

114 FERC ¶ 61,201  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

PJM Interconnection, LLC

Docket No. ER06-406-000

ORDER ACCEPTING AND SUSPENDING FILING AND ESTABLISHING  
SETTLEMENT JUDGE AND HEARING PROCEDURES

(Issued February 24, 2006)

1. On December 28, 2005, PJM Interconnection, LLC (PJM) filed tariff sheets to permit demand side resources to participate in providing ancillary services and to make revisions in the terms of PJM's demand response programs, including making PJM's economic demand response program a part of the PJM energy interchange market. In this order, the Commission accepts the tariff sheets relating to the revisions in existing demand response programs, and accepts and suspends for a nominal period the tariff sheets relating to participation by demand side resources in providing reserves, subject to refund and to the outcome of settlement judge and hearing procedures. The Commission is setting for hearing the question of whether PJM's proposal regarding the inclusion of demand resources in its ancillary service market is unduly discriminatory because it does not enable certain demand side resources to participate in the reserves market. The tariff sheets will become effective upon notification by PJM to the Commission that each new program is fully implemented.

**Background**

2. PJM currently operates two demand response programs, under which, during periods of scarcity or high wholesale prices, PJM compensates program participants who voluntarily reduce their energy demand. PJM operates an emergency demand response program (Emergency Program),<sup>1</sup> under which it compensates customers who voluntarily

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<sup>1</sup> See *PJM Interconnection, LLC*, 99 FERC ¶ 61,139 (2002) (Emergency Program Order).

reduce load during emergency conditions, and an economic demand response program (Economic Program),<sup>2</sup> under which customers reduce load upon request by PJM, when the Locational Marginal Price (LMP) reaches a pre-determined level. Both programs are currently scheduled to terminate on December 31, 2007.

3. In the instant filing, PJM proposes to amend its Operating Agreement (OA) and Open Access Transmission Tariff (OATT) to establish rules under which demand resources – that is, users with the ability to reduce their demand – may provide Synchronized Reserve<sup>3</sup> and regulation service in the PJM region. Such users will do so by agreeing to reduce demand upon dispatch instructions from PJM. PJM notes that it will only permit this process in compliance with the applicable reliability standards, which will be promulgated by local reliability organizations.

4. PJM further proposes to amend its OA, OATT and Reliability Assurance Agreements (RAAs) to (1) make its existing Economic Program permanent and integrate it into the market rules of PJM's Interchange Energy Market, and (2) revise its existing Emergency Program so as to enable greater levels of participation. PJM proposes to incorporate its Economic Program into the Interchange Energy Market rules, with only minor changes, including increasing the combined total of megawatts of reductions that can be made under both Economic and Emergency Programs from 100 to 500 MW, and providing for a non-hourly metered pilot program under which PJM, rather than its stakeholders, may determine whether an alternative demand reduction measurement mechanism may become permanent. PJM claims that these changes will make economic demand response a permanent part of the PJM markets and create a more flexible pilot program for customers who require alternative measurement methods, thus encouraging further demand response.

5. PJM proposes to revise its Emergency Program to permit two levels of participation. First, it will permit a Full Program Option, under which participants will

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<sup>2</sup> See *PJM Interconnection, LLC*, 99 FERC ¶ 61,227 (2002) (Economic Program Order).

<sup>3</sup> Synchronized Reserve is "the reserve capability of generation resources that can be converted fully into energy or Demand Resources whose demand can be reduced within ten minutes from the request of the Office of the Interconnection dispatcher and is provided by equipment that is electrically synchronized to the Transmission System." Proposed PJM OATT page 329, section 1.3.33B.01 Synchronized Reserve replaces PJM's former spinning reserve program, and enables both generation resources and demand resources to provide reserves.

receive both a capacity credit to reduce an entity's capacity obligation under PJM's Active Load Management (ALM) program,<sup>4</sup> and an energy payment for reducing load in an emergency. Second, it will permit an Energy Only Option under which entities can participate in the Emergency Program without meeting all of the criteria required to receive capacity credits.

### **Notice of Filings and Responsive Pleadings**

6. Notice of PJM's filing was published in the *Federal Register*,<sup>5</sup> with comments, protests, or interventions due on or before January 18, 2006. Timely motions to intervene were filed by Exelon Corporation (Exelon), Old Dominion Electric Cooperative (ODEC), Allegheny Power and Allegheny Energy Supply Company, LLC (the Allegheny Companies), American Municipal Power-Ohio, Inc. (AMPO), and the Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Energy Services Inc., and WPS Power Development, LLC (collectively the WPS Companies). Timely motions for intervention together with protests or comments were filed by American Electric Power Service Corporation (AEP), Gerdau Ameristeel Corporation (Gerdau), the PJM Industrial Customer Coalition (PJMICC), and Dominion Virginia Power (Dominion). Motions to intervene out of time together with protests or comments were filed by Steel Dynamics, Inc. and Nucor Steel-Hertford County (Steel Producers) and EnergyConnect, Inc. (ECI). PJM filed an answer to the protests and comments on February 2, 2006. Gerdau and Steel Producers filed answers to PJM's answer on February 17, 2006.

