

ORDER ON PROPOSED MITIGATION MEASURES AND COMPLIANCE FILINGS

(Issued November 17, 2005)

1. In this order, the Commission conditionally accepts Tampa's¹ proposal to mitigate the presumption of generation market power in the control areas of Tampa Electric and Reedy Creek Improvement District (Reedy Creek), to become effective May 14, 2005, subject to Commission acceptance of the compliance filing directed herein.
2. Also in this order, the Commission accepts: (1) the generation market power analysis for Tampa's directly-interconnected first-tier control areas excluding Reedy Creek; (2) data from the Florida Open Access Same-Time Information System (Florida OASIS) to support the transmission import proxy that Tampa relied on for its market power analysis; and (3) revisions to Tampa's market-based rate tariffs to incorporate the Commission's change in status reporting requirement.

I. Background

3. On March 24, 2005, March 25, 2005, and May 2, 2005, Tampa submitted separate compliance filings (March 24 Compliance Filing, March 25 Compliance Filing, and May 2 Compliance Filing, respectively) in response to the Commission's order on Tampa's updated market power analysis issued on March 3, 2005,² which Tampa submitted in compliance with the Commission's order issued on May 13, 2004.³
4. Tampa's generation market power analysis indicated that, among other things,

¹ Tampa Electric Company (Tampa Electric) submitted this filing on behalf of itself and its affiliates, which included the following: Panda Gila River, L.P. (Panda Gila), Union Power Partners, L.P. (Union), TECO EnergySource, Inc. (EnergySource), Commonwealth Chesapeake Company, L.L.C. (Commonwealth), TPS Dell, LLC (Dell), TPS McAdams, LLC (McAdams), and TECO-PANDA Generating Company, L.P. (TECO-PANDA), (collectively, Tampa). Panda Gila, Union and Commonwealth are no longer affiliated with Tampa Electric. Commonwealth filed correspondence in Docket No. EL05-68-000 requesting that it be removed from this proceeding, which is addressed below. Dell, McAdams and TECO-PANDA cancelled their market-based rate tariffs.

² *Tampa Electric Co.*, 110 FERC ¶ 61,206 (2005) (March 3 Order), *reh'g denied*, 111 FERC ¶ 61,373 (2005) (June 8 Order).

³ *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order). The May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004 and clarified on July 8, 2004. *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

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 Federal Power Act (FPA)⁴ and establishes a rebuttable presumption of market power in the section 206 proceeding.⁵ 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. The Commission also established a refund effective date pursuant to the provisions of section 206 of the FPA.

5. For the Tampa Electric and Reedy Creek control areas, Tampa was directed to: (1) file a Delivered Price Test analysis; (2) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that it would adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates.⁶

6. In addition to addressing Tampa's failure of the wholesale market share screen, the Commission directed Tampa to: (1) file data to support its transmission import proxy relied on in conducting the indicative screens for Tampa Electric's first-tier control areas excluding Reedy Creek; (2) file a revised generation market power analysis for its first-tier control areas excluding Reedy Creek using nameplate capacity and submit the relevant work papers and documentation; and (3) revise its market-based rate tariffs to incorporate the change in status reporting requirement adopted in Order No. 652.⁷

A. March 24 Compliance Filing

7. Tampa's March 24 Compliance Filing included revisions to its market-based rate tariffs to incorporate the change in status reporting requirement as directed in the March 3 Order.

B. March 25 Compliance Filing

8. Tampa's March 25 Compliance Filing included revised screens incorporating nameplate capacity and associated documentation, and data to support the transmission

⁴ 16 U.S.C. § 824e (2000).

⁵ April 14 Order, 107 FERC ¶ 61,018 at P 201.

⁶ *Id.* at P 201, 207-09.

⁷ *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).

import proxy for the directly interconnected first-tier control areas to Tampa Electric excluding Reedy Creek as directed in the March 3 Order.

