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April 15, 2005

The Honorable Magalie Roman Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

RE: PJM Industrial Customer Coalition v. PJM Interconnection, L.L.C., and American Electric Power Service Corporation; Docket No. EL05-___-000

Dear Secretary Salas:

Pursuant to Sections 206 and 306 of the Federal Power Act, 16 U.S.C. §§ 824(e) and 825(e), and Rule 206 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.206, the PJM Industrial Customer Coalition ("PJMICC") hereby files this Complaint against PJM Interconnection, L.L.C. ("PJM"), and American Electric Power Service Corporation ("AEP") requesting that the Commission direct PJM and AEP to satisfy their obligations under the PJM Open Access Transmission Tariff by allowing PJMICC members located within the AEP service territory to participate in PJM's Emergency and Economic Load Response Programs. Due to the adverse financial and non-financial implications of Respondents' conduct for PJMICC members, PJMICC requests fast track processing of this Complaint. The electronic attachment accompanying this Complaint contains a form of Notice suitable for publication in the Federal Register.

As evidenced by the attached Certificate of Service, copies have been served upon Respondents and affected regulatory agencies in accordance with Rule 206, 18 C.F.R. § 385.206(c). Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By /s/ Robert A. Weishaar, Jr.
Robert A. Weishaar, Jr.

Counsel to the PJM Industrial Customer Coalition

VK/lmc
Enclosures
c: Certificate of Service

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Industrial Customer Coalition, Complainant	:	
v.	:	Docket No. EL05-___-000
PJM Interconnection, L.L.C., and American Electric Power Service Corporation, Respondents.	:	**COMPLAINT REQUESTING FAST TRACK PROCESSING**

COMPLAINT OF THE PJM INDUSTRIAL CUSTOMER COALITION REQUESTING FAST TRACK PROCESSING

Pursuant to Sections 206 and 306 of the Federal Power Act,[1] and Rule 206 of the Commission's Rules of Practice and Procedure,[2] the PJM Industrial Customer Coalition ("PJMICC") hereby files this Complaint against PJM Interconnection, L.L.C. ("PJM"), and American Electric Power Service Corporation ("AEP" or "Company") (jointly, "Respondents") requesting that the Commission direct PJM and AEP to satisfy their obligations under the PJM Open Access Transmission Tariff ("OATT" or "Tariff") by allowing PJMICC members located within the AEP service territory to participate in PJM's Emergency Load Response Program ("Emergency LRP") and Economic Load Response Program ("Economic LRP") (collectively, "PJM LRPs"). Due to the adverse financial and non-financial implications of Respondents' conduct for PJMICC members and the PJM market as a whole, PJMICC requests fast track processing of this Complaint. The electronic attachment accompanying this Complaint contains a form of Notice suitable for publication in the Federal Register.

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[1] 16 U.S.C. §§ 824(e) and 825(e).
[2] 18 C.F.R. § 385.206.

I. EXECUTIVE SUMMARY

PJMICC is an *ad hoc* coalition of large commercial and industrial end-users of electricity that operate manufacturing and institutional facilities throughout the expanded PJM footprint, including the AEP service territory.[3] PJMICC members support the PJM LRPs; many PJMICC members actively participate in these programs. In recent months, however, AEP has blocked PJMICC members from participating in the PJM LRPs. Good faith efforts to resolve this issue through informal means have failed. PJMICC attributes this failure to AEP's refusal to satisfy its obligations under the PJM Tariff and PJM's willingness to cede authority over the administration of the Emergency and Economic LRPs contained in its Tariff. The Tariff affords PJMICC members an opportunity to participate in PJM LRPs. Notwithstanding, AEP's actions and PJM's refusal to enforce its Tariff have unjustly and unreasonably prevented PJMICC members from utilizing this opportunity. As a result, PJMICC members are experiencing continuous injury and request that the Commission direct Respondents to fulfill their obligations under the PJM Tariff by allowing PJMICC members to participate in PJM LRPs immediately or, at a minimum, prior to the upcoming summer peak period.

II. SERVICE OF DOCUMENTS

The following persons are designated by PJMICC to receive service and communications on its behalf with regard to these proceedings:

[3] For purposes of this Complaint, PJMICC Members include: Air Liquide America L.P.; Air Products and Chemicals, Inc.; Anchor Glass Container Corporation; Appleton Papers Inc.; Armstrong World Industries; BOC Gases; The Boeing Company; Carpenter Technology Corporation; CertainTeed Corporation, SG Bayform, SG Technical Fabrics; Chamberlain Mfg. Corporation; Cinram Manufacturing; Colonial Pipeline Company; ConocoPhillips – Trainer Refinery; DuPont Company; East Penn Manufacturing, Inc.; Eastman Chemical Company; Ellwood National Forge Company; Gerdau Ameristeel Corporation; Glen-Gery Corporation; ISG Sparrows Point LLC; Jefferson Health System; Kimberly-Clark Corporation; Lafarge North America Corporation; Lehigh Cement Company; MeadWestvaco Maryland Inc.; Merck & Co., Inc.; Occidental Chemical Corporation; PPG Industries, Inc.; The Procter & Gamble Paper Products Company; Sunoco, Inc. (R&M); Temple University; The Timken Company; TIMET, Inc.; and, Wegmans Food Markets Inc.

