DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM10–17–000]

Demand Response Compensation in Organized Wholesale Energy Markets

AGENCY: Federal Energy Regulatory Commission.

ACTION: Supplemental Notice of Proposed Rulemaking and Notice of Technical Conference.

SUMMARY: The Federal Energy Regulatory Commission is issuing a Supplemental Notice of Proposed Rulemaking (NOPR) and Notice of Technical Conference to provide additional opportunity for comment on issues related to the March 18, 2010 NOPR, 75 FR 15362 (March 29, 2010), regarding the appropriate compensation to be paid to demand response resources in organized wholesale electric markets administered by Independent System Operators or Regional Transmission Organizations. The Commission proposed an approach for compensating demand response resources in order to improve the competitiveness of organized wholesale energy markets and thus ensure just and reasonable wholesale rates. The Supplemental NOPR seeks comment on whether the Commission should adopt requirements related to two issues addressed in comments: If the Commission were to adopt a net benefits test for determining when to compensate demand response providers, what, if any, requirements should apply to the methods for determining net benefits; and what, if any, requirements should apply to how the costs of demand response are allocated. The Commission invites all interested persons to submit comments in response to the issues discussed herein.

DATES: A technical conference will be held at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, no later than 45 days following the publication of this document in the Federal Register. The exact date of the conference will be provided in a subsequent Commission publication in the Federal Register. Comments on the NOPR will be due 30 days following the technical conference announced herein. The Commission will announce the comment close date in a subsequent publication in the Federal Register.

ADDRESSES: You may submit comments, identified by docket number by any of the following methods:

Agency Web Site: http://ferc.gov. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Mail/Hand Delivery: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:
Helen Dyson (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8856, helen.dyson@ferc.gov.

SUPPLEMENTARY INFORMATION:

Supplemental Notice of Proposed Rulemaking and Notice of Technical Conference

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Issued August 2, 2010.

1. In a Notice of Proposed Rulemaking (NOPR) issued in this proceeding on March 18, 2010 (March NOPR), the Commission proposed to require Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs) with tariff provisions allowing demand response resources to participate in wholesale energy markets by reducing consumption of electricity from expected levels in response to price signals, to pay those demand response resources, in all hours, the market price of energy (also referred to as the “locational marginal price” or “LMP”) for such reductions. In light of matters elucidated in responsive comments to the March NOPR, the Commission seeks additional comments on whether the Commission should adopt requirements related to two issues: (1) If the Commission were to adopt a net benefits test for determining when to compensate demand response providers, what, if any, requirements should apply to the methods for


Demand response means a reduction in the consumption of electric energy by customers from their expected consumption in response to an increase in the price of electric energy or to incentive payments designed to induce lower consumption of electric energy. 18 CFR 35.28(b)(4) (2010).

*3 Demand response means a resource capable of providing demand response. 18 CFR 35.28(h)(3) (2010).

Demand response compensation in organized wholesale energy markets, Notice of Proposed Rulemaking, 75 FR 15362 (March 29, 2010), 130 FERC ¶ 61,213 (March 18, 2010).

The following RTOs and ISOs have organized wholesale electricity markets: PJM Interconnection, L.L.C. (PJM); New York Independent System Operator, Inc. (NYISO); Midwest Independent Transmission System Operator, Inc. (Midwest ISO); ISO New England, Inc. (ISO–NE); California Independent System Operator Corp. (CAISO); and Southwest Power Pool, Inc. (SPP).
determining net benefits; and (2) what, if any, requirements should apply to how the costs of demand response are allocated. The Commission also directs staff to hold a technical conference on these issues no later than 45 days following publication of this notice in the Federal Register. The exact date of the technical conference will be provided in a subsequent notice.

I. Background

2. In the March NOPR, the Commission proposed to add section 35.18(g)(1)(v) to its regulations to establish a specific compensation approach for demand response resources participating in organized wholesale energy markets, i.e., the day-ahead and real-time markets administered by ISOs and RTOs. Under the proposed section, each Commission-approved ISO and RTO that has a tariff provision providing for participation of demand response resources in its organized wholesale energy market would pay demand response resources, in all hours, the market price for energy, i.e., the LMP, for demand reductions made in response to price signals.

3. Numerous comments were filed in response to the NOPR, many of which support the proposed demand response compensation level. However, other comments support payment of LMP only when the benefits of demand response compensation outweigh the costs of paying demand response resources, as determined by some type of net benefits test.

