

123 FERC ¶ 61,012  
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.

Oklahoma Gas and Electric Company	Docket Nos. ER97-4345-018
OGE Energy Resources, Inc.	ER98-511-006
	EL05-107-001

Oklahoma Gas and Electric Company	ER97-4345-019
OGE Energy Resources, Inc.	ER98-511-007
	EL05-107-000

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued April 4, 2008)

1. In this order, the Commission denies Oklahoma Gas and Electric Company's (OG&E) and OGE Energy Resources Inc.'s (OGE Energy) (collectively, OGE Companies) request for rehearing of the Commission's March 21, 2006 order<sup>1</sup> that conditionally accepted OGE Companies' proposal to mitigate the presumption of market power in the OG&E balancing authority area.<sup>2</sup> Additionally, in this order, the Commission accepts in part and rejects in part OGE Companies' compliance filing submitted pursuant to the March 21 Order.

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<sup>1</sup> *Oklahoma Gas and Electric Co.*, 114 FERC ¶ 61,297 (2006) (March 21 Order).

<sup>2</sup> We note that the Commission adopted the use of "balancing authority area" instead of "control area" in Order No. 697. *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 72 Fed. Reg. 39,904 (July 20, 2007), FERC Stats. & Regs. ¶ 31,252, at P 250 (2007), *clarified*, 121 FERC ¶ 61,260 (2007) (Order Clarifying Final Rule).

## I. Background

2. On February 7, 2005, OGE Companies submitted for filing an updated market power analysis in compliance with the Commission's order issued on May 13, 2004.<sup>3</sup> On June 7, 2005, the Commission issued an order<sup>4</sup> stating that OGE Companies' generation market power analysis showed that OGE Companies passed the pivotal supplier screen in all balancing authority areas considered, but failed the wholesale market share screen for each of the four seasons in OG&E's balancing authority area. As the Commission stated in the April 14 Order, where an applicant is found to have failed either generation market power screen, such failure provides the basis for instituting a proceeding pursuant to section 206 of the Federal Power Act (FPA)<sup>5</sup> and establishes a rebuttable presumption of market power in the section 206 proceeding.<sup>6</sup> Accordingly, because OGE Companies' filing indicated that it failed the wholesale market share screen, the Commission instituted a section 206 proceeding to investigate generation market power in the OG&E balancing authority area. The Commission also established a refund effective date pursuant to the provisions of section 206 of the FPA.

3. In the June 7 Order, for the OG&E balancing authority area, the Commission directed OGE Companies to: (1) file a Delivered Price Test analysis; (2) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that it would adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates.<sup>7</sup>

4. On August 8, 2005, OGE Companies submitted a mitigation proposal for the OG&E balancing authority area in response to the June 7 Order. OGE Companies proposed to adopt the Commission's default cost-based rates for mitigated sales with a

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<sup>3</sup> *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order). The May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004 and clarified on July 8, 2004. *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

<sup>4</sup> *Oklahoma Gas and Electric Co.*, 111 FERC ¶ 61,368 (2005) (June 7 Order).

<sup>5</sup> 16 U.S.C. § 824e (2000).

<sup>6</sup> April 14 Order, 107 FERC ¶ 61,018 at P 201.

<sup>7</sup> June 7 Order, 111 FERC ¶ 61,368 at P 26.

term of one week or less that sink in the OG&E balancing authority area (i.e., sales of power of one week or less will be priced at the applicant's incremental cost plus a 10 percent adder),<sup>8</sup> and committed not to make sales for a duration of longer than one week and less than one year at market-based rates within the OG&E balancing authority area. They also stated that any new agreements for long-term sales to affected load will not be made under their market-based rate tariffs. Instead, such new agreements would be filed with the Commission for review under section 205 of the FPA.

5. In the March 21 Order, the Commission rejected OGE Companies' proposed tariff language that defined mitigated sales as sales "to loads that sink in the [OG&E balancing authority] area."<sup>9</sup> The Commission stated that OGE Companies' proposed tariff language would improperly limit mitigation to certain customers in the OG&E balancing authority area, namely, limiting mitigation only to sales to those buyers that serve end-use customers. The Commission reasoned that limiting mitigation in this manner would improperly allow OGE Companies to make market-based rate sales within the OG&E balancing authority area (where OGE Companies have the presumption of market power) to any entities that do not serve end-use customers. The Commission stated that such a limitation would not mitigate OGE Companies' ability to exercise market power over sales in the OG&E balancing authority area and was inconsistent with the Commission's direction in the April 14 and July 8 Orders.<sup>10</sup> Therefore, the Commission directed the OGE Companies to revise their mitigation proposal for the OG&E balancing authority area to define mitigated sales as any sales in the OG&E balancing authority area.<sup>11</sup>

