

121 FERC ¶ 61,275
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. ER96-2585-006
New England Power Company	ER98-6-011
KeySpan-Ravenswood, Inc. ¹	ER99-2387-004
KeySpan-Glenwood Energy Center, LLC	ER02-1470-004
KeySpan-Port Jefferson Energy Center, LLC	ER02-1573-004
Granite State Electric Company	ER05-1249-004
Massachusetts Electric Company	
Narragansett Electric Company	
	EL08-15-000

ORDER ON ORDER NO. 697 COMPLIANCE FILING AND PROVIDING
GUIDANCE

(Issued December 20, 2007)

1. In this order, we direct National Grid USA (National Grid) on behalf of its affiliates² to file, within 30 days of the date of this order, certain modifications to their

¹ We note that in 2002, KeySpan-Ravenswood, Inc. made a filing in Docket No. ER02-1398-000 to change its name to KeySpan-Ravenswood, LLC.

² Niagara Mohawk Power Corporation (Niagara Mohawk), New England Power Company (New England), Granite State Electric Company (Granite State), Massachusetts Electric Company (Mass Electric), Narragansett Electric Company (Narragansett) KeySpan-Ravenswood, LLC (Ravenswood), KeySpan-Glenwood Energy Center, LLC (Glenwood), and KeySpan-Port Jefferson Energy Center (Port Jefferson) (collectively, National Grid affiliates).

market-based rate tariffs to bring them into compliance with Order No. 697.³ This order also rejects as outside the scope of National Grid's compliance filing National Grid's request for a finding that the affiliate restrictions, as prescribed in section 35.39 of the Commission's regulations, are not applicable to its affiliates because none of these affiliates is a franchised public utility with captive customers. We also reject as outside the scope of this compliance filing proposed new provisions in Ravenswood's, Glenwood's, and Port Jefferson's proposed market-based rate tariffs that have not previously been approved by the Commission and are not included in Appendix C of Order No. 697. In addition, we institute a section 206 proceeding regarding additional provisions in Ravenswood's, Glenwood's, and Port Jefferson's market-based rate tariffs that provide for sales of certain services in the markets administered by New York Independent System Operator, Inc. (NYISO), ISO New England, Inc. (ISO-NE), and PJM Interconnection, Inc. (PJM) that were previously in their existing tariffs but that are not consistent with the ancillary services approved by the Commission and listed in Order No. 697's Appendix C applicable provisions.

I. Background

2. On September 21, 2007, National Grid USA filed on behalf of its affiliates with market-based rate authority proposed market-based rate tariff revisions to comply with the requirements of Order No. 697. National Grid also proposes tariff revisions in accordance with the requirements of the Commission's order authorizing the proposed merger between National Grid plc and KeySpan Corporation.⁴ National Grid explains that in the Merger Order the Commission required "[i]mplementation of the Code of Conduct for all utility subsidiaries of the merged company" in order to "protect a utility's captive customers against inappropriate cross-subsidization."⁵ It states that its compliance filing modifies the National Grid affiliates' market-based rate tariffs in accordance with that requirement. National Grid further notes that in connection with the Commission's approval of the merger, National Grid committed to mitigation measures that apply to certain sales that Niagara Mohawk might make under its market-based rate

³ *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 (2007) (Order No. 697).

⁴ *National Grid plc*, 117 FERC ¶ 61,080 (2006) (Merger Order).

⁵ Merger Order at P 66.

authority.⁶ Accordingly, National Grid proposes to incorporate those conditions into Niagara Mohawk's market-based rate tariff.

3. National Grid further requests that the Commission make a finding that the affiliate restrictions, as prescribed in section 35.39 of the Commission's regulations, are not applicable to its affiliates because none of these affiliates is a franchised public utility with captive customers. In addition, National Grid has also removed the market behavior rules⁷ and requests that its tariffs be effective September 18, 2007, the day Order No. 697 became effective.

II. Notice of Filing

4. Notice of National Grid's filing was published in the *Federal Register*⁸ with interventions and protests due on or before October 19, 2007. None was filed.