II. Net Benefits

A. The March NOPR

4. In the March NOPR, the Commission proposed to require ISOs and RTOs to pay LMP to demand response providers in all hours, but the Commission also sought comment on, among other things, whether payment of LMP should indeed apply in all hours and, if not, the criteria that should be used for establishing the hours when LMP should apply.

B. Comments

5. As noted above, numerous commenters, primarily industrial consumers and some consumer advocates, agree with the Commission’s proposal to pay LMP to demand response providers in all hours. They argue that, regardless of the hour or season, all consumers share in the benefits demand response resources provide, including lowering the clearing price. They also argue that, regardless of the hour or season, both demand response providers and generators provide a comparable service in terms of balancing supply and demand and therefore should be paid on a comparable basis, i.e., LMP.

6. At the same time, a diverse group of commenters maintain that paying LMP for demand response in all hours, including off-peak hours, might not result in net benefits to customers, because the payments might be substantially more than the savings created by reducing the clearing price at that time. According to these commenters, net benefits are most likely to be positive and greatest when the supply curve is steepest, which typically occurs in highest-cost, peak hours. Some commenters suggest that paying LMP in all hours might make more difficult, and less accurate, the establishment of baselines for measuring whether a demand response provider has, in fact, responded.

7. Many commenters who oppose paying LMP in all hours for demand response suggest approaches, or net benefits tests, for determining when LMP should apply. These commenters state that the purpose of these tests would be to determine the point at which the incremental payment for demand response equals the incremental benefit of the reduction in load; payment of LMP would apply only when

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8 See generally, Comments of New York State Consumer Protection Board; No. 719.
9 March NOPR, 130 FERC ¶ 61,213 at P 20.
10 Comments of Joint Consumers of Pennsylvania at 12; Comments of Joint Consumers Advocates at 12; Comments of Steel Manufacturers Association at 12; Comments of Consumer Demand Response Initiative at 12; Comments of Joint Consumer Advocates at 11–12.
11 Comments of Alliance for Clean Energy New York at 2–3; Comments of American Chemistry Council at 3; Comments of American Forest & Paper Association at 3; Comments of Crane & Co. at 2–3; Comments of Industrial Energy Consumers of America at 2; Comments of Industrial Energy Consumers of Pennsylvania at 3; Comments of Madison Paper Industries at 2–3.
12 Comments of Steel Manufacturers Association at 12.
13 Comments of Capital Power Corporation at 5; Comments of PJM Power Providers Group at 5.
14 Comments of NECPUC at 13.
15 Comments of ISO-NE at 3–4.
16 Comments of Steel Manufacturers Association at 12.
17 Comments of Capital Power Corporation at 5; Comments of PJM Power Providers Group at 5.
18 Comments of NECPUC at 13.
19 Comments of ISO-NE at 32–33; Comments of California Department of Water Resources at 11; Comments of National Grid USA at 8.
up to that point.\textsuperscript{18} To achieve that end, some comments advocate a net benefits trigger based on a particular price or period of hours.\textsuperscript{19} While some proposals would utilize a static bid threshold, such as $75/MWh,\textsuperscript{20} other proposals would utilize a dynamic bid threshold, which could be based upon fuel prices and heat rates of marginal generation.\textsuperscript{21} Still other commenters urge compensating demand response during an ISO- or RTO-defined period of critical high-cost hours in which it is cost-effective to pay the full LMP.\textsuperscript{22} In addition to advancing net benefits tests, some commenters suggest implementation of an ISO- or RTO-developed mechanism to determine whether a net customer benefit would occur in advance of dispatch.\textsuperscript{23} Some commenters, however, state that it would be difficult to prescribe by regulation the hours in which demand response provides net benefits because system conditions and load patterns change across seasons and over time.\textsuperscript{24}

C. Discussion

8. Due to matters raised in responsive comments to the March NOPR, the Commission seeks further information regarding the net benefits issue. Accordingly, the Commission seeks additional comments and directs staff to hold a technical conference regarding various net benefits tests.\textsuperscript{25} Specifically, the Commission seeks comment on the following issues, as well as any other issues:

(1) Some commenters address the need for a net benefits test. Address why the Commission should adopt a net benefits test for determining demand response compensation, and what the objectives of any such test would be.

(2) How to define benefits, including whether the benefits associated with demand response should account only for lower market-clearing prices in the day-ahead and real-time markets or should also include consideration of operational benefits (e.g., lower reserve requirements), societal benefits or another measure.

(3) In addition to the payments received from the wholesale market, what are the costs demand response providers and load serving entities incur and should these be included for purposes of a net benefits test.

