

99 FERC ¶ 61,227
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Linda Breathitt,

PJM Interconnection, L.L.C.

Docket No. ER02-1326-000

ORDER ACCEPTING TARIFF SHEETS AS MODIFIED

(Issued May 31, 2002)

On March 15, 2002, PJM Interconnection, L.L.C. (PJM) submitted for filing amendments to the Appendix to Attachment K of the PJM Open Access Transmission Tariff (PJM Tariff) to establish a multi-year Economic Load Response Program.¹ The Economic Load Response Program provides a method by which PJM compensates end-use customers for voluntarily reducing load. In this order, the Commission accepts the revised tariff sheets to become effective June 1, 2002, requiring modifications as ordered below. This order benefits customers by promoting demand response in PJM, which will provide customers with lower prices and will enable PJM to better manage its supply and demand imbalances.

Background

A. Load Response Pilot Programs. In 2000 and 2001, PJM conducted pilot programs to develop a program by which it provides financial compensation to customers who are able to voluntarily reduce load.² These programs promote demand response, and provided an additional tool to PJM to use to obtain additional resources during times of scarcity. The two prior programs contained both an emergency component to enable PJM to obtain load reduction during emergency conditions, and an economic option, which allows end-use customers to respond to economic signals, regardless of whether emergency conditions exist.³

A total of 24 companies submitted applications for PJM's 2001 program, involving 50 different locations at which load could be reduced, and the total available load reduction associated with those 50 sites was 220 MW.⁴ In the emergency program, PJM reimbursed participants for reducing load at the higher of the Locational Marginal Price

(LMP) or \$500/MWh. In the economic program, PJM paid participants LMP minus the retail rates the participant would have paid if it had not reduced load. During the summer of 2000, PJM did not experience sufficiently high demand to trigger its emergency load response program, so it did not ask participants to reduce load.⁵ During the summer of 2001, however, PJM implemented its emergency load response program on three occasions. Through the emergency program, PJM obtained reductions of 78.6 MW over a four-hour period on July 25, 2001 for which the average payment was \$623/MWh, 100.2 MW over an eight-hour period on August 8 for which the average payment was \$730/MWh, and 214 MW over an eight-hour period on August 9 for which the average payment was \$772/MWh.⁶ PJM also achieved load reduction through its economic program on these dates. During these hours, Active Load Management (ALM), a demand reduction program operated by PJM's Load Serving Entity (LSE) members, was also operating, and obtaining average load reductions of 682 MW.⁷ PJM states that it is difficult to measure the price impacts of its pilot programs, but estimates that, during the hours in which its demand side programs (both emergency and economic) and the LSEs' ALM programs were implemented, prices would on average have been approximately \$135/MWh higher.⁸

B. Current Proposal. PJM now seeks to implement a multi-year program which will provide a financial incentive to PJM customers or Curtailment Service Providers (CSPs)⁹ to reduce consumption as PJM's locational marginal prices (LMP) rise. PJM asserts that this program will enhance the reliability of PJM's system and reduce energy costs by encouraging load to reduce demand during times of short supply, thus helping to keep prices reasonable and prevent price spikes. PJM states that the program will help customers better manage demand, and provide a cost-effective means to provide additional resources during times of scarcity.

Under this program, which would run for 30 months (from June 1, 2002 to December 1, 2004),¹⁰ market participants – either Load Serving Entities (LSEs) or CSPs – will offer end-use customers the opportunity to reduce load that they draw from the PJM system. PJM will pay those LSEs/CSPs for those reductions based on LMP.¹¹ The LSEs/CSPs will in turn make their own contractual arrangements to compensate end users for the load reductions. The program provides for such reductions in both a real-time and a day-ahead basis. The program also provides for an additional incentive to participants who reduce load when LMP is higher than \$75/MWh, which will be funded by the LSEs in the zone in which the reduction took place.

PJM states that it is making this filing under Section 206 of the Federal Power Act (FPA)¹² because of the public interest in establishing a multi-year economically-based demand response program. Because end users do not receive price signals, they have little incentive to conserve when demand and prices are high; thus, competitive markets

cannot achieve their true potential and unreasonably high prices might result. PJM states that its stakeholders recognized that, in order to develop a meaningful load response program, PJM should use incentives and subsidies, but that the stakeholders could not agree on the level of compensation.¹³ Thus, PJM could not obtain member approval of the program and make this filing under Section 205.¹⁴ PJM states that it and its stakeholders are committed to continue developing an economic load response program that will limit subsidies and promote appropriate responses to economic signals. For this reason, PJM proposes to terminate the program after its 30-month duration, after which participants will have had three summers of experience with the program, and then seek to implement a more price-responsive program, once a load response program has been jump-started with this incentive program.

C. Incentive. Under PJM's proposal, participants who reduce load when LMP is less than \$75/MWh will receive 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.

When LMP is at or above \$75/MWh, load reducers will receive LMP without having the retail generation and transmission charges subtracted. That incentive portion of the payment to the load reducer (the retail rates) will be provided by all the LSEs in the zone where the reduction took place.¹⁵ The LMP portion of the payment to the load reducer will still be made by the LSE serving that load. Total incentive payments under this program will not go beyond \$17.5 million per year. Once this \$17.5 million ceiling is reached, participants who reduce load when LMP is at or above \$75/MWh will receive LMP, minus retail generation and transmission charges, similar to participants who reduce load when LMP is below \$75/MWh.

PJM states that the \$75 trigger point for the incentive is intended to strike a balance between the need to compensate load reducers in order to encourage the development of load response generally, and the need to limit the incentive program (and the socialization of its costs) to avoid undue distortion of price signals. PJM also states that \$75/MWh is the point at which reductions in load will have the most significant effect on LMP.¹⁶ PJM further states that limiting the total incentive program to \$17.5 million annually, and recovering the incentive payments solely from LSEs in the zone where the reduction took place, will ensure that those LSEs are not burdened unduly and that the costs of the incentive program are born by the load that will most likely benefit from the lower LMPs brought about by the reductions.

D. Non-Hourly Metered Program. PJM will also permit small residential, commercial and industrial customers, who otherwise could not participate in the load response program because they are not able to perform hourly metering, to participate in the program on an experimental basis for up to two years per customer. To participate,

such customers or their representatives must propose an alternate method for measuring hourly load reductions that PJM will consider for approval. Because of the experimental nature of this program, participation by non-hourly metered customers will be limited to 25 MW of load reduction, which, according to PJM, will nevertheless allow hundreds of non-hourly metered customers to participate in the program.

