

ORIGINAL

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Speaker

STATE OF FLORIDA
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Harold McLean
Public Counsel

Robert D. Vandiver
Associate Public Counsel

March 29, 2004

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

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COMMISSION
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RE: Docket No. 031033-EI

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Redacted Direct Testimony of H. G. Wells on behalf of the Citizens of the State of Florida and the Florida Industrial Power Users Group for filing in the above-referenced docket.

Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Robert Vandiver
Associate Public Counsel

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company's
2004-2008 Waterborne transportation contract
with TECO Transport and associated benchmark.

Docket No. 031033-EI
Filed: March 29, 2004

REDACTED

TESTIMONY AND EXHIBITS

OF

H. G. WELLS

ON BEHALF OF

THE CITIZENS OF THE STATE OF FLORIDA

AND THE FLORIDA INDUSTRIAL POWER USERS GROUP.

DOCUMENT NUMBER-DATE

04027 MAR 29 8

FPSC-COMMISSION CLERK

1 A. For over 12 years, I was involved in coal procurement and transportation, both rail
2 and barge, at Electric Fuels. Electric Fuels was responsible for all of FPC's coal
3 procurement and delivery, including ownership and operation of mines and
4 transportation equipment. Electric Fuels also supplied coal and transportation services
5 to other companies, including Tennessee Eastman (Kodak), General Electric, General
6 Motors and others.

7 **Q. What experience do you have handling competitive bids?**

8 A. At FPC, I procured contracts for the final design and construction of large steel
9 towers for high voltage and extra high voltage power lines through competitively bid
10 contracts. At Electric Fuels, I was involved in arranging for transportation of
11 waterborne coal on a competitive basis. Our requirements were made known through
12 the coal trade media, meetings with interested parties, and acceptance of proposals.
13 In addition, I was involved in contracting for the design and construction of the IMT
14 terminal below New Orleans on the Mississippi River and the design and construction
15 of barges and tugboats for the marine leg of the coal shipment to FPC's Crystal River
16 Station. I was also involved in contracting for the design and construction of the rail
17 unloading equipment at the Crystal River Station, which was done by Electric Fuels
18 and turned over to FPC upon completion. I assisted in some of the contracting for the
19 coal mining and preparation equipment as well as the rail loading facilities at Electric
20 Fuels' mines in Kentucky and Virginia.

21 **Q. What is your understanding of the issues in this case and how they arose?**

22 A. My understanding is that in the fuel adjustment proceeding last year, issues arose as
23 to the appropriateness of TECo's Request for Proposals (RFP) and the amount TECo

1 wants to collect from ratepayers to pay to its affiliate, TECo Transport, to bring coal
2 to its plants. My testimony will address the following two issues:

- 3 • Is Tampa Electric's June 27, 2003, request for proposals
4 sufficient to determine the current market price for coal
5 transportation?
- 6 • Are Tampa Electric's projected coal transportation costs for
7 2004 through 2008 under the winning bid to its June 27, 2003,
8 request for proposals for coal transportation reasonable for cost
9 recovery purposes?

10 **Q. Please summarize your testimony.**

11 **A.** I will address whether the RFP TECo issued was appropriate and whether it
12 maximized competitive bidding. I will also address whether the proposals that were
13 received were given appropriate consideration and whether the end result of the
14 process provided the lowest delivered cost for ratepayers. Finally, I will discuss some
15 of the recommendations of OPC/FIPUG witness Mr. Michael Majoros, which I deem
16 to be reasonable for use by the Commission. In my view, TECo's handling of the
17 RFP process was flawed and therefore resulted in few responses. The process
18 appears to have been a "rush to judgment" designed to reward TECo's affiliate, TECo
19 Transport, with the entire transportation contract at rates that are excessively high and
20 unfair to TECo's ratepayers.

21 **II. TECO'S RFP PROCESS WAS FLAWED**

22 **Q. Have you reviewed the TECo coal transportation solicitation, responses and**
23 **award?**

1 A. Yes.

2 Q. **Please summarize the problems with the RFP.**

3 A. The RFP was flawed from the outset. In order for an RFP to be fair and provide an
4 appropriate response from the marketplace, the bid process must encourage full
5 participation. TECo's RFP contained provisions which discouraged independent
6 bidders, and by that I mean non-affiliated companies, from submitting a proposal.