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III. BACKGROUND

PJMICC is an *ad hoc* coalition consisting exclusively of large commercial and industrial end-users of electricity. PJMICC members operate manufacturing and institutional facilities throughout the expanded PJM footprint, which encompasses all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia. Several PJMICC members also operate manufacturing and institutional facilities located in parts of Virginia and North Carolina encompassed by the conditionally approved PJM South region. PJMICC member companies consume more than 9.5 billion kilowatt-hours of electricity annually. Several PJMICC members are currently also voting participants of the PJM Members Committee and actively participate in the PJM committee structure. PJMICC members have supported PJM LRPs since their inception.

A. PJM Load Response Programs

The Commission initially approved PJM LRPs as "pilot" programs, effective during the summers of 2000[4] and 2001.[5] In adopting the PJM LRPs, the Commission recognized that

[4] *See PJM Interconnection, L.L.C.*, 92 FERC ¶ 61,059 (2000) ("July 26 Order"), *order dismissing reh'g*, 95 FERC ¶ 61,011 (2001).
[5] *See PJM Interconnection, L.L.C.*, 95 FERC ¶ 61,306 (2001) ("May 30 Order").

"[p]rice-responsive demand is a key part of a well-functioning market" because it would "mitigate price volatility and enhance reliability in the face of supply shortages"; however, "[b]ecause efficient real time prices are not conveyed to retail customers, they have no incentive to reduce consumption voluntarily to alleviate power shortages."[6] According to the Commission, PJM's proposed demand response programs would assist in remedying this "flaw in the markets operated by PJM…."[7]

In 2002, the Commission adopted revisions to the PJM Tariff that signaled the transformation of PJM LRPs from experimental pilots into established, multi-year programs to compensate end-use customers for voluntarily reducing load during emergency conditions[8] or in response to economic signals.[9] The Commission's orders imposed a December 1, 2004, sunset date on the PJM LRPs, unless PJM made a filing requesting Commission approval to continue them.

On September 4, 2004, PJM submitted a filing seeking Commission approval to extend the Emergency and Economic LRPs until December 31, 2007. On October 29, 2004, the Commission issued a Letter Order granting PJM's request.[10] No party challenged PJM's request to extend the expiration date of the PJM LRPs.

B. AEP Integration Into PJM

On April 30, 1998, AEP and Central and Southwest Corporation ("CSW") filed an application with the Commission for approval of a proposed merger.[11] AEP and CSW's merger proposal raised a number of concerns, including market power concerns. To resolve these

[6] *Id.* at pp. 62,042-043.
[7] *Id.* at p. 62,043.
[8] *See PJM Interconnection, L.L.C.*, 99 FERC ¶ 61,139 (2002) ("April 30 Order").
[9] *See PJM Interconnection, L.L.C.,* 99 FERC ¶ 61,227 (2002) ("May 31 Order").
[10] *See* Letter Order in Docket No. ER04-1193-000 (Oct. 29, 2004).

concerns, AEP committed to transfer operational control of its transmission facilities in its east zone ("AEP-East") to a FERC-approved regional transmission organization ("RTO"). The Commission accepted AEP's commitment as an appropriate means of addressing market power concerns and conditioned the merger upon AEP's satisfaction of its commitment.[12]

On May 28, 2002, after an unsuccessful attempt to create and join the Alliance RTO, AEP made a filing expressing its intent to join PJM. The Commission conditionally approved AEP's filing on July 31, 2002.[13] On December 11, 2002, AEP filed for Commission approval to transfer operational control of its transmission facilities to PJM. The Commission approved AEP's application on April 1, 2003.[14]

On September 12, 2003, the Commission initiated a proceeding to resolve issues impeding AEP's integration into PJM, particularly those stemming from the opposition of the Virginia State Corporation Commission ("VSCC") and the Kentucky Public Service Commission ("KPSC"). After extensive litigation, KPSC withdrew its opposition pursuant to a settlement agreement approved by the Commission.[15] By contrast, VSCC continued to oppose AEP's PJM integration and did not express a willingness to resolve these issues via settlement efforts or otherwise in time for AEP to meet the October 1, 2004, integration deadline. As a result, the Commission exercised its authority under Section 205(a) of the Federal Power Act to permit

(continued footnote)

[11] *See generally* Application of Central and Southwest Corporation and American Electric Power Company, Inc., Regarding Proposed Business Combination Application, Testimony and Exhibits in Docket No. EC98-40-000 *et al*.

[12] *See generally American Electric Power Co., et al.*, Opinion No. 442, 90 FERC ¶ 61,242 (2000), *order on reh'g*, 91 FERC ¶ 61,129 (2000) (affirming in relevant part), *appeal denied sub nom. Wabash Valley Power Ass'n v. FERC*, 268 F.3d 1105 (D.C. Cir. 2001).

[13] *See Alliance Companies, et al.*, 100 FERC ¶ 61,137 (2002).

[14] *See American Electric Power Service Corp., et al*., 103 FERC ¶ 61,008 (2003).

