

128 FERC ¶ 61,042
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinohoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Tampa Electric Company

Docket No. ER99-2342-012

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS AND
COMPLIANCE FILINGS

(Issued July 16, 2009)

1. In this order, the Commission accepts an updated market power analysis submitted by Tampa Electric Company (Tampa Electric). As discussed below, the Commission concludes that Tampa Electric continues to satisfy the Commission's standards for market-based rate authority in the Southeast region, excluding the Tampa Electric balancing authority area.¹ The Commission also accepts Tampa Electric's proposed revisions to its market-based rate tariffs, which incorporate provisions as adopted in Order Nos. 697² and 697-A,³ effective September 18, 2007, as requested.

¹ Tampa Electric is subject to cost-based rates in the Tampa Electric balancing authority area. *Tampa Electric Co.*, 114 FERC ¶ 61,221 (2006).

² *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007) (Order Clarifying Final Rule), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009).

³ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 384 and P 391.

2. Additionally, the Commission finds that Tampa Electric meets the criteria for a Category 2 seller and is so designated. Tampa Electric's next updated market power analysis must be filed according to the regional schedule adopted in Order No. 697.⁴

I. Background

3. Tampa Electric, a subsidiary of TECO Energy, Inc. (TECO Energy), is a public utility located in peninsular Florida. It owns approximately 4,735 MW of generation in peninsular Florida. Its first-tier balancing authority areas include the Florida Municipal Power Pool, Progress Energy Florida, Inc. (Progress Energy Florida), Florida Power & Light Company (FP&L), Seminole Electric Company (Seminole), and Reedy Creek Improvement District (Reedy Creek) balancing authority areas. Tampa Electric does not have market-based rate authority in its home balancing authority area (the Tampa Electric balancing authority area) and is not seeking market-based rate authority within that balancing authority area.⁵

4. On September 2, 2008, Tampa Electric filed an updated market power analysis in accordance with the regional reporting schedule adopted in Order No. 697.⁶ Tampa Electric also submitted revised tariffs to incorporate the required provisions adopted by the Commission Order No. 697.⁷ On June 10, 2009, Tampa Electric filed a revised tariff sheet to identify September 18, 2007 as the effective date of that tariff.

⁴ *Id.* P 882-893, App. D; Order Clarifying Final Rule, 121 FERC ¶ 61,260 at P 9, 10, App. D-1; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at Apps. D, D-1, and D-2. *See also* Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 at P 47-48 (amending in part App. D-2).

⁵ Tampa Electric is authorized to make sales at market-based rates outside of the Tampa Electric balancing authority area. *See MEP Investments, LLC*, 87 FERC ¶ 61,209 (1999).

⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882. The Commission stated that "both the Commission and market participants will benefit from greater data consistency that will result from regional examination of updated market power analyses and a methodical study of all sellers in the same region. This will give the Commission a more complete view of market forces in each region and the opportunity to reconcile conflicting submissions, enhancing our ability to ensure that sellers' rates remain just and reasonable." *See also* Order Clarifying Final Rule, 121 FERC ¶ 61,260 at P 13.

⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 914-918.

5. On December 23, 2008, Commission Staff issued a request that Tampa Electric submit additional information regarding the Simultaneous Transmission Import Limit (SIL) study Tampa Electric submitted on September 2, 2008. On January 16, 2009, Tampa Electric submitted a filing in response to the December 23, 2008 request. On April 9, 2009, Commission Staff issued another request to Tampa Electric notifying it that additional information concerning Tampa Electric's SIL study was still needed. On May 8, 2009, Tampa Electric submitted additional information in response to Commission Staff's April 9, 2009 request.

II. Notice and Responsive Pleadings

6. Notice of Tampa Electric's September 2, 2008 filing was published in the *Federal Register*,⁸ with interventions or protests due on or before November 3, 2008. None was filed.

7. Notice of Tampa Electric's January 16, 2009 filing was published in the *Federal Register*,⁹ with interventions or protests due on or before February 6, 2009. None was filed.