7 The problems included:

- 8 • A preference for integrated bids;
- 9 • An unreasonably short response time;
- 10 • Failure to provide the RFP to the railroad;
- 11 • Failure to address the Commission Staff's suggested changes; and
- 12 • Lack of dialogue with the bidders.

13 Q. **You mentioned that one problem with the RFP was the preference for integrated**
14 **bids. Describe that provision.**

15 A. The RFP stated a preference for bids that met TECo's total transportation
16 requirements for the river, terminal, and Gulf transport elements. The RFP stated:

17 Tampa Electric prefers proposals for integrated waterborne
18 transportation services, however proposals for segmented services will
19 be considered. . . . Proposals should represent the entire requirements
20 stated herein of Tampa Electric's domestic waterborne solid fuel
21 transportation services.

22 In other words, TECo's RFP expressed a preference for awarding the total
23 requirements of TECo's waterborne coal transportation needs to one company. Not

1 coincidentally, this preference caters to TECo's affiliate, TECo Transport, which
2 provides precisely those services to TECo.

3 **Q. Would such a preference discourage companies from bidding?**

4 Yes. This requirement tilts the playing field excessively toward the large integrated
5 company such as TECo Transport, which provides all three legs of the service (river,
6 terminal and Gulf). In fact, few companies can meet this requirement. Smaller,
7 efficient players on one leg or another may very well decide not to bid due to this
8 integration preference, especially when they do not know how much weight this
9 "preference" will receive in the bid evaluation.

10 **Q. Was the time TECo provided bidders to prepare responses reasonable?**

11 A. No. Five weeks is clearly an unreasonable period of time for a bid of this complexity.
12 At a bare minimum, eight weeks should have been allowed to accommodate bids for
13 the cross-Gulf leg. This concern is heightened given TECo's preference for
14 integrating the cross-Gulf leg with the river and terminal legs. TECo knew well in
15 advance when the contract would expire. There is no reason for the truncated
16 response time.

17 **Q. Are there any other indications that the RFP was designed to discourage**
18 **bidders?**

19 A. Yes, if TECo had been interested in exploring all of its options, it would have sent the
20 RFP to the railroads. The rail provider that provided a response to TECo's RFP had
21 to request a copy from TECo.

22 **Q. Was the Public Service Commission Staff concerned about the RFP?**

23 A. Yes.

1 Q. Did the Staff recommend that TECo make changes to the RFP?

2 A. Yes. I have attached a letter from Tim Devlin of the Commission Staff to Joann
3 Wehle of TECo, (Exhibit No. ____ (HGW-2)). First, the letter expresses Staff's
4 dismay that it was not permitted to review the RFP before it was issued. The letter
5 then lists Staff's concerns with the RFP and attaches clarifications which Staff
6 believes are necessary. These concerns are self-explanatory, but it should be noted
7 that Staff stated that the problems with the RFP, unless clarified, would "limit the
8 number and type of bids that TECo receives in response to the RFP as issued." The
9 letter further indicated that TECo chose not to address Staff's concerns.

10 Q. Are you aware of any indications that the market did not take the RFP
11 seriously?

12 A. Yes. A major industry website, Platts, quoted industry sources as follows:

13 Industry sources, however, downplayed the [TECo] solicitation as "an
14 exercise in futility." "We went through this same process six years
15 ago," said one industry executive. "They'll take bids and then award
16 the contract to their sister company, TECo Transport. It's all a game
17 to keep the Public Service Commission happy."

18 (Exhibit No. ____ (HGW-3)). Perception is everything in business. Barely one week
19 after the RFP was issued, the article appeared on a major website familiar to industry
20 insiders. Such an article illustrates the industry's perception of TECo's RFP.