E. ALM Program Members. Entities that participate in Active Load Management (ALM) programs run by LSEs may also participate in PJM's economic load response program. If, however, an ALM customer has received payment or credit for energy not consumed during an ALM event, PJM will only make payments to that customer pursuant to its economic load response program for reductions when ALM obligations are not in effect, or for load reduction in excess of that made as part of the ALM program.

F. Details of Program. Participants must be members of PJM and, with the exception of the non-hourly metered customers, must meet certain metering requirements. Participants must either (1) have on-site generators, or (2) be able to reduce a measurable and verifiable portion of load as metered by an Electric Distribution Company (EDC). Any PJM member may act as a CSP for non-members. PJM states, however, that non-member customers that already have LMP-based contracts with their energy suppliers are ineligible for participation in the program.

Participants may reduce load on either a real-time or a day-ahead basis. For real-time load reduction, participants simply reduce load and provide PJM with data showing that they have reduced load within 60 days. For day-ahead load reduction, participants submit offers to PJM the day before they plan to reduce load, including amount of reduction and number of hours that the participant plans to reduce load.

Except for non-hourly metered customers, participants in the program must meet PJM's metering requirements through either (1) metering that can record integrated hourly values for generation serving load (net of that used by the generator), or (2) metering that compares actual metered load to a Customer Baseline Load (CBL). To calculate the weekday CBL, PJM uses a weekday CBL basis window consisting of the 10 most recent weekdays (absent days on which PJM declared a curtailment event, participant reduced load and submitted the reduction to PJM, or the day's usage was less than 75 percent of average). The CBL is then based on the five highest usage days within the window. PJM uses similar procedures to establish the weekend CBL, except that the window consists of the three most recent weekend days or holidays, and then using the two highest usage days to calculate the CBL. PJM will also consider other methods of metering on a case-by-case basis.

At the participant's option, the participant may use a Weather Sensitive

Adjustment (WSA) to its CBL for summer, winter, or both. The WSA will increase or decrease the participant's CBL to more accurately reflect its load. The WSA will be determined using several steps: (1) a regression analysis will be performed between the participant's on-peak, non-holiday, weekday hourly load and the temperature-humidity index (THI) on a seasonal basis for the period the WSA is being applied. Further, PJM states that it will post on the PJM web site a spread sheet of the THI values for all relevant weather stations located within PJM.

PJM will make payments under the program to parties that are PJM members, including LSEs and CSPs. In situations where the payment is made to a CSP or an LSE and not to the actual load reducer, the LSE/CSP and the load reducer must make private arrangements as to payment. As noted above, the payment to the load reducer (apart from the incentive portion of the payment, if there is one) will be made by the LSE that would otherwise serve the load reducer, since the LSE will save the costs of obtaining high-priced energy (*i.e.*, energy valued at the then-prevailing LMP) to serve the load reducer. If, however, an LSE has a full-requirements or load-following contract for generation supply, PJM proposes that the generation supplier rather than the LSE will fund the LMP portion of the payment, since in that circumstance the generator would have to purchase or supply high-priced energy to fulfill its responsibilities under the full requirements or load-following contract.

PJM states that it will file any reports requested by the Commission, and requests an effective date of June 1, 2002 for the program.

Notice of Filing

Notice of PJM's filing was published in the Federal Register, 67 Fed. Reg. 13755 (2002) with comments, protests and interventions due on or before April 5, 2002.

Timely motions to intervene or notices of intervention were filed by the Maryland Public Service Commission (Maryland Commission), the Project for Sustainable FERC Energy Policy on behalf of Multiple Public Interest Organizations (PIOs), Constellation Power Source, Inc., the Public Power Association of New Jersey, and Dynegy Power Marketing. Timely motions to intervene or notices of intervention, together with comments, were filed by the Delaware Public Service Commission (Delaware Commission), Reliant Northeast Energy Generating (RENG), the District of Columbia Public Service Commission (D.C. Commission), the Pennsylvania Public Utility Commission (Pennsylvania Commission), Jersey Central Power and Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly, FirstEnergy), and jointly by the Pennsylvania Office of the Consumer Advocate, the Maryland People's Counsel and the Delaware Division of Public Advocate (collectively, POCA). Timely motions to intervene and protest were filed by the PSEG Companies (PSEG), Mirant

Americas Energy marketing, Mirant Chalk Point, Mirant Mid-Atlantic, Mirant Peaker and Mirant Potomac River (Mirant), the PJM Industrial Customer Coalition (PJMICC), PPL Energy Plus, LLC and PPL Electric Utilities Corporation (PPL), Exelon Generation Company (Exelon), and the Price Responsive Load Coalition (PRLC). PIOs timely filed a protest. On April 22, 2002, PJM filed a response to the protests.

Discussion

I. Procedural Matters.

Pursuant to Rule 214(c) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(c) (2000), the notices of intervention and timely unopposed motions to intervene serve to make the state commissions and movants, respectively, parties to this proceeding. As to PJM's response, under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2)(2000), a party may not file an answer to a protest unless the decisional authority so orders. Because PJM's answer provides additional legal arguments that will assist in the Commission's consideration of this case, the Commission will accept it.

II. Jurisdiction Over the Economic Load Response Program

PPL challenges the Commission's jurisdiction over PJM's economic load response program. It argues that PJM's Economic Load Response Program interferes with existing and potential LSE retail sales contracts, in that customers attracted by PJM's program would have an incentive to drop out of programs such as that operated by PPL, while PPL was simultaneously being forced to pay a non-cost justified incentive to the customer. PPL contends that PJM's program will interfere with potential LSE load reduction agreements under existing programs and deter LSEs from offering new programs. PSEG contends that to the extent the proposal would allow a retail customer to participate directly (without thus use of an LSE/CSP), it is beyond the Commission's jurisdiction to approve and beyond PJM's authority to implement.¹⁷ PSEG complains that the Commission does not have jurisdiction over sales at retail (whether retail payments for electrical usage or retail credits for load reductions).

The D.C. Commission, on the other hand, asserts that PJM's proposed program complements the District of Columbia's demand response programs and other similar programs in the Mid-Atlantic region, and states that the Commission and the states should engage in a collaborative effort toward removing barriers to the implementation of demand response programs.

In its answer, PJM also asserts that the Commission has approved similar load response

programs several times and has found no jurisdictional bars to approval. PJM also states that it actively coordinated the adoption of the Economic Load Response Program with regulatory commissions in the PJM region, and the program has their support. Moreover, PJM argues that by allowing load response in its markets, PJM no more competes with others that offer DSM programs than PJM competes with generators that offer energy products when PJM administers the spot market.

