

132 FERC ¶ 61,214
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinohoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Tampa Electric Company

Docket No. ER10-1782-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS,
SUBJECT TO REFUND, AND ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES

(Issued September 13, 2010)

1. On July 15, 2010, pursuant to section 205 of the Federal Power Act (FPA),¹ Tampa Electric Company (Tampa Electric) filed revised tariff sheets for inclusion in its Open Access Transmission Tariff (OATT).² The revised tariff sheets establish a cost-of-service formula rate for Network Integration Transmission Service (network service), Point-to-Point Transmission Service (point-to-point service), and ancillary service under OATT Schedule 1. In this order, the Commission accepts for filing and suspends the tariff sheets for a nominal period to become effective September 14, 2010, subject to refund, and establishes hearing and settlement judge procedures.

2. In addition, Tampa Electric submitted new and revised tariff sheets that: (1) modify the procedures for distribution of imbalance surcharge revenues under ancillary service Schedules 4 and 9; (2) replace the indexes of transmission service customers in Attachments E and I with references and a link to the Commission's website containing Tampa Electric's Electric Quarterly Report (EQR) information; and (3) effect non-substantive editorial revisions and clarifications to the OATT. The Commission

¹ 16 U.S.C. § 824d (2006).

² Tampa Electric, a wholly-owned subsidiary of TECO Energy, Inc., is a public utility that owns, operates, and controls facilities used for the generation, transmission, distribution, and sale of electric power to retail customers in and around the City of Tampa, Florida. Tampa Electric also sells and purchases electric power in regional wholesale markets and provides transmission service to customers under its OATT since 1996. Tampa Electric July 15, 2010 Filing, Transmittal Letter at 3 (Transmittal Letter).

accepts these revised tariff sheets, subject to a compliance filing, to become effective September 14, 2010, as requested.

3. Finally, pursuant to sections 205 and 206,³ and procedures set forth in the Commission's Order No. 890-A,⁴ Tampa Electric filed new and revised tariff sheets that establish unreserved use penalties and mechanisms for distribution of the revenues from unreserved use penalties and late study penalties. The Commission accepts Tampa Electric's proposal and makes the late study penalty distribution mechanism effective July 15, 2010, while the remaining tariff revisions will be made effective September 14, 2010, as requested.

I. Filing

A. Proposed Formula Rate

4. Tampa Electric proposes revisions to Attachment H of its OATT to replace its existing transmission rates from stated rates⁵ to a cost-of-service formula rate for determining Tampa Electric's annual transmission revenue requirement. The formula rate has three components: (1) a statement that the rates and Tampa Electric's charges for network service and point-to-point service will be calculated based on the formula; (2) the formula to be used to determine the annual rate for network service and point-to-point service (Appendix A to Attachment H); and (3) a set of protocols that describe how Tampa Electric will update the formula in future years, review procedures to be followed, how customer challenges will be resolved, and how any changes to the annual rate updates will be implemented (Appendix B to Attachment H).⁶

5. According to Tampa Electric, the proposed formula would enable Tampa Electric to calculate the net annual transmission revenue requirement for each rate year using actual calendar year cost data from Tampa Electric's FERC Form No. 1, as well as forecasted plant additions. Tampa Electric proposes to use these data to populate the formula each May to produce the network service and point-to-point service and ancillary service Schedule 1 rates that will become effective each July 1. Additionally, the

³ 16 U.S.C. § 824e.

⁴ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007).

⁵ *Tampa Elec. Co.*, 104 FERC ¶ 61,043 (2003) (approving Tampa Electric's stated rate established by a settlement) (2003 Settlement).

⁶ Appendices A and B to Attachment H are collectively the formula rate.

proposed formula also incorporates a true-up between the forecasted and actual revenue requirement, which will be calculated each subsequent year and applied, with interest, to the subsequent year's net revenue requirement.⁷

6. According to Tampa Electric, the first annual transmission revenue requirement for the formula rate, subject to true-up, is approximately \$78.5 million. This revenue requirement represents an increase of \$23.2 million, or about 43 percent, over the as-filed annual revenue requirement of \$54.3 million in Tampa Electric's last rate case, which was based on a 2001 test year. Tampa Electric contends that this increase is attributable in large part to the increase in rate base resulting from Tampa Electric's investments in transmission-related plant and increased operation and maintenance (O&M) expenses.

7. According to the testimony of Alan C. Heintz,⁸ the cost-of service formula rate template is the sum of the return on rate base, O&M expense, depreciation expense, taxes other than income taxes, income taxes, and revenue credits.⁹ Additionally, Tampa Electric has included in Formula Attachment 5 three transmission acquisition adjustments totaling approximately \$4 million in net transmission plant and \$231,000 in depreciation expense. The three acquisition adjustments are related to the Lake Agnes-Cane Island transmission line purchased from the Orlando Utilities Commission, representing approximately \$3 million in net plant,¹⁰ the Big Bend-Manatee transmission line purchased from Florida Power & Light Company, representing approximately \$700,000 in net plant, and the Pasco-Union Hall-Dade City transmission line segment purchased from Florida Power Corporation, representing approximately \$340,000 in net plant.¹¹

8. Tampa Electric states that its proposed formula conforms to the Commission's requirements that certain inputs be fixed and unchanging absent the service provider's obtaining authorization through a section 205 filing. These inputs include return on equity (ROE) and depreciation rates.¹² Tampa Electric states that its total depreciation

⁷ Transmittal Letter at 5.