[15] *See generally New PJM Companies, et al.*, 107 FERC ¶ 61,271 (2004) ("Opinion No. 472").

AEP to join PJM.[16] The Commission rejected a settlement agreement filed subsequently by VSCC *et al*.[17]

AEP's integration into PJM occurred on October 1, 2004, pursuant to the terms and conditions of the PJM Tariff, PJM Operating Agreement, and PJM West Transmission Owners Agreement.

C. AEP's Efforts To Block PJMICC Member Participation In PJM LRPs

In the last few months, AEP has blocked several PJMICC members from participating in PJM LRPs. By way of illustration, on November 23, 2004, a PJMICC member located in the AEP transmission zone attempted to enroll certain accounts in PJM's Economic LRP.[18] On February 2, 2005, this PJMICC member updated the enrollment information pertaining to its LaPorte Facility.[19] To date, however, PJM has not authorized these requests for enrollment in the PJM Economic LRP, based solely on an objection by AEP.[20] To the best of Complainants' knowledge, no accounts within the AEP transmission zone have been permitted to enroll in the PJM LRPs.

In subsequent discussions with PJM and AEP, AEP claimed that end-use customer participation in PJM LRPs was a matter that was not subject to FERC jurisdiction. AEP also claimed that, because its transmission zone was located within non-retail access states, it would be unlawful for end-use customers located in its transmission zone to participate in PJM LRPs.

As discussed, *infra* Section V, PJMICC attempted in good faith to resolve this dispute by informal means. This attempt at informal dispute resolution, however, was unsuccessful due to a fundamental difference of opinion regarding AEP's obligations to comply with the FERC-

[16] *See id.*
[17] *See generally New PJM Companies, et al.*, 110 FERC ¶ 61,009 (2005).
[18] *See* Affidavit of Larry Stalica at ¶ 4.
[19] *See id.*

approved PJM LRPs, as well as PJM's refusal to administer and enforce the PJM Tariff as it pertains to the PJM LRPs.

IV. BASIS FOR FAST TRACK PROCESSING

Pursuant to 18 C.F.R. § 385.206(b)(11), PJMICC states that fast track processing of this Complaint is necessary because PJMICC members are experiencing continuous injury as a result of AEP's persistent refusal to allow them to participate in PJM LRPs. PJMICC members are experiencing both financial and non-financial injury. PJMICC members are being denied the opportunity to seek compensation for providing load curtailment. The financial consequences of these denials will likely increase during the coming summer peak season. A precise quantification of this impact is not possible, because such calculations depend on locational marginal prices ("LMPs"), which are not known or knowable at this point in time.

Preventing PJMICC members from providing load reductions per the PJM LRPs also contributes to an unnecessarily high locational marginal price for electricity, undermines system reliability, and diminishes market efficiencies.[21] These consequences have system-wide implications for PJMICC members and all other market participants. Absent expedited relief, PJMICC members will continue to be unjustly and unreasonably precluded from participating in PJM LRPs pursuant to the terms of the PJM OATT and will continue to face undue discrimination as a result of this exclusion. Accordingly, fast track processing is necessary to

(continued footnote)
[20] *Id*.
[21] *See, e.g.*, April 30 Order at p. 61,573 ("Load response is a highly useful and beneficial tool to reduce costs and maintain reliability during peak periods when generation supplies may be scarce."); *see also Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States*, 94 ¶ 61,272 at p. 61,272 (2001) ("It is widely accepted that dropping even a few megawatts off the system at peak periods is more efficient and economical than the incremental cost of generating them" and "providing additional load resources when generating resources are scarce…should help maintain reliability of the grid").

prevent continuing harm to PJMICC members, which will only be exacerbated by the onset of the upcoming summer peak period.

V. STATEMENT CONCERNING ATTEMPTS AT ALTERNATIVE DISPUTE RESOLUTION

Pursuant to 18 C.F.R. § 385.206(b)(9), PJMICC states that it has made a good faith effort to resolve the issues giving rise to this Complaint. In accordance with Section 12.1 of the PJM Tariff, senior representatives of PJM, PJMICC, and AEP engaged in discussions in an attempt to resolve this issue on an informal basis. Notwithstanding, these efforts at informal dispute resolution failed, in PJMICC's opinion, due to AEP's refusal to satisfy its obligations pursuant to the FERC-approved PJM LRPs and PJM's unwillingness to enforce the PJM Tariff provisions regarding the PJM LRPs. Given AEP's and PJMICC's fundamentally different views of AEP's obligations under the PJM Tariff and PJM's passive role in this dispute, PJMICC believes that attempting to resolve this dispute through other types of alternative dispute resolution would be equally unsuccessful. Moreover, this issue may adversely impact other PJM LRP participants, and formal Commission action would provide such participants with notice and an opportunity to be heard on this matter. To the best of Complainant's knowledge, this issue is not pending before the Commission in any other forum. Accordingly, PJMICC respectfully requests that the Commission set this Complaint for fast track processing.

VI. ARGUMENT

A. The PJM Tariff Affords PJMICC Members The Opportunity To Participate In PJM's Emergency Or Economic Load Response Programs.