6. Additionally, the Commission accepted OGE Companies' proposal to adopt the default cost-based rates for sales of power of one week or less, but noted that OGE Companies filed their cost-based rate proposal as revisions to OG&E and OGE Energy's

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<sup>8</sup> OGE Companies stated that OG&E will charge a rate based on the total incremental cost to OG&E of supplying the power sold (including applicable taxes), plus a 10 percent adder. They also stated that, because OGE Energy does not own or control any generation resources, the incremental cost component of the rate OGE Energy will charge for mitigated sales will be based on the actual out-of-pocket costs incurred by OGE Energy to supply the capacity and energy sold (including applicable taxes), plus a 10 percent adder. *Id.* P 15.

<sup>9</sup> March 21 Order, 114 FERC ¶ 61,297 at P 20.

<sup>10</sup> *Id.* P 21-22.

<sup>11</sup> *Id.* P 23.

market-based rate tariffs. Therefore, the Commission directed OGE Companies to remove the cost-based sales provisions from their respective market-based rate tariffs and, instead, to include those provisions in separate cost-based rate tariffs. The Commission also required OGE Companies to provide, in their cost-based rate tariffs, the formulas and methodology under which they intend to calculate incremental costs for short-term sales.<sup>12</sup> Finally, the Commission accepted OGE Companies' commitment not to make any sales of more than one week and less than one year in the OG&E balancing authority area and directed OGE Companies to revise their tariffs accordingly. The Commission also accepted their commitment in regards to long-term sales.<sup>13</sup>

## **II. Description of Filings**

7. On April 20, 2006, OGE Companies submitted a request for a rehearing of the March 21 Order. They state that the Commission erred by rejecting OGE Companies' mitigation proposal, which was tailored to bar market-based rate sales to "loads that sink in the OG&E control area."

8. On April 20, 2006, OGE Companies submitted revised versions of the OGE Companies' respective market-based rate tariffs, as well as cost-based power sales tariffs for sales by OG&E and OGE Energy within the OG&E balancing authority area, in compliance with the March 21 Order (April 20 Compliance Filing).

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

9. Notice of the April 20 Compliance Filing was published in the *Federal Register*, 71 Fed. Reg. 26,949 (2006), with interventions and protests due on or before May 11, 2006. None was filed.

## **IV. Discussion**

### **A. Rehearing Request**

10. OGE Companies assert that there is no economic basis for expanding the mitigation to cover all sales in the OG&E balancing authority area, regardless of where the power sinks. They state that, by passing the indicative screens in the first-tier balancing authority areas outside of the OG&E balancing authority area, OGE Companies are presumed to lack market power in these first-tier balancing authority area

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<sup>12</sup> *Id.* P 19.

<sup>13</sup> *Id.* P 24-25.

markets. Thus, customers serving load in these balancing authority areas have access to competitive markets in which the OGE Companies cannot exercise market power. OGE Companies claim that the Commission ordered such an expansion of their mitigation without adequately explaining why the expansion is necessary or appropriate.

11. Additionally, OGE Companies claim that the Commission erroneously focused on the physical location of the transaction's point of sale. They argue that the Commission erroneously assumed that sales consummated within the geographical confines of the OG&E balancing authority area, and then exported to other balancing authority area markets, require the same mitigation. According to OGE Companies, such sales do not require the same mitigation. They state that "loads that sink" language excludes only export transactions from mitigation because those transactions are not subject to market power concerns. Therefore, the Commission's focus should be on whether the transaction is made in a competitive market, not where the buyer is physically located or where the transaction's point of sale takes place. They argue that the competitively significant market is the one where the customer's load sinks.

12. Further, OGE Companies argue that the Commission subjected OGE Companies to disparate treatment when it rejected their sink language. They claim that, in prior orders, the Commission accepted mitigation proposals substantively identical to OGE Companies' proposal.<sup>14</sup> Therefore, according to OGE Companies, the Commission departed from its established policy without an explanation and failed to provide a reasoned basis for rejecting OGE Companies' mitigation proposal.