### **Discussion**

#### **A. Procedural Matters**

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notices of intervention and the timely, unopposed motions to intervene serve to make the intervenors parties to this proceeding. Given the early stage of this proceeding, the absence of any undue prejudice or delay, and their

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<sup>4</sup> Under the ALM program, PJM directs load serving entities (LSEs) to reduce load, thus enabling those entities to reduce their capacity obligations; *see* PJM RAA, Schedule 5.2. Under the ALM program, customers enter into contracts with LSEs to reduce load up to ten times during the summer period when PJM requests a load interruption. The LSE receives a capacity credit for the reductions and is subject to penalty if there is a failure to reduce load. Transmittal letter at 7.

<sup>5</sup> 71 Fed. Reg. 2211 (2006).

interest in this proceeding, we grant the untimely, unopposed motions to intervene. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest or an answer unless otherwise permitted by the decisional authority. We will accept the answers filed by PJM, Gerdau, and Steel Producers.

## **B. Ancillary Services Issues**

8. PJM's proposal would permit demand resources to participate in its ancillary services market by bidding into the PJM reserve markets. Certain parties have raised three issues with this proposal. Generally, they challenge the test for measuring whether a participating party has responded as required; the need for approval of demand response resources by reliability organizations; and the ability of demand resources to provide reactive power.

### **1. Measurement of Response by Demand Resources**

9. To determine whether a party who is participating in the demand response program is actually reducing load when PJM declares a Synchronized Reserve Event (SRE), PJM proposes to rely on one-minute snapshots of a customer's usage before and after it calls the event. Under its proposal, PJM would first take a one-minute snapshot of the customer's consumption prior to PJM's initiation of an SRE, looking at the lower of the minute before, or the minute after, initiation of the event. PJM would then take a second one-minute snapshot of the customer's consumption, looking at the higher of a minute measured between 9 and 11 minutes after initiation of the event. PJM would then compare the first snapshot to the second snapshot, and, if the consumption is less during the second snapshot, PJM would consider the customer to have reduced load.<sup>6</sup>

#### **a. Protests**

10. Gerdau, a steel producer, and the largest customer of two utilities in New Jersey, claims that PJM's "one minute snapshot" method of determining whether the customer has reduced load unduly discriminates against its participation in the synchronized reserve market. Gerdau alleges that its "batch load" manufacturing process consists of cycles each approximately one hour in duration, and that its furnace load (the facility's manufacturing process load) fluctuates between zero MW (which occurs during brief halts in the manufacturing process) and 80 MW (which is approximately its peak load), with an average usage of 50 MW. Gerdau claims that it is capable of responding to an

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<sup>6</sup> Gerdau protest at 2-3 nn. 6-9, *citing* PJM Manual 11 at 57, 63, 69-70.

SRE within ten minutes of PJM's dispatch instruction, and could significantly reduce or shut down its manufacturing process for the duration of the SRE. But, according to Gerdau, because it has brief periods of zero MW usage during its manufacturing cycle, if PJM happened to call an SRE during one of those zero usage periods, PJM's measurement method would make it appear that Gerdau had not reduced load: the first one-minute snapshot would show zero usage, and the second one-minute snapshot would show either zero or low usage, so that it would appear that Gerdau had not reduced its usage in compliance with PJM's instructions.

11. Gerdau asserts that PJM has been unwilling to revise the measurement methodology contained in its market rules to accommodate end users like Gerdau, whose manufacturing process has a cyclical or "batch" pattern. As a result, Gerdau claims, PJM's market rules do not provide such demand side resources with an opportunity to provide demand response that is equivalent to the opportunity given to generation side resources and other manufacturing processes – thus resulting in different treatment of generation and demand resources that is not just and reasonable and that is unduly discriminatory.

12. Dominion asserts that, before allowing demand resources to provide ancillary services, PJM should certify the provision of demand response by demand side resources, as it now does for generators, and/or must provide training to ensure that ancillary resources are actually provided. PJM states in its reply that certification is not necessary, since with regard to regulation service, demand and generation resources must pass the identical test to qualify to provide the service, and similarly, neither generation nor demand resources need to be certified to provide Synchronized Reserve. PJM also states that both demand resources and generation resources will be provided with training to provide Synchronized Reserve and regulation service.

