

149 FERC ¶ 61,294
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

TECO Energy, Inc.
Tampa Electric Company

Docket No. ER15-18-000

ORDER ON REQUEST FOR WAIVER OF AFFILIATE PRICING RULES

(Issued December 31, 2014)

1. On October 1, 2014, TECO Energy, Inc. (TECO) and Tampa Electric Company (Tampa Electric) (together, Applicants) filed a request for waiver of section 35.44(b)(1) of the Commission's regulations¹ to permit Tampa Electric to provide non-power goods and services to non-utility affiliates at cost, rather than at the higher of cost or market price. In this order, we grant the requested waiver, effective as of January 1, 2015, as requested.

I. Background

2. Tampa Electric is a franchised public utility that owns, operates, and controls generation and transmission facilities. Tampa Electric is a wholly-owned subsidiary of TECO, a holding company.

3. Applicants state that, in the past, consistent with section 35.44(b)(4) of the Commission's regulations,² both TECO and Tampa Electric have provided certain general administrative and management non-power goods and services, at cost, to affiliates within the TECO holding company system. They state that the services provided by TECO at cost have included: financial reporting and regulatory accounting;

¹ 18 C.F.R. § 35.44(b)(1) (2014).

² 18 C.F.R. § 35.44(b)(4) (2014) (permitting a company in a single state holding company to provide general administrative and management non-power goods and services to, or receive such goods and services from, other companies in the same holding company system, at cost, provided that the only parties to such transactions are affiliates or associate companies of a holding company in the holding company system).

insurance risk management; energy risk management; corporate audit/ethics and compliance; corporate safety; treasury; shareholder/investor relations; legal; governmental affairs; and corporate taxes. Applicants state that the services provided by Tampa Electric at cost have included: information technology; human resources; procurement; corporate communications; corporate security and emergency management; accounts payable; real estate; facilities management; telecommunications; regulatory, governmental and community affairs; engineering; and environmental. They add that the information technology services provided by Tampa Electric have included the purchase and deployment of large computer system assets, such as computer software and implementation/maintenance agreements, which have been used in common with affiliates in the TECO holding company system and charged to the affiliates in accordance with their usage. Applicants state that the primary beneficiaries of the non-power goods and services provided by TECO and Tampa Electric at cost have been Tampa Electric and Peoples Gas System, a division of Tampa Electric that is a local natural gas distribution company doing business in Florida and, as such, is not a non-utility affiliate. Applicants state that except for services provided to former affiliates during short transition periods following divestitures, neither TECO nor Tampa Electric has ever provided general administrative and management non-power goods or services to non-affiliated third parties.

4. Applicants state that on October 18, 2013, TECO established TECO Services, Inc. (TECO Services), as a centralized service company within the TECO holding company system. Effective January 1, 2014, the non-power goods and services formerly provided by TECO were transferred to TECO Services. Applicants state that these steps were taken in anticipation of TECO's acquisition later in 2014 of New Mexico Gas Company, Inc. (New Mexico Gas), a local natural gas distribution company doing business in New Mexico. Applicants state that TECO recognized that the acquisition of New Mexico Gas eventually would result in loss of TECO's eligibility as a single-state holding company system, and thus render the affiliate pricing allowances in section 35.44(b)(4) of the Commission's regulations inapplicable to sales of general administrative and management non-power goods and services by TECO and the companies in its holding company system. Applicants state that TECO's acquisition of New Mexico Gas closed on September 2, 2014, and that while that acquisition will not immediately cause the public-utility company revenues originating outside of Florida – the single state within which the TECO holding company has historically conducted business – to exceed the 13 percent threshold for single-state holding company status, it is expected to do so, on an annual basis, beginning in 2015. Applicants state that in further conformance with the Commission's affiliate transaction pricing rules, therefore, TECO's present intention is to also transfer to TECO Services, effective January 1, 2015, the bulk of the non-power goods and services that Tampa Electric has historically provided to its affiliates at cost. The services thus transferred will include information technology, human resources, procurement, corporate communications, accounts payable, and corporate security and emergency management.