(4) How to identify the beneficiaries of demand response, and how the allocation of costs related to demand response compensation affect the beneficiaries, if at all.

(5) Whether any net benefits methodology adopted should be the same for all ISOs and RTOs or whether the individual circumstances or configuration of each ISO and RTO would support a different net benefits methodology.

(6) Proposed methodologies for implementing a net benefits test. Comments also should consider whether a net benefits threshold should be established up front based on static measures, such as a specific price or number of peak hours, or established on a dynamic basis, such as a price threshold based on a pre-set heat rate and daily updated fuel price; and similarly, whether the net benefits should be an explicit test run by the ISO or RTO either after bids have been received or each hour prior to accepting demand response bids. Comments should also describe the advantages and limitations of any proposed net benefits methodologies.

III. Cost Allocation

A. Comments

9. Comments concerning cost allocation essentially ask how the proposed demand response compensation level will be funded.\textsuperscript{26} These commenters argue that, if not structured correctly, demand response compensation methodologies can increase, rather than decrease costs to end-users.\textsuperscript{27} Some commenters further contend that requiring payment of LMP for demand response will require ISOs and RTOs to reopen cost allocation issues that have previously been settled based on varying ISO- and RTO-specific demand response compensation levels.\textsuperscript{28} Additional commenters assert that demand response compensation and a method for allocating the associated costs are so inextricably entwined that the two issues must be simultaneously addressed as part of an integrated demand response regime.\textsuperscript{29}

10. Another group of commenters endorse the position that demand response compensation and cost allocation are necessarily related, but they contend that resolution of cost allocation issues can await the final rule on demand response compensation. These commenters maintain that any cost allocation approach will depend on the outcome of the final demand response compensation rule and, in any case, should first be addressed through stakeholder discussions at the regional level.

11. Several commenters advocate a specific approach or discuss the pros and cons of alternative approaches for allocating the costs associated with demand response compensation. Potential approaches raised in comments include:

(1) Allocating the costs across the entire relevant ISO or RTO market, based upon the rationale that there are system-wide benefits to demand response, including reducing the market price for energy.\textsuperscript{30} Conversely, some commenters argue that, while this approach might increase the amount of demand response provided to the market, it might also result in some market participants paying costs associated with demand response for which they do not receive equivalent benefit.\textsuperscript{31}

(2) Allocating the costs to only the load-serving entity of record, i.e., the load-serving entity that would have served the load providing the demand response. According to commenters, this option assumes that the deemed full benefit of demand response is only received by the load-serving entity of record and that demand response does
question of whether a singular cost allocation approach should be determined by the Commission for all ISOs and RTOs or whether differing cost allocation approaches should be developed regionally and reviewed by the Commission on an ISO- and RTO-specific basis. Accordingly, the Commission seeks additional comments on whether the Commission should consider a generic approach to allocating the costs of demand response compensation required by the final rule in this proceeding; and if so, what approach the Commission should adopt. Such issues also will be explored at the staff technical conference. Specifically, the Commission seeks comment on the following issues, as well as any other issues:

(1) Whether standardizing demand response compensation among ISOs and RTOs requires simultaneous standardization of a method for allocating the costs associated with such compensation. In addition, whether standardizing demand response compensation among ISOs and RTOs requires consideration of corresponding settlements and other impacts associated with the compensation mechanism.

(2) If the Commission standardizes an approach for allocating the costs associated with requiring payment for demand response, what type of approach is appropriate. Comments should address the specific approaches delineated above, and may address other broad principles the Commission could use to determine the cost allocation mechanism.

(3) How the use of a net benefits test would affect the need for and methodologies for determining cost allocation.

IV. Technical Conference

13. The exact date of the Commission staff technical conference directed herein will be provided in a subsequent notice and will be no later than 45 days following publication of this notice in the Federal Register. The conference will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All interested persons are invited to participate in the conference.

14. Those interested in speaking at the conference should notify the Commission by August 10, 2010 by completing an online form describing the topics that they will address: http://www.ferc.gov/whats-new/registration/demand-RM10-17-000-speaker-form.asp. Due to time constraints, we may not be able to accommodate all individuals interested in speaking, so multiple persons sharing the same position are encouraged to have one representative speak on their behalf. A detailed agenda, including panel speakers, will be published at a later date.

15. The technical conference will be transcribed. Transcripts of the conference will be immediately available for a fee from Ace-Federal Reporters, Inc. ((202) 347–3700 or 1–800–336–6646). The transcript will be available for free on the Commission’s eLibrary system and on the Calendar of Events approximately one week after the conference.

