

**ORIGINAL**  
**AUSLEY & McMULLEN**

ATTORNEYS AND COUNSELORS AT LAW

227 SOUTH CALHOUN STREET  
P.O. BOX 391 (ZIP 32302)  
TALLAHASSEE, FLORIDA 32301  
(850) 224-9115 FAX (850) 222-7560

RECEIVED-PPSC

04 MAY 21 AM 11:19

COMMISSION  
CLERK

May 21, 2004

VIA HAND DELIVERY

Ms. Blanca S. Bayo, Director  
Division of Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Review of Tampa Electric Company's waterborne transportation contract with  
TECO Transport and associated benchmark; FPSC Docket No. 031033-EI

Dear Ms. Bayo:

Enclosed for filing in the above-referenced matter are the original and fifteen (15) copies of  
Tampa Electric's Response to Residential Customers' Objection to Notice of Intent to Serve  
Subpoena on Non-Party Pursuant to Rule 1.351, Florida Rules of Civil Procedure.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this  
letter and returning same to me.

Thank you for your assistance in connection with this matter.

Sincerely,



Richard E. Doran

CMP \_\_\_\_\_

COM S

CTR \_\_\_\_\_

ECR \_\_\_\_\_ RED/em  
Enclosures

GCL \_\_\_\_\_

OPC \_\_\_\_\_ cc: All Parties of Record (w/encl.)

MMS \_\_\_\_\_

RCA \_\_\_\_\_

SCR \_\_\_\_\_

SEC 1

OTH +cover Hr.

RECEIVED & FILED

  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

05850 MAY 21 04

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: May 21, 2004

**Tampa Electric's Response to Residential Customers' Objection to Notice of Intent to Serve Subpoena on Non-Party Pursuant to Rule 1.351, Florida Rules of Civil Procedure**

Tampa Electric Company ("Tampa Electric"), by and through its undersigned counsel, hereby responds in opposition to the **Residential Customers' Objection to Notice of Intent to Serve Subpoena on Non-Party Pursuant to Rule 1.351, Florida Rules of Civil Procedure ("Objection")**, filed with the Commission on May 19, 2004, and states:

1. On May 12, 2004, Tampa Electric requested and received from the Commission a subpoena duces tecum for the attendance of Walter Dartland, Executive Director of the Consumer Federation of the Southeast ("CFSE") scheduled on May 17, 2004, at 9:30 a.m. at the Offices of Ausley & McMullen, 227, South Calhoun Street, Tallahassee. This was noticed to all parties of record as a deposition pursuant to Rule 1.310, Florida Rules of Civil Procedure. See **Exhibit 1**.

2. Service of this subpoena duces tecum was unsuccessful because Mr. Dartland was traveling outside the United States and would not be returning to Tallahassee until May 19, 2004.

3. On May 13, 2004, undersigned counsel sought to have the subpoena duces tecum reissued with a deposition date of May 20, 2004 for Mr. Dartland and a second subpoena duces tecum issued for the CFSE for that same date and place.

DOCUMENT NUMBER-DATE

05850 MAY 21 03

FPSC-COMMISSION CLERK

4. Also on May 13, 2004, counsel for Tampa Electric, John Fons, sent a letter to Mr. Dartland, communicating that he was scheduled for deposition pursuant to Rule 1.310, but indicating that given Dartland's late return from overseas travel, that Tampa Electric would be amenable to postponing the depositions if Dartland so desired. Counsel for the Residential Customers was copied on that letter. **See Exhibit 2.**

5. Mr. Dartland called counsel's office on the morning of May 20, 2004, and requested that the depositions be postponed. Tampa Electric agreed to postpone the depositions of Dartland and CFSE with the understanding that Mr. Dartland would present himself for deposition as the Executive Director of the CFSE.

6. Soon after receiving and agreeing to Mr. Dartland's request, undersigned counsel and other counsel of record for several of the parties conferred at the appointed time for the depositions. Counsel for the Residential Customers articulated that his basis for raising his objection was the May 13, 2004 notice of intent on file with the Commission. Specifically, he raised the point that the only notices issued on behalf of undersigned counsel were issued pursuant to Rule 1.351, Florida Rules of Civil Procedure and that no notice was on file pursuant to Rule 1.310. Following the conclusion of the conference call, undersigned counsel reviewed the Commission's on-line electronic docket in order to better understand the objection of the Residential Customers. Undersigned counsel now realizes that he inadvertently sent the renewed request under the incorrect form of notice. **See Exhibit 3.**

7. The May 13, 2004 notice should have read "NOTICE OF DEPOSITION DUCES TECUM" as the notice filed by Tampa Electric for the Dartland deposition had read on May 12, 2004. **See Exhibit 1.** Undersigned counsel apologizes to anyone inconvenienced by this mistake.

8. In order to resolve any lingering confusion, Tampa Electric immediately noticed Mr. Dartland and CFSE, yet again, pursuant to Rule 1.310, Florida Rules of Civil Procedure, for deposition duces tecum on Monday, May 24, 2004. The subpoenas were served on May 20, 2004, as were the new notices of deposition duces tecum. **See Exhibit 4.**

9. This process of noticing the two depositions duces tecum with the corrected notice will allow the deponents time to gather documents and raise any issues they have concerning the deposition duces tecum. It will also clarify any remaining confusion over the nature of the deposition notice and allow the parties the opportunity to raise any issues they may have concerning these depositions in a timely fashion. At the same time, Tampa Electric will have time prior to the start of the hearing on May 27th to review the information.

10. Issuing new notices and subpoenas also moots all the issues raised by Residential Customers regarding the procedural improprieties asserted by the Residential Customers with regard to utilization of Rule 1.351, Florida Rules of Civil Procedure, in that Tampa Electric will no longer rely (albeit even inadvertently) upon that provision of the rules in its current notice. It will be clear to all parties that the deposition is noticed pursuant to Rule 1.310, Florida Rules of Civil Procedure.

11. Notice made pursuant to Rule 1.310 is proper in this matter in that CFSE has acted, by and through its executive director, in a number of ways to influence the outcome of this docket. Some of its advocacy has been external to the process. **See Exhibit 5** (Letter from CFSE Executive Director Walter Dartland soliciting funding from Mr. Michael Bullock of CSX Transportation, dated November 24, 2003). Some of its advocacy has been more direct and in the nature of a testimony opining on facts and arguments contained in this phase of the proceeding. **See Exhibit 6** (Letter from CFSE Executive Director Walter Dartland to the Public

Service Commissioners, dated September 29, 2003, outlining a number of factual and policy arguments against the Tampa Electric position and seeking to have the letter “incorporated into the record of Docket No. 030001-EI”).

12. If and when CFSE or Mr. Dartland raise issues of privilege, confidentiality or other recognized arguments in support of limiting some or all of this deposition process, Tampa Electric is prepared to address them with CFSE or its counsel. However, Tampa Electric finds it unusual that these issues are being raised, in a most general manner, by counsel for Residential Customers.

13. If the Commission were to find that Residential Customers have standing to raise these objections, Rule 1.280 (b)(5), Florida Rules of Civil Procedure, outlines the manner in which the types of objections Residential Customers seek to raise generally in this Objection should actually occur. Specifically, an objector should generate a privilege log and produce it to the Commission and to Tampa Electric so that the specific claims can be evaluated. Absent resort to this privilege log process, any claim of privilege is deemed waived as a matter of law. See, TIG Insurance v. Johnson, 799 So.2d 339 (Fla. 4<sup>th</sup> DCA 2001); Nationwide Mutual Fire Insurance Co. v. Hess, 814 So.2d. 1240 (Fla. 5<sup>th</sup> DCA 2002).

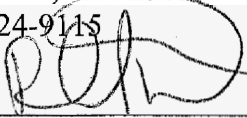
14. If provided a privilege log in a reasonable time- frame, Tampa Electric is prepared to evaluate such claims in good faith, consistent with the prior order of the Prehearing Officer (Order No. PSC 04-0498-PCO-EI, issued May 13, 2004) denying in part Tampa Electric’s Motion to Compel, and the appropriate standards for invoking privilege. However, until that action is taken and a log produced, the arguments of Residential Customers, particularly those in paragraphs one and two of the objection are premature and inappropriate.

15. In conclusion, Tampa Electric urges the Commission to deny Residential Customers' Objection for the following reasons: (1) The depositions in question have been rescheduled from a Thursday until the following Monday to allow CFSE, Mr. Dartland and any party to obtain a corrected Notice of Intent to Depose Pursuant to Rule 1.310, Florida Rules of Civil Procedure; (2) The May 13, 2004 filing of a Notice citing to Rule 1.351 was an inadvertent mistake by undersigned counsel and he apologizes to the Commission and to any Party or counsel inconvenienced by his mistake, however no party suffered any prejudice due to this mistake since the proceeding did not go forward; (3) Residential Customers do not have standing to assert claims of privilege on behalf of the CFSE; (4) Rule 1.280 (b)(5), Florida Rules of Civil Procedure sets out the method required to assert the types of privilege claims generally made in this Objection. As a matter of procedure, this Objection does not meet that standard and must be rejected. Failure to produce a privilege log results in a waiver of any claim of privilege; and (5) Tampa Electric is prepared to work to resolve any appropriately raised claims of privilege at the appropriate time.