III. Discussion

A. Market-Based Rate Tariff Standard Required Tariff Provisions

5. In Order No. 697, the Commission determined that continuing to allow inconsistencies in market-based rate tariffs due to the lack of consistent form and content was unjust and unreasonable under sections 205 and 206 of the Federal Power Act (FPA). As such, the Commission required that all market-based rate sellers revise their respective tariffs to contain standard required provisions.⁹ Order No. 697 adopted two standard required provisions that each market-based rate seller must include in its tariff: (1) a provision requiring compliance with Commission regulations, and (2) a provision identifying all limitations and exemptions regarding the seller's market-based rate authority.¹⁰ The Commission required that all market-based rate sellers make a section

⁶ *Id.* P 28 (The Commission accepted the merger applicants' commitment not to make bilateral sales from upstate New York generating resources into New York City or Long Island without prior consent from the Commission).

⁷ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 114 FERC ¶ 61,165, *reh'g denied*, 115 FERC ¶ 61,053 (2006). Removal of the Commission's market behavior rules was effective February 27, 2006.

⁸ 72 Fed. Reg. 59,281 (2007).

⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 912-913.

¹⁰ *Id.* P 914-915.

206 compliance filing¹¹ to modify their existing tariffs to include these standard required provisions as well as the standard applicable provisions.¹²

6. Order No. 697 directs all sellers to include in their market-based rate tariffs a provision requiring compliance with Commission regulations. This required provision states that a:

Seller shall comply with the provisions of 18 CFR Part 35, Subpart H, as applicable, and with any conditions the Commission imposes in its orders concerning seller's market-based rate authority, including orders in which the Commission authorizes seller to engage in affiliate sales under this tariff or otherwise restricts or limits the seller's market-based rate authority. Failure to comply with the applicable provisions of 18 CFR Part 35, Subpart H, and with any orders of the Commission concerning seller's market-based rate authority, will constitute a violation of this tariff.¹³

7. Consistent with Order No. 697, we find that National Grid has revised the National Grid affiliates' respective market-based rate tariffs to include the above provision requiring compliance with Commission regulations, including certain affiliate restrictions set forth in section 35.39 of the Commission's regulations.¹⁴

¹¹ These compliance filings are to be made the next time a seller proposes a tariff change, makes a change in status filing, or submits an updated market power analysis (or a demonstration that Category 1 status is appropriate) in accordance with the schedule in Appendix D, whichever occurs first.

¹² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 923. The standard applicable provisions, which are discussed in greater detail in the following section, must be included in a seller's market-based rate tariff to the extent that they are applicable based on the services provided by the seller. A complete description of these standard applicable provisions is available in Appendix C of Order No. 697.

¹³ *Id.*

¹⁴ We note that National Grid's inclusion of the provision requiring compliance with the Commission's regulations in the market-based rate tariffs does not constitute satisfaction of all the conditions set forth in the Merger Order regarding the implementation of the code of conduct. The code of conduct as directed in the Merger Order included provisions beyond those contained in the affiliate restrictions recently codified in the Commission's regulations. We note that while no compliance filing was

(continued...)

8. Order No. 697 also requires sellers to include a provision identifying any limitations and exemptions regarding their market-based rate authority. A seller must identify all limitations on its market-based rate authority (including markets where the seller does not have market-based rate authority) and any exemptions from, waivers of, or blanket authorizations under the Commission's regulations that the seller has been granted (such as an exemption from affiliate sales restrictions; waiver of the accounting regulations; blanket authority under Part 34 for the issuances of securities and liabilities, etc.), including cites to the relevant Commission orders.¹⁵

9. In this regard, Niagara Mohawk has proposed to include in its market-based rate tariff the following language limiting certain market-based rate sales in New York in accordance with the Merger Order's requirements:

Niagara Mohawk shall seek the authorization of the Commission in a proceeding under section 205 of the Federal Power Act before making sales of electric energy or capacity purchased under a power purchase agreement [from] a generating unit or units located in any of NYISO Zones A through I into NYISO Zones J (New York City) or K (Long Island). Without such authorization, Niagara Mohawk shall continue to make all such energy and capacity available to the NYISO in the Zone [or] Zones where the generating unit or units are located, or where Niagara Mohawk has retail delivery customers.¹⁶

required under the Merger Order, National Grid must still comply with the restrictions set forth in the Merger Order. Codification of the affiliate restrictions in the Commission's regulations under Order No. 697 does not change National Grid's obligations under the Merger Order. We also note that the Commission has issued a notice of proposed rulemaking on cross-subsidization that proposes to, among other things, codify in the Commission's regulations conditions similar to those set forth in the Merger Order. *See Cross-Subsidization Restrictions on Affiliate Transactions*, Notice of Proposed Rulemaking, 72 Fed. Reg. 41644 (July 31, 2007), FERC Stats. & Regs. ¶ 32,618 (2007).