21 Also attached to my testimony is letter from one of the top carriers in the
22 industry, [REDACTED] (Exhibit No. ____ (HGW-4)). [REDACTED] did
23 not provide a response to TECo's RFP, stating in its letter:

1
2
3
4
5

[REDACTED]

6 **Q. Do you know whether TECo contacted non-bidders to inquire why they chose**
7 **not to bid?**

8 A. There is no record to show that any additional contacts were made.

9 **Q. Did TECo establish a dialogue with bidders?**

10 A. No. I think an interactive process with bidders is appropriate as long as the process is
11 the same for all prospective bidders. Much can be learned through dialogue in a pre-
12 bid conference. TECo carried its "no dialogue" policy throughout: there was no
13 structured pre-bid meeting or follow-up meetings. The last is the most important. This
14 is the opportunity for more improvement in bids, not just price, but in operational
15 procedures, and many other factors of importance in such a contract. To me, not
16 meeting with the bidders is a huge indicator of TECo's lack of "seriousness" about
17 awarding this business to anyone but its affiliate. One bidder, [REDACTED] sent TECo a
18 letter that indicated its desire to meet with TECo to discuss the rejection of its
19 proposal. (Exhibit No. ___ (HGW-5)). TECo refused to meet with [REDACTED]

20 **Q. Did TECo Transport submit a bid in response to the RFP?**

21 A. No. TECo Transport was not required to bid under the terms of its prior contract with
22 TECo. Therefore, TECo Transport had no incentive to "sharpen its pencil" and
23 provide a competitive bid to win the business. Under the terms of the prior contract,

1 TECo Transport was simply allowed to "meet-or-beat" the best bid to win the
2 contract.

3 **Q. Do "meet-or-beat" clauses discourage competitive bidding?**

4 A. Yes. Such clauses discourage a company from coming in with a really competitive
5 bid because bidders perceive that one company, the one with the right to "meet-or-
6 beat," has an extraordinary advantage over all others,, all it needs to do is sit back and
7 wait for the other bids.

8 **Q. Were there problems with TECo's handling of the bids it did received?**

9 A. Yes. TECO did not seriously consider the low bidders it actually had in hand, [REDACTED]
10 and CSX. In fact, it dismissed them, out of hand, apparently due to two things: 1) a
11 flawed analysis of the CSX bid and, 2) a perceived lack of financial ability on the part
12 of [REDACTED].

13 **Q. Please provide an overview of the bids that were submitted.**

14 A. The TECo solicitation went to a number of barge lines operating on the Ohio and
15 Mississippi rivers, terminal facilities for handling coal in the New Orleans area, and
16 marine operators in coastal waters. Probably due to the problems with the RFP
17 discussed earlier, the number of bids received was disappointing. On the river
18 portion, only one operator, [REDACTED] an established company operating on the
19 Mississippi River and its tributaries, responded to the RFP. On the New Orleans
20 terminal portion, only one bidder, [REDACTED] responded. Its bid offered little or no savings.
21 No bids were received for the cross-Gulf transportation leg.

22 **Q. Was a bid submitted by a party to whom TECO did not send the RFP?**

1 A. Yes. CSX presented a bid to TECo to haul up to all of the tonnage by rail direct to
2 TECo.

3 **Q. Please describe the CSX bid.**

4 A. CSX submitted a bid for a tonnage that was sufficient to meet the total requirements
5 of TECO with no reliance on waterborne transport. CSX also submitted a second bid
6 that would have provided up to one-half of TECO's needs by rail. CSX's bid
7 contained an offer to construct and pay for the necessary rail unloading equipment at
8 TECo's Big Bend and Polk plants at no cost to TECO, up to a maximum of [REDACTED]
9 million. The company rejected both of CSX's offers.

10 **Q. Did TECo properly handle CSX's bid?**

11 A. No. I believe that the CSX bid represented an opportunity for TECo to take an
12 overall lower rate back to TECo Transport for it to "meet or beat" pursuant to the
13 terms of the contract. TECo, in looking out for its ratepayers, should have been a
14 tough negotiator with TECo Transport, not an affectionate sister.

