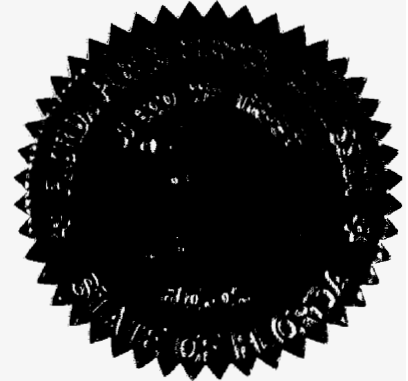


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 031033-EI

In the Matter of

REVIEW OF TAMPA ELECTRIC  
COMPANY'S 2004-2008 WATERBORNE  
TRANSPORTATION CONTRACT WITH  
TECO TRANSPORT AND ASSOCIATED  
BENCHMARK.



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: CHAIRMAN BRAULIO L. BAEZ  
Prehearing Officer

DATE: Monday, May 17, 2004

TIME: Commenced at 1:30 p.m.  
Concluded at 2:25 p.m.

PLACE: Betty Easley Conference Center  
Hearing Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR  
Chief, Office of Hearing Reporter Services  
FPSC Division of Commission Clerk and  
Administrative Services  
(850) 413-6732

## 1 APPEARANCES:

2 LEE L. WILLIS, ESQUIRE, JAMES D. BEASLEY, ESQUIRE,  
3 and JOHN P. FONS, ESQUIRE, Ausley Law Firm, P.O. Box 391,  
4 Tallahassee, Florida 32302, appearing on behalf of Tampa  
5 Electric Company.

6 SCHEFFEL WRIGHT, ESQUIRE, and JOHN T. LAVIA, III,  
7 ESQUIRE, Landers Law Firm, 310 West College Avenue,  
8 Tallahassee, Florida 32301, appearing on behalf of CSX  
9 Transportation.

10 VICKI GORDON KAUFMAN, ESQUIRE, and TIMOTHY PERRY,  
11 ESQUIRE, McWhirter Reeves, 400 North Tampa Street, Suite 2450,  
12 Tampa, Florida 33602, appearing on behalf of Florida Industrial  
13 Power Users Group.

14 ROB VANDIVER, ESQUIRE, Office of Public Counsel, c/o  
15 The Florida Legislature, 111 W. Madison St., Room 812,  
16 Tallahassee, Florida 32399-1400, appearing on behalf of the  
17 Office of Public Counsel.

18 MICHAEL B. TWOMEY, ESQUIRE, P. O. Box 5256,  
19 Tallahassee, 32314-5256, appearing on behalf of Catherine L.  
20 Claypool, Helen Fisher, William Page, Edward A. Wilson, Sue E.  
21 Strohm, Carlos Lissabet, Betty J. Wise, Lesley A. Diaz and Mary  
22 Jane Williamson.

23  
24  
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1 APPEARANCES CONTINUED:

2 MARY ANNE HELTON, ESQUIRE, and JENNIFER RODAN,  
3 ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak  
4 Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf  
5 of the Commission Staff.

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## P R O C E E D I N G S

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CHAIRMAN BAEZ: Call the prehearing to order.

Counsel, can you read the notice?

MS. RODAN: Notice of this prehearing conference was published April 30th, 2004, in the Florida Administrative Weekly. The notice set this time and place for the prehearing in Docket Number 031033-EI, and the purpose of the prehearing is more fully set out in the notice.

CHAIRMAN BAEZ: Thank you, Ms. Rodan.

We'll take appearances. Mr. Beasley.

MR. BEASLEY: Mr. Chairman, I'm James D. Beasley, appearing with Lee L. Willis and John P. Fons, all of the law firm of Ausley and McMullen, P.O. Box 391, Tallahassee, Florida 32302. We are representing Tampa Electric Company.

CHAIRMAN BAEZ: Mr. Wright.

MR. WRIGHT: Robert Scheffel Wright and John T. Lavia, III, Landers and Parsons, 310 West College Avenue, Tallahassee 32301, appearing on behalf of CSX Transportation.

MR. TWOMEY: Good afternoon, Mr. Chairman. Mike Twomey on behalf of Catherine Claypool and eight others listed as residential customers.

MR. VANDIVER: Robert Vandiver appearing on behalf of the Citizens of the State of Florida.

MS. KAUFMAN: Vicki Gordon Kaufman and Timothy Perry of the McWhirter Reeves law firm on behalf of the Florida

1 Industrial Power Users Group.

2 MS. HELTON: Mary Anne Helton, Jennifer Rodan and  
3 Cochran Keating on behalf of the Florida Public Service  
4 Commission.

5 CHAIRMAN BAEZ: Thank you. And Ms. Rodan or Ms.  
6 Helton, do we have any preliminaries?

7 MS. HELTON: None that I'm aware of, Mr. Chairman. I  
8 believe we can just start going through the prehearing order.

9 CHAIRMAN BAEZ: Great. Let's walk through it. I'm  
10 going to -- you can start at Section VII. I will trust all the  
11 typos and whatever clarifications in the first six sections we  
12 can make offline.

13 Mr. Beasley, if you can tell me if there are any  
14 changes to the order of witnesses?

15 MR. BEASLEY: Yes, Mr. Chairman. We would like to  
16 have Mr. Dibner be the lead-off witness for Tampa Electric  
17 Company for both his direct and rebuttal testimony and then  
18 followed by Ms. Wehle, with her direct and rebuttal  
19 testimonies, and then the remaining witnesses will be in the  
20 order shown.

