

123 FERC ¶ 61,175  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Niagara Mohawk Power Corporation	Docket Nos. ER96-2585-007
New England Power Company	ER98-6-012
KeySpan-Ravenswood, Inc.	ER99-2387-005
KeySpan-Glenwood Energy Center, LLC	ER02-1470-005
KeySpan-Port Jefferson Energy Center, LLC	ER02-1573-005
Granite State Electric Company, Massachusetts Electric Company, and The Narragansett Electric Company	ER05-1249-005
National Grid plc and KeySpan Corporation	EC06-125-000

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS

(Issued May 16, 2008)

1. In this order, the Commission accepts an updated market power analysis filed by Niagara Mohawk Power Corporation (Niagara Mohawk Power), New England Power Company (New England Power), KeySpan-Ravenswood, Inc. (KeySpan-Ravenswood), KeySpan-Glenwood Energy Center, LLC (KeySpan-Glenwood), KeySpan-Port Jefferson Energy Center, LLC (KeySpan-Port Jefferson), Granite State Electric Company (Granite State Electric), Massachusetts Electric Company (Massachusetts Electric), and The Narragansett Electric Company (Narragansett Electric) (collectively, National Grid USA). As discussed below, the Commission concludes that National Grid USA satisfies the Commission's standards for market-based rate authority.
2. Additionally, as discussed below, National Grid USA meets the criteria for a Category 2 seller and is so designated. National Grid USA's next updated

market power analysis must be filed according to the regional schedule adopted in Order No. 697.<sup>1</sup>

## **I. Background**

3. On January 14, 2008, National Grid USA filed an updated market power analysis in accordance with the reporting schedule adopted in Order No. 697.<sup>2</sup>

4. National Grid USA states that it is a public utility holding company headquartered in Westborough, Massachusetts, and is an indirect, wholly owned subsidiary of National Grid plc.<sup>3</sup> National Grid USA further states that it is the direct or indirect corporate parent of eight jurisdictional public utilities to which the Commission has granted market-based rate authority.

### **A. Subsidiaries in ISO-New England Market**

5. National Grid USA states that it is the direct corporate parent of four jurisdictional New England public utilities with market-based rate authority: New England Power, which is an electric transmission company, Massachusetts Electric, Narragansett Electric, and Granite State Electric, which are electric distribution companies. New England Power, Granite State Electric,

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<sup>1</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882-893 and Appendix D, *clarified*, 121 FERC ¶ 61,260 at P 9-10 (2007) (Order Clarifying Final Rule); *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 (2008).

<sup>2</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882. The Commission stated that “both the Commission and market participants will benefit from greater data consistency that will result from regional examination of updated market power analyses and a methodical study of all sellers in the same region. This will give the Commission a more complete view of market forces in each region and the opportunity to reconcile conflicting submissions, enhancing our ability to ensure that sellers’ rates remain just and reasonable.” *See also* Order Clarifying Final Rule, 121 FERC ¶ 61,260 at P 13.

<sup>3</sup> National Grid USA states that National Grid plc, incorporated in England and Wales, is the parent holding company in the National Grid holding company system. National Grid USA states that, through various subsidiaries and investments, National Grid is engaged in utility and non-utility operations in the United States, the United Kingdom, Australia, and other countries.

Massachusetts Electric, and Narragansett Electric operate exclusively in the ISO New England Inc. (ISO-NE) market.

6. National Grid USA states that New England Power is a Commission-regulated public utility company organized and operated under the laws of the Commonwealth of Massachusetts that operates transmission facilities in the states of Massachusetts, Rhode Island, New Hampshire, and Vermont.<sup>4</sup> New England Power's transmission facilities are subject to the operational control of ISO-NE.

7. National Grid USA states that Massachusetts Electric is an electric distribution utility in Massachusetts. Massachusetts Electric delivers electric energy to approximately 1.2 million retail customers in Massachusetts. National Grid USA states that Narragansett Electric is an electric distribution utility in Rhode Island with approximately 478,000 retail customers. National Grid USA states that Granite State Electric is a distribution utility that provides retail electric service to approximately 41,000 customers in New Hampshire.<sup>5</sup>

#### **B. Subsidiaries in New York ISO Market**

8. National Grid USA additionally states that it is also the indirect corporate parent (through the intermediary Niagara Mohawk Holdings, Inc.) of Niagara Mohawk Power, a jurisdictional public utility company engaged primarily in transmission and distribution operations. Niagara Mohawk Power operates exclusively in the New York Independent System Operator, Inc. (NYISO) market.

