143 FERC ¶ 61,118
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 Nos. ER13-830-002
ER13-830-001

ORDER GRANTING REHEARING, DISMISSING IN PART AND ACCEPTING IN PART COMPLIANCE FILING

(Issued May 10, 2013)

1. On March 29, 2013, J.P. Morgan Ventures Energy Corporation (JP Morgan) filed proposed tariff revisions to govern its new wholesale sales of energy, capacity, and ancillary services during the period in which the Commission has suspended JP Morgan's market-based rate authority, in compliance with the Commission's March 19, 2013 order.[1] On April 10, 2013, JP Morgan filed a request for rehearing of the March 19 Order. As discussed below, we grant JP Morgan's request for rehearing and dismiss in part and accept in part JP Morgan's compliance filing.

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.[2] Under the terms of the suspension, the Commission explained:

---

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

[2] *See 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.[[3]]

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.[4]

B. <u>January 30 Filing and March 19 Order</u>

4. On January 30, 2013, JP Morgan filed two tariffs setting forth the rates that JP Morgan proposed to charge during the suspension period.[5] First, JP Morgan proposed the General Tariff, which would govern its new sales outside of the CAISO markets. The General Tariff was divided into three parts. 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 during the suspension period.[6] 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. Second, JP Morgan proposed the CAISO-Specific Tariff, which would govern JP Morgan's sales into the CAISO markets during the suspension period.

5. In the March 19 Order, the Commission rejected in part and conditionally accepted in part the General Tariff, notably finding that Part I of the General Tariff departed from the strictures prescribed in the Suspension Order.[7] Thus, the Commission directed JP Morgan to revise Part I of the General Tariff to reflect the bidding and rate

---

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

[4] *Id.*

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

[6] JP Morgan proposed in the January 30 Filing that it would 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, JP Morgan proposed to receive the energy rate established by the terms of the applicable market operator's tariff.

[7] March 19 Order, 142 FERC ¶ 61,190 at P 31.

restrictions previously imposed by the Commission. Specifically, the Commission directed JP Morgan to submit a compliance filing 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.[8]

6. The Commission also conditionally accepted JP Morgan's CAISO-Specific Tariff, subject to the requirement that JP Morgan revise its proposal to conform to Appendix II of CAISO's tariff, which the Commission concurrently approved in a separate proceeding.[9]

II. Compliance Filing

A. General Tariff

7. In an effort to comply with the March 19 Order, JP Morgan states that it has revised Part I of the General Tariff to limit its energy offers to $0/MWh.[10]

8. Further, JP Morgan states that the proposed tariff revisions will set the rate that JP Morgan will receive at the higher of the applicable LMP or the "Cost-Based Energy Price."[11] JP Morgan explains that the organized markets other than CAISO do not use the term "default energy bid" in their tariffs; however, JP Morgan asserts that these markets provide for "an equivalent marginal cost-based rate, which is given a different name in each market."[12] JP Morgan contends that this proposal reflects the requirements of the March 19 Order as well as the Commission's recent determination regarding the conditions under which JP Morgan will participate in the CAISO market.[13]

---

[8] *Id.* P 32.

[9] *Id.* P 29 (citing *Cal. Indep. Sys. Operator Corp.*, 142 FERC ¶ 61,191 (2013) (*California ISO*)).

[10] March 29 Compliance Filing at 3.

[11] JP Morgan proposes to define the "Cost-Based Energy Price" as "those energy costs for the unit being offered into an Organized Market, 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.

[12] *Id.* at 3.

[13] *Id.* (citing *California ISO*, 142 FERC ¶ 61,191 at P 29).

9. In addition, JP Morgan proposes to submit offers for start-up and minimum load/no load costs that are based on the relevant resource's marginal costs.[14] JP Morgan asserts that, unlike CAISO, other organized markets pay those costs as bid. Thus, JP Morgan posits that its submission of $0/MWh offers for those costs would prevent it from receiving any compensation for those costs, which JP Morgan suggests would be confiscatory.[15] To address this concern, JP Morgan proposes to submit offers for start-up costs, capped at the "Cost-Based Start-Up Price,"[16] as well as offers for its minimum load/no load costs, capped at the "Cost-Based Minimum Load/No Load Price."[17] JP Morgan states that the start-up and minimum load/no load costs for each resource are on file with the relevant market operator and/or market monitor. JP Morgan contends that this aspect of its proposal is consistent with the approach that the Commission approved regarding JP Morgan's participation in the CAISO market.[18]

10. JP Morgan also proposes to add new provisions to Part I of the General Tariff to govern its sales of capacity. The March 29 Compliance Filing provides that JP Morgan will submit self-schedules or submit offers to sell capacity at $0/MW and will receive the applicable rate established by the relevant market's rules.