21 CHAIRMAN BAEZ: Very well. Without objection, show  
22 those changes made. I guess I should raise a question here  
23 now. Are we going to be taking direct and rebuttal together?  
24 I don't know if it has even been discussed or if there is any  
25 objections to it, but I think it will make for a much

1 smoother --

2 MS. HELTON: I'm not sure that that has been  
3 discussed. I did not discuss that with Mr. Keating.

4 CHAIRMAN BAEZ: Is this a good time to discuss it?

5 MR. BEASLEY: Yes, it is.

6 MS. HELTON: I believe that it would be.

7 CHAIRMAN BAEZ: Okay. Seeing as how we are changing,  
8 is there any discussion? Mr. Beasley.

9 MR. BEASLEY: Just to say that we offer that up to  
10 make things move a little more swiftly, and I believe we can  
11 present our case in that format.

12 CHAIRMAN BAEZ: Okay. Mr. Wright, Mr. Twomey, Mr.  
13 Vandiver.

14 MR. WRIGHT: We have no objection to taking direct  
15 and rebuttal together.

16 CHAIRMAN BAEZ: Do you have any objections?

17 MR. VANDIVER: None.

18 MS. KAUFMAN: We have none.

19 Mr. Chairman, when it is appropriate, I do need to go  
20 back to a prior section.

21 CHAIRMAN BAEZ: Okay. Let me make sure. Let me just  
22 get this one on the record, then. We don't have -- there is no  
23 objection to taking direct and rebuttal together. Parties, I  
24 appreciate that.

25 Ms. Kaufman, quickly. You needed to go back to a

1 prior section?

2 MS. KAUFMAN: I do, Mr. Chairman. I wanted to go  
3 back to Section Number IV about the confidential information,  
4 and to notify you and the parties that it would be our intent  
5 to use confidential information at the hearing, and then really  
6 to ask two questions about that.

7 CHAIRMAN BAEZ: Okay.

8 MS. KAUFMAN: And the first question is it seems to  
9 me in this case there is an incredible volume of information  
10 that is being claimed to be confidential, and you know there  
11 are motions and whatnot pending.

12 CHAIRMAN BAEZ: Right.

13 MS. KAUFMAN: And so my first question is can the  
14 parties rest assured that the Commissioners will all have all  
15 of the confidential testimony that has been filed so far?

16 CHAIRMAN BAEZ: Can you rest assured that we will  
17 have it?

18 MS. KAUFMAN: Are we supposed to bring copies, I  
19 guess, is what I'm trying to ask; or should we assume that the  
20 Commissioners will have all of that information when they come  
21 to the bench?

22 CHAIRMAN BAEZ: Well, Ms. Kaufman, that has always  
23 been -- it is always the assumption, it is always the fact that  
24 the Commissioners have available to them all the confidential  
25 testimony that gets filed. The only reason -- the only reason

1 that the request is made that you have specific portions that  
2 you intend to use available is just for expediency sake. And,  
3 again, I'm taking your word for it, and I believe it to be true  
4 that there is a fair amount of confidential information that we  
5 are going to use, but that only serves to prove the point that  
6 maybe it is a better -- again, I don't have any indication as  
7 to how much information you are planning on using. I suspect  
8 by your question it to be a considerable amount.

9 MS. KAUFMAN: My question really went to actually the  
10 prefiled. And if I need to have copies of information that my  
11 witness is using that Tampa Electric is saying is confidential,  
12 I will be sure to do that. I just wanted to clarify.

13 CHAIRMAN BAEZ: Is it voluminous to say the least? I  
14 mean, are we going to spend the whole day passing stuff out?  
15 You can warn me, it's okay.

16 MS. KAUFMAN: I think it could severely impede  
17 progress, yes.

18 CHAIRMAN BAEZ: All right, then. Let's do this. You  
19 do your best to have it available if necessary, and I trust  
20 your judgment. I mean, if you are going to have to pass a file  
21 that is yea big, I think you can trust us to have it. But to  
22 the extent that we are just using isolated passages from  
23 certain pages, I think if it is easier, that becomes easier for  
24 you to have it available for us, because that way we are not  
25 paging around for it.



1           Is that okay with everyone? I know it is a very  
2 vague and general rule, but I'm kind of putting it back on you  
3 all. We will have it available to us, but it always creates a  
4 better impression, certainly with smaller documents, that you  
5 have copies available for us as well. It makes it a lot  
6 easier.

7           MS. KAUFMAN: We will do that.

8           CHAIRMAN BAEZ: Thank you.

9           MS. KAUFMAN: Thank you.

10          CHAIRMAN BAEZ: Mr. Vandiver.

11          MR. VANDIVER: The same issue, Mr. Chairman. I  
12 wanted to also give that notice that we plan to use  
13 confidential information at the hearing, and we will have it  
14 available per your instructions. But, again, it is the  
15 voluminous nature of bringing all the testimony here that we  
16 have filed, but we will do so as you wish.

17          CHAIRMAN BAEZ: And understand, I'm not trying to  
18 pass off a responsibility that we have on you all. My interest  
19 is for having this -- we do have a limited amount of time,  
20 something which we will discuss at length, hopefully short  
21 length a little later at the close of the prehearing. I'm not  
22 trying to pawn a responsibility that the Commissioners have.  
23 Obviously we are responsible for reading the record and for  
24 having it available. That is one of the things that we are  
25 supposed to do, and we will do our best to have it. My only

1 plea to you all is where you can judge that for convenience  
2 sake it is better if you just hand it out, then let that be  
3 your guide.

4 MR. VANDIVER: My only concern, sir, is knowing well  
5 in advance so that I bring the proper number of red folders and  
6 copies so that there is no shuffling at the hearing and we can  
7 move swiftly to the matter at hand.

8 CHAIRMAN BAEZ: The only thing that I can assure you  
9 is that I'm not going to get upset with you if you say this one  
10 was just too darn big, and we are going to have to go back and  
11 see it.