C. August 12 Commission Data Request

9. On August 12, 2005, the Director, Division of Tariffs and Market Development – South, acting pursuant to delegated authority, issued a data request seeking additional information relating to Tampa’s March 24 and March 25 Compliance Filings.

10. On August 18, 2005, Panda Gila and Union filed its response to the data request regarding the change in status reporting requirement. On September 12, 2005, Tampa filed its response to the data request regarding the Florida OASIS data and the change in status reporting requirement. On October 5, 2005, Tampa filed additional information it argues is responsive to the data request. In particular, Tampa states that the data previously submitted was anomalous in that it results in Reedy Creek being unable to serve its own load in certain seasons. Tampa states it performed a simultaneous import capability study and that, when the new import amounts are incorporated in the indicative screens, Tampa passes the screens in the Reedy Creek control area.

D. Tampa’s Mitigation Proposal

11. Tampa’s May 2 Compliance Filing contains Tampa’s mitigation proposal. In this filing, Tampa informs the Commission that if the Commission does not find that the information Tampa has submitted to date in response to the March 3 Order is sufficient to rebut the presumption of market power, then it proposes tailored mitigation to mitigate market power in the Tampa Electric and Reedy Creek control areas. Tampa continues to maintain, however, that it does not have market power in either control area.

1. Mitigation Proposal for Tampa Electric Control Area

12. Tampa commits that it will not make any sales within the Tampa Electric control area without first receiving authorization of the transaction from the Commission. Tampa states that this commitment will apply only to wholesale loads physically connected to the Tampa Electric transmission system, and will not apply to its two wholesale customers that are dynamically scheduled as part of the Tampa Electric control area.

2. Mitigation Proposal for Reedy Creek Control Area

13. For the Reedy Creek control area, Tampa proposes to mitigate only the winter season because in Tampa’s initial screen analysis that was the only season for which Tampa failed the wholesale market share screen. For these sales, Tampa Electric commits that it will make short-term sales to Reedy Creek in the winter season at the currently-effective cost-based rates in Service Schedule B of First Revised Rate Schedule FERC No. 54 on file with the Commission. Tampa states that Service Schedule B rates

are updated annually and were last updated on April 29, 2005.⁸ Tampa states that because the Commission has already accepted these rates and found them to be just and reasonable, they would be effective at eliminating any potential market power concerns. Furthermore, because the rate schedule allows the parties to negotiate rates up to the specified maximum charges, Tampa submits that the mitigation proposal will permit Reedy Creek to benefit from rates below the cost-justified maximum rate when market conditions permit. Tampa commits that, other than the short-term sales described above, it will not sell to Reedy Creek without first receiving authorization of the transaction from the Commission. Tampa states that, because only Tampa Electric is party to the Reedy Creek contract, Tampa Electric affiliates also commit that they will not sell capacity or energy into the Reedy Creek control area without first receiving authorization from the Commission.

3. Tampa's Arguments Regarding Lack of Market Power

14. In its May 2 Compliance Filing, Tampa reiterates arguments made earlier in this proceeding to demonstrate that it does not have market power. For the Tampa Electric control area, Tampa states that there are no wholesale loads physically connected to the Tampa Electric transmission system. While Tampa does provide service to two wholesale customers (with total load of approximately 25 MW), it states that these customers are physically located in the Progress Energy Florida (Florida Power) system and are electronically included in Tampa Electric's control area via dynamic scheduling. According to Tampa, these wholesale customers receive network transmission service from Florida Power. Tampa further notes that one of these customers has announced it will use a new supplier, the Florida Municipal Power Agency, at the expiration of its current contract with Tampa. Hence, Tampa states that it has no market power with respect to wholesale loads within the Tampa control area, and that these customers have ample supply options. For the Reedy Creek control area, Tampa states the wholesale load is small and can be easily met by the uncommitted capacity located in Florida. Tampa states that Reedy Creek has suppliers other than Tampa Electric, including Florida Power.