This Complaint stems from AEP's refusal to satisfy its obligations under the PJM Tariff with respect to PJM's Economic and Emergency LRPs. Quite simply, AEP has blocked, and

continues to block, qualified PJMICC members from registering to participate in PJM LRPs.[22] At the same time, PJM is unwilling to carry out its duties under the OATT. A plain reading of the PJM Tariff demonstrates that AEP is not authorized to determine whether end-use customers may participate in the PJM LRPs; end-use customer participation in the PJM LRPs is a matter subject to PJM's administration, in accordance with the PJM OATT. Accordingly, PJMICC respectfully requests that the Commission direct Respondents to comply with the terms of the PJM OATT.

Commission approval of PJM LRPs was designed to address a flaw in PJM markets. According to the Commission, in "a well-functioning , competitive electricity market….[t]he market would…allocate scarce energy and capacity to those who valued it most and assure that the load was served at the least cost."[23] However, the Commission noted that "the market structure that has developed in PJM …does not communicate wholesale prices to retail customers in real time" and, therefore, "they have no incentive to reduce consumption voluntarily to alleviate power shortages."[24] On this basis, the Commission approved the PJM Emergency and Economic LRPs as a means to "enable end users (who are, after all, the ultimate beneficiaries of a well-functioning electricity market) to be aware of prices and respond to them in an economically meaningful way."[25] According to the Commission, in the absence of a mechanism to "enhance PJM's supply situation and provide demand response on an economic basis" the Tariff is unjust and unreasonable.[26] To that end, PJM proposed and the Commission approved PJM's Economic and Emergency LRPs.

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[22] *See, e.g.,* Affidavit of Larry Stalica at ¶ 4.
[23] *See* May 30 Order at pp.62, 042-043.
[24] *Id*.
[25] *Id*.

According the PJM Tariff, "a participant that has the ability to reduce a measurable and verifiable portion of its load, as metered on an EDC [electric distribution company] account basis" is a viable candidate for participation in the Emergency or Economic LRP.[27] To register in the Emergency LRP, a participant must complete the registration form on the PJM web site.[28] Subsequently, PJM "reviews the application and ensures that the qualifications are met, including verifying that the appropriate metering exists" and "confirms with the appropriate LSE [load-serving entity] and EDC whether the load reduction is under other contractual obligations."[29] Although such obligations "may not preclude participation," they may "require special consideration by PJM" to ensure that settlements are made in accordance with any existing contract.[30] For example, a retail tariff or contract that provides the utility with a "call" on a retail customer does not preclude that retail customer from participating in the LRPs; it simply means that PJM settlements with the retail customer take into account these existing arrangements by not duplicating payment. The EDC and LSE "have ten (10) business days to respond or PJM assumes acceptance."[31] PJM then "informs the requesting participant of acceptance into the program and notifies the appropriate LSE and EDC of the participant's acceptance into the program."[32]

The registration process for the Economic LRP is virtually identical. End-use customers or their representatives must complete the appropriate registration form located on the PJM web

(continued footnote)
[26] *See* May 31 Order at pp. 61,938.
[27] PJM Tariff at Second Revised Sheet No. 416; *see also id*. at Third Revised Sheet No. 428.
[28] *See* PJM Tariff at Substitute Original Sheet No. 418.
[29] *Id*.
[30] *Id*.
[31] *Id*.
[32] *Id*. at First Revised Sheet No.419.

site.[33] As in the Emergency LRP, PJM next "reviews the application and ensures that the qualifications for the participation in the program are met, including verifying that the appropriate metering exists" and "confirms with the appropriate EDC and LSE whether the load that might be reduced is under other contractual obligation."[34] Similarly, such obligations "may not preclude participation in the program," but they may trigger "special consideration by PJM" to ensure that settlements are made in accordance with any existing contract[35] Unless the EDC and LSE respond within 10 business days, PJM assumes acceptance.[36] Thereafter, PJM "informs the end-use customer or its representative (LSE/CSP) of acceptance into the program" and then "notifies that appropriate LSE and EDC of the participant's acceptance into the program."[37]

The PJM OATT provides eligible end-use customers with an opportunity to participate in PJM LRPs, pursuant to the aforementioned registration and verification process conducted by PJM. Thus, if PJM concludes that an end-use customer possesses the appropriate metering capability and satisfies other requirements (which the PJMICC members that sought participation in the LRPs have), then PJM must allow that end-use customer to participate in the Economic or Emergency LRP. In this case, however, AEP is impermissibly infringing upon PJM's duties as the Transmission Provider under the PJM Tariff by deciding, across-the-board, that PJMICC members in its service territory cannot participate in the PJM LRPs. Eligible PJMICC members that wish to participate in the PJM LRPs must be permitted to do so, consistent with the terms of the PJM OATT. Therefore, PJMICC respectfully requests that the Commission direct Respondents to comply with their obligations under the PJM OATT.

