

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Tampa Electric Company	Docket Nos. ER99-2342-001 ER99-2342-003
Panda Gila River, L.P.	ER01-931-004 ER01-931-006 ER01-931-007
Union Power Partners, L.P.	ER01-930-004 ER01-930-006 ER01-930-007
TECO EnergySource, Inc.	ER96-1563-017 ER96-1563-019 ER96-1563-020
Commonwealth Chesapeake Company, L.L.C.	ER99-415-005 ER99-415-006
TPS Dell, LLC	ER02-510-002 ER02-510-003
TPS McAdams, LLC	ER02-507-002 ER02-507-003
TECO-PANDA Generating Company, L.P.	ER02-1000-003 ER02-1000-004
Tampa Electric Company Panda Gilda, L.P., Union Power Partners, L.P., TECO EnergySource, Inc., Commonwealth Chesapeake Company, L.L.C., TPS Dell, LLC, TPS McAdams, LLC and TECO-PANDA Generating Company, L.P.	EL05-68-000

ORDER ON UPDATED MARKET POWER ANALYSIS AND CHANGE IN STATUS,
INSTITUTING SECTION 206 PROCEEDING AND ESTABLISHING
REFUND EFFECTIVE DATE

(Issued March 3, 2005)

1. On November 9, 2004, Tampa Electric Company (Tampa) and its affiliates, 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, TECO), submitted for filing an updated market power analysis in compliance with the Commission's order issued on May 13, 2004.¹ The May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004 and clarified on July 8, 2004.²

2. The filing indicates that TECO passes the pivotal supplier screen in all markets considered, but fails the wholesale market share screen for each of the four seasons in Tampa's control area, as well as for one season in the control area of Reedy Creek Improvement District (Reedy Creek).³

3. 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 under section 206 of the Federal Power Act (FPA)⁴ and establishes a rebuttable presumption of market power in the section 206 proceeding. Accordingly, as discussed below, in this order, the Commission institutes a proceeding pursuant to section 206 of the FPA to determine whether TECO may continue to charge market-based rates and establishes a refund effective date pursuant to the provisions of

¹ *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order). The Commission has previously accepted TECO's market behavior rules. *AES Creative Resources, L.P.*, unpublished letter order dated March 29, 2004 in Docket Nos. ER99-1773-003, *et al.* *Commonwealth Chesapeake Company, L.L.C.*, unpublished letter order dated December 29, 2004, in Docket No. ER05-198-000.

² *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

³ TECO's analysis shows market shares as high as 58.3 percent and 29 percent, respectively.

⁴ 16 U.S.C. § 824e (2000).

section 206. The instant section 206 proceeding, as well as any resulting mitigation or refunds, is limited to the Tampa and Reedy Creek control areas because the filing indicates that these are the geographic markets for which TECO fails the wholesale market share screen.

4. In addition, TECO states that it passes the pivotal supplier screen and the wholesale market share screen in each of the directly interconnected first-tier control areas examined. However, as discussed below, the Commission is unable to conclude that TECO satisfies the Commission's generation market power standard for market-based rate authority in the first-tier control areas of Tampa excluding Reedy Creek. Accordingly, in this order, the Commission directs TECO to make a compliance filing within 30 days of the date of this order to revise its generation market power analysis for its first-tier control areas.

5. This order, including the refund effective date, will protect customers from excessive rates and charges that may result from the exercise of market power.

Background

6. On September 10, 2001, EnergySource filed an updated market power analysis employing a hub-and-spoke analysis. On May 6, 2002, Tampa filed an updated market power analysis utilizing a Supply Margin Assessment. On March 3, 2004, Panda Gila and Union separately filed updated market power analyses also utilizing a Supply Margin Assessment.

7. On June 24, 2004, EnergySource, Panda Gila, Union, EnergySource, Dell, McAdams, Commonwealth and TECO-PANDA filed a change in status notifying the Commission of an internal reorganization that did not affect the ultimate upstream ownership.⁵

8. In the April 14 Order, as clarified by the July 8 Order, the Commission adopted two indicative screens for assessing generation market power: a pivotal supplier screen and a wholesale market share screen. The Commission stated that passage of both

⁵ On October 19, 2004, Panda Gila and Union submitted notice of "potential change in status" in Docket Nos. ER01-931-005 and ER01-930-005, respectively, related to its application for disposition of jurisdictional facilities. The Commission approved the application pursuant to section 203 of the FPA on January 24, 2005, effective upon consummation of the transaction. *LenderCo*, 110 FERC ¶ 61,044 (2005). Consistent with that order, Panda Gila and Union are required to notify the Commission when the transaction has been consummated.