15. In addition, Tampa included a new and revised wholesale market share screen in its May 2 Compliance Filing. Tampa states that, with the inclusion of second-tier utilities in the revised wholesale market share screen, Tampa does not have market power with respect to the Reedy Creek control area. Tampa then states that, even if Tampa did not pass this screen, it does not have market power because Reedy Creek has other potential suppliers. Tampa submits as evidence of this an email message from a representative of Reedy Creek dated March 23, 2005, which notes two solicitation processes, one in 1998 (where Reedy Creek received seven bids) and one in 2004 (where Reedy Creek received five bids), in which Reedy Creek did not select Tampa Electric's bids. Tampa argues that

⁸ *Tampa Electric Co.*, Docket No. ER05-901-000 (June 22, 2005) (unpublished letter order).

the fact that Reedy Creek can, and does, select suppliers other than Tampa clearly demonstrates that Tampa does not have market power in the Reedy Creek control area.

II. Notice of Filing and Responsive Pleadings

16. Notice of Tampa's March 24 Compliance Filing was published in the *Federal Register*, 70 Fed. Reg. 17,441 (2005), with comments, interventions, and protests due on or before April 14, 2005. None was filed.

17. Notice of Tampa's March 25 Compliance Filing was published in the *Federal Register*, 70 Fed. Reg. 18,387 (2005), with comments, interventions, and protests due on or before April 15, 2005. None was filed.

18. Notice of Tampa's May 2 Compliance Filing was published in the *Federal Register*, 70 Fed. Reg. 25,564 (2005), with comments, interventions, and protests due on or before May 23, 2005. None was filed.

19. Notice of Panda Gila and Union's August 18 response to the data request was published in the *Federal Register*, 70 Fed. Reg. 51,351 (2005), with comments, interventions, and protests due on or before September 8, 2005. None was filed. Notice of Tampa's September 12 response to the data request was published in the *Federal Register*, 70 Fed. Reg. 57,590 (2005), with comments, interventions, and protests due on or before October 11, 2005. None was filed.

20. Notice of Tampa's October 5 filing was published in the *Federal Register*, 70 Fed. Reg. 61,279 (2005), with comments, interventions, and protests due on or before October 26, 2005. None was filed.

III. Discussion

A. March 24 and March 25 Compliance Filings

21. The Commission concludes that, with the additional submittals, which include data to support the transmission import proxy and revised screens using nameplate capacity, Tampa satisfies the Commission's generation market power standard for market-based rate authority in the directly interconnected first-tier control areas excluding Reedy Creek.

22. Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Panda Gila and Union's revised tariffs that include the change in status reporting requirement were recently accepted by the Commission.⁹ Similarly, the

⁹ *Gila River Power, L.P.*, Docket No. ER05-1178-000 (October 28, 2005) (unpublished letter order).

required revisions with regard to Commonwealth have been accepted by the Commission.¹⁰ The notices of cancellation of the market-based rate tariffs of Dell, McAdams, and TECO-PANDA were accepted by the Commission and therefore no tariff revision is required.¹¹ In the instant proceeding, the Commission accepts revisions to the tariffs of Tampa Electric and EnergySource to include the change in status reporting requirement.¹² We note that Tampa Electric has another tariff, a “short-form” market-based rate tariff designated as Original Volume No. 6, which has not been updated to include the change in status reporting requirement or the market behavior rules required by the Commission.¹³ Tampa Electric is directed to revise this tariff accordingly within 30 days of the date of this order.

23. Further, the Commission terminates the section 206 proceeding instituted in Docket No. EL05-68-000 with regard to Commonwealth, Panda and Union. Since Commonwealth, Panda and Union are no longer affiliated with Tampa Electric and are not located in Florida, there is no further need to include them in this section 206 proceeding.¹⁴

B. Tampa’s Mitigation Proposal

24. In the April 14 Order, the Commission adopted default rates tailored to three distinct products. Sales of power of one week or less must be priced at the applicant’s incremental cost plus a 10 percent adder. Sales of power of more than one week but less

¹⁰ *Commonwealth Chesapeake Co., LLC*, Docket No. ER05-991-000 (August 12, 2005) (unpublished letter order).