13. PJM states in its answer that its methodology for measuring demand response does not discriminate unduly against batch load resources. PJM states that, to preserve reliability, PJM operators must be able to depend on the resources that provide Synchronized Reserve, and that operators would not be able to know when a load such as Gerdau's manufacturing plant was reducing demand. PJM further states that although it is open to continuing to work with such parties to identify the ways in which batch load resources can contribute to the reliable operation of the system, to modify PJM's rules in this regard now would delay beyond June 1 the implementation of PJM's proposal enabling demand resources to participate in the Synchronized Reserve markets.

14. Gerdau claims in its answer that its participation in PJM's Synchronized Reserve market actually benefits PJM, on the basis that, absent such participation (and PJM's call on participating resources to curtail), Gerdau would have no notice of when PJM's capacity situation was deteriorating and could begin a new batch during that event, thus

decreasing and actually worsen an operating reserve situation. Gerdau also states that industrial customers in Ontario participate successfully in reserves market through the use of automated controls, and that it "is willing to discuss with PJM installation at Gerdau Ameristeel's facilities in PJM equipment that is comparable to the equipment installed at Gerdau Ameristeel's facilities in Ontario to guarantee response."<sup>7</sup>

15. Gerdau and PJMICC in their protests further assert that PJM's "two strikes and you're out" policy – under which a demand side resource that fails to provide its assigned amount of Synchronized Reserve during any two consecutive SREs must requalify for participation in the program – is discriminatory because it is only applied to demand side resources. Gerdau argues that PJM should place this rule in its tariff, rather than a manual, as PJM originally proposed. PJM states in its answer that, in light of the reliability consequences when a demand resource fails to provide reserves and the lack of experience of demand resources in providing reserves, it is not unreasonable or unduly discriminatory for PJM to require re-qualification of demand resources after two consecutive failures to perform.<sup>8</sup>

**b. Commission ruling**

16. We will accept PJM's amendments to its OA and OATT that establish rules under which demand resources may provide Synchronized Reserve in the PJM region for filing,<sup>9</sup> suspend those sheets for a nominal period, and set this issue for settlement judge and hearing procedures, to become effective as of the date that PJM notifies the Commission that it has implemented its program allowing demand side resources to provide Synchronized Reserve.

17. As PJM itself has recognized, providing opportunities for demand resources to participate in capacity and other markets is important to ensuring reliability. Gerdau operates the largest single location accounts in two zones in New Jersey, an area that PJM recognizes is experiencing "persistent and worsening imbalances between supply and demand – the result of load growth, lagging generation additions, and generation

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<sup>7</sup> Gerdau's February 17 answer at 7.

<sup>8</sup> PJM further states that it would be willing to move this rule to its tariff, should the Commission so rule.

<sup>9</sup> See Appendix to this order. The Commission is not setting for hearing that portion of those rules which allow demand resources to provide regulation service.

retirements.”<sup>10</sup> The ability to include the largest customer in these areas to help alleviate these problems would seem of paramount importance, and such participation should be excluded only where clearly necessary.

18. While it is certainly important for PJM to verify that customers are in fact shutting down when required, PJM has not explained why its "one minute snapshot" method is a just and reasonable method, and not unduly discriminatory or preferential, for ensuring that a manufacturing plant in fact is operating prior to PJM's order to shut down. Gerdau points out that it has previously been able to participate in reserve markets in Ontario, and that Ontario has been able to develop a satisfactory method of assuring the plant is operating prior to being required to shut down.<sup>11</sup>

19. PJM's "one minute snapshot" verification method is not contained in PJM's tariffs, but is set forth only in PJM's Manual 11.<sup>12</sup> The Manual was developed when only generation resources were permitted to participate in the PJM reserves market. It is not clear that the Manual provisions are reasonably applied to demand resources or that alternative verification procedures could not be developed for demand resources. While generation and demand resources should be competing on an equal playing field, the ability to compete does not necessarily mean the verification procedures applicable to generation are reasonably applied to demand resources.

20. In the settlement judge and hearing process, the parties should explore whether alternative approaches to the verification process can be implemented. These can include different measurement time periods, as well as the installation of communication and metering facilities that may be needed to accommodate batch load resources, or the use of automatic controls, as mentioned by Gerdau in its answer. Additionally, we will set for hearing the appropriateness of the "two strikes and you're out" rule, under which resources must requalify for participation if they fail to curtail usage after two SREs, and whether PJM is treating demand side resources in a discriminatory fashion by applying this penalty to demand side resources only.

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<sup>10</sup> See, Statements of Audrey A. Zibelman and Andrew Ott For Technical Conference Re: Reliability Pricing Model Filed By PJM Interconnection, L.L.C., at 7 (Docket Nos. ER05-1410 and ER06-406-000, et al., February 2, 2006).