screens establishes a rebuttable presumption that the applicant does not possess generation market power, while failure of either screen creates a rebuttable presumption that the applicant has generation market power. The Commission further stated that applicants and intervenors may, however, rebut the presumption established by the results of the initial screens by submitting a Delivered Price Test. Alternatively, an applicant may accept the presumption of market power or forego the generation market power analysis altogether and go directly to mitigation.⁶ The May 13 Order directed TECO to file within 180 days of the issuance of that order revised generation market power analyses based on these two indicative screens.⁷

9. On November 9, 2004, TECO filed an updated market power analysis, amending its earlier analyses, listed above, in compliance with the Commission's May 13 Order.

Description of TECO's November Filing

10. In its filing, TECO submitted the results of the two generation market power screens. As required in the May 13 Order, TECO also provided updated information on the other three parts of the Commission's four-part analysis. TECO states it continues to be unable to exercise transmission market power, erect barriers to entry, or engage in affiliate abuse or reciprocal dealing.

11. TECO states that it passes the pivotal supplier screen in Tampa's control area and in each directly interconnected control area. TECO further states that it passes the wholesale market share screen in each directly interconnected control area but fails the wholesale market share screen in both the Tampa and Reedy Creek control areas. TECO notes that the generating facilities located outside of Florida, owned by Panda Gila, Union, Commonwealth, Dell and McAdams, were all constructed after July 9, 1996, and thus a generation market power analysis is not needed for those facilities pursuant to section 35.27(a) of the Commission's regulations.⁸

12. TECO argues that, despite the screen failures, TECO does not have market power in the Tampa or Reedy Creek control areas. TECO states that there are no wholesale loads that are physically connected to the Tampa transmission system. While TECO does

⁶ In addition, as the Commission stated in the April 14 Order, the applicant or intervenors may present evidence such as historical sales data to support whether the applicant does or does not possess market power. *See* April 14 Order, 107 FERC ¶ 61,018 at P 37.

⁷ *See* May 13 Order at Ordering Paragraph (A).

⁸ 18 C.F.R. § 35.27(a) (2004)

provide service to two wholesale customers (with total load of approximately 25 MW), it discloses that these customers are physically located in the Progress Energy Florida system and are electronically included in Tampa's control area via dynamic scheduling.⁹ Further, 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, TECO states that it has no market power with respect to wholesale loads within the Tampa control area. In addition, TECO rebuts the screen failure in Reedy Creek by noting the only reason for the screen failure in the winter season is the increased import capability, stating that this results in a greater allocation of transfer capability to TECO, thereby increasing its uncommitted capacity in the Reedy Creek control area. TECO states this is of no concern as it also increases the remote generation choices available to serve the small potential load in the Reedy Creek control area.¹⁰

13. TECO did not include a simultaneous transmission import capability study pursuant to the methodology laid out in the April 14 Order. Instead, TECO utilized a proxy of the largest available transfer capability (ATC) between it and its first-tier control areas at the time of the study, setting all other transfer capabilities to zero. TECO states that this is a conservative proxy because the amount of simultaneous transmission import capability in any area would be greater than or equal to the ATC on any single import path.

Notice of Filing and Responsive Pleadings

14. Notice of the September 10, 2001, filing of EnergySources's updated market power analysis was published in the *Federal Register*, 66 Fed. Reg. 48,869 (2001), with interventions or protests due on or before October 1, 2001. None was filed.

15. Notice of the May 6, 2002, filing of Tampa's updated market power analysis was published in the *Federal Register*, 67 Fed. Reg. 35,357 (2002), with interventions or protests due on or before May 28, 2002. On May 29, 2002, Seminole Electric Cooperative, Inc. (Seminole) filed a late motion to intervene and protest. Seminole states that its concern lies with the GridFlorida proceeding, the regional transmission

⁹ TECO's submittal is unclear as to whether it treated these customers as part of its control area for purposes of the generation market power analysis. 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.