¹¹ *TPS Dell, LLC*, 112 FERC ¶ 61,272 (2005). In that order, the Commission also terminated the section 206 proceeding in Docket No. EL05-68-000 with regard to these three entities.

¹² Tampa Electric, FERC Electric Tariff, First Revised Volume No. 5, Substitute Original Sheet No. 19A; EnergySource, FERC Electric Tariff, Original Volume No. 1, Substitute First Revised Sheet No. 1.

¹³ *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). The Commission accepted the “short-form” market-based rate tariff in 2001. *Tampa Electric Co.*, Docket No. ER01-2185-000 (July 23, 2001) (unpublished letter order).

¹⁴ The Commission authorized the disposition of jurisdictional facilities associated with Commonwealth on March 22, 2005 in *TPF Chesapeake, LLC*, 110 FERC ¶ 62,291 (2005), and the transfer was consummated on April 14, 2005. The Commission authorized the disposition of jurisdictional facilities associated with Panda Gila and Union on January 24, 2005 in *LenderCo*, 110 FERC ¶ 61,044 (2005), and the transfer was consummated on June 1, 2005.

than one year will be priced at an embedded cost “up to” rate reflecting the costs of the unit(s) expected to provide the service. All long-term sales (one year or more) into any market where the applicant has market power must be priced on an embedded cost of service basis and each such contract will be filed with the Commission for review and approval prior to the commencement of service. The Commission stated that it will set the just and reasonable rate at the default rate unless it approves different cost-based rates for that applicant based on case-specific circumstances.¹⁵

25. An applicant that fails the initial screens has several options at its disposal. An applicant may choose to contest the screen failure by filing a DPT. An applicant may also file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power, propose to use an existing cost-based rate on file with the Commission, propose a new cost-based rate, or adopt the default cost-based rates as set forth in the April 14 Order.

26. Tampa’s proposed rates primarily differ from the default cost-based rates in that they do not differentiate sales for less than a year between those that are less than one week and those that are between one week and one year.

27. As discussed below, the Commission conditionally accepts, as modified below, Tampa’s mitigation proposal, to become effective May 14, 2005, subject to Commission acceptance of the compliance filings directed herein. In addition, Tampa Electric and EnergySource are directed, within 30 days of the date of this order, to state that they accept the modifications to their mitigation proposal.

1. Tampa’s Arguments Regarding Lack of Market Power

28. As an initial matter, we are not persuaded by Tampa’s resubmitted arguments (that there are no wholesale loads physically connected to the Tampa Electric transmission system, and that Reedy Creek has a small load and many supply options) regarding why, even though it failed the wholesale market share screen, it should not have to mitigate generation market power in the Tampa Electric and Reedy Creek control areas. We note that Tampa raised these same arguments in its rehearing request of the March 3 Order. The Commission considered and rejected these arguments in the June 8 Order denying rehearing, stating, among other things, that this evidence was not sufficient to rebut the presumption of market power on its own.¹⁶ The Commission, therefore, rejects Tampa’s attempt to raise these arguments yet again in its May 2 Compliance Filing.

29. However, we stated in the March 3 Order that we would further examine the information Tampa submitted in conjunction with other evidence submitted in the section

¹⁵ April 14 Order, 107 FERC ¶ 61,018 at P 148.

¹⁶ *Tampa Electric Co.*, 111 FERC ¶ 61,373 at P 13 (2005).

206 proceeding.¹⁷ Tampa did submit additional evidence with respect to the Reedy Creek area. Therefore, consistent with the March 3 Order, we will consider this new evidence below in conjunction with the evidence submitted previously for the Reedy Creek control area.

2. Mitigation Proposal for Tampa Electric Control Area

30. As Tampa correctly notes, the Commission allows applicants the option to propose case-specific mitigation.¹⁸ Tampa states that it will seek prior Commission authorization for any sale into the Tampa Electric control area. Tampa states that this will ensure that the Commission has the opportunity to approve the rates of Tampa prior to any power sales to loads within the Tampa Electric control area, thus eliminating any market power concerns. Tampa proposes to exclude two dynamically scheduled customers.