12 Mr. Twomey.

13 MR. TWOMEY: Mr. Chairman, I may or may not use  
14 confidential materials. But if I do, I will plan to bring --  
15 if it is acceptable by your ultimate ruling here, plan to bring  
16 just copies, sufficient copies of the things that I might try  
17 to use that have been submitted in discovery. Aside from the  
18 testimony, I think there is still some doubt in your ruling  
19 because -- and I would encourage you to say we are going to  
20 have all of the confidential testimony on the bench so that the  
21 various parties all don't have to worry about providing you  
22 with copies of testimony, which is replete with numbers and  
23 phrases and soon forth.

24 CHAIRMAN BAEZ: And I guess just as a way to assure  
25 you and better clarify, the point that I'm trying to make is

1 that -- and this is just an ergonomic conversation here, you  
2 know, it is a lot easier if it is a small document, if it is  
3 something that is manageable to have it placed in front of us  
4 than for us to go digging for it in the confidential. And that  
5 is really all it has ever been. This is pure convenience more  
6 than anything else.

7           We will make sure, and I think we will let it float  
8 down, whoever has gotten in the habit of not having  
9 confidential testimony available should do so for this hearing.  
10 And I suspect that with the kind of profile and the kind of  
11 importance of the issues that we are discussing, that we will  
12 be hearing, that should be the rule of the day, okay?

13           MR. TWOMEY: Yes, sir.

14           CHAIRMAN BAEZ: All right. Thank you. Mr. Wright.

15           MR. WRIGHT: If I could, just to clarify what we are  
16 talking about by way of example, and then I have a separate  
17 question and request regarding confidential information.

18           CHAIRMAN BAEZ: Okay.

19           MR. WRIGHT: One, we, too, CSX Transportation also  
20 does intend to use confidential information. By way of  
21 example, I want to make sure I'm understanding what you have  
22 been saying. Let's say our witness, Doctor Sansom, has a  
23 couple of key tables in his testimony to which he may well  
24 refer in his summary. Each of these tables happens to be three  
25 pages long. It sounds like what you are suggesting is that we

1 should show up with copies of those three-page tables so that  
2 we can hand those out to you for convenience sake, even with  
3 the understanding that you would have the inch-thick document  
4 of his testimony, including all of his tables and exhibits  
5 behind you. Am I getting it?

6 CHAIRMAN BAEZ: And, again, you are getting it.  
7 Because I'm not saying anything any different than it has ever  
8 been, as far as I know. We have always got the confidential  
9 portions of the testimony and confidential exhibits available  
10 to us. But as you can see, as you can imagine, you guys have  
11 been here a long time practicing, you know how voluminous it is  
12 and you know how clumsy it is to be digging through the back.  
13 I mean, you can't even just fit it here. If we put in on the  
14 front we would be blinded, we couldn't see your pretty faces.  
15 So, I guess the rule of convenience should be in force. And  
16 I'm willing to -- in light of the volume of it, I'm willing to  
17 let that work both ways.

18 MR. WRIGHT: Thank you.

19 CHAIRMAN BAEZ: Okay. And whatever convenience you  
20 want to offer us, it will be duly noted, shall we say that?  
21 Any other questions on this section? Mr. Beasley was getting  
22 poised to say something. Go ahead, Mr. Beasley.

23 MR. BEASLEY: Yes, sir. We also plan to use and rely  
24 upon confidential information. And our plan all along had been  
25 to bring copies, extra copies of all testimonies that we will

1 sponsor into evidence in red folders for the Commissioners and  
2 the staff as needed. And anything that we are going to rely on  
3 in cross-examination.

4 CHAIRMAN BAEZ: I appreciate that, Mr. Beasley. And  
5 Mr. Wright to close.

6 MR. WRIGHT: I did have a separate issue related to  
7 the confidential information.

8 CHAIRMAN BAEZ: You did; and, I'm sorry, I skipped  
9 over that. Go ahead.

10 MR. WRIGHT: That's okay. At Page 3 in  
11 Section IV(B)(2)(a), the order as it stands requires that we --  
12 do I understand that correctly to just say that all I have to  
13 do is give notice by then that we intend to use confidential  
14 information, or do I have to tell you exactly what it is? **If I**  
15 have to tell you exactly what it is, I would like an extension  
16 from that seven-day advance notice by one day.

17 CHAIRMAN BAEZ: If I am reading (2)(a) correctly, I'm  
18 not sure that there is a requirement for it to be made known  
19 with any specificity. If someone has a different take on that,  
20 please let me know now, because we need to really discuss it.  
21 As far as I know, by all of your actions right now you have  
22 complied with (2)(a) at this point.

23 MR. WRIGHT: Thank you very much.

24 CHAIRMAN BAEZ: Any other questions on this section  
25

1 Mr. Beasley, you were done with your changes?

2 MR. BEASLEY: Yes. And I would just reiterate, Mr.  
3 Chairman, that our witness order would be Ms. Wehle -- excuse  
4 me, Mr. Dibner on direct and rebuttal, Ms. Wehle on direct and  
5 rebuttal, Mr. Murrell on rebuttal, and Ms. Guletsky on  
6 rebuttal.

7 CHAIRMAN BAEZ: Let the record reflect those changes.  
8 Thank you. That is the way I have it, Mr. Beasley. Mr.  
9 Vandiver and Ms. Kaufman, I guess you are sponsoring jointly?

10 MR. VANDIVER: That's correct.

11 CHAIRMAN BAEZ: Mr. Wells and Mr. Majoros, there is  
12 no addition and no changes?

13 MR. VANDIVER: That is correct.

14 CHAIRMAN BAEZ: Okay. Mr. Wright.

15 MR. WRIGHT: Yes, sir. The order of witnesses, Mr.  
16 White, Doctor Sansom, and Mr. Stamberg as shown is correct.

17 CHAIRMAN BAEZ: Okay. And you have Doctor Hochstein  
18 as your sole witness, Mr. Twomey, and I am assuming that order  
19 is correct? Kidding.