¹⁰ TECO states that Reedy Creek's peak load in winter is 152 MW and total import capability is 235 MW for all seasons. TECO's pro-rata share of that import capability is highest in winter (54 MW versus 18 MW in summer).

organization proposal pending in Docket No. RT01-67, and its overall market power concerns are focused on Florida Power & Light Company and Progress Energy Florida. However, it wants the Commission to make clear that any finding in this docket will not extend TECO's market-based rate authority into any market that may be created in the GridFlorida proceeding, such as imbalance, congestion, installed reserves and ancillary services. Seminole requests the Commission state that nothing in this proceeding is intended to foreclose the requirement of a new market power showing in order to have authority to participate in any new market, and states that if the Commission will not make such a statement, it then protests this analysis as inadequate to support TECO's participation in GridFlorida markets not yet determined.

16. Notice of the March 3, 2004, filing of Union's updated market power analysis was published in the *Federal Register*, 69 Fed. Reg. 13,517 (2004), with interventions or protests due on or before March 23, 2004. None was filed.

17. Notice of the March 3, 2004, filing of Panda Gila's updated market power analysis was published in the *Federal Register*, 69 Fed. Reg. 13,516 (2004), with interventions or protests due on or before April 1, 2004. None was filed.

18. Notice of the June 25, 2004, filing of TECO's change in status was issued on February 10, 2005, with interventions or protests due on or before February 18, 2005. None was filed.

19. Notice of the November 9, 2004, filing of TECO's revised updated market power analysis was published in the *Federal Register*, 69 Fed. Reg. 68,894 (2004), with interventions or protests due on or before November 28, 2004. On November 30, 2004, Seminole filed comments reiterating its earlier protest. On December 1, 2004, Reedy Creek filed comments reserving the right to challenge TECO's market-based rate authority in the future and claiming its status as a party in this proceeding due to its intervention in Docket No. ER99-2342-000.

Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

21. Given Seminole's interest in this proceeding, the early stage of this proceeding, and the absence of undue delay or prejudice, the Commission finds good cause to grant the untimely, unopposed motion to intervene of Seminole.

Discussion

Market-Based Rate Authorization

22. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.¹¹

Generation Market Power

23. TECO states that TECO's share of uncommitted capacity in the Tampa control area exceeds 20 percent for each of the four seasons during the relevant time period, and exceeds 20 percent for winter in the Reedy Creek control area. Consequently, TECO fails the wholesale market share screen in those control areas.

24. In its submission, TECO presents evidence it believes to be relevant to rebut the presumption of market power established by its failure of the wholesale market share screen. According to TECO, it does not have market power because there are no wholesale loads in the Tampa control area, and there is a relatively small amount of wholesale load in the Reedy Creek control area during the season it fails the wholesale market share screen compared to the overall level of supply that can reach the control area.

25. The Commission stated in the April 14 and July 8 Orders that applicants may present historical evidence to show that the applicant satisfies the generation market power concerns. The evidence that will be considered is historical sales and/or access to transmission to move supplies within, out of, and into a control area.¹² The Commission will further examine the information TECO submitted in conjunction with other evidence submitted in the section 206 proceeding we institute herein.

26. As outlined in the April 14 Order, TECO's failure of the wholesale market share screen provides the basis for the Commission to institute the instant section 206 proceeding, which is limited to the Tampa and Reedy Creek control areas, to determine whether TECO may continue to charge market-based rates and establishes a rebuttable

¹¹ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281 at 61,899 (1996); accord *Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

¹² April 14 Order, 107 FERC ¶ 61,018 at P 102, and July 8 Order, 108 FERC ¶ 61,026 at P 181.

presumption of market power. This order establishes a refund effective date in order to put in place the necessary procedural framework to promptly impose an effective remedy, in case the Commission determines that such a remedy is required. Our decision to establish a refund effective date does not constitute a determination that refunds will be ordered.

27. The Commission's decision to institute the instant section 206 proceeding does not constitute a definitive finding by the Commission that TECO has market power in the Tampa and Reedy Creek control areas. As discussed in the April 14 and July 8 Orders, the screens are conservatively designed to identify the subset of applicants who require closer scrutiny. Accordingly, TECO will have 60 days from the date of issuance of this order finding a screen failure 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 will adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates.¹³ In addition, as the Commission stated in the April 14 Order, the applicant or intervenors may present evidence such as historical sales data to support whether TECO does or does not possess market power.¹⁴

28. In cases where, as here, the Commission institutes a section 206 proceeding on its own motion, section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after publication of notice of the initiation of the Commission's proceeding in the *Federal Register*, and no later than five months subsequent to the expiration of the 60-day period. In order to give maximum protection to customers, and consistent with Commission precedent,¹⁵ the Commission will establish a refund effective date at the earliest date allowed. This date will be 60 days from the date on which notice of the initiation of the proceeding in Docket No. EL05-68-000 is published in the *Federal Register*. In addition, section 206 requires that, if no final decision has been rendered by that date, the Commission must provide its estimate as to when it reasonably expects to make such a decision. Given the times for filing identified in this order, and the nature and complexity of the matters to be resolved, the Commission estimates that it will be able to reach a final decision by June 30, 2005.