¹⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 916.

¹⁶ As noted in the quote above, there were typographical errors in this proposed provision; the correct words have been substituted in brackets. Therefore, we direct Niagara Mohawk to correct these typographical errors in its market-based rate tariff in addition to the other modifications directed in this order. In particular, Niagara Mohawk should revise and correct the sentences noted above by substituting the words "from" and "or."

10. We find that Niagara Mohawk's inclusion in its proposed market-based rate tariff of this limitation on its market-based rate sales in New York is consistent with Order No. 697's requirement to include in a seller's market-based rate tariff a provision identifying any limitations and exemptions regarding a seller's market-based rate authority. However, contrary to the requirement of Order No. 697, Niagara Mohawk failed to include in the limitation section of its tariff the citation to the order in which the Commission accepted Niagara Mohawk's commitment to limit its market-based rate sales in New York. Accordingly, we direct Niagara Mohawk, within 30 days of the date of this order, to revise this required provision to include the citation to the Merger Order.

11. In addition, we note that New England, Granite State, Mass Electric, Narragansett, and Ravenswood failed to include in their respective market-based rate tariffs the provision regarding limitations and exemptions as directed by Order No. 697. We clarify that inclusion of this required provision in a seller's market-based rate tariff is necessary regardless of whether a seller is subject to a limitation on its market-based rate authority or has been granted any exemptions, waivers, or blanket authorizations.¹⁷ If a seller has not been subject to a limitation or has not been granted any exemptions, waivers, or blanket authorizations under the Commission's regulations, then the seller should enter not applicable (N/A) for this provision. Therefore, we direct New England, Granite State, Mass Electric, Narragansett, and Ravenswood to modify their respective market-based rate tariffs to include the required limitations and exemptions provision within 30 days of the date of this order.

B. Market-Based Rate Tariff Standard Applicable Provisions

1. Ancillary Services

12. In Order No. 697, the Commission adopted a set of standard provisions that must be included in a seller's market-based rate tariff to the extent that they are applicable based upon the services that are offered by the seller.¹⁸ For example, if a seller makes sales of ancillary services in certain Regional Transmission Organizations (RTOs)/Independent System Operator (ISOs), or if it makes sales of ancillary services as a third-party provider, the seller must include the standard ancillary services provision(s), as applicable.¹⁹

¹⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 916.

¹⁸ *Id.*

¹⁹ *Id.* P 916-917; *see* Appendix C for a listing of the standard ancillary services provisions.

13. The Commission has approved the sale of ancillary services at market-based rates where an RTO/ISO has performed a market analysis that demonstrates a lack of market power for certain ancillary services or has adopted mitigation that guards against the exercise of market power.²⁰ Appendix C to Order No. 697 reflects a current list of the Commission-approved ancillary services in NYISO, ISO-NE, PJM, and California Independent System Operator Corporation (CAISO).

14. National Grid states that Ravenswood, Glenwood, and Port Jefferson have revised their market-based rate tariffs to include the ancillary service provisions as specified in Order No. 697.²¹ However, Ravenswood, Glenwood, and Port Jefferson have included in their proposed market-based rate tariffs language describing services they offer for sale in addition to the ancillary services specifically identified by the Commission in Appendix C of Order No. 697. National Grid contends that the additional services are appropriate for inclusion in Ravenswood's, Glenwood's, and Port Jefferson's market-based rate tariffs because in Order No. 697 the Commission stated that "sellers [may] list in their tariffs additional seller-specific terms and conditions that go beyond the standard provisions set forth in Appendix C."²²

2. Seller-Specific Terms and Conditions

15. In regard to National Grid's contention that Order No. 697 permits sellers to include additional seller-specific terms and conditions that go beyond the standard applicable provisions listed in Appendix C, we take this opportunity to clarify our intent. In the Notice of Proposed Rulemaking that led to Order No. 697, the Commission initially proposed that all sellers adopt a uniform market-based rate tariff of general applicability to be included in their tariffs, with other "generic" terms and conditions to be provided as information on a company website.²³ However, the Commission

²⁰ *Id.* P 1069; *see also* n.1194.