20 MR. TWOMEY: Nobody asked me, but that's fine.

21 CHAIRMAN BAEZ: Section VIII. Mr. Beasley, any  
22 changes to your basic position?

23 MR. BEASLEY: I've gotten with Ms. Helton and made a  
24 clarification of our position.

25 CHAIRMAN BAEZ: Very well. Mr. Vandiver or Ms.

1 Kaufman?

2 MR. VANDIVER: No, sir.

3 MS. KAUFMAN: No, sir.

4 CHAIRMAN BAEZ: Okay, thank you. Mr. Wright?

5 MR. WRIGHT: Our position is correctly stated. Thank  
6 you.

7 CHAIRMAN BAEZ: Thank you. And, Mr. Twomey?

8 MR. TWOMEY: No changes.

9 CHAIRMAN BAEZ: No changes. Thank you, sir.

10 Staff?

11 MS. HELTON: No changes.

12 CHAIRMAN BAEZ: Section IX, Issue 1. And I'll just  
13 move through these. If anyone has changes, we will go from my  
14 left to right. Seeing no hands up, I'm assuming no changes.  
15 Thank you.

16 Issue Number 2. Ms. Helton. I didn't see you all  
17 the way over there.

18 MS. HELTON: I have a change to staff's position for  
19 Issue Number 2.

20 CHAIRMAN BAEZ: Okay.

21 MS. HELTON: In the first paragraph, the last line,  
22 after the date October 6th, 2003, we will need to insert the  
23 words "appear to." So that last line would read, "October 6th,  
24 2003, appear to overstate the market prices at that time for  
25 such services."

1 CHAIRMAN BAEZ: Thank you, Ms. Helton. Is that the  
2 only change?

3 MS. HELTON: Yes, sir.

4 CHAIRMAN BAEZ: Okay. Issue Number 3. Okay. Now  
5 here is where we enter discussion on issues to include or not.

6 Ms. Helton, can you kind of lead us through this?

7 MS. HELTON: I can certainly attempt to do so. It is  
8 my understanding that the first three issues were issues that  
9 were, I guess, spun off from the fall fuel hearing.

10 CHAIRMAN BAEZ: Right.

11 MS. HELTON: And you have since then entered an order  
12 to approve a stipulation between TECO, FIPUG, and OPC that  
13 those are the three issues that those particular parties agree  
14 to. But you also included language in that order to the effect  
15 of that other parties would not be, I think, limited to perhaps  
16 raising additional issues, if within your discretion you found  
17 that it was within the scope of the proceeding.

18 CSX has in the prehearing order identified Issues 4  
19 through 10 for the Commission's consideration. I believe that  
20 Shef passed out today some consolidated issues for 5, 6, 7, and  
21 8 to trunc those down to just Issues 5 and 6. This kind of a  
22 matter, I guess, means it is kind of teeing this all off. It  
23 is staff's position that what were Issues 4 through 8, which  
24 have now been changed to Issues 4 and the new Issue 5 and the  
25 new Issue 6, that these are all issues that could be subsumed



1 within the existing Issue 3. And it is staff's position that  
2 Issues 9 and 10 are outside of the scope of this proceeding.

3 CHAIRMAN BAEZ: Mr. Wright.

4 MR. WRIGHT: If I could have just a moment.

5 CHAIRMAN BAEZ: Sure.

6 MR. WRIGHT: As to what were Issues 4 through 8, if  
7 the staff would be agreeable that they could be addressed under  
8 either Issue 3 or Issue 1. Several of them, in particular  
9 Issue 4 goes to procurement practices which relates to the RFP,  
10 which is Issue 1. We would not have any problem agreeing to  
11 subsume 4 through 8 in either 1 or 3 as applicable.

12 CHAIRMAN BAEZ: Ms. Helton, help me understand. I  
13 mean, I'm inclined to -- and I think this has been a practice  
14 of mine for some time, is to not -- you know, I'm not going to  
15 micromanage arguments that you make. But in the context of  
16 having either more or less issues, and certainly where the  
17 possibility exists that you have that flexibility to state your  
18 case however you want, I'm inclined to have those, I guess, the  
19 first five proposed issues, if they are adequately subsumed  
20 under the existing ones, you know, I will offer you that  
21 opportunity. And I appreciate your offer to do that.

22 But, my question to Ms. Helton is this. Is it  
23 necessary at this point to -- just by merely stating that they  
24 can fit in, I guess they can be subsumed under the existing  
25 issues, there is no need to identify -- I mean, I heard Mr.

1 Wright suggesting where they might be appropriately subsumed.  
2 That is not something that we need to settle; it's not  
3 something that we are going to hold them to at this point?

4 MS. HELTON: I agree with you, Mr. Chairman. All I  
5 was trying to say is that staff believes if Mr. Wright wants to  
6 address any aspects of the Issue 4 through 8 that he has raised  
7 here, that staff will include that in its analysis and its  
8 recommendation when it brings it to you.

9 CHAIRMAN BAEZ: All right. And the mere act of  
10 deeming them acceptable to address within the existing issues  
11 doesn't require, necessarily, pinning any of these that are now  
12 going to disappear to any other particular --

13 MS. HELTON: That's correct. I agree with that.

14 CHAIRMAN BAEZ: All right. Mr. Wright, you are okay  
15 with that, right?

16 MR. WRIGHT: Yes, I just wanted --

17 CHAIRMAN BAEZ: You have accepted that those issues  
18 that you have identified can be subsumed under the existing  
19 issues? And I guess I was trying to react somehow to your  
20 suggestion, or to your comment that one issue might be better  
21 subsumed under a specific existing issue and so on. We are not  
22 even making that determination at this point.

23 MR. WRIGHT: And that is exactly right. I just  
24 wanted to be sure that by acquiescing we weren't agreeing that  
25 they had to be addressed under 3, because I think some of them

1 really do relate to Issue 1, which is the issue that relates to  
2 the adequacy of the RFP. And, correspondingly, what, if  
3 anything, the Commission should do about it if it determines  
4 that issue in the negative.