15 **Q. Describe the bid that was received for the river portion of the transportation leg.**

16 A. [REDACTED] was the sole bidder on the river portion of the transportation leg. Its bid was
17 quite competitive, but was for less tonnage than TECo's full requirements. It was
18 also rejected by TECo.

19 **Q. How should TECo have handled this bid?**

20 A. Certainly a company in bankruptcy, such as [REDACTED] is not an ideal contractor.
21 However, [REDACTED] was competitive for coal coming from the Green River area of West
22 Kentucky. [REDACTED] offer provided considerable savings from several origins, mostly
23 concentrated in the Green River area. It makes economic sense to me that [REDACTED]

1 could be awarded a contract for this area only in order to save substantial freight
2 costs, which might be only marginally reduced by the cost of coordinating two
3 carriers. Although [REDACTED] was in bankruptcy at the time it made its bid, it offered to
4 meet with TECo to discuss its financial situation. Being the low bidder on the river
5 portion, I believe TECo should have met with [REDACTED]. Since TECo Transport has the
6 right of refusal, it should have at least been required to meet the lower [REDACTED] bid.

7 **Q. Are you recommending that the Commission order TECo to reissue the RFP?**

8 A. No. Our position is reflected in Mr. Majoros' recommended adjustments to Mr.
9 Dibner's price per ton for coal transportation. In the alternative, we request that the
10 Commission audit TECo Transport's actual costs.

11 **III. MR. MAJOROS' TESTIMONY IS REASONABLE**

12 **Q. Have you reviewed Mr. Majoros' testimony filed in this docket?**

13 A. Yes.

14 **Q. Mr. Majoros addresses backhaul in his testimony. Should TECo charge the**
15 **ratepayers for the round trip cost of the barge when it has backhaul traffic?**

16 A. No. My company, EFC, did not charge round trip costs to FPC's ratepayers when
17 backhaul was involved. This was prior to the imposition of the market proxy. Mr.
18 Dibner's procedure of charging round trip costs is patently unfair to the ratepayer.
19 Were it not for ratepayer-financed TECo coal, these backhauls would not have
20 occurred and it is wrong for TECo ratepayers to pay the full round trip voyage costs.

21 **Q. Please summarize your testimony.**

22 A. I believe TECo's administration of its RFP was unreasonable and flawed. As I have
23 discussed in detail above, there were numerous problems with the RFP that TECo

1 could have avoided. At a minimum, TECo should have required TECo Transport to
2 “meet or beat” the bids TECo received. Finally, I agree with Mr. Majoros’
3 conclusion that backhaul should be considered.

4 **Q. Does this conclude your testimony?**

5 **A. Yes.**

Resume of H. G. (Pat) Wells

H. G. (Pat) Wells is a consultant to clients on energy matters including electric rates, power supply contracts, fuels and other related matters. He has served in this capacity since 1987. Prior to then he was President of Electric Fuels Corporation, originally a subsidiary of Florida Power Corporation, and later a subsidiary of Florida Progress Corporation, covering a period of about 12 years.

Prior to this assignment, he was Assistant Vice President of Corporate Planning at Florida Power Corporation for a number of years, having worked in the past as head of System Planning, head of Transmission Engineering and a number of more junior positions, his first assignment being as Transmission Engineer when Florida Power was building its Crystal River power plant facility. As head of Corporate Planning, he was responsible for the planning and electric rate departments and computer services. His total service at Florida Power was about 12 years. During this time he was a delegate of Florida Power on the Florida Operating Committee, a coordinating group formed of representatives from all operating electric companies, both public and private, in Florida. He served as Chairman of this committee until he was appointed as President of Electric Fuels Corporation. The Florida Operating Committee was a predecessor of the electric reliability councils now so important to the electric industry.

During this time at the Florida Progress/Florida Power group of companies, he testified before the Florida Public Service Commission on a number of occasions and a number of subjects, including planning, electric rates and related matters.

Since his retirement in 1987 he has been an independent energy consultant. He has been consultant to Public Utility Commissions in Illinois and Kentucky, consultant to independent industrial companies on electric rate and contract matters and to a number of city and county governments and school boards in Florida. Some of these assignments required filing of testimony, and in some cases testifying, in legal proceedings.