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[33] *See* PJM Tariff at Original Sheet No. 434A (noting that if an LSE or CSP completes the form, a separate registration form must be submitted for each end-use customer the LSE/CSP represents that actually can reduce load).
[34] *Id*. at First Revised Sheet No. 435.
[35] *See id.*
[36] *See id.*

B. PJM's Failure To Uphold Its Obligations Under The Tariff Violates The Federal Power Act.

Notwithstanding its duty to administer the Economic and Emergency LRPs in accordance with the OATT, PJM is effectively allowing AEP to exercise "veto power" over such duty. Specifically, AEP is attempting to unilaterally determine if, and to what extent, PJMICC members in its transmission zone may participate in PJM LRPs. By refusing to administer and enforce the PJM LRPs consistent with the PJM Tariff in the face of AEP's unlawful antics, PJM contravenes not only the PJM OATT, but also the Federal Power Act. PJMICC respectfully requests that the Commission direct PJM to satisfy its obligation under the PJM Tariff and provide all PJMICC members with the opportunity to participate in the PJM LRPs.

Under the PJM Tariff, PJM's Office of Interconnection is the Transmission Provider "for all purposes."[38] The PJM Operating Agreement expressly provides that the "Office of Interconnection shall…administer the PJM Tariff…"[39] This broad mandate includes the administration of the regional competitive market "for the purchase and sale of spot electric energy at wholesale interstate commerce and related services, as set forth in Attachment K-Appendix to the Tariff and Schedule 1 to the Operating Agreement."[40] Among the "related services" detailed in Attachment K-Appendix to the Tariff are the guidelines for PJM's Emergency and Economic LRPs.[41] Under the Emergency LRP guidelines PJM must – among other duties – ensure applicants are qualified to participate,[42] notify the appropriate EDC or LSE

(continued footnote)
[37] *Id.*
[38] *See* PJM Tariff at § 1.46.
[39] *See* PJM Operating Agreement at § 10.1 (emphasis added).
[40] *See id.* at § 1.32C; Attachment K-Appendix incorporates by reference into the Tariff the provisions of Schedule 1 of the PJM Operating Agreement. *See* Attachment K-Appendix at Second Revised Sheet No. 322.
[41] *See generally id.* at Substitute Original Sheet No. 414-First Sheet Revised No. 444.
[42] *See, e.g.*, PJM Tariff, Attachment K-Appendix at Substitute Original Sheet No. 418-419.

of applicant's acceptance into a LRP,[43] initiate requests for load reductions,[44] verify load reduction data,[45] and compensate the PJM Member that nominates the load.[46] PJM has similar obligations under the Economic LRP guidelines.[47] Thus, as the Transmission Provider, PJM is charged with the duty to administer the Economic and Emergency LRPs pursuant to the Tariff.

AEP's apparent veto authority over the FERC-approved PJM Tariff undermines PJM's actual and perceived independence, a quality that is necessary "to ensure that an RTO will provide transmission service and operate the grid in a non-discriminatory manner. Equal access requires RTOs to be independent."[48] In determining that PJM satisfied the criteria established by Order No. 2000, one factor upon which the Commission relied was that "under PJM's existing PJM Open Access Transmission Tariff (OATT or Tariff) and PJM Operating Agreement, PJM is the sole administrator and transmission provider."[49] In this case, PJM is both abdicating its responsibility to serve as the sole administrator of the Tariff and effectively transferring that authority to one of the PJM transmission owners. AEP's assumption of PJM's Tariff administration responsibilities with respect to the PJM LRPs contravenes PJM's obligations under the Federal Power Act. As a FERC-jurisdictional entity, PJM is obligated to administer its Tariff in a just, reasonable, non-discriminatory and impartial manner.[50] Accordingly, PJM must satisfy its obligations to independently and uniformly administer the PJM LRPs as set forth in the Tariff.

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[43] *See, e.g., id.* at Original Sheet No. 419.
[44] *Id.*
[45] *Id.*
[46] *See, e.g., id*. at First Revised Sheet No. 420.
[47] *See generally* PJM Tariff, Attachment K-Appendix at Original Sheet No, 434A-First Revised Sheet No. 439.
[48] *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 at p. 31,061 (1999), *order on reh'g*, Order No 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001) ("Order No. 2000").
[49] *See PJM Interconnection, L.L.C.*, 96 FERC ¶ 61,061 at p. 61,226 (2001) (emphasis added).
[50] *See* 16 U.S.C. § 824e(a).

To this end, PJM must not permit AEP to circumvent PJM's exclusive authority to administer PJM LRPs in accordance with the Tariff. Allowing all PJM Transmission Owners and LSEs to pick and choose whether and to what extent they wished to comply with the Tariff would eviscerate any value from the RTO framework and render meaningless the provisions of the Federal Power Act. PJMICC respectfully requests that the Commission direct PJM to enforce its Tariff and put an end to AEP's unjust, unreasonable, and unlawful antics.

C. As a PJM Member, AEP Must Fulfill Its Obligations Under The PJM Tariff.

As a PJM Member and Transmission Owner, AEP has an obligation to uphold the terms of the PJM Tariff. However, AEP's refusal to allow PJMICC members to participate in PJM LRPs violates its obligations under the Tariff. Accordingly, PJMICC respectfully requests that the Commission direct AEP to allow PJMICC members to participate in PJM LRPs immediately.