5 CHAIRMAN BAEZ: Very well.

6 MR. WRIGHT: Thanks.

7 CHAIRMAN BAEZ: Mr. Beasley, no comment?

8 MR. BEASLEY: Do I correctly understand then that we  
9 are traveling under the same three issues that were deferred?

10 CHAIRMAN BAEZ: Right up to now. TBA.

11 MR. BEASLEY: I think we can accommodate, and have  
12 accommodated the testimony of the various parties represented  
13 here.

14 CHAIRMAN BAEZ: Very well. And now, Ms. Helton, this  
15 causes me a bit of confusion, because now I'm not sure what to  
16 do with what Mr. Wright has --

17 MS. HELTON: I think we can ignore now what Mr.  
18 Wright passed out, because those issues no longer exist.

19 CHAIRMAN BAEZ: No longer is such a harsh term.  
20 Let's set it aside, and we don't have to address them. Is that  
21 right? And we are left with what were proposed 9 and 10?

22 MS. HELTON: We still need to deal with what were  
23 proposed as Issues 9 and 10.

24 CHAIRMAN BAEZ: Okay.

25 MS. HELTON: And those are the ones that it is

1 staff's recommendation that those two issues are outside of the  
2 scope of this proceeding.

3 MR. BEASLEY: We would concur in that, sir. And we  
4 had three issues we have all known about for many months. Now  
5 and they have been addressed both in the previous docket, and  
6 they have been deferred to this docket in your earlier order  
7 back in March. We would all, obviously, would like to tweak  
8 the list of issues and to add something perhaps that we would  
9 want to have in there, but we are comfortable in proceeding  
10 with the three issues that were deferred. And I think everyone  
11 can proceed in that way.

12 CHAIRMAN BAEZ: Mr. Wright.

13 MR. WRIGHT: Commissioner, we want Issues 9 and 10 in  
14 of the case. We think they are justiciable, we think that we  
15 have rights under 366.07 as well as under 366.03 to have the  
16 Commission decide those issues.

17 And, again, it would be our position -- we also  
18 raised these in our petition to intervene which was filed on  
19 December 16th, I think. It was filed the middle of December.  
20 So they have been on the table as filed by CSX Transportation  
21 since we petitioned to intervene in this case in December. And  
22 I think probably they were put on the table when we petitioned  
23 to intervene in the 0001 docket, as well, but I can't swear to  
24 that right now.

25 MR. BEASLEY: I can swear to the fact that they were

1 not, and that CSXT --

2 CHAIRMAN BAEZ: That was going to be my question.

3 MR. BEASLEY: -- used the same three issues in the  
4 prehearing statement that they filed in the fuel docket that we  
5 have before us here. We filed our case based on these three  
6 issues, and not the two new issues that CSXT has raised.

7 We think it would be fundamentally unfair for the  
8 course of the proceeding to change at this late date, and to  
9 pick up other issues that were not previously addressed.

10 MR. WRIGHT: Well, I don't think the course of  
11 hearing would change at all, Your Honor.

12 CHAIRMAN BAEZ: I suspected. Ms. Helton, have  
13 these -- I'm not sure I have ever seen issues like these. Even  
14 in the fuel dockets, even in the -- I mean, in your  
15 recollection have issues like this ever popped up or been  
16 considered?

17 MS. HELTON: Well, I'm always uncomfortable with  
18 asking the Commission to answer a question: Does the  
19 Commission have statutory power to do something? Which is, as  
20 I understand Issue 9, is what CSX is asking the Commission to  
21 do. I mean, the Commission has the power that it has that is  
22 set out in Chapter 366, and as it is necessary to explain that  
23 in whatever actions it decides to take, I think it is  
24 appropriate then to go into a discussion about what the  
25 Commission has authority to do or not to do. But to have a

1 flat out issue, what is the statutory authority, I'm not  
2 comfortable recommending to the Commission that they rule on  
3 that particular issue.

4 CHAIRMAN BAEZ: And Issue 10 is just a fallout, so we  
5 are really arguing about Issue 10.

6 MS. HELTON: Issue 10 is a fallout.

7 CHAIRMAN BAEZ: Issue 9, I'm sorry.

8 MR. WRIGHT: Mr. Chairman, if I may. I think the way  
9 I view it is that Issue 10 is the real application question. I  
10 view Issue 9 as a predicate legal issue. And I'm familiar with  
11 there being numerous legal issues posed to the Commission in  
12 prehearing orders in my career here.

13 CHAIRMAN BAEZ: Here is the trouble that I am having,  
14 Mr. Wright. This proceeding is, in my mind, just a spin-off,  
15 or I think even as a functional matter a postponement of a  
16 decision or consideration of something that was properly within  
17 the fuel docket. As such, it becomes very difficult for me to  
18 have questions like anything different than what would have  
19 been carried over, the fuel docket. And so I am hesitant not  
20 only for the reasons that Ms. Helton stated, but this is sort  
21 of changing the nature of the proceeding somehow.

22 I'm not saying that it would never be appropriate or  
23 ever be inappropriate under other circumstances. But in this  
24 context where what we have merely done, in my opinion, is slid  
25 consideration of certain issues on the 01 docket out a little

1 farther into the future, if only just to give staff and some of  
2 the other parties an opportunity to flesh out the issues that  
3 were existing then more appropriately, this seems like  
4 something a little bit farther afield than what would have  
5 normally been the case.

6 So I'm inclined to deny having or including this  
7 issue and the fallout Issue 10. I will give you the last word  
8 before I make the ruling final, but go ahead.

9 MR. WRIGHT: Thank you, I appreciate it. Three  
10 things. First, this is a new docket. It is not the fuel  
11 docket. Second, as your previous remarks contemplate we could  
12 perhaps file a petition or even a complaint seeking the more  
13 specific relief that is contemplated by our Issue 10. Third, I  
14 think our Issue 10 really is an issue that goes to what, if  
15 anything, the Commission is going to do about the situation at  
16 hand.