5. Applicants state that while the transfer of non-power goods and services to TECO Services will be substantial, TECO would prefer that Tampa Electric continue to provide to its affiliates, at cost, certain of the non-power goods and services that it has provided historically. Those goods and services include: real estate; facilities management; telecommunications; regulatory, governmental and community affairs; engineering; environmental; other operations and maintenance services such as safety training; and the purchase and deployment of goods such as large computer system assets. Applicants state that, as before, these goods and services, whether provided directly or indirectly through TECO Services, would be provided primarily for the benefit of Tampa Electric itself and its local gas distribution company affiliates, Peoples Gas System and New Mexico Gas, which are not non-utility affiliates. Applicants state that most of these remaining goods and services would be provided to non-utility affiliates only on an occasional basis. Applicants state that allowing Tampa Electric to provide the goods and services to non-utility affiliates at cost will require a waiver of the section 35.44(b)(1) requirement that the pricing be at the higher of cost or market price.

6. Applicants state that, as in the past, except for services to former affiliates in brief transitional periods following TECO divestitures, the non-power goods and services would be provided by Tampa Electric only to affiliates; there would be no sales of such goods or services, either directly or indirectly through TECO Services, to non-affiliated third parties. Applicants state that the services are specialized to the corporate situation of TECO and Tampa Electric.

7. Applicants state that the Commission has cited several reasons for permitting affiliates within a single state holding company system to provide the same kinds of goods and services at cost to other affiliates in the system, “including the facts that: (1) defining a market price for general and administrative services is speculative; (2) goods and services often can be provided less expensively by other members of the holding company system, at cost, than if they were purchased outside the system by individual system members; (3) requiring holding companies to incur the additional expense of creating a [centralized service company] to provide the services could simply lead to greater costs for the same services; and (4) a single-state holding company is more likely to have complementary state regulatory oversight of affiliate transactions.”³ Applicants further state that “[t]he Commission acknowledged that many of these considerations would also apply to general and administrative goods and services provided between affiliates in multi-state holding company systems that do not have [centralized service companies]. While the Commission declined to grant a generic

³ Filing at 9 (citing *Cross-Subsidization Restrictions on Affiliate Transactions*, Order No. 707, FERC Stats. & Regs. ¶ 31,264, *order on reh’g*, Order No. 707-A, FERC Stats. & Regs. ¶ 31,272, at PP 24-27 (2008)).

exception for such systems, it did state that it would consider requests for waiver on a case-by-case basis to permit at-cost pricing in the multi-state holding company context, under the same circumstances as for single-state holding companies.”⁴ Applicants note that the Commission has granted requests for waiver of section 35.44(b)(1) in the context of multi-state holding company systems that included centralized service companies.⁵

8. Applicants state that granting the requested waiver would not result in cross-subsidization of non-utility affiliates. They state that except for services to former affiliates in brief transitional periods following TECO divestitures, the non-power goods and services would be provided by Tampa Electric only to affiliates. There would be no sales of such goods or services, either directly or indirectly through TECO Services, to non-affiliated third parties. Applicants state that the absence of sales to non-affiliated third parties means that any attempt to determine a market price for the goods and services would be speculative, rendering the determination unreliable. They state that there will be no third-party sale benchmark with which to determine a meaningful market price for the services. Applicants further state that, as the Commission has recognized repeatedly in such circumstances, there would be no basis for a finding that Tampa Electric is forgoing profits by providing non-power goods and services to affiliates at cost, and any attempt to determine a market price for the goods and services would be speculative, at best.⁶

9. Applicants maintain that the bulk of the non-power goods and services provided by Tampa Electric are provided for the benefit of Tampa Electric itself or Tampa Electric’s local natural gas distribution company affiliates, which are not non-utility affiliates. Applicants also state that it is more efficient and cost effective for Tampa Electric to provide certain administrative and general goods and services to affiliates, including non-utility affiliates, at cost, rather than to transfer that capability to TECO Services, the TECO centralized service company, or to obtain the capability elsewhere. Applicants further state that the Florida Public Service Commission (Florida Commission) has sanctioned fully-embedded, cost-based pricing for the non-power goods and services that Tampa Electric provides to its affiliates and the Florida Commission

⁴ Filing at 9 (citing Order No. 707-A, FERC Stats. & Regs. ¶ 31,272 at P 28).

⁵ Filing at 10 (citing *Pepco Holdings, Inc.*, 141 FERC ¶ 61,034 (2012) (*Pepco*); *Northeast Utilities Service Co.*, 141 FERC ¶ 61,016 (2012) (*Northeast Utilities*); *National Grid USA*, 133 FERC ¶ 61,241 (2010) (*National Grid*)).

