

153 FERC ¶ 61,237  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Tampa Electric Company

Docket No. ER10-1437-002

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS  
AND SIMULTANEOUS TRANSMISSION IMPORT LIMIT VALUES FOR A  
PORTION OF THE SOUTHEAST REGION

(Issued November 24, 2015)

1. On June 30, 2014, as amended on October 7, 2014, June 16, 2015, and September 16, 2015, Tampa Electric Company (Tampa Electric) submitted an updated market power analysis for the Southeast Region in accordance with the reporting schedule adopted in Order No. 697.<sup>1</sup> Tampa Electric's updated market power analysis assesses Tampa Electric's generation market power in the Tampa Electric balancing authority area and the balancing authority areas with which Tampa Electric is directly interconnected: the Florida Municipal Power Pool, Florida Power Corporation, Florida Power & Light Company, and Seminole Electric Cooperative. Tampa Electric's filing includes Simultaneous Transmission Import Limit (SIL) values for the December 1, 2011 through November 30, 2012 study period for the Tampa Electric, Florida Municipal Power Pool, Florida Power Corporation, Florida Power & Light Company, and Seminole Electric Cooperative balancing authority areas.

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<sup>1</sup> See *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at PP 848-850, *clarified*, 121 FERC ¶ 61,260 (2007), *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), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

2. In this order, we accept Tampa Electric's updated market power analysis and conclude that Tampa Electric continues to satisfy the Commission's standards for market-based rate authority in all areas except the Tampa Electric balancing authority area. Additionally, we accept the SIL values submitted by Tampa Electric for the Tampa Electric, Florida Municipal Power Pool, Florida Power Corporation, Florida Power & Light Company, and Seminole Electric Cooperative balancing authority areas. These SIL values are identified in Appendix A (Commission-accepted SIL values).

### **I. Background**

3. On June 30, 2014, as amended on October 7, 2014, June 16, 2015, and September 16, 2015, Tampa Electric submitted an updated market power analysis for the peninsular Florida portion of the Southeast region. Tampa Electric is authorized to sell energy, capacity, and ancillary services at market-based rates outside the Tampa Electric balancing authority area.<sup>2</sup> Tampa Electric is a Category 2 Seller for the Southeast region.

4. Tampa Electric states that it is a direct subsidiary of TECO Energy, Inc.<sup>3</sup> TECO Energy, Inc.'s regulated utility generation assets are owned by Tampa Electric and are located in peninsular Florida.<sup>4</sup> Tampa Electric states that it currently owns approximately 4,720 megawatts (MW) of generation within the Florida Reliability Coordinating Council.<sup>5</sup> According to Tampa Electric, beginning November 1, 2011, and running through December 31, 2016, Tampa Electric also has a 117-MW power-purchase contract with Calpine Energy Services, which is delivered from the Calpine Osprey Energy Center and the Auburndale Peaker Energy Center, both of which are located within the Tampa Electric balancing authority area.<sup>6</sup> Additionally, Tampa Electric states that it has power purchase contracts for 121 MW from the Pasco Cogeneration facility,

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<sup>2</sup> Tampa Electric notes that it was initially granted authorization to make sales at market-based rates in Docket No. ER99-2342-000. Tampa Electric states that it may not make market-based rate sales under its market-based rate tariff to be delivered within the Tampa Electric balancing authority area, including sales to any customer dynamically scheduled into the Tampa Electric balancing authority area. June 30, 2014 Filing at 2 n.4.

<sup>3</sup> June 16, 2015 Filing at 3.

<sup>4</sup> June 30, 2014 Filing, Ex. TEC-1 at 4.

<sup>5</sup> *Id.* at 3 (citation omitted).

<sup>6</sup> *Id.*

which since January 2009 has been located within Tampa Electric's balancing authority area, and 158 MW from Reliant Energy, which is located in the Duke Energy Florida balancing authority area.<sup>7</sup>

5. Tampa Electric states that it owns a transmission system located in west-central Florida<sup>8</sup> and that it operates its transmission system pursuant to regulations promulgated by the Commission in Order Nos. 888, 889, 890, *et al.*<sup>9</sup> Tampa Electric notes that it has an Open Access Transmission Tariff (OATT) on file with the Commission.