⁸ Tampa Electric July 15, 2010 Filing, Exhibit No. TEC-100, Direct Testimony and Exhibit of Alan C. Heintz (Heintz Testimony).

⁹ *Id.* at 10.

¹⁰ Tampa Electric notes that the acquisition adjustment of \$3 million for Lake Agnes-Cane Island has been authorized under the terms of the settlement in Tampa Electric's last transmission rate case. 2003 Settlement, 104 FERC ¶ 61,043.

¹¹ Transmittal Letter at 10-12.

¹² Transmittal Letter at 6.

and amortization expense is the sum of booked transmission depreciation expense plus general depreciation and intangible amortization functionalized to transmission.¹³ While post-retirement benefits other than pensions (PBOP) are also often treated as fixed inputs, Tampa Electric proposes to include in the formula only the actual payments made on behalf of retirees for PBOPs in a given year rather than a fixed, actuarially determined PBOP amount.¹⁴ Also, Tampa Electric does not at this time propose incentive rate treatment, but it states that the proposed formula rate includes a placeholder for the incentive ROE adders for new transmission facilities approved by the Commission¹⁵ as well as placeholders for recovery of construction work in progress authorized by the Commission.¹⁶

9. Tampa Electric proposes an ROE of 11.25 percent, which it maintains is fair and reasonable based on the analysis and recommendations of Tampa Electric's witness Dr. William E. Avera.¹⁷ Dr. Avera used a one-step discounted cash flow methodology (DCF) to analyze Tampa Electric's cost of equity. Tampa Electric explains that Dr. Avera selected a nine-member regional proxy group consisting of investor-owned utilities located in adjacent regional reliability organizations, i.e., Florida Reliability Coordinating Council, Inc. (FRCC) and SERC Reliability Corporation (SERC).¹⁸ Also, based on Tampa Electric's credit rating of "BBB" with Standard and Poor's (S&P), Dr. Avera selected a ratings screen proxy group of five electric utilities with comparable corporate credit ratings, which yielded a range of reasonableness and midpoint that were identical, and median that was very similar, to those of the regional proxy group. Furthermore, Tampa Electric states that Dr. Avera analyzed ROE benchmarks developed by applying the DCF model to a group of non-utility companies, and by reference to expected earned rates of return for utilities.¹⁹ Based on his analysis, Dr. Avera recommended an ROE

¹³ Tampa Electric notes that its current depreciation rates are as approved by the Florida Public Service Commission in 2008. Transmittal Letter at 9 (citing Florida Public Service Commission Order PSC-08-0014-PAA-EI, issued on January 4, 2008).

¹⁴ *Id.*

¹⁵ Heintz Testimony at 25.

¹⁶ *Id.* at 15.

¹⁷ Tampa Electric July 15, 2010 Filing, Exhibit No. TEC-200, Direct Testimony and Exhibit of Dr. William E. Avera (Avera Testimony).

¹⁸ Transmittal Letter at 7.

¹⁹ *Id.* at 8.

range for Tampa Electric of 8.2 percent to 13.6 percent and concluded that the appropriate ROE for Tampa Electric is 11.25 percent, which falls within the recommended zone of reasonableness.

10. Tampa Electric also proposes formula rate implementation protocols, in Appendix B to Attachment H, which describe how Tampa Electric will update the formula in future years, review procedures to be followed, how customer challenges will be resolved, and how any changes to the annual rate updates will be implemented. The review procedures prescribe certain periods for: (1) customer review of, (2) service of data requests and Tampa Electric's responses thereto in connection with, and (3) preliminary and formal challenges to, the annually published formula rate update. The protocols also prescribe certain periods for filing a complaint with the Commission, and Tampa Electric's response thereto, in the event formal challenges cannot be resolved by the parties. Tampa Electric states that these procedures do not limit Tampa Electric's right to file changes to the formula or its inputs under section 205 of the FPA, or the right of any other party to file a complaint requesting such changes under section 206 of the FPA.²⁰

11. Tampa Electric explains that it seeks to convert from stated rates to a cost-of-service formula in order to reflect changes in its transmission revenue requirement and for more current cost recovery.²¹ Specifically, it states that Tampa Electric has experienced substantial growth in its net transmission plant investment in recent years and the conversion to a formula rate will enable Tampa Electric to recover the costs of providing transmission service on a more timely basis.²² Tampa Electric notes that the proposed formula rate is modeled after formula rates accepted previously by the Commission.²³

12. Tampa Electric requests that the Commission accept the revised rates for filing to become effective September 14, 2010, without suspension, or subject to nominal suspension and hearing and settlement judge proceedings.²⁴ It also requests waiver of various requirements under Part 35 of the Commission's regulations. Specifically, Tampa Electric requests waiver of sections 35.13(a)(2)(iv), 35.13(d)(1), (2), (5) and (6), and 35.13(h) of the Commissions Regulations, to the extent that its filing requires

²⁰ *Id.* at 6.

²¹ *Id.* at 4.

²² *Id.* at 3-4.

²³ *Id.* at 5.

²⁴ *Id.* at 17.

waivers of the requirement to submit full Period I and Period II data and workpapers and cost-of-service statements.