¹³ See April 14 Order, 107 FERC ¶ 61,018 at P 201, 207-209.

¹⁴ *Id.* at P 37.

¹⁵ See, e.g., *Canal Electric Company*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

29. The Commission intends to examine the issue of market power in generation in the control areas of Tampa and Reedy Creek in the instant 206 proceeding discussed above. The filing indicates that other than Reedy Creek, TECO passes the pivotal supplier screen and the wholesale market share screen in each of the directly interconnected first-tier control areas examined. However, the Commission is unable to find here that TECO satisfies the Commission's generation market power standard for market-based rate authority in the first-tier control areas of Tampa excluding Reedy Creek without a compliance filing, as discussed below.

30. The Commission has previously stated that uncommitted capacity is determined by adding the total nameplate capacity of generation owned or controlled through contract and firm purchases, less operating reserves, native load commitments and long-term firm non-requirement sales.¹⁶ Further, applicants are required to prepare the screens as designed.¹⁷ TECO states that seasonal capacity data was used for the indicative screens. The Commission directs TECO to revise its submittal for TECO's first-tier markets using nameplate capacity for all generating capacity used in calculation of the screens (including TECO's capacity and competing suppliers' capacity), and submit the relevant work papers and documentation within 30 days of the date of this order.

31. Regarding import capability, as noted above, TECO did not utilize a simultaneous transmission import capability study, but rather proposed a proxy amount for transmission limits. TECO utilized a proxy of the largest ATC between it and its first-tier control areas, setting all other transfer capabilities to zero. TECO states that this is a conservative proxy because the amount of simultaneous transmission import capability in any area would be greater than or equal to the ATC on any single import path.

32. The Commission has stated that it will consider a proxy for the simultaneous transmission import capability on a case-by-case basis.¹⁸ The Commission agrees that using the largest ATC into the control area at the time the study is conducted is a conservative assumption for import capability as described in TECO's submittal, and that this is an acceptable proxy for the TECO's simultaneous transmission import capability study. However, the Commission requires further information in order to make an accurate determination regarding TECO's pro-rata share of the import capability into its first-tier control areas. The Commission notes that, according to TECO's filing, ATC data was retrieved as posted on the Florida Open Access Same-Time Information System

¹⁶ April 14 Order, 107 FERC ¶ 61,018 at P 95.

¹⁷ *Id.* at P 118.

¹⁸ *Id.* at P 85.

(OASIS) site for use in calculating the proxy. TECO is directed to file this data to support its transmission import proxy within 30 days of the date of this order.¹⁹

33. In addition, applicants studying their first-tier control areas have historically allocated imports (after subtracting firm reservations) pro-rata between the applicant and its competitors based on first-tier uncommitted capacity. The Commission's review of TECO's submittal indicates that TECO performed the pro-rata import allocation based on transmission capacity, i.e. the largest ATC from each first-tier market. The Commission's review indicates that using uncommitted capacity as its basis for the pro-rata import allocation will not affect the outcome of TECO's generation market power analysis.

34. With regard to the generating facilities owned by Commonwealth, Union, Panda Gila, Dell, McAdams, and TECO-Panda, which are all located outside of Florida, TECO cites section 35.27(a) of the Commission's regulations, which provides that applicants shall not be required to demonstrate any lack of market power in generation with respect to sales from capacity constructed after July 9, 1996.²⁰ If an applicant sites generation in an area where it or its affiliates own or control other generation assets, the applicant must study whether its new capacity, when added to existing capacity, raises generation market power concerns.²¹ TECO states that each of the above facilities were built after July 9, 1996, and there are no affiliated generation facilities that were built before July 9, 1996 in those areas. Based on these representations, the Commission finds that TECO satisfies the generation market power standard with respect to Commonwealth, Union, Panda Gila, Dell, McAdams, and TECO-Panda. The Commission further finds that TECO conditionally satisfies the generation market power standard with respect to all areas not subject to the instant 206 proceeding, pending acceptance of the compliance filing directed above.