## II. Notice of Filings

6. Notice of Tampa Electric's June 30, 2014, October 7, 2014, June 16, 2015, and September 16, 2015 filings were published in the *Federal Register*,<sup>10</sup> with interventions or protests due on or before October 7, 2015. None was filed.

## III. Discussion

### A. 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, horizontal and vertical market power.<sup>11</sup> As discussed below, we find that Tampa Electric satisfies the Commission's standards for market-based rate authority in all areas except for Tampa Electric's balancing authority area.

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<sup>7</sup> *Id.* In addition, Tampa Electric had rights to purchase between 356 and 441 MW of power from the Hardee Power Station, an unaffiliated supplier, under a long-term contract, which ended on December 31, 2012. As of that same date, the Hardee Power Station no longer resided within Tampa Electric's balancing authority area but is now part of Seminole Electric Cooperative's balancing authority area. *Id.*, Ex. TEC-1 at 5 & n.3.

<sup>8</sup> *Id.*, Ex. TEC-1 at 8.

<sup>9</sup> *Id.*

<sup>10</sup> 79 Fed. Reg. 38,877; 79 Fed. Reg. 62,129 (2014); 80 Fed. Reg. 36,334; 80 Fed. Reg. 57,350 (2015).

<sup>11</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

## 1. Horizontal Market Power

8. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.<sup>12</sup> The Commission has stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess horizontal market power, while failure of either screen creates a rebuttable presumption that the applicant has horizontal market power.<sup>13</sup>

9. Tampa Electric prepared the pivotal supplier and wholesale market share screens for the Tampa Electric, Florida Municipal Power Pool, Florida Power Corporation, Florida Power & Light Company, and Seminole Electric Cooperative balancing authority areas consistent with the requirements of Order No. 697. Tampa Electric states that the pivotal supplier screen indicates that Tampa Electric's uncommitted capacity is less than the total net uncommitted supply in each of the five Florida balancing authority areas analyzed. With regard to the market share screen, Tampa Electric represents that the only area in which Tampa Electric has a market share greater than 20 percent is in the Tampa Electric balancing authority area,<sup>14</sup> in which it already lacks market-based rate authority.<sup>15</sup>

10. We have reviewed Tampa Electric's pivotal supplier screen and wholesale market share screen and determined that Tampa Electric passes both screens in the Florida Municipal Power Pool, Florida Power Corporation, Florida Power & Light Company, and Seminole Electric Cooperative balancing authority areas. Accordingly, we find that Tampa Electric satisfies the Commission's requirements for market-based rates regarding horizontal market power outside of the Tampa Electric balancing authority area.

11. We note that Tampa Electric's analysis of the Tampa Electric, Florida Municipal Power Pool, Florida Power Corporation, Florida Power & Light Company, and Seminole Electric Cooperative balancing authority areas relies on SIL values prepared for the December 1, 2011 through November 30, 2012 study period.<sup>16</sup> We find that the SIL study included in Tampa Electric's filing meets the Commission's requirements for a SIL

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<sup>12</sup> *Id.* P 62.

<sup>13</sup> *Id.* PP 33, 62-63.

<sup>14</sup> June 30, 2014 Filing, Ex. TEC-1 at 9.

<sup>15</sup> June 30, 2014 Filing at 2.

<sup>16</sup> *See, e.g., id.* at 1; September 16, 2015 Filing at 1.

study as discussed in Appendix E of *AEP Power Marketing, Inc.*,<sup>17</sup> Order No. 697,<sup>18</sup> *Puget Sound Energy, Inc.*,<sup>19</sup> and *Public Service Company of New Mexico*.<sup>20</sup> Therefore, we will accept these SIL values for these areas for this study period as identified in Appendix A.