WHEREFORE, TAMPA ELECTRIC PRAYS FOR DENIAL OF RESIDENTIAL CUSTOMERS' OBJECTION.

DATED this 21st day of May 2004.

LEE L. WILLIS  
JAMES D. BEASLEY  
JOHN P. FONS  
RICHARD E. DORAN  
Ausley & McMullen  
Post Office Box 391  
Tallahassee, FL 32303  
(850) 224-9115

By:   
ATTORNEYS FOR TAMPA ELECTRIC  
COMPANY

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing Notice of Deposition, filed on behalf of Tampa Electric Company, has been furnished by hand delivery (\*) or U. S. Mail on this 21st day of May 2004 to the following:

Mr. Wm. Cochran Keating III\*  
Senior Attorney  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Ms. Vicki Gordon Kaufman\*  
Mr. Timothy J. Perry  
McWhirter, Reeves, McGlothlin,  
Davidson, Kaufman & Arnold, P.A.  
117 S. Gadsden Street  
Tallahassee, FL 32301

Mr. Robert Vandiver\*  
Associate Public Counsel  
Office of Public Counsel  
111 West Madison Street – Suite 812  
Tallahassee, FL 32399-1400

Mr. John W. McWhirter, Jr.  
McWhirter, Reeves, McGlothlin,  
Davidson, Kaufman & Arnold, P.A.  
400 North Tampa Street, Suite 2450  
Tampa, FL 33601-5126

Mr. Michael B. Twomey\*  
Post Office Box 5256  
Tallahassee, FL 32314-5256

Mr. Robert Scheffel Wright\*  
Mr. John T. LaVia, III  
Landers & Parsons, P.A.  
310 West College Avenue  
Tallahassee, FL 32301



---

ATTORNEY

LA ✓

# AUSLEY & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

227 SOUTH CALHOUN STREET  
P.O. BOX 391 (ZIP 32302)  
TALLAHASSEE, FLORIDA 32301  
(850) 224-9115 FAX (850) 222-7560

May 12, 2004

HAND DELIVERED

RECEIVED-FPSC  
04 MAY 12 AM 9:38  
COMMISSION  
CLERK

Ms. Blanca S. Bayo, Director  
Division of Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Review of Tampa Electric Company's waterborne transportation contract with  
TECO Transport and associated benchmark; FPSC Docket No. 031033-EI


Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa  
Electric Company's Notice of Deposition Duces Tecum of Walter Dartland.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this  
letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,

  
James D. Beasley

JDB/pp  
Enclosure

cc: All Parties of Record (w/enc.)


RECEIVED & FILED  
  
FPSC-BUREAU OF RECORDS

EXHIBIT 1



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company's )  
Waterborne transportation contract with ) DOCKET NO. 031033-EI  
TECO Transport and associated benchmark. ) FILED: May 12, 2004  
\_\_\_\_\_ )

**NOTICE OF DEPOSITION DUCES TECUM**

TO: Mr. Walter Dartland  
Executive Director  
Consumer Federation of the Southeast  
2086 Wildridge Drive  
Tallahassee, FL 32303

PLEASE TAKE NOTICE THAT pursuant to Rule 1.310, Florida Rules of Civil Procedure, the undersigned will take the deposition of the following witness before a court reporter of Accurate Stenotype Reporters, Inc. in the main conference room of the law firm of Ausley & McMullen, 227 South Calhoun Street, Tallahassee, FL 32301, as follows:

**Deponent:** Walter Dartland  
**Date & Time:** 9:30 A.M., Monday, May 17, 2004

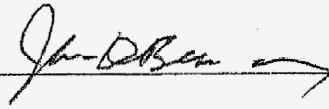
This deposition is being taken for the purpose of discovery, for use at trial and for such other purposes as are permitted under the Florida Rules of Civil Procedure. The deponent will bring with him to his deposition all documents listed in the "Document Request" described in Attachment A to the enclosed subpoena.

PLEASE BE GOVERNED ACCORDINGLY.

DATED this 12<sup>th</sup> day of May 2004.

LEE L. WILLIS  
JAMES D. BEASLEY  
JOHN P. FONS  
RICHARD E. DORAN  
Ausley & McMullen  
Post Office Box 391  
Tallahassee, FL 32303  
(850) 224-9115

By: \_\_\_\_\_

A handwritten signature in cursive script, appearing to read "John P. Fons", is written over a horizontal line.

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing Notice of Deposition, filed on behalf of Tampa Electric Company, has been furnished by hand delivery (\*) or U. S. Mail on this 12<sup>th</sup> day of May 2004 to the following:

Mr. Wm. Cochran Keating III\*  
Senior Attorney  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

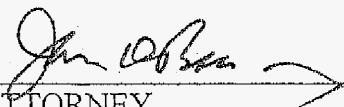
Ms. Vicki Gordon Kaufman\*  
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McWhirter, Reeves, McGlothlin,  
Davidson, Kaufman & Arnold, P.A.  
117 S. Gadsden Street  
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Associate Public Counsel  
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McWhirter, Reeves, McGlothlin,  
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400 North Tampa Street, Suite 245 O  
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Post Office Box 5256  
Tallahassee, FL 32314-5256

Mr. Robert Scheffel Wright\*  
Mr. John T. LaVia, III  
Landers & Parsons, P.A.  
310 West College Avenue  
Tallahassee, FL 32301

  
\_\_\_\_\_  
ATTORNEY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Docket No. 031033-EI - )  
Review of Tampa Electric Company's )  
2004-2008 waterborne transportation )  
contract with TECO Transport and )  
associated benchmark. )  
\_\_\_\_\_ )

SUBPOENA DUCES TECUM  
FOR DEPOSITION

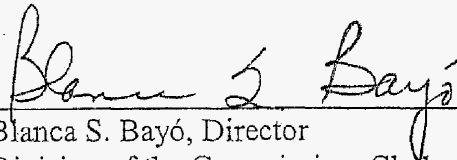
THE STATE OF FLORIDA

TO: Walter Dartland, Consumer Federation of the Southeast, 2086 Wildridge Drive, Tallahassee, FL 32303.

**YOU ARE COMMANDED** to appear before a person authorized by law to take depositions at the Offices of Ausley & McMullen P.A., 227 South Calhoun Street, Tallahassee, FL 32301, on Monday, May 17, 2004, at 9:30 a.m., to testify in this action, and to have with you at that time and place the following: The documents described in Attachment A. "Document Request."

**YOU ARE SUBPOENAED** to appear by the following attorney(s) and, unless excused from this subpoena by these attorneys or the Commission, you shall respond to this subpoena as directed.

**DATED** on May 11, 2004.

  
\_\_\_\_\_  
Blanca S. Bayó, Director  
Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission

( S E A L )

James D. Beasley, Esq.  
Ausley & McMullen P.A.  
227 South Calhoun Street  
Tallahassee, FL 32301  
Attorney for Tampa Electric Company

## **ATTACHMENT A**

### **REQUESTED DOCUMENTS**

**PLEASE REVIEW THIS ATTACHMENT IN ITS ENTIRETY  
IN ORDER TO COMPLY WITH THIS SUBPOENA**

### **DEFINITIONS AND INSTRUCTIONS**

A. The term "Document" shall mean any written, recorded, or graphic material of any kind, whether prepared by plaintiff or by any other person, that is in the possession, custody or control of plaintiff including, but not limited to, tapes or other forms of audio, visual, or audio/visual recordings, drawings, films, graphs, charts, photographs, e-mails, phone records, any retrievable data, whether in computer storage, carded, punched, taped or coded form, or stored electrostatically, electromagnetically, or otherwise. Without limiting the generality of the foregoing, "document" specifically includes all contracts, agreements, forms, correspondence, letters, telegrams, telephone messages, notices, notes (handwritten or otherwise), memoranda, records, reports, diaries, minutes, statements, worksheets, summaries, books, journals, ledgers, audits, maps, diagrams, drafts, newspapers, appointment books, desk calendars, notes or summaries of personal interview or conversations, messages (including without limitation reports of telephone conversations and conferences), acknowledgments, telexes, telecopies, all other written or printed matter of any kind, and all other data compilations from which information can be obtained and translated if necessary. "Document" shall also specifically include all checks, credit card statements, receipts, invoices, personal or business checks, and any and all other modes of billing and payment. Every draft or non-identical copy of a document is a

separate document as defined herein. A non-identical copy is a document originally identical in all relevant respects to another document, but no longer identical by virtue of any notation, modification, or attachment of any kind. A document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person or public or private entity having actual physical possession thereof.

B. The terms "refer," "relate," "reflect," "concern," or "regarding" means refer to, relate to, reflect, embody, touch on, pertain to, discuss, mention, support, evidence, contradict, modify, or in any way whatsoever concern the subject.

C. The terms "CFSE" means the Consumer Federation of the Southeast, Inc., a Florida non-profit corporation, together with its officers, employees, consultants, agents, representatives, attorneys and any other person or entity acting on its behalf.

D. The term "Case" means the matter *In re: Review of Tampa Electric Company's Waterborne transportation contract with TECO Transport and associated benchmark DOCKET NO. 031033-EI*.

