

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Granite State Electric Company
Massachusetts Electric Company
The Narragansett Electric Company
Niagara Mohawk Power Corporation
New England Power Company

Docket No. ER05-1249-000
and ER05-1249-001

ORDER ON MARKET-BASED RATE APPLICATION

(Issued December 19, 2005)

1. In this order the Commission accepts the proposed market-based rate tariffs and accompanying codes of conduct filed by Massachusetts Electric Company (Mass Electric), Narragansett Electric Company (Narragansett), and Granite State Electric Company (Granite State), to become effective July 27, 2005.¹ The Commission's review indicates that Mass Electric, Narragansett, and Granite State charged market-based rates without prior Commission authorization to enter into market-based rate sales. Therefore, the Commission requires all companies that collected revenues in excess of cost-based rates to pay refunds.² Finally, the Commission accepts Niagara Mohawk's and NEP's

¹The filings were submitted by National Grid USA (National Grid) on behalf of its five subsidiaries: Niagara Mohawk Power Corporation (Niagara Mohawk), New England Power Company (NEP), Mass Electric, Narragansett, and Granite State. The Commission accepted Niagara Mohawk and NEP's three year updated analysis in *Alcan Power Marketing, Inc.*, 113 FERC ¶ 61,123 (2005) (*Alcan*).

² Since the purchasing costs for energy and capacity by Mass Electric and Narragansett exceeded the revenues received from reselling them into the ISO New England (ISO-NE) market, resulting in net losses, no refunds are required. However, the market revenues received by Granite State exceeded its purchasing costs, and refunds are required.

tariff sheets incorporating, among other things, the Commission's market behavior rules³ and the change in status reporting requirement, consistent with Order No. 652.⁴ Niagara Mohawk, NEP, Mass Electric, Narragansett, and Granite State's next updated market power analysis is due three years from the date of this order.⁵

Background

2. On July 26, 2005, in Docket No. ER05-1249-000, National Grid submitted a filing on behalf of its five subsidiaries. Niagara Mohawk's and NEP's market-based rate tariffs were revised to reflect the Commission's market behavior rules and the change in status report requirements required by Order No. 652. Niagara Mohawk's market-based rate tariff was also revised to reflect the Commission's authorization for Niagara Mohawk to make sales of energy and capacity into markets administered by the New York Independent System Operator (NYISO) and to eliminate various provisions that are no longer applicable under the NYISO market structure. National Grid states that NEP's market-based rate tariff was revised to conform the tariff to the standard market-based rate tariff for entities engaged in market transactions in New England. This filing also includes an application for market-based rate authority for Mass Electric, Narragansett and Granite State.

3. On September 23, 2005, the Director, Division of Tariffs and Market Development – South, acting pursuant to delegated authority, issued a data request seeking additional information on sales in the ISO-NE market. On October 21, 2005, National Grid filed a report in response to the data request reflecting all costs and revenues related to the purchase of Qualifying Facility (QF) output under state approved retail tariffs for the implementation of PURPA obligations and the associated resale of the output into the ISO-NE spot markets.

³ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004) (requiring incorporation of the market behavior rules, to be effective December 17, 2003).

⁴ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175 (2005).

⁵ In order to put the five National Grid Companies on the same updated market power analysis schedule, the Commission's direction in *Alcan* directing a three year update for Niagara Mohawk and NEP from the date of that order is superseded by the direction in this order.

4. National Grid is a registered public utility holding company with electric utility subsidiaries, Mass Electric, NEP, Narragansett, and Granite State, operating in Massachusetts, New Hampshire and Rhode Island; and an electric and gas utility subsidiary, Niagara Mohawk, operating in New York. National Grid has effectually divested itself of any generation assets or interest in generation capacity. Currently, National Grid's subsidiaries control 2,504 MW of capacity in the NYISO market and 288 MW of capacity in the ISO-NE market.

5. National Grid requests waiver of the Commission's prior notice requirement to allow an effective date of July 27, 2005, one day after filing, for the market-based rate tariffs of Mass Electric, Narragansett and Granite State.

Procedural Matters

6. Notices of National Grid's filings on July 26, 2005 and October 21, 2005 were published in the *Federal Register*, 70 Fed. Reg. 46,161 (2005) and 70 Fed. Reg. 66,832 (2005), with interventions or protests due on or before August 2, 2005, and November 3, respectively. No interventions or protests were filed.

Discussion

Market-Based Rate Authorization

7. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.⁶ As discussed below, the Commission concludes that Granite State, Mass Electric and Narragansett satisfy the Commission's standards for granting market-based rate authority.

⁶ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC & 61,155, at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC & 61,281, at 61,899 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC & 61,223, at 62,062-63 (1994).

Generation Market Power

8. In *AEP Power Marketing, Inc.*,⁷ the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. National Grid submitted both indicative screens for the NYISO and ISO-NE markets. National Grid asserts that its subsidiaries pass both of the indicative screens for the NYISO and ISO-NE markets.