12. Future filers submitting screens for the balancing authority areas and study period identified in Appendix A are encouraged to use these Commission-accepted SIL values. In the alternative, a filer may propose different SIL values provided that the filer's accompanying SIL studies comply with Commission directives and that the filer fully supports the values used and explains why the Commission should consider a different SIL value for a particular study area other than the Commission-accepted SIL values provided in Appendix A. In the event that the results for one or more of a particular seller's screens differ if the seller-supplied SIL value is used instead of the Commission-accepted SIL value, the order on that particular filing will examine the seller-supplied SIL study and address whether the seller-supplied SIL value is acceptable. However, when the overall results of the screens would be unchanged, i.e., the seller would pass using either set of SIL values or fail using either set of SIL values, the order would be based on the Commission-accepted SIL values found in Appendix A and would not address the seller-supplied SIL values.

## 2. Vertical Market Power

13. 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 OATT on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.<sup>21</sup>

14. Tampa Electric states that it offers open-access transmission service over its transmission system under an OATT on file with the Commission.<sup>22</sup>

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<sup>17</sup> 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

<sup>18</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 19, 354, 356.

<sup>19</sup> 135 FERC ¶ 61,254 (2011).

<sup>20</sup> 153 FERC ¶ 61,060 (2015).

<sup>21</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

<sup>22</sup> June 30, 2014 Filing at 6; *see also Allegheny Power System, Inc.*, 80 FERC ¶ 61,143 (1997) (accepting the Tampa Electric OATT).

15. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.<sup>23</sup> 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, intrastate natural gas 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).<sup>24</sup> 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.<sup>25</sup> The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.<sup>26</sup>

16. Regarding other barriers to entry, Tampa Electric states that it does not own or control and is not affiliated with any entity that owns or controls interstate natural gas transportation, intrastate natural gas transportation, or natural gas storage facilities.<sup>27</sup> Tampa Electric notes that Peoples Gas System, Inc. (Peoples Gas), a division of Tampa Electric, is a local distribution company serving various areas in Florida.<sup>28</sup> In addition, Tampa Electric notes that SeaCoast Gas Transmission, LLC, a subsidiary of TECO Energy, Inc., is an intrastate natural-gas pipeline.<sup>29</sup> Tampa Electric states that because Peoples Gas and SeaCoast Gas Transmission, LLC serve only a limited portion of the state, are regulated by the Florida Public Service Commission, and Tampa Electric

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<sup>23</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

<sup>24</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

<sup>25</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

<sup>26</sup> *Id.* P 446.

<sup>27</sup> June 30, 2014 Filing at 6-7. Tampa Electric notes that Tampa Electric and its affiliates do not own gas storage facilities in Florida. Tampa Electric and Peoples Gas System, Inc. have leased respective long and short-term capacity rights in an intrastate natural gas storage facility located in Alabama. *Id.* at 7 n.22.

<sup>28</sup> *Id.* at 7.

<sup>29</sup> *Id.* at 7 n.24.

does not own the interstate natural gas pipelines serving Florida, Tampa Electric cannot withhold natural gas supplies to rival generation companies.<sup>30</sup>

17. Tampa Electric states that it does not own or control and is not affiliated with any entity that owns or controls sites for new generating facilities, other than at its existing plant sites.<sup>31</sup>

18. Additionally, Tampa Electric notes that it is affiliated with TECO Coal Corporation, a supplier of coal to power and steel producers, but explains that Tampa Electric does not control TECO Coal Corporation and does not purchase coal from it.<sup>32</sup> Tampa Electric also states that it is also affiliated with TECO Coalbed Methane Florida, Inc., and TECO Oil & Gas, Inc., both of which formerly were fuel producers but which now are commercially inactive.<sup>33</sup> Tampa Electric represents that aside from these affiliations Tampa Electric does not own or control and is not affiliated with any entity that owns or controls physical coal supply sources.<sup>34</sup>

