

142 FERC ¶ 61,190
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. ER13-830-000

ORDER REJECTING IN PART
AND CONDITIONALLY ACCEPTING IN PART PROPOSED TARIFFS

(Issued March 19, 2013)

1. On January 30, 2013, pursuant to section 205 of the Federal Power Act (FPA),¹ J.P. Morgan Ventures Energy Corporation (JP Morgan) filed proposed tariff revisions to govern its new sales of energy, capacity, and ancillary services during the period in which the Commission has suspended JP Morgan's market-based rate authority. In this order, we reject JP Morgan's filing in part and conditionally accept JP Morgan's filing in part, subject to a compliance filing, to be effective April 1, 2013.

I. Background

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.² Nevertheless, the Commission permitted JP Morgan to participate in wholesale electricity markets within certain parameters. Specifically, under the terms of the suspension, the Commission explained:

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

¹ 16 U.S.C. § 824d (2006).

² See *J.P. Morgan Ventures Energy Corporation*, 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).

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.³

The Commission, however, delayed the effectiveness of the suspension until April 1, 2013, in response to concerns raised by California Independent System Operator Corporation (CAISO) that the generating units controlled by JP Morgan⁴ play a significant role in enabling CAISO to address system reliability needs.⁵

II. JP Morgan's Filing

3. JP Morgan's filing is comprised of two tariffs setting forth the rates that JP Morgan proposes to charge during the suspension period. First, JP Morgan proposes a tariff that would govern its new sales of energy, capacity, and ancillary services in the CAISO market during the suspension period (CAISO-Specific Tariff). Second, JP Morgan proposes a tariff that would govern its new sales outside of the CAISO markets (General Tariff).

A. JP Morgan's CAISO-Specific Tariff

4. JP Morgan argues that the Suspension Order applies only to energy offers for operations above minimum load conditions because the Suspension Order "does not fully address" minimum load energy, the recovery of a seller's minimum load and start-up costs, ancillary services, or residual unit commitment (RUC).⁶ With respect to energy above minimum load, JP Morgan proposes to cap its offers at \$0/MWh and to receive the higher of the applicable LMP determined by CAISO in accordance with the CAISO Tariff or JP Morgan's default energy bid for the applicable unit.⁷ With respect to start-up costs and minimum load energy, JP Morgan proposes to cap its offers and to receive a rate in accordance with the governing terms of CAISO's Open Access Transmission Tariff (CAISO OATT).⁸

³ Suspension Order, 141 FERC ¶ 61,131 at P 53.

⁴ These natural-gas fired units, owned by the AES Corporation, total almost 4,000 MW of capacity and are located at the Alamitos Generating Station, Huntington Beach Generating Station, and Redondo Beach Generating Station.

⁵ *Id.*

⁶ JP Morgan Filing at 4-5.

⁷ *Id.* at 5; Ex. 1 at §§ 4.2(c), 5.3.

⁸ JP Morgan Filing at 5; Ex. 1 at §§ 4.2(a), (b), 5.1, 5.2.

5. For ancillary services and RUC awards, JP Morgan proposes to cap its bids at \$0/MWh and to receive the applicable rate provided under the CAISO OATT.⁹ Additionally, JP Morgan commits to comply with the CAISO OATT, except to the extent that the CAISO OATT conflicts with JP Morgan's CAISO-Specific Tariff. In the event of such a conflict, under JP Morgan's proposal, JP Morgan's CAISO-Specific Tariff would prevail.

6. JP Morgan contends that the CAISO-Specific Tariff is consistent with the requirements of the Suspension Order.¹⁰ Specifically, JP Morgan suggests that the Suspension Order "imposes a zero-price bid requirement on [JP Morgan] for energy above minimum load and eliminates [JP Morgan's] ability to submit market-based rates into those markets."¹¹ Further, JP Morgan interprets the Suspension Order to afford a reasonable opportunity for JP Morgan to recover its costs by ensuring that JP Morgan is paid at the higher of the LMP or the default energy bid.¹² JP Morgan claims that the Suspension Order, as implemented in JP Morgan's CAISO-Specific Tariff, would avoid confiscatory rates. JP Morgan claims confiscatory rates violate both the FPA and the U.S. Constitution.¹³

B. JP Morgan's General Tariff

7. JP Morgan's General Tariff is divided into three parts. Part I of the General Tariff establishes the terms under which JP Morgan proposes to make new sales of electricity, capacity, and ancillary services into organized electricity markets other than CAISO during the suspension period.¹⁴ Part II of the General Tariff authorizes JP Morgan to make new bilateral sales of energy, capacity, and ancillary services during the suspension period. Part III of the General Tariff sets forth general terms and conditions that govern Parts I and II.