<sup>11</sup> Gerdau Protest (January 18, 2006), Affidavit of Darren Macdonald on Behalf of Gerdau Ameristeel Corporation, at 13-14

<sup>12</sup> See Manual 11 at 69-70, <http://www.pjm.com/contributions/pjm-manuals/pdf/m11v26.pdf>.

21. With regard to the concern Dominion raises regarding the need for certification, the Commission finds that, as PJM has pointed out, no certification is required for generation resources providing Synchronized Reserves, so that it is appropriate to treat demand resources similarly. Also, the Commission agrees with Gerdau that PJM should place the “one minute snapshot” verification method in its tariff, rather than a manual. Therefore the Commission will require PJM to place into its OA, OATT or RAA, as appropriate, the provisions of Manual 11 that address the ability of demand resources to provide Synchronized Reserve, within 30 days from the date of this order. At the conclusion of the hearing or settlement proceedings, PJM must also revise these provisions as necessary.

22. Our preliminary analysis indicates that PJM’s proposal regarding measurement for demand resources may be unjust and unreasonable and unduly discriminatory or preferential, or otherwise unlawful. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle the dispute before hearing procedures commence. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed under Rule 603 of the Commission's Rules of Practice and Procedure. If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>13</sup> The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

## **2. Obtaining Approval from Reliability Organizations**

23. PJM states that it is required to comply with applicable regional reliability council rules, and notes, as of January 1, 2006, a new reliability council, the Reliability First Corporation (RFC), will govern most of the PJM region. The RFC has adopted transitional standards permitting demand resources to supply 25 percent of regulation service requirements. The RFC has not yet, however, adopted a standard that would allow demand resources to supply Synchronized Reserve, but rather has established a

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<sup>13</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at 202-502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) - click on Office of Administrative Law Judges).

requirement for spinning reserves, which demand resources may not supply. PJM further states that the Virginia-Carolina Reliability Group (VACAR), the reliability council for the Virginia-Carolinas region, has not promulgated standards that allow demand response to fulfill either regulation or Synchronized Reserve requirements.

24. Therefore, to comply with these standards, PJM will permit demand resources only to fulfill up to 25 percent of the regulation requirements in the portion of the PJM region governed by the RFC, and will not permit demand resources to provide regulation service in the PJM region governed by VACAR. PJM also states that, until the reliability councils establish rules either specifying a Synchronized Reserve requirement (RFC) or allowing demand response to fulfill Synchronized Reserve requirements (VACAR), PJM will not permit demand resources to participate in the Synchronized Reserve market.<sup>14</sup>

**a. Protests**

25. PJMICC states that PJM's decision not to permit demand side resources to provide Synchronized Reserve service until the regional reliability councils provide standards will prevent demand resources from participating meaningfully in PJM's Synchronized Reserve market. PJMICC and Gerdau asks the Commission to take action pursuant to its new statutory authority granted by the Energy Policy Act of 2005 (EPAAct2005) to "take such action as is necessary or appropriate against [the Electric Reliability Organization (ERO) that sets standards for electric reliability within the United States] or a regional entity to ensure compliance with a reliability standard or any Commission order affecting the ERO or a regional entity."<sup>15</sup> Steel Producers assert that PJM should attempt to work with the RFC and VACAR to ensure that they complete their work on providing these standards as quickly as possible. ECI also asks PJM to expedite implementation of any systems and procedural changes that will allow demand resources to provide Synchronized Reserves.

26. PJM states in its answer that it is currently working with the RFC to develop standards that allow demand side resources to provide Synchronized Reserves, and will continue to work with the regional reliability councils to the extent appropriate to ensure implementation of PJM's demand response initiatives.

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<sup>14</sup> Transmittal letter at 5-6.

<sup>15</sup> Pub. L. No. 109-58, 119 Stat. 594 ((new Federal Power Act § 215(e)(5), 16 U.S.C. 824o(a)(15) (2005)).

**b. Commission ruling**

27. On February 3, 2006, the Commission issued its rule implementing the majority of the reliability aspects of EPAct 2005.<sup>16</sup> As part of that rule, we have established procedures for certification of the ERO. Once that approval is obtained, the ERO may delegate the authority to propose and enforce reliability standards to regional entities. Under section 215 of the Federal Power Act, the Commission is responsible for approving proposed reliability standards. It also has authority to order the ERO to “submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.”<sup>17</sup> Section 215(e)(5), cited by the protesters, provides the Commission with the authority to ensure compliance with a mandatory, Commission-approved reliability standard and enforce any Commission order affecting the ERO or a regional entity.