B. Other Revisions to the OATT

1. Unreserved Use and Late Study Penalty Provisions

13. Tampa Electric states that, pursuant to the Commission's directive in the January 31, 2008 order,²⁵ it is submitting a proposed penalty rate for unreserved use by transmission customers, including customers for network service and firm and non-firm point-to-point service. Consistent with Commission Policy under Order No. 890-A²⁶ and the January 2008 Order, Tampa Electric states that its proposed rate is based on a rate equal to 200 percent of the applicable rate for firm point-to-point service for the period of the unreserved use of the transmission service.²⁷ Also, Tampa Electric proposes that the unreserved use penalty revenues collected pursuant to its OATT be allocated for distribution based on the ratio of the transmission revenues collected from each network service or point-to-point service customer that did not experience unreserved use in an hour to the sum of the transmission revenues collected from all transmission customers that did not experience unreserved use in the hour. According to Tampa Electric, it will distribute the accumulated penalty revenues, plus interest, when the accumulated amount reaches \$100,000. However, if the distribution has not been made within the previous calendar year, Tampa Electric states that a distribution will be made no later than April 1st following that calendar year.²⁸

14. Additionally, Tampa Electric states that its OATT currently contains the *pro forma* provisions for the assessment of late study penalties, but does not yet contain a methodology for the distribution of revenues from such penalties. According to Tampa

²⁵ In an order accepting Tampa Electric's non-rate terms and conditions compliance filing under Order No. 890, the Commission noted that Tampa Electric had not included an unreserved use penalty in its OATT, and stated that "if Tampa Electric plans to charge unreserved use penalties, it must file a penalty rate in a section 205 filing based on the firm point-to-point rate and provide that penalties will be charged based on the specific period of unreserved use." *Tampa Elec. Co.*, 122 FERC ¶ 61,069, at P 12 (2008) (January 2008 Order).

²⁶ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 472.

²⁷ Transmittal Letter at 13. *See also* Tampa Electric Company, FERC Electric Tariff, Fourth Revised Vol. No. 4, First Revised Sheet No. 77, 79A.

²⁸ Transmittal Letter at 14.

Electric, it has not yet collected any penalty revenues for late studies. However, in view of the possibility of collecting such penalty revenues in the future, and in compliance with the procedures prescribed in Order No. 890-A, Tampa Electric proposes a methodology for distributing late study penalty revenues to non-offending transmission customers.²⁹ Tampa Electric states that the late study penalty revenues will be allocated for distribution based on the ratio of the quarterly transmission revenues collected from each transmission customer to the sum of the transmission revenues from all transmission customers. The late study penalty revenues, plus interest, will be distributed to the transmission customers based on the quarters to which the penalties apply, within 60 days after the end of the quarter.³⁰

2. Imbalance Surcharge Revenue Distribution Mechanism

15. Tampa Electric states that, as accepted in the January 2008 Order, existing Schedule 4 (Energy Imbalance Service) and Schedule 9 (Generator Imbalance Service) provide that the transmission provider shall distribute imbalance surcharge revenues when the accumulated amount of such revenues, including interest, reaches \$100,000, that the annual period shall be the calendar year, and that imbalance surcharge revenues that accumulate in one year shall not be carried over into the following year.³¹

16. However, to comply with the Commission's more recent pronouncements,³² Tampa Electric states that it is proposing to revise Schedules 4 and 9 to provide that if a distribution has not been made within the previous calendar year, a distribution will be made no later than the first April 1 following that calendar year.³³

²⁹ *Id.* at 14.

³⁰ *Id.* at 15. *See also* Tampa Electric Company, FERC Electric Tariff, Fourth Revised Vol. No. 4, First Revised Sheet No. 47.

³¹ Transmittal Letter at 15.

³² *Entergy Services, Inc.*, 124 FERC ¶ 61,148, at P 25 (2008), *reh'g denied*, 126 FERC ¶ 61,194 (2009) (holding that all imbalance surcharge revenues in excess of the transmission provider's incremental costs must eventually be distributed, and that if accumulated revenues are to be distributed only after they exceed a certain dollar threshold, then there must be a mechanism for the revenues to be rolled over to the following year if the revenues do not exceed the threshold in a given year).

³³ Transmittal Letter at 16.

3. Removal of Detailed List of Transmission Customers

17. Tampa Electric proposes to remove the existing indexes of transmission customers under the OATT, which contains lists of the customers and the dates of their respective service agreements (set forth in Attachments E and I). It states that keeping the list current is administratively burdensome for both Tampa Electric and Commission staff because it requires frequent filings as new customers are added and the service agreements with old customers come to an end.³⁴ Thus, Tampa Electric proposes to replace its detailed lists of transmission customers with references and a link to the Commission's website containing Tampa Electric's EQR. This approach, according to Tampa Electric, will allow easy access to information that is reasonably current since a list of transmission customers as of the end of the last quarter is included in the EQR.³⁵

4. Editorial Revisions

18. Tampa Electric proposes to make editorial revisions to: (1) conform the OATT to the *pro forma* language prescribed by the Commission; (2) incorporate the table of contents entries for the Small Generator Interconnection Procedures and Agreement into the table of contents for the OATT as a whole; and (3) update Tampa Electric's contact references. Additionally, Tampa Electric proposes other miscellaneous editorial revisions to the OATT. Tampa Electric states that none of these revisions affect the substance of the OATT provisions or the rights of transmission customers.³⁶

5. Proposed Effective Date

19. Tampa Electric requests, pursuant to Order No. 890-A,³⁷ that its tariff sheets containing the late study penalty revenue distribution methodology be made effective on the date of filing, i.e., July 15, 2010. Tampa Electric requests that the tariff sheets containing the remaining new and revised OATT provisions be made effective on September 14, 2010, without suspension, or subject to nominal suspension and hearing and settlement judge procedures.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Order No. 890-A, FERC Stats. & Regs. ¶ 31,621 at P 472.