8. Notice of Tampa Electric's May 8, 2009 filing was published in the *Federal Register*,¹⁰ with interventions or protests due on or before May 29, 2009. None was filed.

9. Notice of Tampa Electric's June 10, 2009 filing was published in the *Federal Register*,¹¹ with interventions or protests due on or before July 1, 2009. None was filed.

III. Discussion

A. Market-Based Rate Authorization

10. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.¹² The Commission concludes that Tampa Electric satisfies the Commission's

⁸ 73 Fed. Reg. 53,860 (2008). We note that on November 4, 2008, the Commission issued an errata notice stating that the comment date is November 3, 2008.

⁹ 74 Fed. Reg. 6149 (2009).

¹⁰ 74 Fed. Reg. 23,688 (2009).

¹¹ 74 Fed. Reg. 30,059 (2009).

¹² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 399, 408, 440.

standards for market-based rate authority, excluding the Tampa Electric balancing authority area, as discussed below.

1. Horizontal Market Power

11. The Commission adopted two indicative screens for assessing horizontal market power, the pivotal supplier screen and the wholesale market share screen.¹³ An applicant that fails one or more of the indicative screens is provided with several procedural options including the right to challenge the market power presumption by submitting a Delivered Price Test (DPT) analysis, or, alternatively, sellers can accept the presumption of market power and adopt some form of cost-based mitigation.¹⁴

12. Tampa Electric prepared the pivotal supplier and wholesale market share screens for its first-tier balancing authority areas, the Florida Municipal Power Pool, Progress Energy Florida, FP&L, Seminole, and the Reedy Creek balancing authority areas, consistent with the requirements of Order No. 697.¹⁵ Tampa Electric did not study its home balancing authority area, where it does not have and is not seeking market-based-rate authority.

13. Tampa Electric did not pass the market share screen in the Reedy Creek balancing authority area, as Tampa Electric's market share ranged by season from 45 to 50 percent. Accordingly, Tampa Electric submitted a Delivered Price Test analysis for the Reedy Creek balancing authority area.

a. Indicative Screens

14. The Commission has reviewed Tampa Electric's pivotal supplier and wholesale market share screens. As noted above, Commission Staff issued data requests on December 28, 2008 and April 9, 2009 requesting that Tampa Electric provide additional information regarding the SIL study Tampa Electric submitted as part of its updated market power analysis. In response to those requests, Tampa Electric submitted additional information and revised SIL studies. Commission Staff requested the other transmission owners in the Southeast that filed SIL studies with their updated market

¹³ *Id.* P 62.

¹⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 63. The results of the DPT can be used for pivotal supplier, market share, and market concentration analyses.

¹⁵ *Id.* P 231-232.

power analyses (Southeast Transmission Owners)¹⁶ to submit similar information as well. As detailed in an order being issued concurrently with this order, the Commission has made adjustments to the SIL studies submitted by the Southeast Transmission Owners, which we will use in evaluating market power analyses in the Southeast region.¹⁷

15. We find that Tampa Electric passes the pivotal supplier and wholesale market share screens in the Florida Municipal Power Pool, Progress Energy Florida, FP&L, and Seminole balancing authority areas. Specifically, using the Commission-adjusted SIL study results, Tampa Electric's market shares for the relevant balancing authority areas are as follows: Florida Municipal Power Pool balancing authority area market shares range from 0 to one percent; Progress Energy Florida balancing authority area market shares range from four to eight percent; FP&L balancing authority area market shares range from 1.0 to 1.4 percent; and Seminole balancing authority area market shares range from zero to 5.5 percent.