E. The terms "communication" and "communicate" shall mean any recordation, exchange or transfer of information, whether in writing, oral or other form, including, but not limited to, memoranda or notes to the file, telephone conversations and meetings, letters, telegraphic and telex communications, and includes all information relating to all oral communications and "documents" (as hereinabove defined), whether or not such document, or information contained herein was transmitted by its author to any other person.

F. As used herein the terms "you" and "your" refers to Mr. Walter Dartland, together with any other person or entity acting on his behalf in his capacity as Director of the CFSE.

G. Words in the past tense include the present, and words in the present tense include the past. Use of the singular includes the plural, and use of the masculine includes the feminine where appropriate, and vice versa.

H. In the event that any request seeks the production of documents or things for which a claim of privilege is asserted, the party responding to this request for production must produce all non-privileged items responsive to the request, and then for each document for which a privilege is claimed state the following information: (a) the name of the person(s) in whose files the documents are maintained; (b) the author or creator of the document; (c) the date of creation of the document; (d) the names of the persons to whom a copy of the document has been provided or shown; (e) a general description of the nature of the contents of the document, sufficient for determination of whether a claim of privilege has been properly asserted; and (f) the privilege asserted, and the basis therefor.

I. If you or CFSE have possession, custody, or control of the originals of the documents requested, please produce the originals or a complete copy of the originals and all copies, which are different in any way from the original, whether by interlineations, receipt stamp or notation. If you do not have possession, custody, or control of the originals of the documents requested, please produce any copies, however made, in your possession, custody, or control.

J. You should construe the words "and" as well as "or" either disjunctively or conjunctively as necessary to bring within the scope of this production of documents any document which might otherwise be construed to be outside the scope.

K. Unless otherwise indicated, please only produce documents created since January 1, 2002 through and until May 17, 2004.

#### **DOCUMENTS REQUESTED**

1. All documents relating to or referring to any contribution or donation made to CFSE by any of the following persons or entities, or by persons or entities acting on their behalf;
  - a. CSX Corporation;
  - b. CSX Transportation;
  - c. **Drummond Company Inc. or its subsidiaries.**
2. All documents, including but not limited to checks, credit card statements, and receipts, relating to or reflecting payment made by you or by CFSE or by any other person or entity on behalf of you or CFSE, to any of the following persons or entities, or to any persons or entities acting on their behalf:
  - a. CSX Corporation;
  - b. CSX Transportation;
  - c. **Drummond Company Inc. or its subsidiaries.**
3. All documents reflecting communication by, between or among CFSE, Walter Dartland, Ronald Sachs, Ron Sachs Communication, Michelle Ubbin referring or relating to the formation of the CFSE, the mission of the CFSE, Tampa Electric Company, Drummond Coal Company, CSX, or the Case.



4. All documents reflecting communication by, between or among Michael Twomey, Esq. and CFSE or its officers directors and/or employees relating or referring to the Case.
5. All documents reflecting communication by, between or among you and Drummond Coal Company Inc. or other persons or entities acting on behalf of Drummond Coal Company Inc.
6. All documents reflecting communication by, between or among you and CSX Corporation or CSX Transportation or other persons or entities acting on behalf of CSX.
7. All documents reflecting communication by, between or among you and Dr. Timothy "Tim" Lynch , or other persons or entities acting on his behalf.
8. All contracts, memorandum of understanding, or engagement letters between CFSE and Michael Twomey, Esq.
9. All contracts, memorandum of understanding, or engagement letters between CFSE and Dr. Timothy "Tim " Lynch.
10. All contracts, memorandum of understanding, or engagement letters between CFSE and Drummond Coal Company, Inc. or its affiliates, officers, directors, employees, agents or attorneys.
11. All contracts, memorandum of understanding, or engagement letters between CFSE and CSX Corporation or its affiliates, officers, directors, employees, agents or attorneys.

12. All contracts, memorandum of understanding, or engagement letters between CFSE and CSX Transportation or its affiliates, officers, directors, employees, agents or attorneys.
13. All documents provided to Dr. Timothy "Tim" Lynch by CFSE in connection with Dr. Lynch's analysis of the case.
14. All documents reviewed by Dr. Timothy "Tim" Lynch in connection with his analysis of the case.
15. All documents provided to Dr. Anatoly Hochstein by CFSE in connection with Dr. Hochstein's analysis of the case.
16. All documents reviewed by Dr. Anatoly Hochstein in connection with his analysis of the case.

**AUSLEY & McMULLEN**

ATTORNEYS AND COUNSELORS AT LAW

227 SOUTH CALHOUN STREET  
P.O. BOX 391 (ZIP 32302)  
TALLAHASSEE, FLORIDA 32301  
(850) 224-9115 FAX (850) 222-7560

May 13, 2004

Walter Dartland, Executive Director,  
Consumer Federation of the Southeast  
2086 Wildridge Drive,  
Tallahassee, Florida

Re: FPSC Docket No. 031033-EI

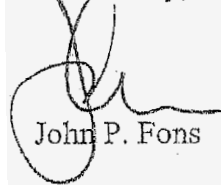
Dear Walter:

Enclosed is a copy of a Subpoena Duces Tecum for Deposition pursuant to Rule 1.310 (b)(16), Florida Rules of Civil Procedure, directed to the Consumer Federation of the Southeast. As Executive Director, we anticipate that you will be the corporate deponent.

We are aware that you will have just returned from Europe on May 19th, and that the deposition is scheduled for May 20, 2004. Unfortunately, the hearing date is quickly approaching, and we must take this deposition before that date. Nonetheless, we will work with you to find a mutually convenient date other than May 20th if necessary.

You can reach me at 425-5431.

Yours truly,



John P. Fons

cc: Mike Twomey

**EXHIBIT 2**

# AUSLEY & MCMULLEN

ATTORNEYS AND COUNSELORS AT LAW

227 SOUTH CALHOUN STREET  
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TALLAHASSEE, FLORIDA 32301  
(850) 224-9115 FAX (850) 222-7560

May 13, 2004

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Ms. Blanca S. Bayo, Director  
Division of Commission Clerk  
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Re: Review of Tampa Electric Company's waterborne transportation contract with  
TECO Transport and associated benchmark; FPSC Docket No. 031033-EI

Dear Ms. Bayo:

Enclosed for filing in the above-referenced matter are the original and fifteen (15) copies of Tampa Electric Company's Notice of Intent to Serve Subpoena Duces Tecum for Deposition of Walter Dartland, in his capacity as Executive Director of Consumer Federation of the Southeast.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,



Richard E. Doran

RED/em  
Enclosures

cc: All Parties of Record (w/encl.)

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EXHIBIT 3

**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 )  
\_\_\_\_\_ )

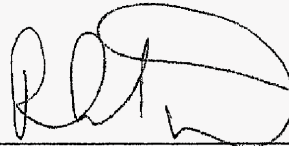
Docket No. 031033-EI

**NOTICE OF INTENT TO SERVE SUBPOENA ON NONPARTY PURSUANT TO  
RULE 1.351, FLORIDA RULES OF CIVIL PROCEDURE**

Comes now Tampa Electric Company by and through its attorneys and hereby files this notice pursuant to Rule 1.351, Florida Rules of Civil Procedure. Notice is hereby given that pursuant to the attached subpoena (Attachment 1), Tampa Electric Company requests production of documents as listed in the attached subpoena from:

Walter Dartland  
In his capacity as Executive Director of  
Consumer Federation of the Southeast  
2086 Wildridge Drive  
Tallahassee, FL 32303

Respectfully submitted this 13th day of May, 2004.



Richard E. Doran, Esq.  
Ausley & McMullen  
227 S. Calhoun Street  
Post Office Box 391 (32302)  
Tallahassee, Florida 32301  
Attorney for Tampa Electric Company

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Docket No. 031033-EI - )  
Review of Tampa Electric Company's )  
2004-2008 waterborne transportation )  
contract with TECO Transport and )  
associated benchmark. )

SUBPOENA DUCES TECUM  
FOR DEPOSITION

THE STATE OF FLORIDA

TO: Walter Dartland, Executive Director, Consumer Federation of the Southeast, 2086 Wildridge Drive, Tallahassee, FL 32303.

YOU ARE COMMANDED to appear before a person authorized by law to take depositions at the Offices of Ausley & McMullen, P.A., 227 South Calhoun Street, Tallahassee, FL 32301, on Thursday, May 20, 2004, at 9:30 a.m., to testify in this action, and to have with you at that time and place the following: The documents described in Attachment A, "Document Request."

YOU ARE SUBPOENAED to appear by the following attorney(s) and, unless excused from this subpoena by these attorneys or the Commission, you shall respond to this subpoena as directed.

DATED on May 13, 2004.

