

114 FERC ¶ 61,221
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tampa Electric Company	Docket Nos. ER99-2342-008
TECO EnergySource, Inc.	ER96-1563-025 ER06-281-000 ER06-281-001
Tampa Electric Company and TECO EnergySource, Inc.	EL05-68-000 EL05-68-002

ORDER ACCEPTING COMPLIANCE FILING AND
TERMINATING SECTION 206 PROCEEDING

(Issued February 28, 2006)

1. In this order, the Commission accepts a compliance filing submitted by Tampa Electric Company (Tampa Electric) on behalf of itself and its affiliate, TECO EnergySource, Inc. (EnergySource) (collectively, Tampa), regarding its proposal to mitigate the presumption of generation market power in the control areas of Tampa Electric and Reedy Creek Improvement District (Reedy Creek), including revised market-based rate tariffs prohibiting sales into these two control areas, effective May 14, 2005. The Commission also terminates the proceeding instituted in Docket No. EL05-68-000 pursuant to section 206 of the Federal Power Act (FPA).¹ Also in this order, the Commission accepts a notice of cancellation of market-based rate tariff filed by EnergySource.

Background

2. On December 19, 2005, Tampa submitted a compliance filing and revised market-based rate tariffs in response to the Commission's order on Tampa's mitigation proposal

¹ 16 U.S.C. § 824e (2000).

issued on November 17, 2005,² which Tampa submitted in compliance with the Commission's order issued on March 3, 2005.³

3. Tampa's generation market power analysis indicated that, among other things, Tampa passed the pivotal supplier screen in all control areas considered, but failed the wholesale market share screen in the Tampa Electric and Reedy Creek control areas. As the Commission stated in the April 14 Order, where an applicant is found to have failed either generation market power screen, such failure provides the basis for instituting a proceeding pursuant to section 206 of the FPA and establishes a rebuttable presumption of market power in the section 206 proceeding.⁴ Accordingly, because Tampa's filing indicated that it failed the wholesale market share screen, the Commission instituted a section 206 proceeding to investigate generation market power in the Tampa Electric and Reedy Creek control areas.

4. Consequently, Tampa filed a mitigation proposal for the Tampa Electric and Reedy Creek control areas, and in the November Order, the Commission conditionally accepted the proposal subject to Commission acceptance of the compliance filings directed therein.

5. With regard to the Tampa Electric control area, Tampa committed that it will not make any sales within the Tampa Electric control area without first receiving authorization of the transaction from the Commission. The Commission stated that it interpreted Tampa's proposal to be that such sales will be made at cost-based rates and accepted Tampa's proposal on the condition that any such sales will be cost-justified. Although Tampa proposed that this commitment will apply only to wholesale loads physically connected to the Tampa Electric transmission system, and not to its two wholesale customers that are dynamically scheduled, the Commission accepted Tampa's mitigation proposal conditioned upon its application to any wholesale customer in the Tampa Electric control area, including Tampa's two dynamically-scheduled customers. The Commission directed Tampa to state that it accepts these modifications to its mitigation proposal for the Tampa Electric control area within 30 days of the date of the November Order. The Commission also directed Tampa Electric and EnergySource to file revised market-based rate tariffs prohibiting sales into the Tampa Electric control area.

² *Tampa Electric Co.*, 113 FERC ¶ 61,159 (2005) (November Order).

³ *Tampa Electric Co.*, 110 FERC ¶ 61,206, *reh'g denied*, 111 FERC ¶ 61,373 (2005).

⁴ April 14 Order, 107 FERC ¶ 61,018 at P 201.

6. With regard to the Reedy Creek control area, Tampa proposed to use a currently effective cost-based rate⁵ for short-term sales into the Reedy Creek control area and to seek prior Commission authorization for long-term sales. The Commission noted that Tampa defines short-term sales as sales with a duration of one year or less, and conditioned its acceptance of Tampa's mitigation proposal for short-term sales into the Reedy Creek control area on that proposal applying to sales of less than one year. Similarly, the Commission accepted Tampa's commitment to seek prior authorization for long-term sales to the extent that such commitment applies to sales of one year or longer. Further, the Commission interpreted Tampa's proposal to be that any long-term sales will be made at cost-based rates, and accepted Tampa's proposal on the condition that any such sales will be cost-justified. In addition, Tampa proposed to limit the mitigation in the Reedy Creek control area to the winter season only, and the Commission accepted Tampa's proposal on the condition that it apply to all four seasons. The Commission also gave Tampa the option to propose different mitigation for the other three seasons if it chose to do so. The Commission directed Tampa to state that it accepts these modifications to its mitigation proposal for the Reedy Creek control area within 30 days of the date of the November Order. The Commission also directed Tampa Electric and EnergySource to file revised market-based rate tariffs prohibiting sales into the Reedy Creek control area.

7. In its compliance filing, Tampa states that it accepts the modifications to its mitigation proposal for the Tampa Electric and Reedy Creek control areas. Tampa also states that it chooses to apply its mitigation proposal for the Reedy Creek control area to all four seasons rather than just the winter season and accordingly does not propose different mitigation for those seasons. Tampa filed revisions to Tampa Electric's two market-based rate tariffs to prohibit sales into the Tampa Electric and Reedy Creek control areas. Tampa states that it did not file a revised market-based rate tariff for EnergySource because it had already filed a notice of cancellation for that tariff, as discussed below. Tampa further revised one of Tampa Electric's market-based rate tariffs to incorporate the change in status reporting requirement adopted in Order No. 652,⁶ and include the market behavior rules required by the Commission.⁷

⁵ Service Schedule B of Tampa Electric's First Revised Rate Schedule FERC No. 54. Service Schedule B contains a formula rate.