He is a graduate of Louisiana Tech University in Ruston, Louisiana in 1950 with a B.S. in Electrical Engineering. He briefly did graduate work in electrical engineering at the University of Texas in Austin before the Korean conflict broke out, at which time he joined the U.S. Navy, attended their Officer Candidate School, and was assigned to the San Francisco Naval Shipyard at Hunter's Point in San Francisco, where he served as a Ship's Repair Superintendent for four years, working on repairs, overhaul and re-conditioning of naval vessels of all kinds, from submarines to aircraft carriers and battleships. After leaving the Navy he worked at a number of industrial and engineering firms in Texas before moving to Florida in late 1962.

STATE OF FLORIDA

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TIMOTHY DEVLIN, DIRECTOR
DIVISION OF ECONOMIC REGULATION
(850) 413-6900

Public Service Commission

July 11, 2003

Joann T. Wehle, Director
Department of Wholesale Marketing and Fuels
Tampa Electric Company
702 North Franklin Street
Tampa, Florida 33602

VIA FAX (813) 228-1545

RE: Docket No. 030001-EI - Fuel and Purchased Power Cost Recovery Clause and GPIF

Dear Ms. Wehle:

As you know, on June 19, 2003, staff requested a meeting with Tampa Electric to discuss formulating a request for proposals for waterborne coal transportation (RFP), and such a meeting was arranged for July 1, 2003. However, staff was surprised and disappointed that Tampa Electric not only formulated but also issued the RFP to prospective bidders prior to the meeting with staff. Upon staff inquiry, the utility informed staff that the necessary utility personnel could not meet with staff and parties during the week of June 23, 2003, thus, the delay in the meeting date until the following week. However, Tampa Electric never indicated to staff that it would also issue the RFP prior to the meeting.

As a result of the events described above, staff agreed at the conclusion of the July 1, 2003, meeting to prepare and forward to all parties a minimum set of clarifying statements to Tampa Electric's RFP. Such clarifying statements are enclosed with this letter. In staff's opinion, such statements are necessary to clarify certain ambiguous aspects of the RFP which may otherwise limit the number and type of bids that Tampa Electric receives in response to the RFP as issued. These clarifications will have little impact in addressing this concern unless Tampa Electric distributes these clarifications to current and prospective bidders immediately, given Tampa Electric's August 1, 2003 bid deadline. While Tampa Electric has recently indicated that it will not provide staff's RFP clarifications to current and prospective bidders, trade publications, and newspapers, staff believes it would be prudent for the utility to do so in order for staff's concern to be adequately addressed.

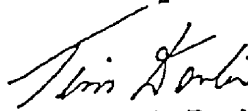
Joann T. Wehle

Page 2

July 8, 2003

If you have any questions, please contact Todd Bohrmann at (850) 413-6445.

Sincerely,



Timothy J. Devlin, Director

TJD:kb

Enclosures (2)

cc: Mary Bane
Harold McLean
Jim Beasley
Parties of Record
Division of Commission Clerk & Administrative Services

TECO RFP MINIMUM CLARIFICATIONS SHEET

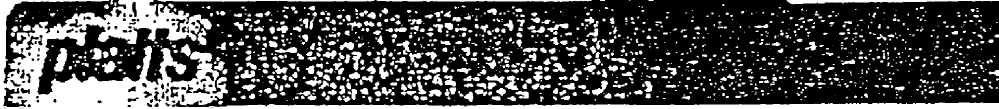
1. TENTATIVE TIMETABLE: Attached is the timetable that Tampa Electric has established for soliciting, evaluating, and awarding bids for coal transportation for the period 2004 through 2008.
2. TRANSPORTATION SEGMENT BIDS: Bids for transportation segments will be matched to form a complete transportation system. For purposes of bid evaluation and selection, Tampa Electric will combine segments to achieve the best combination of price and non-price factors.
3. ALTERNATIVE TO MISSISSIPPI RIVER TERMINALS: Alternative terminals, such as Pascagoula, Mississippi; Mobile, Alabama; and Tampa, Florida; are acceptable locations and will be subject to the provisions of clarification 2 above.
4. INTERNATIONAL SHIPMENT TERMINALS: Tampa Electric will evaluate bids for international shipments separately from domestic shipments. International shipments may be received at Pascagoula, Mississippi; Mobile, Alabama; Tampa, Florida; or elsewhere.
5. MISPRINT: The first sentence under the "Required Terminal Transportation Services" paragraph should be deleted. Thus, Tampa Electric would strike the passage: "The fixed and variable component charges must represent all charges other than fuel."
6. TERMINAL VESSEL SIZE: Terminals which can not accept Panamax-sized vessels will also be evaluated.
7. TECO TRANSPORT: TECO Transport can/can not (circle one) match the lowest bid with all non-price factors considered.