Blanca S. Bayó, Director  
Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission

By: Kay Flynn  
Kay Flynn, Chief, Bureau of Records

( S E A L )

Richard E. Doran, Esq.  
Ausley & McMullen  
227 S. Calhoun Street  
Post Office Box 391 (32302)  
Tallahassee, Florida 32301  
Attorney for Tampa Electric Company

**ATTACHMENT A**  
**REQUESTED DOCUMENTS**

**PLEASE REVIEW THIS ATTACHMENT IN ITS ENTIRETY  
IN ORDER TO COMPLY WITH THIS SUBPOENA**

**DEFINITIONS AND INSTRUCTIONS**

A. The term "Document" shall mean any written, recorded, or graphic material of any kind, whether prepared by plaintiff or by any other person, that is in the possession, custody or control of plaintiff including, but not limited to, tapes or other forms of audio, visual, or audio/visual recordings, drawings, films, graphs, charts, photographs, e-mails, phone records, any retrievable data, whether in computer storage, carded, punched, taped or coded form, or stored electrostatically, electromagnetically, or otherwise. Without limiting the generality of the foregoing, "document" specifically includes all contracts, agreements, forms, correspondence, letters, telegrams, telephone messages, notices, notes (handwritten or otherwise), memoranda, records, reports, diaries, minutes, statements, worksheets, summaries, books, journals, ledgers, audits, maps, diagrams, drafts, newspapers, appointment books, desk calendars, notes or summaries of personal interview or conversations, messages (including without limitation reports of telephone conversations and conferences), acknowledgments, telexes, telecopies, all other written or printed matter of any kind, and all other data compilations from which information can be obtained and translated if necessary. "Document" shall also specifically include all checks, credit card statements, receipts, invoices, personal or business checks, and any and all other modes of billing and payment. Every draft or non-identical copy of a document is a

separate document as defined herein. A non-identical copy is a document originally identical in all relevant respects to another document, but no longer identical by virtue of any notation, modification, or attachment of any kind. A document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person or public or private entity having actual physical possession thereof.

B. The terms "refer," "relate," "reflect," "concern," or "regarding" means refer to, relate to, reflect, embody, touch on, pertain to, discuss, mention, support, evidence, contradict, modify, or in any way whatsoever concern the subject.

C. The terms "CFSE" means the Consumer Federation of the Southeast, Inc., a Florida non-profit corporation, together with its officers, employees, consultants, agents, representatives, attorneys and any other person or entity acting on its behalf.

D. The term "Case" means the matter *In re: Review of Tampa Electric Company's Waterborne transportation contract with TECO Transport and associated benchmark DOCKET NO. 031033-EI.*

E. The terms "communication" and "communicate" shall mean any recordation, exchange or transfer of information, whether in writing, oral or other form, including, but not limited to, memoranda or notes to the file, telephone conversations and meetings, letters, telegraphic and telex communications, and includes all information relating to all oral communications and "documents" (as hereinabove defined), whether or not such document, or information contained herein was transmitted by its author to any other person.



F. As used herein the terms "you" and "your" refers to Mr. Walter Dartland, together with any other person or entity acting on his behalf in his capacity as Director of the CFSE.

G. Words in the past tense include the present, and words in the present tense include the past. Use of the singular includes the plural, and use of the masculine includes the feminine where appropriate, and vice versa.

H. In the event that any request seeks the production of documents or things for which a claim of privilege is asserted, the party responding to this request for production must produce all non-privileged items responsive to the request, and then for each document for which a privilege is claimed state the following information: (a) the name of the person(s) in whose files the documents are maintained; (b) the author or creator of the document; (c) the date of creation of the document; (d) the names of the persons to whom a copy of the document has been provided or shown; (e) a general description of the nature of the contents of the document, sufficient for determination of whether a claim of privilege has been properly asserted; and (f) the privilege asserted, and the basis therefor.

I. If you or CFSE have possession, custody, or control of the originals of the documents requested, please produce the originals or a complete copy of the originals and all copies, which are different in any way from the original, whether by interlineations, receipt stamp or notation. If you do not have possession, custody, or control of the originals of the documents requested, please produce any copies, however made, in your possession, custody, or control.

J. You should construe the words "and" as well as "or" either disjunctively or conjunctively as necessary to bring within the scope of this production of documents any document which might otherwise be construed to be outside the scope.

K. Unless otherwise indicated, please only produce documents created since January 1, 2002 through and until May 17, 2004.

#### **DOCUMENTS REQUESTED**

1. All documents relating to or referring to any contribution or donation made to CFSE by any of the following persons or entities, or by persons or entities acting on their behalf;
  - a. CSX Corporation;
  - b. CSX Transportation;
  - c. Drummond Company Inc. or its subsidiaries.
  
2. All documents, including but not limited to checks, credit card statements, and receipts, relating to or reflecting payment made by you or by CFSE or by any other person or entity on behalf of you or CFSE, to any of the following persons or entities, or to any persons or entities acting on their behalf:
  - a. CSX Corporation;
  - b. CSX Transportation;
  - c. Drummond Company Inc. or its subsidiaries.
  - d. Michael Twomey, Esq.
  - e. Dr. Anatoly Hochstein
  - f. Natural Ports and Waterways Institute, University of New Orleans

3. All documents reflecting communication by, between or among CFSE, Walter Dartland, Ronald Sachs, Ron Sachs Communication, Michelle Ubbin referring or relating to the formation or the CFSE, the mission of the CFSE, Tampa Electric Company, Drummond Coal Company, CSX, or the Case.
4. All documents reflecting communication by, between or among Michael Twomey, Esq. and CFSE or it's officers, directors and/or employees relating or referring to the Case.
5. All documents reflecting communication by, between or among you and Drummond Coal Company Inc. or other persons or entities acting on behalf of Drummond Coal Company Inc.
6. All documents reflecting communication by, between or among you and CSX Corporation or CSX Transportation or other persons or entities acting on behalf of CSX.
7. All documents reflecting communication by, between or among you and Dr. Timothy "Tim" Lynch, or other persons or entities acting on his behalf.
8. All contracts, memorandum of understanding, or engagement letters between CFSE and Michael Twomey, Esq.
9. All contracts, memorandum of understanding, or engagement letters between CFSE and Dr. Timothy "Tim" Lynch.
10. All contracts, memorandum of understanding, or engagement letters between CFSE and Drummond Coal Company Inc. or its affiliates, officers, directors, employees, agents or attorneys.

11. All contracts, memorandum of understanding, or engagement letters between CFSE and CSX Corporation or its affiliates, officers, directors, employees, agents or attorneys.
12. All contracts, memorandum of understanding, or engagement letters between CFSE and CSX Transportation or its affiliates, officers, directors, employees, agents or attorneys.
13. All documents provided to Dr. Timothy "Tim" Lynch by CFSE in connection with Dr. Lynch's analysis of the case.
14. All documents reviewed by Dr. Timothy "Tim" Lynch in connection with his analysis of the case.
15. All documents provided to Dr. Anatoly Hochstein by CFSE in connection with Dr. Hochstein's analysis of the case.
16. All documents reviewed by Dr. Anatoly Hochstein in connection with his analysis of the case.

# AUSLEY & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

227 SOUTH CALHOUN STREET  
P.O. BOX 391 (ZIP 32302)  
TALLAHASSEE, FLORIDA 32301  
(850) 224-9115 FAX (850) 222-7560

May 20, 2004

VIA HAND DELIVERY

COMMISSION  
CLERK

04 MAY 20 PM 3:20

RECEIVED-FPSC

Ms. Blanca S. Bayo, Director  
Division of Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Review of Tampa Electric Company's waterborne transportation contract with  
TECO Transport and associated benchmark; FPSC Docket No. 031033-EI

Dear Ms. Bayo:

Enclosed for filing in the above-referenced matter are the original and fifteen (15) copies of Tampa Electric Company's Notice of Deposition Duces Tecum of Walter Dartland, in his capacity as Executive Director of Consumer Federation of the Southeast, to be issued pursuant to Florida Rule of Civil Procedure 1.310.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,



Richard E. Doran

RED/em  
Enclosures

cc: All Parties of Record (w/encl.)

RECEIVED & FILED


  
FPSC-BUREAU OF RECORDS

EXHIBIT 4

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company's )  
Waterborne transportation contract with )  
TECO Transport and associated benchmark. )  
\_\_\_\_\_ )

DOCKET NO. 031033-EI  
FILED: May 20, 2004

NOTICE OF DEPOSITION DUCES TECUM

TO: Mr. Walter Dartland  
Executive Director  
Consumer Federation of the Southeast  
2086 Wildridge Drive  
Tallahassee, FL 32303

PLEASE TAKE NOTICE THAT pursuant to Rule 1.310, Florida Rules of Civil Procedure, the undersigned will take the deposition of the following witness before a court reporter of Accurate Stenotype Reporters, Inc. in the main conference room of the law firm of Ausley & McMullen, 227 South Calhoun Street, Tallahassee, FL 32301, as follows:

**Deponent: Walter Dartland**

**Date & Time: May 24, 2004 at 10:30 a.m.**

This deposition is being taken for the purpose of discovery, for use at trial and for such other purposes as are permitted under the Florida Rules of Civil Procedure. The deponent will bring with him to his deposition all documents listed in the "Document Request" described in Attachment A to the enclosed subpoena.

PLEASE BE GOVERNED ACCORDINGLY.

DATED this 20<sup>th</sup> day of May 2004.

LEE L. WILLIS  
JAMES D. BEASLEY  
JOHN P. FONS  
RICHARD E. DORAN  
Ausley & McMullen  
Post Office Box 391  
Tallahassee, FL 32303  
(850) 224-9115

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to be "R. Doran", written over a horizontal line.