11. JP Morgan additionally states that the March 29 Compliance Filing removes Part II of its General Tariff, which the Commission rejected in its entirety in the March 19 Order.[19] Consequently, JP Morgan states that it will file any bilateral sales contracts with the Commission, supported by the appropriate cost support, and in accordance with the applicable filing requirements.[20]

---

[14] *Id.*

[15] *Id.*

[16] JP Morgan proposes to define the "Cost-Based Start-Up Price" as "those start-up 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.

[17] JP Morgan proposes to define the "Cost-Based Minimum Load/No Load Price" as "those minimum load/no load 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.

[18] *Id.* at 4.

[19] *Id.* (citing March 19 Order, 142 FERC ¶ 61,190 at PP 32-33).

[20] *Id.*

B. CAISO-Specific Tariff

12. JP Morgan states that, consistent with the March 19 Order, all of its sales for energy, ancillary services, and residual unit commitment into the CAISO market will be governed by the procedures approved by the Commission in Docket No. ER13-872-000. To reflect the Commission's directives, JP Morgan proposes to revise all sections of the CAISO-Specific Tariff to conform to Appendix II of CAISO's tariff.

13. JP Morgan requests that its proposed revisions become effective on April 1, 2013, the effective date established by the March 19 Order.

III. Rehearing Request

14. On April 10, 2013, JP Morgan filed a request for rehearing of the March 19 Order.[21] Specifically, if the Commission determines 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 requests rehearing of the Commission's rejection of the cost-based offer cap proposed in Part I of the General Tariff in its January 30 Filing.[22] First, JP Morgan argues that limiting its offers to $0/MWh while simultaneously limiting the rate it receives to the applicable LMP would potentially result in a confiscatory rate.[23] Second, JP Morgan argues that the Commission's rejection of the cost-based offer cap proposed in the January 30 Filing is inconsistent with the Commission's decision to approve CAISO's use of a cost-based price to evaluate JP Morgan's offers in the CAISO market.[24] Third, JP Morgan asserts that the use of a

---

[21] JP Morgan's rehearing request is styled as an "answer or, in the alternative, complaint and request for rehearing and request for expedited consideration." *See* JP Morgan Rehearing Request at 1. Specifically, to the extent that the Commission finds that the terms of the Suspension Order and the March 19 Order cannot be implemented without modification of the tariffs administered by PJM Interconnection, L.L.C. (PJM) and Midwest Independent Transmission System Operator, Inc. (MISO), JP Morgan argues that those tariffs are unjust and unreasonable because they preclude JP Morgan's compliance with the Commission's prior directives. *See id.* at 14-15.

[22] *Id.* at 16. JP Morgan does not request rehearing of the March 19 Order to the extent that it requires JP Morgan to include a cap on its payment equal to the higher of LMP or its marginal costs.

[23] *Id.*

[24] *Id.* at 17.

cost-based offer cap would not interfere with the Commission's requirement that JP Morgan's payments be capped at the higher of the LMP or marginal costs.[25]

15. JP Morgan additionally contends that, in the event the Commission grants rehearing of the March 19 Order, the Commission should also approve JP Morgan's proposal to include in its offers a 10 percent adder for difficult to quantify costs.[26] JP Morgan argues that its proposed offer cap is similar to the proposal accepted by the Commission with respect to JP Morgan's participation in the CAISO market.[27]

16. JP Morgan additionally argues that the March 29 Compliance Filing complies with the Commission's directives in the March 19 Order.[28] JP Morgan also contends that any inconsistency between Part I of the General Tariff and market operators' tariffs reflects a failure by those market operators to comply with the March 19 Order.[29] Furthermore, JP Morgan contends that the tariffs administered by PJM and MISO include provisions that authorize those market operators to replace an offer with a cost-based offer that reflects a resource's marginal costs under certain circumstances.[30]

IV. Notice and Responsive Filings

17. Notice of JP Morgan's compliance filing was published in the *Federal Register*, 78 Fed. Reg. 20,901 (2013), with interventions and protests due on or before April 19, 2013. On April 5, 2013, the Secretary issued a notice shortening the comment period to April 12, 2013. A motion to intervene and comment was filed by Potomac Economics, Ltd. (MISO Market Monitor). A protest was filed by PJM. A comment was filed by Monitoring Analytics, LLC (PJM Market Monitor).

