

JAMES E. "JIM" KING, JR.  
President



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JOHNNIE BYRD  
Speaker



February 12, 2004

Ms. Blanca S. Bayó, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0870

RE: Docket No. 031033-EI

Dear Ms. Bayó:

Enclosed for filing in the above-referenced docket are the original and fifteen (15) copies of Citizens' to Motion For Revision to Order Establishing Procedure or Continuance to Tampa Electric Company.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Vandiver".

Robert Vandiver  
Associate Public Counsel

RV/pwd  
Enclosures

DOCUMENT NUMBER-DATE  
02037 FEB 12 04  
FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Review of Tampa Electric Company's  
2004-2008 waterbound transportation  
contract with TECO transport and trade

Docket No. 031033-EI

Filed: February 12, 2004

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**MOTION FOR REVISION TO ORDER ESTABLISHING PROCEDURE OR  
CONTINUANCE**

Comes now, the Citizens of the State of Florida (Citizens), pursuant to Rule 28.106.204, Florida Administrative Code, and file this Motion for Revision of Order PSC-03-1398-PCO-EI, issued December 11, 2003, which set forth the procedural schedule for this docket. In the alternative, Citizens urge that the Prehearing Officer grant a continuance of these proceedings. In support thereof Citizens state:

1. In Order No. PSC-03-1398-PCO-EI, Order Establishing Procedure, the hearing in this matter was set for April 13-14, 2004, with Intervenor's testimony scheduled on March 1, 2004.
2. On January 9, 2004, Citizens caused to issue a subpoena on a non-party, TECO Transport Corporation (TECO Transport), pursuant to the Rules of Civil Procedure (See Rule 1.351, Florida Rules of Civil Procedure) on January 23, 2004, TECO Transport filed a Motion to Quash Subpoena Duces Tecum. Citizens filed a Response to the Motion to Quash Subpoena Duces Tecum on January 28, 2004. TECO Transport filed a reply thereto January 30, 2004 and Request for Oral Argument. As of this date, no ruling has been made concerning the subpoena issue.
3. The information sought by the subpoena goes to the costs of TECO Transport to provide coal transportation service to Tampa Electric. This is highly relevant information in this docket. Such information will surely lead to the discovery of admissible evidence. Rule 1.280 (b)(1), Florida Rules of Civil Procedure.

4. On January 9, 2004, the Citizens filed a Motion to Compel Production of Documents. On January 16, 2004, Tampa Electric Company (Tampa Electric) filed a Response Opposing Citizens' Motion to Compel. On January 30, 2004, the Prehearing Officer issued Order No. PSC-04-0118-PCO-EI, Order Granting Motion to Compel. The Prehearing Officer's finding in that Order is particularly relevant here:

The information sought by OPC relates to TECO Transport's costs to provide coal transportation service, and, thus, may lead to the discovery of admissible evidence on the issues in this proceeding noted above. Precluding discovery on this matter could effectively preclude parties from pursuing, if they choose, a cost-based alternative to the current benchmark mechanism or looking at cost as a basis for determining the reasonableness of the new contract rate. Order PSC-04-0118-PCO-EI at page 5.

5. This Order is now final and was not appealed by Tampa Electric. As the Citizens noted in their Response to the Motion to Quash the Subpoena Duces Tecum filed January 28, 2004, the arguments contained in Tampa Electric's January 16, 2004 response to the Motions to Compel were similar to TECO Transport's arguments in its January 28, 2004 Motion to Quash and Reply to Citizens Response to the Motion to Quash filed January 30, 2004.

6. Tampa Electric's theory of this case as understood by the Citizens is to allocate 100% of the costs for transporting coal from coal mines in the mid-western United States and elsewhere to plants in the Tampa Bay area and the associated backhaul to the ratepayers, see Attachment I. It is the Citizens understanding that millions of tons of bulk commodities are transported from the Tampa Bay Area to Louisiana for compensation by TECO Transport. These revenues must be credited or allocated back to the ratepayers in the Citizens' view.

7. It is important to examine TECO Transport personnel and records so that the dollar amounts associated with the millions of tons in backhaul can be learned. Tampa Electric has already stated that it does not have the information, see Attachment II. Order PSC-04-0118-PCO-EI, supra, has stated that cost information is

relevant in this docket. Tampa Electric did not appeal that order. The Citizens must have a dollar figure to go with the millions of tons in backhaul we believe to exist.

8. Citizens also need to pursue backhauls upriver. To the extent ratepayers have underwritten the cost of transport they should be given credit for any backhaul here as well. Again the question of cost needs to be pursued to ensure a proper accounting. Citizens are not bound by Tampa Electric's theory of the case.

9. Citizens have no desire to delve into the identity of individual shippers. Names of TECO Transport clients can be shielded, as long as the relevant tonnages and revenues are provided. Citizens have previously committed to working with TECO Transport to narrow its request to manageable levels and believes a deposition format with a subpoena duces tecum will meet our needs if proper guidance from this Commission is given.