16. With respect to the Reedy Creek balancing authority area, Tampa Electric passes the pivotal supplier screen but does not pass the wholesale market share screen for the winter, summer, and fall seasons. Therefore, as discussed below, Tampa Electric performed a DPT for the Reedy Creek balancing authority area.

b. Delivered Price Test

17. As the Commission has previously explained, the DPT identifies potential suppliers based on market prices, input costs, and transmission availability, and calculates each supplier's economic capacity and available economic capacity¹⁸ for each

¹⁶ There were seven separate updated market power filings submitted on behalf of Southeast Transmission Owners. They include submissions by: (1) Duke Energy Carolinas, LLC; (2) South Carolina Electric & Gas Company; (3) Tampa Electric; (4) Carolina Power & Light Co. and Florida Power Corporation; (5) Entergy Services, Inc., Entergy Power Ventures, LP, EWO Marketing, LP, and Entergy Power, Inc.; (6) LG&E Energy Marketing Inc., Louisville Gas & Electric Company, Kentucky Utilities Company, and Western Kentucky Energy Corporation; and (7) Southern Company Services, Inc., Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company.

¹⁷ *Carolina Power & Light Co.*, 128 FERC ¶ 61,039 (2009).

¹⁸ "Economic capacity" is the total generation capacity of all the suppliers that can compete in the destination market, given their costs and transmission availability. "Available economic capacity" is derived by subtracting each supplier's native load obligation from its total capacity and adjusting transmission availability accordingly. See *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 at Appendix F (2004) (April 14 Order),

(continued...)

season/load period.¹⁹ Under the DPT, applicants must also calculate market concentration using the Hirschman-Herfindahl Index (HHI).²⁰ A showing of an HHI less than 2,500 in the relevant market for all season/load conditions for sellers that have also shown that they are not pivotal and do not possess a 20 percent or greater market share in any of the season/load conditions would constitute a showing of a lack of market power, absent compelling contrary evidence from intervenors.

18. As with our initial screens, applicants and intervenors may present evidence such as historical wholesale sales data, which can be used to calculate market shares and market concentration and to refute or support the results of the DPT.

19. Tampa Electric's DPT analysis for the Reedy Creek balancing authority area indicates that, when the available economic capacity measure is used, Tampa Electric passes the pivotal supplier, market share, and HHI screens in all periods. However, when the economic capacity measure is used, Tampa Electric passes the pivotal supplier and market share screens in all periods, but fails the HHI screen in all periods.

20. Tampa Electric states that the reason the HHI screen fails is because Reedy Creek itself is the largest supplier and its share is often over sixty percent. Tampa Electric states that Reedy Creek is the only wholesale customer in the Reedy Creek balancing authority area, and it cannot exercise market power against itself. Hence, Tampa Electric maintains that the standard HHI for economic capacity does not capture the state of competition. Accordingly, Tampa Electric prepared an additional measure of the economic capacity for the Reedy Creek balancing authority area without Reedy Creek's contribution to the HHI. This modified HHI is below 2,500 in all periods.

21. Tampa Electric performed a sensitivity study by increasing its share of available economic capacity by twenty percent.²¹ Even with this increase, the resulting measures of market concentration all were below the threshold levels.

order on reh'g, 108 FERC ¶ 61,026 (2004) (July 8 Order); *see also* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at n.78.

¹⁹ Super-peak, peak, and off-peak, for winter, shoulder and summer periods and an additional highest super-peak for the summer.

²⁰ The HHI is the sum of the squared market shares. For example, in a market with five equal size firms, each would have a 20 percent market share. For that market, $HHI = (20)^2 + (20)^2 + (20)^2 + (20)^2 + (20)^2 = 400 + 400 + 400 + 400 + 400 = 2,000$.

²¹ Tampa Electric's September 2, 2008 Filing, Morris Affidavit at 13.

c. **Commission Determination**

22. As noted above, the results of Tampa Electric's DPT analysis for the Reedy Creek balancing authority area varies depending on whether the economic capacity or available economic capacity measure is used. However, as the Commission has stated, the DPT does not function like the initial screens – i.e., failure of either the economic capacity or available economic capacity analyses does not result in an automatic failure of the test as a whole. Neither measure is definitive; the Commission weighs the results of both the economic capacity and the available economic capacity analyses and considers the arguments of the parties.²²

23. The Commission has recognized that not all generation capacity is available all of the time to compete in wholesale markets and that some accounting for native load requirements is warranted.²³ Available economic capacity accounts for native load requirements. As we explained in Order No. 697:

[I]n markets where utilities retain significant native load obligations, an analysis of available economic capacity may more accurately assess an individual seller's competitiveness, as well as the overall competitiveness of a market, because available economic capacity recognizes the native load obligations of the sellers. On the other hand, in markets where the sellers have been predominantly relieved of their native load obligations, an analysis of economic capacity may more accurately reflect market conditions and a seller's relative size in the market.^[24]

24. We note that Tampa Electric and Reedy Creek are in Florida where utilities retain significant native load obligations. Thus, we find that, in this case, available economic capacity measure more accurately captures conditions in the relevant market. Under the available economic capacity measure of the DPT, Tampa Electric is not pivotal, has less than a 20 percent market share in all season/load periods, and does not exceed the 2,500 HHI threshold in any season/load period. Our analysis indicates that these results are maintained even when available economic capacity is increased. For example, our review shows that a 20 percent increase in Tampa Electric's available economic capacity

²² See, e.g., *Tampa Electric Co.*, 117 FERC ¶ 61,311 (2006); *PacifiCorp*, 115 FERC ¶ 61,349 (2005); *Tucson Electric Power Co.*, 116 FERC ¶ 61,051 (2006).

²³ April 14 Order, 107 FERC ¶ 61,018 at P 67.

²⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 112.

in all season/load periods still yields market shares below 20 percent in all season/load periods. At the same time, Tampa Electric remains a non-pivotal supplier, and the market concentration as measured by the HHI's remains below 2,500.

25. Accordingly, after weighing all of the relevant factors, the Commission concludes that, on balance, based on Tampa Electric's DPT analysis in the Reedy Creek balancing authority area, Tampa Electric has rebutted the presumption of horizontal market power and satisfies the Commission's horizontal market power standard for the grant of market-based rate authority in the Reedy Creek balancing authority area. Accordingly, as discussed herein, we find that Tampa Electric satisfies the Commission's requirements for market-based rate authority regarding horizontal market power, excluding the Tampa Electric balancing authority area.

2. Vertical Market Power

26. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved Open Access Transmission Tariff (OATT) on file before granting a seller market-based rate authorization.²⁵

27. Tampa Electric owns transmission facilities in west-central Florida. Tampa Electric states that it has an OATT on file with the Commission.²⁶

28. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²⁷ The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).²⁸ The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to

²⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

²⁶ *Allegheny Power System, Inc.*, 80 FERC ¶ 61,143 (1997).

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

²⁸ *Id.* P 447. Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

electric power production does not allow a seller to raise entry barriers, but will allow intervenors to demonstrate otherwise.²⁹

29. Tampa Electric states that it owns Peoples Gas System, Inc. (Peoples Gas), a local gas distribution company serving various parts of Florida. Peoples Gas is regulated by the Florida Public Service Commission.

30. Tampa Electric states that it and its affiliates do not own gas storage facilities in Florida, though it and its division Peoples Gas have leased respective long and short-term capacity rights in an intrastate natural gas storage facility located in Alabama. Tampa Electric's parent, TECO Energy, recently announced the formation of a new subsidiary, SunCoast Gas Transmission, LLC, which is developing an intrastate gas pipeline in east central Florida, but that pipeline is still in its early development stages and has not yet been constructed.

31. Additionally, Tampa Electric states that it is affiliated with TECO Coal Corporation (TECO Coal), a supplier of coal to power and steel producers, but that Tampa Electric does not control TECO Coal and does not purchase coal from it. Tampa Electric also is affiliated with TECO Coalbed Methane, Inc. and TECO Oil & Gas, both of which formerly were fuel producers but which now are commercially inactive.³⁰

32. The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.³¹

33. Tampa Electric affirmatively states that its affiliates have not erected barriers to entry in the relevant markets and will not erect barriers to entry in the relevant markets in the future.

34. Based on Tampa Electric's representations, we find that Tampa Electric satisfies the Commission's requirements for market-based rate authority regarding vertical market power.

²⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 446.