8. Under Part I of the General Tariff, JP Morgan proposes to sell energy by either self-scheduling energy or submitting bids not to exceed 110 percent of JP Morgan's applicable cost-based price on file with each market operator. In turn, Part I of the

⁹ *Id.* at 5-6; Ex. 1 at §§ 6.2, 6.3.

¹⁰ *Id.* at 6.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* (citing *FPC v. Hope Natural Gas Co.*, 320 U.S. 59, 606-07 (1944); *Bluefield Waterworks Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679 (1923)).

¹⁴ *Id.*

General Tariff permits JP Morgan to receive the energy rate established by the terms of the applicable market operator's tariff.¹⁵ Further, JP Morgan proposes to limit its bids for ancillary services to \$0/MWh and to receive the rate established by the applicable market operator's tariff.

9. JP Morgan argues that this approach limits its bids to cost-based offers and minimizes deviations from current tariff provisions, thus avoiding the need for market operators to develop special procedures to accommodate JP Morgan's participation in organized electricity markets. JP Morgan also states that Part I of the General Tariff is consistent with communications it has had with various market operators.¹⁶

10. Pursuant to Part II of the General Tariff, JP Morgan proposes to make new bilateral sales during the suspension period at a rate not to exceed either 110 percent of the LMP, if applicable, or 110 percent of the price index published for the relevant product at the agreed-upon delivery point.¹⁷ JP Morgan contends that such index-based pricing is consistent with cost-based pricing because it reflects JP Morgan's opportunity costs if JP Morgan were to acquire energy in the market. Moreover, JP Morgan claims that index pricing is consistent with the Suspension Order, as well as Order No. 697, which JP Morgan states allows such an approach on a case-by-case basis when the LMP or index price is appropriate and the seller cannot influence that market price.¹⁸ Finally, JP Morgan notes that the Commission has previously allowed sellers to receive "a ten

¹⁵ *Id.*

¹⁶ *Id.* at 6-7. JP Morgan attaches to its filing a letter from PJM Interconnection, L.L.C. (PJM), which states that PJM expects that JP Morgan will submit only cost-based offers during the suspension period. *See* Ex. 3.

¹⁷ JP Morgan Filing at 7; Ex. 2, Part II, § 5.0.

¹⁸ JP Morgan Filing at 7 (citing Suspension Order, 141 FERC ¶ 61,131 at P 53; *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 698, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied sub nom. Pub. Citizen, Inc. v. FERC*, 21012 U.S. LEXIS 4820 (U.S. June 25, 2012)).

percent adder to incremental costs in order to allow recovery of difficult-to-quantify costs.”¹⁹

C. Requests for Waivers and Authorizations

11. JP Morgan additionally requests the following waivers and authorizations: (i) waiver of the accounting and reporting requirements of Parts 41, 101, and 141 of the Commission’s accounting and periodic reporting requirements, except for sections 141.14 and 141.15; (ii) waiver of the filing requirements of Subparts B and C of Part 35 of the Commission’s regulations requiring the filing of cost-of-service information, except for sections 35.12(a), 35.13(b), 35.15, and 35.16; and (iii) blanket authorization under section 204 of the FPA²⁰ and Part 34 of the Commission’s regulations for the issuance of securities and the assumption of liabilities.²¹

III. Notice and Responsive Filings

12. Notice of JP Morgan’s filing was published in the *Federal Register*, 78 Fed. Reg. 8506 (2013), with interventions and protests due on or before February 20, 2013. Timely motions to intervene were filed by: Monitoring Analytics, LLC; FirstEnergy Service Company; and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California. The Public Utilities Commission of California filed a notice of intervention. CAISO filed a timely motion to intervene and protest. Timely motions to intervene and protests were filed by: California Department of Water Resources State Water Project (State Water Project); Southern California Edison Company (SoCal Edison); Northern California Power Agency (NCPA); PJM; and Pacific Gas and Electric Company (PG&E). JP Morgan filed an answer to the protests filed in this proceeding.