31. Although it is not clear from Tampa's submittal, we interpret Tampa's proposal to be that such sales will be made at cost-based rates, and we accept Tampa's proposal on the condition that any such sales will be cost-justified.¹⁹ Because Tampa commits that it will not make any sales without first receiving authorization of the transaction from the Commission, the Commission will determine at that time if the rates are just and reasonable. While we accept Tampa's commitment to seek prior Commission authorization for any sale into the Tampa Electric control area, we reject Tampa's proposal to exclude two dynamically scheduled customers from this commitment. The two wholesale customers that are dynamically scheduled as part of Tampa Electric's control area are electronically included in Tampa Electric's control area.²⁰ Accordingly, as long as these customers, or any others, are dynamically scheduled as part of the Tampa Electric control area, they must be covered by any mitigation applicable to that control area. Similarly, if a customer that is physically located outside of Tampa Electric's control area ceases to be dynamically scheduled as part of the Tampa Electric control area, that customer will no longer be covered by any mitigation applicable to the Tampa Electric control area. On this basis, the Commission's acceptance of Tampa's mitigation proposal is conditioned upon its application to any wholesale customer in the Tampa Electric control area including Tampa's two customers that are dynamically scheduled. Accordingly, Tampa Electric and EnergySource are directed, within 30 days of the date of this order, to state that they accept these modifications to Tampa's mitigation proposal.

¹⁷ March 3 Order, 110 FERC ¶ 61,206 at P 25.

¹⁸ April 14 Order, 107 FERC ¶ 61,018 at P 148.

¹⁹ *Id.* at P 155.

²⁰ The Commission stated in Order No. 888 that dynamic scheduling electronically moves load out of the control area in which it is physically located and into another control area. Order No. 888 at 31,709-10.

32. We conditionally accept Tampa's mitigation proposal for filing for the Tampa Electric control area, with the modifications discussed above, to become effective May 14, 2005,²¹ subject to Commission acceptance of the compliance filing directed herein.²² We direct Tampa Electric and EnergySource to file, within 30 days of the date of this order, revised market-based rate tariffs prohibiting sales into the Tampa Electric control area.²³

33. Since Tampa incorrectly presumed that its dynamically scheduled customers would not be subject to its proposed mitigation for future sales in the Tampa Electric control area, we will allow Tampa to propose other mitigation that will be applicable prospectively with respect to the dynamically scheduled customers. To the extent Tampa wishes to make such a proposal, it is directed to do so within 30 days.

3. Alternative Evidence/Revised Screen for Reedy Creek Control Area

34. We are not persuaded by Tampa's argument that it does not have market power in the Reedy Creek control area because there are other potential suppliers for that control area. Nor do we find that the revised wholesale market share screen submitted by Tampa supports its contention that it lacks generation market power in the Reedy Creek control area.

35. As noted above, to support its argument Tampa submitted an e-mail from Reedy Creek identifying two procurement processes that resulted in Reedy Creek choosing alternate suppliers. We find that an informal e-mail from a Reedy Creek employee does not constitute sufficient evidence to rebut the presumption of market power in the Reedy Creek control area. We find that Tampa did not present a full, accurate picture of the supply conditions in the Reedy Creek control area. Likewise, Tampa's assertion that, because Reedy Creek twice chose alternate suppliers, Tampa did not exert market power in past periods, does not address the Commission's concern as to whether a utility has the potential to exercise market power at this time. The two procurement processes for partial requirements referenced by Tampa do not necessarily reflect the full extent of wholesale transactions in the Reedy Creek control area. Although information regarding solicitation processes is the type of evidence the Commission will consider when considering historical sales, Tampa has not provided us with sufficient information to

²¹ See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *order on reh'g*, 61 FERC ¶ 61,089 (1992).