²¹ We note that Port Jefferson included "energy imbalance service" twice in the ancillary service provision for the PJM market. Therefore, we direct Port Jefferson to eliminate the redundant service provision. In addition, to avoid confusion regarding what services are provided in each market we also direct Ravenswood, Glenwood, and Port Jefferson to add the specific RTO/ISO market acronym (i.e., NYISO, PJM, ISO-NE:) where the sale of Commission-approved ancillary services are located, as shown in Appendix C.

²² National Grid (citing Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 919).

²³ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Notice of Proposed Rulemaking, 71 Fed. Reg. 33,102 (June 7, 2006), FERC Stats. & Regs. ¶ 32,602, at P 161-63 (2006).

reconsidered its position and instead required in Order No. 697 that all sellers include in their respective tariffs certain standard required provisions and standard applicable provisions to the extent that they are applicable based on the services provided by the seller.²⁴ In addition, the Commission stated that it agreed with commenters regarding the benefits to both sellers and customers of having terms and conditions relevant to the seller's market-based rate power sales available in one document. Accordingly, the Commission explained that it would permit sellers to list in their market-based rate tariffs additional terms and conditions that go beyond the standard provisions listed in Appendix C.²⁵

16. We clarify that "seller-specific terms and conditions" are those provisions that are commonly found in power sales agreements, such as creditworthiness, force majeure, dispute resolution, billing, and payment provisions. As the Commission noted in Order No. 697, it has been our practice not to evaluate these types of terms and conditions once the seller is authorized to sell power at market-based rates, but to allow them to be included in the market-based rate tariff that is on file with the Commission. In particular, a seller granted market-based rate authority has been found not to have, or to have adequately mitigated, market power. Thus, if a customer is not satisfied with the terms and conditions offered by a seller, the customer can choose to purchase from a different supplier.²⁶

17. Therefore, as discussed below, the additional provisions that Ravenswood, Glenwood, and Port Jefferson propose to add to the ancillary services portion of their market-based rate tariffs are not what the Commission contemplated in Order No. 697 as additional "seller-specific terms and conditions."

3. Appendix C Ancillary Services

18. As an initial matter, we note that Ravenswood's proposed market-based rate tariff includes new provisions in section 6, "Ancillary Services," regarding certain ancillary services provided in PJM and ISO-NE. However, National Grid's pleading fails to identify that these provisions were not previously included in Ravenswood's market-based rate tariff.²⁷ Despite National Grid's failure to clearly identify these proposed

²⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 914-917.

²⁵ *Id.* P 919, 927.

²⁶ *Id.*

²⁷ National Grid is reminded that under the Commission's regulations, pleadings, tariffs and rate filings must identify the specific authorization sought. *See* 18 C.F.R. § 385.203(a) (2007).

provisions as new provisions, we will accept the provisions that comport with the ancillary services previously approved by the Commission for sale at market-based rates in PJM²⁸ and ISO-NE²⁹ and listed in Appendix C of Order No. 697. However, Ravenswood's, Glenwood's, and Port Jefferson's proposed market-based rate tariffs also include services that were not in their existing tariffs and that are not listed in Appendix C.³⁰ These other provisions are rejected as outside the scope of this compliance filing.

4. Services Listed in Existing Market-Based Rate Tariffs

19. We note that Ravenswood, Glenwood, and Port Jefferson propose to include in their revised market-based rate tariffs other services that are not listed in Appendix C, but that were included in their existing Commission-approved market-based rate tariffs. Although these provisions (which we discuss in greater detail below) were previously accepted, we note that inclusion of such provisions in Ravenswood's, Glenwood's, and Port Jefferson's market-based rate tariffs as ancillary services to be provided is not consistent with the RTO/ISO ancillary services set forth in Order No. 697 and,

²⁸ The additional services included in Ravenswood's market-based rate tariff for PJM at section 6.a.i are "regulation and frequency response service, reactive supply and voltage service, black start capability, energy imbalance service, and operating reserve service (which includes spinning, 10-minute, and 30-minute reserves) for sale into the market administered by [PJM] and where the PJM Open Access Transmission Tariff permits, the self-supply of these services to purchasers for a bilateral sale that is used to satisfy the ancillary services requirements of the PJM Office of Interconnection." With the exception of reactive supply and voltage service and black start capability, these provisions are consistent with the ancillary services listed in Appendix C of Order No. 697.