13. For the foregoing reasons, OGE Companies argue that the Commission should find that the risk of the OGE Companies exercising market power in the OG&E balancing authority area is fully mitigated by prohibiting sales at market-based rates to loads that sink in the OG&E balancing authority area.

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<sup>14</sup> OGE Companies' rehearing request at 11-12, citing *AEP Power Marketing, Inc.*, 112 FERC ¶ 61,047, at P 23 (2005) (proposed tariff language defining "mitigated sales" as "physical sales of power and or energy . . . that sink in the control area"); *Duke Power*, 113 FERC ¶ 61,192, at P 6 (2005) (proposed cost-base mitigation for sales "that sink within the Duke Power control area"); *LG&E Energy Marketing, Inc.*, 113 FERC ¶ 61,229 (2005) (mitigation proposal prohibits sales at market-based rates that "sink" in the relevant control market); *South Carolina Electric & Gas Co.*, 114 FERC ¶ 61,143, at P 15 (2006) (proposed that the only sales that would remain permissible under its market-based rate tariff would be those sales that "do not sink within the SCE&G control area").

14. Alternatively, OGE Companies state that, if the Commission requires additional safeguards to ensure that export transactions indeed sink in the balancing authority areas outside the OG&E balancing authority area, OGE Companies are willing to adopt such safeguards. For example, they state that they are willing to include in their tariffs provisions similar to those proposed by MidAmerican Energy Company's (MidAmerican) April 17, 2006 filing, in Docket No. ER96-719-011, *et al.*<sup>15</sup>

### **Commission Determination**

15. We will deny OGE Companies' request for rehearing. As an initial matter, we disagree with OGE Companies' argument that the Commission in the March 21 Order failed to provide a reasoned basis for rejecting their proposed tariff language. The March 21 Order fully explained the basis for rejecting OGE Companies' sink language. Specifically, the Commission explained that OGE Companies' proposed tariff language ("sink in the OG&E [balancing authority] area") would improperly limit mitigation to certain customers, namely, only to sales to those buyers that serve end-use customers in the OG&E balancing authority area, while improperly allowing market-based rate sales within the OG&E balancing authority area to entities that do not serve end-use customers there.<sup>16</sup> The Commission explained that such limitation would not mitigate OGE Companies' ability to attempt to exercise market power over sales in the OG&E balancing authority area.<sup>17</sup>

16. Moreover, the Commission noted that OGE Companies' proposed tariff language was contrary to the Commission's direction in the April 14 and July 8 Orders, as well as recent Commission orders accepting mitigation for other entities that failed the indicative

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<sup>15</sup> OGE Companies state that they are willing to adopt the following safeguards proposed by MidAmerican in its filing: (1) counterparties must affirmatively confirm that the energy sold within the MidAmerican control area will not stay inside the control area; (2) MidAmerican's energy schedulers will review North American Electric Reliability Corporation (NERC) tags associated with in-control area sales on a daily basis to ensure that the transactions sink outside the MidAmerican control area; (3) if a review of NERC tags shows that a transaction will sink inside the MidAmerican control area, the sale will be renegotiated at cost-based rates; and (4) if required by the Commission, MidAmerican would submit the NERC tag data to the appropriate market monitor. OGE Companies' Rehearing Request at 10.

<sup>16</sup> March 21 Order, 114 FERC ¶ 61,297 at P 21.

<sup>17</sup> *Id.*

screens.<sup>18</sup> As the Commission explained in the March 21 Order, “the Commission authorizes sales of electric energy at market-based rates only if the seller and its affiliates do not have, or have *adequately* mitigated, market power in the generation and transmission of such energy, and cannot erect other barriers to entry by potential competitors.”<sup>19</sup> The Commission also explained that it had rejected these precise arguments, that access to power sold under mitigated prices should be restricted to buyers serving end-use customers within the relevant geographic market in which the seller has been found to have market power, in the July 8 Order.<sup>20</sup> Therefore, the Commission fully explained in the March 21 Order the basis for its rejection of OGE Companies’ sink language and how its action in that regard was consistent with Commission policy and precedent at the time.<sup>21</sup>

17. Additionally, since the issuance of the March 21 Order, the Commission has further addressed mitigation issues in Order No. 697, and rejected arguments similar to those raised by OGE Companies, such as that the Commission erroneously focused on the physical location of the transaction’s point of sale. After careful consideration of the arguments raised by commenters on the scope of mitigation, the Commission concluded that adequately protecting customers from the potential exercise of market power required that it continue to apply mitigation to *all* sales in the balancing authority area in which a seller is found, or presumed, to have market power.<sup>22</sup> In this regard, the

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<sup>18</sup> *Id.* P 22; *see also* *MidAmerican Energy Co.*, 114 FERC ¶ 61,280, at P 29-33 (2006).