⁶ Filing at 12 (citing Order No. 707-A, FERC Stats. & Regs. ¶ 31,272 at P 24; *Pepco*, 141 FERC ¶ 61,034 at PP 22-23; *Northeast Utilities*, 141 FERC ¶ 61,016 at P 16; *National Grid*, 133 FERC ¶ 61,241 at PP 36-37).

would continue to review the pricing after January 1, 2015. Applicants add that any charge for non-power goods or services by Tampa Electric to New Mexico Gas will be subject to the New Mexico Public Regulation Commission's (New Mexico Commission) scrutiny.

10. Applicants state that Tampa Electric's non-power goods and services would be assessed to affiliates at cost, either directly or indirectly through TECO Services. Applicants state that in most instances, the charges by Tampa Electric for non-power goods and services, at cost, would be assessed directly to the affiliate(s) receiving the services. On other occasions, however, such as the accounting software system, the charges would be assessed indirectly by pass-through, at cost, of charges billed to TECO Services in the first instance. Applicants state that either way, the charges to the affiliate ultimately receiving the benefit would be the same, and would be priced at cost. Applicants state that the Commission has recognized that, when services provided by a public utility to its affiliated centralized service company at cost are billed by the centralized service company to its other affiliates at cost, and the centralized service company will not procure the service for its own use or service to non-affiliates, the arrangement cannot give rise to cross-subsidization of non-utility affiliates.⁷

11. Applicants maintain that the fact that New Mexico Gas would receive non-power goods and services from Tampa Electric at cost does not implicate the policy against cross-subsidization of non-utility affiliates because New Mexico Gas, as a local natural gas distribution company, is not a non-utility affiliate.

II. Notice of Filing

12. Notice of Applicants' October 1, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 61,073 (2014), with interventions and protests due on or before October 22, 2014. None was filed.

III. Discussion

13. The Commission's pricing rules for affiliate transactions provide that unless otherwise permitted by Commission rule or order, the transfer or sale of non-power goods or services to a non-utility affiliate from a franchised public utility that owns or provides transmission service over jurisdictional transmission facilities "must be at the higher of cost or market price."⁸ The Commission's regulations further specify that a company in a single-state holding company system may provide or receive such non-power goods and

⁷ Application at 19 (citing *National Grid*, 133 FERC ¶ 61,241 at PP 36-37).

⁸ 18 C.F.R. § 35.44(b)(1).

services from its affiliates at cost.⁹ In Order No. 707-A, the Commission stated it would “consider requests for waiver on a case-by-case basis for at-cost pricing in the multi-state context, under the same circumstances as for single state holding companies (i.e., only for general and administrative services and the goods to support those services and only where members of the holding company do not sell such goods and services outside the holding company).”¹⁰

14. Given the transition of the TECO holding company system from single-state to multi-state, Applicants will no longer qualify for the authorization provided under section 35.44(b)(4) of the Commission’s regulations for at-cost pricing of the transactions described in its application and they request waiver of section 35.44(b)(1) of the Commission’s regulations. Based on the information Applicants have provided, we grant the requested waiver.¹¹ Tampa Electric will need a waiver because the acquisition of the local natural gas distribution company in New Mexico will cause TECO to no longer be a single-state holding company. Based on Applicants’ representations, we find that granting the request for waiver will not result in inappropriate cross-subsidization. As noted by Applicants, Tampa Electric generally does not provide non-power goods and services to non-affiliates. Thus, Tampa Electric is not forgoing profits by providing non-power goods and services to affiliates at cost and any attempt to determine a market price for these goods and services would be speculative. Additionally, we note that the new affiliate, New Mexico Gas, is a franchised public utility subject to the regulation and oversight of the New Mexico Commission.

15. Finally, we note that the waivers granted herein are based on the specific facts and representations made by Applicants. To the extent that there is any material change in circumstances that would reflect a departure from the facts and representations that we have relied upon in granting the requested waivers, Applicants will be required to inform the Commission within 30 days of any such change.

⁹ 18 C.F.R. § 35.44(b)(4).

¹⁰ Order No. 707-A, FERC Stats. & Regs. ¶ 31,272 at P 28.

¹¹ We note that our action does not preclude complaints in specific instances alleging that an at-cost price for a specific service supplied to a franchised public utility exceeds the market price and has an effect on rates that is unjust and unreasonable.

The Commission orders:

(A) Applicants' request for waiver of the affiliate restrictions under section 35.44(b)(1) is hereby granted for the transactions identified in the body of this order, as discussed in the body of this order.

(B) Applicants must inform the Commission within 30 days of any material change in circumstances that would reflect a departure from the facts, policies, and procedures the Commission relied upon in granting the waivers herein.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.