²⁹ The service provisions included in Ravenswood's market-based rate tariff for ISO-NE at section 6.a.iii are "regulation and frequency response service (automatic generator control), reactive supply and voltage service, black start capability, energy and balancing services, and operating reserve service (which includes 10-minute spinning reserve, 10-minute non-spinning reserve, and 30-minute operating reserve service) to purchasers within the markets administered by the [ISO-NE]."

³⁰ The services that were not listed in Ravenswood's existing tariff are: (1) ISO-NE- reactive supply and voltage service, and black start capability, and energy and balancing services; and (2) PJM- reactive supply and voltage service, and black start capability. The service that was not listed in Glenwood and Port Jefferson's existing tariffs is installed capability in the PJM market.

accordingly, may not be just and reasonable, and may be unjust and unreasonable.³¹ Therefore, we will institute a section 206 proceeding in Docket No. EL08-15-000 regarding the continued inclusion of these provisions in Ravenswood's, Glenwood's, and Port Jefferson's market-based rate tariffs.

5. Cost-Based Services

20. Ravenswood has included in the ancillary services provisions of its proposed market-based rate tariff provisions from its existing market-based rate tariff regarding the following services in the NYISO market: (1) reactive supply and voltage service; (2) black start capability; and (3) energy and balancing services. With regard to these services, Ravenswood's proposed market-based rate tariff at section 6.b.ii, restates language from its existing market-based rate tariff that "[s]ales of reactive power supply and voltage service, and black start capability shall be made on a cost-basis in compliance with NYISO rules and procedures."³²

21. As an initial matter, we note that none of these services are identified in Order No. 697 as Commission-approved ancillary services in the NYISO market. Further, although the Commission has previously allowed these cost-based provisions as part of Ravenswood's market-based rate tariff, such inclusion conflicts with the Commission's existing policy that cost-based provisions should not be included in a seller's market-based rate tariff; therefore, inclusion of these provisions in Ravenswood's market-based rate tariff may not be just and reasonable.³³ As a result, we will institute a section 206 proceeding in Docket No. EL08-15-000 to determine if inclusion of these services in Ravenswood's market-based rate tariff is just and reasonable. We direct Ravenswood, within 30 days of the date of this order, to show cause why the provisions for reactive supply and voltage service and black start capability should remain in its market-based rate tariff, or to submit a compliance filing removing these provisions from its market-based rate tariff.

³¹ We note that the orders accepting these provisions did not include a detailed discussion of the services being offered. *See MEP Investments, LLC*, 87 FERC ¶ 61,209 (1999); *KeySpan-Glenwood Energy Center, LLC*, Docket No. ER02-1470-000 at 2 (May 30, 2002) (unpublished letter order); *KeySpan-Port Jefferson Energy Center, LLC*, Docket No. ER02-1573-000 at 2 (June 12, 2002) (unpublished letter order).

³² *See* proposed tariff: FERC Electric Tariff, First Revised Volume No. 1, Original Sheet No. 2.

³³ *Deseret Generation & Transmission Co-operative, Inc.*, 115 FERC ¶ 61,306, at P 13 (2006), *order on reh'g*, 120 FERC ¶ 61,139 (2007); *Northern States Power Co.*, 83 FERC ¶ 61,293 (1998).

6. Other Services

22. As noted in Order No. 697, market-based rates for sales of particular ancillary services in an RTO/ISO market were approved after the RTO/ISO performed a market analysis.³⁴ Because to date we have neither received nor reviewed a market analysis for “energy and balancing services” or “energy imbalance service” as an ancillary service in the NYISO or ISO-NE markets, we believe it may not be just and reasonable to allow market-based rate sales of these services in those markets. Therefore, we will institute a section 206 proceeding in Docket No. EL08-15-000 to determine if the inclusion of these services in Ravenswood’s, Glenwood’s, and Port Jefferson’s market-based rate tariffs is just and reasonable. Accordingly, as part of the section 206 proceeding that we institute in Docket No. EL08-15-000, we direct Ravenswood, Glenwood, and Port Jefferson, within 30 days of the date of this order, to show cause why such service provisions should remain in their market-based rate tariffs, or to submit a compliance filing removing these provisions from their market-based rate tariffs.