Upon its integration into PJM, AEP became a signatory to the PJM Tariff,[51] PJM Operating Agreement,[52] and West Transmission Owners Agreement.[53] Pursuant to these agreements, AEP assumed, *inter alia*, the following commitments and obligations:

- "To transfer to PJM, in accordance with the Operating Agreement, the responsibility to direct the operation of its Transmission Facilities…" and "the responsibility for providing transmission and other services as to the Transmission Facilities of such Party under the PJM Tariff"[54];
- "To be a party to the Operating Agreement"[55];
- To "[a]ccept the obligations set forth in this [Operating] Agreement"[56]; and

[51] *See* PJM Tariff, Attachment L at Eighth Revised Sheet No. 445 (identifying the AEP Operating Companies as PJM Transmission Owners).
[52] *See* PJM Operating Agreement, Schedule 12 at Original Sheet No. 215 (identifying the AEP Operating Companies as PJM Members).
[53] *See* West Transmission Owners Agreement Among PJM Interconnection, L.L.C., and Certain Owners of Electric Transmission Facilities at Second Revised Sheet No. 1 ("West TOA") (emphasis added).
[54] *Id. at* §§ 2.3.4 and 2.3.5.
[55] *Id.* at § 2.3.8.
[56] PJM Operating Agreement at § 11.6(a)(ii).

- To "cooperate with the other [PJM] Members in the coordinated planning and operation of the facilities of its System within the PJM Region so as to obtain the greatest practicable degree of reliability, compatible economic and other advantages from such coordinated planning and operating."[57]

Moreover, AEP agreed that:

- "PJM shall have the right to enforce the obligations of any Party to PJM under Articles 2, 3, 4, 7 and 9 of this [West TOA][58];
- "PJM shall…[a]dminister the PJM Tariff and provide service thereunder in the PJM West Region"[59];
- PJM shall "obtain and maintain its status as an RTO under the terms of FERC Order Nos. 2000 and 2000-A, as amended from time to time by the FERC"[60]; and
- PJM "shall implement this [Operating] Agreement, administer the Tariff, and undertake such other responsibilities as set forth herein."[61]

Finally, in executing the PJM Tariff, West TOA, and the PJM Operating Agreement, AEP represented that the terms of such agreements constituted "the legal, valid and binding obligation of such Member, enforceable against it in accordance with the terms thereof…."[62] Accordingly, AEP is bound to discharge the obligations memorialized in the various PJM agreements, including those in the PJM Tariff related to PJM LRPs.

As previously noted, Attachment K-Appendix to the Tariff "incorporates…for ease of reference the provisions of Schedule 1 of the Operating Agreement."[63] Attachment K- Appendix to the Tariff and Schedule 1 of the Operating Agreement set forth the provisions of the PJM LRPs. As a result, AEP, as a PJM Member and Transmission Owner, has an obligation to adhere to the provisions of the PJM Tariff, including the provisions of the PJM LRPs. By refusing to

[57] *Id*. at § 11.3.2.
[58] *See* West TOA at § 8.2
[59] *Id.* at § 8.3.2
[60] *Id.* at § 8.3.4
[61] PJM Operating Agreement at § 10.1.
[62] *See id*. at § 17.1.3; *see also* West TOA at § 9.12(b).
[63] *See* Attachment K-Appendix at Second Revised Sheet No. 322.

allow PJMICC members to participate in PJM LRPs, AEP is in violation of the PJM Tariff. Therefore, PJMICC respectfully requests that the Commission direct AEP to comply with the PJM Tariff by allowing PJMICC members to participate in the PJM LRPs.

D. AEP's Challenge To The Commission's Jurisdiction Over PJM LRPs Constitutes An Impermissible Collateral Attack.

It appears that AEP's non-compliance with its obligations as a signatory to various PJM documents is grounded in AEP's perception that the Commission lacks jurisdiction over PJM's LRPs. AEP claims that end-use customer participation in PJM LRPs is a matter subject to state, not federal, jurisdiction. AEP's claim is nothing less than a collateral attack on a series of FERC orders that considered and rejected like arguments and clearly established the Commission's jurisdiction over the PJM LRPs.

Although the Commission initially accepted PJM LRPs as "a reasonable, temporary market solution…to potential capacity deficits" in July 2000,[64] it was not until the following year that questions about the Commission's jurisdiction to approve such programs began to be raised. Specifically, PECO, PPL and GPU challenged the Commission's jurisdiction over the LRPs, claiming that the PJM LRPs constituted retail sales transactions subject to the exclusive jurisdiction of the states.[65] The Commission, of course, disagreed. In rejecting the utilities' jurisdictional challenges, the Commission, noted that "[p]rice-responsive demand is a key part of a well-functioning market that would mitigate price volatility and enhance reliability in the face of supply shortages."[66] The "market structure that has developed in PJM as in the rest of the nation does not communicate wholesale prices to retail customers in real time" and, as a result,

[64] July 26 Order at 5.
[65] *See* May 30 Order at p. 62,043.
[66] *Id*. at pp. 62,042-043.

retail customers have "no incentive to reduce consumption voluntarily to alleviate power shortages."[67] Accordingly, the Commission held:

> In the instant case, the current lack of meaningful demand side response is 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.[68]

The May 30 Order built upon the Commission's prior pronouncements on its jurisdiction over load response programs in general.[69]

In 2002, the Commission accepted PJM's proposal to convert the Emergency and Economic LRPs from experimental pilots into multi-year programs.[70] Again, the Commission addressed jurisdictional issues like those that have been raised informally by AEP in discussions. For example, in the proceeding pertaining to PJM's Emergency LRP, PPL asserted that the Federal Power Act confers jurisdiction over retail power sales to the states, not the Commission; therefore, the Commission lacks jurisdiction.[71] The Commission found PPL's jurisdictional argument "unpersuasive." [72] As a threshold matter, the Commission noted, "none of the state commissions participating in this proceeding have asserted that the Commission lacks jurisdiction to approve [the Emergency LRP] or that it infringes on their regulatory jurisdiction."[73] As to the issue of jurisdiction, the Commission re-iterated its prior holdings that demand response transactions are wholesale transactions subject to FERC jurisdiction and that,

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[67] *Id*.
[68] *Id*. at p. 62,043.
[69] *See, e.g., Removing Obstacles To Increased Electric Generation and Natural Gas Supply in the Western United States*, 94 FERC ¶ 61,272 at p. 61,972 (2001) (initially asserting jurisdiction only on the basis that demand response transactions "are considered wholesale when they involve the sale for resale of energy that would ordinarily be consumed by the [retail customer]").
[70] *See generally* April 30 Order and May 31 Order.
[71] April 30 Order at p. 61,572.
[72] *Id*. at p. 61,573.
[73] *Id*.

because PJM markets are subject to FERC jurisdiction, the Emergency LRP is also subject to FERC jurisdiction.[74]

The Commission further addressed jurisdictional challenges with respect to its approval of PJM's proposal to extend the Economic LRP into a multi-year program. Opponents argued that, to the extent that PJM's proposal provided for direct participation by retail customers, the Commission lacked jurisdiction to approve the Economic LRP and that the Commission lacked jurisdiction over retail sales.[75] As in the April 30 Order, however, the Commission asserted jurisdiction over the Economic LRP on two bases: that the program was a facet of PJM markets, which are subject to Commission jurisdiction, and that the program involved wholesale transactions.[76]

As evidenced above, the Commission's jurisdiction over PJM LRPs has been established in prior Commission orders. In the proceedings underlying those orders, jurisdictional arguments such as those now presented by AEP were advanced and addressed. As a result, AEP's challenge to the Commission's jurisdiction over PJM LRPs constitutes an impermissible collateral attack on those earlier Commission rulings.[77]

Assuming, *arugendo*, that AEP's arguments are not collateral attacks, it is important to note that the PJM LRPs were fully functioning, Commission-approved multi-year programs at the time AEP requested Commission approval to join PJM. As a result, AEP had full notice that participation in PJM included obligations to comply with the PJM LRPs. Equally noteworthy is the fact that on September 9, 2004 – less that one month prior to AEP's physical integration into

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[74] *Id*.
[75] *See* May 31 Order at pp. 61,938-939.
[76] *See id*. at p. 61,938.
[77] *See California v. British Columbia Power Exchange Corporation et al.*, 99 FERC ¶ 61,247 at p. 62,062 (2002) (deeming arguments raised and resolved by prior Commission orders as collateral attacks on those orders); *see also*

(cont'd footnote)

PJM and after most, if not all, of its regulatory approvals had been received – PJM filed with the Commission a request to extend its Emergency and Economic LRPs until December 31, 2007. Notwithstanding its impending integration into PJM, AEP failed to voice any concerns regarding PJM's LRPs.

PJMICC respectfully requests that the Commission dismiss AEP's jurisdictional challenges as impermissible collateral attacks and direct AEP to allow PJMICC members to participate in the PJM LRPs immediately.

D. A State's Position On Retail Access Does Not Dictate Whether End-Use Customers May Participate In PJM LRPs.

In support of the Company's argument that the Commission lacks jurisdiction over PJM LRPs, AEP claims that, to the extent that the Company's service territory is located in a non-retail access state, such as Indiana, state jurisdiction dictates whether retail customers located in that territory may participate in PJM LRPs. PJMICC disagrees with AEP's contention that a state's position on retail access determines whether retail customers may participate in PJM LRPs.

A state's position on the issue of retail access does not dictate whether end-use customers may participate in PJM LRPs. In fact, at least one PJMICC member has facilities located in West Virginia. Even though West Virginia does not support retail access, PJMICC members located in that state are not precluded from participating in PJM LRPs.

Moreover, and contrary to AEP's assertions, the Kentucky Power settlement agreement does not support AEP's claim. As previously noted, in Opinion No. 472, the Commission approved a settlement agreement between KPSC, PJM, and AEP, acting on behalf of its

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(continued footnote)
Old Dominion Electric Cooperative v. Public Service Electric and Gas Company, 84 FERC ¶ 61, 155 at p. 61,845
(cont'd footnote)

operating company, Kentucky Power. The settlement agreement provided, in relevant part, that: "Any PJM-offered demand side response or load interruption programs will be made available to Kentucky Power for its retail customers at Kentucky Power's election. No such program will be made available by PJM directly to a retail customer of Kentucky Power. Kentucky Power may, at its election, offer demand side response programs to its retail customers."[78] In approving the settlement agreement as a "reasonable resolution of the complex matters at issue in this proceeding," the Commission noted, "the Settlement does not change the authority of this Commission or of the Kentucky Commission."[79] In other words, the Commission's approval did not constitute an opinion on the merits of the settlement agreement.

