

169 FERC ¶ 61,081
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Tampa Electric Company

Docket No. ER19-2439-000

ORDER ON REQUEST FOR WAIVER OF AFFILIATE PRICING RULES

(Issued October 30, 2019)

1. On July 23, 2019, as supplemented on September 18, 2019, Tampa Electric Company (Tampa) filed a request for waiver of sections 35.44(b)(1)¹ and 35.39(e)(1)² of the Commission’s regulations to permit Tampa to provide non-power goods and services to non-utility affiliates and/or market-regulated power sales affiliates at cost, rather than at the higher of cost or market price. In this order, we grant the requested waiver, effective January 1, 2020, as requested.

I. Background

2. Tampa states that it is a franchised public utility operating within the state of Florida. Tampa explains that it has two business segments: its Tampa Electric division, engaged in the generation, purchase, transmission, distribution and wholesale and retail sale of electric energy, and Peoples Gas System, engaged in the exploration for or production of natural gas.

¹ 18 C.F.R. § 35.44(b)(1) (2019) (“Unless otherwise permitted by Commission rule or order, and except as permitted by paragraph (b)(4) of this section, sales of any non-power goods or services by a franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, including sales made to or through its affiliated exempt wholesale generators or qualifying facilities, to a market-regulated power sales affiliate or non-utility affiliate must be at the higher of cost or market price.”).

² 18 C.F.R. § 35.39(e)(1) (2019) (“Unless otherwise permitted by Commission rule or order, sales of any non-power goods or services by a franchised public utility with captive customers, to a market-regulated power sales affiliate must be at the higher of cost or market price.”).

3. Tampa states that its Tampa Electric division owns approximately 6,121 megawatts (MW) of generation. Tampa further states that open access to its Tampa Electric division transmission system is provided pursuant to the company's Open Access Transmission Tariff.³

4. On October 18, 2013, Tampa's parent company TECO Energy, Inc. (TECO) established TECO Services, Inc. (TECO Services) as a centralized service company within the TECO holding company system in anticipation of TECO's acquisition of New Mexico Gas Company. As a result of the transaction, TECO and its subsidiaries, including Tampa, could no longer rely on the single-state holding company exemption from the Commission's affiliate pricing regulations.⁴ Effective January 1, 2015, Tampa transferred to TECO Services the bulk of the non-power goods and services that Tampa had historically provided to its affiliates at cost.⁵

5. Effective January 1, 2020, TECO intends to engage in a corporate reorganization in which TECO Services will be dissolved and the non-power goods and services it provided it will be transferred to and thereafter provided by Tampa. According to Tampa, TECO and Tampa are undertaking this reorganization in order to simplify their collective corporate structure, and thereby reduce overhead and capture efficiency benefits associated with housing the provision of non-power goods and services within the TECO family under "one roof."⁶

6. Tampa states that the following non-power goods and services currently being provided to affiliates will be transferred from TECO Services to Tampa: financial reporting and corporate accounting; insurance risk management; energy risk

³ *Tampa Electric Co.*, Docket No. ER10-1508-000 (August 12, 2010) (delegated order).

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

⁵ TECO and Tampa sought waiver of 18 C.F.R. § 35.44(b)(1) effective with the January 1, 2015 transition of TECO from a single-state to a multi-state holding company so that it could continue to sell certain non-power goods and services to affiliates at cost, which the Commission granted. *TECO Energy, Inc.*, 149 FERC ¶ 61,294 (2014) (2014 Waiver Order).

⁶ Tampa July 23, 2019 Filing at 5.

management; corporate audit/ethics and compliance; corporate safety; treasury; legal; claims; governmental affairs; corporate taxes; information technology; human resources; employee benefits; procurement; corporate communications; accounts payable; and corporate security and emergency management.⁷ Tampa states that it will provide these non-power goods and services only to affiliates and not to any third parties except as may be necessary as part of providing transition services in the event of a divestiture of any part of TECO's current business.⁸ As a result, Tampa explains that it is not forgoing profits by providing non-power goods and services to affiliates at cost.

7. In addition, Tampa states that its sales of non-power services to affiliates are, and will continue to be, subject to Florida Public Service Commission (Florida Commission) oversight following the transition of the TECO Services non-power goods and services to Tampa. Tampa explains that this oversight expressly includes non-power services and requires an annual report to the Florida Commission detailing inter-affiliate transactions. Tampa also states that the Florida Commission routinely audits Tampa and, during rate cases, undertakes a full review of its cost-allocation procedures.⁹ Tampa further explains that it will maintain rigorous accounting and cost-allocation procedures for the purpose of determining the costs of non-power goods and services provided to affiliates, specifically those procedures currently used by TECO Services.

8. In response to questions from Commission staff, Tampa filed a supplement to its July 23, 2019 filing. Tampa explains that, subsequent to the 2014 Waiver Order, on July 1, 2016, it was indirectly acquired by Emera Inc. (Emera) and, shortly thereafter, began selling certain non-power goods and services to some of its new affiliates within the Emera system. Tampa states that these sales were priced at cost consistent with the 2014 Waiver Order. Tampa notes that it filed a notice of change in status pursuant to section 35.42(a)(2) of the Commission's regulations but, in that filing, failed to reference the 2014 Waiver Order. Tampa requests that, to the extent necessary, its notice of change in status be considered amended by the present filing to satisfy the notice of change in circumstances requirements of the 2014 Waiver Order. Tampa also clarifies that it

⁷ *Id.* at 5-6.