9. The Commission has reviewed National Grid's generation market power screens for the NYISO and ISO-NE markets, and has determined that Mass Electric, Narragansett, and Granite State pass both the pivotal supplier and wholesale market share screens in those markets. Accordingly, the Commission finds that Granite State, Mass Electric and Narragansett satisfy the generation market power standard for granting market-based rate authority.

Transmission Market Power

10. When a transmission-owning public utility seeks market-based rate authority, the Commission has required the public utility to have an open access transmission tariff (OATT) on file before granting such authorization. National Grid states that the transmission facilities of Niagara Mohawk and NEP in NYISO and ISO-NE are under the ISOs' control, and these ISOs have OATTs that have been approved by the Commission.⁸ Additionally, National Grid states that although it has interests in the transmission subsidiaries that own the Hydro-Quebec HVDC Intertie,⁹ control of this facility has also been transferred to the ISO-NE. Based on these representations, the Commission finds that Granite State, Mass Electric and Narragansett satisfy the transmission market power standard for granting market-based rate authority.

⁷ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (2004), *order on reh'g*, 108 FERC ¶ 61,026 (2004).

⁸ *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).

⁹ The HVDC technology (High Voltage Direct Current) is used to transmit electricity over long distances by overhead transmission lines or submarine cables.

Other Barriers to Entry

11. National Grid states that its subsidiaries do not control gas production facilities or any significant fuel inputs. National Grid states that the local gas distribution systems owned by Niagara Mohawk are subject to regulation by New York State Public Service Commission, which oversees compliance with statutory and regulatory open-access requirements. National Grid states that Mass Electric, Narragansett and Granite State do not engage in the manufacturing of electric equipment or have the ability to hinder the siting of electric generation facilities. Based on these representations, the Commission is satisfied that the Granite State, Mass Electric and Narragansett cannot erect barriers to entry. However, should Granite State, Mass Electric and Narragansett or any of its affiliates deny, delay, or require unreasonable terms, conditions, or rates for natural gas service to a potential electric competitor in bulk power markets, then that electric competitor may file a complaint with the Commission that could result in the suspension of the Granite State, Mass Electric and Narragansett's authority to sell power at market-based rates.¹⁰

Affiliate Abuse

12. National Grid states that Niagara Mohawk and NEP have codes of conduct on file with the Commission, and Mass Electric's, Granite State's and Narragansett's proposed market-based rate tariffs include codes of conduct, which are in compliance with the Commission's *pro forma* code of conduct. National Grid states that Mass Electric, Narragansett, and Granite State have complied with the codes of conduct in their respective market-based rate tariffs. Based on these representations, we find that the Granite State, Mass Electric and Narragansett satisfy the Commission's concerns with regard to affiliate abuse.

Waiver of Prior Notice Requirement

13. National Grid requests waiver of the Commission's 60-day prior notice requirement¹¹ to permit the market-based rate tariffs of Mass Electric, Narragansett, and Granite State to become effective on July 27, 2005, one day after filing. National Grid states that since this filing demonstrates that these three subsidiaries have no ability to exercise market power and meet all Commission requirements for market-based rate authority, no customers will be harmed by granting the requested waiver of the 60-day prior notice requirement. National Grid states that it is requesting the earliest possible post-filing effective date. We will grant waiver of section 35.3 of the Commission's regulation, 18 C.F.R. § 35.3 (2004) to allow an effective date of July 27, 2005.

¹⁰ See *Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 at 61,148 (1993).

¹¹ 18 C.F.R. § 35.3 (2004).

Sales into ISO-NE Market

14. National Grid argues that, with respect to its sales into ISO-NE market, until recently, it believed that the energy and capacity sales by Mass Electric, Narragansett, and Granite State were authorized through the Commission's approval of Market Rule 1 in New England. National Grid states that in light of the guidance provided in recent Commission orders,¹² National Grid recognizes that it would be prudent to obtain individual authorizations for Mass Electric, Narragansett, and Granite State to transact at market-based rates.

15. National Grid asserts that, with respect to sales into the ISO-NE market, the revenues received by Mass Electric, Narragansett, and Granite State for reselling Qualifying Facility (QF) energy and capacity into ISO-NE markets are offset by their costs in purchasing the energy and capacity from these QFs. National Grid provides an analysis of sales into ISO-NE markets and the offsetting payments to the QFs for the period from August 1999 through June 2005. National Grid submits in its July 26, 2005 filing that purchasing costs for the energy and capacity by Mass Electric and Narragansett exceeded market revenues received from reselling them into ISO-NE market, resulting in net losses of \$60,979 and \$9,298 respectively. National Grid maintains that the market revenues received by Granite State exceeded its purchasing costs (*i.e.*, payments to the QFs) by \$11,477. National Grid asserts that collectively, the purchasing costs exceeded the market revenues received by Mass Electric, Narragansett, and Granite State for the period analyzed. National Grid concludes that its three subsidiaries suffered a collective net loss of approximately \$58,801 and did not profit from the mandatory sales of QF energy and capacity into ISO-NE markets. National Grid's amended filing confirms that purchasing costs for the energy and capacity by Mass Electric and Narragansett exceeded market revenues received from reselling them into ISO-NE market, resulting in net losses, while the market revenues received by Granite State exceeded its purchasing costs for the period from August 1999 through June 2005.