9. National Grid USA states that Niagara Mohawk Power, a New York corporation, is a combination gas and electric utility company.<sup>6</sup> Niagara Mohawk

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<sup>4</sup> New England Power was authorized to sell electric energy and capacity at wholesale at market-based rates in *New England Power Company*, 82 FERC 61,179 (1998). New England Power's last updated market power analysis was accepted for filing in *Alcan Power Marketing, Inc.*, 113 FERC ¶ 61,123 (2005).

<sup>5</sup> Massachusetts Electric, Narragansett Electric, and Granite State Electric were authorized to sell electric energy and capacity at wholesale at market-based rates in *Granite State Electric Company*, 113 FERC ¶ 61,289 (2005).

<sup>6</sup> Niagara Mohawk Power was authorized to sell electric energy and capacity at wholesale at market-based rates in *Plum Street Energy Marketing, Inc.*, 76 FERC ¶ 61,319 (1996). Niagara Mohawk Power's last updated market power analysis was accepted for filing in *Alcan Power Marketing, Inc.*, 113 FERC ¶ 61,123 (2005).

Power is primarily engaged in the business of transmission and distribution of electricity and the distribution and transportation of natural gas in New York State. Niagara Mohawk Power serves over 1.6 million retail electric and 568,000 retail gas customers in New York State. Niagara Mohawk Power owns approximately 6,000 miles of electric transmission lines and 8,500 miles of main and distribution gas pipelines. All of Niagara Mohawk Power's bulk transmission facilities are subject to the operational control of the NYISO.

10. National Grid USA states that it is the direct corporate parent of KeySpan Corporation. KeySpan Corporation is engaged in various aspects of the energy business, including natural gas distribution, electricity generation, and administrative services for energy, transmission and distribution operations. KeySpan Corporation has several subsidiaries that are jurisdictional public utilities with market-based rate authority. National Grid USA states that these subsidiaries are KeySpan-Glenwood, KeySpan-Port Jefferson, and KeySpan-Ravenswood, which are all merchant electric generation companies located in New York.

11. National Grid USA states that KeySpan-Glenwood and KeySpan-Port Jefferson are each Delaware limited liability companies and exempt wholesale generators.<sup>7</sup> National Grid USA states that each of these companies owns and operates a 79.9 megawatt (MW) electric peaking facility on Long Island, New York.

12. National Grid USA states that KeySpan-Ravenswood is a New York limited liability company and an exempt wholesale generator.<sup>8</sup> National Grid USA states that KeySpan-Ravenswood owns and controls generation facilities located in Queens, New York that total approximately 2,450 MWs. Except for a 250 MW combined-cycle facility that began operations in 2004, KeySpan-

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<sup>7</sup> KeySpan-Glenwood was authorized to sell electric energy and capacity at wholesale at market-based rates in *KeySpan-Glenwood Energy Center, LLC*, Docket No. ER02-1470-000 (May 30, 2002) (unpublished letter order). KeySpan-Port Jefferson was authorized to sell electric energy and capacity at wholesale at market-based rates in *KeySpan-Port Jefferson Energy Center, LLC*, Docket No. ER02-1573-000 (June 12, 2002) (unpublished letter order). The last updated market power analysis from both applicants was accepted for filing in *KeySpan-Ravenswood, LLC*, 113 FERC ¶ 61,196 (2005).

<sup>8</sup> KeySpan-Ravenswood was authorized to sell electric energy and capacity at wholesale at market-based rates in *MEP Investments, LLC*, 87 FERC ¶ 61,209 (1999). The last updated market power analysis from the applicant was accepted for filing in *KeySpan-Ravenswood, LLC*, 113 FERC ¶ 61,196 (2005).

Ravenswood's generation was formerly owned by Consolidated Edison Co. of New York, Inc. (Con Edison).

13. National Grid USA states that a subsidiary of KeySpan Corporation, KeySpan Energy Trading Services, LLC (KeySpan Energy Trading Services) manages a generation and energy portfolio and fuel supplies on behalf of the Long Island Power Authority and its affiliates, the Long Island Lighting Company d/b/a LIPA (LIPA) pursuant to an energy management agreement.<sup>9</sup> National Grid USA states that KeySpan Energy Trading is required under the agreement to act in accordance with the policies established by LIPA and prudent utility practice.