<sup>19</sup> *Id.* P 22 (footnote omitted) (emphasis added).

<sup>20</sup> In the July 8 Order, the Commission held that its “role is to assure customers that sellers who are authorized to sell at market-based rates do not have market power or have adequately mitigated it,” and therefore, “it is inappropriate to determine the third party buyers with whom the seller will transact, nor is it appropriate to restrict . . . who may buy power from a seller whose sales have been mitigated.” 108 FERC ¶ 61,026 at P 146.

<sup>21</sup> The Commission rejected proposed tariff language with similar sink language. *See, e.g.* *MidAmerican Energy Co.*, 114 FERC ¶ 61,280 (2006) and *Westar Energy, Inc.*, 116 FERC ¶ 61,219 (2006).

<sup>22</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 817. Although the Commission used the term “mitigated market” in Order No. 697, the Commission later determined that “balancing authority area in which a seller is found, or presumed, to have market power” is a more accurate way to describe the area in which a seller is mitigated.

(continued)

Commission rejected proposals that it limit mitigation to sales that “sink” in the balancing authority area in which the seller is mitigated.<sup>23</sup> The Commission stated that allowing a seller that has been found to have market power, or has so conceded, to make market-based rate sales in a balancing authority area in which a seller is found, or presumed, to have market power is inconsistent with the Commission’s responsibility under the FPA to ensure that rates are just and reasonable, and not unduly discriminatory or preferential.<sup>24</sup> The Commission further stated that, while it generally agrees that it is desirable to allow market-based rate sales into markets where the seller has not been found to have market power, it does not agree that it is reasonable to allow a mitigated seller to make market-based rate sales *anywhere* within a balancing authority area in which the seller has been found to have market power, or has so conceded, as it is unrealistic to believe that such sales could be effectively monitored to ensure against improper sales.<sup>25</sup> However, the Commission stated that it would allow mitigated sellers to make market-based rate sales at the metered boundary with a balancing authority area in which the seller has market-based rate authority under certain circumstances.<sup>26</sup> Thus, if OGE Companies want to make market-based rate sales at the metered boundary, consistent with Order No. 697, they can adopt the relevant tariff provision.<sup>27</sup>

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Accordingly, we use that phrase herein. *See Order Clarifying Final Rule*, 121 FERC ¶ 61,260 at P 7 & n.10.

<sup>23</sup> *Id.* P 818.

<sup>24</sup> *Id.* P 819.

<sup>25</sup> *Id.* P 818-19.

<sup>26</sup> Such sales will be allowed provided: (i) legal title of the power sold transfers at the metered boundary of the balancing authority area where the seller has market-based rate authority; (ii) any power sold is not intended to serve load in the seller’s mitigated market; and (iii) no affiliate of the mitigated seller will sell the same power back into the mitigated seller’s mitigated market. The seller must retain, for a period of five years from the date of the sale, all data and information related to the sale that demonstrates compliance with items (i), (ii), and (iii) above. *See id.* P 830.

<sup>27</sup> The required tariff provision need not also be effective September 18, 2007, and may be effective as of the date that the market-based rate seller commences making market-based rate sales at the metered boundary.

18. Further, in response to OGE Companies' argument that the Commission previously accepted mitigation proposals substantively identical to OGE Companies' proposal and failed to distinguish OGE Companies' situation from those cases, we recognize that, in some prior orders, the Commission accepted certain mitigation proposals that included sink language similar to that which we rejected in this proceeding. However, as the Commission has since explained,<sup>28</sup> the Commission's action in those orders was in error and was not consistent with Commission policy.<sup>29</sup> As the Commission stated, all sellers are subject to the requirements of Order No. 697 and thus may not limit mitigation to sales that "sink" in the balancing authority area where the mitigated seller has been found, or presumed, to have market power. Rather, such sellers are required to comply with the mitigation policy as stated in Order No. 697.<sup>30</sup>

19. For the foregoing reasons, we believe that we have fully explained the basis of our rejection of OGE Companies' mitigation proposal, including how such a rejection was consistent with Commission policy. Accordingly, we will reject the request for rehearing.

