and degree of mitigation of exceptional dispatches. The reports are intended to ensure transparency for stakeholders and the Commission regarding CAISO's use of exceptional dispatch and also to discourage CAISO from developing an overreliance on exceptional dispatch.[6]

5. JP Morgan and its subsidiary, BE CA LLC, control through tolling agreements 10 generating units operating in the CAISO market. JP Morgan alleges that between April 2012 and June 2012, CAISO exceptionally dispatched these resources at least 18 times without paying the amount required by CAISO's tariff. JP Morgan asserts that, rather than paying the higher of the bid price, locational marginal price, or default energy bid for the exceptionally dispatched energy, CAISO instead mitigated the payments down to the higher of the default energy bid or locational marginal price. JP Morgan notes that CAISO initially settled the April transactions at the bid price, but later issued resettlement statements reflecting the mitigated amount. JP Morgan states that CAISO's actions have resulted in an unlawful withholding of approximately $3.7 million for exceptional dispatches during the period at issue.[7]

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

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

[4] *Id.*, §§ 39.10.1, 11.5.6.7.

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

[6] *Id.*

[7] JP Morgan September 14, 2012 Complaint at 5, 10-11 (Complaint). JP Morgan alleges that CAISO has continued to underpay for exceptional dispatch energy through September 2012 and reserves the right to file a new or amended complaint to address these continuing actions. *Id.* at 11-12.

6. JP Morgan represents that none of the three circumstances under which CAISO can mitigate exceptional dispatches are applicable to the exceptional dispatches at issue here. JP Morgan states that CAISO classified each of the exceptional dispatches at issue as "non-transmission-related modeling limitations" at the time of each dispatch. JP Morgan notes that despite emails seeking explanation, disputes filed with CAISO regarding the mitigated settlements, and a demand letter requesting remittance of the unpaid amounts, CAISO has not provided an explanation of the specific reasons for the exceptional dispatches or identified any existing authority that would permit mitigation. Thus, JP Morgan argues that CAISO has violated its tariff by failing to pay the required rate for the exceptional dispatches.[8]

7. JP Morgan requests that the Commission order CAISO to pay to JP Morgan the higher of the bid price, locational marginal price, or default energy bid, plus interest for the exceptional dispatches at issue.[9]

II. Notice and Responsive Pleadings

8. Notice of the complaint was published in the *Federal Register*, 77 Fed. Reg. 58824 (2012), with CAISO's answer, interventions, and protests due on or before October 4, 2012. A notice of intervention was filed by the Public Utilities Commission of the State of California. Timely motions to intervene were filed by Northern California Power Agency; Pacific Gas and Electric Company; the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California; Southern California Edison Company; and the California Department of Water Resources State Water Project. CAISO timely filed its answer. JP Morgan filed an answer to CAISO's answer.

III. CAISO Answer

9. CAISO requests that the Commission reject JP Morgan's complaint, without prejudice, as premature. CAISO reports that, in addition to the 18 exceptional dispatches listed in the instant complaint, JP Morgan has also initiated disputes regarding the mitigation of 115 additional exceptional dispatches that took place on 35 different dates in July and August 2012.[10] CAISO states that it is currently engaged in a review of the exceptional dispatches that JP Morgan has disputed, pursuant to the settlement statement dispute process established in the CAISO tariff. CAISO explains that, given the large number of disputed dispatches and monetary amounts at issue, it designated these settlement disputes as "complex" under section 11.29.8.5 of its tariff. This tariff

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[8] *Id.* at 12-17.

[9] *Id.* at 17-18.

[10] CAISO October 4, 2012 Answer at 4 (CAISO Answer).

provision allows CAISO to designate as complex, in its sole discretion, a dispute that will entail extensive research and require more time than typical disputes. Accordingly, CAISO's tariff requires it to make reasonable attempts to resolve the dispute no later than 15 months after the applicable trading day. CAISO argues that by filing a complaint before CAISO has completed its review, JP Morgan is improperly interfering with CAISO's settlement dispute process.[11]

10. CAISO notes that the Commission has approved the settlement dispute timeline as just and reasonable and binding on the parties. The Commission found that, despite the considerable period of time for review, the requirement for CAISO to apply interest to any changes in payments ultimately owed would mitigate against the harm a market participant may suffer while waiting for resolution of the matter.[12] Thus, CAISO contends that JP Morgan has no basis for disrupting the established process by filing a complaint.[13] Further, CAISO asserts that JP Morgan has no basis for challenging its designation of the disputes as complex because the Commission-approved tariff provision expressly provides that such designation is a matter of CAISO's "sole discretion."[14] CAISO adds that designating these disputes as complex furthers the objective of the underlying tariff provision, which is to provide CAISO with sufficient time to ensure that similar issues are resolved in a consistent manner.[15] CAISO notes that it has informed JP Morgan of its intention to "resolve these disputes in a much more expeditious manner than this designation would allow."[16]

IV. <u>JP Morgan Answer</u>

11. JP Morgan argues that CAISO's answer does not provide any information to address the complaint, which JP Morgan asserts contradicts the Commission's requirement that answers to a complaint admit or deny "specifically and in detail" the facts and allegations in the complaint. JP Morgan also characterizes CAISO's answer as

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[11] *Id.* at 5-8.