10. Intervenor testimony is now due March 1, 2004. Citizens need to schedule the deposition of TECO Transport personnel, examine TECO Transport documents, get the transcript back, provide same to our experts, digest the information, put it into our testimony and file it. The date is now February 12, 2004, Even if an order were issued tomorrow and Tampa Electric/TECO Transport were not to appeal, the logistics make it highly improbable that all tasks could be completed in a timely fashion.


11. Citizens have under taken discovery in a timely fashion and filed responses early to several motions.

12. This cost information requested from TECO Transport (both across the Gulf and upriver) is critical to the preparation of Citizens' case. In the Citizen's view, fairness demands an allocation of the backhaul revenue as an offset the coal transportation expenses. At a minimum, the Citizens are entitled to discovery on these important issues and cannot file a complete case without such information. While extremely

relevant and visible, backhaul is only one aspect of the total cost equation. Citizens need access to all facets of costs.

13. The Commission should adjust the procedural order issued December 11, 2003 to allow Citizens more time file testimony as discussed above or continue the hearing in this matter for the same reason. See affidavit of Michael J. Majoros, Jr., at Attachment III.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert Vandiver", with a long horizontal flourish extending to the right.

Robert Vandiver  
Associated Public Counsel

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and exact copy of the above and foregoing has been furnished by U.S. Mail or \*hand-delivery this 12th day of February, 2004:

James Beasley \*  
Lee Willis  
Ausley Law Firm  
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Robert D. Vandiver  
Associate Public Counsel

27. Referring to Bates Stamp 134, 135 and 136, does the fuel cost included in this estimate include the total cost of fuel for the return voyage to Davant? Likewise, do the fixed and variable costs include an assumption that the total costs of ocean transport vessels shall be recovered from ratepayers with no allocation of expenses or revenues as a result of backhaul? Please discuss the reasons why no allocation of backhaul expenses or revenues is appropriate in this instance.
- A. Tampa Electric understands that the aforementioned Bates stamp pages refers to Mr. Dibner's testimony and exhibit and therefore answers as such. Yes, fuel cost for a return to Davant is included in Mr. Dibner's model. Mr. Dibner estimated the costs for voyages that will be required to serve Tampa Electric's volume and type of transportation needs. He based his calculation on the estimated average cost of service for the core fleet that serves Tampa Electric, without allocation for backhaul revenues or expenses. Mr. Dibner determined that there is no marginal backhaul business. Therefore, backhaul does not affect the market for transportation services, and it would not be appropriate to include backhaul in setting rates.

15. What documents does Tampa Electric have in its possession that show the revenues, costs and earnings of TECO Transport and/or Progress Fuels for the transport of coal over inland rivers, for terminal services in the Gulf, and for transport of coal from the Mississippi River to Florida, excluding consolidated income statements of the parent companies?
- A. Tampa Electric does not possess or have access to any documents that show the aforementioned information.



AFFIDAVIT //

STATE OF District of Columbia;  
COUNTY OF Washington

BEFORE ME, the undersigned authority, personally appeared

Michael J. Majoros, Jr. who has sworn as to the following statement that is true and correct to the best of his information and belief:

1. My firm, Snavely Majoros O'Connor & Lee, Inc., has been engaged by the Florida Office of Public Counsel and the Florida Industrial Power Users Group to provide expert testimony and analysis regarding the waterborne coal transport costs that Tampa Electric passes on to ratepayers in Florida, Docket No. 031033 EI.

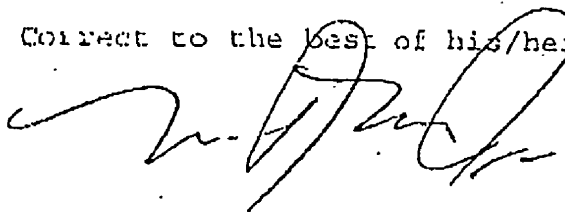
2. In order to properly evaluate the waterborne transport charges that are being passed on to ratepayers, it is necessary for our office to evaluate the actual level of rates that Tampa Electric pays for waterborne transport and provide valid conclusions of the associated costs that would enable the Commission to ascertain that the rates paid by Tampa Electric are reasonable and prudent.

3. TECO Transport is an affiliate of Tampa Electric and we have sought on a timely basis to obtain the actual cost data the Commission needs in order to reach a decision regarding the prudence of Tampa Electric's, the waterborne transport costs. Such information has not yet been received.

4. The current schedule for this docket requires that I file testimony on March 1, 2004. In order to file such testimony, it is necessary that we receive the information requested, review the data, and prepare testimony.

5. As of the date of this affidavit, there are 10 working days prior to the testimony filing date according to the current schedule. This is inadequate time for our office to properly prepare testimony to address the complex issues before this Commission.

Correct to the best of his/hers information and belief.

 2/12/04

DATED at 1220 1 Street, Washington, DC this day

February 12, 2004.

and subscribed before me this Thursday  
February 12, 2004.

[Signature]  
NOTARY PUBLIC

State of Washington, DC at Large

My Commission Expires: March 14, 2006