We addressed a similar issue in our April 30 Order, and consistent with our determination there, we find PPL's argument unpersuasive. We note that none of the state commissions participating in this proceeding have asserted that the Commission lacks jurisdiction to approve PJM's Economic Load Response Program or that it infringes on their regulatory jurisdiction.

In our April 30 Order, we cited a previous order stating that such transactions "are considered wholesale when they involve the sale for resale of energy that would ordinarily be consumed by the [retail consumer.]"¹⁸ Subsequently, in New York Independent System Operator,¹⁹ we drew more clearly the line between state and federal jurisdiction over this question, approving the following clarification:

the Commission may deem a load reduction arrangement to involve two separate and independent transactions: the first being a "sale for resale" of power by the LSE to a retail customer that is participating in the programs (by generating electricity or reducing its electric consumption) (the "Retail Sale"), and the second involving the participating retail customer's sale of power back to NYISO and the LSE, which was also viewed by the Commission as a sale for resale (the Program Sale).²⁰

We clarified that the first of these two transactions (the Retail Sale) would not be considered FERC-jurisdictional.²¹ We consider the second transaction (the Program Sale), however, to be within our jurisdiction. In effect, the end user is "selling" the energy that it could otherwise purchase to another party (whether an LSE or otherwise) for payment or credit, and the LSE or other purchaser will then resell that energy to other entities.

We also stated in our April 30 Order regarding PJM's emergency load response program that the absence of demand side response was

a flaw in the markets operated by PJM which, if not corrected, could lead to dysfunction in those markets, and the Load Response Program is part of PJM's attempt to correct that dysfunction. PJM's markets are within our jurisdiction, and the Load Response Program is thus within our jurisdiction

as well.²²

III. Economic Load Response Program

The Commission accepts PJM's economic load response program. Given recent problems and capacity shortages in PJM,²³ we find that PJM's tariff (once the pilot load response program expires on May 31, 2002) is not just and reasonable absent a mechanism to enhance PJM's supply situation and provide demand response on an economic basis. We also find that PJM's economic load response program, with the modifications discussed below, addresses that need, and is therefore just and reasonable.

As we most recently stated in our April 30 Order, "load response is a highly useful and beneficial tool to reduce costs and maintain reliability during peak periods when generation supplies may be scarce."²⁴ The Commission has previously found that a mechanism allowing market participants to reduce load in response to economic signals keeps prices low and provides an efficient allocation method when supply is scarce:

Without a demand response mechanism, the [independent system operator] is forced to work under the assumption that all customers have an inelastic demand for energy and will pay any price for power. There is ample evidence that this is not true. Many customers, given the right tools, can and will manage their demand. . . . A working demand response program puts downward pressure on price, because suppliers have additional incentives to keep bids close to their marginal production costs and high supply bids are more likely to reduce the bidder's energy sales. Appropriate price signals to customers thus helps to mitigate market power as high supply bids are more likely to reduce the bidders' energy sales. Suppliers thus have additional incentive to keep bids close to their marginal production costs. Demand-side price-responsive bids will also help to allocate scarce supplies efficiently.²⁵

We disagree with PPL's arguments that PJM's economic load response program interferes with the demand side management programs operated by LSEs and is inconsistent with PJM's role as an independent system operator. As we have previously stated, the Commission views PJM's demand response programs as adjuncts to, rather than competitors with, LSE programs.²⁶ As noted above, PJM has worked and commits to continue to work closely with states and state regulatory commissions to ensure that its program works in tandem with state-approved programs. PPL provides no documentation to support its allegations that PJM's demand response pilot programs have had a negative impact on the PJM LSEs' programs. In the May 2001 Order approving PJM's 2001 pilot program, the Commission directed PJM to file a report showing whether its pilot load response program was obtaining demand reduction for PJM largely or solely at the

expense of PJM members' DSM programs, and if so, by how much. In its report, PJM explains that the only PJM member DSM programs for which PJM has detailed, systematic information are the ALM programs. PJM states in its report that there is no evidence that the pilot program had any negative impact on the LSEs' ALM programs. PPL has provided no evidence of its own to support its allegations to the contrary. We encourage PJM and its LSE members to continue to work together to resolve remaining issues to the satisfaction of all parties, particularly as PJM and its members look toward joining a larger Regional Transmission Organization (RTO) in which it will have to harmonize PJM's current practices with those of a larger organization.

We will also require PJM to file two reports evaluating its economic load response program, including the amount of demand response it has elicited. The first report should be filed after 12 months' experience in the program, on May 31, 2003. The second report should be filed near the conclusion of the program, on October 31, 2004, concurrently with PJM's report on its emergency load response program. PJM should review and evaluate its program, including how it can best elicit the maximum possible amount of demand response and whether its current demand response program or programs are the best means of doing that. In its report, PJM should include an evaluation of its trial program for non-hourly metered customers, including whether this program is the best means of obtaining participation by small customers. Further, the Commission directs PJM to examine in its report whether the level of compensation that is still necessary to induce customers to join and remain in the program is still appropriate, or whether PJM can implement compensation programs that more closely respond to and provide market signals. PJM should estimate, as closely as possible, the costs and benefits of (a) implementing a compensation program with no incentive provision, (b) continuing the current incentive provision, or (c) enlarging the incentive provision. In addition, PJM should also evaluate possible methods of obtaining significant amounts of demand response other than by providing financial incentives. PJM should coordinate the filing of its October 31, 2004 report on its economic load response program with its October 31, 2004 report on its emergency load response program, either by filing a single report that discusses both programs, or else ensuring that information that is relevant to both programs is in both reports.

We will require PJM to file amendments reflecting this modification within 30 days of the date of this order.²⁷

IV. Need for an Incentive Program

Parties make arguments for and against PJM's incentive program. The Delaware Commission supports the socialization component of PJM's program because all customers benefit from reducing load and moving down the steep portion of the supply curve, and argues that socialization also provides an incentive to participate in the program. The Pennsylvania

and Maryland Commission's also strongly support the implementation of the economic load response program, and state that they do not believe that a proposal raised by any one of the stakeholder interests can win sufficient support to be approved under the super-majority sector voting rules of the PJM Members Committee.

On the other hand, other parties state that PJM is offering an incentive that will elicit load reduction without any market basis. PPL argues that PJM has arbitrarily proposed that when LMP exceeds \$75/MWh, customers that curtail load can obtain the LMP without subtracting for the cost of the generation and transmission charges. PSEG also opposes the incentive program. Reliant contends that the program is flawed because it socializes much of the costs.