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Notice of Deposition, filed on behalf of Tampa Electric Company, has been furnished by hand delivery (\*) or U. S. Mail on this \_\_\_<sup>th</sup> day of May 2004 to the following:

Mr. Wm. Cochran Keating III\*  
Senior Attorney  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Ms. Vicki Gordon Kaufman\*  
Mr. Timothy J. Perry  
McWhirter, Reeves, McGlothlin,  
Davidson, Kaufman & Arnold, P.A.  
117 S. Gadsden Street  
Tallahassee, FL 32301

Mr. Robert Vandiver\*  
Associate Public Counsel  
Office of Public Counsel  
111 West Madison Street – Suite 812  
Tallahassee, FL 32399-1400

Mr. John W. McWhirter, Jr.  
McWhirter, Reeves, McGlothlin,  
Davidson, Kaufman & Arnold, P.A.  
400 North Tampa Street, Suite 2450  
Tampa, FL 33601-5126

Mr. Michael B. Twomey\*  
Post Office Box 5256  
Tallahassee, FL 32314-5256

Mr. Robert Scheffel Wright\*  
Mr. John T. LaVia, III  
Landers & Parsons, P.A.  
310 West College Avenue  
Tallahassee, FL 32301



\_\_\_\_\_  
ATTORNEY



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Docket No. 031033-EI - )  
Review of Tampa Electric Company's )  
2004-2008 waterborne transportation )  
contract with TECO Transport and )  
associated benchmark. )

**SUBPOENA DUCES TECUM  
FOR DEPOSITION**

THE STATE OF FLORIDA

TO: Walter Dartland, Executive Director, Consumer Federation of the Southeast, 2086 Wildridge Drive, Tallahassee, FL 32303.

**YOU ARE COMMANDED** to appear before a person authorized by law to take depositions at the Offices of Ausley & McMullen, P.A., 227 South Calhoun Street, Tallahassee, FL 32301, on Monday, May 24, 2004, at 10:30 a.m., to testify in this action, and to have with you at that time and place the following: The documents described in Attachment A, "Document Request."

**YOU ARE SUBPOENAED** to appear by the following attorney(s) and, unless excused from this subpoena by these attorneys or the Commission, you shall respond to this subpoena as directed.

DATED on May 20, 2004.

Blanca S. Bayó, Director  
Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission

By: Kay Flynn  
Kay Flynn, Chief, Bureau of Records

(SEAL)

Richard E. Doran, Esq.  
Ausley & McMullen  
227 S. Calhoun Street  
Post Office Box 391 (32302)  
Tallahassee, Florida 32301  
Attorney for Tampa Electric Company

## ATTACHMENT A

### REQUESTED DOCUMENTS

**PLEASE REVIEW THIS ATTACHMENT IN ITS ENTIRETY  
IN ORDER TO COMPLY WITH THIS SUBPOENA**

### DEFINITIONS AND INSTRUCTIONS

A. The term "Document" shall mean any written, recorded, or graphic material of any kind, whether prepared by plaintiff or by any other person, that is in the possession, custody or control of plaintiff including, but not limited to, tapes or other forms of audio, visual, or audio/visual recordings, drawings, films, graphs, charts, photographs, e-mails, phone records, any retrievable data, whether in computer storage, carded, punched, taped or coded form, or stored electrostatically, electromagnetically, or otherwise. Without limiting the generality of the foregoing, "document" specifically includes all contracts, agreements, forms, correspondence, letters, telegrams, telephone messages, notices, notes (handwritten or otherwise), memoranda, records, reports, diaries, minutes, statements, worksheets, summaries, books, journals, ledgers, audits, maps, diagrams, drafts, newspapers, appointment books, desk calendars, notes or summaries of personal interview or conversations, messages (including without limitation reports of telephone conversations and conferences), acknowledgments, telexes, telecopies, all other written or printed matter of any kind, and all other data compilations from which information can be obtained and translated if necessary. "Document" shall also specifically include all checks, credit card statements, receipts, invoices, personal or business checks, and any and all other modes of billing and payment. Every draft or non-identical copy of a document is a

separate document as defined herein. A non-identical copy is a document originally identical in all relevant respects to another document, but no longer identical by virtue of any notation, modification, or attachment of any kind. A document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person or public or private entity having actual physical possession thereof.

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D. The term "Case" means the matter *In re: Review of Tampa Electric Company's Waterborne transportation contract with TECO Transport and associated benchmark DOCKET NO. 031033-EI.*

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F. As used herein the terms "you" and "your" refers to Mr. Walter Dartland, together with any other person or entity acting on his behalf in his capacity as Director of the CFSE.

G. Words in the past tense include the present, and words in the present tense include the past. Use of the singular includes the plural, and use of the masculine includes the feminine where appropriate, and vice versa.

H. In the event that any request seeks the production of documents or things for which a claim of privilege is asserted, the party responding to this request for production must produce all non-privileged items responsive to the request, and then for each document for which a privilege is claimed state the following information: (a) the name of the person(s) in whose files the documents are maintained; (b) the author or creator of the document; (c) the date of creation of the document; (d) the names of the persons to whom a copy of the document has been provided or shown; (e) a general description of the nature of the contents of the document, sufficient for determination of whether a claim of privilege has been properly asserted; and (f) the privilege asserted, and the basis therefor.

I. If you or CFSE have possession, custody, or control of the originals of the documents requested, please produce the originals or a complete copy of the originals and all copies, which are different in any way from the original, whether by interlineations, receipt stamp or notation. If you do not have possession, custody, or control of the originals of the documents requested, please produce any copies, however made, in your possession, custody, or control.

J. You should construe the words "and" as well as "or" either disjunctively or conjunctively as necessary to bring within the scope of this production of documents any document which might otherwise be construed to be outside the scope.

K. Unless otherwise indicated, please only produce documents created since January 1, 2002 through and until May 17, 2004.

### **DOCUMENTS REQUESTED**

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  - b. CSX Transportation;
  - c. Drummond Company Inc. or its subsidiaries.
  
2. All documents, including but not limited to checks, credit card statements, and receipts, relating to or reflecting payment made by you or by CFSE or by any other person or entity on behalf of you or CFSE, to any of the following persons or entities, or to any persons or entities acting on their behalf:
  - a. CSX Corporation;
  - b. CSX Transportation;
  - c. Drummond Company Inc. or its subsidiaries.
  - d. Michael Twomey, Esq.
  - e. Dr. Anatoly Hochstein
  - f. Natural Ports and Waterways Institute, University of New Orleans

3. All documents reflecting communication by, between or among CFSE, Walter Dartland, Ronald Sachs, Ron Sachs Communication, Michelle Ubbin referring or relating to the formation or the CFSE, the mission of the CFSE, Tampa Electric Company, Drummond Coal Company, CSX, or the Case.
4. All documents reflecting communication by, between or among Michael Twomey, Esq. and CFSE or it's officers, directors and/or employees relating or referring to the Case.
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7. All documents reflecting communication by, between or among you and Dr. Timothy "Tim" Lynch, or other persons or entities acting on his behalf.
8. All contracts, memorandum of understanding, or engagement letters between CFSE and Michael Twomey, Esq.
9. All contracts, memorandum of understanding, or engagement letters between CFSE and Dr. Timothy "Tim" Lynch.
10. All contracts, memorandum of understanding, or engagement letters between CFSE and Drummond Coal Company Inc. or its affiliates, officers, directors, employees, agents or attorneys.

11. All contracts, memorandum of understanding, or engagement letters between CFSE and CSX Corporation or its affiliates, officers, directors, employees, agents or attorneys.
12. All contracts, memorandum of understanding, or engagement letters between CFSE and CSX Transportation or its affiliates, officers, directors, employees, agents or attorneys.
13. All documents provided to Dr. Timothy "Tim" Lynch by CFSE in connection with Dr. Lynch's analysis of the case.
14. All documents reviewed by Dr. Timothy "Tim" Lynch in connection with his analysis of the case.
15. All documents provided to Dr. Anatoly Hochstein by CFSE in connection with Dr. Hochstein's analysis of the case.
16. All documents reviewed by Dr. Anatoly Hochstein in connection with his analysis of the case.

# AUSLEY & MCMULLEN

ATTORNEYS AND COUNSELORS AT LAW

227 SOUTH CALHOUN STREET  
P.O. BOX 391 (ZIP 32302)  
TALLAHASSEE, FLORIDA 32301  
(850) 224-9115 FAX (850) 222-7560

May 20, 2004

VIA HAND DELIVERY

COMMISSION  
CLERK

04 MAY 20 P 3:18

RECEIVED-PPSC

Ms. Blanca S. Bayo, Director  
Division of Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Review of Tampa Electric Company's waterborne transportation contract with  
TECO Transport and associated benchmark; FPSC Docket No. 031033-EI

Dear Ms. Bayo:

Enclosed for filing in the above-referenced matter are the original and fifteen (15) copies of Tampa Electric Company's Notice of Deposition Duces Tecum of Consumer Federation of the Southeast, c/o its registered agent CorpDirect Agents, Inc., to be issued pursuant to Florida Rule of Civil Procedure 1.310 (b)(6).

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,



Richard E. Doran

RED/em  
Enclosures

cc: All Parties of Record (w/encl.)