Therefore, the settlement agreement between KPSC, Kentucky Power and PJM does not support AEP's jurisdictional claim. AEP's jurisdictional claim must be rejected.

(continued footnote)
and n.16 (1998); and *South Carolina Public Service Authority*, 81 FERC ¶ 61,192 at p. 61,851-852 (1997).

[78] *See* Offer of Settlement and Explanatory Statement, Appendix A at ¶ 4, in Docket No. ER03-262-009 (filed June 1, 2004).

[79] *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,272 at P 15 (2004).

VII. CONCLUSION

WHEREFORE, the PJM Industrial Customer Coalition respectfully requests that the Commission grant the instant request for fast track processing of this Complaint and require American Electric Power Service Corporation and PJM Interconnection, L.L.C., to comply with the terms of the PJM Open Access Transmission Tariff governing the PJM Economic and Emergency Load Response Programs.

Respectfully submitted,

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Counsel to the PJM Industrial Customer Coalition

Dated: April 15, 2005

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Complaint of the PJM Industrial Customer Coalition upon each person designated below, as required by the Commission's Regulations at 18 C.F.R. § 385.206(c).

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Dated at Washington, D.C., this 15th day of April 2005.

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Industrial Customer Coalition, Complainant	:	
v.	:	Docket No. EL05-___-000
PJM Interconnection, L.L.C., and American Electric Power Service Corporation, Respondents.	:	**COMPLAINT REQUESTING FAST TRACK PROCESSING**

AFFIDAVIT OF LARRY STALICA

I, Larry Stalica, being duly sworn, depose and state as follows:

1. I am employed by BOC Gases, a division of The BOC Group, Inc., a worldwide industrial gases, vacuum technologies, and distribution services company ("BOC").
2. My position is Manager – Energy & Regulatory Affairs. In my current position, I manage energy procurement and regulatory affairs for BOC's plants in the Northeast and Midwest United States.
3. Several BOC facilities are located within the PJM footprint. These facilities include, but are not limited to, an air separation plant in LaPorte, Indiana ("LaPorte Facility"), which is served by AEP's Indiana Michigan Power subsidiary, and a carbon dioxide production facility in Lima, Ohio ("Lima Facility"), which is served by AEP's Ohio Power Company facility.
4. On November 23, 2004, I attempted to enroll the LaPorte Facility and the Lima Facility in the PJM economic load response program ("ELRP"). On February 2, 2005, I updated information for the LaPorte Facility. To date, AEP has objected to PJM's inclusion of both of these facilities in the ELRP. Based on AEP's objection,

PJM has not permitted enrollment of either facility in the ELRP. Both facilities possess the metering capabilities necessary for participation in the ELRP, are not subject to existing obligations that prohibit ELRP participation, and otherwise satisfy the enrollment and registration requirements for ELRP participation.

5. BOC is a member of the PJM Industrial Customer Coalition ("PJMICC").
6. The statements contained herein are true and correct to the best of my knowledge and belief, and I am authorized to make the same to the Federal Energy Regulatory Commission.

Larry Stalica

SUBSCRIBED AND SWORN TO
BEFORE ME THIS 14th DAY
OF APRIL, 2005

Mary A. Sipe
Notary Public

My Commission Expires:

NOTARIAL SEAL
MARY A SIPE
Notary Public
CITY OF HARRISBURG, DAUPHIN COUNTY
My Commission Expires Mar 19, 2009

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Industrial Customer Coalition, Complainant	:	
v.	:	Docket No. EL05-___-000
PJM Interconnection, L.L.C., and American Electric Power Service Corporation, Respondent.	:	**COMPLAINT REQUESTING FAST TRACK PROCESSING**

NOTICE OF COMPLAINT

Take notice that on April 15, 2005, the PJM Industrial Customer Coalition filed a formal complaint against PJM Interconnection, L.L.C., and American Electric Power Service Corporation pursuant to Sections 205 and 306 of the Federal Power Act and pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, alleging that Respondents' refusal to allow members of the PJM Industrial Customer Coalition, located in American Electric Power Service Corporation's service territory, to participate in PJM Interconnection, L.L.C.'s Emergency and Economic Load Response Programs contravenes Respondents' obligations under the PJM Open Access Transmission Tariff.

The PJM Industrial Customer Coalition certifies that copies of the complaint were served on the contacts for PJM Interconnection, L.L.C., and American Electric Power Service Corporation as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§ 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondents' answer and all interventions, or protests must be filed on or before the comment date. The Respondents' answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at http://www.ferc.gov. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

This filing is accessible on-line at http://www.ferc.gov, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, D.C. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online

service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on (insert date).

Magalie R. Salas
Secretary

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