28. Since the ERO process has not been completed, there is not a current Commission approved reliability standard to be enforced and it is not possible at this point to require the ERO to develop a reliability standard covering demand resource participation in synchronized reserve markets. However, we agree with PJM and the parties that this is an important issue deserving of reasonably quick consideration. PJM has stated that it is continuing to work with the RFC on this issue, and we encourage PJM to continue its process with the RFC, and to make similar efforts with VACAR, to ensure that the necessary standards to enable these market benefits are developed in as timely a fashion as possible.

**3. Provision of Reactive Power**

29. Steel Producers state that PJM should be required to provide that demand resources may provide reactive service, when an end user is equipped to do so. PJM states in its response that it is currently unaware of how an end user could provide reactive service and Steel Producers have not explained how this could be done, but that PJM will consider this issue if it should become possible in the future for demand side resources to provide reactive service.

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<sup>16</sup> Order No. 672, "Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards," 114 FERC ¶ 61,104 (2006).

<sup>17</sup> Section 215(d)(5).

30. At this point, the Commission does not find that there is sufficient evidence to pursue whether demand resources can provide reactive power. This issue should be pursued pursuant to PJM's stakeholder processes to determine whether a proposal for provision of reactive power by demand resources can be developed.

**4. PJM Review of its Program Allowing Demand Resources to Provide Synchronized Reserve**

31. ECI generally supports PJM's proposal, but asks the Commission to order PJM to file two reports. First, it asks the Commission to require PJM to review its market rules and to amend any such rules that distort market incentives by December 31, 2006. Second, ECI asks the Commission to require PJM to review its market rules for, and operating experience with, the use of demand resources to provide Synchronized Reserve, and to submit a technical and economic evaluation of these programs (along with any necessary revisions to its OATT and OA) by March 31, 2007.

32. ECI has not sufficiently supported its request that PJM should review its market rules and to amend any rules that distort market incentives. The Commission agrees, however, that a report of PJM's operating experience with allowing the participation of demand resources, and a technical and economic evaluation of this new program, would be worthwhile. PJM should file this information in its state of the market report within eighteen months of the date that demand resources become able to provide Synchronized Reserve.

**C. Existing Demand Response Programs**

**1. Payment Mechanism under the Economic Program**

33. The Economic Program, under PJM's existing tariff, will expire on December 31, 2007. In this filing, PJM has proposed to make the Economic Program permanent but has proposed no substantive changes in the payment mechanism or measurement provisions of its tariff. The protests, for the most part, challenge unchanged provisions of PJM's tariff, rather than PJM's new proposals.

34. Under PJM's current Economic Program when the local marginal price within PJM is less than \$75, participants are paid a rate reflecting the LMP minus retail generation and transmission charges (*i.e.*, the retail prices that the load reducer would have paid if it had taken the power). The payment to the load reducer will be made by

the LSE serving that load.<sup>18</sup> When the LMP exceeds \$75, participants are paid the full LMP without any subtraction of retail generation and transmission charges.

35. In its current filing, PJM proposes, in new subsection 3.3A.5 of its OATT, to continue this payment mechanism until December 31, 2007, when under the existing tariff, the Economic Program would have terminated, unless the provision is retained by a two-thirds vote of the PJM Members Committee.<sup>19</sup> PJM explains that the provision requiring payment of the full LMP at LMP's above \$75 was designed as a temporary incentive and that it is not proposing to make this element permanent:

The incentive payments remain a temporary feature of the Economic Program because, as the market matures, it is anticipated that the incentives will no longer be necessary to encourage demand response. Therefore, PJM and the stakeholders determined to retain a sunset date for the incentives to provide an opportunity for the reassessment of the need for such incentives.<sup>20</sup>

**a. Protests**

36. Dominion asserts that PJM should eliminate the possibility that the incentive program could be extended beyond December 31, 2007, and set a date certain for termination of the incentive program, so that prices can return to a level that correctly reward customers for reducing load, without harming other market participants. Dominion further argues that the threshold for operation of the incentive mechanism should now be higher than \$75/MWh: it asserts that the threshold was set at \$75 on the basis of LMP levels at the time of implementation (2002), but that LMP levels have risen since then, so that a higher threshold is now appropriate. AEP similarly asserts that the incentive program should be terminated, without the possibility of extension, and alleges that the support of many stakeholders was conditioned on the prerequisite that the incentive payment provisions end on December 31, 2007. AEP argues that PJM should address the continuation of the incentive program now. ECI, by contrast, argues that PJM should retain the incentive and the pool of funds supporting the incentive program (*i.e.*, the funds contributed by the LSEs) should be expanded, so as to reflect the fact that PJM's footprint has also expanded significantly in recent years.

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<sup>18</sup> Economic Program Order at 61,935.

<sup>19</sup> See PJM OATT, proposed section 3.3A.5(d).