RECEIVED & FILED

*Mas*  
FPSC-BUREAU OF RECORDS



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company's )  
Waterborne transportation contract with ) DOCKET NO. 031033-EI  
TECO Transport and associated benchmark. ) FILED: May 20, 2004  
\_\_\_\_\_ )

**NOTICE OF DEPOSITION DUCES TECUM**

TO: Consumer Federation of the Southeast  
c/o its registered agent  
CorpDirect Agents, Inc.  
103 N. Meridian Street  
Tallahassee, FL 32301

PLEASE TAKE NOTICE THAT pursuant to Rule 1.310 (b)(6), Florida Rules of Civil Procedure, the undersigned will take the deposition of the following witness before a court reporter of Accurate Stenotype Reporters, Inc. in the main conference room of the law firm of Ausley & McMullen, 227 South Calhoun Street, Tallahassee, FL 32301, as follows:


**Deponent: Consumer Federation of the Southeast**  
**Date & Time: May 24, 2004 at 10:30 a.m. or upon the conclusion of the deposition of Walter Dartland.**

This deposition is being taken for the purpose of discovery, for use at trial and for such other purposes as are permitted under the Florida Rules of Civil Procedure. The matters on which the examination will be conducted shall include, but not be limited to, the efforts of Consumer Federation of the Southeast to influence the decision in this docket by direct and indirect advocacy. The deponent will bring to this deposition all documents listed in the "Document Request" described in Attachment A to the enclosed subpoena.

PLEASE BE GOVERNED ACCORDINGLY.

DATED this 20<sup>th</sup> day of May 2004.

LEE L. WILLIS  
JAMES D. BEASLEY  
JOHN P. FONS  
RICHARD E. DORAN  
Ausley & McMullen  
Post Office Box 391  
Tallahassee, FL 32303  
(850) 224-9115

By: 

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing Notice of Deposition, filed on behalf of Tampa Electric Company, has been furnished by hand delivery (\*) or U. S. Mail on this 20<sup>th</sup> day of May 2004 to the following:

Mr. Wm. Cochran Keating III\*  
Senior Attorney  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850


Ms. Vicki Gordon Kaufman\*  
Mr. Timothy J. Perry  
McWhirter, Reeves, McGlothlin,  
Davidson, Kaufman & Arnold, P.A.  
117 S. Gadsden Street  
Tallahassee, FL 32301

Mr. Robert Vandiver\*  
Associate Public Counsel  
Office of Public Counsel  
111 West Madison Street – Suite 812  
Tallahassee, FL 32399-1400

Mr. John W. McWhirter, Jr.  
McWhirter, Reeves, McGlothlin,  
Davidson, Kaufman & Arnold, P.A.  
400 North Tampa Street, Suite 2450  
Tampa, FL 33601-5126

Mr. Michael B. Twomey\*  
Post Office Box 5256  
Tallahassee, FL 32314-5256

Mr. Robert Scheffel Wright\*  
Mr. John T. LaVia, III  
Landers & Parsons, P.A.  
310 West College Avenue  
Tallahassee, FL 32301

  
\_\_\_\_\_  
ATTORNEY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Docket No. 031033-EI - )  
Review of Tampa Electric Company's )  
2004-2008 waterborne transportation )  
contract with TECO Transport and )  
associated benchmark. )

SUBPOENA DUCES TECUM  
FOR DEPOSITION

THE STATE OF FLORIDA

TO: CorpDirect Agents, Inc., Registered Agent for Consumer Federation of the Southeast, 103 N. Meridian Street, Tallahassee, Florida 32301

**YOU ARE COMMANDED** to appear before a person authorized by law to take depositions at the Offices of Ausley & McMullen, P.A., 227 South Calhoun Street, Tallahassee, FL 32301, on Monday, May 24, 2004, at 10:30 a.m., to testify in this action, and to have with you at that time and place the following: The documents described in Attachment A, "Document Request."

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**DATED** on May 20, 2004.

Blanca S. Bayó, Director  
Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission

By:

Kay Flynn  
Kay Flynn, Chief, Bureau of Records

( S E A L )

Richard E. Doran, Esq.  
Ausley & McMullen  
227 S. Calhoun Street  
Post Office Box 391 (32302)  
Tallahassee, Florida 32301  
Attorney for Tampa Electric Company

## ATTACHMENT A

### REQUESTED DOCUMENTS

**PLEASE REVIEW THIS ATTACHMENT IN ITS ENTIRETY  
IN ORDER TO COMPLY WITH THIS SUBPOENA**

### DEFINITIONS AND INSTRUCTIONS

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separate document as defined herein. A non-identical copy is a document originally identical in all relevant respects to another document, but no longer identical by virtue of any notation, modification, or attachment of any kind. A document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person or public or private entity having actual physical possession thereof.

B. The terms "refer," "relate," "reflect," "concern," or "regarding" means refer to, relate to, reflect, embody, touch on, pertain to, discuss, mention, support, evidence, contradict, modify, or in any way whatsoever concern the subject.

C. The terms "CFSE" means the Consumer Federation of the Southeast, Inc., a Florida non-profit corporation, together with its officers, employees, consultants, agents, representatives, attorneys and any other person or entity acting on its behalf.

D. The term "Case" means the matter *In re: Review of Tampa Electric Company's Waterborne transportation contract with TECO Transport and associated benchmark DOCKET NO. 031033-EI*.

E. The terms "communication" and "communicate" shall mean any recordation, exchange or transfer of information, whether in writing, oral or other form, including, but not limited to, memoranda or notes to the file, telephone conversations and meetings, letters, telegraphic and telex communications, and includes all information relating to all oral communications and "documents" (as hereinabove defined), whether or not such document, or information contained herein was transmitted by its author to any other person.

F. As used herein the terms "you" and "your" refers to Mr. Walter Dartland, together with any other person or entity acting on his behalf in his capacity as Director of the CFSE.

G. Words in the past tense include the present, and words in the present tense include the past. Use of the singular includes the plural, and use of the masculine includes the feminine where appropriate, and vice versa.

H. In the event that any request seeks the production of documents or things for which a claim of privilege is asserted, the party responding to this request for production must produce all non-privileged items responsive to the request, and then for each document for which a privilege is claimed state the following information: (a) the name of the person(s) in whose files the documents are maintained; (b) the author or creator of the document; (c) the date of creation of the document; (d) the names of the persons to whom a copy of the document has been provided or shown; (e) a general description of the nature of the contents of the document, sufficient for determination of whether a claim of privilege has been properly asserted; and (f) the privilege asserted, and the basis therefor.

I. If you or CFSE have possession, custody, or control of the originals of the documents requested, please produce the originals or a complete copy of the originals and all copies, which are different in any way from the original, whether by interlineations, receipt stamp or notation. If you do not have possession, custody, or control of the originals of the documents requested, please produce any copies, however made, in your possession, custody, or control.

J. You should construe the words "and" as well as "or" either disjunctively or conjunctively as necessary to bring within the scope of this production of documents any document which might otherwise be construed to be outside the scope.

K. Unless otherwise indicated, please only produce documents created since January 1, 2002 through and until May 17, 2004.

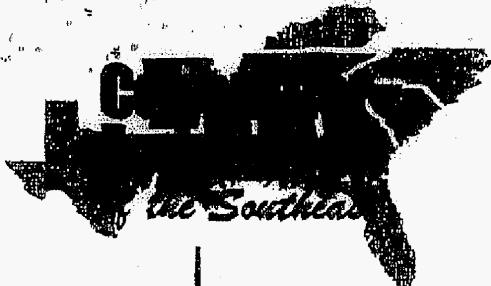
### **DOCUMENTS REQUESTED**

1. All documents relating to or referring to any contribution or donation made to CFSE by any of the following persons or entities, or by persons or entities acting on their behalf;
  - a. CSX Corporation;
  - b. CSX Transportation;
  - c. Drummond Company Inc. or its subsidiaries.
2. All documents, including but not limited to checks, credit card statements, and receipts, relating to or reflecting payment made by you or by CFSE or by any other person or entity on behalf of you or CFSE, to any of the following persons or entities, or to any persons or entities acting on their behalf:
  - a. CSX Corporation;
  - b. CSX Transportation;
  - c. Drummond Company Inc. or its subsidiaries.
  - d. Michael Twomey, Esq.
  - e. Dr. Anatoly Hochstein
  - f. Natural Ports and Waterways Institute, University of New Orleans



3. All documents reflecting communication by, between or among CFSE, Walter Dartland, Ronald Sachs, Ron Sachs Communication, Michelle Ubbin referring or relating to the formation of the CFSE, the mission of the CFSE, Tampa Electric Company, Drummond Coal Company, CSX, or the Case.
4. All documents reflecting communication by, between or among Michael Twomey, Esq. and CFSE or it's officers, directors and/or employees relating or referring to the Case.
5. All documents reflecting communication by, between or among you and Drummond Coal Company Inc. or other persons or entities acting on behalf of Drummond Coal Company Inc.
6. All documents reflecting communication by, between or among you and CSX Corporation or CSX Transportation or other persons or entities acting on behalf of CSX.
7. All documents reflecting communication by, between or among you and Dr. Timothy "Tim" Lynch, or other persons or entities acting on his behalf.
8. All contracts, memorandum of understanding, or engagement letters between CFSE and Michael Twomey, Esq.
9. All contracts, memorandum of understanding, or engagement letters between CFSE and Dr. Timothy "Tim" Lynch.
10. All contracts, memorandum of understanding, or engagement letters between CFSE and Drummond Coal Company Inc. or its affiliates, officers, directors, employees, agents or attorneys.