19. Finally, consistent with Order No. 697, Tampa Electric affirmatively states that neither it nor its affiliates have erected barriers to entry into the relevant market and that they will not erect barriers into the relevant market.<sup>35</sup>

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<sup>30</sup> *Id.* On September 30, 2014, in Docket No. ER10-1437-003, Tampa Electric filed a notice of change in status stating that TECO Energy, Inc., the parent company of Tampa Electric, acquired 100 percent of the interests in New Mexico Gas Intermediate, Inc. In this notice of change in status, Tampa Electric explained that New Mexico Gas Intermediate, Inc. is the parent company of New Mexico Gas Co., which operates a natural gas local distribution company in New Mexico that is regulated by the New Mexico Public Regulation Commission. Tampa Electric stated that the transaction does not affect the findings upon which the Commission relied in granting TECO market-based rate authority. On December 17, 2014, the Commission accepted Tampa Electric's notice of change in status. *See Tampa Elec. Co.*, Docket No. ER10-1437-003 (Dec. 17, 2014) (delegated letter order).

<sup>31</sup> June 30, 2014 Filing at 6.

<sup>32</sup> *Id.* at 7 n.23.

<sup>33</sup> *Id.*

<sup>34</sup> June 16, 2015 Filing at 2.

<sup>35</sup> June 30, 2014 Filing at 8.

20. Based on Tampa Electric's representations, we find that Tampa Electric's submittal satisfies the Commission's requirements for market-based rates regarding vertical market power.

### **B. Reporting Requirements**

21. An entity with market-based rate authorization must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001<sup>36</sup> and 768,<sup>37</sup> to fulfill its responsibility under section 205(c) of the Federal Power Act<sup>38</sup> to have rates on file in a convenient form and place.<sup>39</sup> Tampa Electric must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.<sup>40</sup> Failure to timely and accurately file an EQR is a violation of the Commission's regulations for which Tampa Electric may be subject to refund, civil penalties, and/or revocation of market-based rate authority.<sup>41</sup>

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<sup>36</sup> *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, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008) (Order No. 2001).

<sup>37</sup> *Electricity Market Transparency Provisions of Section 220 of the Federal Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

<sup>38</sup> 16 U.S.C. § 824d(c) (2012).

<sup>39</sup> *See Revisions to Electric Quarterly Report Filing Process*, Order No. 770, FERC Stats. & Regs. ¶ 31,338, at P 3 (2012) (Order No. 770) (citing Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 31).

<sup>40</sup> Order No. 770, FERC Stats. & Regs. ¶ 31,338.

<sup>41</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2015). Forfeiture of market-based rate authority may require a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

22. 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.<sup>42</sup>

23. Additionally, Tampa Electric must file an updated market power analysis for all regions in which it is designated as a Category 2 seller in compliance with the regional reporting schedule adopted in Order No. 697.<sup>43</sup> The Commission also reserves the right to require such an analysis at any intervening time.<sup>44</sup>

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) The specific SIL values identified in Appendix A to this order are hereby accepted for purposes of analyzing updated market power analyses for the peninsular Florida portion of the Southeast region, as discussed in the body of this order.

(C) Tampa Electric is hereby directed to file updated market power analyses according to the regional reporting schedule adopted in Order No. 697, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>42</sup> *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 (2015).

<sup>43</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 848-850.

<sup>44</sup> *Id.* P 853.

## Appendix A

### Accepted SIL Values (MW) for a Portion of the Southeast Region Study Period of December 2011 to November 2012

	<b>Abbrev.</b>	<b>Balancing Authority Area</b>	<b>Winter 2011</b>	<b>Spring 2012</b>	<b>Summer 2012</b>	<b>Fall 2012</b>
1	FPC	Duke Energy Florida Florida Municipal Power	0	2,773	937	2,502
2	FMPP	Pool Florida Power & Light	634	1,305	2,774	2,781
3	FPL	Company Seminole Electric	0	0	0	0
4	SEC	Cooperative	268	116	188	151
5	TEC	Tampa Electric Company	182	1,028	460	728