13. Notice of JP Morgan’s request for blanket authorization under Part 34 of the Commission’s regulations was separately published in the *Federal Register*, 78 Fed. Reg. 16,262 (2013), with interventions and protests due on or before March 18, 2013. None was filed. 78 Fed. Reg. 16,262 (2013)

14. PG&E, SoCal Edison, State Water Project, and NCPA all request that the Commission reject JP Morgan’s CAISO-Specific Tariff in favor of CAISO’s OATT, which was filed in Docket No. ER13-872-000.²² PG&E contends that JP Morgan’s

¹⁹ *Id.* (citing *MidAmerican Energy Co.*, 114 FERC ¶ 61,280, at P 37 & n.36 (2006); *Terra Comfort Corp.* 52 FERC ¶ 61,241, at 61,840 (1990)).

²⁰ 16 U.S.C. § 824c (2006).

²¹ JP Morgan Filing at 8.

²² Both State Water Project and NCPA contend that Docket No. ER13-872-000 is

proposal to cap its offer at \$0/MWh would result in the uneconomic dispatch of generation whenever JP Morgan's costs are above the applicable LMP.²³ Similarly, SoCal Edison argues that use of the proposed \$0/MWh bid will result in nearly all of JP Morgan's portfolio being dispatched at maximum output, even when its marginal costs exceed the market-clearing price, resulting in the inefficient dispatch of generating units and artificially low market-clearing prices.²⁴

15. PG&E and SoCal Edison agree with CAISO that JP Morgan's proposal attempts to convert the cap established in the Suspension Order into a floor, which PG&E states results in greater and guaranteed profits to JP Morgan in excess of those received by any other participant in the CAISO market.²⁵ PG&E argues that JP Morgan, or any other market participant whose market-based rate authority has been suspended, should be paid no more than its "Variable Cost Option Default Energy Bid."²⁶ SoCal Edison states that the payment should be capped at the LMP, but that the Commission should have the discretion, on a case-by-case basis, to specify whether payments for energy from suspended market participants are based on the LMP or the default energy bid, if less than the LMP.²⁷

16. CAISO argues that JP Morgan's CAISO-Specific Tariff does not qualify as a cost-based proposal, as contemplated by the Suspension Order, and does not include the cost support information that the Commission requires for cost-based rate proposals.²⁸ Rather, CAISO argues, JP Morgan is seeking to change the terms of the CAISO OATT as they would apply to JP Morgan during the suspension period. CAISO states that this intention is made clear by section 3.0 of JP Morgan's CAISO-Specific Tariff, which purports to prevail over the CAISO OATT in the event of a conflict.²⁹ CAISO states that

the appropriate proceeding in which to consider changes to the CAISO OATT. *See* State Water Project Comment at 2; NCPA Comment at 4.

²³ PG&E Comment at 4.

²⁴ SoCal Edison Comment at 2.

²⁵ *Id.* at 3; PG&E Comment at 3-4.

²⁶ PG&E Comment at 6-7.

²⁷ SoCal Edison Comment at 4.

²⁸ CAISO Protest at 8-9. Section 3.0 of the CAISO-Specific Tariff states, in part, "[i]n the event of a conflict between the CAISO Tariff and this Tariff, this Tariff shall prevail." JP Morgan Filing, Ex. 1, § 3.0.

²⁹ *Id.* at 10.

the Commission has consistently rejected attempts by individual market participants to change the terms of an independent system operator's tariff unilaterally for the benefit of a single generator.³⁰ CAISO also states that JP Morgan has agreed to be bound by the CAISO OATT through its Scheduling Coordinator and Participating Generator Agreements and that CAISO has exclusive rights to modify the CAISO OATT.³¹

17. CAISO argues that JP Morgan's proposal that it be paid for energy at the higher of the LMP or its default energy bid effectively seeks to transform the cap prescribed in the Suspension Order into a floor, guaranteeing JP Morgan receive a rate that is no lower than its default energy bid.³² CAISO explains that, because the default energy bid includes a 10 percent adder, the price floor would ensure that JP Morgan receives a minimum 10 percent margin above operating cost for all of its capacity, even when these costs exceed the LMP.³³ CAISO contends that this proposal would enable JP Morgan to earn higher profits than market participants with market-based rates at the expense of other sellers. CAISO also argues JP Morgan's proposal departs from the strictures of the Suspension Order by allowing JP Morgan to submit bids for start-up and minimum load costs up to 200 percent of JP Morgan's actual costs, in accordance with the terms of the CAISO OATT. CAISO concludes that such a proposal might enable JP Morgan to earn bid cost recovery payments well in excess of its actual costs and at the expense of load-serving entities that would pay for these bid cost recovery payments.³⁴ Moreover, CAISO argues that its proposal, filed in Docket No. ER13-872-000, represents a more consistent implementation of the Suspension Order.³⁵