35. As a final matter, the Commission finds that Seminole's protest raises issues outside the scope of this proceeding. The Commission, therefore, will not make any finding regarding the impact of its decision in this proceeding on any market that may be created in the GridFlorida proceeding.

¹⁹ April 14 Order, 107 FERC ¶ 61,018 at P 82-85; July 8 Order, 108 FERC ¶ 61,026 at P 122-125.

²⁰ 18 C.F.R. § 35.27(a) (2004). We note that the Commission intends to address as part of the generic rulemaking proceeding in Docket No. RM04-7-000 whether to retain or modify section 35.27 of its regulations.

²¹ April 14 Order, 107 FERC ¶ 61,018 at P 69.

Transmission Market Power

36. When a transmission-owning public utility seeks market-based rate authority, the Commission has required the public utility to have an open access transmission tariff (OATT) on file before granting such authorization. TECO states that it has an OATT on file with the Commission.²² Further, no intervenor has raised transmission market power concerns. The Commission finds that TECO satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

Other Barriers to Entry

37. TECO states that it does not have the ability to erect barriers to entry. While TECO is affiliated with Peoples Gas System, Inc., a local distribution company in peninsular Florida, it notes that it is regulated by the Florida Public Service Commission. TECO states that it is also affiliated with Trans-Union Interstate Pipeline, which transports natural gas in accordance with the Commission's open access requirements in Order No. 636. No intervenor has raised concerns regarding barriers to entry. Based on TECO's representations, the Commission finds that TECO cannot erect barriers to entry. However, should TECO or any of its affiliates deny, delay or require unreasonable terms, conditions or rates for natural gas service to a potential electric competitor in bulk power markets, that electric competitor may file a complaint with the Commission that could result in the suspension of TECO's authority to sell power at market-based rates.²³

Affiliate Abuse

38. TECO states that it has on file Commission-approved codes of conduct as part of its market-based rate tariffs. Furthermore, TECO notes that its market-based rate tariffs contain restrictions on transactions with affiliates. In addition, no intervenor has raised concerns regarding affiliate abuse. Based on these representations, the Commission finds that TECO satisfies the Commission's concerns with regard to affiliate abuse.

²² TECO's OATT was accepted by the Commission in *Allegheny Power System, Inc.*, 80 ¶ FERC 61,143 (1997)..

²³ *See, e.g., Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 (1993).

Changes in Status

39. Panda Gila, Union, EnergySource, Dell, McAdams, and TECO-PANDA submitted a notice of change in status informing the Commission of an internal reorganization. The Commission finds that this change in status does not affect the ultimate upstream ownership or their authority to sell at market-based rates.²⁴

Reporting Requirements

40. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.²⁵ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.²⁶

41. TECO must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.²⁷ A change in status includes, but is not limited to, each of the following: (i) ownership or control of generation or transmission facilities or inputs

²⁴ The Commission approved the related internal reorganization application pursuant to section 203 of the FPA. *TECO Wholesale Generation, Inc.*, 107 FERC ¶ 62,208 (2004).

²⁵ *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 Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

²⁶ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

²⁷ *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097 (2005) (Order No. 652).

to electric power production other than fuel supplies; or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

42. 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. Accordingly, TECO is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to incorporate the change in status reporting requirement adopted in Order No. 652.

The Commission orders:

(A) TECO is directed, within 30 days of the date of issuance of this order, to revise its generation market power analysis for its first-tier control areas, as discussed in the body of this order.

(B) TECO's updated market power analysis for all relevant markets not subject to the section 206 proceeding instituted herein is hereby conditionally accepted for filing, pending Commission acceptance of the compliance filing directed in Ordering Paragraph (A), as discussed in the body of this order.

(C) TECO's notification of changes in status for Commonwealth, Union, Panda Gila, Dell, McAdams, and TECO-Panda is hereby accepted for filing, as discussed in the body of this order.

(D) TECO is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to incorporate the change in status reporting requirement adopted in Order No. 652.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 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), the Commission hereby institutes a proceeding in Docket No. EL05-68-000 concerning the justness and reasonableness of TECO's market-based rates in the Tampa and Reedy Creek control areas, as discussed in the body of this order.

(F) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the proceeding under section 206 of the FPA in Docket No. EL05-68-000.

(G) The refund effective date established pursuant to section 206(b) of the FPA will be 60 days following publication in the *Federal Register* of the notice discussed in Ordering Paragraph (F) above.

(H) For the Tampa and Reedy Creek control areas, TECO is directed, within 60 days from the date of issuance of this order, 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 will adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.