17 Now, we recognize that we would have an affirmative  
18 burden of proof to establish facts to support this action. We  
19 would have to prove up that each of the elements that are  
20 identified in 366.07 has been met, and then prove as a matter  
21 of application and policy that the Commission should take some  
22 specific action in response to that.

23 But we think it is an appropriate issue in the  
24 context of what is the Commission going to do about the factual  
25 situation that we have in which every party except Tampa

1 Electric agrees that they haven't done it right.

2 CHAIRMAN BAEZ: Well, and, again, going back to  
3 something I said earlier, given the fact that this is sort of a  
4 sliding, you may be right, it has a different number and  
5 everything, but the fact is that as a practical matter this was  
6 spinning off of a fuel docket issue, and the remedies and the  
7 relief available, or the remedies available to that,  
8 resolutions available to the Commission in that context are  
9 already known going in. And I don't think that this is one of  
10 them. And I don't think that it is appropriate in this  
11 context.

12 Now, at some given point in time you have leave, I  
13 mean, this obviously is not -- nothing affects your right to be  
14 able to bring this issue before the Commission in a different  
15 docket or through a different vehicle, but we are not going to  
16 do it in this one. Because I feel that the remedies or the  
17 resolutions available to the Commission were clear moving  
18 forward, and they should be consistent with those that are  
19 available to us in the context of the fuel dockets. And that  
20 means you either deny recovery of imprudent costs, and so  
21 forth. I mean, those remedies or those resolutions are well  
22 known, and I don't think it is appropriate to be putting this  
23 question before us in this context now.

24 There are plenty of other opportunities, or you have  
25 your choice of opportunities with which to put it -- in context



1 with which to put it before the Commission, and I just don't  
2 think this is the one. So I'm going to deny inclusion of these  
3 issues, and we are going to stick with the three issues that  
4 have been set forth. And you do know that as to the balance of  
5 your proposed issues, they are properly subsumed between the  
6 existing issues, as well. I thank you for bringing it before  
7 us, Mr. Wright.

8 Next we have the exhibit lists.

9 MR. VANDIVER: Commissioner.

10 CHAIRMAN BAEZ: I'm sorry, go ahead, Mr. Vandiver.

11 MR. VANDIVER: HGW-4 is a letter from the barge  
12 company to TECO. Presently that letter in Mr. Wells' exhibit  
13 is wholly confidential. In Mr. Majoros' deposition recently,  
14 portions of that letter were not claimed to be confidential.  
15 And at this time I would like to pass out that letter as it  
16 presently stands, knowing the Commission's policy of as much  
17 being in the public record as possible.

18 I would also like to point out that we have a pending  
19 motion to declassify the entire letter, and that is without  
20 prejudice to that motion. But I would like to pass out the  
21 letter as it stands right now, recognizing that we have a  
22 motion to declassify the entire thing. But I think this would  
23 be the status of the exhibit as it stands right now.

24 CHAIRMAN BAEZ: And you are passing it out now for  
25 purposes of --

1 MR. VANDIVER: Of letting everyone know where it  
2 stands.

3 CHAIRMAN BAEZ: Okay.

4 MR. BEASLEY: If you want to save that effort, I can  
5 stipulate that we would be in agreement that this can be an  
6 exhibit as redacted.

7 MR. VANDIVER: Okay.

8 CHAIRMAN BAEZ: Do you want to save the -- I mean, I  
9 think you solved your issue, Mr. Vandiver.

10 MR. VANDIVER: Yes. And I will just go ahead and  
11 send the letter to the Clerk's Office to that effect, but go  
12 ahead and pass it out to the parties now so they can take a  
13 look at it.

14 CHAIRMAN BAEZ: Okay. Thank you.

15 Mr. Beasley, any changes to your exhibit list?

16 MR. BEASLEY: No, sir. I would like to point out,  
17 though, that the exhibit list seems to reflect that the  
18 intervenors have 59 exhibits, whereas we have six. What we  
19 have done with our exhibit is to accumulate all of the various  
20 documents under an exhibit.

21 CHAIRMAN BAEZ: Well, we are not keeping score, Mr.  
22 Beasley.

23 MR. BEASLEY: I just wanted to make that clear.

24 CHAIRMAN BAEZ: Six exhibits was actually scoring you  
25 some points, but --

1 MR. TWOMEY: Mr. Chairman, Mr. Beasley has forgotten  
2 that it is the weight of the evidence, so they will probably  
3 win.

4 CHAIRMAN BAEZ: Thank you for pointing that out, Mr.  
5 Beasley.

6 Mr. Vandiver or Ms. Kaufman, do you have any changes  
7 to your exhibit list?

8 MR. VANDIVER: No, sir.

9 MS. KAUFMAN: No.

10 CHAIRMAN BAEZ: Any clarifications as to the weight  
11 of those exhibits?

12 MS. KAUFMAN: They are very weighty, but that would  
13 be my only clarification.

14 MS. HELTON: May I bring up one thing about the  
15 exhibits? I apologize, for those of you who don't know, Mr.  
16 Keating is sick today, so I am kind of filling in for him at  
17 the last minute.

18 CHAIRMAN BAEZ: You are doing wonderfully, Ms.  
19 Helton.

20 MS. HELTON: Thank you. And I wanted to clarify  
21 something. For instance, Mr. Beasley's exhibits, which he has  
22 combined a group of exhibits into one exhibit, is that  
23 confidential and nonconfidential information? And I'm  
24 wondering if there would be way to break it up into two pieces  
25 so that we have a part that is clearly public for which we

1 don't have to have any kind of special treatment, and a part  
2 which is confidential where we can be a little bit more  
3 protective about it.