[12] *Id.* at 9 (citing *Cal. Indep. Sys. Operator Corp.*, 130 FERC ¶ 61,034, at P 16 (2010) (January 2010 Order)).

[13] *Id.* at 9-10.

[14] *Id.* at 10 (citing CAISO Tariff, § 11.29.8.5(c); January 2010 Order, 130 FERC ¶ 61,034 at P 14 ("The CAISO will have the sole discretion to designate a dispute as complex … .")).

[15] *Id.*

[16] *Id.* at 7.

an unsupported procedural argument, designed to thwart transparency and deny JP Morgan a meaningful answer regarding the mitigation. JP Morgan contends that the Commission has held that dispute resolution protocols cannot restrict section 206 rights and that CAISO's tariff does not contain language restricting such rights. JP Morgan claims that section 206 rights are most valuable in situations such as the instant proceeding where CAISO, according to JP Morgan, seeks to avoid resolving the dispute and is unwilling to promptly disclose the information necessary to reach a resolution. Further, JP Morgan discredits CAISO's decision to classify the dispute as complex, arguing that CAISO has not explained what aspects of its mitigation determinations warrant such classification. JP Morgan also notes that CAISO's answer fails to disclose which category each of the disputed exceptional dispatches falls into. Thus, JP Morgan argues that the Commission should find CAISO in default, grant the complaint, and direct CAISO to pay the $3.7 million of withheld revenue because CAISO has failed to defend the facts and merits of the dispute.[17]

V. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

13. 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 an answer unless otherwise ordered by the decisional authority. We will accept JP Morgan's answer because it has assisted us in the decision-making process.

B. Commission Determination

14. We will dismiss JP Morgan's complaint, without prejudice, as premature because JP Morgan has not exhausted the settlement dispute review process established in CAISO's tariff. The Commission has previously dismissed as premature complaints that seek to contravene dispute resolution procedures prescribed in a utility's tariff.[18] It is well established that the Commission strongly encourages parties to attempt to resolve

[17] JP Morgan October 18, 2012 Answer at 7-8.

[18] *See, e.g., Strategic Energy L.L.C. v. Cal. Indep. Sys. Operator Corp.*, 95 FERC ¶ 61,312, at 62,069 (2001), *aff'd on reh'g*, 96 FERC ¶ 61,146, at 61,629 (2001) (denying a complaint as premature because the complainant did not follow the alternative dispute resolution procedures set forth in the CAISO tariff) (*Strategic Energy*).

their disputes before bringing them to the Commission.[19] CAISO's tariff expressly allows for up to 15 months after the trading day to resolve a complex dispute. We find no reason to subvert the established process in this case. CAISO's obligation to apply interest to any changes to the settlements will prevent any harm that JP Morgan may suffer as a result of the delay. JP Morgan may also pursue a future complaint if issues remain after CAISO's settlement dispute resolution process has concluded.

15. The Commission is unconvinced by the arguments made by JP Morgan in its answer. First, while JP Morgan is not prohibited by CAISO's tariff-based dispute resolution provisions from bringing a complaint under section 206, we note that the Commission has an established preference for allowing a matter to be processed through existing dispute resolution provisions prior to Commission involvement.[20] Second, we find no support for JP Morgan's claim that CAISO seeks to avoid resolving the dispute. To the contrary, CAISO's filing makes it clear that it is taking reasonable steps to resolve the dispute pursuant to procedures set forth in its tariff, and CAISO has further stated its intention to "resolve these disputes in a much more expeditious manner than this [15 month long] designation would allow."[21] Third, we find that CAISO's designation of the disputes as "complex" is consistent with its tariff authority. CAISO's Commission-approved tariff allows CAISO the sole discretion to designate disputes as complex when the dispute involves policy considerations, extensive research, complicated data, or requires additional information.[22] Since CAISO claims, and JP Morgan does not dispute, that CAISO is now reviewing 115 exceptional dispatches in addition to the 18 listed in the instant complaint, the Commission believes it is reasonable to conclude that CAISO would be expected to do "extensive research" and obtain "additional information" in order to be able to appropriately resolve these issues, thus qualifying the disputes as "complex" under the tariff standards. We thus find that CAISO operated within the authority under its tariff when it designated this dispute as complex. Finally, since we are dismissing JP Morgan's complaint without prejudice, there is no need to reach the issue of the sufficiency of the remaining issues in CAISO's answer to the allegations in the complaint. We reiterate that JP Morgan will not be harmed by our decision to defer to CAISO's dispute resolution procedures because JP Morgan will receive interest if it prevails in any of the disputes.

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[19] *See, e.g.*, *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 61,177, at PP 12, 14 (2006); *Strategic Energy*, 95 FERC ¶ 61,312 at 62,069.

[20] *Strategic Energy*, 95 FERC ¶ 61,312.

[21] CAISO Answer at 7.

[22] CAISO Tariff, § 11.28.8.5(c).

16. Although the CAISO tariff provides up to 15 months to reach a determination on a complex dispute, we encourage CAISO to resolve this matter in an expeditious manner, consistent with its communication to JP Morgan.

The Commission orders:

JP Morgan's complaint is hereby dismissed without prejudice, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.