16. A free webcast of the technical conference directed herein will be available. Anyone with Internet access interested in viewing this conference can do so by navigating to http://www.ferc.gov’s Calendar of Events and locating the appropriate event in the Calendar. The events will contain a link to the applicable webcast option. The Capitol Connection provides technical support for the webcasts and offers the option of listening to the conferences via phone-bill for a fee. If you have any questions, visit http://www.CapitolConnection.org or call (703) 993–3100.

17. 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 e-mail FERConlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

18. Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to accessibility@ferc.gov or call toll free (866) 208–3372 (voice) or (202) 208–1659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

V. Comment Procedures

19. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due 30 days following the technical conference announced above. Comments must refer to Docket No. RM10–17–000, and must include the commenter’s name, the organization the commenter represents, if applicable, and the commenter’s address.

20. The Commission encourages comments to be filed electronically via the eFiling link on the Commission’s
Web site at http://www.ferc.gov. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

21. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

22. All comments will be placed in the Commission’s public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VI. Document Availability

23. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC’s Home Page (http://www.ferc.gov) and in FERC’s Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

24. From FERC’s Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

25. User assistance is available for eLibrary and the FERC’s website during normal business hours from FERC’s Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or e-mail at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission, Commissioner Moeller is concurring, in part and dissenting, in part with a separate statement attached.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

MOELLER, Commissioner, concurring, in part and dissenting, in part:

While I support the decision to supplement the record and convene a technical conference, for the reasons set forth in my concurring and dissenting statement on the NOPR that initiated this proceeding on March 18, I continue to concur and dissent, in part.

Philip D. Moeller, Commissioner.
[FR Doc. 2010–19376 Filed 8–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–247C]

Schedules of Controlled Substances; Placement of 2,5-Dimethoxy-4-(n)-propylthiophenethylamine and N-Benzylpiperazine Into Schedule I of the Controlled Substances Act; Correction

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The Drug Enforcement Administration (DEA) is correcting a notice of proposed rulemaking that appeared in the Federal Register of September 8, 2003. The proposed rule pertained to the scheduling of N-Benzylpiperazine (BZP), and contained an error regarding the potency of BZP relative to amphetamine. Although DEA used the correct figures in arriving at its scheduling determination, the agency is publishing this correction to provide an official statement of the actual figures. This correction does not address the scheduling of 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C–T–7) which was also placed into schedule I as a result of the above cited rulemaking.

DATES: This correction is effective August 6, 2010 without further action.

FOR FURTHER INFORMATION CONTACT: Christine A. Samerud, PhD, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Background

DEA is correcting an inadvertent error that occurred in a Notice of Proposed Rulemaking that scheduled the substance N-Benzylpiperazine (BZP) as a schedule I controlled substance. The Notice of Proposed Rulemaking, published on September 8, 2003 (68 FR 52872), proposed the control of BZP in schedule I of the Controlled Substances Act (CSA). The Final Rule, published on March 18, 2004 (69 FR 12794), finalized the placement of BZP in schedule I of the CSA.

Each of these rules contained a misstatement in the “Supplementary Information” section, with regard to the potency differences between BZP and amphetamine. In each rule, it was erroneously stated that BZP is 10 to 20 times more potent than amphetamine. In actuality, the converse is true (i.e., BZP is 10 to 20 times less potent than amphetamine.) Therefore this Rulemaking corrects this misstatement in the Notice of Proposed Rulemaking. Under separate rulemaking, DEA is publishing a correction to the Final Rule, published March 18, 2004 (69 FR 12794).

DEA emphasizes that these errors were made solely in the rules as published in the Federal Register. Both DEA and the U.S. Department of Health and Human Services (HHS) considered the correct BZP potencies during their scheduling deliberations. The correct potencies were included in both the HHS scientific and medical evaluation document, and in DEA’s scheduling document, which were used to make the determination for control. The public docket for BZP contains both of these review documents. In addition, DEA has already published on the agency’s Web site the correct figures regarding relative potency.

The determination of control of BZP was made after consideration of all the available data and all eight factors and the criteria for schedule I as specified in 21 U.S.C. 801, 911, and 812. The amphetamine-like property of BZP was determined following the collective review and consideration of all the available evidence including drug discrimination and self-administration and other information. These studies were briefly mentioned in the rules controlling BZP as a schedule I controlled substance and were discussed in detail in the scientific and medical evaluation and scheduling documents prepared by both HHS and DEA.

Although the potency difference between BZP and amphetamine was discussed in the rules proposing and