23. Glenwood and Port Jefferson also have included in their proposed tariffs the following services from their existing tariffs: (1) NYISO- (a) replacement reserves; (b) automatic generation control; and (c) additional ancillary services that the Commission may specify and authorize from time-to-time; (2) ISO-NE- (a) installed capability; and (b) additional ancillary services that the Commission may specify and authorize from time-to-time; (3) PJM- (a) replacement reserves; and (b) additional ancillary services that the Commission may specify and authorize from time-to-time. Although these additional services were in Glenwood’s and Port Jefferson’s existing market-based rate tariffs as ancillary services, inclusion of these additional services is not consistent with the RTO/ISO ancillary services previously approved by the Commission and explicitly listed in Order No. 697’s Appendix C applicable provisions. Accordingly, as part of the section 206 proceeding we institute in Docket No. EL08-15-000, we direct Glenwood and Port Jefferson to show cause why such provisions should remain in their respective market-based rate tariffs, or submit a compliance filing removing those provisions.

24. We note that the Commission has found that replacement reserve service is not an ancillary service, thus sellers may offer such services under their market-based rate tariffs without a separate authorization.³⁵

25. With respect to automatic generation control, we note that the NYISO Ancillary Services Manual states that regulation and frequency response service “is accomplished

³⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at n.1194.

³⁵ See *AES Redondo Beach, L.L.C.*, 83 FERC ¶ 61,358, at 62,446 (1998), *reh’g denied*, 85 FERC ¶ 61,123 (1998).

by committing on-line generators whose output is raised or lowered (predominately using Automatic Generation Control (AGC)) as necessary to follow moment-by-moment changes in load.”³⁶ Therefore, we believe that automatic generation control is included as part of “regulation and frequency response service” and also need not be listed separately.

26. Although Glenwood and Port Jefferson propose to offer “installed capability” in ISO-NE, they do not define that service. We believe they mean “installed capacity.” Although the Commission has not approved installed capacity as an ancillary service, Glenwood and Port Jefferson have authority to sell installed capacity as part of their authorizations to sell energy and capacity at market-based rates and, therefore, “installed capacity” need not be listed separately.

27. Further, although Glenwood and Port Jefferson include in their market-based rate tariffs a provision regarding additional ancillary services that the Commission may specify and authorize from time-to-time, we will not allow sellers to include this provision in their market-based rate tariffs. This provision causes confusion regarding whether the tariff lists all services that are available or whether there are other services available that have not been specified in the tariff. To the extent the Commission authorizes market-based rate sales for ancillary services that are not presently included in Appendix C, the Commission will reflect on its website³⁷ the appropriate language that sellers wishing to provide the service must include in their market-based rate tariffs. In this regard, in granting market-based rate authority for ancillary services in particular RTOs/ISOs, the Commission’s practice has been to authorize all sellers with market-based rate authority to provide the service at market-based rates and to allow such sellers to amend their market-based rate tariffs accordingly.

C. Show Cause Order and Refund Effective Date

28. Under the section 206 proceeding established herein, National Grid must show cause, within 30 days of the date of issuance of this order, why it is appropriate to include in the market-based rate tariffs of Ravenswood, Glenwood, and Port Jefferson the services identified above that are not listed in Appendix C of Order No. 697 as ancillary services approved by the Commission for sale at market-based rates in those markets.

29. In lieu of the show cause demonstration discussed above, in the alternative, National Grid may revise the market-based rate tariffs of Ravenswood, Glenwood, and Port Jefferson to remove the additional services.

³⁶ NYISO Ancillary Services Manual, § 4.1.

³⁷ <http://www.ferc.gov/industries/electric/gen-info/mbr.asp>

30. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date of the publication of the notice of the initiation of the Commission's investigation in the *Federal Register*, and no later than five months after the publication date. In order to give maximum protection to customers, and consistent with our precedent,³⁸ we will establish a refund effective date at the earliest date allowed. This date will be the date on which notice of the initiation of the investigation in Docket No. EL08-15-000 is published in the *Federal Register*.

31. Section 206(b) also requires that, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such a decision. Since we have directed National Grid to show cause why certain provisions should remain its tariffs, or to submit a compliance filing removing these provisions from its market-based rate tariffs, we expect to issue a decision in Docket No. EL08-15-000 by April 30, 2008.