In contrast, other parties state that PJM's proposal does not provide sufficient incentive to motivate load reduction. PIOs contend that in attempting to implement a compromise approach, the PJM program is offering an incentive which will not be enough to motivate demand response.²⁸ PJMICC complains that because of the costs and inconveniences of curtailment, a viable economic program must adequately compensate a customer, by reflecting the value of its contribution to the system, and compensation to end-use customers for load reductions should be, at a minimum, at full LMP with no offset for foregone generation and transmission charges; otherwise, the reduced payment is less than the value that the end-use customer's load reduction affords the PJM system, particularly under PJM's last bid in regime. The PRLC asserts that the \$17.5 million figure will function as a cap on the Economic Load Response Program, and that there is no cap on participation in either the NYISO or the ISO-NE programs and no need for a cap in PJM.

The Commission accepts PJM's program as modified here, including the incentive for load reduction. PJM's incentive program is supported by the Pennsylvania, Maryland, Delaware and D.C. Commissions.²⁹ It is our view that the benefit of jump-starting an effective demand responsive program in PJM is sufficiently great that it merits offering incentives to expand customer participation levels and to encourage PJM members to get into the habit of considering whether load reduction might be their best choice from an economic perspective. PJM and most market participants recognize that an incentive program for a period of time is needed to facilitate the development of load response and enable participants to invest in the metering equipment, and human resources necessary for such programs.³⁰ While clearly an incentive program with no end in sight would be undesirable, PJM is not proposing such a program. Rather, PJM has proposed a program which will sunset by its own terms in 30 months, but which will provide a long enough period (unlike PJM's prior pilot programs) to give customers an incentive to invest in and develop load reduction mechanisms. By the end of the 30-month period proposed here, if PJM's economic load response program has not been superseded as a result of PJM's RTO membership, PJM and the Commission will have a better sense of what is needed to bring

about meaningful load response that responds solely to economic signals. The Commission considers this program a worthwhile attempt to reach that goal, and therefore accepts it.

Some protests argue that the appropriate price for a load response program is the full LMP without subtracting the retail rate. However, PJM reasonably takes the position that the appropriate economic price is LMP minus the retail rate, and that payments above this price constitute an incentive. The purpose of a load response program is to try to duplicate what a customer reducing power would receive in an unregulated market where the customer's price reflects the LMP. In that market, a customer that reduces power would receive a benefit – namely, the LMP. To replicate this result in a market where the retail rate is less than the LMP, PJM should compensate the customer by paying the difference between the LMP and what the customer would save by not using power (the retail price it didn't have to pay). Therefore, the Commission rejects those comments that find that payment of the full LMP is required, and finds that PJM's program provides a reasonable balance between encouraging participation through the payment of an incentive in certain situations and limiting the amount of the incentive the LSEs (and their ratepayers) will have to pay.

The PRLC argues that the New York and New England ISOs do not have a total dollar cap on their demand response programs, and PJM has not shown why a cap is needed here. The \$17.5 million cap in issue here is on the incentive portion of the economic load response program, not on the program itself. Moreover, the demand response programs operated by the Northeast ISOs are in their infancy, and the Commission has not yet found that any one program presents the optimal format. We find that PJM's program with the incentive cap is a reasonable option. PJM anticipates that its economic load response program would elicit a significant amount of load reduction (2700 MW of load reduction before the \$17.5 million incentive cap is reached) sufficient to lower LMP, without causing major market distortions. The Commission accepts the \$17.5 million cap on this basis.

We are concerned, however, that in a year with an exceptionally hot summer, PJM could reach the \$17.5 million annual cap in mid-summer, thus ending the incentive program at the very time when it is most necessary to induce customers to reduce demand and thereby lower prices and improve supply within PJM. We therefore will be amenable, if it appears that the \$17.5 million cap will be reached between June 1 and September 15 of any year, to PJM's making an emergency filing with the Commission to extend the incentive program. If PJM makes such a filing, it should clearly specify the revisions it seeks to the incentive program (i.e., a new dollar cap, an extension of the program until a specific date, or a combination of the two), and it should also clearly state the reasons for the extension.

V. Appropriate Trigger Point for Incentive

PIOs and PRLC argue that the \$75/MWh floor price to trigger the incentive program is too high. They assert that a lower floor price, such as \$55/MWh, will allow for much greater participation over a greater number of hours and encourage more customers to sign up for the program. Moreover, PIOs and PRLC note that the NYISO is likely to implement a floor of \$50.

Mirant argues that the \$75/MWh threshold would result in the more costly behind-the-meter distributed generation being dispatched by PJM before less costly combustion turbines. Mirant contends that a \$100/MWh threshold would provide more than enough load reduction to buffer possible price spikes, and that for combustion turbines particularly, many of which are economically dispatched in the \$75/MWh to \$100/MWh range, a \$100/MWh threshold is critical. PPL similarly argues that if any incentive is to be provided, the trigger point should be set no lower than \$125/MWh. PPL and generally Mirant contend that PJM's trigger point of \$75/MWh for determining when a participant will obtain a payment of LMP that is not reduced to reflect applicable generation and transmission charges was arbitrarily set and is unsupported. Moreover, PPL argues that PJM's only submission of evidence regarding the justness and reasonableness of its \$75/MWh trigger is a representative supply curve.

The Commission will accept the \$75/MWh trigger price as proposed by PJM. This price is more likely to have a significant effect on LMP than the \$55/MWh trigger, because it reflects the approximate place on PJM's representative supply curve where the slope of the curve begins to increase more dramatically (*i.e.*, the knee of the curve). PJM asserts that the lower floor requested by some participants of \$55/MWh would overly distort the market and encourage demand response that is not responsive to actual price signals, while at the same time it would not have a significant effect on LMP (*i.e.*, the price curve would remain too flat). On the other hand, the higher floor of \$100/MWh would not elicit significant demand response, because in the last four years, LMP in PJM has only reached \$100/MWh in 1.1 percent of the hours.

VI. Contract Modification

PJM's filing provides that "if an LSE has a full-requirements or load-following contract for generation supply, the generation supplier rather than the LSE will be responsible for funding the LMP portion of the load reduction payment." PJM asserts that the generation supplier should assume this cost because "it is the entity that otherwise would have had to purchase (or supply) the high-priced energy to meet its responsibilities under the full requirements or load following contract," and the reduction in load therefore saves the generator from incurring those costs. PJM states that to the extent that this aspect of its program interferes with contracts between LSEs and generators, "the Commission should exercise its Section 206 authority to modify any wholesale full requirements or load following

contracts to enable this portion of the program, which recoups revenues from the proper party."