II. Notice of Filing and Responsive Pleadings

20. Notice of Tampa Electric's filing was published in the *Federal Register*, 75 Fed. Reg. 42,730 (2010), with interventions and comments due on or before August 5, 2010. Orlando Utilities Commission and Reedy Creek Improvement District filed timely motions to intervene. Florida Municipal Power Agency (Florida Municipal), Seminole Electric Cooperative, Inc. (Seminole), and Calpine Construction Finance Company, L.P. (Calpine) filed timely motions to intervene and protest. Tampa Electric filed an answer in response to the protests.

A. Protests

21. Protesters raise a number of issues regarding Tampa Electric's proposed adoption of a formula rate for transmission services under its OATT. They argue that the issues raised warrant a full five-month suspension of Tampa Electric's proposed rate changes, and request that the Commission set the filing for settlement judge procedures and for a full evidentiary hearing should the settlement judge procedures be unsuccessful.³⁸ Calpine and Seminole argue that the Commission should suspend the proposed formula rate for the maximum period because it will result in an excessive increase of their rates.³⁹ They note that under the Commission's long-standing precedent, the Commission will suspend a proposed rate increase, for the maximum period permitted under the FPA, "where more than ten percent of the proposed increase appears to be excessive."⁴⁰

22. Protesters argue that Tampa Electric's proposed ROE of 11.25 percent is excessive.⁴¹ They argue that the proposed ROE is based on flawed analysis by Dr. Avera. First, they contend that Dr. Avera used outdated data to calculate an adjusted ROE range of 8.2 percent to 13.6 percent with a median ROE of 10.5 percent. They argue that, although the market data through June 2010 was readily available, Dr. Avera

³⁸ Seminole Protest at 26-29, 33; Florida Municipal Protest at 29-30; Calpine Protest at 10-14.

³⁹ For example, Seminole contends that its current rate for point-to-point service will increase about 50 percent. Seminole at 2. Calpine argues that its rates for transmission service would increase by more than 49 percent. Calpine at 3.

⁴⁰ *West Texas Utils. Co.*, 18 FERC ¶ 61,189, at 61,375 (1982) (*West Texas*).

⁴¹ Seminole Protest at 3-13; Florida Municipal Protest at 29-30; Calpine Protest at 4-7.

chose to use market data for the six months ending in March 2010.⁴² Calpine and Seminole assert that this is contrary to the Commission's longstanding preference for using the latest market data available at the time of filing.⁴³ According to protesters, using the most recent market data available at the time of filing (data for the six months ending in June 2010) results in an adjusted ROE ranging from 8.2 percent to 13.4 percent, with a median ROE of 9.8 percent.⁴⁴

23. Protesters also argue that Dr. Avera's selection of companies in the ratings screen proxy group overstates Tampa Electric's cost of capital and is inconsistent with the Commission's credit screening criteria for proxy groups, which is intended to ensure that the average risk of the proxy group chosen is roughly the same as that of the applicant.⁴⁵ In particular, they note that Tampa Electric's decision to use S&P's credit ratings, which generally assigns the same rating to the subsidiary as the parent holding company, conceals the fact that the other five utilities in Tampa Electric's proxy group are, on average, significantly more risky than Tampa Electric. They explain that if Tampa Electric had instead used Moody's rating system, which separately rates the parent and subsidiary, then three of the five companies in Tampa Electric's proxy group would not have been selected because they are not within one notch of Tampa Electric. Thus, because these companies are riskier, protesters argue that they have a higher cost of capital.⁴⁶

24. Protesters also argue that to achieve the high ROE, Dr. Avera employed two alternative empirical analyses that have been rejected by the Commission. Seminole notes that the Commission previously determined that the best measure of investors' required ROE is the median of a properly performed DCF analysis using proxy companies that are truly comparable to the subject utility.⁴⁷ However, Seminole states that Dr. Avera used a DCF analysis for a group of 50 non-regulated, non-utility companies who are not comparable to Tampa Electric. Further, according to Seminole, Dr. Avera conducted a comparable earnings analysis using Value Line's projected earned

⁴² Seminole Protest at 3-4; Calpine Protest at 5.

⁴³ *Id.* (citing *Southern California Edison Co.*, 131 FERC ¶ 61,020, at P 21 (2010)).

⁴⁴ Seminole Protest at 4; Florida Municipal at 4; Calpine Protest at 5. Florida Municipal and Seminole submitted updated analysis based on recent market data.

⁴⁵ *See, e.g.*, Calpine Protest at 6.

⁴⁶ Seminole Protest at 6-8; Florida Municipal Protest at 8-9; Calpine Protest at 6-7.