14. National Grid USA states that another subsidiary of KeySpan Corporation, KeySpan Electric Services, LLC (KeySpan Electric Services) provides transmission and distribution management services to LIPA under the supervision of LIPA. In addition, National Grid USA states that Utility ServCo, a subsidiary of KeySpan Corporation, provides gas purchase, sale, and trading services to LIPA.

## **II. Notice and Responsive Pleadings**

15. Notice of the January 14, 2008 filing was published in the *Federal Register*, 73 Fed. Reg. 5540 (2008), with interventions or protests due on or before March 14, 2008. A timely motion to intervene, raising no substantive issues, was filed by Exelon Corporation on March 14, 2008.

## **III. Discussion**

### **A. Procedural Matters**

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), Exelon Corporation's timely, unopposed motion to intervene serves to make it a party to this proceeding.

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<sup>9</sup> Under the agreement, KeySpan Energy Trading Services, on behalf of LIPA (1) procures and manages fuel oil supplies for LIPA's use to generate electricity in the generating facilities owned by KeySpan Generation; (2) dispatches LIPA's resources to meet total energy and capacity requirements of LIPA's electric customers and off-system sales; (3) purchases additional resources to satisfy LIPA's system needs; and (4) makes "offsystem" sales to the market with LIPA's surplus generation, primarily via NYISO dispatch.

**B. Market-Based Rate Authorization**

17. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.<sup>10</sup> As discussed below, the Commission concludes that National Grid USA satisfies the Commission's standards for market-based rate authority.

**1. Horizontal Market Power**

18. The Commission adopted two indicative screens for assessing horizontal market power, the pivotal supplier screen and the wholesale market share screen.<sup>11</sup>

19. National Grid USA has prepared the pivotal supplier and wholesale market share screens for the ISO-NE and NYISO markets and submarkets, consistent with the requirements of Order No. 697.<sup>12</sup>

**a. ISO-New England Market**

20. For the ISO-NE market, National Grid USA did not submit a simultaneous import limitation (SIL) study but instead referenced the 2006 ISO-New England Regional System Plan (ISO-NE Study). We find National Grid USA's reliance on ISO-NE Study acceptable because it meets the principles established in the April 14, 2004 order.<sup>13</sup> As the Commission explained in the April 14 Order, an applicant is required to provide a reasonable approximation of simultaneous import capability that would have been available to suppliers in surrounding first-tier markets during each seasonal peak.<sup>14</sup> As discussed below, we find that the ISO-NE Study satisfies these requirements.

21. In particular, the ISO-NE Study assumed a 90/10 peak-load forecast to simulate higher transmission stress conditions in major load pockets, consistent

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<sup>10</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 399, 408, 440.

<sup>11</sup> *Id.* P 62.

<sup>12</sup> *Id.* P 235-236.

<sup>13</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, at P 84 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004).

<sup>14</sup> *Id.* See also *Pinnacle West Capital Corp.*, 117 FERC ¶ 61,316 (2006).

with ISO-NE planning principles.<sup>15</sup> It also accounts for the single largest contingency and considers other probabilistic unavailable resources at the time of peak. In addition, the study considers ISO-NE interconnections with external balancing authority areas of NYISO, Hydro-Quebec (HYQ), and the Maritimes and assumes reasonable import flows based on historical use from those balancing authority areas.

22. The Commission has reviewed National Grid USA's pivotal supplier screen and wholesale market share screen and has determined that National Grid USA passes the pivotal supplier screen and the wholesale market share screen in the ISO-NE market with market shares ranging by season from five to ten percent.

**b. New York ISO Market**

23. For the NYISO market, National Grid USA derived SIL values from the 2005 NYISO transmission planning studies (NYISO Study).<sup>16</sup> We find National Grid USA's reliance on the NYISO Study to calculate SIL values acceptable because it meets the principles established in the April 14 Order as clarified in *Pinnacle West Capital Corp.*, and therefore provides a reasonable approximation of simultaneous import capability that would have been available to suppliers in surrounding first-tier markets during each seasonal peak.

24. In particular, the NYISO Study considers the base case power flow studies, which by their nature address simultaneous constraints on the system, utilizing the five year annual transmission reliability assessment. The study considers interconnections with ISO-NE, PJM Interconnection, L.L.C., HYQ, Independent Electricity System Operator in Ontario and their summer and winter ratings, and provides interface limits for external flows into NYISO and internal flows among NYISO's zones as well as transfer limits on all interfaces to New York. In addition, the study accounts for the total amount of long-term contracts and remote generation owned and controlled by the applicant.