---

[25] *Id.*

[26] *Id.* In its January 30 Filing, JP Morgan proposed to limit its offers into organized markets outside of CAISO to "the Cost-Based Price, plus 10 percent." January 30 Filing at 3; *id.* Ex. A. JP Morgan defined the "Cost-Based Price" as "those 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."

[27] *Id.* at 17 (citing *California ISO*, 142 FERC ¶ 61,191). Under Appendix II of CAISO's tariff, CAISO will replace JP Morgan's $0/MWh offers with a generated bid based on JP Morgan's marginal costs. *See California ISO*, 142 FERC ¶ 61,191 at P 4.

[28] *Id.* at 10-11.

[29] *Id.* at 12.

[30] *Id.*

18. Generally, intervenors argue 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.[31] Further, intervenors generally argue that JP Morgan's proposal would require other market participants to keep JP Morgan whole when JP Morgan's costs are higher than the LMP.[32]

19. Intervenors contend that, if JP Morgan is required to submit offers of $0/MWh, it should only be entitled to receive a rate equal to LMP.[33] Such intervenors additionally argue that JP Morgan's proposal to submit $0/MWh offers and be paid the higher of the LMP or its "Cost-Based Energy Price" would benefit JP Morgan and place an unjust and unreasonable burden on other market participants.[34] For instance, PJM explains that under JP Morgan's proposal, other PJM market participants would be required to keep JP Morgan whole in the form of day-ahead operating reserves and balancing operating reserves charges, thereby causing unreasonable cost shifts.[35] The MISO Market Monitor adds that JP Morgan's units would be scheduled even when their costs are well above market prices, and MISO customers would thus be required to pay JP Morgan the difference for energy that was inefficient to produce.[36] The PJM Market Monitor further suggests that JP Morgan's proposal would guarantee JP Morgan a positive margin whenever the LMP exceeds JP Morgan's costs and would require PJM's other market participants to guarantee that JP Morgan never loses money.[37]

20. The MISO Market Monitor further argues that requiring JP Morgan to submit offers at $0/MWh would result in JP Morgan's resources displacing lower-cost resources, the effects of which "can be magnified when the resources in question affect a transmission constraint."[38] Moreover, the MISO Market Monitor states that, almost immediately after the suspension period began on April 1, 2013, a resource that was

---

[31] *See* PJM Protest at 3-5; MISO Market Monitor Comment at 3.

[32] PJM Protest at 5; MISO Market Monitor Comment at 4.

[33] MISO Market Monitor Comment at 3; PJM Protest at 5; PJM Market Monitor Comment at 2.

[34] MISO Market Monitor Comment at 3; PJM Protest at 5; PJM Market Monitor Comment at 2.

[35] PJM Protest at 5.

[36] MISO Market Monitor Comment at 3-4.

[37] PJM Market Monitor Comment at 2.

[38] MISO Market Monitor Comment at 4.

offered at $0/MWh began overloading a transmission constraint and violating MISO's screens for uneconomic production.[39]

21. PJM further asks the Commission to reconsider the issue of allowing JP Morgan to submit cost-based offers during the suspension period, rather than offers of $0/MWh.[40] Similarly, the PJM Market Monitor and the MISO Market Monitor support allowing JP Morgan to submit cost-based offers, but add that that the offers should not include a 10-percent adder.[41]

V. Discussion

A. Procedural Matters

22. 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 MISO Market Monitor a party to this proceeding.

B. Substantive Matters

1. General Tariff

23. We will grant rehearing of the March 19 Order with respect to the conditions under which the Commission accepted Part I of the General Tariff.

24. Although the revisions proposed in the March 29 Compliance Filing largely reflect the Commission's directives in the March 19 Order, the tariffs administered by PJM and MISO do not include provisions that would allow JP Morgan to receive the Cost-Based Energy Price for its unmitigated sales. JP Morgan further is prohibited from unilaterally modifying the PJM and MISO tariffs.[42] Thus, the conditions imposed by the March 19

---

[39] The MISO Market Monitor adds that the resource in question is violating the conduct thresholds in Module D of the MISO tariff and may warrant mitigation if the market impact exceeds the impact thresholds.

[40] PJM Protest at 6.

[41] PJM Market Monitor Comment at 2-3; MISO Market Monitor Comment at 4-5. The PJM Market Monitor adds that it would be required to verify JP Morgan's cost-based offers. The MISO Market monitor states that it already validates the costs submitted by market participants.

[42] *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).

Order may subject JP Morgan to a confiscatory rate in the event that the LMP falls below the relevant resource's cost of producing electricity.