Exelon asserts that PJM must demonstrate that the rate and cost allocation provisions of the full requirements and/or load following contracts between LSEs and generators are unjust and unreasonable or not in the public interest before those contract provisions can be abrogated, and it must also demonstrate that its proposed modifications to those contracts are just and reasonable. Mirant complains while PJM's proposal generally provides for LSEs to fund the Economic Load Response Program, PJM's proposal would carve out an exception that creates an obligation for full requirements customers to bear costs that were not discussed when the full requirements contracts were negotiated. PRLC asserts that where allowed under the provisions of the contract the charges can be passed back to the generation provider, but if the contract does not permit such a pass-through, the costs should be allocated to all load in the zone in a similar manner to the generation and transmission costs of the load response programs.

PJM provides no information about these contracts, nor does it address whether some or all of those contracts may be modified under their own terms, or whether, under the Mobile-Sierra³¹ doctrine, if parties have agreed contractually to a price, the Commission may change the rate only if it can establish that the contractual rate is contrary to the public interest. Given this absence of information, it is not possible for us to decide whether modification of some of the terms of the contracts in question would be permissible. We will therefore require PJM to modify its proposal so that the costs for the LMP portion of the program be recovered from the LSEs, as if there were no full-requirements or load following contract. This ruling is without prejudice to PJM subsequently making a new filing under Section 206 demonstrating why modification of the contracts in question would be allowed based on the current terms of the contracts or within the Mobile-Sierra public interest standard.

VII. Other Issues

A. Non-hourly metered customers. The Delaware and D.C. Commissions support the extension of the program to non-hourly metered customers. PIOs, who also support it, contend that the restrictions PJM proposes for the experiment are too narrow and inflexible to attract participation, in that PJM is requiring small customers to comply with every other requirement applicable to large and more sophisticated customers (e.g., weather sensitivity adjustments), and that CSPs will not be willing to invest in a program that has a two-year limit. PSEG, however, argues that the non-metered customer pilot program proposal, which is not even fully described or structured at this juncture, should be disapproved.

In its answer, PJM notes that its proposed non-metered customer pilot program is an

experimental program, and thus suggestions that it should be modified or eliminated are premature. PJM also states that PJMICC's proposed metering methodology was included in PJM's previous pilot program, but the new Customer Baseline Load calculation, which did not exist under the pilot, makes PJMICC's methodology unnecessary, and in any case, no participant in the previous pilot program used this metering methodology.

We find that PJM's experimental program for non-hourly metered customers has the potential of increasing load reduction at times of peak demand. PJM's load response program provides an opportunity to reduce demand, thereby reducing the use of more expensive generators, and it is beneficial to include small customers in this opportunity.

With respect to the complaint that PJM's proposal is too inflexible to attract participation by small customers, at this time, it is not possible to determine whether certain components such as PJM's CBL calculation, WSA, and day-ahead provisions will prevent non-hourly metered customers from participating in the program. Regarding the argument that PJM's 25 MW and two-year limit should be removed, we do not consider it appropriate, in the context of this experimental non-hourly metered program, to expand the scope of the program. We concur with the D.C. Commission's assertion that while this two-year demand response pilot program is currently limited to an aggregate of 25 MW for participants in both load response programs, this pilot encourages participation by small customers that will provide long-term potential for demand response. The Commission finds that PJM's non-hourly metered program has the potential to decrease load and is consistent with the Commission's goal to encourage price responsive demand during high priced energy periods, and reject PSEG's request to disapprove PJM's experimental program.

B. Duration. PJM asserts that its proposed 30-month duration, with a predetermined sunset date, strikes a balance between the need to provide initial incentives to facilitate development of meaningful load response, while recognizing the long-term goal of developing demand response programs that are market-driven without additional financial incentives. PIOs argue that PJM's 30-month duration fails to provide the assurance of permanence and virtually guarantees that the program will end, since experience suggests that PJM members will deadlock on the program extension, as they have on all previous economic load response proposals. PPL argues that the Commission should not accept the program for 30 months, but rather, any experimental financial incentives should not be implemented for a period longer than essential to determine whether their costs outweigh any benefits. Reliant asserts that PJM's sunset provision is critical and is essential to Reliant's support of this filing.

In the April 30, 2002 Order, we required PJM to provide a report evaluating the Emergency Load Response Program, including the amount of demand response it has elicited.

There the Commission stated that it would require PJM to terminate its emergency load response program on December 1, 2004, and that PJM must make a new filing under Section 205 of the Federal Power Act containing tariff sheets taking effect after that date to continue or modify the program. We will accept PJM's proposal for a 30-month economic load response program, also terminating on December 1, 2004, **and then PJM must make a new filing under Section 205 of the Federal Power Act containing tariff sheets taking effect after that date to continue or modify the program. This will enable PJM to evaluate the results of its emergency program and its economic program simultaneously.**³²

C. **LMP-based contracts.** PJM's tariff sheets state that end-use customers that are on LMP-based contracts with their energy suppliers are ineligible to participate in the Economic Load Response Program. Some intervenors (PIOs, PJMICC and PRLC) complain that PJM's proposal to exclude LMP contracts from the Economic Load Response Program is unclear. PIOs and generally PRLC contend that PJM's proposed language could apply to virtually any customer who receives generation supply from a competitive supplier. PJMICC recognizes that a stakeholder group is being convened to resolve the ambiguity of "LMP-based contracts," but several parties propose clarifications for the Commission to use here. **PJMICC also contends that PJM has presented no legitimate basis for disqualifying these customers from participation.**

It is apparently unclear what customers would be included in this category, and further, PJM has not explained why they should be excluded from the program. We therefore direct PJM to file a clarification including both a definition of "LMP-based contracts" and PJM's reason for their exclusion from this program within 30 days of the issuance of this order.

D. **On-Site Generation.** Under PJM's proposal, any end-use customer intending to run distributed generating units in support of local load for the purpose of participating in the Economic Load Response Program must submit to PJM the applicable environmental permits for running the generators, or written justification for the lack of such permits. PIOs argue that allowing unmitigated small generators to participate in PJM's Economic Load Response Program could adversely affect air quality. Moreover, PIOs and generally Reliant contend that it also provides an unfair competitive advantage to these smaller units since larger facilities must meet more stringent environmental regulations. PIOs suggest that the Commission could ensure that all generators in the markets are competing on a level environmental field by requiring all generators in the economic load response program to have no greater emissions levels than those of large new generation units in that market. Alternatively, PIOs suggest that the Commission could simply exclude diesel-fueled auxiliary power units (generators or diesel-driven engines) from participation in the economic load program or adopt the NYISO's day-ahead demand response program exclusion.