⁶ *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, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

⁷ *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).

8. On December 1, 2005, as amended on January 18, 2006, EnergySource filed a notice of cancellation of its market-based rate tariff. EnergySource states that its parent, TECO Energy, Inc., has decided to exit the merchant generation and power-trading business. EnergySource states that it is currently not making sales of electricity at wholesale and has not made any such sales in 2005. EnergySource further states that it will not make any such sales in the future, and thus has concluded that it no longer needs to retain its market-based rate authorization.

Notice of Filing and Responsive Pleadings

9. Notice of Tampa's compliance filing was published in the *Federal Register*, 71 Fed. Reg. 596 (2006), with comments, interventions, and protests due on or before January 9, 2006. None was filed.

10. Notice of EnergySource's notice of cancellation was published in the *Federal Register*, 70 Fed. Reg. 74,796 (2005), with interventions or protests due on or before December 22, 2005. None was filed. Notice of EnergySource's amended filing was published in the *Federal Register*, 71 Fed. Reg. 5,826 (2006), with interventions or protests due on or before February 3, 2006. None was filed.

Discussion

11. The Commission finds that Tampa has complied with the Commission's directives in the November Order. The Commission accepts Tampa's revised market-based rate tariff sheets containing the prohibition on sales in the Tampa Electric and Reedy Creek control areas, effective May 14, 2005.⁸ The Commission also accepts Tampa's revised market-based rate tariff sheets incorporating the change in status reporting requirement.⁹ Further, the Commission terminates the section 206 proceeding instituted in Docket No.

⁸ FERC Electric Tariff, First Revised Volume No. 5, First Revised Sheet No.1, Original Sheet No. 1A, and FERC Electric Tariff, Original Volume No. 6, First Revised Sheet No. 6.

⁹ FERC Electric Tariff, Original Volume No. 6, Original Sheet No. 6B, effective March 21, 2005. With regard to the market behavior rules, on February 16, 2006, the Commission issued an order rescinding market behavior rules 2 and 6 effective upon publication of the order in the Federal Register. *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 114 FERC ¶ 61,165 (2006). On that date, the Commission also adopted a final rule codifying market behavior rules 1, 3, 4 and 5 in the Commission's regulations, effective on the date of publication of the final rule in the Federal Register. *Conditions for Public Utility Market-Based Rate Authorization Holders*, Order No. 674, 71 Fed. Reg. 9695 (Feb. 27, 2006), 114 FERC ¶ 61,163 (2006).

EL05-68-000. Given the Commission's acceptance of Tampa's mitigation proposal and revised market-based rate tariffs, there is no further need for this section 206 proceeding.

12. With Tampa's acceptance of the Commission's modifications to its mitigation proposal, Tampa's mitigation is as follows. For the Tampa Electric control area, Tampa will not make any sales within the Tampa Electric control area without first receiving authorization of the transaction from the Commission, the transaction will be cost-justified, and will apply to any wholesale customer that is part of the Tampa Electric control area, not just those customers that are physically connected. For the Reedy Creek control area, Tampa Electric will make any sale of less than one year at the currently-effective cost-based rates in Service Schedule B of First Revised Rate Schedule FERC No. 54 on file with the Commission, will not make sales of one year or more without first receiving authorization of the transaction from the Commission, and the transaction will be cost-justified.

13. To the extent that Tampa made any sales under its market-based rate tariffs since the refund effective date of this proceeding¹⁰ in the Tampa and Reedy Creek control areas that were above the rate accepted herein, Tampa is directed, within 30 days of the date of issuance of this order, to make refunds, with interest. In addition, to the extent that such sales were made, we direct Tampa to file a refund report within 15 days after making refunds.

14. The Commission also accepts EnergySource's notice of cancellation, effective December 2, 2005.¹¹ The Commission notes that, because the request by EnergySource to cancel its market-based rate authority is granted herein, any waivers and authorizations previously granted in connection with its market-based rate authority are no longer applicable.

The Commission orders:

(A) Tampa's compliance filing is accepted, as discussed in the body of the order.

(B) The revised tariff sheets prohibiting sales into the Tampa Electric and Reedy Creek control areas are hereby accepted for filing, effective May 14, 2005.

(C) Tampa is hereby ordered to make refunds, within 30 days of the date of this order, with interest, calculated pursuant to 18 C.F.R. § 35.19(a) (2005), and to file a

¹⁰ The refund effective date is May 14, 2005.

¹¹ FERC Electric Tariff, Original Volume No. 1, First Revised Sheet No. 1 (cancels FERC Electric Tariff, Original Volume No. 1).

refund report with the Commission within 15 days of the date refunds are made, as discussed in the body of this order.

(D) The revised tariff sheets incorporating the change in status reporting requirement adopted in Order No. 652 are hereby accepted for filing, effective March 21, 2005.

(E) The revised tariff sheets incorporating the market behavior rules are hereby accepted for filing, effective December 17, 2003.

(F) The notice of cancellation filed by EnergySource is hereby accepted for filing, effective December 2, 2005.

(G) The section 206 proceeding in Docket No. EL05-68-000 is hereby terminated, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.