25. Furthermore, the comments submitted in response to the March 29 Compliance Filing identify a series of adverse effects that could result from requiring JP Morgan to submit offers of $0/MWh. For instance, JP Morgan's resources could displace more cost-effective resources. Such uneconomic dispatch could also require other market participants to make JP Morgan whole where the applicable LMP is less than the cost of JP Morgan's resource.

26. Therefore, in order to ensure that JP Morgan is not subject to a confiscatory rate, and to limit the impact on organized electricity markets of the sanction imposed by the Suspension Order, we will grant rehearing with respect to the conditions under which the Commission accepted Part I of the General Tariff in the March 19 Order. Specifically, we will subject our 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.[43] JP Morgan's offers, however, should not include the additional 10 percent adder proposed in the January 30 Filing because, as discussed below, such an adder is unnecessary to ensure that JP Morgan recovers the cost of its resources when those resources are dispatched.[44] JP Morgan's compliance filing should also provide for its submission of its start-up and minimum load/no load costs in amounts equal to the costs on file with the applicable market operator and/or market monitor. Lastly, JP Morgan's compliance filing should specify that it will receive a rate calculated in accordance with the applicable market rules.

27. Such procedures will ensure that JP Morgan is not required to sell the output of its resources at a confiscatory rate. Specifically, pursuant to the conditions described above, JP Morgan will recover its costs when its resources are dispatched. Moreover, because

---

[43] Consistent with the terms of the Suspension Order, JP Morgan may also self-schedule energy and ancillary services, as the relevant tariffs require.

[44] We note, however, that some market rules may permit certain adders as part of the calculation of the cost-based offers. For example, in PJM, the cost-based offer (used when a transmission constraint arises on the system and the generator owner is determined to have local market power) may include a 10 percent adder to account for uncertainty in calculating costs. *See A Review of Generation Compensation and Cost Elements in the PJM Markets* 11, 14 (2009), http://www.pjm.com/documents/~/media/documents/reports/a-review-of-generator-costs-and-compensation.ashx. Our rejection of JP Morgan's proposed 10 percent adder has no effect on JP Morgan's authority to include such adders in its cost-based offer pursuant to the relevant market rules.

the rate paid to JP Morgan will be calculated pursuant to the applicable market rules, JP Morgan will be eligible to receive make-whole payments to the extent necessary in accordance with the market rules previously approved by the Commission. The 10 percent adder sought by JP Morgan in the January 30 Filing and its request for rehearing is, therefore, unnecessary to ensure that JP Morgan recovers the cost of its resources.[45]

28. Such limitations on JP Morgan's authority to sell energy and ancillary services during the suspension period will additionally avoid the inefficiencies created by requiring JP Morgan to submit offers of $0/MWh. In particular, subjecting JP Morgan's offers to a cost-based cap, rather than a cap of $0/MWh, will ensure that JP Morgan's resources are dispatched economically. As a result, JP Morgan's resources will not displace lower-cost resources. Additionally, JP Morgan will not receive make-whole payments unless those costs are necessary to achieve the least cost solution to serve load.[46] In this respect, JP Morgan's participation in organized electricity markets during the suspension period will not unreasonably shift costs to other market participants.[47]

29. In light of the fact that we grant rehearing of the March 19 Order with respect to the conditions under which Part I of the General Tariff was accepted, we will dismiss JP Morgan's proposed revisions to Part I of the General Tariff, as well as that portion of JP Morgan's filing labeled a complaint,[48] and direct JP Morgan to submit an additional compliance filing within 15 days of the date of this order.

2. CAISO-Specific Tariff

30. JP Morgan's proposed revisions to the CAISO-Specific Tariff appropriately conform to the procedures established by the Commission in Docket No. ER13-872-000, as required by the March 19 Order. Specifically, the March 29 Compliance Filing subjects the CAISO-Specific Tariff to Appendix II of CAISO's tariff. Therefore, we accept JP Morgan's CAISO-Specific Tariff to be effective April 1, 2013, as requested.

---

[45] Such an outcome will also enable JP Morgan to participate in organized electricity markets, as provided in the Suspension Order, while avoiding the need to modify existing market rules.

[46] *See* PJM Protest at 6.

[47] Such a cost-based bidding procedure would also be consistent with the procedures approved for JP Morgan's participation in the CAISO market. *See California ISO*, 142 FERC ¶ 61,191.

[48] We note that on April 10, 2013, JP Morgan filed a separate complaint in Docket No. EL13-58-000.

The Commission orders:

(A) JP Morgan's request for rehearing of the March 19 Order is hereby granted, as discussed in the body of this order.

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

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.