D. Reassignment of Transmission Capacity

32. In Order No. 697, the Commission determined that provisions concerning the reassignment or sale of transmission capacity or firm transmission rights (FTR) are not required to be included in a seller's market-based rate tariff, nor is it appropriate to include transmission-related services in the seller's market-based rate tariff.³⁹ Consequently, the Commission directed all market-based rate sellers to remove provisions governing these services, finding that sellers who seek to reassign transmission capacity should adhere to the provisions of Order No. 890.⁴⁰

³⁸ See, e.g., *Canal Elec. Co.*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

³⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 920.

⁴⁰ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 at P 814-816 and n.496 (2007) (Order No. 890).

33. Despite this direction, Glenwood and Port Jefferson have provided for the reassignment of transmission capacity in sections 1(c),⁴¹ (2),⁴² (5),⁴³ and (6)⁴⁴ of their proposed market-based rate tariffs.⁴⁵

34. We find that Glenwood and Port Jefferson have failed to comply with the directives set forth in Order No. 697. We reject Glenwood's and Port Jefferson's proposal to include reassignment of transmission capacity as a limitation in their market-based rate tariffs. As discussed above, the Commission determined in Order No. 697 that the reassignment of transmission capacity is a transmission-related service and that those sellers who seek to reassign transmission capacity should adhere to the provisions set forth in Order No. 890 in this regard.⁴⁶ In addition, the Commission affirmatively stated that the provisions concerning the reassignment or sale of transmission capacity or FTRs were transmission-related services rather than generation services and found that it was not appropriate to include these services as part of a seller's market-based rate tariff and thus, directed sellers to remove them.⁴⁷ Order No. 890 stated that the transmission

⁴¹ Section 1.c, Availability, identifies "reassignment of transmission capacity to customers with [company] has contracted" as an ancillary service.

⁴² Section 2, Applicability, states that "[t]his Tariff is applicable to . . . all reassignments of transmission capacity by [company] which are not subject to another tariff."

⁴³ Section 5, Other Terms and Conditions, states, in part, that "any reassignment of transmission capacity is subject to the terms and conditions established by the FERC for reassignment of transmission capacity."

⁴⁴ Section 6, Limitations Regarding Market-Based Rate Authority includes price cap language that states that the company "may reassign transmission capacity that it has reserved for its own use at a price not to exceed the highest of (i) the original transmission rate paid by [the company]; (ii) the applicable transmission provider's maximum stated firm transmission rate on file at the time of the transmission reassignment; or (iii) [the company's] own opportunity costs capped at the applicable transmission provider's cost of expansion at the time of the sale to the eligible customer."

⁴⁵ National Grid states that these provisions were previously included in the Glenwood and Port Jefferson tariffs and "have been retitled 'Limitation Regarding Market-Based Rate Authority' in accordance with Order No. 697's contemplated tariff structure."

⁴⁶ *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 814-816 and n.496.

⁴⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 920.

provider's Open Access Transmission Tariff (OATT) governs the reassignment of transmission service. Thus, there is no need for the assigning party to have on file with the Commission a rate schedule governing reassigned capacity.⁴⁸ Therefore, Glenwood and Port Jefferson are directed to remove, within 30 days of the date of this order, all provisions governing the reassignment of transmission capacity from their respective market-based rate tariffs.

E. Codification of Change in Status

35. National Grid proposes to include the change in status reporting requirement language in its affiliates' respective tariffs. However, it is unnecessary for National Grid to include this language as part of its market-based rate tariffs. The change in status reporting requirement is codified in the Commission's regulations at section 35.42, and the provision requiring compliance with Commission regulations, which National Grid has included in its affiliates' market-based rate tariffs, provides that ". . . failure to comply with the applicable provisions of 18 CFR Part 35, Subpart H. . . will constitute a violation of this tariff." Accordingly, National Grid is directed to remove within 30 days of the date of this order, the change in status provisions from its affiliates' proposed market-based rate tariffs.

F. Matters Beyond the Scope of the Compliance Filing

36. National Grid requests that the Commission find that none of its electric utility affiliates is a franchised public utility with captive customers and, thus, the restrictions on affiliate transactions in section 35.39 of the Commission's regulations do not apply to market-based rate sales under National Grid's tariffs.