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<sup>15</sup> The 90/10 peak load forecasts take into account the possibility of abnormal weather conditions. In a 50/50 peak load forecast, peak load has a 50 percent chance of being exceeded due to weather conditions, while in a 90/10 peak load forecast, peak load has a 90 percent chance of being exceeded due to weather conditions.

<sup>16</sup> See Table 1 and P 42-47 of Attachment A (Affidavit of Dr. Romkaew P. Broehm on behalf of National Grid USA), Docket No. ER96-2585.

25. As noted, KeySpan Energy Trading Services has an energy management agreement under which it manages a generation and energy portfolio and fuel supplies on behalf of the Long Island Power Authority and its affiliate, LIPA. Therefore, National Grid USA assigns LIPA's resources and load to National Grid USA's KeySpan Energy Trading Services for purposes of the Long Island (Zone K) submarket analysis.

26. The Commission has reviewed National Grid USA's pivotal supplier screen and market share screen and has determined that National Grid USA passes the pivotal supplier and market share screens in the NYISO market as a whole with market shares ranging by season from seventeen to nineteen percent.

27. However, National Grid USA does not pass either of the indicative screens in either the New York City or Long Island submarkets. In New York City, National Grid USA's market share ranged by season from thirty-nine to fifty-three percent, and in Long Island, National Grid USA's market share ranged by season from sixty-five to seventy percent.

28. An applicant that fails one or more of the indicative screens is provided with several procedural options including the right to challenge the market power presumption by submitting a Delivered Price Test analysis, or, alternatively, sellers can accept the presumption of market power and adopt some form of cost-based mitigation.<sup>17</sup> National Grid USA foregoes the Delivered Price Test analysis and proceeds directly to mitigation for the New York City and Long Island submarkets.

29. National Grid USA states that any market power it may be presumed to possess by virtue of failing the indicative screens is adequately mitigated in both New York City and Long Island submarkets by mechanisms already in place under the NYISO Market Mitigation Plan.<sup>18</sup> NYISO is a Commission-approved RTO with an existing Commission-approved market mitigation plan for the energy, capacity, and ancillary services markets. National Grid USA states that it and all suppliers in the NYISO markets and submarkets are currently subject to these market mitigation measures.

30. For the relevant New York City and Long Island energy submarkets, National Grid USA states that the NYISO Market Mitigation Plan requires

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<sup>17</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 63.

<sup>18</sup> *New York Independent System Operator, Inc.*, 89 FERC ¶ 61,196 (1999); and *New York Independent System Operator, Inc.*, 90 FERC ¶ 61,317 (2000).

generating units in the NYISO to offer their output in the NYISO energy market. Bids in the day-ahead and real-time energy markets are also subject to the NYISO's Automated Mitigation Protocol, which identifies bidding behaviors that result in significant adverse impact on market prices. National Grid USA states that the Automated Mitigation Protocol is a two-step test: a "conduct" test, and an "impact" test. The conduct test screens bids to determine if they are consistent with reference prices. These reference prices are based, in part, on historically accepted bids in the past 90 days for similar hours or load levels adjusted for changes in fuel prices. If the bid fails the conduct test, the impact test is applied. The impact test determines whether the bid substantially raises a market clearing price over a certain threshold level. If the bid fails the impact test, it will be mitigated down to its reference price. National Grid USA states that this Automated Mitigation Protocol threshold is directly related to congestion and is designed to address locational market power by employing thresholds that decline as the frequency of transmission congestion increases.

31. For the installed capacity market, National Grid USA states that the generating units that were divested from Con Edison are subject to Commission-approved installed capacity market mitigation measures that include bid and price caps on these New York City generation facilities. The bid and price cap is set at \$105 per kW-year of installed capacity. Under the Market Mitigation Plan, all of the KeySpan-Ravenswood units which were previously owned by Con Edison must offer their capacity through the NYISO's Installed Capacity auction markets subject to the bid and price cap. National Grid USA states that this capacity may not be sold in bilateral transactions. National Grid USA states that these divested Ravenswood units must offer their capacity at prices not exceeding \$105 per kW-year and receive market prices no greater than \$105/kW-year.<sup>19</sup>

32. For the Long Island submarket, National Grid USA states that it is doubtful that the Energy, Fuel and Billing Agreement in place with its affiliate and LIPA provide Applicants an incentive to exercise market power. Under the agreement, KeySpan Energy Trading has performance incentives to obtain least cost energy and capacity for LIPA's load. National Grid USA's entire capacity, energy and ancillary services on Long Island are sold under long-term contracts to LIPA. These contracts will continue in effect for at least the next five to twenty years.