<sup>20</sup> Transmittal letter at 14.

37. PJM in its answer states that it is not proposing to make permanent the incentive payment when LMP is higher than \$75/MWh, but merely retaining a provision agreed on by PJM stakeholders in 2003. PJM asserts that retaining the incentive will allow PJM and its stakeholders more effectively to assess the success of the Economic Program. PJM further states that raising the incentive threshold, as Dominion suggests, is not warranted solely on the basis of changes in LMP. PJM notes that LMP is dynamic, and that next year fuel prices may be down, so that LMP will fall. Further, according to PJM, the parties did not contemplate that the incentive threshold would vary as LMP varied. PJM also argues that, since the incentive is slated to end in 2007, changing the threshold now for a short period would lead to unnecessary uncertainty in the demand response market rules.

38. On the other hand, Steel Producers maintain that the incentive payments should not only be retained but enhanced, asserting that PJM's economic program does not fairly compensate end users for providing demand response, and provides insufficient incentive for such customers to participate in the program. Steel Producers state in both their protest and their answer that a customer's savings from not consuming – *i.e.*, avoiding the price of power – is not enough, and that end users should receive a share of the benefits that their demand response produces. PJM in its response states that the proposal made by Steel Producers would create dissimilar treatment for demand side and generation resources providing demand response, and would thereby be inconsistent with the goal of making demand resources a player on equal footing with generation in the PJM energy markets.

**b. Commission ruling**

39. PJM has proposed no change in its payment scheme with respect to the Economic Program, which prior to this filing was due to expire on December 31, 2007. The Commission therefore will accept the tariff sheets proposed by PJM.

40. The protests are not challenging a new proposal made by PJM, but are contending that an unchanged provision of its existing tariff is unjust and unreasonable. Based on the information provided in the protests, the Commission sees no basis for instituting an examination under section 206 of the Federal Power Act into the justness and reasonableness of this provision, which will expire on its own terms by December 31, 2007, unless PJM files under section 205 to continue it.

41. In accepting this provision, the Commission found that this was "a short-term incentive that . . . is needed to help institute this program which provides significant

benefits to the entire PJM market."<sup>21</sup> The protesters here have not made a sufficient showing that the incentive is no longer needed at this point, or that demand response is not of sufficient benefit to the market that the incentive is warranted. AEP maintains that stakeholders only supported PJM's filing because they believed that the incentive program would end on December 31, 2007.<sup>22</sup> But this element of the filing is unchanged since the program will still terminate on December 31, 2007 unless PJM files under section 205 to renew it.

42. Neither have the Steel Producers presented evidence that the incentive program must be made a permanent part of the market or that it should be expanded. They fail to define what they would consider "fair compensation" or an "appropriate share" of the benefits that they provide to the system or why demand side resources should be treated differently from generation resources.

## **2. CBL measurement issue**

43. PJM proposed no changes in its method for establishing a Customer Base Line (CBL) in its Economic Program. PJM uses the CBL to measure the reductions made by demand resources who participate in its economic demand response program. In establishing a CBL, PJM uses a CBL window consisting of the 10 most recent weekdays (beginning with the day two days prior to the event for which the CBL is being calculated), excluding NERC holidays, weekends, and event days. Additionally, any days during that 10-day period in which the customer's event period usage level is below 75 percent of the average event period usage level are replaced with other days that have a higher event period usage level. Once the final ten days are selected, the five days within those ten days that have the highest average event period usage are selected for use in the final CBL determination.<sup>23</sup>

44. Dominion asserts that PJM's choice of the ten-day method to measure the CBL, and selecting high-usage days within the 10-day period, results in the overstatement of actual load reduction. Dominion proposes that the CBL should be calculated by including eleven days, without exclusion for low-usage days within the window, and that

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<sup>21</sup> *Id.* at 36 n. 15.

<sup>22</sup> AEP Protest at 4.

<sup>23</sup> *See, e.g.*, section 3.3A.2 of PJM's OA. Additionally, participants may choose to use either the CBL methodology, or an alternative metering basis agreed upon by all relevant parties. *See* proposed PJM OATT sheet 388, 3.3A.1.

PJM should use the median day of the eleven days, rather than the average of the top five higher load days, to calculate the CBL.

45. PJM in its answer disagrees with Dominion's criticisms of its CBL measurement method. PJM states that, contrary to Dominion's argument, the purpose of the methodology was not to provide incentives for demand response, but to provide the most efficient proxy for the amount of energy a demand resource would have consumed, absent its voluntary curtailment, and that the measurement methodology currently used by PJM achieves this goal.