**B. Compliance Filing**

20. In the April 20 Compliance Filing, OGE Companies submitted revised versions of their respective market-based rate tariffs. OGE Companies state that these tariffs do not include the cost-based power sales mitigation provision and that the tariff language has been revised to state that all sales under the respective tariffs "shall take place at or beyond the boundary of the [OG&E] [balancing authority] [a]rea."<sup>31</sup> OGE Companies also submitted a cost-based power sales tariff covering sales of up to one week in

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<sup>28</sup> Order Clarifying Final Rule, 121 FERC ¶ 61,260 at P 7; *South Carolina Electric & Gas Co.*, 121 FERC ¶ 61,263, at P 12 (2007); *LG&E Energy Marketing, Inc.*, 122 FERC ¶ 61,175, at P 32 (2008).

<sup>29</sup> Indeed, the Commission otherwise has consistently rejected proposals to limit mitigation to sales that sink in the mitigated balancing authority area. *See supra* note 21.

<sup>30</sup> Order Clarifying Final Rule , 121 FERC ¶ 61,260 at P 7.

<sup>31</sup> Oklahoma Gas and Electric Company, FERC Electric Tariff, Fourth Revised Vol. No. 3, Original Sheet No. 1; OGE Energy Resources, Inc., Fifth Revised Rate Schedule FERC No. 1, Original Sheet No. 1.

duration that take place within the OG&E balancing authority area, including the formulas and methodology OG&E will use to calculate prices for sales under the tariff.<sup>32</sup>

21. Additionally, OGE Companies state that they are removing from their respective tariffs the market behavior rules pursuant to the Commission's February 26, 2006 order.<sup>33</sup>

### **Commission Determination**

22. In the March 21 Order, the Commission directed OGE Companies to remove the sink language from their tariffs and, instead, to define mitigated sales as any sales in the OG&E balancing authority area. OGE Companies' revised tariff language states that all sales under the respective tariff "shall take place at or beyond the boundary of the [OG&E] [balancing authority] [a]rea." We find that OGE Companies' revised tariff language is inconsistent with the Commission's directive in the March 21 Order.

23. While we recognize that, *in practice*, OGE Companies may have complied with the March 21 Order by not making market-based rate sales in their balancing authority area, the revised tariff language is ambiguous and could be interpreted as allowing for sales within the OGE Companies' balancing authority area. Accordingly, we will direct OGE Companies to revise their market-based rate tariff to reflect their commitment not to make any sales at market-based rates anywhere in the OG&E balancing authority area, effective March 21, 2006, the date of the issuance of the March 21 Order,<sup>34</sup> and to file it

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<sup>32</sup> OGE Companies state that they have adopted the formulas and methodology that specifies the cost components used to calculate the applicable rate. They state that this method has been previously accepted by the Commission in other similar cases. OGE Companies Transmittal Letter at 3-4, citing *Aquila, Inc.*, 114 FERC ¶ 61,281 (2006); *Carolina Power & Light Co.*, 113 FERC ¶ 61,130 (2005); and *Duke Power*, 115 FERC ¶ 61,042 (2006).

<sup>33</sup> *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 114 FERC ¶ 61,165 (2006) (February 26 Order). The elimination of the market behavior rules became effective February 27, 2006.

<sup>34</sup> We note that OGE Companies' tariff would be subject to refund from the date of the issuance of the March 21 Order. In the March 21 Order, the Commission rejected OGE Companies' tariff regarding the sink language, i.e., *no* sales anywhere within the OG&E balancing authority area and specified the mitigation to be applied prospectively from the date of the March 21 Order.

with the Commission within 30 days of the date of this order. The revised tariff will be effective until September 18, 2007, the effective date of Order No. 697.<sup>35</sup>

24. In addition, we note that OGE Companies' commitment "that any new agreements for long-term sales to affected load will not be made under their market-based rate tariffs"<sup>36</sup> is similar to their proposed sink language because it allows for long-term sales within the OG&E balancing authority area as long as the power does not serve affected load. In other words, OGE Companies are proposing that they be allowed to make long-term sales at a generator bus bar within the OG&E balancing authority area, provided that the power sinks outside the OG&E balancing authority area. Therefore, for the same reasons discussed above regarding short-term sales, we will direct OGE Companies to modify their long-term mitigation proposal to be consistent with Commission precedent.