18. CAISO additionally challenges JP Morgan's request for waiver of Subparts B and C of Part 35 of the Commission's regulations.³⁶ CAISO contends that Order No. 697 expressly provides that such waivers would not be granted to entities making sales at

³⁰ *Id.* at 10-11 (citing *El Segundo Power, LLC*, 91 FERC ¶ 61,110, at 61,390 (2000), *reh'g denied*, 95 FERC ¶ 61,159 (2001)). CAISO adds that JP Morgan's CAISO-Specific Tariff would not apply to any transaction unless the counterparty signs a service agreement agreeing to be bound by JP Morgan's proposal. *Id.* at 12.

³¹ *Id.* at 11-12.

³² *Id.* at 12-13.

³³ *Id.* at 13.

³⁴ *Id.* at 16.

³⁵ *Id.* at 16-22.

³⁶ *Id.* at 9.

cost-based rates.³⁷ Furthermore, CAISO notes that nothing in Order No. 697 indicates that such waivers would be granted as a result of the length of time during which the entity would make sales at cost-based rates.³⁸

19. With respect to the General Tariff, PJM states that JP Morgan's proposal is consistent with other market participants' cost-based offers in PJM markets.³⁹ PJM supports this approach because the provisions will help PJM avoid the need to develop special procedures for JP Morgan's submission of offers during the suspension period.⁴⁰

IV. Discussion

A. Procedural Matters

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

21. 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 JP Morgan's answer and will, therefore, reject it.

B. Substantive Matters

22. As discussed further below, we will conditionally accept JP Morgan's CAISO-Specific Tariff, as well as Parts I and III of its General Tariff, to become effective on April 1, 2013, subject to JP Morgan's submission of a compliance filing. We will, however, reject Part II of the General Tariff.

1. JP Morgan's CAISO-Specific Tariff

23. The Commission conditionally accepts JP Morgan's CAISO-Specific Tariff, subject to the requirement that JP Morgan submit a compliance filing within 15 days of

³⁷ *Id.* (citing Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 984 n.1126).

³⁸ *Id.*

³⁹ PJM Comment at 3.

⁴⁰ *Id.*

the date of this order to revise its proposal to conform to the procedures determined to be just and reasonable in the concurrently-issued order in Docket No. ER12-872-000.⁴¹

24. In the Suspension Order, despite suspending JP Morgan's authority to make new sales of energy, capacity, and ancillary services at market-based rates, the Commission specifically permitted JP Morgan to participate in wholesale electricity markets. In doing so, the Commission established two conditions with which JP Morgan must comply in making new sales. First, the Commission restricted JP Morgan's ability to bid competitively. Specifically, the Commission allowed JP Morgan "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."⁴² Second, the Commission limited the rate that JP Morgan can be paid during the suspension period to "the higher of the applicable [LMP] or [JP Morgan's] default energy bid."⁴³ The Commission additionally noted that JP Morgan would have the option to propose cost-based rates, pursuant to which it could be authorized to sell energy, capacity, and ancillary services during the suspension period.⁴⁴

25. JP Morgan's CAISO-Specific Tariff appropriately implements the terms of the Suspension Order in a number of respects. For example, JP Morgan proposes to either self-schedule energy sales above minimum load or to submit a zero-price bid. JP Morgan further proposes to cap its offers for RUC awards and ancillary services at \$0/MWh.

26. Some provisions of JP Morgan's CAISO-Specific Tariff, however, depart from the requirements of the Suspension Order. For instance, JP Morgan's CAISO-Specific Tariff fails to apply the bid restrictions imposed by the Suspension Order to its start-up and minimum load costs. JP Morgan's proposal also fails to uniformly apply the price cap established by the Commission. Where the Commission capped the rate that JP Morgan would receive during the suspension period, under JP Morgan's CAISO-Specific Tariff, the rate paid to JP Morgan for start-up costs, minimum load costs, ancillary services, and RUC awards would not be capped but would be governed by the CAISO OATT.

27. These inconsistencies appear to derive at least in part from JP Morgan's flawed reading of the Suspension Order; JP Morgan suggests that the terms of the Suspension Order apply only to offers to sell energy from operations above minimum load

⁴¹ *California Independent System Operator Corporation*, 142 FERC ¶ 61,191 (2013).

⁴² Suspension Order, 141 FERC ¶ 61,131 at P 53.