37. In addition, as discussed above, Ravenswood, Glenwood, and Port Jefferson have included in their proposed market-based rate tariffs provisions for services for which they have not previously requested approval. In particular, Ravenswood's proposed tariff includes "reactive supply and voltage service, and black start capability" in PJM and ISO-NE as well as "energy and balancing services" in ISO-NE, none of which are Commission-approved ancillary services for those markets as listed in Appendix C. Similarly, Glenwood's and Port Jefferson's proposed market-based rate tariffs at 1.b. list "installed capability" as a service offered in PJM despite the fact that "installed capability" was not listed in their existing tariffs or included in Appendix C as an approved ancillary service for those markets. We reject the inclusion of these new

⁴⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at n.496.

provisions in Ravenswood's, Glenwood's, and Port Jefferson's tariffs as outside the scope of the instant compliance filing and direct them to remove these provisions.⁴⁹

38. As the Commission has previously stated, compliance filings must be limited to the specific directives ordered by the Commission.⁵⁰ The purpose of a compliance filing is to make the directed changes and the Commission's focus in reviewing them is whether they comply with the Commission's previously stated directives.⁵¹ We have held that revisions to a market-based rate tariff that are beyond the scope of the directives of a compliance order are deemed to be rejected at the time of filing.⁵² Therefore, Ravenswood's, Glenwood's, and Port Jefferson's inclusion of these new tariff provisions was rejected at the time of filing as outside the scope of this compliance filing without prejudice to them making filings pursuant to section 205 of the FPA seeking to include such provisions in their market-based rate tariffs.

39. Similarly, consistent with Commission precedent, National Grid's request for a finding that none of its electric utility affiliates is a franchised public utility with captive customers to which the affiliate restrictions in section 35.39 was, therefore, rejected at the time of filing as outside the scope of its compliance filing, without prejudice to National Grid making a separate filing pursuant to section 205 of the FPA.

⁴⁹ Although we are rejecting these provisions as outside the scope of this compliance filing, we note that the previous discussion addresses issues regarding these provisions. Specifically, we explain why it is inappropriate to include cost-based provisions such as reactive supply and voltage service and black start capability in a market-based rate tariff. In addition, we note that while we believe "energy and balancing service" is meant to be "energy imbalance service," neither service has been approved for ISO-NE. Finally, we note that while we believe "installed capability" is meant to refer to "installed capacity," we note that installed capacity is not an ancillary service; the affiliates are authorized to offer installed capacity as part of their market-based rate authority.

⁵⁰ *Reliant Energy Aurora*, 111 FERC ¶ 61,159 at 61,816; *AES Huntington Beach, LLC.*, 111 FERC ¶ 61,079; *FirstEnergy Operating Companies*, 111 FERC ¶ 61,032(2005).

⁵¹ *AES Huntington Beach, LLC.*, at P 60 (citing *Pacific Gas and Electric Company*, 109 FERC ¶ 61,336 at P 5 (2004)); *Midwest Independent Transmission System Operator, Inc.*, 99 FERC ¶ 61,302 at 62,264 (2002); *ISO New England, Inc.*, 91 FERC ¶ 61,016 at 61,060 (2000); *Sierra Pacific Power Company*, 80 FERC ¶ 61,376 at 62,271 (1997); *Delmarva Power & Light Company*, 63 FERC ¶ 61,321 at 63,160 (1993).

⁵² *FirstEnergy Operating Companies*, 111 FERC ¶ 61,032.

The Commission orders:

(A) National Grid is hereby directed, within 30 days of the date of this order, to submit a compliance filing to modify the market-based rate tariffs of its affiliates, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), the Commission hereby institutes a proceeding in Docket No. EL08-15-000 concerning inclusion of services not listed in Appendix C in the market-based rate tariffs of Ravenswood, Glenwood, and Port Jefferson as discussed in the body of this order.

(C) National Grid is directed within 30 days of the date of issuance of this order to show cause as to why it is appropriate to include in the market-based rate tariffs of Ravenswood, Glenwood, and Port Jefferson the services identified in the body of this order that are not listed in Appendix C of Order No. 697 as ancillary services approved by the Commission for sale at market-based rates in those markets. In lieu of the show cause demonstration, National Grid may revise the market-based rate tariffs of Ravenswood, Glenwood, and Port Jefferson to remove the additional services.

(D) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the proceeding under section 206 of the FPA in Docket No. EL08-15-000.

(E) The refund effective date established pursuant to section 206(b) of the FPA will be the date of the publication in the *Federal Register* of the notice discussed in Ordering Paragraph (D) above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.