4 MR. BEASLEY: We can certainly work with you in an  
5 effort to do that.

6 MS. HELTON: I think that might help to speed things  
7 up along the hearing.

8 CHAIRMAN BAEZ: And we can make the necessary changes  
9 on whatever clarifications are necessary.

10 MS. HELTON: We can certainly work with the parties  
11 to do that.

12 CHAIRMAN BAEZ: Great. I appreciate that, Mr.  
13 Beasley. Where were we?

14 Mr. Wright.

15 MR. WRIGHT: Our exhibits are fine. Thank you.

16 CHAIRMAN BAEZ: You're okay. And, Mr. Twomey, I'm  
17 paging through this to find out if you have -- go ahead.

18 MR. TWOMEY: Yes, sir, they are fine.

19 CHAIRMAN BAEZ: All right. Thank you.

20 MR. WRIGHT: Mr. Chairman, just a question on the  
21 exhibits. The prehearing, the order on procedure asked us to  
22 state in our prehearing statements, and we did anyway, as to  
23 whether our witnesses exhibits could be made a single composite  
24 exhibit. I'm happy to keep them listed separately and identify  
25 them, you know, seriatim accordingly. I just wondered if you

1 had a preference on that.

2 CHAIRMAN BAEZ: I'm not sure that we need to -- I  
3 mean, I think come hearing time we can entertain whatever  
4 things to make it a little more efficient going forward.

5 MR. WRIGHT: Thank you.

6 CHAIRMAN BAEZ: No proposed stipulations. And we  
7 have got some pending motions, which my understanding is that  
8 they are in the process of being ruled on, so I don't think  
9 that any of the pending motions is going to get settled up  
10 right here and now. And that goes the same for the pending  
11 confidentiality matters.

12 Last we have a ruling on opening statements. We have  
13 set it at 10 minutes per party.

14 MR. BEASLEY: Mr. Chairman, if I could address that.

15 CHAIRMAN BAEZ: Sure.

16 MR. BEASLEY: We think it would be very useful to  
17 extend that time to 20 minutes for the company and 20 minutes  
18 to be shared amongst the intervenors. We would use that time  
19 in order to give you an executive summary in the context of the  
20 legal background of this case, the evidence that we intend to  
21 produce, a clear description of where we are going to hopefully  
22 give you all a good fix on what our case is and what we are  
23 going to demonstrate for you.

24 The other side obviously has their position and would  
25 like to address that, I would assume, as well. But I think

1 that extra time would pay off in the long run by giving the  
2 Commission a clear picture of what we are about, and what the  
3 issues are and what the background is.

4 CHAIRMAN BAEZ: Can you state again, 20 minutes per  
5 side?

6 MR. BEASLEY: Per side, yes, sir. That is very  
7 similar to what they have --

8 CHAIRMAN BAEZ: I see one of the sides lining up to  
9 comment. And we will go, Mr. Wright, to my right. Go ahead.

10 MR. WRIGHT: Thank you, Mr. Chairman. We would  
11 support extending the time. However, because there are at  
12 least two very different theories of the case and damages on  
13 this -- and the calculation of damages, i.e., what amounts  
14 should be disallowed for cost-recovery and what amount should  
15 be allowed for cost-recovery, on our side, at least just  
16 speaking for myself, I would suggest that 20 minutes for the  
17 company and 40 minutes for our side, which would actually work  
18 out to the ten minutes per party would be fine.

19 On our side we have got CSX Transportation's  
20 position, which is that the company was imprudent in refusing  
21 to take seriously and negotiate in good faith with Tampa  
22 Electric --

23 CHAIRMAN BAEZ: Are you cutting into your time right  
24 now?

25 MR. WRIGHT: I didn't think this was the hearing. I

1 just wanted to explain to you why I think this is -- very  
2 briefly.

3 CHAIRMAN BAEZ: Mr. Wright, I'm sorry, I'm just  
4 busting your chops. That is a legal term.

5 MR. WRIGHT: Thank you, I appreciate it. I need it  
6 as often as I can get it.

7 CHAIRMAN BAEZ: Go ahead. I'm sorry.

8 MR. WRIGHT: We have got a theory of the case that  
9 they were imprudent in their dealing with the railroad.

10 CHAIRMAN BAEZ: Okay.

11 MR. WRIGHT: We need to lay out the legal framework  
12 of that for you and tell you what we think we are going to  
13 prove, establish through the evidence as it relates to our  
14 theory of the case. The other side, as I understand it, has  
15 different theories of the case that include, at a minimum,  
16 Tampa Electric's failure to account for backhaul revenues,  
17 which is a whole different theory of the case legally and  
18 factually. And, accordingly, I think our side needs more than  
19 just 20 minutes.

20 CHAIRMAN BAEZ: Mr. Twomey.

21 MR. TWOMEY: Yes, sir. Mr. Chairman, I think your  
22 initial suggestion was imminently fair, that each party have  
23 ten minutes. I think that is appropriate. I, for one, am not  
24 opposed to the company having twice that amount. **I do reject**  
25 the notion or oppose the notion that they should ask for twice

1 as much and keep us in the same ballpark. So I think the  
2 notion of 20 and 40 with each of us having ten minutes would be  
3 more than fair.

4 MS. KAUFMAN: Mr. Chairman, I agree somewhat with Mr.  
5 Wright in that different parties have different theories of the  
6 case. But I also don't want -- I know we have a short amount  
7 of time, and I don't want to see us spend the entire morning on  
8 the opening statements. So I think that I could represent for  
9 the Office of Public Counsel and FIPUG we would be happy for  
10 our portion to just take ten minutes. I think we could do that  
11 easily.