⁴³ *Id.*

⁴⁴ *Id.*

conditions.⁴⁵ Notably, though, JP Morgan offers no support for this interpretation other than its claim that the Suspension Order “does not fully address how offers are submitted into the CAISO market.”⁴⁶ Such a limitation is not apparent in the text of the Suspension Order. Rather, the Commission described the sanction imposed on JP Morgan broadly, stating that JP Morgan “will *only* be allowed to participate in wholesale electricity markets” by complying with the prescribed bid and rate restrictions.⁴⁷ To the extent that JP Morgan suggests that the terms of the suspension are inadequate to facilitate its participation in wholesale markets, such an argument amounts to an out-of-time request for rehearing, which we will not consider.⁴⁸

28. Furthermore, JP Morgan’s CAISO-Specific Tariff impedes CAISO’s exclusive right to develop and propose modifications to its market rules. The Commission has consistently rejected attempts by generators to unilaterally revise the terms of market operators’ tariffs.⁴⁹ The Commission has not limited the application of this principle to existing market rules. Notably, the Commission has rejected individual agreements that would preempt proposals under consideration in a market operator’s stakeholder process at the time the agreement was filed.⁵⁰ In this regard, as relevant here, CAISO recently filed proposed revisions to its tariff to establish “the terms and conditions applicable when the Commission has suspended market-based rate authority for a market participant, but nonetheless has permitted the entity to continue participating in [CAISO’s] markets.”⁵¹ In that filing, CAISO explained that its proposal “is necessary . . . to address the implementation of the [Suspension Order] suspending the market-based rate authority of [JP Morgan] for a period of six months, beginning on April 1, 2013.”⁵² JP Morgan’s proposal would conflict with CAISO’s filing in that JP Morgan’s CAISO-

⁴⁵ See JP Morgan Filing at 4.

⁴⁶ *Id.*

⁴⁷ Suspension Order, 141 FERC ¶ 61,131 at P 53 (emphasis added).

⁴⁸ See 16 U.S.C. § 825l(a) (2006) (“[A] party may apply for a rehearing within thirty days after the issuance of such order.”).

⁴⁹ See, e.g., *El Segundo Power, LLC*, 91 FERC ¶ 61,110 (2000); *USGen New England, Inc.*, 90 FERC ¶ 61,323 (2000); *Sithe New England Holdings, LLC*, 86 FERC ¶ 61,283 (1999).

⁵⁰ See *USGen New England, Inc.*, 90 FERC ¶ 61,323, at 62,090-91.

⁵¹ California Independent System Operator Corporation, Application, Docket No. ER13-872-000, at 1 (filed Feb. 1, 2013).

⁵² *Id.*

Specific Tariff provides that it would prevail over CAISO's proposal in the event of a conflict.⁵³

29. In a concurrently-issued order, the Commission conditionally approves CAISO's proposal in Docket No. ER13-872-000.⁵⁴ Specifically, we find that CAISO's proposal, subject to certain modifications, reasonably implements the terms of the Suspension Order. We will, therefore, conditionally accept JP Morgan's CAISO-Specific Tariff, subject to the requirement that JP Morgan submit a compliance filing within 15 days of the date of this order to revise its proposal to conform to the procedures determined to be just and reasonable in the concurrently-issued order in Docket No. ER12-872-000.

30. We note that PG&E and SoCal Edison each take issue with the effect of requiring JP Morgan to submit zero-price bids and permitting JP Morgan to receive a rate equal to LMP. In light of the compliance requirement ordered herein and the fact that PG&E and SoCal Edison also raise similar arguments in Docket No. ER13-872-000, we find that these arguments are more appropriately addressed in that proceeding.

2. JP Morgan's General Tariff

31. Although JP Morgan argues that its proposal to submit "cost-based offers" is necessary to minimize the need for market administrators to develop special procedures to accommodate the suspension of its market-based rate authority, we find that Part I of the General Tariff departs from the strictures of the Suspension Order. JP Morgan proposes to offer energy at a rate no higher than the costs for the relevant generating unit, plus ten percent, rather than pursuant to the bid restrictions imposed by the Commission.⁵⁵ Further, JP Morgan proposes that the rate it would receive for its sales of energy and ancillary services would be calculated pursuant to the market rules of the applicable market operator, rather than in accordance with the rate cap established by the Commission. Thus, we will conditionally accept Part I and Part III of the General Tariff, and require JP Morgan to submit a compliance filing within 15 days of the date of this order revising Part I of the General Tariff to comprehensively apply the requirements of the Suspension Order. Specifically, JP Morgan's compliance filing must provide that JP Morgan will only "participate in wholesale electricity markets by either scheduling

⁵³ See JP Morgan Filing, Ex. 1 at § 3.0 ("Except as established herein, [JP Morgan's] sales into the CAISO market shall be governed by the CAISO [OATT]. In the event of a conflict between the CAISO [OATT] and this Tariff, this Tariff shall prevail.").