⁸ Tampa states that, on occasion, when TECO has divested a subsidiary, the goods or services formerly provided to the divested affiliate have been offered to the affiliate's purchaser, under a separate contract, for a limited transitional period (typically, three to six months). Tampa states that these transitional services are provided at cost, and are confined to what is needed for the transition, within the scope of what had been provided to the former affiliate before the divestiture. Tampa states that these types of transition arrangements are common during the divestiture of affiliated entities. *Id.* at 11 & n.36.

⁹ *Id.* at 10-11.

requests waiver of section 35.39(e)(1), which contains an affiliate transaction pricing rule similar to, but more narrow than, the affiliate transaction pricing rule in section 35.44(b)(1).¹⁰

II. Notice of Filing

9. Notice of Tampa's July 23, 2019 filing was published in the *Federal Register*, 84 Fed. Reg. 36,909 (2019), with interventions and protests due on or before August 13, 2019. None was filed.

10. Notice of Tampa's September 18, 2019 supplement was published in the *Federal Register*, 84 Fed. Reg. 51,535 (2019), with interventions and protests due on or before September 30, 2019. None was filed.

III. Discussion

11. The Commission's pricing rules for affiliate transactions provide that unless otherwise permitted by Commission rule or order, the sale of non-power goods or services to a market-regulated power sales affiliate or a non-utility affiliate from a franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities "must be at the higher of cost or market price."¹¹ The Commission's regulations further specify that a company in a single-state holding company system may provide or receive such non-power goods and services from its affiliates at cost.¹² In Order No. 707-A, the Commission stated it would "consider requests for waiver on a case-by-case basis for at-cost pricing in the multi-state context, under the same circumstances as for single state holding companies (i.e., only for general and administrative services and the goods to support those services and only where members of the holding company do not sell such goods and services outside the holding company)."¹³

12. Based on the information Tampa has provided, we grant the requested waiver of sections 35.44(b)(1) and 35.39(e)(1). Tampa requires waiver because it cannot provide

¹⁰ Tampa September 18, 2019 Supplement at 1-2. Tampa explains that section 35.39(e)(1) does not encompass sales to non-utility affiliates, whereas the affiliate transaction pricing rule in section 35.44(b)(1) does. *Id.* at n.6.

¹¹ 18 C.F.R. § 35.44(b)(1); *see also id.* § 35.39(e)(1).

¹² 18 C.F.R. § 35.44(b)(4).

¹³ *Cross-Subsidization Restrictions on Affiliate Transactions*, Order No. 707, 122 FERC ¶ 61,155, *order on reh'g*, Order No. 707-A, 124 FERC ¶ 61,047, at P 28 (2008).

non-power goods and services to market-regulated power sales affiliates and/or non-utility affiliates at cost without potentially violating sections 35.44(b)(1) and 35.39(e)(1). Based on Tampa's representations, we find that granting the request for waiver will not result in inappropriate cross-subsidization. As Tampa notes, it does not provide non-power goods and services to non-affiliates, except on a limited basis. Thus, Tampa is not forgoing profits by providing non-power goods and services to affiliates at cost and it states that any attempt to determine a market price for these goods and services would be speculative. Tampa commits to maintain the rigorous accounting and cost-allocation procedures currently used by TECO Services to determine the costs of non-power goods and services provided to affiliates. Additionally, we note that Tampa is a franchised public utility subject to the regulation and oversight of the Florida Commission, including the Florida Commission's oversight of inter-affiliate transactions and its ability to audit and undertake a full review of Tampa's cost-allocation procedures.

13. Our decision is based on Tampa maintaining its current cost allocation methodology. Tampa shall inform the Commission should there be a material change to that methodology. Further, we will rely on the Commission's ratemaking review process and audit functions, as well as the Commission's ability to access Tampa's books and records, to ensure that costs are allocated appropriately and that no inappropriate cross-subsidization is occurring.

14. In addition, we direct Tampa to submit a compliance filing, within 30 days of the date of this order, revising its market-based rate tariff to list the specific, limited waiver granted herein and to include a citation to this order.¹⁴

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

¹⁴ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 119 FERC ¶ 61,295, at App. C, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, 123 FERC ¶ 61,055, at P 384, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, 125 FERC ¶ 61,326 (2008), *order on reh'g*, Order No. 697-C, 127 FERC ¶ 61,284 (2009), *order on reh'g*, Order No. 697-D, 130 FERC ¶ 61,206 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied sub nom. Pub. Citizen, Inc. v. FERC*, 567 U.S. 934 (2012).

¹⁵ We note that the purchases and sales to Emera affiliates disclosed in Tampa's September 18, 2019 supplement were a material change in circumstances that reflects a

The Commission orders:

(A) Tampa's request for waiver of the affiliate restrictions under sections 35.44(b)(1) and 35.39(e)(1) is hereby granted for the transactions identified in the body of this order, as discussed in the body of this order.

(B) Tampa must inform the Commission within 30 days of any material change in circumstances that would reflect a departure from the facts, policies, and procedures the Commission relied upon in granting the waiver herein, as discussed in the body of this order.

(C) Tampa is hereby directed to submit a compliance filing, within 30 days of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

departure from the facts and representations that the Commission relied upon in granting waiver in the 2014 Waiver Order. Although we acknowledge that Tampa reflected its affiliation with Emera in an August 1, 2016 notice of change in status, it did not make a similar filing for the docket in which the Commission issued the 2014 Waiver Order. We remind Tampa that it must submit required filings on a timely basis, or it may face possible sanctions by the Commission.