⁴⁷ Seminole Protest at 12.

returns on book equity for the companies in his two electric utility proxy groups for the years 2010, 2011 and 2013-2015. Seminole asserts that the Commission has determined that allowable ROE should be market-oriented and based on the market-based DCF method, and thus the Commission has rejected the use of the comparable earning method.⁴⁸ Similarly, Calpine asserts that Tampa Electric has failed to provide sufficient information to permit the Commission or interested parties to verify that its proxy group has been selected in accordance with the Commission's requirements. It contends that further discovery will be necessary to determine whether the proxy group chosen by Tampa Electric is appropriate, and if not, what the appropriate proxy group should be.⁴⁹

25. Calpine also asserts that Tampa Electric's proposed formula rate is unduly discriminatory on its face because it would result in excessive rates for transmission customers. For example, under the proposed formula rate, Calpine states that it would be subject to a relatively high proportion of the increased revenue requirement, about 70 percent of the total increase in transmission rates paid by all point-to-point customers on Tampa Electric's transmission system. According to Calpine, this would amount to it paying more than \$3,300,000 per year in additional transmission charges.⁵⁰

26. Florida Municipal states that the formula rate proposed by Tampa Electric is a partially lagging formula rate. That is, six months into a calendar year, Tampa Electric will begin charging an estimated rate that is based on an annual transmission revenue requirement derived from cost data from Tampa Electric's FERC Form No. 1 annual report for the prior calendar year with adjustments for net transmission plant capital additions projected to be in service during the current calendar year.⁵¹ According to Tampa Electric, the annual transmission revenue requirement is "divided by the 12 coincident peak (12 CP) load" to determine the annual rate in dollars per megawatt.⁵² In accordance with Attachment H and Schedules 7 and 8 of the Tampa Electric tariff, the annual charge is divided by 12 to obtain the monthly rate. Tampa Electric states that a customer's monthly bill will be determined by multiplying the monthly rate by the customer's load coincident with the transmission system peak. Florida Municipal contends that, as a result, the divisor and the billing determinants do not match, and this

⁴⁸ *Id.* at 10-11.

⁴⁹ Calpine Protest at 6-7.

⁵⁰ *Id.* at 9.

⁵¹ *See, e.g.*, Tampa Electric Co., FERC Electric Tariff, Fourth Revised Volume No. 4, Original Sheet No. 113Y (defining "Projected ATRR").

⁵² Transmittal Letter at 6.

mismatch is likely to result in Tampa Electric over-recovering its costs and that over-recovery is not corrected in the true-up.⁵³ Accordingly, Florida Municipal argues that Tampa Electric's proposed formula rate is unjust and unreasonable.⁵⁴

27. According to Florida Municipal and Seminole, the Tampa Electric formula rate uses end-of-year account balances to determine the transmission plant in service included at line 15 of the formula rate. They argue that Tampa Electric does not discuss the use of end-of-year balances, or acknowledge the conflict with Commission regulations that require the use of thirteen-month average balances.⁵⁵ Florida Municipal contends that the Commission should direct Tampa Electric to modify its formula rate to comply with the requirement that companies use the average of thirteen monthly balances.

28. Protesters raise a number of additional issues with Tampa Electric's formula rate. For example, Seminole and Calpine argue that Tampa Electric's proposed depreciation rates are unsupported.⁵⁶ They also contend that the inclusion of acquisition adjustments in the formula rate is contrary to Commission policy.⁵⁷ Seminole argues that Tampa Electric's allocation of administrative and general expenses to transmission should exclude, among other things, all research, development, and demonstration expenses, consistent with Commission precedent.⁵⁸ Additionally, Seminole contends that the allocation of property taxes to transmission based on net plant is not appropriate.⁵⁹ Further, Florida Municipal and Seminole raise other issues concerning the proposed formula rate and argue that Tampa Electric's proposed rate increase contains a number of flaws, has not been justified, and, therefore, a five-month suspension is appropriate.⁶⁰

⁵³ Florida Municipal Protest at 14.

⁵⁴ *Id.* at 16.

⁵⁵ *Id.* at 17; Seminole Protest at 14 (citing *PSEG Power Connecticut, LLC*, 110 FERC ¶ 61,020, at P 32 (2005)).

⁵⁶ Seminole Protest at 14-15; Calpine Protest at 8.

⁵⁷ Seminole Protest at 16-17; Calpine Protest at 8-9.

⁵⁸ Seminole Protest at 21-22 (citing *South Carolina Elec. & Gas Co.*, 63 FERC ¶ 61,218 at 62,600 (1993)).

⁵⁹ *Id.* at 22-23.

⁶⁰ Florida Municipal Protest at 29; Seminole Protest at 33.

29. Florida Municipal and Seminole also raise a number of issues with Tampa Electric's formula rate implementation protocols. For instance, Florida Municipal states the protocols attempt to impermissibly restrict the review of Tampa Electric's implementation of the formula rate.⁶¹ For instance, Florida Municipal and Seminole argue that Tampa Electric attempts to bar an interested party from submitting a discovery request to ascertain whether the formula rate is just and reasonable, contrary to the Commission's policy.⁶² In addition, Florida Municipal asserts that the protocols do not correctly state Tampa Electric's burden of proof in a challenge to an annual update.⁶³ Florida Municipal and Seminole also argue the time periods for making preliminary and formal challenges are inadequate and inappropriately confined.⁶⁴ Florida Municipal further contends that while unclear, the protocols appear to restrict a party's statutory rights to bring a section 206 complaint to change the formula rate.⁶⁵

30. Additionally, Seminole states that Tampa Electric has not provided a procedure for resolving data disputes, which means that Tampa Electric can refuse to answer questions if it deems appropriate. Seminole recommends that a procedure be built into the protocols that permit customers to take discovery disputes to a Commission administrative law judge for prompt resolution. Florida Municipal and Seminole note that Tampa Electric gives itself the right to make a single issue filing to change its ROE or to add amortization/depreciation rates. Seminole states this is inappropriate and one-sided, and contend that if Tampa Electric makes a single issue filing, customers should not be limited in their legal rights to either challenging the proposed change or raising any other matter they deem appropriate in light of the section 205 change requested by the company.⁶⁶

⁶¹ Florida Municipal Protest at 19.