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<sup>19</sup> The Commission has since approved new mitigation for the New York City Installed Capacity Market in *Order Conditionally Approving Proposal*, 122 FERC ¶ 61,211 (March 7, 2008). Additionally, the Commission accepted the tariff sheets for the market on an expedited fashion in *Order Accepting and Suspending Tariff Sheets Subject to Conditions and Granting Waivers*, 122 FERC ¶ 61,282 (March 26, 2008).

33. National Grid USA states that its capacity in upstate New York is committed to its load. Additionally, National Grid USA states that it has committed not to make bilateral sales from their upstate New York generating resources into the New York City and/or Long Island submarkets without prior approval from the Commission.

34. Finally, National Grid USA states that the New York Public Service Commission conditioned its approval of the merger of National Grid plc and KeySpan Corporation on the requirement that National Grid USA divest all of its Ravenswood units. National Grid USA states that it is in the process of conducting the divestiture process and plans to announce the winner by the end of the first quarter of 2008.<sup>20</sup> National Grid USA states that the divestiture of Ravenswood will eliminate any concerns of Applicants' potential market power in the New York State and New York City submarket.

35. The Commission stated in Order No. 697 that with respect to market concentration within RTO/ISO submarkets, it will consider any existing Commission-approved market monitoring and mitigation regime already in place within the RTO/ISO that provides for mitigation of the submarket.<sup>21</sup> The Commission finds that the NYISO Market Mitigation Plan is sufficient to address market power concerns in the New York City and Long Island submarkets.<sup>22</sup>

36. Accordingly, the Commission finds that National Grid USA satisfies the Commission's requirements for market-based rates regarding horizontal market power.

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<sup>20</sup> In an April 10, 2008 filing, National Grid states that on March 31, 2008 it entered into an agreement with TransCanada Facility USA to sell "all of KeySpan's ownership interests in Ravenswood, subject to the satisfaction of certain conditions and Ravenswood would become a wholly-owned subsidiary of TransCanada Facility." National Grid further states that "[i]n the near future, Ravenswood will file a separate application under section 203 for the Commission's approval of the sale." Docket No. EC08-70-000, page 6, fn.13.

<sup>21</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 242, 290.

<sup>22</sup> We note that in Order No. 697-A, the Commission adopted a rebuttable presumption that existing Commission-approved RTO/ISO marketing monitoring and mitigation is sufficient to address any market power concerns. Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 111.

## 2. Vertical Market Power

37. The Commission requires a public utility, or any of its affiliates, which owns, operates, or controls transmission facilities have a Commission-approved Open Access Transmission Tariff (OATT) on file before granting that utility or affiliate market-based rate authorization.<sup>23</sup>

38. National Grid USA states that Niagara Mohawk Power owns transmission facilities in the NYISO market, and New England Power, Massachusetts Electric, and Narragansett Electric own transmission facilities in the ISO-NE market. Additionally, National Grid USA owns and operates part of the high voltage Alternating Current/Direct Current converter facilities and High Voltage Direct Current transmission lines as part of the New England-Hydro-Quebec interconnection. National Grid USA states that the transmission facilities of its affiliates in NYISO<sup>24</sup> and ISO-NE<sup>25</sup> have been turned over the operational control of NYISO and ISO-NE, respectively, which have OATTs on file with the Commission.<sup>26</sup>

39. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.<sup>27</sup> The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and sources of coal supplies and equipment for the transportation of coal supplies, such as barges

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<sup>23</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

<sup>24</sup> See *Central Hudson Gas & Electric Corporation*, 86 FERC ¶ 61,062 (1999).

<sup>25</sup> See *New England Power Pool*, 83 FERC ¶ 61,045 (1998); *ISO New England Inc.*, 106 FERC ¶ 61,280, *order on reh'g and compliance*, 109 FERC ¶ 61,147 (2004), *order on reh'g and compliance*, 110 FERC ¶ 61,111, *order on reh'g and compliance*, 110 FERC ¶ 61,335, *order on reh'g and compliance*, 110 FERC ¶ 61,344 (2005).

<sup>26</sup> *Central Hudson Gas & Elec. Corp.*, 86 FERC ¶ 61,352 (1999) (accepting NYISO's OATT) and *ISO New England Inc.*, 101 FERC ¶ 61,305 (2002) (accepting ISO-NE's OATT).