11. All contracts, memorandum of understanding, or engagement letters between CFSE and CSX Corporation or its affiliates, officers, directors, employees, agents or attorneys.
12. All contracts, memorandum of understanding, or engagement letters between CFSE and CSX Transportation or its affiliates, officers, directors, employees, agents or attorneys.
13. All documents provided to Dr. Timothy "Tim" Lynch by CFSE in connection with Dr. Lynch's analysis of the case.
14. All documents reviewed by Dr. Timothy "Tim" Lynch in connection with his analysis of the case.
15. All documents provided to Dr. Anatoly Hochstein by CFSE in connection with Dr. Hochstein's analysis of the case.
16. All documents reviewed by Dr. Anatoly Hochstein in connection with his analysis of the case.



P.O. Box 630  
 Tallahassee, FL 32302

Walter Dartland  
 Executive Director

Michael Bullock  
 CSX Transportation  
 500 Water Street - J842  
 Jacksonville, FL 32202

November 24, 2003

Dear Michael:

I'm writing to offer CSX Transportation the opportunity to support a new consumer advocacy group, the Consumer Federation of the Southeast (CFSE), in its effort to open long-closed markets to fair competition in Florida and elsewhere. I am certain we share a common interest in ensuring the lowest possible energy costs through competitive markets, especially in the area of transportation.

By offering whatever financial assistance you can to CFSE, you will help consumers fight for affordable electric utility rates in Florida by changing current practices allowed under Florida's flawed energy transportation policy. In addition, we want all transportation companies to have a fair chance at providing services to Florida utilities.

CFSE, though new, already is deeply engaged in opening these markets. Specifically, we are supporting positions in regulatory rate hearings before the Florida Public Service Commission that call for scrutiny into transportation pass-through requests from two investor-owned utilities, Tampa Electric Company and Progress Energy. Both companies have long engaged in the practice of awarding sweetheart transportation deals to affiliated companies, effectively shutting out companies like yours.

I am contacting you, in part, because PSC records indicate your company was among a list of potential bidders for the TECO waterborne transportation contract. As you know, TECO eschewed bids from other companies, and, as it has done for 45 years now, once again awarded the transportation contract to a sister company, TECO Transport.

We have supported the intervention of a group of TECO customers in that case, providing them with the initial financial help necessary to hire an attorney. And, we're pleased to report the TECO customers were successful in persuading the PSC to assign the TECO transportation issue to a separate docket hearing (Docket No. 031033).

That hearing, now set for May 26 and 27, 2004, will provide an opportunity to fully develop arguments as to why it is important that TECO re-bid this contract, as well as what a poor deal the current contract is for TECO customers.

That hearing, now set for May 26 and 27, 2004, will provide an opportunity to fully develop arguments as to why it is important that TECO re-bid this contract, as well as what a poor deal the current contract is for TECO customers.

The requirements of TECO's waterborne transportation solicitation for bids were uncharacteristic of standard business practices and inaccurate for a number of practical and technical reasons - many of which have been raised by CFSE and by the PSC staff.

Examples of TECO's irregular bid requirements include such red flags as 1) a desired five-year contract with an individual provider, instead of shorter periods with several contractors, 2) terminals offering 1.5 million tons of inventory space, and 3) requiring terminal facilities to accept responsibility for cargo loss. And there's more.

- Requires that bidders use "sources convenient to Mississippi and Ohio River systems" and that "terminal facilities should be accessible to Mississippi River barge traffic," which eliminates some ports in the Gulf of Mexico that are not located in Louisiana.
- Requires consent decree options ranging up to 3 million tons annually for ocean shipping alone, and requires that terminals pay for port demurrage.

With legal assistance from consumer attorney Mike Twomey, CFSE also won a recent decision from the PSC to hold a similar hearing on Progress Energy's self-dealings and transportation costs. A hearing date for Progress Energy's spin-off docket is in the works.

An important goal for consumers is that these spin-off hearings result in TECO and Progress Energy actively seeking open and fair bids in the future. Consumers will benefit from greater industry competition. To be sure, we can all expect the utilities to mount a strong public and legal battle to thwart these efforts. That's why we need your help!

Your contribution will help us further our ongoing education effort, prepare for the coming PSC hearings, and build our organization into a strong consumer advocacy presence. While CFSE is a not-for-profit organization, contributions to it are not tax deductible. Our corporate status does not require us to reveal our contributors, and we will keep your identity confidential to protect you from possible industry backlash. We recognize that confidentiality can be extremely important to corporations in this industry.

Included with this letter are representative newspaper articles on CFSE and the TECO issue. If you would like more information, or wish to discuss any of these issues further, please feel free to call me at (850) 562-2086.

Sincerely,



Walter Dartland,  
Executive Director

September 29, 2003

Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

*Delivered by Courier*

Commissioners:

As you know, I have been following closely the developments around Tampa Electric Company's solicitation for bids for barge transportation services. As you also know, it is my opinion and the opinion of many others knowledgeable of the energy industry that TECO is abusing its ratepayers by entering into inflated contracts with a sister company, TECO Transport. Further, I have advocated and will continue to advocate that the state best serves the interest of ratepayers by ensuring honesty, prudence and common sense in the bid solicitation and fuel recovery processes.

In a September 12, 2003, filing (Docket No. 030001-BI) with the Commission, and in subsequent testimony by TECO advocates, TECO defended the bid solicitation process for which it has come under fire. In this filing and in these testimonies, TECO makes a number of claims about its solicitation in an attempt to validate a process that can have only one result: the awarding of TECO's river barging, transloading and ocean barging contracts to TECO Transport.

By writing to you today, I hope to show that several of what TECO considers pillars of its defense of this solicitation are unstable and weak at best. I will assert that those pillars cannot reasonably sustain a controversial bid that could impact TECO ratepayers to the tune of millions of excess dollars. Rather, those pillars crumble under the weight of closer scrutiny, especially TECO's seminal claim that rail rates are a reasonable proxy for determining reasonable barge shipping rates.

Initially, though, allow me to make several crucial points about this bid process in general. First, it is out of the ordinary for contractors of barge and terminal services to desire a contract as lengthy as five years. Rather, contractors generally choose very short contract periods, such as one or two years, or even shorter if terminals and barge companies will allow. This gives contractors the opportunity to take advantage of changing market conditions. Also, contractors rarely wish to contract with only one barging company or terminal service. Why? Because contracting with multiple companies allows a contractor to create competition, take advantage of flexibility and foster market conditions favorable to their bottom line.

It should raise serious concern among regulatory bodies, then, when large utilities such as TECO buck industry norms and seek long-term contracts with a sole source provider. It should also raise concern that TECO seems unwilling to take advantage of opportunities to buy goods and services on the spot market, even though goods and services on the spot market often are available at considerable value relative to contracted products.

Second, we must not forget that TECO can, if it wishes to, ship imported coal directly to Tampa. One of its smaller competitors, Lakeland Electric, recently signed a contract with CSX to deliver coal for a rate of \$16.50/ton, delivering it from coalfield to plant. Compare that rate to TECO's projected bid price, which is almost \$24/ton. The Commission must not allow TECO to ignore its competitors' practices. One fact is clear: the Port of Tampa can just as easily accept ocean-going, coal-laden vessels as it can ocean-going barges sailing from Davant, Louisiana. The dimensions of so-called handy-sized vessels are no greater than TECO Transport's barges that originate from Davant. These facts are indisputable, and any independent survey of the Port of Tampa's channel depths will confirm this fact. TECO, though, chooses to ignore these facts, deciding instead to ship imported coal past Tampa to Davant, and then back to Tampa on TECO Transport's barges. TECO Transport is able to charge \$13.50 for the passage of barges from Davant to Tampa, adding to the bottom line of its parent company's balance sheet.

Third, there is evidence that TECO, if it wished to branch outside its own subsidiaries, could do business with other ports along the Mississippi River at lower prices. In fact, one terminal in the vicinity of TECO Transport's Davant terminal is offering transloading rates as low as \$1.25/ton. I will disclose the name of that terminal if asked to do so by the Commission. Similarly, TECO does not have to send coal to Davant for blending, as its power plants are capable of blending coal. TECO's Gannon plant, for example, is now a gas facility and has ample facilities for coal blending. The Big Bend facility also has blending capabilities.

Those, of course are my broad observations on the process, and they raise, in my opinion, important questions about TECO's behavior with respect to this solicitation. Why would a company as large as TECO seek to enter into long-term contracts with a sole source for river barge, transloading and ocean barge services? Why would a contractor choose a costly, circuitous route for imported coal when its competitors in the Tampa area ship directly to the Port of Tampa? And, finally, why would a company use rail rates to determine whether bids for waterborne rates are fair? I assert that the answers to all of those questions revolve around one important theme: TECO's unwavering effort to contract with TECO Transport for river barge, terminal and ocean barge services.

There are a number of logistical, practical and technical flaws in TECO's solicitation (WB-2004). Logistical requirements of the bid solicitation grant a substantial competitive advantage to TECO Transport. The attached critical analysis of WB-2004 unpacks these logistical requirements and shows multiple ways in which TECO lays its bid solicitation upon the doorstep of TECO Transport. While TECO's September 12 filing and testimonies claim that the prices it pays to TECO Transport are "reasonable and prudent" and that it would be appropriate for TECO to recover costs associated with these prices, I assert that the company stretches the definition of reason and goes beyond the boundaries of prudence.