⁶² They note that the Commission requires customers to have the right to fully review inputs to a formula rate, including the prudence of cost inputs to a formula rate. Seminole Protest at 31 (citing *Virginia Electric & Power Co.*, 123 FERC ¶ 61,098, at P 45, 46 (2008)); Florida Municipal Protest at 19 (quoting *Public Service Electric & Gas Co.*, 124 FERC ¶ 61,303, at P 17 (2008)).

⁶³ Florida Municipal Protest at 22.

⁶⁴ *Id.* at 23-24; Seminole Protest at 30.

⁶⁵ Florida Municipal Protest at 25.

⁶⁶ Seminole Protest at 32; Florida Municipal Protest at 26.

B. Tampa Electric's Answer

31. Tampa Electric's response to the protests largely reiterates the points made in its initial filing and requests that the Commission reject the protesters' arguments and deny their requests. However, Tampa Electric states that it does not object to a nominal suspension of its proposed formula rate, establishing hearing and settlement judge procedures. Tampa Electric maintains that parties would benefit from the opportunity for information exchange and negotiation afforded by settlement judge procedures. However, Tampa Electric opposes a full five-month suspension and instead argues that its proposed formula rate should be suspended for a nominal period and allowed to go into effect subject to refund.⁶⁷

32. Tampa Electric disagrees with the protesters that the proposed ROE is excessive. Tampa Electric states that Dr. Avera concluded that an ROE of 11.25 percent for Tampa Electric is reasonable based on his examination of current capital market conditions and application of the Commission's DCF methodology to the proxy groups. Moreover, Tampa Electric reiterates that the 11.25 percent ROE falls within the 8.2 percent to 13.6 percent zone of reasonableness, and is supported by reference to alternative ROE benchmarks that consistently result in cost of equity estimates considerably above the DCF midpoints and medians for the regional proxy groups.⁶⁸

33. Also, Tampa Electric disputes Calpine's claim that the proposed formula rate is discriminatory or preferential because it would result in Calpine paying a relatively high proportion of the increased revenue requirement.⁶⁹ Tampa Electric notes that Calpine's share of the increased revenue requirement is proportionate to its share of the firm service. Thus, according to Tampa Electric, the proposed rate increase is simply a reflection of the amount of Calpine's firm capacity on Tampa Electric's transmission system, which is substantially higher than that of other firm customers.⁷⁰

34. Tampa Electric contends that the protesters assert incorrectly that its DCF analysis rests on stale data because Dr. Avera used market data for the six months ending in March 2010. Tampa Electric states that the practical requirement of preparing and assembling a detailed and complex filing necessitates that supporting analyses and

⁶⁷ Tampa Electric Answer at 3, 19-20.

⁶⁸ *Id.* at 4.

⁶⁹ *Id.* at 13.

⁷⁰ *Id.*

documentation be developed well before its submission to the Commission.⁷¹ Therefore, according to Tampa Electric, it was not possible to use the market data ending in June 2010 for the July 15, 2010 filing. Moreover, Tampa Electric argues that protesters' updated market data is limited to one portion of Dr. Avera's analysis, the ratings screen proxy group. It notes that the updated analysis fails to consider the DCF results for the broader regional proxy group or the alternative ROE benchmarks. Tampa Electric also asserts that the protesters present no valid economic basis on which to reject the result of Dr. Avera's alternative ROE benchmarks.⁷²

35. According to Tampa Electric, the protesters' argument that Tampa Electric's investment risks justify an ROE from the lower end of the range of reasonableness is misguided. Tampa Electric argues that the protesters provide no justification to discredit S&P's corporate credit ratings. It notes that S&P's corporate credit ratings are widely relied on by investors to provide an unbiased assessment of the overall investment risks of utilities, including the operating company subsidiaries of larger holding companies.⁷³ Moreover, Tampa Electric emphasizes that the protesters' own analysis of investment risks based on ratings by S&P, Fitch, and Moody's fails to distinguish between the investment risks of Tampa Electric and those of the utilities in Dr. Avera's proxy groups.⁷⁴

36. Regarding the argument that the proposed depreciation rates are unsupported, Tampa Electric states that the Commission should set the issue for hearing and settlement judge procedures, consistent with prior formula rate filings in which intervenors challenged a company's proposed depreciation rates.⁷⁵ Also, contrary to protesters' arguments, Tampa Electric contends that its proposed acquisition adjustments are justified. It notes that the acquisition adjustment of \$3.1 million for the Lake Agnes-Cane Island transmission line is authorized under the terms of the 2003 Settlement.⁷⁶ Similarly, Tampa Electric asserts that its acquisition adjustments for the Big Bend-Manatee and Pasco-Union Hall-Dade City transmission lines satisfy the Commission's policy that acquisition adjustments will be permitted if the acquisition provides

⁷¹ *Id.* at 5.

⁷² *Id.* at 8.

⁷³ *Id.* at 10.

⁷⁴ *Id.* at 10-11.

⁷⁵ *Id.* at 13-14.