<sup>27</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

and rail cars (collectively, inputs to electric power production).<sup>28</sup> The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.<sup>29</sup>

40. With regard to other barriers to entry, National Grid USA owns and operates KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island, the natural gas distribution companies serving 1.304 million customers in New York City and Long Island. KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island also own and operate two LNG peakshaving facilities. The plants provide peaking supplies of 395 MDth on the coldest days of the year with winter season availability of 2,053 MDth.

41. National Grid USA owns New England Gas Company (New England Gas) and KeySpan Energy Delivery New England, consisting of the natural gas distribution companies in Rhode Island, Massachusetts (Boston Gas, Colonial Gas, and Essex Gas), and New Hampshire (Energy North Natural Gas). New England Gas provides retail gas sales and distribution services at regulated rates to approximately 245,000 customers in Rhode Island, as well as a very small amount of competitive gas supply. Boston Gas, Colonial Gas, and Essex Gas Companies provide gas sales and transportation service to approximately 804,600 customers in Massachusetts. They also own and operate satellite LNG and propane-air peakshaving facilities that provide a total of about 600 MDth/day of peakshaving deliverability with 6,835 MDth of storage capacity. Energy North Natural Gas provides gas sales and transportation service to 84,066 customers in New Hampshire.

42. National Grid USA, through its KeySpan Corporation subsidiary, owns KeySpan LNG, LP (KeySpan LNG). KeySpan LNG owns and operates a 2,080-MDth LNG storage facility in Providence, Rhode Island.

43. National Grid USA, through KeySpan Corporation's subsidiaries, also has ownership interests in natural gas storage facilities, including 52.3 percent of Honeoye Storage Corporation (an underground gas storage facility in Ontario

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<sup>28</sup> *Id.* P 447. In Order No. 697-A, the Commission revised the definition of inputs to electric power production to include “physical coal supply sources and ownership of or control over who may access transportation of coal supplies.” Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

<sup>29</sup> Order No. 697, FERC Stats. & Regs. ¶ 31, 252 at P 447.

County, New York), and a 30 percent interest in Steuben Gas Storage Company, which owns an underground storage facility in Steuben County, New York.

44. The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.<sup>30</sup>

45. Further, National Grid USA affirmatively states that its affiliates have not erected barriers to entry in the relevant markets and will not erect barriers to entry in the relevant markets in the future.

46. Based on National Grid USA's representations, National Grid USA satisfies the Commission's requirements for market-based rates regarding vertical market power.

### **C. Asset Appendix**

47. In Order No. 697, the Commission required each seller to list in an appendix all affiliates that have market-based rate authority and identify any generation assets owned or controlled by the seller and any such affiliate.<sup>31</sup> In addition, the appendix must reflect all electric transmission and natural gas intrastate pipelines and gas storage facilities owned or controlled by the corporate family and the location of such facilities.<sup>32</sup> National Grid USA includes such an asset appendix.

### **D. Reporting Requirements**

48. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or longer) market-based power sales during the most recent

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<sup>30</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 446.

<sup>31</sup> *Id.* P 894.

<sup>32</sup> *Id.* P 895.

calendar quarter.<sup>33</sup> Public utilities must file Electric Quarterly Reports no later than 30 days after the end of the reporting quarter.<sup>34</sup>

49. National Grid USA must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.<sup>35</sup>

50. Additionally, in Order No. 697, the Commission created two categories of sellers.<sup>36</sup> Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888); that are not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.<sup>37</sup>

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<sup>33</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit Electric Quarterly Reports to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

<sup>34</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2007). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

<sup>35</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42(a).

<sup>36</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

<sup>37</sup> 18 C.F.R. § 35.36(a)(2).

Sellers that do not fall into Category 1 are designated as Category 2 and are required to file an updated market power analysis.<sup>38</sup>

51. Based on National Grid USA's representations, we find that National Grid USA meets the criteria for a Category 2 seller and is so designated based on its ownership of generation assets totaling greater than 500 MW of capacity and because its affiliates own transmission in the ISO-NE and NYISO markets. Thus, National Grid USA must file an updated market power analysis in compliance with the regional reporting schedule adopted in Order No. 697.<sup>39</sup> The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) National Grid USA's updated market power analysis and Order No. 697 compliance filing are hereby accepted for filing, as discussed in the body of this order.

(B) National Grid USA is hereby directed to file an updated market analysis according to the regional reporting schedule adopted in Order No. 697.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>38</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

<sup>39</sup> *Id.* P 882.