The Delaware Commission asserts that coordination between environmental agencies and FERC and ISOs on this issue is critical, since recent information provided by the Delaware Department of Natural Resources and Environmental Control indicates that diesel generation emits up to 500 times more nitrous oxide per megawatt of electricity produced than gas-fired combined cycle generation. Moreover, the Delaware Commission asserts that the diesel generators would operate during the peak load, high cost hours that occur during the hottest summer periods -- the periods when ground level ozone conditions are the most serious.

With respect to the argument that PJM's proposed price responsive program favors distributed generation over central generators, the intent of PJM's program is to increase demand reduction through load curtailments or the use of distributed generation in response to high wholesale prices, and it is our view that the program will accomplish that goal. **As the Commission has stated with regard to other aspects of its economic regulatory program, the agency's purpose "is to promote competitive and efficient energy and transmission markets," and it will not exceed that mandate by engaging in regulatory activities that are intended to facilitate other public-policy objectives. We also pointed out that "Order No. 888 explicitly noted that the Commission is not required to balance all the perceived or real cost implications of competition in bulk power markets."**³³ We encourage PJM, its members and state commissions to work with appropriate environmental agencies (both state and federal) to address the environmental and air quality issues raised by intervenors in this proceeding.

E. Planning. The Delaware Commission suggests that the reductions in peak load achieved through the economic load reduction program not be used to reduce peak load for planning purposes or for determining capacity reserve requirements, since that would mean that the system benefits achieved through the DSR economic program would be for a short period only and would disappear once load, generation, transmission and distribution facilities "rebalanced." PJMICC argues that if the Commission approves any program limitation, the \$17.5 million per year limitation on "Recoverable Charges" should be clarified to be \$17.5 million per planning year.

PJM has not proposed to use load reductions achieved during this stage of its Economic Load Response Program for planning purposes. Therefore, we reject the parties' requests that we now issue a clarification on these issues as premature.

F. Minimum Run Times. Instead of self-determining when it wishes to participate, a participant may also choose to have PJM dispatch its load reduction based on a load response bid. In that case, PJM has said that payment to the participant will not be less than the total value of the load response bid, including any submitted start-up costs.

PJMICC argues that the day-ahead program includes "minimum down times" within those costs, and the real-time program should also include those costs. PJMICC contends that similar to generators' minimum run times, minimum down times accommodate customers' processes and the latent costs associated with load response – for example, it may be necessary for an industrial process to remain shut down for a certain period of time before being restarted to allow for proper equipment cool down -- and thus, minimum down times should also be accommodated in the real-time economic program. PJMICC also asserts that program participants should also be compensated in both the real-time and day-ahead Programs for costs associated with the minimum number of contiguous hours for which the load reduction is committed. Specifically, PJMICC recommends that PJM revise its proposed tariff language to state:

In cases where the load response is dispatched by PJM, payment will not be less than the total value of the load response bid, including any submitted start-up costs and costs associated with a minimum number of contiguous hours for which the load reduction must be committed.

Additionally, Mirant contends that PJM fails to define start-up costs (e.g., whether the start-up costs include lost opportunity costs such as delayed industrial output). Mirant also contends that PJM's so-called start-up costs for demand response should also be included under the umbrella of the \$17.5 million cap.

We agree that PJM's day-ahead provisions for start-up costs should be consistent with PJM's real-time program. It appears that PJM accommodates load reducers for the length of commitment time as well as any start-up costs only in the day-ahead program. However, we also recognize that PJM is still in the process of refining its price response program. Therefore, we will require PJM, to the extent applicable, to define start-up costs and to accommodate the costs incurred by demand response customers in both the day-ahead and real-time programs. We direct PJM to file amendments to conform its day-ahead and real-time start-up cost provisions to one another within 30 days of the issuance of this order.

G. Penalties. Under the economic load response program, PJM states that participants with load reduction commitments in the day-ahead Economic Load Reduction Program that fail to reduce in real-time equal to the commitment will be charged the higher of the day-ahead or real-time LMP for the amount of the shortfall, plus any associated day-ahead operating reserve credits. PJMICC argues that PJM's proposed penalties for demand-side non-performance should conform to penalties for generators. PJMICC contends generators that fail to perform consistently with their day-ahead commitments pay the real-time LMP without regard to whether the real-time LMP is higher or lower, and no sound basis exists to discriminate against demand-side resources in this manner. Further, PJMICC complains that

for the sake of parity between demand side and supply side resources, customers participating in the day-ahead Economic Load Response Program should get the same treatment as generators that cannot demonstrate hourly performance in the real time market.

We agree. PJM must apply penalties for non-performance on a not unduly discriminatory basis. Therefore, we direct PJM to file amendments conforming end-user penalties to generators' penalties within 30 days of the issuance of this order.

H. Customer Baseline Load. As noted above, to calculate the CBL, PJM uses a CBL basis window consisting of the 10 most recent weekdays, and the CBL is then based on the five highest usage days within the window. PSEG argues that PJM's proposed customer baseline level methodology for estimating load reductions should be replaced using existing PJM market features, as the existing two-settlement system allows the customer to self-select the load for the next day: under this method, the day-ahead quantities would serve as the CBL, and the demand response would be any deviation from the day-ahead CBL. PSEG asserts that any program that pays incentives based on historical estimates invites gaming, and that depending on weather, usage, and a participant's individual circumstances, the program may pay incentives even if the participant does not actually curtail usage. Mirant argues that the CBL cannot provide as accurate a picture as possible of a participant's expected demand because it arbitrarily eliminates half the demand picture – the five days out of the ten-day CBL window representing the days on which demand was lowest. PIOs, on the other hand, defend the CBL adjustment, contending that it allows for participation of customers who have loads that vary over time. PIOs state that since individual customer consumption typically rises with overall system consumption the selection of the top five days from the ten-day average will reflect the consumption trend, and selecting a different baseline would tend to understate that amount of actual curtailment on peak days.

In its answer, PJM contends that under PSEG's theory, load reduction would be similar to a forward energy contract and retail load simply would respond to real-time price signals and reduce consumption, but most retail rate structures will not permit this theory to become a reality, because they pay retail rates that do not fluctuate in the event of high LMPs. Therefore, PJM posits, retail customers have no reason to hedge in the day-ahead market, and without further incentives they have no reason to respond to price signals and reduce load. PJM asserts that this incentive is provided through payments for reducing load; the CBL is needed to measure the load reductions. Further, PJM argues that limiting the Economic Load Response Program to the day-ahead market also would be inconsistent with the other PJM markets. PJM also stated that it is appropriate to use the highest five average usage days of the preceding ten like days to determine a participant's CBL because, by eliminating the five lowest usage days, PJM creates a CBL that reflects load conditions that most approximate those conditions when load reductions are likely to occur - - i.e., when it is hot and

consumption is high.