⁷⁶ *See supra* note 10

measurable benefits to ratepayers. It also adds that the issue can be explored in the context of settlement judge procedures.⁷⁷

37. Tampa Electric also responds to additional issues concerning the proposed formula rate. For example, Tampa Electric asserts that its use of end-of-year account balances from FERC Form No. 1 rather than the thirteen-month average for plant balances prescribed by the Commission's regulations is reasonable because the Commission has routinely granted waivers of requirements that are inappropriate for formula rates.⁷⁸ It states that a waiver is called for in this instance. Tampa Electric contends that the proposed use of actual FERC Form No. 1 data from the prior year and projected capital additions from the current year, subject to true-up, will not result in over-recovery of costs or unavoidable inequities as the protesters assert. Also, contrary to Seminole's argument, Tampa Electric contends that its allocation of administrative and general expenses to transmission should not exclude all research, development, and demonstration (RD&D) expenses. Further, Tampa Electric states that the above issues, as well as any additional issues concerning the proposed formula rate and protocols may be addressed in settlement discussions.⁷⁹ Finally, Tampa Electric states that its allocation of property taxes to transmission based on net plant is appropriate.⁸⁰

III. Discussion

A. Procedural Matters

38. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

39. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept Tampa Electric's answer because it has provided information that assisted us in our decision-making process.

⁷⁷ *Id.* at 15.

⁷⁸ *Id.* at 15.

⁷⁹ *Id.* at 16-19.

⁸⁰ *Id.* at 18.

B. Commission Determination**1. Formula Rate/Hearing and Settlement Judge Procedures**

40. Tampa Electric's proposed revised tariff sheets establishing a cost-of-service formula rate for network service, point-to-point service, and ancillary services under OATT Schedule 1 raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

41. Our preliminary analysis indicates that Tampa Electric's proposed revised tariff sheets have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept Tampa Electric's filing, suspend it for a nominal period to become effective September 14, 2010, subject to refund, and set it for hearing and settlement judge procedures.⁸¹

42. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁸² If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁸³ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to

⁸¹ We will deny the protesters' requests for a five-month suspension. In *West Texas*, we explained that, when our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in that order, we would generally impose a nominal suspension. Here, our examination indicates that the proposed rates may not yield substantially excessive revenues. 18 FERC at 61,375.

⁸² 18 C.F.R. § 385.603 (2010).

⁸³ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

2. Other Revisions to the OATT

43. As discussed below, we will accept Tampa Electric's other proposed revisions to its OATT, subject to the condition that it submits a compliance filing with revised tariff sheets within 30 days of this order, as discussed in paragraph 50 below. As requested and consistent with Order No. 890-A, the tariff sheets containing Tampa Electric's proposed late study penalty revenue distribution methodology will be effective July 15, 2010. Tampa Electric's tariff sheets containing the remaining new and revised OATT provisions submitted in this filing will be effective September 14, 2010, as requested.

a. Unreserved Use Penalty and Late Study Penalty Provisions

44. In Order No. 890,⁸⁴ the Commission determined that transmission customers would be subject to unreserved use penalties in any circumstance where the transmission customer uses transmission service that it has not reserved and the transmission provider has a Commission-approved unreserved use penalty rate explicitly stated in its OATT.⁸⁵ In Order No. 890, the Commission stated that unreserved use penalties up to twice the relevant firm point-to-point rate are just and reasonable.⁸⁶ Therefore, we will accept Tampa Electric's proposed rate for unreserved use penalty based on a rate equal to 200 percent of the applicable rate for firm point-to-point service.

45. Also, in Order No. 890-A, the Commission clarified the process for distributing operational penalties.⁸⁷ The Commission explained that if a transmission provider elects to impose unreserved use penalties, it must submit to the Commission a tariff filing under section 205 of the FPA⁸⁸ stating the applicable unreserved use penalty rate. Also, each

⁸⁴ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁸⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 834, 838.

⁸⁶ *Id.* P 848.

⁸⁷ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 472.

⁸⁸ 16 U.S.C. § 824d (2006).

transmission provider must submit a one-time compliance filing under section 206 of the FPA detailing the transmission provider's methodology for distributing revenues from late study penalties and, if applicable, for distributing revenues from unreserved use penalties. This one-time compliance filing may be submitted at any time prior to the first distribution of operational penalties. We find that Tampa Electric's proposed methodology for distributing revenues from late study penalties and unreserved use penalties satisfies the requirements under Order Nos. 890 and 890-A.⁸⁹

b. Imbalance Surcharge Revenue Distribution Mechanism

46. In Order No. 890, the Commission determined that charges for both energy and generator imbalances would be based upon a tiered approach that reflects incremental costs. The Commission also required transmission providers to credit revenues in excess of incremental costs to all non-offending customers. As a result, the Commission directed transmission providers to develop, as part of their Order No. 890 compliance filings, a mechanism for crediting such revenues to all non-offending transmission customers (including affiliated transmission customers) and to the transmission provider on behalf of its own customers.⁹⁰

47. While Tampa Electric currently distributes accumulated imbalance penalty revenues only after they exceed \$100,000, it provides no mechanism for the revenues to be rolled over to the following year if those penalty revenues do not exceed the threshold in a given year. By not providing a rollover mechanism, Tampa Electric does not comply with the Order No. 890 requirement that all penalty revenues must be distributed.⁹¹ Thus, in the instant filing, Tampa Electric proposes to revise Schedules 4 and 9 to provide that if a distribution has not been made within the previous calendar year, a distribution will be made no later than April 1 of the following calendar year. We find that the proposed revisions in Schedules 4 and 9 satisfy the requirements under Order No. 890 and will accept Tampa Electric's proposed imbalance surcharge revenue distribution mechanisms.