16. As stated above, the Commission will grant the market-based tariffs of Mass Electric, Narragansett and Granite State to become effective July 27, 2005, as requested. However, since Granite State, Mass Electric and Narragansett charged market-based rates without prior Commission authorization to enter into such market-based rate sales since 1999, refunds are required. National Grid claims that refunds are not due because collectively Granite State, Mass Electric and Narragansett had a net loss. The Commission, however, does not accept National Grid's characterization that the market-

¹² *Carthage Energy, LLC*, 111 FERC ¶ 61,240 (2005); *Vermont Electric Cooperative, Inc.*, 108 FERC ¶ 61,223 (2004), *order on reh'g*, 110 FERC ¶ 61,232 (2005) (*Vermont Order*).

based sales resulted in a collective loss. Since Mass Electric, Narragansett and Granite State are each individual entities that have individual tariffs, they must be treated separately for purposes of calculating refunds. Under these circumstances, it would not be appropriate to allow National Grid to use the losses of two affiliates to offset the profits of another. Moreover, accepting National Grid's collective loss argument would be inequitable to Granite State's customers because they would not receive refunds even though Granite State profited by making market-based rate sales without Commission authorization. National Grid's Attachment A in its October 21, 2005 filing confirms that the payments made to QFs by Mass Electric and Narragansett exceeded the revenues received for the QF energy and capacity, resulting in net losses. Accordingly, no refunds are required.¹³ Attachment A also confirms that the market revenues received by Granite State exceeded payments to the QFs from August 1991 through June 2005. Therefore, in accordance with the Commission's order in *Prior Notice and Filing Requirements under Part II of the Federal Power Act (Prior Notice)*,¹⁴ the Commission will require Granite State to refund the amounts in excess of the payments made to QFs and the time value of such excess amounts, calculated pursuant to section 35.19a of the Commission's regulations,¹⁵ for the entire period that the rate was collected without Commission authorization.¹⁶ Granite State is also directed to file a refund report with the Commission.

Reporting Requirements

17. 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 greater) market-based power sales during the most recent calendar quarter.¹⁷ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the

¹³ See, e.g. *Vermont Order*, 110 FERC ¶ 61,232 at P 16 (2005).

¹⁴ 64 FERC ¶ 61,139 at 61,980, *clarified*, 65 FERC ¶ 61,081 (1993).

¹⁵ 18 C.F.R. § 35.19a (2004).

¹⁶ *Prior Notice*, 64 FERC at 61,980.

¹⁷ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted 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>.

reporting quarter.¹⁸ Accordingly, Mass Electric, Narragansett and Granite State must file their first Electric Quarterly Reports no later than 30 days after the first quarter their tariffs are in effect.¹⁹

18. Mass Electric, Narragansett, and Granite State 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. Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. As noted above, Mass Electric, Narragansett, and Granite State have included the change in status reporting requirement in their tariffs.

19. Niagara Mohawk, NEP, Mass Electric, Narragansett, and Granite State are directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) Waiver of the 60-day notice requirement is granted and the proposed market-based rate tariffs of Mass Electric, Narragansett and Granite State are accepted to be effective July 27, 2005.²⁰

(B) Niagara Mohawk's and NEP's revised tariff sheets which incorporate the market behavior rules and the Order No. 652 language are accepted effective December 17, 2003, and March 21, 2005, respectively.²¹

¹⁸ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004).

¹⁹ 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.

²⁰ Massachusetts Electric Company, FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-5; Narragansett Electric Company, FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-5; and Granite State Electric Company, FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-5.

²¹ Niagara Mohawk Power Corporation, FERC Electric Tariff, Fifth Revised Volume No. 4, Original Sheet Nos. 1-5; and New England Power Company, FERC Electric Tariff, First Revised Volume No. 10, Original Sheet Nos. 1-5.

(C) Niagara Mohawk, NEP, Mass Electric, Narragansett and Granite State are directed to file an updated market analysis within three years of the date of this order and every three years thereafter.

(D) Granite State is ordered to make refunds regarding sales of energy and capacity into the ISO-NE spot market, with interest, within 30 days of the date of issuance of this order, as discussed in the body of this order, and to file a refund report with the Commission within 15 days of the date refunds are made.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.