We will not direct PJM, during this stage of its Economic Load Response Program, to revise an optional component of PJM's market-driven program. During PJM's pilot program in 2001, parties did not raise significant allegations of gaming, and PSEG similarly makes no specific allegations. Further, we expect that PJM's market monitor will be vigilant in reviewing activities under this program for signs of abuse. In addition, it is not clear that PSEG's approach of relying on day-ahead data is not also susceptible to gaming. PJM's approach is reasonable, and we will accept it. Further, we anticipate that PJM will continue to work with market participants to explore possible improvements to the CBL component.

I. Weather System Adjustment. The D.C. Commission and PIOs support the WSA. The D.C. Commission argues that actual load and load growth are significantly influenced by weather variations and, therefore, are not subject to precise projections. The D.C. Commission believes that the promotion of demand-response programs will assist customers with the efficient management of their consumption during periods of high demand, allow for the efficient allocation of minimal supplies, and prevent the potential of recurring forced outages in the District of Columbia and the Mid-Atlantic region. PIOs state that customers whose electricity consumption is directly related to weather variations can select this option and have their CBL adjusted to account for weather impacts.

Mirant, however, argues that WSA provisions should be rejected, or alternatively, set for hearing. Mirant contends that these provisions needlessly complicate administration of the program without improving its accuracy. By focusing on weather sensitive load, Mirant complains that the program disproportionately weighs one portion of the basic load calculation while ignoring other components. Moreover, Mirant argues that with respect to the calculation formula proposed, THI is generally agreed to be a meaningful tool during summer months, but not during the winter months. Finally, Mirant contends that the filing is silent regarding which sources of meteorological data will be used further undermining the efficacy of the WSA.

In its answer, PJM argues that the CBL methodology should include a WSA, which will serve to either raise or lower a customer's calculated CBL according to weather fluctuations, eliminating the possibility that utilization of the highest five days prior to a relatively cool day will result in overestimation of the customer's actual load.

We do not believe that it is appropriate to eliminate a feature of PJM's Economic Load Response Program that provides an opportunity for customers whose load is particularly sensitive to weather fluctuations to allocate capacity more efficiently during periods of high wholesale prices. Moreover, PJM's customers have the opportunity to offer alternative WSA methods. PJM's WSA proposal provides for case-by-case suggestions for alternative WSA

methods or adjustments to the end-use customer's historical, seasonal, on-peak non-coincident peak load may be approved by PJM for use in this Economic Load Response Program if negotiated in good faith and agreed to by all parties. Therefore, we reject intervenors requests to remove the WSA component of PJM's proposed Economic Load Response Program.

J. Interaction of PJM's program with ALM programs. PJMICC argues that the economic load response program should be clarified such that ALM customers do not bear the burden of proving their eligibility to participate in the program, asserting that by shifting the burden to ALM customers to prove that their contracts explicitly exclude payment or credit for energy not consumed during ALM events, the program unreasonably limits ALM customers' participation in this program.

In our April 30 Order, we noted that in its report PJM indicates that its Demand Side Task Force continues to address the impact of interactions between ALM and DSM program, and we encourage PJM to continue to work with its market participants to resolve remaining issues. Similarly, in the instant filing, PJM has included provisions that mitigate the impact on existing ALM arrangements. Therefore, we approve PJM's proposed ALM provisions consistent with our determination in the April 30 2002 Order.

K. Metering. PJMICC requests that another metering methodology also be included in the program, namely, metering that continuously records the load drawn from a specific process or application and is capable of demonstrating that the process or application was halted for the purposes of a load reduction and not due to normal operations. PJMICC notes that PJM has indicated that it may consider alternate metering bases than those specifically set out, PJMICC asserts that incorporating its recommended approach in the Commission-approved program will facilitate greater customer participation.

If PJMICC submits this metering method to PJM, PJM has indicated that it will consider it. We will not now require PJM to approve this metering method.

L. Description of Day-Ahead and Real-Time Programs. The introduction section of PJM's proposed tariff sheets describing the real-time and day-ahead Economic Load Response Program states:

Real-Time: This option will provide a mechanism by which any qualified Load Serving Entity ("LSES") or Curtailment Service Provider ("CSP") may offer end-use customers the opportunity to, or end-use customers that are PJM members independently may choose to, reduce load they draw from the PJM system during time of high prices and receive payments based on real-time LMP for the reductions.

Day-Ahead: This option will provide a mechanism by which qualified LSE or CSPs may offer end-use customers that are PJM members the opportunity to, or end-use customers independently may choose to, commit to a reduction of load they draw from the PJM system in advance of real time operations and receive payments based on day-ahead LMP for the reductions.

PJMICC argues that PJM's description of the day-ahead economic load response program should be clarified to be consistent with the description of the real-time economic load response program. PJMICC asserts that it appears that an inadvertent error was made in PJM's proposed tariff revisions, because the phrase "that are PJM members" is inappropriately placed, the description of the day-ahead Economic Load Response Program does not capture the intent of the program as described in the filing letter and would produce an absurd result. PJMICC proposes that PJM adopt the following proposal:

Economic Load Response Program - Day-Ahead: This option will provide a mechanism by which any qualified LSES or CSP may offer end-use customers the opportunity to, or end-use customers that are PJM members independently may choose to, commit to a reduction of load they draw from the PJM system in advance of real time operations and receive payments based on day-ahead LMP for the reductions.

We agree that the descriptions of these two programs should be consistent. We direct PJM to file amendments to accurately reflect the intention of the day-ahead Economic Load Response Program within 30 days of the issuance of this order.

M. Retail Access Programs. PSEG argues that different states in the PJM region are at different stages in their retail restructuring initiatives. PSEG explains that New Jersey has just completed an auction for default supplier obligations for the period of August 2002 through July 2003, and has just begun a process to determine how this service will be provided after the end of the restructuring transition period in August 2003. Moreover, PSEG states that retail rate caps will end in New Jersey in August 2003 as well. PSEG asserts that other states have longer retail rate cap periods and different default supplier programs. Thus, PSEG contends, given the uncertainty about provider of last resort obligations in different states, it is inappropriate for PJM to lock LSEs and generators into a thirty-month subsidy-based economic load response program at this time. Further, PSEG argues if the Commission approves the economic load response program at all, it should limit it to one year's duration, as it did this year regarding the ISO New England program.

With respect to the argument that PJM's Economic Load Response Program will interfere with state mandated retail access programs, we believe that due to the lack of

real-time metering and pricing in retail markets PJM's price responsive program provides an opportunity for retail customers to reduce load during periods of peak demand. Further, none of the state commissions participating in this proceeding have asserted that PJM's program would adversely impact the various stages (e.g., provider of last resort obligations) of their retail access programs.