12 CHAIRMAN BAEZ: So you are okay if I lump you all  
13 together?

14 Mr. Beasley, I appreciate your wanting to provide us  
15 with an executive summary. I'm going to offer you an  
16 opportunity to do that, so you have your 20 minutes. However,  
17 judging by my math, the time you so generously offered to the  
18 opposing parties didn't sort of add up to me. So I don't want  
19 to impinge on your rights. But by saying that, you will each  
20 have -- I'm counting 30 minutes. Okay. You each have ten with  
21 FIPUG and OPC splitting their ten minutes.

22 Please don't make me regret that, any of you. I  
23 mean, time is really short. And I guess since we are done  
24 here, and I have made my ruling as to what the opening  
25 statements are going to be, now I am going to launch into my



wishful thinking.

2 All right. You know we have only got two days  
3 allotted to this hearing. It happens to be two days leading  
4 into a very important time for all of us, okay? I don't need  
5 to tell you what that is. So I think to the extent that we can  
6 keep things moving on, please, I urge both sides not to pass up  
7 opportunities to streamline this process. Get to the heart of  
8 the matter. You have all been given -- to the opposing side,  
9 you have been given ten minutes per party. Use them wisely.  
10 And if you can't use them wisely, don't use them at all.

11 I say that same thing to the company. I mean, we are  
12 really scrapping for every minute here. As we are going into a  
13 Friday on a long weekend, I know none of you -- I hate to say  
14 this on the record, but I know nobody wants to get stuck  
15 overtime in Tallahassee. We have got quite a few witnesses to  
16 call up. And they, above all else, are here from out-of-town  
17 by and large. So it is not just us that I'm really worried  
18 about, it is the cost and expense to everybody involved that is  
19 going to have to be here to testify. So if you would just keep  
20 that in mind all the better.

21 Having said that, is there anything else that has to  
22 come before the prehearing officer at this point?

23 MR. BEASLEY: Mr. Chairman.

24 CHAIRMAN BAEZ: Mr. Beasley.

25 MR. BEASLEY: We are amenable to accelerating the

1 start time of the hearing, if that is your pleasure. I mean,  
2 that could buy us a little extra time.

3 CHAIRMAN BAEZ: That's always -- I tend to want to  
4 take the first day, use the option to run late on the first  
5 day. I'm not going to make that -- I'm not going to set that  
6 in stone today, but I would rather start earlier as necessary.  
7 So I'm not going to push it up on Thursday. It may be  
8 necessary on Friday, if we are not making enough progress. **It**  
9 also may be necessary to run a little later than usual on  
10 Thursday if, we are not making the progress necessary.

11 I'm going to sit back and look at the witness lists  
12 and the testimony and set some realistic goals for us on that  
13 first day, and I will let you know as a preliminary matter what  
14 my goal is for that day, and let's see if we can't all be good  
15 enough to reach it, and then we will take it from there. **But I**  
16 appreciate your -- hopefully everyone else is sort of in that  
17 mode, as well. Again, we have only got two days, and perhaps  
18 not even that to do it comfortably, and I appreciate anything  
19 that you can do to make it happen.

20 Anything else?

21 MR. BEASLEY: Two other brief things. We would like  
22 to request a daily copy on the transcript. I'm sure all the  
23 parties could probably make use of that, if that is possible.  
24 I don't know if I should raise that here or with the court

25

1 CHAIRMAN BAEZ: Ms. Helton, I'm out of my depth here.

2 MS. HELTON: That is within the Commission's  
3 discretion to have a daily transcript of the hearing. I have  
4 not -- I don't know whether Cochran has made arrangements to do  
5 that or not, and I haven't talked to Mrs. Faurot, and that is  
6 really -- I think that is more of a Commission-driven matter  
7 than a party request type thing. I mean, I could certainly  
8 talk to Mrs. Faurot and see where we are with that, but I would  
9 be hesitant to recommend to you today that we go forward with  
10 that.

11 CHAIRMAN BAEZ: Hold that thought, Ms. Helton.

12 Mr. Wright.

13 MR. WRIGHT: I would like to agree with my  
14 counterpart, Mr. Beasley, and speak in support of that. The  
15 schedule, as I recall, presently says the transcript would be  
16 due on June 7th with our posthearing briefs due on June 14th.  
17 That is awfully tight. If we could possibly get the transcript  
18 even by Tuesday or Wednesday following the weekend after the  
19 hearing, that would be a big help to us in preparing our  
20 briefs. Otherwise it is very, very tight.

21 CHAIRMAN BAEZ: Thank you, Mr. Wright. We will go  
22 off the record for a second.

23 (Off the record.)

24 CHAIRMAN BAEZ: Okay. Let's go back on the record.  
25 Is there anything else that we need to address?

1 MR. BEASLEY: One final thing, sir. We intend to  
2 rely upon two demonstrative evidence pieces; one is a large map  
3 showing the eastern portion of the United States, the other is  
4 a chart.

5 CHAIRMAN BAEZ: Not to scale, I hope.

6 MR. BEASLEY: No, it is not to scale. It is smaller  
7 than that. But we will get copies of that to the parties  
8 before the end of this week.

9 CHAIRMAN BAEZ: All right. And if you can get  
10 copies --

11 MR. VANDIVER: What was the second one?

12 CHAIRMAN BAEZ: And what was the second one?

13 MR. BEASLEY: It's a chart just depicting certain  
14 transportation routes.

15 CHAIRMAN BAEZ: All right. And that will also be  
16 provided?

17 MR. BEASLEY: Yes.

18 CHAIRMAN BAEZ: Okay. Thank you. If there is  
19 nothing else, then we can adjourn.

20 Thank you all for coming. I appreciate it.

21 (The prehearing conference concluded at 2:25 p.m.)  
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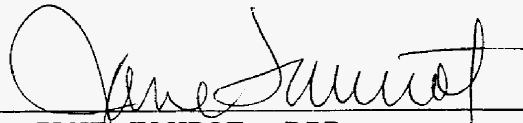
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I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 20th day of May, 2004.



JANE FAUROT, RPR

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