Transportation Services Solicitation Schedule

| Step | Tasks to Establish Transportation Contract | Estimated Time to Complete Task |
|------|--|---------------------------------|
| 1. | Mail RFP to bid list of waterborne coal transportation providers and notify industry publications of pending RFP | Week of June 23, 2003 |
| 2. | Deadline to submit sealed proposals | August 1, 2003 |
| 3. | Complete evaluation of proposals | Week of August 11, 2003 |
| 4. | Notify transportation provider that submitted the winning proposal and begin contract negotiations | Week of August 18, 2003 |
| 5. | Complete transportation contract negotiations | Week of October 6, 2003 |
| 6. | Execute new transportation contract | Week of October 6, 2003 |
| 7. | Notify unsuccessful bidders that contract has been awarded | Week of October 13, 2003 |

TECO seeks barge bids; industry skeptical/Platts News

**TAMPA ELECTRIC COMPANY
DOCKET NO. 031033-EI
OPC'S 1st REQUEST FOR POD**



TECO seeks barge bids;
Industry skeptical

Pennsylvania solicits
bituminous and anthracite
coal offers

NRP buys reserves,
Pinnacle and Oak Grove
mines from PinnOak

IRS widens review of
chemical change processes
at synfuel facilities

Kospo tenders for 300,000
mt

Knoxville (Platts Coal Outlook) 7 July 2003

Tampa Electric is taking bids to transport solid fuels — including coal, coal-based synfuel and petroleum coke — to the Big Bend station, but some in the industry are skeptical about the offer. Bids are due Aug. 1, and the utility expects to award a five-year contract, beginning in 2004 and running through 2008. TECO is seeking bids to move the fuels from midwestern supply sources convenient to the Mississippi and Ohio river systems. Minimum annual tonnage requirements for 2004-2006 range from 3.25 million tons on the Inland river system to 4 million tons on the Gulf.

The tonnage will decrease in 2007-2008 "if a consent decree trigger event occurs," TECO said. Such an event would be if Tampa Electric "decided to comply with the [Environmental Protection Agency's] Consent Decree by either shutting down Big Bend or repowering Big Bend to natural gas," it explained. Industry sources, however, downplayed the solicitation as "an exercise in futility." "We went through this same process six years ago," said one industry executive. "They'll take bids and then award the contract to their sister company, TECO Transport. It's all a game to keep the Public Service Commission happy." TECO solicited in 1997 for a five-year contract and awarded it to TECO Transport. For details, contact Martin Duff at 813-228-1596.

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Docket No. 031033-EI
Wells Exhibit No. _____
(HGW-4)
Letter from [REDACTED] to TECO

ENTIRE DOCUMENT IS CONFIDENTIAL

Docket No. 031033-EI
Wells Exhibit No. _____
(HGW-5)
Letter from [REDACTED] to TECO

ENTIRE DOCUMENT IS CONFIDENTIAL

CERTIFICATE OF SERVICE

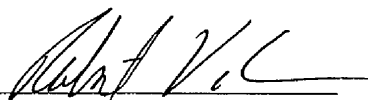
I HEREBY CERTIFY that a true and correct copy of the foregoing Testimony and Exhibits of H.G. Wells has been furnished by (*) hand delivery, (**) electronic mail or U.S. Mail this 29th day of March 2004, to the following:

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