²² The Commission will terminate the instant 206 proceeding upon finding that Tampa has met the conditions set forth in this order.

²³ This directive applies to both of Tampa Electric's market-based rate tariffs.

assess how representative these activities, one of which apparently was an informal process, are of competition in the market as a whole in the Reedy Creek control area.

36. Further, Tampa's assertions that, while Reedy Creek has only 178 MW of peak load, there is over 8,000 MW of uncommitted capacity in the surrounding areas to meet Reedy Creek's load, are not supported. Tampa has provided no evidence of the actual availability and deliverability of the supplies to Reedy Creek. We have evaluated the new evidence, in conjunction with the previously submitted arguments as to the assertion that the wholesale load in Reedy Creek is small and can be easily met by the uncommitted capacity located in Florida, and find that it is not sufficient to rebut the presumption of market power established by the failure of the wholesale market share screen.

37. We also find that the revised wholesale market share screen for the Reedy Creek control area submitted by Tampa in the May 2 Compliance Filing is outside the scope of the compliance filing directed by the March 3 Order. Compliance filings must be limited to the specific directives in the Commission's order; their only purpose is to make the directed revisions, and the sole issue in reviewing them is whether they comply with these directives.²⁴ The Commission directed Tampa to file a DPT analysis or a mitigation proposal. The Commission did not provide the option to Tampa of filing a new indicative screen for either of the control areas that are subject to the instant 206 proceeding.

38. However, even if we were to consider the revised wholesale market share screen submitted by Tampa, we find that revised wholesale market share screen to be flawed. Tampa impermissibly incorporated suppliers from Florida Power & Light Company and Seminole Electric Cooperative, control areas second-tier to the Reedy Creek control area, as available to compete in the Reedy Creek control area. We find that this inclusion represents an erroneous interpretation by Tampa of the Commission's April 14 Order. In the April 14 Order, the Commission stated that we would only consider those supplies that are located in the control area being considered (relevant market) and those in first-tier control areas to the relevant market.²⁵ The Commission also stated that only those control areas directly interconnected with the relevant market should be included in calculations of simultaneous import capability.²⁶ We find that, once these errors are corrected in Tampa's revised wholesale market share screen, the screen shows Tampa

²⁴ See, e.g., *Union Light, Heat and Power Company*, 111 FERC ¶ 61,341 at P 11 (2005) and *Pacific Gas and Electric Company*, 109 FERC ¶ 61,336 at P 5 (2004).

²⁵ April 14 Order, 107 FERC ¶ 61,018 at P 73.

²⁶ *Pinnacle West Capital Corp.*, 109 FERC ¶ 61,295 at P 19.

with a market share of between 36 and 71 percent in all seasons in the Reedy Creek control area.²⁷

4. Mitigation Proposal for Reedy Creek Control Area

39. Tampa submitted a mitigation proposal for the Reedy Creek control area, proposing to use a currently effective cost-based rate²⁸ for short-term sales into the Reedy Creek control area and to seek prior Commission authorization for long-term sales. We note that Tampa defines short-term sales as sales with a duration of one year or less. This definition, however, is inconsistent with the April 14 Order, in which the Commission required long-term mitigation to apply to sales of one year or longer and short-term sales to apply to sales of less than one year.²⁹ Accordingly, our acceptance of Tampa's mitigation proposal for short-term sales into the Reedy Creek control area is conditioned on that proposal applying to sales of less than one year. Similarly, we accept its commitment to seek prior authorization for long-term sales to the extent that such commitment applies to sales of one year or longer. Further, we interpret Tampa's proposal to be that such sales will be made at cost-based rates and we accept Tampa's proposal on the condition that any such sales will be cost-justified. Accordingly, Tampa Electric and EnergySource are directed, within 30 days of the date of this order, to state that they accept these modifications to Tampa's mitigation proposal.