For example, the solicitation's requirement that the bidder must use "sources convenient to Mississippi and Ohio River systems" and that "terminal facilities should be accessible to Mississippi River barge traffic" eliminates a wide range of possible ports in the Gulf of Mexico that are not located in Louisiana. Although Joann Wehle, TECO's Director of Wholesale Marketing and Fuels, testified before you that TECO's coal portfolio

"necessitates that the transloading and storage terminal facilities be accessible to Mississippi River barge traffic," a wholesale funneling of shipments to Davant, Louisiana, does not always serve the best interest of ratepayers.

According to requirements of the solicitation, a bidder would not be able, for example, to use a port along the west coast of Florida to receive foreign coal shipments. The bidder, instead, would have to direct foreign coal shipments to the Gulf Coast of Louisiana before then directing coal to its final destination. However, Tampa Electric's competitors, such as Lakeland Electric, regularly use the Port of Tampa to receive inbound coal from origins in South America and elsewhere. This element of the solicitation, then, would seem to create unnecessary shipping expenses that drive up the cost of electricity for Tampa Electric customers.

As another example, the solicitation limits imports of foreign coal to only 1 million tons, a mere fraction of the coal required under the solicitation. This limit has several important consequences. First, limiting coal imports precludes potential bidders from procuring less expensive coal that is chemically similar to domestic products. The cheapest petcoke currently on the market, for example, comes from Venezuela. The result for end consumers of Tampa Electric energy would be unnecessarily high pass-through costs for fuel materials. Second, limiting foreign coal continues to give a competitive advantage to ports not on the west coast of Florida. If nearly all of the coal shipped pursuant to the solicitation comes from domestic sources, then west Florida ports will lose out on the possibility of receiving coal from foreign sources. The beneficiaries of such an arrangement are bidders with ports along the Mississippi River.

In contrapuntal testimony to these facts, Wehle states that TECO prefers having one provider "because of the benefits of receiving priority handling of its coal transportation needs, having first call on dedicated transportation resources and benefiting from administrative efficiencies from dealing with one entity in the day-to-day management of the waterborne coal transportation services."

However, what TECO is calling 'priority handling' and 'first call on resources' requires a deformity of shipping industry practices so severe that only a subsidiary with mutual interests to the bid designer would be willing to bear the burden of these requirements. Furthermore, any 'administrative efficiencies' that might inure to TECO surely would be swallowed up by the gross inefficiencies that would occur pursuant to other requirements of the solicitation. Not the least of these inefficiencies is the fact that TECO would require shipments from foreign origins to traverse the Gulf of Mexico twice to arrive on the Florida coast.

Turning now to the issue of practical flaws in the bid and to the notions of 'priority handling' and 'first call on resources,' I wish to point out several areas in which TECO's bid specifications extend far beyond normal industry practice. These practical requirements include requirements as aberrant as 1) requiring consent decree options ranging up to 3 million tons annually for ocean shipping alone, 2) requiring shipping variances up to 40% monthly, 3) requiring TECO to pay terminal costs after discharge of coal at the generating station, and 4) requiring terminals to maintain responsibility for port demurrage.

To cite an example of the prohibitive nature of these requirements, I want to focus on the issue of consent decrees. TECO's solicitation requires options as high as 3 million tons annually, an option rate extremely high for any utility. Such a large option comes with a high price tag, one that has been calculated to be as high as \$18 million annually according to the well-established Black-Scholes method of determining the value of options. Any participating company would have to incorporate into its bid the cost of these coal options, which works to drive up the cost per ton of coal under the contract. No reasonable company would be willing to obligate 3 million tons of coal options to any contractor. The lack of response to WB-2004 serves as proof.

Furthermore, the solicitation requires bidding terminals to offer 1.5 million tons of inventory space, an amount far in excess of industry norms. In fact, if TECO Transport's competitors with respect to terminal services were to meet this requirement, they could essentially be working entirely for TECO. Why? Because maintaining 1.5 millions tons of inventory would obligate almost every square foot of their terminals. The price for such a move would indeed be great, and it is no surprise they have chosen thus far not to submit bids. Who, other than a company such as TECO Transport with shared interest of the contractor, would choose to satisfy such abnormal requirements?

As yet another very specific example, it is widely accepted industry practice that terminal facilities do not bear responsibility for cargo loss. However, the solicitation's specs require just that. Compounding the difficulty of such a requirement is that potential bidders must maintain 100 to 158 days of inventory at the terminal facility. The industry average, by the way, is approximately 40 days. Keeping inventory for 100 to 158 days will lead to loss of cargo due to wind and rain. For a terminal to have to pay for cargo lost over a 100- to 158-day period will be very expensive and virtually no terminal will be willing to take such a risk. In fact, most terminals do not provide insurance for the cargo they store. Rather, the shippers pay for the insurance.

Taken separately, these requirements might serve as anomalies of a company with idiosyncratic preferences about its business relationships. Taken together, they form a pattern that clearly grants competitive advantages to TECO Transport.

Turning now to technical flaws within TECO's defense of its solicitation, I must focus extreme attention upon the idea that one might use rail transportation rates to gauge whether shipping costs are 'reasonable and prudent.' In testimony to you, Brent Dibner, a consultant to TECO, asserts, "I am not aware of a better alternative for the purpose of evaluating Tampa Electric's waterborne transportation costs."

Joann Wehle echoes this belief when she says, "Tampa Electric believes the benchmark is still a useful tool in evaluating the prudence of its waterborne transportation costs. The rail rate comparison is the best alternative for comparison currently available." The 'benchmark' to which Wehle refers, of course, is a \$25 per ton benchmark that most in the industry consider an outdated proxy with negligible value in today's shipping environment. It is akin to basing modern poverty thresholds upon the cost of a basket of food in 1960.



Wehle even goes so far as to state, "The water transportation system has saved hundreds of millions of dollars in fuel transportation costs during the period from 1998 to 2002 alone, as demonstrated by the company's actual waterborne coal transportation costs as compared to its transportation benchmark." The key phrase in Wehle's explanation is "as compared to its transportation benchmark."

The problem is, any survey of coal shipping data clearly proves that the \$25 rail rate benchmark that TECO seems to hold in unquestioned esteem is steeply overpriced. The reason is two-fold. First, Florida's average rail rates are the highest in the country, because of the dependence of Florida utilities on CSX rail. Therefore, even if one wanted to make legitimate comparisons between rail and waterborne shipping methods, Florida's inflated rail prices muddy such a comparison. Second, TECO utilizes the average rail rate figures even for points of origin for which it would never in a million years consider using rail.

*Franklin*

Consider this. TECO defends its waterborne transportation costs by comparing them to rail rates for origins such as New Orleans, Wyoming and Illinois. Who, though, would send freight by rail from New Orleans to Tampa when barge lines exist? Who would procure coal from Wyoming when one can get it from the Appalachians? Who would send coal by rail from Illinois when one could use the Mississippi and Ohio River systems? The answer must be that no one would, and that is why TECO's use of the average rail rate methodology is flawed and disingenuous.

Ms. Wehle would be better served comparing TECO's waterborne coal shipment costs to competitors in the energy industry. What she would find, among other things, is that competitors such as Lakeland Electric and Jacksonville Electric do not choose to route all of their foreign coal shipments through Louisiana. Rather, they take the obvious and orthodox approach of shipping their coal from its origin to coastal Florida. Ms. Wehle also would discover that those same competitors do not even approach the sacred \$25 benchmark.

I am enclosing a critical analysis of WB-2004 that looks in more detail at the unusual and perhaps even unethical nature of TECO's solicitation.

TECO's claim that its solicitation is unbiased does not hold water, as evidenced by the paucity of companies that elected to respond to the company's bid solicitation. No company bid on ocean transportation. Not one. More than any other piece of evidence, the lack of participation by competing companies in this bid process should raise the Commission's eyebrows with regard to whether TECO conducted the bid process in a sincere and open way.

Brent Dibner states in his testimony that TECO's bid solicitation should not have prevented 'creative and innovative bids' from TECO Transport's competitors. Having assessed the stringent and aberrant requirements of the solicitation, 'creative and innovative' might as well mean impossible. TECO sent the solicitation to 24 vendors, and received not a single bid for the ocean-going portion of its solicitation. More than anything, that should serve as a blinding flash of the obvious -- that TECO never intended to contract with anyone but TECO Transport for its waterborne coal transportation.

Commissioners, I urge you to act swiftly in sending a message to TECO that the Commission will not allow fuel recovery costs for inflated waterborne transportation expenses. Help draw a line in the sand for TECO's executive leadership and its stockholders that competition -- not insider dealings with sister companies -- is the way to best protect ratepayer interests. Know, as well, that I personally, with the help of others, will remain vigilant and vocal on this issue until these developments result in a fair result for TECO ratepayers. The consumers of Central Florida deserve fair utility rates.

I ask that this letter of public concern be incorporated into the record of Docket No. 050001-EL.

Sincerely,

Walter Dartland  
Executive Director  
Consumer Federation of the Southeast, Inc.  
P.O. Box 630  
Tallahassee, FL 32302-0630  
(850) 222-1996