46. The Commission will accept PJM's tariff sheets that contain the same provisions as its existing tariff. Dominion is challenging an existing just and reasonable provision of PJM's existing tariff, and has not made a sufficient showing to warrant an FPA section 206 review of that provision. PJM's stakeholder process determined that the CBL provided a representative level of a customer's typical usage, and Dominion has not shown that this provision is not just and reasonable, nor that its proposed alternative use of an eleven-day median is superior to the method used by PJM. While there may be several reasonable methods of measuring customer baselines, Dominion has not shown that PJM's current method is now unreasonable. Dominion may pursue changes to PJM's existing method through PJM's stakeholder process or file a fully justified complaint pursuant to the Commission's complaint regulations if it believes that the unchanged CBL provision has become unjust and unreasonable.

### 3. Manuals

47. Steel Producers ask PJM to place the requirements for ALM customers that wish to participate in PJM's Economic Program in the tariff, rather than PJM's manuals.

48. The Commission finds that, because the requirements for participation by ALM customers significantly affect PJM's rates, terms or conditions of service, they should be placed in PJM's tariff<sup>24</sup> rather than its manuals, and PJM is required to make that change within thirty days of the date of this order.<sup>25</sup>

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<sup>24</sup> PJM should place these provisions in its OATT, OA and/or RAA, as appropriate.

<sup>25</sup> *ISO New England*, 113 FERC ¶ 61,157 at P 18 (2005) ("Any provisions within ISO-NE's manuals that significantly affect the rates, terms and conditions of its services must also be filed with the Commission and included in its Tariff"), *citing New England Power Pool*, 110 FERC ¶ 61,396 at P 29 (2005). Similarly, once the issue of an

#### **4. Other issues**

##### **a. Coordination with state regulators**

49. AEP asserts that, before promoting demand response programs in states where customer tariffs are in place that are based on the bundled embedded costs of service, PJM should obtain the concurrence of state regulators. AEP states that many states have in place their own demand response programs, and that PJM's demand response programs should be coordinated with state programs to avoid inappropriate subsidization. AEP further notes that EAct 2005 has directed states to consider whether additional programs should be provided, so that AEP anticipates that states will, in fact, put such new programs into place shortly, and urges close coordination between PJM and states. PJM states in its response that no state has intervened in this proceeding, much less protested PJM's proposal, and that AEP has not raised any specific example of a conflict between state and federal programs.

50. The Commission agrees with AEP about the need for close coordination. PJM's current, and proposed, operating agreement requires that before enrolling an applicant in the Economic Program, PJM must confirm with the appropriate Electric Distribution Company (EDC) and LSE whether the load that might be reduced is under other contractual obligations.<sup>26</sup> This provision provides sufficient ability to raise potential conflicts between PJM's program and state programs, and that since states have not protested PJM's provision, no further action is needed at this point.

##### **b. Termination of Emergency Program and ALM programs**

51. PJM's filing provides for the combination of the Emergency Program and the current ALM program into a single program.

52. Steel Producers ask that PJM be required to clarify whether, if the Emergency Program does sunset on December 31, 2007, the ALM program will also terminate. PJMICC states that PJM inadvertently failed to eliminate the sunset date for the Emergency Program, and asks the Commission to find that the Emergency Program

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appropriate measurement for batch load manufacturers participating in the provision of Synchronized Reserve is developed, that measurement method should also be placed in the appropriate PJM tariff.

<sup>26</sup> Third Revised Rate Schedule FERC No. 24, Original Sheet No. 159-A, Third Revised Rate Schedule FERC No. 24, Proposed Original Sheet No. 74A.

should be fully integrated into PJM's markets and PJM should remove the sunset provision for the Emergency Program from its tariff. PJM answered that combining the Emergency and ALM programs does not impact the permanent nature of the ALM program, and that ALM is intended to be a permanent feature of the Emergency Program. PJM also states that it has no objection to making the Emergency Program permanent.

53. Consistent with PJM's agreement to make the Emergency Program permanent, PJM must make a compliance filing to remove the sunset date for the Emergency Program from its tariff within thirty days from the date of this order.

**c. Change from special to regular membership**

54. Two kinds of PJM members can participate in PJM's emergency and economic demand response programs: full members of PJM, and special members (members who do not have the obligations and rights of full members, and who have a special membership solely to participate in demand response programs<sup>27</sup>). PJM currently permits special members to become full members only once a year, on January 1. Steel Producers assert that PJM should either make a greater effort to accommodate end use customers' membership choices, or else explain why this limitation is just and reasonable. PJM in its answer states that its current once-a-year limitation permits the orderly administration of membership matters, and prevents gaming that could result from entities changing their membership status temporarily solely to vote on matters of interest to them or to avoid certain member liabilities.