VIII. Conclusion

We will accept PJM's economic load response program for a 30-month period, effective June 1, 2002, as discussed above.

The Commission orders:

(A) PJM's filing is accepted, as discussed above.

(B) PJM is ordered to make a compliance filing within 30 days to reflect the modifications discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

PJM submitted identical changes to Schedule 1 of the PJM Amended and Restated Operating Agreement (Operating Agreement).

¹See PJM Interconnection, L.L.C., 92 FERC ¶ 61,059 (2000), order dismissing rehearing, 95 FERC ¶ 61,011 (2001); PJM Interconnection, L.L.C., 95 FERC ¶ 61,306 (2001) (the May 2001 Order).

²The Commission approved PJM's 2002 emergency load response plan, filed on March 1, 2002, in PJM Interconnection, L.L.C., 99 FERC ¶ 61,139 (April 30, 2002) (the April 30 Order).

³PJM's Report on the 2001-2002 PJM Customer Load Reduction Pilot Program, filed December 28, 2001 (December 2001 Report) at 5.

⁴December 2001 Report at 1.

⁵December 2001 Report at 12.

⁶ALM is a program by which a customer reduces metered load, either manually or automatically, after a request or communication by a load serving entity that holds the rights to ALM credits. ALM credits in the amount of the reduction provided by the LSE's customer or customers are applied to reduce a load serving entity's peak load to determine its capacity obligations under the Reliability Assurance Agreement (RAA). In effect, ALM is an alternative means (reducing load instead of increasing capacity) for a load serving entity to meet its obligations under the RAA. See PJM's transmittal letter filed in Docket No. ER01-789-000 page 2. Docket No. ER01-789-000 was approved in PJM Interconnection, L.L.C., 94 FERC ¶ 61,172 (2001).

⁷December 2001 Report at 7.

⁸CSPs are PJM members who act on behalf of non-members with regard to the Economic Load Response Program.

⁹PJM notes that its current load response program expires on May 31, 2002.

¹⁰The program provides options for reductions in both the real-time and day-ahead markets.

¹¹16 U.S.C. § 824e (1994).

¹²PJM's Energy Market Committee formed a Demand-Side Response Working Group (DSRWG) to develop demand response programs. Both the DSRWG and PJM's Public Interest and Environmental User Group (PIEUG) presented proposals for an economic load response program to the Members Committee, but that Committee could not reach agreement. The PJM Board then developed the instant program on the basis of the proposals of the parties.

¹³16 U.S.C. § 824d (1994).

¹⁴While the parties refer to the compensation component of the program as a subsidy, we view it as a short-term incentive that is properly viewed as a form of start-up cost that is needed to help institute this program which provides significant benefits to the entire PJM market.

¹⁵PJM asserts that a representative supply curve attached to its filing (Attachment A) shows that the \$75/MWh price point reflects the approximate place on the PJM supply curve where a more dramatically increasing slope occurs, so that reductions in load when LMP is \$75/MWh and above will have a greater effect on determining LMP than load reductions when LMP is lower.

¹⁶For retail customers that participate through an LSE/CSP, PJM would market the load reduction payment to the LSE/CSP, which would in turn pass it to the retail customers. PSEG argues while these payments would not go directly from PJM to the retail customer, the jurisdictional result is still clear: PJM would be mandating that retail suppliers (as well as generators in certain circumstances) fund a retail credit to a retail customer for reducing load.

¹⁷Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States, 94 FERC ¶ 61,272 at 61,972 (2001) (Western U.S. Order).

¹⁸98 FERC ¶ 61,268 (2002) (NYISO).

¹⁹NYISO, 98 FERC at 62,041.

²⁰NYISO, 98 FERC at 62,041.

²¹April 30 Order, 99 FERC at 61,573.

²²See New Power Company v. PJM Interconnection, LLC, 98 FERC ¶ 61,208 (2002); PJM Interconnection, LLC, 95 FERC ¶ 61,330, reh. denied, 96 FERC ¶ 61,206 (2001).

²³April 30 Order, 99 FERC at 61,573.

²⁴San Diego Gas and Electric Co., 95 FERC ¶ 61,148 at 62,555, footnote omitted (2001). See also New England Power Pool, 98 FERC ¶ 61,229, slip op. at 4 ("the ability to rely on demand side responses better allows the market to resolve demand and supply imbalances") (2002).

²⁵The D.C. Commission argues that the proposed load response program supplements the dispatchable energy use management (EUM) programs that currently exist in the District of Columbia, and states that it believes that the economic and market benefits that result from

the EUM programs that are currently in effect in the District and in the Mid-Atlantic region will be further enhanced by PJM's proposed economic load response program.

²⁶We further note that, depending on the terms of PJM's membership in a future RTO, the provisions in PJM's tariff governing its load response programs may need to be revisited, as will be the case with all of PJM's tariff provisions. Nothing in this order should be construed as keeping the economic load response program in place until December 1, 2004, if PJM becomes a member of an RTO that files tariff provisions which would conflict with the economic load response program.

²⁷PIOs also contend that PJM provides a subsidy to generators by providing a \$1,000/MWh bid cap to them, and so should not hesitate to provide lesser subsidies to customers who reduce load. This is a misperception of the PJM bid cap, the intent of which is ensure that PJM's market offers consumers energy at just and reasonable rates, not to benefit a certain market segment.

²⁸PJM's overall economic load response program is supported by the Pennsylvania, Maryland, Delaware and D.C. Commissions. The Delaware Commission supports the socialization component of PJM's program because all customers benefit from reducing load and moving down the steep portion of the supply curve. Additionally, the D.C. Commission supports PJM's programs, which are designed to provide incentives for hourly-metered and non-hourly metered customers to reduce their load requirements when locational marginal prices are at their highest.

²⁹See PJM transmittal letter at 11.

³⁰See *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1955); *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348, 355 (1955).

³¹See *PJM Interconnection, L.L.C.* 99 FERC ¶ 61,139 (2002).

³²*ISO New England, Inc. and New England Power Pool*, 95 FERC ¶ 61,384 at 62,439 (2001), citing *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540, FERC Stats. & Regs. ¶ 31,036 at 31,890 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274, FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. *Transmission Access Policy Study Group, et al. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000) (Order No. 888) ("Sellers come to the power markets with a variety of advantages and disadvantages, many of which are the result of federal laws... In empowering the Commission to remedy undue discrimination and promote

competition, Congress has not authorized the Commission to equalize the environmental costs of electricity production in order to ensure 'economic fairness").