³⁰ Tampa Electric also states that it formerly was affiliated with TECO Transport Corporation, which provided coal transportation services, but that TECO Transport Corporation has been sold, renamed and now is owned in its entirety by nonaffiliates of Tampa Electric.

³¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

B. Compliance Filing

35. In Order No. 697, the Commission adopted two standard required provisions that each seller must include in its market-based rate tariff: (1) a provision requiring compliance with the Commission's regulations; and (2) a provision identifying any limitations and exemptions regarding the seller's market-based rate authority.³² In addition to the required tariff provisions, 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.³³ In Order No. 697-A, the Commission also required that each seller include in its market based rate tariff a provision identifying which category of seller it qualifies as in each region.³⁴

36. Tampa Electric's revised market-based rate tariffs include the Commission's two required provisions, indicating that it intends to comply with the Commission's regulations, including the affiliate restrictions.

37. Additionally, the revised market-based rate tariffs provide that Tampa Electric shall not make any sales under the tariffs to be delivered within Tampa Electric's balancing authority area (including sales to any customer dynamically scheduled into Tampa Electric's balancing authority area).

38. The revised market-based rate tariffs also include a set of standard provisions with regard to sales of certain ancillary services in the markets administered by PJM Interconnection, L.L.C., New York Independent System Operator, Inc., ISO New England Inc., and California Independent System Operator, Inc., as well as a provision regarding sales of ancillary services as a third-party provider.

39. Tampa Electric's revised market-based rate tariffs include the required provision concerning seller categories.

40. Tampa Electric also included an asset appendix as required by Order No. 697.³⁵ Tampa Electric's revised market-based rate tariffs therefore satisfy the Commission's requirements set forth in Order No. 697 and Order No. 697-A. Accordingly, we will

³² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 914.

³³ *Id.* P 917.

³⁴ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 391-393.

³⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 894-895.

accept Tampa Electric's revised market-based rate tariffs, effective September 18, 2007, as requested.³⁶

C. Reporting Requirements

41. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or longer) market-based power sales during the most recent calendar quarter.³⁷ Public utilities must file Electric Quarterly Reports no later than 30 days after the end of the reporting quarter.³⁸

³⁶ Tampa Electric Company, FERC Electric Tariff, First Revised Volume No. 5, Second Revised Sheet No. 1, 1A, Original Sheet Nos. 1B and 1C, First Revised Sheet Nos. 19A, 43-49 (Superseding First Revised Sheet Nos. 1, 1A, Original Sheet No. 19A, 43-49). FERC Electric Tariff Original Volume No. 6, First Revised Sheet Nos. 1, 2, Original Sheet No. 2A, First Revised Sheet Nos. 3-4, Third Revised Sheet Nos. 6, 6B (Superseding Original Sheet Nos. 1-4, Second Revised Sheet No. 6, Original Sheet No. 6B).

³⁷ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit Electric Quarterly Reports to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

³⁸ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2008). 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.

42. Tampa Electric 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.³⁹

43. Additionally, in Order No. 697, the Commission created two categories of sellers.⁴⁰ Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888⁴¹); that are not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.⁴² Sellers that do not fall into Category 1 are designated as Category 2 and are required to file an updated market power analysis.⁴³

44. Based on Tampa Electric's representations, we find that Tampa Electric meets the criteria for a Category 2 seller and is so designated based on its ownership of generation assets totaling greater than 500 MW of capacity and because it owns transmission facilities in Florida. Thus, Tampa Electric must file an updated market power analysis in

³⁹ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42(a) (2008).

⁴⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

⁴¹ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁴² 18 C.F.R. § 35.36(a)(2) (2008).

⁴³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

compliance with the regional reporting schedule adopted in Order No. 697.⁴⁴ The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) Tampa Electric's updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) Tampa Electric's revisions to its market-based rate tariffs are hereby accepted, effective September 18, 2007, as discussed in the body of this order.

(C) Tampa Electric is hereby directed to file an updated market power analysis according to the regional reporting schedule adopted in Order No. 697.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴⁴ *Id.* P 882.