25. Further, we conclude that, with the April 20 Compliance Filing, the OGE Companies have complied with the Commission's March 21 Order on OGE Companies, proposed mitigation measures. In response to the Commission's directive in the March 21 Order, OGE Companies have provided cost support on how it intends to calculate such incremental costs and included in their cost-based rate tariff the formulas and methodology for calculating incremental costs. Therefore, we will accept OGE Companies, cost-based rate tariffs, adopting the default rates of incremental costs plus 10 percent for short-term transactions.

26. To the extent that OGE Companies made any short-term sales under their market-based rate tariff in the OG&E balancing authority area since the March 21 Order in this proceeding at rates that were above the rates under the mitigation proposal accepted by the Commission, we will direct OGE Companies, within 30 days of the date of issuance of this order, to make refunds, with interest. In addition, we will direct OGE Companies to file a refund report within 15 days after making refunds. If no refunds were due, OGE Companies are expected to file with the Commission within 30 days of the date of issuance of this order so stating.

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<sup>35</sup> In the Order Clarifying Final Rule, the Commission clarified that sellers are required to comply with all of the requirements of Order No. 697 as of the effective date of the Final Rule. Thus, any sales made after September 18, 2007 are expected to be in compliance with the requirements of Order No. 697. Order Clarifying Final Rule, 121 FERC ¶ 61,260 at P 5.

<sup>36</sup> March 21 Order, 114 FERC ¶ 61,297 at P 17.

27. As discussed above, Order No. 697 allows sellers to make sales at the metered boundary because the Commission recognized that such sales lend themselves to being monitored for compliance, and therefore provide the necessary protection against any exercise of market power and improper sales. In that regard, if OGE Companies want to make market-based rate sales at the metered boundary, they may adopt the relevant tariff provisions required under Order No. 697 and file them with the Commission.<sup>37</sup>

28. In addition, we find that OGE Companies' tariff is not consistent with the Commission's current policy as set forth in Order No. 697 in other respects. For example: (1) the ancillary service provisions do not conform to the two standard provisions required in Order No. 697 – a provision requiring compliance with Commission regulations and a provision identifying all limitations and exemptions regarding the seller's market-based rate authority;<sup>38</sup> (2) the now-codified change in status reporting requirement must be removed; (3) the affiliate sales restriction must be removed; (4) the code of conduct must be removed; (5) any transmission-related provisions that are still in its market-based rate tariff must be removed; and (6) the tariff must be properly designated according to Order No. 614.<sup>39</sup> As of the effective date of Order No. 697 (September 18, 2007), OGE Companies became subject to the requirements of that Final Rule. Accordingly, we will direct OGE Companies, within 30 days from the date of this order, to revise their market-based rate tariffs in compliance with Order No. 697.<sup>40</sup>

29. Finally, we find OGE Companies' removal of the market behavior rules in their market-based rate tariff to be consistent with the Commission directive in the February 26 Order. In that order, the Commission directed market-based rate sellers to remove from their tariffs the market behavior rules "at such time as sellers make any amendments to their market-based rate tariffs."<sup>41</sup> Therefore, we will accept OGE Companies' revised tariff sheets that remove the market behavior rules.

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<sup>37</sup> *See supra* note 26.

<sup>38</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 914-15.

<sup>39</sup> *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000).

<sup>40</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 923-24.

<sup>41</sup> February 26 Order, 114 FERC ¶ 61,165 at Ordering Paragraph (B).

The Commission orders:

(A) OGE Companies' request for clarification and/or rehearing is hereby denied, as discussed in the body of this order.

(B) OGE Companies' revised market-based rate tariffs for mitigation in the OG&E balancing authority area are hereby rejected, as discussed in the body of this order.

(C) OGE Companies' cost-based rate tariffs providing for sales within the OG&E balancing authority area are hereby accepted, as discussed in the body of this order.

(D) OGE Companies are hereby directed, within 30 days of the date of this order, to revise their market-based rate tariff, as discussed in the body of this order.

(E) The revised tariff sheets which remove the market behavior rules are hereby accepted for filing, as discussed in the body of this order.

(F) OGE Companies are hereby directed, within 30 days of the date of this order, to revise its market-based rate tariff to comply with Order No. 697, as discussed in the body of this order.

(G) OGE Companies are hereby directed to make refunds within 30 days of the date of issuance of this order, with interest, calculated pursuant to 18 C.F.R. § 35.19a(a)(2) (2007), and to file a refund report with the Commission within 15 days of the date refunds are made, as discussed in the body of the order. If no refunds are due, OGE Companies are directed to file with the Commission within 30 days of the date of issuance of this order so stating.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.