⁸⁹ We note that Order Nos. 890 and 890-A did not specify the distribution methodology each transmission provider should employ, thus providing flexibility in the development of distribution methodologies. *Florida Power & Light Co.*, 127 FERC ¶ 61,115, at P 15 (2009).

⁹⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 663, 667, 727; *see Progress Energy, Inc.*, 125 FERC ¶ 61,006 (2008); *see also Progress Energy, Inc.*, 122 FERC ¶ 61,078 (2008).

⁹¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 727. *See supra* note 32.

c. Removal of Detailed Lists of Transmission Customers

48. Tampa Electric proposes to replace its detailed lists of transmission customers with references and a link to the Commission's website containing Tampa Electric's EQR. We find that this revision is consistent with or superior to the *pro forma* OATT because, as Tampa Electric states, referring interested parties to Tampa Electric's EQRs will reduce the burden on Tampa Electric, and on Commission staff.⁹² Thus, we will accept Tampa Electric's proposed revision to remove its detailed list of transmission customers.

d. Editorial Revisions

49. Tampa Electric proposes a number of editorial revisions to its OATT. We find that these revisions will not affect the substance of the OATT provisions or the rights of transmission customers. Therefore, we will accept these editorial revisions, with the modifications discussed below.

50. We note that Tampa Electric's revised tariff sheets contain some numbering errors that are inconsistent with the numbering provided in its baseline tariff filed with the Commission in Docket ER10-1508-000. For example, sheet nos. 38, 52, 77, 78, and 79 read as "First Revised Sheet No., Superseding Original Sheet No.," but according to Tampa Electric's baseline tariff, these sheets should read as "Second Revised Sheet No., Superseding First Revised Sheet No." Also Sheet No. 127 reads as "First Revised Sheet No. 127, Superseding Original Sheet No. 125;" this should read as "Second Revised Sheet No. 127, Superseding First Revised Sheet No. 127." Therefore, we will require Tampa Electric to make a compliance filing within 30 days of the date of this order to revise the errors in tariff sheet numbering.⁹³

3. Waivers

51. Tampa Electric requests any necessary waivers of section 35.13 of the Commission's regulations, including waivers of the requirements to submit full Period I and Period II data and workpapers and cost of service statements in sections 35.13(a)(2)(iv), 35.13(d)(1), (2), (5) and (6), and 35.13(h). The Commission may grant

⁹² See *Carolina Power & Light Co.*, 123 FERC ¶ 61,291, at P 23-24 (2008).

⁹³ Some of the tariff sheets with numbering errors are tariff sheets for which the Commission is establishing hearing and settlement judge procedures herein. We will not order a compliance filing for those particular sheets, but we note that after the termination of hearing and settlement judge procedures, those sheets will need to be corrected and resubmitted to the Commission.

waiver of our filing requirements under section 35.13, (with the exception of the attestation) to provide full Period I and Period II data, and 35.13(a)(2)(iv). The filing by Tampa Electric is to establish a formula rate using FERC Form No. 1 data and, therefore, it is not clear that full Period I and Period II data are needed to evaluate this proposal. Nonetheless, to the extent that parties at the hearing procedures can show the relevance of additional information needed to evaluate this proposal, the presiding judge may provide for appropriate discovery of such information.⁹⁴ We reject Tampa Electric's request for waiver of filing an attestation as required in 18 C.F.R. § 35.13(d)(6) (2010).⁹⁵ However, we will grant the remaining waivers consistent with our prior approval of formula rates.⁹⁶

The Commission orders:

(A) Tampa Electric's proposed formula rate is hereby accepted for filing and suspended for a nominal period, to become effective September 14, 2010, subject to refund, as discussed in the body of this order.

(B) Tampa Electric's proposed tariff sheets containing the late study penalty revenue distribution are hereby accepted for filing, to become effective July 15, 2010, as discussed in the body of this order.

(C) Tampa Electric's remaining proposed tariff sheets are hereby accepted for filing, to become effective September 14, 2010, subject to a compliance filing, as discussed in the body of this order.

(D) Tampa Electric is ordered to make a compliance filing with revised tariff sheets within 30 days of this order, as discussed in the body of the order.

(E) Tampa Electric's request for waiver of the requirements of section 35.13 to provide full Period I and Period II data, and waiver of sections 35.13(a)(2)(iv), 35.13(d)(1), (2) and (5), and 35.13(h) is hereby granted, as discussed in the body of this order.

⁹⁴ *Allegheny Power System Operating Cos.*, 111 FERC ¶ 61,308, at P 56 (2005), *order on reh'g*, 115 FERC ¶ 61,156 (2006); *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 (2009).

⁹⁵ *Trans Allegheny Interstate Line Co.* 119 FERC ¶ 61,219, at P 57 (2007); *Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 79 (2007); *Commonwealth Edison Co. and Commonwealth Edison Co. of Indiana, Inc.*, 119 FERC ¶ 61,238 (2007).

⁹⁶ *Allegheny Power System Operating Cos.*, 111 FERC ¶ 61,308, at P 56, *order on reh'g*, 115 FERC ¶ 61,156.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning Tampa Electric's revised tariff sheets. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (G) and (H) below.

(G) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(H) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(I) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.