⁵⁴ *California Independent System Operator Corporation*, 142 FERC ¶ 61,191 (2013).

⁵⁵ JP Morgan Filing at 6; Ex. 2 at 1-2.

quantities of energy products without an associated price or by specifying a zero-price in [its] offer, as the relevant tariffs require.”⁵⁶ Furthermore, JP Morgan’s compliance filing must make clear that “the rate received by JP Morgan will be capped at the higher of the applicable [LMP] or its default energy bid.”⁵⁷

32. We will, however, reject Part II of the General Tariff. JP Morgan offers no support for its assertion that Part II of the General Tariff is consistent with the Suspension Order. While the Suspension Order established terms and conditions pursuant to which JP Morgan could continue to participate in organized electricity markets, the Commission offered no analogous option for JP Morgan’s bilateral sales. Rather, the Commission delayed the date on which the suspension of JP Morgan’s market-based rate authority would take effect by more than five months, noting that such a delay would “afford JP Morgan time to make alternative arrangements to fulfill any existing contractual obligations that may be affected.”⁵⁸ Further, the Commission stated that JP Morgan had the option to file cost-based rates pursuant to which it could be authorized to sell energy, capacity, and ancillary services during the suspension period.⁵⁹

33. Additionally, JP Morgan has not filed the cost support required by Part 35 of the Commission’s regulations and has not provided adequate support for its contention that sales at up to 110 percent of the LMP, if applicable, or 110 percent of the applicable index price, amount to cost-based pricing. As a result, we find that Part II of the General Tariff does not constitute a properly-filed cost-based rate. Furthermore, we find that JP Morgan inappropriately relies on Order No. 697 in support of Part II of the General Tariff. Whereas the Commission has permitted sellers that have been found to possess market power to submit “non-cost-based mitigation proposals, such as the use of an index or an LMP proxy, for Commission consideration on a case-by-case basis,” JP Morgan has not been found to have market power.⁶⁰ Rather, the Suspension Order imposed a sanction as a result of JP Morgan’s violations of section 35.41(b) of the Commission’s regulations. Moreover, Order No. 697 categorizes the use of an index or LMP proxy as “non-cost-based mitigation.” The Suspension Order specifically invited JP Morgan to file for cost-based rates, which it has not done. We will, therefore, reject Part II of the General Tariff, as it is neither consistent with the Suspension Order nor the Commission’s requirements for cost-based rates.

⁵⁶ Suspension Order, 141 FERC ¶ 61,131 at P 53.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 698.

3. Waivers and Authorizations

34. We will grant the requested waivers and authorizations, which are typically granted to sellers with market-based rate authority. Although the Commission has suspended JP Morgan's market-based rate authority, the principles typically justifying such waivers and authorizations to sellers nevertheless continue to apply in this case. The Commission has previously explained that "little purpose would be served to require compliance with accounting regulations for entities that do not sell at cost-based rates and do not have captive customers."⁶¹ While the Commission has recognized that the waivers requested by JP Morgan would not be appropriate for an entity that makes cost-based sales,⁶² we find that the sales contemplated under JP Morgan's filing cannot accurately be described as a cost-based sales, as discussed above. For this reason, we grant the requested waivers and authorizations until such time as JP Morgan has a cost-based rate on file with the Commission.

The Commission orders:

(A) JP Morgan's filing is hereby conditionally accepted, in part, and rejected, in part, effective April 1, 2013, as discussed in the body of this order.

(B) JP Morgan is hereby directed to submit a compliance filing within 15 days of the date of this order, as discussed in the body of this order.

(C) Waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15, and 35.16, are hereby granted.

(D) Waiver of Parts 41, 101, and 141 of the Commission's regulations, with the exception of sections 141.14 and 141.15 is hereby granted.

(E) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. JP Morgan is hereby granted authority to issue securities and assume obligations or liabilities as guarantors, indorsers, sureties, or otherwise in respect of any security of another person;

⁶¹ *Id.* P 984.

⁶² *Id.* & n.1126.

provided that such issue or assumption is for some lawful object within the corporate purposes of JP Morgan, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.