55. Steel Producers are objecting to an existing tariff provision and have not shown that this provision is unjust and unreasonable. PJM has satisfactorily explained that the once a year limitation is needed for administrative reasons and to prevent potential gaming.

**d. Termination of e-mail notification process**

56. PJM proposes new procedures to replace its current e-mail procedure by which it notifies demand response program participants of various required items. PJM asks the Commission to clarify that PJM may not delete its e-mail notification program any

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<sup>27</sup> See Emergency Program Order at 61,570 n.10 ("Special members will not be required to pay PJM's annual membership fee, wait 30 days to commence participation, and have 24/7 control center coverage. . . . All members, however, must be capable of reducing at least 100 kW of load and of receiving PJM notification during emergency conditions ").

earlier than June 1, 2006, so as to allow end use customers sufficient time to make changes and acquire training in advance of implementation. PJM in its answer states that, regardless of when it implements its new demand response initiatives or any new notification procedures, it will recognize a transition period for required e-mail notification until June 1, 2006. The Commission does not, therefore, need to rule on this issue.

**D. Effective Date**

57. PJM asks the Commission to act on this filing within 60 days, but to defer the effective date of each new demand response initiative contained therein until PJM notifies the Commission that it can implement each such initiative. PJM states that it anticipates being capable of full implementation of the filing by June 1, 2006, and that it will notify the Commission of the date that it implements each initiative.

58. The Commission's regulations provide that "all rate schedules or any part thereof shall be tendered for filing with the Commission and posted not less than sixty days nor more than one hundred-twenty days prior to the date on which the electric service is to commence and become effective."<sup>28</sup> However, the Commission waives this regulation for good cause,<sup>29</sup> and in light of the facts that (a) PJM is implementing a sequence of multiple initiatives, so that determining an implementation date for each initiative might be impracticable until the initiative immediately before that is completed, (b) PJM has stated that it will inform the Commission before implementing each initiative, and (c) no party has objected to this waiver. PJM is required to serve all parties to this proceeding with its filing notifying the Commission of the effective date of these tariff provisions.

The Commission orders:

(A) The Commission accepts the tariff sheets relating to the revisions in existing demand response programs, to become effective on the earlier of (a) the date that PJM notifies the Commission that it has implemented each initiative, or (b) June 1, 2006.

(B) The Commission accepts for filing and suspends for a nominal period the tariff sheets listed in the Appendix to this order that deal with demand resource participation in Synchronized Reserve, subject to refund and to the outcome of settlement judge and hearing procedures, to become effective as of the date that PJM notifies the

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<sup>28</sup> 18 C.F.R. § 35.3(a) (2005), emphasis added.

<sup>29</sup> See *Entergy Services*, 106 FERC ¶ 61,115 at P 57 (2004).

Commission that it has implemented its program allowing demand side resources to provide Synchronized Reserve.

(C) PJM is required to make an informational filing notifying the Commission of the date that it implements each demand response initiative and its program allowing demand side resources to provide Synchronized Reserve.

(D) PJM is required to make a filing to remove the Emergency Program sunset date from its tariff, so that the program becomes permanent, within thirty days from the date of this order.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the provisions dealing with the ability of demand resources to provide Synchronized Reserve. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (F) and (G) below.

(F) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(G) Within thirty (30) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(H) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, N.E., Washington,

DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(I) Within thirty days of the date of this order, PJM is required to place into its OATT, OA or RAA, as appropriate, the provisions in its manuals, as discussed in the body of this order.

(J) PJM is required to include a technical and economic evaluation of its new program allowing demand resources to provide Synchronized Reserve in its state of the market report within eighteen months of the date that demand resources become able to provide Synchronized Reserve.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

**Appendix**

List of proposed tariff and operating agreement sheets suspended that include provisions relating to demand resource participation in Synchronized Reserves in PJM:

**Tariff Sheets**

First Revised Sheet No. 236, Fifth Revised Sheet No. 329, Original Sheet No. 329A, Fifth Revised Sheet No. 346, First Revised Fourth Revised Sheet No. 347, Sixth Revised Sheet No. 369, Original Sheet No. 369A, Seventh Revised Sheet No. 384, Original Sheet No. 384.01, Fourth Revised Sheet No. 384A, Fifth Revised Sheet No. 384B, Second Revised Sheet No. 413C

**Operating Agreement Sheets**

First Revised Sheet No. 236, Fifth Revised Sheet No. 329, Original Sheet No. 329A, Fifth Revised Sheet No. 346, First Revised Fourth Revised Sheet No. 347, Sixth Revised Sheet No. 369, Original Sheet No. 369A, Seventh Revised Sheet No. 384, Original Sheet No. 384.01, Fourth Revised Sheet No. 384A, Fifth Revised Sheet No. 384B, Second Revised Sheet No. 413C