40. Further, Tampa's proposal to limit the mitigation in the Reedy Creek control area to the winter season only is misplaced. As discussed above, the winter season is not the only season in which Tampa's market share exceeds 20 percent. While the Commission conditionally accepts Tampa's proposal for the winter season, we direct Tampa to submit a filing within 30 days of the date of this order to inform the Commission as to whether it wishes to extend its current proposal to the other three seasons, or whether it wishes to accept the default cost-based rates or other cost-based rates for the other three seasons. Alternatively, Tampa may file a DPT analysis for the Reedy Creek control area, if it chooses. The refund effective date of this section 206 proceeding remains in place until the Commission takes final action on all unresolved issues herein.

41. Therefore, we conditionally accept Tampa's mitigation proposal for the Reedy Creek control area, with the modifications discussed above, to become effective May 14,

²⁷ This result was obtained by adjusting Tampa's wholesale market share screen to reflect the fact that the import amount for the Reedy Creek should be divided *pro rata* among suppliers located in the Tampa Electric and Florida Power control areas only.

²⁸ Service Schedule B of Tampa Electric's First Revised Rate Schedule FERC No. 54. Service Schedule B contains a formula rate.

²⁹ April 14 Order, 107 FERC ¶ 61,018 at P 40.

2005,³⁰ subject to Commission acceptance of the compliance filing directed herein.³¹ We direct Tampa Electric and EnergySource to file, within 30 days of the date of this order, revised market-based rate tariffs prohibiting sales into the Reedy Creek control area.³²

C. Waivers and Reporting Requirements

42. As we stated in the April 14 Order, where, as here, an applicant adopts cost-based rates in order to mitigate the presumption of market power, we will no longer waive our otherwise applicable accounting regulations (e.g., Parts 41, 101, and 141 of the Commission's regulations),³³ and we will not grant blanket approval for issuances of securities or assumptions of liability pursuant to Part 34 of the Commission's regulations for the applicant and its affiliates.³⁴

43. The Commission requires entities that make power sales to submit an electric quarterly report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for all jurisdictional services, including market-based and cost-based power sales and transmission services; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) power sales during the most recent calendar quarter.³⁵

44. Tampa Electric and EnergySource are directed to file an updated market power analysis within three years of the date of this order. The Commission reserves the right to require such an analysis at any time.

³⁰ See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *order on reh'g*, 61 FERC ¶ 61,089 (1992).

³¹ The Commission will terminate the instant 206 proceeding upon finding that Tampa has met the conditions set forth in this order.

³² This directive applies to both of Tampa Electric's market-based rate tariffs.

³³ April 14 Order, 107 FERC ¶ 61,018 at P 150.

³⁴ *Id.*

³⁵ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001.

The Commission orders:

(A) Tampa's mitigation proposals for Tampa Electric and Reedy Creek control areas are conditionally accepted, as modified herein, to be effective May 14, 2005, as discussed in the body of the order, subject to Commission acceptance of the compliance filings directed in Ordering Paragraphs (C) and (D).

(B) Tampa Electric and EnergySource are directed, within 30 days of the date of this order, to state that they accept the modifications to Tampa's mitigation proposal, as discussed in the body of this order.

(C) Tampa Electric and EnergySource are directed, within 30 days of the date of this order, to inform the Commission as to whether they wish to extend Tampa's current mitigation proposal for the Reedy Creek control area to the other three seasons, to accept the default cost-based rates or other cost-based rates for the other three seasons, or to file a DPT analysis for the Reedy Creek control area as discussed in the body of this order.

(D) Tampa Electric and EnergySource are directed, within 30 days of the date of this order, to revise their market-based rate tariffs to prohibit sales at market-based rates in the Tampa Electric and Reedy Creek control areas.

(E) Tampa's March 24 and March 25 Compliance Filings regarding its first-tier control areas excluding Reedy Creek are accepted for filing.

(F) 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.

(G) The section 206 proceeding in Docket No. EL05-68-000 is terminated with regard to Commonwealth, Panda Gila and Union, as discussed in the body of this order.

(H) Tampa Electric's and EnergySource's next updated market power analysis is due within three years of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.